



BOARD OF ADJUSTMENT DRAFT MINUTES

April 26, 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
David Paletta
Michael Retchless
Jessica Major, Alternate
Michael Tarrant, Designated Alternate
Natalie Beauchaine, Alternate

Members Absent:

Ian Kipp

Staff Present:

Jessica Dockery, Planning Manager
Crista Cuccaro, City Attorney's Office
Bryan Wardell, County Attorney's Office
Cole Renigar, Planner
Amanda Holmes, Clerk
Chris Peterson, Technology Liaison
Earlene Thomas, Engineer-Transportation
Leigha Larkins, Planner

Chair Rogers read the following statement:

The meeting will now come to order. Welcome to the April 26, 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.

MOTION: To excuse Ian Kipp.

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

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

MOTION: Approve the March 22, 2022 minutes.

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

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

IV. **Hearing and Determination of Cases**

B2200007 – City: A request for a variance from the outer 50' of the 100' riparian buffer and 10' no-build setback. The subject site is located at 2120 E. Geer Street, is zoned Planned Development Residential 3.360 (PDR 3.360) & Residential Rural (RR), Falls/Jordan Lake Protected Area

Watershed Protection Overlay (F/J-B), Major Transportation Corridor I-85 (MTC I-85), and in the Suburban Tier.

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

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

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, Dan Jewell, and Leah Bergman, spoke in support. Sharon Crawford Quick spoke in opposition.

MOTION: Paletta made a motion that application number B2200007, an application for a request for a variance from the outer 50' of the 100' riparian buffer and 10' no-build setback, on property located at 2120 E. Geer St., 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.
2. This variance is approved with the condition that a rezoning that allows the proposed project is approved and is substantially in keeping with the submitted application.
3. A form of mitigation is provided from the options in UDO section 8.5.11.D.

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

B2200009 – City: A request for minor special use permit for an educational use in a residential zoning district. The subject site is located at 1001 and 901 North Street, is zoned Residential Urban – Multi-family (RU-M), and in the Urban Tier.

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

Seated: Meadows, Paletta, Rogers, Major, Tarrant, and Beauchaine (Retchless recused)

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: Helena Cragg, Patrick Byker, Dan Jewell, Richard Hall, and David Smith spoke in support. No one spoke in opposition. Earlene Thomas responded to Transportation Department-related questions.

MOTION: Meadows made a motion that application number B2200009, an application for a request for a minor special use permit for an educational facility in a residential zoning district, on property located at 1001 and 901 North 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.
2. The educational facility shall serve the fifth through eighth grade levels.
3. Any outdoor areas to be utilized by the school shall be shown on the associated site plan.

ACTION: Carried, 6-0 (Meadows, Beauchaine 2nd)

Break: 10:18 a.m.-10:25 a.m.

B2200010 – County: A request for a minor special use permit for a helipad in an SRP zoning district. The subject site is located at 2 Maughan Drive, is zoned Science Research Park (SRP), and in the Suburban Tier.

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

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

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: Toby Coleman, Avi Halpert, Damien Bell, Ben Litke, Michael Allen, Colin Regan spoke in support. No one spoke in opposition.

MOTION: Beauchaine made a motion that application number B2200010, an application for a minor special use permit for an accessory use, helipad, on property located at 2 Maugham 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: Carried, 7-0. (Beauchaine, Meadows 2nd)

B2200011 – County: A request for a variance from the balloon test requirement for a wireless communication facility. The subject site is located at 5193 International Drive, is zoned Industrial Light (IL), and in the Suburban Tier.

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

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

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: Thomas Johnson and Chris Bernado spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion that application B2200011, be continued to the June 28 BOA meeting.

ACTION: Carried, 5-2. (Meadows, Beauchaine 2nd) (Rogers, and Paletta voting no)

Break: 12:35 a.m.-12:45 a.m.

B2200012 – City: A request for a variance from the street yard setback standards. The subject site is located at 1908 Southgate Street, is zoned Residential Urban - 5(2) (RU-5(2)), and in the Urban Tier.

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

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

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: Josh Mitchell spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion that application B2200012, an application for a variance from the street yard requirements, on property located at 1908 Southgate 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: Failed, 3-4. (Meadows, Beauchaine 2nd) (Meadows, Paletta, Major, and Tarrant voting no)

B2200013 – City: A request for a variance from the sidewalk and pedestrian passage requirements. The subject site is located at 400 West Main Street, is zoned Downtown Design – Core (DD-C), and in the Downtown Tier.

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

Seated: Meadows, Paletta, Rogers, Retchless, Major and Beauchaine (Tarrant recused)

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: Alden West, Crystal Ross, and Philip Oliver spoke in support. No one spoke in opposition.

MOTION: Retchless made a motion that application B2200013, a request for a variance from sidewalk and pedestrian passage requirements, on property located at 400 W. Main St, 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, 6-0. (Retchless, Beauchaine 2nd)

V. Old Business – None

VI. New Business

- a. Jessica Dockery introduced Leigha Larkins, the new BOA planner.
- b. Bryan Wardell asked that Board Members read packets carefully in preparation for upcoming appeal cases.

VII. Approval of Orders

Case B2100055

MOTION: Approve the order for case B2100055 (Meadows, Beauchaine 2nd)

ACTION: Carried, 4-0.

Case B2200003

MOTION: Approve the order for case B2200003 (Retchless, Meadows 2nd)

ACTION: Carried, 6-0.

Case B2100009

MOTION: Approve the order for case B2100009 (Beauchaine, Tarrant 2nd)

ACTION: Carried, 6-0.

Case B2100010

MOTION: Approve the order for case B2100010 (Meadows, Beauchaine 2nd)

ACTION: Carried, 7-0.

Case B2100013

MOTION: Approve the order for case B2100013 (Beauchaine, Meadows 2nd)

ACTION: Carried, 6-0.

VIII. Adjournment

The meeting adjourned at 3:23 a.m.

The next meeting will be May 24, 2022, in-person, in the City Council Chambers at City Hall

Respectfully Submitted,
Terri Elliott, Clerk to the Board