



Planning, Development & Inspections

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

MINUTES OF BOARD OF ADJUSTMENT MARCH 11, 2025

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. Waheed Haq
5. Mr. Mark Spanioli
6. Mr. Will Wingfield

MEMBERS ABSENT:

1. Mr. Joe Cebina
2. Mr. DeAntony Collins
3. Mr. Russell Stephenson

COUNTY STAFF:

1. Mr. Steven Finn
2. Mr. Timothy Maloney
3. Mr. Josh McClellan
4. Ms. Beth Simmons
5. Ms. Kathy Williams

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 9:06 a.m.
 2. **Approval of Minutes of the February 11, 2025, Meeting:** Ms. Waddell made a motion to approve the February 11, 2025, minutes as presented. The motion was seconded by Mr. Wingfield and the minutes were approved unanimously.
 3. **Approval of Written Decision for PLG-SU-005383-2024:** Ms. Waddell made a motion to approve the Written Decision for PLG-SU-005383-2024 as presented. The motion was seconded by Ms. Butler and was approved unanimously.
 4. **PLG-ZV-005420-2024 (Ms. Kathy Williams, Planner II)**
The applicant is requesting two variances from the Wake County Unified Development Ordinance; (1) from Article 11, Section 11-21-6(C), which requires that buildings be setback at least 20 feet from the outer boundary of the required water supply watershed buffer, and (2) from Article 11, Section 11-22-1 Activities Allowed Within Buffers, which does not allow for a swim spa or swim spa deck encroachment into a water supply watershed buffer.

Voting Members

Five voting members were identified:

1. Mr. Jeffrey Goebel
2. Ms. Britany Waddell
3. Mr. Waheed Haq
4. Mr. William Wingfield
5. Ms. Irene Butler

Location

WAKE COUNTY PIN: 0799 36 6507

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

LAND USE CLASSIFICATION: Rural Non-Urban Area Water Supply Watershed

WATERSHED: Falls Lake

CROSS REFERENCE FILES: N/A

APPLICANT: Richard Burnett

PROPERTY OWNER: Richard Burnett

PROPERTY SIZE: 2.14 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 Kathy Williams

Ms. Williams was sworn in and presented the Staff Report, Presentation, and Applicant's Application, all of which were accepted into the record. She explained that the case involved two variance requests: 1) to allow the unpermitted expansion of a non-conforming house deck to encroach into the 20-foot water supply watershed buffer building setback, and 2) to allow an unpermitted swim spa and deck to encroach into both the 50-foot and 20-foot water supply watershed buffer setbacks. Article 11, Section 11-21-6(C) requires a 20-foot setback from the watershed buffer boundary, and Section 11-22-1 prohibits encroachments for swim spas in this area. The petitioner, Richard Burnett, owns the property at 1420 Kinsdale Drive, zoned R-40 Watershed.

Prior to the purchase of the property by the current owner in April 2020, the previous owner expanded the house deck without a permit, and the swim spa and swim deck were built unpermitted in 2021. During staff review of final building permits that were submitted on June 27, 2024, the unpermitted deck expansion was discovered. The original Zoning Hardship Variance request was heard by the Board of Adjustment on January 14th, 2025. The Board took the following action: 1) approved the request for the non-conforming deck to encroach into the 20-foot water supply watershed buffer building setback, and 2) denied the swim spa and swim spa deck to encroach into the 50-foot water supply watershed buffer and associated 20-foot water supply watershed buffer building setback.

Mr. Goebel noted that the reconsideration of this case would be treated as *de novo*, as though the Board had never heard the original case. Mr. Murphy confirmed that, as no Written Decision had been drafted, the Board was not bound by any decisions made during the first hearing. Ms.

Williams thanked them for the clarification and added that at the February 11, 2025, Board of Adjustment meeting, a motion to reconsider the variance was approved. Staff notified all adjacent property owners and reposted the hardship variance sign on February 26, 2025. Staff received no response from adjacent property owners.

Ms. Williams showed a slide of the subdivision layout, explaining that Lot 37, created in 1996, is 2.14 acres with a 50-foot water supply watershed buffer along the stream and a 20-foot building setback along the rear. After the plat was recorded, the stream shifted, and the buffer regulations are enforced from its current location.

She presented the site plan showing the original deck, its expansion, and the encroaching swim spa and swim deck. The deck is a non-conforming feature, and the expansion encroaches into the 20-foot and 50-foot buffer zones. Other encroachments, such as walkways and a pergola, have been removed, and portions of the buffer are being stabilized. If the variance is approved, the applicant will complete the necessary permits for the deck and swim spa.

Ms. Williams presented a slide of the applicant's proposed new site plan, explaining that Mr. Burnett had submitted a proposed adjustment of the existing swim spa structure to remove it from the 20-foot water supply watershed buffer building setback. If the Variance is approved, the applicant would need to complete the existing permits for the swim spa and swim spa deck.

A video from the site showed the removed encroachments and the location of the expanded deck and swim spa. Adjacent property owners were notified of the request on December 18, 2024, and a public hearing sign was posted on December 19, 2024, of which no comments or concerns have been received. Staff recommends approval, pending positive findings from the Board, and Ms. Williams offered to answer any questions.

Mr. Goebel asked for clarification regarding the 50-foot buffer and the 20-foot buffer, and Ms. Williams explained that the 50-foot is a water supply watershed buffer, measured from the top of the bank of the stream on each side. The 20-foot buffer is a building setback off the 50-foot water supply watershed buffer which does not allow buildings. She noted that if the swim spa and swim spa deck were not attached to the house, then it would be allowed because it was not a building. Because it is attached, it is considered part of the main structure and is not allowed in the 20-foot water supply watershed building setback that's associated on the outside of the 50-foot water supply watershed buffer itself. Mr. Goebel asked from where the 50-foot buffer criterion originates, and Ms. Williams responded that it was a county requirement. The State has a separate USGS 50-foot Neuse Riparian buffer, and the applicant had worked with the State to come into compliance with their regulations. The 20-foot buffer is also a county requirement, designed to limit encroachments to leave the area as natural as possible and protect the water supply watershed buffer.

Ms. Waddell asked for clarification regarding the reconsideration and whether the Board would be voting on both variances. Ms. Williams responded that, per Mr. Murphy's instructions, it would be treated like a new case. Mr. Goebel noted that it appeared that the applicant was no longer encroaching into the 50-foot water supply watershed buffer, and Ms. Williams indicated that per their newly submitted proposed site plan, they intended to relocate the swim spa and swim spa deck and modify the existing deck outside of the 50-foot area. If this takes place, the applicant will submit an as-built site plan to verify with staff. Mr. Goebel asked for clarification as to whether two variance decisions were necessary, and Ms. Williams indicated that the original application referred to two requests, but the Board would be able to make a determination if both were necessary. Mr. Murphy indicated that, dependent on the applicant's testimony, it would be reasonable only to have one variance considered. Responding to Mr. Goebel's question about the

permitted use of a swim spa, Mr. Murphy and Ms. Williams indicated that the variance request was related to the encroachment, not to use.

Applicant's Presentation

Testimony by:

1) Richard Burnett, property owner, 1420 Kinsdale Drive, Raleigh, NC 27615

Mr. Burnett was sworn in and explained that he did not consider the hardship arising from his case to be one of money, and that he would prefer it not be accounted into the request. He installed the swim spa after his parents moved into his home, as his father was recovering from medical treatments, and the swim spa was recommended for rehabilitation purposes. When purchasing the swim spa, Mr. Burnett asked the installer if a permit was needed and was told "no," as it would not be considered a permanent structure. The contractor hired to install the deck also told Mr. Burnett that he did not believe one was required – it was an expansion of the existing deck. Likewise, the electrician told Mr. Burnett that a permit would not be required. After installation, Mr. Burnett became uncomfortable with the electrical work done by a contractor, so he consulted a friend in code enforcement who advised him to go through the permitting process, as he had been given incorrect information.

Mr. Burnett testified that he is currently working with a more reputable builder to assist him with the permitting project. The builder hired an engineer to verify that both decks are sound, and to assist with the submission process. He also became aware of the riparian buffer issue. While reviewing the septic system, Mr. Burnett found the waterway location on the original plat and noticed a berm with a pipe draining a nearby pond. After contacting NCDEQ, he obtained credits to offset the encroachment, leading to this variance request.

His revised site plan is based on the determination of the builder and engineer that the deck could be moved out of the 50-foot buffer area. They are currently working on designing the stairs to the swim spa deck to address the 20-foot setback, and he is working to remove the old deck and meet the requirements for a new one within the setback area.

Mr. Burnett contended that the hardship was created by needing the spa for his father and having no other place to install it. Much of the property is covered by a septic system, which the NCDEQ mapped and found to leave him little room while in compliance with the 15-foot setback. Mr. Burnett removed existing alterations made by the previous owner. These additions were unpermitted, so Mr. Burnett worked with the NCDEQ and County to remove them safely and bring the rest of the back area into compliance.

Mr. Goebel asked if his father lived on the property, and Mr. Burnett responded that both of his parents moved in after his father's diagnosis. Ms. Waddell asked if the stairs could be moved and still keep the swim spa accessible, and Mr. Burnett responded that the engineer he has been working with believed so, and that they would submit any plans with County permitting to ensure it met code.

Mr. Goebel opened the floor for public hearing and with no respondents, closed for Board Discussion at 9:39 a.m.

Board Discussion

Mr. Goebel began discussion by identifying the two variances that they must consider, noting that there would be overlap in facts between them. Mr. Murphy informed the Board that procedural rules require a variance to have a 4/5 supermajority to approve.

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 noted that the stream had moved, and that changed the calculation of what portions of the property fell into buffer areas. Ms. Waddell added that based on testimony, no reasonable use could be made of the backyard without an encroachment of some form. Mr. Spanioli indicated he agreed with Ms. Waddell's position.

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. Goebel noted that this was related to finding number one, in that a change to the stream meant that strict application would adversely impact the house as well.

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

Mr. Goebel indicated that the applicant did not move the stream and therefore could not be held responsible for the consequences arising from it.

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 explained that, based on testimony, it was clear that Mr. Burnett was making a significant effort to be compliant, and furthermore that the position of the stream relative to his property did not seem consistent with the spirit of the ordinance.

Mr. Goebel entertained a motion on PLG-ZV-005420-2024.

Motion on PLG-ZV-005420-2024

Mr. Goebel made a motion in the matter of PLG-ZV-005420-2024 Variance One, that the Board find and conclude that the petition does meet the requirements of Article 19-26 of the Wake County Unified Development Ordinance and that the requested variance be granted with the recommended staff conditions. The motion to approve 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.

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

5. Planning, Development & Inspections Report

Mr. Finn clarified that Article 8-31 of the UDO outlines the goals and relevant policies of the water supply watersheds. Staff works with the State Environmental Management Council and with local partners to protect the seven water supply watersheds in Wake County, one of the principal charges of the 100 counties in the State. Water supply watershed buffer efforts include filtration, stabilization of the canopies, and root undergrowth to maintain a natural state. The 50-foot buffers in particular is to minimize the velocity and protect areas through erosion control.

Mr. Finn added that public information requests continue to trend upward. Staff attempts to provide public education through individual reviews and general inquiries from realtors looking to develop property. He closed by noting that, at present, there were no cases for April, and that they were working to resolve a potential appeal. Mr. Finn reported that in the last two years, staff had seen over 30 Board of Adjustment cases, which he believed to be a very high volume.

Mr. Maloney noted that it was uncertain whether an April meeting would be scheduled, but that during the Board's next regular session, they would hold elections for Chair and Vice Chair. He added that the Board of Adjustment did not specify term limits in their bylaws.

6. Adjournment

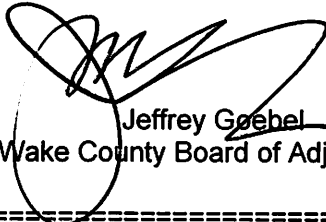
Mr. Goebel adjourned the meeting at 9:51 a.m.

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REGULAR MEETING
WAKE COUNTY
BOARD OF ADJUSTMENT
March 11, 2025

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

Respectfully Submitted:


Jeffrey Goebel
Wake County Board of Adjustment

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