

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
January 23, 2023**

The meeting of the Greensboro Board of Adjustment was held on Monday, January 23, 2023, at 5:35 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Vaughn Ramsey, Chuck Truby, Ted Oliver, Cory Randolph, and Tiffanie Rudd. City staff present were Rachel McCook and Mike Kirkman of the Planning Department, and Emily Guarascio (Associate City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Ms. Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF THE MINUTES (December 12, 2022 Meeting)

Mr. Randolph made a motion to approve the December 12, 2022, minutes. Mr. Oliver seconded. The Board voted 5-0-1 in favor of the motion, (Ayes: Oliver, Randolph, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0; Abstention: Truby). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Vice Chair Ramsey asked about the vote margin required to approve a variance with six members seated. Mr. Kirkman stated that the member not present counts as a no vote, so a variance request would need all 6 members to vote in the affirmative.

Mr. Kirkman advised there were no continuances or withdrawals.

NEW BUSINESS

a. BOA-23-01: 1921 West Gate City Boulevard (APPROVED)

Ms. McCook stated in BOA-23-01, the City of Greensboro requests a special use permit to place a temporary wireless telecommunications facility (WTF) on the property in addition to all uses permitted in the A-O (Auto-Oriented) District for a period not to exceed six months. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 5. The Land Development Ordinance reference was Section 30-8-12.5(B): All other temporary WTFs may be allowed for a period not to exceed 6 months with approval of a Special Use Permit subject to the following additional standards: (1) Temporary WTFs may only be placed on sites that are already approved for a permanent WTF. (2) A temporary WTF may not exceed the permitted height of the permanent WTF permitted for a particular site. (3) All portions of the temporary WTF and its support structures, including guy wires, must be contained within the property or compound boundaries that are approved specifically for the permanent WTF. (4) An application for a temporary WTF may be submitted simultaneously with an application for a permanent WTF. A Special Use Permit is not required for a temporary WTF if the application is submitted concurrently with the application for a permanent WTF.

Background and Site Information: The subject lot is located on the south side of West Gate City Boulevard, west of Coliseum Boulevard, and is zoned A-O (Auto-Oriented). Tax records indicate the lot contains approximately 44.01 acres. The applicant proposes to install a temporary wireless telecommunications facility

on the property during the month of March for the ACC basketball tournament to add capacity for visitors and to provide for public safety. The applicant indicates that the wireless telecommunications facility will be next to the road, shorter than two other existing towers and surrounded by a six-foot opaque fence. Similar use permits at this location were approved by the Planning and Zoning Commission in 2013, 2014 and 2020.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Mike Perdue for his testimony.

Mike Perdue, on behalf of Greensboro Coliseum Complex, stated that this request is to allow the installation of a temporary Cellsite-On-Wheels (COW) that is required to maintain adequate cellular service levels during the NCAA tournament events.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Ms. Rudd moved that in BOA 23-01, 1921 West Gate City Boulevard, based on the stated Findings of Fact, the special use permit be approved based on the following: (1) The proposed use will not be detrimental to the health or safety of persons residing or working in the vicinity or injurious to property or improvements in the vicinity because the WTF will be surrounded by a 6-foot opaque fence and will not be seen; (2) The proposed use at the particular location provides a service or facility that will contribute to the general well-being of the neighborhood or the community because the WTF will be used for the ACC tournament visitors during the month of March, adding capacity for the customers and providing for public safety; (3) The location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the Comprehensive Plan because the WTF will be next to a short and other two towers. Mr. Oliver seconded the motion. The Board voted 6-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0). Chair Necas stated the special use permit request was granted unanimously.

b. BOA-23-02: 1124 South Holden Road (APPROVED)

Ms. McCook stated in BOA-23-02, Russell Standard NC LLC and Norfolk Southern Railway Company request a special use permit to operate an asphalt plant and other facilities for the manufacture and storage of chemicals, petroleum products, explosives and allied products on the property in addition to all uses permitted in the HI District. Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-1 – Table 8-1: Asphalt Plants and Other Facilities for the Manufacture and Storage of Chemicals, Petroleum Products, Explosives, and Allied Products is a permitted use in the HI District with a Special Use Permit; and Section 30-8-10.5(A): Asphalt Plants and Other Facilities for the Manufacture and Storage of Chemicals, Petroleum Products, Explosives, and Allied Products must meet the following standards: (1) All operations must be set back at least 50 feet from any property line; (2) Tanks, loading areas, or other facilities for the manufacturing, handling, or storage of flammable or explosive materials must be separated from any residential district by at least 500 feet; (3) Security fencing at least 8 feet in height must be provided around the perimeter of the operation (see 30-9-4).

Background and Site Information: The subject lot is located on the west side of North Holden Road, north of Patterson Street, and is zoned HI (Heavy Industrial). Survey records indicate the Hammaker East Emulsions Lease Lot contains approximately 7.18 acres. The applicants' use of the subject lot as an asphalt emulsions terminal has been in existence since 2008. When reviewing an air permit request from the applicants for expansion on the subject lot, staff found no record of a special use permit for the subject property and identified it as a nonconforming use since one is required to operate Asphalt Plants and Other Facilities for the Manufacture and Storage of Chemicals, Petroleum Products, Explosives, and Allied Products in the HI District.

After ongoing discussions with the applicants' representatives, the Zoning Administrator, on June 29, 2022, provided a zoning consistency determination for on site improvements that included the applicants working with the City to meet special use permit requirements. To remedy the nonconformity, the applicants applied for this special use permit and associated variances, which will be heard by the Board of Adjustment as part of BOA-23-03. If the special use permit is approved, the Board of Adjustment can consider the variance requests related to the three use conditions. The applicants indicate that the applicants' use of the subject lot has no material impact on neighboring properties and provides necessary service/products instrumental in the creation of the City's infrastructure.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Shawn Byram for his testimony.

Marc Isaacson, 804 Green Valley Road, Suite 200, on behalf of Russell Standard NC LLC, displayed a site plan of the subject property and stated that the leased area used by the applicant for its business operations. The applicant acquired Hammaker East Emulsions in the 1990s, but this property has been in operation as an industrial use since 1958. He displayed aerial photography from 1986 demonstrating the facility's emulsion terminal use at that point, and noted that the applicant has not moved major improvements at the site since. He then displayed a site plan layout of the subject property, and noted that all but three new emulsion tanks were on the site for decades. With the growth of the region, the asphalt emulsions manufactured at the site are in greater demand, as seen with today's completion of the Urban Loop. He stated that applicant's engineers have deemed these locations suitable, and this is not expanding the use outside its current boundaries. Mr. Isaacson stated that it was determined the current operations were not under an applicable SUP, and the company is applying to bring its operations into full compliance in good faith. The subject property is zoned HI and is surrounded by similar high-intensity heavy industrial uses, and the railway terminal is integral to the emulsion manufacturing process. He stated the current use is not detrimental, as it has existed on the subject property in this manner since at least the mid-80s with no noted issues. The applicant is not seeking to change the use in any way, just to bring longstanding operations into compliance with the current ordinance. Mr. Isaacson stated that this facility provides a service for the community, producing key components for the expansion of infrastructure in the region. The location and character of the proposed use are in harmony with the neighborhood, and this site lies in an industrial district in the comprehensive plan. He stated that the applicant sent a notification letter to neighbors according to the City's distribution list and received no communications regarding the request.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Truby moved that in BOA 23-02, 1124 South Holden Road, based on the stated Findings of Fact, the Special Use Permit be approved based on the following: (1) The proposed use will not be detrimental to the health or safety of persons residing or working in the vicinity or injurious to property or improvements in the vicinity because the applicant's use has been in existence on the subject property since 2008, no material impact on neighboring property owners is anticipated as a result of this expansion; (2) The proposed use at the particular location provides a service or facility that will contribute to the general well-being of the neighborhood or the community because applicant's use of the subject property provides a necessary service product instrumental in the creation of improvements to the City's infrastructure system including roadways, railroads tracks, runways, and sidewalks; (3) The location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the Comprehensive Plan because the parcel contains an existing railroad use and is bordered on all sides by similarly zoned heavy industrial districts. Ms. Rudd seconded the motion. The Board voted 6-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Vice

Chair Ramsey, Chair Necas; Nays: 0). Chair Necas stated the special use permit request was approved unanimously.

c. BOA-23-03: 1124 South Holden Road (APPROVED)

Ms. McCook stated in BOA-23-03, Russell Standard NC LLC and Norfolk Southern Railway Company request three variances: (1) To allow all operations to be setback 10 feet from any property line when at least 50 feet is required; (2) To allow tanks, loading areas, or other facilities for the manufacturing, handling, or storage of flammable or explosive materials to be separated 330 feet from any residential district when at least 500 feet is required; (3) To allow security fencing to be 6 feet in height around the perimeter of the operation when at least 8 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 references were Section 30-8-10.5(A)(1)(a): All operations must be set back at least 50 feet from any property line; Section 30-8-10.5(A)(1)(b): Tanks, loading areas, or other facilities for the manufacturing, handling, or storage of flammable or explosive materials must be separated from any residential district by at least 500 feet; and Section 30-8-10.5(A)(2): Security fencing at least 8 feet in height must be provided around the perimeter of the operation.

Background and Site Information: The subject lot is located on the west side of North Holden Road, north of Patterson Street, and is zoned HI. Survey records indicate the Hammaker East Emulsions Lease Lot contains approximately 7.18 acres. Per the submitted application, an asphalt emulsions terminal has operated on the subject lot for decades without issues. When reviewing an air permit request from the applicants for expansion on the subject lot, staff found no record of a special use permit for the subject property and identified it as a nonconforming use since one is required to operate Asphalt Plants and Other Facilities for the Manufacture and Storage of Chemicals, Petroleum Products, Explosives, and Allied Products in the HI District. After ongoing discussions with the applicants' representatives, the Zoning Administrator, on June 29, 2022, provided a zoning consistency determination for on site improvements that included the applicants working with the City to meet special use permit requirements. To remedy the nonconformity, the applicants applied for a special use permit, which will be heard by the Board of Adjustment as part of BOA-23-02, and these variances. If the special use permit is approved, the Board of Adjustment can consider the variance requests related to the three related use standards. Per the Land Development Ordinance, operations for this use must be setback at least 50 feet from property lines, facilities must be separated from any residential district by at least 500 feet, and security fencing of at least 8 feet must be provided around the perimeter of the operation. The Hammaker East Emulsions Lease Lot, which is subject to the variance requests, is a small portion of the parent parcel, so the nonconformities mostly exist along the southern boundary line closest to Patterson Street. The submitted site plan shows that the part of the operation closest to a property line is a metal shed, which is approximately 10 feet away, when 50 feet is required. The submitted site plan also shows that the closest tank, loading area or other facility is approximately 330 feet from a residential district, when 500 feet is required. The submitted site plan shows that security fencing surrounds the entire operation, but some sections are only 6 or 7 feet in height, when at least 8 feet is required. The applicants indicate that the nonconforming components of the operation have been in place for decades, have not interfered with neighboring property owners, and requiring the relocation of existing infrastructure and improvements would create a hardship. If the variances are granted, the subject property will come into compliance with the Land Development Ordinance.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Shawn Byram for his testimony.

Marc Isaacson, 804 Green Valley Road, Suite 200, on behalf of Russell Standard NC LLC, stated that the industrial use has been in operation at the subject property 195, and the hardship from the spacing and setback requirements would mean that Russell Standard would have to cease operation and relocate its infrastructure that has been in place for decades. The peculiar local conditions of the railroad terminal impose the current site layout, and the property is currently fenced on all sides and there have been no noted security issues with the

current fence. He stated that the entire site is fenced to provide security and protect the public, and the portion of the fence which is beneath the ordinance is bordered by the property owner, Norfolk Southern, and both parties have a relationship and interest in maintaining security on the site. Mr. Isaacson stated that because of the specific design of the site to allow for this use, requiring the relocation of infrastructure could make the site unfeasible. Strict application of the ordinance would also require unnecessary installation of a fence. He stated that the hardship is not caused by applicant, as improvements were installed prior to Russell Standard's operation on the site, and were constructed to account for railroad operations. The general purpose and intent of the ordinance is to promote public safety, this use has been in operation for many decades without causing harm, and the GSO2040 Comprehensive plan anticipates this exact use in the area. Granting of the variances will allow the applicant to continue business as it has for years, without interference to neighboring property owners. Mr. Isaacson stated the applicant sent out notification, and received no communications.

Mr. Oliver stated he reviewed the maps of the area and could not find any residential uses within 500 feet. Mr. Kirkman stated that there were residential districts south of Patterson Street. Mr. Oliver asked if there were residential uses, and Mr. Kirkman stated that area was at the edge of a residential development.

Mr. Randolph asked if the applicant leases the property, and Mr. Isaacson confirmed that was correct. Randolph asked if the applicant has responsibility for the fence.

Shawn Byram, 374 Spring Valley Drive, Lexington, on behalf of Russell Standard NC LLC, stated there was no fence when his company first leased the subject property years ago, and they installed the fencing along Holden Road.

Mr. Randolph asked what the applicant would need to do to continue operations without the variances. Mr. Isaacson stated that complying without the variances would require the applicant to relocate many components to comply with spacing and other requirements. Mr. Randolph asked if this was feasible, or would it require tearing down and rebuilding all infrastructure. Mr. Byram stated that the tanks already in location would have to be removed, at a cost of half a million dollars or more. Mr. Isaacson stated that the components on the property were designed for the safe and efficient operation of this specific use, around the location of railroad tracks which are fixed. Mr. Byram stated that they had to comply with fire regulations when placing the tanks.

Chair Necas asked about the ownership structure of the subject property. Mr. Isaacson stated that Norfolk Southern Railway Company owns the property and leases it to the applicant. Chair Necas asked if Norfolk Southern's interest was in the transport of the raw materials, and Mr. Isaacson stated that was correct.

Vice Chair Ramsey asked if the lease arrangement changed any land use considerations. Mr. Kirkman stated that as long as the applicable use is still in operation, the special use permits and variances would remain on the subject property.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Truby moved that in BOA 23-03, 1124 South Holden Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the owner would be forced to relocate a significant portion of its existing infrastructure and operations on site; (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 these improvements have been in place for decades prior to the applicant purchasing the property; (3) The hardship is not the result of the applicant's own actions because the business and operations on site as currently configured were acquired by the owner in its current state; (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 applicant will be able to carry on with its operation on site in the same manner in which such operations have been conducted for decades. Vice Chair Ramsey seconded the motion. The Board voted 6-0

in favor of the motion, (Ayes: Oliver, Vice Chair Ramsey, Randolph, Rudd, Truby, Chair Necas; Nays: 0). Chair Necas stated the variance requests were approved unanimously.

d. BOA-23-04: 508 Pisgah Church Road (APPROVED)

Ms. McCook stated in BOA-23-04, McDonald's Corporation requests a variance to provide 29 parking spaces for an existing eating and drinking establishment when at least 37 spaces are required. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-11-5 – Table 11-1: For eating and drinking establishments, the minimum parking ratio is 1 space per 100 square feet of gross floor area.

Background and Site Information: The subject lot is located on the north side of Pisgah Church Road, west of North Elm Street, and is zoned CD-C-M (Conditional District - Commercial – Medium). Tax records indicate the lot contains approximately 1.01 acres and the existing building was constructed in 1993. The applicant proposes to construct a double drive-through for the existing fast food restaurant, which would eliminate some existing parking spaces. The Land Development Ordinance requires 1 parking space per every 100 square feet of gross floor area for eating and drinking establishments. To accommodate a larger drive-through component, the applicants propose to provide 29 parking spaces when 37 are required, based on the 3,493 square foot building. The applicants indicate that far more patrons use the drive-through as a result of the pandemic, so less onsite parking is needed. If the variance is granted, the applicant will proceed with the commercial building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Jim Smith and Dylan Diefenbach for their testimony (Jim Smith, 23 Thimbleberry Square, did not speak).

Patrick Byker, 700 West Main Street, Durham, on behalf of McDonald's Corporation, stated that the subject is very small at 1.01 acres, and the McDonald's restaurant is approximately 29 years old. This variance would permit the construction of a side-by-side drive through by reducing available parking spaces. The Covid-19 pandemic has been severely damaging to the foodservice industry, and made drive through service much more preferred than dine-in service. He stated the applicant suffers a hardship because without the variance, McDonald's would have to demolish at least 600 square feet of its existing building to comply with the parking ratios imposed by the ordinance, which would be extremely expensive. Mr. Byker stated the hardship is peculiar to the subject property because of the lot's small size. The need to modify the drive through and parking arrangement is not a result of actions of the applicant because the Covid-19 pandemic has dramatically shifted customer demands over the past 3 years. He then stated that this request is consistent with intent of ordinance and promotes substantial justice. The variance is in accordance with the goals of property owners investing in their properties to have economically viable businesses, helps McDonald's provide service that the residents of Greensboro demand, assists employees in the operation of the business, and the proposed parking layout makes the site a safer environment for customers and employees.

Ms. Rudd asked how another drive through will work with the tight configuration of the subject property. Mr. Byker stated that their site plan calls for the removal of parking spots near the entrance and exit zone, which will ease access to the restaurant.

Dylan Diefenbach, 326 Tryon Road, Raleigh, on behalf of McDonald's Corporation, stated that the plan calls for pulling the existing curbing closer to the building and removing a curb island in the north side to facilitate a bypass lane.

Mr. Randolph asked if the applicant was getting rid of the existing double-window drive through or expanding the existing arrangement. Mr. Byker stated there would be two drive through areas on the east side of the building. Mr. Diefenbach stated that they were not modifying the windows, just adding another lane and order point. Mr. Randolph asked if the second window was supposed to increase flow of orders. Patrick stated that cars being parallel would allow traffic to move quicker.

Mr. Oliver asked if the impact of the pandemic has been on consumer preference in how to purchase, and not on the amount of business. Mr. Byker stated that was correct. Mr. Oliver asked if this would increase speed of service or amount of sales. Mr. Byker stated potentially both, and that customers often use parking to pick up online orders. Mr. Oliver asked if the applicant built a new McDonald's, would they build this building style. Mr. Byker stated it is likely they would not, and it would likely be a double drive through.

Vice Chair Ramsey stated that he represents fast food restaurants and there is a large trend to design new stores for primarily drive through with smaller dining rooms. Mr. Byker stated that it has been a significant change in the industry.

Ms. Rudd stated this would improve traffic flow in the area, and that when she visited the subject property she saw traffic backing up.

Chair Necas asked if there was anyone to speak in opposition, and swore in Bill Spaulding for his testimony.

Bill Spaulding, 4100 Bell Orchard Drive, stated that he owns the property directly adjacent to the subject property, behind the McDonald's and other commercial uses. The paved area behind the commercial development has created a pass-through that negative impacts his property and the flow of traffic on Bell Orchard Drive. He stated he believes the proposed drive through expansion would increase speed of service at the McDonald's, thus increasing traffic. He stated that turning left onto Pisgah Church Road to return to Elm Street is difficult, leading many drivers to choose to turn onto Bell Orchard Drive instead. Accessing his property on Bell Orchard Drive is already difficult and this will likely make it worse. Mr. Spaulding then stated that the careless disposal of trash is a significant concern, and displayed photographs of litter in his yard that is from the McDonald's. He stated that upcoming development will increase traffic on Bell Orchard Drive, and that with an increase in drive through traffic, ingress and egress will get more difficult. Mr. Spaulding stated he would like a fence on the property line to prevent the transit of trash onto his property.

Mr. Truby asked Mr. Spaulding when he bought his property, and if the McDonald's was there. Mr. Spaulding stated he does not remember if the McDonalds was there, but he stated the adjacent automobile service use was not. He stated that he used his property as a long-term rental for most of the time he has owned it, but recently renovated it to live in it as his primary residence. Mr. Truby stated that the Board has very little control over the areas of Mr. Spaulding's complaints, given that the Board can only consider the parking request in the variance. Mr. Spaulding stated he felt he had to oppose the request.

Vice Chair Ramsey asked about the enforcement mechanism for trash leaving a property. Mr. Kirkman stated that the nuisance code covers trash piling up on a property, but not necessarily for trash transiting onto another property. Vice Chair Ramsey asked if this qualified as a nuisance. Mr. Kirkman stated that the ordinance primarily deals with accumulating trash.

Mr. Randolph stated that it might be difficult to determine how the trash got to the property. Vice Chair Ramsey stated that in Mr. Spaulding's photographs, much of it had McDonald's branding.

Chair Necas stated that the safety issue was pertinent to this request, but she understands the trash concerns presented by Mr. Spaulding and advised him to communicate with the applicant and the City about the littering.

Ms. Guarascio stated that Mr. Spaulding is presenting personal opinion testimony on traffic levels.

Mr. Kirkman stated that staff is happy to follow up with Mr. Spaulding to connect him to other City resources.

Chair Necas asked if the applicant or anyone in support of the request wished to speak in rebuttal.

Mr. Byker stated that the McDonald's location began operation in 1993, before Mr. Spaulding purchased his property. McDonald's will look into what efforts it can take to reduce instances of litter. He stated that reductions in walk-in traffic facilitated by the additional drive through should alleviate some of the concerns as well.

Mr. Oliver asked if the intention of the drive through change was to increase sales or convenience for customers. Mr. Byker stated that they expected sales to stay on current trends and this is a means to address customer

preferences, not increase number of customers. Mr. Oliver stated that means there should not necessarily be more trash generated.

Chair Necas asked if anyone in opposition of the request wished to speak in rebuttal.

Mr. Spaulding stated that the access to Bell Orchard Drive from the commercial uses south of his property is new since he purchased it. He stated that he has not observed dine-in customers littering, it comes from the drive-through.

With no additional speakers present, Chair Necas closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Randolph stated that he understands McDonald's preferences, but he questioned whether this request would significantly improve traffic flow. Chair Necas stated the request might reduce the potential for accidents on Pisgah Church Road.

Vice Chair Ramsey stated this was the trend in the industry, with higher drive through volumes and less dine-in service.

Mr. Oliver moved that in BOA 23-04, 508 Pisgah Church 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 consumer behavior has changed since the pandemic, drive through lanes are the preferred way to purchase food at fast food restaurants; (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 configuration of the property and building do not allow two drive through lanes without substantial changes to the building; (3) The hardship is not the result of the applicant's own actions because consumer behavior has changed very recently and the applicant is trying to adapt; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because no hardship will be created for the area, public safety and welfare will not be harmed, lines into the street will be reduced and improve public safety as a result. Mr. Truby seconded the motion. The Board voted 6-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0). Chair Necas stated the variance request was approved unanimously.

Vice Chair Ramsey encouraged the applicant to work with the neighbors and City to handle the litter situation.

e. BOA-23-05: 3207 Edgewater Drive (APPROVED)

Mr. Kirkman stated in BOA-23-05, John and Anna Nickels request two variances. (1) To allow a proposed accessory structure to be 8 feet from another structure on the lot when at least 10 feet is required; (2) To allow an existing house toe encroach 1.4 feet into a required 15 foot side street setback. The house is 13.6 feet from the side property line along West Avondale Drive. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.1(E)(2): Accessory structures 600 square feet and larger must be separated by at least 10 feet from any other structure on the site; and Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum side street setback is 15 feet.

Background and Site Information: The subject lot is located on the south side of Edgewater Drive, east of West Avondale Drive, and is zoned R-3. Tax records indicate the corner lot contains approximately 37,026 square feet and the house was constructed in 1958. The applicants propose to construct an 864 square foot three-car garage on the property that will be 8 feet from the existing house, which is 2 feet less than the 10 feet required by the Land Development Ordinance. To allow for the reduced separation, the applicants requested a variance. The submitted site plan shows that the existing house is also a nonconforming structure as it encroaches 1.4 feet in to a 15 foot required side street setback. So, the applicants also seek a variance to address the nonconformity at this time. The applicants indicate that the narrow lot shape, stream presence,

existing tree location and drainage issues affect the development of the property. If the variances are granted, the applicants will proceed with the residential building permit process.

Mr. Kirkman provided the land use and zoning for this property and surrounding properties, and noted the applicable overlay.

Chair Necas asked the applicant to provide their name/address for the record and swore in John Nickels for his testimony (John Nickels, 3207 Edgewater Drive, did not speak).

Amanda Hodierne, 804 Green Valley Road, Suite 200, on behalf of John and Anna Nickels, stated that the subject property's plat dates to 1938, and the lot is oddly shaped. She displayed aerial photography, and stated there was a stream at the front of the property. She displayed a site plan with the proposed garage, noting that the distance between the primary and accessory structures. The applicant sent a letter sent to property owners on the City's mailing list and there were no communications received. Ms. Hodierne stated that the hardship comes from the existing residence's noncompliance; the footprint of the home will not change. The additional 2 feet of separation would require moving the garage from the most viable siting on the subject property, possibly damaging a mature tree's root zone and exacerbating draining issues. She stated that the home dating to 1958 would require significant construction work for a very insignificant encroachment. Due to the shape of the property and the stream corridor, the hardship arises from the peculiar characteristics of the subject property. Ms. Hodierne stated that this hardship is not the applicant's own doing as the lot plat is from 1938 and the home built in 1958, long before the applicant and the current LDO. These variance requests are in harmony with the spirit of the ordinance as the 2 foot encroachment is minor and the ordinance exists to ensure clear differentiation between primary and accessory structures. She stated that the 1.4 foot encroachment on the setback has not presented a problem in its more than 60 year history. The requests advances public safety, welfare and substantial justice as they allowing siting of the garage in the area causing least harm, preserving an old growth tree, effective drainage, preserving setbacks and clear separation and subordination of structures. She then stated that the variance on the home remedies a minor 60 year old infraction caused by ordinance changes adopted long after its construction.

Mr. Oliver asked about the three-car capacity of the garage. Ms. Hodierne stated that is a design point; the third bay could be for a vehicle, but the applicant currently plans to use it for general storage.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Vice Chair Ramsey moved that in BOA 23-05, 3207 Edgewater Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant will be unable to construct a new garage in the best location to preserve a large tree and maintain drainage in the backyard; (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 tapers from front to back and is narrowed where the house is located, the large tree located on the property and drainage issues with the lot; the narrow part of the lot where the garage will be located also create material issues; (3) The hardship is not the result of the applicant's own actions because the applicant purchased the property in July 2021 with the lot in its present condition and configuration and there is no change of the original dwelling footprint; (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 construction of the garage increases the livability for present and future owners, is consistent with the neighborhood and will increase property tax values. Mr. Truby seconded the motion. The Board voted 6-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0). Chair Necas stated the variance requests were approved unanimously.

f. BOA-23-06: 208 West Fisher Avenue (APPROVED)

Ms. McCook stated in BOA-23-06, First Presbyterian Church Corporation of Greensboro and E & V Properties LLC request three special exceptions: (1) To allow a relocated building to encroach 6 feet into a 20 foot required front setback. The building will be 14 feet from the property line along North Greene Street; (2) To allow a relocated building to encroach 6 feet into a 20 foot required front setback. The building will be 14 feet from the property line along North Greene Street; (3) To provide 7 parking spaces for a multifamily use when at least 8 spaces are required. Evidence provided by the applicant included Exhibits A through B. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance references were Section 30-7-3.2 – Table 7-7: In the RM-18 District, the minimum front setback is 20 feet and the minimum thoroughfare setback is 35 feet; and Section 30-11-5 – Table 11-1: For multi-family dwellings, the minimum parking ratio is 1.25 spaces per 0-1 bedroom units, 1.5 spaces per 2 bedroom units, and 2 spaces per 3+ bedroom units.

Background and Site Information: The subject lot is located on the north side of West Fisher Avenue, west of North Greene Street, and is zoned R-3. Survey records indicate the lot contains approximately 12,632 square feet and the existing building on the lot was constructed in 1935. The applicants propose to relocate a contributing structure within the Fisher Park Historic District to the subject property for renovation and use as a multifamily building, along with the existing multifamily building. In the proposed location, the relocated building will encroach 6 feet into a 20 foot required front setback and be 14 feet from the property line along North Greene Street. The relocated building will also encroach 24.1 feet into a 35 foot required thoroughfare setback and be 10.9 feet from the property line along West Fisher Avenue. To accommodate the existing multi-family units on the property and new units proposed by the building relocation, additional parking is necessary. Based on parking ratios contained in the Land Development Ordinance, 5 parking spaces are required for the existing units and 3 more are required for the new units. The applicants intend to provide 7 parking spaces when at least 8 are required. The applicants seek special exceptions to allow for the proposed setback encroachments and parking reduction. The Historic Preservation Commission approved a certificate of appropriateness on November 17, 2022 in support of the building's relocation to the subject property. At a special meeting on January 11, 2023, the Historic Preservation Commission considered actions to support the rezoning of the subject property from CD-RM-8 to CD-RM-18 and the special exception requests discussed in BOA-23-06. The rezoning request was heard by the Planning & Zoning Commission at its meeting on January 18, 2023 and staff recommended approval of the rezoning request. The Planning & Zoning Commission's decision will still be within the 10 day appeal window at the time of the Board of Adjustment meeting, so the special exceptions can only be granted subject to the successful rezoning without appeal.

Ms. McCook provided the land use and zoning for this property and surrounding properties, and noted the applicable overlays and historic districts.

Chair Necas asked to confirm the outcomes of the cases referenced. Mr. Kirkman stated that the other commissions approved all requests, but the rezoning is still subject to an appeal period. Chair Necas asked if anyone has appealed yet. Mr. Kirkman stated there has been no appeal filed, and there was no opposition at the hearing

Mr. Oliver asked about the definition of contributing structures. Mr. Kirkman stated that contributing structures were a part of the historic character of a district.

Chair Necas asked the applicant to provide their name/address for the record and swore in Michael Fuko-Rizzo for his testimony (Michael Fuko-Rizzo, 301 Fisher Park Circle, did not speak).

Amanda Hodierne, 804 Green Valley Road, Suite 200, on behalf of First Presbyterian Church Corporation and E & V Properties LLC, stated that this case had a significant history. A townhome development would have required to the demolition of historic structures, but work with the HPC delayed the demolition and allowed the establishment of this agreement to move and restore the historic structure. She stated that contributing structures make up the historical significance and fabric of the historic districts they reside in, protecting the district's character to maintain the historical integrity of the area even as development increases. So far this has

proposal been approved by the Historic Preservation Commission and the Planning and Zoning Commission. Ms. Hodiernie stated that the applicant did not conduct a neighborhood meeting because it has been a long-standing process with heavy neighborhood involvement. The Fisher Park Neighborhood Association (FPNA) has worked hard with the applicant throughout the process. She displayed the current zoning map, showing the rezoning of the subject property to multi-family for townhome development. In the process of studying the subject property, the historic significance of another structure was also established. Displaying a sketch plan of the townhome development, Ms. Hodiernie stated that the applicant reduced the townhome development to 6 units with the relocation of the historic property to the corner of North Greene Street and West Fisher Avenue, fronting on North Greene Street. The site would ultimately have 6 dwelling units between the quadplex and the historic structure's original historic use as a duplex. The ordinance requires 8 parking spots, but the applicant proposes 7 based on the tight spaces inside the lot, particularly in such a pedestrian-heavy area adjacent to the Downtown Greenway with excellent bicycle and GTA infrastructure. She pointed out the setback to Fisher Avenue and stated that the thoroughfare designation is an unreasonable imposition on the subject property in this instance. Ms. Hodiernie stated that the relocation to preserve the historic structure necessitates reducing the setback to Greene Street. She displayed street-level photography of the subject property, indicating the structures referenced. Displaying aerial photography from 1967 showing the historical context, she stated that a home was previously in the location roughly where the applicant will move the historic structure. She displayed historic street-level photography of the contributing historic structure, demonstrating that the density was within the character and historical context of the neighborhood. Ms. Hodiernie then displayed aerial photography from 1995, 2008, 2010, and 2018 demonstrating the development of the area.

Mr. Kirkman stated that the advertised special exception request was a 14 foot distance from Greene Street and 10.9 feet from Fisher Avenue.

Ms. Hodiernie stated that this is the outcome of a long process with good collaboration with Planning, the Presbyterian Church, FPNA, the applicant, local developers, and neighborhood business owners for the adaptive reuse of property and restoring Fisher Avenue's historic character.

Chair Necas asked if there was any on street parking around the subject property. Ms. Hodiernie stated that Fisher Avenue in proximity to the subject property does not have striping on street parking, but the adjacent section of North Greene Street does.

Mr. Oliver asked what would happen to some existing parking on the subject property adjacent to the historic structure. Ms. Hodiernie stated that the townhome development would redevelop that part of the overall property. Mr. Oliver asked if the other houses are being removed or the townhomes. Ms. Hodiernie stated that the applicant would preserve the two historic structures but not the non-historically contributing structure. Mr. Oliver asked if the non-contributing structures still contained nonprofits offices, and Ms. Hodiernie stated they are now vacant.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Chair Necas moved that in BOA 23-06, 208 West Fisher Avenue, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the special exceptions 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 allows a contributing structure of the Fisher Park Historic District to revert to residential use as originally intended on the lot, and there is nearby on street parking for additional vehicles; and (2) The granting of the special exception assures the public safety and welfare and does substantial justice because it preserves a contributing structure in the Fisher Park Historic District and has already been approved for a Certificate of Appropriateness by the Historic Preservation Commission. Mr. Truby seconded the motion. The Board voted 6-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0). Chair Necas stated the special exception requests were granted unanimously.

g. BOA-23-07: 907 Sunset Drive (APPROVED)

Ms. McCook stated in BOA-23-07, Michael and Catherine Fortney request three variances: (1) To allow the building coverage of an expanded accessory structure to exceed 50% of the principal structure's building coverage. The building coverage of the accessory structure will be 1,284 square feet when no more than 1,067 square feet is allowed; (2) To allow the building coverage of an expanded accessory structure to exceed 50% of the principal structure's building coverage. The building coverage of the accessory structure will be 1,284 square feet when no more than 1,067 square feet is allowed; (3) To allow the building coverage of an expanded accessory structure to exceed 50% of the principal structure's building coverage. The building coverage of the accessory structure will be 1,284 square feet when no more than 1,067 square feet is allowed. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance references were Section 30-8-11.1(A)(3): In R- districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater; Section 30-8-11.2(D): A detached accessory dwelling must meet the location and dimensional requirements of the principal structure; and Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum side setback is 10 feet and the minimum rear setback is 30 feet.

Background and Site Information: The subject lot is located on the south side of Sunset Drive, west of Woodland Drive, and is zoned R-3. Tax records indicate the lot contains approximately 18,295 square feet and the house was constructed in 1934. The applicants propose to add 525 square feet to an existing 759 square foot detached garage. With the proposed addition, the accessory structure building coverage will exceed 50% of the principal structure building coverage. The new accessory structure's building coverage will be 1,284 square feet when no more than 1,067 square feet is allowed, so the applicants request a variance. The proposed addition lengthens the garage, but also includes living space and a kitchen, which will convert the accessory structure into an accessory dwelling containing 425 heated square feet. Per the Land Development Ordinance, a detached accessory dwelling must meet the location and dimensional requirements of the principal structure. The existing garage currently meets accessory structure side and setback requirements, but when part of it is converted to an accessory dwelling, it does not meet the setbacks of the principal structure. The proposed accessory dwelling will align with the existing building lines and encroach 7 feet into a required 10-foot side setback and 27 feet into a required 30-foot rear setback. The applicants indicate that the placement of the existing accessory structure, driveway and swimming pool on the property create difficulties for making improvements. If the variances are granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Michael and Catharine Fortney for their testimony.

Catharine Fortney, 907 Sunset Drive, stated that their home was built in 1934 and the existing accessory structure is unusable at this point. They need to construct an extension to use the garage, and they are requesting the variance to modify the pool house area for this purpose. She stated they will not rent out the dwelling, it is for short-term guests or sick or aging family members. They have talked to their neighbors, and have heard no opposition. The modifications would be inward in their property, not creating any visual degradation to the neighborhood.

Chair Necas asked to confirm that the change in use from a garage to an accessory dwelling unit necessitated the variance request. Mr. Kirkman stated the first variance is required due to building coverage restrictions, but the other two are to change the use to an accessory dwelling unit. Chair Necas asked if the accessory structure would still infringe on setbacks, and Mr. Kirkman stated it likely would. Ms. Fortney stated that they are not increasing the setback, just going further into their property, and they are seeking to comply with the ordinance requirements.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Randolph moved that in BOA 23-07, 907 Sunset Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the existing use of the outdated unit will not be able to be utilized as intended as a parking garage and the pool house will not be able to be utilized currently in its rundown state; (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 given the lot size and the location of the other structures on the property, including but not limited to the pool and the existing driveway, there's no other logical placement to expand the existing garage and dwelling structure; (3) The hardship is not the result of the applicant's own actions because the house was constructed in 1934 and has existed in that fashion since then, and the lot size leaves no room to expand; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it helps enhance the property value by having an up-to-date and usable garage and pool house that will then enable it to be in congruence with the other homes in the neighborhood and adjacent properties. Mr. Truby seconded the motion. The Board voted 6-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0). Chair Necas stated the variance requests were approved unanimously. Chair Necas advised the applicants to consult with the City beforehand for any potential short-term rental use in the future.

OTHER BUSINESS

Chair Necas stated that the Board's meetings are taking longer and asked to consider if the Board members should get a stipend. Durham gives stipends to its Board of Adjustment members. She stated that absences have persisted for months, and asked for the City to recognize the sacrifice given by the Board members. Mr. Kirkman stated any change would require action by City Council. He stated that none of the boards or commissions in place have any compensation. Mr. Randolph stated that the County has a travel stipend for its Board of Adjustment. Ms. Rudd agreed it was worth considering. Mr. Kirkman stated staff will pass it on to managers for consideration.

ADJOURNMENT

The meeting was adjourned at 8:13 p.m.

Respectfully submitted,

Leah Necas, Chair

Greensboro Board of Adjustment

LN/arn

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
February 27, 2023**

The meeting of the Greensboro Board of Adjustment was held on Monday, February 27, 2023, at 5:36 p.m. in-person in the City Council Chamber. Board members present were: Chair Necas, Vice Chair Ramsey, Cory Randolph, Larry Wright, Tifanie Rudd, Ted Oliver, and Stephen Barkdull. City staff present were Shayna Thiel and Mike Kirkman of the Planning Department, and Emily Guarascio (Associate City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Ms. Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF THE MINUTES (January 23, 2023 Meeting)

Mr. Vaughn made a motion to approve the January 23, 2023, minutes, seconded by Mr. Randolph. The Board voted 6-0-1 in favor of the motion, (Ayes: Randolph, Wright, Rudd, Oliver, Vice Chair Ramsey, Chair Necas; Nays: 0; Abstention: Barkdull). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised there were no continuances or withdrawals.

NEW BUSINESS

a. BOA-23-08: 809 Dover Road (APPROVED)

Ms. Thiel stated in BOA-23-03, Peter and Sarah Evenson request three variances: (1) to allow a proposed accessory dwelling to encroach 5 feet into a 10 foot required side setback. The accessory dwelling will be 5 feet from the side property line; (2) to allow a proposed accessory dwelling to encroach 26 feet into a required 30 foot rear setback. The accessory dwelling will be 4 feet from rear property line; (3) to allow an existing accessory structure to be separated by 3 feet from another structure on the lot when at least 10 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): A detached accessory dwelling must meet the location and dimensional requirements of the principal structure; Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum side setback is 10 feet and the minimum rear setback is 30 feet; and Section 30-8-11.1(E)(2): Accessory structures 600 square feet or larger must be separated by at least 10 feet from any other structure on the site.

Background and Site Information: The subject lot is located on the south side of Dover Road, west of Cleburne Street, and is zoned R-3. Tax records indicate the lot contains approximately 9,583 square feet and the house was constructed in 1936. The applicants propose to increase the roof height of an existing

detached garage and convert the second floor into an accessory dwelling containing 550 heated square feet without increasing the building coverage. Per the Land Development Ordinance, a detached accessory dwelling must meet the location and dimensional requirements of the principal structure. The existing garage currently meets accessory structure side and rear setback requirements, but when it's converted to an accessory dwelling, it does not meet the setbacks of the principal structure. The proposed accessory dwelling will encroach 5 feet into a required 10 foot side setback and 26 feet into a required 30 foot rear setback. The submitted site plan shows that the existing detached garage is a nonconforming structure as it is 3 feet from the existing house, when the required separation is 10 feet, so the applicant is seeking another variance to address this issue and bring the structure into compliance. The applicants indicate that the driveway location and existing improvements on the property limit the placement of additional living space. If the variances are granted, the applicants 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record.

Nick Blackwood, 804 Green Valley Road, Suite 200, on behalf of Peter and Sarah Evenson, stated that the principle and accessory structures were already in place when the applicants purchased the property in 2021, and they are attempting to bring the accessory structure configuration into City standards. They require additional living space for their growing family, and the narrowness of the lot presents a problem. He stated that this presents a hardship because the applicant could not perform renovation and cannot add additional living space without a variance. Mr. Blackwood stated that the size of the lot and location of existing structures confines the applicant and leaves no other practical location to install additional living space. The existing garage encroaches into the setback requirement and as an accessory dwelling unit under the LDO, requires enhanced setback requirements. He stated that the applicants have not caused this situation as they acquired the property as-is with the existing improvements. They sent letters to neighbors and received 6 replies of support.

Chair Necas asked if the letters of support were notarized, and Mr. Blackwood stated that was correct and submitted copies to the record for the Board to review.

Mr. Blackwood stated that no there was foreseeable impact on neighboring property owners, and that the request arose when the applicants installed a screened-in porch and only found out about the need for a variance during the building permit process.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Vice Chair Ramsey moved that in BOA-23-08, 809 Dover Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicants would not be able to expand living space on the property which was constructed in 1936, moreover the applicant will otherwise have to remove part of the existing garage or demolish part of their home to create additional living space; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the original 1936 lot was narrowly configured which limited placement of additional living space, and the existing improvements were placed before the applicant's purchase of the property also hindered the creation of more living space; (3) The hardship is not the result of the applicant's own actions because the applicant acquired the property as-is with the existing garage and improvements in place; (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 of the living space in the garage will not impact adjacent property owners as it sits on the existing garage pad and is consistent with the character of the neighborhood. Ms. Rudd seconded the motion. The Board voted 7-0 in favor of the motion, (Randolph, Wright, Rudd, Oliver, Barkdull, Vice Chair Ramsey, Chair Necas; Nays: 0). Chair Necas stated the variance requests were approved unanimously.

b. BOA-23-09: 736 South Chimney Rock Road (APPROVED)

Ms. Thiel stated in BOA-23-09, Colonial Pipeline Company requests a special use permit to operate facility for the manufacture and storage of chemicals, petroleum products, explosives and allied products on the property in addition to all uses permitted in the HI District. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference were Section 30-8-1 – Table 8-1: Asphalt Plants and Other Facilities for the Manufacture and Storage of Chemicals, Petroleum Products, Explosives, and Allied Products is a permitted use in the HI District with a Special Use Permit and Section 30-8-10.5(A): Asphalt Plants and Other Facilities for the Manufacture and Storage of Chemicals, Petroleum Products, Explosives, and Allied Products must meet the following standards: (1) All operations must be set back at least 50 feet from any property line; (2) Tanks, loading areas, or other facilities for the manufacturing, handling, or storage of flammable or explosive materials must be separated from any residential district by at least 500 feet; (3) Security fencing at least 8 feet in height must be provided around the perimeter of the operation.

Background and Site Information: The subject lot is located on the north side of South Chimney Rock Road, east of Gallimore Dairy Road, and is currently zoned R-3 (Residential Single-Family). Tax records indicate the subject lot contains approximately 1.6 acres. The applicant has requested a rezoning of the subject property to HI (Heavy Industrial) to be consistent with the adjacent properties under the same ownership and to be incorporated into the existing use and operations. The rezoning request is scheduled to be heard by the Planning & Zoning Commission at its meeting on February 20, 2023 and staff is recommending approval of the rezoning request. The Planning & Zoning Commission's decision will still be within the 10 day appeal window at the time of the Board of Adjustment meeting, so the special use permit can only be granted subject to the successful rezoning without appeal. A special use permit and variances were approved in 2017 for the adjacent properties under the same ownership. The applicant intends to use the subject property for offloading and storage of chemicals and petroleum products, which is permitted in the HI District, provided a special use permit is granted and certain use standards are met. To make the subject property consistent with the existing use and operation on the adjacent properties, the applicant applied for this special use permit and a variance related to one of the use standards, which will be heard by the Board of Adjustment as part of BOA-23-10. If the special use permit is approved, the Board of Adjustment can consider the variance request related to the use condition. The applicant indicates that the use of the subject property will be complementary to the character of the area and will improve the local fuel supply.

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

Mr. Kirkman stated that the Planning and Zoning Commission approved the rezoning request at its February 20, 2023 meeting, but it is still subject to appeal.

Mr. Oliver asked if there has been an appeal filed and Mr. Kirkman stated one has not.

Chair Necas asked if the Board should note the appeal period, and Mr. Kirkman stated that the Board should note any decision is subject to potential appeal of the rezoning decision.

Chair Necas asked the applicant to provide their name/address for the record.

Brian Pearce, 800 Green Valley Road, Suite 500, on behalf of Colonial Pipeline Company, distributed maps and visual material to the Board and stated that there were no objections at last week's

Planning and Zoning Commission hearing. All the adjacent properties are zoned Heavy Industrial and have the same special use permit as requested, and the applicant is asking to bring the subject property up to the same standard. Chair Necas asked if applicant owned all the properties in the area, and Mr. Pearce stated that it did not own the adjacent Business Park and R-3 residential districts to the southeast. Chair Necas asked if the applicant planned to integrate the subject property into the existing site, and Mr. Pearce stated that was correct, and that the site splits across parcels but now has universal zoning.

Mr. Oliver asked if there were any residents still living at the subject property. Mr. Pearce stated that the subject property is vacant since purchase by the applicant. He stated that it makes sense to have heavily regulated uses like this located in one spot.

Mr. Wright asked where this facility was located in relation to the Caterpillar facility. Mr. Pearce stated it is located off Gallimore Dairy Road, and that this would consolidate the use to prevent the proliferation of tank farms across Greensboro.

Mr. Oliver asked if the 500 foot buffer was no longer an issue because the applicant owns the subject property. Mr. Pearce stated that there was still a variance needed that would be heard in BOA-23-10, this request was to establish the use right. He stated that the request is not detrimental to the properties in the area because the federal government heavily regulates the applicant's business and requires rigorous federal review along with City's development review. The applicant has a positive relationship with the Greensboro Fire Department and has a very secure facility for this use. Mr. Pearce stated that the proposed use provides a service that contributes to the community due to the City's logistics-based economic sector and this provides an asset as the applicant's largest facility, and this request provides for an optimal use of the area. The GSO2040 Comprehensive Plan designates this area as industrial, and accordingly the use matches the character of its surroundings.

Mr. Randolph asked what the applicant would do if denied the permit. Mr. Pearce stated that the applicant would have to move the proposed facility back into the adjacent Heavy Industrial parcel, and the subject property would essentially be unused apart from an artificially long driveway.

A member of the audience asked a general question. Mr. Pearce stated that neighbors have had questions about the development review process for the construction of the facility and the mitigation of potential spills given the presence of residential wells in the proximity. Ms. Guarascio stated that anyone wishing to present information and speak in opposition to the request must be sworn in.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Ramsey stated that the subject property is in the middle of the Heavy Industrial area and the request is thus reasonable. Mr. Oliver and Mr. Randolph agreed.

Mr. Oliver moved that in BOA-23-09, 736 South Chimney Rock Road, based on the stated Findings of Fact, the special use permit be approved based on the following: (1) The proposed use will not be detrimental to the health or safety of persons residing or working in the vicinity or injurious to property or improvements in the vicinity because the property is now owned by the applicant and will not be used as a residence any longer; (2) The proposed use at the particular location provides a service or facility that will contribute to the general well-being of the neighborhood or the community because almost all of the property is already being used for this purpose, this small piece will now be used in the same way; (3) The location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the Comprehensive Plan because a special use permit was issued in 2017 for the adjoining property already, this will bring this small piece of property in conformity with the rest. Ms. Rudd seconded the motion. The Board voted 7-0 in favor of the motion, (Randolph, Wright, Rudd, Oliver, Barkdull, Vice Chair Ramsey, Chair Necas; Nays: 0). Chair Necas stated the special use permit request was granted unanimously.

c. BOA-23-10: 736 South Chimney Rock Road (APPROVED)

Ms. Thiel stated in BOA-23-10, Colonial Pipeline Company requests a variance to allow tanks, loading areas, or other facilities for the manufacturing, handling, or storage of flammable or explosive materials to be separated 284 feet from any residential district when at least 500 feet is required. Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-8-10.5(A)(1)(b): Tanks, loading areas, or other facilities for the manufacturing, handling, or storage of flammable or explosive materials must be separated from any residential district by at least 500 feet.

Background and Site Information: The subject lot is located on the north side of South Chimney Rock Road, east of Gallimore Dairy Road, and is currently zoned R-3 (Residential Single-Family). Tax records indicate the subject lot contains approximately 1.6 acres. The applicant has requested a rezoning of the subject property to HI (Heavy Industrial) to be consistent with the adjacent properties under the same ownership and to be incorporated into the existing use and operations. The rezoning request is scheduled to be heard by the Planning & Zoning Commission at its meeting on February 20, 2023 and staff is recommending approval of the rezoning request. The Planning & Zoning Commission's decision will still be within the 10 day appeal window at the time of the Board of Adjustment meeting, so the special use permit to be heard by the Board of Adjustment as BOA-23-09 can only be granted subject to the successful rezoning without appeal. If the special use permit is approved, the Board of Adjustment can consider this variance request related to the use condition. A special use permit and variances were approved in 2017 for the adjacent under the same ownership. The applicant intends to use the subject property for offloading and storage of chemicals and petroleum products, which is permitted in the HI District, provided a special use permit is granted and certain use standards are met. To make the subject property consistent with the existing use and operation on the adjacent properties, the applicant applied for a special use permit (BOA-23-09) and this variance related to separation from a residential district. The proposed tank, loading area or other facility for the manufacturing, handling or storage of flammable or explosive materials on the subject property will be 284 feet from the nearest residential district when at least 500 feet is required. The applicant indicates that the use of the subject property accomplishes the Land Development Ordinance's purpose of clustering similar uses together.

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

Chair Necas asked the applicant to provide their name/address for the record.

Brian Pearce, 800 Green Valley Road, Suite 500, on behalf of Colonial Pipeline, distributed a sketch plan of the proposed use and stated that this would be a facility for trucks to offload fuel additive for piping into the tank farm for final mixing. The use separation requirement in the LDO is separation from residential districts, not residential uses. He stated that the closest residential dwelling is over 300 feet from the abutting property line; accordingly, the distance would be over 500 feet between uses. Mr. Pearce stated that the applicant plans to construct the proposed driveway to line up directly with Federal Drive to preclude the need for multiple curb cuts and to assist traffic flow, but that design consideration created the need for this variance. Applicant's engineers studied the subject property and found this to be the optimum siting, along with the benefits of lining it up with Federal Drive. He stated this hardship did not result from the applicant's own actions because the residential property across the street was constructed and zoned after the tank farm was in operation, and the applicant did not design Federal Drive. He stated this request is consistent with the spirit, purpose, and intent of the ordinance and secures public safety because this centralizes this use in the area, takes advantage of existing security and environmental controls in place at the facility, and improves traffic flow.

Ms. Rudd commended the applicant for intentionality in their design. Mr. Pearce stated the line-up with Federal Drive was a priority from the start.

Mr. Oliver asked if south of Chimney Rock Road was county jurisdiction and north was City. Mr. Kirkman stated that was correct and this area was the intersection of three jurisdictions including High Point.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Randolph moved that in BOA-23-10, 736 South Chimney Rock Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant will be unable to offload and properly store chemicals and petroleum consistent with the existing use on the adjacent property that is owned by the applicant, additionally it will cause potentially unnecessary disruption of traffic flow patterns to Federal Drive; (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 of the land is such that it is surrounded by other Heavy Industrial zoned properties and an existing roadway; (3) The hardship is not the result of the applicant's own actions because the hardship existed at the time the applicant purchased the property, they are not responsible for the residential zoning of the property at issue nor the issues due to the location of Federal Drive; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the variance would allow the continuance of an existing use of the storage and offloading of chemicals for the existing tank uses by the applicant, this use would then be in line with the purpose of the LDO to place in a single location or in a clustering the existing tank and chemical uses on the property, the actual use is more than the current separation require to any adjacent residential uses, and it would allow for safe traffic flow on Federal Drive. Vice Chair Ramsey seconded the motion. The Board voted 7-0 in favor of the motion, (Randolph, Wright, Rudd, Oliver, Barkdull, Vice Chair Ramsey, Chair Necas; Nays: 0). Chair Necas stated the variance requests were passed unanimously.

OTHER BUSINESS

There was no other business.

Chair Necas acknowledged the absence of Mr. Truby

ADJOURNMENT

The meeting was adjourned at 6:28 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/arn

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
March 27, 2023**

The meeting of the Greensboro Board of Adjustment was held on Monday, March 27, 2023, at 5:32 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Vaughn Ramsey, Chuck Truby, Ted Oliver, Cory Randolph and Larry Wright. City staff present were Shayna Thiel and Mike Kirkman of the Planning Department, and Emily Guarascio (Associate City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Chair Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF MINUTES (February 27, 2023 Meeting)

Mr. Ramsey made a motion to approve the February 27, 2023, minutes, seconded by Mr. Randolph. The Board voted 5-0-1 in favor of the motion, (Ayes: Oliver, Randolph, Wright, Chair Necas, Vice Chair Ramsey; Nays: 0; Abstention: Truby). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised that the applicant for BOA-23-12, 1204 Fuller Street, requested a continuance to the April meeting.

NEW BUSINESS

a. BOA-23-11: 3904 Dogwood Drive (APPROVED)

Ms. Thiel stated in BOA-23-11, Michael and Kristy Barnbeck request a variance to allow a proposed carport addition to encroach 7.4 feet into a required 10 foot side setback. The carport addition will be 2.6 feet from the side property line. Evidence provided by the applicants included Exhibits A through D. 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 side setback is 10 feet.

Background and Site Information: The subject lot is located on the north side of Dogwood Drive, west of North Holden Road, and is zoned R-3. Tax records indicate the lot contains approximately 23,522 square feet and the house was constructed in 1958. The applicants propose to attach a carport to their house that will encroach 7.4 feet into a required 10 foot side setback and be 2.6 feet from the side property line. The applicants indicate that the proposed carport would cover the area that is already used for vehicle parking and would not require tree removal or backyard grading. If the variance is granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and sworn in Michael Barnbeck for his testimony.

Michael Barnbeck, 3904 Dogwood Drive, stated that they already park their cars at the location of the proposed carport, and none of his neighbors oppose the request.

Mr. Wright asked about the trees in the area of the carport. Mr. Barnbeck stated that trees from a neighbor's property overhang the area where he wishes to build the carport and this request lets them protect their vehicles from tree damage without removing any trees. Mr. Wright asked if there was any problem with trees being over the carport, Mr. Barnbeck stated there was not.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Vice Chair Ramsey moved that in BOA-23-11, 3904 Dogwood 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 of increased costs and loss of trees, along with extensive grading requirements to place the carport elsewhere; (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 applicant acquired property in 2021 with the current paved area already as-is; (3) The hardship is not the result of the applicant's own actions because the applicant acquired the property in its current condition and there is no other reasonable place to locate a carport on the property other than in the current paved parkway; (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 will be located on the existing parking pad and is consistent with the neighborhood. Mr. Truby seconded the motion. The Board voted 6-0 in favor of the motion, (Ayes: Oliver, Randolph, Wright, Truby, Chair Necas, Vice Chair Ramsey; Nays: 0). Chair Necas stated the variance requests was approved unanimously.

b. BOA-23-13: 3300 Wedgewood Place (APPROVED)

Ms. Thiel stated in BOA-23-13, Nathan Horwitz requests two variances: (1) to allow a proposed accessory structure to encroach 16.1 feet into a required 35 foot thoroughfare setback. The accessory structure will be 18.9 feet from the property line along West Friendly Avenue; and (2) to allow an existing accessory structure to encroach 19 feet into a required 35 foot thoroughfare setback. The accessory structure is 16 feet from the property line along West Friendly Avenue. Evidence provided by the applicant included Exhibits A through E. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was 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 street setback.

Background and Site Information: The subject lot is located on the north side of Wedgewood Place, at the intersection of Gwyn Lane, and is zoned R-3. Tax records indicate the through lot contains approximately 32,670 square feet and the house was constructed in 1984. The subject property is considered a through lot, which is a lot that fronts on two streets that do not intersect at the corner of the lot. A through lot has two street setbacks, but no rear setback. Because West Friendly Avenue is classified as a thoroughfare, a 35 foot thoroughfare setback applies. The applicant proposes to construct a 598 square foot detached garage behind the existing house and aligned with the existing driveway that will be 18.9 feet from the property line along West Friendly Avenue when at least 35 feet is required. The applicant indicates that the topography of the property prevents the placement of the detached garage in any other location. The submitted site plan shows that an existing storage building is a nonconforming structure as it encroaches 19 feet into the same 35 foot thoroughfare setback, so the applicant is seeking

another variance to address this issue and bring the existing structure into compliance. If the variances are 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 the applicable overlay.

Chair Necas asked the applicant to provide their name/address for the record and swore in Nathan Horwitz for his testimony.

Don Vaughn, 612 West Friendly Avenue, attorney on behalf of the applicant, displayed a more detailed rendering and stated that after conducting neighborhood outreach, they have heard no opposition to the request. The terrain of the subject property makes this the only viable location for the accessory structure, requiring the variance.

Mr. Oliver asked what the setback on the back of the lot would be if it was not on a thoroughfare. Ms. Thiel stated for an interior lot it would be 3 or 10 feet depending on the height of the structure. Mr. Vaughn stated that the applicant consulted the North Carolina Department of Transportation (NCDOT) to ensure the request was reasonable and safe.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Oliver moved that in BOA-23-13, 3300 Wedgewood Place, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the hill the house sits on provides few other options if the applicant wants to add a 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 topography of the lot provides very limited options, the home is built on a hill; (3) The hardship is not the result of the applicant's own actions because the applicant bought the home with the topography and placement of buildings already in place, there are no other options for placement of the 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 large brick wall in the back of the property offers considerable protection and safety from Friendly Avenue, which is a thoroughfare. Mr. Ramsey seconded the motion. The Board voted 6-0 in favor of the motion, (Ayes: Oliver, Randolph, Wright, Truby, Chair Necas, Vice Chair Ramsey; Nays: 0). Chair Necas stated the variance requests were granted unanimously.

c. BOA-23-14: 1601 Hooks Street (APPROVED)

Ms. Thiel stated in BOA-23-14, David Moore and Rosemary Moore request a variance to allow an existing house and proposed addition to encroach 16 feet into a required 35 foot thoroughfare setback. The house and addition will be 19 feet from the property line along East Florida Street. Evidence provided by the applicants 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 7-2: In the R-5 District, the minimum thoroughfare setback is 35 feet.

Background and Site Information: The subject lot is located on the east side of Hooks Street, south of East Florida Street, and is zoned R-5. Tax records indicate the corner lot contains approximately 11,326 square feet and the house was constructed in 1959. The existing house is considered a nonconforming structure as it encroaches 16 feet into a required 35 foot setback and is 19 feet from the property line along East Florida Street. The applicants propose to add a 200 square foot deck at the back of their existing house that will encroach the same 16 feet into a required 35 foot thoroughfare setback. The applicants indicate that the proposed deck will be aligned with the side building line of the house and will

provide direct access from an existing rear door. The applicants seek this variance to bring the existing house and proposed deck addition into compliance with the Land Development Ordinance. If the variance is granted, the applicants 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in David Moore for his testimony.

David Moore, 1601 Hooks Street, stated that the existing deck is almost ruined, and he seeks to replace it with a new deck.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Truby moved that in BOA-23-14, 1601 Hooks Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because they would not be allowed to build 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 door from which they would access the deck is on the Florida Street side of the house; (3) The hardship is not the result of the applicant's own actions because the house was built 1957 and the owner purchased the house in 2019; (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 deck will add value to the property and will enable the owners to use their property without harming adjacent properties or the public. Mr. Randolph seconded the motion. The Board voted 6-0 in favor of the motion, (Ayes: Oliver, Randolph, Wright, Truby, Chair Necas, Vice Chair Ramsey; Nays: 0). Chair Necas stated the variance requests was granted unanimously.

d. BOA-23-15: 8620 McGuire Road (APPROVED)

Ms. Thiel stated in BOA-23-15, Charles and Joy Coverdale request two variances: (1) to allow the building coverage of all accessory structures on the lot to exceed 50% of the principal structure's building coverage. The building coverage of all accessory structures will be 3,565 square feet when no more than 996 square feet is allowed; (2) to allow a proposed accessory structure to exceed the height of the principal structure. Evidence provided by the applicants included Exhibits A through F. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.1(A)(3): In R districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater; and Section 30-8-11.1(A)(2): An accessory structure must be clearly subordinate to the principal structure in all dimensional aspects.

Background and Site Information: The subject lot is located on the north side of McGuire Road, east of Bunker Hill Road, and is zoned R-3. Tax records indicate the lot contains approximately 63,162 square feet and the house was constructed in 1968. The submitted application materials show the subject property currently contains a 1,992 square foot single-family dwelling and five accessory structures that encompass 2,179 square feet. The applicants propose to remove three of the existing accessory structures and replace them with one 2,700 square foot multi-purpose garage to improve security, function, and aesthetics of the property. The work will also allow the applicants to grade the property to correct drainage issues. When the proposed garage is added to the two remaining existing accessory structures, the total accessory structure building coverage becomes 3,565 square feet, exceeding 50% of the principal structure's building coverage (996 square feet) by 2,569 square feet, and necessitates a

variance. The proposed garage will be approximately 19 feet tall, so the applicants are also seeking a variance to allow it to be taller than the principal structure. If the variances are granted, the applicants 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 and/or plans.

Chair Necas asked the applicants to provide their name/address for the record and swore in Joy and Charles Coverdale for their testimony.

Joy Coverdale 8620 McGuire Road, stated that their home was constructed in 1968 and the City annexed the property in 1995 while it was unoccupied. All structures on the property existed when they moved to it in 2012 and subsequently purchased the property in 2016. The accessory structures impractical, old, and have safety and security issues; one of the accessory structures is on a foundation and had separate electrical service when they moved in. They need secure storage for tools and equipment. She stated that next-door neighbors' landscaping changed how water drains, and their property now has issues with flooding. Grading and newly installed drainage will help, but that will require the variance. They applied for the biggest building they might be looking at, but will not necessarily build it this large. Ms. Coverdale stated that the height variance is to permit a potential hydraulic lift for automobile hobby use.

Chair Necas asked if the new structure would be smaller than the aggregate of the current structures, and Mr. Coverdale stated that was correct, including the space between the existing deficient accessory structures. Chair Necas asked how this would affect drainage on the subject property. Ms. Coverdale stated that clearing the old structures would permit them to install drainage that is more efficient.

Mr. Wright asked why the garage would be taller than the house on the subject property. Ms. Coverdale stated that the house is two stories but has a subterranean basement level so it appears shorter. Mr. Wright asked about neighbors in opposition, Ms. Coverdale stated that they have spoken to multiple neighbors and have only heard opposition from one neighbor.

Mr. Oliver asked if the height of the accessory structure would be second story or a living space, and Ms. Coverdale stated it would not. Mr. Coverdale confirmed the height is for a hydraulic lift.

Mr. Randolph asked about the adjacent property causing the drainage issues. Ms. Coverdale stated that most of the issues arise from the topography of their property, and that because of the location of the house, drainage is very complicated. Mr. Randolph asked if the neighbor's removal of trees exacerbated the drainage issue, and Ms. Coverdale stated that was correct.

Mr. Randolph asked about the neighbors in opposition. Ms. Coverdale stated that they were aware of one neighbor who opposed the request and was present at the meeting.

Mr. Wright asked if the garage's foundation would make the drainage issues worse. Ms. Coverdale stated that it would not, because they are going to account for it in the engineering and design process and install enhanced drainage equipment.

Chair Necas asked if there was anyone to speak in opposition, and swore in Gregory Roberson for his testimony.

Gregory Roberson, 210 Krusinski Lane, Colfax, stated that he did not have a problem with the building of a carport, but he felt that the subject property is in poor maintenance. There are logs on the property line, and he requested that the Board require the applicant to clear the logs and put up a fence or trees to prevent uncontrolled access to neighboring properties. Mr. Roberson stated that he does not think the neighbors have been good neighbors in the area.

Ms. Guarascio stated that the Board cannot consider opinion and material irrelevant to the case.

Mr. Wright asked if Mr. Roberson was speaking for older neighbors, and Mr. Roberson stated he was. Chair Necas stated this was a nuisance issue for the City to manage.

Mr. Truby asked where Mr. Roberson's property was, and Mr. Roberson stated that one of his properties was across the street from the subject property.

Vice Chair Ramsey asked for where the speaker would seek redress from the City for these issues. Mr. Kirkman stated that nuisance ordinances apply, and zoning enforcement could assess the subject property.

Mr. Roberson stated that he believed the applicant has rebuilt accessory structures on the property since their purchase of it. He showed pictures of McGuire Road and Guilford County GIS images.

Ms. Guarascio stated that the Board could only consider relevant evidence presented tonight by property owners who spoke at the hearing.

Chair Necas asked if the applicant or anyone in support of the request wished to speak in rebuttal.

Mr. Coverdale stated that he supplies an adjacent neighbor with firewood, and stated that Mr. Roberson is responsible for the logs being on his property.

Ms. Coverdale stated that Mr. Roberson's property is responsible for the drainage issues. She reiterated they only intend to replace the old, damaged buildings with a new one. The building process and budget accounts for clearing yard waste in the back yard.

Chair Necas asked if anyone in opposition of the request wished to speak in rebuttal.

Mr. Roberson stated that the applicants could afford to clean up the property.

With no additional speakers present, Chair Necas closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Truby stated that this was the first step in cleaning up the subject property, and he can support the request.

Mr. Randolph moved that in BOA-23-15, 8620 McGuire Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the existing accessory structures will remain with limited use to protect the homeowners' vehicles and continue to pose damage to the property by allowing flooding and other minor runoff in the subject area; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property has five existing structures, those structures are in a condition of disrepair, the property slopes from north-to-south and east-to-west causing drainage issues due to the topography of the existing property and the existing structures have been on the property since the homeowners purchased it; (3) The hardship is not the result of the applicant's own actions because the primary residence was built in 1968 the existing structures have been on the property since the homeowners have purchased the property, the property was annexed into the City in 1995 thus subjecting them to 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 new accessory structure will improve the safety and aesthetics of the property, allow the owners to address the drainage issues on the property, and the new accessory structure will provide utility and adequate and property security for the homeowners' vehicles, tools and equipment. Mr. Truby seconded the motion. The Board voted 6-0 in favor of the motion, (Oliver, Randolph, Wright, Truby, Chair Necas, Vice Chair Ramsey; Nays: 0). Chair Necas stated the variance requests were approved unanimously. Vice Chair Ramsey encouraged the neighbors to collaborate to address their concerns.

e. BOA-23-16: 817 North Eugene Street (APPROVED)

Ms. Thiel stated in BOA-23-16, E & V Properties LLC requests three variances: (1) to allow a proposed swimming pool to be located in front of the principal structure (when viewed from a road or street); (2) to allow a proposed fence located within 15 feet of a street right-of-way to exceed the maximum 4 foot height allowed by 2 feet; (3) to allow an existing house to encroach 11 feet into a required 15 foot side street setback. The house is 4 feet from the property line along Cleveland Street. Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.9(C)(1): Swimming pools (as well as the decking and equipment associated with the pool) and interactive water features that are located on single-family lots that are less than one acre in area must be located behind the principal structure (when viewed from a road or street); 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; and Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum side street setback is 15 feet.

Background and Site Information: The subject lot is located on the west side of North Eugene Street, south of Cleveland Street, and is zoned R-5. Tax records indicate the corner lot contains approximately 8,712 square feet and the house was constructed in 1937. The applicant proposes to install a swimming pool in the back yard behind the existing house that will meet setback and separation requirements. The subject property is a corner lot, so there is also a side street setback measured from the property line that runs along Cleveland Street. Since the corner lot has two road/street frontages, the proposed swimming pool, even though technically located behind the house, will be located in front of a principal structure when viewed from Cleveland Street. The applicant also proposes to erect a 6 foot privacy fence along the side property line to screen the back yard from Cleveland Street. Because the fence will be located within 15 feet of the street right-of-way along Cleveland Street, a variance is necessary to allow the fence to exceed the maximum 4 foot height by 2 feet. The submitted site plan shows that the existing house is a nonconforming structure as it encroaches 11 feet into a required 15 foot side street setback along Cleveland Street, so the applicant is seeking another variance to address this issue and bring the structure into compliance. If the variances are granted, the applicant will proceed with the residential building permit process for the swimming pool and install the fence.

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

Chair Necas asked the applicant to provide their name/address for the record.

Amanda Hodierne, 804 Green Valley Road Suite 200, attorney on behalf of E & V Properties LLC, stated that the first variance is to allow a swimming pool on a corner lot, the second is to increase the height of a privacy fence along that side yard due to corner lot status, and the third is to cure an existing nonconformity for this house built in 1930s. The ordinance, when strictly applied to corner lots, would prevent them from ever having a screened backyard or pool, and the first two variance requests are reasonable to solve this. She stated that the home fits the historical character of the neighborhood, and the third variance is required to prevent any future conveyance or title issues. The applicant reached out to neighbors, and no issues presented; some neighbors offered to come in support. Ms. Hodierne displayed photography of the subject property, and stated that GDOT stated that there are no sight issues with the fence. She indicated the subject property's corner lot status and stated that homes across Cleveland Street built in the 1930s all lack the current LDO's setback requirements. Displaying a conceptual plan for the additions, she stated that the proposed design keeps the spirit and intent of the ordinance intact, maintaining and increasing property value in the area and increasing the use of the property.

Mr. Truby asked if this was in the local historic district, Ms. Hodierne stated that it was not, and no Certificate of Appropriateness (COA) was required.

Mr. Oliver asked about the size of the pool, and Ms. Hodierno stated it was 12 by 24 feet.

Mr. Randolph asked about similar pools in the area. Ms. Hodierno stated that there are pools on West Bessemer midway through the block between Fisher Avenue and Carolina Street. While these are not on a corner lot, there are pools in historic neighborhoods like this.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Chair Necas moved that in BOA-23-16, 817 North Eugene Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the ordinance will not allow a corner lot to have a pool due to the larger setbacks required for two frontages; (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 corner lot restricts the privacy fence's height because it is treated as a front yard despite its use as a back yard; (3) The hardship is not the result of the applicant's own actions because the house was platted and constructed in 1937 before the current LDO; (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 only relates to the side street of a corner lot, pool will still be behind principle structure, the second variance is also in harmony with the purpose and intent because the fence will not block the vision of drivers entering or leaving the property. Mr. Randolph seconded the motion. The Board voted 6-0 in favor of the motion, (Oliver, Randolph, Wright, Truby, Chair Necas, Vice Chair Ramsey; Nays: 0). Chair Necas stated the variance requests were passed unanimously.

OTHER BUSINESS

Ms. Thiel advised the Board that the Planning Department would cover registration fees for any Board members interested in attending the May 24th quasi-judicial workshop in Kernersville.

Chair Necas acknowledged the absence of Ms. Rudd

ADJOURNMENT

The meeting was adjourned at 6:41 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/arn

MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
April 24, 2023

The meeting of the Greensboro Board of Adjustment was held on Monday, April 24, 2023, at 5:34 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Chuck Truby, Ted Oliver, Cory Randolph, Tifanie Rudd, Deborah Bowers, and Larry Wright. City staff present were Rachel McCook and Mike Kirkman of the Planning Department, and Emily Guarascio (Associate City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Chair Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF MINUTES (March 27, 2023 Meeting)

Mr. Truby made a motion to approve the March 27, 2023, minutes, seconded by Mr. Oliver. The Board voted 7-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Bowers, Wright, and Chair Necas; Nays: 0). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

There were no continuances or withdrawals.

OLD BUSINESS

a. BOA-23-12: 1204 Fuller Street (APPROVED)

Ms. McCook stated in BOA-23-12, Faith Worship Believers Church Inc. requests two variances: (1) to allow a proposed building to encroach 10 feet into a required 15-foot side street setback. The building will be 5 feet from the property line along an unimproved street right-of-way; (2) to allow a proposed building to encroach 10 feet into a required 20-foot rear setback. The building will be 10 feet from the rear property line. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance references were Section 30-8-10.2(G)(1)(a): All buildings are subject to the setback and building height standards of the underlying zoning district; and Section 30-7-3.5 – Table 7-12: For nonresidential development in the R-5 District, the minimum side street setback is 15 feet, and the minimum rear setback is 20 feet.

Background and Site Information: The subject lot is located on the south side of the intersection of Fuller Street and Midway Street, and is zoned R-5. Tax records indicate the vacant lot contains approximately 30,492 square feet. The applicant proposes to construct a 3,500 square foot neighborhood-scale community center on the vacant lot that will encroach into the required side street

setback and rear setback. The proposed building will be 5 feet from the property line along an unimproved street right-of-way when the minimum required is 15 feet. It will also be 10 feet from the rear property line when the minimum required is 20 feet. The applicant indicates that the configuration of the property, the existing topography and associated drainage feature create a hardship that affects development. A third variance for a buffer yard width reduction was requested at the time of application, but alternative means of compliance were achieved based on property size and proposed screening, so that variance is not necessary. If the setback variances are granted, the applicant will proceed with the commercial building permit process

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

Chair Necas asked the applicant to provide their name/address for the record.

Ted Johnson, P.O. Box 5272, attorney for the applicant, stated that the subject property contains a drainage feature in the center of the lot, and building without the variance would require bridging and disturbing it, affecting the neighbors. The hardship is not the fault of the applicant, and the applicant is attempting to follow the LDO as faithfully as possible regarding parking requirements. Mr. Johnson distributed material for the record and stated that the applicant seeks to build a community center. Chair Necas asked if the proposed use was relevant to the setback requirements. Mr. Johnson stated that it speaks to the variance request satisfying the aims of the ordinance. It indicates that this is not a commercial use and is in line with the residential character of the neighborhood. Mr. Kirkman asked if Mr. Johnson was asserting that the proposed use was beneficial to the surrounding community, and Mr. Johnson stated he was. Ms. Guarascio stated that the Board could consider competent material relevant to the case. Mr. Johnson stated that the subject property currently has sufficient buffering, and the issues around the design buffering in the proposal have been resolved.

Mr. Oliver asked about the water on the subject property. Mr. Johnson stated it was a small creek. Mr. Oliver stated he did not see it in photographs and did not notice it when he visited the subject property, and asked if it was only present during periods of rain. Mr. Johnson stated that the civil engineering team has indicated that the applicant cannot redirect or control the stream.

Ms. Bowers asked if the problem the applicant faced was a requirement to build on either side of the creek, and Mr. Johnson stated that was correct. Ms. Bowers asked if there were residential uses in proximity to the potentially encroached setback areas, and Mr. Johnson stated he did not believe there were. Ms. Bowers asked if there was an existing home on the subject property, and Mr. Johnson stated there was. Ms. Bowers asked if it would be demolished, and Mr. Johnson stated that it was his understanding that it would be.

Mr. Wright asked where the subject property was in the City. Mr. Oliver stated it was near the Coliseum.

Mr. Randolph asked the approximate cost of the project. Mr. Johnson stated he did not have that information. Mr. Randolph asked what the cost would be to fill in the existing stream. Mr. Johnson stated that the civil engineer's preliminary estimate is that it would increase the overall project cost by a third to a half.

Ms. Bowers asked about the location of the setbacks and potential encroachment, and Mr. Kirkman stated it was a side street setback based on the configuration of the subject property. Mr. Johnson stated that Exhibit C demonstrates the need for the variance.

Mr. Oliver asked about the position of the water as indicated on Exhibit C, and Mr. Johnson stated it was not marked but his understanding is that it was flowing through the middle of the subject property and displayed an illustrative drawing of the site. Mr. Oliver asked about the impact of the water, and Mr. Johnson indicated the flow of the water on the subject property. Mr. Kirkman stated that it appeared to be through the proposed parking area, and Mr. Johnson concurred. Mr. Oliver asked if the applicant

was seeking to place parking over the stream buffer, and Mr. Johnson stated that the civil engineer has developed a solution to support the drainage on the subject property.

Mr. Truby stated that it appeared the proposed site plan left the stream area undeveloped. Mr. Johnson stated that the applicant is maximizing the buildable space on the subject property while following appropriate regulations.

Mr. Wright asked about the presence of additional structures currently on the subject property, and Mr. Kirkman stated that the maps indicated the presence of existing accessory structures, and the proposal would replace them.

Mr. Randolph asked if the applicant considered removing parking spaces to allow relocating the parking lot without needing the variances. Mr. Johnson stated that the applicant's engineers could not find a solution that did not require a variance.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Randolph stated that it appeared the applicant had attempted to make all reasonable accommodations to come into compliance. Mr. Truby stated that it did not appear that the rear setback was as significant as requested in the variance. Mr. Kirkman stated that the variance request was based on the application materials provided at the time the request was filed. He stated that the site plan included with the application indicated the setback on Exhibit C in a way that might make it appear less significant.

Ms. Bowers moved that in BOA-23-12, 1204 Fuller Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the current planting yard for the proposed use is Type B with a 25-foot average width and minimum width of 20 feet; the current side setback on the east side of the lot is 15 feet and the rear setback on the south side of the lot is 20 feet; if the community center were to keep that buffer and setbacks, there would be insufficient room to provide the parking needed for the proposed use without extending the parking lot across a drainage feature; the applicant has requested a reduction in the buffer to 10 feet and is providing the same number of landscaping plants as required in the Type B planting yard, the applicant also requested a reduction in the side setback from 15 to 5 feet and a reduction of the rear setback from 20 feet to 10 feet which is reasonable; (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 of the site shows a drainage feature through the center of the property; the topography of the property's drainage dictates the requirement that the building be built away from the drainage area; (3) The hardship is not the result of the applicant's own actions because the drainage was there at the time and was already existing, the applicant has made adjustments to the original size of the community center to reduce it to the most practical size given the constraints of the ordinance and the topography of the lot; (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 applicant seeks to provide a community center, the applicant has reached out to adjoining neighborhood residents, none of whom have objected, and has determined that a majority of those citizens feel the proposed use will have a positive impact on the community. Mr. Randolph seconded the motion. The Board voted 7-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Bowers, Wright, and Chair Necas; Nays: 0). Chair Necas stated the variance requests were approved unanimously.

NEW BUSINESS**a. BOA-23-17: 3840 Wendover Industrial Drive (APPROVED)**

Ms. McCook stated in BOA-23-17, LeoTerra Development Inc. and LOFCO LLC request a special use permit to operate an asphalt plant on the property in addition to all uses permitted in the CD-HI District. Evidence provided by the applicant included Exhibits A through E. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance references were Section 30-8-1 – Table 8-1: Asphalt Plants and Other Facilities for the Manufacture and Storage of Chemicals, Petroleum Products, Explosives, and Allied Products is a permitted use in the HI District with a Special Use Permit; and Section 30-8-10.5(A): Asphalt Plants and Other Facilities for the Manufacture and Storage of Chemicals, Petroleum Products, Explosives, and Allied Products must meet the following standards: (1) All operations must be set back at least 50 feet from any property line; (2) Tanks, loading areas, or other facilities for the manufacturing, handling, or storage of flammable or explosive materials must be separated from any residential district by at least 500 feet; (3) Security fencing at least 8 feet in height must be provided around the perimeter of the operation (see 30-9-4).

Background and Site Information: The subject lot is located on the south side of Wendover Industrial Drive, east of Ward Road, and is zoned CD-HI (Conditional District-Heavy Industrial). Tax records indicate the vacant lot contains approximately 12.39 acres. The applicants propose to operate an asphalt plant on the subject property in addition to all uses permitted in the CD-HI District. The existing CD-HI District designation allows a variety of heavy industrial uses, but excludes the wholesale trade of petroleum and petroleum products; transportation and warehousing of hazardous and radioactive waste; solid waste disposal; manufacturing or sale of asbestos, abrasive and related products; mining and quarrying of any type or nature; and salvage yards for auto parts or scrap processing. The applicants indicate that the proposed asphalt plant is consistent with the property's zoning, will create good well-paying job opportunities and will provide a needed service in the community. If the special use permit is approved, the applicants will proceed with the Technical Review Committee and building permit review processes.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Buddy Lyons, C. Tyrus Clayton, Jr, Rob VandenMeiracker, Andrew Rodak, and Mandy Chisolm for their testimony.

La-Deidre Matthews, 101 North Tryon Street, Charlotte, attorney for the applicants, entered information into the record about the environmental impact of asphalt plants into the record and material supporting the applicant's witnesses.

Buddy Lyons, 4105 Strader Court, Summerfield, stated that he is the founder and CEO of LeoTerra Development. They are seeking to relocate much of their operations to Greensboro, and this is a part of moving the infrastructure division. Mr. Lyons displayed a conceptual aerial rendering of the proposed development, and stated that they are in the process of constructing a large reinforced concrete pipe manufacturing facility in the adjacent properties, and they seek to add capacity with the asphalt plant in this special use permit request. He stated that this would reduce costs to lay asphalt in East Greensboro, and would serve to help accommodate the increasing demand in this future growth area. This would be an advanced manufacturing facility, increasing commercial activity in the area.

C. Tyrus Clayton, Jr, 3030 Old Stage Road South, Erwin, stated that he is a civil engineer and involved with the site plan of the subject property. He displayed an illustrative sketch plan of the subject property, and stated that they have designed the site to have efficient and safe circular traffic flow to

separate the hauling traffic from employee and visitor areas. They have configured the site's lighting to minimize light pollution into neighboring properties. There will be no disturbance of the vegetative buffer around the creek to the north of the site, and a pond will collect stormwater on the site to capture any potential sediment and control erosion. Mr. Clayton stated that their site plan calls for security fencing and significant landscape buffering on the site. The nearest residential use adjacent to the property is approximately 500 feet, and the neighborhood is compatible with this land use. He displayed annotated aerial photography of the subject property and proximity, and stated that there were other intensive industrial uses adjacent to it and displayed photography of the surrounding area.

Rob VandenMeiracker, 2170 Fate Dill Road, Greer, South Carolina, stated that he is an environmental engineer. The facility is required to have an air permit for emissions from the State of North Carolina's Department of Environmental Quality (DEQ) and is subject to requirements from the federal EPA and other state agencies, and they are designing the facility to meet all stringent contemporary environmental requirements. He displayed charts indicating expected pollutants generated by the facility and stated that the plant will generate fewer pollutants than the thresholds for all pollutants, but some specific individual pollutants will require a permit. Mr. VandenMeiracker stated that the EPA has delisted some categories of pollutants from asphalt plants in the past few decades, and stated that the predicted outputs of pollutants are at 30% or less of the allowed maximum.

Mr. Truby asked when the applicant would apply for these permits. Mr. VandenMeiracker stated they have already applied for it, but it requires a zoning consistency statement before DEQ will issue it.

Andrew Rodak, 1738 River Club Way, Franklinton, stated that the site would be subject to National Pollutant Discharge Elimination System (NPDES) permits concerning stormwater pollution prevention and spill control plans. The applicant will require permits before operations can begin, which will require inspection and management of pollutants. He stated that runoff from the site will be directed to a pond that will remove suspended solids from the water to comply with stormwater regulations. The applicant will be required to develop a plan to prevent stormwater from the site from becoming a pollution source, and the applicant requires a permit from DEQ before operations begin with semi-annual monitoring and reporting requirements.

Ms. Matthews stated that consultants working on the site have determined that the request will not damage property values in the area, and reviewed the factors required for SUP issuance.

Chair Necas advised there would be a break at 6:46 p.m. and the meeting resumed at 6:50 p.m.

Ms. Rudd asked what type of job positions the facility would have. Mr. Lyons stated that there would be approximately 50 new jobs initially and 100 at scale. 10 would be directly related to the asphalt plant, but many more jobs could be made by the availability of material and could result in an additional 50 jobs. He stated that many positions would be equipment operators, but also superintendents, project managers, and civil engineers. The salary range for the facility would be between \$60,000 at entry level to over \$200,000.

Mr. Wright asked if the applicant would be in both production and manufacturing. Mr. Lyon stated that they are in both and purchased this operational unit to supply its operations.

Chair Necas asked if there was anyone to speak in opposition and swore in Sidney Falken and Jim Irvin for their testimony

Sidney Falken, 143 Pendleton Lane, Winston-Salem, stated that her family owns an adjacent property, and they are concerned about the environmental impact, noise pollution, and traffic in the area. She stated that her family has owned their property for decades and is in the process of selling it, and they are concerned this request will damage that.

Chair Necas asked for Ms. Falken about the location of her property, and Ms. Falken indicated it on Exhibit C.

Mr. Oliver asked about the projected use for the opposition speaker's land, and Ms. Falken stated she believed it was for an industrial use, but her realtor has told them this could damage the value of the property. Mr. Kirkman stated that Ms. Falken's property was directly to the east of the subject property.

Ms. Bowers asked if she owned the property, Ms. Falken stated she was one of the owners, and the property was currently undeveloped.

Mr. Oliver asked if she was under contract, and Ms. Falken stated they were not yet fully under contract.

Mr. Wright asked if the buyer has expressed that they will pull out of the sale, and Ms. Falken stated they were not sure yet, as she only recently became aware of this request.

Ms. Matthews stated that she objected to the opposition speaker's discussion of property values.

Ms. Falken stated that her family was concerned about losing value at the critical sale period.

Chair Necas stated that area appeared heavily industrial.

Mr. Truby asked about the zoning of the opposition speaker's property, and Ms. Falken stated it was zoned County LI, Light Industrial.

Jim Irvin, 3900 Cascade Drive, stated that he was another owner of the other property, and is concerned about the environmental impact of an asphalt plant. He stated that there was a correlation between respiratory illness and dangerous pollutants from asphalt plants, and that is why he is concerned about the impact on their property. Mr. Irvin stated that the applicant may meet minimum standards, but he is still concerned about the health and safety of the workers and people in the area of the subject property.

Chair Necas asked if the applicant or anyone in support of the request wished to speak in rebuttal.

Molly Chisolm, 902 West Lexington Avenue, High Point, stated she was a state certified real estate appraiser. The market information she prepared about the impact the proposed asphalt plant would have on adjoining properties indicates that it would not substantially injure the value of adjoining properties. She stated that contemporary asphalt plants are compatible with a diverse set of neighboring uses and are not an objectionable part of a community.

Mr. Oliver asked if there were many residential uses near the subject property, and Ms. Chisolm said there were a few. Mr. Oliver asked what impact it would have on the impact of neighboring light industrial properties. Ms. Chisolm stated that she only studied neighboring residential uses, but she believed this use was consistent with adjacent industrial uses.

Mr. Randolph asked about the emissions standards the plant would be required to meet and if they are exempt from any requirements. Mr. VandenMeiracker stated that the facility is not exempt from permitting, as the State has rules for asphalt plants and they will be required to meet them. He stated that the air permit is primarily concerned with impact on offsite properties, and the state has strong emissions control regulations. Onsite chemical considerations are a facet of OSHA compliance, which is required federally. Mr. Randolph asked if the air permits have any requirement to prevent the emission of noxious odors that are not dangerous but are unpleasant to neighboring properties. Mr. VandenMeiracker stated that NC has odor regulations and there are expectations that facilities minimize odor emissions, but odors are not necessarily an indication of a health issue and are impossible to eliminate fully. Mr. Randolph stated that the opposition speaker's concern is that odors within the regulation limits may still impact neighboring property values. Ms. Matthews displayed the illustrative site design and indicated the natural buffers surrounding the property which would heavily

buffer the subject property from the opposition speaker's property. Mr. Randolph asked what the odor emissions they expect the subject property to emit. Mr. VandenMeiracker stated they could not project it and it would be subjective. Mr. Randolph asked if that meant they cannot project what the impact would be. Mr. VandenMeiracker stated that odors were subject to thresholds directly related to distance from a source, and they will be dependent on multiple factors including individual sensitivity. Mr. Lyons stated that they cannot objectively state what odors may come from the operation. He stated that his perception of industrial property value in the area makes him believe the adjacent properties would not be negatively impacted. Mr. Randolph asked what the time frame for this site's construction would be. Mr. Lyons stated that they anticipate a 12-15 month period before the properties could complete construction.

Mr. Wright asked if any other neighbors have contacted the applicant. Mr. Lyons stated they have not heard any other concerns despite reaching out.

Mr. Randolph asked about typical wind patterns in the area. Mr. VandenMeiracker stated that the typical wind in the area was northeast or southwest.

Mr. Oliver asked if the applicant was going to use the facility to supply its construction operations. Mr. Lyons stated that the proposed facilities could likely supply 20-25% of their needed materials, and there are increasing projects in the area that need asphalts. They anticipate selling a majority of their output to developers in the area due to the opening of Interstate 840.

Chair Necas asked if anyone in opposition of the request wished to speak in rebuttal.

Ms. Falken stated that her concern is that no one can definitively address her concerns.

Ms. Bowers stated that Ms. Falken was speculating on the potential impact on her property.

With no additional speakers, Chair Necas closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Truby stated that asphalt plants can produce odors, but there are significant permit requirements for this kind of industrial facility. He stated that there are adjacent uses in the area that are more objectionable than the proposed facility. Greensboro is in need of asphalt, particularly in this area, to support its growth, and he can support the request.

Ms. Bowers stated she agreed with Mr. Truby, and that the relevant evidence presented does not indicate there will be any negative impacts on adjacent properties.

Ms. Rudd stated the area supports the proposed land use.

Mr. Randolph stated that he was dubious of the market research presented, but that there was no significant evidence of a negative impact on adjacent properties. Given the pre-existing uses in the area, and the lack of other opposition, he believes the request is reasonable.

Mr. Wright stated that he understands neighbors' concerns about property values, but the State DEQ monitors air pollution very closely, and he believes the buffering on the site is sufficient to maintain health and safety standards.

Mr. Truby moved that in BOA-23-17, 3840 Wendover Industrial Drive, based on the stated Findings of Fact, that the Special Use Permit be granted based on the following: (1) The proposed use will not be detrimental to the health or safety of persons residing or working in the vicinity or injurious to property or improvements in the vicinity because the applicant will attain all the required permits as required by law and this request is consistent with the zoning of the parcel; (2) The proposed use at the particular location provides a service or facility that will contribute to the general well-being of the neighborhood or the community because the facility will create good well-paying jobs and the asphalt plant will

provide a product needed by the community and the City; (3) The location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the Comprehensive Plan because the request is consistent with a parcel that is zoned for industrial use and is surrounded by industrially zoned properties. Ms. Bowers seconded the motion. The Board voted 7-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Bowers, Wright, and Chair Necas; Nays: 0). Chair Necas stated the Special Use Permit request was granted unanimously.

b. BOA-23-18: 1809 Heilwood Drive (APPROVED)

Ms. McCook stated in BOA-23-18, Danielle Wright requests a Special Exception to allow a proposed family care home to be 1,866 feet from another family care home located at 2001 Jane Street when at least 2,640 feet is required. Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-8-10.1(B)(1): To increase housing alternatives available to resident persons and fully integrate them into the community mainstream by allowing them to live in typical homes in typical neighborhoods, 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 Heilwood Drive, north of Beckford Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 9,583 square feet and the house was constructed in 1964. The applicant wishes to establish a family care home at the subject property, which is located within ½-mile of one other existing facility. A family care home, Jane Street Group Home, operates at 2001 Jane Street, which is 1,866 feet away. The required separation between family care homes is measured from property line to property line, so the ½-mile buffer associated with the existing facility at 2001 Jane Street encompasses the subject property. To approve a special exception for reduced separation, the Board of Adjustment must find that a reduced separation will not promote the clustering of homes which could lead the resident persons to cloister themselves and not interact with other members of the community.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Danielle Wright for her testimony.

Danielle Wright, 1809 Heilwood Drive, stated that she is seeking to open a family care home for men leaving prison.

Ms. Rudd commended the applicant for her application materials, and asked about the information and details submitted regarding the potential use of the property to help victims of domestic violence. Ms. Wright stated that the facility would not house women in crisis, only men leaving prison.

Chair Necas asked if she would live at the facility, Ms. Wright stated she would not

Mr. Wright asked about the difference between a transition home and a halfway house, and Ms. Rudd asked about the transitional character of the home. Ms. Wright stated that she would not be receiving prisoners directly from the state, she would recruit clients already released, such as those at probation facilities.

Mr. Oliver asked if they would know what crimes the residents committed, Ms. Wright stated she would exclude sex offenders and men with murder convictions or serious offenses. Mr. Oliver stated that the applicant's description of the buffer between the existing home and hers indicated a freeway, but he

did not notice one there. Ms. Rudd asked about the property being walking distance from a grocery store, and Ms. Wright stated it was a grocer on Gate City Boulevard, approximately one mile away.

Mr. Wright asked if the applicant would provide transportation assistance to the residents, and Ms. Wright stated she was working with her father to purchase a van. Mr. Wright asked about the screening of applicants, and Ms. Wright stated she would not select seriously violent offenders. Ms. Rudd asked about to clarify that her standards would be advertised for the referral process, and Ms. Wright stated that was correct. Mr. Wright asked about the character of the neighborhood around the subject property. Ms. Wright stated that she spoke to her neighbors about her intentions and she heard no opposition.

Ms. Rudd asked if the applicant knew anything about the other group home, and Ms. Wright stated she visited the site but has not had discussion with anyone associated with that facility.

Mr. Wright asked if there was a Homeowners' Association (HOA) in the area, and Ms. Wright stated there was not.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Ms. Rudd stated that she had concerns with the consistency of the applicant's request and she cannot support the request.

Chair Necas asked if both the subject property and the existing family care home are within city limits, and Mr. Kirkman stated that was correct.

Mr. Oliver asked if staff knew details about the other group home. Mr. Kirkman stated they did not, but that the population could not be a consideration of the decision.

Mr. Randolph asked about the regulation's definition of clustering other than the distance requirement. Mr. Kirkman stated that the broad goal of the regulation is to prevent having many in close proximity so that the homes do not isolate and concentrate themselves. Mr. Randolph asked if it was within the Board's discretion to determine if this was clustering, and Mr. Kirkman stated that was correct.

Chair Necas asked about the official notice distance, and Mr. Kirkman stated that property owners within 150 feet of the subject property received letters.

Mr. Randolph stated that 150 feet is a short distance compared to the potential for impact in the area. Mr. Kirkman stated that the City uses the 150 foot notification distance to satisfy City ordinances and exceed State regulations on Family Care Homes.

Ms. Bowers asked about the definition of Family Care Homes. Mr. Kirkman stated that a Family Care Home is considered a facility of a private, charitable, nonprofit or commercial home care provider in use as a residence for 9 or fewer individuals with support and supervisory personnel to provide room and board, personal care, and habilitation services in a family environment for resident persons who receive such care and service.

Mr. Truby stated that the Board has often denied these requests but they also normally have opposition present, which this one does not, even with neighborhood outreach by the applicant. He stated that the City needs these kinds of facilities and understands the intention of the ordinance.

Ms. Guarascio stated that the Board's past decisions are not firm precedent, and the Board determines individual cases by their unique characteristics.

Ms. Rudd moved that in BOA-23-18, 1809 Heilwood Drive, based on the stated Findings of Fact, that 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 sprit because approval does not provide sufficient safeguards with respect to the subject property's location; (2) The granting of the special exception does not assure the public safety and welfare and does not do substantial justice because of the uncertainties of the welfare and safety of the neighborhood. Chair Necas asked about the Board's procedure regarding the motion. Mr. Kirkman stated that if the motion for denial did not pass, the Board would need to have a separate motion for approval establishing the findings of fact. Mr. Truby seconded the motion. The Board voted 3-4 in opposition of the motion, (Ayes: Rudd, Truby, Wright; Nays: Bowers, Oliver, Randolph, Chair Necas).

Chair Necas then moved that in BOA-23-18, 1809 Heilwood Drive, based on the stated Findings of Fact, that the Zoning Enforcement Officer be overruled and the Special Exception granted based on the following: (1) The special exception is in harmony with the general purpose and intent of this ordinance and preserves its sprit because the proposed family care facility is within a reasonable distance due to the physical boundary of a creek, away from another family care home due to the presence of the creek; (2) The granting of the special exception assures the public safety and welfare and does substantial justice because family care homes are useful and necessary to help rehabilitate members of the community that would otherwise might otherwise return to incarceration and the facility would serve the community. Mr. Randolph seconded the motion. The Board voted 7-0 in favor of the motion, (Ayes: Bowers, Oliver, Randolph, Rudd, Truby, Wright, Chair Necas; Nays: 0). Chair Necas stated the Special Exception was granted unanimously.

c. BOA-23-19: 100 Duffy Avenue (APPROVED)

Mr. Kirkman stated in BOA-23-19, Jose Cervantes requests a variance to allow a proposed house to encroach 11.8 feet into a required 44-foot front setback. The house will be 32.2 feet from the front property line Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-7-1.4(1)(b): When 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average (mean) setback that exists on the two lots on either side of the subject lot.

Background and Site Information: The subject lot is located on the south side of Duffy Avenue, east of North Church Street, and is zoned R-5. Survey records indicate the vacant lot contains approximately 9,744 square feet. In April 2022, the subject lot and adjacent lot at 98 Duffy Avenue were created by reconfiguring previously recorded lot lines through the exempt recombination plat process. Based on the average front setback calculations using 98 Duffy Avenue, 102 Duffy Avenue and 104 Duffy Avenue, the applicable front setback for the subject property is 44 feet. The applicant proposes to construct a new house on the property that will encroach 11.8 feet into a required front setback and be 32.2 feet from the front property line. If the variance is granted, the applicant will proceed with the residential building permit process.

Mr. Kirkman provided the land use and zoning for this property and surrounding properties, and noted the applicable overlay.

Chair Necas asked the applicant to provide their name/address for the record and swore in Jose Cervantes, 116 Duffy Avenue (property owner), and Chris Rohrer for their testimony.

Chris Rohrer, P.O. Box 307, Oak Ridge, stated that strict application of the ordinance requirements would require building an insufficient structure on the subject property. The existing adjacent lots are deeper, allowing them to comply easily with the setback requirements where the subject property cannot. He stated that the hardship is not a result of the applicant's actions, and the variance is in harmony with the purpose of the ordinance because it allows for building an acceptable residence.

Several structures on this street have a setback less than that requested, and approval of the request allows for the construction of a quality residence on an otherwise vacant lot.

Chair Necas asked about the deed submitted with the application, which had no signature or date. Mr. Rohrer stated that the Register of Deeds recorded it with a stamp by Guilford County. Ms. Guarascio stated it was within Board discretion to determine the relevance of evidence.

Ms. Bowers asked if Mr. Rohrer was the builder, and Mr. Rohrer stated he was the site planner.

Mr. Oliver asked about the averaging of lot setbacks in the neighborhood, and asked if the subject property previously contained a home. Mr. Rohrer stated it did not, and that the averaging would have taken place regardless due to the infill provision of the LDO. Some neighboring lots were deeper, allowing for larger setbacks. Mr. Kirkman stated that the measurement was an average of the existing contextual properties, looking at the residences on either side of the subject property or applying the minimum standard in the zoning district if vacant. Mr. Oliver asked if the setback requirement would be different if there was a house on the adjacent property, and Mr. Rohrer said it would. Mr. Kirkman stated that it would be relative to the properties as they are prior to building a new residence.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Oliver moved that in BOA-23-19, 100 Duffy Avenue, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the owner wants to build a home for a specific occupancy, this shape of home is what he needs to do that; (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 empty lot beside this lot requires a different calculation of the setback line; (3) The hardship is not the result of the applicant's own actions because there's an empty lot beside this house and the other homes nearby have a deeper setback which creates this calculation of a 32-foot setback; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the lot is currently vacant and empty, putting a home on the property will improve the neighborhood and improve public safety. Mr. Randolph seconded the motion. The Board voted 7-0 in favor of the motion, (Ayes: Bowers, Oliver, Randolph, Rudd, Truby, Wright, Chair Necas; Nays: 0). Chair Necas stated the variance request was granted unanimously.

OTHER BUSINESS

Chair Necas acknowledged Vice Chair Ramsey's absence.

ADJOURNMENT

The meeting was adjourned at 8:11 pm.

Respectfully submitted,

Leah Necas, Chair

Greensboro Board of Adjustment

LN/arn

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
May 22, 2023**

The meeting of the Greensboro Board of Adjustment was held on Monday, May 22, 2023, at 5:36 p.m. in-person in the City Council Chamber. Board members present were: Vice Chair Vaughn Ramsey, Cory Randolph, Ted Oliver, Chuck Truby, and Stephen Barkdull. City staff present were Shayna Thiel, Christopher Andrews and Mike Kirkman of the Planning Department, and Emily Guarascio (Associate City Attorney).

Vice Chair Ramsey welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Vice Chair Ramsey further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Vice Chair Ramsey 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. Vice Chair Ramsey went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF MINUTES (April 24, 2023 Meeting)

Mr. Randolph made a motion to approve the April 24, 2023, minutes, seconded by Mr. Truby. The Board voted 4-0-1 in favor of the motion, (Ayes: Randolph, Oliver, Truby, Barkdull; Abstain: Vice Chair Ramsey). Vice Chair Ramsey advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel stated that the applicants in BOA-23-22, 308 North Chapman Street, have requested a continuance until the next regular meeting.

Mr. Kirkman advised that 6 Board members must be present to hear/take action on any variance requests, so in the interest of time, he suggested that the Board proceed with the re-hearing and special exception requests while we wait for Ms. Rudd to arrive.

NEW BUSINESS

a. BOA-23-20: 325 Erwin Street (APPROVED)

Ms. Thiel stated in BOA-23-20, Nicole Davis and Hatfield Charles request a re-hearing concerning variance requests from side setback requirements for an existing principal structure that were originally denied at the November 28, 2022 Board of Adjustment meeting. Evidence provided by the applicant include Exhibit A. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-7-3.5 – Table 7-12: In the RM-8 District, the minimum side setback for nonresidential development is 25 feet

Background and Site Information: The subject lot is located on the south side of Erwin Street, east of Randleman Road, and is zoned CD-RM-8 (Conditional District - Residential Multi-family – 8). Tax records indicate the lot contains approximately 14,375 square feet, and the structure was constructed in 1956. As a result of a failed motion to approve at its November 27, 2022 meeting, the Board of

Adjustment denied the applicants' variance requests to allow an existing principal structure to encroach into required side setbacks. Within 90 days of the Board's decision, the applicants filed a request for a re-hearing and indicated that they have new evidence to help Board of Adjustment members understand their original variance requests more clearly. After filing their re-hearing request, the applicants asked for additional time to secure and consult with legal counsel. If the re-hearing is granted, the applicants will submit a new variance application for consideration by the Board of Adjustment.

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

Nick Blackwood, 804 Green Valley Road Suite 200, attorney on behalf of Nicole Davis and Hatfield Charles, stated that the applicants request a rehearing due to the availability of new evidence. The applicants filed in their individual name but this request is to facilitate a business, and the applicants were unaware of the technical intricacies of a variance request versus zoning. The prevailing objections presented by neighbors regarded the potential land use available to the applicant by right in the CD-RM-8 zoning district and not the technical standards of the variance. Mr. Blackwood stated that two pieces of new evidence serve to change the nature of the request. The applicants have removed the previous fence encroachment and installed a new opaque fence installed on the appropriate side of property line, and the applicants are proposing to engage with neighboring property owners to address any residual concerns about the land use and proximity to the adjacent property line by providing additional landscaping to buffer residential uses to the east. He stated that the applicants intend to enter a private agreement with neighbors to provide appropriate buffering, but need more time to meet with the neighbors and develop a landscaping plan fitting the subject property's difficult narrow configuration. Mr. Blackwood stated that the applicants currently operate a limited Daycare Home use on the subject property and seek to expand their client base by converting it to the Daycare Center use for business viability.

Vice Chair Ramsey asked about the difference between the Daycare Center and Daycare Home uses. Mr. Kirkman stated that the Land Development Ordinance (LDO) considers Daycare Home as a home occupation accessory to a residential dwelling use, whereas Daycare Center is a principal commercial use. Mr. Blackwood stated that the applicants currently operate the Daycare Home use in compliance with the ordinance and the original variance request that the applicants seek to have reheard regards the dimensional difficulties the subject property has to satisfy the additional buffering requirements imposed in the RM-8 zoning district for the Daycare Center use.

Vice Chair Ramsey asked if the applicant had previously intended to expand the footprint of the structure on the subject property to increase their license capacity. Mr. Blackwood displayed the zoning conditions for the subject property and stated that the applicants could not expand the structure's footprint as a condition of the CD-RM-8 zoning:

7. The existing principal structure shall remain and shall not be expanded close to the front property line.

Mr. Blackwood stated that the increase in capacity is due to the change in use from the home occupation Daycare Home to Daycare Center commercial principal use. Vice Chair Ramsey asked to confirm that the applicant asserts the new facts are removing the previous encroaching fence and being willing to communicate with neighbors. Mr. Blackwood stated that was correct, and that the applicants are willing to pay to install and maintain any landscaping. Vice Chair Ramsey asked if the applicant has had communication with neighbors yet. Blackwood stated they had not since the prior hearing. Mr. Kirkman asked if there had been a new survey since the previous hearing. Mr. Blackwood stated there was not, but displayed the site plan and indicated the property line in question.

Vice Chair Ramsey asked to confirm the Daycare Home use is currently permissible, and Mr. Kirkman stated that the applicants could use the subject property for that use as an accessory home occupation with the child limitation in effect.

Mr. Randolph asked to confirm that the underlying variance request stems from the setback requirements imposed by the Daycare Center nonresidential use, and Mr. Kirkman stated that was correct.

Vice Chair Ramsey asked what the license capacity of the Daycare Center use would be. Mr. Blackwood stated it would be above 16, limited by the capacity determined by the State. The State has inspected the subject property and final determination of license capacity is in progress.

Mr. Oliver asked to confirm the intent was to have a maximum of 12 children, Mr. Blackwood stated he believed that was correct. Mr. Kirkman stated that the applicant is requesting a maximum capacity of 30 children.

Vice Chair Ramsey asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

Mr. Randolph asked about the duty of the Board to address substantiality in determining whether to grant a new hearing. Ms. Guarascio stated that it was at the Board's discretion, and that the rules and procedures of the Board state that if the applicant provides new evidence that was unavailable or unable for the applicant to discover at the time of the initial hearing, the Board could consider it substantial. Mr. Kirkman stated that the normal public advertisement process would apply to any potential new hearing.

Vice Chair Ramsey stated that he did not believe the second asserted fact was significant, and asked if the zoning district of the subject property changed prior to the variance hearing. Mr. Kirkman confirmed the Planning and Zoning Commission approved the rezoning before the applicant made the variance request. Vice Chair Ramsey stated that he was unsure if the encroaching fence's removal is a significant fact sufficient to grant a rehearing.

Mr. Truby stated he believed so, and Mr. Oliver concurred. Vice Chair Ramsey stated that opposition could speak again, and Ms. Guarascio stated confirmed that the Board would conduct a completely new hearing.

MOTION

Vice Chair Ramsey moved that in BOA-23-20, 325 Erwin Street, the Board of Adjustment allow a re-hearing based on new evidence provided on the record by the applicants due to the removal of the removal of an encroaching fence and its replacement with a conforming fence, and the applicant's stated intent to offer buffering to the adjacent property to the east and develop a letter of agreement with the adjacent owner to that effect. Mr. Truby seconded the motion. The Board voted 4-1 in favor of the motion, (Ayes: Oliver, Truby, Barkdull, Vice Chair Ramsey; Nays: Randolph). Vice Chair Ramsey stated the re-hearing request was granted.

Mr. Kirkman then stated that Ms. Rudd is ill and unable to attend the meeting as planned. Due to a lack of quorum, the Board will be unable to consider any variance requests, and those items will be automatically placed on the next available meeting agenda.

a. BOA-23-24: 912 Olive Street (APPROVED)

Ms. Thiel stated in BOA-23-24, Eric and Anna Phillips request a special exception to allow a proposed accessory structure to encroach 5 feet into a required 15-foot side street setback. The accessory structure will be 10 feet from the property line along East Bessemer Avenue. Evidence provided by the applicant include Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were 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 street setback; and Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum side street setback is 15 feet.

Background and Site Information: The subject lot is located on the east side of Olive Street, south of East Bessemer Avenue, and is zoned R-5 (Residential Single-Family). Tax records indicate the corner lot contains approximately 6,534 square feet, and the house was constructed in 1935. The applicants propose to construct a 669 square foot accessory structure in the back yard that will be less than 15 feet tall in height and will include a workshop, porch and lean-to. The proposed accessory structure will encroach 5 feet into a required 15-foot side street setback and be 10 feet from the property line along East Bessemer Avenue. At its meeting on March 29, 2023, the Historic Preservation Commission recommended a special exception to the side street setback requirement. If the special exception is granted, the applicants will proceed with the residential building permit process.

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

Vice Chair Ramsey asked the applicant to provide their name/address for the record and swore in Eric Phillips for His testimony.

Eric Phillips, 912 Olive Street, stated that he wants to build a workshop and studio on his property. The house has no storage space outside, and his family seeks to create storage that is more efficient. Their house is currently 18 inches from the sidewalk, and the accessory structure will be set back 10 feet from the sidewalk, the maximum available space given the configuration of the subject property. He stated that the lot is only 45-feet wide, less than the typical 50 feet in this area, and the 15-foot setback would be one third of the subject property. Mr. Phillips stated that the proposed design fits the character of the neighborhood and the Historic Preservation Committee has approved his request.

Vice Chair Ramsey asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Ramsey moved that in BOA-23-24, 912 Olive Street, based on the stated Findings of Fact, that the Zoning Enforcement Officer be overruled and the Special Exception granted based on the following: (1) The special exception is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it is consistent with the neighborhood and will increase the tax value of the applicant's property; (2) The granting of the special exception assures the public safety and welfare and does substantial justice because it does not affect neighboring property owners and increases the functionality of the property. Mr. Randolph seconded the motion. The Board voted 5-0 in favor of the motion, (Ayes: Randolph, Oliver, Truby, Barkdull, Vice Chair Ramsey; Nays: 0). Vice Chair Ramsey stated the special exception was granted unanimously.

Mr. Kirkman advised that staff just learned that Ms. Rudd was ill and would not be coming to the meeting. As a result, he announced that the variance requests cannot be heard and will be continued to the June 26th meeting.

OTHER BUSINESS

Mr. Kirkman stated that there would be a special meeting of the Board on June 5th to hear five appeals of zoning enforcement actions. Mr. Randolph asked when the Board would receive materials regarding the meeting, and Ms. Thiel stated by the end of the week.

Mr. Truby asked if the Board could consider any of the variance cases continued tonight at that meeting. Mr. Kirkman stated that it would be at the Board's discretion, as there may be significant testimony at an appeal hearing.

Vice Chair Ramsey asked how long staff anticipated the hearing would be. Mr. Kirkman stated it would be difficult to project.

Mr. Truby stated he was willing to stay longer to help hear cases before the June regular meeting. Ms. Guarascio stated that there would need to be notice for the hearings, and applicants would need to confirm they wished to attend.

Vice Chair Ramsey asked if there was time for official notice. Mr. Kirkman stated that staff could meet legal notice requirements if the applicants reply promptly.

Mr. Oliver asked about the anticipated caseload for next month's regular meeting. Mr. Kirkman stated approximately 6 or 7, but the deadline is this Friday and the number could increase. Mr. Oliver asked about the time critical nature of the June 5th special meeting. Mr. Kirkman stated that enforcement actions are on hold during the appeal process, and that the Board needs to hear and consider significant evidence. Ms. Guarascio stated that both the appellant and City must introduce evidence and cross-examine witnesses.

Vice Chair Ramsey asked if the Board could consolidate multiple items, and Ms. Guarascio stated that appellant counsel plans to present some items together, but all votes must be taken individually. Mr. Kirkman stated there were different zoning districts and conditions on properties associated with the appeals. Vice Chair Ramsey asked if the Board could hear a limited number of the continued items at the June 5th meeting to make the workload manageable. Ms. Guarascio stated that applicants would need consent to have their requests heard at a special meeting. Mr. Kirkman stated that the Board would address the appeal first at the June 5th special meeting.

Mr. Randolph asked to confirm that there is no time limit imposed on speakers during an appeal. Mr. Kirkman stated that the 20-minute time per side in normal hearings is a suggestion. Mr. Randolph asked if there was any possibility of setting time guidelines for the appeal under consent of the parties. Ms. Guarascio stated that she was uncomfortable with any time limit, and that while the Board can cut off any repetitive testimony and maintain decorum of the hearing, it cannot limit the completion of the record.

Mr. Kirkman asked the Board to give guidance to staff on contacting applicants about the June 5th special meeting. Vice Chair Ramsey asked if there were any issues with granting variances in a special meeting. Mr. Kirkman stated that the newspaper has not yet published the official advertisement of the special meeting. Mr. Oliver stated that he believed the Board could hear some continued requests in the special meeting if the applicants are willing. Based on the Board's comments, Mr. Kirkman stated that staff would reach out to the applicants to find out their wishes.

Vice Chair Ramsey acknowledged the absence of Ms. Rudd, Mr. Wright, and Chair Necas.

ADJOURNMENT

The meeting was adjourned at 6:24 pm.

Respectfully submitted,

Vaughn Ramsey, Vice Chair
Greensboro Board of Adjustment
HVR/arn

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
June 5, 2023**

The special meeting of the Greensboro Board of Adjustment was held on Monday, June 5, 2023, at 5:32 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice-Chair Vaughn Ramsey, Larry Wright, Cory Randolph, Chuck Truby, Ted Oliver and Tifanie Rudd. City staff present were Mike Kirkman, Shayna Thiel, Tonya Rumley, and Andrew Nelson of the Planning Department, and Brent Ducharme and Emily Guarascio of the City Attorney's Office.

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Chair Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

Chair Necas asked to clarify if any Board members needed to disclose any ex-parte communication regarding any items under consideration, and no Board members responded. She then asked if any Board members have visited any properties under consideration, and no Board members responded.

APPROVAL OF MINUTES (May 22, 2023 Meeting)

Mr. Randolph made a motion to approve the May 22, 2023, minutes, seconded by Ramsey. The Board voted 4-0-3 in favor of the motion, (Ayes: Randolph, Truby, Oliver, Vice Chair Ramsey; Nays: 0; Abstain: Necas, Rudd, Wright). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised that the applicants of BOA-23-26 have requested a continuance until the June 26th regular meeting. Chair Necas asked if they needed a motion to approve the continuance, and Mr. Kirkman stated the request is changing and staff must advertise the item again, so no.

Chair Necas stated that the Board anticipates taking a significant amount of time to address the agenda and will take regular breaks.

NEW BUSINESS

- a. **BOA-23-27: 3102 Randleman Road**
- b. **BOA-23-28: 3040 Randleman Road**
- c. **BOA-23-29: 3036 Randleman Road**

d. **BOA-23-30: 3034 Randleman Road**

e. **BOA-23-31: 3032 Randleman Road**

Dave Pokela, 800 Green Valley Road, Suite 500, on behalf of GOC-KSC-RDC-JDC Family Limited Partnership, LP, stated that with the consolidation of the five appeals and stipulation of evidence agreed upon with the City, the length of the hearing should be reduced. Their appeal is based significantly on the rezoning of the middle three properties in 2008, but the argument he intends to present will require referencing all five properties and asked to confirm that the record is being established for all five cases.

Chair Necas stated the Board found that acceptable, and asked Ms. Guarascio for input.

Emily Guarascio, Associate City Attorney, stated that consolidation was acceptable as long as each property has its own separate vote.

Chair Necas asked if Ms. Thiel needed to read each individual into the staff report. Vice Chair Ramsey asked if the Board could stipulate that they are in the record. Mr. Pokela stated that was acceptable. Ms. Guarascio stated it would be permissible.

Brent Ducharme, Assistant City Attorney, stated that request was acceptable.

Chair Necas stated that the Greensboro Board of Adjustment accepts into the record the staff report on cases BOA-23-27, BOA-23-28, BOA-23-29, BOA-23-30, and BOA-23-31.

Mr. Pokela stated he would present evidence to create a record for all the cases and tie it together in his closing argument, and asked the Board to allow him a brief opening statement.

Chair Necas asked if the appellant usually goes first in an appeal hearing, and Ms. Guarascio stated that was correct. Mr. Ducharme asked the Board to permit the City to present a brief presentation of evidence.

Mr. Pokela stated that his belief under the precedent of *Frazier vs. Town of Blowing Rock*, the burden of proof lies with the City to first prove a violation, and the appellant would respond accordingly if the Board determines so. Chair Necas stated that Mr. Ducharme would argue first.

Mr. Ducharme stated that the evidence from the City will thoroughly document the violations for the five subject properties. Outdoor storage is not a permissible primary use in any of the relevant zoning districts, 3102 Randleman Road violates use standards for the automobile storage use on the property, and a trucking terminal present at that property is not a permitted use under the Commercial – Medium zoning district. He stated that the Board had to consider historic changes in zoning and questions about laches or statutes of limitations in context of the fact that the City has only recently become aware of the uses on the property.

Chair Necas asked if this investigation was the result of a neighbor's complaint or inspector initiative. Mr. Ducharme stated that the City would elaborate on that in testimony, but this was a complaint-driven case.

Mr. Pokela stated that he had printed material prepared for the Board to review and to enter into the record, and distributed exhibit binders. He stated that he is here tonight representing the appellant, GOC-KSC-RDC-JDC Family Limited Partnership L.P., which he stated he would refer to as the Chambers family, that has owned the five subject properties since the 1970s. The family had previously operated the old Greensboro Pipe Company on the southernmost subject

property, 3102 Randleman Road, but maintains operations on the middle three properties—3040, 3036, and 3034 Randleman Road—and the northernmost property, 3032 Randleman Road.

Ms. Rudd asked for clarification on the subject properties. Mr. Pokela stated that the middle three properties were subject to a 2008 rezoning, and the use considerations on the subject properties have been complicated by changes in City policy. The City passed the Land Development Ordinance in 2010, prior to that between 1992 and 2010 the Unified Development Ordinance was in effect, and there were pre-UDO zoning regulations prior to that. He stated that the southernmost property is now Commercial – Medium, the middle three properties are Conditional District - Commercial – Medium, and the northernmost is Conditional District - Residential Multi-family – 12 and has been since before 1992. He stated that the subject properties have always had the trailer storage parking use, and asserted that the 2008 rezoning was an official recognition of this historic nonconforming use. The Notices of Violation (NOVs) issued to the appellant reflect the conditions and understanding of the uses at only one moment in time, and does not take into account historical patterns of use and what may have changed or be in the process of changing as it is observed. Mr. Pokela stated that the appellant asserts their land use has been legal and conforming since 2008 due to the rezoning, and stated that he will present evidence that the City was aware of the appellant's land uses by means of a public record, and that there are thus two statutes of limitations in the North Carolina General Statutes the Board should consider.

Mr. Ducharme called **Tonya Denise Rumley, Zoning Enforcement Officer, City of Greensboro**, as a witness to testify.

Ms. Rumley stated that she is one of three full-time Zoning Enforcement Officers working for the City and she investigates zoning complaints. Mr. Ducharme asked about the investigation of the subject properties, and Ms. Rumley stated that the originating complaint was for 3040 Randleman Road, and she expanded her investigation when she saw the extent of the land uses. She stated that she spoke with one of the property owners, David Chambers, on the site and visited the property twice, on 23 January and 27 February. During her visits, she observed an auto sales and service use at the southernmost property. Behind that is a salvage use with piles of auto parts and unscreened automobile storage. Further on the property has trailer and container storage that continues onto the four other properties along with tractor trailer parking and other outdoor storage. Ms. Rumley stated that she documented her findings with photographs and established case notes for the investigation, and discussed the issue with Mike Kirkman before issuing the NOVs.

Vice Chair Ramsey asked if all the trailers on the subject properties were stationary and used for storage. Ms. Rumley stated that she was only aware of seven parking spaces, and that the rest were for storage.

Mr. Ducharme displayed aerial photography of the subject properties. Chair Necas asked if there was any discussion with the appellant about changing the zoning of the subject properties to remedy the use violations. Ms. Rumley stated that the applicants may have considered filing a rezoning request for the subject property. Mr. Kirkman stated that an attorney previously retained by the appellant discussed Light Industrial zoning. Chair Necas asked if the Board could consider that in their deliberations, and Ms. Guarascio stated that the Board was only deciding whether to uphold or overrule the Zoning Enforcement Officer's determination.

Mr. Oliver asked if the appellant was going to apply for rezoning. Mr. Kirkman stated that the appellant filed a rezoning request but it has not proceeded pending this appeal. Mr. Pokela stated

that the appellant asserts there is no violation due to the 2008 rezoning and historical nature of the previously nonconforming use.

Mr. Ducharme stated he intended to display photographs that counsel has stipulated upon. Mr. Pokela asked to address the stipulation.

Mr. Pokela stated that the appellant has signed stipulations of the authenticity of the Land Development Ordinance (LDO), the previous Unified Development Ordinance (UDO) and Greensboro Zoning Ordinance, the ownership and zoning histories of the subject properties, the five NOVs, and Ms. Rumley's staff photographs.

Mr. Wright asked if the uses being displayed were located directly in front of residential dwelling uses, stated that the condition of the properties has not changed in decades, and asked why the violations were cited just recently. Mr. Kirkman stated that the northernmost property, 3032 Randleman Road, is zoned Conditional District-Residential Multifamily and has a single-family dwelling use on the front of the property, whereas the other properties are Conditional District-Commercial-Medium or Commercial-Medium. The violations are due to the City's opinion of the impermissibility of the land uses established on the subject properties.

Mr. Pokela asked to introduce the stipulations as signed, and Ms. Thiel accepted the official record. Chair Necas asked how the Board should address the stipulations. Mr. Pokela requested that the stipulations be entered into the record of the Board, and Chair Necas asked to hear the stipulations.

Mr. Ducharme stated that the appellant and the City of Greensboro, by and through their undersigned counsel, hereby stipulate as follows: The City's Greensboro Zoning Ordinance, the Unified Development Ordinance, the Land Development Ordinance, the property ownership and zoning history of the subject properties, the 2008 rezoning case files and associated documentation, recordings, minutes, and photographs, the NOVs, and staff photographs.

Mr. Ducharme asked about the violations cited in the NOV for 3102 Randleman Road. Ms. Rumley stated that automobile towing and storage use standards are not being met, as more than twenty vehicles are stored on the premises, they are not screened by a six-foot tall opaque fence or wall, and outdoor disassembly and salvage operations are prohibited. Truck and freight terminals are not permitted in C-M zoning, and warehousing/storage use standards in the C-M district prohibit outdoor storage.

Vice Chair Ramsey asked if the violation was for both automobile storage and outdoor storage. Mr. Ducharme stated that was correct.

Mr. Ducharme asked about the photographs of the subject property. Ms. Rumley stated that they displayed piles of automobile parts, the automobile sales and service uses on the site, automobile storage, trailers cited for outdoor storage, and heavy equipment. She stated that they opened trailers on the property and the photographs of the inside of the trailers indicated they were used for outdoor storage. Ms. Rumley then stated that additional photographs illustrated the trucking terminal use present on the subject properties.

Mr. Ducharme asked about the NOV issued for 3040 Randleman Road. Ms. Rumley stated that photographs illustrated more outdoor storage and trailers, as well as trailer sales.

Vice Chair Ramsey asked if the smaller trailers were used for storage, and Ms. Rumley stated they were not, and were for sale.

Mr. Ducharme asked Ms. Rumley about the NOV issued on 3036 Randleman Road. Ms. Rumley stated this was for outdoor storage.

Vice Chair Ramsey and Mr. Oliver asked if anyone was living in the single-family residences on the subject properties. Ms. Rumley stated that she did not enter the residences, but it is her understanding that they are rented.

Ms. Rudd asked if there was a fence or anything separating the residential uses from the other uses. Ms. Rumley stated that there was exterior fencing of the subject properties but she was not sure about internally.

Mr. Ducharme asked about the NOV for 3034 Randleman Road, and Ms. Rumley stated it for outdoor storage. He then asked about the NOV for 3032 Randleman Road, and Ms. Rumley stated that that NOV was originally issued incorrectly, citing the wrong zoning district, but the outdoor storage uses that are in violation are prohibited in both districts.

Mr. Ducharme asked how Ms. Rumley established an LDO violation on the subject properties. Ms. Rumley stated that she determined there were violations based on discussions with Mr. Chambers, walking the properties, and consulting with Mr. Kirkman while reviewing the LDO. Mr. Ducharme asked what the appellant would need to do to bring the subject properties into compliance, and Ms. Rumley stated that for 3102 Randleman Road, the appellant would have to discontinue the automobile salvage use, reduce the number of automobiles stored to under twenty and screen the vehicle storage area, discontinue the trucking terminal use, and remove the trailers and containers used for outdoor storage. She then stated that 3040, 3036, 3034, and 3032 Randleman Road would require a removal of the trailers and containers used for outdoor storage on the property.

Mr. Randolph asked about the City's policies on zoning enforcement, and if it was complaint-driven or based on inspector initiative. Ms. Rumley stated that there are three full-time Zoning Enforcement Officers for the entire City, and because of their limited workforce they are primarily complaint-driven but they would have the ability to self-initiate investigations if they had the time for it. Mr. Randolph asked if some of the violations were noticeable from Randleman Road, and asked to confirm that the Zoning Enforcement Officers do not survey the City to find violations. Ms. Rumley stated that was correct. Mr. Kirkman stated that the City does not have proactive enforcement at the moment.

Vice Chair Ramsey asked if the zoning history of the subject property was considered as part of the enforcement action. Mr. Kirkman stated that was part of the conversation during an investigation and part of what the Zoning Enforcement Officer observes on-site. Vice Chair Ramsey stated that he believed the intent of the appellant was to bring the middle three properties into compliance with the rezoning in 2008, and asked if the only violation for those properties is outdoor storage. Mr. Ducharme stated that was correct. Vice Chair Ramsey asked if the uses were established as pre-existing? Mr. Ducharme stated that the City's position was that the outdoor storage was never established as an acceptable use, and was only apparent during Ms. Rumley's inspection. Vice Chair Ramsey stated that there appeared to be imagery of trailers from the 2008 rezoning. Mr. Ducharme stated that it can be difficult to determine the difference between parking and storage without direct observation. Vice Chair Ramsey asked if the difference between parking and storage is whether a trailer is moved, and Mr. Kirkman stated that was correct.

Mr. Oliver asked about the statutes of limitations. Mr. Ducharme stated that the City asserts the Board has to consider whether the violations were apparent to the City.

Mr. Wright asked if the City would not have issued a NOV without a complaint, and Mr. Kirkman stated that was not necessarily correct, as there was cause to investigate. Mr. Wright stated that the potential violation in question has existed for a while.

Mr. Truby asked if outdoor storage was prohibited in the previous UDO's Highway Business district, and Mr. Kirkman stated that was correct.

Mr. Oliver asked when the statute of limitations starts. Mr. Ducharme stated that it depends on which provision of the statutes the Board is considering, but it can be when a violation is apparent from a right of aware, made apparent by virtue of public record, or known to a City employee. He stated that it was the City's position that the uses on the subject properties have changed since 2008 and intensified in use, and it is not apparent from a right of way or where the public is invited.

Chair Necas stated that some of the potential violations are visible from Randleman Road and asked if the City is asserting that some of the violations are further back on the subject properties and not visible, and Mr. Ducharme stated that was correct.

Vice Chair Ramsey stated it can be difficult to determine if a trailer is used for storage.

Mr. Randolph asked Ms. Rumley how she determined the trailers for storage and not mobile. Ms. Rumley stated that her initial impression in seeing the large number of containers on the subject property was that there was a trucking terminal use. Mr. Chambers then told her the containers and trailers were used for storage, and there were only seven parking spaces for trucks.

Mr. Wright asked if the appellant told Ms. Rumley how long the trailers have been used for storage. Ms. Rumley stated that he did not.

Mr. Randolph asked Ms. Rumley if there is usually follow-up in zoning enforcement action, given the circumstances of the 2008 rezoning. Ms. Rumley stated that they do receive information from their supervisors, Mr. Kirkman, and Council or other City staff and employees following up on rezoned properties for investigative purposes. Mr. Randolph asked why there hadn't been follow-up from that, and Ms. Rumley stated he can't answer for the previous staff.

Mr. Pokela objected to Mr. Ducharme answering questions as evidence on the record, and Chair Necas confirmed he was not a witness.

Mr. Kirkman stated that the record does not indicate there was an NOV or Zoning Enforcement investigation initiating the 2008 rezoning.

Mr. Wright asked if there was any record of Zoning Enforcement action against the appellant or the subject properties. Mr. Pokela stated that Mr. Chambers would have to testify to that.

Mr. Randolph asked that since the appellant sought the 2008 rezoning to remedy admitted nonconformities, if there is any record of the City investigating the subject properties then. Mr. Kirkman stated that there was no record of an NOV, but the appellant can speak more to the rezoning.

Chair Necas advised there would be a break at 7:11 p.m. and the meeting resumed at 7:18 p.m.

Chair Necas then stated that the Board anticipates spending a significant period of time in the deliberations of these appeals and offered any applicants for other variance requests on the

agenda to continue their cases to the next regular meeting on 26 June. Vice Chair Ramsey stated that it is likely this hearing will take at least another two hours. Ms. Guarascio stated that applicants who wish to continue their requests can inform Ms. Thiel at any time.

MOTIONS

The applicant for BOA-23-21, 1001 West Cornwallis, requested a continuance. Vice Chair Ramsey made a motion to continue BOA-23-21 until the June 26th regular meeting, seconded by Mr. Randolph. The Board voted 7-0 in favor of the motion, (Ayes: Wright, Randolph, Truby, Oliver, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0).

The applicant for BOA-23-25, 6718 Forsythia Drive, requested a continuance. Vice Chair Ramsey made a motion to continue BOA-23-25 until the June 26th regular meeting, seconded by Ms. Rudd. The Board voted 7-0 in favor of the motion, (Ayes: Wright, Randolph, Truby, Oliver, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0).

Chair Necas stated that Mr. Pokela could cross examine Ms. Rumley. Mr. Pokela asked to confirm that the stipulations were accepted into the record, and Chair Necas stated that was correct. Ms. Guarascio confirmed there was a motion and it was entered into the record.

Mr. Pokela asked Ms. Rumley if she used the LDO to determine whether there was a violation, and Ms. Rumley stated that was correct. Mr. Pokela asked if Ms. Rumley was familiar with the former UDO and if she reviewed the UDO when considering whether to cite the appellant. Ms. Rumley stated she did not. Mr. Pokela asked if Ms. Rumley considered the 2008 rezoning before issuing the NOVs, and Ms. Rumley stated she was not aware of the rezoning at the time she issued the NOVs. Mr. Kirkman mentioned it prior to the appeal, but she has not reviewed the 2008 rezoning file. Mr. Pokela asked if Ms. Rumley thought the rezoning case file would be important in determining a use violation, and Ms. Rumley stated that she confers with the Zoning Administrator prior to issuing an NOV. Mr. Pokela asked about the photographs in the staff report and the NOVs.

Mr. Oliver stated that Ms. Rumley has signed all of the NOVs. Mr. Pokela asked if the City would stipulate the NOVs into the record, and Mr. Ducharme stated he would.

Mr. Pokela asked about photographs not included in the NOV, and Ms. Rumley stated that multiple photographs were in fact not included in the NOVs she issued.

Chair Necas asked why Mr. Pokela was engaging in this line of questioning. Mr. Pokela stated that the appellant believes this constitutes a due process violation, and asked to submit the appeals to the NOVs, photographs, and staff reports into evidence. Mr. Ducharme stated that was acceptable as most of those items were already entered into evidence, and Chair Necas stated the evidence was accepted.

Mr. Pokela asked about the NOV for 3032 Randleman Road. Ms. Rumley reiterated that the NOV was initially issued incorrectly as listing the subject property as being in the C-M zoning district, but outdoor storage is also prohibited in the RM-12 zoning district. Mr. Pokela asked if any of the NOVs related to outdoor storage behind a tree line on the subject properties, and Ms. Rumley stated that the prohibited outdoor storage uses are crossing over multiple property lines of the subject properties.

Mr. Ducharme objected to the question, as the NOV would apply throughout the property. Mr. Pokela stated that the appellant has a right to know what it is defending against. Chair Necas stated that the objection was overruled.

Mr. Pokela asked if the appellant was defending itself against an allegation of use violation behind the trees on the subject property, and Ms. Rumley stated she was unsure how to answer the question.

Mr. Truby stated that the aerial photography, even accounting for geo-correlation errors, definitely shows trailers that cross over property lines.

Mr. Pokela asked if the trailers shown in the aerial photograph are part of the NOV in Exhibit 106. Ms. Rumley stated it was included as part of this NOV based on her conversation with Mr. Chambers on the property. Mr. Pokela asked if the trailers cited as part of the outdoor storage violation would have been driven to the subject properties by an automobile? Ms. Rumley stated that was generally correct, but some of the containers were hauled there. Mr. Pokela asked if shipping containers were moved around via automobiles, and Ms. Rumley stated that was correct. Mr. Pokela asked Ms. Rumley about the 2008 rezoning file, and Ms. Rumley stated that she was not familiar with it as she was not employed with the City in 2008.

Mr. Ducharme objected to the line of questioning, as it was material Ms. Rumley does not have knowledge of. Vice Chair Ramsey asked if this was something Mr. Kirkman would testify about, and Mr. Ducharme stated that was correct. Vice Chair Ramsey asked Mr. Pokela if he shouldn't be asking these questions to Mr. Kirkman instead. Mr. Pokela stated that he will likely ask Mr. Kirkman about it, but Ms. Rumley issued the NOVs and he wanted to cross examine her about the contents of the rezoning. Mr. Ducharme reiterated his objection, and stated that Ms. Rumley does not have personal knowledge of these matters and they are outside the scope of her Zoning Enforcement actions. Chair Necas asked Mr. Pokela to keep his questioning of Ms. Rumley to matters relevant to her experience as a Zoning Enforcement Officer in the time she has been working for the City.

Vice Chair Ramsey stated that Ms. Rumley has already testified that she is not familiar with the rezoning case. Mr. Pokela stated there were aspects of the rezoning he had questions about and should have the ability to question City staff about it. Vice Chair Ramsey stated that Ms. Rumley did not seem to be able to answer many questions about it.

Ms. Rudd stated that Ms. Rumley testified that she sought guidance from Mr. Kirkman, and stated that these questions were likely better suited for him.

Mr. Pokela asked about the status of the objection. Vice Chair Ramsey stated that the Board should give Mr. Pokela some latitude.

Mr. Pokela asked Ms. Rumley about the preliminary application sufficiency checklist, and asked about the technical elements that Planning staff will fill out when processing a rezoning request, and Ms. Rumley reiterated that she was not familiar with the rezoning process.

Mr. Ducharme objected again, as rezoning case work is outside her duties and the line of questioning is requiring her to speculate, as she does not have personal knowledge of it. Mr. Pokela stated that Ms. Rumley has not testified that she does not have personal knowledge of this process. Mr. Truby stated that he believed Mr. Pokela should ask these questions of Mr. Kirkman, as Ms. Rumley cannot answer them. Ms. Rudd stated that Ms. Rumley issued the NOVs with the guidance of Mr. Kirkman. Mr. Randolph stated that Mr. Pokela should be granted some latitude to develop the record, but his scope should be limited to the knowledge base and testimony of Ms. Rumley. Mr. Pokela stated that he did not want to forecast where his questioning would lead but it will become apparent, and Chair Necas allowed the questioning to continue.

Mr. Pokela noted a comment on the application checklist that stated “to bring property into compliance for the way it is being used now, and the manner it has been used for 35 years in a nonconforming way”, and asked if Ms. Rumley was aware that tractor trailer storage was present on the subject properties prior to 2008. Ms. Rumley stated she was not. Mr. Pokela stated the zoning staff report for the 2008 rezoning request indicated parking area as an existing use, and comments that “the subject property currently consists of a parking area and two single-family dwelling units”, “the applicant intends to bring the use of his property in compliance with the City Code since the current use is a nonconforming use as indicated by the applicant”, “staff has made a determination that this request is consistent with the intent and purpose of the zoning code and the comprehensive plan, Connections 2025. Staff is also of the opinion that the request is compatible with the existing development and trend in the surrounding area”, and “staff recommends approval of the requested CD-HB zoning district”. He then displayed a video recording of the 2008 rezoning hearing and asked if Ms. Rumley saw there were trailers visible in an aerial photograph used in that hearing, and Ms. Rumley stated that the photograph was not clear and there could be trailers on the property. Mr. Pokela displayed the minutes of the 2008 rezoning hearing and asked Ms. Rumley if Rawls Howard and Dick Hails were representatives of the City of Greensboro. Ms. Rumley stated that she was not employed by the City in 2008 and does not know who they are, but the minutes appear to recognize the trailer storage. Mr. Pokela asked about photographs in the staff report, and whether the City would stipulate that there were clearer versions in the record, which Mr. Ducharme agreed to.

Mr. Pokela asked if the aerial photography indicated the City was aware of the storage since 2008, and Ms. Rumley stated that would be an assumption. Mr. Pokela referenced the prior UDO’s use tables and parking and asked if the City could have guided the rezoning to HB to solve the nonconformity as an automobile parking use.

Mr. Ducharme objected, as the questioning was requiring speculation of Ms. Rumley. Chair Necas sustained the objection, and stated that speculation was unnecessary. Mr. Pokela stated that he was trying to establish a record of the conclusions Ms. Rumley should have drawn. Mr. Ducharme again stated that this was requiring Ms. Rumley to speculate, and that details of rezoning generally are more within Mr. Kirkman’s expertise. Chair Necas stated that the objection was sustained. Mr. Pokela requested an offer of proof for the record.

Mr. Pokela asked that if she knew what the rezoning file indicated and considered the provisions of the prior UDO, could the City have determined the storage trailers were permitted as an automotive parking use. Ms. Rumley stated that automotive parking and storage of trailers or containers are separate uses, and reiterated that she was being asked to speculate outside her duties. Mr. Pokela asked if it was reasonable to conclude that the 2008 rezoning made this a conforming use.

Mr. Ducharme stated that Mr. Pokela had moved on to another line of questioning, and renewed his objection.

Mr. Wright stated that the NOV’s were based on Ms. Rumley’s findings, and going back to staff actions before she was employed by the City is unreasonable. Mr. Pokela stated that Ms. Rumley signed the NOV, has visited the subject properties, and did not consider the UDO. He stated that Ms. Rumley should have looked at this detail and should admit she was wrong in issuing the NOV. Mr. Wright stated that Ms. Rumley can only base her position on her findings, and she is not responsible for the City’s previous Zoning Administration or Zoning Enforcement regimes.

Chair Necas stated that the Board sustains the objection of the City, and questioning should move on. Mr. Pokela stated that he still sought to develop the record with an offer of proof.

Mr. Wright stated that Ms. Rumley can only address her findings, and whatever the City has done or not done up to 2008 and afterward is not relevant to her.

Vice Chair Ramsey stated that Mr. Pokela seemed to be trying to establish whether or not any use on the subject properties have been grandfathered. Mr. Wright stated that is not relevant to Ms. Rumley.

Chair Necas stated that the Board sustains the original objection of Mr. Ducharme, and is not asking Ms. Rumley to speculate about matters before her time with the City.

Mr. Pokela requested a brief conference with Mr. Guarascio.

Ms. Guarascio stated that the Board is acting in a quasi-judicial manner, and Mr. Pokela is requesting to make an offer of proof that the City is not objecting to. Mr. Pokela stated that he was seeking to establish the record for future appeal purposes.

Mr. Truby asked Mr. Pokela if the UDO permitted outdoor storage in the HB zoning district, and stated that the automobile parking use referenced relates to parking for retail or commercial establishments, not the use present on the subject properties. Mr. Pokela stated he did not believe outdoor storage was permitted in the HB district, but that the City appeared to be directing the appellant into the HB district in the 2008 rezoning, in an attempt to make the preexisting uses conforming. Mr. Truby stated that HB was the incorrect district in retrospect. Mr. Pokela stated that may be the case, but he asserted that the record indicates the City intended the HB district to bring the use into conformity. Mr. Truby stated he does not believe the automobile parking classification is applicable.

Mr. Randolph stated that the Board should let the record develop before making assertions or conclusions.

Ms. Guarascio asked to clarify the status of the objection. Chair Necas stated the Board wished to hear the offer of proof.

Mr. Pokela asked if, considering the record of the rezoning which references parking of storage trailers, that it would be reasonable to conclude that the City pushed the appellant into an HB zoning district in 2008 to solve the nonconforming use. Ms. Rumley stated that she recalled trailer storage, not parking, in the video of the hearing. She reiterated that she is being asked to speculate and parse the meaning of a summarized staff report, and the definition of parking area.

Mr. Ducharme stated that Ms. Rumley has attempted to answer the question. Vice Chair Ramsey asked Ms. Rumley to consider a direct answer to the question.

Mr. Pokela asked if the City could have been referring to automotive parking when it referenced vehicle storage in the rezoning staff report, and thus considered the nonconforming use resolved by the rezoning, and Ms. Rumley stated it was possible. Mr. Pokela asked if this indicated there were well-founded doubts about the City's intentions with regards to the rezoning.

Vice Chair Ramsey stated the Board has gone as far as it can on the offer of proof. Mr. Ducharme stated that this line of questioning was beyond the offer of proof and reiterated his objection. Mr. Pokela stated he was finished with his offer of proof.

Mr. Pokela asked if Ms. Rumley was familiar with the UDO-LDO conversion table, and Ms. Rumley stated she was not. Mr. Pokela asked if the appellant had been cited for the storage trailers in 2009. Ms. Rumley stated that the Zoning Enforcement records do not go back that far, and she was not aware of any previous citation at any time for the subject property. Mr. Pokela displayed the Greensboro GIS website and asked Ms. Rumley if she was familiar with it. Ms. Rumley stated she was, and that she used elements of it in her work. Mr. Pokela then displayed the Guilford County GIS parcel data website.

Mr. Ducharme objected, as the Guilford County GIS website is not controlled by the City and outside of Ms. Rumley's knowledge. Mr. Pokela stated he was indicating how to access the website. Chair Necas stated the question was acceptable.

Mr. Pokela demonstrated the website's ability to search for parcel information and display aerial photography, and asked if Ms. Rumley was familiar with the oblique imagery feature of the website. Ms. Rumley stated she did not use that feature.

Mr. Ducharme objected, reiterating that this website is operated by the county and not the City, and is outside of Ms. Rumley's professional duties. Vice Chair Ramsey stated Mr. Pokela should be granted leeway, as he is asking about how the website is accessed.

Mr. Pokela demonstrated the historical aerial photography basemaps available on the Guilford County GIS website, and asked if anyone—a public citizen or a City employee—could access the Guilford County GIS website and view this, and Ms. Rumley stated that was correct. Mr. Pokela asked if Ms. Rumley considered a statute of limitations when deciding whether to issue the NOV's or not, and Ms. Rumley stated she did not, would have consulted with the Zoning Administrator if she was aware of a potential question about it, and would not have issued the NOV's if she was told the potential violations was outside a statutes of limitation. Mr. Pokela then asked Ms. Rumley to mark what she believed to be trailers with a pen on a 2015 aerial photograph, and Ms. Rumley stated that she could not determine that there were storage trailers during her investigation without visiting the subject properties.

Ms. Rudd stated that the Board cannot see these documents.

Ms. Rumley proceeded to mark on the official record as requested.

Mr. Pokela asked about the cited violation on 3102 Randleman Road, and Ms. Rumley stated that it was for automobile towing and storage, with storage being separate from towing. Mr. Pokela asked if automobile storage as a use was different than a used car dealer buying and repairing automobiles for resale. Ms. Rumley stated that vehicles stored are different from vehicles available for sale in inventory. Mr. Pokela asked if Ms. Rumley was aware that the car dealer operating on 3102 Randleman Road that stores vehicles behind the automobile sales use purchased them for part of inventory to be resold. Ms. Rumley stated that vehicles in need of repair are a storage use, versus vehicles out front presented for sale being inventory. In the C-M zoning district, the limit for vehicle storage is 20, with development standards for screening. Mr. Pokela asked if the violation cited for outdoor disassembly and salvage referred to both disassembly and salvage. Ms. Rumley stated that it referred to outdoor salvage as the storage of parts, the disassembly did not necessarily need to happen outdoors, and the violation for salvage relates to the outdoor storage of parts, apart from disassembly. Mr. Pokela asked how Ms. Rumley made the determination of a salvage use, and Ms. Rumley stated that she consulted with Mr. Kirkman after discussing the use with Mr. Chambers, Mr. Assad, and Mr. Chambers' attorney and read a definition of the land use in salvage yard – scrap processing. Mr. Pokela asked if Ms.

Rumley had read the definition for salvage yard – auto parts, and Ms. Rumley stated she had not. Mr. Pokela read from the LDO and asked if the definition for salvage automobiles referred only to no longer serviceable vehicles, and it would not apply to a used car dealer fixing vehicles. Ms. Rumley stated that was correct. Mr. Pokela asked about the citation for a truck and freight terminal use. Ms. Rumley stated that she observed a large number of trailers on the site, and saw trucks entering and exiting the subject property but no dispatching facility or loading docks. Mr. Pokela read the Merriam-Webster Unabridged definitions of terminal, and Ms. Rumley stated that while what she observed did not fit all elements of all definitions, she saw trucks parked on the property. Mr. Pokela asked if Ms. Rumley's determination process in issuing the NOV's would have been different if she knew specific details about the used automobile sales use and 2008 rezoning, and Ms. Rumley stated that the use violation related to the vehicles on the property being out of operation and being stored outside the use standards in the C-M zoning district. She stated that she would consult with the Zoning Administrator to make a final determination of a use violation. Her original NOV's were amended based on additional information gathered during the investigation and discussions with Mr. Chambers. Mr. Pokela asked if an NOV could be issued in error if more information came to light, and Ms. Rumley stated that was correct. Mr. Pokela stated that he had no further questions.

Ms. Thiel stated that the applicant for BOA-23-23 at 1812 Huntington Road has a conflict for the 26 June regular meeting, and she will work with them to find the next available date.

Mr. Randolph made a motion to continue BOA-23-23 until a future meeting, seconded by Ms. Rudd. The Board voted 7-0 in favor of the motion, (Ayes: Wright, Randolph, Truby, Oliver, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0).

Chair Necas advised there would be a break at 9:29 p.m. and the meeting resumed at 9:47 p.m.

Mr. Ducharme called **Michael Thomas Kirkman, Zoning Administrator, City of Greensboro**, as a witness to testify.

Mr. Kirkman stated that he has been a City employee for over sixteen years and has held his current position since 2010. His duties are overseeing, applying, and enforcing the provisions of the LDO, and interpretation of the LDO is central to his work. Mr. Ducharme asked about the current zoning of the subject properties. Mr. Kirkman stated that the northernmost property, 3032 Randleman Road is Conditional District - Residential Multi-family – 12, 3034 through 3040 Randleman Road are Conditional District - Commercial – Medium, and 3102 Randleman Road is Commercial – Medium. The intent statement for the Commercial – Medium zoning district is to accommodate retail, service and office uses typically located along thoroughfares in areas that have developed with minimal front setbacks. He stated that commercial zoning brings an assumption of significant direct interaction with the public. Mr. Kirkman stated that the RM zoning districts support residential uses. Mr. Ducharme asked about the uses present on the subject properties. Mr. Kirkman stated that staff has determined the principal use is outdoor storage, and an auto towing and storage use on 3102 Randleman Road. The LDO does not permit outdoor storage as a principal use in the C-M or RM-12 zoning district. He stated that automobile storage in the C-M district is subject to use standards that the 3102 Randleman Road property does not meet—no more than twenty vehicles can be stored at one time, a six-foot opaque fence or wall must screen the vehicle storage area, and outdoor disassembly and salvage operations are prohibited. The factor for discriminating between automobile sales and service uses and storage and salvage relates to areas readily accessible to the public, and the storage of vehicles that are not available for sale. Mr. Kirkman stated that there were large quantities auto parts present on

the subject property that had been removed from vehicles on the site. The determination of staff was that this use constituted a salvage yard due to the vehicles becoming inoperable as parts are removed from them. Mr. Ducharme asked about the citation for trucking and freight terminals on the 3102 Randleman Road property. Mr. Kirkman stated that the LDO grants authority for Planning staff to make use determinations for the reasonable application of development standards, and the closest use to that present on the subject properties is a trucking and freight terminal. Mr. Ducharme asked about how use standards may have changed after the adoption of the LDO and transition away from the prior UDO. Mr. Kirkman stated that there were no significant differences in the permitted uses and their use standards under the prior Highway Business zoning district in the UDO versus the contemporary Commercial – Medium zoning district in the LDO. The UDO's use table indicates that various uses equivalent or substantially similar to outdoor storage were not permissible in the HB district. Mr. Ducharme asked about the 2008 rezoning case for the middle three properties. Mr. Kirkman stated that the record indicates some staff knowledge of "parking areas", but parking as a use is established for temporary use: the parking of licensed, operable motor vehicles that move on some regular basis. The evidence indicates that the trailers on the subject property have been there for a significant period of time and are intended for outdoor storage, not parking. Because of the volume of the trailers and containers on the subject property, the original citation was only for a trucking and freight terminal use, but the discussion with the property owner indicated their status as storage and thus the NOV was updated. Mr. Ducharme asked about the 2008 rezoning case and about the rezoning process in general.

Mr. Pokela objected due to Mr. Kirkman not being involved with rezoning in the City of Greensboro in 2008. Mr. Ducharme stated he was asking Mr. Kirkman about the rezoning process generally, as he has the most knowledge of the process among those present. Chair Necas stated the Board should hear the question.

Mr. Kirkman stated that to relate to the hearing video from 2008, he has a similar position to what Rawls Howard had at that time, as Zoning Administrator. With rezoning requests, staff usually talks to applicants before applications are finalized to understand the intended uses, currently and in the future. Staff relies heavily on information provided by applicants to help them determine what zoning district is necessary for their intended use. He stated that the record indicates there was discussion about parking areas, and while he cannot speak for staff at the time, that would indicate a more commercial than industrial focus. Mr. Kirkman stated that staff determination today is that the present principal use is not commercial, but outdoor storage.

Vice Chair Ramsey asked if staff conduct site visits for rezoning requests. Mr. Kirkman stated that site visits are a customary part of a rezoning, and the photographs shown in the 2008 hearing were taken by staff. Vice Chair Ramsey asked if this means staff would have seen the storage trailers. Mr. Kirkman stated that the staff photos did not show many trailers. The aerial and oblique photos indicated some outdoor storage uses, but little of it was evident from Randleman Road.

Mr. Randolph asked if a site plan is required for a rezoning request. Mr. Kirkman stated that there was not, and the LDO as implemented does not permit using site plans in that way unless tied to a zoning condition. It was clear in the 2008 hearing that there were no specific plans at that time.

Mr. Ducharme asked about the distinction between parking and storage and how staff determines uses. Mr. Kirkman stated that this case required a full assessment on-site to understand the uses, far beyond simply looking at aerial photography. The subject properties are deep parcels with more commercial frontage in front of the principal uses. Mr. Ducharme asked what the property

owner would need to do to bring the subject properties into compliance with the LDO. Mr. Kirkman stated that to meet the automobile towing and storage use standards, they would need to reduce the number of vehicles in the storage area to no more than twenty, construct screening around the storage area, and discontinue salvage operations on the site. For the outdoor storage violation, a rezoning to Light Industrial would allow those uses by right. Without a rezoning, removing the storage trailers would be required.

Vice Chair Ramsey asked if the City still asserts that there is a truck or freight terminal use on the subject property. Mr. Kirkman stated that following additional investigative work and discussion with the applicant, it appears it is more outdoor storage instead of a terminal use. The overall character of land use for the subject property is industrial—more activity outdoors with less interaction with the general public—than commercial.

Mr. Oliver asked if the residential uses on the subject property could remain if it was rezoned to Light Industrial. Mr. Kirkman stated that the residences are nonconforming now in the subject properties zoned Commercial – Medium, as no residential use is allowed in that district. The RM-12 district permits any residential uses other than manufactured homes.

Vice Chair Ramsey stated that the applicant had not attempted to hide the uses on the subject property, and asked if that had any influence on the potential violation given the 2008 rezoning. Mr. Kirkman stated that the scale of the activity has increased since 2008, but he cannot state how staff in 2008 came to their conclusions.

Ms. Rudd asked if staff explained the violation in detail to the appellant. Mr. Kirkman stated that State law gives anyone cited with an NOV thirty days to come into compliance or appeal, and staff will hold discussions during that time and sometimes offer extensions if there are attempts to come into compliance or additional information needed.

Mr. Randolph asked if a nonconforming use in the prior UDO would carry over with the transition into the LDO. Mr. Kirkman stated that would depend on changes in the use rights between the districts, and there were not changes in the Highway Business to Commercial – Medium districts pertinent to the uses in question with the subject properties. The tests for a nonconforming use are dependent on whether it was ever legally established and continued after a change. The City argues that the northern property zoned CD-RM-12 has never had use rights to any outdoor storage use. Nonconforming uses can only continue if they are not modified or expanded. Mr. Randolph asked if staff was aware why only the middle three properties were rezoned in 2008. Mr. Kirkman stated that the City has no material in the record to suggest why the rezoning was triggered or the circumstances around it.

Mr. Pokela began his cross examination and asked about Mr. Kirkman's knowledge of the 2008 rezoning case. Mr. Kirkman stated that he was aware the property had been rezoned, but it was not until after the issuance of the NOVs that he did further investigation into the rezoning case by reviewing the minutes or staff report. He stated that the residential uses on the subject properties are not a facet of the cited violations. Mr. Pokela asked about the truck and freight terminal use violation. Mr. Kirkman stated that based on staff conversations with Mr. Chambers, they believe the use is outdoor storage and not a truck terminal for the northern four properties. There is a question about 3102 Randleman Road due to the parking spaces offered for rent. Mr. Pokela asked if Mr. Kirkman had visited the property. Mr. Kirkman stated he has not, and relies on the reports by Ms. Rumley. Mr. Pokela asked about the truck terminal definition and remedying the purported violations. Mr. Kirkman stated that truck and freight terminal is the closest equivalent to

the use present on the subject property. The appellant would need to remove the storage trailers from the subject properties to come into compliance. Mr. Pokela asked if the evidence in the record indicates the City knew about storage trailers on the subject properties during the 2008 rezoning, and there had been no City action in the subsequent fifteen years. Mr. Kirkman stated that based on the staff report, there appeared to be a record of trailers parked on the subject properties, and the appellant had not been asked to remove the storage trailers.

Ms. Rudd asked if the City's lack of response to the appellant was due to a lack of complaints. Mr. Kirkman stated that was correct, and that there had been no reason to initiate a Zoning Enforcement action without a complaint or reasonable assumption of a use violation.

Mr. Randolph asked if this had been the policy since 2008. Mr. Kirkman stated that since the 2008 recession, staffing has not permitted any proactive enforcement.

Mr. Pokela asked if the City could have found a potential violation even with its general complaint-driven investigation policy, and if this case is different due to the 2008 rezoning. Mr. Kirkman stated that it is possible, but there is effectively no ability to proactively look for violations even though the City had some information about the parking of trailers on the subject property. Mr. Pokela asked if the State statutes establishing statutes of limitations created an exception for municipalities that do not conduct proactive enforcement. Mr. Kirkman stated his understanding of the statutes was that a defense may be raised as part of the discussion on a violation.

Vice Chair Ramsey asked about aerial photography from 2008 that he stated appeared to have multiple trailers without tractors to move them. Mr. Kirkman stated that some of the older aerial photography is not very clear, but there appears to be outdoor storage present at that time.

Mr. Randolph asked to confirm Ms. Rumley's testimony that there is no follow-up by the City to confirm use conformity after a rezoning. Mr. Kirkman stated that was correct, and that the City does not have the ability to go back and check. Mr. Randolph asked if even after the rezoning, there would not have been a mechanism to confirm the then-contemporary use was in compliance. Mr. Kirkman stated that was correct, and there were no records of any Zoning Enforcement action occurring either before or after 2008.

Mr. Pokela asked if the City's operating assumption is that property owners will remedy violations without City action. Mr. Kirkman stated that Zoning Enforcement actions are followed up on, but the City lacks the capability to do verification following a rezoning. Mr. Pokela asked about the statutes of limitations in the State statutes, and again asked if the statutes create an exception for municipalities that do not have the funding levels to have proactive Zoning Enforcement.

Mr. Ducharme objected, and stated that Mr. Kirkman was being asked to draw a legal conclusion outside of his professional purview. Chair Necas sustained the objection.

Mr. Pokela asked if the Planning Department operates as if the statute of limitations grants latitude due to a lack of proactive Zoning Enforcement.

Mr. Ducharme objected, stating that this was substantially the same question. Chair Necas again sustained the objection, and stated that Mr. Kirkman should be asked questions pertinent to his experience.

Mr. Wright asked Mr. Pokela if the appellant had a responsibility to maintain land use standards even without City enforcement action. Mr. Pokela stated that the appellant asserts that the rezoning established use rights for the uses currently present on the subject property. Mr. Wright

asked if the appellant asserts they should be allowed to leave the subject property as it is. Mr. Pokela stated that the appellant asserts they are legal and conforming today apart from a potential difference with the northernmost property, as a statute of limitations argument due to its residential zoning.

Mr. Pokela asked if the uses permitted in the HB district under the prior UDO were defined substantially similarly to the uses in the C-M district under the current LDO. Mr. Kirkman stated that they were substantially the same use groups, and stated he was familiar with the UDO-LDO district conversion chart. Uses that were legal under HB should be legal under C-M. Mr. Pokela asked to confirm that Mr. Kirkman was not present at the City of Greensboro during the 2008 rezoning case, and whether the case file raised questions whether the appellant intended the present use to be legal and conforming. Mr. Kirkman stated he was a City employee in 2008 but was not involved with zoning. He stated that staff did work to try to understand the 2008 rezoning, and their determination is that staff in 2008 intended it for parking with trailers as opposed to the outdoor storage use that exists today, even with the specific use of the word storage during the 2008 hearing. Mr. Pokela asked if the appellant's use at the time of the 2008 rezoning and following would be obscure.

Mr. Ducharme objected, and stated that Mr. Kirkman was again being asked to draw a legal conclusion. Chair Necas asked Mr. Pokela to restate the question.

Mr. Pokela asked if the ultimate conclusion obscure in trying to figure out if the HB district was intended to make the use conforming. Mr. Kirkman stated that it is unclear what conclusion staff made regarding the use on the property. Mr. Pokela asked about the definitions of obscure and unclear, and Mr. Kirkman stated that by unclear he meant there was some question, obscure means it's not understandable, but defining terms like this is a matter of personal interpretation. Mr. Pokela asked if the rezoning file is a public record, and asked about the State statute of limitations regarding violations apparent from a right of way, if that included areas the public is invited to enter, and if he was familiar with those areas on the subject properties. Mr. Kirkman stated that the rezoning file is a public record, and that while some parts of the subject properties have businesses that invite the public, the principal uses that the City asserts are in violation are deeper into the subject properties where the public is not invited. Mr. Pokela asked where specifically the public is invited such that they could see what is in the subject properties.

Mr. Ducharme objected, and stated that Mr. Kirkman is being asked to speculate where the public is invited to on the subject properties. Mr. Kirkman stated that he could not state definitively as there are likely areas that might have the public but would not necessarily be advertised for the public to come to it. Chair Necas stated that Mr. Kirkman could likely address the right of way question as opposed to the public invitation question, and sustained the objection. Mr. Pokela stated that Mr. Kirkman's answer sufficed for his offer of proof.

Vice Chair Ramsey asked how many statute of limitations defenses have been raised during Mr. Kirkman's time in Greensboro and how many have been successful. Mr. Kirkman stated that he was not aware of any being raised and there have been no court hearings to test their success.

Mr. Pokela asked if Mr. Kirkman confirmed the City knew of trailer storage on the subject properties in 2008. Mr. Kirkman stated it was noted during the public hearing on the 2008 rezoning. Mr. Pokela asked about right of ways and areas the public is invited to. Mr. Kirkman stated that there is no clear delineation of where the public is invited, and fences could be a barrier that staff uses in building a general assessment. He stated that there is parking associated with

the shopping center abutting 3102 Randleman Road. Mr. Pokela asked if the Planning Department made an interpretation in 2008 that the HB zoning made the then contemporary uses conforming, and there was no appeal, then the interpretation is binding. Mr. Kirkman stated that a promulgated interpretation which is not appealed is final. Mr. Pokela asked if the City should have appealed the rezoning decision if it disagreed with it.

Mr. Ducharme objected, and stated that Mr. Kirkman is being asked to speculate about the determination made by prior staff in 2008 that there is insufficient record to establish a differentiation between parking or outdoor storage. Mr. Pokela stated that the City is taking a different position now versus in 2008, and that the City's power to oppose the rezoning ended with the appeal period. Mr. Ducharme stated that his objection is based on quibbling about what a determination may have been. Vice Chair Ramsey asked if the intent of the 2008 rezoning was to bring the middle three subject properties into compliance. Mr. Kirkman stated that the applicant indicated such in his statement to the Zoning Commission. Vice Chair Ramsey asked if staff had said that as well, and Mr. Kirkman stated that the staff report does not make a firm determination. Vice Chair Ramsey stated that staff would have visited the property, and asked about a statement on the application checklist that stated the request was to solve a compliance issue. Mr. Kirkman stated that it appears that was the intent of the rezoning request, yes. Vice Chair Ramsey asked if one of those uses was trailers for outdoor storage. Mr. Kirkman stated the City is making that distinction. Vice Chair Ramsey stated that the appellant stated they had a trailer storage use in the 2008 hearing. Chair Necas stated that the Board sustained the objection.

Mr. Pokela asked if a vehicle on the front of the used automobile sales use on the subject property had a battery failure, is it then violating the zoning ordinance as a salvage automobile. Mr. Kirkman stated that while it would be inoperable, it would not be a salvage vehicle as it was not being scrapped, it would fall under the automobile service use. Mr. Pokela asked how that differs from buying an automobile at an auction which needs major repairs like an engine replacement. Mr. Kirkman stated that storing inoperable vehicles for a long period of time converts it to a salvage use, and that the auto parts on the subject property appeared to have been stored for a long period of time. Mr. Pokela asked if there was a determination that the appellant's uses were legal and conforming due to the 2008 rezoning, those uses would be legal and conforming now under the LDO. Mr. Kirkman stated that the appellant would have some use rights in that scenario, if the Board were to make that determination. Mr. Pokela asked if the Board were to look at 2015 aerial imagery and count the number of number of automobiles, would that not trigger the statute of limitations. Mr. Kirkman stated that the use is not necessarily the same relative to today.

Mr. Ducharme objected, and Mr. Pokela withdrew the question.

Mr. Pokela asked about Exhibit 31. Mr. Kirkman stated it appeared to be the 2008 rezoning application, staff documents, legal description, maps, photographs, and the application sufficiency checklist. Mr. Pokela displayed an oblique aerial photograph from 2023 and asked if this was available on the City of Greensboro's GIS website. Mr. Kirkman stated that he was familiar with the oblique photography available. It was a Guilford County document and that most users would likely access it through the county, and he confirmed that any member of the public or City employee could access them. Mr. Pokela asked if the City of Greensboro made parcel data available. Mr. Kirkman stated that it provides limited parcel data compared to the county information. Mr. Pokela asked if the City still held there was an outdoor disassembly use violation on the subject properties. Mr. Kirkman stated that staff has determined the violation is outdoor storage of automobile parts constituting a salvage operation, and not outdoor disassembly.

Mr. Ducharme began his redirect, and asked about the difference between outdoor storage and parking and what the principal use at the subject properties is. Mr. Kirkman stated that the staff determination is the principal use is outdoor storage, which was not allowed under the prior UDO's HB district or the current LDO's C-M district because the trailers on the site are not being moved and there are not vehicles to indicate it's a parking use. Mr. Ducharme asked about automobile sales and storage uses. Mr. Kirkman stated that staff has determined there is an automobile storage use on the subject properties because of the intensity of the use and the size of it on the 3102 Randleman Road property. Mr. Ducharme asked about the City's contention of a truck or freight terminal use at the subject properties. Mr. Kirkman stated that more complete information has led staff to determine there is such a prohibited use at 3102 Randleman Road but not the other subject properties. Mr. Ducharme asked if these detailed determinations of granular use differences requires close investigation. Mr. Kirkman stated that was correct, as most of the activity on the subject properties is off the public right of way and not easily accessible or visible without permission to be on the subject properties. You cannot determine what a trailer's presence on a property means in terms of land use without confirmatory information. Mr. Ducharme asked if such investigation was also necessary to determine the extent of an automobile storage use, and Mr. Kirkman stated that was correct.

Mr. Randolph asked if it was possible that the City made an incorrect assumption in 2008 that the rezoning would bring the subject properties' land uses into conformity, and if he has ever seen that occur. Mr. Kirkman stated that it's possible when applicants provide incomplete or inaccurate information or staff was otherwise not aware of all the intended uses when the rezoning was requested. Mr. Randolph asked if Mr. Kirkman believed that could have occurred in the 2008 rezoning. Mr. Kirkman stated that the record indicated a focus on parking, which would have qualified as commercial activity instead of the storage use present on the subject properties which is industrial activity, but this cannot be confirmed because the staff making the determinations in 2008 are no longer with the City. Mr. Randolph asked if rezoning applicants have later found their intended uses are prohibited. Mr. Kirkman stated he has seen that, and the City addresses it on a case-by-case basis. He stated that he believed the applicant clearly thought they were coming into conformance, but there is no record of a firm staff determination.

Mr. Wright asked if the City and the applicant have had any negotiations to solve the nonconformity issues on the subject properties. Mr. Kirkman stated that there was discussion about rezoning, but the appellant has decided to appeal the NOV's instead.

Ms. Rudd asked if the City contended that there was an automobile junkyard on the subject properties. Mr. Kirkman stated that staff had not made that determination, instead that the automobile service use violates use standards.

Mr. Pokela began a follow-up cross examination, and asked if the commercial-industrial distinction is based on automobiles being behind the structure on the automobile sales use. Mr. Kirkman stated that the distinction is the area in the back is used principally for storage and is inaccessible to the public, and is thus not a commercial use. Mr. Pokela asked about the need for on-site investigation in Zoning Enforcement, and asked if the appellant's statements in the 2008 rezoning would not have obviated that. Mr. Kirkman stated that the complete record of the 2008 rezoning indicates that a potentially incorrect distinction was made about a commercial parking use on the subject properties versus an industrial storage use.

Vice Chair Ramsey asked if Mr. Chambers was represented by counsel in the 2008 rezoning hearing. Mr. Pokela stated that Mr. Chambers would need to testify to that but he did not believe so.

Mr. Randolph asked if Mr. Chambers would testify tonight. Mr. Pokela stated that it was unlikely, as the testimony could take multiple hours.

Chair Necas asked if the Board needed to make a motion to adjourn. Ms. Guarascio stated that both attorneys need to develop a schedule, and the Board should make a motion to continue the hearing at a later date and then to adjourn.

Mr. Oliver asked if the Board needed to have the same members presented, and Ms. Guarascio stated that was correct and must be part of the scheduling. Mr. Kirkman stated that public advertisement also needed to occur.

MOTIONS

Mr. Oliver made a motion to continue the case to another date, seconded by Ms. Rudd. The Board voted 7-0 in favor of the motion, (Ayes: Wright, Randolph, Truby, Oliver, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0).

Mr. Randolph made a motion to adjourn the meeting, seconded by Ms. Rudd. The Board voted 7-0 in favor of the motion, (Ayes: Wright, Randolph, Truby, Oliver, Rudd, Vice Chair Ramsey, Chair Necas; Nays: 0).

ADJOURNMENT

The meeting was adjourned at 11:32 p.m.

Respectfully submitted,

Leah Necas, Chair

Greensboro Board of Adjustment

LN/arn

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
July 12, 2023**

The meeting of the Greensboro Board of Adjustment was held on Monday, July 12, 2023, at 5:41 p.m. in-person in the City Council Chamber. Board members present were: Tifanie Rudd, Ted Oliver, Vaughn Ramsey, Leah Necas, Chuck Truby, & Cory Randolph (board member Larry Wright would arrive at 6:08 p.m.). City staff present were Shayna Thiel and Mike Kirkman of the Planning Department, and Emily Guarascio (Associate City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross-examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling. Chair Necas 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. Chair Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF MINUTES (June 5, 2023 Special Meeting)

Mr. Randolph made a motion to approve the June 5, 2023, minutes, seconded by Mr. Ramsey. The Board voted 6-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph; Nays: None). Chair Necas advised the minutes were approved unanimously.

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

Chair Necas stated that due to the absence of Mr. Wright, any variance request would require the unanimous approval of the Board. She asked if any applicants wished to request a continuance of their case until the Board's next regular meeting on Monday, August 28th.

Nick Blackwood, 804 Green Valley Road, Suite 200, attorney for Nicole Davis and Hatfield Charles, requested a continuance for the requests regarding 325 Erwin Street.

MOTION

Mr. Randolph made a motion to continue item BOA-23-20, 325 Erwin Street, until the August 28th regular meeting, seconded by Mr. Ramsey. The Board voted 6-0 in favor of the motion (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph; Nays: None). The continuance was granted unanimously.

Roscoe Gray, 207 S Bunker Hill Road requested a continuance for the request regarding 207 South Bunker Hill Road.

MOTION

Mr. Randolph made a motion to continue item BOA-23-33, 207 South Bunker Hill Road, until the August 28th regular meeting, seconded by M. Ramsey. The Board voted 6-0 in favor. The continuance was granted unanimously.

OLD BUSINESS**a. BOA-23-21: 1001 West Cornwallis Drive (Approved)**

Ms. Thiel stated in BOA-23-21, Andrew Crone requests a variance to allow a proposed addition to encroach 30 feet into a required 30 foot rear setback. The addition will be 0 feet from the rear property line. Evidence provided by the applicant includes 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 east side of West Cornwallis Drive, south of Kirkpatrick Place, and is zoned R-3 (Residential Single-Family). Tax records indicate the corner lot contains approximately 16,553 square feet, and the house was constructed in 1968. The applicant proposes to construct an addition on the existing house, including a two-car carport and storage area, which will align with the existing driveway. The proposed addition will encroach 30 feet into a required 30 foot rear setback and be 0 feet from the rear property line. The applicant has been advised of building code requirements related to fire-rated construction within 0-3 feet of the property line and intends to comply. 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in Andrew and Della Crone for their testimony.

Andrew Crone, 1001 West Cornwallis Drive, stated they are requesting a variance to build a carport. They do not have a garage and need space to store their cars in addition to recreational items, lawn equipment, childcare items, and other personal affects. The design of their proposed construction is intended to match the principal structure. Mr. Crone stated that their neighbors, the previous owners of the subject property, had added a section of the subject property to the adjacent property to expand a driveway prior to their purchase of the subject property, limiting their rear setback. In addition to limited construction space, functionality of the carport (e.g. opening doors) requires them to build up to the property line.

Mr. Truby asked if the applicants had discussed the possibility of sharing driveway space with their neighbors to avoid abutting the property line. The applicant stated that they had not discussed this.

Mr. Crone stated that their neighbors have trees and other improved greenery that would further enhance the aesthetic of a carport if it were built in the area.

Mr. Randolph asked if the applicants had discussed their planned construction with their neighbors and if they have received any complaints about it. Mr. Crone stated that they had thoroughly discussed their construction and shared site plans with neighbors and received no complaints.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Chair Necas moved that in BOA-23-21, 1001 West Cornwallis Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the Variance approved based on the following: (1) If the applicants comply with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the house is a corner lot and was built in 1968, before the adoption of the LDO, and the applicants are unable to create a

carport within the current setback limitations; (2) The hardship of which the applicants complain results from conditions that are peculiar to the property and unique circumstances related to the applicants' property because the driveway for the adjacent property removed rear space of the subject property, reducing the rear setback by 26.21 feet; (3) The hardship is not the result of the applicants' own actions because the reduced rear property was deeded to the adjacent property owner before the current subject property owner's 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 portion of the property deeded to the adjacent property is for driveway access only and the carport addition does not exceed the current driveway's intrusion into the rear setback. Mr. Ramsey seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph; Nays: none). Chair Necas stated the variance request was granted unanimously.

b. BOA-23-25: 6718 Forsythia Drive (Approved)

Ms. Thiel stated in BOA-23-25, Charles Tickner and David Bryan request a variance to allow the heated floor area of a proposed accessory dwelling to be 240 square feet when at least 400 square feet is required. Evidence provided by the applicant includes Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-11.2(E): The heated floor area of an accessory dwelling must be at least 400 square feet in area, but it may not exceed 30% of the floor area of the primary dwelling.

Background and Site Information: The subject lot is located on the east side of Forsythia Drive, south of West Friendly 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 1956. The applicants propose to construct a 240 square foot accessory dwelling in the back yard that will meet setback and separation requirements. Since the heated floor area of the proposed accessory dwelling is less than the minimum required 400 square feet, the applicants are seeking a variance to allow for the reduced size. If granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Charles Tickner for his testimony.

Charles Tickner, 6718 Forsythia Drive, stated he would like to build an accessory dwelling unit in his backyard to accommodate a disabled family member. He noted that his property has a 65-foot rear setback that limits available construction space and added that he cannot build a larger accessory dwelling unit without incurring prohibitive financial burdens.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Truby moved that in BOA-23-25, 6718 Forsythia Drive, based on the stated Findings of Fact, that Zoning Enforcement Officer be overruled and the Variance approved 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 construct a 240 square foot accessory dwelling unit; (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 65 foot setback the available yard space is already mitigated, the setback has caused the house to be constructed further back on the property, thereby lessening the available yard space; (3) The hardship is not the result of the applicant's own actions because the property was purchased by the current owner in July 2022 and the main dwelling had already been constructed in the current location with the 65-foot setback, thereby minimizing rear yard space; (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 accessory dwelling unit will be fully contained on the parcel and will not negatively impact the neighbor's property or the overall neighborhood. Mr. Ramsey seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph; Nays: none). Chair Necas stated the variance request was granted unanimously.

c. BOA-23-26: 2909 East Gate City Boulevard (Approved)

Ms. Thiel stated in BOA-23-26, Gateway Research Park, Inc. and North Carolina A&T State University request variance to provide 173 parking spaces for buildings containing cultural/community, warehouse and office uses when at least 238 spaces are required. Evidence provided by the applicant includes Exhibits A through F. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance reference was Section 30-11-5 – Table 11-1: The minimum parking ratio for cultural/community use is 1 space per 400 square feet of public use area; for warehouse use is 1 space per 3,030 square feet; and for office use is 1 space per 400 square feet.

Background and Site Information: The subject lot is located on the north side of East Gate City Boulevard, at the intersection of East Florida Street, and is zoned PI (Public and Institutional). Tax records indicate the lot contains approximately 71.38 square feet. The applicants' attorney advised that Gateway Research Park, Inc. sign the variance application as owner since it is the Ground Lessee of the South Campus of Gateway Research Park from the State of North Carolina under a Ground Lease entered into in December 1, 2006 that has a term that extends through at least November 30, 2056. The applicants propose to construct a 69,287 square foot Guilford County Schools Professional Community Education Center and a 127,362 square foot ImpactData Dream Center, along with associated parking, on the Gateway Research Park Campus. The proposed buildings will contain approximately 40,906 square feet of cultural/community public uses area, 84,351 square feet of warehouse uses (data center), and 43,011 square feet of office use. Based on the breakdown of proposed uses and applicable parking ratios, 238 parking spaces are required. The applicants propose to provide 173 spaces and seek a variance to address the parking deficit of 65 spaces. The applicants indicate that the existing topography limits the area that can be used for parking and that shared parking on the Gateway Research Campus would help accommodate any parking overflow needs. If the variance is granted, the applicants will proceed with the Technical Review Committee and building permit processes.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Spencer Brewer and Gene Sides for their testimony.

Alexander Elkan, 230 North Elm Street, attorney for Gateway Research Park, Inc., stated that the terms of the variance request had been amended from 65 spaces to 72 spaces, following consultation with the surrounding community.

Robert Pompey, 113 North Church Street, on behalf of North Carolina A&T State University, spoke on the utility of the Gateway Research Park's southern campus as a proponent of economic development and investment in Guilford County, and their role in advancing educational achievement through their research, their partnerships with local universities, and the construction of a community education center for Guilford County Schools. He added that Gateway Research Park maintains a close relationship with the neighboring community in College Forest. He stated that there are 453 parking spaces at the current property. On average, 65 percent of these spaces (appx. 294 spaces) are used throughout the week (Monday-Friday 8:00 a.m.-9:00 p.m.). On weekends, the use of these spaces drops to 10 percent (approximately. 45 spaces). He stated that, with the current availability of parking, including proposed additions, there exists enough space to accommodate the property's operation, including potential overflow.

Spencer Brewer, Davenport Engineering, 119 Brookstown Avenue, stated that a floodway on the east side of the site, privacy wall on the west side of the site, a proposed data center and educational community center, sheer slopes on the property, fire lanes, and zoning setbacks all limit available construction space and hinder expansion on the site. He added that the parking minimum for the data center under the LDO (28 spaces) exceeds the estimated staff of the facility (10 employees). The proposed site includes plans for a bus stop and recycling center, both of which would reduce their burden on parking spaces, although their failure to meet the initial requirements on parking spaces and their application for a variance negates these benefits.

Gene Sides, Guilford County Schools, 3 Creekstone Court, provided a summary of the educational community center and its utility in addressing gaps in the educational system and improving learning outcomes (e.g. learning loss, support for marginalized and underserved students, teacher training, and equity issues around access to broadband).

Alexander Elkan stated that he believed the requirements to approve the variance had been met and stressed the issue of the sites topography in limiting expansion.

Chair Necas asked for any other speakers. Marshena McCoy-Williams approached the podium and was sworn in for her testimony

Marshena McCoy-Williams, 7 Belles Court, stated that she had a letter to read for the Board but had to leave due to a prior commitment. She asked that Mr. Pompey read the letter in her stead.

Chair Necas asked if Ms. McCoy-Williams Mr. Pompey's reading of the letter in lieu of Ms. McCoy Williams was allowed.

Ms. Guarascio advised that it would be allowed so long as Ms. McCoy-William's absence was reflected in the minutes and she consent that her letter would be subject to cross-examination. Chair Necas acknowledged.

Mr. Truby asked if the letter could be entered as evidence. Staff acknowledged and a copy of the letter was entered as evidence after Ms. McCoy-William's testimony.

Ms. McCoy-Williams stated that she would read the letter herself. Its contents spoke in favor of the ordinance being granted.

Chair Necas asked Ms. Guarascio if she, as chair, needed to declare a conflict of interest due to her employment with Guilford County Schools.

Ms. Guarascio advised that would only be necessary if she had a financial interest that could be gained through the construction of the project. Chair Necas acknowledged and stated she did not.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion.

Mr. Wright entered the meeting as testimony concluded at 6:08 p.m.

Chair Necas stated that with Mr. Wright present the Board would no longer need a unanimous vote to grant variance requests.

The Board consulted with staff to determine if Mr. Wright would be able to vote on the current case. They determined that he had heard enough of the testimony to pass judgement.

MOTION

Mr. Randolph moved that in BOA-23-26, 2909 East Gate City Boulevard, 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 property would not be able to be utilized in the manner that affords the most useful use of the property [*sic*]; (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 property is an odd shape [*sic*]; it is square and cut in on the north side by a floodway and the property has a severe slope from the east to west; (3) The hardship is not the result of the applicant's own actions because the existing topography of the land existed at the time that the property was entitled to 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 land use is being used for educational purposes for Guilford County, to provide economic development, data research opportunities, and workforce enhancement additionally there exists sufficient parking spaces in adjacent parking lots where the current utilization rate would allow for the difference for the parking in the parking that is being requested in the variance. Mr. Ramsey seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph, Wright; Nays: none). Chair Necas stated the variance request was approved unanimously.

NEW BUSINESS

a. BOA-23-32: 2410 Cyprus Street (Approved)

Ms. Thiel stated in BOA-23-32, Deanne O'Connor requests a variance to allow the heated floor area of a proposed accessory dwelling to be 240 square feet when at least 400 square feet is required. Evidence provided by the applicant includes Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-11.2(E): The heated floor area of an accessory dwelling must be at least 400 square feet in area, but it may not exceed 30% of the floor area of the primary dwelling.

Background and Site Information: The subject lot is located on the east side of Cypress Street, north of Twelfth Street, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 11,761 square feet, and the house was constructed in 1932. The applicant proposes to construct a 240 square-foot accessory dwelling in the back yard that will meet setback and separation requirements. Since the heated floor area of the proposed accessory dwelling is less than the minimum required 400 square feet, the applicant is seeking a variance to allow for the reduced size. If 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 the applicable historic district.

Chair Necas asked the applicant to provide their name/address for the record and swore in Deanne O'Connor for her testimony.

Deanne O'Connor, 2410 Cyprus Street, stated that, due to the size of her home (approximately 930 square feet), she cannot build an accessory dwelling unit that adheres to the minimum size requirement of 400 square feet established in the LDO while also meeting the criteria that the accessory structure not exceed 30% of the floor area of the primary dwelling. She added that two utility easements from Duke Energy and a nearby railroad further restrict her ability to build a larger accessory structure on her property.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Ms. Rudd moved that in BOA-23-32, 2410 Cypress Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the Variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the size of the applicant's property and the existing easements limit the area suitable for construction; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because of the unique size of the property and the existence of two large easements which predated the purchase of the home; (3) The hardship is not the result of the applicant's own actions because of the unique size of the property and the existence of two large easements which predated the purchase of the home; (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 ADU will sit behind a 6 foot privacy fence and not impact the character of the neighborhood. Mr. Oliver seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph, Wright; Nays: none). Chair Necas stated the variance request was granted unanimously.

Chair Necas advised there would be a break at 6:51 p.m. and the meeting resumed at 7:03 p.m.

b. BOA-23-34: 805 Bellaire Street (Approved)

Ms. Thiel stated in BOA-23-34, James Hutton requests a variance to allow the building coverage of all accessory structures on the lot to be 720 square feet when no more than 600 square feet is allowed. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-11.1(A)(3): In R districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater.

Background and Site Information: The subject lot is located on the north side of Bellaire Street, east of Curry Street, and is zoned R-5. Tax records indicate the lot contains approximately 9,583 square feet and the house was constructed in 1956. The applicant proposes to construct a 720 square foot accessory structure to protect, maintain and secure several recreational motorized and non-motorized items. Based on the building coverage of the existing house, the maximum allowed building coverage of all accessory structures on the lot is 600 square feet, so a variance is necessary

to allow the proposed accessory structure to exceed that amount by 120 square feet. 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in James Hutton for his testimony.

James Hutton, 805 Bellaire Street, stated he would like to build a garage to store a custom automobile, several other vehicles, recreational items, and possessions that would otherwise be unsecure, take up space, and clutter the principle structure.

Chair Necas asked if the additional storage space afforded by the garage would improve the overall aesthetic quality of the applicant's property. The applicant stated that it would.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Truby moved that in BOA-23-34, 805 Bellaire Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the Variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the accessory structure would provide security for the belongings, and without this structure the applicant may not be able to own recreational leisure items; (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 does not have a garage; (3) The hardship is not the result of the applicant's own actions because the applicant owned the recreational items prior to owning the property and was not aware of the ordinance prior to purchasing 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 building is only 120 square feet over the limit and would provide greater safety for the property and security for the possessions and, as a result, improve public safety. Mr. Ramsey seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph, Wright; Nays: None). Chair Necas stated the variance request was granted unanimously.

c. BOA-23-35: 2415 Retriever Lane (Approved)

Ms. Thiel stated in BOA-23-35, Kamenthri and Mobolaji Bakare request a variance to allow a proposed addition to encroach 5.62 feet into a required 20 foot rear setback. The addition will be 14.38 feet from the rear property line. Evidence provided by the applicant includes Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-7-3.2(A)(2): Single-family detached dwellings constructed within cluster subdivisions with a preliminary plat approved prior to June 30, 2011, shall comply with the dimensional standards of the R-5 zoning district; and Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum rear setback is 20 feet.

Background and Site Information: The subject lot is located on the south side of Retriever Lane, west of Regents Park Lane, and is zoned R-3 Cluster (Residential Single-Family). Tax records indicate the subject lot contains approximately 8,276 square feet, and the house was constructed in 2003. Because Howard's Walk is identified as a cluster subdivision on the recorded plat, R-5 dimensional requirements apply to the subject lot instead of R-3 ones. The applicants propose to

construct an addition on the back of the existing house that will encroach 5.62 feet into a required 20 foot rear setback and be 14.38 feet from the rear property line. Per the recorded plat, designated common elements/undisturbed easement lie directly behind the subject lot. The applicants indicate that the lot shape and existing house design affect the location of the proposed addition. If the variance is granted, the applicants 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in Kamenthri and Mobolaji Bakare for their testimony.

Mobolaji Bakare, 2415 Retriever Lane, stated they would like to build a multipurpose room as an addition to their home and the topography of property restricts their ability to build anywhere besides the rear of the home. The applicants added that they had received approval to build the addition from their HOA, contingent on the approval of the Board, and discussed the planned construction with their neighbors. The applicants noted that the intended design of the addition will be in line with the overall design of the principal structure.

Mr. Wright asked if the applicants were looking to extend their patio area. The applicants stated that they were indeed extending the patio southward towards the property's rear setback and enclosing it.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Ramsey moved that in BOA-23-35, 2415 Retriever Lane, 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 not be able to construct a reasonably sized addition to their dwelling; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because of the placement of the house and the size and shape of the lot; (3) The hardship is not the result of the applicant's own actions because the house and lot were sized and developed prior to the applicants purchase of 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 it will not infringe on neighbors, is consistent with the neighborhoods, and will increase property tax values. Mr. Randolph seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph, Wright; Nays: None). Chair Necas stated the variance request was granted unanimously.

d. BOA-23-36: 3314 Windrift Drive (Approved)

Ms. Thiel stated in BOA-23-36, Michael and Leah Williard request a variance to allow an existing accessory structure to be separated 0 feet from another structure on the lot when at least 10 feet is required. Evidence provided by the applicant includes Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-11.1(E)(2): Accessory structures 600 square feet and larger must be separated by at least 10 feet from any other structure on the site.

Background and Site Information: The subject lot is located on the north side of Windrift Drive, east of Cascade Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the

subject lot contains approximately 13,504 square feet, and the house was constructed in 1967. The applicants propose to construct an elevated deck connecting their existing house and existing square foot detached garage. Since the garage is 600 square feet or greater, the LDO requires it to be separated by at least 10 feet from any other structure on the lot. And because the proposed deck is considered a structure with portions of it above grade, the 10 foot separation requirement applies. The applicants indicate that the topography of the lot causes a hardship and limits access to the detached garage. If the variance is granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Michael and Leah Williard for their testimony.

Michael Williard, 3314 Windrift Drive, stated they had built a garage where a detached carport once existed and realized the door to the garage opened to a steep drop into their yard. They are requesting a variance to build an elevated deck to connect their garage door to the principal property so they can safely cross between the garage and their home. The applicants added that they had spoken to their neighbors about their proposed construction and received no complaints.

Chair Necas asked Mr. Kirkman for clarification on the nature of the applicant's case. Mr. Kirkman stated that because the deck is elevated, it is considered an accessory structure by the read of the ordinance, and thus cannot built adjacent to another structure, in this case the garage.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Ramsey moved that in BOA-23-36, 3314 Windrift Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the Variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because it inhibits the use of a newly constructed 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 unique topography of the lot will not allow the applicant easier use of the existing door; (3) The hardship is not the result of the applicant's own actions because the topography requires the location of the garage at its present location such that the door cannot be used; (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 allowing the deck increases safety in bad weather and will not detract from the neighborhood. Mr. Randolph seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph, Wright; Nays: None). Chair Necas stated the variance request was granted unanimously.

e. BOA-23-37: 1416 West Lake Drive (Approved)

Ms. Thiel stated in BOA-23-37, Marcella Clashman and Brian Schoonover request a variance to allow a proposed accessory dwelling to encroach 2 feet into a required 5 foot side setback. The accessory dwelling will be 3 feet from the side property line. Evidence provided by the applicant includes 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): A detached accessory

dwelling must meet the location and dimensional requirements of the principal structure; and Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum side setback is 5 feet.

Background and Site Information: The subject lot is located on the north side of West Lake Drive, east of Pamlico Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 17,424 square feet, and the house was constructed in 1940. The applicants propose to convert an existing 404 square foot detached garage into an accessory dwelling in its current location without changing the footprint. The existing detached garage meets accessory structure setback and area requirements, but when converted into an accessory dwelling, it does not meet principal structure setbacks. The proposed accessory dwelling will encroach 2 feet into a required 5 foot side setback and be 3 feet from the side property line. If the variance is granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Marcella Clashman and Brian Schoonover for their testimony.

Marcella Clashman and Brian Schoonover, 1416 West Lake Drive, stated there was an existing detached garage on the subject property before their purchase in 2015. They now want to convert it into an accessory dwelling unit for an aging family member.

Chair Necas asked how much work was needed to convert the garage into an accessory dwelling unit. The applicants stated that the structure was still unfinished and would require extensive work.

Mr. Randolph asked if the intended construction would change the dimensions of the structure. The applicants stated that it would not.

Mr. Truby asked if the applicants had discussed the intended construction with their neighbors. The applicants stated that they had.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Mr. Truby moved that in BOA-23-37, 1416 West Lake Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the Variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant would not be able to convert the existing garage into an accessory dwelling unit; (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 garage structure is existing with a 3-foot side setback and it would be unreasonable to require the existing garage be moved; (3) The hardship is not the result of the applicant's own actions because the garage existed prior to their purchase of 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 no harm will come to the public or adjacent neighbors since the building already exists. Mr. Randolph seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Randolph, Wright; Nays: None). Chair Necas stated the variance request was granted unanimously.

OTHER BUSINESS

Mr. Ramsey asked if the Planning Department has considered reevaluation of the LDO's language on accessory dwelling units in light of the frequency of applicants coming before the board with issues regarding the ordinance.

Mr. Kirkman stated that the Planning Department is currently in the process of looking at the ordinance requirements related to accessory dwelling units, but cannot give a time period on when any alterations, if any, will be made.

Mr. Ramsey asked staff if there are any measures that can be implemented to curtail repetitive testimony for future proceedings.

Mr. Kirkman and Ms. Guarascio stated that it is within the Board's right to limit testimony they feel is redundant or not germane.

Ms. Guarascio asked to confirm that the absence/presence of Mr. Wright was noted in the meeting minutes.

ADJOURNMENT

The meeting was adjourned at 7:42 pm.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/hus

MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
July 24, 2023

The meeting of the Greensboro Board of Adjustment was held on Monday, July 24, 2023, at 5:31 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice-Chair Vaughn Ramsey, Tifanie Rudd, Ted Oliver, Chuck Truby, Larry Wright and Stephen Barkdull.

City staff present were Shayna Thiel and Mike Kirkman (Planning), and Tony Baker (Chief Deputy City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Chair Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF MINUTES (July 12, 2023)

Mr. Ramsey made a motion to approve the July 12, 2023, minutes, seconded by Mr. Oliver. The Board voted 6-0-1 in favor of the motion with Mr. Barkdull abstaining as he was not present for the July 12th meeting (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Nays: None, Abstentions: Barkdull). Chair Necas advised the minutes were approved.

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

Chair Necas inquired if there were any continuances or withdrawals.

Ms. Thiel stated that BOA-23-43 would not be heard. Chair Necas acknowledged and stated that a vote to approve a continuance for this case was not necessary.

Mr. Baker introduced himself as counsel for the city, sitting in for Emily Guarascio, Associate City Attorney. He advised that he would interject in the proceeding if testimony was delivered that, in case of an appeal, could create an issue for the superior court.

NEW BUSINESS

a. BOA-23-22: 308 North Chapman Street (Approved)

Mr. Kirkman stated that staff had received new information regarding this case which would strike the second variance requested by the applicant. This variance was requested to allow the heated floor area of a proposed accessory dwelling to be 384 square feet when at least 400 square feet is required. New measurements added 74 square feet of loft area to initial calculations of the subject structure, bringing the total heated floor area above the required minimum 400 square feet and negating the variance request.

Ms. Thiel stated in BOA-23-32, Swati Argade and Alec Pollak request a variance to allow a proposed accessory dwelling to encroach 0.2 feet into a required 5 foot side setback. The accessory dwelling will be 4.8 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 references were Section 30-8-11.2(E): A detached accessory dwelling must meet the location and dimensional requirements of the principal structure; and Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum side setback is 5 feet.

Background and Site Information: The subject lot is located on the east side of North Chapman Street, north of Rolling Road, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 10,454 square feet, and the house was constructed in 1927. The applicants propose to convert an existing 384 square foot detached garage into an accessory dwelling in its current location without changing the footprint. The existing detached garage meets accessory structure setback and area requirements, but when converted into an accessory dwelling, it does not meet principal structure setbacks. The proposed accessory dwelling will encroach 0.2 feet into a required 5 foot side setback and be 4.8 feet from the side property line. The applicants seeks a variance to address this issue. If 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 the applicable historic district.

Chair Necas asked the applicant to provide their name/address for the record and swore in Alec Pollak and Maureen Mallon for their testimony.

Alec Pollak, 308 North Chapman Street, stated that they are requesting a variance to restore and beautify a garage on their property and convert the structure into an accessory dwelling unit to accommodate their family, entertain visitors, and provide a “dog free space” for those with allergies, particularly within their family. Mr. Pollak stated that their request concerns one corner of the garage that encroaches four inches into a 5 foot side setback. Mr. Pollak noted that, despite this encroachment, the majority of the subject structure remains well within permitted space. Mr. Pollak stated that the garage was built alongside the principal structure in 1927 and both are considered historical structures. Mr. Pollak added that, in their renovation and conversion of the garage, they do not plan to add to the footprint of the structure in an effort to maintain its historical design and the overall aesthetic of the property and the surrounding community of Sunset Hills. Mr. Pollak stated that the garage was last updated in 1989, adding a set of windows, prior to their purchase of the property.

Maureen Mallon, 4205 Henderson Road, applicants’ contractor, provided further comment on the size of the subject structure’s encroachment on the side setback.

Mr. Truby confirmed that the structure’s footprint would not be changed and any construction would be localized to the interior of the structure.

Chair Necas asked if there was anyone else to speak in support of the request. Hearing none, she asked if there was anyone to speak in opposition.

Chair Necas asked the opposition speakers to provide their name/address for the record and swore in Eric Tedford, Stephen Webster, Kimberly Pilling, Michelle Togut, and Beverly Gass.

Chair Necas advised that not all of the speakers present had to give testimony to the Board should they choose to select a spokesperson. Mr. Tedford acknowledged.

Eric Tedford, 306 North Chapman Street, stated that he opposed the applicants’ request on the grounds that their conversion of the garage into an accessory dwelling unit would alter the purpose and function of the structure.

Mr. Baker interjected, stating that Mr. Tedford's testimony on the use of the structure was not germane to the Board's consideration of the applicants' request. Mr. Baker added that accessory dwelling units were permitted by right in the zoning district and requested that the Board not consider any testimony regarding the use of the structure in their decision on the variance request.

Chair Necas acknowledged and reiterated Mr. Baker's comments to Mr. Tedford and advised him to continue his testimony with the knowledge that evidence not related to the variance request, while permitted, would be disregarded.

Mr. Tedford stated that the applicants would face no hardship if their request is denied, adding that they could still use the garage as it was built.

Chair Necas reminded Mr. Tedford that the use of the structure was not being considered by the Board.

Mr. Tedford stated that, although nothing within the designation of Sunset Hills as a national historic district precludes the applicants from renovating existing structures like their garage, they would need to expand the structure by 16 square feet to meet the minimum 400 square feet requirement for accessory dwelling units.

Chair Necas stated that the applicants had fulfilled the 400 square foot sizing requirement and the variance request Mr. Tedford was referring to had already been struck from the Board's consideration. Chair Necas reminded Mr. Tedford of the variance request currently being considered (4 inch encroachment into the side setback) and advised he may skip any part of his testimony that was irrelevant.

Mr. Tedford stated that any specialization that would allow the owners to skirt zoning requirements would increase the property value of the surrounding neighbor's homes is just speculation and that the applicants' request for a variance to allow them to build an accessory dwelling unit smaller than the minimum 400 square feet should be understood as an attempt to avoid additional costs and inconveniences involved with expanding the structure into their own property. Mr. Tedford stated that the structure incurred on the property line with 306 North Chapman Street and rebuilding a structure to code would require the applicants to remedy this incursion, adding that the applicants were seeking to preserve the existing footprint of the structure in order to avoid remedying the incursion under the guise of maintaining historical integrity. Mr. Tedford advised that the Board not cede to this scheme, stating that their decision to grant the request would invite others to bypass zoning regulations by relying on historic structure classifications.

Chair Necas asked if any of the other speakers wished to come forward.

Mr. Ramsey asked staff if the subject structure was encroaching onto Mr. Tedford's property or into the applicants' own setback. Mr. Kirkman stated that the encroachment was on the applicants' setback.

Chair Necas advised that anyone else speaking in opposition may come forward if they had testimony that would materially add to the proceeding.

Mr. Ramsey asked staff to clarify the nature of Sunset Hill's historic designation. Mr. Kirkman stated that Sunset Hills is listed in the National Registry of Historic Places but does not have a historical overlay within the city. This allows property owners tax write-offs for improvements, renovations, or maintenance of existing structures without the regulatory burdens associated with an overlay.

Mr. Tedford asked where the additional 74 square feet on the subject property came from.

Mr. Kirkman stated that the additional square footage came from a loft space on the subject structure that was not accounted for in the original measurements.

Mr. Tedford stated that he understood the loft space had been removed from the structure and asked for confirmation.

Chair Necas advised that Mr. Pollak and Ms. Mallon may return to the podium and speak to Mr. Tedford's question and reminded Mr. Tedford that the size variance was no longer being considered.

Mr. Pollak took issue with Mr. Tedford's characterization of his request as a scheme and reiterated his desire to renovate and repurpose his garage, adding that the interior loft was being rebuilt.

Chair Necas asked either Mr. Pollak or Ms. Mallon to clarify the exact condition of the interior loft.

Ms. Mallon stated that they are adding a two walls on the main floor of the structure, a bathroom, and a kitchen space, the loft area is being rebuilt above this.

Mr. Wright confirmed that all construction would be localized to the interior of the structure.

Chair Necas asked if there was anyone else to speak in opposition.

Beverly Gass, 2104 Rolling Road, asked whether the loft space already existed or if the structure would be expanded to add it.

Mr. Baker reiterated that the size variance was no longer being considered.

Mr. Wright asked Mr. Tedford to clarify what his grounds for opposition to the request were.

Mr. Tedford stated he was opposing the request on the grounds that the garage was encroaching 4 inches into his property and that the applicants were referring to their garage as a historic structure.

Chair Necas stated that the garage was not encroaching into Mr. Tedford's property, but was rather encroaching on the applicants' own side setback, noting that it was still 4.8 feet away from their shared property line.

Mr. Tedford added that his primary concern was that the applicants were turning their garage into a dwelling.

Chair Necas reminded Mr. Tedford that the Board was not considering the use of the structure.

Mr. Truby explained that the Board could not prohibit the applicants from building an accessory dwelling unit since the city's code allows them by right in the zoning district.

Chair Necas asked if there was anyone else to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Oliver moved that in BOA-23-22, 306 North Chapman 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 request is reasonable and the structure only encroaches 0.2 feet (four inches) into the side setback; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the buildings were already there when the property was purchased; (3) The hardship is not the result of the applicant's own actions because the building was already there and they are modifying an existing structure and not changing the footprint at all; (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 they are modifying an existing building, no harm or other impact will be felt by neighbors. Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Barkdull, Wright; Nays: none). Chair Necas stated the variance request was granted unanimously.

Chair Necas asked Mr. Baker if, during proceedings with opposition speakers, it was necessary to again receive testimony from the opposition after the applicants deliver their rebuttal.

Mr. Baker advised that it was within the Board's discretion, but was not strictly necessary.

b. BOA-23-39: 1815 Dalton Road (Approved)

Chair Necas stated that the Board had already heard this case in January 2022 and asked staff how much of it needed to be re-litigated.

Mr. Kirkman advised that, due to the length of time since the Board's consideration of the case, the staff report should be entered into the record, noting that there are current members of the Board that were not present during the initial hearing of the case.

Ms. Thiel stated in BOA-23-39, Gray and Tara Sherrill request two variances: (1.) To allow an existing house and proposed addition to encroach 5.2 feet into a required 10 foot side setback. The house and addition will be 4.8 feet from the side property line; (2.) To allow the proposed building coverage to exceed 30% of the total lot area. The building coverage will be 3,446 square feet when no more than 3,371 square feet is allowed based on current zoning. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-2-4(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; and Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum side setback is 10 feet and the maximum building coverage is 30%.

Background and Site Information: The subject lot is located on the west side of Dalton Road, south of Saint Andrews Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 11,326 square feet, and the house was constructed in 1922. The existing house is considered a nonconforming structure as it encroaches 5.2 feet into a required 10 foot side setback. 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. The applicants propose to construct a 704 square foot porch addition at the back of the house that will be aligned with the existing house and be 4.8 feet from the side property line. In addition to the new porch, the applicants propose to replace the existing detached garage with one that meets accessory structure setback requirements. In making the proposed improvements, the maximum 30% building coverage will be exceeded by 0.7%. The building coverage will be 3,446 square feet when no more than 3,371 square feet is allowed, so a variance is necessary to address the excess.

The Board of Adjustment previously approved these two variance requests in BOA-22-04 at its meeting on January 24, 2022. Per the Land Development Ordinance, a variance becomes void if construction, operation or installation does not start within 12 months of the issue date of issuance. Because construction has not commenced on the subject lot, the applicant must seek new variances. If the variance is granted, the applicants 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in Gray and Tara Sherrill for their testimony.

Gray Sherrill, 1815 Dalton Road, stated that steep costs prohibited him from beginning construction after the initial approval of the Board, adding that he did not know that waiting a year would mean that he would have to request the variances again. Mr. Sherrill stated that their garage, built alongside the house in 1922, cannot accommodate the size of newer car models and lacks privacy measures like a door. Mr. Sherrill added that their outdoor living space is antiquated and slopes in such a way that

prohibits them from using it as intended; they plan to level it and add a roof without changing the existing footprint of the space.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

Mr. Truby asked staff to explain why variance approvals lapse after one year, adding that they may consider extending their duration to accommodate financial barriers, administrative challenges and other delays related to construction. Mr. Truby stated he was unclear as to whether state or local ordinances governed this.

Mr. Kirkman advised that staff may reevaluate the ordinance with this in mind.

Mr. Baker stated that state law did not govern the duration of variance requests.

MOTION

Mr. Truby moved that in BOA-23-39, 1815 Dalton Road, 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 owner of the property would not be allowed to construct the addition to the porch or 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 property is zoned R-3 and many of the surrounding properties are R-5, which would only require a 5 foot setback and permit a lot coverage of greater than 30%; (3) The hardship is not the result of the applicant's own actions because the house was existing and was originally constructed within 5 feet of the property line; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the proposed addition would extend an open porch on the same line as the existing house, the proposed addition is in keeping with the existing house and its current relationship to neighboring properties. Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Barkdull, Wright; Nays: None). Chair Necas stated the variance request was granted unanimously.

c. BOA-23-40: 4929-2105 West Market Street (Approved)

Ms. Thiel stated in BOA-23-40, Tyler Driskill and Lalida Whittington request a variance to allow a proposed bar to be located 278 feet from a residentially zoned lot when at least 400 feet is required. Evidence provided by the applicants includes Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance reference was Section 30-8-10.4(F)(1)(b)(ii)(b): No bar, nightclub or brewpub on tracts larger than 5 acres in area may be located within 400 feet of a lot containing a residence or a lot that is residentially zoned.

Background and Site Information: The subject lot is located on the south side of West Market Street, east of Walnut Circle, and is zoned CD-C-M Conditional District-Commercial-Medium). Tax records indicate the individual condominium lot contains approximately 1,742 square feet and is part of a larger parent tract containing over 5 acres. The building was constructed in 1954. The applicants propose to operate a bar on the subject property, within the larger Super G Mart shopping center, that is 278 feet from a residentially zoned lot across West Market Street. To allow a bar to operate on the subject property within the existing shopping center, a variance is necessary for reduced separation. If the variance is granted, it would only apply to the specific unit (property) within the shopping center, and the applicants will submit applications for necessary City permits.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Tyler Driskill for his testimony.

Tyler Driskill, 2904 Merryweather Road, stated that they are requesting a variance on an ordinance that would prohibit them from opening a bar within 400 feet of a residential property. Mr. Driskill stated, not only is the subject property separated from the residential property in question by a four lane highway, but there is already a karaoke bar and event center that serves alcohol in operation within the same condominium as their proposed bar.

Mr. Truby asked what sort of bar Mr. Driskill would be opening. Mr. Driskill stated that he wanted to open a bar that would double as a community hub.

Mr. Wright asked why Mr. Driskill was asking for a variance if there is already several businesses that distribute alcohol in operation within the same condominium.

Mr. Baker interjected, stating that it may be impermissible to cite the use of other properties on the lot that may or may not be in violation of the ordinance in support of the applicant's request.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

Mr. Truby noted that he would be supporting the request, citing the four lane highway separating the proposed bar and the residential property.

MOTION

Mr. Barkdull moved that in BOA-23-40, 4929-2105 West Market 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 area is zoned conditional district commercial and a variance would only apply for the reduced separation built in 1954, which is 278 feet versus the required 400 feet, the applicant would not be able to open their business without this 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 when the shopping center was built in 1954, the 400 foot separation was not required, furthermore the property is a condo and cannot be adjusted 400 feet; (3) The hardship is not the result of the applicant's own actions because the original building was retail, not a bar subject to the 400 foot separation that, furthermore, was not required when the building was constructed; (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 to ensure the safety and welfare of customers and neighbors, security personnel and security cameras will be installed. Chair Necas amended the motion to add that the subject property is located across a four lane highway from residential property. Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Barkdull, Wright; Nays: None). Chair Necas stated the variance request was granted unanimously.

Mr. Driskill asked, in reference to the 12 month duration of Board approvals, if he could request an extension on the variance should construction not begin within 12 months, or if he would have to reapply.

Chair Necas stated that, should the limit of the approval lapse, he would have to reapply for the variance.

d. BOA-23-41: 507 Woodlawn Avenue (Approved)

Ms. Thiel stated in BOA-23-41, Parlee and Patrick Noonan request a variance to allow a proposed accessory structure to encroach 5 feet into a required 10 foot side setback. The accessory structure will be 5 feet from the side property line. Evidence provided by the applicant includes Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-11.1(C)(2): In R- Districts, accessory structures over 15 feet tall must be setback at least 10 feet from side and rear lot lines.

Background and Site Information: The subject lot is located on the west side of Woodlawn Avenue, north of Lakeview Street, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 17,424 square feet, and the house was constructed in 1921. The applicants propose to construct a 774 square foot accessory structure in the back yard that will be taller than 15 feet. The proposed accessory structure will encroach 5 feet into a required 10 foot side setback and be 5 feet from the side property line. The applicants indicate that the proposed accessory structure will align with the existing driveway, enable established older trees to remain and allow for more usable yard/garden space. If the variance is granted, the applicants 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in Parlee Noonan for her testimony.

Parlee Noonan, 507 Woodlawn Avenue, stated they are unable to build their garage within the 10 foot side setback due to the unique topography of their backyard. Additionally, building the garage within the setback requirements would require removing trees in the backyard and would, due to the orientation of the driveway in relation to existing stone walls, reduce turnaround space needed for a vehicle to exit the property, ultimately impacting the functionality of the garage.

Ms. Noonan then asked if she could submit letters from her neighbors as evidence in her testimony.

Mr. Baker advised that the Board could only consider sworn testimony and that such letters would be counted hearsay.

Chair Necas asked if the notarization of the letters made any difference.

Mr. Kirkman clarified that the issue in this matter was that the Board could not cross examine the statements made by the letter's author, as they were not present for the proceeding.

Mr. Truby stated that the Board could consider, in their decision, the fact that nobody came to speak in opposition to the request.

Mr. Baker reiterated his statement on the letters being hearsay and noted that, as Mr. Truby stated, it would be more appropriate for the Board to consider the absence of opposition speakers than any letters speaking in support of the applicant's request.

Chair Necas acknowledged and asked if there were any further questions for the applicant.

Ms. Rudd clarified that the Board's current discussion on the admissibility of the letters was a matter of procedure and that it should not discourage Ms. Noonan regarding the status of her request.

Mr. Barkdull asked staff for clarification regarding a component of the zoning processes that requires applicants send letters to surrounding neighbors. Mr. Kirkman clarified that the Board's proceedings were quasi-judicial and subject to stricter requirements regarding the admission of evidence than the largely legislative proceedings for rezonings.

Chair Necas suggested that, if written letters do not carry weight in Board proceedings, it should be impressed on applicants to invite neighbors to the proceedings for them to voice their support for their requests in-person.

Mr. Kirkman noted that staff already recommends applicants do this.

Mr. Ramsey asked staff for clarification regarding the required letter notices that are part of the application process for variance requests, specifically whether it is the city or the applicant that sends out these notices.

Mr. Kirkman stated that the city notifies all property owners within 150 feet of an applicant's property.

Mr. Ramsey acknowledged and stated that the Board could take judicial notice of the absence of opposition speakers.

Ms. Noonan stated that she also sent letters to property owners within 150 feet of her property.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Ramsey moved that in BOA-23-41, 507 Woodlawn Avenue, 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 proposed garage will be further into the backyard, resulting in the removal of established trees, reduction of useable yard space, put the garage out of alignment with the existing driveway, and make it impossible to have a car turnaround; (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 of the yard artificially increases the garage height, the location of trees, existing house, and driveway; (3) The hardship is not the result of the applicant's own actions because the position of the house and driveway precedes the applicant's ownership of 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 proposed garage's architecture will be consistent with the neighborhood, better use of the property, and increase property tax values. Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Barkdull, Wright; Nays: None). Chair Necas stated the variance request was granted unanimously.

e. BOA-23-42: 4719, 4721, 5301, 5303 & 5305 Ridgefall Road (Approved)

Ms. Thiel stated in BOA-23-42, BMS Investment Properties LLC requests a variance to allow proposed houses to encroach 5 feet into a required 25 foot front setback. The houses will be 20 feet from the front property line. Evidence provided by the applicant includes Exhibits A and B. Supporting Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum front setback for garage doors is 25 feet.

Background and Site Information: The subject lots are located on the west side of Ridgefall Road, south of Pleasant Ridge Road, and are zoned R-5 (Residential Single-Family). Survey records indicate the five lots range in size from 7,006 to 8,662 square feet and contain approximately 39,888 square feet in total. The applicants propose to construct new houses on each of the five lots that will encroach 5 feet into a required 25 foot front setback for garage doors and be 20 feet from the front property line. During the permitting process, the applicant was advised of the 25 foot front setback for garage doors, revised site plans accordingly and was issued building permits. However, the footings and foundations for the new houses were placed incorrectly and encroached into the front setback for garage doors.

When made aware of the error, the applicant submitted a variance application to address the setback encroachments on the five lots. 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in Nick Blackwood for his testimony.

Nick Blackwood, 804 Green Valley Road, attorney for BMS Investment Properties LLC, stated that initial plot plans, prepared by a 3rd party expert contracted by the applicant, established a 20 foot front street setback on the subject properties but did not take into account the separate 25 foot street setback for garages. The plans were revised, but due to a miscommunication between the applicant and the surveyor for the properties, foundations were laid based on the erroneous plot plans.

Chair Necas asked if the surveyor was present for the proceedings. Mr. Blackwood stated that he was.

Mr. Baker advised that the surveyor would need to be sworn in if they were either going to testify, or if Mr. Blackwood was going to deliver testimony based on their statements.

Mr. Blackwood stated there is a unique 60 foot wide right of way that fronts the subject properties as opposed to a 50 foot wide right-of-way found elsewhere in the neighborhood. This restricts the area suitable for construction on the subject properties and is one of the reasons why the garages encroach into the required setback space. Mr. Blackwood added that a drainage easement along the western property line of the subject properties further restricts construction space.

Chair Necas asked for further detail on how the right of way differs between the subject properties and the rest of the neighborhood. Mr. Blackwood provided clarification, citing Exhibit 6.

Mr. Blackwood stated that, once fully built, the homes on the subject lots will ultimately resemble surrounding homes despite the encroachment of their garages, if only because of the unique size of the 60 foot wide right-of-way.

Mr. Truby clarified that, if the 60 foot wide right-of-way was instead 50 feet wide, as it is in the rest of the neighborhood, the garages would be compliant with the front street setback.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion and/or a motion.

MOTION

Chair Necas moved that in BOA-23-42, 4719, 4721, 5301, 5303 and 5305 Ridgefall Road, 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 applicant would require to remove existing improvements which were constructed pursuant to plans provide by a professional surveying company; (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 applicants property have a 60 foot right-of-way, versus adjacent properties to the immediate south who have only a 50 foot right of way; (3) The hardship is not the result of the applicant's own actions because the applicant relied on a professional surveying company when determining the building footprint and made a good faith effort to follow the 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 houses constructed on the subject properties

will be in line with adjacent properties to the south and driveway lengths are not affected by the intrusion into the setback. Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Oliver, Ramsey, Necas, Truby, Barkdull, Wright; Nays: None). Chair Necas stated the variance request was granted unanimously.

OTHER BUSINESS

Mr. Ramsey asked staff about the status of the zoning enforcement actions on Randleman Road (BOA-23-27 through 31) and Guilford Avenue (BOA-23-43).

Mr. Kirkman advised that there was no resolution to either case at the moment and that staff would update the Board on any future developments.

ADJOURNMENT

The meeting was adjourned at 7:02 pm.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/hus

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
August 28, 2023**

The meeting of the Greensboro Board of Adjustment was held on Monday, August 28, 2023, at 5:30 p.m. in-person in the City Council Chamber. Board members present were: Chair Necas, Cory Randolph, Tifanie Rudd, Ted Oliver, Chuck Truby, and Stephen Barkdull. City staff present were Shayna Thiel and Mike Kirkman (Planning), and Emily Guarascio (Associate City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Ms. Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF THE MINUTES (July 24, 2023 Meeting)

Randolph made a motion to approve the July 24, 2023, minutes, seconded by Barkdull.

The Board voted 5-0-1 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Barkdull; Nays: None Abstention: Randolph). Chair Necas advised the minutes were approved.

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

Chair Necas stated that because only six Board members are seated, any variance request would require the unanimous approval of the Board. She asked if any applicants would, in light of this information, like to request a continuance on their case until the Board's next meeting on Tuesday, September 26th.

Jim and Margaret Wynn, 2103 Mimosa Drive requested a continuance on BOA-23-44: 2103 Mimosa Drive until the Board's September meeting. Mr. Randolph made a motion to grant a continuance, seconded by Ms. Rudd. The Board voted 6-0 in favor. The continuance was granted unanimously.

Ms. Guarascio advised that she would interject in the proceeding if testimony was delivered that could either taint the record in the event of an appeal to the superior court or was deemed repetitive. She added that it was within the Board's discretion to do so as well.

OLD BUSINESS

a. BOA-23-33: 207 South Bunker Hill Road (APPROVED)

Ms. Thiel stated in BOA-23-33, Roscoe and Kimberly Gray request three variances: (1.) To allow relief from a provision requiring a lot to abut and have direct vehicular access to a publicly maintained street. (2.) To allow the building coverage of all accessory structures on the lot to be 918 square feet when no more than 623 square feet is allowed. (3.) To allow an accessory structure to be located in front of the front building line of the principal structure and in a required street setback. Evidence provided by

the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-9-3.1: Every zone lot must abut and have direct vehicular access to a publicly maintained street. Section 30-8-11.1(A)(3): In R districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater. 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 street setback.

Background and Site Information: The subject lot is located on the east side of South Bunker Hill Road, south of West Market Street, is zoned R-3 (Residential Single-Family) and was annexed into the City on June 30, 2008. Survey records indicate the landlocked lot contains approximately 20,933 square feet. The subject lot is surrounded by lots owned by other individuals, with access provided by an existing joint use gravel drive. Because it does not abut and have direct vehicular access to a publicly maintained street, a variance is necessary to allow for site improvements. The Board of Adjustment approved a similar variance on November 28, 2009 for the adjacent lot, which is also owned by the applicant. At this time, the applicant proposes to construct a 1,246 square foot house to replace a larger 1,346 square foot one that was demolished in 2022. Based on the building coverage of the proposed house, the maximum allowed building coverage of all accessory structures on the lot is 623 square feet, so another variance is needed to allow the existing 918 square foot accessory structure to exceed that amount by 295 square feet. In its current size and location, the existing accessory structure is located in front of the front building line of the proposed principal structure and in a required street setback, so the applicant is seeking a third variance to achieve compliance with the Land Development Ordinance. If the variances are granted, the applicants will proceed with the residential building permit process for the new 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 Necas asked the applicant to provide their name/address for the record and swore in Roscoe Gray, Robert Russel and Joseph Tyler for their testimony.

Roscoe Gray, 207-A South Bunker Hill Road, stated that he had purchased the subject property from his grandmother with the intent of moving in his elderly in-laws. After the purchase, he found that the primary structure on the property was in disrepair and decided then to demolish it and build a new one. Mr. Gray obtained a demolition permit and removed the primary structure but was unable to receive a building permit from the city due to a vehicular access issue with the property (the subject property is on a landlocked lot with street access only via the driveway of an adjacent property at 209 South Bunker Hill Road).

Mr. Gray stated that he had received a similar variance regarding vehicular access on his property at 207-A South Bunker Hill 13 years prior and assumed that the approval had resolved the issue on the rest of the property. In regards to the variance for the accessory structure, a garage, Mr. Gray stated that it had been on the property since the lot was annexed into the city.

Robert Russel, 1195 Fisherman's Cove Road, Pine Hall, introduced himself as the owner of Associated Surveying and Engineering and presented illustrative images of the subject property and garage. He stated that the garage had existed prior to the subject property's annexation and added that the proposed primary structure would be smaller than the one that had been demolished, making the non-conformity less severe. Mr. Russel added that the request would not alter the status quo of the subject property and stated that reasonable use of the site as it is zoned (building a single-family house in a district zoned for single-family homes) would be prohibited if the variance was not granted.

Joseph Tyler, 209 South Bunker Hill Road, introduced himself as the owner of the adjacent property whose driveway currently provides street access to the subject property. He stated that he was in favor of the request and had also assumed that the previous variance approval for the property at 207-A South Bunker Hill had resolved the issue of vehicular access.

Mr. Barkdull asked if there had been any plans to create direct access to the main road for the subject property.

Mr. Gray stated that the subject property had been in his family since 1934 and there was no consideration at the time of its construction for how the surrounding area would develop.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Ms. Rudd moved that in BOA-23-33, 207 South Bunker Hill, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the planned principal structure would be smaller and maintain appropriate use in the zoned district; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property has maintained its existing use; (3) The hardship is not the result of the applicant's own actions because the applicant went through proper channels and the county already approved of the development; (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 they already provided access to surrounding property owners. Mr. Oliver seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Barkdull, Randolph Nays: None). Chair Necas stated the variance request(s) were approved unanimously.

b. BOA-23-38: 325 Erwin Street (DENIED)

Ms. Thiel stated in BOA-23-38, Nicole Davis and Hatfield Charles request two variances: (1.) To allow an existing principal structure to encroach 6 feet into a required 25-foot side setback. The principal structure is 19 feet from the western side property line; (2.) To allow an existing principal structure to encroach 11.5 feet into a required 25-foot side setback. The principal structure is 13.5 feet from the eastern 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 was Section 30-7-3.5 – Table 7-12: In the RM-8 District, the minimum side setback for nonresidential development is 25 feet.

Background and Site Information: The subject lot is located on the south side of Erwin Street, east of Randleman Road, and is zoned CD-RM-8 (Conditional District-Residential Multifamily). Tax records indicate the lot contains approximately 14,375 square feet, and the structure was constructed in 1956. The rezoning of the property to CD-RM-8 (Conditional District-Residential Multifamily) from R-5 (Residential Single-Family) was approved by the Planning & Zoning Commission on August 15, 2022 and by the City Council on September 20, 2022. At that time, staff recommended approval of the rezoning and indicated that the request was consistent with the intent and purpose of the zoning code, the Comprehensive Plan (GSO2040) and generally compatible with the existing development and trend in the surrounding area. Additionally, a number of conditions were approved as part of the rezoning that dictate future development of the property. Consistent with those conditions, the applicants propose to convert an existing single-family home into a day care center without changing the size or foundation of the existing structure and have installed a 6-foot opaque fence along the

eastern property line. After the rezoning, the existing principal structure meets the dimensional requirements for residential use, but if converted into a day care center, the structure becomes nonconforming because a larger 25 foot side setback applies to nonresidential development in residential multifamily zoning districts. The existing principal structure encroaches 6 feet into the western side setback and 11.5 feet into the eastern side setback, so the applicants seek variances to remedy the nonconformities. At its November 27, 2022 meeting, the Board of Adjustment denied the applicants' similar variance requests (BOA-22-60). Subsequently, the applicants filed a request for a re-hearing and advised that they have new evidence to help Board of Adjustment members understand their original variance requests more clearly. At its May 22, 2023 meeting, the Board of Adjustment granted the re-hearing request (BOA-23-20), and the applicants submitted a new variance application for consideration. The applicants indicate that the narrow lot configuration and the layout of the existing structure causes hardship. If the variances are granted, the applicants will proceed with the change of use process.

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

Chair Necas asked the applicant to provide their name/address for the record.

Nick Blackwood, 804 Green Valley Road, applicants' attorney, stated that the applicants had rezoned the subject property to CD-RM-8 with the intention of using the primary structure as a daycare center. Mr. Blackwood clarified that a daycare home (elsewhere referred to as a "home-base daycare") is allowed by-right in the CD-RM-8 district and that the applicant's desire to turn the structure into a "daycare center" is what incurred the enhanced setback requirements.

Mr. Blackwood provided an update on developments since the rehearing was granted in May 2023. He stated that the applicants had developed a landscaping plan to install a buffer between the subject property and surrounding neighbors, but found that existing improvements on the site prohibited them from building the buffer on their side of the property line. The applicants then reached out to adjoining neighbors about building the buffer on the other side of their property line, offering to cover the expense of installation and maintenance. The applicants attempted to reach adjoining neighbors to no avail, exhausting several mediums (e.g. in person messages, mail, and text messages) and even enlisting the help of Councilwoman Hightower, the district representative for the area.

Mr. Blackwood stated that unnecessary hardship would result from strict application of the ordinance in that the applicants would have to demolish the existing structure to adhere to setback requirements. He added that the hardships resulted from conditions peculiar to the subject property, a narrow lot that was plotted nearly a century ago. Further, the applicants do not plan on changing the existing footprint of the building and intend on localizing all construction to the interior. Mr. Blackwood noted that there would be no alteration to the distance between the existing structure and the property line, and additionally, a six foot fence at the rear of the property would mitigate any potential disturbance a neighboring property owner would experience from the change of use.

Mr. Blackwood, speaking on the previously denied variance request, stated that many of the concerns raised by neighbors during the previous Board hearing related to the use of the property as a daycare facility. He noted that the City Council, in its decision to rezone the property, had settled the issue of use and that the Board should only consider evidence and testimony that spoke to the issue of the setback requirement.

Mr. Randolph asked if the fence was the only new piece of evidence since the rehearing request. Ms. Guarascio advised that evidence from previous hearings should not be considered in the Board's decision.

Mr. Barkdull, referring to images submitted by the applicant, noted that it appeared the applicant's already had a well-equipped daycare facility and asked if the property was already in use in that capacity.

Mr. Blackwood stated that the subject property is allowed by right to be used as a home-base daycare, which permits a maximum of 15 students. He stated that the applicants wish to convert it into a daycare center, which increases the cap for permitted students and negates the requirement that the applicants live on the property.

Mr. Kirkman advised that the property is currently used as a residence with a home-base daycare as an accessory use. The transition to a daycare center would see it effectively convert to commercial use.

Mr. Randolph asked what the difference in terms of profitability would be between a home-base daycare and a daycare center.

Mr. Blackwood stated that he couldn't speak to the specifics of the question but posited that a greater number of attendees would result in higher rate of profit. He added that the requirement of a home-base daycare that the owner live on the property, acts as hindrance on the applicants in their personal lives, as they work and maintain property elsewhere.

Ms. Guarascio advised that the Board's questions concerned the use of the property.

Chair Necas asked if there was anyone to speak in opposition and swore in Brenda Barksdale, Margret Rawls, and Christine Marshall.

Brenda Barksdale, 308 Erwin Street, introduced herself as president of the Oak Grove Community Watch and stated her opposition to the variance request, citing concerns about traffic impacts.

Ms. Guarascio advised that only experts can testify regarding traffic impacts as the result of a variance approval and that Ms. Barksdale's testimony should not be considered non-competent by the Board.

Ms. Barksdale stated that the subject property had not been inspected since 2010 and noted that the applicants did not get a building permit when performing improvements to the building.

Ms. Guarascio advised that testimony was not germane as it related to the use of the property and not the variance request.

Chair Necas asked if Ms. Barksdale or any other opposition speaker had testimony that was material to the variance request.

Margaret Rawls, 218 Erwin Street, voiced her opposition to the request, citing neighborhood resistance towards the daycare facility.

Ms. Guarascio advised that the testimony was not germane to the case and should not be considered in the Board's decision.

Mr. Barkdull asked for clarification regarding the city council's approval of the use (it seems like the use is basically allowed this vote is to determine whether the applicant can build to adhere to approved zoning)

Christine Marshall, 319 Erwin Street, introduced herself as the neighbor to the subject property that the applicants had tried reaching out to regarding the landscape buffer. She voiced her opposition to the daycare facility and the applicant's offer to plant shrubs on her property.

Chair Necas noted that Ms. Marshall's testimony did not relate to the variance request and asked if the applicant would like to give their rebuttal.

Mr. Blackwood reiterated that city council, in rezoning the subject property, had already decided on the issue of the applicant's desired to use it as a daycare facility.

Mr. Randolph asked if the hardship the applicants are citing is unique to the subject property. Citing exhibit 1 of the staff report he stated that many of the surrounding properties are on narrow lots.

Mr. Blackwood clarified that one of the distinguishing factors of the subject property, as compared to others in the area, is its proximity to other commercial properties and a major thoroughfare on Randleman Road. Mr. Blackwood added that the subject property was built from the combination of multiple lots and has a primary structure with a larger square footage than many of the other properties in the area, which has triggered many of the setback requirements.

Mr. Randolph clarified that the additional requirements were being triggered due to the proposed use as a daycare center as opposed to a home-based daycare.

Mr. Oliver clarified that, regardless of whether the variance was approved or denied, the applicant's would still be allowed to operate a daycare facility of some kind.

Mr. Barkdull asked for clarification on the use relationship as it relates to City Council's decision to rezone the property.

Mr. Kirkman advised that the City Council's decision to rezone the property to a multi-family lot allowed the applicants to operate a daycare facility by right. He added that the Board's current decision did not concern the use and was on whether or not to grant two variances on setback requirements.

Chair Necas asked if there was any further comment from the applicant. Hearing none, she closed the public hearing and went to Board discussion.

MOTION

Chair Necas moved that in BOA-23-38, 325 Erwin Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the current structure would not be usable as a daycare center without demolishing the current 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 property was platted nearly 100 years ago and is very narrow; (3) The hardship is not the result of the applicant's own actions because the existing structure was built well before the 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 applicants wish to keep the existing structure without expanding the footprint, merely utilizing the property for a slightly different purpose and a 6 foot wooden fence is already installed to limit negative impact on adjoining properties. Ms. Rudd seconded the motion.

The Board voted 4-2 in favor of the motion, (Ayes: Barkdull, Oliver, Rudd, Truby; Nays: Randolph, Necas). Without a unanimous consensus, Chair Necas stated the variance requests were denied.

NEW BUSINESS

a. BOA-23-45: 6 Westminster Court (APPROVED)

Ms. Thiel stated in BOA-23-45, Brian and Whitney Keubert request a variance to allow a proposed addition to encroach 4.92 feet into a required 30 foot rear setback. The addition will be 25.08 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 west side of Westminster Court, south of Westminster Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 22,216 square feet and the house was constructed in 1976. The applicants

propose to add an 816 square foot garage and covered breezeway connection to their existing house that will be 25.08 feet from the rear property line. Because the garage will be connected to the house, it becomes part of the principal structure and standard R-3 dimensional requirements apply. As a result, the proposed addition will encroach 4.92 feet into a required 30 foot rear setback. If the variance is granted, the applicants 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 Necas asked the applicant to provide their name/address for the record and swore in Brian Keubert for his testimony.

Brian Keubert, 6 Westminster Court stated he is requesting a variance to build a garage with a breezeway. During the design of the garage, Mr. Keubert assumed he had an extra 10 feet on his rear setback and included a breezeway between the garage and the principal structure which triggered the setback requirement. Mr. Keubert stated he reached out to many of his neighbors and did not receive any pushback to the variance request and noted that he made direct contact with all adjoining neighbors. Mr. Keubert stated strict application of the variance would require the garage to be placed in a location that would block easy access to his backyard, increasing inconvenience. He stated that the size of the lot and placement primary structure meant the hardship was the result of conditions peculiar to the property. He stated that the garage would be built in line with the design of the primary structure and surrounding community.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Barkdull moved that in BOA-23-45, 6 Westminster Court, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because strict compliance will result in the connecting walkway path extending all the way around the garage, which causes increased inconvenience and limits property 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 of the size, shape, and location of existing structures; (3) The hardship is not the result of the applicant's own actions because the house was built in 1976 and the applicant has owned the property for three years; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the garage would remain consistent with other properties in the neighborhood and would have no negative impact on surrounding properties and the variance would also slightly increase the property's value. Ms. Rudd seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None). Chair Necas stated the variance request was approved unanimously.

b. BOA-23-46: 1003 Fairmont Street (APPROVED)

Ms. Thiel stated in BOA-23-46, LaCarla Lynch and Russell Williams request a variance to allow a proposed addition to encroach 12 feet into a required 55.7 foot front setback. The addition will be 43.7 feet from the front property line. Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must

comply with the minimum street setback determined by calculating the average setback that exists on the lots on either side of the subject lot.

Background and Site Information: The subject lot is located on the south side of Fairmont Street, west of Adams Street, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 10,019 square feet and the house was constructed in 1941. Based on the average front setback calculations using 1001 Fairmont Street, 1005 Fairmont Street and 1007 Fairmont, the applicable front setback for the subject property is 55.7 feet. The applicants propose to construct a 300 square foot open air/covered porch at the front of the existing house that will encroach 12 feet into the required front setback and be 43.7 feet from the front property line. Per the Land Development Ordinance, open air/covered porches are allowed to encroach up to 10 feet into a required front setback. However, in this case, the existing house does not meet the front setback, so a variance is necessary to address the total encroachment. If the variance is granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in LaCarla Lynch for her testimony.

LaCarla Lynch, 1003 Fairmont Street, stated that her front porch had collapsed during a storm and she then decided to rebuild and extend it. She had reached out to surrounding neighbors and received positive feedback regarding her planned construction. Ms. Lynch presented illustrative images of the subject property and proposed improvements to the front porch, adding that she would like to keep its design in line with other homes in the surrounding area. She stated that hardship would result from the strict application of the ordinance as she would not be able to make reasonable improvements to the property, adding that the hardship results from conditions peculiar to the property since the house was built before contemporary zoning and setback requirements were implemented.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Barkdull moved that in BOA-23-46, 1003 Fairmont Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because complying with the ordinance would prohibit applicant from building open air front porch like several of the surrounding homes; (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 dwelling was built in 1941 causing the placement of the house to be non-compliant prior to the applicant's purchase; (3) The hardship is not the result of the applicant's own actions because the house was built prior to the ordinance being in effect; (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 variance preserves spirit and character of the neighborhood and houses with similar front porches. Mr. Truby seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None). Chair Necas stated the variance request was approved unanimously.

c. BOA-23-47: 8 Devonshire Drive (APPROVED)

Ms. Thiel stated in BOA-23-47, Melissa Gebhardt requests a variance to allow a proposed house to encroach 10 feet into a required 40 foot front setback. The house will be 30 feet from the front 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 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average setback that exists on the lots on either side of the subject lot.

Background and Site Information: The subject lot is located on the west side of Devonshire Drive, south of Battleground Avenue, and is zoned R-3 (Residential Single-Family). Tax records indicate the undeveloped lot contains approximately 17,424 square feet. Based on the average front setback calculations using 2 Devonshire Drive, 6 Devonshire Drive, 10 Devonshire Drive and 12 Devonshire Drive, the applicable front setback for the subject property is 40 feet. The applicant proposes to construct a new house on the lot that will encroach 10 feet into the required front setback and be 30 feet from the front property line. The applicant indicates that the slope of the land makes it difficult to build the proposed house further back on the lot. 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 Necas asked the applicant to provide their name/address for the record and swore in Melissa Gebhardt for her testimony.

Melissa Gebhardt, 3 Friends Meadow Drive, Apt C, stated that she had purchased the lot in 2016 and faced several complications in her attempts to develop it, primarily due to a sharp slope which prohibits construction within the front setback requirements. Ms. Gebhardt noted that surrounding properties have structures that are built closer to the street than her proposed structure.

Mr. Randolph asked if surrounding properties have similar topographic issues. Ms. Gebhardt stated that they do, although only a few are as severe as the subject property.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Randolph moved that in BOA-23-47, 8 Devonshire Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant will not be able to make reasonable use of the property for her residence; (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 situated on a significant downslope from front to back that necessitates the variance; (3) The hardship is not the result of the applicant's own actions because the topography of the property prior to the applicant's purchase of 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 house would be in alignment with adjoining neighbors with similar property topography and the 10 foot encroachment would not substantially impair the public safety, and newly existing residence would improve the property values of surrounding residences. Mr. Truby seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None). Chair Necas stated the variance request was approved unanimously.

d. BOA-23-48: 1216 Lakewood Drive (APPROVED)

Ms. Thiel stated in BOA-23-48, Sharol Gauthier, Marcel Gauthier, and Shirl Hoffman request two variances: (1.) To allow a proposed accessory dwelling to encroach 4.87 feet into a required 10 foot side setback. The accessory dwelling will be 5.13 feet from the side property line; (2.) To allow a proposed accessory dwelling to encroach 19.33 feet into a required 30 foot rear setback. The accessory dwelling will be 10.67 feet from the rear property line. Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance references were Section 30-8-11.2(D): A detached accessory structure must meet the location and dimensional requirements of the principal structure. Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum side setback is 10 feet and the minimum rear setback is 30 feet.

Background and Site Information: The subject lot is located on the east side of Lakewood Drive, south of Farrar Drive, and is zoned R-3. Tax records indicate the through lot contains approximately 12,197 square feet and the house was constructed in 1955. The applicants propose to convert a 414 square foot portion of the existing detached garage at the end of the driveway into an accessory dwelling without changing/expanding the footprint of the structure. The existing detached garage meets accessory structure setback and area requirements, but when converted into an accessory dwelling, it does not meet principal structure setbacks. In its current location, the proposed accessory dwelling will encroach 4.87 feet into a required 10 foot side setback and be 5.13 feet from the side property line. It will also encroach 19.33 feet into a required 30 foot rear setback and be 10.67 feet from the rear property line. The applicants indicate that the existing accessory structure is screened from view by large evergreen trees along the side and rear property lines. If the variances are granted, the applicants 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 Necas asked the applicant to provide their name/address for the record and swore in Sharol Gautier and Shirl Hoffman for their testimony.

Sharol Gauthier, 1415 Carmel Road, Charlotte, stated that she and Mr. Hoffman, her father, are joint tenant-owners of the subject property and that Mr. Hoffman is the primary occupant. Ms. Gauthier stated that all of her parents are Greensboro residents and their age requires her to frequently travel between the city and her own home in Charlotte. As such she is requesting a variance to convert a portion of an existing garage on the subject property into an accessory dwelling unit that will provide a place for her to stay when she is in town and serve as a space for Mr. Hoffman to entertain guests. She stated that the garage was built in 2014 by the previous property owner and it is fully electrified and heated.

Ms. Gauthier stated she had discussed her plans with the neighbor alongside the garage and received no pushback. She added that she had also reached out to both the owner and the tenants of the rental property along their rear property line but did not get a response. Ms. Gauthier stated that an underground oil storage tank leak in the late 1990s established deed restrictions extending 20 feet from the rear of the primary structure which prohibits construction of an accessory dwelling unit within setback requirements. Ms. Gauthier noted that the portion of the garage that is being converted would not be visible from the street, adding that none of the improvements associated with the conversion would change the footprint of the structure.

Chair Necas, referring to Exhibit C, clarified that an apparent change in front elevation of the garage was a necessary part of the conversion and would not structurally alter anything.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Randolph moved that in BOA-23-48, 1216 Lakewood Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the existing conversion to an accessory dwelling will not be able to be built and accommodate the applicant's 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 existing footprint for which the accessory dwelling will be built is in an area at the rear of the property that is subject to existing underground storage tanks and other deed restrictions; (3) The hardship is not the result of the applicant's own actions because the garage was built in 2014 and the new use is not expanding the existing footprint; (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 provides a reasonable use for the existing footprint of which the current garage sits, the new accessory building will be protected on the rear and side setback by towering evergreens which provide privacy for the neighbors and applicants, and the new accessory dwelling will sit on the rear left of the property which has existed since the structure was built in 2014. Truby seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None). Chair Necas stated the variance requests were approved unanimously.

e. BOA-23-49: West Market Street (APPROVED)

Ms. Thiel stated in BOA-23-49, Mike's Tire & Service Center Inc. requests a variance to allow an existing freestanding sign over 6 feet in height to be located within 100 feet of a residential zoning district. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance references were Section 30-2-5.4(C)(e): All nonconforming signs must be brought into compliance or removed if an application for a sign permit is made to add new or additional signs to a property containing a nonconforming sign. Section 30-14-7.3(B)(3): Signs over 6 feet in height may not be located within 100 feet of a residential zoning district (measured along the same side of the fronting street).

Background and Site Information: The subject lot is located on the south side of West Market Street, at the intersection of Montlieu Avenue, and is zoned C-M (Commercial-Medium). Tax records indicate the corner lot contains approximately 35,719 square feet and the buildings were constructed in 1986. The applicant proposes to update and rebrand the existing convenience store and fuel pumps with new signage. After submitting sign permit applications with the City, the applicant was advised that all nonconforming signs on the property must be brought into compliance or removed since new signage is proposed. The existing 25 foot tall freestanding sign along West Market Street is considered nonconforming since it is located within 100 feet of a residential zoning district, as measured on the same side of the street. A multifamily residential community zoned RM-18 is adjacent to the west, and the existing sign is approximately 5 feet from the side property line. The applicant applied for a variance to address the existing nonconforming freestanding sign and allow for upgrades. If the variance is granted, the applicant will proceed with the sign 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 Necas asked the applicant to provide their name/address for the record and swore in Brad Engel and George Akers for their testimony.

Nelson Stanaland, 101 South Elm Street, applicant's attorney, stated that Mr. Engel had purchased the subject property from his parents in 2020 and the signs had existed since the construction of the buildings on the site in 1986, adding that Mr. Engel had only discovered the non-conformity while trying to renovate the property and refresh the signage. Mr. Stanaland stated that the refreshed signage would be in keeping with the spirit and character of the surrounding area which is, other than the residential district to the west, is a commercial center.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Oliver moved that in BOA-23-49, West Market Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the signage will be similar to existing signs, so they could be harmed if not built; (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 they are just changing the names on the existing signs; (3) The hardship is not the result of the applicant's own actions because the rule existed and is only being heard now because of a rule, long in place, that does not apply to this situation; (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 if the signs were already there, it stands to reason that the new signs will not cause any negative impact. Ms. Rudd seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None). Chair Necas stated the variance request was approved unanimously.

f. BOA-23-50: 414 Beverly Place (APPROVED)

Ms. Thiel stated in BOA-23-50, Brian and Annemarie Dloniak request two variances: (1.) To allow a proposed accessory structure to encroach 17.44 feet into a required 35 foot thoroughfare setback. The accessory structure will be 17.56 feet from the property line along West Friendly Avenue; (2.) To allow a proposed accessory structure to encroach 6.83 feet into a required 10 foot side setback. The accessory structure will be 3.17 feet from the side property line. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were 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 street setback. Section 30-8-11.1(C)(2): In the R- Districts, accessory structures over 15 feet tall must be setback at least 10 feet from side and rear lot lines. Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum thoroughfare setback is 35 feet.

Background and Site Information: The subject lot is located on the north side of Beverly Place, east of Gwyn Lane, and is zoned R-3. Tax records indicate the through lot contains approximately 30,928 square feet and the house was constructed in 1985. The subject property is considered a through lot, which is a lot that fronts on two streets that do not intersect at the corner of the lot. A through lot has two street setbacks, but no rear setback. Because West Friendly Avenue is classified as a thoroughfare, a 35 foot thoroughfare setback applies. The applicants propose to construct a 572 square foot detached garage behind the existing house and aligned with the existing driveway that will be 17.56 feet from the property line along West Friendly Avenue when at least 35 feet is required. Because the proposed detached garage will be between 19 and 22 feet tall, the LDO requires that it

be set back at least 10 feet from the side property line. So, the applicants also seek a variance to allow it to only be 3.17 feet from the side property line. The applicants indicate that the configuration of the property makes the proposed location of the detached garage the only option and that the existing storage building shown on the submitted site plan will be removed. If the variances are granted, the applicants will proceed with the residential building permit process

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Brian and Annemarie Dloniak for their testimony.

Brian Dloniak, 414 Beverly Place, stated that they would like to build a detached garage in their back yard but have limited building space due to the slope of the property, existing landscaping improvements, and a brick wall at the rear of the property along Friendly Avenue. Mr. Dloniak stated that the house was built nearly 40 years ago with a detached carport that was subsequently closed into the property by a previous owner.

Mr. Oliver clarified that the carport was attached to the house and now functions as their garage, and that Mr. Dloniak was looking to build an additional garage.

Annemarie Dloniak, 414 Beverly Place, stated that the enclosure of the carport created a tight turning radius leading into it, which prohibited them from parking more than one car in it despite its capacity to support two cars.

Mr. Dloniak stated that one of their neighbors had a similar situation with their garage and had a similar variance approved to build an additional detached garage.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Truby moved that in BOA-23-50, 414 Beverly Place, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant will not be allowed to build a 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 slope and location of existing driveway require garage to be built in its current location; (3) The hardship is not the result of the applicant's own actions because the house was built in 1985 and the property was purchased by the applicant 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 there is a large brick wall on the rear of the property that screens the garage from Friendly Avenue. Mr. Barkdull seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None). Chair Necas stated the variance request was approved unanimously.

g. BOA-23-51: 5503 Greenlee Road (APPROVED)

Ms. Thiel stated in BOA-23-51, Michael Lalama and Michelle Young request a variance to allow a proposed addition to encroach 4.29 feet into a required 10 foot setback. The addition will be 5.71 feet from the side property line. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum side setback is 10 feet.

Background and Site Information: The subject lot is located on the south side of Greenlee Road, west of Condor Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 13,504 square feet and the house was constructed in 1976. The applicants propose to add a 484 square foot addition to the side of their existing house that will encroach 4.29 feet into a required 10 foot side setback and be 5.71 feet from the side property line. The applicants indicate that the topography limits the proposed addition's location on the lot. If the variance is granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Michael Lalama and Michelle Young for their testimony.

Michael Lalama, 5503 Greenlee Road, stated that they would like to build an accessory structure in their backyard for use by an elderly relative. Mr. Lalama stated that they intend on building the addition in-line with the design of the principle structure on the property and other homes in the neighborhood, however, the topography of their backyard property prohibits them doing so and threatens future complications if built within the required setback. Mr. Lalama added that they had reached out to adjacent neighbors and received their support.

Mr. Randolph asked for further details on the topography in the backyard and if there are plans to grade the land.

Mr. Lalama stated that they would grade the land immediately around the proposed addition.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Chair Necas moved that in BOA-23-51, Greenlee Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the topography limits the placement of any addition that is in line with the primary structure's design; (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 20 foot utility easement, 30 foot rear setback, and the topography of the lot limits the addition's placement; (3) The hardship is not the result of the applicant's own actions because the topography that limits the addition's placement is inherent to the lot; (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 in keeping with the primary structure's architecture and façade and add value to the property. Mr. Randolph seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None). Chair Necas stated the variance request was approved unanimously.

h. BOA-23-52: 1804 East Market Street (APPROVED)

Ms. Thiel stated in BOA-23-52, NC A&T Real Estate Foundation Inc., sole member of Bulldog Real Estate Holdings of East Greensboro LLC requests a variance to allow proposed buildings to be 75 feet in height when the maximum allowed height is 55 feet. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 9. The Land Development Ordinance references were Section 30-7-8.9(B)(1): Development and construction activity within a Pedestrian Scale Overlay District must conform to the adopted design guidelines for

the subject district (East Market Street Design Manual). East Market Street Pedestrian Scale Overlay Development Regulations (C)(4): The maximum building height shall not exceed 55 feet.

Background and Site Information: The subject lot is located on the south side of East Market Street, east of South Benbow Road, and is zoned UMU (University Mixed Use). Tax records indicate the corner lot contains approximately 7.15 acres and the buildings were constructed in 1974. In an effort to revitalize the East Market Street corridor, the applicant proposes to develop a mixed-use development on the subject property, starting with a 5-story office building to be occupied by Cone Health and North Carolina A&T State University. The applicant indicates that the proposed revitalization project will support public health, create new housing and stimulate employment opportunities in a vibrant, attractive and walkable setting. The dimensional requirements for the underlying UMU District do not restrict building height, but the adopted East Market Street Pedestrian Scale Overlay District, which encompasses the subject property, limits building height to 55 feet. To allow proposed buildings on the subject property to be up to 75 feet in height, the applicant seeks a variance to allow them to be 20 feet taller than the maximum 55 feet allowed. The applicant states that hardships result from the East Market Street Pedestrian Overlay, which was adopted over 20 years ago, and the railroad right-of-way located along the south side of the subject property. If the variance is granted, the applicant will proceed with the Technical Review Committee and building permit processes.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Kimberly Cameron and Jeff Sowers for their testimony.

Patrick Byker, 700 West Main Street, applicant's attorney, stated the variance request concerned increased building height and noted that, while the site is zoned University Mixed Use and has no building height limitation within that district, it also exists within the East Market Street Pedestrian Scale Overlay which restricts building height to 55 feet. He stated that the applicants request a variance that will increase the restriction by 20 feet, raising the allowed building height to no more than 75 feet.

Mr. Byker stressed that the height limitation of the overlay (and the associated East Market Design Manual) was archaic and did not reflect the current vision for how the surrounding area should be developed, having been implemented over two decades ago, adding that the requirement was incongruous to the permissions of University Mixed Use district. He stated the existing overlap of the site and the greater overlay, in addition to existing right-of-ways from a nearby railroad, prohibits construction of the proposed development in another location.

Mr. Byker presented on the proposed development on the site and spoke to its utility to the surrounding area (providing a primary healthcare facility as part of a partnership with Cone Health, creating housing, and creating employment opportunities in a vibrant setting and serving as the first step in a greater development of East Market Street).

Mr. Byker stated that the first two floors of the site would be occupied by Cone Health, while organizations affiliated with North Carolina A&T would occupy the top three floors.

Mr. Oliver asked if North Carolina A&T owned the land for the proposed site and asked about the status of the existing building (a church) on the site.

Kimberly Cameron, Bulldog Real Estate Holdings of East Greensboro LLC, 200 North Benbow Road, stated that the university owned the land and that the existing building would be removed, noting that the owners had already made plans to relocate. She also clarified the function of the proposed primary health care facility and the university organizations that would occupy the site, and

spoke further about future developments to the site that would include retail and high density mixed income housing

Mr. Oliver asked staff why the 55 foot height restriction was imposed on the East Market Street Pedestrian Scale Overlay.

Mr. Kirkman advised that the restriction was put in place to keep the scale of development in the area close to the street so as to not overpower pedestrians.

Mr. Randolph asked what the impact to the development would be if the variance were not granted.

Ms. Camera stated that denial of the variance would make the project unfeasible.

Jeff Sowers, CJMW Architecture, 22 Shady Oak Lane, stated that, aside from the height requirement, the development would adhere to the guidelines and intent of the East Market Street Pedestrian Scale Overlay

Mr. Barkdull clarified that the applicant was requesting a 24 month variance extension. Chair Necas stated that would be reflected in the board language.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Oliver moved that in BOA-23-52, 1804 East Market Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the desired and needed building will not be able to be built and, as a result, available services will be denied to North Carolina A&T and local residents; (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 East Market Street Pedestrian Scale Overlay District and a railway right of way that encumbers 24.7% of the property creates a unique obstacle; (3) The hardship is not the result of the applicant's own actions because Cone Health needs this place (Cone is not the applicant) and the 20 year old East Market Design Manual does not reflect current needs; (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 general welfare will be improved by health services for local residents. Mr. Oliver advised that this was a 24 month variance extension. Chair Necas seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None). Chair Necas stated the variance request was approved unanimously.

i. BOA-23-53: 2710 Koury Boulevard (APPROVED)

Mr. Kirkman stated in BOA-23-53, the Koury Corporation requests two variances: (1.) To allow drive through stacking lanes on a lot abutting an AO (Auto Oriented) District to be set back 5 feet from the property line when at least 30 feet is required and to waive the landscaping requirements of 30-8-10.4(l)(3)(b); (2.) To allow drive through stacking lanes within 50 feet and visible from the roadway to be setback 7 feet from the right-of-way along Koury Boulevard when at least 20 feet is required to waive the landscaping requirements of 30-8-10.4(l)(3)(c). Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance references were Section 30-8-10.4(l)(3)(b): Service areas and stacking lanes on lots abutting office and mixed-use zoning districts (including AO, UMU, NS and LIM) must be set back at least 30 feet and landscaped in accordance with the "B" buffer planting yard standards of 30-10-2.3. Section 30-8-10.4(l)((3)(c): If the service areas and stacking lanes are within 50 feet of and

visible from the roadway, they must be set back at least 20 feet from the right-of-way and landscaped in accordance with the "C" buffer planting yard standards of 30-10-2.3.

Background and Site Information: The subject lot is located on the east side of Koury Boulevard, south of West Gate City Boulevard, and is zoned AO (Auto Oriented). Tax records indicate the corner lot contains approximately 1.39 acres and the building was constructed in 2018. The applicant proposes to redesign the existing drive-through facility of the Chick-fil-A restaurant to accommodate two parallel stacking lanes to reduce the risk of stacking on Koury Boulevard. The proposed stacking lanes would be 7 feet from the western property line along the Koury Boulevard right-of-way, which encroaches 13 feet into a required 20 foot setback for stacking lanes that are within 50 feet of and visible from the roadway. The proposed stacking lanes would also be 5 feet from the interior eastern property line, which encroaches 25 feet into a required 30 foot setback for stacking lanes on lots abutting an AO (Auto Oriented) District. The applicant indicates that a hardship results from the location of existing improvements on the property and the property's size. As part of the request, the applicant also wishes to waive the landscaping requirements for the drive-through facility in the same areas where reduced setbacks are requested. If the variances are granted, the applicant will proceed with the Technical Review Committee and building permit processes.

Mr. Kirkman provided the land use and zoning for this property and surrounding properties, and noted the applicable plan.

Chair Necas asked the applicant to provide their name/address for the record and swore in Andre Linen and Eric Reichenbach.

Patrick Lineberry, 400 Bellemeade Street, applicant's attorney, posed several questions for Mr. Linen & Mr. Reichenbach, both engineers with Civil & Environmental Consultants, Inc. The questions spoke to the impact of the COVID-19 pandemic on dining habits of customers, specifically the increase in drive-through use, the benefit of a drive through at this site, hardships that may be incurred from strict application of the ordinance, and peculiarities of the lot that require the drive through to be built.

Mr. Randolph asked if the two lane stacking design of the proposed drive through was for entering and exiting traffic. Mr. Linen stated that it would be for entry and exit.

Mr. Randolph asked if an existing crosswalk in the area would be removed to make way for the two lane drive through. Mr. Linen stated that the crosswalk would be moved.

Mr. Oliver noted that many of the Chick-Fil-A locations he has seen around the city have two lane drive through. Mr. Linen stated that this has become an industry standard for new locations.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Ms. Rudd moved that in BOA-23-53, 2710 Koury Boulevard, based on the stated Findings of Fact, the special use permit be approved 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 drive through could not be built; (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 size of the property requires that the drive through be built in its proposed location; (3) The hardship is not the result of the applicant's own actions because the applicant would be able to make the needed updated to the drive-through without having to seek a variance from the setback requirement of the LDO; (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 a two lane driveway reduces the risk of traffic stacking into Koury Boulevard. Mr. Randolph seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None). Chair Necas stated the variance requests was approved unanimously.

OTHER BUSINESS

Chair Necas advised the Board needed to vote for the positions Chair and Vice-Chair.

Mr. Truby moved that Chair Necas and Vice-Chair Ramsey remain in their roles. Ms. Rudd seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Rudd, Oliver, Truby, Randolph, Barkdull; Nays: None).

Ms. Thiel noted that the next Board meeting would be on Tuesday, September 26th

There was no other business.

Chair Necas acknowledged the absence of Mr. Wright and Vice Chair Ramsey.

ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/hus

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
September 26, 2023**

The meeting of the Greensboro Board of Adjustment was held on Tuesday, September 26, 2023, at 5:39 p.m. in-person in the City Council Chamber. Board members present were: Chair Necas, Vice Chair Ramsey, Cory Randolph, Chuck Truby, Tifanie Rudd, Ted Oliver, and Deborah Bowers. City staff present were Shayna Thiel, Mike Kirkman, and Andrew Nelson (Planning Department), and Brent Ducharme (Assistant City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Ms. Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF MINUTES (August 28, 2023 Meeting)

Mr. Randolph made a motion to approve the August 28, 2023, minutes, seconded by Ms. Rudd.

The Board voted 7-0 in favor of the motion, (Ayes: Necas, Ramsey, Randolph, Truby, Rudd, Oliver, Bowers. Nays: none). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised there were no continuances or withdrawals.

Mr. Ducharme introduced himself as counsel for the city, sitting in for Emily Guarascio (Associate City Attorney). He advised that he would interject in the proceeding if testimony was delivered that, in case of an appeal, could create an issue for the superior court.

OLD BUSINESS

a. BOA-23-44: 2103 Mimosa Drive (APPROVED)

Ms. Thiel stated in BOA-23-44, James and Margaret Wynn request a variance to allow an existing addition to encroach 4 feet into a required 5 foot side setback. The addition is 1 foot from the side property line. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance references were Section 30-7-3.2 – Table 7-2: In the R-5 District the minimum side setback is 5 feet.

Background and Site Information: The subject lot is located on the west side of Mimosa Drive, north of Catalina Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 11,326 square feet and the house was constructed in 1956. Without obtaining a building permit, the applicants added a 240 square foot carport to their existing house that encroaches 4 feet into a required 5 foot side setback. On June 20, 2023, a zoning enforcement officer issued a Notice of

Violation advising that a variance and building permit were required to allow the carport to remain. To bring the property into compliance and remedy the Notice of Violation, the applicants applied for a variance within the required 30-day appeal period. If the variance is granted, the applicants will submit a residential building permit application.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in James and Margaret Wynn for their testimony.

Margaret Wynn, 2103 Mimosa Drive, stated that they were requesting a variance for an existing carport in their driveway. Without a garage on their property, Ms. Wynn stated that she and her husband built the carport on their own as a space to store their cars and protect them from inclement weather when moving between their house and their vehicles. She added that the irregular positioning of their driveway and property line provided no suitable location to erect the carport without encroaching on the five foot side setback, adding that one corner of the driveway already sits 22 inches from the property line.

Mr. Oliver asked if the carport was built on the existing driveway pad. Ms. Wynn clarified that it was.

Ms. Wynn stated that only a portion of the carport encroaches on the side setback, specifically the rear corner of the roof which sits 14 inches away from the property line. She stated that many homes in the neighborhood, some of which have carports, also suffer from irregular driveway and property line angles. She added that, had she been aware of the permit process before building the carport, they would have requested a variance before beginning construction.

Chair Necas asked if there was anyone else present to speak in support of the request and swore in Mark Gibb, Derick Shular, Christian Aaroe, Jeanne Aaroe, Matthew Wagener, Kelly Wagener, John Nicely, Naomi Niceley, Chris Nicely, and Mary Louise Pascavage for their testimony.

Chair Necas advised that not all of the speakers present had to give testimony to the Board should they choose to select a spokesperson. Mr. Shular acknowledged.

Derick Shular, 601 Candlewood, reiterated Ms. Wynn's comments and expressed support for the request on behalf of the speakers present.

Ms. Bowers asked how much of the carport encroached on the property line.

Mr. Wynn, citing images in Exhibit C, stated that the rear corner of the carport is 22 inches from the property line, but its roof juts out further and is 14 inches from the property line. He stated that the driveway and the property line run at an unusual angle to each other, such that the carport sits 7 feet from the property line at the front end (closest to Mimosa Drive) and 14 inches from the property line at the back end.

Ms. Bower asked how long the carport was. Mr. Wynn stated that it was about 20 feet long.

Ms. Bower asked where the encroachment began along that length. Mr. Wynn stated that it starts infringing on the side setback about 10 feet in.

Ms. Wynn reminded the Board that the infringement was on the required five foot side setback and not the property line. Ms. Bower acknowledged.

Mr. Wynn stated that the house on the opposite side of the property line was vacant and had been for several years.

Mr. Ducharme interjected, advising that Mr. Wynn's testimony on the occupancy of the neighboring house was not relevant to the scope of the request.

Naomi Nicely, 608 Shawnee Road, stated that the applicants already keep a well maintained yard and home and noted that the addition of a carport to their property would be in keeping with the character of the neighborhood.

Mr. Ducharme interjected, advising that Ms. Nicely's testimony on the aesthetic quality of the applicant's property was not relevant to the scope of the request.

Chair Necas asked if there was anyone to speak in opposition. Hearing none, she closed the public hearing and went to a motion.

MOTION

Mr. Ramsey moved that in BOA-23-44: 2103 Mimosa Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because they must remove a carport they constructed on their own; (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 uniquely shaped and it is not possible to construct a carport over the existing driveway pad without encroaching on the side setback; (3) The hardship is not the result of the applicant's own actions because the applicant was not a construction professional, and thus did not know the permit requirements, and the house and driveway were built in 1956 before the LDO; (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 is not visible and is similar to many in the neighborhood so there is no adverse public impact. Mr. Truby seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Necas, Ramsey, Randolph, Truby, Rudd, Oliver, Bowers. Nays: None). Chair Necas stated the variance request was approved unanimously.

OTHER BUSINESS

Ms. Thiel acknowledged the service of Mr. Wright, noting that he will be resigning. She advised that his replacement would be appointed at the next City Council meeting.

ADJOURNMENT

The meeting was adjourned at 6:00 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/hus

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
OCTOBER 23, 2023**

The meeting of the Greensboro Board of Adjustment was held on Monday, October 23, 2023, at 5:30 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice-Chair Vaughn Ramsey, Cory Randolph, Ted Oliver, Stephen Barkdull, and Drew Wofford. City staff present were Shayna Thiel and Mike Kirkman (Planning Department), and Tony Baker (Chief Deputy City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Ms. Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

APPROVAL OF THE MINUTES (September 26, 2023 Meeting)

Mr. Ramsey made a motion to approve the September 26, 2023, minutes, seconded by Mr. Oliver.

The Board voted 4-0-2 in favor of the motion, (Ayes: Necas, Ramsey, Oliver, Randolph, Nays: None; Abstention: Barkdull, Wofford). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

Mr. Baker introduced himself as counsel for the city, sitting in for Emily Guarascio (Associate City Attorney). He advised that he would interject in the proceeding if testimony was delivered that, in case of an appeal, could create an issue for the superior court.

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised that BOA-23-43 has been continued to the December 11th regular meeting, and BOA-23-58 has been continued to the November 27th regular meeting.

NEW BUSINESS

a. BOA-23-54: 602 Crestwood Drive (APPROVED)

Ms. Thiel stated in BOA-23-54, Michael Crawford requests a variance to allow the building coverage of all accessory structures on the lot to be 808 square feet when no more than 600 square feet is allowed. 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 30-8-11.1(A)(3): In R (residential) districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater.

Background and Site Information: The subject lot is located on the north side of Crestwood Drive, east of Gracewood Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 10,454 square feet and the house was constructed in 1957. The applicant proposes to construct an 808 square foot accessory structure, including an enclosed workshop and lean-to storage area, which will meet setback and separation requirements. Because the building coverage of the proposed accessory structure exceeds the maximum 600 square foot allowed, the applicant seeks a variance to allow

for 208 additional square feet. 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 the applicable overlays.

Mr. Baker advised that letters from neighbors presented in opposition are hearsay and should not be considered by the Board. He respectfully requested the Board only consider sworn testimony going forward. He advised that the Board operates in a quasi-judicial capacity and that its proceedings were not akin to a public hearing, adding that it is within the Board's discretion to discontinue testimony it deems incompetent or inadmissible for the sake of the record. Mr. Baker noted that personal circumstance, e.g. personal animosity between neighbors, should be considered irrelevant to the Board's deliberation.

Mr. Ramsey asked if staff would include letters in its material for the Board going forward. Mr. Kirkman stated that they would no longer include letters.

Mr. Oliver asked if there was a list of material or evidence that the Board should disregard in their deliberation. Mr. Baker stated that relevant material and evidence would depend on the variance being requested.

Mr. Baker advised that, with only six members, all variance approvals would need unanimous approval from the Board. He also noted that if one Board member has decided that the applicant has not met the burden for approval after their testimony, they can move to deny their request without having to hear testimony from the opposition.

Chair Necas acknowledged and asked the applicant to provide their name/address for the record and swore in Michael Crawford for his testimony.

Michael Crawford, 602 Crestwood Drive, stated that he is requesting a variance to allow a roof extension on a proposed workshop in his backyard. He stated that the workshop will be 512 square feet on concrete foundation with no plumbing or wiring and that he would like to build an 8x32 lean-to roof extending from the rear of the structure, under which he would store recreational equipment. This lean-to roof would increase the square footage of the structure to 808 square feet, exceeding the 600 square foot maximum. Mr. Crawford added that roof would not enlarge the structure itself and that below it would remain 512 square feet.

Mr. Wofford asked if there was anything unique about the subject property. Mr. Crawford stated that there was a distorted right angle at the rear of the property line and two utility easements that cut diagonally from the principal structure to the rear of the property.

Mr. Randolph asked where the applicant would store his belongings if he couldn't not build the lean-to roof. Mr. Crawford stated he would likely store them under an existing overhang on the principal structure or under a deck, the latter of which is already full.

Chair Necas asked if the staff included the property owner's deed as part of its evidence. Ms. Thiel advised that the information was not available from county records.

Chair Necas asked how long has Mr. Crawford had owned the property. Mr. Crawford stated he purchased the property in 1978.

Chair Necas, citing the relatively small size of the principal structure, asked Mr. Crawford where else he planned store his belongings on the property if he could not build the roof extension. Mr. Crawford stated that he has an unfinished basement that is already full of other belongings and equipment.

Mr. Randolph clarified that Mr. Crawford needed expandable space which he does not currently have due to the size of his home.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to Board discussion.

Mr. Ramsey expressed his intention to approve the request, citing the fact that the applicant's house was too small to accommodate his storage needs.

Mr. Randolph expressed his intention to approve the request, reiterating Mr. Ramsey's comments and stating that living conditions and storage requirements have clearly changed since the time of the property's construction. He added that Mr. Crawford has maximized the usable space within his home and would need more space to make reasonable use of his property. He also noted that the lack of opposition indicated to him that variance approval would be in harmony with public safety.

MOTION

Mr. Wofford moved that in BOA-23-54, 602 Crestwood Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because would not be able to store his items on his property; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the layout of his property is not completely square and there are power lines in the rear; (3) The hardship is not the result of the applicant's own actions because the ordinance existed before he started construction of the shed and the building was built a long time ago and is small; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because there would be no impact to public view and the structure would be in harmony with the neighborhood. Mr. Randolph seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Ramsey, Randolph, Oliver, Barkdull, Wofford; Nays: None). Chair Necas stated the variance request was approved unanimously.

b. BOA-23-55: 3106 Madison Avenue (DENIED)

Ms. Thiel stated in BOA-23-55, Robert and Susan Tayloe request three variances: (1) To allow the building coverage of all accessory structures on the lot to be 1,998 square feet when no more than 1,408 square feet is allowed; (2) To allow an expanded accessory structure to encroach 1 foot into a required 3 foot side setback, the accessory structure will be 2 feet from the side property line; (3) To allow an expanded accessory structure to be 7 feet from another structure on the lot when at least 10 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 references were Section 30-8-11.1(A)(3): In R (residential) districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater, Section 30-8-11.1(C)(2): Accessory structures must be setback at least 3 feet from side and rear lot lines, and Section 30-8-11.1(E)(2): Accessory structures 600 square feet or larger must be separated by at least 10 feet from any other structure on the site.

Background and Site Information: The subject lot is located on the north side of Madison Avenue, east of East Avalon Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 18,295 square feet and the house was constructed in 1953. The applicants propose to construct a 330 square foot carport addition to their existing detached garage. The building coverage of the expanded accessory structure exceeds the maximum 1,408 square foot allowed, so the applicants seek a variance to allow for 590 additional square feet. Additionally, the expanded accessory structure will encroach 1 foot into a required 3 foot side setback and be only 7 feet from the house when at least 10 feet is required so the applicants are also seeking variances to address these issues. If the variances are granted, the applicants 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 Necas asked the applicant to provide their name/address for the record and swore in Robert Tayloe for his testimony.

Robert Tayloe, 3106 Madison Avenue, stated that he is requesting three variances to allow construction of a carport on his property. He presented illustrative images and site plans of the proposed carport and its relation to the property line and principal structure. He reiterated the rationale behind each of the three variances in reference to presented images.

Mr. Tayloe noted that building the carport in accordance with the side setback requirements would place a support post such that it would be an impediment from backing in and out of the garage. He added that a utility easement prohibited them from building a carport that would meet the requirement that the expanded accessory structure be at least 10 feet from another structure.

Mr. Tayloe stated the carport would also serve as a supplement to a 7 foot brick wall that was built on their property to attenuate nuisances from construction and other activities on the neighboring property at 3108 Madison Avenue (construction of an unsightly 12 foot brick wall, installation of pool filters and HVAC units that create noise and installation of a surveillance camera facing their driveway).

Mr. Baker objected, advising that the issue before the Board was not why the applicant wanted to build the carport, but rather the rationale behind the requested variances.

Mr. Randolph acknowledged Mr. Baker's comment and suggested that the brick wall built by the applicant along their side property line and its justification as a buffer against the nuisances from the neighboring property may have relevance to the side setback requirement.

Mr. Tayloe engaged the Board in an extended discussion about acoustics and whether the carport would act as a sufficient buffer to the nuisances.

Chair Necas asked if there was anyone to speak in opposition and swore in David and Anna Caton.

Peter Isakoff, 109 Westchester, Williamsburg, VA, attorney for David and Anna Caton, prepared a presentation on his clients' opposition to the variance requests.

Mr. Ramsey, noting that Mr. Isakoff's address was listed in Virginia, asked if he was licensed to practice in North Carolina. Mr. Isakoff affirmed that he was licensed to practice in North Carolina.

Mr. Baker advised that it would be inappropriate, in the context of a quasi-judicial proceeding, for Mr. Isakoff to present new evidence as part of his opening testimony. He suggested that the witnesses, his clients, should speak to the evidence first and that Mr. Isakoff may provide a summation of evidence or an argument afterwards.

Mr. Ramsey clarified the procedures for testimony and asked if Mr. Isakoff could lead the witnesses through the presentation. Mr. Baker advised that it would be permissible.

As the presentation was submitted, Mr. Baker asked the Board to review it in case it contained prejudicial information.

Mr. Isakoff acknowledged and began leading David Caton through the presentation.

David Caton, 3108 Madison Avenue, stated that he is opposed to the variance requests and expressed disapproval with the construction of the carport. He also refuted Mr. Tayloe's framing of the nuisances generated by the activity on his property.

Mr. Baker objected, reminding Mr. Caton that a carport was a valid use in the area and to keep his testimony within the scope of the variance requests.

Mr. Ramsey reminded Mr. Caton what the criteria for the Board's consideration were.

Peter Isakoff, 109 Westchester, on behalf of David and Anna Caton, asked Mr. Caton if he was aware of and could describe the variances requested by the applicant. Mr. Caton stated that he was aware of them and described them.

Mr. Isakoff asked if, to his understanding, approval of the variances would be injurious to his property and/or improvements within the vicinity of the subject property. Mr. Caton stated he did believe approval of the variances would be injurious, citing concern about fire damage.

Mr. Isakoff asked Mr. Caton to speak to any concerns about water damage. Mr. Caton stated he was concerned about drainage from the carport's roof and whether it would drain over the wall along their shared property line and into his property.

Mr. Baker objected, cautioning the Board that concerns about fire damage, water damage, and rooflines were not relevant issues. He reminded the Board that the location of the carport's support poles, the size of the roof, and location of the carport relative to the principal structure were at issue.

Mr. Isakoff asked Mr. Caton if he understood that the burden was on the applicant to show why a variance was necessary. Mr. Caton stated that he did.

Mr. Isakoff asked Mr. Caton to confirm the dimensions of the applicant's primary residence, the existence of a garage on the subject property, and evidence of the applicant trespassing on their property.

Chair Necas asked if any of the evidence given thus far was admissible. Mr. Baker advised that it was not. He corrected an earlier statement regarding concerns about the carport's roofline, clarifying that it could be raised in opposition to the side setback variance.

Chair Necas advised Mr. Isakoff to focus their opposition to the criteria outlined in the Board's motion language.

Mr. Randolph clarified that the opposition only had to show that the applicant did not meet the burden of proof for one of the four criteria outlined in the motion language. Mr. Baker affirmed and stated that Mr. Isakoff could present evidence as part of an argument for why the applicant did not meet that burden of proof.

Mr. Isakoff asked Mr. Caton to speak on concerns about how construction of the carport would be injurious to his property based on nuisances generated by the applicant's behavior and previous construction along their shared property line. Mr. Caton also spoke to disagreements on the measurements of their shared property line.

Staff and members of the Board objected at several points during the testimony, citing speculative evidence.

Mr. Wofford clarified that the carport is allowed by right but the applicant would not be able to build a functional one if they adhered to the ordinances.

Mr. Kirkman reiterated this and reminded the Board that the issue before them was whether a variance should be granted based on the relevant evidence.

Mr. Isakoff asked Mr. Caton to speak on whether the carport would contribute to the general well-being of the neighborhood. Mr. Caton stated that the carport would be out of line with the character of the neighborhood, noting that there were few houses with carports and none nearby with a similar design.

Mr. Baker asked the Board to pause as he consulted with staff. He then objected, stating that whether or not other houses in the area had a carport was not germane to the Board's consideration.

Mr. Ramsey stated that he believed Mr. Isakoff's testimony was addressing one of their motion criteria (whether the variance was in harmony with the general purpose and intent of this ordinance).

Mr. Baker deferred to the Board as to whether they would like to hear the rest of the testimony, but cautioned against considering objections related to what residents in the neighborhood find appealing or what exists in the neighborhood.

Mr. Isakoff prepared to rebut the applicant's testimony regarding the nuisances.

Mr. Baker advised the Board that they had dismissed the applicant's testimony regarding the nuisances and noted that the record would be tainted if they permitted Mr. Isakoff's rebuttal.

Chair Necas acknowledged and advised Mr. Isakoff that they could not admit further evidence regarding the nuisances.

Mr. Isakoff asked if they could acknowledge the Board's dismissal and note that they had additional information to present. Mr. Ramsey stated that the record would note their acknowledgement and that it could be used for appeal in the event of an unfavorable decision.

Mr. Isakoff asked the Board to consider why the applicant wanted to build the carport, particularly one that is not in compliant. He suggested that the nuisances put forward by the applicant were not significant by his estimation.

Chair Necas asked if the applicant would like to speak in rebuttal to the opposition's testimony.

Mr. Kirkman reminded Mr. Tayloe to keep his testimony relevant to the scope of the Board's consideration.

Mr. Tayloe reiterated his desire to build the carport as a buffer for the nuisances mentioned earlier and to improve enjoyment of their property.

Mr. Oliver asked if Mr. Tayloe would build a carport of a smaller size if the variance was denied. Mr. Tayloe stated that he would take action after consulting with relevant parties (e.g. architects, builders).

Mr. Ramsey asked Mr. Tayloe to speak on the hardships he would experience if the variance was denied. Mr. Tayloe stated he would not be able to enjoy his property and that the carport would not be functional if he was required to build it in accordance with the ordinance.

Mr. Ramsey asked if these hardships were unique to the property, citing the nuisances and setback issues generated by the brick wall. Mr. Tayloe affirmed that they were.

Mr. Randolph asked Mr. Tayloe to clarify how the variance would help alleviate potential hardships considering there were available alternatives that would allow him to build the carport while remaining in compliance with the ordinances.

Mr. Tayloe stated that he was certain that alternatives existed that would allow him to build the carport without the variances, but could not speak to them specifically.

Mr. Randolph asked if Mr. Tayloe had brought any material from the acoustic consultant he hired to assess the noise nuisance from the neighboring property. Mr. Tayloe stated that he did not.

Chair Necas asked if there were any further questions for the applicant. Hearing none, she closed the public hearing and went to Board discussion.

Mr. Ramsey asked staff if they could consider the noise nuisance in their decision.

Mr. Baker advised the Board that, based on his understanding of Mr. Tayloe's testimony, there are two hardships. The first hardship is the existing configuration of the principal structure and the orientation of the garage relative to the side property line, both of which would require the support posts to be located in such a way that the carport would be less functional. The second hardship is the nuisances, and he could not speak to whether it was necessary for the Board to consider them.

Mr. Kirkman cautioned that there was no independent verification of the noise (e.g. documents from acoustic consultant) and noted that complaints about noise are often subjective.

Mr. Ramsey asked if the Board could take judicial notice of the fact that a primary cause of the applicant's desire to build a carport, and thus their request for a variance, related to the nuisances.

Mr. Baker advised that the Board received opinion evidence from the applicant that the carport would act as a buffer from the nuisances. The Board is able to consider that evidence but the driving factor should be whether hardship is incurred based on the layout of the property.

Mr. Randolph stated that, although the Board was not the proper forum for nuisance complaints, it would be reasonable to consider it a hardship unique to the subject property, noting that they are not obliged to consider it as substantial enough to approve or deny the variance.

Mr. Oliver clarified that the Board was not the correct forum to address noise complaints.

Chair Necas noted that noise complaints do arise in some cases (e.g. drive-through stacking lanes).

Mr. Baker advised that nuisances are not inherently related to the variance requests in this case and suggested that the Board ignore all the evidence related to the animosity between the applicant and the opposition, and only consider the question of hardships as it relates to the layout of the property.

Chair Necas asked staff if, as a matter of procedural efficiency, they should make a motion to approve or deny the request. Mr. Baker clarified that he could not advise the Board on that matter.

Mr. Ramsey stated that without the consternation between the applicant and their neighbors, he believes that the Board would have likely supported approval of the variances.

Mr. Wofford stated that the applicant had put a lot of effort in their design of the carport and noted that the layout of the property left them no suitable location to build it without the variance.

Mr. Oliver suggested that a redesign may allow them to build a functional carport that adheres to the ordinances.

Chair Necas requested a motion.

MOTION

Mr. Oliver clarified that the following motion was to deny all three variances.

Mr. Oliver moved that in BOA-23-55, 3106 Madison Avenue, based on the stated Findings of Fact, the Zoning Enforcement Officer be upheld and the variances denied based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will not result to the property by applying strict application of the ordinance because a carport is already allowed by right in the district should they comply with the ordinance; (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 applicant did not convincingly demonstrate a hardship that needs to be repaired; (3) The hardship is not the result of the applicant's own actions because they can design a different carport. Mr. Randolph seconded the motion.

The Board voted 2-4 in favor of the motion, (Ayes: Barkdull, Oliver; Nays: Necas, Ramsey, Randolph, Wofford). Chair Necas stated the motion to deny did not carry.

Mr. Baker advised the Board to make a motion in the affirmative for approval, noting that a non-unanimous approval would be an effective denial of the request.

MOTION

Mr. Ramsey moved that in BOA-23-55, 3106 Madison Avenue, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because if the applicant wants to build a carport this is the only place they could build it, a variance must be granted to allow the posts to encroach within the setback requirements to have a functional 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 applicant wants to mitigate noise from the neighboring lot, a carport would help; (3) The hardship is not the result of the applicant's own actions because it is in response to the actions of neighbors, noise etc.; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because no harm to public safety will result also the carport will not be visible from the street. Additionally, not granting the variance will make the carport less functional as the posts will block vehicle entry and cut against an existing electrical line. Mr. Randolph seconded the motion.

Mr. Kirkman clarified that the current motion was to approve all three variances.

The Board voted 4-2 in favor of the motion, (Ayes: Necas, Ramsey, Wofford, Barkdull; Nays: Randolph, Oliver). Without a unanimous affirmative vote, Chair Necas stated the variance requests were denied.

Mr. Randolph asked if the Board could vote to approve each variance individually. Mr. Kirkman advised that it was within the Board's discretion to do so.

Mr. Randolph moved to approve consideration of each variance separately, seconded by Chair Necas. The Board voted 6-0 in favor of the motion, (Ayes: Necas, Ramsey, Wofford, Barkdull, Randolph, Oliver; Nays: None). The motion passed unanimously.

The Board discussed which of the three variances had unanimous support among them and prepared to vote on variance 3, which was to allow an expanded accessory structure to be 7 feet from another structure on the lot when at least 10 feet is required.

Mr. Kirkman and Ms. Thiel advised that denial of the square footage variance (variance 1) would prohibit the construction of the carport in the first place, negating the approval of the other two variances.

The Board acknowledged and advised that the previous motion including the three variance requests stands and that they were denied.

Chair Necas advised there would be a 10 minute break and resumed the meeting after the break.

Mr. Ramsey asked staff how the Board should proceed in cases where the applicant may have already begun construction.

Mr. Baker advised the Board to consider approval of a variance in such cases based on pre-construction (e.g. approach the case as if construction had not occurred). Mr. Baker acknowledged that handing down a decision under these circumstances may be difficult, but the problem of the applicant having to conform to the ordinance by tearing down or relocating a structure should not factor into the Board's deliberation.

c. BOA-23-56: 2325 Newton Street (APPROVED)

Ms. Thiel stated in BOA-23-56, Juan Luis Valadez Padilla requests two variances: (1) To allow the building coverage of all accessory structures on the lot to be 651 square feet when no more than 600 square feet is allowed; (2) To allow an existing accessory structure to encroach 9 feet into a required 10 foot side setback. The accessory structure is 1 foot from the side property line. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.1(A)(3): In R (residential) districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater, and Section 30-8-11.1(C)(2): In R districts, accessory structures over 15 feet tall must be setback at least 10 feet from side and rear lot lines.

Background and Site Information: The subject lot is located on the south side of Newton Street, east of Creek Ridge Road, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 17,933 square feet and the house was constructed in 1945. Without obtaining a building permit, the applicant started construction of an accessory structure, including a garage and covered storage area, which exceeds the maximum allowed building coverage and encroaches into a required side setback. The applicant indicates that the existing carport and storage shed will be removed once the new accessory structure is completed. The building coverage of the new accessory structure alone is 651 square feet when no more than 600 square feet is allowed, and the overhanging roof of the accessory structure is 1 foot from the side property line when at least 10 feet is required. The applicant seeks variances to remedy these issues and complete construction of the new accessory structure. If the variances are 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 Necas asked the applicant to provide his name/address for the record and swore in Juan Luiz Valdez Padilla for his testimony and Marisol Flores as his interpreter.

Mr. Baker advised that Ms. Flores was not an authorized court interpreter and asked that she provide Mr. Padilla's testimony without omission or paraphrasing.

Marisol Flores, 2325 Newton Street, stated that Mr. Padilla is requesting a variance to complete construction of a 21x21 storage garage. He would like to use the space to store work materials (e.g. lawnmowers and tools).

Mr. Ramsey asked if the applicant was building the proposed accessory structure on his own. Ms. Flores stated that he is building it with help from his work colleagues.

Mr. Ramsey asked if the applicant or his colleagues were aware of the Land Development Ordinance requirements on square footage and setbacks for accessory structures. Ms. Flores stated that he was not aware of the ordinances or the requirement to obtain a building permit before beginning construction of the accessory structure.

Chair Necas asked where the applicant was currently storing his work materials. Ms. Flores stated he was storing them in an 8x8 storage shed and under a carport adjoining the proposed accessory structure.

Chair Necas asked if the proposed accessory structure would better accommodate the applicant's storage needs. Ms. Flores affirmed that it would.

Mr. Wofford asked if the carport protected the applicant's property from the elements. Ms. Flores stated that it did not.

Mr. Oliver asked for clarification as to whether the proposed accessory structure already existed. Ms. Thiel advised that the applicant had already begun construction of the proposed accessory structure without obtaining a building permit.

Chair Necas clarified that the carport would be removed and that the requested variances were for the proposed accessory structure only.

Mr. Randolph asked if the concrete foundation of the carport would be extended into the proposed accessory structure.

Ms. Flores stated that there was some concrete from the carport that was spread into the proposed accessory structure, but affirmed that it would have its own foundation.

Mr. Barkdull asked if the applicant was removing the carport to remain in compliance with the ordinance. Ms. Flores stated that he was.

Mr. Kirkman advised the Board that the figure of 651 feet at the center of the variance request assumed the removal of the carport.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Ramsey moved that in BOA-23-56, 2325 Newton Avenue, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant would not be allowed to build a new garage in the most logical place, aligned with the existing driveway; (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 proposed location for the new garage is the only logical location on the lot; (3) The hardship is not the result of the applicant's own actions because the applicant was doing his own work and was not aware of the various restrictions and the Board would have granted this variance if the applicant had applied before construction; (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 is consistent with the surrounding neighborhood and would increase property tax values.

Mr. Randolph seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Ramsey, Randolph, Oliver, Barkdull, Wofford; Nays: None). Chair Necas stated the variance request(s) were approved unanimously.

d. BOA-23-57: 203 Summerwalk Road (APPROVED)

Ms. Thiel stated in BOA-23-54, Jeffrey Hawkins requests a variance to allow a proposed addition to encroach 3 feet into a required 20 foot rear setback. The addition will be 17 feet from the rear property line. Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-7-3.2(A)(2): Single-family detached dwellings constructed within cluster subdivisions with a preliminary plat approved prior to June 30, 2011, shall comply with the dimensional standards of the R-5 zoning district, and Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum rear setback is 20 feet.

Background and Site Information: The subject lot is located on the north side of Summerwalk Road, north of North Church Street, and is zoned R-3 Cluster (Residential Single-Family). Tax records indicate the lot contains approximately 10,019 square feet and the house was constructed in 2015. Because Townsend Point is identified as a cluster subdivision on the recorded plat, R-5 dimensional requirements apply to the subject lot instead of R-3 requirements. The applicant proposes to construct a sunroom addition on the back of the existing house that will encroach 3 feet into a required 20 foot rear setback and be 17 feet from the rear property line. 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 Necas asked the applicant to provide his name/address for the record and swore in Jeffrey Hawkins for his testimony.

Jeffrey Hawkins, 203 Summerwalk Road, stated he is requesting a variance to convert an existing covered porch into a sunroom to provide an indoor play space for his children. He planned on expanding the porch by 3 feet to mitigate a steep slope at the rear of the property, however, in doing so he was unaware that the porch had already been built up to the required 20 foot rear setback.

Mr. Ramsey clarified where the proposed sunroom would begin and end in relation to the principal structure.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Barkdull moved that in BOA-23-57, 203 Summerwalk Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because strict application would require additional undue expenses due to the size, shape, and placement of the house on the triangular lot; (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 is zoned R-3 Cluster Residential but must comply with the setback requirements of R-5 that requires a 20 foot rear setback; (3) The hardship is not the result of the applicant's own actions because the house was constructed in 2015 and purchased by the applicant in 2021 after house placement on the triangular lot was determined; (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 planned sunroom addition would match the characteristics of the neighborhood and promote the spirit of the ordinance. Mr. Randolph seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Ramsey, Randolph, Oliver, Barkdull, Wofford; Nays: None). Chair Necas stated the variance request was approved unanimously.

e. BOA-23-59: 7807 Airport Center Drive (APPROVED)

Mr. Ramsey asked to be recused for this case, citing the fact that he is law partners with counsel for the applicant. Chair Necas made a motion for Mr. Ramsey to be recused, seconded by Mr. Randolph. The Board

voted 5-0 in favor of the motion, (Ayes: Necas, Randolph, Oliver, Barkdull, Wofford; Nays: None). Chair Necas stated the motion carried unanimously.

Ms. Thiel stated in BOA-23-59, Branch Banking and Trust Company requests a variance to allow two freestanding signs along the northern frontage of Airport Center Drive between Corsair Lane and North Regional Road when only one is allowed. Evidence provided by the applicant included Exhibits A through E. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-14-7.3 – Table 14-2: In the BP District, the maximum number of freestanding signs is one per lot frontage.

Background and Site Information: The subject lot is located on the east and south sides of Airport Center Drive, west of North Regional Road, and is zoned BP (Business Park). Tax records indicate the lot contains approximately 62.4 acres. Because of the configuration of Airport Center Drive curving around the subject property as both the west and north boundaries, the Zoning Administrator determined it to have two lot frontages, one from Cornerstone Drive to Corsair Lane and one from Corsair Lane to North Regional Road. In the BP District, only one freestanding sign is allowed per lot frontage. The applicant is currently installing a freestanding sign between Corsair Lane and North Regional Road and proposes to install another one, which triggers the need for a variance. If the variance is granted, the applicant will proceed with the sign permit process.

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

Chair Necas asked staff to clarify the nature of the variance request and why, in reference to the staff report, the subject property had two lot frontages.

Mr. Kirkman clarified that, because Airport Center Drive circles around most of the subject property, he determined that the subject property had two lot frontages stretching from Cornerstone Drive to the intersection of Corsair Lane and Airport Center Drive, and another from the intersection of Corsair Lane and Airport Center Drive to North Regional Road. The applicants are allowed to build one sign on either of those frontages and are now requesting a variance to build a second sign on one of them.

Chair Necas asked the applicant to provide their name/address for the record and swore in Thomas Clarke for his testimony.

Patrick Lineberry, 400 Bellmeade Street, attorney for Branch Banking and Trust Company, stated that the applicant is requesting a variance to add an additional sign to accommodate an expansion to the BB&T Leadership Institute and adjoining Truist offices. The expansion of the facilities will see the construction of two new buildings, one of which will require a new sign to demarcate its location. Mr. Lineberry, speaking to the hardship resulting from not having an additional sign, stated that visitors to the expanded facilities coming from either Cornerstone Drive or North Regional Road would have to drive nearly half the length of Airport Center Drive before they saw a sign for the new entrance.

Mr. Oliver clarified the location of the expanded facility relative to the sign locations in Exhibit C.

Thomas Clarke, 511 Maple Ridge Circle, Salisbury, introduced himself as the sign contractor. Referring to Exhibit C, he stated there are two signs with different branding across the subject property, one for the BB&T Leadership Institute and another for the Truist offices. There is an existing sign near Corsair Lane for the original BB&T Leadership Institute (3 on Exhibit C) and another on North Regional Road for the Truist offices (2 on Exhibit C). A sign for the expanded BB&T Leadership Institute has been permitted on one of the subject property's lot frontages (1 on Exhibit C) and a variance is being requested for another sign for the expanded Truist offices on that same lot frontage (4 on Exhibit C). He added that the differences in branding would make it difficult, if looking at a sign for the BB&T Leadership Institute, to tell that you were at a Truist facility and vice versa.

Mr. Lineberry stated that the curvature of the road makes it very difficult to see a change in signage further ahead. He added that the applicant reached out to neighbors and received no opposition to the request.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and went to a motion.

MOTION

Mr. Randolph moved that in BOA-23-59, 7807 Airport Center Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because visitors, employees, and other users of the property may get lost and confused when trying to locate the Truist building or the Truist Leadership Institute 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 the need for additional signage without the frontage [sic] results from the curvature of the land on which the buildings are location, and additionally the curvature of the roadway making it difficult to see signage at the slotted entrances for the property; (3) The hardship is not the result of the applicant's own actions because the topography of the land as acquired existed prior to the acquisition, and the road was built by the city in conformance with the need and/or property design; (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 visible signage would allow for clear entry and exit from the property and provides for safe navigation for traffic on Airport Center Drive and traffic exiting the property and would improve the property outlay. Mr. Oliver seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Ramsey, Randolph, Oliver, Barkdull, Wofford; Nays: None). Chair Necas stated the variance request was approved unanimously.

OTHER BUSINESS

Staff acknowledged the absence of Mr. Truby and Ms. Rudd and welcomed Mr. Wofford as the Board's newest member.

Mr. Baker, drawing a distinction between the permitted testimony of Mr. Lineberry and the conditioned testimony of Mr. Isakoff, stated that Mr. Lineberry presented an argument based on evidence already before the Board while Mr. Isakoff was presenting new testimony as a witness and was thus required to deliver his testimony via questions to the applicant.

There was no other business.

ADJOURNMENT

The meeting was adjourned at 8:23 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/hus

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
NOVEMBER 27, 2023**

The meeting of the Greensboro Board of Adjustment was held on Monday, November 27, 2023, at 5:30 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Vaugh Ramsey, Chuck Truby, Cory Randolph, Ted Oliver, and Drew Wofford.

City staff present were Shayna Thiel, Mike Kirkman (Planning Department) and Tony Baker (Chief Deputy City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Ms. Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

Chair Necas advised that all testimony and evidence from applicants or opposition speakers must be relevant to the case(s) before the Board and the four criteria it uses to make decisions. She added that, going forward, if a member of the Board would like to allow immaterial testimony or evidence to be entered, they must make a motion for its admission.

Mr. Baker clarified the nature of their objections during testimony. He stated that consideration of testimony is within the Board's discretion, and that objections by the City Attorney's Office are merely recommendations on how the Board should approach irrelevant or inappropriate testimony for the sake of the record. He added that general practice with immaterial testimony is that the Chair rules to admit or deny it, and any Board members who feel otherwise can put their option into a motion for vote. He added that the Board's vetting of irrelevant testimony should also be done to limit the length of proceedings, reiterating that relevance is determined by the Board.

Chair Necas acknowledged and stated that she would defer to any member of the Board that disagrees with her ruling on the relevance of testimony.

Mr. Ramsey asked if other members of the Board can determine whether testimony is irrelevant. Mr. Baker stated that they could, adding that it is also with in the Board's discretion to stop testimony.

APPROVAL OF MINUTES (October 23, 2023 Meeting)

Mr. Ramsey made a motion to approve the October 23, 2023, minutes, seconded by Mr. Randolph.

The Board voted 5-0-1 in favor of the motion, (Ayes: Necas, Ramsey, Randolph, Oliver, Wofford; Nays: none; Abstention: Truby). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

Mr. Baker introduced himself as counsel for the city, sitting in for Emily Guarascio (Associate City Attorney). He advised that he would interject in the proceeding if testimony was delivered that, in case of an appeal, could create an issue for the superior court.

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised that BOA-23-58 and BOA-23-61 has been removed from the agenda and continued to the December 11th regular meeting.

NEW BUSINESS**a. BOA-23-60: 2224 West Florida Street (APPROVED)**

Mr. Ramsey asked to be recused for this case, as he is law partners with counsel for the applicant. Chair Necas made a motion for Mr. Ramsey to be recused, seconded by Mr. Randolph. The Board voted 5-0-1 in favor of the motion, (Ayes: Necas, Randolph, Truby, Oliver, Wofford; Nays: none; Abstention: Ramsey). Chair Necas stated the motion carried unanimously.

Ms. Thiel stated in BOA-23-60, Habitat for Humanity of Greater Greensboro Inc. requests a variance to allow a proposed house to encroach 5 feet into a required 41 foot front setback. The house will be 36 feet from the front property line. Evidence provided by the applicant includes Exhibits A and B. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average setback that exists on the lots on either side of the subject lot.

Background and Site Information: The subject lot is located on the north side of West Florida Street, east of Rainbow Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the undeveloped lot contains approximately 8,276 square feet. Based on the average front setback calculations using 2222 West Florida Street and 2212 West Florida Street, the applicable front setback for the subject property is 41 feet. The applicant proposes to construct a new house on the lot that will encroach 5 feet into the required front setback and be 36 feet from the front property line. The applicant indicates that the small lot size makes it difficult to build the proposed house further back on the lot. 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in Justin Heyward for his testimony.

Benjamin Hintze, 400 Bellemeade Street, Suite 800, attorney for Habitat for Humanity of Greater Greensboro Inc., stated that he was going to ask questions to Mr. Heyward as sole witness to establish the necessary findings of fact.

Mr. Hintze asked Mr. Heyward to state his job title.

Justin Heyward, 511 Lake Boone Trail, Raleigh, stated that he was Director of Construction for Habitat for Humanity.

Mr. Hintze asked what Mr. Heyward's responsibilities were as part of his job. Mr. Heyward stated that he was generally required to supervise any construction related projects.

Mr. Hintze clarified that Mr. Heyward was responsible for figuring out how to build a house for Habitat for Humanity on the subject property. Mr. Heyward affirmed that he was.

Mr. Hintze, establishing hardship from strict application of the ordinance, asked if there was a set number of floor plans that Habitat for Humanity builds its homes from. Mr. Heyward stated that there were.

Mr. Hintze then asked if a variance to the front setback requirement would be required in order to build from any of Habitat's designated floor plans on the subject property. Mr. Heyward stated that a variance would be required.

Mr. Hintze, asked if the requested 5 foot variance was the smallest possible request for adjustment that would allow development. Mr. Heyward stated that it was.

Mr. Hintze, establishing hardship from conditions peculiar to the property, asked if the parcel was unusually shaped. Mr. Heyward stated that it was.

Mr. Hintze asked if the parcel's depth was smaller than other properties on West Florida Street. Mr. Heyward stated that it was.

Mr. Hintze asked for the parcel's depth. Mr. Heyward stated that it was 112 feet deep from front to back.

Mr. Hintze, noting that the single-family residential lots across the street were approximately 163 feet deep, asked if Mr. Heyward was aware that the subject property was roughly 50 feet smaller. Mr. Heyward stated that he was aware of the lot's size relative to surrounding properties.

Mr. Hintze asked if Mr. Heyward was aware that setbacks for properties in the district were calculated by setbacks of surrounding properties, adding that the requirements for the subject property were determined by the average setbacks of larger lots. Mr. Heyward stated that he was aware.

Mr. Hintze, establishing that hardship was not the result of applicant action, asked if Habitat for Humanity created or sold the parcel in its current configuration. Mr. Heyward stated that they did not.

Mr. Hintze, establishing that the variance is in keeping with the harmony and intent of the ordinance and assures public safety etc., asked whether the property will have a setback of 36 feet rather than 41 feet. Mr. Heyward stated that it would.

Mr. Hintze asked if Mr. Heyward was aware that, absent additional requirements, the R-5 district establishes a minimum setback requirement of 20 feet, adding that the front setback with the variance would maintain 107 percent of the district minimum. Mr. Heyward stated that he was aware of this.

Mr. Hintze asked if Mr. Heyward was aware that the variance would allow Habitat for Humanity to convert a vacant lot into a residential property that would generally improve the community. Mr. Heyward stated that he was aware of this.

Mr. Hintze asked if Mr. Heyward had any general safety concerns about the approval of this variance. Mr. Heyward stated that he did not.

Mr. Hintze concluded his questioning.

Chair Necas asked if there were any questions for the applicant.

Mr. Oliver asked what individual setbacks were for the properties at 2222 West Florida Street and 2212 West Florida Street, whose average was used to determine the setbacks for the subject property. Staff provided clarification on the properties used to determine the setback measurements.

Mr. Oliver asked if anything had been built on the property before. Mr. Heyward stated that the property was undeveloped when applicant acquired it, however there had once been a home there that had been built in the 1940s.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and requested a motion.

MOTION

Mr. Oliver moved that in BOA-23-60, 2224 West Florida Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If

the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because they will likely be unable to build the home, lot depth is 50 feet smaller than surrounding properties; (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 small and provides few options for constructing a home without a variance; (3) The hardship is not the result of the applicant's own actions because the lot was this way when purchased, other buildings nearby have similar setbacks; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because this will convert an empty lot into an owner occupied lot. Mr. Randolph seconded the motion.

The Board voted 5-0-1 in favor of the motion, (Ayes: Necas, Randolph, Truby, Oliver, Wofford; Nays: none; Abstention: Ramsey). Chair Necas stated the motion carried.

b. BOA-23-62: 905 Dover Road (CONTINUED)

Ms. Thiel stated in BOA-23-62, Brian and Emalene Disney request two variances: (1) To allow a proposed house to encroach 9 feet into a required 36.6 foot front setback. The house will be 27.6 feet from the front property line; (2) To allow a proposed house to encroach 18.4 feet into a required 30 foot rear setback. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 6. The Land Development Ordinance reference was Section 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average setback that exists on the lots on either side of the subject lot, and 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 east side of Dover Road, south of Nottingham Road, and is zoned R-3 (Residential Single-Family). Survey records indicate the undeveloped lot contains approximately 17,340 square feet. Based on the average front setback calculation using 901 Dover Road and 909 Dover Road, the applicable front setback for the subject property is 36.6 feet. The applicants propose to construct a new house on the lot at 905 Dover Road that will encroach 9 feet into the required front setback and be 27.6 feet from the front property line. The proposed house will also encroach 18.4 feet into a required 30 foot rear setback and be 11.6 feet from the rear property line. The applicants indicate that the abnormal shape of the lot and angled rear property line make it difficult to fit a house that will conform with dimensional requirements. If the variances are granted, the applicants 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 Necas asked the applicant to provide their name/address for the record and swore in Brian Disney for his testimony.

Brian Disney, 4334 Four Farms Road, stated that they had recently moved to Greensboro and are requesting variances to build a home to the same specifications as their previous home in Oak Ridge. He stated that their home would be a good fit for the neighborhood and that the shape of the lot was too small for their desired use, adding that their home had been designed with efficiency of its footprint in mind. He referred the Board to his application for other relevant findings of fact.

Chair Necas clarified the dimensions of the subject property. She then asked if there was anyone to speak in opposition.

Alexander Elkan, 230 North Elm Street, attorney for three adjacent land owners (David and Kelly Hassel, Greg and Janet Smith, Russ and Anne Robinson), noted that his clients were unable to attend the hearing and began presenting evidence for their opposition to the request.

Mr. Baker objected, advising that Mr. Elkan appeared to be presenting new evidence from his clients, which would be considered hearsay in the absence of relevant witnesses. He stated that Mr. Elkan, as counsel, was permitted to present evidence based on the applicant's testimony. If he wanted to present new evidence, he would have to be sworn in for testimony.

Chair Necas acknowledged and clarified that the only evidence they could address thus far was the case report and Mr. Disney's testimony.

Mr. Baker advised that it would be appropriate for the Board to hear argument based on the case report and Mr. Disney's testimony. However, it would not be appropriate to consider contradictory evidence without a witness.

Chair Necas asked if it was appropriate for the Board to consider the neighbors opposition generally. Mr. Baker advised that would likely be hearsay.

Chair Necas agreed and suggested the Board consider the criteria in their motion language.

Mr. Baker advised that Mr. Elkan was able to request a continuance to make sure his applicants are present.

Mr. Elkan acknowledged Mr. Baker's comments and stated that it was not his intention to testify before the Board, but rather present his clients' concerns and state their opposition.

Mr. Baker clarified that his objection was in reference to the presentation of those concerns, adding that any relation of what would otherwise be testimony from his clients was considered hearsay. He stated that arguments, based on submitted evidence, as to whether the applicant met their burden on the Board's criteria of consideration were permitted.

Mr. Elkan stated that the applicant's inability to build their desired home on the subject property was not a sufficient hardship incurred from compliance with the ordinance. He stated that, if granted, the variance would leave only 11 feet of the required 30 foot rear setback, adding that the setback requirements are implemented to protect neighborhood character and reduce nuisances and that the reduced setback would infringe on the privacy of surrounding property owners. He then added that the front setback variance would negatively impact neighborhood character.

Chair Necas asked if there were any questions or comments from the Board.

Mr. Truby asked the applicant if he had spoken to neighbors about their request.

Mr. Disney stated that he had spoken to five neighbors and that they were all supportive of the request.

Mr. Oliver asked if the applicant's desired home was the only one they wanted to build on the subject property, noting that there could be other designs that would adhere to the setback requirements.

Mr. Disney stated that there likely were other designs that could fit on the lot, but that it was nonetheless restrictive.

Mr. Wofford asked if, without the variance, the applicant would have to develop new floor plans to build on the subject property. Mr. Disney stated that he would.

Chair Necas, citing Exhibit C, suggested that the issue at the heart of the variance stems from the triangular shape of the lot, noting that at a different angle or orientation the setback requirement would not be violated.

Members of the Board discussed specifics of the subject property's dimensions and orientation relative to the street and surrounding properties with the applicant and staff.

Chair Necas asked if there was any further material evidence from the opposition.

Mr. Elkan stated that he had no further evidence.

Ms. Thiel stated that the applicant has provided evidence that they were the owner of the subject property.

With no additional speakers present, Chair Necas closed the public hearing and went to Board discussion.

Mr. Truby stated that he was not comfortable voting on the case without hearing from the opposition and with only six Board member's present.

Mr. Oliver asked staff what the process for continuing the case would be at this point in the hearing.

Mr. Baker advised that it was within the Board's discretion to continue the case at any time.

Chair Necas requested a motion.

MOTION

Mr. Truby moved that BOA-23-62 be continued to the December 11th regular meeting, seconded by Mr. Ramsey. The Board voted 6-0 in favor of the motion, (Ayes: Necas, Ramsey, Randolph, Truby, Oliver, Wofford; Nays: none). Chair Necas stated the motion carried unanimously.

c. BOA-23-63: 700 Magnolia Street (APPROVED)

Ms. Thiel stated in BOA-23-62, Mitchell Kamphuis requests a special exception to allow a proposed accessory structure to encroach 2.58 feet into a required 3 foot side setback. The accessory structure will be 0.42 feet from the side property line. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-11.1(C)(2): Accessory structures 15 feet tall or less in height must be setback at least 3 feet from side and rear lot lines.

Background and Site Information: The subject lot is located on the east side of Magnolia Street, north of Leftwich Street, and is zoned R-7 (Residential Single-Family). Tax records indicate the corner lot contains approximately 6,098 square feet and the house was constructed in 1900. The applicant proposes to demolish an existing detached garage and construct a new 338 square foot accessory structure in the same general area that will include living space and storage. The proposed accessory structure will encroach 2.58 feet into a required 3 foot side setback and be 0.42 feet from the side property line. Since the property is located within the Fisher Park Local Historic District, the proposed project must be reviewed and approved by the Historic Preservation Commission. On September 27, 2023, the Historic Preservation Commission issued a certificate of appropriateness for the proposed project and recommended that the Board of Adjustment grant a special exception for the setback encroachment. If the special exception is granted, the applicant will proceed with the residential building permit application process.

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

Chair Necas asked the applicant to provide their name/address for the record.

Mitchell Kamphuis, 700 Magnolia Street, stated that he would like a special exception to replace an existing nonconforming accessory structure. The proposed accessory structure will have similar footprint and orientation as the existing one. He added that he had reached out to surrounding property owners about his request and received no opposition.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and requested a motion.

MOTION

Mr. Randolph moved that in BOA-23-63, 700 Magnolia 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 subject to the conditions expressed in the Historic Preservation Commission's certificate of appropriateness, the proposed structure will utilize the existing 123 year old foundation and give the homeowner additional living and storage space needed for modern living; (2) The granting of the special exception assures public safety, welfare and substantial justice because the garage will allow for safe storage of the homeowner's property, providing adequate space for enjoyment of the property and in accordance with the Historic Preservation Commission's certificate of appropriateness, ensure and maintain of the character and integrity of the existing neighborhood and subject property. Mr. Truby seconded the motion.

The Board voted 6-0 in favor of the motion, (Ayes: Necas, Ramsey, Randolph, Truby, Oliver, Wofford; Nays: none). Chair Necas stated the motion carried unanimously.

OTHER BUSINESS

Chair Necas acknowledged the absence of Ms. Rudd

Staff reminded the Board that the next meeting was on December 11th. There was no other business.

ADJOURNMENT

The meeting was adjourned at 6:19 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/hus

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
DECEMBER 11, 2023**

The meeting of the Greensboro Board of Adjustment was held on Monday, December 11, 2023, at 5:32 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Vaughn Ramsey, Chuck Truby, Cory Randolph, Ted Oliver, Tifanie Rudd, and Drew Wofford.

City staff present were Mike Kirkman, Shayna Thiel, Andrew Nelson (Planning Department), Tony Baker (Chief Deputy City Attorney) and Brent Ducharme (Assistant City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas 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. Ms. Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

Chair Necas advised that all testimony and evidence from applicants or opposition speakers must be relevant to the case(s) before the Board and the four criteria it uses to make decisions. She added that, going forward, if a member of the Board would like to allow immaterial testimony or evidence to be entered, they must make a motion for its admission.

APPROVAL OF MINUTES (November 27, 2023 Meeting)

Vice Chair Ramsey made a motion to approve the October 23, 2023, minutes, seconded by Mr. Randolph.

The Board voted 6-0-1 in favor of the motion, (Ayes: Truby, Randolph, Oliver, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None; Abstention: Rudd). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised that there were no continuances or withdrawals.

NEW BUSINESS

a. BOA-23-58: 2005 Etta Court (APPROVED)

Ms. Thiel stated in BOA-23-58, American Property Services Company requests a variance to allow a proposed house to encroach 11.7 feet into a required 20 foot rear setback. The house will be 8.3 feet from the rear property line. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-7-3.2 – Table 7-2: in the R-5 District, the minimum rear setback is 20 feet.

Background and Site Information: The subject lot is located on the south side of Etta Court, west of Randleman Road, and is zoned R-5 (Residential Single-Family). Tax records indicate the undeveloped lot contains approximately 13,932 square feet. Based on the average front setback calculations using 2001 Etta Court and 2003 Etta Court, the applicable front setback for the subject property is 31.6 feet. The applicant proposes to construct a new house on the subject property that will meet the front setback but will encroach 11.7 feet into a required 20 foot rear setback. The house will be 8.3 feet from the rear property line. 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record.

Kathryn Overby, 400 Bellemeade Street, Suite 702, attorney representing the applicant, stated that the applicant wishes to build affordable housing and the variances are required due to the configuration of the subject property that limits practical locations to place a single-family dwelling. The variance request would permit him to build a home in congruence with other properties on the cul-de-sac, and strict application of the ordinance would require building the dwelling in an unappealing way that does not fit the neighborhood. The proposed variance would not interact with the pre-existing encroachment to the northeast. She stated that there was commercial property adjacent, visible in one of the applicant's exhibits.

Chair Necas asked to confirm that was Exhibit B, and Mr. Randolph asked if Ms. Overby was referencing the commercial properties off Randleman Road. Ms. Overby stated that was correct, in Exhibit 1. She stated that a majority of the back yard is covered by a privacy fence, and the variance request would further the goals of the Ordinance.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and requested a motion.

MOTION

Mr. Truby said this lot would be impossible to build without the variance. Chair Necas concurred, and stated that any previous structure would have been nonconforming.

Mr. Wofford moved that in BOA-23-58, 2005 Etta Court, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant would be unable to replace the house that was on the land that was previously there; (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 plot of land is an odd shape, there is no ideal placement for a house without a variance; (3) The hardship is not the result of the applicant's own actions because the applicant did not create the odd shape of the land; (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 allowing the variance will allow a house to be built on an otherwise overgrown plot of land, improving the value of the neighborhood and aesthetic appeals. Mr. Randolph seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Truby, Randolph, Oliver, Rudd, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

b. BOA-23-62: 905 Dover Road (APPROVED)

Ms. Thiel stated in BOA-23-62, Brian and Emalene Disney request two variances: (1) To allow a proposed house to encroach 9 feet into a required 36.6 foot front setback. The house will be 27.6 feet from the front property line; and (2) To allow a proposed house to encroach 18.4 feet into a required 30 foot rear setback. The house will be 11.6 feet from the rear property line. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 6. The Land Development Ordinance references were Section 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average setback that exists on the lots on either side of the subject lot; and 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 east side of Dover Road, south of Nottingham Road, and is zoned R-3 (Residential Single-Family). Survey records indicate the undeveloped lot contains approximately 17,340 square feet. Based on the average front setback calculation using 901 Dover Road and 909 Dover Road, the applicable front setback for the subject property is 36.6 feet. The applicants propose to construct a new house on the lot at 905 Dover Road that will encroach 9 feet into the required front setback and be 27.6 feet from the front property line. The proposed house will also encroach 18.4 feet into a required 30 foot rear setback and be 11.6 feet from the rear property line. The applicants indicate that the abnormal shape of the lot and angled rear property line make it difficult to fit a house that will conform with dimensional requirements. If the variances are granted, the applicants 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in Brian Disney for his testimony.

Brian Disney, 4334 Four Farms Road, stated that the encroachment into the rear setback has been reduced to a 10 foot variance request, and that the configuration of the subject property makes development difficult. He stated that he has communicated with neighbors about the request and reduced the request due to that outreach.

Mr. Oliver asked to confirm that that the applicant reduced the encroachment request to 10 feet, and Mr. Disney stated that was correct.

Mr. Disney stated that the footprint of the proposed dwelling is as efficient as he can make it, and building without the variance would produce an inferior lot configuration.

Chair Necas asked if Mr. Disney received feedback from neighbors regarding the removal of the room in the back, and Mr. Disney stated that an adjacent neighbor was previously in opposition, so he addressed his concerns with the new modifications.

Chair Necas asked if there was anyone to speak in opposition and swore in Russ Robinson for his testimony after confirming that he was not acting as an attorney for any other parties.

Russ Robinson, 715 Blair Street, stated that the larger subject property used to contain one dwelling.

Vice Chair Ramsey asked to confirm the location of Mr. Robinson's property, and Mr. Robinson indicated the location of his home on the zoning map. He stated that an additional dwelling was added to the property and after a subsequent subdivision, the applicant's proposed construction would result in a third home.

Vice Chair Ramsey asked to confirm that the other house was on the corner of Dover Road and Blair Street, and Mr. Robinson stated that was correct, and that his property adjoins the subject property.

Chair Necas stated that Mr. Robinson's property adjoins at the corner, not the side of the property. Mr. Robinson stated that was correct, at a pointed corner. He stated that the Ordinance's setback requirements exist to define the character of a neighborhood, and that the neighborhood has not had many variances. Mr. Robinson stated he does not believe the applicant has a severe hardship with the subject property. He stated that the setback rules exist to help define neighborhood character and this request threatens it. He stated that the applicant does not have a severe hardship with what is a significantly sized lot.

Mr. Randolph asked Mr. Robinson what he thought a hardship could be. Mr. Robinson stated that he was not familiar with the definition of a hardship, but thought it would mean factors that would make a property worthless. He stated that he believed the applicant is able to construct a house on the subject property without a variance. Mr. Randolph stated that the unique shape and topography of the lot are a consideration, particularly with stormwater runoff, tending toward the granting of a variance. Mr. Robinson stated that the applicant could reduce the size of the dwelling to avoid the need for a variance, and he was in favor of application of the Ordinance's setback requirements. Mr. Randolph stated that some of the houses in the neighborhood appear to either be under a variance or have historic nonconforming status, and asked if Mr. Robinson objected to that. Mr. Robinson stated that he has not measured setbacks in other houses, and is not familiar with any variances granted, but consistent application of the setback requirements benefits his neighborhood.

Mr. Wofford asked if Mr. Robinson was asking the Board to preserve the character of the neighborhood, and if the applicant's proposed alternative to the variance would not be more disruptive than the reduced setbacks.

Vice Chair Ramsey stated that the applicant might be conforming in such a configuration.

Mr. Wofford stated that the dwelling might be conforming but it would stand out compared to the pre-existing homes in the neighborhood. Mr. Robinson stated that was correct, and he would be opposed that as well. He stated that the reduced setbacks change the look of the neighborhood.

Mr. Oliver asked if the imposed setback was a result of averaging block face setbacks, and Ms. Thiel stated that was correct. Mr. Oliver asked about surrounding setbacks, and Ms. Thiel stated it comes from measuring the setbacks on either side of the subject property.

Chair Necas advised the applicant that he had five minutes to speak in rebuttal.

Mr. Disney stated that he intends for this property to be a positive part of the neighborhood, and there are many properties adjacent to his request that either needed variances or were pre-existing nonconforming. He stated that building a conforming dwelling on this lot would produce an inferior property.

Mr. Ramsey asked about the applicant's neighborhood outreach.

Mr. Disney stated that some neighbors have provided notarized letters of non-opposition to his request. He contacted an adjacent neighbor who had retained counsel and did not hear back.

Mr. Randolph asked about the 10 foot reduction versus the original request. Mr. Disney stated it came from discussion with the neighbors. Mr. Randolph asked what the impact was on his original plans. Mr. Disney stated that he reshaped a room on the rear of the dwelling. Mr. Randolph asked if it was still functional, and Mr. Disney stated it was.

With no additional speakers present, Chair Necas closed the public hearing and requested a motion.

MOTION

Chair Necas stated that neighboring properties have deeper setbacks and moving the proposed home back would create rear setback issues.

Ms. Rudd stated that the applicant's outreach efforts have been significant and she supports the request.

Mr. Truby stated that meeting the ordinance requirements would require a much smaller home that would be even more out of place in the neighborhood. He asked about the language the Board would need to use in its motion.

Ms. Thiel stated that second variance request would need to be amended to state that the encroachment into the rear setback would be 10 feet. *To allow a proposed house to encroach 10 feet into a required 30 foot rear setback. The house will be 20 feet from the rear property line.*

Vice Chair Truby moved that in BOA-23-62, 905 Dover Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted (as amended) based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant would not be able to make reasonable use of the property; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because of the unique shape of the property with the angled rear property line; (3) The hardship is not the result of the applicant's own actions because the applicant did not create this lot, which is a very limited depth restricting where a house can be located; (4) The variances are 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 private nature of the back yard ensures there will be no negative impact to the public safety or welfare if the variances are granted. Mr. Randolph seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Truby, Randolph, Oliver, Rudd, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

c. BOA-23-61: 1119 Grayland Street (APPROVED)

Ms. Thiel stated in BOA-23-61, Charles Hall requests two variances: (1) To allow an existing house and proposed addition to encroach 8.33 feet into a required 15 foot side street setback. The house and addition will be 6.67 feet from the side property line along West Northwood Street; and (2) To allow an existing fence located within 15 feet of a street right-of-way along West Northwood Street to exceed the maximum 4 foot height allowed by 2 feet. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance references were Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum side street setback is 15 feet; Section 30-2-4.1(A)(2): Any enlargement of a nonconforming structure must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance; and Section 30-9-4.6(A): For residential uses, 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 west side of Grayland Street, south of West Northwood Street, and is zoned R-5 (Residential Single-Family). Tax records indicate the corner lot contains approximately 10,454 square feet and the house was constructed in 1953. The existing house is considered a nonconforming structure as it encroaches 7.92 feet into the required 15 foot side street setback along West Northwood Street. The applicant proposes to construct an addition at the side and back of the existing house that will align with the existing building plane along the side property line. Because the house is not quite parallel with the side property line along West Northwood Street, the proposed addition will encroach 8.33 feet into the required side street setback and be 6.67 feet from the side property line along West Northwood Street. The applicant indicates that the narrow lot width makes it difficult to add on to his existing house. During the site visit, staff observed a 6 foot tall wooden fence within 15 feet of the right-of-way along West Northwood Street that exceeds

the maximum allowed 4 foot height by 2 feet. The applicant stated that the fence provides safety for his dogs, reduces pedestrian interaction and accommodates existing large trees. He seeks a variance to allow it to remain and come into compliance with the Land Development Ordinance. The Greensboro Department of Transportation has reviewed the property's existing conditions and does not have any objections to the proposed addition. It did request that the fence gate across the driveway be pushed further back into the property to make the driveway deeper. If the variances are granted, the existing fence will remain and 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 and/or plans.

Chair Necas asked the applicant to provide their name/address for the record and swore in Charles Hall for his testimony.

Charles Hall, 1119 Grayland Street, stated that the encroachment existed prior to his purchasing the property, and he is requesting the variance to allow him to reconfigure the dwelling in a more usable way. The only way to increase the width of the house is to move towards the street, due to the location of stairs. He stated that the variance request for the fence is to increase safety due to his dogs jumping over it.

Chair Necas asked to confirm that GDOT does not object to the fence other than moving the gate, and that the applicant will address that in his request. Mr. Hall stated that the attached plans demonstrate he will comply with the GDOT directive and move the fence gate.

Mr. Hall stated that he spoke with the adjoining neighbors and heard no opposition to his request.

Chair Necas asked if there was anyone to speak in opposition. With no additional speakers present, she closed the public hearing and requested a motion.

MOTION

Vice Chair Ramsey moved that in BOA-23-61, 1119 Grayland Street, based on the stated Findings of Fact, subject to the applicant agreeing to push back the fence gate as required by the Greensboro Department of Transportation, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because of the unique shape of the lot which will only allow house expansion consistent with the existing dwelling in a limited area; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because of the unique shape of the lot; (3) The hardship is not the result of the applicant's own actions because the shape of the lot predates the applicant's purchase of the property and the Board would have approved the fence if the application been received prior to construction; (4) The variances are 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 increased functionality of the applicant's dwelling, increased property tax values, and is consistent with the neighborhood. Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Truby, Randolph, Oliver, Rudd, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

Chair Necas stated that the Board would be taking a break in the next thirty minutes.

a. BOA-23-43: 520 Guilford Avenue (UPHELD)

Ms. Thiel stated in BOA-23-61, Patrick and Caitlin Maloy; Deana Coble, Kenzi Watts, Martha Outlaw, Todd Rotruck, Aimee Rotruck, Philip Short, Douglas Kretschmaier, Lori Gerlach, Andrew Willis, Amy Zigler, Steve Landis, John Cockerham, Walter Watts, Alisha Wielfaert and Neil Reitzel; and

Westerwood Neighborhood Association appeal a zoning administrative decision that the rights to a nonconforming group care facility are still in place on the property. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 11. The Land Development Ordinance references were Section 30-8-1 – Table 8-1: Group Care Facilities are not permitted in the R-5 District, but are permitted in the RM-26 District with a Special Use Permit and subject to certain use conditions; and Section 30-2-3.6(A)(1): A nonconforming use that ceases operations for any reason for a continuous period of more than one year may not be reestablished. Any subsequent use of such land must be a use permitted in the district.

Background and Site Information: The subject lot is located on the north side of Guilford Avenue, east of Fountain Street, and is zoned R-5 (Residential Single-Family). Tax records indicate the corner lot contains approximately 13,068 square feet and the building was constructed in 1998. A group care facility use was legally established on the property in accordance with a special use permit (SUP-13) in 1997. In 2002, the property was rezoned from RM-26 to RS-7 (PL(Z)02-06), which later became R-5, which made the group care facility use nonconforming and the special use permit null and void. Staff records indicated that the group care facility has not been licensed by the State since 2019. Per the Land Development Ordinance, a nonconforming use that ceases operations for any reason for a continuous period of more than one year may not be reestablished. In an email dated July 29, 2022, the Zoning Administrator made a determination based on information provided by the property owner that the group care facility use was legally established; became nonconforming due to a change in zoning on the property; and the nonconformity had not ceased for a period of more than 12 consecutive months. The Zoning Administrator confirmed this determination in another email on December 22, 2022. The appellants appeal the decision of the Zoning Administrator that the rights to a nonconforming group care facility use are still in place on the property. If the zoning administrative decision is upheld, the property owner can proceed with plans to continue operating a group care facility as a nonconforming use on the subject property. If the zoning administrative decision is overturned, a rezoning and possibly a special use permit, depending on zoning district, will be required to operate a group care facility on the subject property.

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

Tony Baker (Chief Deputy City Attorney) stated that he was representing the Board and to protect the record, and **Brent Ducharme** (Assistant City Attorney) would present the factual evidence. He stated that the Board can hear the same facts heard by the Zoning Administrator and make its determination. The Board may interpret the Ordinance differently than staff. He stated that neither staff nor the City Attorney's office are advocating for any outcome. Mr. Baker stated that staff and the City Attorney's office waive any issue of standing, but the counsel for the property owner has asked to reserve the right to raise standing should there be an appeal of the Board's decision to Superior Court. They have also stipulated that this hearing is only to determine if the nonconforming use has been terminated. He then stated that water records are in evidence showing no material usage since late 2019, indicating no occupation since that point.

Marsh Prause, 380 Knollwood Street, Suite 700, Winston-Salem, attorney representing the appellants, stated that his clients contend that there was no occupation of the structure from March 2019, and asked if Mr. Baker would stipulate to that. Mr. Baker stated the City did not object to that stipulation. Mr. Prause stated that there were a number of documents he intended to introduce to the record, and Mr. Baker stated that the Board can request to see any document referenced.

Mr. Randolph asked if there would be unstipulated evidence introduced for the Board to review.

Mr. Prause stated that he does not need to introduce any additional evidence related to this stipulation, and Mr. Baker confirmed that City did not.

Mr. Baker stated that the Board Chair issued subpoenas for information from the property owner, these documents have been provided to Mr. Prause, and the City will not raise objections to any documents provided by the property owner. Mr. Prause stated that he will also stipulate the authenticity of documents provided by the City. Mr. Baker stated that the appellant argues the Zoning Administrator should have considered whether the Special Use Permit had expired, and that Articles 2 and 4 have different standards regarding termination of use, and the City wished to present legal arguments on which termination provision should apply. Mr. Kirkman's determination stated that the Special Use Permit was moot once a property becomes a nonconforming use.

Chair Necas asked for clarification on the Board's decision-making process. Mr. Baker stated that the Board's decision must be based on the evidence and testimony presented at this hearing.

Mr. Oliver asked to clarify procedure for appealing the Board's decision. Mr. Baker confirmed that would be at Superior Court. Mr. Oliver asked if their decision to overturn the determination would permanently terminate the rights for this use, and Mr. Baker stated that was the case unless the decision was appealed and overturned at Superior Court, and any future use would require conforming with current zoning or requesting a rezoning.

Mr. Prause stated that did not dispute Mr. Baker's statement.

Mr. Wofford asked about the determination the Board was being asked to make regarding potential termination of nonconforming use. Mr. Baker stated that there would be argument about the definition of "cessation" in light of the Ordinance.

Vice Chair Ramsey asked for clarification on the nature of the nonconforming use. Mr. Baker stated that the Board was first being asked whether the Special Use regulations under Article 4 or Article 2 apply, then the Board must decide whether the nonconforming use or Special Use Permit has terminated pursuant to the Ordinance.

Mr. Oliver asked to see the language for Article 2 and Article 4.

Mr. Prause stated the language was not in the information packet and objected to that.

Chair Necas asked Mr. Baker to confirm the Board's first action was considering Article 2 and Article 4.

Mr. Baker stated the Board was being presented the portion of Article 4 relevant to Special Use Permits.

Mr. Prause asked to make a statement.

Chair Necas asked if it was an appropriate time for that, and Mr. Baker stated that he had effectively presented an opening statement and it would be reasonable, as long as evidence was not presented.

Mr. Prause stated that he wished to explain his clients' perspective.

Mr. Baker objected to presenting appellant commentary before their testimony.

Chair Necas stated that Mr. Baker was acting in representation of the City and Board and there have not been formal opening statements, but invited Mr. Prause to address his concerns regarding Article 2 and Article 4.

Mr. Prause stated that his clients' position is that Mr. Kirkman's determination includes three separate decisions, and they contend they have a right to appeal all three. The City's position is that there is a legal threshold that, if the appellants do not meet, they only have the right to appeal one aspect of the determination. He stated that is why he and Mr. Baker decided to request that the Board to consider that threshold question first.

Mr. Baker stated he concurred with Mr. Prause's description of their conversation, and asked if the Board was ready to consider the Article 2 versus Article 4 Question.

Chair Necas stated the Board was ready.

Mr. Baker stated that Mr. Kirkman's determination was that once the subject property became a nonconforming use, the Special Use Permit became moot based upon Planning staff and City Attorney's office determination in the context of Land Development Ordinance section 30-2-1.1. Once a use becomes nonconforming, it is regulated solely under 1992. He stated that the Special Use Permit (SUP) has some meaning as it helps define the characteristics of the nonconforming use. Article 4 speaks to the issuance and administration of SUPs to maintain harmony with the Comprehensive Plan and areas in proximity, which this use is not, by definition of it being nonconforming. Mr. Baker stated that Article 4 provides a period of 18 months whereupon use rights granted under an SUP expire if discontinued, where Article 2 speaks to the determination that a nonconforming use has terminated if it ceases for any reason for a period of at least one year. The difference, he stated, was the use of the term "ceases" in Article 2 versus "discontinued" in Article 4. He stated that the City Attorney's office has determined that case law by the North Carolina Court of Appeals defines the two terms differently. "Discontinue" refers to use; the cessation of use for any period of time for any reason, "cease" refers to the intent to close permanently, and there is a clear distinction of the use of the words in the different sections. Mr. Baker stated that there is case law in North Carolina indicating that nonconforming uses do not require SUPs because the use is already nonconforming, and it thus cannot be shown to be in harmony with the area and Comprehensive Plan, and should not be considered in the same way. He stated that City staff thus asserts only Article 2 applies, and that the Zoning Administrator was correct in ruling that the SUP and its attendant terminating provisions are moot given the subject property's status as a nonconforming use.

Mr. Oliver asked to confirm that the City's position was that only Article 2 applies, and Mr. Baker stated that was correct, that City Council's clear intent stated in 30-2-1.1 was that solely Article 2 be used in administering nonconforming uses. Mr. Oliver asked if the Board was then to consider if there was intent by the property owner to cease its use. Mr. Baker stated that was not the first issue. The Board must first determine if the termination provision of Article 4 had any application regarding a nonconforming use, which the City asserts the Ordinance does not. Intent regarding cessation would be the following issue.

Chair Necas if the Board should make a motion on which Article provision to use in its consideration.

Mr. Prause stated that appellants wished to present its argument regarding the applicability of termination provisions.

Mr. Oliver asked for clarification on the appellants' standing. Mr. Baker stated that Mr. Prause presented evidence regarding standing, and the City concedes the issue of standing, and thus it does not need to be presented. Mr. Oliver asked if the property owner's counsel had reserved the right to challenge standing in another venue, and Mr. Baker stated that they had stipulated that appellants have standing to present this case at the Board, and that any standing issues would be considered by Superior Court only. Mr. Oliver asked if the Board can consider standing. Mr. Baker stated that he did not believe the Board could rule on it without any evidence presented, as the City concedes it.

Mr. Prause displayed the relevant section of Article 4, and stated that the City's position was that the limiting restrictions of SUP administration are moot should a use become nonconforming, and that was counterintuitive, as SUP regulation is designed to protect adjacent property owners.

Mr. Oliver asked what they were being protected from. Mr. Prause stated it was the potential impacts of the special use, and referred to Exhibit 5, the 1997 SUP.

Chair Necas asked if the Board should be considering the SUP at this point in the proceeding.

Mr. Prause stated that the SUP was in the record and that the appellant's second basis of disagreement with the City is related to *Huntington Properties vs. Currituck County*, which he states

that zoning ordinances are predisposed against perpetual continuation of a nonconforming use. He stated that the distinction between “discontinuation” and “cease” is not relevant. Mr. Prause objected that Article 15 of the LDO was not included.

Mr. Baker stated that the Ordinance is public record and can be referenced at will.

Mr. Prause stated that “discontinuation” and “cease” are not defined in the definitions section of the Ordinance, and stated that the Merriam-Webster dictionary defines the words synonymously. He asserted that when taken together, this indicates that Article 4’s special use provisions cannot be ignored.

Mr. Baker stated that the SUP defines the nonconforming use, and the Ordinance specifically does not permit nonconforming uses to continue perpetually. He stated that section 30-1.7.1’s Rules of Language and Construction that states the headers and illustrations do not define terms of the ordinance. But once a use becomes nonconforming, Article 2 holds, and the Zoning Administrator must use it as basis for determinations.

Mr. Oliver stated that several words could be substituted for “cease.” Mr. Baker stated the City Council could, but the Board has no authority to substitute words, only interpret the Ordinance once it determines which Article to consider.

Mr. Randolph asked if, since there is no definition of “cease,” how there can be a distinction. Mr. Baker stated that because the ordinance uses the two separate terms, there must be a distinction, and the NC Court of Appeals has ruled that “cessation” implies intent where “discontinuation” does not.

Mr. Prause stated that the Ordinance directs the use of the Merriam-Webster dictionary when there is not a specific definition, as there is not for “discontinuation” and “cessation.” He stated that the case the City is citing is much more constrained, and that the Board can consider both Articles 2 and 4.

Mr. Baker stated that the Ordinance specifically requires the Board to use Article 2 when considering nonconforming uses.

Vice Chair Ramsey asked to confirm if the appellants have the burden of proof. Mr. Prause stated that the burden on establishing whether an SUP has expired is on the property owner, and the burden of establishing that a nonconforming use has ended and the use rights lost is on the appellant. Vice Chair Ramsey then asked if they would not know where the burden lies until they decide which Article to use. Mr. Prause stated he believed that was correct, and that the appellant is asking the Board to consider both.

Mr. Baker stated that he disagreed there was a burden of proof, per se; each side needed to convince the Board by the weight of factual evidence presented. The Board is making a new decision in the position of the Zoning Administrator.

Vice Chair Ramsey stated that it was a question of law, and Mr. Baker concurred.

Mr. Prause stated that the language of 30-4-10.11(b), that the owner must be demonstrate that a special use was not terminated, placing a burden on the property owner and thus the City.

Vice Chair Ramsey stated that only applied if they chose to apply Article 4.

Mr. Oliver stated that the Board relies on the City Attorney for advice, and he would support using Article 2 for this hearing.

Ms. Rudd stated she concurred with Mr. Oliver based on the definitions presented.

Mr. Wofford concurred, based on the subject property’s status as a nonconforming use.

Mr. Randolph stated that he did not believe the distinction was perfectly clear, but he is willing to move forward based on the discussion with fellow Board members.

Mr. Truby stated that his interpretation of the Ordinance did not immediately abrogate consideration of the SUP when a use becomes nonconforming, and both Articles should apply.

Chair Necas asked to confirm that it would be a majority vote to choose what Article(s) to use, and Mr. Baker stated that was correct.

MOTION

Mr. Oliver then made a motion to use Article 2 and not consider Article 4, seconded by Vice Chair Ramsey. The Board voted 5-2, (Ayes: Oliver, Vice Chair Ramsey, Rudd, Wofford, Chair Necas; Nays: Randolph, Truby). Chair Necas stated the motion passed and the Board would consider only Article 2 moving forward with this hearing.

Chair Necas advised that the Board would take a break at 7:20 p.m., and the Board returned at 7:33 p.m.

Brent Ducharme (Assistance City Attorney) called Mike Kirkman (Zoning Administrator) as a witness.

Mr. Kirkman stated that as the Zoning Administrator, he was responsible for interpreting the Land Development Ordinance and rendering administrative decisions. He stated that a Group Care Facility use was established legally on the subject property via a Special Use Permit in 1997. The property was rezoned to RS-7 (Residential Single-family) in a City-initiated rezoning. This rezoning generated the nonconforming use situation. Mr. Kirkman stated that his decision determined the rights to the nonconforming use still existed. Mr. Ducharme asked about the LDO's language regarding nonconforming uses. Mr. Kirkman stated that he applied section 30-2-3.6 to make his determination, considering multiple factors to decide if a use has ceased. The intent of the property owner is relevant to the inquiry about use rights. He stated that the directors of the charity had attempted to maintain the Group Care Facility use and did not materially alter the property or sell or market it for a different use. The lack of direct occupation was not sufficient evidence that the legally established nonconforming use had ceased.

Mr. Oliver asked about the circumstances around the property's change of status in 2019. Mr. Kirkman stated that he believed the charity was unable to find alternative funding to maintain operations past 2019.

Mr. Prause asked if Mr. Kirkman was the only member of Planning staff that makes administrative decisions under the LDO. Mr. Kirkman stated that multiple staff make decisions, but he makes interpretations of the Ordinance. Questions that require interpretations may require additional research and assessment of history and facts. Mr. Prause asked about the additional considerations in this case and potential impact on neighbors. Mr. Kirkman stated that the question is more about the function of the use and whether it has continued, not a hypothetical. He stated that he used public records and information from knowledgeable individuals to understand the history of the subject property. Mr. Prause asked if Mr. Kirkman discussed the situation with members of the neighborhood, and Mr. Kirkman stated he was not aware of any identified organization to be consulted. Mr. Prause asked if Mr. Kirkman considered the *Southern Equipment Company v. Winsted* case. Mr. Kirkman stated that he did not, but he spoke with City Attorney staff to develop support for his interpretation. Mr. Prause asked if Mr. Kirkman was made aware of the *Huntington Properties, LLC v. Currituck County* case.

Mr. Baker objected to the question, as Mr. Kirkman stated he deferred to City Attorney staff on specific case history. Mr. Prause stated he was entitled to ask the basis of Mr. Kirkman's determination. Chair Necas stated the objection was overruled. Mr. Kirkman stated he was not.

Mr. Prause asked if Mr. Kirkman was aware that the previous operator of the subject property allowed their license to expire in 2018. Mr. Kirkman stated he was aware of that from information the State provides on licensure. Mr. Prause asked if Mr. Kirkman was aware that the previous operator lost its

nonprofit status in 2019, and Mr. Kirkman stated he was not. Mr. Prause asked if Mr. Kirkman was aware that the State of North Carolina's records stated the final resident of the previous charity operator was discharged from the facility in March of 2019, and Mr. Kirkman stated that he only had information about the license's expiration. Mr. Prause asked if Mr. Kirkman aware the previous operator of the subject property was facing foreclosure, and Mr. Kirkman stated he was not. Mr. Prause asked if Mr. Kirkman consulted the City's water billing records to assess use of the subject property. Mr. Kirkman stated that staff was aware the subject property was not occupied. Mr. Prause asked if Mr. Kirkman consulted City fire inspection records to assess the possibility for occupancy after 2019, and Mr. Kirkman stated he did not. Mr. Prause asked if the subject property had been cited by Code Compliance for nuisance issues, and Mr. Kirkman stated he did review the code compliance case history. Mr. Prause asked if Mr. Kirkman was aware of federal litigation regarding the previous operator's funding, and Mr. Kirkman stated he was not. Mr. Prause asked if Mr. Kirkman issued multiple iterations of his interpretation. Mr. Kirkman stated that the email dated July 29, 2022 was the official determination, which he reaffirmed without modification in December. Mr. Prause asked about an email sent by Shayna Thiel.

Mr. Baker objected to the question, as the only question before the Board is Mr. Kirkman's determination. Chair Necas stated the objection was sustained. Mr. Prause requested to make an offer of proof. Mr. Baker waived any objection to an offer of proof at Superior Court, but stated that the Board had no reason to consider this question now. He then requested to release Planning Director Sue Schwartz and Housing and Neighborhood Development Director Michelle Kennedy if they are not going to be asked to testify on Mr. Kirkman's determination.

Mr. Prause stated he had not called either witness yet. Mr. Baker stated that there had been discussion that should the Board sustain his objection that the only issue at question with this hearing is Mr. Kirkman's decision, there would be no need to have them as witnesses. Mr. Prause stated he has not asked all his questions yet regarding a purported meeting between Mr. Kirkman and those witnesses. Mr. Baker stated that would not be relevant to the consideration of the Board.

Vice Chair Ramsey stated that the issue was not how Mr. Kirkman arrived at his decision, but what his decision was on July 29, 2022. Mr. Baker stated that was the basis of his objection, as that was sustained.

Chair Necas stated that Mr. Kirkman was the Zoning Administrator, and the Board is only considering his decision. The Board does not have purview over the other aspects of the case.

Mr. Prause objected, and stated that appellant asserts they should be permitted to ask probative questions regarding how Mr. Kirkman established his decision, including any discussions with other City staff, and whether Mr. Kirkman was the decision-maker in this case. Mr. Prause then asked Mr. Kirkman if he was aware that the previous operator was in discussion to sell the subject property. Mr. Kirkman stated he was. Mr. Prause asked if Mr. Kirkman asked to see a Purchase and Sales Agreement for the subject property. Mr. Kirkman stated he did not, he relied on public records of property information. Mr. Prause asked if Mr. Kirkman was aware of the current property owner's interaction with the State regarding the sale, and Mr. Kirkman stated he was not. Mr. Prause asked if it was typical for Mr. Kirkman to seek input from other City employees when making a Zoning Administration determination, and Mr. Kirkman stated it was. Mr. Prause asked if Mr. Kirkman attended a meeting with Directors Schwartz and Kennedy and Mark Sumerford two days prior to making his decision, and Mr. Kirkman stated he did. Mr. Prause asked about what was discussed at that meeting.

Mr. Baker objected, and Chair Necas sustained the objection. She stated that the Board can only look at the Zoning Administrator's decision.

Mr. Prause asked if any of Mr. Kirkman's decision stemmed from the meeting he was referencing.

Mr. Baker again objected, on the prior base, as Mr. Kirkman has given the factual basis for his decision. Chair Necas sustained the objection.

Mr. Prause stated that appellant asserts a need to probe the basis for Mr. Kirkman's decision-making process. Mr. Baker stated that the factual basis is subject for cross-examination. Mr. Prause asked if Mr. Kirkman received information at that meeting that established any of the factual basis for his determination. Mr. Kirkman stated he received information about the history of the subject property in that conversation. Mr. Prause asked Mr. Kirkman if the determination was his decision alone, and Mr. Kirkman stated that was correct.

Mr. Ducharme asked if Mr. Kirkman knew why the subject property was being transferred. Mr. Kirkman stated that he knew the previous charity operator was unable to secure funding and another prospective property owner contacted the City to establish information about use rights. Mr. Ducharme asked if Mr. Kirkman established an intent to continue that use from that request. Mr. Kirkman stated that was correct. Mr. Ducharme asked about signs of intent, and whether Mr. Kirkman inquired about any potential modifications to the building that would indicate a change of use. Mr. Kirkman stated he did, and he did not find any information that influenced his decision.

Mr. Prause asked how he determined the intent to continue operations, and Mr. Kirkman stated that he met with a representative of the current property owner. Mr. Prause asked if the owner discussed any other uses at that time, and Mr. Kirkman stated they did not.

Mr. Oliver asked if it was Mr. Kirkman's understanding that the prospective new owner would continue the use as it was prior, and Mr. Kirkman stated that was correct.

Mr. Randolph asked if the cost of required repairs for the facility was considered as an element of use continuation, and Mr. Kirkman stated it was not.

Mr. Wofford asked to confirm that the use rights for a nonconforming use follow the property, not the property owner, and Mr. Kirkman stated that was correct, and that the impact of the pandemic in 2020 was also a part of his consideration especially when establishments were ordered to reduce or eliminate operations.

Mr. Baker stated that under State and City law, change of ownership is not a factor in the continuation of nonconforming use.

Mr. Truby asked about the reasoning Mr. Kirkman used in his determination. Mr. Kirkman stated that the central issue is the cessation of use, not disruption of the property user. There had been no attempt to make alteration to the subject property or evidence of a change of use. Mr. Truby stated that it appeared the operation of the use in this case may have discontinued, but he is not sure about the definition.

Ms. Rudd asked to confirm that the subject property had not been occupied for a significant period of time, and Mr. Kirkman stated that was correct.

Vice Chair Ramsey asked if this was effectively a question of a use being grandfathered, and Mr. Kirkman stated that was correct, the terminology used by Ordinance is different. Vice Chair Ramsey asked what would have been an indication that the use had ceased operations. Mr. Kirkman stated that it would require evidence of some change in the property's configuration, and in this case there was no evidence of a change in use. Vice Chair Ramsey asked if the proposed sale of the subject property was evidence of use cessation, and Mr. Kirkman stated that the information staff gathered indicated that the proposed buyer was to continue the nonconforming use.

Mr. Oliver asked how the pandemic situation from 2020 factored into decision-making. Mr. Kirkman stated that many uses were impacted by the pandemic, and staff has had to consider it.

Mr. Randolph stated that the Ordinance requires nonconforming uses to be legal, and he believes continuing to operate a use despite government orders to limit or suspend operations would make it unlawful and thus remove nonconforming use protections. Mr. Kirkman stated that was part of staff conversation. Mr. Randolph asked about how Mr. Kirkman assesses the continuation of a nonconforming use and how time factors in to his considerations, and Mr. Kirkman stated that the twelve-month period was considered in context with the pandemic restrictions in place. If the operator of a nonconforming use is taking measures to maintain the use, that would tend to support a determination in favor of the use.

Mr. Oliver asked if the previous operator took any active steps to close the facility. Mr. Ducharme stated that there would be direct testimony to that with another witness.

Mr. Prause asked about Mr. Kirkman's knowledge of the intended use by the new property owner, and Mr. Kirkman stated that he believed it was a substantially similar use to that of the previous operator. Mr. Prause asked if Mr. Kirkman's determination would change if the use were changed to be a shelter for the homeless. Mr. Kirkman stated that it would matter for enforcement, but is separate from what use rights exist. The SUP outlined what use rights existed originally, and his determination was whether or not the use continued. Mr. Prause asked if the specific details of the proposed continued operation by the new owner needed to be identical to the previous operator.

Mr. Ducharme objected to the question, as the issue is the intent of the property owner at the time. Mr. Prause is discussing prospective enforcement questions, not the use. Chair Necas sustained the objection.

Mr. Ducharme called Michael Jackson as a witness, and **Michael Jackson, 3816 Cranwell Court**, was sworn in for his testimony. He stated he was Chair of the Board for Mary's House starting in approximately 2014 and remained so until the subject property was sold to the current property owner. The organization investigated multiple alternative sources for funding and alternative leasing or operational paradigms with other organizations for over five years, but could not find a solution to continue the use. Mr. Ducharme asked about the impact of the Covid-19 pandemic, and Mr. Jackson stated that the restrictions on occupancy and how to preserve staff and resident safety complicated their efforts, and the organization continued to maintain the property while they attempted to continue operations. The current property owner was selected because it has the organizational capacity to continue the use as it was established and continue the mission of the charity, as stated in the Purchase and Sales Agreement. Mr. Ducharme entered the Purchase and Sales Agreement into evidence as Exhibit 12, and Mr. Jackson confirmed it was a true and accurate copy with his signature on the final page. Chair Necas accepted the document into evidence.

Mr. Ducharme asked about paragraph 5A, and Mr. Jackson stated that Mary's House retained the first right of refusal to purchase the property back if the established use were not continued, as the board did not want the property to be transferred unless the use was continued. All efforts were focused on continuing the nonconforming use.

Mr. Prause asked if Mr. Jackson provided the Purchase and Sales Agreement, and Mr. Jackson stated that was correct. Mr. Jackson stated that Mary's House was approached by other potential purchasers who sought to use the property for different uses. Mr. Prause asked Mr. Jackson about the need for approval from the State Attorney General's office, and Mr. Jackson stated that a nonprofit must seek approval from the Attorney General when transferring the majority of its assets, which the subject property was, and he prepared documents to submit to the State. Mr. Prause asked Mr. Jackson to read some of that document, and Mr. Jackson read a portion that stated "Mary's House ceased to operate in 2018", but stated that Mary's House was still in operations in 2018.

Vice Chair Ramsey stated that any nonprofit would be required to follow these procedures, it is not something peculiar to this subject property.

Mr. Wofford asked to confirm that Mary's House was still in operation after discharging its last resident, and Mr. Jackson stated that was correct.

Mr. Randolph asked when the negotiations began with other agencies, and Mr. Jackson stated they were ongoing from 2018.

Mr. Oliver asked Mr. Jackson how long he had been associated with Mary's House, and Mr. Jackson stated approximately ten years. Mr. Oliver asked if Mr. Jackson was aware of any disputes with neighbors.

Mr. Baker objected to the question, as it was not directly related to Mr. Kirkman's decision. Chair Necas sustained the objection.

Mr. Randolph asked Mr. Jackson to clarify that the statement to the State regarding operations ceasing in 2018, and Mr. Jackson stated that referred only to the direct client service, and Mary's House had continued to operate while they attempted to restore the charitable activity.

Vice Chair Ramsey asked if the board of Mary's House had continued to meet, and Mr. Jackson stated that the board of 3 had sporadic meetings for years.

Mr. Prause asked about foreclosure proceedings against the subject property and if Mary's House had taken a loan of \$50,000 that had outstanding balance. Mr. Jackson stated that was correct.

Mr. Wofford asked about the relevance of the question. Mr. Prause stated that a property owner allowing a property to enter foreclosure restricts or prohibits its continued use.

Mr. Jackson stated that the foreclosure was the result of funding difficulties, which they were in the process of addressing.

Chair Ramsey asked if the default was cured, and Mr. Jackson stated it was.

Mr. Prause asked how it was cured. Mr. Jackson stated that they sought funding from donors.

Ms. Rudd asked if the board approached the purchase contract, and Mr. Jackson stated it had.

Mr. Prause displayed a copy of Mary's House's State operational license, and asked why it was not renewed. Mr. Jackson stated it was due to staffing challenges.

Vice Chair Ramsey stated that the State licenses users, whereas the use rights follow the property. Mr. Jackson stated that another agency they were in discussion with regarding potential colocation to continue the use at the subject property had a State license.

Mr. Prause asked Mr. Jackson to confirm that Mary's House's federal tax exempt status expired in 2018, and he stated that was correct, due to an oversight on his behalf. Mr. Prause asked about a previous executive director of Mary's House, and Mr. Jackson stated that that individual passed away in 2015. Mr. Jackson stated that staff and board members had pay reduced due to lack of funding. Mr. Prause asked to confirm that the final client of Mary's House was discharged on March 1, 2019, and Mr. Jackson stated that he believed there was a client beyond March 1. Mr. Jackson confirmed that there had been no water use past March 2019.

Mr. Oliver asked to confirm that the board continued meeting after March 2019, and Mr. Jackson stated that was correct.

Vice Chair Ramsey asked if other utilities had remained active after March 2019, and Mr. Jackson stated that was correct.

Mr. Wofford asked when fundraising to pay the loan took place, and Mr. Jackson stated it was summer of 2022, and they had actively been seeking to reopen.

Mr. Ducharme stated that he had no further witnesses to call.

Chair Necas released Directors Schwartz and Kennedy.

Mr. Prause asked if the Board would permit the appellant to question Ms. Thiel. Chair Necas stated that the Board was only considering Mr. Kirkman's decision-making process and would not permit such questioning.

Mr. Prause called Deana Coble as a witness, and **Deana Coble, 600 Guilford Avenue**, was sworn in for her testimony. She stated that lived directly across Fountain Street from the subject property and has observed the subject property daily.

Mr. Prause displayed photographs taken by Ms. Coble. Ms. Coble stated that on August 31, 2020, an individual from the Guilford County Health Department left a business card and attempted to contact someone with Mary's House.

Mr. Baker objected to the question, as the discussion is hearsay. Chair Necas sustained the objection.

Mr. Prause stated that Ms. Coble was testifying to the contexts of her text messages, images of which were presented as evidence. Ms. Coble stated that she sent text messages to Jackie Phillips, Executive Director of Mary's House, regarding the visit. She stated that she had not seen activity at the property since the first quarter of 2018.

Mr. Wofford asked to confirm the text message exchange was from August 2020, and Ms. Coble stated that was correct.

Ms. Coble stated that the activity level at the subject property was much different than it had been prior. She stated she recalled seeing Mr. Jackson the property approximately three times since 2018 and had been in contact with him regarding concerns about the subject property. Mr. Prause asked if Ms. Coble had observed residents of Mary's House in years prior.

Mr. Baker objected to the question as being irrelevant, and stated that the City has already stipulated that Mary's House has not had clients since March 2019. Chair Necas sustained the objection. Mr. Prause objected, stating that appellant asserts the timeline in 2018 is relevant.

Mr. Prause asked about what Ms. Coble had witnessed during this time period. Ms. Coble stated that she had seen almost no activity since 2018.

Ms. Rudd asked to confirm that Ms. Coble had witnessed Mr. Jackson at the subject property and was able to contact him, and Ms. Coble stated that was correct, but that the neighborhood had to conduct upkeep of the area.

Mr. Wofford asked about Ms. Coble's observation of the property and if she may have missed seeing someone visit the subject property. Ms. Coble stated that she does not observe everything, but feels that there is a clear difference between active and inactive facilities.

Mr. Prause asked if Ms. Coble was aware of a second facility operated by Mary's House, and Ms. Coble stated she was. She stated she did not see any clients at the subject property in 2019.

Mr. Prause called Martha Outlaw as a witness, and **Martha Outlaw, 601 Guilford Avenue**, was sworn in for her testimony. She stated that her observations of the subject property were substantially similar to those testified by Ms. Coble.

Mr. Prause moved to enter the photographs from Ms. Coble into evidence, and Chair Necas stated those were accepted as evidence. He then displayed photographs from Ms. Outlaw, and she confirmed she took them and that they accurately reflect conditions around her property during July 2021 when large quantities of mail had accumulated. She stated that she contacted the City to report nuisances at the subject property. Ms. Outlaw stated she has seen activity at the subject property decline before the Covid-19 pandemic.

Mr. Baker stated that the Board has the authority to curtail repetitive testimony.

Mr. Prause called Todd Rotruck as a witness, and **Todd Rotruck, 211 Wilson Street**, was sworn in for his testimony.

Mr. Baker requested for Mr. Prause to outline the testimony so the Board can assess if it would be repetitive or novel.

Mr. Rotruck stated that he has done contracting work for Mary's House, and is familiar with the subject property at full operational capacity, and that level has not been evident for some time.

Mr. Baker objected to the testimony as repetitive.

Vice Chair Ramsey stated he did not believe there was new testimony being presented.

Chair Necas sustained the objection.

Mr. Rotruck stated that the March 2019 date for operations suspending is incorrect, and he asserted it stopped in the middle of 2018.

Mr. Prause asked Mr. Rotruck to testify to his observation of the intent of Mary's House to cease operations.

Mr. Baker objected, stating that the witness cannot testify to such intent. Chair Necas sustained the objection.

Mr. Prause called Patrick Maloy as a witness, and **Patrick Maloy, 206 Wilson Street**, was sworn in for his testimony. Mr. Maloy stated that he had submitted approximately 17 public records requests to the City of Greensboro regarding this determination. Mr. Prause asked if Mr. Maloy could authenticate documents as being the requests he made.

Mr. Baker objected to the requests as being irrelevant to the issue of Mr. Kirkman's determination. The authenticity of the requests is not relevant if the requests themselves are not relevant, as he asserts they are not.

Chair Necas asked Mr. Prause to broadly characterize the documents. Mr. Prause stated they were City public records requests.

Mr. Baker stated that while they may be true and accurate copies of public records of the City of Greensboro, that does not automatically make them relevant to the dimensions the Board has to consider the appeal.

Vice Chair Ramsey reiterated the request to characterize the documents.

Chair Necas stated that the Board needed proof of relevance of the documents, and overruled the objection to allow for an explanation of the relevance.

Mr. Prause asked what documents Mr. Maloy had requested and why. Mr. Maloy stated he requested communications between Mr. Kirkman, Ms. Thiel, individuals associated with Mary's House and Greensboro Urban Ministry, Planning Director Schwartz, and Housing and Neighborhood Development Director Kennedy.

Mr. Baker reiterated his objection, as the only issue before the Board is Mr. Kirkman's determination.

Chair Necas stated that the Board cannot consider the communications that lead up to Mr. Kirkman's decision, only the factual evidence he considered, and sustained the objection.

Mr. Prause asserted that the information in the public records requests was relevant.

Chair Necas sustained Mr. Baker's objection, as Mr. Kirkman has testified to the factual basis behind his determination.

Mr. Prause stated that the appellant was attempting to offer evidence for future impeachment.

Mr. Baker stated that such specific evidence would need to be presented directly.

Chair Necas instructed the witness to present the evidence.

Vice Chair Ramsey asked to clarify that the witness is only testifying on evidence to impeach the testimony of Mr. Kirkman. Mr. Maloy stated that he believed information in the public records indicated the City had initially come to a different determination.

Mr. Baker objected to the testimony, again reiterating that the Board is only considering Mr. Kirkman's determination and the factual basis behind it.

Mr. Randolph stated he was in favor of constrained latitude for the witness to present information relevant to the decision-making process of Mr. Kirkman.

Mr. Oliver stated that the only relevant factor before the Board is the final determination.

Mr. Wofford stated that he was in favor of hearing testimony if it is relevant.

Vice Chair Ramsey concurred with Mr. Randolph.

Chair Necas stated the objection was overruled.

Mr. Maloy displayed an email from March 2022 sent by Ms. Thiel to an individual associated with Mary's House with preliminary discussion about the nonconforming use present at the subject property.

Mr. Wofford stated that this email appeared to be internal staff discussion and not a determination.

Mr. Baker objected to the testimony, stating that it was irrelevant to the issue of Mr. Kirkman's determination.

Chair Necas sustained the objection.

Mr. Maloy presented more email messages, and Mr. Baker objected for relevancy. Chair Necas sustained the objection.

Mr. Oliver stated that Directors Schwartz and Kennedy had been released from testimony, and were now being referenced by the witness, and asked if the evidence could be considered.

Mr. Baker stated that Mr. Kirkman testified there were internal staff conversations before he made his determination, and testimony to that is thus superfluous.

Vice Chair Ramsey asked Mr. Prause if the witness had any new information that had not previously been considered or overruled for consideration.

Chair Necas sustained the objection.

Vice Chair Ramsey asked if the property owner's attorney has a role in the appeal, and asked Mr. Kirkman if there had been any previous nonconforming use situations with time spans as long as those in this case, and if any information presented by Mr. Prause makes him doubt his determination. Mr. Kirkman stated that he can't recall any other cases at the moment, and his conclusion is still the same.

Mr. Truby stated that the determination seems subjective, and asked if it was a difficult decision. Mr. Kirkman stated that it took time to consider the circumstances.

Marc Isaacson, 804 Green Valley Road, attorney present on behalf of Greensboro Urban Ministry (GUM), stated that the organization is a stakeholder as the property owner, and GUM's leadership decided to accept the Board's decision. They have provided documents and information at the request of the City and appellant counsel.

Mr. Oliver asked to confirm that GUM is the sole owner of the subject property currently, and Mr. Isaacson stated that was correct.

Mr. Ducharme distributed copies of case law, and Mr. Prause entered Ms. Outlaw's photographs into evidence. Chair Necas accepted the exhibits as evidence.

Mr. Ducharme stated that North Carolina courts have held that intent of the property owner must be considered when assessing nonconforming uses. Losing nonconforming status requires more than an interruption in day-to-day operations. The *Southern Equipment Company v. Winsted* case discusses the interpretation of the word "cease" as relating to the intent of the property owner. He stated that the historical use of the subject property is broadly a residential use, and State courts have given factors to assess the continuation or cessation of such similar land uses. Individuals associated with Mary's House testified that efforts were taken to maintain the subject property and resume operations by seeking out funding or passing ownership of the property to another entity with licensure and funding available. Mr. Ducharme stated that this is intent to continue the nonconforming use, and the purchase agreement for the subject property reiterates that by maintaining a right of first refusal if the use would be discontinued. He asserted that the evidence presented before the Board supports Mr. Kirkman's determination and that the Board should uphold it.

Mr. Prause stated that the most recent case law from the North Carolina Court of Appeals relating to Special Use Permits is *Huntington Properties v. Currituck County*, which states that zoning ordinances are construed against indefinite continuation of a nonconforming use, and that nonconforming uses are not favored by the law. The City's position amounts to wishful thinking that would permit the perpetual potential continuation of a nonconforming use. He stated that the desire to continue operation and seek funding is insufficient to maintain use rights, and that documents which the board of Mary's House filed or failed to file indicated a cessation in operation of the use at the subject property. While there were exigent circumstances during 2020, neighbors have testified that operations were severely curtailed or suspended as early as 2018, and thus the pandemic emergency should not be the basis for the determination.

Vice Chair Ramsey asked about the five-year right of first refusal period in the purchase contract Mr. Prause referenced. Mr. Baker stated that the future intent of the current property owner is not the issue before the Board.

Mr. Wofford asked to confirm that the Board is only considering the subject property, not the past or prospective operators of the use on it, or any potential changes to the use. Mr. Baker stated that was the view of the City Attorney's office, that the nonconforming use status follows the property, and the Board is considering that alone. The Board is not deciding policy, as a quasi-judicial body. It is considering the factual basis used by Mr. Kirkman in making his determination.

Chair Necas closed the public hearing.

Vice Chair Ramsey stated that this was a complicated case, and that the period of time gave him pause even though there is evidence of intent to continue the use. He questioned whether other uses would receive as much consideration in similar circumstances.

Mr. Oliver stated that the determination was hard to overturn, as there was not incontrovertible evidence of a lack of intent to continue the nonconforming use, and Mr. Kirkman's determination was sound.

Mr. Truby stated that the decision will be made strictly on the language of the Ordinance, and it is clear that operations ceased for longer than the period permissible under the Ordinance. The property owner has alternatives to establish use rights on the subject property. He believes the subject property has lost nonconforming use rights.

Mr. Wofford stated that the timeline as testified by witnesses demonstrates an impact of the Covid-19 pandemic and its attendant difficulties and restrictions. Based on the evidence presented, the previous owner displayed intent to continue the use.

Ms. Rudd concurred with Mr. Wofford's assessment of the timeline, and stated that the Board has a limited envelope of review. The effort shown by the previous owners to develop new funding to continue operations demonstrates the intent to continue the use.

Mr. Randolph stated that the Ordinance language regarding termination provisions is not perfectly clear. While the appellants presented compelling evidence regarding the interruption of operations at the subject property, that is not the sole method by which nonconforming uses are assessed. He stated that testimony by the previous property owners demonstrates intent to continue operation of the nonconforming use in light of severe exigent circumstances beyond their control.

Chair Necas stated that the evidence presented demonstrates intent to continue operation of the use, and the influence of outside factors that limited the use of the subject property does not abrogate the rights to maintain the use.

MOTION

Mr. Oliver moved that in BOA-23-43, 520 Guilford Avenue, based on the stated Findings of Fact, the determination of the Zoning Enforcement Officer that the right to use the subject property as a nonconforming group care facility still exists be upheld based on the following facts: (1) the property located at 520 Guilford Avenue is within the corporate limits of the City of Greensboro and subject to its jurisdiction and the application of its Ordinances; (2) the City of Greensboro Land Development Ordinance (LDO) applies to the property and sections relevant to this decision include Section 30-8-1 – Table 8-1 and Section 30-2-3.6; the Board accepts the following testimony and evidence as true in support of its decision: the property was never used for another use so it did not cease operations, they did not intend to close, they tried to keep it open; this is a valuable service to Greensboro, the board continued to meet for those purposes, the entity continued and did not cease operations. Ms. Rudd seconded the motion.

The Board voted 6-1 in favor of the motion, (Ayes: Oliver, Vice Chair Ramsey, Randolph, Rudd, Wofford, Chair Necas; Nays: Truby). Chair Necas stated the motion passed.

OTHER BUSINESS

There was no other business.

ADJOURNMENT

The meeting was adjourned at 10:06 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/arn