City of Riverside
Board of Zoning Appeals Meeting

July 27, 2021
7:00 P.M.

Members Present: Chuck Childers, Chairman
Todd Pultz
Jerry Richardson
Tim Schneider
Reece Timbrook

Members Absent: none

Staff Present: Nia Holt, Zoning Administrator
Gary Burkholder, Community Development Director
Katie Lewallen, Clerk of Council

CALL TO ORDER: Chairman Childers called the City of Riverside Board of Zoning Appeals meeting to order at 7:00 p.m.

OATH OF OFFICE: Chairman Childers administered the oath of office to newly appointed member Todd Pultz.

ROLL CALL: Mr. Childers, present; Mr. Pultz, present; Mr. Richardson, present; Mr. Schneider, present; and Mr. Timbrook, present.

APPROVAL OF MINUTES: Mr. Timbrook motioned to approve the meeting minutes of June 22, 2021. Mr. Schneider seconded. On call of the roll: Mr. Timbrook, yes; Mr. Schneider, yes; Mr. Richardson, yes; and Mr. Childers, yes. **Motion carried**.

HEARING OF APPEALS:

A. BZA Case # 21-0009 – 2347 Rondowa Avenue (Parcel I39 00711 0030) – R-3, Medium Density Single-Family Residential District

- **The appeal of an administrative decision regarding a chain link fence in the front yard.**

Mr. Jim Miller, legal counsel, spoke with city staff regarding the procedural result from that hearing based on the discussion of board members after the vote was taken. He advised to put the matter on not for new evidence, but for a revote to procedural clean it up so that the question is asked in an appropriate manner for an appeal. It is not a variance request; it is an appeal from the applicant pursuant to the city staff's denial of a permit for a chain link fence. This is to clarify the record and ensure the board is acting according to the proper procedure.

Chairman Childers presented the findings of fact. The BZA finds that the Riverside Zoning Ordinance was passed into law after a rigorous procedure was followed; therefore, they begin the inquiry with presumption that the law should be upheld WITHOUT granting the appeal and that the burden is on the appellant to show by convincing evidence that the Code should be varied regardless of how large or how small the requested appeal may be. The BZA finds that the property in question contains a chain link fence in violation of UDO Section 1115.01(E) as amended in March 2017. This Code section expressly prohibits a chain link fence on the subject property. The property was subject to nonconforming use rights to be grandfathered in should the nonconforming use have remained in existence after the Code was amended in March 2017 to prohibit the chain link fence on the subject property. However, the nonconforming use was extinguished upon the demolition of the chain link fence after the March 2017 amendment to the Code. The testimonial and documentary evidence presented to the Board supports the finding that the previously-existing fence was removed sometime in the 1990's, well prior to the March 2017 amendment to the Code. A review of publicly available geographical documents presented to the Board supports the same finding. The terminal post in the ground of the property does not constitute a pre-existing fence. The currently erected 36" chain link fence on the property is in violation of the plain language of the Code, and that no nonconforming use or permit was granted on the property prior to erecting the fence. The appeal of the denial of the permit **is** substantial; the requested appeal is a complete deviation from the Code. The Code prohibits chain link fences on the subject property; the requested appeal is for the expressly prohibited chain link fence. The essential character of the neighborhood **would not** be substantially altered nor would adjoining properties suffer a substantial detriment as a result of the appeal. However, a substantial detriment **would** occur to the uniformity and conformity of the Code provisions to permit applications should the appeal be granted, thus creating confusion and uncertainty for subsequent applications as to how the Code is interpreted and enforced. The BZA finds that the owner's predicament **can** be obviated through some method other than the requested appeal by installing a fence that complies with the Code with respect to material and height, and by obtaining a proper permit for the fence prior to erecting the fence. The spirit and intent behind the Zoning Ordinance **would not** be observed by granting the appeal. The proposed fence will be a complete deviation from the plain language of the Code, which was amended in March 2017 to prohibit chain link fences on the subject property. Granting the appeal on these facts would violate the spirit and intent of the Zoning Ordinance, and create disparate application of the Code in an arbitrary and non-uniform fashion. The BZA also takes into consideration that the City Zoning Staff **does not** recommend granting the appeal as requested. The BZA finds that the appellant **has not** met the burden of proof for an appeal of the City's denial of the permit for the installation of a chain link fence, as the plain language of the Code prohibits the fence.

Chairman Childers motioned to ask whether the applicant has met his burden of proof to sustain his appeal from the staff denial of his fence permit. Mr. Schneider seconded the motion.

Mr. Pultz asked city staff when the applicant was denied the permit, was he advised to file the appeal and that was his only process; there is no option to file for a variance. Ms. Holt replied yes, the variance would not cover a design element of the code. Discussion was held on clarifying design elements and dimensional elements. Mr. Pultz stated when somebody appeals an administrative decision, it is not just them appealing whether they are allowed to do it or not as that is a variance. If they are appealing it, the appeal in the code allows for the appeal of the entire enforcement action of the UDO in his interpretation. He stated that in 2018, there were

three churches that were approved for variances in electronic signs in R-3 neighborhoods. Discussion was held on conditional uses as Councilman Childers stated they have heard conditional uses with electronic signs. Ms. Holt stated that conditional use is for planning commission. Councilman Childers stated they have received a number of them. Ms. Holt stated she does not know what her predecessors did, but those would be heard by planning commission.

Mr. Burkholder asked Mr. Miller what should be considered to the narrow facts of this case. Mr. Miller stated if it is to compare, it is to compare to appeals and not to a variance or any other type of item in front of the BZA. If the board wants to review similar situations of the past, the board needs to look at appeals of permits that have been denied by city staff. The focus should be on the facts of the case, the appellant bears the burden to show whether he has provided persuasive evidence to the board that his actions were not in violation of the code as the city found. An appeal of a denial of a fence permit would be relevant to discuss. Anything beyond that scope in his legal opinion would not be relevant to this case. Mr. Pultz asked if someone appeals the enforcement action of the city, in this scenario, the city staff advised them they could file an appeal and not a variance; if they file an appeal, then the BZA could hear whether that enforcement action of the entire case was correct or not, whether city staff gave them correct direction. Mr. Miller stated the BZA would hear the appeal in terms or whether or not the appellant can provide the burden of proof to sustain his appeal. That is the question that the board is tasked with determining. Mr. Pultz stated that variances were allowed in the past to come before the BZA for things other than dimensional requirements until recently within the last month or so with the Circle K case. The city told Circle K they could not file a variance for two signs because it was not a dimensional requirement. He stated citizens should not be held to a standard to understand what they can and cannot appeal because that is not their specialty. If the city staff guides them in a direction to file an appeal, then they need to be able to believe city staff. He agrees with the city in terms of chain link fences not allowed in the front yard as well as 4' fences not being allowed. He also believes that the citizen was not given proper direction by the city that he should have been allowed to file a variance as opposed to an appeal for a chain link fence based on what has happened before the BZA with this administration and three administrations before that. He stated that if it changes every time they change zoning administrators then they are in bad shape. He will vote against the motion as he thinks it should have been able to come before them as a variance; it is not their interpretation of what is allowed, it is the enforcement action of the UDO as a whole. Chairman Childers stated what was brought before them was that the city staff says you can or cannot do something and tells them why. A person can then appeal that decision; they are appealing the interpretation and they want the BZA to decide. The appellant was saying it should be grandfathered; it was purely a legal interpretation that they chose. It had nothing to do with variances or conditional uses or anything else. That was the appeal. Variances weren't discussed. Mr. Pultz stated that the city staff guided him and told him what his options were. A normal citizen is not a code expert, so if city staff tells him the only option is to file and appeal and then city staff writes the wording on the appeal that goes before the BZA that is unfair to the citizen. He stated that the appellant asked several times in the previous case what could he do. BZA members asked if he could file a variance because there is confusion. If city staff tells him he can only file an appeal, then he is left with no option. When filing the appeal, it isn't just can he have a chain link fence or not, if so, then it would not be an appeal; it would be a variance. He read the purpose of the BZA.

Mr. Burkholder asked Mr. Pultz if he watched previous decisions made by the BZA. Mr. Pultz

replied he has watched every meeting since it has been live. Mr. Burkholder stated it was decided at the previous meeting they could not consider a variance because the previous decision by the BZA said a person could not get a variance on a design request it had to be dimensional. The BZA made that decision previously so staff did advise Mr. Davis what his options were. He was also advised that there would be a possibility to come back and request a waiver through the planning commission as that legislation recently passed council and will be in effect in about 30 days. Staff did act properly. If there had been misinterpretations in the past, this staff now looks deeply into the code and has an expert who had looked at code and other codes in previous positions. They also check with legal counsel to make sure they are advising properly everyone that comes before the BZA or planning commission, complete due process in accordance with the code and the law. Discussion continued on design and dimensional variances and the code and to make sure the BZA gets it right from here on and reduce confusion. Mr. Pultz stated the code has three sections that discuss major variances and they are all a little bit different and conflicting. He stated he spoke with Mr. Childers previously and agrees with him that BZA case should not be worked on precedence; every case should be on its individual merits. If that is the case, then a staff report to the BZA should not set precedent because of a prior decision on the Circle K case. This is creating confusion. He doesn't believe this was enforced correctly, not because of any ill intent, just not enforced correctly. He believes city staff made the right interpretation on the chain link fence and 4' height, but the enforcement action for the UDO was incorrect in not allowing the applicant to file a variance.

Mr. Miller stated the BZA is supposed to be deliberating about the appeal at this time. The applicant had the due process to submit evidence to show he got a permit; that evidence was not submitted. He had the chance to show it was not a fence in violation; that evidence was not submitted. This is a limited appeal; it is not a variance. The board is not discussing matters before it, if it is discussing variances, etc… If the board is going to deliberate on this particular case, then the discussion is not relevant. Only the evidence presented is what is relevant, and if that evidence was sufficient to sustain an appeal.

Chairman Childers stated they need to narrow their focus to the cases and then on another day have a training session without cases being heard.

Mr. Miller stated he may wish to resubmit the motion to be clear.

Chairman Childers motioned to ask whether the applicant has met his burden of proof to sustain his appeal on the staff denial on a fence permit. Mr. Schneider seconded the motion. Roll call went as follows: Mr. Childers, no; Mr. Schneider, yes; Mr. Pultz, yes; Mr. Richardson, yes; and Mr. Timbrook, yes. **Motion carried.**

Mr. Miller clarified the motion: whether or not the applicant provided sufficient evidence to the BZA to sustain an appeal, meaning that the fence is permitted. The board just voted four 'yes', meaning the applicant submitted sufficient evidence to prove that he is not in violation. There is one 'no' vote. The applicant in the BZA's determination provided sufficient evidence to show the fence erected without a permit is proper. Chairman Childers stated by doing so, they just confused the people more.

Ms. Holt stated she would contact Mr. Davis tomorrow about the case.

B. BZA Case # 21-0012 – 601 Woodman Drive (Parcel I39 00920 0008) – B-2, General Business District

- **Variance from the City of Riverside UDO Section 1113.07(D)(5), 1113.09(C)(3), and 1113.13(C)(3) to allow a reduction in the required landscape buffer yard and distance between curb cuts and to increase the on-site light fixture height.**

Chairman Childers stated there are three variances with this case. Ms. Holt stated this variance is to allow: a) a 63% reduction in the required landscape buffer yard, b) a 66% increase in the height of the pole mounted light fixtures, and c) a 21.7% reduction in distances between curb cuts. She provided the case summary – the former K-Mart site is being redeveloped into a new Kroger store. The existing structure will be demolished by the applicant and construct a new 100,349 sq. ft. store with a 10-pump gas station on the site. The applicant is working with the service department to realign the drive so they align with St. Helen's across the street. She presented the zoning map, an aerial map, a site plan, and site photos of the area. She reviewed the standards for approval. She stated the property would yield a reasonable return and there can be beneficial use of the property without the variance on all three requests. The requests of all three variances is substantial (major). The essential character of the neighborhood would only be altered by the variance of increasing the on-site light fixture height. She indicated that the light fixtures will be taller than other lighting fixtures in the general vicinity and the light trespass will be greater than one foot, which is permitted to go beyond the property lines of the site. No governmental services will be impacted. The applicant was aware of the zoning regulations prior to the purchase of the property. The property owners' predicament could not be obviated through some other method than a variance on all three requests. The spirit and intent behind the zoning requirement would be upheld by granting the variances; there is concern only on the light trespass to other properties. Staff recommends approval of the landscape buffer yard variance and the distance between curb cuts. Staff recommends approval of the on-site light fixture height with the condition that the lighting plan be reviewed and approved by the planning commission.

Discussion was held on the light trespass as there is no residential area around it. Ms. Holt stated it is a code issue as to how much light can trespass beyond property lines. Planning commission must make that determination.

Mr. Pultz asked on the front yard landscape buffer, which is a 10' requirement, they are asking for a 6.3' reduction making it go down to 3.7'. Ms. Holt stated that it will vary; she may have a typo. Mr. Pultz stated that his math makes it look like a landscape buffer request of 3.7'. But, when reading through Kroger's justification, it says their average is three feet, but the minimum setback is zero. It was just a bit confusing.

Chairman Childers opened the public hearing. Anne McBride, zoning consultant for Kroger with McBride Dale Clarion LLC, 5721 Dragon Way, Cincinnati, OH, took the oath to give sworn testimony. She stated that Kroger will soon be demolishing the 118,500 sq. ft. structure formerly known as K-Mart. The proposed development will be 100,349 sq. ft. Kroger store. It would have 465 parking spaces. Some features include: 15 online pickup spaces, pharmacy drive-thru, and a fuel center oriented toward Burkhardt that had 10 pumps. They found working with the city and looking through the ordinances they needed to come before the BZA to request the variances mentioned. She stated for the landscape buffer the code requires a 10' setback for both parking

and access drives from any right-of-way. Currently, on Burkhardt the existing pavements sets back a minimum of 9.5' from the right-of-way with an average of 15' setback. However, on Woodman, it is a minimum of zero. The right-of-way is actually into the existing pavement. It is a minimum of zero and an average of three feet. Kroger is proposing to increase the setback on Burkhardt to a minimum of 21', which is in excess of what the code requires and would be planning the six required street trees along that frontage. On the Woodman frontage it would vary with a minimum of 3.7' setback, an increase of zero with the right-of-way encroaching into the pavement area with an average of 6.25'. They will plant all of the 12 trees required within there. Although a variance is being requested, it would be a significant improvement aesthetically. On the driveway spacing variance request, the speed limit required on Woodman is 45 mph, and per the code it would require 360' spacing between curb cuts or access points for non-residential uses. Currently, there is 310' between the north and the south curb cuts/access points that serve the K-Mart. They are proposing 255' between the north drive and the property line to allow it to align with the access point to St. Helen Parish. They hired a traffic engineer who did a traffic impact analysis and has been working with the city's engineer and that was the recommendation to them so the two access points align. They felt it was a safer situation and good traffic principles. That will only be a three-quarter access: turn right in, turn right out, and turn left in. There will be no left turn out at that access point. The south access point will be shifted to the southern property line to maximize the distance between the two driveways and be as close to code compliance. It will be only 282' between the relocated access point and the south access point. It will reduce the amount of compliance towards the code, but it was a request from the traffic engineer to do that. On the height of light poles variance, the code limits the height to 25'. That is found in more office parks and is what the code requires. They are proposing to light the site with LED fixtures, which gives a more even and controlled light as well as energy efficiency. They are requesting the poles to be 41' 5". The number of parking spaces is important to them. If they were to go to 25' height poles, it would almost double the number of poles required, which will take up parking spaces and creates more hot spots in the lot than the higher controlled mounted fixtures. Their requested variances will be safer to the site and more aesthetically pleasing with the building and landscaping. It is a $23 million investment to the community of Riverside and will offer employment opportunities and convenience for residents.

Mr. Richardson asked if there would be a pork chop on the north Woodman entrance/exit. Ms. McBride replied yes. He asked about the south entrance/exit. She stated it would be signalized.

Chairman Childers closed the public hearing at 7:50 pm.

Chairman Childers reviewed the findings of fact for Case #21-0012a – reduction in the required landscape buffer yard. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the presumption that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small it may be. The property in question **would** yield a reasonable return and there can be beneficial use of the property **without** the variance; however, the development would lose the quality of green space along the perimeter of the site. The applicant is requesting to reduce the landscape buffer by 6.3', which is 63%. They find the variance is substantial. The BZA finds that the essential character of the neighborhood **would not** be substantially altered, nor would

adjoining properties be adversely affected. The proposed landscaping buffer will average 6.25' street trees and 5' asphalt walk will be included in the redevelopment which supports the City's walkability goals. The BZA finds that the owner's predicament **could not** be obviated without the requested variance. They find that the spirit and intent behind the Zoning Ordinance **would be** observed by granting the variance. They also take into consideration that the city's zoning staff recommends granting the variance as requested. They find the appellant **has** met the burden of showing that practical difficulties exist for a variance as requested.

Chairman Childers motioned that the variance be granted as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; Mr. Richardson, yes; Mr. Schneider, yes. **Motion carried**.

Chairman Childers reviewed the findings of fact for Case #21-0012b – maximum height of on-site light fixtures. The BZA finds that the property in question **would** yield a reasonable return and there cannot be a beneficial use of the property without the variance. The applicant could install less energy efficient products, which require more pole mounted lighting fixtures. The applicant is requesting to install light fixtures, which are 16.5' taller than permitted, which is a 66% increase in height. They find that the variance is **substantial.** The BZA finds that the essential character of the neighborhood **might** be altered and the adjoining property might be affected. The proposed light fixtures will be taller than fixtures in the area. They find that the owner's predicament could not be obviated through some method other than a variance request. Kroger's justification is that the light fixtures are more efficient which allows for more controlled and even lighting. They find that the spirit and intent behind the Zoning Ordinance **would be** observed by granting the variance. The variance will help create a safe environment for customers and employees. They also take into consideration that the city's zoning staff does recommend granting the variance as requested. The BZA finds the appellant **has** met the burden of showing that practical difficulties exist for a variance for fence height.

Chairman Childers motioned that the variance be granted with the condition that the lighting plan and design be approved by the planning commission. Mr. Schneider seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Schneider, yes; Mr. Pultz, yes; Mr. Richardson, yes; and Mr. Timbrook, yes. **Motion carried**.

Chairman Childers reviewed the findings of fact for Case #21-0012c – reduction of a distance between curb cuts. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would yield a reasonable return and there can be a beneficial use of the property without the variance. The applicant is requesting a 21.7% reduction in the distance between drives. The BZA finds that the variance is substantial. The BZA finds that the essential character of the neighborhood **will not** be altered nor adversely affect the adjoining properties. They find that the owner's predicament **could not** be obviated through some method other than the variance requested. A variance is needed to improve the access to the site. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. They also take into consideration that the city's zoning staff does recommend granting the variance as requested. The BZA finds the

appellant **has** met the burden of showing that practical difficulties exist for the variance as requested.

Chairman Childers motioned that the variance be granted as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried**.

Chairman Childers asked when the new Kroger's will be open and operational. Ms. McBride stated they still need to go to the planning commission next month. They hope to start construction this fall with the store opening in the fall of 2022.

C. BZA Case # 21-0013 – 4641 Oakdell Avenue (Parcel I39 101411 0008, I39 101411 0030, and I39 1001400 0031) R-3, Medium Density Residential

- **Variance from the City of Riverside Unified Development Ordinance Section 1107.05(D)(1)(e) and 1107.05(D)(1)(f) to allow an additional to encroach into the required rear yard setback and to increase the maximum lot coverage allowed.**

Ms. Holt stated these variances are to allow an addition to encroach into the required rear yard setback and increase the maximum lot coverage. The required setback is 25' and the request is for a 13' encroachment, a 52% encroachment. The maximum lot coverage is 50% and the request is for a 65% lot coverage, an 18% increase. She presented the case summary for the Anchor Baptist Church campus located on Oakdell Avenue between Mayapple Avenue and Spinning Road. They are proposing to add a multi-purpose building on the rear of the existing church. They have received approval from the planning commission for the site plan and lot consolidation. She presented the zoning map, an aerial map, the site plan, and site photos from the area. She reviewed the standards for approval. She stated the property would have a reasonable return; the applicant would need to build a slightly smaller addition. Both variance requests are substantial. It is a community church in a residential neighborhood and the addition will result in a loss of green space and will change the character of the subject site and potentially the neighborhood. No government services will be impacted, but there is concern about storm water management due to the loss of green space. Staff has no information on the applicant's knowledge of zoning restrictions. Staff recommends a smaller addition or for the maximum lot coverage adding some additional green space in other areas of the property. She stated the spirit and intent behind the zoning code would not be observed by granting the variances. Staff recommends denial of the rear yard setback; staff recommends approval of the increase in maximum lot coverage with the conditions of submitting a landscape plan and obtaining all required permits.

Chairman Childers opened the public hearing. Mr. Rich Miller took the oath to give sworn testimony. Mr. Miller stated he has a house on Mayapple and throughout the course of the church taking over that property, they have done nothing but good things for that area. They fixed up a dilapidated house across the street. He wanted to speak in favor of what they are doing.

Mr. James Elliott, pastor of Anchor Baptist Church, took the oath to give sworn testimony. He stated the problem with the existing building is that his fellowship hall is not big enough to

contain the people adequately distance-wise. He stated Ms. Holt informed him of everything he needed to know and what was being presented to the BZA. He is not looking to add space to a place to cause problems in the neighborhood that is not what they are there for. They just don't have the space. He can sit up to 299 in his auditorium. Saturday, they had 220 for a funeral. When they tried to feed everyone, it was a nightmare with everyone being so close. The multi-purpose room is to make additional space. When he bought the building, all the lots were a mess. He went to get a loan and every bank said it was a mess. He had to combine all the lots to make one lot. Mr. Richardson asked if the lot was a recent purchase. Mr. Elliott replied no; they have been there since 2007.

Mr. Timbrook asked if both variances were denied and they had to build within the requirement, which looks like 32,000 sq. ft. instead of 44,000 sq. ft. what would be the impact. Mr. Elliott stated he would have to know exactly how big of a space to add to the back of the building. When they discuss a fellowship hall, they need enough room to move around. Putting two feet on the back doesn't solve their problem. The fellowship hall they have, which was existing, was never big enough for what they are doing. Mr. Timbrook asked if that was the main structure. Mr. Elliott stated the auditorium can seat 299; the fellowship hall is a 30' x 40' in the wing next to the house. If the two structures were the same size, then it would be great, but the main structure was built in 1958, he believes, and done first then they built the fellowship hall, which is right on the line.

Mr. Pultz stated if the variances weren't approved they would have to move their structure to a 77' x 120'. It would put them in compliance. This is just the size of the rear building with encroachment. This would leave them with a 9,240 sq. ft. building. Mr. Elliott replied that would be adequate. He does not want to start issues anywhere, but even the lot behind them is two feet from their line. Even if he put a fence down the line to separate the properties, he would be right on the house with that line so they haven't done that because he doesn't want to look out a window and see a fence right there. He is wanting to see what the city will allow him to do. He doesn't want to invest $1.9 millions in a building and find out they can't do that. He wants the spirit of the community to be there as well. Mr. Pultz asked if they are doing a pre-fab or a stick build. Mr. Elliott stated the initial building is a Butler building, a steel building, with a brick façade. They went back to Butler and General Steel, which do the exact same buildings. They will come in and design that building to match. Butler built the original building. Mr. Pultz stated that with a steel buildings they may be limited at times to what is in stock. Discussion was held on building types and sizes.

Mr. James D. Piergies, owner of 1228 Mayapple, took the oath to give sworn testimony. Mr. Piergies stated his son lives there as a tenant. In thinking on what the pastor had to say, he thinks they can work things out, but he says as it exists, he asks them to deny the request for the variance. In the spirit of the zoning laws and UDO, it is important to maintain the integrity of the community and the area. He is sensitive to what has been said about the building and the size. If they can get away from encroaching on the setback period to that extent; then they can come to some type of terms as to how that works. What is requested at this point is excessive and not in the best interest of the community. There would be concerns about rainwater problems if the green space is taken away. A stick building could meet specifications and stay within the requirements. He understands the lot configuration and understands the church has needs and want to meet. He asks that they work together to meet them in a way that doesn't encroach to as

great a degree as it does. On that side of the property, there are several windows that is the only light source that comes in from that side of the property. It will potentially be a problem if those windows are blocked and it becomes an issue if they get the sunlight they ordinarily would get. He asks they modify the request and proposal as the pastor has indicated and try to stay within the zoning requirements and a building that fits better into that lot.

Chairman Childers closed the public hearing at 8:13 pm.

Mr. Schneider asked how tall the building is. Ms. Holt replied she had no elevations. Mr. Timbrook stated it would be roughly the size of the structure there now. It would be similar to the building there now. Discussion was held about the runoff and how much it encroaches on the residents to the south. Chairman Childers asked if they built it the size they wanted how close would it be to the other property on the back side. Ms. Holt replied 12'. Mr. Timbrook stated he thought it was 12' from the property line. The satellite image looks close. Mr. Schneider asked if the city was aware of any storm drainage around there. Ms. Holt stated the church worked on putting a storm drain in 2010.

Chairman Childers asked what their thoughts were on the rear yard setback. Mr. Timbrook replied he would deny. Mr. Schneider replied the same and to have the landowners work it out. Mr. Pultz stated with a pre-fab they will end up with a 70' x 120', not a 77'. This will give them an 8,400 sq. ft. building, 2,000 more people capacity and probably more than they would need. He doesn't think this is a hardship and still can be accomplished. He would vote against it. Chairman Childers asked what they thought on the lot coverage, the same thing. Mr. Timbrook replied yes.

Chairman Childers reviewed the findings of fact for Case #21-0013a – rear yard setback. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would yield a reasonable return and that there can be a beneficial use of the property without the variance. They find that the applicant is requesting a 52% encroachment which is substantial. The essential character of the neighborhood **would** be substantially altered and adjoining properties would suffer a substantial detriment as a result of the variance. They find that the owner's predicament **could** be obviated by constructing an addition which would meet the 25 feet rear yard setback. They find that the spirit and intent behind the Zoning Ordinance **would not** be observed by granting the variance. The variance request **is not** within the intent of the ordinance. They also take into consideration that the City Zoning Staff does not recommend granting the variance as requested. They find that the appellant **has not** met the burden of showing that practical difficulties exist for a variance for the addition as requested.

Chairman Childers motioned that the variance be denied as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried**.

Chairman Childers reviewed the findings of fact for Case #21-0013b – lot coverage. The property in question would yield a reasonable return and there can be a beneficial use of the property without the variance by constructing a smaller addition. They find that the applicant is requesting a 18% variance to the lot coverage which is not substantial. The essential character of the neighborhood **would not** be substantially altered nor would adjoining properties suffer a substantial detriment as a result of the variance. They find that the owner's predicament **could** be obviated by constructing a smaller addition. The spirit and intent behind the Zoning Ordinance **would not** be observed by granting the variance. They also take into consideration that the City Zoning Staff does recommend granting the variance as requested with conditions. They find that the appellant **has not** met the burden of showing that practical difficulties exist for a variance for the addition as requested.

Chairman Childers motioned that the variance not be granted as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Timbrook, yes; Mr. Pultz, yes; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried**.

D. BZA Case # 21-0014 – 1 Hermiston Avenue (Parcel I39 00719 0017) R-3, Medium Density Residential

- **Variances from the City of Riverside Unified Development Ordinance Section 1107.05(D)(1)(c) and 1115.01(E)(3)(a) to allow four (4) foot fence in the front yard.**

Ms. Holt stated that the first variance is for 20' encroachment into the front yard setback, which has a 20' setback requirement, so a 100% encroachment. The second variance is for the maximum height for a front yard fence. The requirement is 36"; the request is for a 12" increase, a 33% increase. She reviewed the case summary. The site is a corner lot at the intersection of Hermiston Avenue and Pocatello Avenue. The applicant is proposing a 4' chain link fence in the front yard. While the property curves, it does not interfere with any sight triangles. Staff received one call in opposition to the proposed fence after the site report was written. She presented the zoning map, an aerial map, the site plan indicating where the proposed fence will be, and site photos of the property and surrounding area. The BZA is only considering the fence height and setback, not the material. She reviewed the standards for approval. She stated the property still have a beneficial use without a variance for the front yard setback. Staff acknowledges that due to the configuration of the lot that beneficial use could not include the installation of a fence without limiting the amount of the lot could be enclosed. She stated it is a substantial variance for 100% encroachment and for the 33% increase in fence height. The essential character of the neighborhood would not be altered. No delivery of government services would be impacted with either variance. Staff had no information of the applicants knowledge of the zoning code at the time of the purchase. There is no other method to alleviate the predicament other than a variance. Staff finds that the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Staff recommends approval of the front yard setback variance. Staff recommends approval of the fence height with the conditions if the waiver text amendment is adopted the applicant must request and obtain approval from the planning commission for the chain link fence or change the fencing material.

Mr. Timbrook asked Ms. Holt to explain the condition. Ms. Holt stated that BZA cannot rule on the material, they will need to go to the planning commission to get approval on that. If the

planning commission denies them that material, then they would have to install a compliant material. Mr. Pultz asked if they aren't hearing about a chain link fence, then why would they put a condition on there for them to address it. Ms. Holt stated they are hearing it for the height. Mr. Burkholder stated they are actually trying to reduce the confusion because an applicant can come to the BZA and say they got approval and that is all they have to do. They are doing everything they can to make sure the applicants know all the steps. Some of that applies to the BZA and some goes to planning. This is a service to the community when they have that condition and clarify it in the staff report. Ms. Holt stated that the waiver is not in effect, yet.

Chairman Childers opened the public hearing. Mr. William Cole, 1 Hermiston Avenue, took the oath to give sworn testimony. He stated that he thinks it is a 42" and not a 48" fence. It is the same size as the fence on either side of his house. He discussed his lot layout as his house front faces Pocatello. The side is the only yard they can put a fence around for the dogs. They want the 42" fence because of the hill on the property line.

Chairman Childers closed the public hearing at 8:30 pm.

Mr. Pultz asked if they approve for a 48" does he have to do a 48" or can he do a 42" fence. Chairman Childers stated if they approve 48" he can do a 42".

Chairman Childers reviewed the findings of fact for Case #21-0014a – front yard setback. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would have a beneficial use without the variance. They find that the variance is not substantial because it is a unique circumstance. The front yard is 12' deep which is 8' less than the 20' setback standard. The lot also curves. The essential character of the neighborhood would not be altered nor would it cause detriment to adjoining properties. The applicant's predicament cannot be obviated through some method other than a variance. Due to the shape of the lot application of the regulations would deprive the applicant of the reasonable use of the land and create an unnecessary hardship. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. They also take into consideration that the City Zoning Staff recommends approving the variance as requested. They find that the appellant **has** met the burden of showing that practical difficulties exist for a variance for the front yard setback requirement.

Chairman Childers motioned that the variance be granted as requested. Mr. Richardson seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Richardson, yes; Mr. Pultz, yes; Mr. Schneider, yes; and Mr. Timbrook, yes. **Motion carried**.

Chairman Childers reviewed the findings of fact for Case #21-0014b – fence height. The BZA finds that the property in question would have a beneficial use without the variance. They find that the variance of 33% is not substantial to increase the permitted height of the fence by 12" from 36" to 48". The essential character of the neighborhood would not be altered nor would it cause detriment to adjoining properties. The applicant's predicament cannot be obviated through some method other than a variance. The requested height is the minimum necessary to afford

relief to the applicant. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. The requested 12" difference in height will be out of the right-of-way and any sight angles. They take into consideration that the City Zoning Staff recommends approving the variance as requested with conditions. They find that the appellant **has** met the burden of showing that practical difficulties exist for a variance for the front yard setback requirement.

Chairman Childers motioned that the variance be granted as requested with the condition of the chain link fence being approved by planning commission if the proposed text amendment passes; if not the applicant must install fencing material compliant with Riverside's UDO. Mr. Pultz seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Pultz, yes; Mr. Richardson, yes; Mr. Schneider, yes; and Mr. Timbrook, yes. **Motion carried**.

E. BZA Case # 21-0015 – 1133 & 1155 Mayapple Avenue (Parcel I39 101408 0009 and I39 101408 0010) R-3, Medium Density Residential

- **Variance from the City of Riverside Unified Development Ordinance Section 1113.13(C)(6)(b) to allow a shared driveway to be wider than permitted.**

Ms. Holt stated these variances are to allow a shared driveway to be wider than permitted at the right-of-way. The first variance is where the private drive meets the right-of-way has a 24' requirement and the request if for 30', a 25% increase. The other variance is for the wing to wing right-of-way having a 30' requirement and the request is for 36', a 20% increase. She provided a driveway requirement diagram example. She presented the case summary. The applicant owns two properties on the southwest corner of Mayapple and Sheller Avenues and want to connect the driveways to widen the one on 1133 Mayapple to the property line as well as the street. This creates a wider driveway than permitted by the UDO in the public right-of-way. Their purpose is to divert water that pools on both properties. She stated that will not solve the problem. Mark Tilley, Riverside Engineering Technician, inspected the site. He stated in that neighborhood the residents have filled in their ditches so there is nowhere for the water to divert to. The issue with that is the grass has grown up and keeps the water onto the roadway. He is getting water from both sides of the street and crossing the road going toward his driveway. They showed up to the properties and was told by the owner it was to join the properties together. Then, he came up with another reason to divert the water. It is a bad situation in that area. There is a catch basin in between the two lots he owns and the water goes to the catch basin, but it is beginning to undermine the side so he is getting water on the property. Site photos were shown of the area and the street where there were catch basins. The water has no place to go as the ditches are full so it goes down the street.

The BZA took a 10-minute recess.

Mr. Schneider asked when the water goes in the catch basins where does it go. Mr. Tilley stated on this situation the catch basin in the driveway is connected to the one on the corner; then it runs further down the adjacent street. Different catch basins are connected. The problem is the water goes into the front yard and it cannot reach the catch basin. If he pours a double driveway, then he has a flat surface for the water to on and directed to the catch basin in between the drives.

Mr. Schneider asked if that would help it. Mr. Tilley replied they are combining two driveways and if they have grass in the area and it is built up, it is going to do the same thing. It still exceeds the maximum width of the driveways. Mr. Timbrook asked if the water issue would be slightly better. Mr. Tilley stated that the catch basin they see is 4" below the existing driveway elevation surface, so they would have to put a swale in to the new driveways to get the water to go in there or raise the catch basin.

Mr. Burkholder stated storm water is a citywide issue. They have had township and village and over the years people have made their own resolutions for their property. Many times, that exacerbates the problem even worse. People choose to close their open ditches to mow and then you see the result that it negatively impacts other residents. Individual solutions don't correct the property in question, and also create problems for other residents. It has to be a comprehensive regional approach to storm water, which is something they are discussing with council now.

Mr. Pultz asked if the lighter colored driveway was poured without a permit. Ms. Holt stated that was correct. Mr. Pultz asked if any drawings were submitted for the new driveway that is not in the packet. Ms. Holt presented a site plan, the best they could get with the 30' and 36' drawn onto the photo. He asked if a proper drawing was submitted for the driveway, then Mr. Tilley would have expected to see some type of build-up of the catch basin to be over the height of the driveway because they wouldn't want it below. Mr. Tilley replied he does not know if the resident has been educated on this very thing. As far as he is concerned his property line is 25' off that centerline. After talking with him, he didn't have a concern about the catch basin; he was going to pour concrete all the way around it. It was still on the right-of-way property, and he was trying to do it without a permit. He was unaware he had to have a permit. That is what he got from the conversation. Discussion was held on the property line and the aerial views. Ms. Holt stated that the photo they have is from Montgomery County GIS, but from the aerials they are off by a few feet because they aren't surveys. They don't know if it is on the property line or over. Mr. Pultz asked if she had an opinion. Ms. Holt stated she is not a surveyor and does not want to step over her bounds as an urban planner. Mr. Pultz stated from the picture it looks like the driveway is already encroaching.

Mr. Tilley stated that any time they have a property line question, they do recommend the owner to get a hold of the county and have a surveyor come out and give them exactly where their property line is at before they go any further. That is not he city's responsibility to lay the property lines out. Ms. Holt added if a structural use is non-conforming, then the code does not allow any expansion of the non-conforming use.

Chairman Childers opened the public hearing. No one came forward to speak. Chairman Childers closed the public hearing at 8:55 pm.

Ms. Holt presented a slide indicating that staff recommends denial of both variances.

Discussion was held among BZA members. Mr. Timbrook stated water is tangential to the variance, but if they do one thing that fixes, it has a negative impact on the other. There are other properties with a combined driveway or double. The water problem still exists. Mr. Pultz stated there is a big encroachment on the property line so all they would be doing is further the encroachment. It would decrease the value if it was to sell down the road and potential neighbors

having civil litigation fighting over property lines.

Chairman Childers reviewed the findings of fact for Case #21-0015a – expansion of private drive to right-of-way, a 30' request. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would yield a reasonable return and have a beneficial use of property without the variance. The applicant will need a different way to divert the water away from the property. They find that the applicant is requesting a 25% variance of the lot coverage, which is not substantial. The essential character of the neighborhood would not be altered nor would it cause detriment to adjoining properties. The applicant's predicament could be obviated working on a long-term solution to the flooding problem. They find that the spirit and intent behind the Zoning Ordinance **would not** be observed by granting the variance since the variance would increase the impervious surface that is already dealing with storm water problems. They also take into consideration that the City Zoning Staff does not recommend approving the variance as requested. They find that the appellant **has not** met the burden of showing that practical difficulties exist for the variance as requested.

Chairman Childers motioned that the variance **not** be granted as requested. Mr. Richardson seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Richardson, yes; Mr. Pultz, yes; Mr. Schneider, yes; and Mr. Timbrook, no. **Motion carried**.

Chairman Childers reviewed the findings of fact for Case #21-0015b – wing to wing, 36' request. The BZA finds that the property in question would yield a reasonable return and have a beneficial use without the variance. The applicant will need a different way to divert the water away from the property. The applicant has requested a 20% variance, which is not substantial. The essential character of the neighborhood would not be altered nor would it cause substantial detriment to adjoining properties. The owner's predicament could be obviated by working on long-term solutions to flooding problems. They find that the spirit and intent behind the Zoning Ordinance **would not** be observed by granting the variance since the variance would increase the impervious surface that is already dealing with storm water problems. They take into consideration that the City Zoning Staff does not recommend granting the variance as requested. They find that the appellant **has not** met the burden of showing that practical difficulties exist for a variance as requested.

Chairman Childers motioned that the variance not be granted as requested. Mr. Pultz seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Pultz, yes; Mr. Richardson, yes; Mr. Schneider, yes; and Mr. Timbrook, no. **Motion carried**.

F. BZA Case # 21-0017 – 900 Beatrice Drive (Parcel I39 00616 0006) R-3, Medium Density Residential

- **Variances from the City of Riverside Unified Development Ordinance Section 1107.05(D)(1)(c) to allow an encroachment into the front yard setback.**

Ms. Holt stated this is a variance to allow a garage to encroach into the required front yard setback. The requirement is 20' and the request is for a 12' encroachment, a 60% encroachment. She presented the case summary of the corner lot that is located on the southeast corner of Beatrice Drive and Marjorie Avenue. The applicant is proposing to construct an 836 sq. ft. detached garage in the front yard on a corner lot. The proposed structure meets the required front yard setback on the Beatrice Drive property line, but not on Marjorie Avenue. She presented a zoning map, an aerial map, a site plan, a rendering, and site photos of the subject site and neighboring homes in the area. She had several views of the variance area. She reviewed the standards for approval. The applicant would have a reasonable return without the variance, but they would have a greater return with a garage on the property. The variance is substantial, a 60% encroachment. The essential character of the neighborhood would not be changed as detached garages are common in the neighborhood. It would not impact delivery of any governmental services. Staff does not have information on the applicant's knowledge at the time of the purchase. The applicant does have the option to construct a smaller garage to meet the required front and side yard setbacks. It does not meet the spirit and intent of the zoning code because there is not a great hardship. Staff recommends denial of the variance.

Mr. Richardson asked to review a photo. He stated the house faces Marjorie, but the address is for Beatrice. Ms. Holt replied yes.

Mr. Pultz asked what the setback was on the rear yard. Ms. Holt replied three feet for accessory structures. Mr. Pultz stated that the site plan looks like the garage extends beyond the frontage of the house. Ms. Holt stated that the setback for accessory structures is 3' and for principle structures it is 25' in the rear yard. Mr. Pultz asked about the fence that looks like it goes around the front of the house. He referred to a rendering in the packet that was not in the slide presentation. Ms. Holt stated the fence would not be allowed to go if that is a fence and not part of the configuration of the driveway. They can ask the applicant.

Mr. Timbrook asked if the tree in the site plan will be staying. Ms. Holt replied yes.

Chairman Childers opened the public hearing. Mr. Aldo Enriquez, owner, took the oath to give sworn testimony. Mr. Enriquez stated he drew the fence as he was looking for ideas, but having to get more variances he does not need the fence. He wants the garage on the left side so he could still have the yard space on the right of the property where it is less busy. It is a 4-bedroom and 1-bathroom house; he wanted to get as big as possible of a garage. He believes it would fit a three-car garage. The tenant living there works for him and needs that garage space. He also looked at neighboring houses and used Google Maps to measure their distance from the right-of-way. It is a little offset from the property to try and fit a bigger structure, but he is trying to go with what they are willing to approve. He wanted to keep the yard space under 50% coverage and try to go a little bit bigger and keep the 3' from the neighbor. He placed it that way because there is not a lot of driveway space. If they have the garage go the other way, they would not have a lot of parking; it doesn't have any parking now. He didn't want to hatch it because the electric line goes on the left of the house, and he doesn't want to spend a lot of money and having to relocate that. It is easier to put on the left and try to keep within the guidelines minus the front setback on Marjorie. If they go back the 20', it is a tiny garage and not even worth the money. Once you start building, you might as well build as much as you can while in that phase. A decent sized garage keeps tenants there longer.

Mr. Pultz stated in the driveways he is proposing there is a basin or old well, has he identified what that is. Mr. Enriquez replied it is an old cistern that carried water. He thinks whoever lived there before filled it in a bit. They are going to collapse it some more and fill it in. Mr. Pultz asked if the entrance to the garage is facing Marjorie. Mr. Enriquez replied it is opposite of Beatrice. Mr. Richardson stated the entrance to the garage is facing the house. Mr. Enriquez stated that was correct. Mr. Pultz stated that a lot of times when they see larger driveways it is the anticipation of storing something there. So, when doing a large 18' driveway next to a 12' driveway, what is he anticipating storing. Mr. Enriquez replied that his employee is a tree trimmer so smaller trailers, but nothing too tall. He was parking his RV there, but he couldn't find any parking in Dayton so he was trying to leave it until he finds a suitable place. He is also going to build a house. He just doesn't know if he is doing that in California or here. He did get a notice and moved his RV to a property he owns in Bellbrook. Discussion was held on the driveway and any changes to reduce the setback. Mr. Pultz stated the two driveways combined have a total width of 30', which is not within code. Mr. Enriquez stated it is going to be 24' where the right-of-way ends and from there he can span out to 30'. Ms. Holt replied that was correct. Ms. Holt added on private property it can be 30'. The issue with the previous case was that they were in the right-of-way. Mr. Enriquez stated he has pulled the permits for the driveway separately as he has worked with Mr. Tilley on knowing how to do it. He added that he is going to build a nice garage and put in some windows so it looks nice.

Mr. Jim Wellman took the oath to give sworn testimony. He provided the history of the site stating in 1954 when he moved in that was a garage and kept progressing and becoming a home. He stated several of his neighbors have come to him to represent them since he had served on the BZA years ago and have a working understanding of it. He requested information about the property about a week ago when he first heard about it. The rumors they were hearing and he did see the mobile home because he lives across from the property. There was a dump trailer parked between the house and RV. One of the rumors was that the garage would be large enough to house the RV, which is about the size of a school bus, and a privacy fence put around the property where they could store more dump trailers and things. He does not know how much of that is true. That is why they requested information about the property. He does not believe it would be in compliance with the rest of the neighborhood because the garage would be in front of the house. There is sufficient room and if he recalls, any time there is a trailer parked, it has to be on a cement pad or hard surface, which would give them sufficient room to the right of the house, about 25', room enough for a one-and-a-half car garage. It is not the best of working for a garage guy, and he understands the importance of that. Part of the dilemma is that he is not going to be one of their neighbors. He is going to make this investment and then flip it and move on and they would be stuck with looking at a garage as they drive up a road. Most of the houses around there even though they are smaller, they are behind the house. They are hoping the BZA works with him and it is a nice property, put the garage to the right of the house and/or put the pad. He gets the feeling he is going to run a business out of a residential home. Most of the neighbors around there are requesting that it be denied as is.

Mr. Enriquez stated he understands Mr. Wellman's concern, which is why he was telling them that he was not going to put a shack up there. He wants it to look more like a house and put some windows on it and nice siding. He is not trying to run a business out of there. He has plenty of properties that he can put something somewhere else. He is getting into the trucking business and will not put trucks in this little spot. He employee has his tree service and wanted just to park his

small trailer there. It would be in between the property and the garage or in the garage. He will not be running a business from there. He wants the property to look good and appreciates the neighbors and wants to have mutual feelings. He went on to explain that he wants the garage on the left rather than the right mainly because a car can come off of Beatrice road and hit a kid and he would not want to live with that. It is not safe; it is better to keep that in the back.

Chairman Childers closed the public hearing at 9:26 pm.

Mr. Schneider stated there is no where else to put a garage that size on the property. Mr. Pultz stated he appreciated Mr. Enriquez and his investment in the city and that he understands the frustration with real estate investing. He agrees with everything on the city's report other than where the city says they would have to construct a smaller one-car garage, because when looking at the plan, they are allowing for a 30' driveway and an 18' driveway is larger than most driveways. He thinks he can accomplish the same size of the garage if he eliminates the 12' driveway, which will have its challenges. He needs more than just collapsing an existing utility structure; there will need to be an environmental study there to make sure that is not affecting something else. If he keeps the 18' driveway, keep the garage, then he falls within the requirements. There is a resolution to this that doesn't make it a hardship. Chairman Childers stated they do not vary their plans. Mr. Timbrook stated he is leading to denying the variance. Mr. Pultz stated he would deny the variance and the reason is there is a solution that is easy. Mr. Timbrook stated he may want that space to be able to pull in and get in and out of the garage; it makes sense to him and to have it on that side of the house.

Chairman Childers reviewed the findings of fact for Case #21-0017 – encroachment into the front yard setback, a 12' encroachment request. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would yield a reasonable return and have a beneficial use of property without the variance. The variance is substantial; the requested variances is a 60% encroachment into the required setback. The essential character of the neighborhood would not be substantially altered nor would it cause detriment to adjoining properties. The owner's predicament can be obviated through some other method other than a variance by constructing a smaller one-car garage. They find that the spirit and intent behind the Zoning Ordinance **would not** be observed by granting the variance. They also take into consideration that the City Zoning Staff denies granting the variance as requested. They find that the appellant **has not** met the burden of showing that practical difficulties exist for the variance as requested.

Chairman Childers motioned that the variance be denied as requested. Mr. Pultz seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Pultz, yes; Mr. Richardson, no; Mr. Schneider, no; and Mr. Timbrook, no. **Motion failed**.

Mr. Miller stated the motion was to deny the variance so that didn't carry. They should probably do another vote to see if the variance will be granted. Chairman Childers stated they haven't done that in the past, but that doesn't make that right so he asked since legal counsel was present. Mr. Miller stated when it is asked in the negative then you ask what is the variance denying. That

motion did not carry. Chairman Childers stated they need to make a motion that carries. Mr. Miller state either that or continue it to the next hearing. At this point, it is not resolved.

Chairman Childers motioned that the variance be granted as requested. Mr. Timbrook seconded the motion. On call of the roll: Mr. Childers, no; Mr. Timbrook, yes; Mr. Pultz, no; Mr. Richardson, yes; and Mr. Schneider, yes. **Motion carried**.

G. BZA Case # 21-0018 – 2627 Old Troy Pike (Parcel I39 100505 0034) R-1, Low Density Single-Family Residential

- **Variances from the City of Riverside Unified Development Ordinance Section 1107.05(B)(1)(d) to encroach into the required side yard setback.**

Ms. Holt stated this is to allow an encroachment into the required side yard setback. The requirement is 15' minimum setback; the request is for a 3' encroachment or 20%. The applicant is proposing to construct a first-story bathroom addition. The proposed addition will extend the existing footprint of the house which is nonconforming. She presented a zoning map, an aerial map, a site plan, and site photos of the subject site and the surrounding area. She reviewed the standards for approval. The property would yield a reasonable return, but an even greater return and use for the property owner with a first-floor bathroom. The variance is substantial with 20% encroachment. The essential character of the neighborhood would not be affected nor will delivery of governmental services be impacted. Staff does not have information of applicants knowledge at the time the property was purchased. There is no other way for the property owner to get the addition other than a variance. The spirit and intent of the zoning code is being observed as the applicant is creating a space which will allow them to age in place and update a home in an older neighborhood. Staff recommends approval of the variance.

Chairman Childers opened the public hearing. Mr. Christopher Adams, representing Adams Home Construction that will be doing the bathroom addition, took the oath to give sworn testimony. He stated Mr. and Mrs. Gamble are in their mid-70s and their only bathroom is upstairs. They are done with going upstairs and want to build a 6' x 12' bathroom on the first floor on the back end of the dining room.

Mr. Dan Zanell, neighbor, took the oath to give sworn testimony. He stated he has lived next door to them for 30+ years. They do own the lot to the north as well. They actually have 62' of side yard rather than 12' as they own the other lot. They are getting up in years and all they want is a remedy to that.

Chairman Childers closed the public hearing at 9:38 pm.

Chairman Childers reviewed the findings of fact for Case #21-0018 – encroachment on side yard setback. The BZA finds that the Riverside Unified Development Ordinance was passed into law after a rigorous procedure was followed, therefore, the BZA began their inquiry with the **presumption** that the law should be upheld **without** a variance and that the burden is on the appellant to show by convincing evidence that the code should be varied regardless of how large or how small the requested variance may be. The property in question would have a beneficial use without the variance. They find that the applicant is requesting a 20% encroachment; this

would not be substantial. The essential character of the neighborhood would not be substantially altered nor would adjoining properties suffer detriment as a result of the variance. The owner's predicament could not be obviated through some method other than a variance. They find that the spirit and intent behind the Zoning Ordinance **would** be observed by granting the variance. They also take into consideration that the City Zoning Staff recommends approving the variance as requested. They find that the appellant **has** met the burden of showing that practical difficulties exist for a variance as requested.

Chairman Childers motioned that the variance be granted as requested. Mr. Schneider seconded the motion. On call of the roll: Mr. Childers, yes; Mr. Schneider, yes; Mr. Pultz, yes; Mr. Richardson, yes; and Mr. Timbrook, yes. **Motion carried**.

NEW BUSINESS:

A) Joint Work Session – Ms. Holt reminded the BZA that there is a legal update on August 12 at 6:00 pm in council chambers. Mr. Burkholder stated it would be a joint meeting with city council and the planning commission.

B) BZA Work Session – Ms. Holt stated they may wish to discuss dates. Chairman Childers stated that email works best for that. She just wants them to start thinking about dates. Chairman Childers asked Mr. Miller if in the future their motions should be in the positive and not the negative. Mr. Miller replied it doesn't always have to be, but the applicants that come before them have a burden so, if the motion is to deny a permit or variance and that carries it is okay, but if they ask for a variance or permit to be granted and it doesn't get granted that ends it. If they ask for it to be denied, and that does not carry, then there is still the question – the applicant might have met their burden. Ms. Holt told them to watch their emails to get a date settled for a work session.

Ms. Holt told them they are already looking at four cases for August.

ADJOURNMENT: Chairman Childers motioned to adjourn. All were in favor; none opposed. **Motion carried**. The meeting adjourned at 9:43 pm.

_____ _____

Chairman Date