



BOARD OF ADJUSTMENT APPROVED MINUTES

October 25, 2022, 8:30 a.m.
Committee Room, 101 City Hall Plaza

I. Call to Order

Chair Meadows called the meeting to order at 8:34 a.m.

II. Roll Call

Members Present:

Chad Meadows, Chair
Michael Tarrant, Vice Chair
Ian Kipp
George Kolasa
Jessica Major, Designated Alternate

Members Absent:

Chase Pickett, Alternate
Natalie Beauchaine

Staff Present:

Jessica Dockery, Planning Manager
Don O'Toole, City 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 October 25, 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? Tarrant asked for recusal from B2200023 Gordon St. Townhomes DSUP. Chair Meadows then asked if there were any early dismissals. No early dismissals were noted.

III. Adjustments to the Agenda:

None

IV. Approval of Minutes from September 27, 2022 and October 6, 2022

MOTION: Approve the September 27, 2022 minutes

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

MOTION: Approve the October 6, 2022 minutes

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

V. 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, Office and Institutional (OI) and within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

Staff Report: Leigha Larkins presented this 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: Patrick Byker, Jeff Hochanadel, Stephen Ballentine, Depesh Patel, Zach Spurgeon, and Tom Murphy spoke in support. LeAnn Brown, attorney for the opponents to the case, noted that the opponents were not opposed as long as the applicant meets the thirteen conditions that the two parties had negotiated.

MOTION: Meadows made a motion that case number B2000019, an application for a Minor Special Use Permit, on the property located at 3114 Hillsborough 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 site plan, case D1900376, as modified, and all information submitted to the Board as part of the application; and
2. That the development be consistent with all conditions identified and/or modified on "Exhibit E" below:
 - a. To address neighborhood concern relating to harmony, the hotel facades facing north and east shall have brick masonry in two vertical elements reaching up to the seventh floor, and the entirety of the basement level and the fitness center on the north side of the hotel shall be clad in brick as well.
 - b. To address the neighborhood concern relating to building height, in regard to the roof screening features reflected on sheet SD6 of the hotel site plan, the height of the central roof screening feature shall not exceed 10'-10" in height from the parapet. The roof screening features on the east and west side of the roof shall not exceed 6'-3" in height from the parapet.
 - c. To address neighborhood concerns regarding car headlights, the applicant shall, subject to approval by NCDOT and City of Durham, provide a brick wall at least thirty-six inches (36") tall and the wall will be located above the +/- 4-inch curb and approximately 4-inches of additional grading outside of the parking lot facing east. This wall shall be a minimum of sixty feet (60') in length for screening the eastern end of the parking lot from the dumpster enclosure towards the southeastern corner of the parking lot near Hillsborough Road and shrubs/landscaping that is approximately three feet tall along the eastern edge of the vehicle use area as shown on Sheet C6.1 of the hotel site plan. If approved by NCDOT, the eastern side of the wall shall be supplemented with shrubs at intervals along its length.
 - d. Exterior lighting located to the east of a line bisecting the property north and south at the easternmost façade of the building shall consist of fixtures of no more than 50 Watts and 3000 degrees Kelvin mounted on poles approximately 12 feet in height, provided that in this area at a place approximately 40 feet south of the trash dumpster, there may be erected a fixture on a pole approximately 25 feet in height. This 25-foot fixture shall be of no more than 50 Watts and 3000 degrees Kelvin, or not more wattage and color than is necessary to satisfy the minimum light levels in foot candles required by the UDO. Exterior lighting located to the west of the above-mentioned line may consist of fixtures mounted on poles approximately 12 feet in height or on four poles of approximately 25 feet in height. These 25-foot fixtures shall be the lowest levels in terms of wattage and degrees Kelvin necessary to satisfy the minimum light levels in foot candles required by the UDO. All fixtures wherever located shall be shielded in accordance with Duke Energy standards to prevent lamp glare from being

visible from nearby residences. All fixture, shielding and poles shall be those available from Duke Energy.

- e. No hotel employees or contractors shall park on Englewood Avenue, or on any other street north of Hillsborough Road and east of Hillandale Road.
- f. Other than breakfast no food shall be prepared on site and breakfast is limited to patrons of the hotel.
- g. Not guest activities on the outdoor balcony area(s) shall be permitted after 11:00 P.M.
- h. Retaining walls at the eastern and northern sides of the property facing nearby residences shall be clad with brick.
- i. Trash dumpsters and utilities shall be completely screened from view of nearby residences with a brick treatment.
- j. Hotel windows shall be 32% tinted to reduce light emission from within the building.
- k. The building shall not be up-lit.
- l. The northern street yard shall include plantings of canopy trees which at maturity shall substantially screen the lower level of the hotel building from nearby residences.
- m. The exterior surfaces of the building shall employ a color palette of earth tones.

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

B2200023 – City: B2200023 – City: A request for a Design Special Use Permit for the reduction of the pedestrian mall width and increased building height. The property is located at 508 Gordon Street, is zoned Downtown Design – Support 1 (DD-S1) and within the Downtown Tier.

Due to a lack of quorum (with Tarrant’s recusal) this case was continued to the December 13, 2022 meeting.

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

Break: 10:11 a.m. – 10:16 a.m.

B2200038 – City: A request for a Variance to allow for a payment-in-lieu of a required street connection. The property is located at 602 and 606 NC HWY 54 W, is zoned Planned Development Residential 5.189 (PDR 5.189) and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

Staff Report: Leigha Larkins presented the case.

Speakers: Mike Roselli spoke in support. Earlene Thomas, City Transportation Department, spoke as a staff expert. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2200038, an application for a Variance to permit a payment-in-lieu of constructing a required street connection, on property located at 602 and 606 NC HWY 54 West, 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. The applicant shall meet all requirements for the payment-in-lieu set forth by the Public Works Engineering Department.

3. The applicant shall be responsible for the recording of a plat showing the required easements and/or dedications, as referenced in UDO 12.3.1F.3.a(2), per guidance from the Public Works Engineering Department.

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

B2200040 – City: A request for a Variance to allow for a payment-in-lieu of a required street connection. The property is located at western terminus of Eastfield Lane (reference address: 1003 Pondfield Way), is zoned Planned Development Residential 3.322 (PDR 3.322) and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

Staff Report: Leigha Larkins presented the case.

Speakers: Scott Altman and Jack Sutherland spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2200040, an application for a Variance to permit a payment-in-lieu of constructing a required street connection, on property located at the western terminus of Eastfield Lane, 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. The applicant shall meet all requirements for the payment-in-lieu set forth by the Public Works Engineering Department.
3. The applicant shall be responsible for the recording of a plat showing the required easements and/or dedications, as referenced in UDO 12.3.1F.3.a(2), per guidance from the Public Works Engineering Department.

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

B2200039 – City: A request for a Variance to place an accessory structure to the front of a primary structure on a parcel less than two acres in size. The property is located at 1420 Ellis Road, is zoned Residential Rural (RR) and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

Staff Report: Cole Renigar presented the case.

Speakers: Charles Hansen spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2200039, a request for a Variance to place an accessory structure to the front of a primary structure on a lot less than two acres in size, on property located at 1420 Ellis 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: Failed, 1-4. (Kolasa, Major 2nd) (Kipp voting Yes)

B2200041 – City: A request for a Variance from the 10’ no-build setback from a riparian buffer. The property is located at 11 Rose Brook Drive, Planned Development Residential 3.440 (PDR 3.440) and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

Staff Report: Leigha Larkins presented the case.

Speakers: Tim Ott spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2200041, an application for a Variance from the 10’ no-build setback from a riparian buffer, on property located at 11 Rose Brook 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. Necessary digging will be done by hand and materials will be hand carried into the site.
3. No part of the construction will be located within the riparian buffer.

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

Break: 11:56a.m. – 12:00a.m.

B2200042 – City: A request for a Variance from the side yard requirements to allow a porch to encroach. The property is located at 3729 Stonegate Drive, is zoned Residential Suburban –20 (RS-20) and within the Suburban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

Staff Report: Leigha Larkins presented the case.

Speakers: Lyle Yetman and Alvin Marguerat spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2200042, an application for a Variance from the rear yard requirements to allow a porch to encroach on property located at 3729 Stonegate 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, 5-0. (Kolasa, Tarrant 2nd)

B2200043 – City: A request for a Minor Special Use Permit for the construction of an addition to a nonconforming structure. The property is located at 703 Watts Street, is zoned Residential Urban – 5 (RU-5) and within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

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

Staff Report: Leigha Larkins presented the case.

Speakers: Joshua Quinlan spoke in support. No one spoke in opposition.

MOTION: Kolasa made a motion that case number B2200043, an application for a Minor Special Use Permit to permit the construction of an addition to a nonconforming structure, on property located at 703 Watts 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, 5-0. (Kolasa, Kipp 2nd)

VI. Old Business - None

VII. New Business

- a. 2023 Board of Adjustment Meeting Calendar

MOTION: Approve the 2023 Board of Adjustment Meeting Calendar (Tarrant, Major 2nd)

ACTION: Carried, 5-0.

- b. Staff noted that a new County-appointed alternative was approved and would be starting their term at the December 13, 2022 meeting.

VIII. Approval of Orders

Case B2200026

MOTION: Approve the order for case B2200026 (Kolasa, Meadows 2nd)

ACTION: Carried, 5-0.

Case B2200027

MOTION: Approve the order for case B2200027 (Kolasa, Major 2nd)

ACTION: Carried, 4-0. (Meadows not voting)

Case B2200034

MOTION: Approve the order for case B2200034 (Tarrant, Major 2nd)

ACTION: Carried, 5-0.

Case B2200038

MOTION: Approve the order for case B2200038 (Tarrant, Major 2nd)

ACTION: Carried, 5-0.

Case B2200040

MOTION: Approve the order for case B2200040 (Kolasa, Meadows 2nd)

ACTION: Carried, 5-0.

Case B2200042

MOTION: Approve the order for case B2200042 with minor revisions (Tarrant, Kolasa 2nd)
ACTION: Carried, 5-0.

Case B2200043

MOTION: Approve the order for case B2200043 with minor revisions (Kolasa, Tarrant 2nd)
ACTION: Carried, 5-0.

IX. Adjournment

The meeting adjourned at 12:50 p.m.

The next meeting will be December 13, 2022, in the Council Chambers

Respectfully Submitted,
Terri Elliott, Clerk to the Board