

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**City of Burlington, NC**  
**February 12, 2013**

**Members Present**

**City:**

Mr. H.E. "Ed" Wilson, Chairman  
Mr. Mike Gee, Vice Chairman  
Mrs. Joyce Lance  
Mr. Todd Smith  
Mr. Eric Grant

**Members Absent**

**ETJ: (Not voting)**

Mrs. Sylvia Greeson  
Mr. David McDivitt

Also present was Mr. Joey Lea, Zoning Administrator for the City of Burlington and Mr. Chris Marland, Zoning Enforcement Officer

Chairman Ed Wilson called the meeting of the Board of Adjustment to order at 8:30 a.m. Mr. Wilson stated the city representatives to the Board of Adjustment are appointed by the City Council. This is a quasi-judicial hearing. Everyone speaking before the board should state their name, sign the log on the podium, and swear or affirm that everything they say is true to the best of their knowledge. Appeals of the Board's decisions may be taken to the Alamance County Superior Court. The City will state their position because of their knowledge of the case and the technical codes. The applicant will state their case, and then anyone from the public may speak. After the city, applicant and the public have presented all evidence the board will then close the meeting to the public and discuss the case and vote. An affirmative four-fifths vote is required to grant a variance, special use permit or an appeal.

**DUE PUBLICATION**

Mr. Joey Lea, Zoning Administrator with the City of Burlington, stated, due notice and publication of this meeting of the Board of Adjustment has been made, and all contiguous property owners were mailed a notice advising of this meeting

**SWORN TESTIMONY**

Prior to testifying before the Board, each party was sworn in or affirmed that the testimony they were about to give was true to the best of their knowledge.

**MEETING MINUTES**

Board Chairman Wilson asked the Board if there are any proposed changes to the meeting minutes from January 8, 2013. Mr. Eric Grant made a motion to approve the minutes. The board voted unanimously to approve the January 8, 2013 Meeting Minutes.

**ITEM NO. 1:**

**CASE NO. 09-12 – VARIANCE (CITY)**

Woodridge Apartments

1620 Morningside Dr.

Alamance County Tax Map 147-597-4A

§ Section 32.12.Y(4)

Number and Size of Signs Permitted for Multifamily Developments

**EVIDENCE PRESENTED:**

Mr. Joey Lea stated, Woodridge apartments located at 1620 Morningside Dr. is requesting a variance from our sign ordinance for one additional sign and, in addition, for that sign to be larger than is allowed by ordinance. Under the ordinance it allows for one sign per street frontage of no more than twelve square feet. They currently have four signs. This development stretches across two streets with four street frontages. They put up new signage in August of last year. They have two signs on the Graham-Hopedale Road side, and two signs on the Morningside Drive side. They are claiming that the property is not properly identified. They are requesting the new sign to be forty eight square feet. Chairman Ed Wilson asked, and twelve square feet is allowed by ordinance? Mr. Lea stated, correct, they are asking for a sign to be four times larger than allowed by ordinance. In their application they indicated there are larger signs in the area, I think they referenced a church and a school. There is an exception in the ordinance for a church or school to have a sign up to fifty square feet. There is no such exception for multi-family use. By looking at the signs installed in August it is obvious to the City that the property is properly identified. Mrs. Joyce Lance asked, the sign itself sits on a concrete pad, is that considered part of the sign when calculating the area allowed? Mr. Lea stated, we do, for a ground sign that is counted. These were permitted and approved in August. The intent, and again this is a residential area, is to keep the signage down so you don't have the commercial look or the signs don't interfere with traffic in the residential area. I believe the ordinance has done its job here. Mr. Todd Smith asked, where do they want to put the new sign? Mr. Lea stated, it will be in front of the office. Chairman Wilson asked, so the signs shown in the packet are on the corner? Mr. Lea stated, correct. Vice-Chairman Mike Gee asked, how large are those signs? Mr. Lea stated, twelve square feet. Chairman Wilson asked, all the current sign are in compliance with the ordinance? Mr. Lea stated, yes, they were permitted, approved, and installed around August of last year. Because of that they have met the intent of the ordinance and it is the City's position here that there is no hardship. Mrs. Lance asked, so the City has no opposition to them putting a sign in front of the office if it is no larger than twelve square feet? Mr. Lea stated, if they did that they would have to remove one of their other signs. Mrs. Lance asked, because they are only allowed one per street frontage for a total of four signs here. Mr. Lea stated, yes, they are limited in number and they are limited in size. Mrs. Lance asked, so, even if they get this one for forty eight square feet, they will have to drop the total number to three because the one they want for forty eight square feet would be a fifth sign? Mr. Lea stated, in order to comply, they would have to remove one of the twelve square foot signs, or move it to the location that they want this one at. Mr. Smith asked, there is no traffic or visibility issues here, the City states there is no hardship?

Mr. Lea stated, that is correct. Mr. Smith asked, the adjacent property was properly notified, did you receive any calls about this case? Mr. Lea stated, this case was put off a couple of times. The first time this case was scheduled a Mr. Erwin Glenn at 461 Camp Road did call and voice his opposition to the variance. At that time he said he could not make that meeting because he would be out of town and I have not heard back from him. Mrs. Lance asked, and he is a residential neighbor? Mr. Lea stated, that is correct. Mr. Smith asked, did he give a reason? Mr. Lea stated, he said that he did not feel they should get more than what the ordinance allows.

Mrs. Sabrina Kellis stated, I am the property manager here and we want the sign because the way the property sits, the four signs we have now are at the corners. We would like this additional sign to identify the office as it is hard for some people to find the office. We have had vendors and emergency responders drive by. We have had to go out and actually flag people down. Chairman Wilson asked, I understand all that, but why do you need such a large sign for that? Mrs. Kellis stated, we are willing to go down a size to get the additional sign approved. That is just the size we had before we installed the new signage and removed the one we had there. Mrs. Lance asked, you are willing to reduce it to how much? Mrs. Kellis stated, I am willing to reduce it to the twelve square feet as long as we can have an additional sign that properly identifies the office. Vice-Chairman Gee asked, could one of the other signs be moved to the front of the building? Mrs. Kellis stated, yes, we are willing to do that. Mrs. Lance asked, would you move one of the four existing? Mrs. Kellis stated, we would prefer not to do that, but we are willing to do that if we can get the six by eight sign. If we cannot get the six by eight then we would. Mrs. Lance asked, the problem I see there is, one of the things written on your application for the need for this sign, is to aid in emergency responders coming to your location. I don't think emergency responders are coming to the office, they are probably going to the residence, aren't they? Mrs. Kellis stated, actually we had an issue last September 13 when we had a resident in our office who needed emergency assistance. We called 911 and that is the issue where I told you we had to actually go out and flag them down to where we were, and she ended up actually passing away on the way to the hospital. Mrs. Lance asked, have the emergency responders had trouble finding the private residences with the signs that you have now? Mrs. Kellis stated, well, not that I'm aware of. When they go to a private home, they are identified with numbers and there are letters on the door. Mr. Smith asked, you said the sign that was there before, that was taken down, was oversized? Mrs. Kellis stated, I'm pretty sure it was a six by eight and that is why we were asking for that size. Mr. Smith asked, I believe Mr. Lea stated it, but was it in August when that was taken down? Mrs. Kellis stated, yes, we had to remove that one before the new ones could be installed. Mr. Smith asked, how many signs were there back then? Mrs. Kellis stated, just the one sign in front of the office. We were trying to identify the property better. Chairman Wilson asked, prior to all this you had one sign in front of the office, how long had it been there? Mrs. Kellis stated, Westminster took over this property in April of 2011 and I have been there since then, so that's my answer. Chairman Wilson asked, so at least for two years? Mrs. Kellis stated, yes, for at least two years it had been that way. Chairman Wilson asked, did Westminster put that sign up in front of the office? Mrs. Kellis stated, no, that sign was already there. We put the four signs on the corners. Chairman Wilson asked, so I guess what I'm trying to get to is that, for a long time the large sign in front of the office was there and then you guys changed to the four signs? Mrs. Kellis stated, you are right, we put in the four signs and removed the one in front of the office because we were only allowed to have four. Chairman Wilson asked, and since you've done that, it's created a hardship? Mrs. Kellis stated, yes, it has created a hardship. We have had a very hard time with vendors, clients, and people finding the office. Mrs. Lance asked, and how big was the old sign in front of the office? Mrs. Kellis stated, I believe it was six by eight, although, I could be wrong on that.

Mrs. Lance asked, can you see on paper how you are putting up a sign four times larger than what is allowed, it is like, oh wow? Mrs. Kellis stated, yes, I think the reason we went with that size is that we were comparing it to the one the school has. Mrs. Lance asked, under the exception allowed by law? Mrs. Kellis stated, correct. Vice Chairman Gee asked, the ownership of the complex chose to take the big sign down and replace it with four smaller signs? Mrs. Kellis stated, correct. Vice chairman Gee asked, so that created your problem? Mrs. Kellis stated, correct. Vice Chairman Gee asked, so it's not the property's issue, it's the ownership's issue that

created the problem that you have? Mrs. Kellis stated, correct. Mr. Smith asked, just to get an idea, how many people are coming by and looking for this office? Mrs. Kellis stated, I would say at least four to five times a week I have an applicant call, first time vendors will call and say, I'm on the property but I can't find the office. Mr. Smith asked, before the sign was taken down, how often did it occur? Mrs. Kellis stated, it did happen a couple of times a month maybe. Mr. Smith asked, so it is a dramatic change? Mrs. Kellis stated, yes. Mrs. Lance asked, did I understand you to say, that you might be willing to change your request, from the forty eight square foot sign to one more sign that is twelve square feet and just go from four to five signs that fall within the size guidelines? Mrs. Kellis stated, exactly. If the size is the main issue, we would drop the size to twelve square feet just to get the additional sign. Mrs. Lance asked, and did I also hear you say that, if you had to, you would move one of the existing signs over to the office? Mrs. Kellis stated, if we had to. We would prefer not to, but if we had to do it we would be willing. Mrs. Lance stated, our dilemma here as a board, as you well know, there has to be a hardship and that has to be proven. It doesn't sound like there has been a big problem with emergency responders, I understand the unfortunate situation with someone dying, but we can't prove that not having that sign there is the cause of that death. You also need to stay in harmony with the neighborhood. You know that the church and the school is an exception. Right now, based on what you testified to, and what Mr. Lea stated, there probably is not any public welfare that would be impacted. I think a six by eight sign might be a little unsightly in a residential neighborhood, but that is just my opinion. I'm trying to come up with what the real hardship is. You have already said you could move a sign. If you did, what would the hardship be? Mrs. Kellis stated, I don't know that it would necessarily create a hardship, but the way the property is laid out, the four signs identify the ends of the property. I feel with those signs there it keeps people from going through the property, which we have had issues with, and if they were removed I think that would start again. Mrs. Lance asked, Mr. Lea, do we have the latitude that, if she just wants to add an additional sign of twelve square feet for a total of five signs, is that a legitimate variance request? Mr. Lea stated, only if you can prove a hardship. You have the latitude to do whatever you deem necessary, but you have to prove a hardship. Chairman Wilson asked, Mr. Lea, is there a building sign you could put on the door to help identify the office and be in compliance? Mr. Lea stated, they are allowed one identification sign up to three square feet per building. Chairman Wilson asked, and that sign could be lighted, or with neon or whatever? Mr. Lea stated, it would have to be internally illuminated. Residential districts do not allow external lighting of signs. Mrs. Lance stated, and the reason we are putting due diligence on this is because, it can't be for marketing purposes, it can't have anything to do with money, it has to be a true hardship. A hardship is a harder thing to prove than simply inconvenience or just wishes. I think we are working hard here to come up with what your hardship is, because that is what we are bound to do. Mr. Smith asked, how big is the sign that is on the building now? Mrs. Kellis stated, it is three by four. Mr. Smith asked, would putting a bigger sign on the building accomplish your goals? Mrs. Kellis stated, possibly, that might help. The way it sits off the road, I don't know if it would catch your eye, I think we would have to have something lit up. Mrs. Lance stated, the comment by Mr. Gee is well taken in that the hardship was kind of created by your company. Chairman Wilson stated, the ordinance actually reads that the hardship cannot be a result of the applicants own action.

Mrs. Kellis asked, would a larger sign be allowed by removing another one, besides this three by four, that we already have to put in front of the office? Mrs. Lance asked, why do you think you need a larger sign? Mrs. Kellis stated, they are very small, and comparable to what we had before, it is very small. Mrs. Lance asked, so a three by four with just the word office on it would be too small? I mean, wouldn't it be a given that it is the office for the complex? Mrs. Kellis stated, if we could keep the four that we had and just have an additional one that said office, that would probably help out a lot actually. Mrs. Lance asked, so you would be satisfied with that?

Mrs. Kellis stated, yes. Mrs. Lance asked, what's the average age of your residence? Mrs. Kellis stated, we are a sixty five and up community. Vice Chairman Gee asked, if you are coming in to Morningside Drive from Graham-Hopedale Road, you are looking at it and you obviously have apartments on both sides of the road, and there is a sign on one corner and another one a half a block down in the front, are you really losing anything by not having a sign on the other corner? Mrs. Kellis stated, probably not, it's just the way we liked it because it is divided by the road. That way it was properly identified at the ends of the property, but that left the problem with the office. Mr. Smith asked, are you saying that when you put these signs on the four corners, that the amount of traffic that drove through there decreased? Mrs. Kellis stated, I don't think it necessarily decreased. Mr. Smith asked, it starts to get to residential houses as soon as you get past the complex, doesn't it? Mrs. Kellis stated, that is correct. Mrs. Lance stated, I appreciate your honesty, but because you are being so honest it makes it hard to do what we are supposed to do and we can't just make it a hardship because it was created by your company. Tell me, other than people having problems finding you, that has been a problem for you in not having this sign. Mrs. Kellis stated, just applicants finding the office on a week to week basis. Mrs. Lance asked, which could be fixed if you moved one of the other signs? Mrs. Kellis stated, yes. Mrs. Lance asked, and if you move one of the other signs, what is the disadvantage in that? Mrs. Kellis stated, the property ends would not be properly identified. Mr. Jim Perri stated, it is customary for a complex like this to have signage at all of the street frontages and a larger one at the office. The reason for a larger main sign in front of the office is that it is very difficult to be driving down the street and see a small sign on the office. The hardship, in my opinion, is when you can't find the office. My proposal is some sort of compromise to allow them their four existing signs and maybe a four by six at the office. Chairman Wilson stated, it is our job to find a hardship that is relative to the property, not necessarily if people can find the signs. Mrs. Lance stated, the problem with you wanting a larger sign at the office is that it implies that it is more important to find the office for commercial reasons, than finding the residence for where the people live. We can't look at marketing and profits and those types of things. I'm willing to discuss a three by four sign with nothing but the words office on it, and that is a pretty good sized sign. To ask for something even larger, I would have a harder time with that. We need to look for public welfare and safety, and we are dealing with an aging population there and visual problems and all that kind of stuff, so we might look at that if we decide to allow an additional sign. Chairman Wilson stated, I think where we are at is trying to find a hardship that goes with the land to allow the sign. I understand the problem but as far as me finding a hardship with the land, and in fact the applicant created the hardship, and the applicant testified they are willing to move one of the signs. Mr. Lea also testified they could have a three square foot sign on the building there are other options they have here that don't go along with a hardship of the land. Mrs. Lance stated, I agree. When we have to look at the three criteria, I think that forty eight square foot sign, I would not be comfortable with that. I completely agree with you as far as the hardship is concerned. As far as the harmony and general purpose and preserving the spirit there, I think giving them the option of the office sign that we are okay with that. For the public safety and welfare, the population is sixty two and over with visual problems I think it will not hurt anybody as far as that goes. I think we have tried very hard to find the hardship, but they created their own hardship.

Mr. Smith stated, I agree with both of your arguments, but I think there is also an argument to be made that there is some sort of hardship. Just for the sake of argument, they had a sign for the office and they decided to make a change, and now the ordinance changed and they can't go back. Even though they made the decision to take the sign down, I don't know that there is any way to rectify that problem due to the ordinance change. What bothers me more, however, is that there is a way to fix this in the ordinance by just moving one of the signs to in front of the office. To me, and I'm no expert on apartment complex's, I would just move one of the corner signs to

in front of the office. I also understand Mrs. Kellis believes they need to keep all of their signs and put a new one in front of the office. Maybe there is something we could come up with for them to keep all the signs and get a little one in front of the office and keep it harmonious with the area, I would be amendable to that. It's a weak hardship argument I agree, but I think it could be found. Mrs. Lance stated, in that thinking, I believe it was a mistake to remove the old sign, and being that we are all humans, we will make mistakes. I completely agree that it would be a very weak argument. I think for us to expect the general public to follow the letter of the law one hundred percent of the time is probably unreasonable. I don't know that it makes it a hardship, but it is a mistake they are trying to remedy. My concern is for the residents, not the commercial aspect of it, but for the residents. If we are going to do anything, I would lean toward allowing a fifth sign with the word office on it. If we deny it they have no other choice but to move one of the other signs. Vice Chairman Gee asked, human error has been mentioned twice here, how long has Westminster owned this complex? Mrs. Kellis stated, the complex has been here for over thirty years, Westminster has owned it since April, 2011. Vice Chairman Gee asked, how many complexes does Westminster own? Mrs. Kellis stated, thirty, and that is a rough guess. Vice Chairman Gee asked, so, Westminster would probably be pretty up to speed on what code is for signs? Mrs. Kellis stated, they are mainly in Greensboro and High Point areas and I know our code here in Burlington is much different than what they are used to. Vice Chairman Gee asked, how long have they been managing property? Mrs. Kellis stated, I would say thirty plus years. Mrs. Lance stated, I would like to say, and I'm not saying you did this, but we have had applicants do exactly what they want to do, even though they know it's not okay, and then come back later so they can get their variance. How do you respond to that? Mrs. Kellis stated, I don't think that was the case here. Vice Chairman Gee asked, Mr. Lea, when did the ordinance Mr. Smith referenced that made the sign in violation change? Mr. Lea stated, to my knowledge it did not change to create this situation. Mrs. Kellis stated the sign has been there for some thirty odd years, this ordinance was enacted in 1971 and should have been in place when this complex was built. She also stated that she believes the sign that was removed was larger than what is required. That is a possibility, it could have been put up without a permit. We would not have permitted that sign. I also have no knowledge of any variances being granted in the past for this sign. The ordinance itself did not change that would have created a non-conformity. Vice Chairman Gee asked, when the request to change the signage was made in August of last year, was there also an accompanying request for a sign in front of the office? Mr. Lea stated, no, to my knowledge this did not come up until after the signs were installed.

**DISCUSSION & FINDINGS OF FACT:** Vice Chairman Gee stated, I can't see a hardship. I understand what has been presented. This is a large company that owns this complex and they should know about sign requirements and the ordinance requirements when they are changing signs out. If there is a hardship, they created it. Chairman Wilson stated, that is also my problem with this, the hardship was created when they moved the existing signs, and there is a remedy with a couple of options within the ordinance. Mrs. Lance stated, I do agree that they have other options and there are alternatives. I can see if they had none this would be a harder decision, but they do have options.

**DECISION:** Vice Chairman Gee stated, I would like to move that the request for a variance be turned down on the basis that there is no hardship.

Mr. Eric Grant seconded the motion.

**AYES:**

**NOES: Wilson, Gee, Smith, Lance, Grant**

**ITEM NO. 2:**

**CASE NO. 01-13 – VARIANCE (CITY)**

Burlington Housing Authority

1209 Chandler Court

Alamance County Tax Map 12-55-9A

§ Section 32.4.A(10)(c)

Parking requirements for Multifamily Developments

**EVIDENCE PRESENTED:**

Mr. Joey Lea stated, Burlington Housing Authority which owns the complex that is a multifamily housing complex surrounded by Sharpe Rd., Chandler Ave. and Chandler Ct., currently has a new building under construction. This new building will be a multi-use building. They are requesting a variance to add additional parking in front of the building. They want to expand the additional parking. The ordinance states that, no parking or loading areas, or vehicle maneuvering areas shall be located in a required front yard, or in a required side yard on a corner lot. The front yard and side yard are interpreted as the setback area and in this particular case it is thirty feet. This lot is not interpreted as a corner lot, it is actually a through lot. The side along Chandler Ct. is interpreted as a side yard adjacent to a street so the thirty foot setback still applies as a well as the requirement for no parking to be in that area. The existing parking is approximately ten feet from the back of curb. I had our survey crew go out and pin point the property line and it is twelve and a half feet from the back of the curb. They are asking to extend this but through our discussions they understand that we can't allow a variance to extend into the right of way. If a variance is granted it will have to start at the right of way, they would have to move it back a couple of feet. Their request is to extend the paving for the parking right up to the property line. Chairman Ed Wilson asked, that is the property line on Chandler Ct.? Mr. Lea stated, that is correct. Mrs. Joyce lance asked, is that a thirty foot setback? Mr. Lea stated, yes, that is a thirty foot setback. The property is zoned MF-A and it is a side yard adjacent to a street which means it is a thirty foot setback. The drive aisle and the parking for the most part will be in that first thirty feet. Vice Chairman Mike Gee asked, so, this is not going all the way to the corner then? Mr. Lea stated, no it is not. This development was built prior to the enactment of our ordinance. It was built in the late sixties so I am really not sure how the parking got that way or what the code required at the time. All of the parking out there was constructed the same way. The additional parking they are wanting to install is for the new building they are constructing. Mrs. Lacey asked, so they need a thirty foot variance off of Chandler Ct. only? Mr. Lea stated, correct. Mrs. Lacey asked, do you happen to know how close to Chandler Ave. do they intend to go? Mr. Lea stated, I'm not exactly sure of that exact distance. Mrs. Lacey asked, but we do know it is more than thirty feet? Mr. Lea stated, correct, actually it is forty feet.

Chairman Wilson asked, all the proper sight lines are being met? Mr. Lea stated, I know that there is a thirty five by thirty five foot sight triangle easement at every corner, and it is outside of that. Mr. David Stogner, Architect, representing Burlington Housing Authority stated, the required setback is thirty feet along Chandler Ct., if you look down the street you will see all the parking in the setback. The complex was permitted in 1969 and built in 1970 and the ordinance went into effect in 1971. All of the parking constructed out there was done before the setback existed. What we propose is to extend the existing parking in accord with what is already there.

We propose to have the new parking be behind the sixty foot right of way which is twelve and a half feet behind the curb. The cars themselves will actually park outside of the thirty foot setback, only the drive aisle is going to be in the setback. As a hardship, there is no other place suitable for parking. The new building will need this parking and the Housing Authority will need to be able to utilize this community center. Not only will this site utilize this center, but so will other sites of the Housing Authority. The public schools will also use this center. The parking is needed for these outside areas to come in and use the center. One of the other reasons needed for the parking to be in this location, is for the safe path for children ages three to six, who will be using the center. We also need to increase the accessibility of handicap attendees to the center. With that said, if we move the parking somewhere else, accessibility for the handicapped would not be obtainable. Mrs. Lance asked, how many actual spaces are you adding? Mr. Stogner stated, there is no striping existing but there is room for about six cars and we show fourteen on our plan. Chairman Wilson asked, Chandler Ct. only has residences and properties used by this complex, is that correct? Mr. Stogner stated, that is correct. Mr. Lea stated, the thirty foot setback starts at the right of way line, so what they are asking for is a thirty foot variance, because they are going to ask for it to go up to the right of way. Chairman Wilson asked, does it matter if the parking spaces are not in that right of way? Mr. Lea stated, I think it is better obviously that the parking spaces are not up against the street and they are pushed back, so it does make a difference. Chairman Wilson asked, so, that doesn't eliminate the need for a variance? Mr. Lea stated, no, because you can't have a drive aisle or parking in the setback. Mrs. Lance asked, what are the operating hours of the center going to be? Mr. Ernest Mangum, Executive Director for the Burlington Housing Authority stated, the hours will primarily be in the afternoon from four to six, but there will be programs going on all day. Mr. Smith asked, will there be any night time programs? Mr. Mangum stated, very little night time programs, basically we shut down at six. The last group we will have in there is the little kids that come in for the after school program. Mornings will be utilized by some of our residents and people in the neighborhood to attend GED classes. Mrs. Lance asked, will there be adequate lighting here? Mr. Mangum stated, we are installing security cameras and lighting as a safety precaution. We have a letter from the only adjoining neighbor, the church, supporting what we are doing. Chairman Wilson asked, Mr. Stogner, could you state what you believe your hardship to be? Mr. Stogner stated, I believe it is the fact that this property was developed prior to the ordinance, therefore there is no other adequate space for the parking this center needs. Mr. Eric Grant asked, is the necessitation of this new parking brought on by the construction of the new building? Mr. Stogner stated, correct. Mr. Grant stated, so without the new building there would be no hardship for the new parking. Chairman Wilson asked, has the building gone through technical review with the City? Mr. Stogner stated, yes it has. Mr. Lea stated, the parking itself did not go through TRC, just the building itself. There was no need to take the parking before TRC. Mrs. Lance asked, you stated that the new building will provide much needed services for the youth, but your application lists the ages of the children as three to six, is there a reason for that, or is that just an arbitrary number? Mr. Stogner stated, the three to six, that is who we feel most passionate about keeping safe on the way to this building. There will be more age groups, but that is who we think could be in the most danger if the parking is not located where it is.

Mr. Smith asked, what is the City's stand as far as the hardship on this property? Mr. Lea stated, well certainly there is the fact that this was built prior to our current ordinance and every bit of parking out there is the same way. If they put in the additional and leave the existing, that in itself creates a hardship because you will have an offset and that is a matter of public safety. I believe that with those things combined it certainly is a hardship based on the physical aspects of the property. This being a residential street, I doubt it will ever be widened, so I think that is a

moot point. You stated that if they didn't build the building, there would be no need for any new parking, that is not entirely true. There could always be a need or want to install parking even without a new building. Mr. Grant stated, my question is, when they applied for a building permit their site plan should have included any necessary parking, should it not have? Mr. Lea stated, originally it did, but the parking they were asking for couldn't be approved. This issue exists regardless of whether there is a building there or not. If they came in and just wanted additional parking, there would be the same issues. The plan would not have been approved if they left the parking on there. They would have then had to come in and ask for a variance to get the plan approved. This would have put them behind on their time frame, so they took it off and got the building permit to get started. Mr. Stogner stated, there was a time frame to get started in regards to federal funding the Housing Authority was receiving. If they had not got started when they did, they would have lost their funding. Chairman Wilson asked, so the City is fine with all of that, the parking and the building permit thing? Mr. Lea stated, yes, it's fine.

**DISCUSSION & FINDINGS OF FACT:** Chairman Wilson stated, I think we can see from testimony by Mr. Lea that the parking and the building itself are two different issues here. I believe Mr. Stogner defined a hardship well in that the parking was developed before the ordinance and the current ordinance doesn't leave them a reasonable place to locate additional parking. They are trying as much as they can to comply with the ordinance by locating the parking spots as far from the curb as they can. It seems like the rest of our conditions here, the harmony and general welfare and the public safety are being met. It therefore, I am in favor of this request. Mrs. Lance stated, I agree. Mr. Grant asked, what are we doing as a board if we approve the request for a housing project to have additional parking in the setback at any location, are we setting a precedence? Vice Chairman Gee stated, I think we need to take it on a case by case basis. I don't necessarily believe it is setting a precedence to grant a variance at this location. Chairman Wilson stated, we have allowed it in the past, letting parking go right up to the line. Mr. Smith stated, on this property, letting the parking go up to the line there is a hardship. Not every property will have a hardship on it. There is no other place on the property to put the parking and be out of the setbacks. Mrs. Lance stated, there is three criteria that have to be met. Not every case that comes before us will meet all three things. I realize the building and parking can be seen as separate issues, but common sense tells you if they are opening a community center for the good of the community, they are going to need parking.

**DECISION:** Mrs. Lance stated, I would like to make a motion to grant a variance of thirty feet to allow solely for the encroachment for the parking spaces and drive as presented on the site plan to the Burlington Housing Authority. In order to grant this variance we need to come to three conclusions. One would be there are practical difficulties or unnecessary hardships in carrying out the letter of the ordinance, I think we have determined through testimony and discussion that the setbacks were not a condition when this site was originally developed. Like I stated earlier you can't expect them to follow rules that weren't in place when they started this venture.

Second criteria is, that the variance is in general harmony with the ordinance and preserves its spirit, there is no question here as this is a common building for what has been there for some time now. And the third criteria is, that in granting the variance the public safety and welfare has been assured and substantial justice has been done. It is in their application that they are looking at lighting and there has been discussion here for the need for additional parking and the need for

safety of young children. I actually think that in regards to safety and welfare that they are actually enhancing that. Mr. Lea stated, I want you to understand that you are not altering the setbacks here. The setbacks are still in place, if something were to happen here, like another building, the setbacks would still need to be adhered to. What you are doing is allowing an encroachment into the setbacks. It is solely for the encroachment of the parking and the drive aisle.

Vice Chairman Gee seconded the motion.

**AYES: Wilson, Gee, Smith, Lance, Grant**

**NOES:**

**NEW BUSINESS:**

None

**MEETING ADJOURNED**

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Ed Wilson, Chairman

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Chris Marland, Secretary