



BOARD OF ADJUSTMENT APPROVED MINUTES

September 27, 2022, 8:30 a.m.
Committee Room, 101 City Hall Plaza

I. **Call to Order**

Chair Meadows called the meeting to order at 8:30 a.m.

II. **Roll Call**

Members Present:

Chad Meadows, Chair
Michael Retchless, Vice Chair
Natalie Beauchaine
Ian Kipp
George Kolasa
Michael Tarrant
Jessica Major, Designated Alternate
Chase Pickett, Alternate

Members Absent:

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

Chair Meadows read the following statement:

The meeting will now come to order. Welcome to the September 27, 2022, 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: Are there any Board members that would have any conflicts of interests with regard to the cases before us today? Chair Meadows then asked if there were any early dismissals. No early dismissals were noted but both Chair Meadows and Kolasa noted conflicts of interest with the Black Meadow Ridge/Westpoint appeal cases and Tarrant noted a conflict with case B2200032.

- i. **Adjustments to the Agenda:** The Appellants for B2000018, B2100043, B2100044 and B2200015 requested a continuance until the December 13, 2022, BOA meeting. The attorney for opponents of case B2000019 requested a continuance, via email, which was supported by Attorney Don O'Toole and agreed to by the applicant. The attorney for the opponents of case B2200028 requested a continuance, via email, which was supported by Attorney Don O'Toole and agreed to by the applicant.

Speakers: The applicant (TC Morphis and Bill Brian) requested a continuation to a date certain of December 13, 2022.

B2000018 – City: Appeal of a Planning Director's Interpretations regarding the Development Plan related to the Black Meadow Ridge (Westpoint) residential development. The property is located at 5001 and 5011 N. Roxboro Street and is within the Suburban Development Tier.

Seated: Kipp, Retchless, Tarrant, Beauchaine, Pickett, and Major

MOTION: Kipp made a motion to continue B2000018 to a date certain of December 13, 2022.

ACTION: Carried, 6-0, (Kipp, Major 2nd) (Meadows and Kolasa recused)

Speakers: The applicant (T.C. Morphis and Bill Brian) requested a continuation to a date certain of December 13, 2022.

B2100043 – City: Appeal of a Planning Director’s Interpretations regarding Density related to the Black Meadow Ridge (Westpoint) residential development. The property is located at 5001 and 5011 N. Roxboro Street and is within the Suburban Development Tier.

B2100044 – City: Appeal of a Planning Director’s Interpretations regarding Uses related to the Black Meadow Ridge (Westpoint) residential development. The property is located at 5001 and 5011 N. Roxboro Street and is within the Suburban Development Tier.

B2200015 – City: Appeal of the Administrative Approval of the Westpoint site plan (Case # D1900225). The property is located at 4903, 5001, 5007, and 5011 N. Roxboro Street, 4306 Victory Boulevard, and 2801 Maple Ridge Road, is zoned Planned Development Residential 6.2 (PDR 6.2), Residential Suburban – 20 (RS-20), and Residential Suburban – 10 (RS-10) and is within the Suburban Development Tier.

Seated: Kipp, Retchless, Tarrant, Beauchaine, Pickett, and Major

MOTION: Pickett made a motion to continue B2100043, B2100044, and B2200015 to a date certain of December 13, 2022.

ACTION: Carried, 6-0, (Pickett, Beauchaine 2nd) (Meadows and Kolasa recused)

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.

Speakers: The attorney for opponents of the case requested a continuance via email, which was supported by Attorney Don O’Toole and agreed to by Patrick Byker, attorney for the applicant. Patrick Byker requested a continuation to a date certain of October 25, 2022.

Seated: Meadows, Kolasa, Kipp, Retchless, Tarrant, Beauchaine, and Major

MOTION: Major made a motion to continue case B2000019 to a date certain of October 25, 2022.

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

B22000028 – City: A request for a Minor Special Use Permit to allow additional lighting for an existing place of worship. The property is located at 3263 Rose of Sharon Road, is zoned Residential Suburban – 20 (RS-20), and within Suburban Tier.

Speakers: The attorney for the opponents of case B2200028 requested a continuance, via email, which was supported by Attorney Don O’Toole and agreed to by the applicant Todd Ervin. The applicant requested a continuation to a date certain of December 13, 2022.

Seated: Meadows, Kolasa, Kipp, Retchless, Tarrant, Beauchaine, and Major

MOTION: Major made a motion to continue case B2200028 to a date certain of December 13, 2022.

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

ii. **Hearing and Determination of Cases**

B2200027 – City: A request for a Minor Special Use Permit for the construction of an addition to a nonconforming structure. The property is located at 1300 W. Club Boulevard, is zoned Residential Urban – 5(2) (RU-5(2)), and within the Urban Tier.

Applicant and all witnesses swore or affirmed their testimony.

Speakers: The applicant, Morgan Strider Haynes, spoke in support and Rick Peacock spoke in opposition stating concerns about access to the alley adjacent to the accessory structure and proposed addition. The board requested additional information and proposed a continuation to a date certain of October 6, 2022.

Seated: Meadows, Kolasa, Kipp, Retchless, Tarrant, Beauchaine, and Major

MOTION: Major made a motion to continue case B2000027 to a date certain of October 6, 2022

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

B2200029 – City: A request for a Minor Special Use Permit for the construction of a 10-foot electric fence along a street frontage. The property is located at 1052 Harvest Street, is zoned Industrial Light (IL), and within the Suburban Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Kolasa, Kipp, Retchless, Tarrant, Beauchaine, and Major

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: Cindy Lundy spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2200029, an application for a Minor Special Use Permit to permit the construction of a 10-foot electric fence along a street frontage, on property located at 1052 Harvest 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. A solar panel, with an approximately 11-foot pole, as shown in the detail included in the application, will be allowed in the street yard.

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

B2200030 – County: A Minor Special Use Permit to allow for a non-concealed, freestanding wireless communication facility in a residential zoning district. The property is located at 723 Goodwin Road, is zoned Residential Rural (RR), and within the Suburban Tier.

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

Seated: Meadows, Kolasa, Kipp, Retchless, Tarrant, 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: Dan Brown, applicant, spoke in support. Kevin Tom, property owner, spoke in favor of tower in the proposed location but would like a concealed tower instead. The applicant requested a continuation of the case until a date certain of October 6, 2022, to allow the parties to work on a solution.

MOTION: Major made a motion that case number B2200030 be continued to the October 6, 2022, meeting.

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

BREAK 10:12-10:25

B2200031 – City: A request for a variance from the rear yard setback. The property is located at 208 Northwood Circle, is zoned Residential Urban – 5 (RU-5), and within the Urban Tier.

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

Seated: Meadows, Kolasa, Kipp, Retchless, Tarrant, 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: Lee Reiners spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2200031, an application for a variance from the rear yard setback, on property located at 208 Northwood Circle, 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. (Kolasa, Tarrant 2nd) (Major voting no)

B2200032 – County: A request for a Minor Special Use Permit to allow a parking reduction greater than 30%. The property is located at 4175 Park Drive, is zoned Science Research Park –Center (SRP-C), and within the Suburban Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Kolasa, Kipp, Retchless, Beauchaine, Pickett, and Major

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, Richard Adams, and Nick Kirkland spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion that case number B2200032, an application for a Minor Special Use Permit, on property located 4715 Park 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.
2. Parking on-site will be limited to valet parking only.

ACTION: Carried, 5-2. (Meadows, Major 2nd) (Tarrant recused) (Kolasa, Beauchaine voting no)

B2200033 – City: A request for a Minor Special Use Permit to allow for an addition to an existing place of worship in a residential zoning district. The property is located at 1625 S. Alston Avenue, 1722 and 1714 Majestic Drive, is zoned Residential Urban – 5 (RU-5), and within the Urban Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Kolasa, Kipp, Retchless, Tarrant, Beauchaine, and Major

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: Brandon McLamb spoke in support. No one spoke in opposition.

MOTION: Retchless made a motion that case number B2200033, an application for a Minor Special Use Permit, on property located 1625 S. Alston Avenue and 1722 and 1714 Majestic 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, 5-2. (Retchless, Kolasa 2nd)

III. Old Business - None

IV. New Business

a. Election of Vice Chair

Beauchaine nominated Tarrant as Vice-Chair. Tarrant accepted the nomination.

MOTION: Elect Tarrant as Vice-Chair to begin October 25, 2022

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

III. Approval of Orders

Case B2200025

MOTION: Approve the order for case B2200025 (Retchless, Kipp 2nd)

ACTION: Carried, 7-0.

Case B2200031

MOTION: Approve the order for case B2200031 (Beauchaine, Tarrant 2nd)

ACTION: Carried, 6-0.

Case B2200032

MOTION: Approve the order for case B2200032 (Major, Retchless 2nd)

ACTION: Carried, 5-0.

Case B2200033

MOTION: Approve the order for case B2200032 (Beauchaine, Retchless 2nd)

ACTION: Carried, 7-0.

V. Adjournment

The meeting adjourned at 11:59 a.m.

The next meeting will be October 6, 2022, in the Committee Room

Respectfully Submitted,

Terri Elliott, Clerk to the Board