



BOARD OF ADJUSTMENT APPROVED MINUTES

September 26, 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
Justin Hall, Designated Alternate
Ian Kipp
George Kolasa
Jessica Major, Designated Alternate

Members Absent:

Sherrod Banks
Chase Pickett
Nadera Salaam

Staff Present:

Bo Dobrzanski, Assistant Director of City-County Planning
Curtis Massey, County Attorney's Office
Cole Renigar, 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 September 26th, 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? Vice Chair Tarrant will recuse himself from BOA2300031 Pinecrest Internal Walkway Variance. Chair Meadows then asked if there were any early dismissals? Commissioner Kolasa requested a 12:30 P.M. dismissal.

III. Adjustments to the Agenda:

None

IV. Approval of Minutes from August 22, 2023

MOTION: Approve the August 22, 2023, minutes as submitted

ACTION: Carried, 5-0 (Kolasa, Tarrant 2nd)

V. Hearing and Determination of Cases

B2300030 – City: A request for a variance from the stream buffer standards to replace portions of an existing deck with an enclosed porch. The property is located at 3820 Zenith Place, zoned Residential Suburban-10 (RS-10), in the Eno River District B (E-B) Watershed Protection Overlay, and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Tarrant, Kipp, Kolasa, Major and Hall

Staff Report: Robin Schultze presented the case.

Speakers: Nick Pinkin and Delores McNair spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2300030, an application for a variance from the stream buffer standards to construct an enclosed porch, on property located at 3820 Zenith Place, 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.
- Necessary digging for all improvements will be done by hand and materials will be hand-carried into the site.
- Vegetation in undisturbed portions of the buffer shall not be compromised.
- At the completion of the project any disturbed area is stabilized.

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

B2300031 – City: A request for a variance from the internal walkway standards. The property is located at 1050 West Forest Hills Blvd., zoned Planned Residential Development - 6 (PDR 6.000) and Residential Suburban – 20 (RS-20), and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Kipp, Kolasa, Major and Hall (Tarrant recused)

Staff Report: Cole Renigar presented the case.

Speakers: Marie Farmer, Josh Hawn, Ryan Akers, Hunter Freeman and Graham Bruns spoke in support. Exhibit A, was entered into evidence and contained three affidavits from Ryan Akers, Hunter Freeman and Graham Bruns. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2300031, an application for a variance from the internal walkway requirements, on property located at 1050 West Forest Hills Blvd., 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, 5-0. (Kolasa, Major 2nd)

B2300032 – City: A request for a variance from the requirement to connect to the existing Third Fork Greenway. The property is located at 3851 and 3901 Hope Valley Road, zoned Residential Suburban – 10 (RS-10) and Residential Suburban – 20 (RS-20), 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, Kipp, Kolasa, Major and Hall

Staff Report: Robin Schultze presented the case.

Speakers: Bryson Powell spoke in support and Lindsey Smart from City of Durham Parks and Recs gave insight. Bryson Powell requested to continue case due to potential misunderstandings regarding the construction and easement requirements for the required greenway connection.

MOTION: Kolasa made a motion that case number B2300032 be continued to the October 24, 2023, meeting.

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

B2300033 – City: A request for a variance from the maximum height standards. The property is located at 3000 Duke Homestead Road, zoned Residential Suburban – 8 (RS-8), in the Eno River District B (E-B) and Falls/Jordan District B (F/J-B) Watershed Protection Overlays, and within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Tarrant, Kipp, Kolasa, Major and Hall

Staff Report: Cole Renigar presented the case.

Speakers: Jay Smith, Jarvis Martin, and Steven Harris spoke in support. Exhibit A was entered into evidence containing resumes of expert witnesses (Jay Smith, Jarvis Martin, and Steven Harris) potential site plans for the proposed development, and the market studies conducted by Jarvis Martin. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2300033, an application for a Variance from the building height, on property located at 3000 Duke Homestead 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, 6-0. (Kolasa, Hall 2nd)

B2300034 – City: A request for a variance from the street yard setback. The property is located at 3000 Duke Homestead Road, zoned Residential Suburban – 8 (RS-8), in the Eno River District B (E/B) and Falls/Jordan District B (F/J-B) Watershed Protection Overlays, and within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Tarrant, Kipp, Kolasa, Major and Hall

Staff Report: Cole Renigar presented the case.

Speakers: Jay Smith and Jarvis Martin spoke in support. Exhibit A was entered into evidence containing resumes of expert witnesses (Jay Smith, Jarvis Martin, and Steven Harris) potential site plans for the proposed development, and the market studies conducted by Jarvis Martin. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2300034, an application for a Variance from the street yard setbacks, on property located at 3000 Duke Homestead 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, 5-1. (Kolasa, Kipp 2nd)

Break from 12:43 – 12:50 p.m.
Commissioner Kolasa early dismissal

B2300035 – County: A request for a Minor Special Use Permit to allow for the expansion of an existing government facility in a residential zoning district. The property is located at 1031 Exum Road, zoned Residential Rural (RR), in the Falls/Jordan District A (F/J-A) Watershed Protection Overlay, I-85 Major Transportation Corridor (I-85 MTC) Overlay, and within the Rural Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Tarrant, Kipp, Major and Hall

Staff Report: Robin Schultze presented the case.

Speakers: Keischa Lovelace, David Labarre, Seargent J. Henderson, Lieutenant John Hamlett, Lucy Zastrow, Philip Zumbrun, Hunter Howell and Kevin Burke spoke in support. Kathleen and Robert Williams spoke in opposition. Staff recommended approval of the application.

MOTION: Meadows made a motion that case number B2300035, an application for a Variance from the street yard setbacks, on property located at 3000 Duke Homestead Road, has

successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following two conditions:

- The improvements shall be substantially consistent with the site plan, case number D2100422, and all information submitted to the Board as part of the application.
- All firing and detonation areas will be fully surrounded by a fence of at least 6 feet in height topped with barbed wire or other anti-climbing device and bearing signage indicating use of the facility.

ACTION: Carried, 5-0. (Meadows, Tarrant 2nd)

VI. Old Business - None

VII. New Business

- a. Chair Meadows will not be at the October Meeting.
- b. Board is open to working with Planning Department on UDO amendments.

VIII. Approval of Orders

Case B2300014

MOTION: Approve of the order for case B2300014

ACTION: Carried, 5-0 (Tarrant, Major 2nd)

Case B2300025

MOTION: Approve of the order for case B2300025

ACTION: Carried, 4-0 (Tarrant, Major 2nd)

Case B2300027

MOTION: Approve of the order for case B2300027

ACTION: Carried, 4-0 (Hall, Tarrant 2nd)

Case B2300030

MOTION: Approve of the order for case B2300030

ACTION: Carried, 5-0 (Tarrant, Hall 2nd)

Case B2300031

MOTION: Approve of the order for case B2300031

ACTION: Carried, 4-0 (Meadows, Hall 2nd)

Case B2300033

MOTION: Approve of the order for case B2300033

ACTION: Carried, 5-0 (Kipp, Meadow 2nd)

Case B2300034

MOTION: Approve of the order for case B2300034

ACTION: Carried, 4-0 (Major, Hall 2nd)

IX. Adjournment

The meeting adjourned at 3:16 p.m.

The next meeting will be October 24, 2023, in the Committee Room

Respectfully Submitted,
Chezney UpChurch, Clerk to the Board