

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

The meeting of the Greensboro Board of Adjustment was held on Monday, July 22, 2024, at 5:34 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Vaughn Ramsey, Chuck Truby, Ted Oliver, Drew Wofford, Stephen Barkdull, and Deborah Bowers. City staff present were Mike Kirkman, Shayna Thiel, Steve Brumagin, Carla Harrison and Andrew Nelson (Planning Department), Todd Dickson (Engineering and Inspections Department), and Emily Guarascio (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 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.

Chair Necas confirmed no Board members had ex parte communications to disclose regarding any items on the agenda.

**APPROVAL OF MINUTES (June 24, 2024 Meeting)**

Mr. Barkdull made a motion to approve the June 24, 2024 minutes, seconded by Vice Chair Ramsey. The Board voted 7-0 in favor of the motion, (Ayes: Truby, Oliver, Wofford, Barkdull, Bowers, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the minutes were approved unanimously.

**SWEARING IN OF STAFF**

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

**CONTINUANCES / WITHDRAWALS**

Ms. Thiel advised that BOA-24-31 at 4401 Williamsburg Road and BOA-24-32 at 3021 Pacific Avenue were continued to the August meeting.

Ms. Guarascio advised that the Board is not obliged to hear repetitive testimony on continued cases as prior substantial evidence was already presented on the record.

Mr. Truby asked about Board members who were not present for previous meetings. Ms. Guarascio stated that all members have the record of the proceedings and can be prepared to deliberate on and are qualified to vote on the requests.

**OLD BUSINESS**

**a. BOA-24-11: 3008 Madison Avenue (DENIED)**

Ms. Thiel stated in BOA-24-11, Daniel and Christine Eddy request a variance to allow a proposed addition to encroach 10 feet into a required 30 foot rear setback. The addition will be 20 feet from the rear property line. Evidence provided by the applicants included Exhibits A and B. Supporting

documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference 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 1,056 square foot attached garage addition at the back of their existing home. The proposed addition will encroach 10 feet into a required 30 foot rear setback and be 20 feet from the rear property line. At the request of the applicants, the Board of Adjustment granted a continuance of this variance request at its February 26, 2024 meeting. Since that time, the applicants have reduced the size of the proposed addition and the amount of setback encroachment. The applicants have also indicated that the proposed addition will be limited to 15 feet in height, as measured from the nearest point of the driveway. The Board of Adjustment granted another continuance of this variance request at its May 28, 2024 meeting, at the request of the applicants, to allow for further discussions with neighbors. If the variance is granted, the applicants will proceed with the residential building permit process

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

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

**Daniel Eddy, 3008 Madison Avenue**, stated that his current proposal limits the height of the proposed addition to 15 feet.

Chair Necas asked about the design alternatives available to the applicant, and Mr. Eddy stated he could build a taller structure by right without a variance but does not wish to do so.

Vice Chair Ramsey asked about height limitations imposed on the subject property. Mr. Kirkman stated that the R-3 zoning district permits a principal structure to be up to 50 feet tall.

Chair Necas asked if the applicant would agree to condition the variance request to the height, and Mr. Eddy stated he believed it was in the request already. Mr. Kirkman stated that the Board would need to condition the request in the motion.

Mr. Oliver asked about neighborhood outreach, and Mr. Eddy stated it did not materially change his request.

Chair Necas asked if there was any opposition to the request and swore in Tamara Pallagut, Carol Staley, Alice Procter, and Margaret Ramsey for their testimony.

Ms. Guarascio stated that the Board would have to decide how much relevance to assign to conversations between the applicant and neighbors,

**Tamara Pallagut, 3101 Madison Avenue**, stated that the request is unreasonable in scale, and that the applicant has not conducted sufficient outreach despite the multiple continuances of the request.

Ms. Guarascio stated that the Board cannot determine the use of the addition via the variance request, as a variance would run with the land.

Ms. Pallagut stated that the applicant has not demonstrated hardship sufficient to warrant the granting of a variance, and that it is not in harmony with the neighborhood.

Vice Chair Ramsey stated that the applicant can build an addition by right.

Ms. Guarascio asked Carol Staley to confirm that her daughter, Alice Procter, can speak on her behalf, and Ms. Staley stated that was correct.

**Alice Procter, 4 St. Regis Court**, stated that while the applicant has the right to build an addition, the request as presented lacks evidence of a hardship to grant a variance. She displayed an illustrative

sketch of the addition and stated that the request is insufficiently conditioned to ensure its compatibility with the neighborhood. She stated that the Land Development Ordinance (LDO) does not permit home occupation uses to have an adverse impact on the neighborhood, which she asserted the proposed addition would impose. She requested the Board consider conditions to limit the variance to ensure the addition is appropriate. Ms. Procter stated that the applicant has alternatives to build an acceptable addition without this variance request.

Mr. Wofford asked if there were any compromises agreeable to the opposition, and Ms. Procter stated that the applicant had not negotiated in good faith. She stated that the applicant has not submitted drawings by an engineer to demonstrate what he intends to build.

**Margaret Ramsey, 3006 Madison Avenue**, stated that she objected to the proposed addition, and stated that the applicant has not made sufficient outreach efforts to explain the request. She stated that the proposed addition does not fit the residential character of the neighborhood.

**Carol Staley, 200 Homewood Avenue**, stated that she would be most impacted by the proposed addition, and the applicant has not sufficiently worked to discuss the request with her. She stated that the applicant intends to use the proposed addition for a use commercial in nature that is not appropriate for the character of the neighborhood. She stated that the applicant's lack of candor regarding his building plans makes her concerned about an unconditioned variance. Ms. Staley stated that the applicant has not presented sufficient evidence of a hardship satisfying the requirements to grant a variance.

Ms. Guarascio stated that the Board can only consider the variance as presented and that the LDO does not impose an outreach requirement on variance applicants.

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

Mr. Eddy stated that he is willing to accept conditions that would allow the Board to approve the variance, including height and area. He stated that his outreach efforts were complicated by emotions regarding the proposal.

Ms. Guarascio stated that the Board may impose conditions deemed necessary to advance the purpose and intent of the LDO provided that such conditions are directly related to the impacts of the proposed use and are roughly proportional to those anticipated impacts.

Mr. Oliver stated that he felt the Board was being asked to negotiate a settlement, which was not its role.

Chair Necas asked about the proposed height condition, and Mr. Eddy stated that he would be willing to accept a height limit of 15 feet, and that the encroachment area into the setback be no more than 26 linear feet. Chair Necas asked about the existing carport on the property, and Mr. Eddy stated there is a two car carport, not an enclosed garage.

Ms. Bowers asked if the changes required an amended variance application. Mr. Kirkman stated that it would not be necessary to amend the application, but the Board should be cautious to ensure the motion language is specific.

Vice Chair Ramsey reiterated that he felt the Board was being asked to negotiate a settlement, which is not suited to do, and that it would be preferable for the applicant to discuss the changes with the neighbors.

Mr. Wofford asked what the applicant would do without the variance, and Mr. Eddy stated he would need to construct a much taller addition, but he would not tear down the existing carport.

Chair Necas asked about the elevation of the carport in relation to the rest of the property, and Mr. Eddy stated that the carport and the driveway are level and would be the measurement point for the height of the addition. He stated that the height of the existing carport is 12 feet 8 inches.

Chair Necas closed the public hearing.

**BOARD DISCUSSION**

Mr. Truby stated that he was troubled by the communications of the applicant. He stated that he suggested the original continuance so that the applicant could add additional detail to the request and negotiate it with the neighborhood, and this has not been done, and accordingly he cannot support the request.

Ms. Bowers stated that the Board needs to vote on the presented material, and she does not believe the applicant has submitted a complete proposal.

Vice Chair Ramsey stated that he is not persuaded that the hardship of which the applicant complains is not of his own making, and he wished that the neighborhood would collaborate to find a mutually beneficial solution. He stated that without the variance, the applicant could build an unfitting addition by right, but he cannot support the request.

Chair Necas stated that the request as presented would have significant impact on neighboring properties.

Mr. Oliver stated that the applicant has not presented a negotiated settlement that the Board can consider.

Mr. Wofford asked if the Board could vote to continue the request.

Mr. Truby stated that the Board has already granted sufficient continuance to facilitate collaboration, but it has not happened so far. He stated he cannot support a further continuance.

Vice Chair Ramsey stated that the applicant can request another variance if the current request is denied.

**MOTION**

Mr. Truby moved that in BOA-24-11, 3008 Madison Avenue, based on the stated Findings of Fact, the Zoning Enforcement Officer be upheld and the variance denied based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will not result to the property by applying strict application of the ordinance because the garage has been placed too close to the property line and the wall is stark and is too long; (2) The hardship of which the applicant complains does not result from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the garage could be placed on other areas of the property; (3) The hardship is the result of the applicant's own actions because the garage could be placed in a manner that does not require a variance; (4) The variance is not in harmony with the general purpose and intent of this ordinance and does not preserve its spirit and does not assure public safety, welfare and substantial justice because the garage will adversely affect the neighbors to the north. Mr. Barkdull seconded the motion.

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

**b. BOA-24-21: 3108 Madison Avenue (DENIED)**

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 applicants included 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 that planters placed on top of the existing brick wall increased the height of the wall. 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. At the request of the applicants, the Board of Adjustment granted a continuance of this variance request at its May 28, 2024 meeting to allow for additional testimony from City staff related to the existing brick wall.

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 applicants to provide their name/address for the record and swore in David and Anna Caton and Dale Mitchell for their testimony.

Chair Necas advised the applicant's counsel to limit materials presented to new information.

**Anna Caton, 3108 Madison Avenue**, stated that the wall has been in dispute for nearly two years, and that they have attempted multiple measures to satisfy the concerns about the wall but have been unable to do so due to interactions with neighbors.

Ms. Guarascio reiterated that the Board does not need to hear repetitive testimony.

**Peter Isakoff, 109 Westchester, Williamsburg, Virginia, attorney for David and Anna Caton**, stated that the wall has been permitted by the City and inspected by engineers, and that without the variance, the applicants would be required to demolish the wall.

Mr. Wofford asked why the applicant could not change the height of the wall.

**David Caton, 3108 Madison Avenue**, stated that the reduced height would make the wall useless or even unsafe. He stated that the County health department has requirements for wall height to ensure pool safety.

**Dale Mitchell, 101 Tall Oaks Drive**, stated that his firm designed the wall to have a significant concrete footing to ensure its structural integrity. He stated that they would have completed the backfill process but have not been able to do so, and that the 3 foot wide footing and reinforced concrete is sufficient to support the current height.

Mr. Wofford asked about the potential for the wall to collapse into the neighboring property, and Mr. Mitchell stated that due to the inability to complete backfill, there is washed stone at the base of the footing, which is unlikely to suffer significant erosion.

Mr. Oliver asked how much property was between the wall and the property line. Mr. Mitchell stated there was very little space, and that the neighboring wall was not damaged by the excavation process to construct the wall in question. The construction process was intended to be completed by backfill, which they could not do.

Mr. Wofford asked if the wall was at risk of collapse without backfill, and Mr. Mitchell said he did not believe it was.

Mr. Oliver asked about the spacing between the wall in question and the neighboring property, and Mr. Mitchell stated it was approximately two feet, and that they could backfill the space on the applicants' property to fulfill the height requirement. Mr. Oliver asked how this would interact with the neighboring property, and Mr. Mitchell stated that the backfill would abut the neighboring property's

retaining wall. Mr. Oliver referenced Exhibit 3 and asked if the applicant was proposing to fill the gap with material. Mr. Mitchell stated that they would backfill against the neighbor's retaining wall.

Vice Chair Ramsey asked the applicant to indicate where the backfill would be placed. Mr. Mitchell indicated a section of the area between the wall in question and the neighboring retaining wall.

Chair Necas asked if the applicant would have built the wall without the neighboring privacy fence, and asked if they were relying on the structural integrity of the neighboring wall. Mr. Mitchell stated that the neighboring property's condition is not relevant to the structural integrity of the wall, but they would have likely requested a different variance at the beginning of the construction process. Chair Necas asked if the proposed backfill was the only to cure the height violation, and Mr. Mitchell stated that was correct, and that without the neighboring wall, they would have refilled excavated soil.

Vice Chair Ramsey asked Mr. Mitchell to confirm his professional judgment was that the wall was structurally sound, and Mr. Mitchell stated that was correct, and that he proposed to return the properties to their status prior to any construction.

Mr. Wofford asked about the property line in Exhibit 3, and Mr. Mitchell stated that the footing for the wall is just inside the property line and confirmed that they would replace material removed during excavation.

Mr. Oliver stated that the staff report states the applicant built without a permit, and Mr. Mitchell stated that there was not a permit pulled initially because they intended to backfill the wall to meet ordinance requirements but could not. Mr. Oliver stated that Zoning Enforcement Office's measurement does not match the plans submitted, and Mr. Mitchell stated that the submitted plans did not include measurements.

Mr. Caton stated that the neighboring property owner has modified the soil at the property line, which increases the measured height of the wall.

Ms. Bowers asked if the wall was compliant before that modification, and Mr. Caton stated it was not but it would have been had construction (backfill) been completed.

Ms. Guarascio stated that Todd Dickson is present at the request of the Board.

**Todd Dickson, Chief Building Inspector**, stated that engineering documents (Appendix G) were submitted attesting to the structural integrity of the wall. The engineering documents are certified by the seal of the licensed engineer.

Chair Necas asked if there was any opposition to the request and swore in Robert and Susan Tayloe for their testimony.

**Robert Tayloe, 3106 Madison Avenue**, stated that the construction process of the wall in question damaged the retaining wall on his property, and he told the contractor not to add additional dirt or gravel due to concerns about the integrity of his property. He stated that he does not believe the wall as constructed is safe, and the entire wall has not been permitted or inspected. He stated that the property boundary does not permit the proposed backfill.

Chair Necas asked if Mr. Tayloe believed the planters on the wall made it unsafe, and Mr. Tayloe stated that was correct, and that the dirt and gravel placed by the applicant will enter his property if he needs to replace the retaining wall he asserts has been damaged. Mr. Tayloe stated that the applicant does not have a licensed engineer present to testify about the integrity of the wall.

Mr. Dickson stated that the engineering documents presented by the applicant relate to the unbalanced fill, and not the wall's height, and that the engineer asserts the safety of the wall with their submittal.

Mr. Barkdull asked if the Tayloes had consulted with an engineer regarding their concerns, and Mr. Tayloe stated he had not.

Vice Chair Ramsey asked why the opposition speakers did not oppose the construction at the beginning, and Mr. Tayloe stated he had.

**Steve Brumagin, Zoning Enforcement Officer**, stated that he had one complaint filed about the planters, which had previously been addressed by the Board. He stated that he had not received any earlier complaints about the wall height or construction process, or structural integrity.

Vice Chair asked about information on the Appendix G document submitted by the applicant, and Mr. Dickson stated that the footing was constructed to the standards used for residential dwellings.

Mr. Tayloe stated that no inspection has been done.

Vice Chair Ramsey asked the opposition speaker why he sought to have the wall removed, and Mr. Tayloe stated that he believes his wall has been damaged and needs to be replaced.

Vice Chair Ramsey asked about adding dirt to bring the wall into compliance, and Mr. Kirkman stated that fence/wall height is measured from base elevation.

Mr. Truby stated the structural issues are not before the Board and asked about the engineering report.

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

Mr. Isakoff stated that engineering report was attached to the building permit application.

Mr. Truby asked if the applicants had a report from a structural engineer to attest to its integrity.

The applicants displayed the Appendix G form, and Mr. Truby stated the form submitted is not an engineering report of the current conditions and is not sufficient to certify the wall's structural integrity.

Ms. Tayloe stated it was the report submitted to get the building permit.

Mr. Dickson stated that North Carolina General Statutes have changed with regards to submittal requirements, and that the submitted report meets standards.

Mr. Truby stated that it appears the submitted documentation is only for the retaining wall portion, and not the rest of the wall, and with the planters. Mr. Dickson concurred that could be correct.

Mr. Truby stated that he would have liked to see evidence to support the health and safety portion of the Board's deliberation.

Mr. Isakoff stated that engineers were unwilling to testify in the quasi-judicial setting of the Board.

Mr. Truby asked if the applicants had reached out to structural engineers, and Ms. Caton stated that they were unwilling to testify due to the litigation around the issue.

Mr. Caton stated that the weight in the planters is not as significant as purported.

Mr. Wofford stated he is concerned about the dirt removed on the other side of the wall. Mr. Caton stated that the damage arose from the configuration of the neighboring retaining wall encroaching into his property.

Mr. Mitchell stated that the size and thickness of the foundation is more than adequate to support the wall as built. He stated they intended to backfill the wall, but could not, due to the interference of the neighbors.

Ms. Bowers asked about the linear feet the wall exceeds the height limit. Mr. Mitchell stated it was approximately 10 feet, and the entire wall is nearly 50 feet long.

Mr. Oliver asked if the base of the wall is still stable without the dirt, and Mr. Mitchell stated that was correct.

Chair Necas closed the public hearing.

### **BOARD DISCUSSION**

Chair Necas stated she was concerned about granting a blanket variance on the property.

Mr. Wofford stated that he cannot support the request and does not believe a solution should require placing dirt on a neighbor's property. Mr. Oliver asked if the backfill option would cure the violation, and Mr. Wofford stated that the neighbors stated they needed to replace their wall, as they claim it has been damaged.

Mr. Kirkman stated that the variance request could be conditioned to apply only to the existing wall.

Vice Chair Ramsey stated that it appears the wall is stable, and he does not believe requiring the demolition of the wall is useful.

Mr. Truby stated that he could support the variance if competent and material evidence asserting the safety of the wall was available.

Vice Chair Ramsey stated that the Board has the contractor's testimony and the submitted permits to use in its deliberations, supporting the assertion of the wall's stability.

Ms. Bowers stated that requiring the applicant to remove the wall would be unreasonable.

Mr. Oliver stated that the applicant needed a fence of a certain height for pool safety, and that the evidence submitted was sufficient for him to accept that the wall was stable.

### **MOTION**

Chair Necas moved that in BOA-24-21, 3108 Madison Avenue, based on the stated Findings of Fact, the Zoning Enforcement Officer be upheld and the variance denied based on the following: (1) the hardship is the result of the applicant's own actions because the wall was built by the owners and does not match the plans submitted with the permit; (2) the variance is not in harmony with the general purpose and intent of this Ordinance and does not preserve its spirit and does not ensure public safety because the neighbor's wall is necessary for the backfill that would otherwise cure the issue and is not doing justice to the neighbor's property. Vice Chair Ramsey seconded the motion.

The Board voted 2-5 in opposition to the motion (Ayes: Wofford, Chair Necas; Nays: Barkdull, Bowers, Oliver, Vice Chair Ramsey, Truby). Chair Necas advised the motion failed.

Vice Chair Ramsey moved that in BOA-24-31, 3108 Madison 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 property owners would be required to tear down the existing wall; (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 wall is necessary to maintain the topography of the property and the topography between the two lots is unique due to extreme elevation differences; (3) The hardship is not the result of the applicant's own actions because the applicant tried to cure the issue by adding fill along the wall to raise the grade of the wall but was prevented from doing so; (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 existing retaining wall is stable. Mr. Barkdull seconded the motion.

The Board voted 5-2 in favor of the motion (Ayes: Barkdull, Bowers, Oliver, Vice Chair Ramsey, Truby; Nays: Wofford, Chair Necas). Chair Necas advised the motion failed.

Chair Necas advised the Board would take a break at 7:21 p.m., and the Board resumed at 7:31 p.m.

### **NEW BUSINESS**

#### **a. BOA-24-29: 3724 Sagamore Drive (APPROVED)**

Ms. Thiel stated in BOA-24-29, Jeffrey and Sandra Sims request a variance to allow a proposed accessory structure over 15 feet tall to encroach 3.2 feet into a required 10 foot side setback. The accessory structure will be 6.8 feet from the side property line. 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 30-8-11.1(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 east side of Sagamore Drive, north of Cardinal Way, and is zoned R-3 (Residential Single-Family). Tax records indicate the through lot contains approximately 20,037 square feet, and the house was constructed in 1985. The applicants propose to construct a 21 foot tall detached accessory structure containing a garage and unfinished storage in their back yard that will align with the existing driveway. The proposed 672 square foot accessory structure will encroach 3.2 feet into a required 10 foot side setback and be 6.8 feet from the side property line. If the variance is granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicants to provide their name/address for the record and swore in Jeff Sims and Alan Price for their testimony.

**Jeff Sims, 3724 Sagamore Drive**, stated that his request is to facilitate the construction of a detached garage with space for storage, and he was unaware of the enhanced setback requirement due to height. He stated that moving the garage to meet the setback requirement would put it out of line with the driveway, and one of the garage bay doors would be rendered unusable.

**Alan Price, 3722 Sagamore Drive**, stated that his property is directly adjacent to the applicant. He has no opposition to the proposed garage.

Seeing no opposition, Chair Necas closed the public hearing.

#### **MOTION**

Vice Chair Ramsey moved that in BOA-24-29, 3724 Sagamore 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 vehicle access to the garage would be limited and not aligned with the existing concrete driveway; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the proposed location is the only reasonable location for the garage with needed attic space; (3) The hardship is not the result of the applicant's own actions because the applicant acquired the property in 2003 in its present configuration; (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 complement the neighborhood and is consistent with nearby dwellings. Chair Necas seconded the motion.

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

#### **b. BOA-24-30: 5385 Beechmont Drive (APPROVED)**

Ms. Thiel stated in BOA-24-30, Keith and Megan Kepler request a variance to allow a proposed addition to encroach 19.21 feet into a required 30 foot rear setback. The addition will be 10.79 feet from the rear property line. Evidence provided by the applicants included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum rear setback is 30 feet.

**Background and Site Information:** The subject lot is located on the west side of Beechmont Drive, south of Jessup Grove Road, and is zoned R-3 (Residential Single-Family). Survey records indicate the lot contains approximately 11,322 square feet, and the house was constructed in 1992. The applicants propose to construct a 386 square foot addition attached to the back of the house that will encroach 19.21 feet into a required 30 foot rear setback and will be 10.79 feet from the side property

line. The applicants seek a variance to address this issue, 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 there were no applicable overlays or plans.

Chair Necas asked the applicants to provide their name/address for the record and swore in Keith Kepler for his testimony.

**Keith Kepler, 5385 Beechmont Drive**, stated that the variance was required due to smaller size of the property. The location proposed is the only reasonable location to place an accessory structure.

Chair Necas asked if the proposed structure would be attached to the principal structure and Mr. Kepler stated that it would be permanently attached to the rear deck.

Seeing no opposition, Chair Necas closed the public hearing.

### **MOTION**

Mr. Barkdull moved that in BOA-24-30, 5385 Beechmont 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 without approval of the proposed variance, the owners could not build the addition to the size and shape of the property; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because a hardship exists due to the size and shape and placement of current structures on the property; (3) The hardship is not the result of the applicant's own actions because the size and shape of the property existed prior to the applicant's purchase; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the addition will be built to match the existing structure, thereby maintaining the character of the neighborhood. Mr. Truby seconded the motion

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

### **c. BOA-24-33: 519 Muirs Chapel Road (CONTINUED)**

Ms. Thiel stated in BOA-24-32, Christian and Thomas Browne request three variances: (1) To allow a home occupation to be conducted outside the residence; (2) To allow persons who are not occupants of the dwelling to go by the dwelling to pick up orders, supplies or other items related to a home occupation; and (3) To allow outdoor storage of items related to a home occupation. Evidence provided by the applicants included Exhibit A. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.5(C)(2): 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): 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 applicants 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 property 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 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 applicants timely appealed the Zoning Enforcement Officer Decision contained in the Notice of Violation, and the appeal was heard by the Board of Adjustment. At its May 28, 2024 meeting, the Board of Adjustment upheld the Zoning Enforcement Officer decision, so the applicants were required to discontinue the existing home occupation and comply with provisions of the Land Development Ordinance. The applicants are now seeking variances from the three ordinance provisions cited in the Notice of Violation. If the variances are granted, the applicants can continue operating the home occupation as they are currently doing.

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 about why this item had three applications, and Ms. Thiel stated that the applicant submitted three forms.

Chair Necas asked the applicant to provide their name/address for the record and swore in Christian and Thomas Browne for their testimony.

**Christian Browne, 519 Muirs Chapel Road**, stated that he intends to move the vehicles to a commercial storage facility, but he has requested the variance to ensure the transient storage of his personal vehicles for personal use will not be subject to Zoning Enforcement action.

Chair Necas asked if Mr. Browne was moving the commercial activity to the new location, and Mr. Browne stated that is correct and that he will no longer conduct pickup and drop off at the subject property. He stated that he does not use most of the vehicles he owns for the rental business, but he wants the ability to keep some that are occasionally used in the business on his property when they are not in service.

Mr. Kirkman stated that an individual can have as many personal vehicles on their property as they see fit if they are not associated with a home occupation, but any vehicles associated with a home occupation would need to meet standards for the home occupation.

Mr. Browne stated that the vehicles used for rental are also his personal vehicles and are available to him for his own use. He would not be making them available for rent when they were present at the subject property.

Mr. Oliver stated that the previous issue was the business operations outside of the home, and asked if the situation Mr. Browne describes will cure that violation. Mr. Kirkman stated that staff needs to assess the newly presented information.

Vice Chair Ramsey asked if the requests were moot. Mr. Kirkman stated that he wanted to ensure that there was no business activity on the property outside the residence, as that is the Land Development Ordinance standard. Vice Chair Ramsey asked the applicant if there would be no pickup or drop off at the subject property, and Mr. Browne stated that was correct.

Mr. Kirkman stated that the Board may wish to continue this request to ensure that staff has accurate information to present.

Mr. Oliver asked if the Board could set a time limit on a variance. Ms. Guarascio stated that she was not familiar with an arrangement like that.

Chair Necas asked if the applicant needed to request a continuance.

Ms. Guarascio stated that staff needed time to review if a variance request is even applicable, and cautioned the Board that details from a previous case are not applicable to this variance request.

Mr. Browne asked if he would receive a civil penalty for having his personal vehicles on his property. Mr. Kirkman stated that staff would need to assess the situation with the new development.

**MOTION**

Vice Chair Ramsey moved to continue item BOA-24-33 regarding 519 Muirs Chapel Road to the Board of Adjustment's August 26, 2024 regular meeting, seconded by Mr. Oliver.

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

Mr. Wofford stated that the item would be heard at the beginning of the next meeting.

**OTHER BUSINESS**

There was no other business.

**ACKNOWLEDGEMENT OF ABSENCES**

Chair Necas acknowledged the absence of Ms. Rudd and Mr. Randolph.

**ADJOURNMENT**

The meeting was adjourned at 8:01 p.m.

Respectfully submitted,

Leah Necas, Chair  
Greensboro Board of Adjustment  
LN/arn