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**REGULAR MEETING  
WAKE COUNTY BOARD OF ADJUSTMENT  
October 10, 2017**

All petitions complete, Brenton McConkey declared the regular meeting of the Wake County Board of Adjustment for Tuesday, October 10, 2017 adjourned at 9:26 a.m.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'Brenton McConkey', with a long horizontal flourish extending to the right.

**Brenton McConkey  
Wake County Board of Adjustment**

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## Planning, Development & Inspections

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### MINUTES OF REGULAR MEETING

#### Wake County Board of Adjustment

Tuesday, October 10, 2017 (9:00 a.m.)  
Wake County Justice Center  
300 S. Salisbury St., Room 2700  
Raleigh, North Carolina

**Members Present:** (7) Mr. Brenton McConkey (Chair), Mr. Don Mial (Vice-Chair), Mr. Brian Foxx, Mr. Waheed Haq, Mr. John Barker, Mr. Will Barker, Ms. Sheree Vodicka

**Members Absent:** (2) Mr. DeAntony Collins, Mr. Terence Morrison

**County Staff Present:** (4) Mr. Steven Finn (Land Development Administrator), Mr. Tim Maloney (Planning, Development & Inspections Director), Mr. Adam Cook (Planner II), and Ms. Jenny Coats (Clerk to the Board)

**County Attorney's Present :** (1) Mr. Ken Murphy (Senior Assistant County Attorney)

**Item 1:** **Call to Order:** Mr. McConkey called the meeting to order at 9:03 a.m. with 7 members present.

**Item 2:** **Approval of Minutes of the September 12, 2017 Meeting**  
Mr. McConkey made a motion to approve the September 12<sup>th</sup> meeting minutes, and Mr. Mial seconded. The motion carried unanimously.

**Item 3:** **Approval of Written Decision Denying the Special Use in the matter of BA-SU-2256-17.**  
Original voting members were Mr. McConkey, Mr. John Barker, Mr. Brian Foxx and Mr. DeAntony Collins. Mr. McConkey made a motion to approve the written decision denying the special use in the matter of BA-SU-2256-17, and Mr. Waheed Haq seconded. The motion carried unanimously.

**Item 4 :** **BA-V-2254-17 - Williams-Pearce & Associates Special use request to allow for an outdoor recreation facility**

Mr. Murphy stated that North Carolina law prohibits the practice of law by a non-lawyer. The North Carolina State Bar has determined that it is the unauthorized practice of law for someone other than a licensed attorney to appear at a quasi-judicial hearing in a representative capacity to advocate the legal position of another person, firm, or corporation. In the matter of BA V-2254-17, the applicant was a registered surveyor acting as a consultant, and the property owner was a church. There did not appear to be an attorney involved. The applicant may testify, but if there were any witnesses opposed the variance request, the surveyor would not be able to cross-examine those witnesses since that would be the unauthorized practice of law.

Staff Duly Sworn: Mr. Adam Cook

Voting Members: Mr. McConkey, Mr. Foxx, Mr. Haq, Mr. Don Mial, Mr. Will Barker (Alternate),

Landowner: Saint John United Holy Church

Petitioner: Williams-Pearce & Associates (Clyde Pearce)

PIN#: 1797-11-5158

Location: 3127 Jack Mitchell Road

Zoned: Residential-80 Watershed (R-80W)

Land Use Classification: Non-urban Water Supply Watershed

The petitioner is requesting Special Use Permit approval as required by section 4-11 of the Wake County Unified Development Ordinance (UDO) to establish an outdoor recreation ball field use.

## TESTIMONY AND EVIDENCE PRESENTED

Documentary Evidence: Staff report, PowerPoint presentation, and applicant's application with supporting documents into evidence. Mr. McConkey accepted these documents into record.

### Testimony:

Mr. Adam Cook entered the staff report and PowerPoint presentation for BA-V-2254-17 into the record. Mr. McConkey accepted the staff report and PowerPoint slides into the record. Mr. Cook stated the petitioner's name, zoning classification, background and history of the petition.

Mr. Cook testified that the site is currently vacant and is adjacent to a mix of single family homes and undeveloped land and to the west of the property is future Wake County park land. The applicant is proposing to use the site for an outdoor recreation ball field with a new parking lot to serve the proposed ball field. A special use permit is required because the ball field will be the principal use on the lot. Mr. Cook noted that notification letters to adjoining property owners were mailed on September 21, 2017 and a public hearing placard was placed on the site on September 19, 2017. There are no individual well and septic systems proposed for the site.

Mr. Cook provided a PowerPoint presentation and provided the following details concerning zoning requirements pertaining to the property:

- Utilities: There are no individual well and septic systems proposed for the site.
- Streets/Parking: The property has frontage on Jack Mitchell Road. Pursuant to Section 15-10 of the Wake County Unified Development Ordinance, off-street parking is required at the following rates: 1 space per 2,000 square feet of land area. As proposed, the facility would be required to provide 20 parking spaces. Thirty parking spaces are shown on the site plan. The site plan is in compliance with Section 15-10.
- Landscaping and bufferyards: Off-street parking area landscaping is provided in accordance with section 16-10-1. A 10' Type F street front screen is also provided along Jack Mitchell Road in accordance with section 16-10-2 (F)(7).
- Stormwater management/impervious surface coverage: A total of 10,095 square feet of impervious surface (5.95%) is proposed for the site. The maximum impervious coverage allowed for the site is 10,175 square feet (6%). Disturbance of greater than ½ acre is required to comply with the stormwater management regulations of Article 9.
- Land Use Plan: The site is located in a non-urban water supply watershed area. The proposed use is consistent with the Wake County Land Use Plan.

Mr. Cook stated that if the board reaches positive conclusions for a special use permit that they grant the permit with recommended staff conditions.

Mr. McConkey stated that the property appeared to already be used as a ballfield and Mr. Cook agreed. Mr. McConkey stated that the special use would bring the use into compliance.

Sworn witnesses in favor of the petition:

George K. Horton  
705 Tree Green Lane  
Wake Forest, NC 27587

Mr. Horton stated that he had been a pastor of the church for the last three years and that he and his members are working to provide programs and activities to help the youth in his area. The ballfield would help bring in more youth to his church. Mr. Horton wishes to have the ball field permitted properly and is present to speak in favor of the petition.

Mr. Foxx stated that the petition was fairly straightforward and asked if any variances were required. Mr. Cook stated that no variances were needed as the property is currently in compliance with all zoning ordinances.

Mr. Haq asked if any additional fences would be needed to protect property. Mr. Cook stated that the backstop fences met set back requirements and no additional fences would be needed.

There was no one else wishing to speak either in favor of or in opposition to the petition. Mr. McConkey closed the public hearing and opened Board discussion.

**BOARD DISCUSSION**

Mr. McConkey observed that the application was well prepared that addressed the five findings noted that staff found that all five and that staff recommends approval. Mr. McConkey suggested walking through the findings:

1. The proposed development will not materially endanger the public health or safety; Mr. John Barker stated that the applicant's statement addressed this finding that the ball field would be a place for youth to play and would be a welcomed opportunities to the youth in the area with no danger to the community. Mr. Mial agreed that this would be a positive addition for the church and the community and they have met this requirement in supporting public health and safety.
2. The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses; Mr. McConkey stated that this was addressed through Mr. Foxx's question about setbacks and special use permits. Staff confirmed that the petition meets all regulations and standards.
3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity; Mr. Mial stated that the property has already been used as a ballfield in the past and will not injure or change adjoining property.
4. The proposed development will be in harmony with the area in which it is located. Mr. McConkey stated that the property is ancillary use intended to compliment the church and is in harmony with the surrounding land including the undeveloped land and future park land to the west.

5. The proposed development will be consistent with the Wake County Land Use Plan. Mr. McConkey stated that the staff report indicated that the staff finding was that the petition was consistent with the Wake County Land Use Plan. Mr. Barker stated that the property is located in a non-urban water supply watershed area and is consistent with the Wake County Land Use Plan.

## **MOTION**

Mr. Don Mial made a motion in the matter of BA-V-2254-17 that the Board find and conclude that the petition does meet the five requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. The motion to approve is based on the following findings of fact:

- 1) The proposed development will not materially endanger the public health or safety.
- 2) The proposed development will comply with all regulations and standards generally applicable within the zoning district and specifically applicable to the particular type of special use or class of special uses.
- 3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity.
- 4) The proposed development will be in harmony with the area in which it is located.
- 5) The proposed development will be consistent with the Wake County Land Use Plan.

Motion was seconded by Mr. Foxx and passed unanimously.

## **Item 5: New Business**

Mr. Steven Finn recognized the Board and indicated he had two primary items to share, development trend and update to last month's Board discussion regarding staff discretion for relief to development standards.

Mr. Finn identified that land development activities remain consistent and active. He noted the two most recent preliminary subdivision applications were outside of Fuquay-Varina and totaled 29 lots. He emphasized they reflect the routine type of submittals we process. Specifically, new phases to existing subdivisions which reflect compliance with our inter-connectivity policies and average 10-20 lots.

Mr. Finn acknowledged staff's effort to follow up the Board's directive to look at our existing practices with administrative variances and staff discretion. He summarized the Unified Development Ordinance history with staff discretion and applications that have come in seeking a substantial variance to development standards for buffering and landscaping. It was noted the current allowance of up to 25% reduction for related standards upon justification from applicants. He further noted staff could not identify another similar example of such an extensive request or staff ability to sign off administratively. It was the staff conclusion that the case which generated the evaluation was a rare exception compared to the general variance applications processed. Accordingly, it was suggested that no ordinance amendment be further pursued at this time.

T The Chairman thanked Mr. Finn and indicated that was appropriate at this time.

**Item 6: Old Business** – There was no old business.

**Item 7:** Hearing no additional business, Mr. McConkey adjourned the meeting at 9:26 a.m.