



# Planning, Development & Inspections

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A Division of Community Services  
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## MINUTES OF BOARD OF ADJUSTMENT July 12, 2022

**LOCATION:** Wake County Justice Center, 301 S. Salisbury St., Room 2700, Raleigh, NC

### MEMBERS PRESENT:

1. Mr. Brenton McConkey (Chair)
2. Mr. Don Mial (Vice Chair)
3. Mr. DeAntony Collins
4. Mr. Dustin Engelken
5. Mr. Jeffrey Goebel
6. Mr. Waheed Haq
7. Mr. Will Wingfield

### COUNTY STAFF:

1. Mr. Adam Cook
2. Mr. Steven Finn
3. Mr. Tim Maloney
4. Mr. Josh McClellan
5. Ms. Beth Simmons

### COUNTY ATTORNEY:

1. Mr. Kenneth Murphy, Deputy County Attorney

### GUESTS:

1. Mr. Jim Sherrer, Design Development Architects
2. Mr. Rynal Stephenson, Ramey Kemp Associates
3. Mr. Neil Gustafson, MAI Land Appraiser
4. Mr. Bill Lyke, Groundwater Management Association

1. **Meeting called to order:** Mr. McConkey called the meeting to order at 9:01 a.m.
2. **Approval of Minutes of the May 10, 2022, Meeting:** Mr. McConkey made a motion to approve the May 10, 2022, minutes as presented. The motion was seconded by Mr. Mial and the minutes were approved unanimously.
3. **PLG-SU-003114-22021** (Mr. Adam Cook, Planner II, and Mr. Steven Finn, Land Development Administrator)  
The petitioner is requesting special use permit approval as required by section 4-11 of the Wake County Unified Development Ordinance (UDO) for an expansion of outdoor recreation.

Prior to any testimony given, Mr. Haq addressed the Board and disclosed that the applicant's counsel is employed by a firm that is representing a client who is purchasing property from his company and stated that the relationship would not affect his decision in this case. Mr. McConkey acknowledged Mr. Haq and agreed that this would not cause any conflict or need for recusal from the case.

### **Voting Members**

Five voting members were identified:

1. Mr. Brenton McConkey
2. Mr. Don Mial
3. Mr. DeAntony Collins
4. Mr. Dustin Engelken
5. Mr. Waheed Haq

### **Location**

WAKE COUNTY PINs: 1768-97-2676

ZONING DISTRICT: Residential-40 Watershed (R-40W)

LAND USE CLASSIFICATION: Non-urban area (Little River)

WATERSHED: Little River

CROSS REFERENCE FILES: BA-872

APPLICANT: Lacy H. Reaves, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.

PROPERTY OWNER: Leighton Ridge, LLC

PROPERTY SIZE: 95.96 acres

CURRENT LAND USE: Outdoor recreation, scuba diving

PROPOSED LAND USE: Outdoor recreation, inflated floating recreational structure

### **Documentary Evidence Accepted into Record**

- Staff Report
- Staff PowerPoint presentation
- Applicant's application with supporting documentation for PLG-SU-003676-2022
- Applicant's PowerPoint presentation
- Applicant's impact study document created by Mr. Neil Gustafson, MAI land appraiser

### **TESTIMONY AND EVIDENCE PRESENTED**

#### **Testimony by David Parks**

Mr. Finn was duly sworn and introduced the special use permit request, with the assistance of Mr. Adam Cook.

Mr. Cook was duly sworn and asked that the Staff Report, PowerPoint presentation, and the Application with supporting documents, be accepted as evidence into the record.

Mr. McConkey accepted the staff report, the staff PowerPoint presentation and the petitioner's full application for PLG-SU-003676-2022 into record as requested by staff.

Mr. Cook began by presenting an aerial map of the subject site, which is 95.96 acres in size and located at 3601 Quarry Road and is zoned R-40W, Residential watershed district. The site functioned as a former quarry and now contains a 60-acre lake with an approved special use from 1984 to allow for an outdoor recreation use for scuba diving instruction classes. Mr. Cook proceeded to outline the request from the petitioner who is proposing to expand the outdoor recreation to allow for an inflated floating recreational structure to be placed on the site to allow for a maximum of 150 swimmers from 8 a.m. to 12 noon and 150 swimmers from 1 p.m. to 5 p.m. daily.

Mr. Cook presented two site plan maps as submitted by the applicant showing the proposed floating structure, the parking area, and the existing driveway connection on Quarry Road, the existing

internal driveway and a portable toilet facility. Per the Wake County Unified Development Ordinance, a minimum of 50 parking spaces are required for this use and the site plan designates 57 spaces.

Mr. Cook also presented a video of the subject site, at the existing driveway on Quarry Road. Notification letters to adjoining property owners were mailed on June 23, 2022, and a public hearing placard was also placed on the site on June 23, 2022. Staff had received several phone calls and emails from adjacent property owners.

The Board of Adjustment must make positive findings on all the following findings of fact from Article 19-23 in order to approve this special use request:

- (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 PlanWake.

#### **Board Discussion**

Mr. McConkey asked Mr. Cook if the hours of operation and the number of swimmers permitted was a staff condition or were those perimeters set by the applicant. Mr. Cook confirmed that they were conditions set by the applicant in their application.

Mr. Haq asked staff how the parking formula of one space for every 5 swimmers was calculated, and Mr. Cook stated that the calculation is based on the UDO for outdoor recreation.

Mr. Goebel inquired on the reasoning for the split hours of operation, and Mr. Cook understood the reason was to allow a break to clear the morning swimmers from the lake in time to allow the afternoon swimmers to begin at 1 p.m. Mr. McConkey confirmed with staff that if the permit was approved with the proposed hours, the applicant would be required to apply for an amendment in order to change the hours of operation to be open without the one hour break.

#### **Sworn Witnesses in Favor of the Petition**

Mr. James Todd, attorney with Smith Anderson LLP (150 Fayetteville St #2300, Raleigh, NC 27601), represented the property owner, Leighton Ridge, LLC.

Mr. Todd began by introducing the facts of the case that was included in the Staff Report and presented by Mr. Cook. Mr. Todd also presented several aerial maps and photographs of the site for board consideration. Mr. Todd briefly outlined the five criteria required to issue the special use permit and introduced the following witnesses, who were duly sworn by the Chair:

1. Jim Sherrer, Design Development Architects, 800 Salem Woods Dr, Raleigh, NC 27615
2. Rynal Stephenson, Ramey Kemp Associates, 5808 Faringdon PI #100, Raleigh, NC 27609
3. Neil Gustafson, MAI Land Appraiser, 2200 Wheeler Road, Raleigh, NC 27607

4. Bill Lyke, Groundwater Management Association, 2205-A Candun Dr, Apex, NC 27523

Mr. Jim Sherrer testified that he is architect working on the project, with 35 years of experience in private sector architecture work in the Raleigh area. The property current has a special use permit to allow scuba diving. Since acquiring the property, the owners have renovated the amenities but will not be adding new site development. There will be the addition of the inflatable structure, some picnic shelters, and a deck. Mr. Sherrer stated that all swimmers will be required to wear the facility provided lifejackets, and there will be a lifeguard tower within the inflatable structure.

Mr. Sherrer addressed the water and sewer concerns and stated that there will be a portable trailer on site as a toilet facility allowed by the county. Bottled water will be available in the swimmer area and the owners have trash collection that is already in place for the current scuba operation.

Mr. Sherrer stated that there will not be erosion as there will not be any new infrastructure and no new impervious structure. The parking area has the required setbacks and the lake is in harmony with the surrounding nature.

Mr. Sherrer stated that the proposed use is consistent with the Land Use Plan that was adopted in April 2022 in that the property maintains open space and sustained natural resources. The owners are enhancing the recreational opportunities for rural residents, allowing them access to the amenities to support a healthy lifestyle.

Mr. McConkey asked Mr. Sherrer how it was determined that 150 users was to be the maximum. Mr. Sherrer stated that the 150 users refer to the maximum number of swimmers and is by recommendation of the manufacturer of the inflatable structure.

Mr. Haq asked how often the inflatable structure is filled with air and how are they prevented from floating freely. Mr. Sherrer stated that the structure is tethered together and then anchored to the lake, and it is filled once with air.

Mr. Rynal Stephenson testified that he is a traffic engineer licensed in NC and has been practicing for over 21 years. Mr. Stephenson stated that the impact analysis performed by his firm shows very minimal affect to traffic in the area, and the proposed development will not endanger public health or safety.

Mr. Engelken pointed out that the increase in traffic on the analysis is 33% and inquired what percentage would constitute a significant increase. Mr. Stephenson stated that the road corridor has the capacity to carry 8,000-9,000 cars per day and is therefore only at a 10<sup>th</sup> of its capacity.

Mr. Engelken asked for clarification on how the peak travel time trips were calculated. Mr. Stephenson stated that they accounted for the fact that not all cars would be leaving/arriving at the same time during that peak hour and that most vehicles would include multiple swimmers.

Mr. Goebel asked Mr. Stephenson if there would be a designated left hand turn lane into the lake. Mr. Stephenson stated there would not be a left-hand turn lane, as NCDOT only requires turn lanes when there are 4,000 cars per day on the corridor. The current projected number of cars per day is 1,000 to 1,200.

Mr. Haq inquired about the vehicles servicing the portable toilet facility. Mr. Stephenson stated that the vehicles would not be considered heavy construction type vehicles.

Mr. Neil Gustafson testified that he has been appraising real estate since 1978 and stated that the quarry is a beautiful natural area situated on 95 acres in a rural area of the county. The quarry and the facility when in operation will likely not be viewed or heard by surrounding landowners. Mr. Gustafson stated that this use is somewhat similar to a community pool and will have minimal impact on surrounding properties, and definitely not an adverse impact.

Mr. Engelken asked where the nearest property is located, and Mr. Gustafson stated there are a few scattered residences that are several hundred feet from the proposed site.

Mr. Bill Lyke stated that he is a geologist and civil engineer, and presented to the board the geographical features, elevation changes, and water supply wells of the property. My. Lyke stated that the lake is a discharge point for groundwater from rainfall, and therefore is not a stagnant body of water. Additionally, My Lyke testified that the supply of groundwater to the lake will not affect the supply to residential wells in the surrounding area.

Mr. Haq asked Mr. Lyke how the lake level is maintained, and Mr. Lyke stated that it is maintained naturally by rainfall.

Mr. Todd concluded that the petitioner feels that the proposed development is a positive amenity for the community and a great repurpose of the existing outdoor recreational use that takes advantage of the natural resources of the property. Mr. Todd stated that previous testimony shows that the use will not have negative impacts on surrounding property values, the roads are capable to supporting the small increase in traffic, and the groundwater supply will not be negatively impacted.

Mr. Todd asked that his presentation and the appraisers report be accepted as evidence into the record. Mr. McConkey accepted the documents into the record.

Mr. Mial asked about peak season for use, and Mr. Todd stated that peak times will be dependent on the weather and will mostly occur during the warmer months and is a daily operation.

Mr. McConkey stated that pointed out that the Board will typically include conditions to an approval regarding the hours of operation. This use has built in an hour in the middle of operation to close, and to change that in the future if desired, would require another application to the Board, and recommended that the approved hours of operation be a continuous time frame. Mr. Todd agreed and requested that modification.

Mr. Collins asked Mr. Todd if patrons can use the facility for anything other than swimming. Mr. Todd stated that the admission fee is for any use of the quarry and swimming facilities. Mr. Haq asked if alcoholic beverages will be sold, and Mr. Todd confirmed there will not.

### **Closed Public Hearing**

With no additional attendees wishing to speak in favor or in opposition of the application, Mr. McConkey closed the public hearing at 9:50 a.m.

### **Board Discussion**

Mr. McConkey stated that the Board will make its findings based on the testimony provided and will approve if it reaches positive conclusions on all the required findings. He led the Board through each of the findings as follows:

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

Mr. McConkey stated that the expert testimony from Mr. Stephenson, Mr. Sherrer, and Mr. Lyke regarding traffic and hydrogeology satisfied the requirement that this development would not negatively impact the public.

**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 reiterated that Mr. Sherrer's expert testimony indicated that the conditions of section two were met with respect to the proposed water park, and the fact that the property is already approved for recreational use.

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

Mr. Mial indicated that there is sufficient distance between the proposed site and adjoining properties and that there was no clear indication it would impact the property owners. Mr. Engelken added that as there were no nearby property owners testifying to concerns would lend credence to this position. Expert testimony given by licensed NC appraiser, Mr. Neil Gustafson, also showed that the proposed use will not injure the value of surrounding property.

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

Mr. McConkey noted that the proposal is a modification to the existing property and does not change the existing land use, therefore it meets the criteria. Multiple expert witnesses also testified that the property is unique, visually appealing, and is a great repurpose of the previous quarry.

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

Based on the staff report's conclusion, Mr. McConkey noted that this criterion has been met.

Mr. McConkey mentioned to the Board that there was room within the proposal to ask the applicants if the conditional hours of use could be opened to change and indicated that the hours of 8a.m.-5p.m. would be amenable if the applicants so desired to avoid making a future application to the board. With the applicant's agreement, Mr. McConkey recommended the amendment to the application.

There being no further discussions, Mr. McConkey entertained a motion.

**Motion on PLG- SU-003676-2022 and Conclusions of Law:**

Mr. Mial made the motion that in the matter of PLG- SU-003314-2021, so moved 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. The motion also included the Board's recommendation and decision to amend the hours of operation to be 8 a.m. to 5 p.m. seven days of the week. The motion to approve was based on the findings of fact discussed during board deliberation and based off the testimony and evidence presented.

The motion was seconded by Mr. Engelken and the special use permit was approved unanimously.

Mr. McConkey thanked all parties for coming to the meeting.

**Planning, Development & Inspections Report**

Mr. Finn reported that since the last Fiscal Year, PDI saw a 28% increase in applications with less than 2% resulting in refunds. He also noted a 21% increase in applications for zoning over subdivisions, which was atypical. 47% of preliminary subdivisions are lot by lot and the other 53% are cluster subdivisions with more design flexibility for the surveyor without impacting zoning density. Mr. Finn also noted that per PLANWake, PDI were looking into ordinance amendments, including bringing language to the Planning Board on July 20<sup>th</sup> to combine current open space and cluster subdivisions standards. The current proposal would identify a 35% minimum open space requirement in subdivisions, consistent with review of preliminary applications. This amendment would be the first of many proposed adjustments to the UDO that Mr. Finn has been collaborating with the staff in the Planning division. With no questions from the board, Mr. Finn ended his report.

Mr. Maloney informed the Board that a meeting is planned for August and that recruiting is ongoing for the two Board vacancies. Any interested parties should be directed to the website to apply for an appointment on the advisory board. Mr. Maloney asked the board about the preferred timetable for preparing documentation for future meetings. Mr. McConkey indicated one week was sufficient for preparation.

**4. Adjournment**

Mr. McConkey adjourned the meeting at 10:04 a.m.

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REGULAR MEETING  
WAKE COUNTY BOARD OF ADJUSTMENT  
July 12, 2022

All petitions complete, Brenton McConkey declared the regular meeting  
of the Wake County Board of Adjustment for  
Tuesday, July 12, 2022, adjourned at 10:04 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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