

Minutes

BOARD OF ADJUSTMENT

Regular meeting

6 p.m. May 14, 2025

Board Meeting Room of Town Hall Annex, 105 E. Corbin St.



Present: Members Sean Kehoe, Eddie Sain, Richard Chapple, Robert Iglesias and Jenn Sykes

Absent: Chair Raul Herrera and Vice Chair Dave Blankfard

Staff: Town Attorney Bob Hornik and Senior Planner Tom King

1. Call to order and confirmation of quorum

Senior Planner Tom King called the meeting to order and explained that, since the chair and vice chair were unable to attend the meeting, the board would need to elect a chair from among its sitting membership to preside over the meeting.

Motion: Member Sean Kehoe nominated Jenn Sykes as interim chair. Member Robert Iglesias seconded.

Vote: 5-0. Motion passed.

King confirmed the presence of a quorum.

2. Agenda changes and approval

There were no changes to the agenda.

Motion: Kehoe moved to approve. Member Eddie Sain seconded.

Vote: 5-0. Motion passed.

3. Minutes review and approval

Minutes from the regular meeting on April 9, 2025.

Motion: Kehoe moved approval of the April 9, 2025, meeting minutes as submitted. Sain seconded.

Vote: 5-0. Motion passed.

4. Quasi-judicial evidentiary hearings

- A. Case BA-02-2025: Durham Technical Community College Orange County Campus Expansion- Special Use Permit Modification request at 525 College Park Road (Orange County PIN 9873-33-0977). The applicant is Timmons Group. The property owners are Orange County and The Trustees of Durham Technical Community College. The request is for a 12,239 square foot, two-story addition to the southwest side of the building.

Sykes ensured there were no ex parte communications between the board members and the applicant.

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Motion to open the evidentiary hearing.

Motion: Kehoe moved to open the hearing. Sain seconded.

Vote: 5-0. Motion passed.

Sykes swore in King and Lysie Barnes of Timmons Group, a civil engineering firm representing the property owners.

King shared a PowerPoint presentation describing the history of both the Waterstone development and the subject property, including maps of the area. The presentation showed the project site plan and renderings of the proposed building, as well as listing the four findings the board must make to grant a special use permit. King offered the PowerPoint presentation as well as the electronic staff report found in the board's agenda packet into the hearing record.

The proposed construction includes a 12,239 square foot addition to the existing building, stormwater management facilities. Fifty-nine spaces in the 124-space park-and-ride lot and the existing school parking will satisfy parking generated by the building addition.

Barnes addressed the board, briefly discussed the proposed project and asked for questions.

Kehoe asked about the current building's capacity and use of the proposed addition. Barnes replied the school is at capacity and the addition will be used to expand public service training classes and skilled trade tracks offered by the college.

Iglesias asked about the proposed student population of the new facility and if the modification pairs with the community college's master plan. Barnes could not speak to the specific numbers and King stated he's aware the college has a master plan but, to his knowledge, the plan hasn't been submitted to the town for any review or comment.

Kehoe asked if the hill in front of the addition can sustain a stormwater retention facility. King responded that the plans have been reviewed by the town's technical review committee, which includes stormwater and environmental services staff. No issues about the stormwater retention facility were raised during review.

Iglesias asked if staff recommended approval of the project. King replied that staff does not formally recommend approval of projects but offers an analysis that the board can make positive findings in support of permit approval.

Motion: Member Richard Chapple moved to close the hearing. Kehoe seconded.

Vote: 5-0. Motion passed.

Kehoe expressed concern with the building's visual appearance stating that what is essentially a visually attractive façade facing a major street intersection is being replaced with a less attractive façade. Hornik directed the conversation to required Finding #3 and the proposed addition's effect on adjacent property values. Sykes reminded Kehoe that the board is not qualified to determine property values. Hornik added that discussion should be based on property value, not aesthetics. King confirmed to Chapple that all property owners within 500 feet of the property were mailed notice of the hearing, notice of the hearing was posted at the street intersection and notice had been advertised twice in the New of Orange prior to the hearing.

Hornik suggested separate votes on each of the findings.

Finding 1: The use or development is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.

Motion: Iglesias motioned to confirm the finding.

Finding: As stated in the staff report, no reasons were identified as to why the proposed development would be detrimental to public health, safety, and general welfare.
Sain seconded.

Vote: 5-0. Motion passed.

Finding 2: The use or development complies with all required regulations and standards of this Ordinance, including all applicable provisions of Articles 4, 5, and 6 and all applicable regulations.

Motion: Iglesias motioned to affirm the Finding.

Finding: As stated in the staff report:

1. The project complies with the intent of the Entranceway Special Use district as described in Unified Development Ordinance Section 4. The property is located within the larger Waterstone development: a project containing a diverse mixture of commercial, office and employment uses along a primary entrance into town.
2. There are no specific standards listed for "Vocational Schools" in UDO Section 5.
3. The town's Technical Review Committee reviewed the submitted construction drawings and found them to comply with all applicable requirements of UDO Section 6 and other town regulations.

Sain seconded.

Vote: 5-0. Motion passed.

Finding 3: The use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity.

Motion: Sain motioned to affirm the finding.

Finding: The development is a public necessity that will provide greater EMT (Emergency Medical Technician) and healthcare training that will benefit the increasing town population.

Iglesias seconded.

Vote: 5-0. Motion passed.

Finding 4: The use or development conforms with the general plans for the physical development of the town and is consistent with the Town's Comprehensive Plan.

Motion: Iglesias motioned to affirm the finding.

Finding: As stated in the staff report, the property conforms with the description of the "Employment Area" land use designation found on the Future Land Use Map.

Sain seconded.

Vote: 5-0. Motion passed.

Decision:

Motion: Kehoe moved to approve the special use permit modification with no conditions. Chapple seconded.

Vote: 5-0. Motion passed.

Motion: Kehoe moved to close the hearing. Chapple seconded.

Vote: 5-0. Motion passed.

- B. Case BA-03-2025: Holy Family Catholic Church – Variance request at 216 Governor Burke Rd. (Orange County PIN 9865-95-5127). The applicant is Civil Consultants, Inc. The property owner is Holy Family Catholic Parish of Hillsborough. The request is a 14 ft variance from the maximum 45 ft building height requirement of the R-10 zoning district.

Sykes confirmed the board had no ex-parte communication or conflict of interests regarding the proposed variance.

Motion: Kehoe motioned to open the evidentiary hearing. Sain seconded.

Vote: 5-0.

Sykes swore in King, Tony Whitaker, the applicant's representative, Tony Whitaker, and Father Ryan Elder, the property owner's representative.

King entered the staff report provided to board members in their agenda packet and a PowerPoint presentation he prepared for the case into the record. King provided an overview of the property and its history. He described the variance request referring to Table 6.3.1, Dimensional Requirements for Residential Properties, found in the Unified Development Ordinance. He read factors which can and cannot be used in granting a variance.

Father Ryan Elder, the church pastor, addressed the board and described the need for additional space to serve an increasing congregation. He expressed the congregation's appreciation for the property's greenspace, and the constraints on the property that limit church expansion plans. He stated the proposed building design seeks to respect the needs of the congregation, environment and neighbors. The congregation wishes to build a two-story church with a walk-in basement instead of multiple buildings.

Tony Whitaker, a civil engineer with Civil Consultants, Incorporated in Durham, addressed the board noting that he also had a PowerPoint presentation to show the board and offered it into the record. He stated project architect Jeff Harbinson was present to answer any architectural questions. Whitaker explained his expert witness qualifications and stated the proposed building would be higher than allowed by the Unified Development Ordinance. He stated the church will be requesting a special use permit for the project in the future. He explained that, as part of the special use permit review, through a provision stated in the Unified Development Ordinance, the board could approve an additional 10 feet of building height; however, the special use permit process includes uncertainties, and he believed the variance procedure would be the better process to follow. The request is for an additional 14 feet of height. He stated the property owner offers a condition applicable to the variance and is open to other conditions should the variance be granted.

Sykes clarified with Hornik if the proposed condition should be discussed as part of the variance request or at a future hearing on the special use permit. Hornik stated this was the appropriate time to discuss any conditions related to the variance.

Whitaker then offered reasons the board should use in reaching the four required findings for granting a variance. Based on Finding 1, the church would be under unnecessary hardship. As an established and committed community member, the church, to meet its mission, needs to expand to accommodate its growing ministry. The architectural design process proved the facility needs to be two stories with a height above the maximum allowance. Without the variance the church could not attain its mission.

Whitaker then spoke to the unusual conditions on the property pertaining to Finding 2. He referred to a set of site plans in his PowerPoint presentation that high-light the locations of road rights-of-way, utility easements and geographical features restricting use of one-third of the property. Whitaker stated the variance would allow an environmentally sensitive building with architecture consistent with other churches in the area. The requested building height is 59 feet.

Chapple asked if the building could be lower and still meet the church's needs. Whitaker said it could be a few feet lower, but 14 additional feet provides enough height for the desired structure while providing room for error during construction.

Kehoe inquired about the pitch of the roof. Whitaker asked for Harbinson's expertise. Harbinson stated the pitch was a 12-12 pitch, but the elevated choir loft and related acoustics determine the profile of the church. Kehoe asked for a rendering of the proposed building and a print-out of the building elevation concept drawing from Whitaker's presentation was shown to the board.

Kehoe inquired about the impact of the cross on the building's elevation. Whitaker stated the building height is based on the peak of building because ornamentation is not part of the building height based on the Unified Development Ordinance language. The cross would be considered ornamentation. King added to the discussion by reading Unified Development Ordinance section 9.1.7.1, Height Limit Exceptions, that references excluding church spires and their ornamentation being exempt from height requirements with limitations. In follow-up, Hornik inquired about the south elevation. Whitaker stated it was proposed to be 47 feet in height.

Whitaker stated the town's building height requirements are based on each side of the building. Whitaker again highlighted how the site's conditions are unique and peculiar, justifying the variance request.

For Finding 3, Whitaker stated the applicant is requesting the variance during project design and not due to an error that occurred during project construction.

Kehoe asked if re-zoning of the property was a better option to pursue. Whitaker stated "no," because it would require establishment of a conditional zoning district. The town currently does not allow such districts for smaller projects.

Whitaker stated Finding 4 is satisfied. Justification for an affirmative finding may be focused on the impact of the height on adjacent property owners. Whitaker provided scaled "Line of Sight from Rocky Lane," and a "Line of Sight from Hwy NC 57" graphics from his PowerPoint presentation depicting the proposed building versus an allowable building design he described as more intrusive to the line of sight from Rocky Lane and NC 57 than what is requested. Whitaker said a two-story building toward the middle of the site is less intrusive than a building meeting allowed building height placed at the allowed minimum building setback lines, the latter of which places a larger building with a bigger foot-print closer to the site's property lines. He then provided Google Earth images of the property

noting that existing wooded areas buffer the proposed building. These wooded areas would remain throughout construction.

Sykes asked about the percentage of vegetation clearing on the north side of the site. King directed the board to keep questions relative to the variance request. There will be an opportunity to discuss the church project construction at a future hearing where the project will be reviewed.

Whitaker stated the property owners are willing to commit to a condition that the new building will be placed at least 100 feet from any property line. He noted the current plans for the building place it more than 100 feet from all property lines. Whitaker said many municipal ordinances have a sliding scale for building height based on building setbacks so the variance would be in line with what some other municipalities allow.

King said the current ordinance does not have a sliding-scale height allowance for principal buildings, but it exists for detached accessory buildings. Also, the town's ordinance state's building height is measured from the ground to the highest point of the building, while many other municipalities measure it differently. For example, many other ordinances would measure the height of a building with an A-pitch roof from the ground to the mid-point between the roof peak and eaves. Whitaker validated King's statement. Whitaker went on to state that, with the imposed condition, no neighbor is negatively impacted by the increase in building height. The proposed building is in line with the spirit of the ordinance and doesn't impact neighborhood character.

Finally, Whitaker added, safety is of utmost importance and the applicant has conferred with the Orange County Fire Marshall. Whitaker entered an email statement from the Orange County Fire Marshall regarding the building's increased building height. The Fire Marshall had no concern with the proposal.

Chapple inquired about when adjacent property owners would be notified of the special use permit hearing. Whitaker stated the church has already notified some individual neighbors of their plans. Also, the town has given public notice of the proposed variance and will notify them again for an upcoming special use permit hearing. King described the type and extent of notice that is required for special use permit hearings.

Sykes recognized others wishing to speak.

Daniel Rawlins of 200 Governor Burke Road was sworn in. He said he understood his testimony is not related to the proposed variance. He stated his property adjoins the church property to the southwest. He expressed two concerns: one being overflow church parking which sometimes parks along his property's road frontage, damaging it. Second, the new parking lot should be required to address stormwater issues. He stated the church reached out to him and provided the proposed architectural drawings. Rawlins went on to acknowledged church efforts to inform the neighbors and added the existing vegetation on the west side of the property does provide a buffer to neighbors to the west. Rawlins said the requested variance would not negatively affect him. He told the board he has no objections to the variance but is concerned about the need for additional parking to alleviate off-site parking concerns.

The board directed discussion to the required findings.

Finding 1: Unnecessary hardship would result from the strict application of the ordinance.

Motion: Kehoe motioned to affirm the finding.

Finding: All the physical constraints located on the site affect the location of the proposed building. Sain seconded.

Vote: 5-0. Motion passed

Finding 2: The hardship results from conditions that are peculiar to the property such as location, size or topography.

Motion: Kehoe motioned to affirm the finding.

Finding: The hardship is created by the unique characteristics of the property. Considering the surrounding area, the visual impact of the proposed building would be greater if it were required to comply with the building height requirement.
Chapple seconded.

Vote: 5-0. Motion passed.

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

Motion: Kehoe motioned to affirm the finding.

Finding: The applicant or property owner has taken no actions that create the hardship. The request is made prior to the submission of development plans.
Chapple seconded.

Vote: 5-0. Motion passed.

Finding 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.

Motion: Iglesias motioned to affirm the finding.

Finding: The spirit of the ordinance is to be good unto your neighbors. Kehoe seconded.

Vote: 5-0. Motion passed.

Decision:

Motion: Kehoe motioned to approve the variance with the applicant's proffered condition. Chapple seconded.

Vote: 5-0. Motion passed.

Condition: The proposed church building will be set back at least 100 ft from all property boundaries.

Motion: Kehoe moved to close the hearing. Chapple seconded.

Vote: 5-0. Motion passed.

5. Committee and staff reports

King reported the town has signed a contract with Inspire Placemaking Collaborative to rewrite the Unified Development Ordinance. Also, board members will receive a tote bag from the town in appreciation for their service. King described items on the upcoming Planning Board and Town Board of Commissioners Joint Public Hearing agenda.

6. Adjournment

Motion: Kehoe motioned to adjourn.

Vote: 5-0. Motion passed.

Sykes adjourned the meeting at 7:41 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom King", written in a cursive style.

Tom King, AICP, CZO

Senior Planner

Staff support to the Board of Adjustment

Approved: June 11, 2025