

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**City of Burlington, NC**  
**May 12, 2015**

**Members Present**

**City:**

Mr. Ed Wilson, Chairman  
Mr. Mike Gee, Vice-Chairman  
Mr. Robert Giles II (Alt.)  
Mr. Eric Grant (Alt.)

**Members Absent**

Mrs. Joyce Lance  
Mr. Todd Smith

**ETJ:**

Mrs. Sylvia Greeson (Alt. ETJ)  
Mr. David McDevitt (Alt. ETJ)\*

\* Not Voting

Also present was Mr. Joey Lea, Zoning Administrator and Mr. Chris Marland, Zoning Enforcement Officer.

Chairman Mr. Ed Wilson called the meeting of the Board of Adjustment to order at 8:30 a.m. Chairman Mr. Ed 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 applicant and the public have presented all evidence the Board will then close the meeting to the public and discuss the case and vote. During this time no more evidence shall be admitted nor any other arguments made unless the Board wishes to ask the Applicant a question pertaining to the evidence already presented. Anyone that tries to make an argument or present any evidence at this time will be out of order. The Chairperson may order any individuals who willfully interrupt, disturb, or disrupt to leave; failure to comply with this order is punishable by imprisonment up to 60 days, a fine of up to \$1000.00 or both. An affirmative four-fifths vote is required to grant a variance. A majority vote is required to grant a Special Use Permit or to determine an appeal.

**DUE PUBLICATION**

Mr. Chris Marland, Zoning Enforcement Officer 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 Member Mr. Eric Grant made a motion to approve the minutes as corrected. Board Member Mr. Robert Giles, II seconded the motion. The Board voted unanimously to approve the January 13, 2015 Meeting Minutes.

### **ITEM NO. 1:**

#### **CASE NO. 08-15 VARIANCE (City)**

**John Richard Mann Jr.**

2528 Hoskins Rd.

Alamance County Tax Map number 12-3-25

§ Section 32.3(E)(5)

R-9 Front & Side Street Setbacks.

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, case number 08-15 is located at Hoskins Road for John Richard Mann, Jr. He is seeking a variance for the side street setback and the front yard setback for his property. At some time in the past, there was a street right-of-way that was dedicated on both sides of this property. As you can see there is a ten foot section that has been dedicated on the plat. That's where his property line originally was and it was in line with his neighbor's property line. He also lost the same amount on the side street. Mr. Mann is at the last stage now where he would like to put a front porch on the house. He would like to replace the steps he has now that are breaking away from the house. You can see by the poor condition why he would like to make this look better. In order to do what he plans on, he is seeking a variance for a side street setback of 4.3 and 4.2 feet for the front yard setback. Board Member Mr. Mike Gee asked, so before the dedicated right-of-way was in place he would have met the setback requirements? Zoning Enforcement Officer Mr. Chris Marland stated, that is correct. As you see on the plan there is 32.9 and 32.8 feet from where he needs to be. Chairman Mr. Ed Wilson asked, what is the front yard setback? Zoning Enforcement Officer Mr. Chris Marland stated, the front yard setback is 30 feet. Board Member Mrs. Sylvia Greeson asked, so it is the porch that is going to be encroaching in that 30 foot setback? Zoning Enforcement Officer Mr. Chris Marland stated, yes it is. Chairman Mr. Ed Wilson asked, and the side is how much? Zoning Enforcement Officer Mr. Chris Marland stated, the ordinance setback is 15 feet. Chairman Mr. Ed Wilson asked, and the dedicated right-of-way took 10 feet from the front and 10 feet from the side? Zoning Enforcement Officer Mr. Chris Marland stated, yes that is correct. Board Member Mrs. Sylvia Greeson asked, so the house is already not in conformity due to dedicated right-of-way, correct? We don't have the 15 feet there? Zoning Enforcement Officer Mr. Chris Marland stated, on the side that is correct. Board Member Mrs. Sylvia Greeson asked, the right-of-way created that? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, I guess it is a side setback issue because of the angle of the right-of-way? Zoning Enforcement Officer Mr. Chris Marland stated, correct, the porch is going to be kept in line with the house but it will come straight out and as you stated that line is coming in at an angle. Board Member Mrs. Sylvia Greeson asked, how far off the street, not the right-of-way is this house? Zoning Enforcement Officer Mr. Chris Marland stated, that we do not know, perhaps Mr. Mann can testify to that. Board Member Mr. Mike Gee asked, the porch as it stands right now, is it within the front yard setback? Zoning Enforcement Officer Mr. Chris Marland stated, it's not really a porch now it's just steps and those are allowed to encroach. Board Member Mr. Robert Giles asked, the roof line doesn't make it a porch? Board Member Mrs. Sylvia Greeson stated, the porch doesn't come out over the steps. Zoning Enforcement Officer Mr. Chris Marland stated, it appears that 32.8 feet measures to the corner of the house not to that front piece of the roof. I know the steps are out here; but I do not know what this measurement is. It's possible it may be right at the edge of the 30 feet where the overhang is now; I do not have that measurement. Chairman Mr. Ed Wilson asked, can you go back to the

aerial shot, those blue lines accurately represent property lines? Zoning Enforcement Officer Mr. Chris Marland stated, no they don't; those have been known to be off from anywhere of a foot to twelve feet in some cases so we can't go by what is there. The county overlays them on to their information and it's not accurate in depiction. I always tell people not to trust those. Board Member Mrs. Sylvia Greeson stated, but visually we seem to have a decent distance particularly on the side to the actual street and again in the front to the actual street, I understand the right-of-way, but to the street we've got some space. Zoning Enforcement Officer Mr. Chris Marland stated, yes ma'am and you will notice the house next to them too; it's not going to be sticking out any further. Chairman Mr. Ed Wilson asked, so with it being in line it would also be in conformity with the neighborhood? Zoning Enforcement Officer Mr. Chris Marland stated, correct.

Mr. John Richard Mann, Jr. stated, without the 10 foot right-of-way the City has taken from me, I would be able to upgrade the porch within the 30 foot and 15 foot zoning ordinance with no problem. I think that I can answer some of the dimension questions that you have. I measured it the other day. It is 38 feet from the house to the edge of the road. You see the picture where the houses are all in a line, I took that picture so that you can see that my house is right in line with the other homes. Chairman Mr. Ed Wilson asked, is that 38 ft. from the front of the house to the street in front of the house or is that to the side? Mr. John Richard Mann, Jr. stated, that was to the front of the house, so its 38 feet from the front of the house to the road but that is not including any of the porch, that is just from the front of the house. Board Member Mrs. Sylvia Greeson asked, do you know the side measurements? Mr. John Richard Mann, Jr. stated, I measured it last night and it is 26.5 feet from the side of the house to the center of the road. The original porch from the stoop to the steps is 80.5 inches. The proposed porch dimensions come up to 84 inches so I am going to extend the existing step out 3.5 inches. I am adding a step down from the door so I'm lowering the level of the porch and I am trying to keep this dimension down so I would be able to get two steps to meet all the building requirements. Board Member Mr. Mike Gee asked, your proposed porch steps included are only going to be 3 inches closer to the road then where the existing steps are? Mr. John Richard Mann, Jr. stated, correct. The stoop is actually coming away from the house now and I need to get that fixed. Here are some more pictures that continue to show what we have had to take down. The hardship is, if we didn't have the ten foot right-of-way taken away from us on the property on both sides, then we wouldn't even be here and we could continue on with what we have. I found all this out when I went to see Chris to get the permit to be able to do the work. Board Member Mr. Mike Gee asked, so you were unaware of the issues with the porch falling in to the setback until you were ready to pull permits? Mr. John Richard Mann, Jr. stated, yes that is correct. Board Member Mr. Robert Giles, II asked, have there been any calls? Zoning Enforcement Officer Mr. Chris Marland stated, yes I received two calls once our signs went up. I explained to them what exactly is going on and both people were for it and like what the Mann's have done with the house so far and would like to see them be allowed to continue. Chairman Mr. Ed Wilson asked, is there anybody from the public that would like to address this matter? We have no public comment so we will now close for deliberation among the board.

**DISCUSSION & FINDING OF FACTS:** Chairman Mr. Ed Wilson stated, I would like to remind the Board that this is an application for a variance and that the statue has changed. I think both the City and the applicant have discussed the hardship being the loss of ten foot of front and ten foot of side yard due to the right-a-way that happened after the house was built. Board Member Mrs. Sylvia Greeson stated, I think being on the corner has doubled the impact because he got hit on both sides. Chairman Mr. Ed Wilson stated, I agree. The side street is at an angle causing the necessity for the side setback. Board Member Mr. Mike Gee stated, I think that if we don't grant it, then an unnecessary hardship would result if we were strictly applying the ordinance in this case. Board Member Mr. Eric Grant stated, he needs to build his front porch back. Chairman Mr. Ed Wilson stated, which is falling down as he has indicated. Board Member

Mrs. Sylvia Greeson stated, if you leave something there that in fact endangers, then you are not curing the endangerment.

**DECISION:** Board Member Mr. Mike Gee stated, I would like to make a motion that we grant a variance of 4.3 feet to the side setback and 4.2 feet to the front yard setback for the property located at 2528 Hoskins Road based on the following findings of fact:

- a) **unnecessary hardship would result from the strict application of the ordinance:**  
as discussed by the board if the ordinance was strictly applied the applicant would not even be able to rebuild the porch as it sits today. This will be an improvement to the property and the safety of the property as opposed to the porch that is there right now.
  
- b) **the hardship results from conditions that are particular to the property such as location, size or topography:**  
this is a corner lot which kind of amplifies the situation that we have. There was a dedicated right-of-way that was imposed on the property that created the situation of encroachment into the side and front yard setbacks.
  
- c) **the hardship did not result from actions taken by the applicant or the property owner:**  
Again the hardship is the result of the dedicated right-of-way that was imposed on this property. There is adequate space from the house to the street on both sides to compensate for the fact that it is within the dedicated right-of-way.
  
- d) **the requested variance is consistent with the spirit, purpose and intent of the ordinance as such that the public safety is secured and substantial justice is achieved:**  
granting this variance is in harmony and consistent with those things. There are no safety issues created by granting the variance. It does not make the property out of harmony with the rest of the neighborhood as demonstrated by pictures and the testimony presented.

Board Member Mr. Eric Grant seconded the motion. The Board voted unanimously to approve the variance.

**AYES: Giles, Gee, Wilson, Grant, Greeson**

**NOES:**

**ITEM NO. 2:**

**CASE NO. 09-15 SPECIAL USE PERMIT (City)**

**Annette Marie McDow**

809 Virginia Ave.

Alamance County Tax Map number 52-216-24

§ Section 32.13. (W)

In Home Child Care Facility.

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, Ms. McDow has decided to withdraw her case at this time. Chairman Mr. Ed Wilson stated, ok then case number 09-15 has been withdrawn.

**ITEM NO. 3:**

**CASE NO. 10-15 SPECIAL USE PERMIT (City)**

**Dillon Atwood**

844 S. Main St.

Alamance County Tax Map number 17-61-6

§ Section 32.9

Dwelling Within a Mixed Use Structure.

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, case 10-15 is at 844 South Main Street. Mr. Atwood is asking to have a dwelling within a mixed use structure. Mr. Dillon Atwood, is an anesthesiologist who would like to locate here and live on the second floor. He would like to completely turn the entire second floor into a dwelling unit and continue to rent out the first floor. In the back there is a storage area where he will park an RV inside that has to do with his business. Board Member Mr. Mike Gee asked, just for clarification here, the applicant is different from the property owner? Zoning Enforcement Officer Mr. Chris Marland stated, this is correct and this is contingent on him buying the property. We do have a letter on file from the owner Mr. Fisher who is selling the property to Mr. Atwood as long as he can get this special use permit. Chairman Mr. Ed Wilson asked, how is the property currently used? Zoning Enforcement Officer Mr. Chris Marland stated, I don't think there is anything in on the second floor at the moment. The last thing that was in there was a bank. From my understanding he is going to rent that out but he can testify more to that. I was told he will turn the entire second floor into one dwelling unit. Chairman Mr. Ed Wilson asked, what are the particulars in the ordinance that we need to be aware of, Mr. Marland? Zoning Enforcement Officer Mr. Chris Marland stated, there really are none. It's just a requirement of the Table of Permitted Uses that a Special Use Permit be obtained for the use that he would like to do. Dwellings are not allowed in a B-2 district. Chairman Mr. Ed Wilson asked, without a Special Use Permit? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Board Member Mr. Mike Gee asked, again this is a question that you may or may not be able to answer but I think that trying to get people living in the downtown area is something that the City is very interested in to revitalize the area. Zoning Enforcement Officer Mr. Chris Marland stated, yes sir. He is just outside of our "core" downtown area so he is close. Board Member Mr. Eric Grant asked, aren't we currently facing a similar situation in residential use in the downtown business districts and some other buildings, upstairs over the old Billiard's Jewelry? Zoning Administrator Mr. Joey Lea stated, correct, right there off of the corner of Main. Board Member Mr. Eric Grant asked, that's already approved, isn't it? Zoning Administrator Mr. Joey Lea stated, right but that is multi-family. It will be more than three units I think, which is allowed in the downtown area.

Our Downtown area is zoned B-3 and that is a different zoning. They are currently doing renovations to a building that will allow commercial and residential. Board Member Mr. Eric Grant asked, is that the only other building that is being considered for any residential use right now? Zoning Administrator Mr. Joey Lea stated, for right now, yes. Board Member Mrs. Sylvia Greeson asked, are there any other existing downtown properties that have residential apartments upstairs over businesses? Zoning Administrator Mr. Joey Lea stated, yes.

Mr. Jeff Deal stated, I am a broker with Richard Jones real-estate here in Burlington, representing Dillon Atwood and his proposed purchase of the 844 South Main Street property and I would like to give you a hand out. As Mr. Marland mentioned the reason we are here is to request a Special Use Permit allowing residential use of the upper level of the subject property. The first page in the handout is basically a snap shot of the sells flyer the listing agent at NAI of Piedmont who had the property advertised for sell. Incidentally it has been on the market since August of 2009. It was last used as the photo shows for Fisher Wealth Management. Mr. Fisher and his wife continue to own the property. Dr. Atwood does have it under contract for purchase. This building according to the tax card was constructed in 1953 by H. F. Mitchell Construction Company. It served as their office on the west side of the building. Wachovia Bank was the

original tenant on the east side and I'm not exactly sure how many may have been upstairs. Wachovia was also in the rear of the building. The second page is a copy of the email that was sent to the adjacent property owners who are the same ones receiving the letter from the city informing them that there was a Special Use Permit detailing Dr. Atwood's plan. As Mr. Marland mentioned, Dr. Atwood is an anesthesiologist, he serves outpatient clients from roughly the Charlotte area to Raleigh. Since he does operate in a mobile manner he does have a retrofitted recreation vehicle based on a Mercedes Benz Sprinter chassis that he carries his equipment and supplies into wherever his assignments are located. The Burlington area is a good strategic location for him to be able to reach his clients. His intent is to use the rear area which has a higher ceiling to store the vehicle and supplies that is associated with his work and to reside on the upper level of the property; giving him the ability to be close to his equipment and vehicle in case he needs to respond quickly to his clients. The remainder of the lower level will be made available to tenants that would be allowed under the current B-2 zoning. Basically the reason we are here is that the permitted use schedule indicates that any dwelling contained within a mixed use structure in B-2 zoning requires a Special Use Permit. Dr. Atwood is here today as is Lori Mallory with McNairy and Associates a Greensboro based appraisal firm in case there are any questions concerning any impacts on adjoining property values relative to this application. Chairman Mr. Ed Wilson asked, did you receive any replies to your email that you sent to the adjoining property owners? Mr. Jeff Deal stated, I actually called two of the folks. There is a property that is owned a lady that now lives in Florida. I spoke with her and she indicated no issue with the proposal. I also spoke with the Robertson's; they own the apartment building to the west. They are also the ones doing the Front Street project which is somewhat similar to what this is proposing and they certainly sounded agreeable to the proposal. I've not heard from the Gumby's across the street. The gentleman that lives in the R-9 property just behind there, I was not able to track him down mail wise but I did hand deliver a copy of this flyer to him and left it at his home. Chairman Mr. Ed Wilson asked, Mr. Marland, did you hear from anybody about this? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir I received two calls, one was from Mr. Fisher that I spoke earlier about and I did receive a phone call from the gentleman in that R-9 house and he stated that he has no problems with what Mr. Atwood would like to do. Board Member Mrs. Sylvia Greeson asked, did I understand you to say that the RV will actually be garaged inside the building? Mr. Jeff Deal stated, yes ma'am. Board Member Mrs. Sylvia Greeson asked, there is an existing garage area or something else? Mr. Jeff Deal stated, it is of adequate height to accommodate the vehicle. Board Member Mrs. Sylvia Greeson asked, with some minor updating it could be turned into the garage? Mr. Jeff Deal stated, the existing door is not large enough so that will have to be enlarged but there is adequate clear height there to handle that. One attribute of this building is it is fully fire sprinkled, which is fairly rare in a building of that size and age so that will work very much in Dr. Atwood's favor when it affects code compliance and any alterations he plans to make. Chairman Mr. Ed Wilson asked, both floors are sprinkled? Mr. Jeff Deal stated, yes sir. Board Member Mrs. Sylvia Greeson asked, what is the square footage of the area that will be residential? Mr. Jeff Deal stated, roughly 3600. I believe that the upper floor square footage is reflective in the packet you received from the city staff. Board Member Mr. Mike Gee stated, an RV is kind of an overstatement; it's an up-fitted van. I mean it's a tall van. Mr. Jeff Deal stated, it's 115 inches tall I believe. Dr. Atwood stated, it's 115 1/2 inches tall. It's a sprinter van. Board Member Mrs. Sylvia Greeson asked, but it will be housed inside at all times. Mr. Jeff Deal stated, yes. Chairman Mr. Ed Wilson stated, Mr. Marland in terms of residents are we concerned about square footage, number of people in the dwellings; do we have any of those concerns or does the ordinance have any of those concerns. Zoning Enforcement Officer Mr. Chris Marland stated, what we would like to see is to make your motion contingent upon a transformation that meets all building code requirements, which will include stuff like you are saying like square footage and such. Board Member Mrs. Sylvia Greeson asked, it's just the matter that it is in fact going to be a resident in a commercial zoned area? Zoning Enforcement Officer Mr. Chris Marland stated, correct. It needs to still meet all

current building code requirements. Board Member Mrs. Sylvia Greeson asked, for residential, right and once he gets over that hurdle then he has to meet all those codes. Zoning Enforcement Officer Mr. Chris Marland stated, correct. Board Member Mrs. Sylvia Greeson asked, our issue though is just the residence? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, Mr. Deal does your client intend to comply with all building codes when he remodels the property? Mr. Jeff Deal stated, yes. Board Member Mr. Mike Gee asked, do you think that this use will materially endanger the public health or safety if it is approved? Mr. Jeff Deal stated, no sir. Board Member Mr. Mike Gee asked, do you feel like it will substantially injure the value of adjoining or abutting property? Mr. Jeff Deal stated, no quite the opposite. Board Member Mr. Mike Gee asked, do you feel like this will be in harmony with the area that it's going to be located in? Mr. Jeff Deal stated, yes. Board Member Mr. Mike Gee asked, Mr. Marland, are there specific requirements that need to be met? Zoning Enforcement Officer Mr. Chris Marland stated, other than the standard building code requirements I don't know if there are any. Board Member Mr. Mike Gee asked, Mr. Deal, you have testified that you and the applicant intend to meet all the standard building codes? Mr. Jeff Deal stated, yes. Chairman

**DISCUSSION & FINDING OF FACTS:** Chairman Mr. Ed Wilson stated, this is an application for a Special Use Permit. We have the Special Use Permit format for making a motion that we need to follow but it appears from our questioning of Mr. Deal and of Mr. Marland that this fits all of our conditions for a Special Use Permit. Is there any discussion? Board Member Mr. Eric Grant stated, I see no problem with it because it is adjoining residential property on the west already. Board Member Mrs. Sylvia Greeson stated, they are returning to the historic use of downtown which is residential upstairs and commercial downstairs. Most of downtown used to be that way at one time. It's a single dwelling, it's not multifamily. You aren't putting multiple families in that space, you will put one residential dwelling. Board Member Mr. Eric Grant stated, the inspection department will see that it meets all building codes for this particular application. Board Member Mrs. Sylvia Greeson stated, it's already sprinkled. Board Member Mr. Eric Grant stated, which is a plus.

**DECISION:** Board Member Mr. Mike Gee stated, I would like to make a motion that the four required conditions for issuing a Special Use Permit in accordance to Section 32.13.B(1)(a) are met due to the following Finding of Fact:

1. ***the use will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved;***  
the findings of fact are, testimony by the applicant's representative there will be no material danger to the public health or safety and no contradicting testimony to offset that.
2. ***the use meets all required conditions and specifications;***  
the findings of facts are, testimony from the City, Mr. Marland indicated that there are no specific requirements other than that the project being develop for residential use will be required to meet the standard building codes which will be enforced by the inspections department as noted in the discussion.
3. ***the use will not substantially injure the value of adjoining property or that the use is a public necessity;***  
the findings of fact are, testimony from Mr. Deal who is a realtor with Richard Jones Real Estate indicates that there will not be any negative effect adjoining or abutting property and there is no testimony to refute that statement.

4. **The location and character of the use if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Burlington and its environs;**  
the findings of fact are, testimony from the applicants representative that it is in harmony with the area and there is existing multi-family housing and single-family housing surrounding this property. It kind of brings it back to the feel of the historical downtown area.

Board Member Mrs. Sylvia Greeson seconded the motion.

**AYES: Giles, Gee, Wilson, Grant, Greeson**

**NOES:**

Board Member Mr. Mike Gee stated, I would like to make a motion to approve the Special Use Permit for Mr. Dillon T. Atwood to be located at 844 South Main Street due to the previously stated Finding of Facts, and the applicant be required to comply with all the residential building code requirements as he proceeds with developing to a residential use and that the applicant shall complete in accordance with the plans submitted and approved by this Board and if any of the conditions affixed hereto or any part therefore shall be held invalid or void then this permit shall be void and of no affect.

Board Member Mr. Eric Grant seconded the motion. The board voted unanimously to approve the Special Use Permit.

**AYES: Giles, Gee, Wilson, Grant, Greeson**

**NOES:**

**NEW BUSINESS:** None

**MEETING ADJOURNED**

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Ed Wilson, Chairman

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Kelly Peele, Secretary