



# Durham Board of Adjustment

## M I N U T E S

January 23, 2007 ■ 8:30 a.m.

Committee Room, 2<sup>nd</sup> Floor, City Hall

**Members Present:** Lynn Andrews  
Paul A. Arena, Alternate  
William Brian, Chair  
Furney Brown  
Daniel Edwards, Vice Chair  
George Kolasa, Alternate  
David Neill  
Spurgeon Thurston  
Ralph Whitfield, Alternate  
Rebecca Winders

**Members Absent:** None

**Staff Present:** Kevin Cates, Durham Police Officer  
Brenda J. Crews, BOA Clerk  
Kenneth E. Crews, City of Durham Fire Marshal  
Steve Medlin, Assistant Planning Director  
Karen Sindelar, Assistant City Attorney  
Michael Stock, Senior Planner  
Scott Whiteman, Planning Supervisor  
Sara Young, Senior Planner

<b>Guests Present:</b>	Nathan Isley	John Drury	Jim Henderson
	Beth Trahos	Brian Miller	Lyle Overcash
	Eric Braun	Tom Stark	Emily Herbert
	Ann Anderson	I. Jarvis Martin	Gillian Williams
	Linda Wilson	Nancy Scott	Bill Kaikhof
	John Hodges-Copple	Lisabro Ckmeier	Jordan Weinstein
	Adam Dickinson	Dan Jewell	Peter Anlyan
	Steve Ortman	Lou Goetz	Laura Drey
	Keith Wenger	John Staddok	James Dobbins
	Ellen Dagenhart	Tom Davis	Ron Butters
	Alice Bumgarner	Steve Ware	Jay Anderfer
	Borny Moellenbrock	Kimberly Isley	Canu DiBona
	John Bloedorn	Lee Ann Tilley	Steve Bumgardner
	Joel Collins	Laroy Tilley	Fergus Bradley
	John Compton	Diane Pahl	Lisa Drake
	Shelley Dekker	Nondas Kalfas	Carrie Mowry
	Brian Miller	Nahale Kalfas	
	Ann Burton	James D. Williams	
	John Dagenhart	Robert Greason	

**Conflicts of Interest/Early Dismissals**

The Chairman asked if there were any conflicts of interest with any of the Board members and any of the cases before the Board today.

Mr. Brian indicated a conflict with Cases B06-21, B06-22 and B07-02 and indicated he would recuse himself from those cases.

Mr. Arena indicated a conflict with Cases B06-21 and B06-22 in that he had worked with the applicant.

Mr. Neill indicated a conflict with Cases B06-21 and B06-22 and indicated he would recuse himself from those cases.

Chairman Brian also asked if any Board members had to leave early. No Board members requested early dismissal.

Mr. Brian and Mr. Neill recused themselves and left the Committee Room.

Vice Chair Daniel Edwards assumed Chairmanship of the meeting for Cases B06-21, B06-22 and B07-02.

**Hearing and Determination of Cases**

Mr. Stock asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. All Board members concurred.

Vice Chair Edwards read the following statement into the record:

This Board is a quasi-judicial Board of record and as such, all testimony will be recorded. The proceedings of this Board will be governed by the zoning laws, as recorded.

As Vice Chair of the Board of Adjustment, I'd like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First the staff will present an overview of the case then the applicant presents its evidence. The opponents, if there are any, will then present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows directly, not hearsay. All witnesses should come to the podium and speak directly into the microphone so their testimony can be recorded on tape.

Written evidence must be presented to the Chair and a determination will be made about whether it should be accepted. Written evidence can be inspected by the other side. All evidence, written or oral, can be objected to.

Witnesses are subject to cross-examination. Opposing representatives will have a chance to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine you must raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would like to note that Board members may have visited each site under consideration as a part of their preparation for this meeting.

The Board will vote on each case after the presentation of all evidence, pro and con, concerning the case. The law requires that in order for an applicant's request to be granted 5 of the 7 voting Board members must approve the request.

All decisions of this Board are subject to appeal to the Durham County Superior Court. Any one in the audience, other than the applicant, who wish to receive a copy of the formal order issued by this Board on a particular case, must submit a written request for a copy of the order at this hearing. Forms for this purpose are available from the Planning staff.

**SEATED:** Ms. Andrews, Mr. Brown, Mr. Edwards, Mr. Kolasa, Mr. Thurston, Mr. Whitfield and Ms. Winders

**Case B06-21 & Case B06-22**

**Case B06-21** – City - A request by Coulter Jewell Thames, PA for a minor special use permit to permit a density above 16 dwelling units per acre as per Sections 3.7, 3.9 and 4.8 of the Unified Development Ordinance. The property is located at 110 and 114 Watts Street, 1013 Lamond Avenue, 906 Morgan Street and zoned OI, CG; DDO-3. PINs 0821-07-69-0678, -3578, -3677, -4673, -4581

**Case B06-22** – City - A request by Coulter Jewell Thames, PA for a minor special use permit to permit height above three stories as per Sections 3.7, 3.9 and 4.8 of the Unified Development Ordinance. The property is located at 110 and 114 Watts Street, 1013 Lamond Avenue, 906 Morgan Street and zoned OI, CG; DDO-3. PINs 0821-07-69-0678, -3578, -3677, -4673, -4581

Mr. Edwards indicated he understood certain parties desired continuance of these cases.

Staff Presentation was made by: Michael Stock

Persons Appearing in Support  
of continuance:

Mr. Eric Braun, attorney for applicant and Ms. Beth Trahos, attorney for opponents both spoke indicating a desire to continue Case B06-21 and Case B06-22 to the February 27<sup>th</sup> meeting to allow time for the applicants and neighbors to work together.

Persons Appearing in Opposition  
of continuance:

None

Motion: Mr. Whitfield made a motion to continue both Case B06-21 and Case B06-22 to the February 27, 2007 Board of Adjustment meeting.

Conditions: N/A

Seconded By: Mr. Thurston

Vote: 7 to 0

Action: Approval

Mr. Neill came back to the meeting.

**SEATED:** Ms. Andrews, Mr. Brown, Mr. Edwards, Mr. Kolasa, Mr. Neill, Mr. Thurston, Ms. Winders

**Case B07-02:** City

A request by Nondas Kalfas and John Drury for a minor special use permit for a nightclub within an existing restaurant/sports bar as per Sections 3.9, 5.1.2 and 5.3.4O of the Unified Development Ordinance. The property is located at 3019 Auto Drive and zoned CN. PIN 0810-06-37-9777

Staff Presentation was made by: Michael Stock

Mr. Edwards indicated he understood certain parties desired continuance of this case.

Persons Appearing in Support: Ms. Ann Anderson representing G.R.E. Regency and other adjacent property owners came forward and requested that this case be continued to the February 27<sup>th</sup> meeting to allow time for the owners to fully review and understand what is being proposed.

Persons Appearing in Opposition: Attorney James Williams, representing the applicants of continuance requested that the case be heard and a decision made by the Board today.

The Board indicated it is the practice of the Board to continue cases when the applicant and adjacent property owners needed time to come together and discuss what is being proposed.

Motion: Mr. Neill made a motion to continue to this case to the February 27, 2007 meeting.

Conditions: The project shall be completed in accordance with an approved site plan, including any additional corrections and verifications.

Seconded By: Ms. Andrews

Vote: 6 to 1 (Mr. Brown)

Action: Approval

Mr. Edwards asked the Clerk to secure the Council Chambers on the 1<sup>st</sup> Floor to the February 27<sup>th</sup> meeting due to the number of citizens that would potentially attend that meeting.

**SEATED:** Ms. Andrews, Mr. Brian, Mr. Brown, Mr. Edwards, Mr. Neill, Mr. Thurston, Ms. Winders

**Case B07-03:** City: A request by Durham County Habitat for Humanity for a variance from the single-family detached rear yard requirement to extend seven feet into the required rear yard as per Sections 3.15 and 7.1.2 of the Unified Development Ordinance. The property is located at 1210 Franklin Street and zoned RU-5(2). PIN 0831-14-34-7847.

Staff Presentation was made by: Michael Stock

Persons Appearing in Support: Tom Davis, Steve Ware, Robert Greason, Carrie Mowry

Persons Appearing in Opposition: None

Staff

Recommendation: Approval

Motion: Mr. Edwards made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance requirements have been met.

Condition: That the maximum amount of encroachment into the rear yard shall be seven (7) feet and the building shall be constructed in accordance with the plot plan as submitted as part of the application.

Seconded By: Ms. Andrews

Vote: 7 to 0

Action: Approval

**SEATED:** Ms. Andrews, Mr. Brian, Mr. Brown, Mr. Edwards, Mr. Neill, Mr. Thurston, Ms. Winders

**Case B07-04:** City - A request by Durham County Habitat for Humanity for a variance from the single-family detached rear yard requirement to extend four feet into the required rear yard as per Sections 3.15 and 7.1.2 of the Unified Development Ordinance. The property is located at 1209 Franklin Street and zoned RU-5(2). PIN 0831-14-34-7997.

Staff Presentation was made by: Michael Stock

Persons Appearing in Support: Tom Davis, Steve Ware, Robert Greason, Carrie Mowry

Persons Appearing in Opposition: None

Staff

Recommendation: Approval

Motion: Mr. Thurston made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance requirements have been met.

Condition: That the maximum amount of encroachment into the rear yard shall be seven (4) feet and the building shall be constructed in accordance with the plot plan as submitted as part of the application.

Seconded By: Mr. Brown

Vote: 7 to 0

Action: Approval

**SEATED:** Ms. Andrews, Mr. Brian, Mr. Brown, Mr. Edwards, Mr. Neill, Mr. Thurston, Ms. Winders

**Case B07-05:** City - A request by Durham County Habitat for Humanity for a variance from the single-family detached rear yard requirement to extend eight feet into the required rear yard as per Sections 3.15 and 7.1.2 of the Unified Development Ordinance. The property is located at 1008 Worth Street and zoned RU-5(2). PIN 0831-10-25-8059.

Staff Presentation was made by: Michael Stock

Persons Appearing in Support: Tom Davis, Steve Ware, Robert Greason, Carrie Mowry

Persons Appearing in Opposition: None

Staff

Recommendation: Approval

Motion: Mr. Brown made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance requirements have been met.

Condition: That the maximum amount of encroachment into the rear yard shall be seven (8) feet and the building shall be constructed in accordance with the plot plan as submitted as part of the application.

Seconded By: Ms. Winders

Vote: 7 to 0

Action: Approval

**Approval of Summary Minutes for October 24, 2006**

Mr. Neill made a motion, seconded by Mr. Thurston, to approve the summary minutes as submitted by staff. The motion passed unanimously.

**Approval of Orders**

Chairman Brian requested a motion that the three orders, B07-03, B07-04, B07-05 be motioned and voted on together.

Ms. Andrews made a motion, seconded by Mr. Edwards that the approval of orders for Case B07-03, B07-04 and B07-05 is voted on as a group. The motion was seconded by Mr. Kolasa. The motion passed unanimously.

Ms. Andrews asked that the findings that do not apply in the variance cases be deleted from the motions. All Board members concurred. They noted that findings 1 and 4 would be deleted from the motions.

Ms. Andrews made a motion, seconded by Mr. Kolasa to approve the Orders for Cases B07-03, B07-04 and B07-05 as amended with the provision on all that the property be renovated in accordance with the plot plan submitted with each application. The motion passed unanimously.

(B06-21, B06-22, B07-02; these cases were continued, thus no orders were approved.)

**Old Business**

It was noted by the Board that they needed training on the UDO. Several suggestions for dates and times were made. Ms. Sindelar suggested adding 1-2 hours to a meeting time for the Board to have training. Chairman Brian indicated that an evening training session had been done in the past and asked the staff if they could accommodate that. Mr. Stock and Mr. Medlin indicated that the staff would fulfill the desire of the Board for the meeting date and time. The Board asked staff to plan an evening work session for 6-9 p.m. Mr. Stock and Mr. Medlin indicated they would select a date and email that information to all Board members.

**New Business**

Due to the nature of the cases being continued to the February 27<sup>th</sup> meeting, a poll was taken on which Board members would be present for that meeting. All Board members indicated they would be present at the February 27<sup>th</sup> meeting except Mr. Brown.

Mr. Arena, our new Board member, introduced himself. He indicated he was a commercial real estate attorney in Durham and was looking forward to serving on the Board.

**Adjournment**

The meeting adjourned at approximately 10:35 a.m.

Respectfully Submitted,

Brenda J. Crews, Clerk  
Durham Board of Adjustment