



BOARD OF ADJUSTMENT APPROVED MINUTES

June 28, 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
Natalie Beauchaine
Ian Kipp
Michael Retchless
David Paletta
Jessica Major, Designated Alternate
Chase Pickett, Alternate
George Kolasa, Alternate

Members Absent:

Michael Tarrant

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

Chair Rogers read the following statement:

The meeting will now come to order. Welcome to the June 28, 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.

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 - None

IV. Adjustments to the Agenda – B2100021 is postponed to July 26, 2022 meeting. Board will be voting on Order B2000022.

Hearing and Determination of Cases

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

Applicant and all witnesses swore or affirmed their testimony and consented to the virtual platform.

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

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 (Attorney), Chris Bernardo (Applicant) and Mike Sampair (Photo Simulation expert) spoke in support. No one spoke in opposition.

MOTION: Beauchaine made a motion that application number B2200011, a request for a variance from the balloon test requirement, on property located at 5193 International 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, 6-1. (Beauchaine, Kipp 2nd) (Paletta, voting no)

The Board took a break 9:49 a.m. – 9:55 a.m. and Meadows left

B2200016 – City: A request for a variance from project boundary buffer standards. The property is located at 1011 Andrews Road, is zoned Office and Institutional (D) (OI(D)), Residential Suburban – 10 (RS-10), and Residential Suburban – Multi-family (RS-M), and is in the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony and consented to the virtual platform.

Seated: Kipp, Paletta, Rogers, Retchless, Beauchaine, Major, and Pickett

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.

Speakers: Nil Ghosh (Attorney) spoke in support. No one spoke in opposition.

MOTION: Majors made a motion that case number B2200016, an application for a variance from project boundary buffer requirements, on property located at 1011 Andrews 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 and all information submitted to the Board as part of the application.

ACTION: Carried, 6-1. (Major, Beauchaine 2nd) (Paletta, voting no)

B2200018 – City: A request for a variance from household living parking and driveway standards. The property is located at 1307 N. Alston Avenue, 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 and consented to the virtual platform.

Seated: Kipp, Paletta, Rogers, Retchless, Beauchaine, Major, and Pickett

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.

Speakers: Chrisopher Tinsley (Applicant) spoke in support. No one spoke in opposition.

MOTION: Paletta made a motion that case number B2200018, an application for a variance from household living parking and driveway standards, on property located at 1307 N. Alston Avenue, 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. (Paletta, Retchless 2nd)

B2200022 – City: A request for a variance from fence height standards. The property is located at 3001 Angier Avenue, is zoned Commercial General (CG), and is within the Urban Tier.

Applicant and all witnesses swore or affirmed their testimony and consented to the virtual platform.

Seated: Kipp, Paletta, Rogers, Retchless, Beauchaine, Major, and Pickett

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.

Speakers: Ahmed Naji (Owner/Applicant) spoke in support. No one spoke in opposition.

MOTION: Paletta made a motion that case number B2200022, an application for a variance from fence height standards, on property located at 3001 Angier Avenue, 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. (Paletta, Beauchaine 2nd)

B2200024 – County: A request for a Minor Special Use Permit for the construction of an addition to a nonconforming structure. The property is located at 1102 Stanridge Drive, is zoned Residential Rural (RR), and is within the Suburban and Rural Development Tiers.

Applicant and all witnesses swore or affirmed their testimony and consented to the virtual platform.

Seated: Kipp, Paletta, Rogers, Retchless, Beauchaine, Major, and Pickett

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.

Speakers: Mason Rapaport (Owner/Applicant) and Erica Sizemore (Real Estate Broker) spoke in support. No one spoke in opposition.

MOTION: Retchless made a motion that case number B2200022, an application for a Minor Special Use Permit for the construction of an addition to a nonconforming structure, on property located at 1102 Stanridge 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. (Retchless, Kipp 2nd)

V. Old - None

VI. New Business –

a. Election of Chair

Nomination to elect Kipp as Chair. Kipp declined the nomination.

Nomination to elect Meadows as Chair. Meadows not present to accept the nomination.

Nomination held open until July 26, 2022 meeting.

b. Election of Vice Chair

Nomination to elect Retchless as Vice-Chair. Retchless accepted the nomination.

MOTION: Elect Retchless as Vice-Chair.

ACTION: Carried, 8-0 (Rogers, Beauchaine 2nd)

c. MOTION: Paletta made a motion to adopt a Resolution of Appreciation for those ending their terms and leaving the Board.

ACTION: Carried, 8-0 (Paletta, Beauchaine 2nd)

VII. Approval of Orders

Case B2200018

MOTION: Approve the order for case B2200018 (Retchless, Paletta 2nd)

ACTION: Carried, 7-0.

Case B2200022

MOTION: Approve the order for case B2200022 (Retchless, Beauchaine 2nd)
ACTION: Carried, 7-0.

Case B2200024

MOTION: Approve the order for case B2200024 (Retchless, Kipp 2nd)
ACTION: Carried, 7-0.

VIII. Adjournment

The meeting adjourned at 11:22 a.m.

The next meeting will be July 26, 2022, in-person in the Committee Room

Respectfully Submitted,
Terri Elliott, Clerk to the Board