



BOARD OF ADJUSTMENT APPROVED MINUTES

February 28, 2023, 8:30 a.m.
Committee Room, 101 City Hall Plaza

I. Call to Order

Chair Meadows called the meeting to order at 9:02 a.m. due to his late arrival and the absence of the Vice Chair

II. Roll Call

Members Present:

Chad Meadows, Chair
Sherrod Banks
Natalie Beauchaine
Ian Kipp
George Kolasa
Justin Hall, Alternate
Chase Pickett, Alternate

Members Absent:

Michael Tarrant, Vice Chair
Nadera Salaam
Jessica Major

Staff Present:

Jessica Dockery, Planning Manager
Don O'Toole, City Attorney's Office (virtual)
Bryan Wardell, County Attorney's Office
Leigha Larkins, Planner
Terri Elliott, Clerk

Chair Meadows read the following statement:

The meeting will now come to order. Welcome to the February 28, 2023 meeting of the City of Durham Board of Adjustment. My name is Chad Meadows and I am the Chair of the board.

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 Unified Development Ordinance, as recorded

As Chair of the Durham Board of Adjustment, I would like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First, a staff member of the City County Planning Department will present an overview of the case. Then the applicant presents its evidence. The opponents, if there are any, will 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, not hearsay. All witnesses should come forward to the podium and identify themselves each time they approach the podium. Speak directly into the microphone so their testimony can be recorded on tape. Before each application I will read

the findings that must be made to approve an application, and any testimony should be relevant to the criteria that the Board uses to determine whether to approve an application.

Any written evidence or exhibits must be presented to the Chair and a determination will be made whether it should be accepted. Written evidence or exhibits can be inspected by the opposing party. All evidence, written or oral, or exhibits can be objected to.

Witnesses are subject to cross examination. Opposing representatives will have an opportunity to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine, you may raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would also like to remind everyone in attendance to be courteous and ask questions respectfully. If there are numerous people who will be providing the same or similar testimony either for or against an application, in the interest of time, I would request that you please select a representative to present that testimony.

I would like to note that Board members may have visited each site under consideration as part of their preparation for this meeting.

The Board will vote on each case after the presentation of all the evidence, for and against an application, and discussion among themselves concerning the case. North Carolina law requires that in order for an applicant's request to be granted for a City application before the Board, 5 of the 7 voting Board members must approve the request. (If less than 7 voting members present, state 5 of the 5 voting members or 5 of the 6 voting members). For a county variance request, North Carolina law requires that in order for an applicant's request to be granted, 6 of the 7 voting Board members must approve the request. For other county requests, including applications for a minor special use permit, 4 of the 7 Board members, or a simple majority, must approve the request.

All decisions of this Board are subject to appeal to the Durham Superior Court. Anyone 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 for the City/County Planning Staff.

Chair Meadows asked if any board members needed to note any *ex parte* communication for any of the cases? There was none. Chair Meadows asked if there was a need for recusals with regard to the cases before us today? No recusals. Chair Meadows then asked if there were any early dismissals? No early dismissals were requested.

A vote to excuse Major's absence was held.

MOTION: To excuse Major's absence

ACTION: Carried, 7-0 (Beauchaine, Kipp 2nd)

A vote to excuse Tarrant's absence was held.

MOTION: To excuse Tarrant's absence

ACTION: Carried, 7-0 (Beauchaine, Banks 2nd)

A vote to excuse Salaam's absence was held.

MOTION: To excuse Salaam's absence

ACTION: Carried, 7-0 (Kolasa, Pickett 2nd)

III. **Adjustments to the Agenda:**

B2300002 has been withdrawn by Staff

IV. **Approval of Minutes from January 24, 2023**

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MOTION: Approve the January 24, 2023, minutes as amended

ACTION: Carried, 7-0 (Beauchaine, Kolasa 2nd)

V. Hearing and Determination of Cases

B2300003 – City: A request for a Variance from the infill standards. The property is located at 2308 Indian Trail, zoned Residential Urban – 5 (RU-5) and within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Kolasa, Kipp, Beauchaine, Banks, Pickett, and Hall

Staff Report: Leigha Larkins presented the case.

Speakers: Eliana Rubin, Ellie Francis, and Roberto Diaz spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2300003, an application for a Variance from the infill standards, on property located at 2308 Indian Trail, has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

1. The improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.

ACTION: Carried, 7-0. (Kolasa, Kipp 2nd)

B2300005 - County: A request for a Minor Special Use Permit for an expansion of the use at an educational facility in a residential zoning district. The property is located at 501 Orange Factory Road, zoned Residential Rural (RR), and within the Rural Development Tier Lake Michie/Little River – District A Watershed Protection Overlay (M/LR-A)

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Kolasa, Kipp, Beauchaine, Banks, Pickett, and Hall

Staff Report: Leigha Larkins presented the case.

Speakers: Patrick Byker, Dan Jewell, Don Sever, Lyle Overcash, Nick Kirkland and Toni Shellady spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion that case number B2300005, an application for a Minor Special Use Permit to allow expansion of the use at an educational facility located 501 Orange Factory Road, has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

1. The improvements shall be substantially consistent with the plans submitted and as amended to the Board as part of the application.
2. The educational facility shall serve the middle age school and tenth grade levels.
3. The enrollment of the school shall have a maximum of 528 students
4. The site plan shall accurately portray areas of temporary rip rapping across the section of the wildlife corridor passage.

ACTION: Carried, 7-0. (Meadows, Beauchaine 2nd)

VI. Old Business - None

VII. New Business – Terri Elliott’ retirement at the end of April. Jo Gordon will take over BOA Clerk duties.

VIII. Approval of Orders

Case B2300003

MOTION: Approve the order for case B2300003 (Kolasa, Beauchaine 2nd)

ACTION: Carried, 7-0.

Case B2200049

MOTION: Approve the order for case B2200049 (Kolasa, Beauchaine 2nd)

ACTION: Carried, 4-0.

Case B2200052

MOTION: Approve the order for case B2200052 (Kolasa, Beauchaine 2nd)

ACTION: Carried, 4-0.

Case B2200055

MOTION: Approve the order for case B2200055 (Beauchaine, Pickett 2nd)

ACTION: Carried, 4-0.

IX. Adjournment

BOA training will be March 14 at 9:00 a.m.

The meeting adjourned at 10:38 p.m.

The next meeting will be March 28, 2023, in the Committee Room

Respectfully Submitted,

Terri Elliott, Clerk to the Board