



BOARD OF ADJUSTMENT APPROVED MINUTES

March 22, 2022, 8:30 a.m.
Zoom – Virtual Meeting

I. Call to Order

Chair Rogers called the meeting to order at 8:30 a.m.

II. Roll Call

Members Present:

Jacob Rogers, Chair
Chad Meadows, Vice Chair
Ian Kipp
David Paletta
Michael Retchless
Jessica Major, Alternate
Michael Tarrant, Designated Alternate
Natalie Beauchaine, Alternate

Members Absent:

Staff Present:

Jessica Dockery, Planning Manager
Crista Cuccaro, City Attorney's Office
Bryan Wardell, County Attorney's Office
Cole Renigar, Planner
Terri Elliott, Clerk
Chris Peterson, Technology Liaison

Chair Rogers read the following statement:

The meeting will now come to order. Welcome to the March 22, 2022 meeting of the City of Durham Board of Adjustment. My name is Chair Jacob Rogers and I am the Chair of the board.

I would like to start by acknowledging that we are conducting this meeting using a remote, electronic platform as permitted by Session Law 2020-3. This is the second remote meeting of the Durham Board of Adjustment and the first remote BOA meeting with quasi-judicial hearings. I would ask for your patience today as we proceed. There may be slight delays as we transition between speakers.

The Board of Adjustment is a quasi-judicial body that is governed by the North Carolina General Statutes and the City's Unified Development Ordinance. The Board typically conducts evidentiary hearings on requests for variances special use permits, among other requests.

Today's meeting will proceed much like an in-person meeting of the Board of Adjustment. On the screen, you will see the members of the Board of Adjustment. Additionally, Planning staff and representatives from the City and County Attorney's Offices are attending in the remote meeting. Applicants were required to register in advance and are also attending the remote meeting. When a case is called for its hearing, applicants and witnesses will be promoted within the remote platform so their video can be seen. The Chair will swear in applicants and witnesses at the beginning of each case. Staff will present each case and applicants will then provide their evidence. Control of the presentation and screen sharing will remain with Planning staff. Today's meeting is being broadcast live on the City's YouTube site and a link to this broadcast is on the website for the Board of Adjustment.

Before we begin the evidentiary hearings on today's agenda, I would like to provide some important information about the steps taken to ensure that each parties' due process rights are protected as we proceed in this remote platform.

Each applicant on today's agenda was notified that this meeting would be conducted using a remote, electronic platform. During registration, every applicant on today's agenda consented to the Board conducting the evidentiary hearing using this remote platform. We will also confirm today at the start of each evidentiary hearing that the participants in the evidentiary hearing consent to the matter proceeding in this remote platform. If there is any objection to a matter proceeding in this remote platform, the case will be continued.

Notice of today's meeting was provided by letters mailed to property owners and residents within 600 feet of the subject properties, posting a sign at the property, and posting on the City's website. The website and mailed notices for today's meeting contained information about how the public can access the remote meeting, as the meeting occurs. These notices also contained information about the registration requirement for the meeting, along with information about how to register.

All individuals participating in today's evidentiary hearings were also required to submit a copy of any presentation, document, exhibit or other material that they wished to submit at the evidentiary hearing prior to today's meeting. All materials that the City received from the participants in today's cases, as well as a copy of City staff's presentations and documents, were posted on the Board of Adjustment website, as part of the agenda. No new documents will be submitted during today's meeting.

No case is proceeding today in which the City has been contacted by an individual with an objection to the case or an objection to the matter being heard in this remote meeting platform. All decisions of this Board are subject to appeal to the Durham Superior Court. Anyone in the audience, other than the applicant, who wishes 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.

Chair Rogers calls for any necessary recusals or disclosure of any *ex parte* communication.

III. **Approval of Summary Minutes from February 22, 2022.**

MOTION: Approve the February 22, 2022 minutes as amended.

ACTION: Carried, 7-0. (Retchless, Paletta 2nd)

IV. **Adjustments to the Agenda - None**

IV. **Hearing and Determination of Cases**

B2100042 – City: A request for modifications to conditions previously attached to the approval for a variance from the outer 50' of the 100' riparian buffer. The subject site is located at 2702, 2712, 2717 North Duke Street & 1856 Birmingham Avenue, is zoned PDR 8.0 & F/J-B, and in the Urban Tier.

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: Kipp, Meadows, Paletta, Rogers, Retchless, Major, and Tarrant

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Dan Jewell, Patrick Byker, and Jess Brandes spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion that application number B2100042, an application for a request for a variance from the outer 50' of the 100' riparian buffer, on property located at 2702, 2712, and 2717 North Duke Street & 1856 Birmingham Avenue, has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.
- A form of mitigation is provided similar to the options in UDO section 8.5.11A

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

B2200003 – County: A request for a variance from the street yard setback. The subject site is located at 3909 Bristlewood Drive, is zoned RS-20 and F/J-B Watershed Protection Overlay, and in the Suburban Tier.

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: Kipp, Meadows, Paletta, Rogers, Retchless, Major, and Tarrant

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Lisa Ellis spoke in support. Robert Brown and Joan La Rosa spoke in opposition.

MOTION: Meadows made a motion that application number B2200003, an application for a variance from the street yard requirements on property located at 3909 Bristlewood Drive, 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: Failed, 2-5 (Meadows, Paletta 2nd) (Meadows, Paletta, Rogers, Major, Tarrant voting no)

B2200004 – City: A request for a variance from a side yard setback. The subject site is located at 909 Hale Street, is zoned RU-5 and Old West Neighborhood Protection Overlay, and in the Urban Tier.

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: Kipp, Meadows, Paletta, Rogers, Retchless, Major, and Tarrant

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Mary Hill and Cam Hill spoke in support. No one spoke in opposition.

MOTION: Retchless made a motion that application number B2200004, an application for a request for a variance from a side yard setback, on property located at 909 Hale Street, 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. (Retchless, Meadows 2nd)

BREAK from 10:05 am -10:12 am

B2200005 – City: A request for a variance from riparian buffer and no-build setbacks. The subject site is located at 312 E. Umstead Street and 1206 Dawkins Street, is zoned RU-M(D), and in the Urban Tier.

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: Kipp, Meadows, Paletta, Rogers, Retchless, Major and Tarrant

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Howard Partner, Peter Crispell and Peter Skillen spoke in support. No one spoke in opposition.

MOTION: Retchless made a motion that application B2200005, an application for a request for a variance from riparian buffer and no-build setback requirements, on property located at 312 East Umstead Street, 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. (Retchless, Paletta 2nd)

B2200006 – City: A request for a variance from the sidewalk and build-to zone requirements. The subject site is located at 320 W. Morgan Street, is zoned DD-C, and in the Downtown Tier.

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: Kipp, Meadows, Paletta, Rogers, Retchless, Major and Tarrant

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Patrick Byker, Kelsey Westwood, and Earl Guill spoke in support. No one spoke in opposition.

MOTION: Major made a motion that application B2200006, an application for a request for a variance from the sidewalk and build-to zone requirements, on property located at 320 W. Morgan Street, 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. (Major, Retchless 2nd)

V. Old Business – None

VI. New Business – None

VII. Approval of Orders

Case B2100042

MOTION: Approve the order for case B2100042 (Paletta, Tarrant 2nd)

ACTION: Carried, 7-0.

Case B2200004

MOTION: Approve the order for case B2200004 (Tarrant, Kipp 2nd)

ACTION: Carried, 7-0.

Case B2200005

MOTION: Approve the order for case B2200005 (Paletta, Kipp 2nd)

ACTION: Carried, 7-0.

Case B2200006

MOTION: Approve the order for case B2200006 (Paletta, Tarrant 2nd)

ACTION: Carried, 7-0.

VIII. Adjournment

The meeting adjourned at 11:33 a.m.

The next meeting will be April 26, 2022

Respectfully Submitted,
Terri Elliott, Clerk to the Board