



BOARD OF ADJUSTMENT APPROVED MINUTES

June 21, 2022, 8:30 a.m.
Committee Room, 2nd floor, City Hall
101 City Hall Plaza, Durham, NC

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
Michael Retchless
David Paletta
Michael Tarrant
Chase Pickett, Designated Alternate
George Kolasa, Alternate

Members Absent:

Jessica Major, Alternate
Natalie Beauchaine

Staff Present:

Jessica Dockery, Planning Manager
Don O'Toole, City Attorney's Office
Bryan Wardell, County Attorney's Office
Cole Renigar, Planner
Leigha Larkins, Planner
Terri Elliott, Clerk
Chris Peterson, Technology Liaison
Kim Roberts, Zoning Compliance Officer
Landus Robertson, Planning Manager

Chair Rogers read the following statement:

The meeting will now come to order. Welcome to the June 21, 2022 meeting of the City of Durham Board of Adjustment. My name is Chair Jacob Rogers 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.

III. Approval of Summary Minutes from May 24, 2022.

MOTION: Approve the May 24, 2022 minutes.

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

IV. Adjustments to the Agenda – None

Hearing and Determination of Cases

B2000019 – City: A request for a minor special use permit to allow a hotel where the property line is 200 feet or less from a residential district or the property line of a single-family residential use. The property is located at 3114 Hillsborough Road, is zoned Office and Institutional (OI), and is within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Jessica Dockery (staff) requested a continuation to a date certain of August 23, 2022, due to a failure to provide special advanced notice of this hearing as promised via email by former staff member Eliza Monroe.

Tom Miller, representing Watts-Hillandale Neighborhood Association (opponents), spoke in support of the request for the continuance. Patrick Byker, representing the applicant, spoke against the continuance. After discussion, Mr. Byker withdrew his objection.

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

MOTION: To continue case B2000019 to a date certain of August 23, 2022 in-person meeting.

ACTION: Carried, 6-1 (Meadow, Pickett 2nd) (Rogers voting no)

B2000022 – City: Appeal of an administrative decision to administer a Notice of Violation for improvements made to the Durham Green Flea Market without an approved site plan. The property is located at 1600 E. Pettigrew Street, is zoned Light Industrial (IL) and is within the Alston Avenue Compact Neighborhood Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Paletta, Rogers, Retchless, Tarrant, Pickett, and Kolasa (Kipp recused)

Staff Report: Leigha Larkins 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.

Appellant: Robert Perry (Attorney)

Appellee, City of Durham: Don O'Toole (Attorney in the Durham City Attorney's Office) represented the City. Durham Code Enforcement Office, Landus Robertson, presented the basis for the Notice of Violation at 1600 E. Pettigrew Street and confirmed on the record that photographs were submitted as part of the staff report and were taken by Kim Roberts.

Both Landus Robertson and Kim Roberts appeared as witnesses.

MOTION: Tarrant made a motion that this matter, having been reviewed by the Board on Application for Appeal of an administrative decision to administer a Notice of Violation for improvements made to the Durham Green Flea Market, without an approved site plan, by the Director of Planning, Sara Young, for property located at 1600 E. Pettigrew Street in Durham, North Carolina; and, after hearing the presentation of evidence and reviewing the appeal submittals and all substantial, material and competent evidence, that the application appealing the Planning Director's Interpretation be granted.

ACTION: Failed, 1-6. (Tarrant, Kolasa 2nd) (Paletta voting yes)

The Board took a break 9:58 a.m. – 10:10 a.m.

B2200014 – City: A request for a variance from riparian buffer and no-build setback standards. The property is located at 1608 Gunter Street, is zoned Residential Urban – 5(2) (RU-5(2)), and is within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

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: Uriah Dortch spoke in support. Gordon Williams and Clifford Heindel spoke in opposition.

MOTION: Retchless made a motion that case number B2200014, an application for a request for a variance from riparian buffer and no-build setback requirements, on property located at 1608 Gunter 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.

Meadows suggested adding an amendment to the motion to add an additional condition to the motion that the deck be located to the northwestern side of the structure as far out of the riparian buffer as feasibly possible. (Meadow, Retchless 2nd)

ACTION (on amended motion): Carried, 5-2. (Tarrant, Meadows 2nd) (Paletta, Pickett voting no)

B2200019 – City: A request for a variance from the infill development standards street yard requirements. The property is located at 524 and 526 Lakeland Street, is zoned Residential Urban – 5 (RU-5), and is within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

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: Uriah Dortch, applicant, spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion the application number B2200019, a request for a variance from the infill development standards setback requirements, on properties located at 524 & 526

Lakeland 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. (Meadows, Kipp 2nd)

B2200020 – City: A request for a variance from the infill development standards street yard requirements. The property is located at 1203 N. Driver, is zoned Residential Urban – 5(2) (RU-5(2)), and is within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

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: John Black, applicant, spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion that application number B2200020, a request for a variance from the infill development standards street yard requirements, on property located at 1203 N. Driver 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, 7-0. (Meadows, Retchless 2nd)

V. Old - None

VI. New Business - None

VII. Approval of Orders

Case B2200019

MOTION: Approve the order for case B2200019 (Meadow, Retchless 2nd)

ACTION: Carried, 7-0.

Case B2200020

MOTION: Approve the order for case B2200020 (Meadows, Tarrant 2nd)

ACTION: Carried, 7-0.

VIII. Adjournment

The meeting adjourned at 11:07 a.m.

The next meeting will be June 28, 2022, virtual via Zoom

Respectfully Submitted,
Terri Elliott, Clerk to the Board