Planning & Development Services

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

MINUTES OF BOARD OF ADJUSTMENT April 14, 2026

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. Mr. Joe Cebina
4. Mr. DeAntony Collins
5. Mr. Waheed Haq
6. Mr. Mark Spanioli
7. Mr. Russell Stephenson

MEMBERS ABSENT:
1. Ms. Irene Butler
2. Mr. Will Wingfield

COUNTY STAFF:
1. Mr. Adam Cook
2. Mr. Steven Finn
3. Mr. Heath Jones
4. Ms. Caroline Loop
5. Mr. Timothy Maloney
6. Mr. Josh McClellan
7. Mr. Geoffrey Pearson
8. Ms. Beth Simmons
9. Ms. Becca Truluck

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 9:14 a.m.

2. **Election of Chair and Vice Chair:** Mr. Goebel opened the floor for nominations for Chair. Mr. Haq nominated Mr. Goebel, and Ms. Waddell seconded the nomination. He was re-elected unanimously. Mr. Goebel then opened the floor for Vice Chair, and he nominated Ms. Waddell. Her nomination was seconded by Mr. Collins, and she was re-elected unanimously.

3. **Petitions and Amendments:** None.

4. **Approval of Minutes of March 10, 2026, Meeting:** Mr. Goebel made a motion to approve the March 10, 2026, minutes as presented. The motion was seconded by Ms. Waddell, and the minutes were approved unanimously.

5. **Approval of Written Decision for PLG-SU-006219-2025:** Mr. Goebel made a motion to approve the Written Decision for PLG-SU-006219-2025 as presented. It was seconded by Ms. Waddell and approved unanimously.

6. **Approval of Written Decision for PLG-SU-06261-2025:** Ms. Waddell made a motion to approve the Written Decision for PLG-SU-006261-2025 as presented. It was seconded by Mr. Collins and approved unanimously.

7. **Approval of Written Decision for PLG-SU-006258-2025:** Mr. Goebel made a motion to approve the Written Decision for PLG-SU-006258-2025 as presented. It was seconded by Ms. Waddell and was approved unanimously.

8. **PLG-A-006339-2025 (Mr. Geoffrey Pearson, Code Enforcement Program Manager)**
The petitioner is appealing the determination of planning staff, as allowed by Article 19-41 *Appeals of Administrative Decisions*, that a residentially-zoned property is in violation of Sections 4-11 and 20-13-1 of the Wake County Unified Development Ordinance (UDO).

Voting Members
Five voting members were identified:

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

Location
WAKE COUNTY PIN: 1639 45 1941
ZONING DISTRICT: Residential-30 District (R-30)
LAND USE CLASSIFICATION: Nun-Urban Area/Rural
WATERSHED: N/A
CROSS REFERENCE FILES: N/A
APPLICANT: Tim Fowler, d.b.a. Do Whatever's Necessary LLC
PROPERTY OWNER: Tim Fowler, d.b.a. Do Whatever's Necessary LLC.
PROPERTY SIZE: 1.35 acres
CURRENT LAND USE: 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 Application, all of which were accepted into the record. Mr. Pearson explained that the applicant is appealing Planning staff's decision that the residential property located at 8916 White Oak Rd is in violation of sections 4-11 and 20-13-1 of the Wake County Unified Development Ordinance (UDO). The petitioner is Timothy Fowler, doing business as Do Whatever's Necessary, LLC.

The subject site is located at 8916 White Oak Road and is located in the St. Matthews Township near Garner's ETJ. The parcel consists of 1.35 acres and is zoned Residential-30 District, with surrounding properties residentially zoned and developed. On November 12th, 2025, Wake County Planning Division received a complaint that the property was being used to park and / or store vehicles as part of a prima facie business. Upon further research, it was discovered that a business named "Latonya's Parking and Storage" was being advertised as operating from this residential location. Based on this information, a zoning Notice of Violation letter was issued to the property owner, Mr. Tim Fowler, d.b.a. Whatever's Necessary, LLC on December 2, 2025, and an appeal was filed on January 5, 2026.

Mr. Fowler is appealing staff's determination that the property is in violation of the UDO, contending that he is personally not operating the commercial parking business, and that the tenant renting the property is in violation. Mr. Pearson explained that the primary purpose of this hearing is to determine if the Notice of Violation which was issued to the petitioner was issued correctly and not in error. He noted that the burden of proof for the case lies with the petitioner.

Article 20, Section 20-12-1 of the UDO (Responsibility for Violations) states the following:

The following persons may be jointly and severally responsible for violations of this ordinance and subject to enforcement: 20-12-1 Any owner of the property on which a violation of this ordinance occurs.

In reviewing the Articles of Incorporation submitted to the Secretary of State, Mr. Timothy Fowler is listed as the registered agent for Do Whatever's Necessary LLC. Subsequently, Mr. Fowler has been verified as the property owner and would be responsible for the violation occurring at 8916 White Oak Rd. Furthermore, Article 19, Section 19-42-1(A) of the UDO (Permit Required) states the following:

No excavation may be commenced, no wall, structure, premises, or land used, building or part thereof may be built, constructed, or altered, nor may any building be moved, no may any sign be erected or structurally altered (unless exempted), until application has been made and the proper permit has been obtained. This permit requirement includes prima facie businesses or activities.

Mr. Pearson stated that Mr. Fowler does not have development approval to operate the commercial parking business on this residential property. Zoning regulates the use of land and property. As such, Article 4, Section 4-11 of the Wake County Unified Development Ordinance provides a Land Use Table to determine specific uses in each of the Zoning Districts. In this case, staff has identified the use of the appellant's property as Commercial Parking. Section 4-11 of the UDO prohibits commercial parking operations in the Residential-30 Zoning District, and subsequently a Notice of Violation was issued for this unlawful activity.

Mr. Pearson provided photos from Facebook advertising Latonya's Parking and Storage, along with aerial maps of the site which currently show a house and outdoor storage of vehicles.

Mr. Fowler objected to staff's presentation and was sworn in to explain that the photographs were not current. He testified that the vehicles had been removed from the property and the Facebook listing had been removed after discussions with his tenant. Mr. Fowler testified that none of the conditions presented are onsite anymore, and furthermore, 25% of the property was currently under the control of NCDOT, related to the 540 expansions. Mr. Pearson clarified that the appeal from the petitioner is related to conditions at the time of the issuance of a Notice of Violation, not the current conditions on the property. The County is seeking compliance, which it has received, but the appeal before the Board by petitioner is disputing that the Notice of Violation was issued properly and correctly.

Ms. Waddell asked for clarification regarding the Notice of Violation, confirming with Mr. Pearson that the notice does not issue a fine, and that if the issue has been rectified, no further action would take place unless further violations were identified. Mr. Haq asked for clarification regarding the owner of the property, and Mr. Pearson explained that Do Whatever's Necessary LLC is listed as the owner, and Mr. Fowler is the registered agent for the LLC.

Staff concludes that based on evidence presented, it is their determination that the Notice of Violation issued on December 2nd, 2025, was not issued in error, and that Sections 4-11 and 20-13-1 of the UDO do apply.

Mr. Stephenson asked for clarification of the scope of this case, specifically whether the staff's Notice of Violation was accurate at the time of issuance, and Mr. Murphy indicated he was correct. Mr. Stephenson noted that many of his questions would not apply under this criterion. Mr. Goebel asked if the Deed for the property was listed under Do Whatever's Necessary LLC, and Mr. Pearson explained that a Notice of Violation is issued to the property owner listed on the tax records. For the subject property, the owner is listed as Do Whatever's Necessary LLC, and based on cross-referencing with the Secretary of State, Mr. Fowler was determined to be the owner. Mr. Goebel stressed that the LLC is listed as the property owner and Mr. Fowler as an individual is not.

Mr. Fowler declined to cross-examine staff and began his testimony.

Applicant's Presentation

Testimony by:

1) Tim Fowler, Registered Agent, Do Whatever's Necessary LLC

Mr. Fowler was sworn in and began by clarifying that Do Whatever's Necessary LLC, a real estate entity he created to obtain a DCSR loan, is the owner of the property. At the time of the violation, the property was under impact from ongoing construction right-of-way acquisition from NCDOT. This construction impacts normal use of the driveway area and has resulted in temporary changes in how vehicles are situated on the property. He disputed the notion that he was responsible for the violation, noting that the tenant maintains possession and control of the premises, and was conducting business in violation of her lease. Mr. Fowler testified that he has not operated, authorized, or conducted any commercial parking business at the location. To his knowledge, any increase in vehicles has been temporary and influenced by the unique circumstances related to the construction access limitations. There has been no intent to violate any applicable regulations and Mr. Fowler indicated that he has acted in good faith based on the information available to him. He is working to comply with the County to address the Notice. Mr. Fowler testified that he was never provided evidence of the alleged violation prior to this hearing, and requested that the case be dismissed or given adequate time to ensure full compliance.

Mr. Goebel asked if any additional evidence would be submitted, and Mr. Fowler responded that he had the lease and photos of the site in its current state. Mr. Goebel explained the scope of the Board's decision in this case. Mr. Fowler testified that he did not believe Do Whatever's Necessary LLC was in violation at the time of the notice. He was not in control of the property, only the owner, and he was not maintaining it in any way. Mr. Goebel reiterated that the property owner is subject to the violation per the Wake County UDO, and Mr. Fowler explained that he understood that he was responsible for compliance. He did not agree with the assessment that the property owner should be held accountable before being provided with information, and that once he was aware of the situation, he notified the tenant that all advertisement must cease. He testified that he did not know how someone could violate the UDO if they were unaware of it.

Ms. Waddell clarified for Mr. Fowler that while the County is required to send the Notice of Violation to the property owner, he was not operating the business and has demonstrated good faith in working to rectify the situation. If the cars have been removed, the advertising has been taken down, and the business is not operating, as Mr. Fowler testified, there would be no further action taken by the County. From everything Ms. Waddell heard during testimony, it seemed clear that Mr. Fowler was currently in compliance, so the Notice of Violation has been resolved. Mr. Fowler disagreed, asking who is responsible for determining ownership of vehicles on the property, and Ms. Waddell responded that unfortunately, violations are tied to the property itself. Mr. Fowler explained that he did not understand why he was responsible for determining if a violation occurred.

Mr. Murphy interjected to clarify, explaining that County staff is responsible for investigating any complaint about a violation of the UDO occurring on any property in their planning jurisdiction. If County staff, after that investigation, substantiates the complaint and determines that there is a violation of the ordinance on the property, it is by ordinance and statute the property owner's responsibility to make sure the violation is rectified. Mr. Fowler asked if the County did their due diligence in determining who the cars belonged to, and Mr. Murphy clarified for Mr. Fowler and the Board that they have heard testimony from County planning staff about their investigation. As a result of their investigation, staff testified that their findings were sufficient to issue the Notice of Violation. Mr. Fowler's testimony disputes staff's testimony. The Board must determine the narrow issue of whether County planning staff was correct in issuing the Notice of Violation in December of 2025.

Mr. Haq acknowledged the appellant's frustration, adding that he too had been a landlord and that it can be frustrating being responsible for the actions of a tenant. He noted that Mr. Fowler testified that the photos were outdated, but that the ground level photos presented by staff showed commercial parking, which were unlikely to be the tenants. Mr. Fowler believed that the vehicles on site belonged to NCDOT and were related to an acquisition of his property in September of 2025. The vehicles were temporarily relocated to the site but were never permanently on the premises. Mr. Haq asked if the violation had been corrected, and Mr. Fowler responded that he did not believe any violation took place, as no vehicles were permanently stored on the property. Furthermore, he was unaware of the business advertising services at any time prior to receiving the Notice of Violation.

Mr. Cebina recounted Mr. Fowler's testimony, adding that from the County's perspective, any compliance issued had been dealt with, and asked what Mr. Fowler's concerns might be moving forward. Mr. Fowler responded that he was uncertain what future violations might entail if his tenant continued using the site for inoperable vehicles or ones she did not own. Mr. Pearson noted that the County responds to complaints if they are received as a passive enforcement agency. The site is in compliance and would not be subject to further site visits without a corresponding complaint. The vehicles would only be an issue if they were attached to the land use for commercial parking. Mr. Goebel confirmed that the Notice of Violation was not a judgement and would not negatively impact the owner or LLC on the public record, and Mr. Pearson indicated that was correct.

Ms. Waddell asked for clarification regarding the code enforcement process and any future violations, and Mr. Pearson explained that a continuing violation would be referred to the County Attorney's office, who would provide a deadline to cease. Failing that, it would be referred to a judge, but the County's preference is to continue to work with the owner and seek compliance. Mr. Haq asked about the objection to the photos submitted by staff, and Mr. Pearson indicated that the pictures originated from the tenant's Facebook page and he could not pinpoint the date they were taken. Mr. Haq asked what the timeline to correct the violation would be, and Mr. Pearson explained that the appeal must be filed 30 days from the issuance of the Notice.

Mr. Stephenson asked if staff's testimony was that the investigation showed a violation on December 2, 2025, and Mr. Pearson indicated it was. Mr. Fowler objected, noting that staff could not demonstrate when the Facebook photos were taken. Mr. Stephenson asked if Mr. Fowler had evidence contradicting Mr. Pearson's testimony that a violation existed on December 2, 2025. Mr. Fowler responded that he did not see the purpose of this question, but that he did not have evidence contradicting staff's testimony. However, he had no idea of the violation in question and that it had subsequently been addressed. Mr. Stephenson noted that the purpose of his appeal was to dispute that the Notice of Violation was issued correctly, and Mr. Fowler testified that a Facebook page and vehicles being present did not prove the presence of a commercial business.

Mr. Goebel read into the record what the listing of Latonya's Parking and Storage Facebook described: "We store vehicles for the duration of the client's preference, whether you're parking your car, van, truck, 18-wheeler, trailer, tow-truck, box truck, or business vehicle. We're open 24 hours a day, daily, weekly, bi-weekly, monthly rates." Mr. Goebel indicated that it is the definition of a business to him, and Mr. Fowler argued that it demonstrated the intention of a business, not that she rented the space, and that he could not personally confirm it was a business. Mr. Goebel responded that he understood Mr. Fowler's position, but that from his perspective the situation had been remedied and the violation had ceased.

Mr. Goebel opened the floor for public hearing and with no respondents, closed for Board Discussion at 10:01 a.m.

Board Discussion

Mr. Goebel indicated that the determination to be made by the Board was whether a violation was in place at the time the Notice was issued. Their determination was not related to whether the violation has been rectified. Based on testimony provided, a violation was identified and notice was accurately provided to the parties. Staff and the petitioner both provided evidence that activity on-site was a commercial business, and that based on the description of the activity from the tenant, it met Mr. Goebel's criteria for Commercial Business, and that the Notice of Violation was issued correctly.

Mr. Goebel also noted that the testimony shows that the owner of the property is Do Whatever's Necessary, LLC, and that this Notice of Violation does not impact Mr. Timothy Fowler as an individual party.

Motion on PLG-A-006339-2026

Mr. Goebel made a motion that based on the applicable Wake County Unified Development Ordinance provisions, and on the evidence submitted in the matter of PLG-A-006339-2026, that the Board find and concludes that Planning staff's determination should be upheld, and issuance of the Notice of Violation is affirmed. The motion to affirm is based on the following findings of fact and conclusions of law related to:

1) That a commercial business was operating on the property at the date of the Notice of Violation

The motion was seconded by Ms. Waddell and was approved unanimously.
Mr. Goebel called a brief recess at 10:05 a.m. and the meeting resumed at 10:12 a.m.

9. **PLG-A-006460-2026 (Mr. Geoffrey Pearson, Code Enforcement Manager)**
The petitioner is appealing the determination of planning staff, as allowed by Article 19-41 *Appeals of Administrative Decisions*, that a residentially-zone property is in violation of Sections 4-11, 19-42-1(A) and 20-13-1 of the Wake County Unified Development Ordinance (UDO).

Voting Members
Five voting members were identified:

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

Location
WAKE COUNTY PINs: 1860 26 9864
ZONING DISTRICT: Residential-30 District (R-30)
LAND USE CLASSIFICATION: Non-Urban Area/Rural
WATERSHED: N/A
CROSS REFERENCE FILES: N/A
APPLICANT: Michael Paul, Attorney
PROPERTY OWNER: Charles Dennis and Carolyn H. Perry
PROPERTY SIZE: 98.34 acres
CURRENT LAND USE: Residential / Agricultural

Documentary Evidence Accepted into Record

- Staff Report
- Staff Presentation
- Applicant's Application

TESTIMONY AND EVIDENCE PRESENTED

Testimony by Geoffrey Pearson

Mr. Pearson presented the Staff Report, Presentation, and Applicant's Application, all of which were accepted into the record. Mr. Pearson explained that this item is an appeal of zoning staff's decision that a residential property is in violation of Sections 4-11, 19-42-1(A) and 20-13-1 of the Wake County Unified Development Ordinance (UDO). The Petitioner is Mr. Michael Paul, attorney with Michael Paul Law Offices, PLLC. The site is located at 1613 Averette Road, located in the Wake Forest Township near Rolesville. The parcel consists of 98.24 acres and is zoned Residential-30 District, with surrounding properties residentially zoned and developed.

Since October 2025, the Wake County Planning Department received several emails from a citizen stating that the property located on 1613 Averette Road was in violation of the UDO. The complaint alleged that Averette Road Landscape Supply, which is a commercial retail and service business that operates from the property, did not have zoning approval to operate the commercial business. Zoning staff conducted an investigation into the complaint and determined that the business began its operation sometime in the mid-1990s. A retail sales and service operation with outdoor sales and storage is not permitted within the R-30 Zoning District, and staff could not verify if the use was legal. On January 15, 2026, a zoning Notice of Violation was issued to the property owners for operating a commercial retail landscape supply business without development approval and an appeal was filed on February 6.

Mr. Paul is appealing staff's determination that the property is in violation of the Wake County UDO. The primary purpose of this hearing is to determine of the Notice of Violation was issued to the petitioner correctly and not in error – the burden of proof for the case lies with the petitioner.

Mr. Pearson testified that the subject parcel consists of 98.34 acres, however the portion where the retail sales operation occurs consists of approximately 25 acres. Initial zoning of Residential-30 was applied to this parcel in 1960, and the original zoning ordinance of 1964 did not allow commercial retail landscape supply businesses with outdoor storage as a permitted use. He provided a slide of the current Land Use Table, which indicates the use is not permitted under current UDO standards. In order for a use to be legally non-conforming or "grandfathered," it must be legal at the time it was established. Subsequently, staff believes the zoning Notice of Violation was not issued in error.

Mr. Pearson provided photos from the site, indicating the commercial retail landscaping and supply business operated on the premises. Items are not produced on the property and are delivered from other commercial businesses and sold on-site.

It is staff's determination that, based on evidence presented, the Notice of Violation issued on January 15, 2026, was not issued in error, and Sections 4-11, 19-42-1(A) and 20-13-1 of the UDO do apply.

Ms. Waddell asked if any remedy beyond rezoning was available for the property, including a Special Use Permit, and Mr. Pearson explained that outside of rezoning, there were no other options to remedy the violation and enter into compliance. Mr. Haq asked for clarification regarding any previous complaints, and Mr. Pearson responded there had been none between the mid-1990s and today. Mr. Haq inquired if the business could continue operations barring a complaint, and Mr. Pearson responded that the case presented today precluded that possibility. Mr. Haq asked if the UDO had provisions that might permit "grandfathering" the business, and Mr. Goebel clarified that the appellant has raised the issue of "grandfathering" as a basis of the appeal. Accordingly, he would prefer to hear the appellant's presentation regarding that option. Mr. Cebina asked if the complaint originated from another business or an individual, and Mr. Pearson confirmed that an individual had filed the complaint.

Mr. Goebel called the appellant to the lectern to begin his presentation.

Applicant's Presentation

Testimony by:

1) Michael Paul, Attorney, Michael Paul Law Offices PLLC

Mr. Paul was sworn in and introduced himself as the attorney for Mr. and Mrs. Perry, owners of the property. He provided the Board with a packet including a Statement of Facts, Case Law, and Statutes that would support the arguments he intended to present. Mr. Goebel asked if this was evidence or information, and Mr. Paul indicated they were informational in nature and would not be considered argumentative. Mr. Goebel entered the packet into the record, and Mr. Paul began his testimony.

The Perry's have owned 1613 Averette Road since 1980 and have been operating the Landscape Supply Company for nearly 30 years, contending that the County has observed and allowed it to exist, and now cannot lawfully prohibit. Mr. Paul indicated that additionally, he believed that the complainant in this case lacked standing, as the enforcement action appears to have been triggered by someone with no direct connection to or impact from this property. While Wake County may investigate complaints administratively, quasi-judicial enforcement and appeals require evidence-based determinations grounded in actual impacts, not speculative or generalized grievances. The complainant is not an adjacent or nearby property owner, and there is no allegation of specific injury, harm, or interference. Mr. Paul stated that the complaint reflects at most a generalized objection to land use, not a legally cognizable injury. North Carolina Courts have consistently distinguished between generalized public concerns, which do not justify enforcement against long-standing uses and concrete particularized harm, which may support action. The absence of any demonstrable adverse impact underscores the arbitrary nature of the enforcement action and weighs heavily in favor of dismissal.

In 1997, nearly a decade before the adoption of the current UDO, Mr. Perry established a landscape supply business on the property, which has operated consistently, openly, and without interruption for over 29 years. Although the ownership of the business entity has changed over time, the operation itself has remained the same, and has been continuously owned by Mr. Perry. The property has been used as a retail landscape supply business, open to the public, use has been visible from the public rights-of-way, and the Perry's have remained the continuous owners of the land. This uninterrupted continuity of ownership is legally significant under North Carolina land use law and directly supports the existence of a lawful non-conforming use and vested rights. Even if the County now asserts that the use was not formally approved, which unfortunately there is no record of, decades of open operation combined with government inaction creates a vested right.

North Carolina recognizes that vested rights arise when a property owner makes substantial expenditures and good faith reliance on existing conditions or government acquiescence and continues that use over a significant period. For almost 30 years, the business has operated openly. The owners have made substantial investment in the property, equipment, inventory, and infrastructure, and the County has taken no enforcement action whatsoever. Mr. Paul noted that this prolonged acquiescence reasonably induced detrimental reliance that the use was lawful. It would be inequitable, and legally improper to reverse course now. The business has become a community enterprise, serving the general public, has become a known and relied upon resource, and has operated without complaint or disruption. The long-standing presence reinforces that the use is not only continuous, but integrated into the surrounding area, further supporting its protection as a lawful, non-conforming use.

Mr. Paul also testified that immediate termination would also violate constitutional protections. The County's directive to immediately cease operations is legally excessive and constitutionally suspect. Such an action would destroy an ongoing business, eliminate significant economic value, disrupt employees, customers, and operations. Mr. Paul sites concern under due process for arbitrary deprivation of property rights and takings principles, where government action is depriving property of economic use without compensation. Courts are highly skeptical of abrupt enforcement actions against long-standing uses, particularly where the government has allowed the use to persist for decades. Counties also equitably stop from enforcement under the doctrine of equitable estoppel. A property owner relies on government conduct or inaction, the reliance is reasonable, and the owner would suffer harm if the government reverses position. Here, the County has allowed use to continue for nearly 30 years. The business has paid taxes, operated openly, maintained visible commercial activity, and no enforcement action was taken during that entire period. This prolonged inaction constitutes implicit government acceptance. To now enforce the Ordinance would result in substantial and unjust prejudice, making enforcement inequitable and improper.

Mr. Paul added that North Carolina imposes a seven-year statute of limitations on local government enforcement on land use violations where the violation is open and visible. This limitation period begins when the violation is apparent from a public right-of-way or in plain view from a place open to the public. Both conditions are unquestionably satisfied in this case. Business has operated in full view of Averette Road for decades. Signage and commercial activity have been continuously visible, and the public has been invited onto the property for retail transactions. Because the alleged violation has been open, obvious, and continuous for far longer than seven years, the County has been time-barred from enforcement as a matter of law. The statutory bar is independent of, and in addition to, the non-conforming use of vested rights.

Mr. Paul noted that, in sum, this case represents a textbook example of protected, long-standing land use that cannot lawfully be terminated. The County's enforcement action is improper because the use has been continuous for nearly 30 years. It qualifies as a lawful, non-conforming use. The owners have acquired vested rights through detrimental reliance in investment. The County is equitably estoppel from enforcement. The claim is barred by the seven-year statute of limitations, and immediate cessation would raise serious constitutional concerns. Accordingly, the Perry's respectfully request that the Notice of Violation be withdrawn, the complaint be dismissed with prejudice, and the continued operation of the landscape company be recognized as lawful.

Mr. Goebel indicated that without the complainant present, it was likely not relevant to challenge the issue of standing. The nature of the appeal is regarding the County's decision to issue a Notice of Violation, and asked for clarification why the complainant would be cause to dismiss the case in its entirety. Mr. Paul responded that the complainant had no direct harm imposed, and Mr. Goebel asked why that was necessary. Mr. Paul responded that direct harm was typically a case of controversy, and in this case, there is no direct cause for a complaint to be issued, which the County would be obligated to investigate. Ms. Waddell asked for clarification from counsel about the County's obligation to investigate a violation, and Mr. Murphy confirmed it was obligated.

Mr. Goebel indicated that he had additional questions about Mr. Paul's case, and would address them somewhat out of order. He noted that the Statement of Justification mentioned Session Law 2017-10, Senate Bill 131, GS 1-49-3 with respect to the 7-year statute of limitations. To clarify for the other Board members, Mr. Goebel explained that a statute of limitations is a defense, but it is also a bar to proceeding which prohibits action after a certain point in time. This particular statute was drawn up in 2018 and bars a County or local government actions in enforcing zoning.

The specific language of General Statute 1-49 pertaining to the 7-year statute of limitations states "within seven years an action against an owner of an interest in real property by a unit of local government for a violation of land use statute, ordinance, or permit, or any other official action concerning land use carrying the effect of law. Subdivision does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety but does prescribe an outside limitation to seven years from the earlier of the appearance of any of the following: A) the violation is apparent from public right-of-way, B) the violation is in plain view from a place to which the public is invited." Mr. Goebel indicated that, based on testimony from staff and Mr. Paul, that there is ample evidence the business is being operated with advertising from the street and that it has been in operation for well over seven years. Mr. Goebel asked for clarification regarding General Statutes 1-2, which states "(a)n action is an ordinary proceeding in a court of justice by which a party prosecutes another party for the enforcement or protection of a right to redress or prevention of a wrong or the punishment or prevention of a public offense," because the purpose of the appeal surrounds the issuance of a Notice of Violation, not an action in an ordinary proceeding of a court of justice. Mr. Paul responded that the 7-year statute of limitation was introduced in the event that the Board rules against Mr. and Mrs. Perry, where he felt confident an appeals court would rule in his clients' favor.

Mr. Goebel asked for clarification regarding the use of "grandfathering" when testimony indicated that this was a lawfully non-conforming site, and Mr. Paul agreed that he would characterize it as non-conforming. Mr. Goebel noted that UDO Section 7-10-4 defines "any lawful non-conformity that existed on April 17, 2006, or situation that becomes a lawful non-conforming use structure or feature upon adoption of any amendment to this ordinance may be continued in accordance with the regulations of this Article." Mr. Goebel asked if that would qualify as an authority for "grandfathering" and Mr. Murphy indicated that it was. Mr. Goebel asked for clarification that it would need to be a legal non-conformity, and Mr. Paul noted that he cannot state definitively that it was legally non-conforming because there is no record on either side regarding transactions prior to the opening of the landscape supply company in the mid-90s prior to its opening in 1997.

Mr. Goebel explained that the language of the UDO strictly defines a non-conforming use, and that for "grandfathering" to be eligible, it must be a lawful non-conforming use. Per the UDO, a "non-conforming use is a use of land or structures that lawfully existed or for which a vesture right was established before the adoption or amendment of this ordinance, but that fails by reason of such adoption or an amendment to conform to the use regulations of the zoning district in which it was located". When asked if the property was a lawful use prior to this UDO Section, Mr. Paul responded that it may well have been. Ms. Waddell asked if the site was R-30 and continued to be R-30 with no point in the Ordinance allowing for Commercial Use, would that preclude an example of the property being in lawful use. Mr. Pearson responded that it was correct with the caveat that the total property is 98 acres, the majority of which is presently used as a bona fide farm. If the farm produced material like hay which was sold onsite, it would be farm exempt. Hypothetically, a consideration could have been made that this qualified as farm exempt, but there is no current example of that determination being made. Accordingly, it is not considered lawfully non-conforming. Ms. Waddell noted that staff's testimony indicated the materials were not produced on-site, and Mr. Pearson agreed, but that it would be possible to consider options regarding that and the appeal decision.

Mr. Cebina noted that if it is operating outside of allowed zoning, by definition it would be noncompliant, and Mr. Pearson responded by explaining "grandfathering". He noted that it is a layman's term to refer to a non-conforming use, but that the important component is the term "legal" before non-conforming. For example, if the landscape supply business existed in 1958 and had continued operation without interruption, the Zoning Ordinance adopted in 1964 would create a legally non-conforming use because the business existed prior to the adoption, when no law prohibited it. While it would technically be considered illegal, the use can continue because it predated the existence of the law. Mr. Cebina asked if the uncertainty regarding the use was tied to the period between the business opening in 1997 and the adoption of the UDO in 2006, and Mr. Paul responded that there are no records regarding a discussion between the owners and the County regarding a non-conforming use at that time. Mr. Cebina asked if they operated under a business license, and Mr. Paul responded he was unsure, but that they pay taxes every year.

Ms. Waddell asked for clarification regarding the legally non-conforming component regarding whether the use on the property or the zoning on the property took precedent, and Mr. Pearson explained that zoning ordinances were adopted in 1964, updated in 1990, 1997, and again until the current UDO in 2006. In each of these iterations, the property would not be in compliance with the zoning on that parcel (R-30).

Mr. Haq observed that in the absence of a complaint, non-conforming uses could continue undisturbed, and Mr. Paul responded that it has done exactly that for 30 years. Mr. Haq asked the appellant how he related the statute of limitations to the "grandfather" clause, and Mr. Paul indicated that the statue imposes an obligation on the County to find businesses that are non-compliant and then issue a Notice of Violation within 7 years. This business has been in operation for 29 years without complaint, without any gaps in performance, and has not changed since 1997. The County should not be permitted to order the business to cease operations because it is non-conforming. Mr. Haq proposed a hypothetical regarding a complaint made in the future, inquiring if the case would remain the same. Mr. Paul indicated that it would depend on how the Board ruled, but the exercise would remain essentially the same.

Mr. Haq asked counsel for a definition of "grandfathering" and clarification on the statute of limitations. Mr. Murphy responded that his advice to the Board is that it applies to actions in court brought by the County to enforce its Unified Development Ordinance. The statute of limitations piece, does not apply to administrative actions brought by a County, such as a Notice of Violation to enforce its UDO. With respect to the legal non-conformity or "grandfathering" issue, he noted that under the County's UDO and under State Statutes in Chapter 160-D, to be considered a legal non-conforming use, the use in question must have been legal at some point before the zoning ordinance being enforced was adopted. Mr. Stephenson asked for clarification regarding when the business was considered legal, and Mr. Murphy explained that he would advise the Board to consider UDO provision 7-12-1, which defines non-conforming uses as "a use of land or structures that lawfully existed or for which a vested right was established before the adoption or amendment of this ordinance." Zoning was first applied to this piece of property in the 1960's, and based on testimony, in 1964 this type of use was specifically prohibited in the R-30 zoning district where the property sits. When the use being discussed was established in 1997, the zoning ordinance that was then in effect did not allow this use on the property, such that when the UDO was enacted in 2006, there was not a lawful use existing on the property because it was not a lawful use under any previous iteration of the zoning ordinance.

Mr. Paul responded that the Board is being asked to consider that this business has been in operation continuously for 30 years with public knowledge of its existence. Considerable investments have been made in the business, buildings, infrastructure, supplies, and in building a client base. They have operated right on the road with signage. Mr. Paul argued that, at some point, there should be an equitable estoppel because of the length of time the business has been in operation, the amount of investment, and the reliance upon no action by the County that something was awry.

Mr. Cebina asked counsel if another mechanism existed for a more streamlined fashion towards compliance, and Mr. Murphy indicated that testimony from staff stated that a Special Use Permit was not allowable for this type of use in the R-30 zoning district. Mr. Pearson responded that for the purposes of this hearing, the Board's decision-making powers under UDO Article 19, Section 19-41-7(A)(1) is that "(t)he Board of Adjustment is the final decision-making body on appeals in Wake County. The Board may reverse or affirm in whole or in part, or may modify the order, requirement, decision, or determination appealed from, and may make any order, requirement, decision, or determination in its opinion ought to be made in the circumstances."

Mr. Goebel asked counsel if the Board has the authority to act on the statute of limitations or not, and Mr. Murphy responded that the UDO provision read by himself earlier (which is consistent with General Statute provision 160D-406) gives the Board very broad discretion. When hearing an appeal, the Board may reverse or affirm wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made." If this Board determines that the statute of limitations should apply in the manner that Mr. Paul has indicated it should, it is within their powers to make that determination.

Ms. Waddell clarified that the appeal they are being asked to rule on is based on the decision of staff. Though their power is broad, they do not have the authority to make the use allowed if staff does not also have that power. That would be a mechanism of either rezoning or a Special Use Permit if necessary. She asked counsel to clarify what their focus should be, and Mr. Murphy responded that they are being asked very narrowly to determine whether the Notice of Violation was issued properly, and whether circumstances existed that justified its issuance. He reiterated that a Special Use Permit was not an option, and there is no guarantee a rezoning request would be successful, but those avenues would not be up to the Board to determine.

Mr. Cebina asked if the Board had the authority to issue a stay until a rezoning process took place, and Mr. Murphy responded that the Notice of Violation would stay as it has during the pendency of the appeal, but any decision by the Board would not create a mechanism to stay it. Mr. Goebel noted that the scope of the case related to the Notice of Violation, not any enforcement or potential court actions. Ms. Waddell added that during a proceeding of rezoning, staff would not pursue a Notice of Violation or further action in the interim. Mr. Pearson concurred that any procedural actions would be met in good faith that the applicant is working through the process.

Mr. Paul responded that the business in question has been in place for 30 years and is relied on by customers, employees, and fellow businesses. It would be a true loss and a huge detriment to the owners and business operators for it to cease operations. For the duration of its existence, there have been no complaints, and now the action and responsibility has fallen to the Board by a complainant who has no pecuniary interest at all. Mr. Goebel noted that his position is not falling on deaf ears during this proceeding. Mr. Stephenson asked counsel to clarify whether the Board is permitted to consider the statute of limitations argument with respect to ruling on staff's Notice of Violation. Mr. Murphy responded that the Board must determine whether it applies or not, and then the majority vote of the membership is needed to make a determination as to whether it bars this proceeding or not, relative to the Notice of Violation. Mr. Paul argued that the equities here argue in favor of respecting the statute of limitations because of the long-standing use, and it is arguably the case that an appeals court might reach that conclusion.

Mr. Murphy asked Mr. Paul to clarify earlier testimony regarding vested rights, specifically whether the appellant contended that it had been established. Mr. Paul responded that the equities were in favor of his client, having started the business 29 years ago. They made substantial and significant investment in the operation, built a business, and developed a clientele. The business had no problems with the County for 30 years, and his clients pay their taxes and employees. Every aspect of the operation of the business has been conducted correctly. The County has stepped in after 30 years and stated that they cannot conduct their business. Mr. Paul stated that it seems like after 30 years of running the business in a correct manner that they do have some vested right in continuing the operation.

Mr. Murphy responded that, as he understands it, one of the prongs to establish a common law vested right is there must be valid governmental approval, and neither party has evidence of that in the context of land use. There is no permit issued by the County planning staff. He asked Mr. Paul if he or the owners had any other evidence of valid governmental approval, and Mr. Paul responded that governmental acquiescence in action, but also that payroll, property, and business taxes have been paid for 30 years. They are also a licensed business and file reports with the State. Mr. Murphy asked when the first business license was paid for or acquired, and Mr. Paul responded 1997.

Mr. Goebel asked if it would be possible to allow the appellant to provide supplemental evidence in the form of tax bills, licensing fees, or additional documentation, and Mr. Murphy responded it was within the Board's power to defer decision on a matter to provide either party the opportunity to submit relevant evidence. Mr. Goebel then asked Mr. Paul if he would accept the opportunity to submit more evidence, and he responded that if it would help his clients, he would. Mr. Murphy read Board of Adjustment Rule 20, Subsection G, which states "to continue a hearing to a certain time or day, the Board may defer decision of a pending petition to the next regular meeting of the Board and is appropriate when more information is needed. This postponement may exceed 30 days or the next regular meeting, whichever occurs later, only with the consent of the petitioner."

Mr. Goebel asked if the next scheduled meeting had any items on the agenda, and Mr. Finn responded that there could be 1-3 cases as of this morning. Mr. Goebel suggested the June meeting, and asked if the appellants could consent to that meeting date, and Mr. Paul responded they would. Ms. Waddell expressed concern about continuing the case if the Board is unlikely to change their decision. Mr. Goebel indicated he was welcome to open the floor to Board discussion prior to making a procedural motion to continue the case to a June hearing date.

Mr. Goebel opened the floor for public hearing and with no respondents, closed for Board Discussion at 11:15 a.m.

Board Discussion

Ms. Waddell indicated that she was hesitant to continue the case as she did not feel additional information was likely to change her thought process. She explained that while the Board is able to consider the statute of limitations, the scope of what they are being asked in the appeal is related to whether or not a violation took place and notice was adequately rendered. Ms. Waddell noted that she was open to finding a way for the applicant to come into compliance, but did not want to create an expectation that a continuance of the hearing would guarantee that. The existence of tax records would not, in her opinion, create a presumption of a lawful business because there are still no records of permits. She also felt that counsel had demonstrated that the statute of limitations did not apply with respect to this venue.

Mr. Goebel concurred regarding the statute of limitations, but his point of interest for a continuance relied on the vested rights and the equity arguments. He did not feel that he heard enough to make a determination based on the equity arguments, but that they do have some weight if a vested interest can be established. To that end, he supported continuing the case. Mr. Haq agreed with both arguments, but indicated he was leaning in the direction of having all available records, including business permits, taxes, and other licenses. This would allow them to demonstrate they have been in business with the County or the State, and he was in favor of providing them more time to present evidence of the business' legitimacy. This would also prevent future challenges if the appellant could present evidence of a legally non-conforming business. Mr. Goebel asked counsel if their ruling would preclude a future complaint from having standing before the Board.

Mr. Murphy responded that it likely would, as the Board would have fulfilled its quasi-judicial function of determining that this is, in effect, a lawful use. If a vested right existed before the UDO was adopted in 2006, then under Section 7-12-1, that would be a legal non-conforming use. If the business were to stop for some period of time, it would cease to be legally non-conforming, so if a cessation took place, there would be grounds for a Board determination. If the business remained in continuous use, it would preclude further zoning enforcement on the property for the same use.

Mr. Stephenson indicated that his thinking was along the same lines as Ms. Waddell, and that there is a clear path to a decision based on their authority to weigh the statute of limitations argument. He noted that the existence of the business and its operation since 1997 is uncontested. Mr. Goebel responded that the request for more evidence regarding taxes is relevant to the vested rights issue. The statute of limitations argument applies to an action in court. Mr. Cebina expressed support for a continuation, explaining that he felt more evidence would be fair for the appellant. A business operating for 30 years, paying taxes and licensing, would be better served by being provided another hearing. He added it would be constructive for the County and its constituents to understand the reasoning for their decision in light of all evidence being presented. Mr. Spanioli noted that he agreed with the points presented by other Board members during discussion.

Mr. Murphy asked for clarification regarding the voting members and whether Mr. Cebina would continue as the voting alternate, or if Mr. Spanioli would vote in this case. Mr. Goebel responded that Mr. Cebina would be the fifth voting member for the case.

Mr. Goebel entertained a motion on PLG-A-00006460-2025.

Motion on PLG-A-006460-2026

Mr. Goebel made a motion to continue PLG-A-006460-2026 until the June 9th, 2026, meeting, pending further evidence from Mr. Paul and it was approved unanimously.

10. Planning, Development & Inspections Report

Mr. Finn updated the Board that as of their last technical review committee submittal date, staff received five subdivisions totaling 272 lots. He noted that was an indication of the land development pressures the County is experiencing. Four of the five subdivisions are pursuing the Open Space option rather than the lot-by-lot standard, which signifies an ongoing trend for constraints that exist on other developable properties. Three of the subdivisions came in at 100 or more lots, which pushes their average lot yield from 34 to 36 over the course of a year. Typically they would see 14-16 lots as sections of subdivisions that exist to fulfill County connectivity policies relative to these outliers.

Mr. Finn provided a refresher on the County's passive code enforcement program with a goal of compliance. Around 80% of people move towards compliance upon notification or physical visit, as they did not know they were in violation. Less than 2% of cases proceed to Cease and Desist letters from the County Attorney's office. Mr. Finn noted that code enforcement reports have increased 24% with 46 on the books that are current violations being followed up on. Some of the violations trending include ones specific to the tree and vegetation protection zone. To that end, recent interpretations are being reviewed and may potentially have ordinance amendments responding to development trends. He thanked the Board for the deliberations and actions today as it helps staff when coming ack through legislative processes with text amendments.

Mr. Spanioli asked if the 272 lots were comprised of single-family or a combination of town homes, and Mr. Finn explained that they are single-family. The development model of unincorporated County land does not support water and sewer support. Without the interaction of municipalities willing to extend infrastructure, multi-family dwellings are historically unlikely to develop. He noted that during pre-submittal meetings, Mr. Finn has seen a recent trend towards larger lots and estate lots.

Mr. Maloney reminded the Board that he will be retiring effective July 1st. The County has begun a recruitment process for his replacement with a search firm that will extend into the summer and likely beyond his tenure.

11. Adjournment

Mr. Goebel made a motion to adjourn the meeting, and it was seconded by Mr. Collins. The meeting was adjourned at 11:39 a.m.

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REGULAR MEETING
WAKE COUNTY
BOARD OF ADJUSTMENT
April 14, 2026

All petitions complete, Jeffrey Goebel declared the regular meeting of the Wake County Board of Adjustment for Tuesday, April 14, 2026, adjourned at 11:39 a.m.

Respectfully Submitted:

Jeffrey Goebel
Wake County Board of Adjustment

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