

## MINUTES

**Regular Meeting  
Wake County Board of Adjustment  
Tuesday, June 13, 2017  
9:00 a.m., Room 2700  
Wake County Justice Center  
300 S. Salisbury St.  
Raleigh, North Carolina**

**Members Present: (8)** Mr. Brenton McConkey (Chair), Mr. Don Mial (Vice-Chair), Mr. Brian Foxx, Ms. Sheree Vodicka, Mr. Will Barker, Mr. Waheed Haq, Mr. John Barker, and Mr. DeAntony Collins

**Members Not Present: (1)** Mr. Terence Morrison

**County Staff Present: (11)** Mr. Steven Finn (Land Development Administrator), Mr. Tim Maloney (Planning, Development, and Inspections Director), Ms. Celena Everette (Planner II), Mr. Adam Cook (Planner II), Mr. Lee Gupton (Deputy Fire Marshal), Mr. Geoffrey Pearson (Code Enforcement Complaint Coordinator), Ms. Betsy Pearce (Environmental Consultant), Ms. Sarah Dickson (Student Assistant), Ms. Anna Hawksworth (Student Assistant), Ms. Kaitlyn Warren (Student Assistant), and Mr. Russ O'Melia (Clerk to the Board)

**County Attorneys Present: (1)** Mr. Ken Murphy (Assistant County Attorney)

**Item 1, Call to Order:** Mr. McConkey called the meeting to order at 9:05 a.m. with 7 members present.

### IN RE MINUTES

#### **Item 2, Approval of Minutes of the May 9, 2017 Meeting**

Mr. McConkey made a motion to approve the May 9<sup>th</sup> meeting minutes, and Mr. Mial seconded. The motion carried unanimously.

#### **Item 3, Approval of Written Decision Granting the Special Use in the matter of BA SU-2241-16**

Mr. McConkey made a motion to approve the written decision granting the special use in the matter of BA-SU-2241-16, and Ms. Vodicka seconded. The motion carried unanimously.

Before the case was heard, Wake County staff members Mr. Cook and Ms. Everette were duly sworn.

Mr. Foxx arrived at 9:09 a.m.

#### **Item 4, BA SU-2250-17**

Voting Members: Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Foxx, and Mr. John Barker

Landowner: Papa Scoops Pond, LLC

Petitioner: Cumalander Adcock, LLP – James Adcock

PIN#: 0646-84-2041

Size: 10 acres

Location: The property is located at 1404 West Academy Street.

Zoned: Highway District (HD)

Land Use Classification: Fuquay-Varina Short Range Urban Service Area

The petitioner is requesting Special Use Permit approval as required by section 7-12 of the Wake County Unified Development Ordinance (UDO) to change an existing nonconforming use to another nonconforming use of equal or less intensity. The existing nonconforming use is concrete manufacturing and concrete storage. The proposed nonconforming use is a self-storage surface lot. The lot consists of a gravel storage

yard enclosed by a chain link security fence that will be used for the storage of boats, recreational vehicles, and other vehicles.

## **TESTIMONY AND EVIDENCE PRESENTED**

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, aerial maps, relevant sections of the Unified Development Ordinance were shown and/or available, Exhibit 1: photographs from the 1990s submitted by Mr. James Adcock, Exhibit 2: photographs submitted by Ms. Zoe Hansen Burnet, and Exhibit 3: a lease termination agreement and other documents submitted by Mr. James Adcock.

### Testimony:

Mr. Cook, Planner II, entered the staff report and PowerPoint presentation for BA SU-2250-17 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. Directly north of the subject property is a railroad line. Further to the north across the railroad line are single-family homes and a utility sub-station. To the east of the subject property is a utility easement and a vacant lot. To the south of the subject lot, across West Academy Street, is a mix of single-family homes and vacant land. To the west of the subject lot is Piney Grove Baptist Church. Prior to 1974, the subject site contained a retail farm irrigation business that started in the 1950's. In 1974, a business manufacturing precast concrete products with the storage of septic and other precast products was established on the site. In 1986, a business was established for the purpose of concrete manufacturing and concrete storage as well as truck storage. That use occupied the property until June 28, 2016 when the most recent lease was terminated for the subject site and the concrete business ceased operation on the site. A discontinued non-conforming use may not be resumed if the use ceases for more than 12 months. The site has existing concrete pads and gravel from the non-conforming concrete manufacturing and storage use. The property has frontage on West Academy Street, and the proposed self-storage surface lot will use the same driveway location as the previous non-conforming use. No buildings or restroom facilities are proposed for the site. No new landscaping is required or proposed for the site. Off-street parking is required at the following rates: 1 space per 5,000 square feet of non-office area. As proposed, the facility would be required to provide 9 parking spaces. Nine parking spaces are shown on the site plan. The site plan is in compliance with parking requirements. No new stormwater management measures are proposed for the site. The proposed self-storage surface lot will be located on an area that is currently impervious. The site plan calls for the removal of 7,485 square feet of impervious surface from the site. Adjoining property owners were notified by mail on May 26th, and a public hearing notice was also posted on the property on May 26th.

### Sworn witnesses in favor of the petition:

James Adcock, 300 Judd Place Drive, Fuquay-Varina, NC 27526

Alexander Freeman, 1400 Fairway Ridge Drive, Raleigh, NC 27606

Deborah Underwood Brown, 994 Fred Burns Road, Holly Springs, NC 27540

Ed Loeffler, Curry Engineering, 205 S. Fuquay Avenue, Fuquay-Varina, NC 27526

Mr. Adcock, an attorney from Cumalander Adcock, LLP, came forward to address the board representing the property owner, Papa Scoops Pond, LLC. Mr. Adcock submitted Exhibit 1 into the record – photographs of the site from the 1990s. Mr. McConkey accepted the exhibit into the record. He said that the property has been in the Underwood family for four generations. The site had been used to manufacture septic tanks in the past as well as a concrete batching plant. Mr. Adcock said that S.T. Wooten leased the property and operated the batching plant from 1996 until 2016. He said that the property owners would like to make use of the property with a use that is less intense than concrete manufacturing. The concrete manufacturing use involved many heavy trucks that made several trips per day. The boat storage use will be seasonal, and the types of vehicles will be light duty trucks. Mr. Adcock said that the boat storage use would generate less traffic than the concrete manufacturing use. Concrete manufacturing involves air, noise, and water pollution; boat storage would involve less noise, fumes, and dust. He said that removing some of the impervious surface would improve the wastewater drainage. He said that staff has reviewed the plans and concluded that all requirements and regulations have been met. He said that the proposed use will not injure the value of adjoining property since the intensity of the use is being reduced. The proposed development will be in

harmony with the area in which it is located based on the uses on the surrounding properties. The proposed use will be a better transition between the residential and adjoining commercial uses. Mr. Adcock said that there is natural buffering to the site, including the pond which provides a buffer to the west, the railroad to the north, and the utility easement to the east. The limited road frontage limits the visibility of the use. Mr. Adcock said that the proposed use will be consistent with the Wake County Land Use Plan since it would be a continuation of there being a non-conforming use on the property.

Mr. Foxx asked if this would be an RV park with people live out of their recreational vehicles on the site. Mr. Adcock said that it would be strictly parking of the vehicles; people will not be allowed to stay out there. There would be no water or septic service.

Mr. Haq asked if there would be markings for the vehicle parking spots. Mr. Freeman said that they would mark the spots with a railroad tie stop. He said that there would be designated areas for large vehicles and small vehicles.

Mr. Loeffler said that there would be seven pole lights (about 20-25 feet tall) around the perimeter of the property that would not affect the surrounding properties or streets.

Mr. Haq asked for more information about the pond. Ms. Underwood Brown said that the pond was enlarged in 1945. The pond is naturally fed by springs.

Mr. Haq asked if there would be a security fence. Mr. Freeman said that there would be a chain link security fence around the site. Mr. Adcock said that there would be an entrance gate that would require a code or card to enter the facility.

Ms. Zoe Hansen Burnet, 720 Hargett Street, Raleigh, NC 27603 came forward to address the board. She said that she was an attorney with the Sam Weathers Law Firm representing Rick Edwards, an adjoining property owner. Ms. Burnet submitted Exhibit 2 into the record- four photographs of the site. Mr. McConkey accepted Exhibit 2 into the record. Ms. Hansen Burnet said that the property has been empty of the concrete business and large structures for a number of years. She said that the photographs in exhibit 2 were taken from the Google Street View images over the course of several years. The photograph from 2008 shows concrete machinery and trucks, and the photographs from later years do not show any of that equipment. Ms. Hansen Burnet argued that the site should fall under UDO section 7-12-2 (E) which says:

- (E) A discontinued nonconforming use may not be resumed if:*
- (1) the nonconforming use ceases for more than 12 months, or*
  - (2) the land, structures, and other elements of development previously devoted to a ceased or discontinued nonconforming use are devoted to a conforming use for any period of time.*

Ms. Hansen Burnet said that the non-conforming use ceased operations years ago, and now the proposal is for another non-conforming use.

Mr. Haq asked where Mr. Edwards's property is. Ms. Hansen Burnet answered that it is the property across the easement to the east, and it is about 80 acres. It borders the entire east side of the subject site.

Mr. McConkey asked Mr. Cook how staff arrived at the conclusion that the concrete manufacturing use discontinued on June 28, 2016. Mr. Cook said that the applicant produced a lease that showed the lease ending on June 28, 2016.

Mr. Adcock submitted Exhibit 3 – a lease termination agreement dated June 28, 2016 between S.T. Wooten Corporation and Papa Scoops Pond, LLC and other documents. Mr. McConkey accepted exhibit 3 into the record. He said that the batching units were mobile and moved around to different parts of the site. There was a period of time when the concrete manufacturing was winding down, and trucks were stored on the site during the period of time when the concrete manufacturing operation was coming to an end.

Ms. Underwood Brown said that trucks were being stored there through early 2016. She said that there was activity on the site until the end of the lease, and the tenant paid rent through the end of the lease.

Mr. McConkey asked how staff determines when a non-conforming use has discontinued. Mr. Cook said that staff looks at all of the evidence that is presented, and in this case there was enough evidence, based on the document showing the lease ending on June 28, 2016, to bring the case to the board. He said that there was not anything presented at the hearing that changed staff's determination regarding when the non-conforming use was discontinued.

Mr. McConkey closed the public hearing. The board took a brief recess.

Mr. McConkey re-opened the public hearing. Mr. McConkey asked Ms. Hansen Burnet if she had any testimony to add regarding Exhibit 3. Ms. Hansen Burnet said that she did not have anything to add.

Mr. McConkey closed the public hearing.

### BOARD DISCUSSION

Mr. McConkey said that exhibit 2 shows that the concrete manufacturing operation has slowed or stopped in the last five years, but exhibit 3 shows that the lease was terminated on June 28, 2016. He said that exhibit 3 also shows that there were active permits until that time.

Mr. Mial said that the only date to go by is the termination of the lease.

Mr. McConkey noted that staff determined that the non-conforming use ended on June 28, 2016.

Mr. Haq asked if the non-conforming use extends to the end of the lease or when the operations cease. Mr. Murphy said that the board needs to make that determination.

Mr. John Barker said that the lease termination date and staff's determination are the two things that the board can look at regarding when the non-conforming use ended.

Mr. McConkey acknowledged that the photos in exhibit 2 show that there is no activity happening on the site, but the value of the photos is limited by the limited perspective that they offer in addition to the testimony from Ms. Underwood Brown.

Ms. Vodicka said that it was unfortunate that more neighbors were not present to testify regarding when operations on the site ceased since the photos show grass growing where it may not grow if there were heavy activity going on.

Mr. McConkey said that there is evidence that the boat and RV storage yard would have fewer heavy trucks and less traffic. The storage yard would be seasonal, and there would be more light duty trucks than heavy trucks. There would be less noise, less air pollution, less water pollution, less dust, and less erosion. He said that there was testimony that the site would meet lighting standards. He said that all of this evidence supports a finding that the proposed use would be less intense than the concrete manufacturing use.

Mr. John Barker noted testimony that the impervious surface would be reduced.

Mr. Haq said that the impervious surface reduction will reduce the surface flow of the water. The concrete operation is more intense on the environmental conditions, and the storage use would be less intense.

### MOTION #1

Mr. Mial made a motion in the matter of BA SU-2250-17 that the Board find and conclude that the

proposed non-conforming use is of equal or less intensity than the existing non-conforming use. In making the determination of equal or less intensity, the Board determines that the change will have less of an adverse impact on those most affected by it or will be more compatible with the surrounding neighborhood than the current non-conforming use in operation. Mr. McConkey seconded the motion. By a vote of 5-0, the motion passed.

The board discussed the five required findings.

*(1) The proposed development will not materially endanger the public health or safety.*

Mr. Mial said that the proposed use would lessen the public health and safety concerns. There would be less trucks on the road, and the environmental issues with the concrete manufacturing would be gone.

*(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 said that staff did not indicate any deficiencies in the application.

*(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity.*

Mr. McConkey said that the board found that the proposed use will have less of an impact on the surrounding property. The proposed use will have fewer heavy trucks, less traffic, less noise, and less pollution. There was no testimony suggesting that the proposed development will substantially injure the value of adjoining property.

*(4) The proposed development will be in harmony with the area in which it is located.*

Mr. John Barker noted that there is a railroad to the north, a utility easement to the east, a highway to the south, and vacant parcels to the west. There are natural buffers around the property, including the pond. There is limited road frontage.

*(5) The proposed development will be consistent with the Wake County Land Use Plan.*

Mr. McConkey said that the staff report did not indicate any conflict with the Land Use Plan.

## MOTION

Mr. John Barker made a motion in the matter of BA SU-2250-17 that the Board find and conclude that the petition does meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. Mr. Mial seconded the motion. By a vote of 5-0, the motion passed, and the special use permit was granted. So ordered.

## FINDINGS OF FACT

(1) The proposed development will not materially endanger the public health or safety. The proposed use will lessen the public health and safety concerns. The environmental issues with the concrete manufacturing operation will be gone. There will be less noise and less pollution.

Considerations:

a. Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts. There will be less traffic, and fewer heavy trucks on the road. Traffic will consist more of light duty trucks.

- b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
- c. Soil erosion and sedimentation.
- d. Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater.

(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. The proposal is a non-conforming use that will be a less intense use than the previous non-conforming use. There were no deficiencies in the application.

(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The proposed use will have less of an impact on the surrounding property than the previous use. The proposed use will have fewer heavy trucks, less traffic, less noise, and less pollution. There was no testimony suggesting that the proposed development will substantially injure the value of adjoining property.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.
- b. Whether the proposed development is necessary to the public health, safety, and general welfare of the community or County as a whole as to justify it regardless of its impact on the value of adjoining property.

(4) The proposed development will be in harmony with the area in which it is located. There is a railroad to the north, a utility easement to the east, a highway to the south, and vacant parcels to the west. There are natural buffers around the property, including the pond. There is limited road frontage.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

(5) The proposed development will be consistent with the Wake County Land Use Plan. The staff report found that the proposed development will be consistent with the Wake County Land Use Plan.

Considerations:

- a. Consistency with the Plan's objectives for the various planning areas, its definitions of the various land use classifications and activity centers, and its locational standards.
- b. Consistency with the municipal and joint land use plans incorporated in the Plan.

### CONCLUSIONS OF LAW

The proposed development will not materially endanger the public health or safety. 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. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The proposed development will be in harmony with the area in which it is located. The proposed development will be consistent with the Wake County Land Use Plan.

IT IS THEREFORE ORDERED:

- 1) The petitioner must record the notarized form pertaining to the Order of the Board in the Wake County Register of Deeds and return a copy to the Current Planning Section of Wake County Planning;
- 2) The petitioner must obtain and complete appropriate permits from the Wake County Inspections Development/Plans/Permits Division and Environmental Services.
- 3) The petitioner must obtain a driveway permit from NCDOT.

Before the next case was heard, staff member Mr. Pearson was duly sworn.

**Item 5, BA SU-2249-17**

Voting Members: Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Foxx, and Mr. Will Barker

Landowner: Good Hope Missionary Baptist Church

Petitioner: Brian Starkey

PIN#: 1762-45-5747

Size: 4 acres

Location: The property is located at 4209 S. Smithfield Road.

Zoned: Residential-30 (R-30)

Land Use Classification: Raleigh Long Range Urban Services Area

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 athletic field.

**TESTIMONY AND EVIDENCE PRESENTED**

Documentary Evidence: Staff report, PowerPoint presentation, site plans, application, video, aerial maps, and relevant sections of the Unified Development Ordinance were shown and/or available.

Testimony:

Mr. Pearson, Code Enforcement Complaint Coordinator, entered the staff report and PowerPoint presentation for BA SU-2249-17 into the record. Mr. McConkey accepted the staff report and PowerPoint slides into the record. Mr. Pearson stated the petitioner's name, zoning classification, background and history of the petition. The vacant lot adjoins the Good Hope Missionary Baptist Church property. The current land use of the subject property is vacant except for the use of 33 overflow church parking spaces and a private drive located to the north of the lot. The applicant proposes to convert 1.32 acres of the vacant lot into outdoor recreation for youth athletics. The recreation field will not be operated by the church, but will be open to the public and will be operated by a third party. The athletic field will be served by portable waste disposal restrooms. Since no permanent seating will be provided, no permanent restroom facilities are required. Per Wake County Environmental Services, the field will not create an expansion or impact on existing septic system for the church. No water facilities are to be provided. The site has road frontage along S. Smithfield Road which is a public street. Access to the site will be provided by an existing driveway. No new driveways are being proposed for this project. For outdoor recreation, off-street parking is required at a rate of 1 space per 2000 square feet of land area used. There will be approximately 57,500 square feet devoted to the athletic field. There are 29 parking spaces required for the field. The field will utilize the existing 33 overflow parking spaces from the church. The athletic activities will operate during times the church is not in service. The parking is in compliance with Section 15-10 of the UDO. There are 4 landscaped bufferyards required for this project. The applicant requested an alternate buffer plan to be reviewed by the Board. Buffer # 1, as labeled on the submitted site plan, is the western buffer adjacent to Smithfield Road. This bufferyard requires a 10 foot Type F Streetfront Screen. This proposal meets the requirements of Section 16-10-(F)(7)(b) of the UDO. Buffer # 2 is the northern bufferyard adjacent to the northern residential property. It requires a 40 foot Type C Intermittent-2 Screen. As authorized by Section 16-10-2(H) of the UDO, the Planning Director may allow a reduction in the

bufferyard screening density by up to 25%. In order for the reduction to be allowed, the bufferyard width must be increased to effectively mitigate the density reduction. As shown on the site plan, Buffer # 2 depth has been increased to 50 feet. However, the plant reductions for evergreen understory trees and shrubs exceed 25%. This proposal does not meet the requirements of Section 16-10-2(H) of the UDO. A 40-foot Type C Intermittent Screen is required along the northeastern corner of the lot labeled as Buffer # 3. The buffer has been increased by the applicant to 50 feet, and will utilize existing vegetation and additional landscaping. This proposal meets the UDO requirements. Buffer # 4 is the western bufferyard that is adjacent to a vacant residential parcel. It also requires a 40-foot Type C Intermittent Screen. As proposed on the alternate plan, the applicant is showing a reduction in excess of 25% for evergreen understory trees and shrubs. Furthermore, there are now 2 existing parking spaces that are located in the bufferyard. This proposal does not meet the requirements of Section 16-10-2(H) of the UDO. There will be no exterior lighting used for the athletic field. Approximately 18,000 square feet of impervious surface is proposed for the site. This includes the use of existing parking spaces as well as the proposed 20 foot access easement to the north of the property. Maximum impervious surface limit is 30%. Total impervious proposed is 10%. The applicant does not intend to grade the site more than ½ acre. Per the Wake County Land Use Plan, the site is classified as being in the Falls Lake Non-Urban/Area Water Supply Watershed. The proposed land use complies with the intent of the Land Use Plan. Notification letters were mailed to adjacent property owners on May 23, 2017, and a public hearing placard was posted on the property on May 24, 2017.

Mr. Haq disclosed that he and Mr. Starkey served together on the Raleigh Appearance Commission in the past. He said that he does not have a business relationship with him. He said that he can hear the application impartially, and he will not have any undue influence. Mr. Mial disclosed that he attended Good Will Missionary Baptist Church in the past, and he has family that attends the church. He said that he can hear the application impartially, and he will not have any undue influence.

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 or corporation. In the matter of BA SU-2249-17, the applicant was a landscape architect, and the property owner is a church. There did not appear to be an attorney involved. The applicant may testify, but if there were any witnesses opposed the special use request, the applicant would not be able to cross-examine those witnesses since that would be the unauthorized practice of law.

Sworn witnesses in favor of the petition:

Brian Starkey, 400 West Morgan Street, Raleigh, NC 27603  
Doug Herakovich, 8505 Bournemouth Drive, Raleigh, NC 27615

Mr. Starkey stated that he is a principal with OBS Landscape Architects, and he prepared the site plan.

Mr. Herakovich stated that he is part of a family foundation that is trying to give back to the community. There is a youth group in Knightdale that he is helping to find some field space for youth athletics. He said that he is proposing to level out the bumps in the field, and they will plant good grass to provide a quality place for kids to play.

Mr. Starkey addressed the five required findings.

1. The proposed development will not materially endanger the public health or safety. The traffic will be limited to weekends and after school hours. The parking requirement would be met with the existing parking lot. There would be no utility services needed. Grading would be done in compliance with the state and county erosion control regulations. The field would not impact public, community, or private water supplies, surface waters, or groundwater.

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.

Starkey said that the implementation of the athletic field will comply with all regulations except for the proposed buffers. He said that the proposed landscape plan meets the intent of the ordinance.

3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. Mr. Starkey said that there would be no vertical lighting or erection of structures, and the value of adjoining property would not be affected.

4. The proposed development will be in harmony with the area in which it is located. Mr. Starkey said that there would be no vertical lighting or erection of structures. The relationship between the property and the surrounding area will not materially change.

5. The proposed development will be consistent with the Wake County Land Use Plan. Mr. Starkey said that the project is consistent with the goals of the Land Use Plan. The project meets goal #2 since it takes advantage of existing infrastructure and does not require public service. The project meets goal #3 since it does not include any housing or commercial development. The project meets goal #4 since it does not impact the unique character of the East Raleigh-Knightdale area. The project meets goal #5 since it does not impact the capital area transportation plan. The project meets goal #6 since it does not negatively impact existing agricultural or forestry operations. The project meets goal #7 since it does not have an impact on stormwater resources.

Mr. Starkey said that the proposed buffer meets the intent of the UDO. He noted that he prepared an alternate set of plans that meets the UDO buffer requirements using more plant material with flowering trees and shade trees. The proposed plan calls for evergreen trees which would provide a better buffer for the adjacent land use. He said that the plan provides an extra ten feet to the buffers on the north and east sides, and the evergreen trees would provide more of an opaque screen than what is required by the ordinance.

Mr. McConkey commented that the board does not have the authority to grant the exception to the buffers that is being proposed.

Mr. Herakovich said that the cost of providing the required buffer is well in excess of what it would take to build a nice playing field.

Mr. McConkey asked if the Board of Commissioners had considered changes to the UDO where existing plantings could be used to satisfy buffering requirements. Mr. Pearson said that he was not aware of any consideration that the commissioners have given to the issue.

Staff member Mr. Finn was duly sworn. Mr. Finn said that the Board of Commissioners amended the ordinance a few years ago to remove a 10-acre minimum acreage requirement for recreational uses.

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

Mr. Haq asked if tabling the hearing was a valid option. Mr. McConkey re-opened the public hearing.

Mr. Herakovich said that they would not change their mind regarding the buffers. Mr. McConkey closed the public hearing.

Mr. McConkey said that the petition would meet findings 1, 3, 4, and 5, but since the petition does not meet the buffer requirements, finding #2 could not be met.

Mr. Murphy said that it is possible to have both a variance and a special use permit for the same project, though those two hearings would need to occur at different board meetings.

Mr. Will Barker said that finding #2 could not be met by the application.

Mr. McConkey re-opened the public hearing.

Mr. Starkey said that they would like to submit the alternative plans (Option B) for the board to consider, and, if approved, they could come back to the board to ask for a variance. He said that the buffers in option B take advantage of the 25% reduction on the east side and the north side.

Mr. Pearson said that the Planning Director approved the reduction in the buffers up to 25%.

Mr. McConkey closed the public hearing.

## BOARD DISCUSSION

The board discussed the five required findings.

1. The proposed development will not materially endanger the public health or safety.

Mr. Mial said that the project would encourage public health in the area. Mr. McConkey noted the statement of justification references the limited traffic associated with the development, no utility services, minor grading, and no impacts on community or private water supplies, surface water or groundwater.

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 said that staff agreed that the option B plans meet the UDO requirements.

3. The proposed development will not substantially injure the value of adjoining property, or is a public necessity.

Mr. Mial said that there are not a lot of homes surrounding the site. Part of the church property is used for parking.

4. The proposed development will be in harmony with the area in which it is located.

Mr. McConkey said that the proposal will not have a significant impact on the area.

5. The proposed development will be consistent with the Wake County Land Use Plan.

Mr. McConkey noted that the staff report concluded that the development would be consistent with the Land Use Plan.

## MOTION

Mr. McConkey made a motion in the matter of BA SU-2249-17 that the Board find and conclude that the petition does meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and the special use permit be granted with the recommended staff conditions. Mr. Haq seconded the motion. By a vote of 5-0, the motion passed, and the special use permit was granted. So ordered.

## FINDINGS OF FACT

(1) The proposed development will not materially endanger the public health or safety. The project would encourage the public health in the area. There will be limited traffic impacts, no utility services, minor grading, and no impacts on community or private water supplies, surface water, or groundwater.

Considerations:

- a. Traffic conditions in the vicinity, including the effect of additional traffic on streets, street intersections, and sight lines at street intersection and curb cuts.
- b. Provision of services and utilities, including sewer, water, electrical, garbage collections, fire protection.
- c. Soil erosion and sedimentation.
- d. Protection of public, community, or private water supplies, including possible adverse effects on surface waters or groundwater.

(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. The site plan marked as Option B meets all UDO requirements.

(3) The proposed development will not substantially injure the value of adjoining property, or is a public necessity. There are not a lot of homes around the property. Part of the church property is used for parking. The proposal will not have a significant impact on the area.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.
- b. Whether the proposed development is necessary to the public health, safety, and general welfare of the community or County as a whole as to justify it regardless of its impact on the value of adjoining property.

(4) The proposed development will be in harmony with the area in which it is located. The proposal will not have a significant impact on the area.

Considerations:

- a. The relationship of the proposed use and the character of development to surrounding uses and development, including possible conflicts between them and how these conflicts will be resolved.

(5) The proposed development will be consistent with the Wake County Land Use Plan.

Considerations:

- a. Consistency with the Plan's objectives for the various planning areas, its definitions of the various land use classifications and activity centers, and its locational standards.
- b. Consistency with the municipal and joint land use plans incorporated in the Plan.

### CONCLUSIONS OF LAW

The proposed development will not materially endanger the public health or safety. 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. The proposed development will not substantially injure the value of adjoining property, or is a public necessity. The proposed development will be in harmony with the area in which it is located. The proposed development will be consistent with the Wake County Land Use Plan.

### IT IS THEREFORE ORDERED:

1. The petitioner must record the notarized form pertaining to the Order of the Board in the Wake County Register of Deeds and return a copy to the Current Planning Section of Wake County Planning;
2. The petitioner must record the proposed 20' private access easement in the Wake County Register of Deeds and return a copy to the Current Planning Section of Wake County Planning prior to use of the athletic field;
3. The petitioner must obtain and complete all other appropriate permits from the Wake County Inspections Development/Plans/Permits Division and Environmental Services;

Before the next case was heard, staff member Mr. Pearson was duly sworn.

#### **Item 6, BA A-2252-17**

Voting Members: Mr. McConkey, Mr. Mial, Mr. Haq, Mr. Foxx, and Mr. Collins

Landowner: Edith Kay Moore

Petitioner: Edith Kay Moore

PIN#: 0781-47-1487

Size: 0.93 acres

Location: The property is located at 2101 Beneventum Court, which is lot 5 of Old South Trace Subdivision.

Zoned: Residential-40 Watershed (R-40W)

Land Use Classification: Non-Urban Area/Water Supply Watershed (NUA/WSW)

The petitioner is appealing the determination of planning staff, as allowed by Article 19-41 Appeals of Administrative Decisions, that her residential single-family property is in violation of Section 19-42-1(A) of the Wake County Unified Development Ordinance (UDO).

#### **TESTIMONY AND EVIDENCE PRESENTED**

Documentary Evidence: Staff report, PowerPoint presentation, application, aerial map, and relevant sections of the Unified Development Ordinance were shown and/or available.

#### **Testimony:**

Mr. Pearson, Code Enforcement Complaint Coordinator, entered the staff report and PowerPoint presentation for BA A-2252-17 into the record. Mr. McConkey accepted the staff report and PowerPoint slides into the record. Mr. Pearson stated the petitioner's name, zoning classification, background and history of the petition. The appellant is Ms. Edith Kay Moore. Ms. Moore resides at 1212 Enchanted Oaks Drive, which is located in the Enchanted Oaks Subdivision off of Lake Wheeler Road. The property in question is located at 2101 Beneventum Court, which is located in the Olde South Trace Subdivision off of Olde South Road. The property is owned by Ms. Edith Moore and Vincent Moore. The property was purchased by Mr. & Ms. Moore in April 2016. The property is zoned Residential-40 Watershed, and is located in Rural Non-Urban portion of the Swift Creek Watershed. On March 1, 2017, Wake County Planning received a complaint that the property located at 2101 Beneventum Court was being operated as a Bed and Breakfast home. The complaint alleged there were numerous individuals renting home for short term stays. The complaint alleged that the property was being advertised through online rental website AirBnb.com. The investigation confirmed that property was listed for short term bed and breakfast rental online. No zoning approval was obtained for use of the property as a Bed and Breakfast. A Zoning Notice of Violation was issued to the owners on March 21, 2017. A Zoning Appeal was filed to Board of Adjustment on April 24, 2017. Ms. Moore stipulates in her appeal application that she has in fact been using her residential property as a bed and breakfast rental home, and advertises the rental home through the online web site AirBnB.com. Although Ms. Moore stipulates to this fact, she believes that her property is not subject to zoning enforcement. Mr. Pearson said that Ms. Moore contends that the use of her property as short term vacation lodging should be permitted without any zoning review. Section 153A-340 of

the NC General Statutes is the enabling legislation that grants Counties the ability to adopt zoning regulations within their planning jurisdictions. More specifically, this legislation reads in part:

*These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories, and size of buildings and other structures . . . and the location and use of buildings, structures, and land...*

Wake County has created and adopted a Unified Development Ordinance (UDO) pursuant to the grant of power authorized by Section 153A-340 of the NC General Statutes. This UDO is enforceable on all land located in Wake County's Planning & Zoning Jurisdiction. The petitioner's property, located at 2101 Beneventum Court, is located in Wake County's Planning & Zoning Jurisdiction. Ms. Moore purchased the property on April 12, 2016, and the County UDO was already being administered in full force. Section 19-42-1(A) of the Wake County UDO states the following:

*No excavation may be commenced, no wall, structure, premises, or land used, building or part thereof may be built, constructed or altered, nor may any building be moved, nor may any sign be erected or structurally altered (unless exempted), until application has been made and the proper permit has been obtained. This permit requirement includes prima facie businesses or activities.*

As defined in Section 21-11 of the UDO, a Bed and Breakfast Homestay is permitted as an accessory use in the Residential-30 Zoning District with Special Use Approval from the Board of Adjustment. Mr. Pearson testified that it was staff's determination that because no permit application has been submitted for the operation of a short term bed and breakfast rental, the property located at 2101 Beneventum Ct is in violation of Section 19-42-1(A) of the Wake County Unified Development Ordinance.

Mr. Haq asked in which zoning districts bed and breakfast homes are allowed within Wake County. Mr. Pearson said that a Bed and Breakfast Homestay would be the appropriate designation, and a special use permit is required.

Mr. McConkey asked about the difference between a bed and breakfast homestay and a bed and breakfast residence. Mr. Pearson said that one provision of a bed and breakfast residence is that it needs to be a historic property, and it allows stays to be up to 14 days. Bed and breakfast homestays allow stays up to 7 days.

The appellant, Ms. Moore, was not present at the hearing. The board took a brief recess.

Mr. Pearson said that he spoke to Ms. Moore on the telephone, and Ms. Moore would like to proceed with the hearing using her written statement in her appeal application.

Sworn witness in opposition to the appeal:

Sharon Joines, 2100 Beneventum Court, Raleigh, NC 27606

Ms. Joines said that she believes that the property owner is thwarting the UDO by running the bed & breakfast and advertising it on Airbnb.com and other websites. She and other nearby property owners do not support the appeal. She said that the bed & breakfast operation is negatively impacting the neighborhood and injuring neighboring property values. There is a public health issue due to the septic system overflowing when there are eighteen people staying in a home whose septic system was designed to handle three people. Ms. Joines noted public safety concerns due to the high levels of transient visitors.

Mr. Collins asked when the home began to be rented. Ms. Joines said that it began last summer. She said that her online listing at one time showed that the property was rented for 278 of the next 300 days.

Mr. Foxx asked if Ms. Moore lives at the property. Ms. Joines answered that Ms. Moore does not live in the home.

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

## BOARD DISCUSSION

Mr. McConkey commented that the evidence presented shows that this is a commercial operation on the property. He said that he thinks that the Planning staff's classification of the use as a bed and breakfast homestay is appropriate. Mr. Mial agreed.

## MOTION

Mr. Mial made a motion based on the applicable Wake County Unified Development Ordinance provisions, and on the evidence submitted in the matter of BA A-2252-17, that the Board find and conclude that the Planning staff's determination should be upheld and the issuance of the Notice of Violation is affirmed. The motion to affirm is based on the following findings of fact and conclusions of law related to evidence, including the appellant's application that acknowledges that the site has been used for short term rentals, and testimony that the site is being used as a commercial operation, that the issuance of the zoning notice of violation was not issued in error, and the subject property is in violation of the Wake County UDO. Mr. Collins seconded the motion. By a vote of 5-0, the motion passed, and the planning staff's decision was affirmed. So ordered.

**Item 7: New Business** – Mr. O'Melia briefly discussed proposed changes to the Board of Adjustment's Rules of Procedure. The proposed changes include:

- Newly appointed members will be sworn in at the March meeting, instead of the April meeting, to better align with when the appointments are made.
- Deleting references to old code that does not exist anymore.
- Adding paragraph 27 to include language regarding written decisions to align with state statute.
- Changing all instances of "Chairman" to "Chair," and all instances of "Vice-Chairman" to "Vice-Chair."

Mr. McConkey made a motion to approve all of the proposed changes to the Board of Adjustment's Rules of Procedure. Mr. John Barker seconded the motion. The motion passed unanimously.

## **RULES OF PROCEDURE FOR THE WAKE COUNTY BOARD OF ADJUSTMENT (Revised August 12, 2014)**

### (1) Regular Meetings

The Board shall hold a regular meeting on the second Tuesday of each month, except that if a regular meeting day is a legal holiday, the meeting shall be held on the next business day. The meeting shall be held in Room 2700 of the Wake County Justice Center (unless noticed otherwise), located at 300 S. Salisbury Street, Raleigh, North Carolina and shall begin at 9:00 a.m.

### (2) Special Meetings

The ~~Chairman~~Chair of the Board may call a special meeting of the Board as necessary to dispose of matters before the Board with the concurrence of four (4) members of the Board by signing a written notice stating the time and place of the meeting and the subjects to be considered. The Clerk shall cause the notice to be delivered to the ~~Chairman~~Chair and all other Board members and all petitioners and other interest persons at least ~~ten fifteen~~ (1015) days before the meeting and shall cause a copy of the notice to be posted on the primary bulletin board ~~at the Courthouse door~~ at least ~~ten fifteen~~ (1015) days before the meeting. Only those

items of business specified in the notice may be transacted at a special meeting, unless a majority of the members present consent to transacting additional items of business.

### (3) Organizational Meetings

On the second Tuesday in ~~March~~ April, before the regular meeting, the Board shall meet at the regular meeting place. Newly appointed members of the Board shall take and subscribe the oath of office as the first order of business. ~~At the board's April meeting. As the second order business,~~ the Board shall elect a ChairmanChair and Vice-ChairmanChair from among its members. The County Attorney or his designated representative shall preside over elections for ChairmanChair and Vice-ChairmanChair of the Board.

### (4) Public Hearings

All petitions and appeals from determinations of the Zoning Administrator shall be heard at public hearings. At the appointed time, the ChairmanChair or his designee shall call the hearing to order and then proceed over it. A quorum of at least four (4) members shall be required to hear and decide such petitions.

### (5) Quorum

Three members of the Board of Adjustment shall constitute a quorum. For purposes of deciding petitions and appeals, however, a quorum shall be four (4) members, as required by law. When a regular member of the Board is absent, an alternate member shall assume his place. The number require for a quorum shall not be affected by vacancies. It is the responsibility of each member to inform the Clerk to the Board as soon as feasible if he or she is unable to attend a meeting.

### (6) Agenda

The Clerk to the Board shall prepare the agenda for the meeting. A request to have an item of business placed on the agenda must be received at least two (2) working days before the meeting. Any Board member may, by a timely request, have an item placed on the agenda.

The Agenda shall include all appeals from determinations of the Zoning Administrator, which have been filed no less than thirty (30) days before the next regular meeting and for which proper notice was given. Each agenda item shall include as much relevant background information on the subject as is available and feasible to reproduce. A copy of the agenda and attached materials shall be available for public inspection as soon as they are completed. Each Board member shall receive a copy of the agenda. Copies may also be available for members of the public.

The Board may, by majority vote, add an item that is not on the agenda so long as the item is not a petition, which requires notice to interested persons under the Wake County Zing Ordinance.

### (7) Order of Business

Items shall be placed on the agenda to the "Order of Business" The Order of Business for each regular meeting shall be as follows:

- a. Approval of the minutes;
- b. Discussion/adjustment of agenda;
- c. Public hearings on petitions for appeals from determination of the Zoning Administrator, variances and special use approvals;
- d. Unfinished business;
- e. New business and informal discussion.

However, by general consent of the Board, items may be considered out to this order.

### (8) Procedure for Hearing Petitions

In hearing petitions, the Board shall endeavor to comply with the following sequence:

- a. Introduction of the petition by the Zoning Administrator or his delegate;
- b. Evidence by the petitioner;
- c. Evidence by other proponents of the petition, if any;
- d. Evidence by opponents of the petition, if any;
- e. Rebuttal by petitioner, if any;
- f. Discussions by the Board;
- g. Determination by the Board.

Failure to comply with this sequence in hearing a petition, however, shall not invalidate any action taken by the board on a petition.

The following forms attached as appendices to these rules have been approved for use in filing petitions, and may be used in assisting the Board of Adjustment in its deliberations. These forms maybe updated and amended, as the Clerk to the Board deems administratively necessary or proper without formal approval of this board.

- Appendix A: Forms to petition for appeal of Zoning Administrator's interpretation, to petition for a variance and to petition for special use approval.
- Appendix B: Forms for providing notice to interest parties of hearings or applications for variances or special uses.
- Appendix C: Sample Agenda of Board of Adjustment meeting.
- Appendix D: Checklist forms for hearings on petitions for appeals from interpretations of the Zoning Administrator, for variances, and for special uses.

#### (9) Decisions on Petitions

All decisions on petitions to the Board must be rendered within thirty (30) days of the hearing, unless the Petitioner consents, expressly or by implication, to a continuance of the hearing or deferral of a decision to a later regular meeting. The petitioner may withdraw his consent by notifying the ~~Chairman~~Chair in writing that he wants a decision rendered with thirty (30) days of his notice of withdrawal. Failure to timely approve a petition shall be deemed a denial without prejudice to the petitioner's rights to refile his petition, and shall be so recorded at the next regular meeting.

[Comment: ~~§1-1-11 C. (3) of the Code~~ Section 19-23-6 (B) of the UDO requires that the petitioner be notified of the time and place of a special use hearing by registered or certified mail or personal service sent at least ten (10) days before the hearing

~~.-§1-1-11 C. (6) requires the Board to decide special use applications within thirty (30) days of the hearing. The intent of this proposed procedural rule is to soften the provision by allowing a continuance for a hearing or postponement of a decision to a later date in the absence of objection by the petitioner. If a petition is denied by virtue of the Board's failure to act, the denial and reasons therefore must be entered into the minutes of the next meeting.]~~

#### (10) Absence of the Petitioner from the Public Hearing

When a petitioner who has been sent proper notice of the hearing fails to attend, the Board may decide the appeal in the petitioner's absence. The Board upon a showing of hardship, inequity, or other good cause may reconsider appeals decided in the absence of the petitioner.

#### (11) Election of the ~~Chairman~~Chair and Vice-~~Chairman~~Chair

The ChairmanChair and Vice-ChairmanChair of the Board shall be elected annually at the board's April meeting by all regular and alternate members and shall not be removed from the office of the ChairmanChair or Vice-ChairmanChair unless disqualified to serve a member of the Board by reason of excessive absenteeism, dereliction of duty or incapacity to perform the duties required.

(12) Powers of the Presiding Officer

The ChairmanChair shall preside at meetings of the Board. A member must be recognized by the ChairmanChair in order to address the Board. The ChairmanChair shall have the following powers:

- a. To administer oaths and affirmations to witnesses testifying before the Board;
- b. To rule motion in or out of order, including the right to rule out of order any motion patently offered for obstructive or dilatory purposes;
- c. To determine whether a speaker is unduly repetitious or has gone beyond reasonable standards of courtesy in his remarks, and to limit testimony on these grounds;
- d. To entertain and answer questions on parliamentary law or procedures to designate the County Attorney to perform this function;
- e. to call a brief recess at any time;
- f. to adjourn in an emergency;
- g. to appoint alternate members to vote in the place of regular members ;
- h. to excuse members from voting upon petitions in which they have conflicts of interest;
- i. To recommend to the County Commissioners that the appointment of any member or alternate member be terminated for excessive absenteeism if a member is absent from three or more consecutive meetings or from six regular meetings in any twelve-month period.

In the absence of the ChairmanChair, the Vice-ChairmanChair shall exercise all of these powers. In the absence of both the ChairmanChair and the Vice-ChairmanChair, the remaining members of the Board shall select an ad hoc ChairmanChair to serve for the duration of the meeting.

(13) Action by the Board

The Board shall proceed by motion. Any member, including the ChairmanChair and alternate members, may make a motion.

(14) Second is Required

A motion shall require a second.

(15) One Motion at a Time

A member may make only one (1) motion at a time.

(16) Substantive Motion

A substantive motion is out of order while another substantive motion is pending, with the exception of the exception of "friendly" amendments which modify rather than substantially alter the original motion.

(17) Alternate Members

One or all of the alternate members may be appointed to serve as a full member of the Board whenever the Presiding Officer so designates, with the consent of the regular members in attendance at a regular or special meeting. Regular members who plan to be absent from a regular meeting should attempt to contact alternates to serve in their stead, and should inform the Clerk to the Board of planned absences and communications with alternate members as far in advance of the meeting as possible. The Chairman/Chair may appoint an alternate member to serve as a voting member at the beginning of the meeting for the entire meeting, or if more than one alternate is present and a total of more than five regular and alternate members are in attendance, the Chairman/Chair may allow all members to participate by designating the five members to vote on each agenda item requiring four-fifths (4/5) approval of the Board. If the Chairman/Chair fails to specify which members shall vote on any item, all regular members present will vote and alternate members will vote in order of seniority, with a total of five regular and alternate members voting on each item. Nonvoting members may participate fully in all other aspects of meetings.

#### (18) Adoption by Majority Vote

A motion shall be adopted by a majority of the vote's cast, a quorum being present, unless otherwise required by these rules, the laws of North Carolina, or the provisions of the Wake County Zoning Ordinance. Alternate members of the Board may vote only on matters of policy and procedure except when serving as full members hearing petition.

#### (19) Debate

The Chairman/Chair shall restate the motion and then open the floor to discussion on it. The Chairman/Chair shall preside over the debate according to these general principles:

- a. The introducer (the member who makes the motion) is entitled to speak first;
- b. A member who has not spoken on the issue shall be recognized before someone who has already spoken;
- c. To the extent possible, the debate shall alternate between opponents and proponents of the measure.

#### (20) Procedural Motions

In addition to the substantive proposals, the following procedural motions shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

[Comment: While a substantive motion is out of order if another substantive motion is pending, under both Robert's Rules of Order (RRO) and these rules, several procedural motions can be entertained in succession without necessarily disposing of the immediately pending one. The order or priority established which procedural motions yields to which – that is, what procedural motions may be made and considered while another one is pending.]

In order of priority (if applicable), the procedural motions are:

- A. To adjourn. The motion may be made only at the conclusion of an action on a pending matter; it may not interrupt deliberation of a pending matter.  
[Comment: This motion differs from the RRO motion in several aspects. According to RRO, it is not debatable or amendable and can be made at any time, thus interrupting substantive deliberations. In view of the small number of members and the available procedures to limit debate, this rule allows debate and amendment of the motion to adjourn but allows the motion to adjourn only when action on a pending matter is over. The motion to defer consideration or to postpone to a certain time or day may be used if the Board wants to adjourn before completing final action of a matter.]
- B. To take a recess

[Comment: RRO does not allow debate on this motion, but since the number of members is small and procedures to limit debate are available, this rule allows debate on the motion. As in RRO, the motion is in order at any time. Under these rules, the ChairmanChair also has the power to call a brief recess.]

- C. Call to Deviate from the agenda. The motion must be made at the first reasonable opportunity or it is waived.  
[Comment: This motion is patterned on the call for the orders of the day in RRO. It differs in that it may be debated and must be made when an item of business that deviates from the agenda is proposed or the right to insist on following the agenda is waived for that item.]
- D. To Suspend the Rules. The motion requires a vote equal to a quorum. A quorum consists of three (3) members except when hearing petitions, in which case four (4) members constitute a quorum.
- E. To divide a Complex Motion and consider it by Parts.  
[Comment: This motion is the same as the division of a question and consideration by paragraph in RRO except that it is debatable.]
- F. To defer Decision.  
[Comment: See Paragraph (9) above. A decision on a petition whose consideration has been deferred expires thirty (30) days thereafter, or at the next regular meeting of the Board if it should occur more than thirty (30) days later, unless the petitioner consents to deferral in excess of thirty (30) days or beyond the next regular meeting. If the Board has taken no action within thirty (30) days of the hearing and the petitioner has not consented to further deferral, the petition will be deemed to have been denied.]
- G. To continue a Hearing to a Certain Time or Day.  
[Comment: The Board may defer decision of a pending petition to the next regular meeting of the Board and is appropriate when more information is needed. This postponement may exceed thirty (30) days or the next regular meeting, whichever occurs later, only with the consent of the petitioner.]
- H. Call of the Previous Question. The motion is not in Order until every member has had an opportunity to speak.  
[Comment: This motion differs from the motion of the same name in RRO. The RRO motion is always in order, is not debatable or amendable, and requires a two-thirds (2/3) vote for adoption. Thus it may be used to compel an immediate decision on a proposal without any debate on the issue. Such a device may be necessary to preserve efficiency in a large assembly, but with a small Board, a minimum period of debate on every petition that comes before the board strikes a better balance between efficiency and effective representation by all Board members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote.]
- I. To Amend. An amendment to a motion must be germane to the subject matter of the motion. There may be an amendment to the motion and an amendment to an amendment, but not further amendments.  
[Comment: This motion is identical to the motion of the same name in RRO.]
- J. To Reconsider. A motion to reconsider a matter or a part of a matter must be made by a member who voted with the prevailing side. The motion may be made at the same meeting at which the original vote was taken or within two regular meetings thereafter; however, no official Board action may be taken on a matter under reconsideration unless notice has been given to interested persons entitled to notice under the Zoning Ordinance and unless it is established that no prejudice will result from reliance upon the Board's earlier ruling. The motion cannot interrupt deliberation on a pending matter but is in order at any time before adjournment.

## (21) Renewal of Motion

A motion that is defeated may be renewed and redecided at any subsequent meeting so long as the matter remains pending and undecided before the Board.

#### (22) Withdrawal of a Motion

The introducer may withdraw a motion at any time before a vote.

[Comment: RRO provides that once the ChairmanChair for debate has stated a motion, it cannot be withdrawn without the assembly's consent. Such a procedure is unnecessary for a small Board.]

#### (23) Duty to Vote

Every regular member or alternate sitting as a regular member must vote unless excused by the ChairmanChair for conflict or interest. A member who wishes to be excused from voting shall so inform the ChairmanChair, who may excuse the member. If the ChairmanChair wishes to be excused from voting, he shall so inform the Vice-ChairmanChair who shall exercise the power to excuse him. Abstentions shall be counted as affirmative votes.

#### (24) Executive Sessions

The Board may hold executive sessions as provided by law. It shall commence an executive session by a majority vote to do so and terminate an executive session in the same manner.

[Comment: No attempt is made to set for the particulars of compliance with the open meetings law, G.S. §143-318. ET seq. Minutes should be kept of all executive sessions. If the board takes no action in executive session, the minutes should simply state that the meeting was held and a particular topic was discussed.]

#### (25) Minutes

Written minutes shall be kept of all meetings of the Board.

#### (26) Reference to Robert's Rule of Order

To the extent not provided for in these rules and to the extent that the reference does not conflict with the spirit of these rules, the Board shall refer to Robert's Rules or Order, latest revision, for unresolved procedural questions.

[Comment: RRO was designed to govern a large legislative assembly, and many of its provisions may be inappropriate for small boards. Nevertheless, it is the best source of parliamentary procedure. Care should simply be taken to adjust RRO to meet the needs of small governing bodies.]

#### (27) Written Decisions

In accordance with G.S. §160A-388(e2)(1), each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the ordinance specifies. The written decision may be approved by the board or by the board chair.

INTRODUCING THE  
WAKE COUNTY  
BOARD OF ADJUSTMENT

If the ideal zoning ordinance (regulations governing land uses) were adopted by the Commissioners – meeting the basic needs of the citizenry, but at the same time avoiding individual hardship – there would be no need for a Board of Adjustment. Since the ideal zoning ordinance does not exist, the Board serves to hear appeals from any decision of the Zoning Administrator, consider variance requests in hardship situations, and consider special use applications. Without the Board, appeals from decisions of the Administrator, variance requests, and special use applications would have to be heard by the Commissioners (zoning change or ordinance amendment) or by the courts (suit for writ of mandamus ordering the administrator to issue the permit.) The Board, by serving as the intermediary between the Administrator and the courts or Commissioners, greatly reduces the time and expense involved in hearing an appeal or considering a request for variance or special use.

The Board is a quasi-judicial body – the Board’s decisions are appeal able to Superior Court within 30 days after their decision is filed with the administrator – however, it is not intended that proceedings before it be conducted as formally as those before the courts. However, in order to protect the interests of the public and also the parties involved, the Board adhere to the following rules of procedure. (1) Introduction of the petitioner by the Zoning Administrator or his delegate; (2) Evidence by the petitioner; (3) Evidence by other proponents of the petition, if any; (5) Rebuttal by petitioner, if any; (6) Discussion by the Board; and (7) Determination by the Board. In addition to these rules, the presiding officer (~~Chairman~~Chair) has the following powers: (1) To administer oaths and affirmations to witnesses testifying before the Board; (2) To rule motions in or out of order, including the right to rule out of order any motion patently offered for obstructive or dilatory purposes; (3) To determine whether a speaker is unduly repetitious or has gone beyond reasonable standards of courtesy in his remarks and to limit testimony on these grounds; (4) To entertain and answer questions of parliamentary law or procedures or to designate the County Attorney to perform this function; (5) To call a brief recess at any time; (6) To adjourn in an emergency; (7) To appoint alternate members to sit in the place of absent regular members; and (8) To excuse members from voting upon petitions in which they have conflicts of interest.

The Wake County Board of Adjustment meets the second Tuesday of each month at 9:00AM. However, if the regular meeting day is a legal holiday, the meeting is held on the next business day. It is important to remember that the Board’s discretion is limited; that is, their duties and powers are set out in the general statutes and zoning code and they are limited and guided by these laws.

**Item 8: Old Business** – Mr. Finn provided a brief update to the board.

**Item 9: Adjournment**

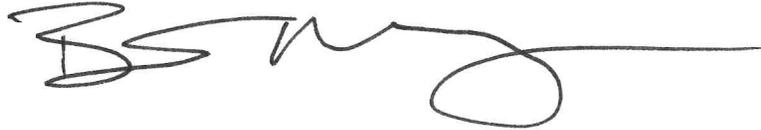
Hearing no additional business, the meeting was adjourned at 12:19 p.m.

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REGULAR MEETING  
WAKE COUNTY BOARD OF ADJUSTMENT  
June 13, 2017

All petitions complete, Brenton McConkey declared the regular meeting  
of the Wake County Board of Adjustment for  
Tuesday, June 13, 2017 adjourned at 12:19 p.m.

Respectfully Submitted:

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

Brenton McConkey  
Wake County Board of Adjustment

=====