

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

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

City staff present were Mike Kirkman, Shayna Thiel, Larry Holdsworth, Steve Brumagin, Duncan Walser, Carla Harrison, and Andrew Nelson (Planning Department), Emily Guarascio (Associate City Attorney) and Brent Ducharme (Assistant City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas advised that each side, regardless of the number of speakers, were allowed a total of 20 minutes to present evidence. Board members may ask questions at any time. Chair Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

Chair Necas advised that all testimony and evidence from applicants or opposition speakers must be relevant to the case(s) before the Board and the four criteria it uses to make decisions. She added that, going forward, if a member of the Board would like to allow immaterial testimony or evidence to be entered, they must make a motion for its admission.

APPROVAL OF MINUTES (December 11, 2023 Meeting)

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

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

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised that there were no continuances or withdrawals.

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

NEW BUSINESS

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

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

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

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

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Alejandrina Velazquez, Amy Velazquez Cruz, Lourdes Cruz, Victor Cruz, and Zizi Barthouma for their testimony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BOARD DISCUSSION

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

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

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

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

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

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

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

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

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

MOTION

Chair Necas moved that in BOA-24-01, 1801 Murrayhill Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and variance #1 granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because dance classes need more space than a small house from 1939 can easily provide; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house was built in 1939; (3) The hardship is not the result of the applicant's own actions because, again, the house was built in 1939; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because classes for Zumba are supporting a healthy lifestyle, particularly for members of the Hispanic community who may not be able to find classes in Spanish for them to attend. Mr. Randolph seconded the motion.

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

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

Chair Necas moved that in BOA-24-01, 1801 Murrayhill Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and variance #2 granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because not enough interested members of the community would be able to participate; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house allows for more than five students since they are using the basement and it would be difficult to be able to hold class without more people; (3) The hardship is not the result of the applicant's own actions because sometimes students show up who were not expected; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the Zumba classes are beneficial to the community and health of the individuals participating. Vice Chair Ramsey seconded the motion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MOTION

Mr. Wofford moved that in BOA-24-03, 408 Martin Luther King Junior Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the church will be unable to install a roadside sign, and the sign would be too small and be illegible; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property is in the MLK improvement district; (3) The hardship is not the result of the applicant's own actions because the applicant has been located on the road for an extremely long time; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because there is no opposition and it does not cause any harm, and the sign will be compatible with the neighborhood. Ms. Rudd seconded the motion.

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

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

Ms. Thiel stated in BOA-24-04, Beverly Bradshaw requests a variance to allow the building coverage of all accessory structures on the lot to be 720 square feet when no more than 600 square feet is allowed. Evidence provided by the applicant includes Exhibits A through D. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-11.1(A)(3): In R districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater.

Background and Site Information: The subject lot is located on the north side of Ross Avenue, west of South Benbow Road, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 8,276 square feet and the house was constructed in 1950. The applicant proposes to construct a 240 square foot accessory structure in her back yard to supplement an existing 480 square foot detached garage that will meet setback and separation requirements. Based on the building coverage of the existing house, the maximum allowed building coverage of all accessory structures on the lot is 600 square feet, so a variance is necessary to allow the total building coverage

of the existing accessory structure and the proposed accessory structure to exceed that amount by 120 square feet. If the variance is granted, the applicant will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Beverly Bradshaw for her testimony

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

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

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

MOTION

Mr. Oliver moved that in BOA-24-04, 1011 Ross Avenue, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the home has limited closet and storage space and the owner must now use the garage for storage and park cars in the street; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the home is over 70 years old with only 2 indoor interior closets; (3) The hardship is not the result of the applicant's own actions because the home has limited storage, making this need for outside storage; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the other storage option is away from the property, this will allow the owner to park their car in the garage and off of the street. Ms. Rudd seconded the motion.

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

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

Ms. Thiel stated in BOA-24-05, Perrin Carrell, Michelle Reed, Michele Huffman, and Timothy Huffman request two variances: (1) To allow the area devoted to a home occupation to occupy approximately 700 square feet when no more than 430 square feet is allowed; and (2) To allow instructions in music, dancing, art, or similar subjects to have more than 5 students at a time. Evidence provided by the applicant includes Exhibit A. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.2(D): A detached accessory dwelling must meet the location and dimensional requirements of the principal structure; and Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum side setback is 10 feet and the minimum rear setback is 30 feet.

Background and Site Information: The subject lot is located on the south side of Alderman Drive, west of McDowell Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 14,810 square feet, and the house was constructed in 1965. The applicants propose to covert the existing 828 square foot detached garage at the end of the driveway into an accessory dwelling without changing/expanding the footprint of the structure. The existing detached garage meets accessory structure setback and area requirements, but when converted into an accessory dwelling, it does not meet principal structure setbacks. In its current location, the proposed

accessory dwelling will encroach 2.47 feet into a required 10-foot side setback and be 7.53 feet from the side property line. It will also encroach 16.65 feet into a required 30-foot rear setback and be 13.35 feet from the rear property line. If the variances are granted, the applicants will proceed with the residential building permit process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ms. Guarascio stated every case is fact-specific.

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

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

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

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

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

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

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

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

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

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

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

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

BOARD DISCUSSION

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

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

MOTION

Ms. Bowers moved that in BOA-24-05, 1615 Alderman Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the building was already over the setback line by 2.5 feet when purchased, the driveway would have to be demolished resulting in hardship and waste simply for an interior renovation; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the original owner built the existing garage to meet the accessory structure setbacks, conversion to a dwelling structure creates greater setbacks and hardship but the footprint does not change; (3) The hardship is not the result of the applicant's own actions because the applicant did not build the original garage but simply wants to convert it to living space; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit

and assures public safety, welfare and substantial justice because the property dwellings' footprint will not change, only the existing structures will be renovated so interiors can be used for living spaces.

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

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

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

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

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

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

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

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

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

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

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

Ms. Rudd seconded the motion.

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

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

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

Ms. Thiel stated in BOA-24-06, Timothy and Angela Fowler request a variance to allow the building coverage of all accessory structures on the lot to be 1,590 square feet when no more than 1,034 square feet is allowed. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 6. The Land Development Ordinance reference was Section 30-8-11.1(A)(3): In R districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater.

Background and Site Information: The subject lot is located on the south side of Fleming Road, west of Isaacson Boulevard, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 40,946 square feet and the house was constructed in 1965. The applicants propose to construct a 1,350 square foot detached garage that will meet setback and separation requirements. Because the combined building coverage of the proposed garage and the existing 120 square foot storage building (which will be relocated on the lot) exceeds the maximum 1,034 square foot allowed, the applicants seeks a variance to allow for the additional 556 square feet. The applicants indicate that the proposed garage will not be visible from the street and that heavy foliage conceals their lot.

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

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

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

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

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

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

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

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

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

MOTION

Vice Chair Ramsey moved that in BOA-24-06, 1937 Fleming Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because compliance would not allow the applicant to protect all of their vehicles including a camper and truck; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the total lot is 1.2 acres but square footage is limited by the 2,200 square foot residence; (3) The hardship is not the result of the applicant's own actions because applicant bought the property in 1999 but the small house was constructed in 1965; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the proposed structure will not be visible from the road or near neighbors due to extensive woods and is consistent with the neighborhood and will increase tax values. Mr. Randolph seconded the motion.

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

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

Ms. Thiel stated in BOA-24-07, Jessica Driggers requests two variances: (1) To allow the building coverage of all accessory structures on the lot to be 1,176 square feet when no more than 878 square feet is allowed; and (2) To allow a proposed accessory structure to encroach 7 feet into a required 10-foot side setback. The accessory structure will be 3 feet from the side property line. Evidence provided by the applicant includes Exhibits A through D. Supporting documentation from staff includes Exhibits 1 through 6. The Land Development Ordinance references were Section 30-8-11.1(A)(3): In R districts, the maximum building coverage of all accessory structures may not exceed 50% of the building

coverage of the principal structure on the lot or 600 square feet, whichever is greater; and Section 30-8-11.1(C)(2): In R districts, accessory structures over 15 feet tall must be setback at least 10 feet from side and rear lot lines.

Background and Site Information: The subject lot is located on the north side of Dogwood Drive, west of Beverly Place, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 13,504 square feet and the house was constructed in 1950. The applicant proposes to construct a detached accessory structure, including a carport, exercise room, storage and future pool house, in the back yard that will exceed the maximum allowed building coverage and encroaches into a required side setback. The building coverage of the proposed accessory structure will be 1,176 when no more than 878 square feet is allowed. Additionally, with a height of 22 feet, the proposed accessory structure will encroach 7 feet into a required 10-foot side setback and be 3 feet from the side property line. The applicant seeks variances to remedy these issues and indicates that the existing storage shed shown on the submitted site plan will be removed. If the variances are granted, the applicant will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Jessica Driggers, Lee Comer, and Ken Wilhelm for their testimony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BOARD DISCUSSION

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

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

MOTION

Mr. Randolph moved that in BOA-24-07, 3412 Dogwood Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the current allowance of the accessory structure square footage and the setback would be substantially restricted and would prevent adequate parking and storage for the applicant's vehicles, outdoor equipment, household items, and pool materials; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house was built in 1950, the existing carport area existed prior to the applicant's ownership of the property and the lot is narrow; (3) The hardship is not the result of the applicant's own actions because the home's characteristics existed prior to the applicant's ownership, the actions undertaken by the applicant did not result in the property conditions; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it would allow the applicant to make reasonable and modern use of its property to safely park cars and store outdoor equipment and other accessories, the character of the home will be maintained and will likely increase the property values of existing homeowners and the addition will cause no additional residential harm to the neighbors. Mr. Oliver seconded the motion.

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

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

Ms. Thiel stated in BOA-24-08, Charles Winfree requests a variance to allow a proposed addition to encroach 10.62 feet into a required 67.25-foot front setback. The addition will be 56.63 feet from the front property line. Evidence provided by the applicant includes Exhibits A through D. Supporting documentation from staff includes Exhibits 1 through 6. The Land Development Ordinance reference was Section 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average setback that exists on the lots on either side of the subject lot.

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

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

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

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

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

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

MOTION

Mr. Oliver moved that in BOA-24-08, 206 Beverly Place, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because of the averaging of the neighboring property setbacks, this is a very small grant; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the street curves, the setback line is the result of averaging; other homes on the street are already closer than this property; (3) The hardship is not the result of the applicant's own actions because the home is over 70 years old and the rules were put in place after the home was built; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because of the averaging

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ducharme called Steve Brumagin to testify.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Ducharme called Mike Kirkman to testify.

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

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

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

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

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

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

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

Mr. Isakoff asked about why they installed the planters.

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

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

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

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

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

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

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

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

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

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

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

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

Chair Necas closed the public hearing.

BOARD DISCUSSION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MOTION

Chair Necas moved that in BOA-24-02, 3108 Madison Avenue, the Board of Adjustment uphold the Zoning Enforcement Officer decision that stated: No fence or wall associated with a residential use may exceed 7 feet in height nor exceed 4 feet in height within 15 feet of any right-of-way. The use of planters on top of an existing brick wall creates effectively a 9 to 10 foot barrier which exceeds the height limitations. In support of this motion to uphold the Zoning Enforcement decision, the Board finds the following facts: (1) The property located at 3108 Madison Avenue is within the corporate limits of the City of Greensboro and is subject to its jurisdiction and the application of its Ordinances; (2) The City of Greensboro Land Development Ordinance (LDO) applies to the property and sections relevant to this decision include Section 30-9-4.6(A); (3) The Board accepts the following testimony and evidence as true in support of its decision: the planters' position on top of the wall constitutes a continuation of the wall's height as a physical barrier and is greater than 7 feet in height and are in violation of the LDO. Mr. Randolph seconded the motion.

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

OTHER BUSINESS

There was no other business.

ADJOURNMENT

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

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/arn

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

The meeting of the Greensboro Board of Adjustment was held on Monday, February 26, 2024, at 5:30 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Vaughn Ramsey, Chuck Truby, Cory Randolph, Ted Oliver, Tifanie Rudd, and Stephen Barkdull. City staff present were Mike Kirkman, Shayna Thiel, Carla Harrison, and Andrew Nelson (Planning Department), and Emily Guarascio (Associate City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas advised that each side, regardless of the number of speakers, were allowed a total of 20 minutes to present evidence. Board members may ask questions at any time. Chair Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

Chair Necas advised that all testimony and evidence from applicants or opposition speakers must be relevant to the case(s) before the Board and the four criteria it uses to make decisions. She added that, going forward, if a member of the Board would like to allow immaterial testimony or evidence to be entered, they must make a motion for its admission.

APPROVAL OF MINUTES (January 22, 2024 Meeting)

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

The Board voted 5-0-2 in favor of the motion, (Ayes: Cory Randolph, Ted Oliver, Tifanie Rudd, Vice Chair Ramsey, Chair Necas; Nays: None; Abstention: Truby, Barkdull). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised that there were no continuances or withdrawals.

NEW BUSINESS

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

Ms. Thiel stated in BOA-24-09, Greensboro Symphony Orchestra Inc. and 122 N Elm Street LLC request a variance to allow 100% of a proposed sign face to be comprised of an electronic message board when no more than 75% is allowed. The electronic message board will be 160 square feet when no more than 120 square feet is allowed. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-14-8 – Table 14-4: In the CB District, the maximum percentage of sign face comprised of electronic message board is 75%.

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

lot contains approximately 8,357 square feet and the building was constructed in 1971. The applicants propose to install a 160 square foot attached sign that will wrap around the corner of the existing building at the intersection of North Elm Street and East Friendly Avenue. The property is located within the boundary of the Downtown Design Overlay District, but these provisions are not applicable in this case since the request does not affect at least 375 square feet of the first floor façade of the building. Instead the CB (Central Business) zoning standards state that the maximum percentage of a sign face comprised of an electronic message board is 75%. As proposed, 100% of the sign face will be comprised of an electronic message board, when only 75%, or 120 square feet is allowed. To allow for the entire sign face to be an electronic message board, a variance is necessary. If the variance is granted, the applicants will proceed with the sign permit review process.

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

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

Nick Blackwood, 804 Green Valley Road, Suite 200, attorney on behalf of the Greensboro Symphony Orchestra Inc. and 122 N Elm Street LLC, stated that the request is to install a modern electronic sign to promote the symphony's activities. The building's architectural features create practical limits to placement and sign of the sign, and the size is considerably smaller than other similar electronic message board signs in the Downtown area.

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

Seeing no opposition, Chair Necas closed the public hearing.

BOARD DISCUSSION

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

MOTION

Mr. Oliver moved that in BOA-24-09, 122 North Elm Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the hardship would result from the symphony not being able to promote events and fully utilize their new practice space; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property's design limits the options available for signs; (3) The hardship is not the result of the applicant's own actions because the 75% rule seems outdated, signs now do not need a border; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because signs at Tanger Center, one block away, do not have borders, and 100% of the surface is available for their signs. Ms. Rudd seconded the motion.

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

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

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

by the applicant includes Exhibits A and B. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance references were Section 30-8-11.2(D): A detached accessory dwelling must meet the location and dimensional requirements of the principal structure; Section 30-8-11.2(E): The heated floor area of the accessory dwelling must be at least 400 square feet in area, but it may not exceed 30% of the floor area of the primary dwelling; Section 30-8-11.2(B): The owner of the property must occupy either the primary or the accessory dwelling; and Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum rear setback is 20 feet.

Background and Site Information: The subject lot is located on the west side of Pichard Street, north of East Florida Street, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 9,583 square feet, and the house was constructed in 1955. The applicants propose to convert an existing 240 square foot storage building into an accessory dwelling without changing/expanding the footprint of the structure. The existing detached garage meets accessory structure setback and area requirements, but when converted into an accessory dwelling, it does not meet principal structure setbacks. In its current location, the proposed accessory dwelling will encroach 13.5 feet into a required 20 foot rear setback and be 6.5 feet from the rear property line. Also, the heated floor area of the proposed accessory dwelling will be 240 square feet when at least 400 square feet is required. Additionally, the property owner does not occupy the primary or proposed accessory dwelling. The applicants seek variances to address these issues and allow the conversion of the existing accessory structure into an accessory dwelling. If the variances are granted, the applicants will proceed with the residential building permit process.

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

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

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

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

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

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

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

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

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

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

Hearing no opposition, Chair Necas closed the public hearing.

MOTION

Vice chair Ramsey moved that in BOA-24-10, 1512 Pichard Street, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant will be unable to convert the existing structures into a studio apartment without tearing down the building; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the existing structure was in place prior to the purchase of the property by the applicant and there is no change in the building footprint; (3) The hardship is not the result of the applicant's own actions because the current structure complies with existing setbacks and was in place when the property was purchased, also the size of the structure is not material; (4) The variances are in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the conversion to an apartment will not impact public safety or welfare, is consistent with the neighborhood, and will increase property tax values, in addition the applicant's children will live at or near the property. Ms. Rudd seconded the motion.

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

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

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

Ms. Thiel stated in BOA-24-11, Daniel and Christine Eddy request a variance to allow a proposed addition to encroach 15 feet into a required 30 foot rear setback. The addition will be 15 feet from the rear property line. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum rear setback is 30 feet.

Background and Site Information: The subject lot is located on the north side of Madison Avenue, east of Homewood Avenue, and is zoned R-3 (Residential Single-Family). Tax records indicate the corner lot contains approximately 25,265 square feet, and the house was constructed in 1958. The applicants propose to construct a 1,400 square foot attached garage addition at the back of their existing home. The proposed addition will encroach 15 feet into a required 30 foot rear setback and be 15 feet from the rear property line. If the variances are granted, the applicants will proceed with the residential building permit process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Vice Chair Ramsey stated this appears to be a hobby.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Laurie Stegall and Ian Phillips for their testimony

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

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

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

Chair Necas closed the public hearing.

BOARD DISCUSSION

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

MOTION

Mr. Randolph moved that in BOA-24-12, 3602 Lawndale Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the utilization of the property for retail and office use as zoned would be prohibited; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the property has a unique L-shape which gives it an unusual depth of which to be able to utilize the property for building the office and retail space, it's also crowded and pinched in by the existing thoroughfares and the larger church lot that is adjacent to the property; (3) The hardship is not the result of the applicant's own actions because the conditions of the property existed at the time that the property owners had acquired the property and has existed since, relatively, 1960 when the property was deeded; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because as constructed it is the most reasonable use of the property to enable both retail and office and other approved commercial use, it allows for safe ingress and egress from the existing thoroughfare on Lawndale which improves both traffic safety and pedestrian safety. Vice Chair Ramsey seconded the motion. The Board voted 7-0 in favor of the motion, (Ayes: Rudd, Barkdull, Randolph, Oliver, Truby, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas stated the motion passed unanimously.

OTHER BUSINESS

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

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

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

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

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

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

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

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

Chair Necas acknowledged the absence of Mr. Wofford.

ADJOURNMENT

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

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/arn

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

The meeting of the Greensboro Board of Adjustment was held on Monday, February 26, 2024, at 5:39 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Vaughn Ramsey, Ted Oliver, Cory Randolph, Tiffanie Rudd, Drew Wofford, and Stephen Barkdull. City staff present were Mike Kirkman, Shayna Thiel, Carla Harrison and Andrew Nelson (Planning Department), and Emily Guarascio (Associate City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is similar to a court decision. Anyone appearing before this Board has a right to offer evidence, cross examine witnesses, and inspect documents. The Board will proceed in according to the agenda, a copy of which was provided. Chair Necas further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chair Necas advised that each side, regardless of the number of speakers, were allowed a total of 20 minutes to present evidence. Board members may ask questions at any time. Chair Necas went on to explain how the Board would make its decision and votes, based on findings of fact and other factors, and she explained how to appeal decisions.

Chair Necas advised that all testimony and evidence from applicants or opposition speakers must be relevant to the case(s) before the Board and the four criteria it uses to make decisions. She added that, going forward, if a member of the Board would like to allow immaterial testimony or evidence to be entered, they must make a motion for its admission.

APPROVAL OF MINUTES (February 26, 2024 Meeting)

Mr. Randolph made a motion to approve the February 26, 2024 minutes, seconded by Mr. Oliver.

The Board voted 6-0-1 in favor of the motion, (Ayes: Oliver, Randolph, Rudd, Barkdull, Vice Chair Ramsey, Chair Necas; Nays: None; Abstention: Wofford). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised that the applicants in case BOA-24-13 at 3106 Madison Avenue are present to request a continuance.

Susan Tayloe, 3106 Madison Avenue, stated that they were requesting a continuance to the June meeting because they need to complete a precursor project before moving forward with this variance request.

Mr. Randolph made a motion to continue the case to the June regular meeting, seconded by Mr. Rudd. The Board voted 7-0 in favor of the motion, (Ayes: Oliver, Randolph, Rudd, Wofford, Barkdull, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously.

OLD BUSINESS

There was no old business.

NEW BUSINESS**a. BOA-24-14: 811 King George Drive (APPROVED)**

Ms. Thiel stated in BOA-24-14, Robert and Kristin Reis request a variance to allow the building coverage of all accessory structures on the lot to be 948 square feet when no more than 663 square feet is allowed. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-11.1(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 east side of King George Drive, north of West Friendly Avenue and is zoned R-3. Tax records indicate the lot contains approximately 19,602 square feet and the house was constructed in 1955. The applicants propose to construct a 660 square foot accessory structure in their backyard. When combined with the existing 288 square foot accessory structure, the total building coverage of all accessory structures on the lot will become 948 square feet, when no more than 663 square feet is allowed, based on 50% of the existing 1,326 square foot house. If the variance is granted, the applicants will proceed with the residential building permit process.

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

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

Robert James Reis, 811 King George Drive, stated that the subject property does not have an enclosed area for parking, and they need space to maintain vehicles.

Chair Necas asked if the proposed accessory structure was primarily for vehicles, and Mr. Reis stated that was correct, and that there was not enough space in his home for an attached two-car garage. The proposed accessory structure would have some extra storage as well, allowing them to use their bedrooms more efficiently.

Mr. Oliver asked if the recently approved accessory dwelling unit (ADU) rules applied to this request. Mr. Kirkman stated that this request does not involve an accessory dwelling unit.

Vice Chair Ramsey asked if this request arose from having a large house on a smaller lot, and Mr. Kirkman stated that was correct.

Mr. Randolph asked if the applicant could use only the proposed accessory structure for storage and remove the existing accessory structure, thus obviating the need for the variance. Mr. Reis stated that it would be difficult to configure their storage needs that way.

Mr. Oliver asked if the accessory structure was going to be built on the site or modular. Mr. Reis stated that it would be a two-car metal building.

Mr. Randolph asked if the applicant received any feedback from their neighbors, and Mr. Reis stated he spoke to three of his neighbors and heard no objections to his request. He stated that the metal building he seeks to construct would be significantly shorter than the roofline of his residence and would not disrupt the look of the neighborhood.

Seeing no opposition, Chair Necas closed the public hearing.

BOARD DISCUSSION

Mr. Randolph stated this was a straightforward request to tailor a historic home to contemporary needs.

MOTION

Mr. Oliver moved that in BOA-24-14, 811 King George Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicants are not able to fully use their home now; this building will allow them to more fully use their home; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the applicant cannot build an attached garage due to lack of space; it is a small house on a large lot; (3) The hardship is not the result of the applicant's own actions because the home is almost 70 years old and a garage was not a common part of homes in 1955; now to have a covered area for cars requires this variance; (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 enhance the value of the property and the neighborhood will be improved. Ms. Rudd seconded the motion.

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

b. BOA-24-15: 22 Notting Hill Court (APPROVED)

Ms. Thiel stated in BOA-24-14, Timothy and Sandra Mann request a variance to allow an accessory structure to be located in front of the front building line of a principal structure. Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-8-11.1(B)(1): Accessory structures must be located behind the front building line of the principal structure and are not allowed in a required street setback.

Background and Site Information: The subject lot is located on the east side of Notting Hill Court, north of White Horse Drive, and is zoned R-3. Tax records indicate the lot contains approximately 4.4 acres and the house was constructed in 2011. The applicants propose to construct a 676 square foot accessory structure that will be in front of the front building line of the existing house. To allow for construction of the proposed accessory structure, the applicants secured the release of portions of an existing Water Quality Conservation Easement (WQCE) where existing and proposed built upon area already exists or is proposed, and then established new WQCE areas on the property. This revised WQCE area was recorded on a new plat. If the variance is granted, the applicants will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Timothy Mann and Stephen Jobe for their testimony.

Timothy Mann, 22 Notting Hill Court, stated they wished to add a two-car garage. Attaching the structure to the residence matching the roof line would cost an additional \$15,000 to \$20,000, and they have combined the previous three lots into one to abide by the water quality easement restrictions. Because the accessory structure would be ahead of the front line of the dwelling, they require a variance. The proposed addition would not be visible from the road and will fit the architectural style of the property.

Mr. Randolph asked what other locations the applicant considered to place the garage on the property. Mr. Mann stated that the property has a significant fall-off, and the location proposed is the only reasonable location.

Chair Necas asked if the retaining wall was located on the left of the principal structure and if there were few feasible locations for an accessory structure, and Mr. Mann stated that was correct. The

three constituent lots have been recombined and a new parcel recorded with Guilford County Register of Deeds.

Stephen Jobe, 3319 Watauga Drive, applicant's architect, stated that they recombined the lots because the proposed structure would have crossed a property line, and the water quality control easement line needed to be moved to reclaim area. The variance request is required to have the separate accessory structure that is required for economic concerns.

Vice Chair Ramsey asked to confirm that the proposed structure satisfies water quality easements requirements, and Mr. Jobe stated that was correct.

Mr. Randolph if neighbors had expressed any concerns. Mr. Mann stated that they contacted all neighbors and heard no opposition.

Seeing no opposition, Chair Necas closed the public hearing.

MOTION

Vice Chair Ramsey moved that in BOA-24-14, 22 Notting Hill Court, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the unique shape and topography of the lot would require more grading and pavement for an accessory structure; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the lot and house location were established prior to the applicant's purchase of the realty and the proposed location is the only reasonable site; (3) The hardship is not the result of the applicant's own actions because the house and lot were established prior to the applicant's purchase, with the house sitting much further back than the nearby houses; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the proposed garage will aesthetically fit with the house and neighborhood and will be difficult to view from the road. Mr. Randolph seconded the motion.

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

OTHER BUSINESS

There was no other business.

ACKNOWLEDGEMENT OF ABSENCES

Chair Necas acknowledged Chuck Truby's absence.

ADJOURNMENT

The meeting was adjourned at 6:07 p.m.

Respectfully submitted,

Leah Necas, Chair

Greensboro Board of Adjustment

LN/arn

**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

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
JUNE 24, 2024**

The meeting of the Greensboro Board of Adjustment was held on Monday, June 24, 2024, at 5:32 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Chuck Truby, Ted Oliver, Cory Randolph, Tiffanie Rudd, Drew Wofford, and Stephen Barkdull. City staff present were Mike Kirkman, Shayna Thiel, 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.

APPROVAL OF MINUTES (May 28, 2024 Meeting)

Mr. Randolph made a motion to approve the May 28, 2024 minutes, seconded by Ms. Rudd.

The Board voted 6-0-1 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Wofford, Chair Necas; Nays: None; Abstention: Barkdull). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

There were no continuances or withdrawals.

OLD BUSINESS

a. BOA-24-13: 3106 Madison Avenue (APPROVED)

Ms. Thiel stated in BOA-24-13, Robert and Susan Tayloe request a variance to allow a proposed addition to encroach 7.5 feet into a required 10 foot side setback. The addition will be 2.5 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 7-1: In the R-3 District, the minimum side setback is 10 feet.

Background and Site Information: .The subject lot is located on the north side of Madison Avenue, east of East Avondale Drive and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 18,295 square feet, and the house was constructed in 1953. The applicants propose to add a covered carport to the existing detached garage that will connect it to the existing house, making it part of the principal structure and subject to the standard R-3 dimensional requirements. The existing detached garage meets accessory structure setback and area requirements, but when connected to the existing house, it does not meet principal structure setbacks. Because of the proposed post placement of the carport addition, the principal structure will now

encroach 7.5 feet into a required 10 foot side setback and be 2.5 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 applicant to provide their name/address for the record and swore in Susan and Rob Tayloe for their testimony.

Susan Tayloe, 3106 Madison Avenue, stated that they are requesting the variance to make better use of their backyard, and to avoid needing to walk on slick surfaces given physical activity limitations imposed by repeated injuries.

Chair Necas asked if there were any other properties in the neighborhood with a similar connected covered space. Ms. Tayloe stated that approximately 40% of the properties on the block have carports.

Chair Necas asked if there was any opposition to the request and swore in David and Anna Caton for their testimony.

Peter Isakoff, 109 Westchester, Williamsburg, VA, attorney for David and Anna Caton, stated that the variance request is unreasonable due to a dispute of the property line associated with neighboring property.

Chair Necas asked about the information on property lines in the staff reports. Ms. Guarascio stated that the boundary information is provided by the applicant, but any private disputes are between the private individuals and do not have a bearing on the decision of the Board.

Mr. Randolph asked if the Board needs to consider the existing property line despite the dispute, and Ms. Guarascio stated that was correct, and that any modification of the property lines would change the enforcement of any granted variance. Mr. Kirkman stated that the LDO standards apply to the recorded property lines.

Chair Necas asked if the variance applies to whatever the ultimate property line is, and Mr. Kirkman stated that was correct.

Chair Necas asked if some of the information displayed in the opposition counsel's presentation would be admissible for the Board or if it is hearsay, and Ms. Guarascio stated that regardless of any question on that the property line dispute is not relevant to the Board's consideration on this variance request. But that the Catons could present a different survey if they have it. Mr. Isakoff stated that the Catons agree with the recorded plat from the 1950s.

Mr. Caton stated that the applicant has had previous identical variances denied by the Board and have made unsubstantiated claims to support this new request.

Mr. Oliver asked if there are motion-activated cameras on the Catons' property, and Mr. Caton stated that was correct, but they are not intentionally aimed at the applicant's property. Ms. Guarascio reiterated that the property boundary dispute and other unrelated factors are not relevant to the Board's consideration of the variance request.

Mr. Wofford asked how the proposed addition would be a hardship on the Catons. Ms. Guarascio stated that the action of other neighbors is not relevant to the consideration of the Board. Mr. Isakoff stated that the proposed addition would potentially create stormwater runoff issues for his clients' property.

Chair Necas stated that the applicants are covering a currently paved impervious surface, and asked how the stormwater concerns were relevant. Mr. Isakoff stated that the applicants have not satisfied the burden of proof that the requested variance is in harmony with the intent of the LDO.

Mr. Wofford stated that the applicants were not creating a new impervious surface. Mr. Caton stated that water could be moved onto his property by the additional construction proposed.

Mr. Randolph stated that was speculation and there had not been expert evidence presented and stated that City and State building codes impose requirements on stormwater runoff.

Mr. Oliver asked if the Board could require runoff control devices as a condition of its approval. Mr. Kirkman stated that the Board could not impose a restriction enforced by Building Inspections.

Ms. Guarascio again reiterated that the Board cannot consider generalized speculation.

Mr. Isakoff stated that the burden is on the applicant to prove the variance is reasonable, and they have not presented any evidence supporting their request.

Mr. Barkdull asked if there had been any previous side setbacks granted for the subject property, as the existing structures were close. Mr. Kirkman stated that a detached accessory structure has a different setback requirement than an addition attached to the principal structure, thus necessitating this request.

Mr. Isakoff stated that many of the issues had been considered in a previous variance request. Ms. Guarascio stated that this is a new request and the Board is not bound by any previous decisions.

Mr. Randolph asked if there was any evidence that Ms. Tayloe did not have medical needs requiring the considerations in the request. Ms. Guarascio stated that the specific personal circumstances of the current property owners are not elements of the Board's consideration, but generalized concerns applicable to any property owner would be. Mr. Randolph stated that the opposition has not presented evidence disputing the general safety improvements suggested by the applicants, and asked how the applicants could satisfy the building requirements without the variance.

Mr. Caton stated that there were design alternatives available to the applicants that would allow them to meet their needs without the variance.

Mr. Isakoff stated that the applicant as not submitted sufficient evidence to support the variance request.

Mr. Wofford asked what other concerns the opposition had to the request. Mr. Randolph stated that much of the evidence presented by the opposition is not within the purview of the Board's consideration of a variance.

Ms. Guarascio stated that the Board could consider stormwater if the Board determined there to be relevant and material evidence submitted pursuant to it.

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

Ms. Tayloe stated that the building code will impose safety requirements such that the proposed addition will obviate any safety concerns. She stated that the attachment to their residence creates the enhanced setback requirement, but it would otherwise meet LDO requirements, and the location of the garage and proposed covered area are logical based on the layout of the property.

Mr. Randolph asked about the attachment of the proposed structure and why it necessitates a variance request. Mr. Kirkman stated that however the accessory garage is attached to the house, the setback requirement would create a need for a variance in this instance due to the configuration of the property. Mr. Randolph asked if the applicant would need to move the entire garage to meet the requirements, and Mr. Kirkman stated that was correct.

Mr. Oliver asked if the applicants disagree with the survey presented with the application, and Ms. Tayloe stated they do not.

Chair Necas closed the public hearing.

BOARD DISCUSSION

Mr. Randolph stated that it would be unreasonable to ask the applicant to demolish the existing garage and reconstruct it a sufficient distance away from the property line to prevent the need for the variance, and that the generalized safety concerns expressed are reasonable.

Chair Necas concurred, and stated that most houses built in the 1950s did not have attached garages, which are now a common housing feature. She stated that commercial buildings would be expected to account for disability needs. Ms. Guarascio stated that arguments applicable to the general population could be considered.

Mr. Wofford stated that he can support the variance request based on the testimony offered.

MOTION

Chair Necas moved that in BOA-24-13, 3106 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 have no protection from the elements when traveling from their car to their home; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house was built in 1953 and did not include a garage connected to the house; (3) The hardship is not the result of the applicant's own actions because the health and weather conditions are not due to the homeowners' actions; (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 extension of the garage roof to the house will allow for protected travel into and out of the garage. Mr. Randolph seconded the motion.

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

NEW BUSINESS

a. BOA-24-22: 3519 South Elm-Eugene Street (DENIED)

Ms. Thiel stated in BOA-24-22, Gerardo Plata Patricio requests a special use permit to operate an urban farm on the subject property in addition to all uses permitted in the R-3 District. Evidence provided by the applicant included Exhibit A. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance references were (1) Section 30-8-1 – Table 8-1: An urban farm is a permitted use in the R-3 District with a special use permit and subject to use standards; and (2) Section 30-8-10.6(D): Additional use standards apply to urban farms in the R-3 District.

Background and Site Information: The subject lot is located on the east side of South Elm-Eugene Street, south of East Vandalia Road, and the portion within city limits is zoned R-3 (Residential Single-Family). The back portion of the property is located in Guilford County and is zoned RS-30 (Residential Single-Family). Tax records indicate the lot contains approximately 5.32 acres. The applicant indicates that he keeps two donkeys, which are considered livestock by the Land Development Ordinance, as pets on the subject property. On July 27, 2022, a zoning enforcement officer issued a Notice of Violation related to animals and livestock on the property. Without a single-family dwelling on the property, the keeping of livestock is considered a principal use and is not permitted in the R-3 District without a special use permit to operate an urban farm. The applicant submitted a special permit to operate an urban farm, so he can continue keeping his donkeys on the property. If the special use permit is approved, the applicant will have to comply with additional use standards, including a requirement that fencing and shelters be set back at least 50 feet from all property lines.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Gerardo Plata Patricio for his testimony.

Gerardo Plata Patricio, 3519 South Elm-Eugene Street, stated that he was unaware that he would need a special use permit for the animals when he purchased the subject property.

Mr. Wofford asked where the animals were located on the property. Mr. Patricio indicated on the zoning map that the area was within City limits.

Ms. Rudd asked if the applicant had the animals fenced in, and Mr. Patricio stated he did.

Mr. Oliver asked if the applicant would need the special use permit if the area was outside City limits, and Mr. Kirkman stated it would not. Mr. Oliver asked if the special use permit was a one-time fee, and Mr. Kirkman stated it was, and it was the standard fee for special use permits.

Mr. Patricio stated that his donkeys are his pets.

Mr. Wofford asked if the animals can be seen from any adjoining properties. Mr. Patricio stated that they were at least 150 feet from structures on adjacent properties.

Mr. Randolph asked if the applicant planned to expand the farming operations, and Mr. Patricio stated he did not, he only wanted to keep his animals.

Ms. Rudd asked if the animals created an odor that impacts adjacent properties. Mr. Patricio stated that they do not.

Mr. Oliver asked to confirm that this permit would run with the land, and Mr. Kirkman stated that was correct, and that the LDO's use standards would apply to the subject property.

Chair Necas asked for any opposition speakers and swore in Michael and Arvella Thompson for their testimony

Michael Thompson, 3525 South Elm-Eugene Street, stated that there are three donkeys on the property, and there is an odor. He stated that the animals have gotten loose before and created issues in the neighborhood. He stated that the donkeys have been left tied to trees for weeks at a time, and that the applicant has obstructed access to their property, and they have needed to report multiple issues to the City.

Ms. Thompson submitted information displaying how close the donkeys were to her property.

Chair Necas asked if the nuisance considerations would be zoning enforcement issues even with the special use permit. Mr. Kirkman stated that was correct, and that there would still be City standards even with the permit allowing the use. Ms. Guarascio stated that the necessary findings of fact for a special use permit required it not to be detrimental to the persons or property adjacent to it; other property disputes would not be germane to the consideration of the special use permit. Chair Necas asked if previous lack of maintenance of the use would be relevant to the Board's consideration. Ms. Guarascio stated that the Board can consider relevant evidence to the special use permit findings.

Mr. Randolph asked about ways a special use permit could be terminated. Mr. Kirkman stated that if the use was suspended or there were violations, it could be suspended.

Mr. Wofford asked if the applicant could have applied for a permit before the use began, and Mr. Kirkman stated that was correct. Mr. Wofford asked if the Board could take into account the lack of consideration before the use, and Mr. Kirkman stated the Board could consider if it is in harmony with the area.

Ms. Rudd asked how often the neighbors' property has been damaged. Ms. Thompson stated that it has happened on multiple occasions, and the applicant has damaged structures and trees on their property.

Mr. Thompson stated that the donkeys are very close to their property.

Ms. Guarascio stated that the LDO provides for the Board to consider factors in the operation of an urban farm relevant to the issuance of a special use permit.

Mr. Randolph asked if there were any other agricultural uses in vicinity. Ms. Thompson stated that they are not aware of any.

Mr. Thompson reiterated that there are three donkeys on the property.

Cheryl Mclvor, 404 West Montcastle Drive, stated that the owner of 3521 South Elm-Eugene Street is different from 3519 South Elm-Eugene Street, and stated that the Board of Adjustment sign was posted at 3523 South Elm-Eugene Street. She stated that the subject property is landlocked, and has no entrance from the street. She stated that the property crosses the City drainageway, and that any waste from the agricultural activities would run off into the City wastewater system.

Mr. Kirkman stated that the addresses are displayed differently in the Guilford County tax system. Stormwater runoff would be addressed as part of the permitting process. Mr. Kirkman stated that the parcel has frontage and direct access, making it a legal parcel.

Ms. Mclvor stated that approval of the special use permit would negatively impact directly adjacent neighbors as well as the neighborhood given that it runs with the land and is not being limited by conditions, and she asked how access to the property was made.

Mr. Kirkman stated that the zoning enforcement officer did enter the property to confirm presence of the animals.

Ms. Mclvor stated that the Board does not have sufficient evidence that the request will be reasonable.

Mr. Barkdull asked if Ms. Mclvor's property is directly adjacent, and Ms. Mclvor stated it was not.

Chair Necas advised the applicant had an opportunity for rebuttal, and asked how many donkeys were on the property.

Mr. Patricio stated that he had originally purchased three, but now has only two on the property. He stated that he needed to separate them at different times, and had some restrained for their safety. He stated that he had not planned things out when he initially moved to the property. He donated one of the donkeys to someone else.

Mr. Truby asked about the tree removal. Mr. Patricio stated that when he bought the property, it needed clearance for him to use it, and he made mistakes when clearing some of the property. He stated that it was close to the property line and it could have been on either property. Mr. Truby stated that there are many code violations on the property, and asked how the farm would be operated. Mr. Patricio stated that he would follow City regulations.

Mr. Wofford asked why the applicant could not move the donkeys to the County side of the property. Mr. Patricio stated that that part of the property is more difficult to develop for the farm use. Mr. Patricio stated that his donkeys are not damaging the area, and he feels he is being unfairly singled out by his neighbors. He stated that he wants to use his property.

Ms. Rudd asked why the applicant didn't build an area for the donkeys away from the property line. Mr. Patricio stated that he does not see the issue with the donkeys. Ms. Rudd asked if the applicant had accounted for the damage to the trees. Mr. Patricio stated that he did not complete the process once he began to receive civil penalties due to the Notice of Violation.

Ms. Guarascio stated that private disputes between property owners are not relevant to the Board's consideration, but impact on adjacent properties such as screening and landscape buffering would be.

Mr. Randolph asked if the applicant were to move the animals to the County side, could he transport them over the City portion without requiring a permit. Mr. Kirkman stated that the structures needed for the keeping of the animals would also need to be moved to the County portion of the lot.

Mr. Wofford asked if the donkeys could ever be on the City property. Mr. Kirkman stated any operation of the farm use on the City property would require the additional special use permit. Mr. Patricio stated it would take multiple years to clear the County side of the property, and it is not setup to house the animals.

Mr. Oliver asked if the special use permit would apply to subdivided property. Mr. Kirkman stated that the property would need to meet development standards, such as street frontage, and residential development could be permitted.

Chair Necas closed the public hearing.

BOARD DISCUSSION

Chair Necas stated that the history of activity on the property is concerning.

Mr. Wofford stated that the evidence presented makes him uncomfortable with granting the permit.

Mr. Truby concurred with Mr. Wofford.

MOTION

Mr. Wofford moved that in BOA-24-22, 3519 South Elm-Eugene Street, based on the stated Findings of Fact, the special use permit be denied based on the following: (1) The proposed use at the particular location does not provide a service or facility that will contribute to the greater wellbeing of the neighborhood or the community because the donkeys are causing an odor and damage to the neighbors' property and the general upkeep of the property is not in harmony of the neighborhood. Mr. Truby seconded the motion.

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

Chair Necas advised the Board would take a short break at 7:08 p.m., and the Board resumed at 7:19 p.m.

b. BOA-24-23: 1508 Lafayette Court (APPROVED)

Ms. Thiel stated in BOA-24-23, Robby and Kelli Robinson request a variance to allow an existing fence to exceed the maximum 7-foot height allowed by up to 1 foot. Evidence provided by the applicants included Exhibits A through C. 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 Lafayette Court, east of Lafayette Avenue and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 12,197 square feet, and the house was constructed in 1960. The applicants erected an 8 foot tall fence on their property along the side and rear property lines to provide a sound barrier from traffic noise on West Cone Boulevard. The Land Development Ordinance states that the maximum height for fences/walls is 7 feet for residential uses. On April 9, 2024, a zoning enforcement officer issued a Notice of Violation related to fence height on the property. The applicants timely submitted a variance application to ask the Board of Adjustment to allow the existing fence to be up to 1 foot taller than the maximum allowed. If the variance is granted, the existing fence will remain on the property as currently constructed.

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 Robby Robinson for his testimony.

Robby Robinson, 1508 Lafayette Court, stated that the noise from Cone Boulevard became apparent after they purchased the property, and there is a lot of street racing and ambulance noise from Cone Boulevard. The pre-existing derelict shorter fence that needed to be replaced did not sufficiently block the noise. He stated that he has disability from his military service that is negatively impacted by the noise. He stated that he misread the LDO requirements on fence height and was unaware his fence did not meet standards until he was made aware of the complaint. He stated that the clearance behind his property between Cone Boulevard and his property exacerbated the issue, and the pre-existing fence became insufficient.

Seeing no opposition, Chair Necas closed the public hearing.

BOARD DISCUSSION

Chair Necas stated that all the adjacent properties have trees to reduce sound impact and this property does not.

MOTION

Chair Necas moved that in BOA-24-23, 1508 Lafayette Court, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the noise from the rear of the property which faces Cone Boulevard is over 100 decibels and injurious to the health of the owner and to their enjoyment of their property; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the vacant lot behind the subject property has minimal vegetation to absorb sound from Cone Boulevard and allows for the sound to freely travel to the subject property; (3) The hardship is not the result of the applicant's own actions because the owner did not remove the vegetation on the lot behind their property; (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 fence allows the property owner to enjoy reduced noise levels and does not block adjoining property sight lines. Second by Ms. Rudd

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

c. BOA-24-24: 306 Holt Avenue (APPROVED)

Ms. Thiel stated in BOA-24-24, JCMNC LLC requests two variances: (1) To allow a proposed house to encroach 5 feet into a required 31 foot front setback. The house will be 26 feet from the front property line; (2) To allow a proposed house to encroach 4 feet into a required 15 foot rear setback. The house will be 11 feet from the rear property line. Evidence provided by the applicants included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance references were (1) Section 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average setback that exists on the two lots on either side of the subject lot; and (2) Section 30-7-3.2 – Table 7-7: In the RM-18 District, the minimum rear setback is 15 feet.

Background and Site Information: The subject lot is located on the east side of Holt Avenue, north of Delancy Street, and is zoned RM-18 (Residential Multifamily). Tax records indicate the vacant triangle-shaped lot contains approximately 5,227 square feet. Based on the average front setback calculations using 302, 304, 310 and 400 Holt Avenue, the applicable front setback for the subject property is 31 feet. The applicant proposes to construct a 738 square foot house on the subject property that will encroach 5 feet into a required 31 foot front setback and will be 26 feet from the front property line. The proposed house will also encroach 4 feet into a required 15-foot rear setback and be 11 feet from the rear property line. If the variance is granted, the applicant will proceed with the residential building permit process.

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

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

Nick Blackwood, 804 Green Valley Suite 200, attorney for JCMNC LLC, stated that the applicant seeks to build a single-family home and the variance is required due to the peculiar shape of the subject property. He stated that the property was established in 1916, and the previous single-family

home on the property was destroyed by a fire. The current LDO standards would make meeting current setback standards impossible.

Mr. Oliver asked about the proposed dwelling.

Jacob Mullins, 1905 Rock Glen Lane, stated that the new dwelling would be approximately 1,400 square feet in total with two stories.

Seeing no opposition, Chair Necas closed the public hearing.

MOTION

Mr. Oliver moved that in BOA-24-24, 306 Holt Avenue, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the lot is small and irregularly shaped, this is about the only home that can be built here; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the lot is tiny, the footprint of the home is very small as well, at 738 square feet, also the lot was established in 1916 before the current rules were written; (3) The hardship is not the result of the applicant's own actions because this issue is caused by averaging the setback lines, the shape of the lot makes it a challenge to put a home on the lot; (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 a home was on this property before, no hardship will result and public safety will not be harmed, building this home helps to meet the City's goals for infill building. Seconded Ms. Rudd

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

d. BOA-24-25: 4810 Fox Chase Road (APPROVED)

Ms. Thiel stated in BOA-24-25, Britney Mercer requests a variance to allow a proposed house to encroach 85 feet into a required 125-foot front setback. The house will be 40 feet from the front 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 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average setback that exists on the two lots on either side of the subject lot.

Background and Site Information: The subject lot is located on the north side of Fox Chase Road, west of Fleming Road and is zoned R-3 (Residential Single-Family). Tax records indicate the vacant lot contains approximately 32,234 square feet. Based on the average front setback calculations using 4812 and 4814 Fox Chase Road, the applicable front setback for the subject property is 125 feet. The applicant proposes to construct a 2,377 square foot house on the subject property that will encroach 85 feet into this required 125 foot front setback and will be 40 feet from the front property line. The depth of the subject lot is significantly shorter than the depth of the two adjacent lots due to the development of Bryan Boulevard, which bounds the lot along the north and east. If the variance is granted, the applicant will proceed with the residential building permit process.

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

Chair Necas asked the applicant to provide their name/address for the record and swore in Britney Mercer and Amber Johnson for their testimony.

Brittney Mercer, 1401 Mariners Rest Drive, North Myrtle Beach, South Carolina, stated that she purchased the property from NCDOT last year.

Chair Necas asked about the buildable area, and Ms. Mercer indicated on the site plan (Exhibit B).

Ms. Mercer stated that the requested front setback is consistent with the LDO standards for the R-3 (Residential Single-Family) zoning district.

Chair Necas asked for any opposition speakers and swore in Mark Messick, David Novak, Robert Harville, and Joel Bowden for their testimony.

Ms. Guarascio reiterated that hearsay statements cannot be considered by the Board.

Mark Messick, 3103 Cardinal Ridge Drive, stated that his parents would be directly impacted by this variance request. The property should have remained a buffer by the State Department of Transportation (NCDOT) and is not suitable for a residential dwelling. He stated that development of the subject property would negatively impact adjacent properties.

Chair Necas stated that the applicant could build a residential dwelling by right. Ms. Guarascio stated that private agreements and Covenants, Conditions & Restrictions (CC&Rs) are not governed by the Board.

Mr. Messick stated that the requested variance is out of character with the neighborhood.

David Novak, 4820 Fox Chase Road, stated that the lot was originally 4.5 acres before parts being taken by the State. He stated that properties of this type and size are usually dedicated for neighborhood use, and that the applicant should have known it was unfit for residential development. He stated that this neighborhood has unique characteristics.

Ms. Guarascio stated that NCDOT officials are not present to testify on the matter.

Mr. Wofford stated that the Board is solely considering the setback. Mr. Novak stated that the neighboring properties have had to follow the setbacks in the area, and the proposed development does not fit the area.

Chair Necas stated that there would need to be expert testimony about property values.

Mr. Randolph asked about the CC&Rs on the neighborhood and property. Mr. Novak stated that CC&Rs are still in effect in the neighborhood, and the neighborhood's developer would need to approve a building plan.

Mr. Oliver asked about the Board's consideration of CC&Rs. Mr. Kirkman stated that the Board is considering a City process, and any private agreements would be enforced at that level. The existence of CC&Rs are not a part of the Board's consideration.

Robert Harville, 4818 Fox Chase Road, stated that his family moved to the neighborhood for its character, including the large setbacks. He stated that they oppose the residential development proposed.

Mr. Oliver asked if the applicant could build two houses. Mr. Kirkman stated that minimum lot sizes and dimensional requirements would make subdivision of the subject property difficult.

Mr. Randolph asked about how the average front setback is calculated, and if they can account for the unique circumstances of properties. Mr. Kirkman stated that the Board can consider unique circumstances.

Joel Bowden, 4816 Fox Chase Road, stated that he has lived in the neighborhood for more than 30 years, and he sought to live there due to its unique characteristics, and this variance would erode that character. The subject property is the only parcel in the neighborhood with these characteristics, due to it being a remnant lot from NCDOT. The property has not been used for many years because it is obviously unsuitable for development.

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

Ms. Mercer stated that the subject property is buildable and has sewer access and will soon have City water. She stated that there are no deed restrictions filed with the County Register of Deeds, and that

she could build an unsuitable residence today but she seeks the variance to more properly utilize the property.

Mr. Truby stated that the applicant could move the dwelling, and asked why it is located where it is. Ms. Mercer stated the 35 foot setback imposed on the rear of the property due to the NCDOT access fence. Mr. Truby stated that the building could be moved and asked about this location. Ms. Mercer indicated on the plot plan the buildable area. Mr. Truby stated that the variance request could have been minimized. Ms. Mercer stated that placing the residence that far back would limit future additions, and she chose to use a closer location at the advice of her contractor, as well as seeking screening from the highway.

Amber Johnson, 907 Shelby Drive, stated that they wish to keep vegetative buffering at the rear of the property.

Ms. Mercer stated that they did not hear opposition previously.

Ms. Guarascio reiterated that hearsay evidence cannot be considered by the Board.

Mr. Randolph asked if the applicant would be willing to modify the request based on the concerns expressed. Ms. Mercer stated that she did not believe the concerns expressed could be alleviated, and that any changes could present other development concerns. Mr. Kirkman stated that the Board is considering the minimum building setback, and future building could be further back. Mr. Randolph stated that it looked like there may be room to make it more fitting with the variance.

Ms. Rudd made a motion to close the public hearing, seconded by Mr. Wofford. The Board voted 4-3 in opposition to the motion (Ayes: Oliver, Rudd, Wofford; Nays: Barkdull, Randolph, Truby, Chair Necas). Chair Necas advised the motion failed and advised that opposition had five minutes for rebuttal. Chair Necas swore in Jill Ash for her testimony.

Jill Ash, 4807 Fox Chase Road, stated she lives across the street from the subject property, which has increased noise from Bryan Boulevard. She stated that the requested setback is completely incongruent with the neighborhood.

Mr. Oliver asked if she opposed any residence on the property, and Ms. Ashe stated that the neighborhood has CC&Rs which should prevent this development.

Mr. Randolph stated that private agreements are separate from the variance request before the Board. Ms. Ashe stated she would not build on the subject property.

Mr. Wofford asked if there is any LDO requirement that prevents it from being used for residential uses, and Mr. Kirkman stated that the R-3 zoning district of the property permits building a single-family detached dwelling by right following development standards. That the configuration of such a structure might be unusual is not relevant to the variance request.

Ms. Ash asked if the subject property had access to City services, and Mr. Kirkman stated it would be required to connect to City services.

Chair Necas stated that the applicant could speak in rebuttal to the opposition.

Ms. Mercer stated that they could build an unsuitable residence, but they are seeking the variance to build something more suitable.

Mr. Randolph asked if the applicant had any renderings of potential residences. Ms. Mercer stated she did not. She stated that building a residence comparable to those in the neighborhood requires the variance.

Mr. Oliver moved to close the public hearing, seconded by Ms. Rudd. The Board voted 7-0 in favor of the motion (Ayes: Barkdull, Oliver, Randolph, Rudd, Truby, Wofford, Chair Necas; Nays: None). Chair Necas advised the public hearing was closed.

BOARD DISCUSSION

Chair Necas stated that if there were deep-seated concerns about the property, the neighborhood should have used zoning remedies prior to it being purchased for development.

Mr. Randolph stated that the property could've been purchased to preclude development.

Mr. Oliver stated that the growth of the city will require building on smaller lots to avoid sprawl, and this request is consistent with the GSO2040 Comprehensive Plan.

Mr. Wofford stated that younger residents of Greensboro lack opportunities to purchase homes, and there needs to be an increase in housing production in the City.

Mr. Truby stated that deed restrictions can be argued in court.

MOTION

Mr. Truby moved that in BOA-24-25, 4810 Fox Chase Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the owner would not be able to reasonably construct a new home; (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 triangular shape of the lot makes it difficult to build a house with a 125-foot front setback; (3) The hardship is not the result of the applicant's own actions because the odd shape of the lot was created by the construction of Bryan Boulevard; (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 buildable area of the lot is too small therefore applicant would be unable to build on the lot, this would unfairly and significantly reduce the lot value. Ms. Rudd seconded the motion.

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

Chair Necas advised the Board would take a short break at 8:28 p.m., and the Board resumed at 8:32 p.m.

e. BOA-24-26: 3603 Mossborough Drive (APPROVED)

Ms. Thiel stated in BOA-24-26, Daniel and Caitlin York request a variance to allow a proposed accessory dwelling to encroach 5 feet into a required 10 foot side setback. The accessory dwelling will be 5 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 references were: (1) Section 30-8-11.2(A): All accessory dwelling units must meet the requirements that apply to accessory uses and structures in the subject zoning district; and (2) Section 30-8-11.1(C)(2): In R- Districts, accessory structures over 15 feet tall must be setback at least 10 feet from side and rear lot lines.

Background and Site Information: The subject lot is located on the south side of Mossborough Drive, west of Forest Hill Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 32,234 square feet, and the house was constructed in 1972. The applicants propose to construct a 26 foot tall detached accessory dwelling, with garage below, in their back yard that will encroach 5 feet into a required 10 foot side setback and be 5 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 applicant to provide their name/address for the record and swore in Daniel York for his testimony.

Daniel York, 3603 Mossborough Drive, stated that they moved into the house before the birth of their children. Their need for storage has increased beyond the capacity of the existing shed, and it makes sense for them to build a larger storage structure with an accessory dwelling now to save money.

Chair Necas asked if the applicant sought to extend their driveway straight back, and Mr. York stated that was correct.

Mr. Randolph asked if the applicant could move the garage to the west. Mr. York stated that in order to safely access the garage with cars would require the setback variance.

Seeing no opposition, Chair Necas closed the public hearing.

MOTION

Mr. Barkdull moved that in BOA-24-26, 3603 Mossborough 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 compliance with the ordinance will hinder development due to placement of pre-existing driveway and house on the property; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the variance request is to alleviate hardship caused by placement of driveway and house on the lot and space needed for entry into the proposed garage; (3) The hardship is not the result of the applicant's own actions because the hardship is caused by the pre-existing placement of driveway of house and drive and original construction, before the purchase of the property by the applicants; (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 no harm will come to the public by development of a detached garage and landscaping will preserve the character of the neighborhood. Second by Mr. Truby.

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

f. BOA-24-27: 1604 College Park Drive North (DENIED)

Ms. Thiel stated in BOA-24-27, Erin Graham requests a variance to allow a proposed short term rental to be separated 451 feet from another short term rental at 1715 West Market Street when a minimum of 750 feet is required. Evidence provided by the applicants included Exhibit A. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-8-10.4(U): A short term rental must be separated from any other short term rental by a minimum of 750 feet, as measured from property lines.

Background and Site Information: The subject lot is located on the north side of College Park Drive North, east of Mayflower Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 32,234 square feet, and the house was constructed in 1972. The applicant proposes to use an existing accessory dwelling in the back yard of the subject property as a short term rental. After applying for the required zoning permit, City staff advised the applicant that another short term rental was located at 1715 West Market Street, which is within 750 feet so the permit could not be issued unless a variance is approved for reduced separation. At this time, the applicant seeks a variance to allow a proposed short term rental to be separated 451 feet from the other short term rental. If the variance is granted, the applicant will proceed with the short term rental zoning 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 Erin and Ester Graham for their testimony.

Erin Graham, 1604 College Park Drive North, stated that they have operated a short term rental at the property, and are asking for the variance because of the heavy rental use of properties in the area.

Mr. Wofford asked if they live in the principal dwelling and rent the accessory dwelling, and Ms. Graham stated that was correct.

Mr. Oliver asked about the separation with the other short term rental, and asked which was in operation first. Ms. Graham stated that she was not sure.

In response to a question from the Board, Mr. Kirkman confirmed that the initial rollout of the permit application system was hindered by vendor issues so there was some delay in identifying and permitting existing short term rentals.

Ms. Rudd asked if the applicant had nonconforming status, and Mr. Kirkman stated the applicant submitted the permit as a new application and was not eligible for this classification.

Mr. Randolph asked about the 750 foot separation requirement. Mr. Kirkman stated that the intent was to separate spacing of quasi-commercial uses in residential areas.

Ms. Guarascio stated that the Board can consider the intent behind the provisions of the LDO.

Mr. Randolph asked about the applicant's hardship. Erin Graham stated that the subject property has a large front setback that makes the separation less than it would be normally. She stated that the accessory dwelling would be closer to meeting the separation requirement if it was in a separate parcel.

Mr. Kirkman stated that the occupants of a rental, short term or long term, cannot be considered by the Board, and that the LDO no longer requires short term rental operators to reside on the premises.

Mr. Oliver asked to confirm that the measurement is made lot line to lot line, and Mr. Kirkman stated that was correct.

Mr. Barkdull asked what the applicant would do if the variance request was denied. Erin Graham stated they would convert it to a long term rental.

Chair Necas asked for anyone wishing to speak in opposition to the request and swore in Stephanie Vaughn, Anne Vaughn, Kevin Brackett, and James Hall for their testimony.

Stephanie Vaughn, 200 Mayflower Drive, stated that the short term rental at the subject property has increased traffic and noise as access is off of Mayflower Drive. There is a deck and patio on the back of the unit, and she hears noise from her property. She stated that parking is difficult in the area due to the university. She stated that residents in the neighborhood are negatively impacted by this use.

James Hall, 1601 College Park Drive North, stated that he is directly next to the subject property, and the short term rental guests tend to arrive late and encroach on his driveway, which is in his back yard. He has young children, and having strangers rotating in and out of his back yard has been difficult. A longer term rental would be much easier to deal with.

Anne Vaughn, 108 South Josephine Boyd Street, stated that granting the variance would render the short term rental regulations meaningless. There have been issues with short term rentals in the neighborhood creating nuisances.

Kevin Brackett, 1610 North College Park Drive, stated that the subject property is unique and has notable architecture. He stated that the applicant has not presented evidence of a significant hardship and is not deprived of any reasonable use of the property without the variance. He stated that this neighborhood has a very complicated parking situation. He stated that the property could be converted into a rooming house with the variance.

Mr. Wofford stated that the variance is only with regard to a short term rental. Ms. Guarascio stated that the Board is only considering whether the separation element of the Ordinance should be varied.

Mr. Brackett stated that the variance as requested does not limit the intensity of the short term rental use.

Mr. Randolph asked if the applicant was only asking for the accessory dwelling unit to be rented. Mr. Kirkman stated that the variance request does not have such a limit, but the Board could limit the request with a condition.

Mr. Brackett stated that the separation requirement should be considered by the Board, and there is no hardship presented by the applicant unique to the applicant or property.

Chair Necas stated the applicant had five minutes for rebuttal.

Ms. Guarascio stated that the Board cannot consider the tenure of a property.

Mr. Wofford asked if the applicant would accept limiting the request to the accessory dwelling unit. Erin Graham stated they only wish to rent the accessory dwelling unit.

Ester Graham stated that they only permit 2 adults in the rental per the requirements of the LDO.

Mr. Wofford asked if switching to a long term rental would impact the applicant's income, and Erin Graham stated that was correct.

Mr. Randolph asked if the applicant had tried to offer the accessory dwelling unit as a long term rental. Erin Graham stated they do not wish to rent it long term, as they like having it available for family and friends to stay in.

BOARD DISCUSSION

Mr. Oliver stated he would be more comfortable if the separation were greater, and he is concerned about the distance.

Mr. Wofford stated that the separation requirement arose from a desire to prevent short term rentals from eroding the long term rental market, but that the disruption of the application process early on should be a reason for granting the variance.

Mr. Truby stated that he could support the variance if conditioned to only permit the accessory dwelling unit as rented.

Ms. Rudd concurred.

Ms. Guarascio stated that the Board may propose conditions if impacts are directly related to the considerations in the findings of fact.

Mr. Randolph stated that he did not see evidence presented of a hardship, and that the applicant still has rental uses available for the accessory dwelling unit without the variance, and the subject property is not unique. He stated he is also concerned about the separation.

Ms. Guarascio stated that there is a policy in place for pre-existing short term rentals to continue.

Mr. Kirkman stated that staff were aware of many pre-existing short term rentals, and the policy has been to approve nonconforming uses with evidence presented of short term rental operation in 2023. This application did not present evidence of operation in 2023.

Mr. Randolph asked if the applicant could apply again with evidence. Mr. Kirkman stated staff would need to review the application.

Erin Graham stated that the short term rental was not in operation in 2023, and Mr. Kirkman confirmed it would not qualify for nonconforming status. He stated that the ordinance was adopted in May 2023 with an original effective date of January 1, 2024 but was delayed until April 1, 2024 due to challenges implementing a more complicated ordinance, and City Council delayed the effective date. A determination was made that short term rentals with evidence of operation in 2023 presented could be granted nonconforming status. But any short term rentals that came into existence after January 1, 2024 would not be nonconforming. Erin Graham confirmed they were not a nonconforming use.

Mr. Oliver asked about the Board's ability to condition variance requests. Mr. Kirkman stated that the Board may condition the variance they feel is appropriate to meet findings of fact to grant a variance.

Mr. Wofford asked if the Board could approve the variance with the condition of limiting the use to the accessory dwelling unit.

Chair Necas stated that she is worried the impacts would not be proportional even if just limited to the accessory dwelling unit.

Mr. Oliver stated he is troubled by reducing the separation requirement.

Ms. Guarascio stated that the Board is not bound by prior decisions, as it is a quasi-judicial board.

Mr. Randolph stated that he feels there may not be facts sufficient to support the variance request.

MOTION

Mr. Randolph moved that in BOA-24-27, 1604 College Park Drive North, based on the stated Findings of Fact, the Zoning Enforcement Officer be upheld and the variance denied based on the following: 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 justification that the property is situated close to UNCG, it's situated in a residential neighborhood with other similarly situated houses; 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 because the close proximity being effectively 300 feet close to the next nearest short term rental would not alleviate concerns for increased parking, noise, and congestion in the neighborhood which would detract from the residential character of the existing neighborhood. Seconded by Ms. Rudd

The Board voted 5-2 in favor of the motion (Ayes: Barkdull, Oliver, Randolph, Rudd, Chair Necas; Nays: Truby, Wofford). Chair Necas advised the motion passed.

g. BOA-24-28: 4123 Driftwood Road (APPROVED)

Ms. Thiel stated in BOA-24-28, Richard and Courtney Whittington request a variance to allow a proposed addition to encroach 5.1 feet into a required 10 foot side setback. The addition will be 4.9 feet from the side property line. Evidence provided by the applicants included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum side setback is 10 feet.

Background and Site Information: The subject lot is located on the west side of Driftwood Road, south of Pineburr Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 34,488 square feet, and the house was constructed in 1960. The applicants propose to construct a 304 square foot carport addition attached to the side of the house that will align with the existing driveway. The proposed carport addition will encroach 5.1 feet into a required 10 foot side setback and will be 4.9 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 applicant to provide their name/address for the record and swore in Richard Whittington for his testimony.

Richard Whittington, 4123 Driftwood Road, stated that they have lived at the subject property since 2009, and they wish to add a carport in a way that makes it fit with the character of the residence. The existing driveway encroaches on the setback, thus the need for the variance. He stated that the neighboring property to the north has a significant side setback, which will make the setback impact the property less.

Mr. Oliver stated that the property is long but skinny. Mr. Whittington stated that was correct, and they just wish to utilize it in the best way for a carport.

Seeing no opposition, Chair Necas closed the public hearing.

MOTION

Mr. Oliver moved that in BOA-24-28, 4123 Driftwood Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant would not be able to put a carport over his driveway without this variance; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the lot is narrow and long, it is hard to do anything on the sides of the property; (3) The hardship is not the result of the applicant's own actions because the driveway was already in place when the home was purchased; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because there will be no harm to public safety or welfare by granting this variance. Ms. Rudd seconded the motion.

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

OTHER BUSINESS

There was no other business.

ACKNOWLEDGEMENT OF ABSENCES

Chair Necas acknowledged the absence of Vice Chair Ramsey.

ADJOURNMENT

The meeting was adjourned at 9:39 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/arn

**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

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

The meeting of the Greensboro Board of Adjustment was held on Monday, August 26, 2024, at 5:40 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, Tifanie Rudd, and Deborah Bowers. City staff present were Mike Kirkman, Shayna Thiel, Carla Harrison and Andrew Nelson (Planning 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.

APPROVAL OF MINUTES (July 22, 2024 Meeting)

Vice Chair Ramsey made a motion to approve the July 22, 2024 minutes, seconded by Ms. Rudd.

The Board voted 6-0-1 in favor of the motion, (Ayes: Truby, Oliver, Rudd, Bowers, Vice Chair Ramsey, Chair Necas; Nays: None; Abstention: Randolph). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Guarascio advised that there was no legal representation present for BOA-24-38 at 5502 West Friendly Avenue.

Vice Chair Ramsey moved to continue BOA-24-38 to the September regular meeting, seconded by Mr. Randolph. The Board voted 7-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Bowers, Vice Chair Ramsey, Chair Necas; Nays: None). Chair Necas advised the motion passed unanimously.

OLD BUSINESS

a. BOA-24-33: 519 Muirs Chapel Road (DENIED)

Ms. Thiel stated in BOA-24-33, Christian Browne and Thomas Browne request two variances: (i) To allow a home occupation to be conducted outside the residence; and (ii) To allow outdoor storage of items related to a home occupation. Evidence provided by the applicants was 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; 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 are in 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; 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 outdoor storage of items related to the home occupation is prohibited. Additionally, the Land Development Ordinance states that one commercial vehicle associated with the home occupation, up to 30 feet in length, may be kept onsite. A second vehicle may also be allowed if it is located behind the front building line of the principal structure and within a covered structure that is fully screened from adjacent residential uses. 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. At the July 22, 2024 Board of Adjustment meeting, the applicants sought variances from the three ordinance provisions cited in the Notice of Violation. The Board approved a request to continue the matter after the applicants noted plans to move vehicle pick-up and drop-off to a different location, away from the home that could not be verified by staff at that time. Staff has since confirmed that the applicants have made arrangements so persons do not have to come to this property to pick-up or drop-off vehicles. As a result, the applicants are now only seeking variances from two of the ordinance provisions cited in the Notice of Violation. If the two variances are granted, the applicants will be able to continue to have more vehicles associated with the home occupation than allowed by the ordinance and to store those additional vehicles outside on the subject property.

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 Christian Browne for his testimony.

Christian Browne, 519 Muirs Chapel Road, stated that he has moved his rental vehicles to a commercial property, and there is no pick-up or drop-off at the subject property. The variance request is to permit him to park rental vehicles at the property for his personal use.

Chair Necas asked about the variance requests, and Mr. Browne stated that the requests are to avoid citations for having rental cars at the property for personal use.

Vice Chair Ramsey asked how many cars the applicant wished to have on the property, and Mr. Browne stated that he hoped to have around three vehicles.

Ms. Rudd stated she visited the subject property on the day of the hearing and observed 8 vehicles with out-of-state and expired license tags. Mr. Browne stated that all the vehicles on his property now are titled to either him or his roommate and are not being offered for rental.

Chair Necas asked about the offsite location that the applicant uses, and Mr. Browne stated it was 109 Muirs Chapel Road.

Ms. Rudd asked about vehicles with out-of-state registration tags, and Mr. Browne stated that those vehicles are not driven often, but some of them are used for towing or other intermittent utility use and are not offered for rental.

Vice Chair Ramsey asked for clarification on how many vehicles the applicant wishes to store uncovered on the subject property, and Mr. Browne stated up to two, as he does not have space to cover more. Mr. Browne stated that he has five or six personal vehicles on the property.

Ms. Guarascio stated that the variance request was only for vehicles listed for rental and in business inventory.

Vice Chair Ramsey asked if there was a limit on personal vehicles, and Mr. Kirkman stated there was no zoning restriction as long as they were operable.

Chair Necas asked if another variance was required to account for outdoor storage of items related to a home occupation, and Mr. Kirkman stated that the variance requested would address those issues and provided zoning standards associated with home occupations.

Mr. Oliver asked about the 24-month period included as part of the request, and Ms. Guarascio stated that the previous time limit is no longer a part of the variance request, and advised against the Board agreeing to a time condition as part of a variance. Variances should be particular to the property, and not the property owner. Mr. Browne confirmed that he has commercial space for his business operations and does not need that element of the original request.

Chair Necas asked how the hardship claimed by the applicant was peculiar to the subject property. Mr. Browne stated that his vehicles are used for both business and personal purposes.

Mr. Truby asked if the home occupation standards change in the future, would outdoor storage of any other home occupation use be permitted. Mr. Kirkman stated that a separate home occupation use would not necessarily have the same rights if the Board granted a variance. Ms. Guarascio stated that the Board could limit a variance by condition to the current home occupation.

Ms. Rudd asked if the vehicles with out-of-state tags were used for business, and Mr. Browne stated that they were not offered for rental.

Mr. Randolph asked how to determine if the vehicles were used commercially or personally. Ms. Guarascio stated that the vehicles become part of the business inventory when listed for rental, even if not in active commercial use at the moment.

Chair Necas asked if there was any opposition to the request and swore in Jerilynn and Chris Bathgate and Daniel Benotti for their testimony.

Jerilynn Bathgate, 517 Muirs Chapel Road, stated that she lives directly adjacent to the subject property and they have a shared driveway. Moving the transactions off-site have helped significantly, but the current Ordinance limitations on two vehicles is reasonable. She stated that any repairs that needed to be done on the vehicles are possible with the limitation, particularly given the large number of other vehicles on the subject property.

Vice Chair Ramsey asked if one commercial vehicle on the subject property would be acceptable, and Ms. Bathgate stated she believed the applicant could already have one uncovered vehicle associated with the home occupation, which she believed would be reasonable and did not present an undue hardship. Vice Chair Ramsey asked if there were problems with the shared driveway. Ms. Bathgate stated that there are not current issues due to the discontinuation of pick-up operations on the subject property.

Mr. Randolph asked if there are other shared driveways in the neighborhood, and Ms. Bathgate stated it was unique to the area.

Chris Bathgate, 517 Muirs Chapel Road, stated that he supported enforcing the Ordinance requirements and opposed the Board granting a variance.

Daniel Benotti, 506 Pleasant Drive, stated that he was located behind the subject property, and that he has seen an increased level of traffic in the area due to the home occupation use. The area has been residential for a very long time, and the applicant was aware of this when he purchased the

property. He stated that the Ordinance requirements create no hardship for the applicant, as the business operations are not suitable for the residential character of the neighborhood. Mr. Benotti stated that the applicant's history of zoning violations should give the Board pause about allowing an increase in commercial activity on the subject property, and that the level of activity has increased even as the applicant has been appealing the determinations of the Zoning Enforcement Officer. Neither Kingswood Drive nor Meade Drive can support cross traffic when the applicant parks his vehicles on the side of the street on them. Mr. Benotti stated that he has seen as many as five vehicles parked by the applicant on Kingswood Drive, creating traffic safety issues.

Mr. Oliver asked if those vehicles were going to be moved, and Mr. Benotti stated that there are still vehicles present parked off-site.

Ms. Rudd stated that egress from the subject property is difficult.

Ms. Guarascio stated that there are not experts available to testify and advises caution for the Board to consider what it determines to be competent and relevant testimony.

Mr. Oliver stated that the Board has no control over the applicant's personal vehicles, and Mr. Kirkman stated that was correct for purely personal vehicles.

Ms. Rudd asked about inoperable vehicles, and Mr. Kirkman stated that the City code has other provisions regarding junked motor vehicles, but that is outside zoning authority.

Vice Chair Ramsey asked to confirm that vehicles were being parked on Kingswood Drive and Meade Drive and Mr. Benotti stated that was correct.

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

Mr. Browne stated that he has not parked vehicles on the street for two weeks and that he has been relocating vehicles to the commercial property for the last few weeks.

Vice Chair Ramsey asked if the applicant had ever parked rental vehicles on the cross streets, and Mr. Browne stated that he had.

Mr. Randolph asked why the repair work could not happen at the off-site business location, and Mr. Browne stated that the commercial space is an office and parking, it cannot support vehicle repairs.

Vice Chair Ramsey asked if the applicant had a covered space to store the commercial vehicles, and Mr. Browne stated that the garage present on the subject property is insufficient for such use.

Mr. Randolph asked if the repair work was done outside, and Mr. Browne stated that was correct.

Ms. Bowers asked about photographs of vehicles parked on Kingswood Drive, and Mr. Browne stated that those vehicles were his.

Chair Necas closed the public hearing.

BOARD DISCUSSION

Vice Chair Ramsey asked to confirm that the applicant can have one vehicle associated with the home occupation uncovered without the variance, and Mr. Kirkman stated that was correct.

Mr. Randolph asked if the home occupation did not have to occur wholly inside the residence, and Mr. Kirkman stated that was correct.

Mr. Truby stated that he cannot support the variance, as the Ordinance already permits sufficient commercial vehicles for a home occupation.

Ms. Bowers stated that the applicant did not provide support for a hardship peculiar to the subject property.

Vice Chair Ramsey stated that the Ordinance already allows for a reasonable limit to commercial vehicles associated with home occupations.

Mr. Randolph stated that there has not been evidence presented of a hardship given the unique shared driveway situation with the subject property.

MOTION

Chair Necas moved that in BOA-24-33, 519 Muirs Chapel Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be upheld and the variances denied based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will not result to the property by applying strict application of the ordinance because the LDO already allows up to two vehicles on the property and that is sufficient for the business; (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 all homes within the R-3 district are expected to comply with the LDO and the property is similar to others in the neighborhood. Ms. Rudd seconded the motion.

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

NEW BUSINESS

b. BOA-24-34: 1905 Elwood Avenue (DENIED)

Ms. Thiel stated in BOA-24-34, Modeste Tchouaso requests a variance to allow a short term rental to be separated 261 feet from another short term rental at 1812 Elwood Avenue when a minimum of 750 feet is required. Evidence provided by the applicants was Exhibit A. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-8-10.4(U): A short term rental must be separated from any other short term rental by a minimum of 750 feet, as measured from property lines.

Background and Site Information: The subject lot is located on the south side of Elwood Avenue, east of Coliseum Boulevard, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 6,970 square feet, and the house was constructed in 1946. The applicant uses the existing home on the subject property as a short term rental. After applying for the required zoning permit, City staff advised the applicant that another short term rental was located at 1812 Elwood Avenue, which is within 750 feet so the permit could not be issued unless a variance is approved for reduced separation. At this time, the applicant seeks a variance to allow a proposed short term rental to be separated 261 feet from another short term rental. If the variance is granted, the applicant will proceed with the short term rental zoning 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 Modeste Tchouaso for his testimony.

Modeste Tchouaso, 1905 Elwood Avenue, stated that he purchased this smaller residence to house family members who visit, and he offers it for short term rental when family is not using it.

Mr. Oliver asked if the applicant lives at the property, and Mr. Tchouaso stated he does not.

Ms. Rudd asked about the applicant's knowledge of other short term rentals operating in proximity to the subject property.

Ms. Guarascio asked if Ms. Rudd had any material discussion with the applicant regarding the request. Ms. Rudd stated that while visiting the site, she was attempting to clarify the address and was unaware she was speaking to the applicant.

Vice Chair Ramsey asked how long the applicant has offered it for short term rental, and Mr. Tchouaso stated since March of this year. Vice Chair Ramsey asked how long the other property in proximity had been operating, and Mr. Kirkman stated that it had been operating during 2023 and was granted nonconforming use status.

Ms. Bowers asked about the separation requirement in the LDO. Mr. Kirkman stated that it was an element of the short term rental text amendment adopted by City Council. Vice Chair Ramsey stated that it was to prevent saturation of residential neighborhoods with short term rental activity.

Mr. Oliver stated that Greensboro had a need for longer term rental properties.

Mr. Randolph asked if there was information in the ordinance regarding the separation requirement. Mr. Kirkman stated that there was conversation about balancing limited commercial uses in a residential setting relative to an established residential area.

Ms. Guarascio stated that the Board can interpret the intent and meaning of the Ordinance.

Mr. Oliver stated that the intent of the limitation in the Ordinance is to limit the number of short term rentals, and that the Convention and Visitor's Bureau indicates there is high availability of hotel occupancy in Greensboro.

Mr. Tchouaso stated that his properties are smaller, and he needs additional space for visiting family members. Making the property available when family is not present helps him afford the properties.

Ms. Guarascio stated that the Board is only considering the subject property.

Chair Necas asked if there was any opposition to the request and swore in Patricia Wisneski, Colin Cutler, Tim Leisman, Blair Kolb, and Debra Marek for their testimony.

Patricia Wisneski, 1607 Bailiff Street, stated that she opposes the variance request because it is harmful to the neighborhood. The new short term rental zoning regulations are intended to ensure the level of activity related to short term rentals does not create significant negative impacts on adjacent residential uses, and the spacing requirement is directly associated with that. She stated that the requested distance is less than half of the Ordinance requirement. Ms. Wisneski stated that the applicant's address associated with County tax records is in Maryland, not Greensboro, and that the Glenwood area has issues with property owners outside of the area.

Colin Cutler, 1506 West Florida Street, stated that there has been an increase in short term rental properties in the Glenwood neighborhood, which has damaged it. He stated that he has witnessed housing affordability be damaged by speculative real estate activity such as short term rental operation, and is concerned about his community being eroded.

Tim Leisman, 1708 Boyden Street, stated that the variance request does not fit within the character of the Glenwood neighborhood. He stated that he was concerned that granting this request would encourage conversion of more housing stock in the area into short term rentals, limiting or preventing younger growing families from settling there.

Ms. Guarascio reminded the Board that it must only consider competent and relevant evidence directly related to the subject property and the specific criteria of the variance request before it.

Blair Kolb, 1812 Marion Street, stated that there are unpermitted short term rentals operating in the neighborhood. Chair Necas advised the speaker that reports should be made to the Zoning Enforcement Officers to investigate.

Debra Marek, 1311 Marion Street, stated that she opposes the variance request.

Mr. Randolph asked about the hardship of the applicant. Ms. Wisneski stated that the applicant has not presented evidence of a hardship not of his own making. She stated that he purchased the subject property after the Ordinance was amended and should have known about the requirements.

Vice Chair Ramsey asked about the operator proximity requirement of the Ordinance. Mr. Kirkman stated that operators must be in Guilford County or an adjacent county. Vice Chair Ramsey asked about the Maryland address, and Mr. Tchouaso stated that he lives at 2409 Yanceyville Street.

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

Mr. Guarascio stated that the operator issue has not come up yet, and Mr. Kirkman stated that if a Zoning Enforcement Officer determined there was a violation to that requirement, then enforcement action would begin.

Mr. Tchouaso stated that the subject property is at the corner of the street near Coliseum Boulevard, and he has constructed a fence to reduce the impact on the neighborhood. He stated that no other cities in North Carolina have a separation requirement and that the operation of the short term rental helps him economically support ownership of the subject property. Mr. Tchouaso stated that there have been no reported incidents at the subject property.

Ms. Rudd asked if the applicant was aware of the other short term rental, and Mr. Tchouaso stated he was not, and he was not aware of the zoning permit requirement.

Mr. Randolph stated that he had not heard any evidence or testimony submitted to justify determination of a hardship imposed on the subject property by the distance to the permitted short term rental. Mr. Tchouaso stated that his property is close to the corner of Coliseum Boulevard, which supports his request for the variance. Mr. Randolph stated that there were other properties in proximity that were similarly situated, and the subject property does not have peculiar circumstances justifying the determination of a hardship.

Mr. Oliver asked if the applicant had considered long term rental, and Mr. Tchouaso stated that he wished to use the property for family when they visit, and he did not find hotel accommodations acceptable for his family's extended visits.

Chair Necas closed the public hearing.

Ms. Guarascio asked to clarify the conversation Ms. Rudd had with Mr. Tchouaso.

Ms. Rudd stated that she was unaware she was speaking to the applicant.

Ms. Guarascio stated that the Board could determine if it finds that unacceptable to allow Ms. Rudd to deliberate on the request. She detailed standards of ex parte communications and impermissible bias for quasi-judicial board members and stated that the Board is interpreting the Ordinance as it is written.

BOARD DISCUSSION

Mr. Randolph stated that the intent of the short term rental regulation is to prevent neighborhood saturation with commercial activity, but the specific 750 foot distance is arbitrary. He stated that his issue with this variance request is that it has not been supported by competent and relevant evidence to establish a hardship determination.

MOTION

Mr. Randolph moved that in BOA-24-34, 1905 Elwood 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 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 property is situated in a neighborhood and while it is close in proximity to a thoroughfare, there are other similarly situated residences and properties that are also situated in the same manner that the property is in relation to both Coliseum Boulevard and the other properties within the neighborhood; (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 assure public safety, welfare and substantial justice because the current Ordinance requires a spacing of 750 feet, the applicant is requesting a 489 foot variance, the density of which the applicant did not show any evidence that that density would still maintain the residential character with the neighborhood, notwithstanding the short term rental. Mr. Oliver seconded the motion.

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

Chair Necas advised the Board would take a break at 7:13 p.m., and the Board resumed at 7:23 p.m.

c. BOA-24-35: 1812 Huntington Road (APPROVED)

Ms. Thiel stated in BOA-24-35, Ryan and Danielle Gioffre request a variance to allow a proposed addition to encroach 19.3 feet into a required 50 foot front setback. The addition will be 30.7 feet from the front 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 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average setback that exists on the lots on either side of the subject lot.

Background and Site Information: The subject lot is located on the east side of Huntington Road, south of Pembroke Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 16,988 square feet, and the house was constructed in 1955. The applicants propose to construct an 879 square foot two-car garage addition at the side and front of the existing house. While average front setback requirements would normally apply to the subject property, a legal memo provided to the Planning Department Director confirms the option to use the front setback shown on a recorded subdivision plat if the setback shown on the plat is less than the calculated average. For the subject property, the 50 foot front setback shown on the recorded plat is less than the calculated 80 foot average front setback. The proposed addition will encroach 19.3 feet into the required 50 foot front setback and be 30.7 feet from the front 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 Ryan Gioffre for his testimony.

Ryan Gioffre, 1812 Huntington Road, stated that location of the proposed addition is the best possible place on the property due to the shape of the parcel.

Mr. Oliver asked if other properties in the area had garage, and Mr. Gioffre stated there were many.

Chair Necas closed the public hearing.

BOARD DISCUSSION

Mr. Truby stated that the subject property was unique and the average front setback requirement made other locations for the addition impractical.

MOTION

Mr. Oliver moved that in BOA-24-35, 1812 Huntington Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the shape of the lot makes adding a garage almost impossible without a variance; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the home was in place, built in 1955, when the applicant purchased it, the shape of the lot has been established since at least 1955; (3) The hardship is not the result of the applicant's own actions because the narrowing of the lot is 150 feet on the front and 35 feet along the back, that makes it very difficult to fit a garage on 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 property will be improved with this addition of a garage, it will be in harmony with the Ordinance and public safety will not be harmed. Mr. Randolph seconded the motion.

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

d. BOA-24-36: 2204 Red Forest Road (APPROVED)

Ms. Thiel stated in BOA-24-36, John and Pamela Porter request a variance to allow the total building coverage of all accessory structures on the lot to be 1,694 square feet when no more than 1,200 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 reference was Section 30-8-11.1(A)(3): In R- districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater.

Background and Site Information: The subject lot is located on the north side of Red Forest Road, east of Pebble Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 17,424 square feet, and the house was constructed in 1970. The applicants propose to construct a 1,034 square foot addition to the back of an existing 660 square foot detached carport that will include a workshop and storage space. The 1,694 square foot building coverage of the expanded accessory structure will exceed 50% of the principal's building coverage, which is 1,200 square feet. 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 the applicable overlay.

Chair Necas asked the applicants to provide their name/address for the record and swore in John and Pamela Porter for their testimony.

John Porter, 2204 Red Forest Road, stated that he has been woodworking for 50 years and they needed the added space for a woodworking workshop. They have owned three homes in Greensboro and this property is the most suitable for their accessory structure while balancing their family's needs, property values, and the conditions of the property allowing the structure to be compatible with the neighborhood.

Pamela Porter, 2204 Red Forest Road, stated that they discussed the request with their neighbors to ensure it was appropriate for the area, and they have not heard any objections.

Chair Necas closed the public hearing.

MOTION

Mr. Truby moved that in BOA-24-36, 2204 Red Forest Road, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant would not be able to construct a 1,694 square foot accessory structure; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the existing house area controls the maximum area of the accessory structure; (3) The hardship is not the result of the applicant's own actions because the house was built in 1970 and the square footage was determined at that time and is what is used to determine the maximum area of the accessory structure; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the accessory structure will back up to Bryan Boulevard which will not have an impact on the public and the accessory structure will add to the property value. Ms. Rudd seconded the motion.

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

e. BOA-24-37: 4234 Ashland Drive (APPROVED)

Ms. Thiel stated in BOA-24-37, JCMNC LLC requests three variances: (i) To allow a proposed house to encroach 7.8 feet into a required 27.8 foot front setback. The house will 20 feet from the front property line; (ii) To allow a proposed house to encroach 6.6 feet into a required 20 foot rear setback. The house will 13.4 feet from the western rear property line; (iii) To allow a proposed house to encroach 14 feet into a required 20 foot rear setback. The house will 6 feet from the eastern rear property line. Evidence provided by the applicants included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 8s. The Land Development Ordinance references were Section 30-7-1.4(A)(1)(b): Where 50% or more of the lots on the same block face as the subject lot are occupied by single family detached dwellings, buildings on the subject lot must comply with the minimum street setback determined by calculating the average setback that exists on the two lots on either side of the subject lot; and Section 30-7-3.2 – Table 7-2: In the R-5 District, the minimum rear setback is 20 feet.

Background and Site Information: The subject lot is located on the north side of Ashland Drive, east of Cornell Avenue, and is zoned R-5 (Residential Single-Family). Survey records indicate the vacant lot contains approximately 6,043 square feet. Based on the average front setback calculations using 4240 and 4242 Ashland Drive, the applicable front setback for the subject property is 27.8 feet. Because of its configuration, the subject lot has two rear property lines and, as a result, two rear setbacks. The applicant proposes to construct a single-family house with a footprint of 875 square feet on the subject property that will encroach 7.8 feet into this required 27.8 foot front setback and will be 20 feet from the front property line. The proposed house will also encroach into both rear setbacks and will be 13.4 feet from the western rear property line and 6 feet from the eastern rear property line. The applicant seeks variances to address these three 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 overlay.

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

Nick Blackwood, 804 Green Valley Road, Suite 200, applicant's attorney, stated that the peculiar triangular shape of the subject property necessitates the variance requests. Building a viable residence within the required setbacks would be impossible, application of those requirements would render the subject property unbuildable, thus imposing a hardship by strict application of the ordinance. He stated that the proposed residence's encroachment is limited and provides for adequate spacing between it and the existing homes in the neighborhood, supporting the character of the area.

Chair Necas closed the public hearing.

MOTION

Vice Chair Ramsey moved that in BOA-24-37, 4234 Ashland Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and all three 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 it will be impractical or impossible to construct a house on the lot and comply with the setback rules; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because of the unique triangular shape of the applicant's lot; (3) The hardship is not the result of the applicant's own actions because the lot was in its current shape prior to the applicant's purchase of the lot; (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the proposed house will fill in a vacant lot, be consistent with the neighborhood, and increase tax values. Mr. Oliver seconded the motion.

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

ACKNOWLEDGEMENT OF ABSENCES

Chair Necas acknowledged the absence of Mr. Wofford.

OTHER BUSINESS

Vice Chair Ramsey moved to elect Chair Necas as Chair and Mr. Randolph as Vice Chair of the Board of Adjustment, seconded by Ms. Rudd. The Board voted 7-0 in favor of the motion, (Ayes: Truby, Oliver, Randolph, Rudd, Bowers, Vice Chair Ramsey, Chair Necas; Nays: None).

ADJOURNMENT

The meeting was adjourned at 7:53 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/arn

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
SEPTEMBER 23, 2024**

The meeting of the Greensboro Board of Adjustment was held on Monday, September 23, 2024, at 5:49 p.m. in-person in the City Council Chamber. Board members present were: Chair Leah Necas, Vice Chair Cory Randolph, Chuck Truby, Ted Oliver, Tiffanie Rudd, Drew Wofford, and Stephen Barkdull. City staff present were Mike Kirkman, Shayna Thiel, Carla Harrison and Andrew Nelson (Planning Department), and Emily Guarascio (Associate City Attorney).

Chair Necas welcomed everyone to the meeting. Members of the Board of Adjustment are appointed by City Council and serve without pay. This is a quasi-judicial Board, meaning that all testimony will be under oath. Findings of fact will be made and final action of the Board is 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.

APPROVAL OF MINUTES (August 26, 2024 Meeting)

Vice Chair Randolph made a motion to approve the August 26, 2024 minutes, seconded by Ms. Rudd.

The Board voted 6-0-1 in favor of the motion, (Ayes: Truby, Oliver, Rudd, Wofford, Vice Chair Randolph, Chair Necas; Nays: None; Abstention: Barkdull). Chair Necas advised the minutes were approved.

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel stated that BOA-24-39 at 1108 Julian Street and BOA-24-43 at 301 Fisher Park Circle will be continued to the October 28th regular meeting, and that BOA-24-41 at 101 Frederick Road has been withdrawn by the applicant.

NEW BUSINESS

a. BOA-24-38: 5502 West Friendly Avenue (APPROVED)

Ms. Thiel stated in BOA-24-38, Three White Oaks Properties LLC requests a variance to allow a short term rental to be separated 390 feet from a short term rental at 5411 Foxwood Drive when a minimum of 750 feet is required. Evidence provided by the applicants included Exhibit A. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-8-10.4(U): A short term rental must be separated from any other short term rental by a minimum of 750 feet, as measured from property lines.

Background and Site Information: The subject lot is located on the north side of West Friendly Avenue, east of Dolley Madison Road, and is zoned O (Office). Tax records indicate the lot contains approximately 32,234 square feet, and the building was constructed in 1926. The applicant is changing the existing building on the subject property from a commercial use back to a single-family residential use and intends to operate it as a whole house short term rental. The Land Development Ordinance defines a whole house

short term rental as the rental of all available bedrooms of an entire residence (at any time) to persons for a fee. After applying for the required zoning permit, City staff advised the applicant that another short term rental was located at 5411 Foxwood Drive, which is within 750 feet so the permit could not be issued unless a variance is approved for reduced separation. At this time, the applicant seeks a variance to allow a proposed short term rental to be separated 390 feet from the other short term rental. If the variance is granted, the applicant will proceed with the short term rental zoning permit process.

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

Chair Necas asked about residential uses in the Office district, and Mr. Kirkman stated those uses are allowed by right.

Chair Necas asked the applicants to provide their name/address for the record and swore in Susan Lambert and Jon McLean for their testimony.

Jonathan McLean, 2409 Walker Avenue, stated that he has rented the garage of the subject property for approximately two years and it had previously been a real estate office, but the tenants have left.

Susan Lambert, 4621 Francisco Drive, stated that her corporation owns residential rental properties, and acquired the subject property in 2013. There are multi-tenant offices adjacent to the property, including 24-hour emergency dental services. She stated that the property is unlikely to be used as a primary residence, and she is not aware of any single-family residences within this area of West Friendly Avenue.

Robert Brown, 4406 Oak Hollow Drive, High Point, property owner's attorney, stated that Council's stated intent of the Ordinance section on short term rentals is to prevent the change of a character of a property from a residential use or negatively impact the residential character of an area. This section of West Friendly Avenue is not residential in character, and neither this property nor any adjacent properties are residential uses on this street. The nearest residences are on a separate street, and occupants of this short term rental would not be in proximity. He stated that an unnecessary hardship is imposed because there are commercial uses adjacent, it is not practical to use this property for long term residential purposes, and there is not a need for commercial occupancy as indicated by its long term vacancy. Mr. Brown stated that this hardship is peculiar to the subject property because it is not in a conventional residential neighborhood. The applicant has owned the property since 2013, the adjacent office uses have existed since at least that point, and the applicant has not created the hardship.

Mr. Truby asked to confirm that hotel/motel uses are allowed in the O (Office) zoning district, and Mr. Kirkman stated that was correct. Mr. Truby stated that the Ordinance section regarding short term rentals was clearly designed to regulate short term rentals in single-family neighborhoods, which the subject property is not.

Ms. Guarascio stated that the Board must rule on the Ordinance as it is written.

Vice Chair Randolph asked if any neighbors have contacted the applicant about the request, and Mr. Brown stated they had not.

Mr. Oliver asked what the applicant would do without the variance, and Mr. Brown stated that the subject property had previously been an office use, but it is unlikely to be viable for a long term residential rental due to the adjacent uses.

Mr. Oliver stated he believed there was a need for long term rental properties in the City, and Ms. Lambert stated that there was also a need for short term accommodations near Guilford College.

Vice Chair Randolph asked how the applicant knew this was viable for use as a short term rental. Mr. McLean stated that he hired a short term rental consultant to assess the market viability and believes it will be a good investment. Vice Chair Randolph asked if the applicant had any inquiries to lease the property for commercial use, and Ms. Lambert stated she did not.

Mr. Oliver asked if the applicant had consulted staff to see if there were any nearby short term rentals, and Mr. McLean stated that his short term rental consultant attested she had, and he was not aware there was another nearby short term rental property when the zoning permit application was filed.

Mr. Wofford asked how much the applicant would list the subject property for sale, and Ms. Lambert stated roughly \$540,000 to \$550,000. Mr. Wofford asked how much the applicant would list the subject property for long-term rental, and Mr. McLean stated approximately between \$2,400 and \$2,500 a month. Mr. Wofford stated that the subject property would not be an affordable long term rental property and the proposed short term rental use is an appropriate use for the subject property.

Vice Chair Randolph asked to confirm there were four bedrooms, and Mr. McLean stated that was correct. Vice Chair Randolph asked if the property would be rented per room, and Mr. Maclean stated it would be a whole house rental.

Ms. Rudd asked to confirm there was not a short term rental operating at this address prior, and Mr. Brown stated that was correct, that the property had been vacant for roughly two years. Ms. Rudd then asked about commercial tenancy of the subject property, and Mr. McLean stated that he has only rented the garage, and Mr. Brown stated that the property was not used for residential occupancy in the last two years.

Vice Chair Randolph asked about the distance between the subject property and the nearest short term rental. Mr. Kirkman stated that the ordinance specified property line separation for measurement. Mr. Brown stated that the adjacent residential properties' neighborhood is not accessed on the same street frontage as the subject property.

Seeing no opposition, Chair Necas closed the public hearing.

BOARD DISCUSSION

Mr. Truby stated that the subject property and existing short term rental are very different properties on different streets and sees no potential for negative impact on adjacent properties associated with this request.

Mr. Oliver stated that the City needs more long term rental properties, given the intense demand in this area.

Ms. Guarascio stated that the Board must rule on a case-by-case basis based on the findings of fact and the Ordinance as written to Council intent.

Mr. Truby stated that it was extremely unlikely for the subject property to be used as a long term rental.

Mr. Wofford concurred and stated that the operation of the subject property as a short term rental supports the GSO2040 Comprehensive Plan's Becoming Car Optional Big Idea.

MOTION

Vice Chair Randolph moved that in BOA-24-38, 5502 West Friendly 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 applicant will be unable to utilize the property for its income value and the property could remain vacant which is not the in best interest of the applicant; (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 residential location is sandwiched in between commercials uses to its south, to its east, and to its west; (3) The hardship is not the result of the applicant's own actions because the property was owned by the applicant in 2013, the short term rental regulations were passed by the City Council and then became effective post the applicant's ownership of the property; (4) The variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it assures that the character of the neighborhood is actually not disturbed, the existing residential

character of the neighborhood includes frontage of commercial uses that are included in or adjacent to the residential properties, and the increased use of the property for short term rentals, which is a commercial uses, would not have a negative impact on the adjacent properties any more than what is currently existing, which the properties are subject to several commercial and other office uses. Mr. Truby seconded the motion.

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

b. BOA-24-40: 4300 Ravenstone Drive (APPROVED)

Ms. Thiel stated in BOA-24-40, Maureen Grimaldi requests a variance to allow a proposed swimming pool to be located in front of the principal structure when viewed from a road or street. Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance reference was Section 30-8-11.9(C)(1): Swimming pools (as well as the decking and equipment associated with the pool) and interactive water features that are located on single-family lots that are less than one acre in area must be located behind the principal structure (when viewed from a road or street).

Background and Site Information: The subject lot is located on the north side of Ravenstone Drive, east of Dover Park Road, and is zoned PUD (Planned Unit Development). Tax records indicate the cul-de-sac lot contains approximately 30,492 square feet, and the house was constructed in 2003. The applicant proposes to install a swimming pool in front of the existing house, surrounded on three sides by a courtyard. The submitted site plan shows that the proposed pool will be blocked from view along Ravenstone Drive by a brick wall and extensive vegetation. If the variance is granted, the applicant will proceed with the residential building permit process.

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

Chair Necas asked the applicants to provide their name/address for the record and swore in Charles Milks, Jr. and Maureen Grimaldi for their testimony.

Charles Milks, Jr., 316 Dodge Loop, Madison, stated that the applicant's property has rear easements that preclude installation of the pool behind the principal dwelling, and the proposed location in the courtyard will prevent the pool from being visible from Ravenstone Drive due to the wall.

Chair Necas asked to confirm the wall was pre-existing, and Mr. Milks stated that was correct.

Mr. Randolph asked if the applicant had discussed the request with neighbors.

Maureen Grimaldi, 4300 Ravenstone Drive, stated that she has heard no opposition to the request.

Seeing no opposition, Chair Necas closed the public hearing.

BOARD DISCUSSION

Vice Chair Randolph stated this was a clear cut request and the design presented is appropriate for the property and character of the neighborhood.

MOTION

Mr. Truby moved that in BOA-24-40, 4300 Ravenstone Drive, based on the stated Findings of Fact, the Zoning Enforcement Officer be overruled and the variance granted based on the following: (1) If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant would not be able to build a pool on their property; (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the lot is extremely irregular in shape, making the courtyard the only logical location for a pool; (3) The hardship is not the result of the applicant's own actions because the house was built in 2003 and the applicant purchased the property in June of 2024; (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 pool will be hidden within the courtyard and landscaping and the wall will screen the pool from the street, the pool will be fenced and will not cause any harm to the public. Ms. Rudd seconded the motion.

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

c. BOA-24-42: 6028 Lucye Lane (DENIED)

Ms. Thiel stated in BOA-24-42, David and Shannon LeFever request a variance to allow a short term rental to be separated 364 feet from a short term rental at 303 College Road when a minimum of 750 feet is required. Evidence provided by the applicants included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance reference was Section 30-8-10.4(U): A short term rental must be separated from any other short term rental by a minimum of 750 feet, as measured from property lines.

Background and Site Information: The subject lot is located on the north side of Lucye Lane, east of Lindley Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 14,375 square feet, and the house was constructed in 1941. The applicants propose to operate a whole house short term rental in their existing house on the subject property. A whole house short term rental is defined as the rental of all available bedrooms of an entire residence (at any time) to persons for a fee. The Land Development Ordinance states that a short term rental must be separated from any other short term rental by a minimum of 750 feet. After applying for a required zoning permit, City staff advised the applicants that another short term rental was already permitted at 303 College Road, which is within 750 feet of the applicants' property. The applicants are seeking a variance to allow their short term rental to be separated less than 750 feet from the other short term rental. If the variance is granted, the applicants will proceed with the short term rental zoning 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 David LeFever for his testimony.

David LeFever, 4107 Stonemill Drive, High Point, stated that this is his second property, and they bought the property to generate income in retirement. They hired an short term rental consultant but rushed to buy the property, were not aware of the existing short term rental, and that they were not sure how to see if there were any existing short term rentals. He stated that they have made improvements that they would not have done if they knew it was not allowed for short term rental use. Mr. LeFever stated that he feels it would not be economically viable for him to rent it long term. The subject property has commercial properties directly behind it, and there is potential future multi-family residential development to the south, along with the school. He stated that he does not feel it will be detrimental to the neighborhood, and that the property was previously poorly maintained before their purchase and renovation. He communicated with the neighbors regarding his request. Mr. LeFever stated that there are noise detection devices on the property, and there will be active professional management of the property. He stated that he met with neighbors and did not hear opposition to the request and has letters from neighbors in support.

Ms. Guarascio stated that the Board could choose to review the letters if it wishes but it may be hearsay.

Chair Necas stated she felt it was inappropriate without the neighbors present to testify.

Vice Chair Randolph asked to confirm the nature of his contact with the neighbors, and Mr. LeFever stated it was positive and he has given tours of the property to his neighbors. He stated that he currently operates the property as a mid term rental, for longer than 30 days.

Ms. Rudd asked about development near the subject property. Mr. Kirkman stated that the property across the street was rezoned to CD-RM-18 (Conditional District-Residential Multifamily) in September

2021, which would permit multi-family development. Ms. Rudd asked if the applicant had considered long term rental, and Mr. LeFever stated that they would likely sell the property if they cannot operate it as a short term rental because it is not economically viable as a long term rental. Ms. Rudd asked how long the other short term rental in proximity had been in operation, and Ms. Thiel stated that the short term rental at 303 College Road applied for its zoning permit on April 12th.

Vice Chair Randolph asked about the school in proximity, and Mr. Kirkman confirmed it was Western Guilford Middle School.

Chair Necas asked if there was any opposition to the request and swore in Kevin Drake and Dana Spyridakos for their testimony.

Dana Spyridakos, 6100 Lindley Woods Drive, stated that the vacant land adjacent to the subject property is not yet under construction. She stated that there are issues with traffic on Lindley Woods Drive, with a large volume of student pedestrian traffic. She is concerned about having short term rental guests in proximity to the school given that there are no sidewalks, and that the intersection on Lucye Lane to Lindley Road is a very sharp, high traffic flow intersection as it is the only way to turn left onto College Road. Ms. Spyridakos stated that she is worried about on-street parking causing an increase in traffic accidents.

Ms. Guarascio stated that the Board must choose how to weigh generalized concerns expressed without expert testimony to support specific claims about traffic flow.

Ms. Rudd asked if the speakers in opposition had communicated with the applicant.

Kevin Drake, 6100 Lindley Woods Drive, stated he had not met the applicant.

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

Mr. LeFever stated that there are a maximum of three cars permissible per the short term rental regulations and the subject property has a garage behind the principal dwelling which can accommodate more than three cars, which would preclude the need for any on-street parking.

Ms. Rudd asked if the applicant would provide guests with information about the neighborhood regarding the concerns presented, and Mr. LeFever stated that they would.

Mr. Oliver asked if the present mid term rental operating at the property was meeting the applicant's economic needs, and Mr. LeFever stated that it was not, and that the current use does not meet their income targets. Mr. Oliver asked if the applicant would lose money continuing with a mid term rental, and Mr. LeFever stated that he would be more likely to sell the subject property than to try to continue operating it as a mid term rental.

Ms. Guarascio stated that any variance granted by the Board would run with the land and must be justified by hardship imposed on the property, and that the personal circumstances of the current owner are not under consideration.

Vice Chair Randolph asked the applicant what peculiar conditions on the subject property create a hardship. Mr. LeFever stated that they have improved the property to the benefit of the neighborhood, in harmony with it.

Mr. Barkdull asked if the applicant's consultant would deal with the concerns, and Mr. LeFever stated that if they can operate a short term rental, they would ensure that the operator informs guests of the special conditions of the neighborhood.

Chair Necas closed the public hearing.

BOARD DISCUSSION

Chair Necas stated that the subject property is deep within a residential neighborhood and that this is what the Ordinance was intended to protect against.

Mr. Oliver stated that the area of this subject property does not lack short term accommodations.

Vice Chair Randolph stated that the request does not meet hardship requirements

Mr. Wofford stated that Council's intention in passing the regulations was to account for situations such as this.

Ms. Rudd stated that concerns expressed by the neighbors prevent her from being able to support the request.

MOTION

Mr. Oliver moved that in BOA-24-42, 6028 Lucye Lane, 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 Greensboro needs more long term rental housing, there does not appear to be a big need for short term rental housing, there are other options available for income from this property; (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 information related to the rules related to the distance required from another short term rental was broadly disseminated and easily found on the City's website or by calling City staff; (3) The hardship is the result of the applicant's own actions because the required distance was very well-known and/or easily acquired, the applicant did not do adequate research prior to purchase; (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 property will be 364 feet away from another short term rental, this is only about one-half the required distance, there are many hotel rooms available a few miles away, the City does not appear to need more short term rentals. Ms. Rudd seconded the motion.

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

ACKNOWLEDGEMENT OF ABSENCES

Chair Necas acknowledged the absence of Mr. Ramsey.

OTHER BUSINESS

Chair Necas recognized Mr. Truby for his service on the Board to the residents of the City of Greensboro

ADJOURNMENT

The meeting was adjourned at 7:05 p.m.

Respectfully submitted,

Leah Necas, Chair
Greensboro Board of Adjustment
LN/arn