

**MEETING MINUTES**  
**OF THE**  
**GREENSBORO BOARD OF ADJUSTMENT**  
**AUGUST 26, 2019**

The meeting of the Greensboro Board of Adjustment was held on Monday, August 26, 2019 at 5:31 p.m. in the Council Chamber Room of the Melvin Municipal Office Building. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Leah Necas, Danielle Brame and Stephen Barkdull (Alternate). City staff present was Shayna Thiel, Mike Kirkman and Andrew Kelly, Assistant City Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

**APPROVAL OF THE MINUTES (July 29, 2019)**

Mr. Waddell made a motion to approve the minutes, second by Mr. Ramsey. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

**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**

No old business.

**NEW BUSINESS**

**1. VARIANCES**

The applicant was sworn.

**a. BOA-19-30: 3803 MANOR DRIVE.** Emily Vergamini and Amy Travis requested a variance to allow a proposed accessory structure to exceed 50% of the building coverage of the principal structure on the lot. **(APPROVED)**

Ms. Thiel stated that in BOA-19-30 at 3803 Manor Drive, Emily Vergamini and Amy Travis request a variance to allow a proposed accessory structure to exceed 50% of the building coverage of the principal structure on the lot. The accessory structure will be 1,100 square feet when not more than 769 square feet is allowed.

Evidence from the applicant included Exhibits A through D. Supporting documentation from staff were Exhibits 1 through 5. The Land Development Ordinance Reference is Section 30-8-11.1(A (3)). Maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot.

**Background and Site Information:** The subject lot is located on the south side of Manor Drive, west of Berry Lane, and is zoned R-5. Tax records indicate the lot contains approximately 10,890 square feet and the house was constructed in 1954. Per the Land Development Ordinance, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot. The building coverage of the principal structure is 1,538 square feet and the maximum building coverage allowed for all accessory structures is 769 square feet. The applicants propose to construct a 1,100 square foot accessory

structure which will be 72% of the building coverage of the principal structure. Based on drawings submitted by the applicants, the proposed accessory structure will contain a carport, workshop, and storage. The applicants indicate that the proposed structure will be under 15 feet tall and will meet side/rear setback and separation requirements.

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

Chair Truby requested the applicant to come to the podium and provide their name and address.

**Steve Vergamini, 3803 Manor Drive.** Mr. Vergamini stated this property is owned by his wife and sister-in-law which was inherited from their father. The house as originally built has no covered parking, no workshop, and very little storage. They would like to have covered parking, a workshop area, and additional storage in addition to the attic inside the home. An architect has been hired and drawings were provided to the Board that conforms with all applicable setbacks. There will be additional concrete work to make sure everything flows and drains properly. They want to bring the house to current standards and without the variance, the house becomes much less livable and difficult to do daily things.

Chair Truby inquired if there were any questions of the applicant.

Mr. Waddell asked if there had been any improvements to the property at all. Mr. Vergamini stated his father in law added a storage building at the back of the property. It is about 30 years old, in very bad condition and will come down as part of this project. Other than that, the house is pretty much as originally designed and built.

Ms. Necas stated that all the reasons stated were personal circumstances, not a justification for a variance. She asked if there was another necessity he could provide. Ms. Necas further stated that he could have a structure of 769 square feet and asked why would that not be useful. Mr. Vergamini responded that it would be too small to do what he would need.

Mr. Waddell asked if the building was for a business or hobby. Mr. Vergamini stated there is no business, it is all personal.

Chair Truby asked if there were any further questions. There were none. Chair Truby asked if there was anyone else who wished to speak in favor or opposition. No one came forward.

Ms. Skenes made a motion to close the public hearing, seconded by Mr. Ramsey. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

### **BOARD DISCUSSION**

Chair Truby stated his opinion on why he felt this was a valid request due to the size of the home. Ms. Skenes stated she felt it was a replacement storage structure. A question was asked if covered parking is counted in the square footage. Mr. Kirkman responded if a structure has a roof and supporting structures, including columns, it does not have to have solid wall to be considered a building for building coverage. Ms. Necas stated her concern over the allowable square footage. The Board members indicated their overall support of the application.

Mr. Waddell moved that in BOA-19-30 at 3803 Manor 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 there is a lack of covered parking, workshop space or outdoor storage space, with limited improvements.
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 originally built in 1954. The existing shed is in poor condition and does not fit the needs of the owner.
3. The hardship is not the result of the applicant's own actions because the home was constructed in 1954. There is currently not enough space for activities of the owner.

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 structure is in the rear of the property, partially visible from the street and will be architecturally structured to fit the space.

Seconded by Skenes. The Board voted 7-0 to approve the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays:0.)

**b. BOA-19-31: 1104 MEADE DRIVE.** Stephen and Paula James requested a variance to allow an addition to encroach 3 feet into a required 10 foot setback. **(DENIED)**

The applicant was sworn.

Ms. Thiel stated that in BOA-19-31 at 1104 Meade Drive, Stephen and Paula James request a variance to allow a cantilever addition to encroach 3 feet into a required 10 foot side setback. The addition is 7 feet from the side property line.

Evidence provided by the applicant included Exhibits A through E. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance Reference is Section 30-7-3.2. R-3 minimum side setback is 10 feet.

**Background and Site Information:** The subject lot is located on the east side of Meade Drive, south of Leonard Drive, and zoned R-3. Tax records indicate the lot contains approximately 13,504 square feet and the house was constructed in 1953. The applicants constructed a cantilever addition in 2003 to accommodate their washer and dryer without a building permit. In response to a complaint, a zoning enforcement officer visited the property and confirmed that the house with the cantilever addition encroached into the side setback. Per the Land Development Ordinance, cornices, overhanging eaves and gutters, window sills, bay window or similar architectural features, chimneys and fireplaces, fire escapes, fire balconies, and fire towers may project up to 2.5 feet into any required setback. Because the cantilever addition encroaches 3 feet into the required 10 foot side setback, a variance is needed to allow it to remain. If the variance is granted, the applicants will apply for a building permit for the previously constructed cantilever addition.

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

Chair Truby asked to hear more about the complaint. Ms. Thiel responded that based on the zoning case report from the code enforcement officer, the complaints were that the house encroached into the side setback. That was all that was in the notes from the code enforcement officer.

Chair Truby requested the applicant to come forward and provide their name and address for the record.

**Paula James, 1104 Meade Drive.** Ms. James stated that she was requesting a variance to allow for the cantilever addition to remain on their house which was built in 1992. It was recently brought to their attention of the encroachment of 3 feet into the required side setback of 10 feet. At the time of construction, they did not believe it would be an issue as there were no footings dug. This was added to an existing laundry room and they were under the impression their property extended further than what it does. In order to correct this situation, they are requesting a variance to make this wrong a right.

Ms. Necas asked if the carport was new. Ms. James responded there is no carport, the end of the gravel driveway comes up to but not past that area. The gravel is new and the reason for the complaint from the neighbor. Ms. Necas asked if there was ever a survey of the property. Ms. James responded from a previous survey they were told they had more property than what they do and she is going by the new survey.

Chair Truby asked when the expansion was done was it already a laundry room. Ms. James responded it was a small utility room that they added 3 feet to house the washer and dryer. Plumbing and electrical was already there. Chair Truby asked if there was a 220 volt outlet for the dryer. Ms. James believes that power was extended to that area. She did not know as she did not do it herself. Chair Truby asked who actually did the addition. Ms. James responded that her husband did the addition as he is a contractor.

In response to a question regarding the complaint made, Ms. James stated the complaint was from their neighbors. The gravel shown on the picture was put in for a driveway to park her husband's trailer as they were being tagged monthly from another complaint. They wanted to stay in good graces with the City and keep everything off the street. The next door neighbors were not happy with where the driveway was placed and wanted them to place a circular driveway in the front of their home. They could not do that as all the plumbing is housed for their street in that location. The neighbors stated they would fight it, took pictures on their property, which escalated the issue and the neighbor called the City to file a complaint. The cantilever has been there for 27 years and her neighbors have lived there for 25 years.

Chair Truby inquired if there was anyone else wishing to speak in favor of the case. No one came forward. Chair Truby inquired if there was anyone to speak in opposition to the case. No one came forward. Chair Truby closed the public portion of the hearing.

Mr. Ramsey made a motion to close the public hearing, seconded by Ms. Necas. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

### **BOARD DISCUSSION**

Chair Truby stated the hardship is a result of the applicants' own actions and does not see how the Board can work around the hardship issue. There is nothing peculiar to the property or any unique circumstances related to the property. Mr. Waddell stated it appears the hardship is not being able to park the work vehicle. Chair Truby asked in regards to the ordinance when this addition was built, has it always been 2 ½ feet. He remembered at one time cantilever being a part of the building foundation and the setback would be measured from actual foundation of the building, not from the cantilever. Mr. Kirkman stated he would need some time to research that issue. Mr. Ramsey asked if the cantilever encroached 6 inches. Chair Truby responded it is not considered a cantilever because it technically encroaches 3 feet. If it had been built at 2 ½ feet, they wouldn't be here. Mr. Waddell asked if the applicant had an estimate on what it would cost to remove the cantilever versus leaving it where it is. Ms. James responded it would be very costly as another place would have to be built for her washer and dryer. The wall would have to be replaced, and remodeling is approximately double new construction. She stated it could be up to \$5,000 or more. Mr. Ramsey inquired if the Board has any type of equity power or only statutory power. Mr. Kelly responded what the Board is asked to review is based on the competent evidence presented and to make findings on the criteria to affirm or deny a request for a variance. The decision is immediately appealable. The Board's task is to consistently apply the rules. If rules are arbitrarily applied to one case and not another, it jeopardizes future decisions. Chair Truby stated legally he did not see how this request could be granted and has not heard any compelling evidence that it is not the result of the applicants own actions. Mr. Kirkman advised he found the provision in the Unified Development Ordinance which is consistent with what the LDO states currently: cornices, eaves, and all those things can project up to 2 ½ feet into a required setback and be no closer than 3 feet from the property line. The current standard is the same standard that was in place under the Unified Development Ordinance.

Chair Truby moved that in BOA-19-31 at 1104 Meade Drive, 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 applicant built the addition without a building permit.
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 lot is rectangular and there is no reason the setback requirements could not be met.
3. The hardship is the result of the applicant's own actions because they constructed the addition without a permit and did the construction themselves.
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 because the applicant did not obtain a building permit as required.

Seconded by Mr. Waddell. The Board voted 7-0 to deny the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.) Chair Truby advised the applicant that this decision can be appealed to Superior Court.

**c. BOA-19-32, 1413 LEXINGTON AVENUE.** Samuel Masters, Jr. requested a variance to allow a proposed house to encroach 20 feet into a required 35 foot street setback. **(APPROVED)**

The applicant was sworn.

Ms. Thiel stated that in case BOA-19-32, at 1413 Lexington Avenue, Samuel Masters, Jr. requests a variance to allow a proposed house to encroach 20 feet into a required 35 foot street setback. The house will be 15 feet from the property line along West Florida Street.

Evidence from the applicant included Exhibits A and B. Supporting documentation from staff were Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-3.2, Table 7-2. R-5 minimum street (thoroughfare) setback is 35 and Section 30-2.2.2(B)(1). A nonconforming lot of record may be built upon if compliance is achieved with regard to all ordinance requirements except for a lot area or width.

**Background and Site Information:** The subject lot is located on the east side of Lexington Avenue, north of West Florida Street, and is zoned R-5. Tax records indicate the vacant lot contains approximately 6,970 square feet. The subject lot is considered nonconforming since it does not meet the minimum 7,000 lot area and 58 foot corner lot width requirements of the R-5 District. Per the Land Development Ordinance, a nonconforming lot of record may be built upon if compliance is achieved with regard to all ordinance requirements except for lot area or width. The applicant proposes to construct a single-family house on the subject lot and seeks a variance to encroach 20 feet in the required 35 foot street setback. The house will be 15 feet from the property line along West Florida Street, which is classified as a thoroughfare. If the variance is granted, the applicant will apply for a building permit to construct a new house.

Ms. Thiel stated there are no applicable overlays and plans. Ms. Thiel provided the land use and zoning for this property and surrounding properties.

**Samuel Masters, Jr. and Earl Henry, 1413 Lexington Avenue.** Mr. Masters stated Mr. Henry is the owner of the lot and he has entered into a contract with him to buy the lot provided a variance is approved. The lot has never been subdivided and is unusually narrow, but is how the lot was created when the Glenwood subdivision was created. The house on the lot was burned down about 15 years ago and with the incident, the Henrys lost any grandfathering at the time. Mr. Henry now has a vacant lot he would like to sell, but the hardship for him is he won't be able to sell it if there is not a reasonable amount of area in the lot to be able to build on. The left side setback is 5 feet and the right side setback along West Florida Street is 35 feet, resulting in 40 feet of setback on a 50 foot wide lot, leaving 10 feet to build, which is why the variance is being requested. Mr. Masters stated that he can roughly see the old foundation by the vegetation on the property, and that it appears the old house was approximately 15 feet off of West Lexington Avenue. He is proposing to place a house back roughly in the same location with about the same setback of the original house that was there.

Chair Truby asked if there were any questions. Ms. Necas inquired if Florida Street was not a thoroughfare when the Glenwood neighborhood was built. Mr. Masters stated he believed the neighborhood was developed around 1910 and did not think requirements were set at that time. Ms. Necas referred to houses on West Florida Street that appeared to be closer to the road than 35 feet and did think Mr. Masters was asking to be closer than what those dwellings are. Mr. Kirkman responded the provision of the 35 foot setback was part of the Unified Development Ordinance when it was adopted in 1992 as it had to do with subdivision of property and thinks the thoroughfare setback standard was adopted at that point in time well after the house previously there was built and believes the other homes were there before that standard was in place.

Mr. Ramsey asked if Florida Street had been widened since 1910. Mr. Kirkman responded he did not have that information and no one from Transportation was present. Chair Truby asked for any further questions. No further questions. Chair Truby inquired if there was anyone else to speak in favor of the request. No one came forward. Chair Truby inquired if there was anyone who wished to speak in opposition to the request. No one came forward. Chair Truby asked for a motion to close the public hearing.

Mr. Ramsey moved to close the public hearing, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

### **BOARD DISCUSSION**

Chair Truby stated that if this variance is not granted the lot is unbuildable. Ms. Skenes stated this is an infill lot that was caught up in some development ordinance changes and feels more infill situations are needed and the Board should be flexible in how the Board approaches the guidelines. Chair Truby stated he did not think there was a 35 foot setback when this property was originally platted.

Mr. Ramsey moved that in BOA-19-32, 1413 Lexington 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 lot, which had historically been residential, will not be able to be built upon or used for any purpose, rendering the lot unusable.
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 has always been its current size since 1910. The lot is 50 feet wide but subject to a 5 foot and 35 foot setbacks which render the lot unsaleable and unusable.
3. The hardship is not the result of the applicant's own actions because the lot size has always been this size.
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 a single family dwelling to be built and support infill in the existing area, thus increasing property values.

Seconded by Ms. Skenes. The Board voted 7-0 to approve the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

**c. BOA-19-33: 400 WAYCROSS DRIVE.** Jeff Frye requests a variance to allow a proposed addition to encroach 2 feet into a required 43 foot front setback. **(CONTINUED)**.

Mr. Kelly advised that the owner is not present and Mr. Jobe, who is present, is the contractor. Mr. Kelly stated the Board can entertain a continuance or see if the owner can be contacted and be available now. Mr. Jobe stated that he is the architect and has texted the owner but believes there was a miscommunication between them. Chair Truby stated the owner would need to be present.

Mr. Kelly advised the Board can entertain a motion for a continuance but Mr. Jobe cannot request a continuance.

Chair Truby stated that since the owner did not know to be in attendance, he would request a motion for a continuance.

Mr. Waddell moved that BOA 19-33 be continued until the September Board of Adjustment meeting, seconded by Ms. Brame. The Board voted 7-0 to continue the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

**c. BOA-19-34, 4919 STARMOUNT DRIVE.** Sherri Miller requested a variance to allow a proposed addition to encroach 2.2 feet into a required 10 foot side setback. **(APPROVED)**

The applicant was sworn.

Ms. Thiel stated that in BOA-19-34, at 4919 Starmount Drive, Sherri Miller requests a variance to allow a proposed addition to encroach 2.2 feet into a required 10 foot side setback. The addition will be 7.8 feet from the side property line.

Evidence from the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance Reference is Section 30-7-3.2 – Table 7-1. R-3 minimum side setback is 10 feet. Section 30-2-4.1(A)(2), any enlargement of a nonconforming structure must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance.

**Background and Site Information:** The subject lot is located on the southwest side of Starmount Drive, northwest of Pebble Drive, and is zoned R-3. Tax records indicate the lot contains approximately 14,375 square feet and the house was constructed in 1959. The existing house is considered a nonconforming structure as it encroaches 2.2 feet into a required 10 foot side setback from the southeastern side property line. The applicant proposes to construct an addition along the rear and side of the house that will also encroach 2.2 feet in the same required 10 foot side setback. Per the application, the proposed addition will align with the existing building line and be 7.8 feet from the side property line.

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

Chair Truby requested the applicant to come forward and state their name and address.

**Jim Cogdill, Sedgefield Homes, 1 Havershire Court, Jamestown and Sherri Miller, 4919 Starmount Drive.**

Mr. Caudill stated Ms. Miller's house was built in 1959 and encroaches into the setback, which was unknown until a survey was received. Ms. Miller purchased the house in and around the 2015 timeframe. The house was flipped and there was no survey when purchased by Ms. Miller. No survey was made until this new addition. Ms. Miller would like to build an addition to have room for a small home office and room for her grandchildren. The hardship is the house was built already and cannot be moved.

Chair Truby asked if an offset could be put in the addition. Mr. Caudill stated it does not work with the floor plan and cannot be moved any further to the left without redoing the bathroom and part of the kitchen. It's approximately a 220 square foot addition.

Chair Truby inquired if there were any further questions. There were none. Chair Truby inquired if there was anyone else in favor or against this request. No one came forward. Chair Truby asked for a motion to close the public hearing.

Mr. Ramsey moved to close the public hearing, seconded by Ms. Skenes. The Board voted 7-0 to close the public hearing. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

**BOARD DISCUSSION**

Chair Truby felt this was a classic variance request. The house is there and they just want to align the rear wall for the addition. Ms. Skenes stated the Board has approved variances for the exact same reason. The Board was in general consensus for approval.

Ms. Necas moved that in BOA-19-34, at 4919 Starmount 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 addition could not be moved 2.2 feet because plumbing lines and the bathroom would have to be moved.
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 and is classified non-conforming.
3. The hardship is not the result of the applicant's own actions because the house is already non-conforming. Built in 1959, the house was already 2.2 feet into a required 10 foot side setback.
4. The variance is 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 in line with the current building's structure.

Seconded by Ms. Skenes. The Board voted 7-0 to approve the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

**OTHER BUSINESS**

No other business.

**ABSENCES:**

Ted Oliver was acknowledged as excused.

**ADJOURNMENT**

The meeting was adjourned by Chair Truby at approximately 6:26 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment