



BOARD OF ADJUSTMENT APPROVED MINUTES

August 22, 2023, 8:30 a.m.
Committee Room, 101 City Hall Plaza

I. Call to Order

Chair Meadows called the meeting to order at 08:30 a.m.

II. Roll Call

Members Present:

Chad Meadows, Chair
Michael Tarrant, Vice Chair
Sherrod Banks
Justin Hall, Alternate
George Kolasa
Jessica Major, Designated Alternate
Chase Pickett, Designated Alternate
Nadera Salaam

Members Absent:

Ian Kipp

Staff Present:

Bo Dobrzanski, Assistant Director of City-County Planning
Don O'Toole, City Attorney's Office
Curtis Massey, County Attorney's Office
Leigha Larkins, Planner
Robin Schultze, Senior Planner/Arborist
Chezney UpChurch, Clerk

Chair Meadows read the following statement:

The meeting will now come to order. Welcome to the August 22nd, 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.

III. Adjustments to the Agenda:
None

IV. Approval of Minutes from July 25, 2023

MOTION: Approve the July 25, 2023, minutes as submitted
ACTION: Carried, 8-0 (Kolasa, Salaam 2nd)

V. Hearing and Determination of Cases

B2300026 – City: A request for a variance from the rear and side yard setback standards to construct an enclosed porch. The property is located at 4519 Malvern Rd, zoned Residential Suburban-10 (RS-

10), in the Falls/Jordan District B (F/J-B) Watershed Protection Overlay and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Tarrant, Banks, Kolasa, Salaam, Pickett and Major

Staff Report: Leigha Larkins presented the case.

Speakers: Holt Woodruff spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2300026, an application for a variance from the rear and side yard setback standards to construct an enclosed porch that encroaches 6.7 feet into the rear yard setback and six inches into the required side yard setback, on property located at 4519 Malvern Road, 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.

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

B2300027 – City: A request for a variance from the stream buffer standards to construct an enclosed porch. The property is located at 5505 Tahoe Dr, zoned Planned Residential Development 3.200 (PDR 3.200), in the Falls/Jordan District B (F/J-B) Watershed Protection Overlay and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Tarrant, Banks, Kolasa, Salaam, Pickett and Major

Staff Report: Leigha Larkins presented the case.

Speakers: Michael Alместica and Christie Drew spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion that case number B2300027, an application for a variance from the riparian buffer use standards to construct an enclosed 18.7x13 square foot porch that encroaches into the outer 50 feet of a required stream buffer, and that requests a variance from the existing 24% upwards to 29.3% on property located at 5505 Tahoe Drive, has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following five conditions:

- The improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.
- Necessary digging for all improvements will be done by hand and materials will be hand carried into the site.
- Vegetation in undisturbed portions of a buffer shall not be compromised.

- At the completion of the project the applicant will include an additional 500-square-foot planted area to be planted with native vegetation.
- Any new planted areas included as part of this project be located outside the designated sanitary sewer easement area.

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

B2300029 – City: A request for a reasonable accommodation to permit the development of an ADU larger than 800 heated square feet. The property is located at 912 Clarion Drive, zoned Residential Suburban – 20 (RS-20), in the Eno River District B (E-B) and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Tarrant, Banks, Kolasa, Salaam, Pickett and Major

Staff Report: Leigha Larkins presented the case.

Speakers: Sandy Smith and Jonathan Burtnett spoke in support. Loretta Humphreys and James Conder spoke in opposition.

MOTION: Kolasa made a motion that case number B2300029 be continued to the October 24, 2023 meeting.

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

VI. Old Business - None

VII. New Business

- Leigha Larkins will soon be out of the office on maternity leave but will return for the December Meeting. Jessica Dockery and Cole Renigar will be the primary contacts during this time.
- The Board requests to work with staff to identify potential amendments to the UDO concerning matters that are relevant to the Board’s review authority.

VIII. Approval of Orders

Case B2300023

MOTION: Approve of the order for case B2300023

ACTION: Carried, 6-0 (Kolasa, Tarrant 2nd)

Case B2300026

MOTION: Approve of the order for case B2300026

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

IX. Adjournment

The meeting adjourned at 10:53 a.m.

The next meeting will be September 26, 2023, in the Committee Room

Respectfully Submitted,
Chezney UpChurch, Clerk to the Board