

KINGSPORT BOARD OF ZONING APPEALS AGENDA

Thursday, November 1, 2012

City Hall Building - second floor, Council Room

CALL TO ORDER – 7:00 P.M.

INTRODUCTION / MEETING PROCEDURES

ADMINISTRATION OF OATH TO PERSONS WISHING TO TESTIFY

PUBLIC HEARING:

1. Case: 12-701-00009 – Property located at 1516 Lawrence Street; Control Map 29E, Group C, Parcel 13.00

Requests a variance of 5 feet 10 inches to [Sect.114-192.(e)(1)(d)] in order to construct a carport in a R-1B Single Family Residential District. The code requires a 8 foot side yard setback.

INTERESTED PARTIES:

Owner: Jerry Bentley
1516 Lawrence Street
Kingsport, TN 37665
(423) 378-4860
djbentley@embarqmail.com

Applicant /Agent: Same as Above

Engineer/Architect: Not known

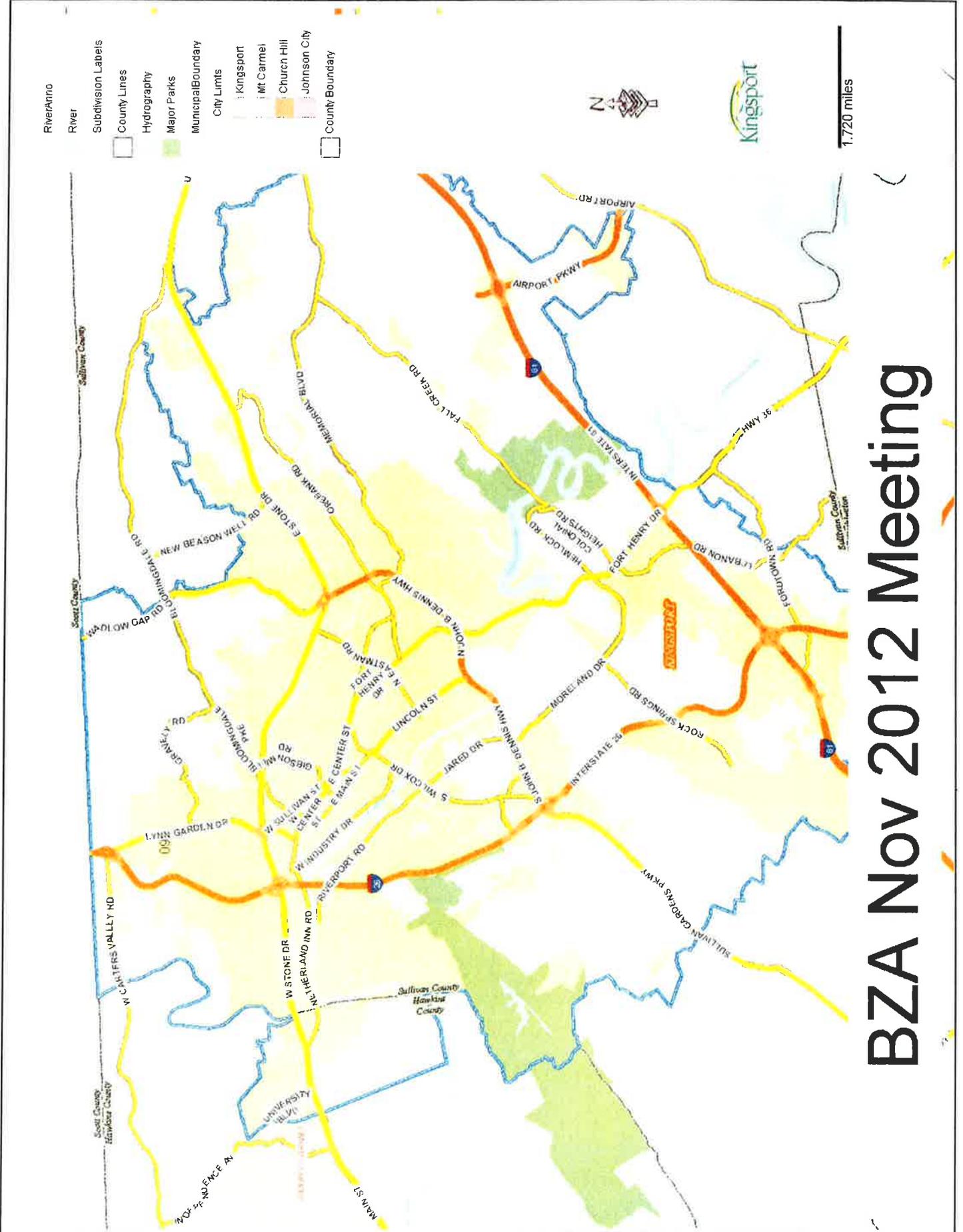
BUSINESS:

- Approval of the August 23 and the September 6, 2012 minutes.
- Stating for the public record, the next application deadline November 15, 2012 at noon, and meeting date (Thursday, December 6, 2012).
- Staff Reports

ADJUDICATION OF CASES:

Case: 12-701-00005 – Property located at 859 Indian Trail Drive; Control Map 47P, Group A, Parcel 04.10 Requests a special exception use as provided in Sec. 114-207(d) in order to construct a movie theater. This item was deferred until the November 1, 2012 meeting. The property has since been rezoned to B-3 which permits the requested use thus negating a special exception use from this Board.

ADJOURNMENT:



BZA Nov 2012 Meeting

- River/Arroyo
- River
- Subdivision Labels
- County Lines
- Hydrography
- Major Parks
- Municipal Boundary
- City Limits
- Kingsport
- Mt Carmel
- Church Hill
- Johnson City
- County Boundary



1.720 miles

MEMORANDUM

TO: KINGSPOINT BOARD OF ZONING APPEALS
FROM: Karen B. Combs, PRINCIPAL PLANNER
DATE: October 16, 2012
RE: 1516 Lawrence Street

The Board is asked to consider the following request:

Case: 12-701-00009 – Property located at 1516 Lawrence Street; Control Map 29E, Group C, Parcel 13.00

Requests an variance of 5 feet 10 inches to [Sect.114-192.(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.

Deadline Oct. 15 @ Noon
Meeting Date: NOV. 1 @ Noon

APPLICATION
Board of Zoning Appeals



12-701-00009

APPLICANT INFORMATION:

Last Name Bentley First Jerry M.I. C. Date 9/24/2012
Street Address 1516 Lawrence Street Apartment/Unit #
City Kingsport State Tennessee ZIP 37665
Phone (423) 378-4860 E-mail Address djbentley@emborgmail.com

PROPERTY INFORMATION:

Tax Map Information Tax map: 029E Group: C Parcel: 03.01 Lot:
Street Address 1516 Lawrence Street Apartment/Unit #
Current Zone Residential R-1B Proposed Zone
Current Use Single Family Residence Proposed Use

REPRESENTATIVE INFORMATION:

Last Name First M.I. Date
Street Address Apartment/Unit #
City State ZIP
Phone E-mail Address

REQUESTED ACTION:

I would like to have certified, traditional metal carport installed on the South side of my house. From my house to the property line is 12 feet 2 inches. I would like to install a 10 foot x 21 foot metal carport leaving 2 feet and 2 inches to the property line.

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: Jerry C Bentley

Date: 9/24/2012

Signed before me on this 24 day of September, 2012
a notary public for the State of Tennessee
County of Sullivan



Setback
8 ft on Side

Notary: Karen B Combs
My Commission Expires May 12, 2013

CITY PLANNING OFFICE

Received Date: 9-24-12

Application Fee Paid: 9-24-12

Board of Zoning Appeals Meeting Date: Nov. 1, 2012

Section of Applicable Code: 114-192(e)(1)(d)

Building/Zoning Administrator Signature: 

Completed Site Plans Received: N/A

Previous requests or file numbers: NONE

Signature of City Planner: 

Received By: 

Date: 9-24-12

Date: 9-24-12



1516 Lawrence Street

BOOK 304 PAGE 227

THIS DEED, made and entered into on this March 25, 1968, by
and between LAWRENCE E. FITE, ^{Jr.} and wife, EDWINA B. FITE, Parties of
the First Part, and JERRY C. BENTLEY and wife, DARLENE M. BENTLEY
Parties of the Second Part.

WITNESSETH:

That for and in consideration of the sum of eleven thousand six
hundred seventy-seven and 51/100 dollars (\$11,677.51) paid and to be paid
as follows:

Thirteen hundred (\$1300.00) dollars, cash in hand paid, the
receipt of which is hereby acknowledged; the assumption and agreement
to pay by the parties of the second part a note payable to Guaranty Mortgage
Company of Nashville, the balance of which is \$10,025.01, and which is
secured by deed of trust on the hereinafter described property; and the
balance of \$352.50, being represented by one promissory note of even date
herewith, due and payable on April 1, 1969; the Parties of the First Part
have this day bargained and sold and do by these presents transfer and convey
unto the Parties of the Second Part, their heirs and assigns, the following
tract or parcel of land, situate, lying and being in the 12th Civil District
of Sullivan County, Tennessee, and more particularly described as follows:

BEGINNING at a point on the westerly side of Lawrence Street, 120
feet southerly from an iron pin at the intersection of the westerly side of
Lawrence Street and the southerly side of Sunset Drive, corners for Lots 11
and 12; thence continuing with side of said Lawrence Street, S. 1° 10' E. 50
feet to a point, corner to Lots 10 and 9; thence with the divisional line of Lots
10 and 9, S. 88° 50' W. . 174.6 feet to a point in the rear line of Lot 10;
thence with the line of Lots 10 and 11, N. 1° 12' W. , 50 feet to a point,
corner to Lots 11 and 12; thence with the divisional line of Lots 11 and 12, N.
88° 50' E. , 174.62 feet to the point of BEGINNING, being Lots 10 and 11,
Block 3, as shown on map of Forest Hill Addition to the City of Kingsport,
Tennessee, dated March 31, 1931, Hugh E. Alley, Surveyor, of record in
the Register's Office for Sullivan County at Blountville, Tennessee, in Plat
Book 1 at page 49, and being the same property as that conveyed to the parties
of the first part by deed dated the ___ day of ___ 19___, and duly
recorded in the Register's Office for Sullivan County at Blountville, Tennessee,
in Deed Book ___ at page ___, to which reference is here made for all
purposes.

The Parties of the First Part also convey all their right, title and
interest in and to any escrow and insurance policies that there might be in
the loan with Guaranty Mortgage Company of Nashville, to the Parties of the
Second Part.

THIS INSTRUMENT WAS PREPARED BY
D.A. Robertson
213 E. MARKET STREET
KINGSPORT, TENN.

BOOK 304 PAGE 228

TO HAVE AND TO HOLD unto the Parties of the Second Part, their heirs and assigns forever in fee simple.

The Parties of the First Part covenant that they are lawfully seized and possessed of said property; that they have a good and lawful right to transfer and convey the same; that the same is free and unencumbered, except as herein set out; and that they will forever warrant and defend the title thereto against the good and lawful claims of all persons whomsoever.

This conveyance is made subject to such covenants, restrictions and reservations as contained in former deeds to said property.

IN TESTIMONY WHEREOF witness the signatures of the parties of the first part, on this the day and year first herein written.

Lawrence E. Fite Jr.
LAWRENCE E. FITE JR.

Edwina B. Fite
EDWINA B. FITE

STATE OF TENNESSEE:
COUNTY OF SULLIVAN:

Personally appeared before me, *Lawrence V. Gilbert, Jr.*, a Notary Public, in and for the state and county aforesaid, Lawrence E. Fite and wife, Edwina B. Fite, the within named bargainors, with whom I am personally acquainted, and who acknowledged the execution of the foregoing instrument for the purposes therein contained.

Witness my hand and official seal at office in Kingsport, Sullivan County, Tennessee, this 26th day of March 1968.

Lawrence V. Gilbert
Notary Public

My commission expires:

Nov 18, 1968



Sullivan County, Tenn. Register of Deeds: Received for record on the 26 day of March 1968 at 12:22 M. Noted in Note Book 36 page 39.

Father J. Davis
Register

State of Tennessee  Comptroller of the Treasury
Real Estate Assessment Data

County Number: 082

County Name: SULLIVAN

Tax Year: 2012

Property Owner and Mailing Address

Jan 1 Owner:
 BENTLEY JERRY C & DARLENE
 M
 1516 LAWRENCE ST
 KINGSPORT, TN 37665

Property Location**Address:** LAWRENCE ST 1516**Map:** 029E **Grp:** C **Ctrl Map:** 029E **Parcel:** 013.00 **PI:** **S/I:** 000**Value Information****Reappraisal Year:** 2009**Land Mkt Value:** \$4,800**Improvement Value:** \$77,600**Total Market Appraisal:** \$82,400**Assessment %:** 25**Assessment:** \$20,600**General Information**

Class:	00 - RESIDENTIAL	City:	KINGSPORT
City #:	380	SSD2:	000
SSD1:	000	Mkt Area:	A63
District:	12	# Mobile Homes:	0
# Bldgs:	1	Utilities - Sewer:	3 - INDIVIDUAL
Utilities - Water:	1 - PUBLIC	Utilities - Gas:	0 - NONE
Utilities - Elec:	1 - PUBLIC	Zoning:	
Utilities - Gas Type:			

Subdivision Data**Subdivision:** FORREST HILL ADD**Plat Bk:** 1 **Plat Pg:** 49 **Block:** 3 **Lot:** 10**Building Information****Building # 001**

Improvement Type:	01 - SINGLE FAMILY	Stories:	2
Base Area Sq. Ft.:	1,646	Aux Base Sq. Ft.:	638
Foundation:	02 - CONTINUOUS FOOTING	Floor System:	04 - WOOD W/ SUB FLOOR
Exterior Wall:	04 - SIDING AVERAGE	Structural Frame:	00 - NONE
Roof Framing:	02 - GABLE/HIP	Roof Cover/Deck:	13 - PREFINISHED METAL CRIMPED
Cabinet/Millwork:	03 - AVERAGE	Floor Finish:	11 - CARPET COMBINATION
Interior Finish:	07 - DRYWALL	Paint/Decor:	03 - AVERAGE
Heat and A/C:	08 - HEAT & COOLING PKG	Plumbing Fixtures:	6
Bath Tile:	00 - NONE	Electrical:	03 - AVERAGE
Shape:	01 - RECTANGULAR DESIGN	Quality:	01 - AVERAGE
Act Yr Built:	1940	Condition:	1 - NEEDS MINOR REPAIRS

Building Areas:

Area: BAS	Sq Ft: 878
Area: USF	Sq Ft: 768
Area: OPF	Sq Ft: 28
Area: BMU	Sq Ft: 480
Area: SPU	Sq Ft: 130

Extra Features

Bldg/Card#	Type	Description	Units
001	DGU	10X20	200
001	SHED	12X16	192
001	AT SHED	12X20	240

Sale Information

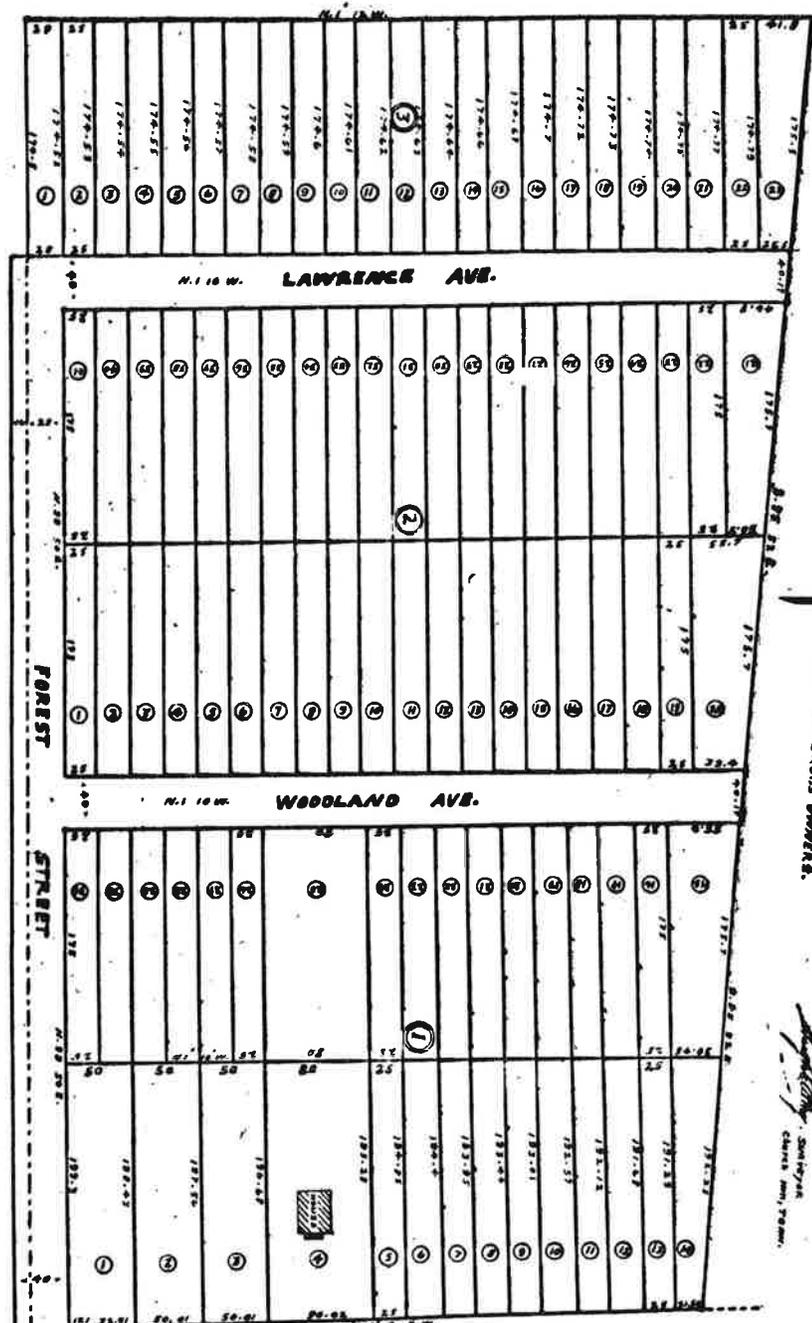
Sale Date	Price	Deed Book	Page	Vac/Imp	Type Instrument	Qualification
03/25/1968	\$0	0304A	00227			

Land Information

Deed Acres:	0.00	Calc Acres:	0.00	Total Land Units:	50.00
Land Type:	01 - RESIDENTIAL	Soil Class:		Units:	50.00

View GIS Map for this Parcel

New Search	Glossary of Terms	How to Search	Fact Sheet
Real Estate Assessment Data Home Page	Division of Property Assessments Home Page	Comptroller of the Treasury Home Page	State of Tennessee Home Page



HILL ADDITION
 TO THE
 CITY OF KINGSFORT, TENNESSEE
 MADE BY DEEDS, S.W. ADAMS, KINGSFORT, TENNESSEE
 AND
 JOHN W. ADAMS, KINGSFORT, TENNESSEE
 DECEASED
 BY
 J. W. ADAMS, ADMINISTRATOR
 OF THE ESTATE OF JOHN W. ADAMS, DECEASED

ADAMTS PROPERTY

1-49

NOTE: O INDICATES ROAD ADDRESS

KINGSFORT TO GATE CITY HIGHWAY

CHANG TO...
 N-36329-7

Variance Worksheet – Finding of Facts for:

Case: 12-701-00009 – Property located at 1516 Lawrence Street; Control Map 29E, Group C, Parcel 13.00 Requests an variance of 5 feet 10 inches to [Sect.114-192.(e)(1)(d)] in order to construct a carport in a R-1B Single Family Residential District. The code requires a 8 foot side yard setback.

Variances. Except as provided herein to hear and decide applications for variance from the terms of this chapter, because of exceptional narrowness, shallowness or shape of a specific piece of property which on June 16, 1981, was a lot of record or where, because of exceptional topographic conditions or other extraordinary or exceptional situation or condition of a piece of property, the strict application of this chapter would result in peculiar and exceptional practical difficulties to exception or undue hardship upon the owner of such property, provided that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. In granting a variance the board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purposes of this chapter. Before any variance is granted, the board must find all of the following, which shall be recorded, along with any imposed conditions or restrictions, in minutes and records and issued in written form to the applicant to constitute proof of the variance:

a. 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.

b. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land.

c. The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption or amendment of this chapter.

d. Reasons that the variance will preserve, not harm, the public safety and welfare and will not alter the essential character of the neighborhood.

Further, a variance may be granted only if the Board finds that such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan and this chapter. Variances shall not be granted permitting an increase in floor area or density above the maximum permitted by the zoning district; allowing a use other than those specifically authorized by this chapter in the applicable zoning district; or from the denial of a zoning permit when such denial is due to the fact that such lot has no frontage on a public street unless such lot was a lot of record on June 16, 1981.

Hardship - There is no definition of a "hardship". Some guidelines, based on legal precedent, for applying the concept of unnecessary hardship are:

1. The premises of cannot be used in a manner permitted by the Zoning Ordinance unless the variance is granted.
2. A strict application of the terms of the Zoning Ordinance precludes its use for any purpose to which the land is reasonably adopted.
3. Inability to put the property to its most profitable use DOES NOT constitute a "hardship".
4. Mere inconvenience to the applicant is not sufficient grounds for determining a "hardship". In granting a variance the BZA may not make any decision that is contrary to the purpose and intent of the Zoning Ordinance.

**MINUTES KINGSPORT BOARD OF ZONING APPEALS (BZA)
Called Meeting**

Thursday August 23, 2012

NOON

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

MEMBERS PRESENT:
Leland Leonard, Chairman
Frank Oglesby, Vice Chairman
Diane Hills

MEMBERS ABSENT:
Bob Winstead Jr
Bill Sumner

STAFF PRESENT:
Karen Combs
Lynn Tully

VISITORS:
Jack Clevinger
Charlie Glass
Ryan Rubuh
Jessie Hensley
Matthew Lane

Jim Demmis
Marc Wagner
K.D. Moore
Greg Hensley

Chairman Leonard called the meeting to order.

Chairman Leonard then explained the meeting procedures.

Public Hearing:

Case: 12-701-00005 – Property located at 859 Indian Trail Drive; Control Map 47P, Group A, Parcel 04.10 Requests a special exception use as provided in Sec. 114-207(d) in order to construct a movie theater. Mr. Jessie Hensley was sworn in by Karen Combs. Mr. Jessie Hensley presented the case to the Board. In his presentation Mr. Hensley presented the Board with a pamphlet that Marquee Theaters has given him which had been distributed throughout the neighborhood; Chairman Leonard asked Mr. Hensley what this pamphlet had to do with his request? Mr. Hensley answered by stating the this theater is a recreational facility and this land had plans for a YMCA and the wetlands mitigation had taken place; the property sets on a dead end street and a red light was put at the end for properties on the corner. The property is located at the end of Indian Trail Drive and the theater sets on the same footprint as the YMCA. He has been talking with adjacent owners about ingress and egress and has accommodated them on their wishes. Mr. Hensley explained that the site added a sidewalk to would connect the greenbelt to K-Mart. Chairman Leonard asked; all of this property belongs to the YMCA and they did do remediation for the wetlands? Mr. Hensley stated yes, it is owned by the YMCA and yes that the remediation was for the YMCA site. Mr. Hensley stated that he does not have a letter from TDEC stating that he may build on the site. Chairman Leonard asked if he was in the process of rezoning the property. Mr. Hensley stated that he was in the process of rezoning part of the property. Mr. Hensley stated that part of the YMCA property would possibly need rezoning for a future project of apartments. Chairman Leonard clarified that Mr. Hensley was in the process of rezoning the property. Mr. Hensley said that staff and he were going back and forth on how much of the property needed to be rezoned. Staff

has advised Mr. Hensley that the entire property needed to be rezoned based upon the plan Mr. Hensley published in the Kingsport Times News. Staff also advised the Board the developer has submitted an incomplete application to rezone and that no development plans required for rezoning have been submitted by the developer. Chairman Leonard asked if Mr. Hensley was denied a permit. Mr. Hensley stated that his building plans had been approved by the Building Official. Staff informed the Board that in order to bring a case to the Board the Building Official must sign the application. By his signature the Building Official is stating that the developer has been denied a building permit. Chairman Leonard asked staff if Mr. Hensley could rezone the property. Staff said yes and that staff had encouraged, both verbally and through email, Mr. Hensley to rezone not only the movie theater but the rest of the properties that were made public in the article in the newspaper. Chairman Leonard explained that the Board of Zoning Appeals is the Board of last resort. If Mr. Hensley is denied a rezoning and he has exhausted all avenues, then he should apply to the Board of Zoning Appeals. Vice Chairman Olgesby clarified that if the Board made a decision today to deny, then the developer could not reapply if he was turned down by the Planning Commission for rezoning. Staff clarified that the policy of the Board is not to rehear a case after a final decision is made for one year unless there is a substantial change to the property. Mr. Hensley stated that he started talking with Mr. Jeff Fleming over a year ago. Mr. Hensley stated that if he had known the property needed to be rezoned he could have done that at that time. He stated that with the special exemption granted to the YMCA and the B-3 around the corner, he never thought that he would be able to build there. Chairman Leonard explained that Special Exceptions did not run with the property in perpetuity like dimensional variances. Once the YMCA chose not to build there, the special exception went away and stated that Mr. Hensley knew all along or should have known that the special exception was no longer in effect. Staff explained that individuals talk with staff everyday about future developments but until a plan has been submitted officially to the appropriate staff no action is taken to start the review process for any development and Mr. Hensley submitted a site plan to staff to last week to be used for this meeting only. Chairman Leonard then asked who was Jeff Fleming and what role does he play in planning. Staff stated that Mr. Fleming was the Assistant City Manager for Development and does not have any functions in the day to day planning activities such as approving development plans or rezoning property. Mr. Hensley was asked if he had anything else to present, he stated that when it comes to this development, if we could have rezoned just this property we would have done it months ago, we were told by Mrs. Tully, the Planning Director that we couldn't do that because he had to wait until all the problems that are associated with this piece but not a part of this piece had to be worked out prior to applying for a rezoning. Staff stated that the decision to look comprehensively was due to the plan that was made public by the Kingsport Times News. Staff knew by that published concept there was going to be more than just a theater and as stewards of public funds it is our responsibility to make sure that infrastructure can handle the entire concept. Staff stated that Mr. Hensley presented the concept as a whole plan to the public through the newspaper so why wouldn't staff want to see the whole plan? Mr. Hensley stated that this project (the theater) is a guaranteed thing and that the City shouldn't look at the rest because he has not turned any plans or timelines in for this development. Mr. Hensley further states that it does make sense to do the grade work for the entire development at the same time and to lay infrastructure at the same time but he does not have contracts for the rest of it. Mr. Hensley explained that the previous owner who had built East Stone Commons had everything along the back was put in and had in mind to extend the road across the property. Staff agreed but pointed out that Mr. Ball had turned in his development plans many months prior to construction for review and approvals. Mr. Hensley stated that Mrs. Tully told him he couldn't do that. Mrs. Tully stated that anyone can ask for any property to be rezoned, staff can ask that property be rezoned without the owner's consent, these things can happen in different ways, Mr. Hensley was advised on several occasions because of the plan was made public that his best chance for rezoning was to show all the site together and staff has consistently said this for the past three months. Chairman Leonard asked Mrs. Tully to define the site. Mrs. Tully stated that the site was defined as the properties identified in the paper as this development and the property that has been discussed by Mr. Hensley but not necessarily mapped. Mr. Hensley clarified that he had an option on the two pieces of property in question and when asked if he could pursue a rezoning he stated yes, if he could

work out a few issues that exist on one of the properties that are prolonging receiving his drawings. He stated that the theater fits the neighborhood, there is B-4P and B-3 adjacent to the property. The property sets on a dead-end road and access to the greenbelt will be provided. As far as a City review, if the City Engineers state that they can't do something then he won't do it. Mr. Hensley states that the Board's decision is not a stamp that you take this plan and can do it. He states that he would have to follow all ordinances put in to place that this plan (presented to BZA) does not address. He needs to know if the theater can go here. Staff explained the rezoning process at the request of Vice Chairman Oglesby. Staff stated that the petitioner must fill out an application and submit plans to staff for review. Staff accepts what the petitioner brings in and makes a recommendation based upon the information provided by the petitioner. The deadline for the September's Planning Commission meeting was August 15th; Mrs. Tully stated that staff had extended this deadline on two different occasions for Mr. Hensley and that he still has not submitted anything to date for Planning Commission. Mr. Hensley stated that staff had received plans but they did not include the sewer lines and that staff has seen the concept. Staff then stated that all information that was turned in has been presented to the Board including the plans received last week. Mr. Hensley then clarified and stated that Mr. Fleming had seen the concept; to that Chairman Leonard stated that apparently Mr. Hensley had been going to the wrong staff member. Chairman Leonard asked if there was anything else that Mr. Hensley wished to present. Mr. Hensley said that should be it. At this time Chairman Leonard opened the meeting up to the public for comments:

1. Mr. Greg Hensley was sworn in and spoke in favor of this development and is Jessie's father. He explained that Jessie wants to be a developer in this City. He stated that he had stopped by the Building Department several times unofficially so that he may determine the best way to develop this property and advise his son. He discussed this exemption with Mike Freeman and Dee Morgan and the consensus of the group was to pursue the special exception because in their opinion a movie theater truly can't be anything but a recreational facility. Mike and he discussed if the exemption just applied to the YMCA and Mike stated you can't zone a business you have to zone the property. Mr. Hensley stated that Mike had told him that the exemption applied to the property and not just the YMCA and at that point he thought that would be how it would proceed. Mr. Hensley stated that there was great latitude in the code and that the key word is recreational and he knows that a movie theater can't be construed as anything but recreational. Mr. Hensley stated that Jessie is new to this and may need some extra guidance and that he is willing to work with the planning department to follow all the regulations. He (Jessie) assumes to know things that he apparently does not know but his effort is proper and he has done everything he knows to do to comply with the agency's request. He has worked diligently to complete one list only to have another list presented to him. He hopes that this Board would consider this exemption for what it is an exemption to place a movie theater on this property.

2. Donna Sell – owner of Salsarita's in town. Ms. Sell was sworn in. She stated that Jessie had been showing her these plans since day one and she is excited to see this area develop. She stated that if you say something you do it and that is the feeling she gets from them (Hensley's).

3. Jack Clevinger – Mr. Clevinger was sworn in. Chairman Leonard recognized him for his service to the Board of Zoning Appeals in the past. Mr. Clevinger stated that he was wearing several hats today; one in representing Vace Covenant Church in support for this development. Though the apartments are not before the Board today, the church likes people and would like to see the property developed where there are lots of people. The second reason is as a citizen. Stating that he is troubled setting here listening and it may be of his own makings, but that this developer is wanting to spend all this money in developing in Kingsport and is having this much trouble. Mr. Clevinger also stated that he is a realtor and maybe bias but we need a better system for developers that these folks can get from A to Z without running into all these vacuums; because someone fumbled here. He stated that the area was a mixed development with a church, doctors, restaurants, daycares and everything down that way. We need to get the property developed and if these folks stepped up to the plate, we need to let them develop this property. Being a

business man, he understands wanting to see the entire development and he believes that we have the whole plan; it is in the mill for this whole property but you have to strike when the ball is thrown. We already see a lot of traffic both vehicle and foot traffic behind the church and we would love to see it developed. It is good for our community. It would be difficult to find a fit for that property and believes that manufacturing would at the bottom of the list because the area is so diversified. The whole thing about it being manufacturing is wrong.

Chairman Leonard asked if there were any others wishing to speak in favor of this item. No one spoke. Then Chairman Leonard asked if there were anyone to speak against this item. No one from the audience spoke. Staff then presented the emails and phone messages received from the public to the Board. These items are attached to the minutes as part of the record.

Chairman Leonard then addressed the flyer that was sent to the surrounding neighborhoods. Stating that the only neighborhood was on Reedy Creek Road which is across the creek; Board members drove up to the neighborhood to ascertain how the neighborhood would be affected by this development. Chairman Leonard took the flyer and went over each statement. Statement one- an increase in crime- most would not cross the creek and climb the hill to get to the neighborhood. Statement two- Lower property values – don't see how. The closest house is down the hill and across the creek. You can't even see the house from the property for the vegetation. Statement three – more traffic – Chairman Leonard stated here again no one is going to be in the neighborhood across the creek and up the bank. Kid loitering – Again don't see this happening because it is down 200 ft. away. Section 8 renters- that can happen anywhere. Need for new traffic light on stone drive – they have two. Destruction along greenbelt – I think the greenbelt is preserved.

Chairman Leonard closed the public hearing and moved into discussion.

Adjudication of Case:

Chairman Leonard spoke that he was concerned that Mr. Hensley was either misguided or just misunderstood what the process was because this property could easily be rezoned so that the theater could be built. He knows that development must be held close in the arms during negotiations but that this went public. He feels somehow the City has mis-communicated the rezoning process and that Mr. Hensley may have started in the wrong place. You can ask for a rezoning of any property, however it may be denied.

The Board then discussed the special exception for the YMCA; stating that the YMCA is a non-profit organization and that non-profit status allowed the Board to grant that special exception because under the current code a non-profit is considered a club by definition and not a business. A business as a primary structure is prohibited in the code.

Vice Chair Oglesby stated that he felt through his experience with the Parks and recreation Board that the theater was entertainment not recreation as defined by the City's code. If look at the code it is specific with active uses such as tennis courts, indoor swimming pools, and such. These buildings fit in well with manufacturing as they are usually big long metal type buildings that look like warehouse buildings. He believes that that is the intent of the code and it is a totally different from a movie theater that is entertainment. He stated that he is not against the project and that it may fit in the area but he feels that the Board of Zoning Appeals is not the appropriate Board to make that decision. This item should go before the Planning Commission for review.

Ms. Diane Hills was concerned that at this point in the process if he went through the rezoning and something needed to be tweaked that he could not apply for a year without substantial changes to the

land. She feels that the developer has gotten the process reversed and should apply for a rezoning prior to approaching the Board.

The Board feels that the City is developer friendly and tries not to hold developers up even though the developers do may not believe that. The Board felt that they did not want to debate whether the use was an indoor facility at this time but instead wanted Mr. Hensley to pursue a rezoning prior to adjudicating this case.

Case: 12-701-00005 – Property located at 859 Indian Trail Drive; Control Map 47P, Group A, Parcel 04.10 Requested a special exception use as provided in Sec. 114-207(d) in order to construct a movie theater.

PROOF PRESENTED:

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.

This was not addressed by the petitioner.

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.

Through the petitioner's and other witness statements there are not any unique circumstances for this property. In fact the witnesses make a good argument for rezoning the property.

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.

A special exception for a movie theater would not alter the commercial feel of the area by witness statements; adjacent commercial zones and uses.

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.

Statements by the developer say he was misled by staff. However, staff provided emails to the Board to show on several occasions that the developer was advised to pursue a rezoning; what the process of rezoning entailed and that deadlines had been extended to accommodate the developer. The developer was given options and chose not to follow staff's advise as provided by the emails.

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.

No proof was provided by the petitioner.

MOTION: made by Diane Hills; seconded by Frank Oglesby– To defer action until the November 1, 2012 meeting so that the Kingsport Regional Planning Commission has the opportunity to consider a rezoning of the property because the Board feels that a rezoning of the property would be more appropriate than granting a special exception at this time.

VOTE: 3-0 to defer action on the request until November 1, 2012.

Karen B. Combs, Principal Planner

MINUTES KINGSPORT BOARD OF ZONING APPEALS (BZA)

Thursday September 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
Bill Sumner
Diane Hills

MEMBERS ABSENT:

Bob Winstead Jr

STAFF PRESENT:

Karen Combs

VISITORS:

Kevin and Lisa Morris
Judy Leach

David Prince
Alan Pairgin

Chairman Leonard called the meeting to order.

Chairman Leonard then explained the meeting procedures.

Public Hearing:

Case: 12-701-00006 – Property located at 694 Clinchfield Street; Control Map 46H, Group C, Parcel 07.00 Requested a special exception use as provided in Sec. 114-200(c)(6) in order to establish a church. Mr. Kevin Morris was sworn in by Karen Combs. Mr. Morris presented the case to the Board. In his presentation he stated that the Church would not present a problem with parking because the doctor's office is closed when the Church is opened and parking would be shared between the two. Staff directed the Board to the letter written by the youth pastor Scott Harper in which the petitioner outlines the criteria outlined by the Board. Staff received no phone calls on this item. No one spoke for or against this item.

Case: 12-701-00007 – Property located at 3212 Hull Drive; Control Map 77H, Group B, Parcel 09.00 Requested variance of 5 feet 7 inches to the front yard setback requirement [Sect.114-192.(e)(1)(c)] in order to construct a porch in a R-1B, Single Family Residential District. The code requires a 30 foot front yard setback. Mr. Alan Pairgin was sworn and gave the presentation to the Board. In his presentation he stated that the structure would be front porch 3 feet wide and covered. The covering was necessary in order to keep the front door out of the weather. He also stated that due to the fact that this lot was a fill lot which left steep topography in the rear, the house had to be pulled to the front of the lot in order to set the house. Staff received no phone calls on this item. No one spoke for or against this item.

Case: 12-701-00008 – Property located at 2001 East Sevier Avenue; Control Map 61L, Group K, Parcel 03.00 Requested variance of 1 foot to the accessory building placement requirement [Sect.114-139.(2)] in order to construct a covered carport/ picnic area in a R-1B, Single Family Residential District. The code requires any accessory structure to be placed five foot from the principle structure. Ms. Judy Leach was sworn and presented to case to the Board. In her presentation, she stated that she was not aware the her contractor had not received a permit for the structure and did not find out until Mr. Mike

Freeman, the Building and Zoning Administrator visited her property and issued a stop work order. Following a discussion with Mike Freeman, Ms. Leach was directed to appeal to the Board because Mr. Freeman said that the structure was not five feet behind her house as required, in his opinion, in the zoning ordinance. Staff was asked to provide the ordinance to the Board. 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 June 7, 2012 minutes as amended.

The BZA stated for the public record the next application deadline on September 17, 2012 at noon and that the next meeting date would be on October 4, 2012.

Adjudication of Case:

Case: 12-701-00006 – Property located at 694 Clinchfield Street; Control Map 46H, Group C, Parcel 07.00

During discussion of this item it was noted that this would be a good use for this facility. That the shared parking would be sufficient and the landscaping would be improved or maintained at its current level.

PROOF PRESENTED:

1. The property would be uniquely restricted from a reasonable use for the purposes permitted in that zone district.
Under Federal Law, a church can be placed in any zoning district. The City of Kingsport allows Churches as special exception uses so that issues of traffic and parking and such can be addressed.
2. The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.
This site is separated from any neighborhood and is located on a Major Arterial, In the past a daycare has occupied the site thus leaving a vase amount of screening from the neighborhood located at the rear of the property.
3. The use would not alter the essential character of the area.
The use will not alter the neighborhood because of the professional offices located on this site in the past and the fact that this site faces a major arterial roadway.
4. The problem is not self-created
The problem is not self created. The site was designed for professional offices and the Church will not conflict with hours of operation of the remaining doctor's office.
5. The other general requirements are met.
All other requirements are met. The Church will locate in an existing building.

MOTION: made by Bill Sumner; seconded by Diane Hills – To approve a special exception use as provided in Sec. 114-200(c)(6) in order to establish a church because the item met all criteria and the use would be acceptable for this facility.

VOTE: 3-0 to grant the special exception as requested.

Case: 12-701-00007 – Property located at 3212 Hull Drive; Control Map 77H, Group B, Parcel 09.00 The Board discussed this item and the 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 a fill lot with very steep topography in the rear of the property. This required that the house be located closer to the front of the property.*

2. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land.

The owner could not enjoy the property as it was intended because of the topography which caused the house to be located towards the front of the lot.

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 was a fill lot. This created a situation where the house was moved toward the front of the property so that it may fit. The house was already out of compliance by 2 feet.

4. Reasons that the variance will preserve not harm the public safety and welfare and will not alter the essential character of the neighborhood.

This lot is secluded with the current vegetation existing on the property. The lot is surrounded by a line of trees that are somewhat mature and thus the structure would be difficult to see from adjoining parcels.

MOTION: made by Diane Hills; seconded by Bill Sumner – To grant the variance of 5 feet 7 inches to the front yard setback requirement [Sect.114-192.(e)(1)(c)] in order to construct a covered porch in a R-1B, Single Family Residential District because of the topography present on the lot and that with all the screening currently in place the variance would not be detrimental to the surrounding neighborhood.

VOTE: 3-0 to grant the variance request.

Case: 12-701-00008 – Property located at 2001 East Sevier Avenue; Control Map 61L, Group K, Parcel 03.00 Requested variance of 1 foot to the accessory building placement requirement [Sect.114-139.(2)] in order to construct a covered carport/ picnic area in a R-1B, Single Family Residential District. The code requires any accessory structure to be placed five foot from the principle structure. The Board discussed this item and the 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. *The Board found that this property was not out of compliance with the ordinance as written and that the Zoning Administrator was incorrect in his interpretation of said ordinance. The Board found that the ordinance states: that an accessory structure must be placed in the rear yard and accessory structures shall be at least three feet from all property lines and five feet from any other building*

on the same lot. This structure was approximately 15.5 feet from the principal structure but 4.5 feet in the rear yard therefore this item was in compliance with the City's Code as written.

2. The manner in which the strict application of this chapter would deprive the applicant of a reasonable use of the land.
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.
4. Reasons that the variance will preserve not harm the public safety and welfare and will not alter the essential character of the neighborhood.

MOTION: made by Diane Hills; seconded by Bill Sumner – To grant the variance of 1 inch in order to construct a covered carport / picnic area in a R-1B, Single Family Residential District because the Board disagreed with the Zoning Administrator's interpretation that an accessory structure had to be placed five feet in the rear yard. The ordinance states that an accessory structure must be placed in the rear yard and accessory structures shall be at least three feet from all property lines and five feet from any other building on the same lot. This structure was approximately 15.5 feet from the principal structure but 4.5 feet in the rear yard therefore this item was in compliance with the City's Code as written.

VOTE: 3-0 to grant the variance request.

_____ Karen B. Combs, Principal Planner