

**MEETING MINUTES  
GREENSBORO BOARD OF ADJUSTMENT  
JANUARY 22, 2024**

The meeting of the Greensboro Board of Adjustment was held on Monday, January 22, 2024, at 5:32 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Vaughn Ramsey, Deborah Bowers, Cory Randolph, Ted Oliver, Tifanie Rudd, and Drew Wofford.

City staff present were Mike Kirkman, Shayna Thiel, Larry Holdsworth, Steve Brumagin, Duncan Walser, Carla Harrison, and Andrew Nelson (Planning Department), Emily Guarascio (Associate 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. 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 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 (December 11, 2023 Meeting)**

Mr. Randolph made a motion to approve the December 11, 2023 minutes, seconded by Ms. Rudd.

The Board voted 7-0 in favor of the motion, (Ayes: Bowers, Randolph, Oliver, Rudd, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the minutes were approved.

**SWEARING IN OF STAFF**

Shayna Thiel, Mike Kirkman, Steve Brumagin, Larry Holdsworth, and Duncan Walser 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.

Chair Necas advised the Board would reorder the agenda to hear item BOA-24-02 last.

**NEW BUSINESS**

**a. BOA-24-01: 1801 Murrayhill Road (VARIANCE #1, VARIANCE #2 DENIED)**

Ms. Thiel stated in BOA-24-01, Alejandrina Velazquez requests two variances: (1) To allow the area devoted to a home occupation to occupy approximately 700 square feet when no more than 430 square feet is allowed; and (2) To allow instructions in music, dancing, art, or similar subjects to have more than 5 students at a time. Evidence provided by the applicant includes Exhibit A. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.5(A): The area devoted to the home occupation may not occupy more than 30%

of the gross floor area of the dwelling; and Section 30-8-11.5(C)(7): Instructions in music, dancing, art, or similar subjects may have up to 5 students at a time.

**Background and Site Information:** The subject lot is located on the south side of Murrayhill Road, east of Beagle Street, and is zoned RM-18 (Residential Multifamily). Tax records indicate the lot contains approximately 14,375 square feet, and the house was constructed in 1939. The applicant regularly conducts Zumba classes for the community, using the entire basement level of the house. On November 1, 2023, a zoning enforcement officer issued a Notice of Violation related to the home occupation use on the property. In conflict with provisions of the Land Development Ordinance, the applicant's home occupation occupies more than 30% of the floor area of the house and serves more than 5 students at a time. To bring the property into compliance and remedy the Notice of Violation, the applicant applied for these variances. If the variances are granted, the applicant will continue operating the home occupation on the property.

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 Alejandrina Velazquez, Amy Velazquez Cruz, Lourdes Cruz, Victor Cruz, and Zizi Barthouma for their testimony.

**Alejandrina Velazquez, 1801 Murrayhill Road,** stated that her family has a number of automobiles that complicate parking on the subject property when her mother's classes are in operation, thus necessitating the variance. She stated that they feel they are being treated unfairly, even after trying to work with neighbors to come to a solution, and that that most of the events her mother runs are not for profit.

Ms. Guarascio stated that the testimony thus far has not been relevant to the variances requested.

Vice Chair Ramsey asked about how the Land Development Ordinance (LDO) addresses home occupations and why the applicant is requesting the second variance. Mr. Kirkman stated that the home occupation standards allow for limited commercial activity compatible with the character of residential areas, hence the limitation on floor area and number of clients. He stated that the applicant's testimony would need to address the situation regarding the number of people attending classes at the subject property.

Alejandrina Velazquez stated that the first Zoning Enforcement report included her family's vehicles in the number of vehicles parked at the subject property.

Chair Necas stated that the variance requests before the Board were only related to the maximum area used for the home occupation and the number of clients.

Alejandrina Velazquez stated that her mother regularly has five clients, but sometimes other people join in as well.

Chair Necas asked to confirm that more than five clients were regularly attending the classes, and Ms. Velazquez stated that was correct.

Vice Chair Ramsey asked how big the classes get. Ms. Velazquez said up to 8 every once and a while.

Mr. Randolph asked if the family members who regularly attend the classes live at the subject property, and Ms. Velazquez stated they do not.

Vice Chair Ramsey asked whether these classes were paid or offered without charge, and Ms. Velazquez stated they were free.

Mr. Randolph asked about the frequency of the classes. Ms. Velazquez stated she holds them daily.

Ms. Rudd asked to confirm if this was a business operation. Ms. Velazquez stated that she holds the classes for personal health reasons and invites others to join.

Chair Necas asked about the standards for home occupations and commercial activity. Mr. Kirkman stated that home occupations consist of any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. He also stated that the home occupations use standards for instruction in music, dancing, art or similar subjects permit up to five students at a time.

Mr. Oliver asked if it mattered whether it was a business that exchanged funds or not, and Mr. Kirkman stated the ordinance only specified non-residential uses as the regulated activity.

Mr. Wofford asked about how the home occupation standards apply to parties for special events, and Mr. Kirkman stated that one-off special events do not qualify as home occupations.

Chair Necas asked if another part of the consideration was that the applicant devotes a specific area of the subject property for the home occupation. Ms. Guarascio stated that was correct, as well as the non-residential use.

Ms. Bowers asked to confirm that both the number of clients and floor area standards were part of the variance requests, and Mr. Kirkman stated that was correct.

Ms. Rudd asked how often the applicant held these classes, and Ms. Velazquez stated they were daily Monday through Friday, with no exchange of money.

Ms. Guarascio stated that compensation is not an element of interpreting the ordinance's regulation of home occupations.

Mr. Randolph asked how the students arrive at the subject property. Ms. Velazquez stated that they either have their own vehicles or carpool. Mr. Randolph asked if the applicant could hold more than one class per day to reduce the number of students to five or less. Ms. Velazquez stated that she only had to take one class per day and did not think she could hold more than one, and that classes were one hour per day between 10 and 11 a.m. She stated that her family members are unable to attend community classes due to issues with language comprehension. Mr. Randolph asked if the classes involved any equipment, and why the applicant needs more than 30% of the area of the dwelling for the use. Ms. Velazquez stated that there was no equipment needed, but they needed space for the exercise.

Mr. Oliver asked if there was music involved, and Ms. Velazquez stated there was but it did not leave the subject property. Mr. Oliver asked if there would be still be a violation with fewer than five clients. Mr. Kirkman stated that both would need to be cured via variances to be a legal home occupation due to the use of more than 30% of the dwelling.

Mr. Wofford asked how the 30% use was determined, and Mr. Kirkman stated that a Zoning Enforcement Office measured the space used.

Ms. Guarascio stated that some of the testimony given was not relevant to the variances requested.

Chair Necas asked if there was anyone to speak in opposition and swore in Richard Johnson, Bonita Benton, John W. Smith III, Amy Newbold, and Roger Wood for their testimony.

**Richard Johnson, 1800 Murrayhill Road**, stated that he understood the desire to use one's property, but the applicant's activity inconveniences the entire neighborhood.

Chair Necas stated that the parking concerns are a different violation, but asked if there was evidence of more than five clients being at the subject property.

Mr. Johnson stated that the applicant holds classes twice a day, including in the evenings, where some clients do not leave until 7 or 8 p.m.

Ms. Guarascio stated that the factors applicable to granting a variance allow for consideration of the creation of nuisances or violating other laws and parking is relevant.

**Amy Newbold, 4960 Cecil Norman Road, Randleman**, owns 1803 Murrayhill Road and stated that she has had to post no parking signs after multiple cars were using her property for unauthorized parking. She stated that guests of the applicant park along the street and on her property and obstruct access, and that she had to rope off her property.

Mr. Wofford asked if the Board could consider the issue of the vehicles, and Ms. Guarascio stated that it could, as a variance cannot create a nuisance. Mr. Wofford asked how many cars show up at the subject property, and Ms. Newbold said up to eight.

Chair Necas asked if the guests parked vehicles on the street in front of Ms. Newbold's property or her property itself, and Ms. Newbold stated they parked on her property.

Ms. Rudd asked if the vehicles were in the adjacent property the applicant had negotiated the use of, and Ms. Newbold stated that she could not be sure.

Chair Necas asked Ms. Newbold to indicate where cars were parked, and Ms. Newbold indicated which property was being used on an aerial photograph. Chair Necas asked if guests ever parked in the vacant lot adjacent to the subject property, and Ms. Newbold stated that guests regularly parked there, and she needed to place a rope to block access to her property to prevent vehicles from crossing her property to park on it.

Ms. Bowers asked if the nuisance was from the parking or the use itself. Ms. Newbold stated that her tenants do not hear noise, but the parking is the issue.

Ms. Guarascio stated that the Board could not speculate as to the number of vehicles correlating to the number of people attending the home occupation.

Mr. Randolph asked where Murrayhill Road ends and the subject property's driveway starts.

Mr. Johnson stated that the subject property is at a dead end.

Ms. Newbold stated that the applicant has paved all the way to the right-of-way.

Mr. Randolph asked staff if there was any clarifying information on where the driveway begins, and Mr. Kirkman stated that it appears it was at the edge of the property.

Mr. Oliver asked to confirm if there was more than one class. Ms. Newbold stated she has visited the property numerous times due to complaints by her tenants and there have usually been multiple vehicles parked there.

**Bonita Benton, 1800 Murrayhill Road**, stated that the home occupation was creating a nuisance. Ms. Guarascio stated that some of the comments were not relevant to the Board's consideration of the variance requests. Ms. Benton stated that vehicles have parked in her yard, and her driveway has been blocked.

**Roger Wood, 4012 Melissa Lane Road**, owns 1800 Murrayhill Road and stated that Murrayhill Road is a dead end road that is only 11.5 feet wide, and the road shoulder is required for vehicles to pass. When cars are parked along the road, it creates a hazard as vehicles cannot maneuver around neighboring properties. The large number of vehicles create daily issues regarding package delivery and other visitors. He stated that the variance request cannot be supported by the subject property or this area of Murrayhill Road, and that the use of the adjacent vacant lot cannot be a permanent solution. Mr. Wood stated that there are commercial sites in close proximity to conduct these classes

Chair Necas advised that the applicant had five minutes for rebuttal.

Mr. Randolph asked if the use regulation was five guests at a time no matter how long the events were, and Mr. Kirkman stated that was correct.

Mr. Wofford asked if parking was a separate issue or directly involved. Ms. Guarascio stated that the parking concerns are relevant, as the ordinance states that home occupations cannot generate an impact beyond what normally exists in a neighborhood.

Vice Chair Ramsey asked about the fourth factor in variance granting, consistency with the neighborhood. Ms. Guarascio stated that the ordinance speaks to what ordinarily occurs in proximity.

Vice Chair Ramsey asked to confirm if it was one class or two per day. Ms. Velazquez stated that there was one regular class, but there are sometimes secondary events among family members. Chair Necas asked if these were temporary, and the applicant stated that it was seasonal based on community involvement, and Chair Necas stated that could be recurrent.

Mr. Oliver asked if they had a formal agreement for parking, and Ms. Velazquez stated that they did. They have paved their driveway to make maneuvering vehicles on the subject property easier in an attempt to avoid impact on the neighbors.

Chair Necas asked about the use of the public right-of-way. Mr. Kirkman stated that the right-of-way could be wider than the pavement, but generally private property owners have a right and responsibility to maintain those spaces.

Vice Chair Ramsey asked if the Board could grant a variance subject to a parking agreement on the neighboring lot. Mr. Kirkman stated that conditions could be imposed, but they would need to be specific.

Mr. Wofford asked if there was a formal lease on the parking area. Ms. Velazquez stated that there is not currently, but they have a verbal agreement. Mr. Kirkman stated that if the lot was only used for parking, it would be a commercial parking use on a residential property, and the condition would be difficult to enforce.

Ms. Guarascio stated that a condition without a contract could not be enforced. Vice Chair Ramsey stated that the applicant would need to present evidence. Ms. Velazquez stated that they could negotiate with the property owner. Mr. Kirkman stated that the referenced property did not have rights to commercial parking as a principal use, which such an agreement would indicate.

Mr. Oliver asked if the use is commercial, and Mr. Kirkman stated that this is not a residential use.

Ms. Bowers asked about the specific details of the variance, as neighbors have presented complaints about the level of vehicular activity at the subject property. Mr. Kirkman stated that the variances are to allow the home occupation in more than 30% of the dwelling, and the number of clients to exceed five.

Vice Chair Ramsey stated that he believed this use was creating a nuisance to the neighborhood and a variance could not be granted.

Alejandrina stated that the use is timed in a way that it would not create an impact on the neighbors who are not home when the classes are held.

Ms. Guarascio stated that generalized fears and opinions are not germane to the Board's deliberations.

With no additional speakers present, Chair Necas closed the public hearing.

### **BOARD DISCUSSION**

Mr. Randolph asked about the standards for this home occupation in the ordinance, and if five separate vehicles would be acceptable. Mr. Kirkman stated that would be allowed if the vehicles were not parked in grass or bare earth.

Vice Chair Ramsey asked about the 30% limit for home occupations. Mr. Kirkman stated that would be addressed by the other variance.

Mr. Randolph stated that the Board did not have evidence about the traffic flow in the area.

Mr. Oliver stated that there are multiple homes on a dead-end, very narrow street. He stated that when he drove into the area, he had issues maneuvering.

Chair Necas asked about the rationale behind the ordinance's 30% limit for home occupations. Mr. Kirkman stated the goal of the ordinance was to make any accessory uses clearly incidental to the principal residential dwelling use.

Mr. Randolph stated that the size of the use did not seem as critical as the number of visitors, and Chair Necas concurred.

Mr. Wofford stated that he supported the size increase for the use but did not want to contribute to a neighborhood nuisance via the parking situation, and Ms. Rudd concurred with Mr. Wofford's reservations.

Mr. Randolph stated that the fact that the home owners regularly have multiple vehicles parked at the subject property makes the number of visitors problematic, and Ms. Rudd concurred based on the narrowness of Murrayhill Road.

Chair Necas asked about the appropriate motion language for the Board to use. Ms. Guarascio stated the motion should reflect the general will of the board, and Mr. Kirkman stated that the items could be broken up into separate motions.

### **MOTION**

Chair Necas moved that in BOA-24-01, 1801 Murrayhill Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and variance #1 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 dance classes need more space than a small house from 1939 can easily provide; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house was built in 1939; (3) The hardship is not the result of the applicant's own actions because, again, the house was built in 1939; (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 classes for Zumba are supporting a healthy lifestyle, particularly for members of the Hispanic community who may not be able to find classes in Spanish for them to attend. Mr. Randolph seconded the motion.

The Board voted 6-1 in favor of the motion (Ayes: Oliver, Wofford, Bowers, Randolph, Vice Chair Ramsey, Chair Necas; Nays: Rudd). Chair Necas stated the motion passed.

Chair Necas started a motion, but abandoned it and began a new motion.

Chair Necas moved that in BOA-24-01, 1801 Murrayhill Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and variance #2 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 not enough interested members of the community would be able to participate; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house allows for more than five students since they are using the basement and it would be difficult to be able to hold class without more people; (3) The hardship is not the result of the applicant's own actions because sometimes students show up who were not expected; (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 Zumba classes are beneficial to the community and health of the individuals participating. Vice Chair Ramsey seconded the motion.

The Board voted 2-5 in favor of the motion (Ayes: Bowers, Oliver; Nays: Randolph, Rudd, Wofford, Vice Chair Ramsey, Chair Necas). Chair Necas stated the motion failed and variance #2 is denied.

**b. BOA-24-03: 408 Martin Luther King Junior Drive (APPROVED)**

Ms. Thiel stated in BOA-24-03, New Zion Missionary Baptist Church Inc. requests a variance to allow the area of a proposed electronic message board to be 29.75 square feet when no more than 14.88 square feet is allowed. Evidence provided by the applicant includes Exhibits A and B. Supporting documentation from staff includes Exhibits 1 through 9. The Land Development Ordinance reference was Section 30-14-8 – Table 14-4: In mixed-use districts, the maximum percentage of sign face comprised of electronic message board is 50%.

**Background and Site Information:** The subject lot is located on the west side of Martin Luther King Junior Drive, south of East Gate City Boulevard, and is zoned TN (Traditional Neighborhood). Tax records indicate the lot contains approximately 3.34 acres and the church was constructed in 2016. The property is also located within the Martin Luther King Junior Drive North Traditional Neighborhood. The applicant proposes to erect a 29.75 square foot monument sign on the property fronting East Gate City Boulevard of which 100% of the sign face will be an electronic message board, when only 14.88 square feet, or 50% is allowed. To allow for the entire sign face to be an electronic message board, a variance is necessary. If the variance is granted, the applicant will proceed with the sign permit review 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 Dwayne Bryant for his testimony.

**Dwayne Bryant, 1207 Brentwood Street, High Point, applicant's attorney,** stated that the existing sign is insufficient for the church, and the ordinance's regulations would result in a sign that is too small. The church seeks the variance to avoid confusion on the location of the church and one that would be readable. He stated that because of the layout of the road around the church, they need a larger sign.

Chair Necas asked to confirm that the issue was not the size of the sign, but the amount of the sign face with an electronic message board component. Mr. Kirkman stated that was correct, and the Board can consider the impact of that.

Vice Chair Ramsey asked if the Greensboro Department of Transportation (GDOT) cleared the sign for safety considerations. Mr. Kirkman stated that the sign has not been constructed yet, and he is not aware of any concerns by GDOT.

Mr. Bryant displayed aerial photography of the subject property, and indicated the location of a ramp on East Gate City Boulevard that necessitated the sign's location. He displayed street-level photographs of the subject property and indicated the proposed location of the sign.

Chair Necas asked if the issue was the overall size of the sign, or if it cannot all be electronic. Mr. Kirkman stated that the electronic display component was the issue. The size of the proposed freestanding sign is acceptable by the ordinance, but the request is for 100% of the face of the sign being an electronic message board.

Mr. Randolph asked if the intent of the ordinance was to limit light pollution and any potential distractions. Mr. Kirkman stated that was correct.

Mr. Bryant stated that they originally believed the issue was the overall sign size, and that they do not intend for the sign to be very bright. The size is necessary to indicate the location of the church.

Chair Necas asked if the variance was necessary, if the applicant was willing to make some portion of the sign face non-electronic. Mr. Bryant stated he believed they needed the variance due to the size of the electronic message board component. Mr. Kirkman stated that the applicant's testimony indicated the electronic message board needed to exceed the size requirement to make the name of the church legible.

Mr. Oliver asked if the subject property was in an historic district. Mr. Kirkman stated it was in a Traditional Neighborhood zoning district.

Vice Chair Ramsey stated the location was near an historic district.

Mr. Oliver stated that it would require a Certificate of Appropriateness (COA) from the Historic Preservation Commission (HPC) if it were in a historic district. Mr. Kirkman stated the subject property was historic, but it is not in a City-designated historic district and HPC approval is not necessary.

Mr. Randolph asked if the applicant received any objections to the request, and Mr. Bryant stated they did not.

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. Wofford moved that in BOA-24-03, 408 Martin Luther King Junior 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 church will be unable to install a roadside sign, and the sign would be too small and be illegible; (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 in the MLK improvement district; (3) The hardship is not the result of the applicant's own actions because the applicant has been located on the road for an extremely long time; (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 no opposition and it does not cause any harm, and the sign will be compatible with the neighborhood. Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Oliver, Randolph, Rudd, Bowers, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

### **c. BOA-24-04: 1011 Ross Avenue (APPROVED)**

Ms. Thiel stated in BOA-24-04, Beverly Bradshaw 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 D. Supporting documentation from staff includes 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 Ross Avenue, west of South Benbow Road, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 8,276 square feet and the house was constructed in 1950. The applicant proposes to construct a 240 square foot accessory structure in her back yard to supplement an existing 480 square foot detached garage that will meet setback and separation requirements. 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 total building coverage

of the existing accessory structure and 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 Beverly Bradshaw for her testimony

**Beverly Bradshaw, 1011 Ross Avenue**, stated that she is a recent retiree and wishes to build the accessory structure to allow for storage and for her to use her garage to store her vehicle.

Mr. Oliver asked about storage in the dwelling. Ms. Bradshaw stated that it was built in the 1950s and has very limited storage inside.

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-24-04, 1011 Ross 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 home has limited closet and storage space and the owner must now use the garage for storage and park cars in the street; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the home is over 70 years old with only 2 indoor interior closets; (3) The hardship is not the result of the applicant's own actions because the home has limited storage, making this need for outside storage; (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 other storage option is away from the property, this will allow the owner to park their car in the garage and off of the street. Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Oliver, Randolph, Rudd, Bowers, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

#### **d. BOA-24-05: 1615 Alderman Drive (APPROVED)**

Ms. Thiel stated in BOA-24-05, Perrin Carrell, Michelle Reed, Michele Huffman, and Timothy Huffman request two variances: (1) To allow the area devoted to a home occupation to occupy approximately 700 square feet when no more than 430 square feet is allowed; and (2) To allow instructions in music, dancing, art, or similar subjects to have more than 5 students at a time. Evidence provided by the applicant includes Exhibit A. Supporting documentation from staff includes 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 7-1: 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 Alderman Drive, west of McDowell Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 14,810 square feet, and the house was constructed in 1965. The applicants propose to covert the existing 828 square foot 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 2.47 feet into a required 10-foot side setback and be 7.53 feet from the side property line. It will also encroach 16.65 feet into a required 30-foot rear setback and be 13.35 feet from the rear property line. 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 overlays.

Chair Necas asked the applicant to provide their name/address for the record and swore in Perrin Carrell and Michelle Huffman for their testimony.

**Perrin Carrell and Michele Huffman, 1615 Alderman Drive**, stated that they were attempting to renovate the existing structure. The property is owned by two families, and the structure was previously a garage. They seek to make it more livable as a dwelling, without changing the footprint of the structure. There is a need for family members to have a place to live and visit, and they are seeking to modify the structure with as little construction as possible.

Ms. Guarascio asked to confirm that the other family was represented at the hearing, and Michele Huffman confirmed she represented the other family.

Vice Chair Ramsey asked about occupancy standards in the ordinance regarding non-related individuals. Mr. Kirkman stated there could be either four unrelated individuals, or a family plus two unrelated individuals.

Chair Necas asked if there was anyone to speak in opposition and swore in Carla and Mark Meissner for their testimony.

**Carla and Mark Meissner, 1403 McDowell Drive**, stated that they are adjacent to the applicant, and they displayed aerial photography of the subject property.

Vice Chair Ramsey asked to confirm where the neighbors lived, and the Meissners indicated on the aerial photograph.

Chair Necas asked about the positioning of the neighboring properties. Ms. Meissner stated that the applicants should have been aware of the existing setbacks and that does not constitute a hardship. There are no peculiar conditions on the property that prevent complying with the setback requirements. She stated that it would create additional cost for the applicant, but it would be possible to relocate the accessory structure. The intent of the setback requirement is to keep the character of the older neighborhood.

Vice Chair Ramsey asked to confirm the garage is currently located in the noncomplying position, and Ms. Meissner stated that was correct.

Ms. Meissner stated that the intent of the variance is to convert it to an ADU, and the existing proximity of accessory structures is acceptable because they are not being used as dwellings. She stated that the density of the R-3 zoning district is not preserved by adding a dwelling unit.

Ms. Guarascio stated that any speculation of the potential use of the accessory dwelling unit is not relevant to the Board's consideration.

Vice Chair Ramsey stated that any variance granted would run with the land.

Ms. Meissner stated that they are concerned about future uses if the Board grants the variance, and that the request does not fit the spirit of the neighborhood.

Mr. Meissner stated that the Board would be setting precedent for other potential ADUs in their neighborhood.

Mr. Randolph stated that the Board was quasi-judicial and not bound by precedent.

Ms. Guarascio stated every case is fact-specific.

Mr. Wofford asked to confirm that the only relevant factor for the Board's consideration is the setback, and asked if the neighbors would be fine with the size of the accessory dwelling if it met the setback requirement. Mr. Meissner stated that was correct. He stated that they do not oppose the ADU, but they are concerned about the close proximity to their property line.

Mr. Meissner displayed illustrative drawings of the proposed ADU. Mr. Wofford asked about the orientation of windows, and Mr. Meissner stated that it would create a privacy issue.

Mr. Wofford asked if the neighbors would have an issue without the proposed windows, and Ms. Meissner stated they would still have an issue with the close proximity of the proposed ADU.

Ms. Rudd asked for clarification on the neighbors' opposition to the request, and Mr. Meissner stated it was both the windows overlooking their property and the proximity of the proposed ADU.

Mr. Oliver asked if proposed new ADU rules would influence this request at all. Mr. Kirkman stated it did not, as there has been no update to the ordinance yet.

Chair Necas advised that the applicant had five minutes for rebuttal.

Mr. Carrell stated that they did not need a window facing the neighbors' garage and they are willing to modify the design to address their concerns. He stated that moving or demolishing the existing structure would not be practical.

Ms. Huffman stated that other neighbors have requested the construction impact to be less significant, and this proposal will be less invasive.

Mr. Carrell stated that they wish to preserve the historic character of the backyard.

Mr. Randolph asked if moving the structure would limit the use of their backyard, and Mr. Carrell stated they would expect damage to the character.

Ms. Huffman stated the garage is already outfitted for plumbing and electrical

With no additional speakers present, Chair Necas closed the public hearing and requested a motion.

### **BOARD DISCUSSION**

Mr. Wofford stated that it was difficult for many younger people to purchase homes and the applicants have proposed a novel solution that offered compromise with their neighbors. Ms. Rudd concurred.

Chair Necas stated she thought the ADU residents might be more concerned about privacy given the positioning of the existing structure.

### **MOTION**

Ms. Bowers moved that in BOA-24-05, 1615 Alderman 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 building was already over the setback line by 2.5 feet when purchased, the driveway would have to be demolished resulting in hardship and waste simply for an interior renovation; (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 owner built the existing garage to meet the accessory structure setbacks, conversion to a dwelling structure creates greater setbacks and hardship but the footprint does not change; (3) The hardship is not the result of the applicant's own actions because the applicant did not build the original garage but simply wants to convert it to living 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 property dwellings' footprint will not change, only the existing structures will be renovated so interiors can be used for living spaces.

Vice Chair Ramsey asked if there was a condition related to the window. Mr. Kirkman stated that the Board might wish to proceed with caution when dealing with architectural concerns. Ms. Bowers stated she did not condition her motion.

Mr. Randolph stated the applicant proposed a change in architectural design. Mr. Kirkman stated he did not believe the applicant offered it as a condition of the variance request.

Ms. Guarascio stated that any condition set on a variance has to be relevant and apply to the section of the Ordinance varied, in this case the setbacks.

Vice Chair Ramsey stated that the Board has room to consider relevance in the fourth finding of fact. Chair Necas stayed the motion for Board discussion.

Mr. Randolph asked if the Board thought the condition should apply.

Mr. Oliver stated he did not believe the condition was necessary, and Mr. Wofford concurred but stated he would accept it to approve the request.

Chair Necas stated she believed the condition was unnecessary, but would accept it.

Mr. Randolph stated that he felt the condition would rely on a speculative concern.

Vice Chair Ramsey stated that the issue of privacy was central to the neighbors' concerns about the request, and the condition might make it easier to accept the variance request.

Ms. Guarascio stated that she would advise the Board to be cautious when dealing with design elements.

Vice Chair Ramsey encouraged the applicants to continue working with their neighbors.

Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Oliver, Randolph, Rudd, Bowers, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

Chair Necas advised the Board would take a break at 7:34 p.m., and the Board resumed at 7:47 p.m.

**e. BOA-24-06: 1937 Fleming Road (APPROVED)**

Ms. Thiel stated in BOA-24-06, Timothy and Angela Fowler request a variance to allow the building coverage of all accessory structures on the lot to be 1,590 square feet when no more than 1,034 square feet is allowed. 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 30-8-11.1(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 south side of Fleming Road, west of Isaacson Boulevard, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 40,946 square feet and the house was constructed in 1965. The applicants propose to construct a 1,350 square foot detached garage that will meet setback and separation requirements. Because the combined building coverage of the proposed garage and the existing 120 square foot storage building (which will be relocated on the lot) exceeds the maximum 1,034 square foot allowed, the applicants seeks a variance to allow for the additional 556 square feet. The applicants indicate that the proposed garage will not be visible from the street and that heavy foliage conceals their lot.

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. Oliver asked about the listed sizes of the structures. Ms. Thiel stated there was a typo on the staff report

Chair Necas asked the applicant to provide their name/address for the record and swore in Timothy and Angela Fowler and John Wehe for their testimony

**Timothy Fowler, 1937 Fleming Road**, stated that their variance request is to store vehicles and equipment. The dwelling is small compared to the size of the lot, and the request would support the proposed structure.

Vice Chair Ramsey asked if the request was necessary due to the small size of the house. Mr. Kirkman stated that was correct, that the ordinance regulates the relationship between the size of the house and the accessory structures.

**Angela Fowler, 1937 Fleming Road**, stated that the house is two stories and has 4,000 square feet. If they built an accessory structure within the allowed size, it would not be sufficient in size for their needs. She stated that the proposed structure would not be visible from the street.

**John Wehe, 1935 Fleming Road**, stated that he supported his neighbors' request.

Mr. Randolph asked if any neighbors were in opposition to the request. Mr. Fowler stated that he spoke with neighbors and was not aware of any 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**

Vice Chair Ramsey moved that in BOA-24-06, 1937 Fleming 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 compliance would not allow the applicant to protect all of their vehicles including a camper and truck; (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 total lot is 1.2 acres but square footage is limited by the 2,200 square foot residence; (3) The hardship is not the result of the applicant's own actions because applicant bought the property in 1999 but the small house was constructed in 1965; (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 structure will not be visible from the road or near neighbors due to extensive woods and is consistent with the neighborhood and will increase tax values. Mr. Randolph seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Oliver, Randolph, Rudd, Bowers, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

#### **f. BOA-24-07: 3412 Dogwood Drive (APPROVED)**

Ms. Thiel stated in BOA-24-07, Jessica Driggers requests two variances: (1) To allow the building coverage of all accessory structures on the lot to be 1,176 square feet when no more than 878 square feet is allowed; and (2) To allow a proposed accessory structure to encroach 7 feet into a required 10-foot side setback. The accessory structure will be 3 feet from the side property line. Evidence provided by the applicant includes Exhibits A through D. Supporting documentation from staff includes 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; 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 north side of Dogwood Drive, west of Beverly Place, 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 1950. The applicant proposes to construct a detached accessory structure, including a carport, exercise room, storage and future pool house, in the back yard that will exceed the maximum allowed building coverage and encroaches into a required side setback. The building coverage of the proposed accessory structure will be 1,176 when no more than 878 square feet is allowed. Additionally, with a height of 22 feet, the proposed accessory structure will encroach 7 feet into a required 10-foot side setback and be 3 feet from the side property line. The applicant seeks variances to remedy these issues and indicates that the existing storage shed shown on the submitted site plan will be removed. 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 Jessica Driggers, Lee Comer, and Ken Wilhelm for their testimony.

**Jessica Driggers, 3412 Dogwood Drive**, stated that the request is necessary to construct an accessory structure that meets her needs for outdoor storage. She stated that the second variance was necessary due to the single-car driveway placed directly on the property line.

**Lee Comer, 1706 Madison Avenue**, general contractor for the project, stated that parking two cars requires either the setback variance or removing the applicant's existing deck. The square footage is in keeping with the spirit of the neighborhood.

**Ken Wilhelm, 3509 Dogwood Drive**, stated that he lives nearby and thinks the request is fitting with the character of the neighborhood

Chair Necas asked if there was anyone to speak in opposition and swore in Nathan Myers, Barbara Robertson, David Girardi, Ethan Pell, and Andrew Harris for their testimony.

**Nathan Myers, 116 West Brentwood Road**, stated that there are options to modify the positioning of the garage in the large backyard to suit the design, and that the proposed structure is 22 feet tall.

Chair Necas asked for clarification if the Board could consider the height of the proposed accessory structure. Mr. Kirkman stated that the height triggers the different setback requirement.

Mr. Myers stated that the proposed accessory structure is not subordinate to the principal dwelling, as it is wider than the dwelling. He stated that the goal of the Ordinance is to preserve neighborhood character, and there are no similar structures in his neighborhood.

Mr. Wofford asked where the neighbors live in relation to the subject property, and Mr. Myers indicated on the applicant's survey.

Mr. Myers stated that the proposed building's coverage is unreasonable.

Mr. Oliver asked to see the aerial photography of the area, and Mr. Myers indicated the location of his property. Mr. Oliver asked how the positioning of the proposed structure would impact the neighbor. Mr. Myers stated that a 3 foot setback for a 22 foot tall structure was insufficient.

Mr. Wofford asked about where Ms. Robertson's porch was in relation to the subject property, and Mr. Myers indicated its location.

Mr. Myers stated that there are options available for the applicant to build an acceptable accessory structure and comply with the ordinance without the need for a variance.

**Barbara Robertson, 3415 Dogwood Drive**, stated that the proposed structure is as wide as the entire backyard and wider than the existing dwelling.

**David Girardi, 411 Hobbs Road**, stated that he has concerns about stormwater runoff from the proposed structure. He displayed photographs of flooding on his property, and stated that drainage in the area is very poor. The City has not constructed sufficient drainage in the area, and he has had to build a drain on his property in an attempt to mitigate water retention. Mr. Girardi stated that water already flows from the applicant's property, and the proposed structure and impervious surface would only make it worse.

Mr. Wofford asked if stormwater was relevant in the Board's consideration of the variance. Vice Chair Ramsey stated it could be a nuisance. Ms. Guarascio stated that the fourth finding of fact states a variance cannot create a nuisance.

Mr. Randolph asked how the Board could know that runoff will increase. Ms. Guarascio stated there had not been expert testimony presented, and the Board will determine the weight of testimony.

Mr. Wofford asked if the proposal has been through plan review and if City staff addresses stormwater runoff in the plan review process. Mr. Kirkman stated review is not complete, and confirmed that staff would consider it during plan review.

**Andrew Harris, 409 Hobbs Road**, displayed photographs of flooding in the back of his property, and stated that rain makes his property unusable and more stormwater runoff would make it intolerable.

Mr. Randolph stated that the photographs indicate a stormwater issue but do not prove conclusively that the applicant's property solely causes the issue.

Mr. Oliver asked to confirm that the applicant has the right to build an accessory structure regardless of any existing concerns, just not one that exceeds the ordinance regulations she seeks to vary, and Mr. Kirkman stated that was correct.

Mr. Myers stated that the size of the accessory structure does not fit the character of the R-3 zoning district.

Mr. Oliver reiterated that the applicant could build a large accessory structure by right, and Mr. Randolph concurred.

Mr. Wofford stated that the proposal will go through plan review and City technical staff may require remediation.

Ms. Rudd asked about the neighbors' concerns regarding the setback variance request. Ms. Robertson stated that the proposed structure would be 3 feet from her property line, and that the proposed structure is wider than the principal dwelling on the subject property.

Chair Necas advised that the applicant had five minutes for rebuttal.

Ms. Driggers displayed the site survey and proposed accessory structure, and stated that the structure is not as wide as her home. The entire structure would not be 22 feet high, only the side with the garage. She stated that she is considering stormwater runoff with the proposal, and the planned drainage system will remedy current problems and prevent any new runoff issues. Ms. Driggers stated that the size of the structure is reasonable due to the design and positioning accounting for the existing driveway.

Ms. Comer stated that building code would require mitigation of stormwater and redirection of runoff. With this new construction, drainage will be improved.

Vice Chair Ramsey asked about what stormwater mitigation the applicant is proposing. Ms. Driggers stated that catch basins would redirect runoff to the wastewater runoff channels. Chair Necas stated that it would require a pump.

Mr. Oliver stated that Dogwood Drive does not have stormwater runoff drains. Mr. Kirkman stated that was correct, it had curb and gutter.

Ms. Comer stated that the applicant has an existing sump pump system draining in the backyard, and the proposal will drain toward the front yard instead.

Mr. Randolph asked if this is beyond what would be required in the technical review process. Ms. Driggers stated that she was aware of the pre-existing drainage issue and had planned to address it.

Chair Necas asked about the second story of the proposed accessory structure, and if the applicant would still be able to build the proposal without it. Ms. Driggers stated that she would still be able to build the structure, but it would have much less utility for her. She stated that the view from the neighbors' porch would not change.

Vice Chair Ramsey asked if the applicant would get a bigger pump to handle more drainage. Ms. Driggers stated that was correct, to be pumped towards Dogwood Drive.

Mr. Randolph asked if the applicant had looked at alternatives to meet the side setback requirement. Ms. Driggers stated that would affect the use of the yard and complicate ingress and egress in the garage. Ms. Comer stated that the applicant would need to remove the deck or move the driveway, which would be cost prohibitive.

### **BOARD DISCUSSION**

Chair Necas stated that the stormwater concerns are significant, but could be mitigated.

Mr. Wofford stated that plan review will require addressing the runoff issues.

### **MOTION**

Mr. Randolph moved that in BOA-24-07, 3412 Dogwood 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 current allowance of the accessory structure square footage and the setback would be substantially restricted and would prevent adequate parking and storage for the applicant's vehicles, outdoor equipment, household items, and pool materials; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house was built in 1950, the existing carport area existed prior to the applicant's ownership of the property and the lot is narrow; (3) The hardship is not the result of the applicant's own actions because the home's characteristics existed prior to the applicant's ownership, the actions undertaken by the applicant did not result in the property conditions; (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 would allow the applicant to make reasonable and modern use of its property to safely park cars and store outdoor equipment and other accessories, the character of the home will be maintained and will likely increase the property values of existing homeowners and the addition will cause no additional residential harm to the neighbors. Mr. Oliver seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Oliver, Randolph, Rudd, Bowers, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

**g. BOA-24-08; 206 Beverly Place (APPROVED)**

Ms. Thiel stated in BOA-24-08, Charles Winfree requests a variance to allow a proposed addition to encroach 10.62 feet into a required 67.25-foot front setback. The addition will be 56.63 feet from the front property line. Evidence provided by the applicant includes Exhibits A through D. 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.

**Background and Site Information:** The subject lot is located on the east side of Beverly Place, north of Kirby Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 18,731 square feet and the house was constructed in 1952. Based on the average front setback calculations using 202, 204, 208 and 210 Beverly Place, the applicable front setback for the subject property is 67.25 feet. The applicant proposes to construct a front porch addition that will encroach 10.62 feet into the required front setback and be 56.63 feet from the front property line. The Land Development Ordinance allows open air/covered porches to encroach up to 10 feet into a required front setback. But since the existing house already encroaches into that setback, a variance is necessary to allow for the total encroachment. 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 Charles Winfree for his testimony.

**Charles Winfree, 206 Beverly Place**, stated that the front footprint of his property has not changed in 73 years, and they want to add more space to improve the home. This would not ordinarily require a variance, but the curve of Beverly Place adds to the average front setback of neighboring properties and thus creates the requirement for the variance. He stated that he discussed his request with neighbors and he is not aware of any opposition.

Mr. Oliver asked if the applicant would require a variance for a slightly smaller porch. Mr. Kirkman stated that because the house is too close to the average setback, it requires the variance no matter what.

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-24-08, 206 Beverly Place, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because of the averaging of the neighboring property setbacks, this is a very small grant; (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 street curves, the setback line is the result of averaging; other homes on the street are already closer than this property; (3) The hardship is not the result of the applicant's own actions because the home is over 70 years old and the rules were put in place after the home was built; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because of the averaging

method used and the very small distance being asked for, there will be no harm to anything in the neighborhood. Ms. Rudd seconded the motion.

The Board voted 7-0 in favor of the motion, (Ayes: Oliver, Randolph, Rudd, Bowers, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

**a. BOA-24-02: 3108 Madison Avenue (ZONING ENFORCEMENT OFFICER DECISION OVERTURNED)**

Ms. Thiel stated in BOA-24-02, David and Anna Caton appeal a Notice of Violation that an existing wall exceeds the maximum 7-foot height allowed by up to 3 feet. Evidence provided by the applicant includes Exhibit A. Supporting documentation from staff includes Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-9-4.6(A): No fence or wall may exceed 7 feet in height for residential uses.

**Background and Site Information:** The subject lot is located on the north side of Madison Avenue, east of East Avondale Drive, and is zoned R-3 (Residential Single-family – 3). Tax records indicate the corner lot contains approximately 20,038 square feet, and the house was constructed in 1941. The property owners placed decorative planters on top of an existing brick wall that increased the height of the wall to 10 feet at its highest point. On October 30, 2023, a zoning enforcement officer issued a Notice of Violation related to fence/wall height on the property. The Land Development Ordinance states that the maximum height for fences/walls is 7 feet for residential uses. The property owners timely appealed the Notice of Violation.

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

**Brent Ducharme, Assistant City Attorney**, stated that the scope of this hearing was only with regard to the planters on the top of the wall.

**Peter Isakoff, appellants' attorney**, stated that was his understanding as well.

Ms. Guarascio stated that only the Notice of Violation regarding the planters was under consideration by the Board tonight, and the Board will not determine anything else.

Mr. Ducharme stated that the LDO states that a wall in this situation cannot be over 7 feet, and the City's position is that planters placed on top of a wall increasing its effective height over 7 feet is a violation of that.

Mr. Isakoff stated that there is no dispute that the wall is beneath the 7 foot height limit, and that the planters increase the effective height over 7 feet, but the appellants assert that the removable planters and greenery do not contribute to the height of the wall.

Mr. Ducharme stated that the wall itself is not at issue due to the scope of the Notice of Violation. He then called Duncan Walser to testify.

**Duncan Walser** stated that he was a Planner with the City of Greensboro since August 2022. He primarily handles sign permit review applications within the Development Services division of the Planning Department, and a few times a week he fields general questions from the public at the Planner of the Day desk. He stated that he has spoken with Ms. Caton on two occasions last year, once in reference to a dispute with a neighbor's accessory structure and questions about fence height regulations. Mr. Ducharme asked if Mr. Walser takes notes during calls, and Mr. Walser stated that was correct, and that staff keeps a log of calls with general information about conversations. Mr. Ducharme displayed a copy of the Planner of the Day log, and asked Mr. Walser about the dates of the calls. Mr. Walser stated the first call was January 5 where Ms. Caton inquired about accessory structure construction on her neighbor's property, and he stated he did not have permit information available at that time, and information about fence height. He stated that he provided Ms. Caton with

the ordinance standards of fence and wall height, and that a deviation would require a variance. He stated that when callers propose something that would require a variance, he directs them to Ms. Thiel for discussion.

Mr. Isakoff reserved the right for a cross examination after his client's testimony. Chair Necas stated that was acceptable.

Ms. Guarascio stated that the Board must base its decisions only on information on the record.

Mr. Ducharme called Steve Brumagin to testify.

**Steve Brumagin** stated that he has been a Zoning Enforcement Office for the City of Greensboro for the last five years and enforces the Land Development Ordinance by investigating complaints. He stated that the Notice of Violation being appealed stemmed from a complaint call regarding fence height and light trespass.

Mr. Oliver asked for clarification on light trespass regulations. Mr. Brumagin stated that the light from one property could not exceed one foot-candle.

Mr. Ducharme asked when Mr. Brumagin visited the property, and Mr. Brumagin stated October 30, 2023. He stated that he returned the next day to speak with the appellants to measure the wall, and observed that planters placed on an existing wall exceeded height regulations. He then documented the situation and issued a Notice of Violation. Mr. Brumagin stated that he spoke to his supervisor, the Zoning Administrator Mr. Kirkman, before issuing the Notice of Violation, as he had not had a case exactly like this before. Mr. Ducharme asked how Mr. Brumagin measured the height, and Mr. Brumagin stated that he measured the planters themselves, not the vegetation. Mr. Ducharme asked if he had previously contacted the appellants during previous investigations, and Mr. Brumagin stated that he had contacted them in April 2023 about a complaint they made about a neighbor's property unrelated to the wall on their property. He stated that he does not recall discussing planters with the appellants at that time.

Mr. Isakoff asked if April 26 was the date of the inspection, and Mr. Brumagin stated it was either April 25 or 26. Mr. Isakoff asked if Ms. Caton asked Mr. Brumagin to review her plans for the planters, and Mr. Brumagin stated that he does not recall discussion about planters, but there was a conversation about cameras on adjacent property pointed at the Caton property. Mr. Isakoff asked if Mr. Brumagin understood that the planters were a result of the cameras.

Mr. Ducharme objected to the question, and Chair Necas sustained the objection.

Mr. Isakoff asked if Mr. Brumagin was able to surmise at that time that the process of adding the planters was not yet complete.

Mr. Ducharme objected to the question, as Mr. Brumagin has already responded to this line of inquiry. Mr. Isakoff withdrew the question but reserved his right to recall the witness to respond to testimony from his clients.

Vice Chair Ramsey asked when the planters went up. Ms. Guarascio stated that the appellants need to testify to that.

Mr. Isakoff called David and Anna Caton to testify and began a presentation.

Mr. Ducharme asked if the appellants would be testifying, and objected to a slide, as it presented information the appellants have not yet testified.

Chair Necas swore in Anna and David Caton for their testimony.

**Anna and David Caton, 3108 Madison Avenue**, stated that they installed the planters in April 2023. The planters were ordered on February 23 and faux plants were ordered on February 28. On March

3, six planter boxes and thirteen faux plants were ordered. They were installed in the beginning of April, and more were purchased April 19 and May 20.

Mr. Oliver asked if the planters were attached to the wall, and Ms. Caton stated they were not.

Mr. Ducharme called Mike Kirkman to testify.

**Mike Kirkman** stated that he is the Zoning Administrator of the City of Greensboro, and has been at that role for 13 years. He oversees the administration, application, and enforcement of the LDO and is responsible for ordinance interpretations. In the R-3 (Residential Single-Family) zoning district and with the principal use of the subject property as a residential dwelling, the maximum wall or fence height is 7 feet per LDO Section 30-9-4.6(A). He stated that his interpretation was that the planters contributed to the height of the wall as defined in Section 30-15-7, and thus violated the LDO. The applicants would need to remove the planters to comply with the ordinance. Mr. Ducharme asked if the LDO had a provision addressing temporary fences or walls, and Mr. Kirkman stated there was only a provision regarding temporary construction fencing, which this was not.

Mr. Isakoff asked Ms. Caton about communications she had with the City regarding the planters. Ms. Caton stated that on February 20, she called the Planning Department at 8:23 a.m. and spoke with Mr. Walser regarding the issue in the backyard and her options to increase privacy. She stated that Mr. Walser stated that she could place something on the top of the wall as long as it is was not attached. Ms. Caton stated that she had not yet purchased any planters before this, and she believed she was asking the City for permission at this time, and she believed her builder was acquiring all required building permits.

Mr. Wofford stated he could not consider the planters temporary, given the weight of the planters and effort taken to install them.

Vice Chair Ramsey asked about Ms. Caton's recollection of the call with the Planner of the Day, and Ms. Caton stated that she had a phone log indicating she called the number at that date and time.

Mr. Isakoff asked if Ms. Caton had any further contact with the Planning Department. Ms. Caton stated that on April 26, Mr. Brumagin visited their property, and she stated she asked about the planters. Ms. Caton asserted she was told they were acceptable, and stated that the planters could be removed at any time. Mr. Isakoff asked Ms. Caton to confirm that Mr. Brumagin saw the planters, and she stated that she indicated the location of the planters on the wall. She stated that her belief after the visit was that there was no problem with the configuration of the wall, as Mr. Brumagin did not issue a Notice of Violation.

Mr. Isakoff displayed photographs of the subject property and planters.

Mr. Ducharme objected to a photograph. Ms. Guarascio stated that any reasons the applicant might have for placing the planters is not relevant to the Board's consideration.

Mr. Isakoff asked about why they installed the planters.

Mr. Ducharme objected to the questioning, as it has no relevance to the Board's consideration. Chair Necas sustained the objection.

Mr. Ducharme asked Ms. Caton about the notes she has regarding her call to the Planner of the Day desk. Ms. Caton stated that the record shows the date and time and duration of call. Mr. Ducharme asked Ms. Caton if she had contemporaneous notes from the exact time of the call, and Ms. Caton stated she did not. Mr. Ducharme asked Ms. Caton if she had any written material from City staff regarding the planters, and she stated she did not.

Mr. Randolph asked when the wall was built, and Ms. Caton stated that it was completed in November 2022, and is 6 foot 9 inches tall. Mr. Randolph asked if Ms. Caton was advised on the maximum height, and she stated she was informed it was 7 feet.

Mr. Isakoff asked Mr. Walser about his recollection of the call. Mr. Walser stated that he does not recall specifically stating that planters would be acceptable, and stated that he advised Ms. Caton that height above 7 feet would require a variance. Mr. Isakoff asked if he was disagreeing with Ms. Caton, and Mr. Walser stated that he does not have a specific recollection of the content of the conversation as such.

Mr. Isakoff asked Mr. Brumagin about his recollection of his visit. Mr. Brumagin stated that they spoke about a variety of issues while he was there, and he was informing Ms. Caton of his findings relating to her complaint. He stated that he may have seen the planters, but he was not there to inspect them.

Mr. Ducharme asked Mr. Brumagin about his visit to the appellants' property in April 2023. Mr. Brumagin stated he was there based on a complaint issued by the Catons, and as his investigations are complaint-driven, he would not be there to address anything other than the matter of the complaint at hand.

Mr. Ducharme asked Mr. Kirkman who was responsible for making LDO interpretations, and Mr. Kirkman stated that was his decision. In the case of enforcement issues, the Zoning Enforcement Officer would ask for his determination. Prior to that point, there is no official interpretation.

Mr. Oliver asked how this case started. Mr. Kirkman stated it came from a complaint by a neighbor.

Mr. Randolph asked Mr. Kirkman about the difference between a privacy fence or wall and a retaining wall. Mr. Kirkman stated that in a combination retaining wall/fence, you would measure from the base of the retaining wall to the top of the fence, from the grade to the highest point.

Ms. Rudd asked for clarification about Ms. Caton's testimony regarding the interpretation she asserts she received from Planning staff, and Mr. Isakoff stated that Ms. Caton has notes from her conversation.

Mr. Ducharme stated that the City contends that plain reading of the LDO indicates a 7 foot height limit for fences and walls, and the planters constitute an increase in height via a physical barrier. The appellants assert conversations with City staff led them to install the planters. He stated that regardless of that, case law states that a City cannot be estopped from enforcing zoning regulations against violations due to conduct of zoning officials.

Mr. Isakoff stated that the base facts are not in dispute, but that the appellants claim detrimental reliance. They assert that City staff gave the appellants the impression the planter installation was acceptable, and he stated that the appellants' due process was violated, as there was no prior notice that the installation was wrong.

Chair Necas closed the public hearing.

### **BOARD DISCUSSION**

Vice Chair Ramsey asked if the appellant had the burden of proof, and Ms. Guarascio stated that was correct. Vice Chair Ramsey asked to confirm that State case law does not prevent enforcement of the zoning ordinance even if the appellants received incorrect information, and Mr. Ducharme stated that was correct.

Ms. Bowers asked if there was a *mens rea* requirement for a violation of the Ordinance. Ms. Guarascio stated there was not.

Vice Chair Ramsey asked if the Board could find that the planters are part of the wall and thus violate the LDO, or that they are not affixed and the rest is irrelevant. Ms. Guarascio stated that goes to any affirmative defenses by the appellants.

Ms. Bowers asked if Mr. Kirkman's interpretation was binding on the Board, and. Ms. Guarascio stated it was not.

Mr. Oliver asked about the detrimental reliance defense, and Ms. Guarascio stated that the Board could make a finding that was the basis of the appellants' actions, and factor that into its interpretation. Mr. Oliver asked if there were no other remedies available to the appellants. Mr. Kirkman stated that the appellants could request a variance on the wall height.

Mr. Randolph stated he was not sure the variance would cure the issue. Ms. Guarascio stated that this was speculation outside the Board's consideration on the issue.

Mr. Wofford stated the appellants could take other mitigation measures. Ms. Guarascio stated that any interactions between the appellants and neighbors was irrelevant to the interpretation of the LDO.

Ms. Rudd stated that the planters are not attached to the wall, and thus cannot be considered part of it.

Mr. Wofford stated that based on the testimony of Ms. Caton, she was aware of the height limitation and was looking for a workaround. He stated that planters installed for over a year are not temporary.

Mr. Randolph stated that even if the Board assumes the position of the appellant is correct, the LDO does not provide for a temporary installation such as this.

Ms. Bowers stated that she was persuaded by the due process argument given the attempt to contact the City.

Chair Necas stated that a wall qualifies as an opaque structure and the planters are thus a continuation of that.

Mr. Oliver stated that the due process and detrimental reliance defenses persuade him, based on the conversations Ms. Caton testified to with City staff. Ms. Guarascio stated that there would need to be a finding of sufficient evidence if the Board wanted to use that in its finding of fact.

Vice Chair Ramsey stated that the appellants' actions and devoting resources to the project lend support to that, and there was no direct contradicting evidence presented.

Mr. Randolph stated that the Board is quasi-judicial in nature and the defenses do not factor in to the purview of his review, regarding interpretation of the LDO and the specific question of whether the planters are a continuation of the wall.

Vice Chair Ramsey asked if the Board had the right to look at all defenses offered by the appellant. Ms. Guarascio stated that the burden is on the appellant to present any affirmative defenses and supporting evidence therein.

Mr. Ducharme stated that the case law in the State is such that a city cannot be estopped from enforcing its zoning ordinance, and they supersede any affirmative defenses.

Mr. Isakoff stated that the appellant asserts their affirmative defenses are a valid consideration for the Board in its deliberation.

Vice Chair Ramsey asked to see the *City of Charlotte* case, and Mr. Ducharme distributed copies.

Mr. Isakoff stated that the appellants are disputing ordinance interpretation, and that Section 30-9 is ambiguous and does not specifically define how the 7 foot height limit is established.

Mr. Ducharme stated that the definition of fence and wall in the ordinance is "opaque barrier."

Ms. Rudd asked if the appellants could ask for a variance, and Chair Necas stated they could, but have not made such a request.

Mr. Isakoff stated his clients would offer to make a variance request if it could solve the dispute, and Chair Necas stated that the Board could not hear that request at this hearing.

Mr. Oliver asked if a variance request would require another request, and Ms. Guarascio stated that was correct.

### **MOTION**

Chair Necas moved that in BOA-24-02, 3108 Madison Avenue, the Board of Adjustment uphold the Zoning Enforcement Officer decision that stated: No fence or wall associated with a residential use may exceed 7 feet in height nor exceed 4 feet in height within 15 feet of any right-of-way. The use of planters on top of an existing brick wall creates effectively a 9 to 10 foot barrier which exceeds the height limitations. In support of this motion to uphold the Zoning Enforcement decision, the Board finds the following facts: (1) The property located at 3108 Madison Avenue is within the corporate limits of the City of Greensboro and is 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 30-9-4.6(A); (3) The Board accepts the following testimony and evidence as true in support of its decision: the planters' position on top of the wall constitutes a continuation of the wall's height as a physical barrier and is greater than 7 feet in height and are in violation of the LDO. Mr. Randolph seconded the motion.

The Board voted 3-4 in favor of the motion, (Ayes: Randolph, Wofford, Chair Necas; Nays: Bowers, Oliver, Rudd, Vice Chair Ramsey). Chair Necas stated the motion failed and the zoning enforcement officer decision is overturned.

### **OTHER BUSINESS**

There was no other business.

### **ADJOURNMENT**

The meeting was adjourned at 10:18 p.m.

Respectfully submitted,

Leah Necas, Chair  
Greensboro Board of Adjustment  
LN/arn