



## Planning, Development & Inspections

A Division of Community Services  
P.O. Box 550 • Raleigh, NC 27602  
www.wake.gov

### MINUTES OF BOARD OF ADJUSTMENT DECEMBER 10, 2024

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

#### MEMBERS PRESENT:

1. Mr. Jeffrey Goebel (Chair)
2. Ms. Britany Waddell (Vice Chair)
3. Ms. Irene Butler
4. Mr. DeAntony Collins
5. Mr. Joe Cebina
6. Mr. Waheed Haq
7. Mr. Russell Stephenson

#### MEMBERS ABSENT:

1. Mr. Mark Spanioli
2. Mr. Will Wingfield

#### COUNTY STAFF:

1. Mr. Steven Finn
2. Mr. Timothy Maloney
3. Mr. Josh McClellan
4. Mr. David Parks
5. Mr. Geoffrey Pearson
6. Mr. Matthew Royslance
7. Ms. Beth Simmons

#### COUNTY ATTORNEY:

1. Mr. Kenneth Murphy, Deputy County Attorney

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1. **Meeting called to order:** Mr. Goebel called the meeting to order at 9:02 a.m.
  2. **Approval of Minutes of the November 12, 2024, Meeting:** Mr. Haq made a motion to approve the November 8, 2024, minutes as presented. The motion was seconded by Mr. Wingfield and the minutes were approved unanimously.
  3. **Approval of Written Decision for PLG-SU-004983-2024:** Mr. Spanioli made a motion to approve the Written Decision for PLG-SU-004983-2024 as presented. The motion was seconded by Mr. Cebina and was approved unanimously.
  4. **Approval of Written Decision PLG-SU-005320-2024:** Mr. Collins made a motion to approve the Written Decision for PLG-SU-005320-2024 as presented. The motion was seconded by Mr. Collins and was approved unanimously.
  5. **PLG-SU-004938-2024 (Mr. Geoffrey Pearson, Code Enforcement Program Manager)**  
The petitioner is requesting a Special Use Permit to operate a commercial boat club.

**Voting Members**

Five voting members were identified:

1. Mr. Jeffrey Goebel
2. Ms. Britany Waddell
3. Mr. DeAntony Collins
4. Mr. Waheed Haq
5. Mr. Russ Stephenson

**Location**

WAKE COUNTY PIN: 0874 81 5377

ZONING DISTRICT: Residential-40 Watershed & Residential-80 Watershed

LAND USE CLASSIFICATION: Non-Urban Area Non-Critical and Critical Falls Lake Watershed

WATERSHED: Falls Lake

CROSS REFERENCE FILES: N/A

APPLICANT: Marcia L. Lewis

PROPERTY OWNER: Marcia L. Lewis

PROPERTY SIZE: 63 acres

CURRENT LAND USE: Vacant/Agricultural

PROPOSED LAND USE: Commercial Boat Club (as outdoor recreation)

**Documentary Evidence Accepted into Record**

- Staff Report
- Staff Presentation
- Applicant's Application

**TESTIMONY AND EVIDENCE PRESENTED**

**Testimony by Geoffrey Pearson**

Mr. Pearson was sworn in and presented the Staff Report, Presentation, and Applicant's Application, which were accepted into the record. He explained that Dr. Marcia Lewis, the property owner, and petitioner, was requesting a Special Use Permit to operate a commercial boat club from her residential property at 10009 Boyce Road in New Light Township. The property is split-zoned with 31 acres in the Residential-40 Watershed District (R-40W) and 32 acres in the Residential-80 Watershed District (R-80W). The surrounding area is residential.

In May 2023, Wake County staff received complaints about boat, watercraft, and vehicle storage, as well as above-ground fuel tanks on the property. A zoning violation was confirmed, and a Notice of Violation was issued to Dr. Lewis in June 2023. The Board of Adjustment upheld the violation in September 2023, and Dr. Lewis applied for a Special Use Permit in April 2024 to bring the property into compliance.

Dr. Lewis seeks to operate a commercial boat club, a use that falls under the UDO's Outdoor Recreation and Entertainment classification, similar to a marina or boating facility. Mr. Pearson noted that the applicant must demonstrate compliance with zoning standards, and if not met, the Special Use Permit must be denied. Staff believes the applicant has not met the criteria, citing several unresolved issues, including an incomplete site plan, failure to address zoning provisions (e.g., zoning boundary limits, impervious surface calculations, parking, buffers, and vegetation), and missing permits (e.g., NCDOT driveway permit). Additionally, the property's impervious surface limits

(12% for R-40W and 6% for R-80W) have not been addressed. However, the proposed use aligns with the Wake County Land Use Plan, which permits boating facilities outside of activity centers if they meet relevant standards.

Mr. Pearson presented site photos showing existing boat storage and the proposed driveway and parking areas. He also noted that the applicant had not submitted a revised site plan or addressed comments from staff. Notification letters were mailed to neighboring property owners on September 24th. Staff recommends denial of the Special Use Permit if the required findings are not met.

In response to questions, Mr. Pearson clarified that, following the 2023 appeal, Dr. Lewis had not removed the boats that belonged to her, though the number of boats had decreased. The applicant had not submitted any new information after the staff's May 2024 comments, and no data was provided to determine compliance with stormwater or impervious surface regulations. Mr. Pearson stated that, given the lack of response, he could not speculate on whether a revised plan would meet the necessary requirements.

### **Applicant's Presentation**

#### **Testimony by:**

- 1) Dr. Marcia L. Lewis, property owner
- 2) Kenneth Wrenn, engineer

Dr. Lewis and Mr. Wrenn, her engineer, were sworn in to present testimony. Mr. Wrenn explained that the proposed site would host a boat club for 9 members, with a parking area for trailers and a pond to dock the boats. He added that storm drainage calculations and a detention basin would offset impervious surfaces, and landscape buffering with screening would be added. The hours of operation would be during daylight, and there would be no overnight parking. He identified a 20'x20' "Club House" building for storing supplies, and discussed plans to widen one driveway and eliminate another once NCDOT permits were obtained. The Army Corps of Engineers had cleared the pond for boat use.

Mr. Goebel questioned the building's use as a clubhouse, noting it lacked windows and doors. Dr. Lewis explained it had a garage door, concrete flooring, roofing, and electricity, with a port-a-john nearby. Mr. Pearson clarified that this was a nonresidential use, and if the building were used by the public, it would need to meet commercial occupancy codes. Dr. Lewis stated it would only be for club members, not the general public.

Regarding the NCDOT driveway permit, Mr. Wrenn confirmed they hadn't applied yet but were confident it would be approved. When asked about the pond size (about  $\frac{3}{4}$  acre), Dr. Lewis stated it could hold up to 10 boats, and boats were commonly stored near her property. Mr. Stephenson expressed concern that calling the building a "Clubhouse" could create issues related to commercial use. Dr. Lewis clarified it was just a name, and Mr. Pearson confirmed that a clubhouse wasn't required for outdoor recreation uses under the UDO.

Mr. Pearson estimated a site plan review could take longer than 60 days due to split zoning and stormwater concerns. Mr. Goebel reminded the applicants that the case had been continued from October, and Mr. Murphy noted that the Board could decide to continue again if more information was needed. Mr. Maloney read the minutes from October, confirming that this was the final continuation.

Mr. Goebel asked if boat storage was permitted, and Mr. Pearson confirmed that boat storage was not allowed, though training use of boats on the pond was. Dr. Lewis acknowledged that members might leave boats and trailers on the property, including overnight, and while they would have exclusive access, she could not guarantee hours of use. Mr. Goebel asked what would happen if a violation occurred after the permit was granted, and Mr. Pearson explained that a notice of violation would be issued, and failure to comply could result in permit revocation.

Mr. Goebel opened the floor for public comments, and hearing none, closed for board discussion at 9:57 a.m.

### **Board Discussion**

Ms. Waddell expressed concerns that based on the testimony presented, the Board would have difficulty meeting the required findings. She believed that storage of boats and trailers, coupled with the inability of staff to review the revised site plan was an obstacle to making positive findings. Ms. Waddell added that in her experience as a Planner, it would be difficult to guarantee a 30-to-60-day continuation period for review. Accordingly, she did not see how it could meet standard 2 (compliance with regulations and standards in the zoning district).

Mr. Goebel thanked Ms. Waddell for her comments, and added for the Board's benefit that their scope was limited to the information before them, not what might happen later. Mr. Stephenson asked the timeline surrounding a resubmittal of the request if they did not reach positive findings. Mr. Pearson responded that if the Board denied the application, they could not bring it forward again in one year. Ms. Waddell inquired if they would be able to withdraw, barring a continuance, and Mr. Pearson and Mr. Murphy noted that withdrawing would start the entire process over again, including public notice. A continuance to a future date would prevent the need for re-notice.

Mr. Goebel outlined the five elements the Board would need to make positive findings based on competent, substantial, and material evidence:

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

Mr. Goebel indicated he had not heard testimony in either direction beyond the justification statement. Ms. Waddell added that if there is a clubhouse onsite that does not have proper water and sewer, it would need to be brought up to commercial standards. If not, it would not meet the provision. Mr. Stephenson added that without NCDOT permits in place, and no indicated date of obtaining them, he found it difficult to see how it met this criterion.

- 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. Goebel identified Mr. Stephenson's points about the lack of permitting, and added that Section 4-33 had specific parking standards, prohibiting outdoor storage and dealing with utilities and water supply and sewage disposal plans. Based on testimony, he did not see how any of those regulations or standards would adequately comply.

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

Mr. Goebel indicated he had not heard testimony that it would not substantially injure the value of adjoining property, nor had he heard any objection from other parties. Mr. Murphy reminded

the Board that it is the applicant's burden to provide testimony that it would not, and Mr. Goebel concurred that the applicant had not provided evidence for or against criterion 3.

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

Mr. Goebel noted that it is in a residential area but would see heavy boat traffic and had previously contained boat storage. Mr. Stephenson indicated that if overnight storage were prohibited, it would be more likely to be in harmony, but that testimony was inconclusive.

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

Mr. Goebel noted that staff's determination is that it would be consistent if the Special Use Permit was granted.

Mr. Goebel explained that his primary concern was with finding number 2 based on testimony and evidence presented. He also had concerns with commercial use in a residential area, open to club members using the site for uncertain periods of time.

**Motion on PLG-SU-004938-2024**

Mr. Goebel made a motion in the matter of PLG-SU-004938-2024, that the Board find and conclude that the petition does not meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance because it is not consistent with findings discussed by the Board and the requested special use permit be denied.

Ms. Waddell seconded the motion to deny, and it was approved unanimously.

**6. PLG-ZV-005409-2024 (Mr. Geoffrey Pearson, Code Enforcement Program Manager)**

The applicant is requesting a zoning hardship variance from Article 11, Section 11-30-4 of the Wake County Unified Development Ordinance to exceed the 12% maximum impervious surface ratio.

The applicant is requesting a 3.7% variance in order to place a 24'x25' detached accessory building with a 12'x25' lean-to on his property. Per section 11-30-4 of the Wake County UDO, a stormwater impoundment and municipal sewer connection is required in order to exceed the maximum 12% impervious surface limit.

**Voting Members**

Five voting members were identified:

1. Mr. Jeffrey Goebel
2. Ms. Britany Waddell
3. Mr. DeAntony Collins
4. Mr. Waheed Haq
5. Mr. Joe Cebina

**Location**

WAKE COUNTY PIN: 0790 75 1647

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

LAND USE CLASSIFICATION: Existing Urban Non-Compliance (SCLMP)

WATERSHED: Swift Creek Water Supply Watershed

CROSS REFERENCE FILES: Swift Creek Land Management Plan (SCLMP)

APPLICANT: Jerry Campbell

PROPERTY OWNER: Jerry Campbell

PROPERTY SIZE: .46 Acres

CURRENT LAND USE: Single-Family Residential

**Documentary Evidence Accepted into Record**

- Staff Report
- Staff Presentation
- Applicant's Application

**TESTIMONY AND EVIDENCE PRESENTED**

**Testimony by Geoffrey Pearson**

Mr. Pearson was sworn in and presented the Staff Report, Presentation, and Applicant's Documents, which were accepted into the record. Mr. Pearson explained that the case was a Zoning Hardship Variance request from Jerry Campbell to exceed the 12% impervious surface limit in the Swift Creek Water Supply Watershed. The property, located at 6520 Malibu Drive in St. Mary's Township, is residentially zoned, with the neighboring area to the west being within the Town of Garner's jurisdiction.

In August 2024, Mr. Campbell applied for a residential building permit to construct a 24'x25' detached accessory building, including a 12'x25' lean-to. During review, staff discovered that the property lies in a noncompliant section of the Swift Creek Watershed, subject to the Swift Creek Land Management Plan. The proposed building would push the impervious surface to 15.7%, exceeding the 12% limit (without stormwater impoundment or municipal sewer service), and the property lacks municipal sewer access. State law prohibits issuing permits inconsistent with the Swift Creek Management Plan, preventing approval unless the applicant submits a stormwater design.

Mr. Pearson clarified that the permit cannot be approved without the property coming into compliance with the Swift Creek Management Plan, but Mr. Campbell proceeded to apply for a variance on October 1st. Adjacent property owners were notified, and a public hearing sign was posted on November 21, 2024. The subject lot is 0.46 acres, zoned R-40W, and non-conforming due to its size. The existing accessory building would be replaced by the new 900-square-foot structure, pushing the total impervious surface to 15.7%. The Town of Garner confirmed there is no municipal sewer service available, and a stormwater device would be required.

Mr. Pearson provided site photos and video, and recommended denial of the variance if the Board does not make favorable findings.

Mr. Goebel asked if the existing building was the same as the proposed one, and Mr. Pearson clarified that the existing building would be removed and replaced. He confirmed that the Swift Creek Plan's requirements are more restrictive than the UDO. Ms. Waddell inquired if the site plan was to scale, and Mr. Pearson confirmed the photos reflect the current site layout.

Mr. Cebina asked if the new building would affect the septic field, and Mr. Pearson confirmed it would not. Mr. Haq asked for the square footage of structures, and Mr. Pearson explained the total impervious surface includes a 700-square-foot driveway, 75-square-foot walkway, 1,000.7-square-foot house, and 900-square-foot exterior building, totaling 15.7%. The property, being in a noncompliant area, has limited impervious surface capacity. Mr. Goebel confirmed that the impervious surface calculations were provided by the property owner, and Ms. Waddell asked if a smaller building could stay under the impervious surface threshold. Mr. Pearson confirmed Mr. Campbell chose to proceed with the current proposal.

## Applicant's Presentation

### Testimony by:

- 1) Jerry Campbell, property owner, 6520 Malibu Drive

Mr. Campbell was sworn in to request a hardship variance to exceed the 12% impervious surface limit. After purchasing a 25'x24' detached garage with a 25'x12' lean-to for \$23,000, he realized it would exceed the impervious surface limit set by the Swift Creek Management Plan. He noted that he bought the property in 1993, and the existing storage buildings had deteriorated. The new building was necessary for storing equipment, but he was unaware of the watershed rules until applying for the permit this year. He had planned to capture stormwater runoff for use in his garden but pointed out that without municipal sewer access, compliance was difficult. He requested an additional 3% impervious surface allowance to install the building.

Mr. Haq asked if acquiring extra land or reducing the driveway would help meet the limit. Mr. Campbell explained there was no available land behind his property and that trimming the driveway was unfeasible. He also expressed concern about security for items like his lawnmower. Mr. Goebel inquired about swapping out existing impervious surface, but Mr. Campbell believed it wouldn't reduce the total enough. While the Board offered informal suggestions, they noted that they were bound by State Law and Swift Creek Land Management Plan regulations.

Ms. Waddell asked if a smaller building could help meet the limit, but Mr. Campbell explained that even without the lean-to, he would still exceed the 12%. He emphasized that meeting the sewage provision would be impossible without municipal utilities. Mr. Stephenson acknowledged the cost of adjusting the impervious surface, particularly with the driveway, but reiterated the need to explore options.

Mr. Goebel opened the floor for public hearing and with no respondents, closed for Board Discussion at 10:48 a.m.

### Board Discussion

Mr. Goebel noted that the case had two layers to be considered: the UDO's requirements and the Swift Creek Land Management Plan with unequivocal legislation from the State preventing the County from approving a variance that did not comply. The Board would make their determination, understanding that the property was within the Swift Creek Management Plan and subject to laws that prohibit staff from issuing permits. Ms. Waddell indicated that she appreciated Mr. Campbell's efforts, but that their hands were tied to some degree.

Mr. Goebel indicated that there were four elements the Board would need to make positive findings based on competent, substantial, and material evidence:

- 1) *Unnecessary hardship would result from the strict application of the ordinance.*
  - Mr. Goebel recognized that there would be issues with the inability to add a storage building but did not feel it met the burden of unnecessary hardship, particularly with the caveat in finding 2 that the hardship did not arise from personal circumstances.
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting*

*from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*

Mr. Collins expressed the difficulty between Mr. Campbell's situation and the Mr. Goebel's point that findings 1 and 2 were tied to personal circumstances. Ms. Waddell added that the inability to connect to sewer systems was not unique to the property, as his neighbors also were subjected to the same regulations.

3) *The hardship did not result from actions taken by the applicant or property owner.*

Mr. Goebel noted that while Mr. Campbell was not aware of the circumstances tied to his property, his testimony indicated that he chose to purchase a detached accessory building of this size and to move forward after being made aware of the impervious surface limits.

4) *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.*

Mr. Goebel noted that he agreed public safety was secured, but that the issue would be whether their findings amounted to substantial justice. Accordingly, while this finding was met, he expressed serious concerns about the other findings. Legally speaking, they found themselves at an "impossibility of performance" regarding the sewer situation. Mr. Stephenson added that the State Statute designed to protect the water supply watershed was also in place to protect the public safety.

Mr. Goebel entertained a motion on PLG-ZV-005409-2024.

#### **Motion on PLG-ZV-005409-2024**

Mr. Cebina made a motion in the matter of PLG-ZV-005409-2024, that the Board find and conclude that the petition does not meet the requirements of Article 19-23 of the Wake County Unified Development Ordinance and General Statute 160D-705D and that the requested variance be denied. The motion to deny is based on the following findings of fact:

- 1) Unnecessary hardship would result from the strict application of the ordinance;
- 2) The hardship results from conditions that are particular to the property, such as location, size, or topography;
- 3) The hardship did not result from actions taken by the applicant or the property owner;
- 4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that the public safety is secured, and substantial justice is achieved.

Mr. Collins seconded the motion to deny, and it was approved unanimously.

Mr. Goebel and members of the Board recommended that Mr. Campbell continue speaking to staff to find a way to make his situation work.

## **7. Planning, Development & Inspections Report**

Mr. Finn updated the Board on staff's work with cases involving split zoning, a trend linked to the County's urbanization, especially in areas with both critical and non-critical water supply watersheds. He emphasized that protecting these watersheds is a top priority.

He noted that 60% of pre-submittal forms in the past fiscal year were for nonresidential uses, even though the County does not provide water or sewer services. The most common nonresidential applications were for "neighborhood retail" buildings under 15,000 square feet, along with home occupations, which are classified as residential. Another frequent request was for maintenance of telecommunication towers, typically for co-location.

Mr. Finn also provided an update on the three most recent subdivisions under review, averaging 31 lots each. While the County's subdivision model averages 35 lots, the typical subdivision size is 12-17 lots, aligning with connectivity policies. Larger subdivisions, however, will increase this average. He noted that the 14 cases before the Board in the past fiscal year was the highest docket he had seen in his 18 years with the County.

In response to questions from Mr. Haq and Mr. Cebina about ETJ requests and annexations, Mr. Finn clarified that while the County shares information on area plans, municipalities handle annexations independently, with the County acting as a partner on ETJ requests when possible.

Mr. Maloney informed the Board that the County's Parks and Recreation Master Plan update is underway, with completion expected in early 2026, with public engagement anticipated. He also shared that the Town of Garner had submitted an ETJ request along the new NC 540 corridor in Southern Wake County is expected to spur mixed-use development near the 540 expansions. Lastly, Mr. Maloney clarified that engineered pervious surfaces do not currently offset impervious surfaces, though changes to the UDO are expected in the coming quarter.

## **8. Adjournment**

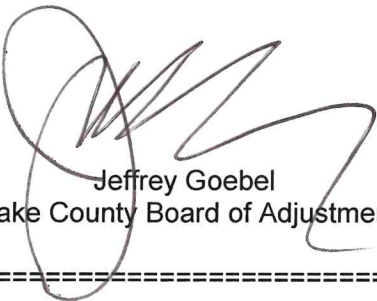
Mr. Goebel adjourned the meeting at 11:19 a.m.

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REGULAR MEETING  
WAKE COUNTY  
BOARD OF ADJUSTMENT  
December 10, 2024

All petitions complete, Jeffrey Goebel declared the regular meeting of the Wake County Board of Adjustment for Tuesday, December 10, 2024, adjourned at 11:19 a.m.

Respectfully Submitted:

  
Jeffrey Goebel  
Wake County Board of Adjustment

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