

**MEETING MINUTES  
GREENSBORO BOARD OF ADJUSTMENT  
MAY 28, 2024**

The meeting of the Greensboro Board of Adjustment was held on Monday, May 28, 2024, at 5:43 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Vaughn Ramsey, Chuck Truby, Ted Oliver, Cory Randolph, and Drew Wofford. City staff present were Mike Kirkman, Shayna Thiel, Steve Brumagin, Carla Harrison and Andrew Nelson (Planning Department), and Brent Ducharme (Assistant City Attorney) 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 like a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed according to the agenda, a copy of which was provided. Chair Necas further explained the way 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 (April 22, 2024 Meeting)**

Mr. Randolph made a motion to approve the April 22, 2024 minutes, seconded by Vice Chair Ramsey. The Board voted 5-0-1 in favor of the motion, (Ayes: Oliver, Randolph, Wofford, Vice Chair Ramsey, Chair Necas; Nays: None; Abstention: Truby). Chair Necas advised the minutes were approved.

**SWEARING IN OF STAFF**

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

**CONTINUANCES / WITHDRAWALS**

The applicant in BOA-24-11 requested a continuance to the July 22 regular meeting.

Vice Chair Ramsey made a motion to continue the item, seconded by Mr. Oliver. The Board voted 6-0 in favor of the motion (Ayes: Oliver, Randolph, Wofford, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously.

**OLD BUSINESS**

There was no old business.

Chair Necas moved for the Board to hear item BOA-24-16 at the end of the agenda, seconded by Mr. Randolph. The Board voted 6-0 in favor of the motion (Ayes: Oliver, Randolph, Wofford, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously.

**NEW BUSINESS****a. BOA-24-17: 6220 Burnt Poplar Road (APPROVED)**

Ms. Thiel stated in BOA-24-17, Meridian Waste North Carolina LLC and 101 Chimney Rock LLC request a special use permit to operate a waste transfer station on the property in addition to all uses permitted in the HI District. Evidence provided by the applicants included Exhibits A through E. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-1 – Table 8-1: All Waste Related Services, except as listed below, is a permitted use in the HI District with a Special Use Permit.

**Background and Site Information:** The subject lot is located on the north side of Burnt Poplar Road, east of South Chimney Rock Road, and is zoned HI (Heavy Industrial). Tax records indicate the undeveloped lot contains approximately 5.65 acres. The site is currently under review by the City of Greensboro as part of plan 2024-0304 for an outdoor storage yard, including gravel pad, diversion ditch, wet pond, chain-link fence with barbed wire and gravel driveway leading up to the laydown area. Additionally, the applicants intend to construct a non-hazardous waste transfer station on the subject property, which is permitted in the HI District, provided a special use permit is granted. Per the applicants, the proposed transfer station will consist of a scale, scale house, transfer station, parking areas, water service and sanitary sewer service to support an anticipated 300 tons of waste delivered daily.

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 David Ross, John Davenport, Mary O'Brien, Charlie Gray, and Patrick Messinger for their testimony.

**Don Vaughan, 612 West Friendly Avenue**, stated that the subject property is well suited for the placement of a solid waste transfer station.

**David Ross, 2610 Wycliff Road, Raleigh**, stated that the site plan maintains proper buffering to comply with the Scenic Corridor Overlay, and that there should be no noise impact on adjacent properties

**Brian Pearce, 800 Green Valley Road, Suite 500**, stated that the property owner was in favor of the granting of the Special Use Permit.

**John Davenport, 119 Brookstown Avenue, Winston-Salem**, stated that the project did not require a Transportation Impact Analysis (TIA) due to the low level of expected activity, but the applicant assessed the site for safety review purposes, and did not identify any capacity problems or safety concerns.

Vice Chair Ramsey asked about the need for a Special Use Permit. Mr. Kirkman stated that the LDO requires certain uses typically regarded as being objectionable or of public concern to be specifically granted permits with a public hearing. Vice Chair Ramsey asked to confirm that this site would not be used for hazardous waste. Mr. Pearce stated that the State of North Carolina has regulations defining hazardous and non-hazardous waste products, and the lease granted to the applicant required the waste handled on the site to be non-hazardous in nature.

**Mary O'Brien, 110 Rupert Road, Raleigh**, stated that the applicant is licensed only to transfer construction and demolition debris and municipal solid waste. There would be no acceptance of chemicals or biological or medical waste.

Mr. Wofford asked if this is like the activity at the City's landfill nearby, and Ms. O'Brien stated that was correct.

Mr. Oliver asked about the goals and guidelines for this area laid out in the GS2040 Comprehensive Plan and for the applicant to confirm that the site plan is properly considering environmental and

stormwater considerations. Mr. Kirkman stated that the Comprehensive Plan indicates that this area is broadly designated for uses directly driving employment and those supportive of employment.

Mr. Ross stated that the site plan has significant runoff engineering as required by the LDO and State regulations, including during the build phase to minimize effluent.

Mr. Pearce stated that this property would be contributing to employment by supporting the solid waste disposal needs of the City.

Mr. Randolph asked if this is a typical project for Meridian. Ms. O'Brien stated that Meridian has multiple transfer stations and similar facilities in neighboring counties across the State, but this is the first in Greensboro.

Seeing no opposition, Chair Necas closed the public hearing.

### **BOARD DISCUSSION**

Mr. Truby stated that the proposed use fits the character of this area.

### **MOTION**

Mr. Oliver moved that in BOA-24-17, 6220 Burnt Poplar Road, based on the stated Findings of Fact, the special use permit be approved based on the following: (1) The proposed use will not be detrimental to the health or safety of persons residing or working in the vicinity or injurious to property or improvements in the vicinity because this is a non-hazardous waste transfer station, use of the site by non-craftsmen and people who are not familiar with the operations of a transfer station will be minimized; (2) The proposed use at the particular location provides a service or facility that will contribute to the general well-being of the neighborhood or the community because the proposed station will provide an effective means to handle new waste systems created by our growing reason, it is already zoned Heavy Industrial; (3) The location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the Comprehensive Plan because the site is currently permitted as an outdoor storage yard, no residential homes, schools, senior citizens' facilities, or parks are near the facility. Mr. Randolph seconded the motion.

The Board voted 6-0 in favor of the motion (Ayes: Oliver, Randolph, Wofford, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously.

#### **b. BOA-24-18: 307 Isabel Street (APPROVED)**

Ms. Thiel stated in BOA-24-18, Andrea Whitney and David Perrin request a special exception to allow a proposed addition to encroach 1.42 feet into a required 5 foot side setback. The addition will be 3.58 feet from the side property line. Evidence provided by the applicants included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum side setback is 5 feet.

**Background and Site Information:** The subject lot is located on the north side of Isabel Street, east of Olive Street, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 6,098 square feet and the house was constructed in 1923. The existing house is considered a nonconforming structure, as it encroaches 0.2 foot into a required 5 foot side setback. As part of planned improvements to the property, the applicants propose to construct a 202 square foot screen porch addition and a 69 square foot deck addition at the back of the house, along with a 140 square foot office addition to the existing detached garage. While the proposed accessory structure and deck additions meet dimensional requirements, the proposed screen porch addition does not. The proposed screen porch addition encroaches 1.42 feet into a required 5 foot side setback and will be 3.58 feet from the side property line. Since the property is located within the Fisher Park Local Historic District, the proposed project must be reviewed and approved by the Historic Preservation Commission. On March 27, 2024, the Historic Preservation Commission issued a certificate of appropriateness for the proposed project and recommended that the Board of Adjustment

grant a special exception for the setback encroachment. If the special exception is granted, the entire house will become conforming and the applicants will proceed with the residential building permit application process.

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

Chair Necas asked to confirm this was a special exception and not a variance due to the property being in a historic district, and Mr. Kirkman stated that was correct.

Chair Necas asked the applicant to provide their name/address for the record and swore in Andrea Whitney and Jesse Arnett for their testimony.

**Jesse Arnett, 3312 Windrift Drive**, stated that the side setback encroachment is due to the house being parallel to the street but not the side property lines, and there are no other practical locations on the property for the addition.

Seeing no opposition, Chair Necas closed the public hearing.

### **MOTION**

Mr. Randolph moved that in BOA-24-18, 307 Isabel Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the special exception granted based on the following: (1) The special exception is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the existing house has a historic dormer which, in order to preserve that, the proposed back porch has to be in line with the existing house which will encroach into the existing side setback, additionally the offset location of the house in relation to the property lines is a condition that was not caused by the applicant and existing prior to the applicant's ownership of the property and the Historic Preservation Commission has approved a Certificate of Appropriateness and recommends to accept the proposed construction; and (2) The granting of the special exception assures the public safety and welfare and does substantial justice because a substantial portion of the side setback will remain, notwithstanding the additional encroachment into the property by the improved porch, the improvement will allow the reasonable use and enjoyment of the property, that it will be fit for modern living with the addition of the porch and other accessories, and the character and appropriateness of the house within the existing neighborhood will be maintained through the COA. Mr. Truby seconded the motion.

The Board voted 6-0 in favor of the motion (Ayes: Oliver, Randolph, Wofford, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously.

### **c. BOA-24-19: 304 Rockford Road (APPROVED)**

Ms. Thiel stated in BOA-24-19, James and Cameron Reittinger request two variances: (1) To allow a proposed accessory structure over 15 feet tall to encroach 7 feet into a required 10 foot side setback. The accessory structure will be 3 feet from the side property line; and (2) To allow the total building coverage of all accessory structures on the lot to be 1,097 square feet when no more than 1,007 square feet is allowed. Evidence provided by the applicants included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.1(C)(2): In R- Districts, accessory structures over 15 feet tall must be setback at least 10 feet from side and rear lot lines; and 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 Rockford Road, east of Marston Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the through lot contains approximately 20,909 square feet, and the house was constructed in 1960. The applicants propose to construct a 24.33-foot-tall detached accessory structure containing a garage, storage and

bonus room, in their back yard that will encroach 7 feet into a required 10-foot side setback and be 3 feet from the side property line. At 1,097 square feet, the building coverage of the proposed accessory structure will exceed 50% of the principal's building coverage, which is 1,007 square feet. The applicants seek variances to address these two issues and, if granted, 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 James Reittinger for his testimony.

**James Reittinger, 304 Rockford Road**, stated that he wishes to build the detached garage to protect their automobiles and create a noise barrier to Cone Boulevard. Alternative design considerations would have required removing more trees, which they wish to preserve.

Chair Necas asked if the applicant had prepared a rendering to assess how the proposed accessory structure will fit on the property, and Mr. Reittinger stated that they have made renderings that indicate the structure is compatible with the property due to the slope present.

Mr. Randolph asked if the topography on the subject property is like neighboring properties, and Mr. Reittinger stated it was not, and that his property has a greater slope.

Seeing no opposition, Chair Necas closed the public hearing.

### **BOARD DISCUSSION**

Mr. Randolph asked to clarify if Exhibit 3 is the same as the Exhibit 3 for BOA-24-18. Ms. Thiel stated that she previously sent updated information to Board members via email.

Chair Necas asked if the Board should note that there were different materials available than those initially printed in the meeting book.

Ms. Guarascio stated the Board should make it clear on the record that it has different exhibits available.

Chair Necas stated the updated copies of the photographs relevant for case BOA-24-19 are available to the Board as it considers its potential motion.

### **MOTION**

Mr. Wofford moved that in BOA-24-19, 304 Rockford Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the property owner will be forced to build the structure in a less than ideal location and will have to remove additional trees; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because of the elevation change on the lot and the existing landscaping adjacent to the property damaging their vehicles; (3) The hardship is not the result of the applicant's own actions because of the pre-existing geographical features; (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 structure is behind the main house and out of view. Mr. Oliver seconded the motion.

The Board voted 6-0 in favor of the motion (Ayes: Oliver, Randolph, Wofford, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously.

#### **d. BOA-24-20: 6 Grey Oaks Circle (APPROVED)**

Ms. Thiel stated in BOA-24-20, Robert and Teresa Scheppegrell request a variance to allow a proposed addition to encroach 11.83 feet into a required 30 foot rear setback. The addition will 18.17

feet from the rear property line. Evidence provided by the applicants included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum rear setback is 30 feet.

**Background and Site Information:** The subject lot is located on the east side of Grey Oaks Circle, north of West Cornwallis Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the cul-de-sac lot contains approximately 13,939 square feet, and the house was constructed in 1996. Because of its configuration, the subject lot has two rear property lines and, as a result, two rear setbacks. The applicants propose to add a 244 square foot sunroom at the back of the existing house that will encroach 11.83 feet into a required 30 foot rear setback and be 18.17 feet from the rear property line. The applicants seek a variance to address this issue and, if granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Robert and Teresa Scheppegrell for their testimony.

**Robert Scheppegrell, 6 Grey Oaks Circle**, stated that they need the variance due to the unusual configuration of the subject property which has very little buildable area left.

Seeing no opposition, Chair Necas closed the public hearing.

### **BOARD DISCUSSION**

Mr. Randolph asked about the dual rear setback situation present on the property, and Mr. Kirkman stated that the property's peculiar configuration created the need for the variance.

Vice Chair Ramsey stated that there had been some similar cul-de-sac requests in the past.

### **MOTION**

Vice Chair Ramsey moved that in BOA-24-20, 6 Grey Oaks Circle, 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 unique shape of the lot and the cul-de-sac prevents reasonable expansion of the dwelling whereas if there was only one rear setback line no variance would be needed; (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 two setback lines due to its unique location on a cul-de-sac; (3) The hardship is not the result of the applicant's own actions because the lot lines were set prior to the applicants' acquisition of the property; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the variance will allow improvement of the dwelling which will increase tax values, is consistent with the neighborhood, and will not affect neighboring properties. Mr. Randolph seconded the motion.

The Board voted 6-0 in favor of the motion (Ayes: Oliver, Randolph, Wofford, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously.

Chair Necas advised the Board would take a break at 6:44 p.m., and the Board resumed at 6:54 p.m.

#### **e. BOA-24-21: 3108 Madison Avenue (CONTINUED)**

Ms. Thiel stated in BOA-24-21, David and Anna Caton request a variance to allow an existing wall to exceed the maximum 7-foot height allowed by up to 5 feet. Evidence provided by the applicant was Exhibit A. Supporting documentation from staff included 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). Tax records indicate the corner lot contains approximately 20,038 square feet, and the house was constructed in 1941. The Land Development Ordinance states that the maximum height for fences/walls is 7 feet for residential uses. Without permits, the applicants erected a brick wall along the interior side and rear property lines that, in some places, exceeds the maximum 7 foot height requirement by up to 5 feet. At its January 22, 2024 meeting, the Board of Adjustment overturned a zoning enforcement officer's decision related to planters placed on top of an existing brick wall on the property. During that process, the applicants applied for a building permit for the existing wall, which was approved by the City as meeting standards. However, the wall, when measured in the field by a zoning enforcement officer, does not match the plans submitted with the permit and is taller than allowed. Per Zoning Enforcement Officer measurements, the wall, at its highest point, excluding the planters, is 11.75 feet. The applicants attempted to remedy the issue by adding fill to raise the grade of the property on the side nearest the abutting property but were unable to do so. The applicants now seek a variance to address the wall height issue and bring it into compliance, and if granted, the wall will remain on the property as-is.

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

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

**Peter Isakoff, 109 Westchester, Williamsburg, Virginia**, stated that the wall had previously been a matter of consideration by the Board.

Ms. Guarascio objected and stated that the Board had previously considered whether planters would be used to determine wall height, and the Board had not granted any specific approval for the wall.

Mr. Isakoff stated that the applicants had previously attempted to remedy issues with the wall, which have failed due to complaints by neighbors.

Ms. Guarascio objected to some of the presentation by Mr. Isakoff.

Mr. Isakoff stated that the circumstances of the applicants are peculiar and they have made good faith efforts to resolve the issue.

Ms. Guarascio stated that the Board has very specific factors it must use to approve or deny a variance request.

Mr. Oliver asked if the applicant could raise the ground to lower the height of the wall, and how it would be measured. Mr. Isakoff stated that was attempted by the applicants. Mr. Kirkman stated that the height would be measured at the side facing the adjacent property. Mr. Oliver asked where the violation was, and Mr. Kirkman stated there would not be enough space to raise the grade sufficiently to meet the standard.

Vice Chair Ramsey asked when the wall was originally built.

**Anna Caton, 3108 Madison Avenue**, stated that the renovations started in April 2021, concurrent with other renovations in the house.

**David Caton, 3108 Madison Avenue**, stated that the wall was added while they were not residing at the property.

Vice Chair Ramsey asked when the wall had first been at issue. Mr. Caton stated January of 2023.

Mr. Wofford asked if it was built without permits, and Mr. Caton stated that the builder didn't think they needed a permit for the wall section in question, as the grade around the wall has been dug out around the footing.

Ms. Caton stated that the plan was to leave the size under 7 feet.

Chair Necas asked about the discrepancies between the permit and the information found by the Zoning Enforcement Office.

Mr. Caton stated that the construction by the neighbor resulted in excavation in April of last year.

Chair Necas asked to confirm that the contractor for the neighbor excavated the area, and Mr. Caton stated that was correct.

Mr. Isakoff stated that the applicants are attempting to comply with the Ordinance.

Mr. Wofford asked why the applicant couldn't remove the top two feet of the wall. Mr. Caton stated that it would possibly leave them in violation of safety standards for fencing around the pool.

Mr. Randolph asked about the variance request for up to five feet more than the height regulation, and Mr. Caton stated it was due to the excavation activity around the footing of the wall.

Ms. Guarascio asked who was questioning the Zoning Enforcement Officer, and Chair Necas stated that the information was volunteered by the applicant.

Chair Necas asked if the request would approve the existing wall or any future wall. Mr. Kirkman stated that it would run with the land.

Mr. Wofford asked if there were any staff from Building Inspections to answer questions, and Mr. Kirkman stated there were not, but Mr. Brumagin took the measurements. Mr. Wofford asked if the statement about the grade difference is correct. Mr. Brumagin stated that the inside is consistent, but they do not measure from that side, and it varies wildly on the exterior.

Mr. Caton stated that there is an 8 foot difference in slope from the top to the bottom of the property.

Vice Chair Ramsey asked if the Board was being asked to grant a variance for the existing wall. Mr. Kirkman stated that was correct.

Chair Necas asked if the variance could be conditioned that it is specifically only the existing wall. Mr. Kirkman stated that it would be preferable for the Board to permit the requested height across the property. The request was to allow the existing wall to exceed the height requirement, and the Board could phrase the motion accordingly.

Mr. Randolph asked about any practical alternatives to meet the standards of the Ordinance, and if the backfill option would be a practical solution. Mr. Brumagin stated that was correct.

Ms. Guarascio cautioned the Board to only consider relevant and material testimony.

**Robert Tayloe, 3106 Madison Avenue**, stated that the boundary between the properties was heavily overgrown and excavation was done to hold back undisturbed earth, along with drainage to manage stormwater. He stated that the applicants' contractors damaged his property, and that the gravel added by the applicant may damage his property even further.

Mr. Truby stated that much of what was being discussed was immaterial and related to a private legal dispute between neighbors.

Ms. Guarascio stated that some evidence has been presented about the hardship argument by the applicant, but any boundary disputes or other allegations are not a factor for the Board's consideration.

Vice Chair Ramsey asked why Mr. Tayloe assumed the wall in question was dangerous, and Mr. Tayloe stated that there is a risk of it collapsing.

Mr. Wofford asked to confirm that the Board is not being asked to affirm the wall is safe. Mr. Kirkman stated that was correct, that the Board would only determine if it could remain that height.

Mr. Oliver asked if Mr. Tayloe would ever permit fill between the walls. Mr. Tayloe stated he would not.

Vice Chair Ramsey asked about what kind of fence Mr. Tayloe would replace the existing one with, and Mr. Tayloe stated he had not yet determined.

Mr. Randolph asked if Mr. Tayloe had any affidavits or statements from contractors to assert that his retaining wall was damaged by the applicants' wall. Mr. Tayloe stated that he did not.

### **BOARD DISCUSSION**

Vice Chair Ramsey asked about the permit requirement. Mr. Kirkman stated that the building code requires certain walls to have a permit, which the wall in question required. The wall as permitted does not match what was built on the site, and the variance request would allow the wall as it exists to stand. Vice Chair Ramsey asked why the wall was not built to standard. Mr. Kirkman stated that the grade of the property varies substantially, contributing to the issue from the zoning perspective.

Ms. Guarascio stated that the Board could weigh public safety and welfare concerns into its considerations. Mr. Wofford asked if the Board could consider the fact that the wall was built without permits. Mr. Kirkman stated that they originally started without permits, but building inspections has inspected the wall since construction began and approved it, but it does not meet zoning standards.

Mr. Oliver stated that the Board cannot intervene in private agreements between parties.

Vice Chair Ramsey stated that the Board was only voting for the height variance. Mr. Kirkman stated that any building permit inspection process would require safety review.

Mr. Wofford asked if the variance request would allow a 15 foot wall around the entire property, and Mr. Kirkman stated that the Board would need to word its motion to specifically apply to the existing wall only.

Mr. Randolph asked how much of the wall infringes on the requirement. Mr. Kirkman stated that it is difficult to state definitively. Mr. Brumagin stated that approximately 20 to 25 feet of its approximately 50 foot length. Mr. Randolph stated he is uncomfortable with a broad variance.

Mr. Wofford stated that he is concerned the Board cannot satisfy its public safety and welfare requirement.

Mr. Randolph stated that the assumptions about the safety of the wall were not supported by expert evidence on the record.

Mr. Wofford asked if the Board could continue the request to gather more evidence. Ms. Guarascio stated that no professionals testified accordingly, but the Board can give weight to relevant evidence as it sees fit. Mr. Kirkman stated that the Board could move to limit the variance to portions of the wall that do not currently meet City requirements.

Mr. Randolph stated that he wished to ensure currently compliant sections of wall could not be expanded due to the variance. Mr. Kirkman stated that the Board could limit the variance to the status of the wall as it currently exists at this time.

Vice Chair Ramsey stated that the wall has existed for a while, and that he could support a variance specifically limited to the wall as it stands now, and removing the wall would not solve anything.

Mr. Kirkman stated that if the variance was not granted, the only way to comply without it is to remove the wall.

Ms. Guarascio stated that the application is part of the record, and the applicant states the complying with the ordinance would likely require demolition of the wall.

Mr. Truby asked about County Health Department requirements for pool safety. Mr. Kirkman stated that the standards for walls to protect pools to meet public safety standards was 4 feet. Mr. Truby stated that the Board could consider continuing the request to allow the applicants and neighbor to gather evidence. Mr. Kirkman stated that the Board could choose to continue the matter, and staff could make building inspections staff available.

Ms. Guarascio stated that professional testimony could be considered relevant testimony by the Board.

Mr. Wofford stated he supported continuing the request.

Mr. Randolph stated that he also supported the presentation of more evidence regarding the safety of the wall.

Mr. Oliver asked if the Board could consider such testimony.

Ms. Guarascio stated it is the Board's discretion to determine if it has sufficient material and relevant evidence to make its determination. Mr. Oliver asked if the Board had to ask the applicant if they wished to continue the request

Chair Necas asked the applicants if they were willing to continue the case to present more evidence. Mr. Caton stated that one month would be sufficient. Ms. Thiel stated that the applicants and staff likely do not have enough time to prepare materials for the June meeting, and suggested the July meeting instead.

### **MOTION**

Mr. Randolph moved to continue the hearing of Board of Adjustment case BOA-24-21 to the July 22 regular meeting, seconded by Mr. Truby. The Board voted 6-0 in favor of the motion (Ayes: Oliver, Randolph, Wofford, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously.

Ms. Guarascio stated the opposition could respond to new evidence, and the applicants have the burden of proof.

Mr. Wofford asked staff to provide the safety standards for swimming pools at the July meeting.

#### **f. BOA-24-16: 519 Muirs Chapel Road (UPHELD)**

Ms. Thiel stated in BOA-24-16, Christian and Thomas Browne appeal a Zoning Enforcement Officer Decision regarding the operation of a home occupation on the property. Evidence provided by the appellant was Exhibit A. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.5(C)(2): Unless located in the TN district, a home occupation must be conducted entirely within the residence. The home occupation must be clearly incidental and secondary to the residential use of the dwelling and may not change the outward appearance of the residence; Section 30-8-11.5(C)(6)(c): Except in the TN District or in child day care homes in any district, persons who are not occupants of the dwelling may not go by the dwelling to pick up orders, supplies, or other items related to the home occupation; and Section 30-8-11.5(B): Outdoor storage of items related to the home occupation is prohibited.

**Background and Site Information:** The subject lot is located on the west side of Muirs Chapel Road, north of Tower Road, 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 1920. The property owners operate a vehicle rental business from their home. Zoning investigations determined that multiple vehicles for rent are parked at the property and customers regularly come to the house to pick up and return the vehicles. These activities conflict with the City's home occupations regulations. On February 14, 2024, a zoning enforcement officer issued a Notice of Violation regarding the operation of a home occupation on the subject property. The Land Development Ordinance states that, except in the TN District, home occupations must be conducted entirely within the residence and persons who are not occupants of the dwelling may not go by the dwelling to pick up orders, supplies, or other items related to the home occupation. Additionally, outdoor storage of items related to the home occupation is prohibited. The property owners timely appealed the Zoning Enforcement Officer Decision contained in the Notice of Violation. If the Zoning Enforcement Officer Decision is overturned, the property owners can continue operating the home occupation as they are currently doing. If the Zoning Enforcement Officer Decision is upheld, the property owners will be required to discontinue operating

the home occupation as they are currently doing and comply with provisions of the Land Development Ordinance.

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

Mr. Oliver asked about the TN zoning district and why home occupation standards were different. Mr. Kirkman stated that district had different standards for home occupations and is designed to accommodate commercial activities often not permitted in other conventional residential zoning districts.

Mr. Ducharme stated that this appeal was regarding peer-to-peer car sharing, where an individual makes their vehicle(s) available to rent by others. The City's standards for home occupations relevant to this matter require occupations to be contained inside the residence, with no outdoor storage, and no traffic of individuals to pick up or drop off supplies. Mr. Ducharme called Steve Brumagin as a witness and asked him to describe his duties.

**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 he visited the property on February 14, 2024 and approximately 30 days thereafter. Mr. Ducharme asked if Mr. Brumagin took the photographs in Exhibit 3, and Mr. Brumagin stated that was correct. He stated he observed multiple vehicles parked on the subject property, and that he determined the appellant was operating a car rental business from the residence. He stated he observed other individuals on the property arriving to pick up a vehicle for rent. Mr. Brumagin stated that he issued an NOV based on these observations.

Vice Chair Ramsey asked if Mr. Brumagin checked the titles on the vehicles, and Mr. Brumagin stated Mr. Browne showed him the titles, and they are owned by the appellant.

Mr. Wofford asks about the distinction between a renter of a home entering a residence and customers visiting a property for a home occupation, and Mr. Brumagin stated the difference is established in the LDO.

Mr. Oliver asked how this home occupation was related to ride-share services. Mr. Ducharme stated that the distinction between ride-share and car-share was that with car-sharing, the clients leave with the vehicles as opposed to being transported.

Chair Necas asked how Mr. Brumagin established that customers "regularly" arrived at the subject property to pick up and drop off vehicles. Mr. Brumagin stated that he did not use the term "regularly."

Vice Chair Ramsey asked about the definition of home occupation in the LDO. Mr. Kirkman gave the LDO definition of home occupation, a use incidental to the principal residential use of the property.

Mr. Oliver asked about outdoor art instruction. Mr. Kirkman stated that the home occupation standards were designed to limit the scale and intensity of commercial activities to reduce their impact on adjacent residential properties.

**Christian Browne, 519 Muirs Chapel Road**, asked if the LDO had a limit to the number of personal vehicles that can be stored on an individual's property, and Mr. Brumagin stated it did not. Mr. Browne asked if the LDO prohibited an individual from repairing personal vehicles, and Mr. Brumagin stated it did not. Mr. Browne asked if Mr. Brumagin witnessed any money exchanged at his property, and Mr. Brumagin stated he did not.

Mr. Randolph asked if there was a car-sharing arrangement that would comply with the home occupation standards. Mr. Brumagin stated that this use was difficult to envision it being conducted within standards.

Mr. Browne asked if Mr. Brumagin confirmed the titles of all vehicles on the property, and Mr. Brumagin stated he believed he had. Mr. Browne asked how he could get into compliance with the LDO moving

forward. Mr. Brumagin stated it would require a location for commercial parking to store the commercial vehicles off-site.

Mr. Ducharme called Mr. Kirkman as a witness and asked about the intention of the home occupation standards.

**Mike Kirkman** stated that he is the Zoning Administrator of the City of Greensboro and has been with the city for 17 years, and he oversees the administration, application, and enforcement of the LDO and is responsible for ordinance interpretations. The standards were designed to maintain the residential character of properties and limit activity in home occupations to an intensity compatible with neighborhoods. Mr. Kirkman stated he discussed the violations with Mr. Brumagin and concurred.

Mr. Truby asked how the case was stated, and Mr. Kirkman stated it arose from a complaint.

Mr. Wofford asked if the Board would hear about the complaint. Mr. Kirkman said Mr. Ducharme would address it in his presentation.

Mr. Randolph asked when the LDO was approved, and Mr. Kirkman stated it was 2010, and most of the current sharing economy was not active at that time. Mr. Randolph stated that the LDO did not specifically address home occupations in this context, and Mr. Kirkman stated the LDO was designed to handle how home occupations broadly impacted their surroundings.

Mr. Ducharme called Kelli Benotti as a witness, and Chair Necas swore her in for her testimony.

**Kelli Benotti, 506 Pleasant Drive**, stated she lived behind the subject property. She stated that she observed car rental operations on the subject property and witnessed multiple vehicles on the property and people coming and going from the property, as well as repairs being made on the vehicles. Mr. Ducharme asked how often this occurred, and Ms. Benotti stated she has seen an uptick in the last six months to a year.

Chair Necas asked how regular the activity was, and Ms. Benotti stated it was a few times a week.

Mr. Wofford asked if the activity was disruptive, and Ms. Benotti stated it was significantly different from what normally happens in the neighborhood.

Mr. Ducharme objected to the question, as the behavior of the clients of a home occupation is not relevant to whether an unacceptable home occupation is present on a property.

Ms. Guarascio stated the LDO's standards, and that the LDO does not require palpably disruptive behavior for a use to be prohibited. Mr. Ducharme stated that the standard is looking at the nature of the commercial activity, not the behavior of any individuals. Ms. Guarascio stated that the Board has deference to interpret the intention of the ordinance.

Mr. Wofford asked if a variance could allow the activity in question, and Mr. Kirkman stated that any standard of the LDO could be addressed with a variance and evaluated with the Board's hardship standards.

Chair Necas stated the Board was only considering the appeal, not a potential variance, and Mr. Kirkman stated that was correct. He stated that the appellant could request a variance if the Board were to uphold his decision as the Zoning Administrator.

Mr. Wofford stated he was attempting to provide potential avenues to resolve the dispute.

Mr. Truby stated that the appellant could also request a rezoning of the property.

Mr. Randolph asked if Ms. Benotti had seen transactions, and Ms. Benotti stated they were occurring outside of the residence.

Mr. Browne asked Ms. Benotti about the nature of the complaint.

Mr. Ducharme objected, stating that the investigation stands on its own, regardless of what the initiating complaint was about. Chair Necas sustained the objection.

Mr. Browne asked Ms. Benotti about what neighborhood she would describe her home being in.

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

Mr. Browne asked if Ms. Benotti had seen money change hands, and Ms. Benotti stated she had not, as online platforms do not usually conduct payment with cash. Mr. Browne asked if adding a fence between the properties would resolve any issues. Chair Necas stated that was irrelevant to the Zoning Enforcement question.

Mr. Ducharme stated that there is limited State law regarding peer-to-peer vehicle sharing, but it is indisputably a business venture.

Vice Chair Ramsey asked if there was additional insurance or other requirements associated with this use, and Mr. Ducharme stated there was little to no State regulation.

Mr. Browne entered the titles to his vehicles, insurance records, and other information regarding his vehicles and business into the record.

Chair Necas asked how many vehicles Mr. Browne had on the property, and Mr. Browne stated he had 11 or 12.

Mr. Ducharme stated that he did not object to any documents except a purported lease agreement.

Mr. Browne stated that the lease agreement was relevant as some vehicles were owned by his lessor.

Ms. Guarascio asked if the lease agreement limited the number of vehicles the lessor can have on the property, and Mr. Browne stated it did not. Chair Necas stated the lease agreement was not to be included.

Mr. Browne stated that he filed his tax returns as an individual. Vice Chair Ramsey asked to see Schedule C where the income was reported. Only a full tax return could represent what Mr. Browne was attempting to substantiate.

Mr. Ducharme asked if the income information was relevant to the Board's consideration.

Ms. Guarascio stated that the Board was not necessarily considering how much income was being generated, just whether the Zoning Enforcement Officer's determination was accurate as to the nature of the home occupation.

Mr. Ducharme stated that the LDO's regulation of home occupations did not depend on the success of the occupation.

Vice Chair Ramsey stated that income information would help to describe the nature and extent of the home occupation.

Mr. Ducharme stated that the ownership status of the vehicles was not relevant if the facts established the vehicles were being rented.

Mr. Browne states all the vehicles were in his name, not a business.

Vice Chair Ramsey asked about insurance requirements for rentals. Mr. Browne stated he carries personal insurance on the vehicles.

Chair Necas stated that the question is not whether the business is being operated legally or not, but if it is being operated at all, and if it is inside the requirements of the home occupation standards set by the LDO.

Mr. Oliver asked the number of transactions and length of rentals. Mr. Browne stated that most are 3 to 4 days at a time, but he could not state the exact number of transactions he has completed over the past year.

Mr. Ducharme objected to speculation about which vehicles were used for rental at different times, and Chair Necas sustained the objection.

Mr. Browne stated that all vehicles pictured in the exhibits were his except one.

Vice Chair Ramsey asked about the vehicle in the photographs that was not owned by Mr. Browne. Mr. Browne stated that he owned it but it was not listed for rental.

Mr. Ducharme objected to the relevance of the questioning.

Vice Chair Ramsey asked how many vehicles Mr. Browne had listed on the peer-to-peer car-sharing platform. Mr. Browne stated he had multiple vehicles listed on the platform, but never more than one at a time was present on his property.

Mr. Randolph asked if the vehicles were regularly stored on the subject property. Mr. Browne stated yes and that he does use them for personal purposes.

Mr. Oliver how often customers came to the subject property. Mr. Browne said a few times a week, but he cannot quote an exact number.

Mr. Ducharme objected to the questioning, noting that the intensity of a use was irrelevant to the Board's consideration of the LDO's home occupation standards as to whether the use was present.

Vice Chair Ramsey asked how the vehicles were advertised. Mr. Browne stated that he had used a business name in the past.

Ms. Guarascio stated that the Board could only consider what was entered into evidence.

Mr. Oliver asked if this was the applicant's primary source of income. Mr. Ducharme objected to the question. Mr. Browne stated it was not.

Mr. Wofford asked if the Board upheld the ruling and the appellant were then to apply for a variance, would he need to suspend operations. Mr. Kirkman stated that enforcement actions are placed on hold during any active applications or processes.

Mr. Ducharme asked Mr. Browne about his level of activity on the peer-to-peer ride-sharing service in question, and Mr. Browne stated he was an "all-star host" on Turo, and he uses the business name "Subaru Whisper." Mr. Browne stated that the daily rental rate varied from vehicle to vehicle.

Mr. Ducharme displayed photographs of vehicles listed on the Turo platform, and asked if they were part of Mr. Browne's business, and Mr. Browne stated that was correct. Mr. Ducharme asked how many trips were indicated as having occurred with the service, and Mr. Browne stated the document indicated 243.

Mr. Ducharme asked if Mr. Browne's Limited Liability Corporation (LLC) was formed in 2022, and Mr. Browne stated that was correct, and that he originally sold vehicles on the subject property but has since ceased those operations. Mr. Ducharme asked if the North Carolina Secretary of State indicated the principal office of the LLC was the subject property, and Mr. Browne stated that was correct. Mr. Ducharme asked if Mr. Browne filed annual reports for the LLC with the State, and Mr. Browne stated that he paid a firm to file paperwork to stay in compliance with State law.

Mr. Oliver asked if the 243 trips number was for just one vehicle, and Mr. Browne stated the number was for all his vehicles on that platform as reported on his 2023 tax return.

Mr. Ducharme displayed Exhibits 10 and 11, the 2023 and 2024 annual reports of the appellant's LLC, and Mr. Browne stated he had not seen the annual reports before. Mr. Ducharme asked if the reports listed his name with dates of certification, and Mr. Browne stated his name was on the reports, listed as e-file annual reports filed with the Secretary of State. Chair Necas accepted the exhibits into evidence. Mr. Ducharme asked about the 2023 calendar year report and the location of the principal office was. Mr. Browne stated it was the subject property and the report was certified by him on March 14, 2024. Mr. Ducharme asked about business purposes listed on the form, and Mr. Browne stated it was for automobile repair and rental. Mr. Ducharme asked if the 2024 form was different, and Mr. Browne stated it was not, but he was not familiar with the documents.

Vice Chair Ramsey asked if Mr. Browne authorized the listed firm to file his annual reports as a registered agent, and Mr. Browne stated that was correct, but he was not familiar with the process.

Mr. Wofford stated that the LDO should be updated to account for the contemporary peer-to-peer sharing platforms, as it has for short term rentals.

Ms. Guarascio stated that the Board does not address policy concerns and cannot use that as a part of its considerations.

Mr. Oliver asked about the Board's voting standards for this motion, and Ms. Guarascio stated it was a majority vote.

Vice Chair Ramsey asked what would happen if the Zoning Administrator's ruling was upheld, and Mr. Kirkman stated that the appellant would have to cease operations as listed in the Notice of Violation or face civil penalties or start another process that might remediate the violation in an alternate fashion.

Mr. Browne stated that he sought to follow the LDO, and he was unaware he was not in compliance until the Zoning Enforcement Officer visit. He stated that the vehicles used for his rental business are personal vehicles that he sometimes uses himself, and that he would relocate some of them if necessary, but they would be on his property occasionally.

Mr. Ducharme stated that the appellant's car-share business is an undisputed commercial activity that would fit the definition of a home occupation, and the evidence indicates the nature of the operation violates LDO standards.

Mr. Browne stated that his vehicles are under his name, and he only repairs his own vehicles.

Mr. Oliver asked if Mr. Browne continued to hold that the home occupation was held entirely inside the residence, and Mr. Browne stated he did not.

Mr. Randolph stated that the pickup of vehicles occurred outside the dwelling. Mr. Browne replied yes.

Mr. Truby stated that the home occupation standards were set for a reason, and the evidence was clear that there was a violation present on the subject property.

Vice Chair Ramsey concurred with the assessment of there being a home occupation on the property.

### **MOTION**

Chair Necas moved that in BOA-24-16, 519 Muirs Chapel Road, the Board of Adjustment uphold the Zoning Enforcement Officer decision that stated: A home occupation on the property does not comply with the following Land Development Ordinance policies: (1) Unless located in the TN District, a home occupation must be conducted entirely within the residence; (2) Except in the TN District, or in child day care homes in any district, persons who are not occupants of the dwelling may not go by the dwelling to pick up orders, supplies or other items related to the home occupation; and (3) Outside storage of items related to the home occupation is prohibited. In support of this motion to uphold, the Board finds the following facts: (1) The property located at 519 Muirs Chapel Road is within the corporate limits of the City of Greensboro and subject to its jurisdiction and the application of its Ordinances; (2) The City of Greensboro Land Development Ordinance (LDO) applies to the property and sections relevant to this decision include Section 30-8-11.5; and (3) The Board accepts the following testimony and evidence as true in support of its decision: (a) Car-sharing is not a permitted use as a home occupation; (b) The occupant has been operating a car-sharing business for 8 to 9 months; customers pickup and return vehicles, and all vehicles used in the business are stored outside; and (c) This use is not compliant with the LDO. Mr. Truby seconded the motion.

The Board voted 6-0 in favor of the motion (Ayes: Oliver, Randolph, Vice Chair Ramsey, Truby, Wofford, and Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously and the Zoning Enforcement Officer's decision was upheld.

**OTHER BUSINESS**

There was no other business.

**ACKNOWLEDGEMENT OF ABSENCES**

Chair Necas acknowledged the absence of Ms. Rudd.

**ADJOURNMENT**

The meeting was adjourned at 9:18 p.m.

Respectfully submitted,

Leah Necas, Chair  
Greensboro Board of Adjustment  
LN/arn