MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
DECEMBER 20, 2004

The regular meeting of the Greensboro Board of Adjustment was held on Monday, December 20, 2004 in the City Council Chamber of the Melvin Municipal Office Building, commencing at 2:07 p.m. The following members were present: Hugh Holston, Jim Kee, Ann Buffington, John Cross and Rick Pinto. Bill Ruska, Zoning Administrator, and Blair Carr, Esq., from the City Attorney's Office were also present.

WELCOME

Acting Chair Hugh Holston welcomed everyone to the December meeting of the Greensboro Board of Adjustment. He explained the procedures of the Board and the procedure for appealing any ruling made by the Board.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Cross moved approval of the minutes of the November 22, 2004 meeting as written, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Kee, Pinto. Nays: None.)

Mr. Ruska was sworn in for all testimony to be given at the meeting.

OLD BUSINESS

APPEAL OF NOTICE OF VIOLATION

(A) BOA-04-35: 3600 SOUTH HOLDEN ROAD - HOMES AMERICA APPEALS A NOTICE OF VIOLATION IN REFERENCE TO A PORTION OF A DISPLAY HOME BEING LOCATED IN THE SOUTH HOLDEN ROAD RIGHT-OF-WAY. THIS CASE WAS CONTINUED FROM THE SEPTEMBER 27, OCTOBER 25, AND NOVEMBER 22, 2004 MEETINGS. SECTION 30-8-3.2, PRESENT ZONING-LI, BS-154, CROSS STREET-MCCUISTON COURT. (WITHDRAWN)

(B) BOA-04-36: 3600 SOUTH HOLDEN ROAD - HOMES AMERICA APPEALS A NOTICE OF VIOLATION IN REFERENCE TO A PORTION OF A FREESTANDING SIGN CABINET WHICH OVERHANGS INTO THE SOUTH HOLDEN ROAD RIGHT-OF-WAY. THIS CASE WAS CONTINUED FROM THE SEPTEMBER 27, OCTOBER 25, AND NOVEMBER 22, 2004 MEETINGS. SECTION 30-8-3.2, PRESENT ZONING-LI, BS-154, CROSS STREET-MCCUISTON COURT. (WITHDRAWN)

Mr. Ruska said he thought a resolution had been reached on BOA-04-35 and BOA 04-36. He reported that since the last Board meeting, they had had further surveys done and they find that the sign is not encroaching into the right-of-way, so that is no longer a violation. There is one modular unit that is in the process of being corrected and moved.

Jim Slaughter, Esq., 2206 Granville Road, was sworn or affirmed. He represented Homes America. At the last meeting, it was agreed that one unit was encroaching into the right-of-way and that it would be

moved. As of today, that unit has been stripped of all attachments and is waiting for the mover to move the unit back. If it cannot be moved back, it will be disassembled. He understands that the sign in question is not in the right-of-way.

Counsel Carr said these both appear as a Notice of Violation so that they would withdraw the Notice of Violation, if Mr. Slaughter would withdraw his appeals of those violations before the Board.

Attorney Slaughter said with the Notices of Violation being withdrawn, he certainly withdrew his appeals.

VARIANCE

(A) BOA-04-37: 421 STONEY RUN DRIVE - D.R. HORTON, INC. REQUESTS A VARIANCE FROM THE MINIMUM FRONT STREET SETBACK REQUIREMENT. *VIOLATION:* AN ATTACHED FRONT PORCH OF A NEWLY CONSTRUCTED SINGLE FAMILY DWELLING ENCROACHES 5.07 FEET INTO A 30-FOOT FRONT STREET SETBACK. THIS CASE WAS CONTINUED FROM THE OCTOBER 25, AND NOVEMBER 22, 2004 MEETINGS. TABLE 30-4-6-1, PRESENT ZONING-RS-20, 247; CROSS STREET-WOODHOLLOW ROAD. (GRANTED)

Mr. Ruska stated that D. R. Horton, Inc. is the owner of the property located at 421 Stoney Run Drive. This case was continued from the October 25 and November 22, 2004 meetings. The lot is located on the western side of Stoney Run Drive south of Woodhollow Road on zoning map block sheet 248. The property is zoned RS-20(CL). This property is lot #60 of the Birch Creek Ridge Subdivision, Phase II, Section C. The houses in this section of the subdivision have recently been constructed, are under construction, or are being planned for construction. The cluster zoning provides for structures to meet RS-12 setbacks instead of RS-20 setbacks. The lot contains a recently constructed single family dwelling. The applicant is requesting a variance for the front porch to encroach 5.07 feet into a 30-foot front street setback. On March 26, 2004 the applicant applied for and was issued a building permit to construct a single family dwelling. The plot plan that was attached for review showed the proposed dwelling was in compliance with the required setbacks. After construction began on the house, the applicant decided to add a 6 foot by 18 foot front porch. The front porch is located 24.93 feet from the front property line instead of 30 feet as required. The lot is rectangular shaped. The preliminary plat was approved under Guilford County jurisdiction. The **maximum** building line is something the county imposed on this lot, due to their Ordinance requirements in relation to lot width. After City annexation occurred, the lot became exempt from the County Ordinance requirements. The current City Ordinance does not require a **maximum** building line due to lot width decreasing as depth increases; however, minimum lot width and setbacks are similar to the County's requirements. Section 30-4-7.4 Encroachments into required setbacks: Porches may encroach a maximum of five feet into the front setback if the maximum area encroaching does not exceed 35 square feet. This porch area is 108 square feet. The encroachment area is 91.26 square feet. The Building Inspections Department has not issued the certificate of occupancy for this location. The adjacent properties are also zoned RS-20.

Mr. Cross said he had a conflict with this case. He had been recused twice before.

Counsel Carr said that would take the Board down to four voting members. It would be up to the applicant. She believed last month the applicant asked that the matter be continued for the same reason.

Marc Isaacson, Esq., 101 West Friendly Avenue, was sworn or affirmed. He represented the applicant and the contract purchaser, Mark Tew. He presented material for the Board's consideration. Attorney Isaacson said they were aware of the 100 percent vote requirement. However, due to the circumstances, they need to press forward and would ask that the Board consider the request, even though there are only four voting members. He gave a short background of the request and then explained the items in the handout. He submitted that the violation was an unintentional error. If the porch had to be torn down, then this would be a house that was out of character in this neighborhood. He felt the remedy was much harsher than the benefit of the variance. He felt the request was reasonable and did substantial justice.

No one else spoke either in favor of or in opposition to this request.

In response to a question from Ms. Buffington concerning the maximum building setback, Mr. Ruska said that was something that the County apparently applied and is not a regulation in the City. The City has a minimum building setback that has to be met.

Mr. Kee said in BOA-04-37, 421 Stoney Run Drive, based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from the carrying out of the strict letter of this ordinance. The hardship is not the result of the applicant's own actions because there appears to be an unintentional error made by the builder and not the applicant. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the appearance of the porch seems to be in harmony with the other homes in the subdivision and the granting of the variance ensures the public safety and welfare and does substantial justice because the porch does not appear to encroach into the setback enough to endanger the residents of the home or people passing down the street. Mr. Pinto seconded the motion. The Board voted 4-0-1 in favor of the motion. (Ayes: Holston, Buffington, Kee, Pinto. Nays: None. Abstain: Cross.)

(B) BOA-04-38: 2900-A PATTERSON STREET - PAUL TALLEY REQUESTS A VARIANCE FROM THE MINIMUM OFF-STREET PARKING REQUIREMENT. *VIOLATION:* A PROPOSED ADDITION TO AN EXISTING NIGHTCLUB WILL REQUIRE A TOTAL OF 264 OFF-STREET PARKING SPACES, WHILE THE APPLICANT IS PROPOSING TO PROVIDE 261 SPACES; THEREFORE, A VARIANCE OF 3 OFF-STREET PARKING SPACES IS REQUESTED. THIS CASE WAS CONTINUED FROM THE NOVEMBER 22, 2004 MEETING. TABLE 30-5-3-1; PRESENT ZONING-HI, BS-45; CROSS STREET-SOUTH HOLDEN ROAD. (DENIED)

Mr. Ruska said Paul Talley is the owner of a nightclub located at 2900-A Patterson Street. This case was continued from the November 22, 2004 meeting. The lot is located at the northwestern intersection of Patterson Street and Brandt Street on zoning map block sheet 45 and is zoned HI. The applicant is proposing a 1,081 square foot addition to the existing club. Based on review of a recent site plan, the applicant is proposing to provide 261 off-street parking spaces and the site will require 264 off-street parking spaces; thus, requesting a variance for 3 off-street spaces. The property contains two buildings, which are both clubs. The comedy club and the nightclub share the same parking lot; however, because the hours of operation are similar, each club has to provide for its required parking spaces. The site is currently nonconforming on parking spaces. The applicant is required to provide 242 off-street spaces and the site has 236 spaces. The site is six (6) spaces short. The proposed plan will reduce the nonconforming number by three (3) spaces. By re-striping, and adding four (4) additional spaces located

on the southern portion of the property, the applicant can reduce the nonconforming number by three (3) spaces. The adjacent properties to the north, west and on the eastern side of South Holden Road are also zoned HI. The adjacent property located on the south side of Patterson Street is zoned LI.

Paul Talley, 4720 Country Woods Land, was sworn and said he was the owner of the subject property. He also owned the two businesses that were on the same zone lot with shared parking. He gave a brief history of the property and a description of the type businesses he runs. He would like to increase the size of the building that houses Arizona Pete's in order to expand the dance floor.

Robert Erskine, 3406-A West Wendover Avenue, was sworn or affirmed and said he was a partner in the architectural firm of Erskine & Smith. He handed up material to the Board for its consideration. They had thought it was fairly simple and straightforward and that the Comedy Zone, with its ABC license, etc., was a restaurant and the parking numbers would be sufficient with the addition involved. However, the Planning Department saw the Comedy Club as a club rather than a restaurant. He then explained the contents of the handout. Complying fully with the parking requirements would require impacting the green space and necessitate taking down some trees, thereby impacting the general visual character of that area.

Mr. Talley said he did not know what he could do with Arizona Pete's if he could not do country, which requires that he enlarge the dance floor. If this variance is not granted today, he will be forced to take out green space for the parking and still do the addition.

No one else spoke either in support of or in opposition to the request.

Mr. Cross said in the matter of BOA-04-38, 2900-A Patterson Street, he moved that the Zoning Administrator's findings of fact be incorporated into the record by reference. Based on those findings of fact, he moved that the Zoning Enforcement Officer be upheld and variance denied based on the fact that the applicant has failed to show that he can make no use of his property if the ordinance is enforced. Mr. Kee seconded the motion. The Board voted 3-2 in favor of the motion. (Ayes: Holston, Cross, Kee. Nays: Buffington, Pinto.)

Mr. Pinto said in BOA-04-38, 2900-A Patterson Avenue, he moved that the Zoning Administrator's findings of fact be incorporated into the record by reference. Based on these findings, he moved that Zoning Enforcement Officer be overruled and the variance granted based on the fact that there are practical difficulties and hardships that would result from carrying out the strict letter of this ordinance. The hardship of which the applicant complains resulted from unique circumstances. As a finding of fact, currently the site is six parking spaces short; under the current proposal, that number is reduced to three parking spaces short. The addition of three more parking places will require the elimination of green space, which is a good thing, especially in the Holden Road/Patterson Avenue area. The hardship is not the result of the applicant's own actions. The variance is in harmony with the general purpose and intent of the ordinance because we are actually getting the difference of three spaces as compared to the 242 off-street spaces that would be required and is minimal. The granting of the variance assures the public safety and welfare and does substantial justice because there has been no showing that there would be a detriment to the public safety by not having these three additional spaces. Ms. Buffington seconded the motion. The Board voted 3-2 in favor of the motion, thereby denying the variance. (Ayes: Holston, Buffington, Pinto. Nays: Cross, Kee.)

NEW BUSINESS

VARIANCE

(A) BOA-04-40: 104 OLDE SALEM DRIVE - MIKE AND HUE BUI REQUEST A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. *VIOLATION:* AN EXISTING PRIVACY FENCE EXCEEDS THE MAXIMUM HEIGHT OF 4 FEET BY 2 FEET WITHIN 15 FEET OF THE LIVENGOOD COURT RIGHT-OF-WAY. SECTION 30-4-9.6(A); PRESENT ZONING-RS-12, BS-277; CROSS STREET-LIVENGOOD COURT. (DENIED)

Mr. Ruska stated that Mike and Hue Bui are the owners of the lot located at 104 Olde Salem Drive. The lot is located at the northwest intersection of Olde Salem Drive and Livengood Court on zoning map block sheet 277. The lot contains a single-family dwelling. The applicant has installed a privacy fence that exceeds the maximum height of 4 feet by 2 feet within 15 feet of the Livengood Court right-of-way. The property owner was issued a Notice of Violation on November 3, 2004. Upon receipt of the Notice of Violation, the applicant immediately contacted the zoning office and began her variance procedures. The lot is a corner lot. The applicant has stated that the additional height is needed to provide adequate privacy. In reference to Section 30-4-9.6(E)1) Measurements: “Fence height shall be measured at the highest point, not including columns or posts, of the fence section as measured from the grade on the side nearest the abutting property or street.” The nearest portion of the fence is approximately 3 feet from the property line adjacent to the Livengood Court right-of-way. This side property line is approximately 140 feet in length. The applicant has kept the fence at least 70 feet from the intersection. There is no problem with visibility or sight distance interference. The lot is currently zoned RS-12(CL). The adjacent properties are also zoned RS-12(CL).

Mike and Hue Bui, 104 Old Salem Drive, were sworn. The Homeowners' Association approved the installation of the fence up to six feet before they purchased the house. The fence was installed over 17 feet from the curb to the fence. Mr. Bui has a lot of tools and stock stored at home, as well as having three young children. They have two young sons who are able to climb over a four-foot fence, but the six-foot fence prohibits their doing so. The six-foot fence would also prevent other children from coming into the back yard and getting hurt on the tools or stock. Ms. Bui said her neighbor was not happy with the fence and that bothered her since the Neighborhood Association had approved its installation. She presented the letter from the Association, a map showing the location of their home and a copy of the survey to the Board. However, the violation came from the City. Behind their house are five houses in the cul-de-sac. The fence goes all around the back of the house and the entire fence is currently six feet in height.

Barry Levine, with Zoning Enforcement for the City, was sworn. One of the neighbors had complained about the fence. When he investigated, he found the fence to be too tall and too close. The fence starts at the driveway, which is 17 feet from the curb, but three feet from the property line. The dedication on Livengood is 50 feet, but the width of the street was only 25, so it has a large dedication.

Mr. Ruska said if the fence were placed properly, given its height, it would have been approximately in line with the rear corner of the house and started there. The plot plan shows the property line and the actual pavement, but the measurement is taken from the property line or right-of-way line.

Mr. Levine said this was the only fence in the cul-de-sac. He saw no other fences as he came in, but he

really did not look too hard.

Speaking in opposition to the variance were Morris Peterkin, 4 Livengood Court; Francine Bradt, 2 Van Horn Court; Ron VanBree, 113 Olde Salem Drive; all were sworn. Mr. VanBree handed up pictures of his house and the Buis' house. All objected to the height and location of the fence. Mr. VanBree said it blocked his view of the street and oncoming traffic. The fence violates the requirements of the Declaration of Covenants, Conditions and Restrictions for Spencers Trace.

Mr. Ruska pointed out that the restrictions for Spencers Trace was a deed restriction and the zoning regulations have nothing to do with that. The sole issue before the Board is the fence height.

Ms. Buffington said in BOA-94-49, Olde Salem Drive, based on the stated findings of fact, she moved that the Zoning Enforcement Officer be upheld and the variance denied based on the following: The applicants did not make a case that there would be no reasonable use of their property. The hardship of which the applicants complain is not really a unique circumstance to their property. The variance is not in harmony with the general purpose and intent of the ordinance and the granting of the variance would not do anything for public safety or welfare or substantial justice. She thought the hardship resulted from the applicants' putting up the fence. Mr. Kee seconded the motion. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Buffington, Cross, Kee, Pinto. Nays: None.)

SPECIAL EXCEPTION

(A) BOA-04-41: 806 LOWDERMILK STREET - ROBERT WILSON REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-2.37(B) TO ALLOW A SEPARATION OF 1,200 FEET FROM ONE FAMILY CARE HOME (6 OR LESS PERSONS) TO ANOTHER FAMILY CARE HOME (6 OR LESS PERSONS) WHEN 1,320 FEET IS REQUIRED. PRESENT ZONING-RS-7, BS-34; CROSS STREET-HOLTS CHAPEL ROAD. (GRANTED)

Mr. Ruska said that Robert Wilson is the applicant for a Special Exception request for a parcel located at 806 Lowdermilk Street. The lot is located on the western side of Lowdermilk Street south of Dawson Avenue on zoning map block sheet 34. The applicant is requesting a Special Exception as authorized by Section 30-5-2.37(B) to locate a proposed family care home (6 or less persons) 1,200 feet from an existing family care home (6 or less persons) instead of the required spacing of 1,320 feet. This location will not meet the spacing requirement by approximately 120 feet. The existing family care home is located at 503 Lowdermilk Street, which is located on the eastern side of Lowdermilk Street directly north of the proposed family care home. Attached is a copy of an updated report for Board of Adjustment Special Exception requests for family care homes from January 1995 through November 30, 2004. The property is zoned RS-7. The adjacent properties located to the west, south, and on the eastern side of this portion of Lowdermilk Street are also zoned RS-7. The adjacent property located to the north is zoned RM-18.

Robert Wilson, 2703 Kilpatrick Light Road, was sworn. He would like to establish a family care home that would be 1,200 feet from a presently operated family care home, which is 120 feet short of the required separation. He gave some background on the area. There are three side streets separating these locations, Central Avenue, Dawson Street and Heath Street, as well as a large church and Lincoln Grove Apartments. The facility at 503 Lowdermilk Street is a senior citizen home with currently two occupants at

that location and a caregiver. The home he proposes will house between one and four adolescents under

24-hour supervision and a live-in person also. Therefore, these are different types of facilities. Lowdermilk is primarily a rental property street, with an apartment complex on each side of the proposed facility and it has operated as a family care facility in the past. He described his proposed facility. His building had been boarded up for several years, subject to vandalism and not utilized. It was an eyesore for the community. Reopening the facility and making use of it will eliminate the eyesore and provide a needed service and eliminate a public safety issue for the community. He is a retired Clinical Psychologist, but he does some private practice. His wife will be working with him on this project. She is a 37-year middle school teacher who is still teaching. They both would like to provide a structured environment so they could work with young people and continue the kinds of things they have done throughout their careers in assisting young people to improve their inner personal relationships and return to their families and school. There will be 24-hour supervised care.

Mr. Wilson said he had talked with the neighbors closest to his property. His neighbors are apartment complexes. He felt the neighborhood would welcome having this boarded-up property rehabilitated and made a useful and tasteful part of the community.

Mr. Cross said it looked like, even though few and far between, there have been some approvals of these Special Exception requests with some conditions. He said if there were an interstate running between the two, locations or a major thoroughfare or something to where these two facilities really wouldn't be considered "in the same neighborhood or area," that would be a perfectly reasonable Special Exception. Here we have one that is actually on the same street. But as pointed out, there are a couple of apartment complexes and three side streets, as well as a large church facility, which to him was not enough for that purpose. However, he heard the plea on the fact that this house isn't being used very well and he would think that the clustering logic is that you are trying to achieve a certain harmony within the neighborhood. He felt they should not consider the clustering solely as a solitary factor, but it does seem to be the primary factor that we talk about most of the time.

Mr. Kee said he is familiar with this area. There is a lot of multifamily use and much activity on this street and there are some abandoned houses. In his opinion, issues of this particular home, which would be an improvement to the area and the kids that he will house, would push him towards favorable consideration of the request.

Mr. Ruska said although the homes were on opposite sides of the street, the distance was still measured property line to property line, as shown on the diagram submitted as part of the packet. When they do the search for such properties, they do a quarter mile radius around the subject property and only one fell within it.

Mr. Pinto said he did not see a lot of difference between this request and the Special Exception the Board granted last month.

Mr. Kee said in the matter of BOA-94-41, 806 Lowdermilk Street, based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the Special Exception granted based on the following: The Special Exception is in harmony with the general purposes and intent of this ordinance and preserves its spirit because this property is located in an area that has multifamily uses as well as other uses and the granting of the Special Exception assures the public safety and welfare and does substantial justice because it does improve the area, it deletes the abandoned use of the building.
Mr. Pinto seconded the motion.

Chair Holston said he had a friendly amendment that if the use of the property is discontinued for six

months, then this Special Exception becomes null and void.

Mr. Kee and Mr. Pinto accepted the amendment to the motion. The Board voted 5-0 in favor of the amended motion. (Ayes: Holston, Buffington, Kee, Pinto, Cross. Nays: None.)

ELECTION OF CHAIRPERSON AND VICE CHAIRPERSON

Mr. Ruska said one of the things he would like the Board to do was elect a Chairman and Vice Chairman. This has been on the agenda for several months and he thought it really needed to be done.

Mr. Ruska said Chris Conrad has left but his replacement has been named, Janet Wright.

Acting Chair Holston said the floor was open for nominations of a Chairperson for the Board. Hugh Holston was nominated and seconded as Chairperson for the Board of Adjustment. John Cross was nominated and seconded as Vice Chair for the Board of Adjustment. The Board voted 5-0 in favor of these nominations. (Ayes: Houston, Buffington, Kee, Pinto, Cross. Nays: None.)

Mr. Cross moved that the Board approve the Resolutions of Appreciation for Donnie Sparrow and Marshall Tuck, seconded by Mr. Kee. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Buffington, Kee, Cross, Pinto. Nays: None.)

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There being no further business before the Board, the meeting was adjourned at 4:00 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

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