



# Durham Board of Adjustment

## M I N U T E S

July 24, 2007 ■ 8:30 a.m.

Council Chambers, 1<sup>st</sup> Floor, City Hall

**Members Present:** Lynn Andrews  
Paul A. Arena, Alternate  
William Brian, Chair  
Furney Brown  
Daniel Edwards, Vice Chair  
George Kolasa, Alternate  
David Neill  
Spurgeon Thurston  
Ralph Whitfield, Alternate  
Rebecca Winders

**Members Absent:** None

**Staff Present:** Brenda J. Crews, Clerk  
Stephen Cruse, Senior Planner  
Steve Medlin, Assistant Planning Director  
Lowell Siler, Deputy County Attorney  
Karen Sindelar, Assistant City Attorney  
Michael Stock, Senior Planner  
Scott Whiteman, Planning Supervisor  
Sara Young, Planning Supervisor

**Guests Present:** Faye Broadwater  
Kimberly Isley  
Nathan Isley  
Liz Kuniholm  
Laura Gutman  
Brian Miller  
Mike Brough  
Sam Hodges  
Trish Hussey  
David Nostrand  
Lou Goetz  
John Swansey  
Bob Gutman  
Paltielo Surk  
Bill Wilson  
John Dagenhart  
Jane Hurlburt  
Julia Borbely-Brown  
Cuedt French

**Summary Minutes**

**July 24, 2007**

**Page 2 of 9**

Barbara French  
Jon Compton  
Beth Trahos  
Marcus Bryan  
Frank Pokrass  
Tom Stark  
John Hunt  
Mary Hurlburt  
Susannah Hurlburt  
J. C. Swansey  
Marc Tucker

Mr. Brian read the following:

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 zoning laws, as recorded.

Are there any members of this Board that would have any conflicts of interest with regard to the cases that are before us today and are there any early dismissals being requested?

Mr. Neill and Mr. Brian noted they both had conflicts with Case B06-21 and Case B06-22. Both will be recused from those cases. There were no requests for early dismissal.

As Chair of the Board of Adjustment, I'd like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First the staff will present an overview of the case then the applicant presents its evidence. The opponents, if there are any, will then 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 directly, not hearsay. All witnesses should come to the podium and speak directly into the microphone so their testimony can be recorded on tape.

Written evidence must be presented to the Chair and a determination will be made about whether it should be accepted. Written evidence can be inspected by the other side. All evidence, written or oral, can be objected to.

Witnesses are subject to cross-examination. Opposing representatives will have a chance to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine you must raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would like to note that

**Summary Minutes**

**July 24, 2007**

**Page 3 of 9**

Board members may have visited each site under consideration as a part of their preparation for this meeting.

The Board will vote on each case after the presentation of all evidence, pro and con, concerning the case. The law requires that in order for an applicant's request to be granted 5 of the 7 voting Board members must approve the request.

All decisions of this Board are subject to appeal to the Durham County Superior Court. Any one 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 from the Planning staff.

After the oath was given, Mr. Stock asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, and or corrections that may be necessary. All Board members concurred.

**Hearing and Determination of Cases**

**Summary Minutes**

**July 24, 2007**

**Page 4 of 9**

**SEATED:** Ms. Andrews, Mr. Brian, Mr. Brown, Mr. Edwards, Mr. Neill, Mr. Thurston, Ms. Winders

**(Case B07-33) Freedom House Group Home City** - A request by Freedom House Group Home for a minor special use permit to convert an existing family care home into a 10-person group home as per Sections 3.7, 3.9 and 5.3.2C of the Unified Development Ordinance. The property is located at 529 Holloway Street and zoned RU-5(2). PIN 0831-09-27-2024.

Staff Presentation was made by: Michael Stock

Persons Appearing in Support: Sam Hodges, Architect; Patricia Hussey, Executive Director of Freedom House Recovery Center; Marcus Bryan, Part Owner, Freedom House Recovery Center

Persons Appearing in Opposition: Faye Broadwater, Retired Director of Alcoholism in Washington, DC; Jon Compton, Executive Director, Preservation Durham; Frank Pokrass, Owner, Blooming Garden Inn

**Staff**

Recommendation: Approval

Motion: Ms. Winders made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance requirements have been met.

**Conditions:**

1. The project shall be completed in accordance with an approved site plan, including any additional corrections and verifications.
2. The maximum number of residents shall be ten (10), not including staff.
3. The facility shall be staffed 24 hours a day, seven days a week.
4. The structure and site conforms to requirements of the historic district and has received all necessary Certificates of Appropriateness (COA) from the Historic Preservation Commission. Any existing violations shall be resolved prior to the establishment of the group home.

Seconded By: Mr. Thurston

Vote: 5 to 2 (Mr. Edwards, Mr. Neill)

Action: Approval

**Summary Minutes**

**July 24, 2007**

**Page 5 of 9**

**SEATED:** Ms. Andrews, Mr. Brian, Mr. Brown, Mr. Edwards, Mr. Neill, Mr. Thurston, Ms. Winders

**Case B07-25 - 3208 Hope Valley Road Fence Height City** - A minor special use permit to permit fence height above four feet along street frontage as per Sections 3.9 and 9.9.1 of the Unified Development Ordinance. The property is located at 3208 Hope Valley Road, located on the west side of Hope Valley Road, north of Winton Road and south of Princeton Avenue and zoned RS-10. PIN 0810-12-95-6294. (*Resource Person: Michael Stock*) **This case was continued from the June 26 BOA meeting.**

Staff Presentation was made by: Michael Stock

Persons Appearing in Support: David Nostrand, Applicant

Persons Appearing in Opposition: None

Staff

Recommendation: Approval

Motion: Mr. Neill made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance requirements have been met.

Conditions:

1. The fence shall not be relocated closer to the right-of-way.
2. The maximum height of the fence shall be six feet
3. The fence shall be constructed substantially consistent with the design submitted by the applicant as Exhibit #1 and attached to the order, except for the following modifications:
  - a. the lower four feet of the fence shall be completely solid, i.e. 100% opaque.
  - b. The upper 2 feet of the fence shall be constructed with lattice.

Seconded By: Mr. Edwards

Vote: 6 to 1 (Mr. Thurston)

Action: Approval

## Summary Minutes

July 24, 2007

Page 6 of 9

Chairman Brian indicated that Approval of Minutes, Old Business and New Business would be handled at this point since three Board members will be dismissed for the remaining cases.

### Approval of Minutes – June 26, 2007

Mr. Neill asked that the minutes be corrected to indicate he was congratulated on the birth of his “daughter” not his “son”. Mr. Edwards made a motion, seconded by Ms. Andrews, to approve the summary minutes with the one noted change. The motion passed unanimously.

### Approval of Orders

Orders involving cases decided today will be brought back to the Board at the next meeting at the earliest for Board review and action.

### Old Business

BOA Rules of Procedures – the change approved by the Board at its last meeting has now been incorporated into the ROP and an updated copy has been given to the Board members and it is also available on line.

### New Business

- Review of Draft 2006-2007 Annual Report - accepted by the Board as submitted. The report will be sent to JCCPC, BOC and Council.
- Chairman Brian noted that in reviewing the Annual Report, he was very happy to see the excellent job the members did on attendance the past 12 months.
- Cases B06-21 and B06-22 – The public hearings for these cases were closed on February 27, 2007 with action deferred to no later than July 24, 2007.–Chairman Brian, Mr. Brown and Mr. Neill recused themselves. Mr. Edwards, Vice Chair, assumed Chairmanship for the remainder of the meeting.

**SEATED:** Ms. Andrews, Mr. Arena, Mr. Edwards, Mr. Kolasa, Mr. Thurston, Mr. Whitfield, Ms. Winders

**Case B06-21 - 1110 West Main Street Project**– City - A request by Coulter Jewell Thames, PA for a minor special use permit to permit a density above 16 dwelling units per acre as per Sections 3.7, 3.9 and 4.8 of the Unified Development Ordinance. The property is located at 110 and 114 Watts Street, 1013 Lamond Avenue, 906 Morgan Street and zoned OI, CG; DDO-3. PINs 0821-07-69-3578, -3677, -4673, -4581. (*Resource Person: Michael Stock*)

**Case B06-22 - 1110 West Main Street Project** – City - A request by Coulter Jewell Thames, PA for a minor special use permit to permit height above three stories as per Sections 3.7, 3.9 and 4.8 of the Unified Development Ordinance. The property is located at 110 and 114 Watts Street, 1013 Lamond Avenue, 906 Morgan Street and zoned OI, CG; DDO-3. PINs 0821-07-69-3578, -3677, -4673, -4581. (*Resource Person: Michael Stock*)

Staff Presentation was made by: Michael Stock

Persons Appearing in Support: Attorney Michael Brough

**Summary Minutes**

**July 24, 2007**

**Page 7 of 9**

Persons Appearing in Opposition: Attorney Beth Trahos, Attorney Tom Stark

The deferral of the cases was granted by the Board in February to allow ample time for all parties to come together and discuss possible alternatives to the initial proposal. Modifications to the original proposal were to have been submitted to the Planning staff for review and inclusion in a revised staff report to the Board of Adjustment. To this date, no revised plan has been submitted to the Planning staff. Since the public hearing was closed in February, no new testimony or evidence may be submitted to the Board.

The Board entertained a request by the applicant, as represented by Attorney Michael Brough, to re-open the public hearing in August to provide evidence and testimony on a revised plan. The applicant also requested that the Board act on the modified proposal without prior staff review, conditioning any order for approval that the plans were to meet site plan and DDRT requirements. The applicant admitted that the request runs counter to standard procedure where plans are first reviewed by staff to ensure the plans meet technical requirements prior to the Board hearing the application. The applicant cited reasons for this request, including but not limited to, costs involved and the amount of time for applications to be reviewed. The applicant further indicated that modified plans have been discussed with the Trinity Park Neighborhood Association and submitted an elevation representing an example of the modifications. Vice Chair Edwards, upon advice from the Ms. Sindelar, accepted the elevation as information only; not as evidence.

Attorney's Trahos and Stark objected to both the change in procedure, the continuance and the new plan Attorney Brough submitted indicating neither of them had previously seen the plan.

Mr. Stock indicated that if the Board wished to re-open the hearing on these cases to hear revised plans, but still wanted staff to review them prior to the hearing, the earliest this case could come back before the Board would be October. However, this would be a best-case scenario since no revised plans had been submitted to the Planning Department and therefore planning staff does not know the extent of the modifications proposed. Staff recommended that the Board not set a specific date for the cases to be brought back, that the cases come back when they are determined technically compliant.

The Board discussed the request, with several members of the Board indicating they were against a further continuance because the cases were continued from February until now to accommodate whatever revisions the applicant planned to make.

Vice Chair Edwards asked for a motion to address the request by the applicant to re-open the public hearing in August and prior to Planning staff reviewing revised plans.

Ms. Andrews made a motion, seconded by Mr. Thurston, to deny the request by the applicant.

**AYES:** Ms. Andrews, Mr. Arena, Mr. Edwards, Mr. Kolasa, Mr. Thurston, Mr. Whitfield, Ms. Winders

**NOES:** None

The motion was approved. The request by the applicant to reopen the public hearing in August was denied.

The Board discussed action on the proposals as submitted and based on evidence previously submitted at the February 27, 2007 hearing.

Staff

Recommendation: Based upon technical requirements of the Ordinance, staff recommended approval.

**Case B06-21 Motion:** Mr. Arena made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance requirements have been met.

Conditions:

1. The project shall be completed in accordance with an approved site plan, including any additional corrections and verifications.
2. All elements of the project materials shall conform to the plans and elevations attached to this staff report as Attachment 5.

Seconded By: Mr. Whitfield

Vote: 2 to 5 (Ms. Andrews, Mr. Edwards, Mr. Kolasa, Mr. Thurston, Ms. Winders)

Action: Denied

**Case B06-22 Motion:** Mr. Kolasa made a motion to grant the request as submitted based on findings of fact by the Board that the governing Ordinance requirements have been met.

Conditions:

1. The project shall be completed in accordance with an approved site plan, including any additional corrections and verifications.
2. All elements of the project materials shall conform to the plans and elevations attached to this staff report as Attachment 5.

Seconded By: Ms. Winders

Vote: 2 to 5 (Ms. Andrews, Mr. Edwards, Mr. Kolasa, Mr. Thurston, Ms. Winders)

Action: Denied

**Adjourn**

The meeting adjourned at approximately 11:37 a.m.

Respectfully Submitted,

Brenda J. Crews, Clerk  
Durham Board of Adjustment