

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**City of Burlington, NC**  
**September 13, 2016**

**Members Present**

**City:**

Mr. Ed Wilson, Chairman  
Mr. Mike Gee, Vice-Chairman  
Mr. Todd Smith  
Mrs. Joyce Lance

**Members Absent**

**City:**

Mr. Robert Giles II (Alt.)  
Mr. Eric Grant (Alt.)

**ETJ:**

Mrs. Sylvia Greeson (Alt. ETJ)

**ETJ:**

Mr. David McDevitt (Alt. ETJ)

Also present were 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 interrupts, disturbs, or disrupts to leave the meeting. Any person who fails to comply with this order is guilty of a class 2 misdemeanor. 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**

Vice-Chairman Mr. Mike Gee made a motion to approve the minutes. Board Member Mrs. Sylvia Greeson seconded the motion. The Board voted unanimously to approve the July 12, 2016 Meeting Minutes.

### **ITEM NO. 3:**

#### **CASE NO. 06-16 VARIANCE (City)**

**Chantelle Stoughton**

2264 Lakeview Ter.

Alamance County Tax Map number 12-21-23

§ Section 32.10.G.1

Fence height in residential area

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, case number 06-16 is for Mrs. Chantelle Stoughton at 2264 Lakeview Terrace, what they are here asking you for is a variance for their fence to be 6 ft. tall in areas where the code only allows a fence to be 4 ft. tall. The Zoning code states that between any street line and the building line the fence may only be 4 ft. tall. As you see on the plan that I have on the screen for you, the red line indicates they are completely enclosing their property around the lake with a fence. The area that I have marked off in the orange would be the 40 ft. building setback line where a fence could only be 4 ft. tall. The yellow line on the side of York Street would be a side street building line which is 20 ft. So in those 2 areas their fence can only be 4 ft. tall. They are here today to ask for a variance in those areas as they would like for the fence to be 6 ft. tall. Board Member Mrs. Sylvia Greeson asked, by code the fence can be 6 ft. tall in the other areas around their property? Zoning Enforcement Officer Mr. Chris Marland stated, yes ma'am. Chairman Mr. Ed Wilson asked, why do you have the 40 ft. and the 20 ft. setbacks noted on here? Zoning Enforcement Officer Mr. Chris Marland stated, those are the areas that, by code, the fence can only be 4 ft. tall when it is located in that area. Chairman Mr. Ed Wilson asked, so if they built the fence inside the 40 ft. it could be 6 ft. tall? Zoning Enforcement Officer Mr. Chris Marland stated, no. Chairman Mr. Ed Wilson stated, only 4 ft., ok. Board Member Mrs. Sylvia Greeson asked, the orange and yellow are just to designate the two separate areas where it can just be 4 ft.? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Vice-Chairman Mr. Mike Gee asked, but the yellow can only be how tall? Zoning Enforcement Officer Mr. Chris Marland stated, 4 ft. Acting Chairman Mr. Mike Gee stated, 4 ft. on all of it? Chairman Mr. Ed Wilson asked, along the street regardless of where the fence is located on the property? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Board Member Mrs. Joyce Lance asked, so we know they want to raise it by 2 ft., do we need to know the length of the fence? Zoning Enforcement Officer Mr. Chris Marland stated, no. Vice-Chairman Mr. Mike Gee asked, so it's not a variance of being able to move the fencing closer to the property line, it's the height of the fence that we are talking about here today? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, what's the intent for 4 ft. verses 6 ft. in the ordinance? Zoning Administrator Mr. Joey Lea stated, one can only assume it was for safety. I guess when the code was written they put a 4 ft. fence along the street for safety so you could see over it. For a corner we have sight easements where a fence can't go. Chairman Mr. Ed Wilson asked, do we have that issue here, in the corner here with York and Lakeview Terrace? Zoning Enforcement

Officer Mr. Chris Marland stated, yes sir, they are not going to construct a fence in that sight triangle corner. Board Member Mrs. Sylvia Greeson asked, will the fence be along the yellow lines or along the red? Zoning Enforcement Officer Mr. Chris Marland stated, along the red. Board Member Mrs. Sylvia Greeson asked, ok I see here in the application there is reference to it being setback to the 40 ft. would that be a change in how high the fence could be, if it was setback the 40 ft.? Zoning Administrator Mr. Joey Lea stated, all that is indicating is that within the area between the red and the orange nothing can be over 4 ft. tall, that is all that indicates. They want to run the fence along their property line and what we are showing you is, in that area by code, between the red and the orange, anywhere in there the fence can't be over 4 ft. tall. Board Member Mrs. Sylvia Greeson asked, if they went beyond that 40 ft. line they could build as tall as they want? Zoning Enforcement Officer Mr. Chris Marland stated, yes. Chairman Mr. Ed Wilson asked, does the Board have any more questions for the City?

Mr. David Stoughton stated, the main goal of the fence is basically to enclose the property. We've been talking to Chris and we only know of one other property that has a pond within its whole property so it's pretty unique. The main issue we've had is people coming over to it, and we can't really see it that well from the house, and they are lighting off fireworks and all sorts of other stuff around it. We've had a property before with a pool that had a 4 ft. fence and people would hop over that all that time, we put a 6 ft. aluminum fence up, like the one we are proposing here, and have had no one hop over that. We would like to do the same thing there. The main reason we feel it's kind of unique is because it is a pond fully enclosed inside the city's limits. We're just trying to prevent any accidents or from anything going on we wouldn't want going on. Mrs. Chantelle Stoughton stated, the issue with putting the fence close to the pond is, as you can see from the drawing from where the orange is, it almost cuts off the pond. It's going to look very unsightly. There is going to be a little bit of a trail of water with that. Our neighbors will support us on this issue because there is a lot of unauthorized traffic. We are about couple of streets over from LabCorp and it's a known smoking spot, they dump their cigarettes there, they hang out there, people in the morning, people in the afternoon. All the neighbors have all expressed concerns, in fact when we moved in, this is a picture of a sign that was put up not by us, but by a house that lives up the street because they were so sick and tired of seeing people coming to the pond, throwing things in the grass; throwing beer bottles and things like that. On the screen is a sample of the fence that we would do. Mr. David Stoughton stated, it's going to be a 6 ft. tall aluminum fence and we will put stone or brick columns every 50 ft. or so. It will look very nice. Chairman Mr. Ed Wilson asked, you intend to leave it open so you can see through? Mr. David Stoughton stated, yes with columns and no screening. It's mainly so people can't hop over it and cause an insurance liability for us. If you see the text you can see the compliance issues we are having with our insurance company, even to get it just temporarily, was quite an ordeal. I don't know how they were doing it before but it's definitely a liability whenever you can see a body of water from the road. It's clearly visible and that's where on insurance the real liability comes in. Chairman Mr. Ed Wilson asked, is this letter from your insurance company? Mr. David Stoughton stated, yes. Board Member Mrs. Joyce Lance stated, that just answered my question, I was wondering what the insurance company was recommending. Mrs. Chantelle Stoughton stated, it's very close to the road and I think it says in there that they recommend for insurance purposes that the body of water be no more than a 1000 ft. from the neighboring yard and ours is. The only reason they actually issued the policy temporarily is because we have a good track record with them because we are in real estate and we have a couple accounts with

them. Board Member Mrs. Sylvia Greeson asked, you just recently purchased this house correct? Mr. David Stoughton stated, correct. Chairman Mr. Ed Wilson asked, did I read in here you said the pond has been here 60 years and predates the roadway? Mr. David Stoughton stated, yes I saw it was on the plat map before they built the house. I'm not sure of the age but the house was built in 1962. Chairman Mr. Ed Wilson asked, alright anymore questions for the Stoughton's? Board Member Mrs. Joyce Lance stated, actually I do have some questions I'm sorry. There are several factors that we have to look at when we issue a variance and I just want to ask you these questions directly. We have to know that there are unnecessary hardships in a way of carrying out the strict letter of the ordinance. I've heard everything you have said and I think you have planned that well and in response to that particular factor what would you consider an unnecessary hardship? Mr. David Stoughton stated, unnecessary and unique I say to the property is the liability that is associated with the property because of the pond. Board Member Mrs. Joyce Lance asked, would you consider it a hardship that you have uninvited visitors to your property? Mr. David Stoughton stated, yes absolutely and the property has sat vacant for a while I think that has only increased that and word has spread. It was something that when we were visiting the property prior to owning it, we would see people there or around the property even after, we still see them around the property. Board Member Mrs. Joyce Lance stated, I think you have answered this, the hardship resulting from the conditions resulting that are particular to the property such as location or size, I think the pond is what we are dealing with here? Mr. David Stoughton stated, right, according to the guidelines we would be putting the fence through the pond if we build it 6 ft. tall. Board Member Mrs. Joyce Lance asked, did this hardship result from any actions taken by you? Mr. David Stoughton stated, aside from buying it, no. Board Member Mrs. Joyce Lance asked, do you feel like if we approve this variance that it will be consistent with the spirit, purpose and intent of the ordinance, such as public safety secured and substantial justice is achieved? Mr. David Stoughton stated, I think so, unless somebody else has a similar case, like I said we've done some research and we didn't see anybody else. Board Member Mrs. Joyce Lance asked, how deep is the pond? Mr. David Stoughton stated, not sure. Board Member Mrs. Joyce Lance asked, is it enough for a kid to drown? Mr. David Stoughton stated, easily. Board Member Mrs. Joyce Lance stated, there's your safety issue. Mr. Michael Brennan stated, I am the neighbor to the south and Helen and I have been in this area for 29 years. Having acquired our property from the Abernathy's we have the pentagon plus we own the property deeper to the right beyond that orange line, so we own the entire southern boundary. I don't need to say much other than I agree, for safety and security this is a wise move and if you are going to build a fence, build a fence. Chairman Mr. Ed Wilson stated, we will now close for discussion among the Board.

**DISCUSSION:** Chairman Mr. Ed Wilson stated, it seems that they meet the variance requirements here as we pulled out with our questioning. The pond predates the house. The house is 60 some years old and all that predates the roadway. The pond can be seen from the roadway and that would be the hardship as the way the pond is laid on the property after the roadway was laid in. The insurance company deems it an unattractive nuisance and recommends they put up a 6 ft. fence. He has shown a fence that is easy to see thru so it doesn't seem to effect any sight lines. He is not building, as the City testified, a fence in the sight triangle at the corner of his lot. It seems here, in my opinion, everything is in order and perfect. Board Member Mrs. Sylvia Greeson stated, I'm curious of why this has never come up before. If their house has been there this long then why hasn't a prior insurance company required this? I think it's certainly

time that we take care of it, just curious. Chairman Mr. Ed Wilson stated, we don't know. Dr. Abernathy owned the house a long, long time. Board Member Mrs. Sylvia Greeson stated, it's never been addressed. Board Member Mrs. Joyce Lance stated, I see this having a body of water as a pool. And I do know that insurance companies generally recommend 6 ft. and to go higher than what the City's ordinance suggest. Like the applicant said, anybody can jump over a 4 ft. fence. There is also an aesthetic issue here to as far as how it won't drop from 6 ft. to 4 ft., so it will be 6 ft. all the way around and it will be an aesthetic thing too. Board Member Mrs. Sylvia Greeson stated, yeah I think this should have been handled years ago. Zoning Administrator Mr. Joey Lea, stated, Mr. Chairman, I just wanted to remind you that we do not do a whole lot of variance cases so, due to the changes that were in the statute on the four conditions that need to be approved, all those have to be met and our last discussion, when a motion is made whether to approve or not, you should do it in the same manner you do in the special use cases. Read each one of the conditions, give your finding of facts then give your motion. It's a little different than the way we used to do it.

**DECISION & FINDINGS OF FACT:** Board Member Mrs. Joyce Lance stated, I make a motion that we approve a variance to increase the height of the fencing from 4 ft. to 6 ft.. The variance is for Chantelle Stoughton 2264 Lakeview Terr., Burlington, NC 27215. I am proposing we approve this variance due to the following relevant factors:

- 1) ***Unnecessary hardship in the way of caring out the strict letter of the ordinance it shall not be necessary to demonstrate that in the absence of a variance for reasonable use can be made of the property.***

Our applicants well described the liability that they perceive and I think that is a reasonable perception. They have also testified they have unwanted visitors there of all ages on their private property. I believe that the 6 ft. fence versus the 4 ft. fence would be a good resolution to the problem.

- 2) ***The hardship results from conditions that are peculiar to the property such as location, size, or topography. Hardships resulting from personal circumstance as well as hardships resulting from conditions that are common to the neighborhood of the general public may not be the best bases for granting a variance.***

There is a pond on this property that they have purchased. I doubt that any reputable fencing company is going to run a fence through a pond, so I believe that is the condition of the property that they are faced with.

- 3) ***The hardship did not result from actions taken by the applicant or the property owner.***

The hardship has nothing to do with the owners of the property, they are simply trying to improve a dangerous situation.

- 4) ***The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.***

I think the public safety is an issue because of the body of water and a potential for a child drowning as well as intoxicated adults and other unseemly characters that might decide to be on their property. I believe that will handle the public safety issue.

Board Member Mrs. Sylvia Greeson seconded the motion. The Board voted unanimously to approve the variance.

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

**NOES:**

**ITEM NO. 4:**

**CASE NO. 07-16 SPECIAL USE PERMIT (City)**

**ARMC Family Enrichment Center**

981 Kirkpatrick Rd.

Alamance County Tax Map number 3-22-31

§ Section 32.13.W

Child care facility

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, case number 07-16 located at 981 Kirkpatrick Road for ARMC Family Enrichment Center. This is an existing child care facility that right now cares for 82 children. They have come back to seek an amendment to the Special Use Permit to allow for 158 children. They have gone through TRC, they met the technical aspects for the code as far as fencing and everything we look at for the daycare centers. Again this is an existing child care facility.

Mr. Kyle Smith stated, currently the center has a need for approximately 114 children and right now their Special Use Permit only allows for 82. Chairman Mr. Ed Wilson asked, is that per-shift? Mr. Kyle Smith stated, that is total for all shifts. Board Member Mrs. Joyce Lance asked, how many shifts do you have? Mr. Kyle Smith stated, we only have 1 that I am aware of.

Board Member Mrs. Joyce Lance asked, 1 shift, you only do daycare in the day time and not in the evenings? Mr. Kyle Smith stated, not that I'm aware of. Chairman Mr. Ed Wilson asked, are you a contractor? Mr. Kyle Smith stated, I'm an engineer for them. Board Member Mrs. Joyce Lance asked, for ARMC? Mr. Kyle Smith stated, yes ma'am. With the approval of this expansion we are proposing to add additional parking to meet the needs for the center. We recently added additional parking and a drive off of Kirkpatrick Road that connects to the hospital. With this expansion we would add parking into the back to tie into that so it would eliminate some of the need to go out on Kirkpatrick Road. They could go access the site directly from that new parking area shown in grey there. Chairman Mr. Ed Wilson asked, you are going to add parking; is there any other changes to the building or to the playground area? Mr. Kyle Smith stated, the building will be renovated inside to accommodate additional children. The playground area will have to be expanded to meet the square footage required, all that is detailed in the plans there. We meet everything required; all the space requirements. Vice-Chairman Mr. Mike Gee asked, that is subject to the State of North Carolina? Mr. Kyle Smith stated, yes sir. Vice-Chairman Mr. Mike Gee asked, do you think this request is in harmony in the area that it is in? Mr. Kyle Smith stated, yes. Chairman Mr. Ed Wilson asked, how long has the child care

facility been there? Mr. Kyle Smith stated, the original Special Use Permit was approved September of 2000. Vice-Chairman Mr. Mike Gee asked, are there any other child care facilities that service employees for ARMC? Mr. Kyle Smith stated, not directly on the property, no.

Zoning Enforcement Officer Mr. Chris Marland stated, yes sir, in reviewing the application once we received it I noticed that they had filled out existing use proposed use child care facility, they did not give us any numbers so I contacted the number that we have here for their construction manager and that's where I received the 158 children number from. I just wanted to explain to you why I said 158 and he said 114. Board Member Mrs. Joyce Lance asked, if we allow the 158 it gives them more room for expansion and more kids, right? You want to go with the 158? Zoning Enforcement Officer Mr. Chris Marland stated, correct. I also explained to them the shifts and how the shifts work and he said they were asking for whatever they could get, so that would have been up to 158 children on 3 shifts. That's what I explained to him. Board Member Mrs. Sylvia Greeson asked, on 3 shifts or 1 shift? Zoning Enforcement Officer Mr. Chris Marland stated, that's what I explained to him, the 3 shifts versus 1 shift, and how if they ever wanted to add another shift they would have to come back, he said they wanted to ask for 3 shifts. Board Member Mrs. Sylvia Greeson asked, 158 children per each shift? Zoning Administrator Mr. Joey Lea stated, I think we need to ask Mr. Smith what the facility was designed for. This is tied to a specific number. Board Member Mrs. Joyce Lance asked, do you think it's possible that there is more than 1 shift running right now? Mr. Kyle Smith stated, it is possible but I'm not aware of that. I asked Mr. Williams to join us today and he had other obligations. Board Member Mrs. Joyce Lance stated, being in health care myself I can't imagine at the hospital they have a daycare just for daytime. Since it's a 24/7 operation and when you said that it sort of surprised me, but I don't know the answer. Chairman Mr. Ed Wilson asked, do you know how many children the facility is designed for? Mr. Kyle Smith stated, 158. The new design will be designed for 158 children. Now whether that will be on 1 shift or 3 shifts I don't know but the facility can handle 158 children. Chairman Mr. Ed Wilson asked, at any one time the facility will be able to handle 158 kids after the renovations? Mr. Kyle Smith stated, yes sir after the renovations. Zoning Administrator Mr. Joey Lea asked, outside play area? Mr. Kyle Smith stated, yes sir. Board Member Mrs. Joyce Lance asked, so Mr. Lea, if we would choose to approve a Special Use Permit it seems like for expediency we would want to approve it for up to 3 shifts and up to 158 children, right? Vice-Chairman Mr. Mike Gee stated, based on the capacity of the building and meeting all the regulations for a daycare center imposed by the state of North Carolina. Board Member Mrs. Sylvia Greeson asked, its per-shift that they will be able to handle 158. First 158, second 158, third 158, right? Mr. Kyle Smith stated, it will be able to handle 158 regardless. Board Member Mrs. Joyce Lance stated, well I'm confused now, I thought when you said 158 you are talking 158 per 24 hours. Zoning Administrator Mr. Joey Lea stated, 158 per shift. Board Member Mrs. Sylvia Greeson asked, at any one time you can have up to 158 children in the building? Plus the adults that go with it. Mr. Kyle Smith stated, yes. Chairman Mr. Ed Wilson asked, that is allowed by our ordinance? Zoning Administrator Mr. Joey Lea stated, correct. Chairman Mr. Ed Wilson asked, you are aware that you have state requirements with the daycare facility? Mr. Kyle Smith stated, yes sir. Chairman Mr. Ed Wilson stated, ok. You will have to meet them as well and that may or may not be 158, I don't know. Board Member Mrs. Joyce Lance asked, do you know if they have already been met? Did that application already get approved, or did you have to come here first? Chairman Mr. Ed Wilson stated, they have to come here first.

**DISCUSSION & FINDING OF FACTS:** Vice-Chairman Mr. Mike Gee stated, I think it meets all the conditions. Board Member Mrs. Joyce Lance stated, it does, it's our sort of routine Special Use Permit where they are just expanding their business, and there is a need. Chairman Mr. Ed Wilson stated, I agree. Would somebody like to make a motion?

**DECISION:** Vice-Chairman 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, being that this is an existing child care facility with an existing Special Use Permit handling 82 children per shift that was granted in September of 2000. It has been in operations for 16 years.
2. **the use meets all required conditions and specifications;**  
the findings of fact are, as testified by Mr. Marland with the City, this plan has passed through the Technical Review Committee. The applicant has also noted that renovations will be made to the building to accommodate up to 158 children at any given time. There is additional parking that will be implemented along with a drive connecting to the hospital to alleviate some of the traffic on Kirkpatrick Road as well as expanding the playground.
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, this is an existing facility. The applicant has testified there is not another child care facility that services the employees of ARMC on this location so that tells me it is a public necessity if they need to house additional children.
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, this facility is already in place and it is in harmony with the area it is located.

Board Member Mrs. Joyce Lance seconded the motion.

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

**NOES:**

Vice-Chairman Mr. Mike Gee stated, I would like to make a motion to approve the Special Use Permit for ARMC Family Enrichment Center to be located at 981 Kirkpatrick Road Burlington, North Carolina due to the previously stated Findings of Fact and that this is an amendment to the Special Use Permit that will allow up 158 children per-shift subject to the requirements for the state of North Carolina that govern child care centers. The applicant shall complete the

development in accordance with the plans submitted and approved by this Board and if any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of effect.

Board Member Mrs. Sylvia Greeson seconded the motion. The board voted unanimously to approve the Special Use Permit.

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

**NOES:**

**ITEM NO. 5:**

**CASE NO. 08-16 SPECIAL USE PERMIT (City)**

**Army of Christ Kingdom Builders**

705 Floyd St.

Alamance County Tax Map number 111-462-96

§ Section 32.9

Churches in I-2 district

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, case 08-16 is for Army of Christ Kingdom Builders at 705 Floyd Street. They are seeking a Special Use Permit to operate a church at this location with a 50 member capacity. We have spoken with them on numerous occasions and the parking will be met. I received 5 phone calls on this property as soon as the signs went up. Everyone was happy for it to be used as a church. Vice-Chairman Mr. Mike Gee asked, does it meet the general requirements? Zoning Administrator Mr. Joey Lea stated, yes it does. Board Member Mrs. Sylvia Greeson asked, what else is in that building currently? Zoning Enforcement Officer Mr. Chris Marland stated, in that spot right now it is vacant. I know there are some offices in there and I believe the applicant can testify a little more on that. Vice-Chairman Mr. Mike Gee asked, this might not be relevant but a 50 member capacity is there a restriction on how many people can be in that building, does fire code dictate that? Zoning Administrator Mr. Joey Lea stated, the restriction on the building code is that anything over 50 changes the occupancy of the building. Vice-Chairman Mr. Mike Gee asked, so they will have to come back and comply with that? Zoning Administrator Mr. Joey Lea stated, they will testify to you that they will not have that many people.

Mrs. Donna Alston stated, we started out in another area and I thank God that a situation came up that we didn't like it at first but God is a good God and we want to do everything decent and in order because everything we go by is what the word said, we're supposed to do everything in decent order. We were told the steps that we needed to take to open up another place and so we have been following everything that we needed to do. At Ray's Storage there is also another church there, Christian Cathedral, I think that is the name of it with Pastor Overson. We introduced ourselves to him and let him know that we were planning on setting up a church there so he didn't have any problems with that. Mr. Ray even checked with him to see if it was ok. There are 2 hair salons there and we are in between the 2 hair salons, there is also a Kirby store there. There is ample parking. What we want to do is help those that are in need. We found out that we had to follow a proper protocol. Whatever it is that we need to do that we would do that;

also with the occupancy we only have like 10 right now but we don't know how it's going to grow. We hope that it will grow and we hope that we can help many dying souls come to Christ and help the community.

Board Member Mrs. Joyce Lance asked, Ms. Alston may I ask what services you plan and what days and how much you will be in that building? Ms. Alston stated, Sunday's we will have service, if we have additional service in the afternoon and then we have Bible study on Wednesday and then the Lord has told me to have a special Bible study just for children. People always want to put children to the side, but these children need to learn also. Board Member Mrs. Joyce Lance asked, right, I know in a moment we will be asking if anybody from the public that wants to speak or anything, have you talked to the neighbors and other people about what you are doing and what kind of response have you gotten? Ms. Alston stated, yes and they were happy and even said that they would like to come and see what we were all about. Board Member Mrs. Joyce Lance asked, you feel like by having this church you are not hurting the adjoining properties or doing anything to injure any real estate values or anything like that? Ms. Alston stated, no ma'am. Board Member Mrs. Joyce Lance asked, no one has said anything? Ms. Alston stated, no. Board Member Mrs. Joyce Lance stated, I think we all know that a church is a public necessity so I think that requirement would be ok and I think you mentioned that there is another church close by and so you fit into the neighborhood. I think the City testified that you met all the requirements and conditions for the City so I think that's all my questions. Chairman Mr. Ed Wilson asked, are you making any changes to the space? Ms. Alston stated, no, we just plan on putting up a sign. Board Member Mrs. Joyce Lance asked, and you do want to have up to 50 in the congregation if possible and the number 50 is to correlate with the fire code is that how you came up with that number? Ms. Alston stated, yes ma'am. Board Member Mrs. Joyce Lance asked, you have 10 members now you think? Ms. Alston stated, yes ma'am.

**DISCUSSION & FINDING OF FACTS:** Board Member Mrs. Joyce Lance stated, I feel like the requirements are here. Board Member Mrs. Sylvia Greeson stated, there are other churches in the area. Board Member Mrs. Joyce Lance stated, right and other businesses with well-traveled roads and there's no problems that I can see. Chairman Mr. Ed Wilson stated, I agree.

**DECISION:** Board Member Mrs. Joyce Lance 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, this is an existing building with surrounding businesses with adequate safety and no danger to the public health.
2. ***the use meets all required conditions and specifications;***  
the findings of fact are, the City has testified that granting this Special Use Permit that all conditions have been met for the City.

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, churches are considered a public necessity. There are no expert witnesses here, no realtor, broker or so forth to say there would be any injury to the value of the adjoining or abutting property.
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, there is another church in the area and within a close distance.

Board Member Mrs. Sylvia Greeson seconded the motion.

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

**NOES:**

Board Member Mrs. Joyce Lance stated, I would like to make a motion to approve the Special Use Permit for Army of Christ Kingdom Builders Church represented by Donna Alston to be located at 705 Floyd Street, Burlington, North Carolina due to the previously stated Findings of Fact and that the applicant be required to only seat up to 50 people in the building based upon the fire code and that the applicant shall complete the development in accordance with the plans submitted and approved by this Board and if any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of effect.

Vice-Chairman Mr. Mike Gee seconded the motion. The board voted unanimously to approve the Special Use Permit.

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

**NOES:**

**ITEM NO. 6:**

**CASE NO. 09-16 VARIANCE (City)**

**Richard D. Johnson Jr.**

1711 Vanderbilt Ct.

Alamance County Tax Map number 6-4B-183

§ Section 32.3.E.5

Side setback requirements in R-9 zone

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, case 09-16 is at 1711 Vanderbilt Court. Mr. Johnson had a concrete patio installed at his home when it was built. He hired a contractor to enclose the patio, he believed that they pulled all the necessary permits; they did not so he came in to get the permits and found out that it is too close to the property line. He is here today seeking a variance for 4 ½ ft. to the side property line for the enclosed room. Vice-Chairman Mr. Mike Gee asked, it has already been built? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir.

Board Member Mrs. Joyce Lance asked, the variance for 4.5 ft. is on what line, the side? Zoning Enforcement Officer Mr. Chris Marland stated, yes ma'am. Chairman Mr. Ed Wilson asked, so the variance is a 4.5 ft. side yard setback? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir. Board Member Mrs. Joyce Lance asked, does it matter what side, we want that in the variance don't we? Zoning Administrator Mr. Joey Lea stated, I would state it. Chairman Mr. Ed Wilson asked, if you could just tell me again how this happened? The concrete patio was there then a builder came in and enclosed it and Mr. Johnson presumed he got all the correct permits but he did not? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir that is what Mr. Johnson stated, he can attest to that. Board Member Mrs. Sylvia Greeson asked, what should the setbacks be? Zoning Enforcement Officer Mr. Chris Marland stated, 10 ft. Zoning Administrator Mr. Joey Lea stated, the ordinance will allow for an uncovered porch in that area to extend 4 ft. into the required setback. Chairman Mr. Ed Wilson asked, the patio that was there was in compliance? Zoning Enforcement Officer Mr. Chris Marland stated, yes. Chairman Mr. Ed Wilson asked, it could be elevated and go in 4 ft. as long as it is not covered? Zoning Administrator Mr. Joey Lea stated, correct. Board Member Mrs. Joyce Lance asked, did you get any calls from the neighbors? Zoning Enforcement Officer Mr. Chris Marland stated, yes, I received numerous calls on this property. Nobody I spoke to had any problems with the granting of the variance if you choose to do so. Vice-Chairman Mr. Mike Gee asked, when did the City become aware of this? Zoning Enforcement Officer Mr. Chris Marland stated, when Mr. Johnson came in for a permit, after it had been built. Board Member Mrs. Joyce Lance asked, do you know how big this porch is? Zoning Enforcement Officer Mr. Chris Marland stated, 8 ft. X 30 ft. Board Member Mrs. Joyce Lance asked, I think what you are saying is that Mr. Johnson was attempting to do the right thing by getting a permit at that time because he find out there wasn't one, and that is when he learned that this is really not ok? Zoning Enforcement Officer Mr. Chris Marland stated, correct.

Mr. Richard Johnson, Jr. stated, I hired a contractor to build a screened in porch. The contractor said he would take care of everything in the way of the building permits. After it was completed I asked him about the building permit and he told me he would talk to me about it the next day and I haven't heard from him since. I came down to check on it myself and that's when I found out that I didn't have one and that one was never requested. I went ahead and tried to get one myself. Board Member Mrs. Joyce Lance asked, do you mind telling us who the contractor is? Mr. Richard Johnson, Jr. stated, it was a guy named Lopez out of Winston-Salem. Board Member Mrs. Joyce Lance asked, how did you find him? Mr. Richard Johnson, Jr. stated, from a friend. He had built a deck for a friend of mine in Winston and he recommended him. He built the porch but he wasn't very reliable. Board Member Mrs. Joyce Lance asked, you are happy with the structure? Mr. Richard Johnson, Jr. stated, I'm happy with the structure but I just wish I would have known beforehand about the 10 ft. setback, we could have done it right the first time. Chairman Mr. Ed Wilson asked, do you live in the house? Mr. Richard Johnson, Jr. stated, yes sir I do. Chairman Mr. Ed Wilson asked, is this house in Graham? Mr. Richard Johnson, Jr. stated, yes it is. Zoning Enforcement Officer Mr. Chris Marland stated, it is in the City of Burlington but however their post office address says Graham. Mr. Richard Johnson, Jr. stated, yeah my mailing address is Graham. Board Member Mrs. Joyce Lance stated, well you do have a dilemma here and you just trusted this gentleman to do what he said he was going to do, you didn't check on it at the time. You never saw a permit posted? Mr. Richard Johnson, Jr. stated, no ma'am I didn't. I was in the military for 30 years so I wasn't familiar with those type things.

Chairman Mr. Ed Wilson asked, where is the front door to your house, I see the driveway? Is your front door where the driveway is? Mr. Richard Johnson, Jr. stated, yes sir. Chairman Mr. Ed Wilson asked, you are on a corner lot here too? Mr. Richard Johnson, Jr. stated, yes my lot is kind of odd shaped the way it is. I have the only lot on the block that is shaped like mine. Everyone else has adequate side yards and back yards. The place to construct the screened-in porch was kind of triangular in shape. Chairman Mr. Ed Wilson asked, the concrete pad was existing? Mr. Richard Johnson, Jr. stated, I had a small 6 ft. pad. Board Member Mrs. Joyce Lance stated, you were attempting to improve your property? Mr. Richard Johnson, Jr. stated, yes ma'am. Board Member Mrs. Joyce Lance stated, I didn't drive out to your property, I admit and I've read what you've said here about your property line being closer than any other house. How does the addition look? Mr. Richard Johnson, Jr. stated, it looks ok. I've talked to my neighbors about it and nobody seems to have any problem with it either. Board Member Mrs. Joyce Lance asked, nobody brought it up while it was being built either? Mr. Richard Johnson, Jr. stated, no ma'am. Chairman Mr. Ed Wilson stated, it's inside a wooden fence, it has an obstructed view. Board Member Mrs. Joyce Lance stated, we do have cases that come before us that know exactly what they are supposed to do and they don't like what they are supposed to do and so they do what they want to do anyway and then ask for forgiveness later. I would admit since I have been on this Board it is usually the contractors that have done that and not the homeowners. You are telling us under oath that this was an error made, you didn't know about it, you couldn't fix something you didn't know about and now you have got this screened in porch and you don't want to have to take the roof and the screening down? Mr. Richard Johnson, Jr. stated, yes ma'am. Board Member Mrs. Sylvia Greeson asked, you believed that all the permits had been pulled before any of the work had begun? Mr. Richard Johnson, Jr. stated, yes ma'am. That was one of the deciding factors of having it built. He said that he would take care of everything. Board Member Mrs. Joyce Lance asked, what have you learned from this? Mr. Richard Johnson, Jr. stated, if I have anything else built to make sure the permits are pulled before any nail or wood is put together.

**DISCUSSION:** Vice-Chairman Mr. Mike Gee stated, I think it was an honest error. Board Member Mrs. Joyce Lance stated, I think all of us have experienced unscrupulous people and I think this was his turn. I don't have the heart and I know my heart has nothing to do with this but to ask him to tear down the roof and the screen part is just a bit much I think. I would admit if we had 25 or 30 people in here saying get rid of it then we would have to listen to that but we don't have a single person here that has a problem with it and he made a human error by not checking. Chairman Mr. Ed Wilson stated, I'm noticing the lot is odd shaped, it's a corner lot and it is an odd shape and it certainly creates an odd angle in the back. He defined the irregular shape lot as his hardship with no backyard space even though that's his side yard, he is using it as his backyard. Zoning Administrator Mr. Joey Lea stated, to confuse things further the house fronts Vanderbilt but the front of the lot is on Burlington Court. Board Member Mrs. Sylvia Greeson asked, he treats it as a backyard but you are saying technically it's the side yard even though it's the backyard of the house? Zoning Administrator Mr. Joey Lea stated, on a corner lot the narrow side is always the front. It doesn't matter which way you turn the house. Board Member Mrs. Sylvia Greeson stated, the porch doesn't obstruct anyone's traffic view and it's not creating a hazard or impediment to anyone else. Chairman Mr. Ed Wilson stated, there are no safety issues. It's inside of a fenced in yard. The fence was existing before the screened-in porch.

**DECISION & FINDINGS OF FACT:** Vice-Chairman Mr. Mike Gee stated, I would like to make a motion to approve the 4 ½ ft. side yard setback defined to the plan that is already in place based on the following Finding of Facts:

- 1) **Unnecessary hardship would result from caring out the strict application in the ordinance.**  
the unnecessary hardship that was created from carrying this thing out is the fact that this porch is already built and it's probably unreasonable and a major hardship to the homeowner to ask him to tear it down. Based on his testimony the hardship was not made willfully by the homeowner but by an unscrupulous contractor.
- 2) **The hardship results from conditions that are peculiar to the property such as location, size, or topography.**  
as has been discussed by the irregular shape of the lot, the way that the house is situated on the property is peculiar and did create the need for a variance.
- 3) **The hardship did not result from actions taken by the applicant or the property owner.**  
based on testimony the property owner did build the porch but the understanding was that the contractor had done all that was required to make this a legal structure with the City of Burlington when in actual reality the applicant, upon learning of that, took the appropriate steps to make this a complying structure.
- 4) **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.**  
I think by granting the variance that justice is achieved in this situation, based on some of the facts that are already been discussed, I think that public safety is not an issue. It does create a smaller backyard for the applicant and there is already fencing on the property and there should be no issues with adjoining property owners.

Board Member Mrs. Joyce Lance seconded the motion. The Board voted unanimously to approve the variance.

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

**NOES:**

**NEW BUSINESS:** None

**MEETING ADJOURNED**

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H.E. Wilson III, Chairman

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Kelly Peele, Secretary