

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
FEBRUARY 26, 2024**

The meeting of the Greensboro Board of Adjustment was held on Monday, February 26, 2024, at 5:30 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 Stephen Barkdull. City staff present were Mike Kirkman, Shayna Thiel, Carla Harrison, and Andrew Nelson (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.

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 (January 22, 2024 Meeting)

Mr. Randolph made a motion to approve the January 22, 2024 minutes, seconded by Ms. Rudd.

The Board voted 5-0-2 in favor of the motion, (Ayes: Cory Randolph, Ted Oliver, Tifanie Rudd, Vice Chair Ramsey, Chair Necas; Nays: None; Abstention: Truby, 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 that there were no continuances or withdrawals.

NEW BUSINESS

a. BOA-24-09: 122 North Elm Street (APPROVED)

Ms. Thiel stated in BOA-24-09, Greensboro Symphony Orchestra Inc. and 122 N Elm Street LLC request a variance to allow 100% of a proposed sign face to be comprised of an electronic message board when no more than 75% is allowed. The electronic message board will be 160 square feet when no more than 120 square feet is allowed. 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 30-14-8 – Table 14-4: In the CB District, the maximum percentage of sign face comprised of electronic message board is 75%.

Background and Site Information: The subject lot is located on the east side of North Elm Street, south of East Friendly Avenue, and is zoned CB (Central Business). Tax records indicate the corner

lot contains approximately 8,357 square feet and the building was constructed in 1971. The applicants propose to install a 160 square foot attached sign that will wrap around the corner of the existing building at the intersection of North Elm Street and East Friendly Avenue. The property is located within the boundary of the Downtown Design Overlay District, but these provisions are not applicable in this case since the request does not affect at least 375 square feet of the first floor façade of the building. Instead the CB (Central Business) zoning standards state that the maximum percentage of a sign face comprised of an electronic message board is 75%. As proposed, 100% of the sign face will be comprised of an electronic message board, when only 75%, or 120 square feet 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 applicants will proceed with the sign permit review 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, Suite 200, attorney on behalf of the Greensboro Symphony Orchestra Inc. and 122 N Elm Street LLC, stated that the request is to install a modern electronic sign to promote the symphony's activities. The building's architectural features create practical limits to placement and sign of the sign, and the size is considerably smaller than other similar electronic message board signs in the Downtown area.

Mr. Oliver asked about why the Ordinance has the face percentage requirement for electronic message boards. Mr. Kirkman stated that the sign standards have been in the Ordinance for a long time, and modern signage trends have changed somewhat since its adoption.

Seeing no opposition, Chair Necas closed the public hearing.

BOARD DISCUSSION

Mr. Randolph stated that the sign regulations might need updating.

MOTION

Mr. Oliver moved that in BOA-24-09, 122 North Elm 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 hardship would result from the symphony not being able to promote events and fully utilize their new practice space; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property's design limits the options available for signs; (3) The hardship is not the result of the applicant's own actions because the 75% rule seems outdated, signs now do not need a border; (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 signs at Tanger Center, one block away, do not have borders, and 100% of the surface is available for their signs. Ms. Rudd seconded the motion.

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

b. BOA-24-10: 1512 Pichard Street (APPROVED)

Ms. Thiel stated in BOA-24-10, Robert and Brinda Massey request three variances: (1) To allow a proposed accessory dwelling to encroach 13.5 feet into a required 20 foot rear setback. The accessory dwelling will be 6.5 feet from the rear property line; (2) To allow the heated floor area of a proposed accessory dwelling to be 240 square feet when at least 400 square feet is required; and (3) To allow the owner of the property to not occupy either the primary or accessory dwelling. Evidence provided

by the applicant includes Exhibits A and B. 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; Section 30-8-11.2(E): The heated floor area of the 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; Section 30-8-11.2(B): The owner of the property must occupy either the primary or the accessory dwelling; 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 west side of Pichard Street, north of East Florida Street, 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 1955. The applicants propose to convert an existing 240 square foot storage building 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 13.5 feet into a required 20 foot rear setback and be 6.5 feet from the rear property line. Also, the heated floor area of the proposed accessory dwelling will be 240 square feet when at least 400 square feet is required. Additionally, the property owner does not occupy the primary or proposed accessory dwelling. The applicants seek variances to address these issues and allow the conversion of the existing accessory structure into an accessory dwelling. 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 Robert Massey for his testimony

Robert Massey, 1512 Pichard Street, stated that this request is to facilitate converting an accessory structure into an accessory dwelling. Without the variance, he would need to tear down or expand the structure, which would also require a variance. He stated that this would allow his family to make the best use of the living space, and that while her daughter is not on the property title, she lives in the residence.

Vice Chair Ramsey asked if the dwelling unit would be a short-term rental, and Mr. Massey stated it would not.

Ms. Rudd asked if the applicant was looking to convert the accessory structure to a tiny home, and Mr. Massey stated it would be similar to a studio apartment suitable for a student.

Vice Chair Ramsey asked to confirm that Mr. Massey's children reside in the dwelling, and Mr. Massey stated that was correct, and they would have stewardship of the property.

Mr. Oliver asked to confirm that only one accessory structure would be converted to a dwelling, and Mr. Massey stated that was correct.

Chair Necas asked to confirm that the third variance does not relate to any potential short-term rental regulation requirements, and Mr. Kirkman stated that was correct.

Ms. Guarascio stated that the Board is not discussing the use of any potential accessory dwelling, as the use is permitted by right.

Mr. Randolph asked about the Board's ability to set conditions on a variance. Ms. Guarascio stated that conditions must reasonably relate to what's needed for the variance and be enforceable.

Hearing no opposition, Chair Necas closed the public hearing.

MOTION

Vice chair Ramsey moved that in BOA-24-10, 1512 Pichard Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant will be unable to convert the existing structures into a studio apartment without tearing down the building; (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 structure was in place prior to the purchase of the property by the applicant and there is no change in the building footprint; (3) The hardship is not the result of the applicant's own actions because the current structure complies with existing setbacks and was in place when the property was purchased, also the size of the structure is not material; (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 conversion to an apartment will not impact public safety or welfare, is consistent with the neighborhood, and will increase property tax values, in addition the applicant's children will live at or near the property. Ms. Rudd seconded the motion.

Mr. Randolph asked to confirm that the Board was voting on all three variances, and Chair Necas stated that was correct.

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

c. BOA-24-11: 3008 Madison Avenue (CONTINUED)

Ms. Thiel stated in BOA-24-11, Daniel and Christine Eddy request a variance to allow a proposed addition to encroach 15 feet into a required 30 foot rear setback. The addition will be 15 feet from the rear 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 30-7-3.2 – 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 north side of Madison Avenue, east of Homewood Avenue, and is zoned R-3 (Residential Single-Family). Tax records indicate the corner lot contains approximately 25,265 square feet, and the house was constructed in 1958. The applicants propose to construct a 1,400 square foot attached garage addition at the back of their existing home. The proposed addition will encroach 15 feet into a required 30 foot rear setback and be 15 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 overlay.

Chair Necas asked the applicant to provide their name/address for the record and swore in Daniel Eddy for his testimony

Daniel Eddy, 3008 Madison Avenue, stated that he wishes to build a garage to reduce noise levels as he constructs his race vehicles. Displaying an architectural elevation, he stated he will paint the garage to match his home, and it would not be taller than the existing residence.

Chair Necas asked Mr. Eddy to indicate the positioning of the proposed garage in relation to the existing carport. Mr. Eddy stated that the current carport is open and using power tools would create noise.

Mr. Oliver asked if the existing carport would remain, and Mr. Eddy stated that was correct. He stated that the garage doors would exit onto Homewood Avenue.

Mr. Truby asked to confirm what side wall the garage doors would be, and Mr. Eddy stated it would be the south side. The proposed garage would extend to the east, providing working space.

Mr. Eddy stated that his home has a 70 foot front setback that limits room at the rear of the property, and the property rises to the rear. Without the variance, he would need to build a two-story garage that would not fit the character of his neighborhood.

Vice Chair Ramsey asked if a two-story garage would require a variance. Mr. Kirkman stated that if it was a separate detached structure, it could not be taller than the principle structure without a variance.

Mr. Randolph asked if the two-story garage was a cost issue. Mr. Eddy stated it was an architectural design issue. He could easily build such a structure, but it would not fit his home or the neighborhood.

Mr. Oliver asked if the applicant could store vehicles on both levels of a two-story garage, and Mr. Eddy stated that it would work with a hydraulic lift.

Vice Chair Ramsey asked about the potential noise, and Mr. Eddy stated that he would be using significant power tools, like that used in an auto body shop, and he intends to insulate the garage to reduce noise. Vice Chair Ramsey asked if the Board could consider noise generated in its deliberation. Mr. Kirkman stated the Board should be careful about extraneous factors and focus on the use of the space. Ms. Guarascio stated the Board should focus on why the Ordinance defines setbacks.

Mr. Eddy stated that he brought up noise in relation to the desire to avoid being a nuisance to his neighbors.

Chair Necas asked if anyone wished to speak in opposition to the request and swore in Alice Procter and Carol Staley for their testimony.

Alice Procter, 4 Saint Regis Court, stated that the applicant has full use of the subject property without the variance. The applicant seeks to establish a professional-level auto body shop in a residence, which is not a use compatible with the area. She stated that substantial portions of the applicant's property are available for building with some modifications to the accessory structures and additions. The applicant did not provide the architectural elevation presented tonight. Ms. Procter displayed a rendering of how the proposed addition would appear from her mother's property, and stated that the backside of the proposed garage would dominate the view. She stated that the Ordinance intends to preserve neighboring property owners' enjoyment of their respective properties with the setback requirements, and the proposed addition significantly encroaches into setbacks, compromising the views of the applicant's neighbors. Most homes in the Starmount neighborhood do not have garages like the one proposed. Ms. Procter stated that the applicant's plans provided to the neighbors indicated there would be multiple commercial-grade hydraulic auto lifts.

Vice Chair Ramsey asked if a two-story garage, that the applicant can build by right without a variance, would not be worse for the neighbors than the proposed garage. Ms. Procter stated that it would need to be set back 30 feet, and that the applicant could build a two-story garage with this variance. She stated that the proposed accessory use is not suitable for a residential neighborhood.

Chair Necas asked if there had been any noise issues previously.

Carol Staley, 200 Homewood Avenue, stated that the applicant had not worked on vehicles at the subject property before, only stored them there. She stated that the applicant has been a good neighbor, with no significant noise issues thus far.

Ms. Procter asked if occasional work would require such a significant addition with commercial automotive equipment.

Mr. Staley stated that the applicant has space on the property to add a similar amount of working space without encroaching on the setbacks.

Ms. Procter stated that the applicant would likely build a taller structure to accommodate the hydraulic lifts even with the variance request, and she believes that what the applicant intends to build is different from tonight's presentation.

Mr. Oliver asked if a granted variance is valid if the applicant builds a significantly different structure. Ms. Guarascio stated that if the Board would need to apply conditions in a way that reasonably relates to the variance to create limits that ensure future enforceability.

Vice Chair Ramsey stated that applicants regularly present architectural drawings, and stated that the applicant's design appears to be changing.

Ms. Rudd asked how long Ms. Staley has lived in her property, and Ms. Staley said 12 years. She stated that she paid an architect to create illustrative elevations of the proposed garage, and stated that it is going to be taller than initially represented.

Ms. Procter stated that the applicant distributed and read a letter to the neighborhood that asserted her mother did not oppose the request, which she stated is false.

Ms. Guarascio stated that the Board must consider if the letter is competent evidence for its basis of review, and that neighbors would need to testify directly.

Ms. Procter stated that the subject property has a significant slope, and the construction of the proposed garage could negatively influence soil stability.

Chair Necas stated that some of the concerns expressed by neighbors are matters for consideration at site plan review.

Ms. Staley stated that the variance would allow the applicant to build an even larger addition, and the proposed drawings do not help her understand what the applicant intends to build.

Mr. Barkdull asked if the use the applicant describes is a home occupation under the LDO.

Vice Chair Ramsey stated this appears to be a hobby.

Ms. Rudd concurred with Mr. Barkdull; and stated that the use seems significant.

Ms. Guarascio stated that would go to the use, and the variance does not address the use.

Chair Necas swore in Jeffrey Hayes and Margaret Ramsey for their testimony.

Margaret Ramsey, 3006 Madison Avenue, stated that the size of the garage is excessive and does not fit the character of their neighborhood.

Ms. Guarascio stated that the Board could choose to interpret evidence and determine its competence as it chooses.

Jeffrey Hayes, 3101 Madison Avenue, stated that he opposes the variance request, as it is not consistent with the character of the neighborhood, and his concern about potential noise in the future.

Ms. Procter stated that not having an automotive shop in a residential neighborhood is not an undue hardship.

Chair Necas advised the applicant had five minutes to speak in rebuttal.

Mr. Eddy stated that he apologized for confusion caused by the letter. He intended to open conversation with his neighbors before the hearing tonight to work out issues, and he stated did not attempt to mislead anyone.

Ms. Guarascio stated that the letter cannot be the basis of the Board's decision.

Mr. Eddy stated that the hydraulic lift in question would be located away from the doors, which would limit the height of the building, and he is willing to condition the variance request to limit the height. He stated he was also willing to take additional time to work with his neighbors.

Chair Necas asked if Mr. Eddy was asking for a continuance, and Mr. Eddy stated that was correct.

Ms. Guarascio stated the Board could consider a continuance if it believes it could be productive to the resolution of the request.

Vice Chair Ramsey moved to accept the continuance request, second by Mr. Randolph.

The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Barkdull, Randolph, Oliver, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously and advised that request BOA-24-11 was continued to the next regular meeting of the Board of Adjustment.

Ms. Guarascio stated that the applicant could request a continuance to a future meeting as his schedule reasonably allows. She stated that the case would still be active and the Board could not engage in any ex parte communication regarding it.

Ms. Thiel stated that Planning staff would mail notices for the March meeting on March 11.

d. BOA-24-12: 3602 Lawndale Drive (APPROVED)

Ms. Thiel stated in BOA-24-12, The Crown Companies LLC and Christ Lutheran Church request a variance to allow a proposed building to encroach 12.28 feet into a required 15 foot street setback. The building will be 2.27 feet from the property line along Pisgah Church Road. Evidence provided by the applicant includes Exhibits A and B. Supporting documentation from staff includes Exhibits 1 through 6. The Land Development Ordinance reference was Section 30-7-5.1 – Table 7-14: In the C-L District, the minimum street setback is 15 feet.

Background and Site Information: The subject lot is located on the east side of Lawndale Drive, south of Pisgah Church Road, and is zoned CD-C-L (Conditional District-Commercial-Low). Tax records indicate the corner lot contains approximately 33,541 square feet and the building was constructed in 1979. The Planning & Zoning Commission approved the rezoning of the subject property to CD-C-L, which became effective on December 29, 2023. The approved zoning allows all uses in the C-L District except for bars, night clubs, brewpubs, laundromats and convenience stores with fuel pumps. The applicants propose to demolish the existing building and construct a new 7,848 square foot commercial building for retail and restaurant uses. The proposed building will encroach 12.28 feet into a required 15 foot street setback and be 2.72 feet from the property line along Pisgah Church Road. The applicants indicate that approximately 1,525 square feet of the proposed building will encroach into the required setback. If the variance is granted, the applicants will proceed with Technical Review Committee review and the commercial 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 Laurie Stegall and Ian Phillips for their testimony

Laurie Stegall, 445 Dolley Madison Road, Suite 102, attorney introduced **Ian Phillips, 8410 U.S. 158, Stokesdale**, who stated that the subject property's shallow depth limits commercial and retail uses. The proposed structure requires a variance to alleviate traffic concerns and facilitate the smooth flow of vehicles on the site. He stated that the peculiar shape of the lot necessitates the variance, and it is reasonable as the proposal meets all other development standards,

Mr. Truby asked if the existing building was zero lot line, and Mr. Phillips stated that was correct.

Mr. Randolph asked if the proposed development increases the footprint of the building, and Mr. Phillips stated that it does not, it moves the existing footprint closer to the intersection.

Chair Necas closed the public hearing.

BOARD DISCUSSION

Ms. Rudd stated the proposed development should help alleviate traffic issues in the area.

MOTION

Mr. Randolph moved that in BOA-24-12, 3602 Lawndale 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 utilization of the property for retail and office use as zoned would be prohibited; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property has a unique L-shape which gives it an unusual depth of which to be able to utilize the property for building the office and retail space, it's also crowded and pinched in by the existing thoroughfares and the larger church lot that is adjacent to the property; (3) The hardship is not the result of the applicant's own actions because the conditions of the property existed at the time that the property owners had acquired the property and has existed since, relatively, 1960 when the property was deeded; (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 as constructed it is the most reasonable use of the property to enable both retail and office and other approved commercial use, it allows for safe ingress and egress from the existing thoroughfare on Lawndale which improves both traffic safety and pedestrian safety. Vice Chair Ramsey seconded the motion. The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Barkdull, Randolph, Oliver, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

OTHER BUSINESS

Ms. Guarascio stated that City Attorney staff advises the Board to make motions to deny variances if that is the general will of the Board, as it provides more information for applicants should they wish to appeal a denial.

Chair Necas stated that motions for denial often do not pass, and require a second approval motion that then fails, and this creates a complicated situation. Ms. Guarascio stated that Board members should consider potential language for motions, and how to tailor motions that are more likely to carry.

Vice Chair Ramsey asked if that the Board discussion reflected by the minutes is sufficient to provide applicants information for appeals. Ms. Guarascio stated that there has not always been sufficient commentary, and advised the Board to be explicit on the record as to why they are voting to deny a request. Vice Chair Ramsey asked about the number of appeals of Board decisions. Ms. Guarascio stated that one is in progress.

Mr. Oliver asked about how the Board can draw a distinction in close votes. Ms. Guarascio stated that Board must ensure there is a basis on the record for the denial, explicitly referencing the criteria in the findings of fact.

Mr. Randolph asked if the Board should make a subsequent denial motion if an approval fails. Ms. Guarascio stated that would keep the record clean. She stated that she would take the Board's input and questions and provide further information.

Mr. Randolph asked if the official notices sent to adjacent property owners has instructions with how to provide objections prior to the meeting. Ms. Guarascio stated that neighbors would need to be at the hearing to present evidence and testimony on the record. The Board must determine the probative value if individuals presenting testimony at the hearing have standing and are giving competent evidence.

Ms. Thiel provided information about the upcoming Text Amendment presentation to the Planning and Zoning Commission to modify the LDO's Accessory Dwelling Unit (ADU) regulations.

Ms. Thiel then stated that staff would determine if there are sufficient Board members available to hold the March meeting.

Chair Necas acknowledged the absence of Mr. Wofford.

ADJOURNMENT

The meeting was adjourned at 7:26 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/arn