



## Planning, Development & Inspections

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

### MINUTES OF BOARD OF ADJUSTMENT, FEBRUARY 11, 2025

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

#### MEMBERS PRESENT:

1. Ms. Britany Waddell (Vice Chair)
2. Ms. Irene Butler
3. Mr. Joe Cebina
4. Mr. DeAntony Collins
5. Mr. Waheed Haq
6. Mr. Mark Spanioli
7. Mr. Russell Stephenson
8. Mr. Will Wingfield

#### MEMBERS ABSENT:

1. Mr. Jeffrey Goebel (Chair)

#### COUNTY STAFF:

1. Ms. Ambryss Brown
2. Mr. Steven Finn
3. Mr. Timothy Maloney
4. Mr. Josh McClellan
5. Ms. Liz Oliver
6. Mr. Geoffrey Pearson
7. Ms. Beth Simmons
8. Mr. Shawn Springer
9. Ms. Kathy Williams

#### COUNTY ATTORNEY:

1. Mr. Kenneth Murphy, Deputy County Attorney

- 
1. **Meeting called to order:** Ms. Waddell called the meeting to order at 9:00 a.m.
  2. **Approval of Minutes of the January 14, 2025, Meeting:** Mr. Haq made a motion to approve the January 14, 2025, minutes as presented. The motion was seconded by Ms. Butler and the minutes were approved unanimously.
  3. **Approval of Written Decision for PLG-SU-005412-2024:** Mr. Wingfield made a motion to approve the Written Decision for PLG-SU-005412-2024 as presented. The motion was seconded by Mr. Spanioli and was approved unanimously.
  4. **Motion to Reconsider PLG-ZV-005420-2024:** Ms. Waddell explained that board Rule of Procedure allows a member to make a motion to reconsider a case at the meeting immediately following the ruling. The motion must be made by one of the Board members who voted with the

majority, and the motion must pass a simple majority vote. The vote to deny was approved with five voting members; Mr. Goebel, Ms. Waddell, and Mr. Wingfield in favor, and Mr. Collins and Mr. Haq opposed.

Ms. Waddell stated that information had been presented after the initial decision that she felt deserved a review by the full Board, and she therefore made a motion that the Board reconsider PLG-ZV-005420-2024 at the March 11<sup>th</sup>, 2025, Board of Adjustment meeting. The motion was seconded by Mr. Collins and was approved unanimously.

**5. PLG-SU-005383-2024 (Mr. Geoff Pearson, Code Enforcement Program Manager)**

The petitioner is requesting Special Use Permit to allow the expansion or other modification to an existing nonconforming use.

**Voting Members**

Five voting members were identified:

1. Ms. Britany Waddell
2. Mr. DeAntony Collins
3. Mr. Waheed Haq
4. Mr. Will Wingfield
5. Mr. Mark Spanioli

**Location**

WAKE COUNTY PIN: 0722 76 2014  
ZONING DISTRICT: Highway District (HD)  
LAND USE CLASSIFICATION: Commercial Non-Urban Area Watershed  
WATERSHED: Jordan Lake  
CROSS REFERENCE FILES: N/A  
APPLICANT: Jerome Eatman, Attorney, Lynch & Eatman LLP  
PROPERTY OWNER: Renuka & Krishna Tummala  
PROPERTY SIZE: 1.83 acres  
CURRENT LAND USE: Commercial Legal Nonconformity  
PROPOSED LAND USE: Commercial Legal Nonconformity

**Documentary Evidence Accepted into Record**

- Staff Report
- Staff Presentation

**TESTIMONY AND EVIDENCE PRESENTED**

**Testimony by Staff, Geoff Pearson**

Mr. Pearson presented the Staff Report and Presentation, which were accepted into the record. He explained that the Board was considering a request for Special Use Permit approval to allow the expansion or other modification to an existing nonconforming use. The petitioner, attorney Jerome Eatman of Lynch & Eatman LLP, is representing property owners Renuka and Krishna Tummala. The subject property is located at 2901 US 64 Highway West in the White Oak Township. The surrounding properties are located within the Town of Apex Planning Jurisdiction and are vacant.

The property was originally built in 1940 and initially operated as a retail store. Wake County applied Highway District zoning to this property in 1960, which does not permit retail as an allowed use, so the property was established as a legal nonconforming use. In 1989, the Wake County

Board of Adjustment granted a Special Use Permit (BA1363) to allow the continuation of a nonconforming use, as the use had changed from Retail to Bar/Tavern. The Special Use Permit (SUP) established its use as Bar/Tavern and the property has continued to operate as such. The property sells beer and alcoholic beverages, but has never prepared or sold food on site. The current owners purchased the property in February 2024 and maintain the use as a bar.

In September 2024, Wake County Planning received complaints that two food trucks were being operated from the site. Staff informed the owners that the introduction of mobile food units (MFU's) would be considered an expansion or modification to an existing nonconforming use. On November 5<sup>th</sup>, 2024, the applicant applied for a Special Use Permit to allow one food truck to sell from the property.

Mr. Pearson provided the proposed site plan, which included one mobile food unit on the property. The food truck would be located onsite during the hours of 6pm to 10pm, Monday through Sunday. Per MFU requirements, the truck would return to the assigned commercial commissary each night and would not remain on the property overnight. The mobile food truck dimensions are 8 feet x 24 feet. No food preparation would occur inside the existing bar building – patrons would be served solely from the food truck. There were no other additions proposed to the existing lot.

Per UDO Development Standards, the property is served by a private well and wastewater system, so utilities will not be affected by the proposed addition. The property is located along US 64 Highway West and has two driveways for ingress and egress, meeting street access requirements. The submitted site plan shows compliance with all required building and use setbacks, as well as an additional parking space as required by Article 15, Section 15-10-4 of the Wake County UDO. No additional landscaping or buffers are required.

Under Highway District Zoning, the maximum impervious surface allowed for this lot is 30%. The applicant has adjusted the site and removed gravel from the western portion of the lot, bringing the impervious limit into compliance with the UDO. The Wake County UDO allows nonconforming uses in all zoning districts, requires that a Special Use Permit be granted by the Board of Adjustment for any expansion to a nonconforming use, and that modifications not exceed 25% of the area occupied by the original nonconforming use - the proposed mobile food unit complies with this standard.

Mr. Pearson provided photos and video from the site, indicating where the impervious surface was removed and the location of the proposed mobile food unit. Notification letters were mailed to adjoining and adjacent property owners on January 31<sup>st</sup>, 2025, along with a public hearing notice placed on the subject property on January 28<sup>th</sup>.

Staff recommended that, if the Board reaches positive conclusions on all of the required findings, that it approve the special use permit request subject to the conditions identified in the staff report.

Ms. Waddell asked about decking mentioned on the site plan, specifically if it was tied to the food unit or the building, and Mr. Pearson clarified that it was attached to the back of the building and identified as "wood deck" on the site plan. Ms. Waddell also confirmed that staff's conclusion was that all the requirements had been met or would be met by the applicant, and Mr. Pearson responded that was correct.

With no further questions for staff, Ms. Waddell called the petitioner to address the Board.

### **Applicant's Presentation**

### **Testimony by Jerome Eatman, Lynch & Eatman LLP**

Mr. Eatman introduced himself as attorney for the landowners, who purchased the Backyard Bar in 2024. In addition to operating the bar, the owners also own a successful food truck which they began parking outside of the facility. They were unaware that this constituted an expansion to the existing legal nonconforming use until advised by the County, at which time they submitted a Special Use Permit request. Mr. Eatman indicated that Mr. Pearson provided ample evidence that the application met all the threshold requirements for expansion of a nonconforming use, particularly that it was well beneath the 25% threshold, and therefore was consistent with the Wake County Comprehensive Plan.

Mr. Eatman explained that he would provide testimony to address the findings necessary for the Board to reach a positive conclusion. The single mobile food unit to be placed on the property would not pose an issue regarding public health or safety – as an ancillary operation, it would not generate any additional or incidental traffic beyond the existing infrastructure. The two access points provide ample parking area (45,000 square feet). The property contains no wetlands, the truck will not use the current water/sewer service, and no waste would be generated for disposal onsite. The applicant has agreed to only one food truck onsite during specified hours, and its presence would not violate dimensional requirements of the site. Additionally, the food truck would generate no noise or odor which would be discernable to vacant adjoining properties and would not affect the value of those adjoining properties.

Mr. Eatman indicated that the listing of the mobile food unit as a permissible use with a Special Use Permit would constitute a presumption that it is in harmony under North Carolina law. The presumption could be overridden by mitigating factors such as noise, odor, or traffic, but these would not be a factor associated with the proposed food truck. Mr. Pearson's report indicated that the food truck location onsite would be consistent with land use planning and the existing nonconforming use. Mr. Eatman closed his presentation by testifying that the application and staff report provided competent, substantial, and material evidence that his clients meet the requirements to grant a Special Use Permit.

Mr. Spanioli asked if any food would be cooked inside of the truck, and Mr. Eatman responded that all food preparation would take place elsewhere.

Ms. Waddell opened the floor for public comments, and hearing none, closed for board discussion at 9:26 a.m.

### **Board Discussion**

Mr. Spanioli began discussion regarding the five elements for which 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. Spanioli indicated that testimony demonstrated that there would be no traffic impacts related to the expansion and the food truck would require no utility connections. His deduction of facts is that there would be no issues regarding soil erosion or sedimentation by the food truck's presence. Ms. Waddell added that no waste would be produced, and water and sewer impacts would be nonexistent.

- 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.*

Ms. Waddell noted that the staff report stated that nonconforming uses were allowed in all zoning districts within the County, and that the expansion requires a Special Use Permit.

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

Mr. Spanioli noted that the establishment was already in place, and the addition of a mobile food unit that was not a permanent fixture should not impact the value on any adjoining properties.

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

Ms. Waddell noted that this was an active business, and the proposed expansion would be an accessory use to the establishment. The site is currently surrounded by vacant lots and does not appear to be in conflict with its existing use.

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

Ms. Waddell indicated that staff testimony was in line with the granting of the Special Use Permit, and planning for the area was consistent with the Comprehensive Plan.

Ms. Waddell entertained a motion on PLG-SU-005383-2024.

#### **Motion on PLG-SU-005383-2024**

Mr. Spanioli made a motion in the matter of PLG-SU-005383-2024, 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 that the special use permit be granted with the recommended staff conditions. The motion to approve is based upon the following findings of fact:

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

Mr. Haq seconded the motion, and it was approved unanimously.

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

Mr. Finn reported that since the introduction LDS (online permit portal) in July of 2018, staff had seen a significant paradigm shift in customer service enhancement. Since 2018, over 4,800 cases have been submitted digitally, representing around 682 per year. The number of appeals has increased significantly over the past year and a half, with 8 cases appearing before the Board. Mr. Finn noted they were primarily driven by code enforcement and Mr. Finn thanked Mr. Pearson for handling the majority of cases. He informed the Board that current projections would continue to yield a high volume of cases.

Mr. Finn also informed the Board that digital enhancements continue to improve customer service efforts. Prior to 2018, records were kept on a three-year retention basis, but LDS provides a centralized area where customers can search building permits issued any time after 2018. He did note that physical copies of many zoning and subdivision maps the preceded the LDS were available in the Planning Department.

Mr. Finn noted an increase in requests for group care facilities, as well as requests for private schools, and that the complexities of these requests are often tied to local zoning ordinances.

Mr. Finn thanked Ambrys Brown and Kathy Williams for auditing today's meeting, and noted Shawn Springer from Environmental Services was also in attendance. Whenever possible, Mr. Finn explained that he liked to recognize his staff for their work.

Ms. Waddell asked about the feasibility of digitizing older subdivision plats, and Mr. Finn and Mr. Maloney indicated that they had explored it as an option, but at present it was cost prohibitive. Mr. Finn did note that Liz Oliver was organizing and gathering all relevant policies and procedures for Community Services to present in a digital format.

Mr. Maloney informed the Board that they will hear the reconsideration of case PLG-ZV-005420-2024 on March 11<sup>th</sup>, and there may be additional items on the agenda. He added that Ms. Waddell was reappointed during the last Board of Commissioners meeting, and that other members would be up for reappointment in February of 2026. He closed by updating the Board on proposed Ordinance Amendments that might ease the number of appeal cases: one pertaining to impervious surface requirements and another designed to clarify Bed and Breakfast and Homestay locations to be more in line with AirBNB and VRBO standards.

## **7. Adjournment**

Ms. Waddell adjourned the meeting at 9:51 a.m.

=====

REGULAR MEETING  
WAKE COUNTY  
BOARD OF ADJUSTMENT  
February 11, 2025

All petitions complete, Britany Waddell declared the regular meeting of the Wake County Board of Adjustment for Tuesday, February 11, 2025, adjourned at 9:51 a.m.

Respectfully Submitted:



Britany Waddell  
Wake County Board of Adjustment

=====