

**KINGSPORT BOARD OF ZONING APPEALS AGENDA**

**Thursday, February 7, 2013**

Development Services Building - first floor, Bob Clear Conference Room

CALL TO ORDER – 12:00 P.M. NOON

INTRODUCTION / MEETING PROCEDURES

ADMINISTRATION OF OATH TO PERSONS WISHING TO TESTIFY

**PUBLIC HEARINGS:**

**1. Case: 13-701-00001 – Property located at 2400 John B. Dennis Hwy Control Map 47, Parcel 11.30** Requests special exception use to [Sect.114-191 (c)(7)] in order to locate a church at this location. The property is located in a P-1, Professional Office District that allows a church as a use by special exception from the Board.

***INTERESTED PARTIES:***

Owner: J. Mark Properties, LLC  
2400 John B. Dennis Hwy Suite 3  
Kingsport, TN 37660  
(423)416-0959  
jmarkco@aol.com

Applicant /Agent: Jessy Frady  
116 Stratton Place  
Kingsport, TN 37663  
(423)817-2543  
jessyfrady@yahoo.com

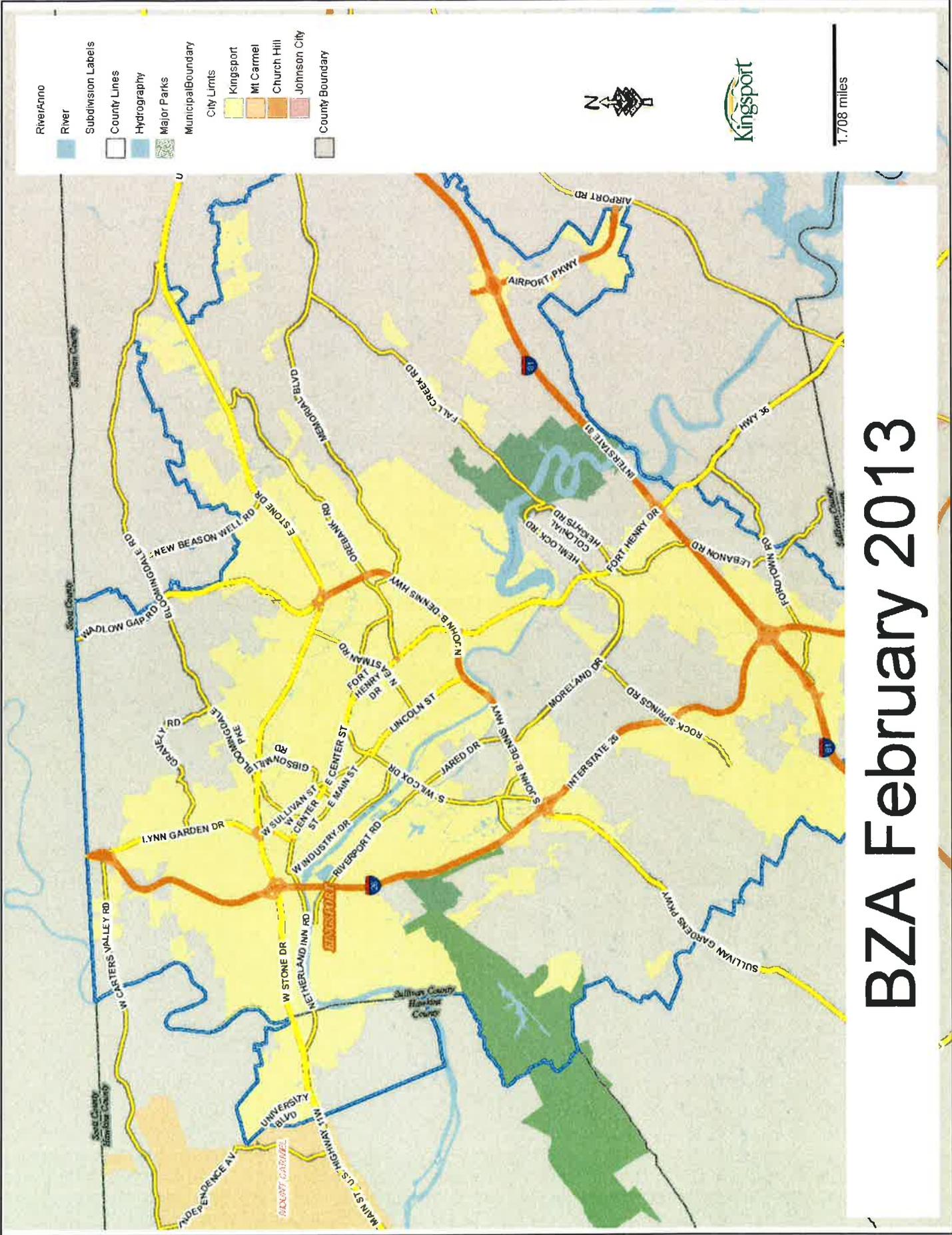
Engineer/Architect: Same As Above

**BUSINESS:**

- Election of Officers
- Approval of the December 6, 2012 minutes.
- Stating for the public record, the next application deadline February 15, 2013 at noon, and meeting date (Thursday, March 7, 2013).
- Staff Reports

**ADJUDICATION OF CASES:**

**ADJOURNMENT:**



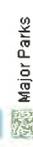
River/Arroyo



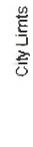
Subdivision Labels



County Lines



Hydrography



Major Parks



Municipal Boundary



City Limits



Kingsport



Mt Carmel



Church Hill



Johnson City



County Boundary



1.708 miles

# BZA February 2013

## MEMORANDUM

TO: KINGSFORT BOARD OF ZONING APPEALS  
FROM: Karen B. Combs, PRINCIPAL PLANNER  
DATE: January 15, 2013  
RE: 2400 John B. Dennis Hwy Suite3

The Board is asked to consider the following request:

**Case: 13-701-00001 – Property located at 2400 John B. Dennis Hwy Control Map 47, Parcel 11.30**

Requests special exception use to [Sect.114-191 (c)(7)] in order to locate a church at this location. The property is located in a P-1, Professional Office District that allows a church as a use by special exception from the Board.

Meeting 2-7-13

**APPLICATION**  
Board of Zoning Appeals



<b>APPLICANT INFORMATION: - DWYON</b>			
Last Name	J. Mark Properties, LLC	First	M.I.
Street Address		Date	
2400 J.B. DENNIS Suite #3		1-14-13	
City	Kingsport	State	TN
Phone	423.416.0959	E-mail Address	JMarkCo@AOL.com
Apartment/Unit #		ZIP	
Suite #3		37660	

<b>PROPERTY INFORMATION:</b>			
Tax Map Information	Tax map: 047	Group:	Parcel: Lot: 011.30
Street Address	Apartment/Unit #		
2400 John B Dennis Kingsport TN 37660	3		
Current Zone	Variance Request/ Special Exception		
P1			
Current Use	Proposed Use		
Office	Church		

<b>REPRESENTATIVE INFORMATION: - LIDA - Church Christ Covenant Church</b>			
Last Name	Fredy	First	Jessy
Street Address		M.I.	Date
116 Stratton Pl.		W.	1-15-13
City	Kingsport	State	TN
Phone	423-817-2543	E-mail Address	jessyfredy@yahoo.com
Apartment/Unit #		ZIP	
		37663	

<b>REQUESTED ACTION:</b>	Special Exception Use to allow a church in a P-1 - Sect 114-191(c)(7)
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**DISCLAIMER AND SIGNATURE**

By signing below I state that I have read and understand the conditions of this application and have been informed as to the location, date and time of the meeting in which the Board of Zoning Appeals will review my application. I further state that I am/we are the sole and legal owner(s) of the property described herein and that I am/we are appealing to the Board of Zoning Appeals.

Signature: <u>J. M. Kelly Mgr. J. Mark Properties, LLC</u>	Date: <u>1-14-13</u>
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Signed before me on this 14<sup>th</sup> day of January, 2013,  
 a notary public for the State of Tennessee  
 County of Hawkins

Notary [Signature]  
 My Commission Expires 7-7-15



Christ Covenant Church

To: Board of Zoning Appeals Members

We are applying for use of the following address 2400 John B. Dennis Kingsport, Tn to be used for a congregational church. All activities will be directly connected to our fellowship. Our meetings will be for worship and study. Our congregation consists of 38 members. Our vehicle load is approximately 12 vehicles. We will be meeting during the week in the evening on Wednesday from 6pm possibly to 9pm and meeting on the weekend on Sundays from 10am to 2pm. Time estimated. There is a safe entrance and same exit to the building running south on the highway. The property has sufficient parking for a small congregation. The building is very appealing to the surrounding businesses'. There is a business open Monday thru Friday next to the proposed building. We anticipate being able to function very well with the other establishments. There is no residential area around the building. Thank you for your consideration and time.

Sincerely,

Jessy W. Frady

Pastor

Christ Covenant Church



Sullivan Co Parcels  
 Hawkins Co Parcels  
 Mount Carmel Zoning  
 Zoning  
 Local Streets

Private Street  
 Local Street  
 Collector Street  
 Major Roads

Ramp  
 Expressway  
 Interstate  
 Minor Arterial  
 Major Arterial

River/Arroyo  
 Subdivision Labels

Golf Course  
 Hospital  
 Schools  
 Fire Stations

Hydrography  
 Urban Growth Boundary  
 County/Muni Boundary

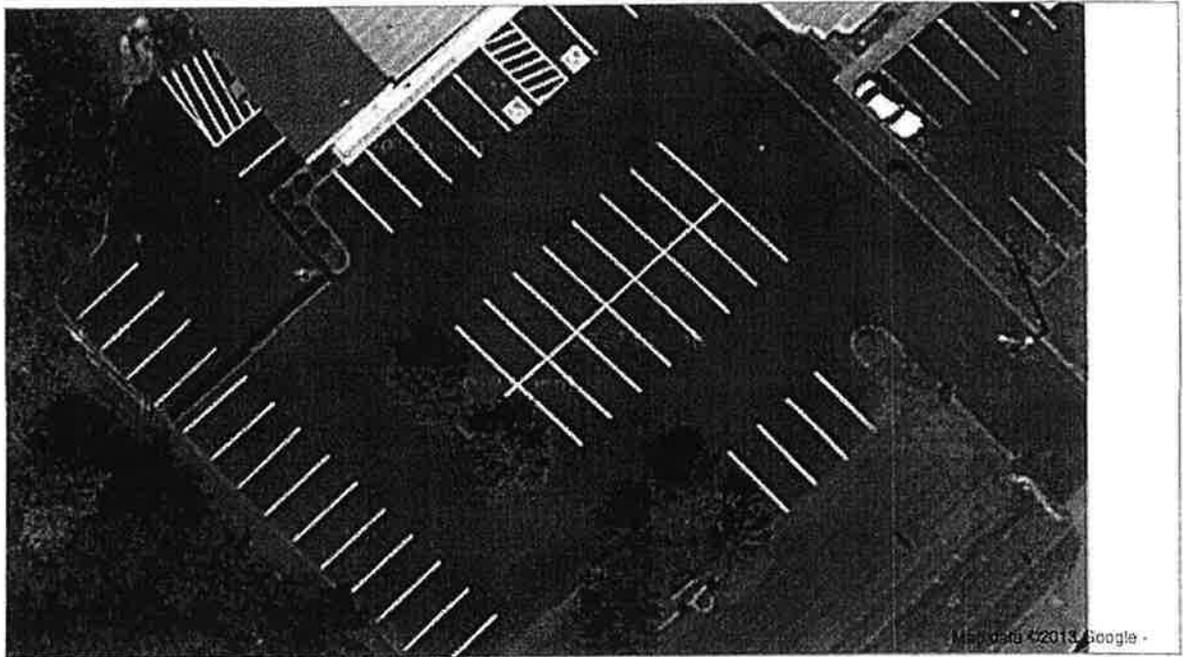


88 ft

# 2400 John B Dennis Hwy

Google

To see all the details that are visible on the screen, use the "Print" link next to the map.



**Special Exception Worksheet  
for**

**Case: 13-701-00001 – Property located at 2400 John B. Dennis Hwy Control  
Map 47, Parcel 11.30**

***Standards for Special Exception Use Variances***

A Special Exception allows a use of land that is not permitted in the district in which the property is placed. Because this type of relief is so significant, granting of a special exception requires the existence of an unnecessary hardship, which is demonstrated by showing that:

***1. The property would be uniquely restricted from a reasonable use for the purposes permitted in that zone district.***

The principle behind a special exception is that it is necessary because the property is so uniquely restrictive that it cannot be reasonably used as it is zoned. Therefore, a thorough review is needed to first establish that none of the uses currently permitted in the district are appropriate for the property. While it is true that financial considerations are not generally the subject of review for variances, this standard may be satisfied by a finding that the property would essentially be valueless if an attempt were made to develop it as zoned. Part of this review will require determining if the property can be reasonably used for any of the uses permitted in the district. This does not mean that the use has to be the most profitable, or the use proposed by the applicant. It only requires a finding that there is one or more uses permitted in the district which could reasonably be placed on the property.

***2. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.***

This standard is generally similar to that for variances, particularly with respect to the necessity for having unique circumstances that are specific to a property and not related to the applicant's personal situation. The other important aspect is the requirement that the situation on the property not be common in the area. If conditions are common to the area, a special exception would not be appropriate because the area should be reviewed by the planning commission to determine if the zoning for the entire area should be changed. But that is the function of the planning commission and not that of the zoning board of appeals.

### **3. The use would not alter the essential character of the area.**

Probably the most difficult aspect of this standard is determining what the essential character of an area is, and if the special exception is approved, what effect might the special exception have on that character.

#### ***What is the “area” affected by a use variance?***

The “area” which may be affected by a special exception will depend on the nature of the request and the size of the property that is the subject of the requested special exception. For example, a small residential lot requesting a use variance for an office will affect a smaller area than a request on a large site for an intensive commercial use. One of the easiest ways to determine the essential character of an area is through a site visit to examine the area and see the various land uses that exist. In some cases the character may be evidenced simply by the dominance of one land use over any others. In others it may not be as obvious. For example, some areas may have a wide variety of uses, occupying different sizes of lots. Viewing the area may not directly lead to a conclusion as to the character of the area and may require some degree of judgment.

Another way to determine the character of an area and the possible effect of a special exception is to examine the community’s master plan. The plan may clearly indicate the existing or intended character of an area. The BZA may also seek the advice of the planning commission to help interpret the master plan, or to provide guidance when there is no plan or if it is out-of-date. Any opinion of the commission is simply advice, and should be considered only as input to the BZA’s deliberations. After determining the essential character, the next step is to evaluate whether or not approval of the special exception would alter that character. This decision might hinge on whether or not the proposed use variance may tip the scales in one direction or another. If an area appears to be in transition from a residential to commercial area, for example, a commercial use special exception may be appropriate. However, if the specific character of the area is unclear, a special exception may not be appropriate since it could tend to establish a specific character. This type of decision will require the exercise of discretion by members of the BZA, as assisted by staff and consultants.

### **4. The problem is not self-created.**

This standard is essentially the same as that for variances. If the applicant created a particular situation that made a property essentially unusable as zoned, that applicant would not be entitled to relief by approval of a special exception. For example, if a property owner subdivides a large, residentially zoned property, leaving a corner lot as an isolated parcel, an argument that the parcel should only be used for nonresidential purposes could fail because the parcel was created by the direct action of the applicant.

**5. The other general requirements are met.**

As in the case of variances, an applicant must show that the special exception meets the state law requirements, that the spirit of the ordinance shall be observed, public safety secured and substantial justice done.

**\*\*\* FYI Use Variances and Rezoning - The Paragon Rule**

Understanding use variances was made more important by a 1996 decision of the Michigan Supreme Court, *Paragon Properties Company v City of Novi*, (452 Mich 568, 550 NW2d 772 (1996)) in which the court required a “final decision” of the municipality. Under the *Paragon* decision, it will not be deemed that a final decision has been rendered by the municipality until the property owner seeks a use variance from the Board of Zoning Appeals. The *Paragon* decision, therefore, requires submission of a use variance application following a rezoning request denial by the legislative body before any legal disputes may be brought before the court.

## MINUTES KINGSPORT BOARD OF ZONING APPEALS (BZA)

Thursday December 6, 2012

NOON

Bob Clear Conference Room, on the first floor of the Development Services Building

MEMBERS PRESENT:  
Leland Leonard, Chairman  
Frank Oglesby, Vice Chairman  
Bob Winstead Jr  
Bill Sumner  
Diane Hills

MEMBERS ABSENT:  
None

STAFF PRESENT:  
Karen Combs

VISITORS:  
Mary McReynolds  
Brad Nicely  
Tom Hatley  
Carletta Sims

Diane Clayton  
Bob Allen  
G.W. Taylor

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Chairman Leonard called the meeting to order.

Chairman Leonard then explained the meeting procedures.

### Public Hearing:

**Case: 12-701-00010 – Property located at 928 Fairmont Avenue; Control Map 45D, Group J, Parcel 04.00** Requested a variance of 8 feet to [Sect.114-183.(e)(1)(d)] in order to construct a carport in a R-1B Single Family Residential District. The code requires an 8 foot side yard setback. Mr. Tom Hatley was sworn in by Karen Combs. Mr. Hatley presented the case to the Board. In his presentation he stated that the carport would be made of aluminum and the drainage downspouts would drain into the yard and not on other properties. He declared his hardship as being the fact that his mother was 83 and that he didn't want to spend \$20,000 to place the structure in the rear of the property similar to adjacent houses. The Board explained that a hardship was to the property not to a person under TCA. The Board suggested several options and Mr. Hatley refused all of them. Staff received no phone calls on this item. No one spoke for or against this item.

**Case: 12-701-00011 – Property located at 315 Clinchfield St; Control Map 46I, Group A, Parcel 23.00** Requested a variance to [Sect.114-533.(7)(a)(1)(20 and (c))] in order to place a free standing sign and wall signage at this location. The property is located in the B-2, Downtown Business District that allows either type of signage but not both. The petitioners are asking for both types of signs to be located on this parcel and an increase to the allowable square footage of each type of sign. Diane Clayton was sworn and gave the presentation to the Board. In her presentation she stated that due to the location both signs were needed in order for the business to be successful. Chairman Leonard asked if she had an alternative to the request as presented and Ms. Clayton said no. Staff then interjected and presented an alternative similar to what was granted to Food City across the street. The alternative would

allow both types of signage with the following restrictions: the freestanding signs would be no higher than 6 feet and no wider than 8 feet, be constructed of brick and the sign facing will be no larger than 16 square feet; and wall signage of no more than 50 square feet. This alternative was presented based on the transition of business in this area. Staff presented the Board a change to the sign ordinance that will be presented to Planning Commission in February 2013. In the proposed ordinance and business in a B-2 zone that can maintain parking and landscaping regulations would be permitted both a freestanding sign and wall signage with limitations. The Board asked Ms. Clayton if this would be acceptable to her. She said yes, except for the wall signage. She stated that her architect would explain further. Mr. Bob Allen was sworn in. He stated to the Board that after running several scenarios the lowest he could get the wall signage to was 54.08 square feet and still satisfy his client. He asked that the Board would increase staff's proposal to that amount. The Board asked Ms. Clayton if that would be acceptable to which she agreed. Staff received no phone calls on this item. No one spoke for or against this item.

**Rehearing of Case Number 09-701-00001**The property located at 907 Cooper Street (Sullivan County tax map 30I, group B parcels 1, 2, 3), concerning the front yard variance.

Ms. Carletta Sims was sworn and presented to case to the Board. In her presentation, she stated that she was not aware that her builder had placed the house wrong on the property. The Board had granted variances to allow the construction of the house and her builder had not followed that order. The Board looked at the new survey provided by Ms. Sims and determined that she would need a front yard variance of 21.1 feet and a rear yard variance of 9 feet. Staff received no phone calls for this item and no one spoke for or against this item at the meeting.

Seeing no one else wishing to speak, Chairman Leonard closed the Public Hearing.

#### **Other Business:**

On a motion by Diane Hills, the Board voted unanimously to approve the November 1, 2012 minutes as amended.

The BZA stated for the public record the next application deadline on December 17, 2012 at noon and that the next meeting date would be on January 3, 2013.

#### **Adjudication of Case:**

**Case: 12-701-00010 – Property located at 928 Fairmont Avenue; Control Map 45D, Group J, Parcel 04.00** During discussion of this item it was noted that there was no hardship to the property that would prevent the owner from placing the carport in the rear of the property consistent with the adjacent houses.

#### **PROOF PRESENTED:**

1. The specific conditions in detail which are unique to the applicant's land. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity. *The Board found that there was no hardship to the property that prevented the owner from placing the structure in the rear of the property similar to the adjacent properties other than the financial costs to the owner.*
2. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land. *The Board found that there were no restrictions other than financial that prevented the owner from placing the structure in the rear of the property which would allow the structure to meet all zoning requirements.*

3. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this chapter. *There were no circumstances or conditions presented that were not the owners preference of location. The representative provided no proof of a hardship to the property that would prevent him from placing the structure in the rear of the property thus meeting all zoning requirements.*

4. Reasons that the variance will preserve not harm the public safety and welfare and will not alter the essential character of the neighborhood. *The Board found that based on the adjacent properties and the location of their carports, this variance would alter the character of the neighborhood by placing the carport on the side of the property while the adjacent properties had their carports in the rear of the property.*

**MOTION:** made by Diane Hills; seconded by Bob Winstead – To deny because no hardship to the property was presented.

**VOTE:** 3-0-1 to deny the request as presented because there was no hardship to the property that restricted the owner from placing the structure in the rear of the property.

**Case: 12-701-00011 – Property located at 315 Clinchfield St; Control Map 46I, Group A, Parcel 23.00** The Board discussed this item and the proposed ordinance briefly.

**PROOF PRESENTED:**

1. The specific conditions in detail which are unique to the applicant's land. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity. *This lot is outside the core B-2 district and can maintain its own parking and landscaping requirements where other properties in the B-2 do not have that ability.*

2. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land. *The property's location, landscaping and parking regulations set the building towards the rear of the property therefore one or the other types of signage would be deficient in representing this business on the same scale of businesses that enjoy zero lot lines and place their building at the curb.*

3. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this chapter. *This property is located outside the core of the B-2 and is larger than most lots in the district.*

4. Reasons that the variance will preserve not harm the public safety and welfare and will not alter the essential character of the neighborhood. *Staff is creating a new ordinance that will address these types of lots that are transitioning into the B-2 District but cannot get the ordinance passed and implemented in the needed time frame. This variance request is very similar to the ordinance that staff has drafted and will assimilate into the new ordinance once it is passed.*

**MOTION:** made by Bob Winstead; seconded by Bill Sumner– To approve a variance of 4.08 feet of wall signage for a total of 54.08 sq feet of wall signage and the placement of a monument sign with the following restrictions:

1. The height of the sign is no higher than 6 feet.

2. The width of the sign is no wider than 8 feet.
3. The sign must be constructed of brick.
4. The sign facing can be no larger than 16 square feet.

**VOTE:** 4-0 to grant the request with restrictions.

**Case: Rehearing of Case Number 09-701-00001**

The owner requested a rehearing because the house was placed incorrectly to the previous granted BZA variances. The Board discussed in detail how this mistake was caught so late in the process and reluctantly voted to void the original variance request. Then on another motion made by Frank Oglesby and seconded by Diane Hills, the Board voted 3 to 1 to grant a new front yard variance of 21.1 feet and a rear yard variance of 9 feet in order to bring this house into compliance with zoning regulations because without the variances this lot is unbuildable due to the topography and findings in the previous case hearing.

With no further business the meeting was adjourned.

\_\_\_\_\_ Karen B. Combs, Principal Planner