

No. COA24-246

No. FOURTEENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

DURHAM GREEN FLEA MARKET,)
Petitioner-Appellant,)
vs.) From Durham County
CITY OF DURHAM)
Respondent-Appellee.)

RECORD ON APPEAL

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STATEMENT OF ORGANIZATION

Petitioner-Appellant, Durham Green Flea Market, appeals from the 9 June 2023 Judgment entered by the Honorable Judge James E. Hardin, Jr. from the 23 May 2023 session of Durham County Civil Superior Court. Plaintiff, Durham Green Flea Market, filed and served written Notice of Appeal to the North Carolina Court of Appeals on 30 June 2023.

This Record on Appeal was filed with the Court of the North Carolina Court of Appeals on the 20th day of March 2024, and docketed on the 20th day March 2024.

STATEMENT OF JURISDICTION

This action was originally commenced by the filing of a Petition of Writ of Certiorari on 27 October 2022.

STATE OF NORTH CAROLINA		No. 22CV53973 In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division	
DURHAM County 12		GENERAL CIVIL ACTION COVER SHEET <input checked="" type="checkbox"/> INITIAL FILING <input type="checkbox"/> SUBSEQUENT FILING	
Name And Address Of Plaintiff 1 DURHAM GREEN FLBA MARKET, L.L.C. (PETITIONER) 202 OCT 27 PM 1:06 U.S. DISTRICT COURT BY CAN		GENERAL CIVIL ACTION COVER SHEET <input checked="" type="checkbox"/> INITIAL FILING <input type="checkbox"/> SUBSEQUENT FILING	
Name And Address Of Plaintiff 2 BY CAN			
VERSUS		Rule 5(b) of the General Rules of Practice for the Superior and District Courts Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address) ROBERT T. PERRY PERRY, PERRY & PERRY, P.A. 601 FAYETTEVILLE ST, SUITE 300 DURHAM, NC 27701 P.O. BOX 2051 DURHAM, NC 27702	
Name And Address Of Defendant 1 CITY OF DURHAM (RESPONDENT)		Telephone No. (919) 683-8685 Cellular Telephone No. (919) 539-9316	
Summons Submitted <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NC Attorney Bar No. 11051 Attorney Email Address ROBERT.PBRRYLAW@FRONTIER.COM	
Name And Address Of Defendant 2		<input checked="" type="checkbox"/> Initial Appearance in Case <input type="checkbox"/> Change of Address	
Summons Submitted <input type="checkbox"/> Yes <input type="checkbox"/> No		Name Of Firm PERRY, PERRY & PERRY, P.A. Fax No. (919) 688-7930	
Summons Submitted <input type="checkbox"/> Yes <input type="checkbox"/> No		Counsel For <input checked="" type="checkbox"/> All Plaintiffs <input type="checkbox"/> All Defendants <input type="checkbox"/> Only: (list party(ies) represented)	
<input type="checkbox"/> Jury Demanded In Pleading <input type="checkbox"/> Complex Litigation <input type="checkbox"/> Stipulate to Arbitration			
(check all that apply) <input type="checkbox"/> Amend (AMND) <input type="checkbox"/> Amended Answer/Reply (AMND-Response) <input type="checkbox"/> Amended Complaint (AMND) <input type="checkbox"/> Assess Costs (COST) <input type="checkbox"/> Answer/Reply (ANSW-Response) (see Note) <input type="checkbox"/> Change Venue (CHVN) <input type="checkbox"/> Complaint (COMP) <input type="checkbox"/> Confession Of Judgment (CNFJ) <input type="checkbox"/> Consent Order (CONS) <input type="checkbox"/> Consolidate (CNSL) <input type="checkbox"/> Contempt (CNTP) <input type="checkbox"/> Continue (CNTN) <input type="checkbox"/> Compel (CMPL) <input type="checkbox"/> Counterclaim (CTCL) Assess Court Costs <input type="checkbox"/> Crossclaim (list on back) (CRSS) Assess Court Costs <input type="checkbox"/> Dismiss (DISM) Assess Court Costs <input type="checkbox"/> Exempt/Waive Mediation (EXMD) <input type="checkbox"/> Extend Statute Of Limitations, Rule 9 (ESOL) <input type="checkbox"/> Extend Time For Complaint (EXCO) <input type="checkbox"/> Failure To Join Necessary Party (FJNP)		TYPE OF PLEADING <input type="checkbox"/> Failure To State A Claim (FASC) <input type="checkbox"/> Implementation Of Wage Withholding In Non-IV-D Cases (OTHR) <input type="checkbox"/> Improper Venue/Division (IMVN) <input type="checkbox"/> Including Attorney's Fees (ATTY) <input type="checkbox"/> Intervene (INTR) <input type="checkbox"/> Interplead (OTHR) <input type="checkbox"/> Lack Of Jurisdiction (Person) (LJPN) <input type="checkbox"/> Lack Of Jurisdiction (Subject Matter) (LJSM) <input type="checkbox"/> Modification Of Child Support In IV-D Actions (MSUP) <input type="checkbox"/> Notice Of Dismissal With Or Without Prejudice (VOLD) <input type="checkbox"/> Petition To Sue As Indigent (OTHR) <input type="checkbox"/> Rule 12 Motion In Lieu Of Answer (MDLA) <input type="checkbox"/> Sanctions (SANC) <input type="checkbox"/> Set Aside (OTHR) <input type="checkbox"/> Show Cause (SHOW) <input type="checkbox"/> Transfer (TRFR) <input type="checkbox"/> Third Party Complaint (list Third Party Defendants on back) (TPCL) <input type="checkbox"/> Vacate/Modify Judgment (VCMD) <input type="checkbox"/> Withdraw As Counsel (WDCN) <input checked="" type="checkbox"/> Other (specify and list each separately) Petition for Writ of Certiorari	
NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must include either a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.			

(Over)

CLAIMS FOR RELIEF

- | | | |
|--|--|---|
| <input checked="" type="checkbox"/> Administrative Appeal (ADMA) | <input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) | <input type="checkbox"/> Product Liability (PROD) |
| <input type="checkbox"/> Appointment Of Receiver (APRC) | <input type="checkbox"/> Medical Malpractice (MDML) | <input type="checkbox"/> Real Property (RLPR) |
| <input type="checkbox"/> Attachment/Garnishment (ATTC) | <input type="checkbox"/> Minor Settlement (MSTL) | <input type="checkbox"/> Specific Performance (SPPR) |
| <input type="checkbox"/> Claim And Delivery (CLMD) | <input type="checkbox"/> Money Owed (MNYO) | <input type="checkbox"/> Other (specify and list each separately) |
| <input type="checkbox"/> Collection On Account (ACCT) | <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) | |
| <input type="checkbox"/> Condemnation (CNDM) | <input type="checkbox"/> Negligence - Other (NEGO) | |
| <input type="checkbox"/> Contract (CNTR) | <input type="checkbox"/> Motor Vehicle Lien G.S. Chapter 44A (MVLN) | |
| <input type="checkbox"/> Discovery Scheduling Order (DSCH) | <input type="checkbox"/> Possession Of Personal Property (POPP) | |
| <input type="checkbox"/> Injunction (INJU) | | |

Date

10/27/2022

Signature Of Attorney/Party

FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)
Substitution Of Trustee (Judicial Foreclosure) (RSOT)
Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY

Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out-Of-State Attorney/Pro Hac Vice Fee)

No.	<input type="checkbox"/> Additional Plaintiff(s)		
No.	<input type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

NORTH CAROLINA

DURHAM COUNTY

DURHAM GREEN FLEA MARKET,
L.L.C.,

PETITIONER,

v.

CITY OF DURHAM,

RESPONDENT.

) IN THE GENERAL COURT OF JUSTICE
) SUPERIOR COURT DIVISION

FILE NO.:

22CVS3973

) PETITION FOR WRIT OF
) CERTIORARI
)
)
)

NOW COMES Petitioner, Durham Green Flea Market, L.L.C,
(hereinafter "Durham Green Flea Market"), herein by and through
their attorney, Robert T. Perry, petitioning the Court, pursuant
to NCGS § 160D-1402 (appeals in the nature of certiorari), alleging
and saying that:

1.

Petitioner, Durham Green Flea Market, is a domestic
corporation organized under the laws of the State of North
Carolina, doing business in the State of North Carolina, and with
its principal place of business located at 1600 E. Pettigrew Street
in Durham, North Carolina.

2.

Upon information and belief, Respondent, City of Durham, is
a municipal corporation, chartered under the laws and constitution
of the State of North Carolina. The City of Durham is responsible
for the protection and procedures carried out by their agents,
servants, and employees.

3.

On February 18, 2020, a Notice of Violation from the Durham City-County Board of Adjustments, a decision-making board of Respondent, City of Durham, dated February 10, 2020 was received by Petitioner. The Notice of Violation alleged Petitioner violated Durham Unified Development Ordinance, Section 3.7.2, Applicability, Site Plan and 15.1.2 Violation.

4.

On March 6, 2020, Petitioner filed a Notice of Appeal to appeal the February 10, 2020 Notice of Violation issued. In said Notice of Appeal, Petitioner requested for a hearing concerning the appeal and for the alleged violation to be held in abatement.

5.

On September 22, 2020, a virtual hearing was held via Zoom to appeal the administrative decision to issue a Notice of Violation to Petitioner. There, Petitioner, by and through its attorney, requested an in-person hearing pursuant to their Constitutional right.

6.

On June 21, 2022, an in-person hearing was held to appeal the administrative decision to issue a Notice of Violation to Petitioner.

7.

Following the hearing, the Board of Adjustment of the City of Durham ruled to deny Petitioner's appeal with a vote of 6-1.

8.

The original Order denying Petitioner's appeal was mailed to Plaintiff in August 2022. Thereafter, a new Order denying Petitioner's appeal was emailed to Plaintiff in September of 2022.

First Assignment of Error: Notice of Violation was Prematurely Issued

9.

Petitioner re-alleges and incorporates the allegations of the preceding paragraphs 1 through 8 above herein by reference as if fully set forth below.

10.

"Where the language of a[n ordinance] is clear and unambiguous, there is no room for judicial construction[,] and the courts must give [the ordinance] its plain and definite meaning, and are without power to interpolate, or superimpose, provisions and limitations not contained therein." *Lipinski v. Town of Summerfield*, 230 N.C. App. 305, 309, 750 S.E.2d 46, 49 (2013).

11.

15.2.1 provides, "[w]hen a violation is discovered, and is not remedied through informal means, written notice of the violation shall be given."

12.

Upon information and belief, the plain and definite meaning of 15.2.1 required the Durham City-County Board of Adjustment to make informal efforts to notify Petitioner of the alleged violation prior to the issuance of the formal written Notice of Violation received by Petitioner on February 18, 2020.

13.

Upon information and belief, the Durham City-County Board of Adjustment did not attempt to contact Petitioner prior to the issuance of the formal written Notice of Violation as required under statute.

14.

Consequently, Petitioner was not afforded the opportunity to prevent the issuance of a formal Notice of Violation.

15.

Therefore, the Notice for Violation issued by the Durham City-County Board of Adjustment was premature.

Second Assignment of Error: Notice of Violation was Facially
Defective

16.

Petitioner re-alleges and incorporates the allegations of the preceding paragraphs 1 through 15 above herein by reference as if fully set forth below.

17.

Section 15.2.1 of the Durham Unified Development Ordinance plainly states "the notice shall include a description of the violation and its location[.]"

18.

The formal written Notice of Violation received by Petitioner on February 18, 2020, did not detail the alleged violations committed and the specific remedies afforded to Petitioner.

19.

The formal written Notice of Violation received by Petitioner on February 18, 2020, abruptly states "Violation: Failure to comply with an approved site plan," without listing the ways Petitioner allegedly failed to comply with the approved site plan.

20.

Therefore, the Notice of Violation received by Petitioner on February 18, 2020, was facially defective.

Third Assignment of Error: Notice of Violation was Issued
Discriminatorily

21.

Petitioner re-alleges and incorporates the allegations of the preceding paragraphs 1 through 20 above herein by reference as if fully set forth below.

22.

Upon information and belief, the Durham City-County Board of Adjustment's decision to issue a notice of violation was done in a discriminatory manner.

23.

Petitioner received discriminatory treatment from the Durham City-County Board of Adjustment due to the differential process of notifying Petitioners of a potential violation in comparison with other local businesses.

24.

Upon information and belief, the Durham City-County Board of Adjustment in similar circumstances have complied with ordinance provisions and provided informal notices to other property owners in the City of Durham.

25.

Upon information and belief, the Durham City-County Board of Adjustment has been put on notice of other site plan violations in the area; yet, have made no efforts to require said property owners to conform with a site plan.

26.

Upon information and belief, the Durham City-County Board of Adjustment has allowed other property owners in the area and City to operate without a site plan at all.

27.

Upon information and belief, owners of properties on Pettigrew Street, Sowell Street, and Amber Street have abandoned and dilapidated houses and buildings; yet, the Durham City-County Board of Adjustment has failed to cite the owners for violations of the City Ordinance.

28.

Therefore, the Durham City-County Board of Adjustment's decision to issue a notice of violation to Petitioner was discriminatory and unfairly targeted Petitioner.

29.

Petitioner, Durham Green Flea Market, requests a stay of execution and enforcement of the decision of the quasi-judicial board pending Superior Court review.

CLAIMS FOR RELIEF

WHEREFORE, the Petitioner respectfully prays the following relief:

1. A writ of certiorari be issued and directed to the City of Durham, commanding it to certify fully to this court, at a specified time and place, the record of proceedings

below regarding Petitioner's appeal of the Durham City-County Board of Adjustment's issuance of a Notice of Violation to Petitioner.

2. The judge in this matter enter an order reversing the decision of the Durham City-County Board of Adjustment finding Petitioner in violation of Sections 3.7.2, and 15.1.2 of the Durham Unified Development Ordinance.
3. The judge in this matter grant petitioner an extended period to amend the previous site plan submitted to comply with the city's regulations.
4. The judge in this matter allow Petitioner to correct minor violations without the reissuance of violations or further penalty.
5. Petitioner have and recover reasonable costs, disbursements, and expenses associated with this appeal and previous appeals.
6. The costs of this action be taxed against Respondent.
7. Petitioner's attorneys' fees and costs be taxed against the City Respondent pursuant to Section 6-21.7 of the North Carolina General Statutes.
8. Such other and further relief as the Court deems just and proper.

NORTH CAROLINA

DURHAM COUNTY

DURHAM GREEN FLEA MARKET

PETITIONER,

v.

CITY OF DURHAM,

RESPONDENT.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2022 OCT 27 PM 1:18 FILE NO.:

22CV53973

REQUEST FOR STAY OF
ENFORCEMENT

Pursuant to § 160D-1402(e) and § 160D-405, Plaintiff, Durham Green Flea Market, hereby requests the Court stay the enforcement of the decision of the Durham City-County Board of Adjustment. In support of said request, Petitioner shows the following:

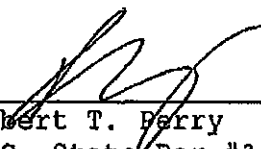
1. The Durham City-County Board of Adjustment issued a notice of violation to Petitioner on or about February 10, 2020 giving thirty (30) days from receipt of said notice to remedy the alleged violation. Said notice of violation states Petitioner is subject to the imposition of civil penalties in an amount up to \$500.00 per day for each day the violation exists after the deadline.
2. Petitioner received the notice of violation on February 18, 2020.
3. Thereafter, Petitioner filed as notice of appeal on March 6. Petitioner's appeal was heard and subsequently denied on June 28, 2022. The original Order denying Petitioner's appeal was mailed to Plaintiff in August 2022. Thereafter, a new Order

denying Petitioner's appeal was emailed to Plaintiff in September of 2022.

4. Petitioner filed a petition for writ of certiorari on the 27th day of October.
5. Enforcement of the decision of the Durham City-County Board of Adjustment will cause Petitioner financial hardship if Respondent and/or the Durham City-County Board of Adjustment levies civil penalties in an amount up to \$500.00 per day for each day the violation exists after the deadline.
6. Furthermore, in balancing the equities related to both parties, the relative harm to Petitioner is great, but the harm to Respondent and/or the Durham City-County Board of Adjustment in postponing the enforcement of civil penalties until a decision by this Court is made is minimal.
7. Petitioner respectfully requests expedited consideration of this request.

Wherefore, Petitioner respectfully requests the Court stay enforcement of the decision of the Durham City-County Board of Adjustment pursuant to § 160D-1402(e) and § 160D-405 until a final adjudication of the above referenced case.

This the 27th day of October, 2022.



Robert T. Perry
N.C. State Bar #11051
PERRY, PERRY & PERRY, P.A.
Attorneys for Petitioner
601 Fayetteville Street, Suite 300
Post Office Drawer 2051
Durham, North Carolina 27701
Telephone: (919) 683-8685

CERTIFICATE OF SERVICE

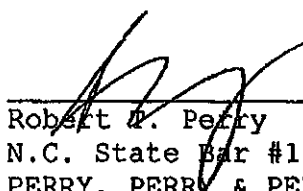
I hereby certify that I have this day served a copy of the **REQUEST FOR STAY OF ENFORCEMENT** by Email transmission addressed to:

Elaine O'Neal
Mayor of the City of Durham
101 City Hall Plaza
Durham, NC 27701
Email: Elaine.O'Neal@durhamnc.gov
Respondent City of Durham

This the 27th day of October, 2022.


Robert T. Perry, Esq.

This the 27th day of October, 2022.




Robert D. Perry
N.C. State Bar #11051
PERRY, PERRY & PERRY, P.A.
Attorneys for Petitioner
601 Fayetteville Street, Suite 300
Post Office Drawer 2051
Durham, North Carolina 27701
Telephone: (919) 683-8685

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **PETITION FOR WRIT OF CERTIORARI** by Email transmission addressed to:

Elaine O'Neal
Mayor of the City of Durham
101 City Hall Plaza
Durham, NC 27701
Email: Elaine.O'Neal@durhamnc.gov
Respondent City of Durham

This the 27th day of October, 2022.


Robert F. Perry, Esq.

NORTH CAROLINA

DURHAM COUNTY

DURHAM GREEN FLEA MARKET
PETITIONER,

v.

CITY OF DURHAM,
RESPONDENT.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

FILE NO.:


22CVS 397

WRIT OF CERTIORARI

Having received the Petition for Writ of Certiorari filed by Petitioner on October 27, 2022, and finding the same was properly filed pursuant to Sections 1-269 and 160D-1402 of the North Carolina General Statutes, the undersigned hereby grants said Petition and issues this Writ. Respondent City of Durham shall prepare and certify to the Court the record of the proceedings of the Durham City-County Board of Adjustment's denying Petitioner's appeal, including either a recording or transcript of the June 22, 2022 Board of Adjustment hearing by the 15th day of November, 2022.

This the 27 day of October, 2022.

By:

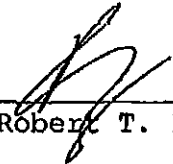

Clerk of Court (Asst)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the WRIT OF CERTIORARI by Email transmission addressed to:

Elaine O'Neal
Mayor of the City of Durham
101 City Hall Plaza
Durham, NC 27701
Email: Elaine.O'Neal@durhamnc.gov
Respondent City of Durham

This the 27th day of October, 2022.



Robert T. Perry, Esq.

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

FILED

2022 NOV 15

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 22 CVS 3973

DURHAM GREEN FLEA MARKET,
L.L.C.,

BY

Petitioner,

v.

CITY OF DURHAM

Respondent.

MOTION TO DISMISS
N.C. Rule of Civ. Pro. 12(b)(2) and (5)

NOW COMES Defendant City of Durham (hereinafter "Respondent"), by and through undersigned counsel, and moves for dismissal of this matter in its entirety pursuant to Rule 12(b)(2) and (5) of the North Carolina Rules of Civil Procedure. Petitioner filed its Petition for Writ of Certiorari, pursuant to N.C. Gen. Stat. § 160D-1402, on October 27, 2022. To date, Petitioner has not served Respondent with the petition and writ in accordance with the requirements of N.C. Gen. Stat. 160D-1402(e).

WHEREFORE, Respondent respectfully prays the Court for an Order dismissing this Petition pursuant to Rule 12(b)(2) and (5) of the North Carolina Rules of Civil Procedure.

This the 15th day of November, 2022.

By:



Donald T. O'Toole (N.C.S.B #29369)

Senior Deputy City Attorney

City of Durham

101 City Hall Plaza

Durham, North Carolina 27701

Phone: (919) 354-2752

Email: donald.o'toole@durhamnc.gov


Attorney for Respondent

CERTIFICATE OF SERVICE

I, do hereby certify that the foregoing Motion was served on all counsel of record, as permitted by Rule 5 of the North Carolina Rules of Civil Procedure. The names and address of the attorney served appears below.

Robert T. Perry
Perry, Perry & Perry, P.A.
601 Fayetteville Street, Suite 300
P.O. Drawer 2051
Durham, NC 27701
Attorneys for Petitioner

This the 15th day of November, 2022.

By: 
Donald T. O'Toole (N.C.S.B. #29369)
Senior Deputy City Attorney
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Phone: (919) 354-2752
Email: donald.otoole@durhamnc.gov

Attorney for Respondent

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

FILED
2022 DEC -8 AM 10:37

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 22 CVS 3973

DURHAM GREEN FLEET MARKET, C.S.C.

BY
Petitioner,

v.

CITY OF DURHAM

Respondent.

**MOTION FOR EXTENSION OF TIME
(RULE 6(b), N.C.R.P.)**

NOW COMES Respondent City of Durham (hereinafter "Respondent"), by and through the undersigned counsel, pursuant to Rule 6(b) of the North Carolina Rules of Civil Procedure, and respectfully moves the Court for an Order enlarging the time within which Respondent may prepare and certify to the Court the record of the proceedings of the Durham City-County Board of Adjustment's denying Petitioner's appeal ("the Record") in response to the Writ of Certiorari. Respondent seeks a period of thirty days, up through and including January 3, 2023.

In support of this Motion, Respondent shows that a copy of the Petition for Writ of Certiorari and the Writ of Certiorari was not served on Respondent until November 30, 2022, and that the time for filing the Record as specified in the Writ of Certiorari expired on November 15, 2022, prior to service of the Writ of Certiorari on Respondent. Given that the time for preparing the Record expired before Petitioner achieved service on Respondent, Respondent seeks until January 3, 2023 to prepare and file the Record with the Court.

WHEREFORE, Respondent respectfully prays the Court for an Order extending the time within which Respondent may prepare and file the Record with the Court, up through and including January 3, 2023.

This the 28th day of December, 2022.

By: Donald T. O'Toole

Donald T. O'Toole (N.C.S.B#29369)
Senior Deputy City Attorney
101 City Hall Plaza
Durham, North Carolina 27701
Phone: (919) 354-2752
Email: donald.o'toole@durhamnc.gov


Attorney for Respondent

CERTIFICATE OF SERVICE

I, do hereby certify that the foregoing or attached *Motion and Order for Extension of Time* was served on all counsel of record, as permitted by Rule 5 of the North Carolina Rules of Civil Procedure. The names and address of the attorney served appears below.

Robert P. Perry
PERRY, PERRY & PERRY, P.A.
601 Fayetteville Street, Ste. 300
Durham, NC 27701
Attorney for Petitioner

This the 31st day of December, 2022.

By: 
Donald T. O'Toole (N.C.S.B.#29369)
Senior Deputy City Attorney
101 City Hall Plaza
Durham, North Carolina 27701
Phone: (919) 354-2752
Email: donald.otoole@durhamnc.gov

Attorney for Respondent

FILED

2022 DEC -9 A 11:16
STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE
COUNTY OF DURHAM DURHAM CO., C.S. SUPERIOR COURT DIVISION
FILE NO. 22 CVS 3973
BY [Signature]
DURHAM GREEN FLEA MARKET
Petitioner,
v.
CITY OF DURHAM
Respondent.

**ORDER FOR EXTENDING TIME
(RULE 6(b), N.C.R.P.)**

For good cause shown, it is ordered that the time for Respondent City of Durham to prepare, and to file with the Court, the record of the proceedings of the Durham City-County Board of Adjustment's denying Petitioner's appeal, in response to Petitioner's Petition for Writ Certiorari and Writ of Certiorari, is extended to, and includes, the 3rd of January, 2023.

This the 9 day of December, 2022.

[Signature]
Clerk of Superior Court

FILED
STATE OF NORTH CAROLINA
COUNTY OF DURHAM

2023 JAN -3 AM 8:45

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 22 CVS 3973

DURHAM GREEN FLEA MARKET C.S.C.

Petitioner, 

v.

CITY OF DURHAM

Respondent.

THE RECORD
DURHAM BOARD OF ADJUSTMENT
BOA Case #2000022

Pursuant to the Writ issued by the Court, and N.C. Gen. Stat. § 160D-1402,
Respondent files the attached Record in Durham Board of Adjustment case B2000022.

This the 3rd day of January, 2023.

By:  

Donald T. O'Toole (N.C.S.B#29369)
Senior Deputy City Attorney
101 City Hall Plaza
Durham, North Carolina 27701
Phone: (919) 354-2752
Email: donald.o'toole@durhamnc.gov


Attorney for Respondent

CERTIFICATE OF SERVICE

I, do hereby certify that the foregoing was served on all counsel of record, as permitted by Rule 5 of the North Carolina Rules of Civil Procedure. The names and address of the attorney served appears below.

Robert P. Perry
PERRY, PERRY & PERRY, P.A.
601 Fayetteville Street, Ste. 300
Durham, NC 27701
Attorney for Petitioner

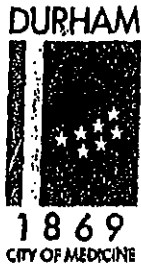
This the 30th day of January, 2023.

By: 
Donald T. O'Toole (N.C.S.B.#29369)
Senior Deputy City Attorney
101 City Hall Plaza
Durham, North Carolina 27701
Phone: (919) 354-2752
Email: donald.otoole@durhamnc.gov

Attorney for Respondent

EXHIBIT

A



CITY OF DURHAM | DURHAM COUNTY
City-County Planning Department
101 CITY HALL PLAZA | DURHAM, NC 27701
919.560.4137 | F 919.560.4641



NOTICE OF VIOLATION

RECEIVED FEB 10 2020

February 10, 2020

Robert T. Perry
Durham Green Flea Market LLC
601 Fayetteville St, Suite 300
Durham, NC 27701

2E19-1117
Certified Mail
7014 2120 0001 2285 7659
Return Receipt Requested
Copy Via First Class Mail

The following zoning violation was observed during a recent field inspection:

Address: 1600 E. Pettigrew St	Durham Tax Parcel ID#: 119006
Zoning: IL	PIN #: 0831-18-42-0210
Violation: Failure to comply with an approved site plan (D1300045)	
To be corrected as noted below	

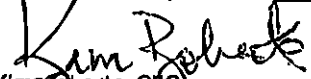
The above condition constitutes a violation of the Durham Unified Development Ordinance, Section 3.7.2, Applicability, Site Plan and 15.1.2 Violation (see attached).

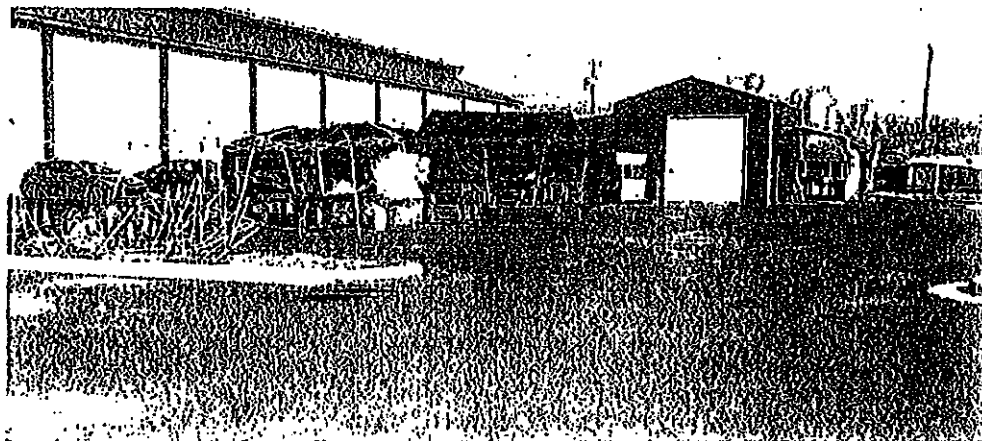
Correction of this violation will require the violator to remove all alterations inconsistent with the approved site plan within thirty (30) days of the receipt of this notice.

This notice serves as a warning and explains what steps must be taken to comply with the ordinance. If you do not contact us and begin the process to correct this violation within the time frame specified above, you are subject to the imposition of civil penalties in an amount up to \$500.00 per day for each day the violation exists after the deadline. The Durham UDO allows for the pursuit of (a) prosecution of this violation as a criminal misdemeanor, and (b) injunctive relief through the Durham County Courts. Additionally, Section 15.2.2(A) of the UDO allows a person charged with a violation of the Zoning Code the right to appeal the determination to the Durham Board of Adjustment within 30 days from the date of receipt of this notice.

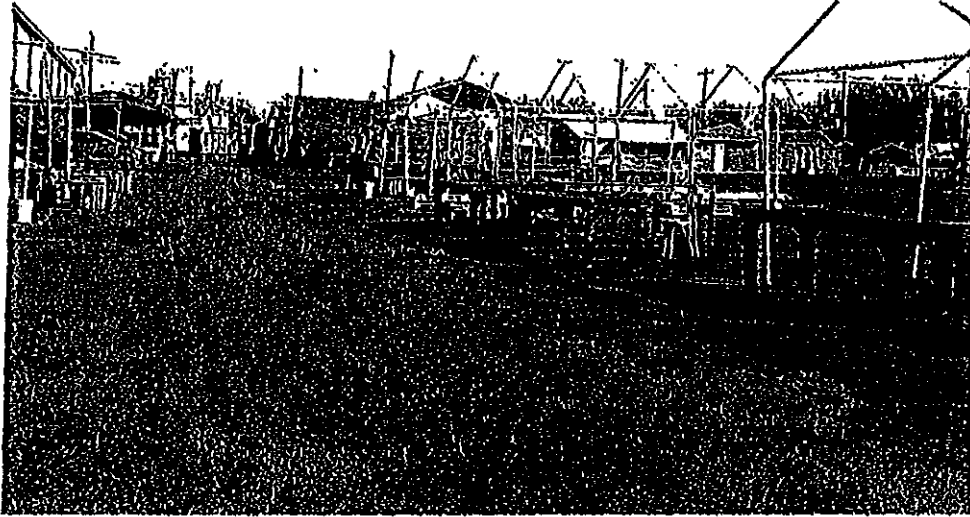
Please note that if the same violation as noted above is repeated within the next two years, the violation will be viewed as a continuation of this violation and may subject the violator to civil penalties without prior notification, as allowed in Section 15.2.

If you notify me when you have corrected the violation I will close out this case. The best way to reach me is by email at Kim.Roberts@DurhamNC.gov.

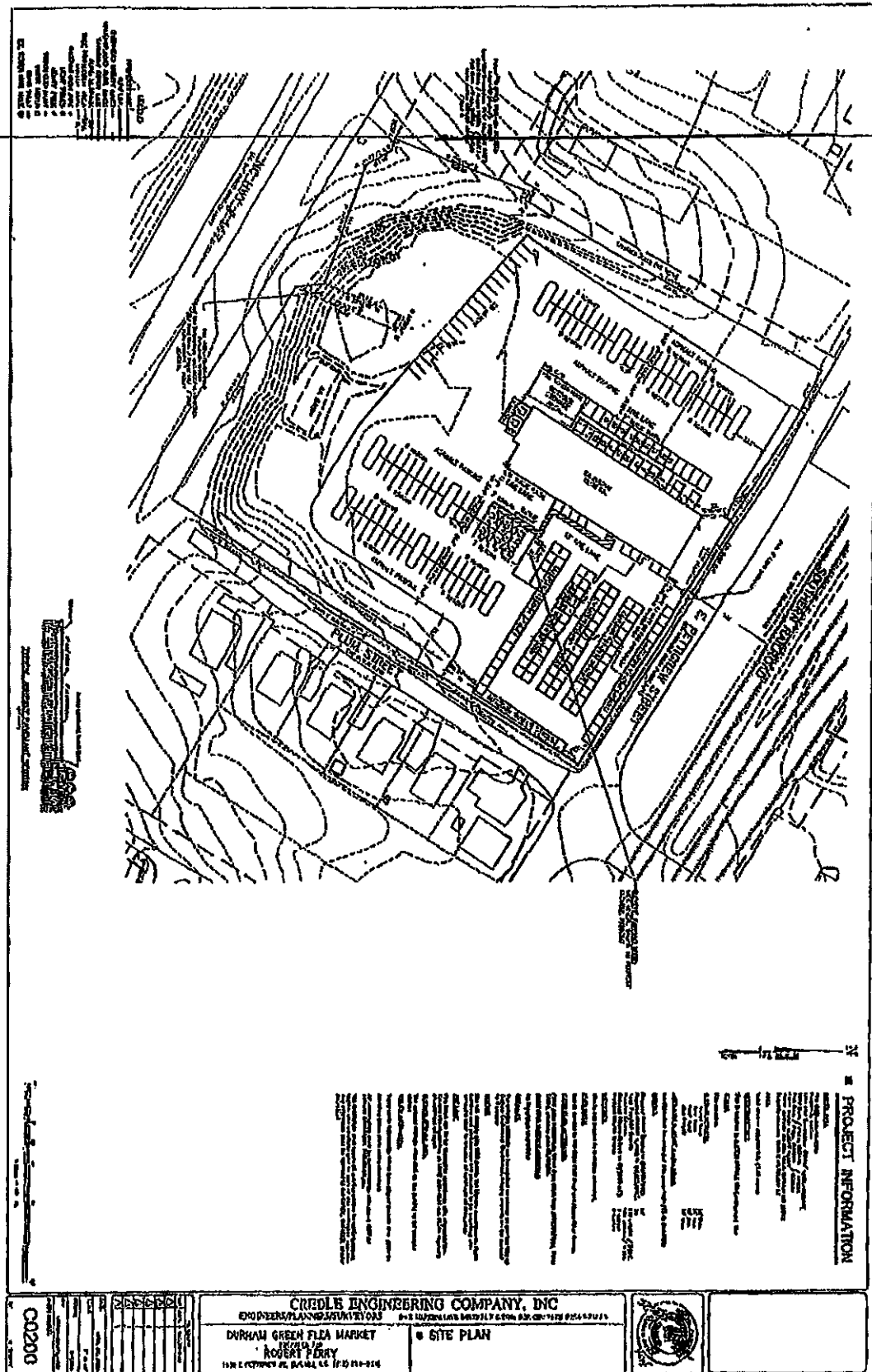

Kim Roberts, CLO
Senior Planner, Site Compliance Officer

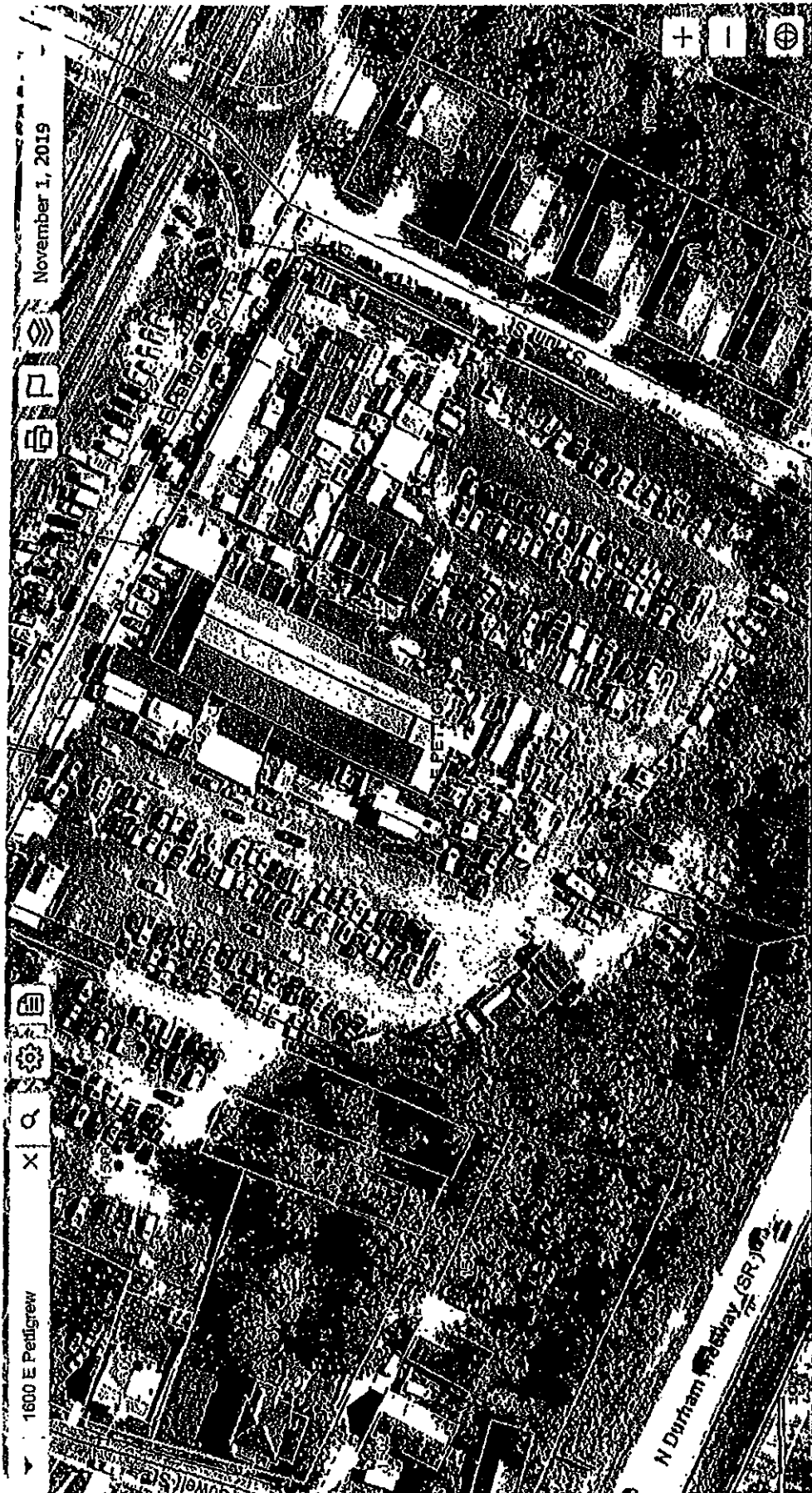


1600 E Pettigrew St, 01/17/20 by KFR



1600 E. Pettigrew Street, 01/17/20 by KFR





EXHIBIT

B



Application For Appeal

A Pre-submittal meeting is not required prior to submission

City-County Development Services Center

Planning

101 City Hall Plaza, Durham, NC 27707 | <https://dsc.durhamnc.gov> | 919-560-4137

Submittal: Applications are due within 30 days of receipt of the decision being appealed and are available online at: <http://dsc.durhamnc.gov/174/Permits-and-forms>. Application submittals must be made in-person to the City Clerk's Office, if in City's jurisdiction, or the County Clerk's Office, if in the County's jurisdiction. Fees are due at time of submittal. **ONLY COMPLETE APPLICATIONS CAN BE ACCEPTED.**

Appeal applications are heard by the Board of Adjustment as a quasi-judicial public hearing. The application is a form of written testimony and is used to provide evidence. In addition to the application materials, the applicant may provide any other written, drawn or photographed material to support his/her request and as permitted by the Board of Adjustment. Any such additional material submitted will become part of the application, and as such cannot be returned.

Attendance at the hearing is required. Applicants may represent themselves or may be represented by someone appropriate for quasi-judicial public hearings. The public hearing will allow the applicant, proponents, opponents and anyone else the opportunity to speak and ask questions in regards to the request.

An "Appeal of an Administrative Decision" is permitted in accordance with Section 3.15, and an "Appeal of an Interpretation of Zone Boundaries" is permitted in accordance with Section 4.1.4, of the Unified Development Ordinance (UDO).

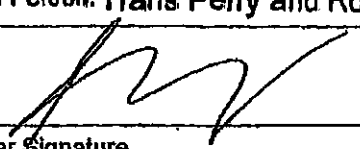
Action by the Board of Adjustment (Section 3.15.6A of the UDO): The Board of Adjustment may reverse or affirm (wholly or partly), or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken. Decisions can be appealed to Superior Court within 30 days.


Tracking Information (Staff Only)		
Case Number:	Date/Time rec'd:	Rec'd by:

Application Requirements	Applicant Initial	Staff Initial
Completed application and responses: ORIGINAL signatures required	<i>ML</i>	
Fee: \$695, payable to City of Durham or County of Durham, as applicable	<i>RF</i>	
Supplemental material, as applicable: <ul style="list-style-type: none">• Written Order or decision being appealed• Copy of Notice of Violation• Site plan or plot plan• Other documents	<i>RF</i>	

Case # _____

Property Information	
Site Address: 1600 E. Pettigrew St	Site size (in acres): 5.5
Zoning District(s) : IL	PIN(s): 0831-18-42-0210
Zoning Overlay District(s):	PID(s):
Development Tier:	<input checked="" type="checkbox"/> City <input type="checkbox"/> County <input type="checkbox"/> Both

Property Owner	
Name(s) (Print): Trans Perry and Robert Perry	Phone: Trans-919-308-7657, Robert-919-683-8685
Contact Person: Trans Perry and Robert Perry	Email: transperry@gmail.com, robert.perrylaw@frontier.com
 Owner Signature	3-9-20 Date

Applicant Information	
Name(s): Trans Perry and Robert Perry	
Contact Person: Robert T. Perry	Phone: 919-683-8685
Address: 601 Fayetteville St., Suite 300	Fax: 919-688-7930
City/State/ZIP: Durham, NC 27701	Email: robert.perrylaw@frontier.com
I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.	
 Applicant Signature	3-9-20 Date

Agent (if different than applicant)	
Name:	
Contact Person's Mailing Address:	Phone:
Address:	Fax:
City/State/ZIP:	Email:

Case # _____

For General Appeals (UDO 3.15): Complete and respond to the following in the space provided, or with an attachment (Suggested)

Trans Perry and Robert T. Perry wish to appeal the following decision by

Kim Roberts, CZO (Administrative official)

The ruling was based on the following Unified Development Ordinance provision(s):
Section 3.7.2, Applicability, Site Plan and 15.1.2 Violation (see documents attached to the Notice of Violation)

A copy of the written decision/interpretation is attached. This ruling was made with respect to the property located at:

Address: **1600 E. Pettigrew St., Durham, NC 27703**

PIN or PID: **0831-18-42-0210**

Summarized below, and on other sheets as necessary (attached), is my rationale for arguing that the administrative ruling is an improper or erroneous interpretation of the Ordinance:

We believe the actions taken by the City representative is discriminatory and done without consideration to the services provided by the City of Durham. Specifically, based on prior notices of violations and decisions by the Planning Department, it was agreed minor violations would not be noticed as violations considering similar violations by other business owners in the City of Durham.

Case # _____

For Appeals of Zoning Boundary Interpretations (UDO 4.1.4): Complete And Respond To The Following In The Space Provided Or With An Attachment (Suggested):

I, _____, wish to appeal the interpretation of the zoning district boundary at a location generally described as:

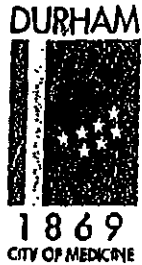
N/A.

Section 4.1.4B states the methods of interpreting zoning boundaries that do not follow lot lines. Explain how your circumstances are not covered by Section 4.1.4B:

N/A.

OR Explain how physical or cultural features existing on the ground vary with those shown on the Official Zoning Map:

N/A.



CITY OF DURHAM | DURHAM COUNTY
City-County Planning Department
101 CITY HALL PLAZA | DURHAM, NC 27701
919.560.4137 | F 919.560.4641



NOTICE OF VIOLATION

RECEIVED FEB 10 2020

February 10, 2020

Robert T. Perry
Durham Green Flea Market LLC
601 Fayetteville St, Suite 300
Durham, NC 27701

2519-1117
Certified Mail
7014 2120 0001 2285 7659
Return Receipt Requested
Copy Via First Class Mail

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To be corrected as noted below	

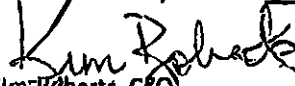
The above condition constitutes a violation of the Durham Unified Development Ordinance, Section 3.7.2, Applicability, Site Plan and 15.1.2 Violation (see attached).

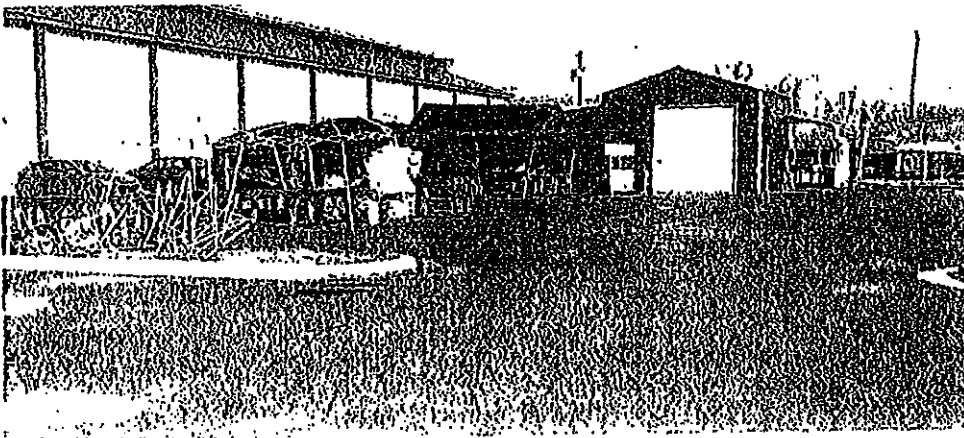
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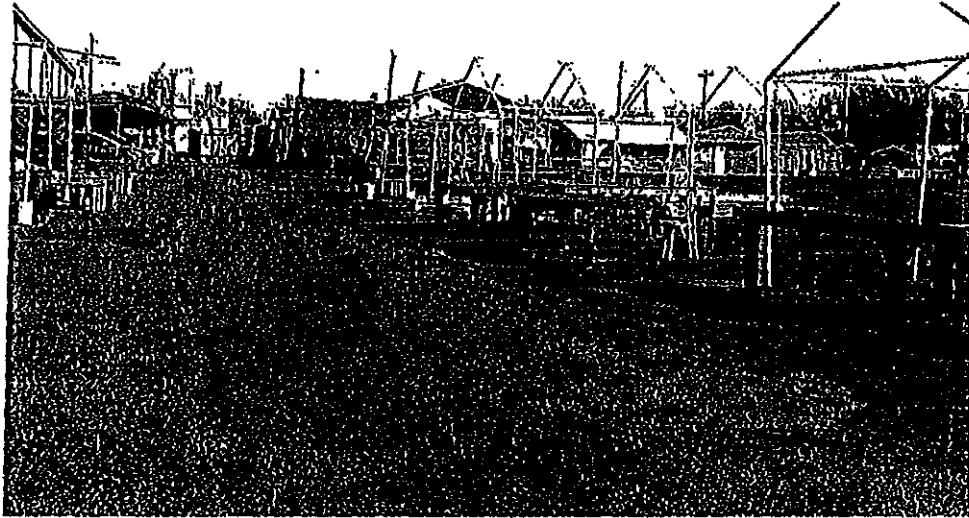
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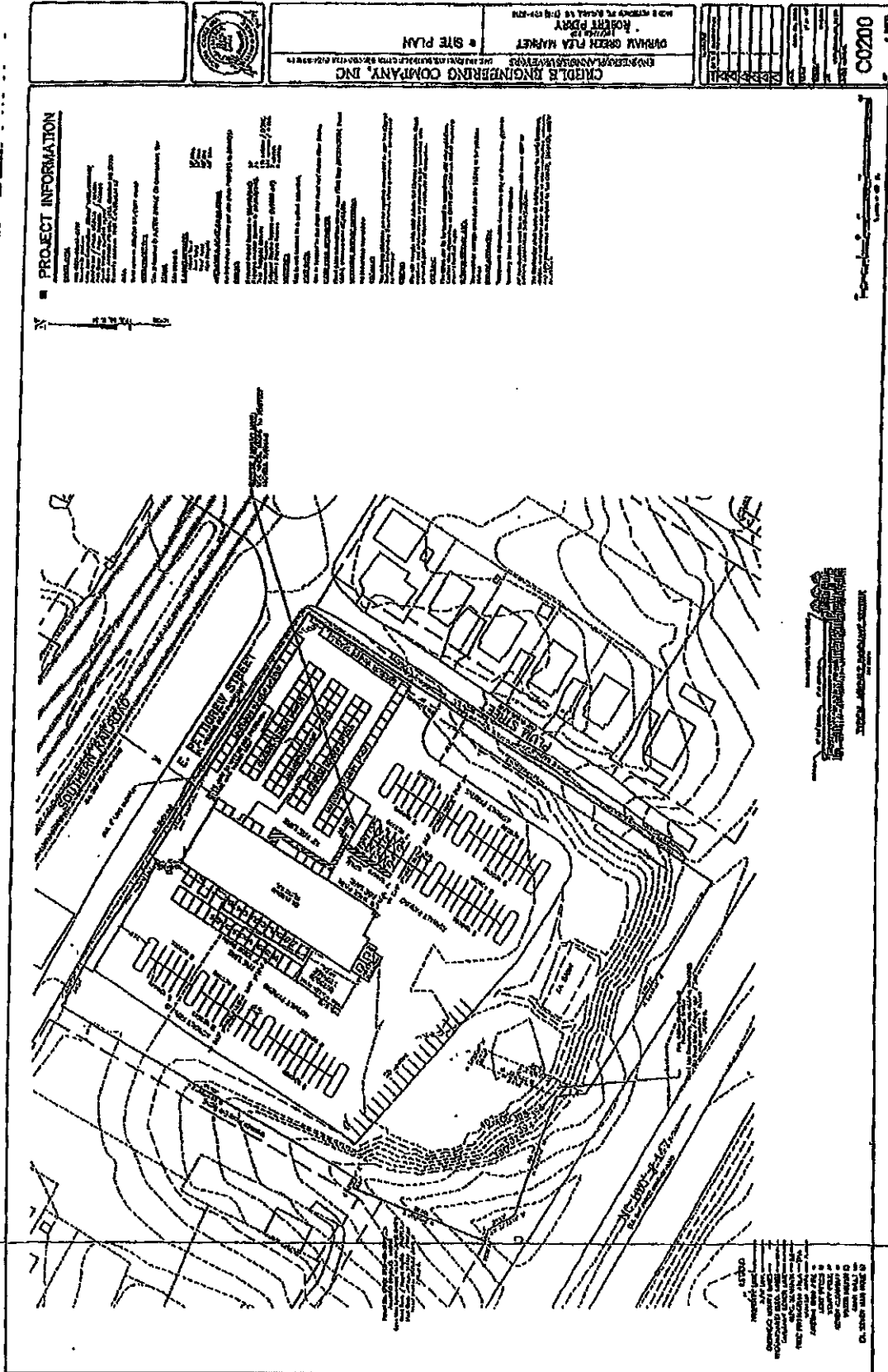

Kim Roberts, CEO
Senior Planner, Site Compliance Officer

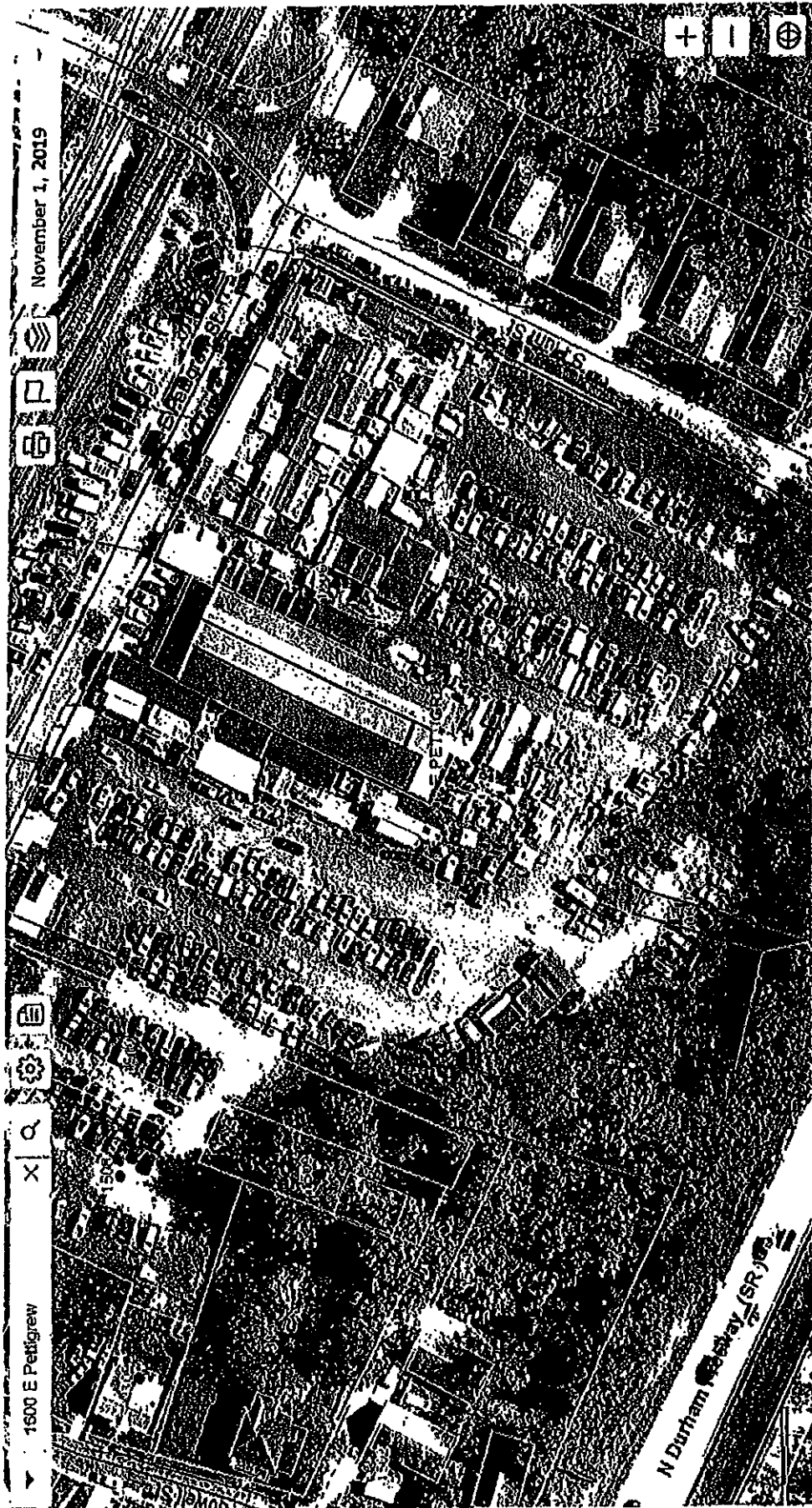


1600 E Pettigrew St, 01/17/20 by KFR



1600 E. Pettigrew Street, 01/17/20 by KFR





DURHAM PROPERTY RECORD SEARCH

119006
1600 E PETTIGREW ST

CURRENT
DURHAM GREEN FLEA MARKET LLC
321 E CHAPEL HILL ST
DURHAM, NC, 27701

Total Assessed Value
\$815,815

KEY INFORMATION

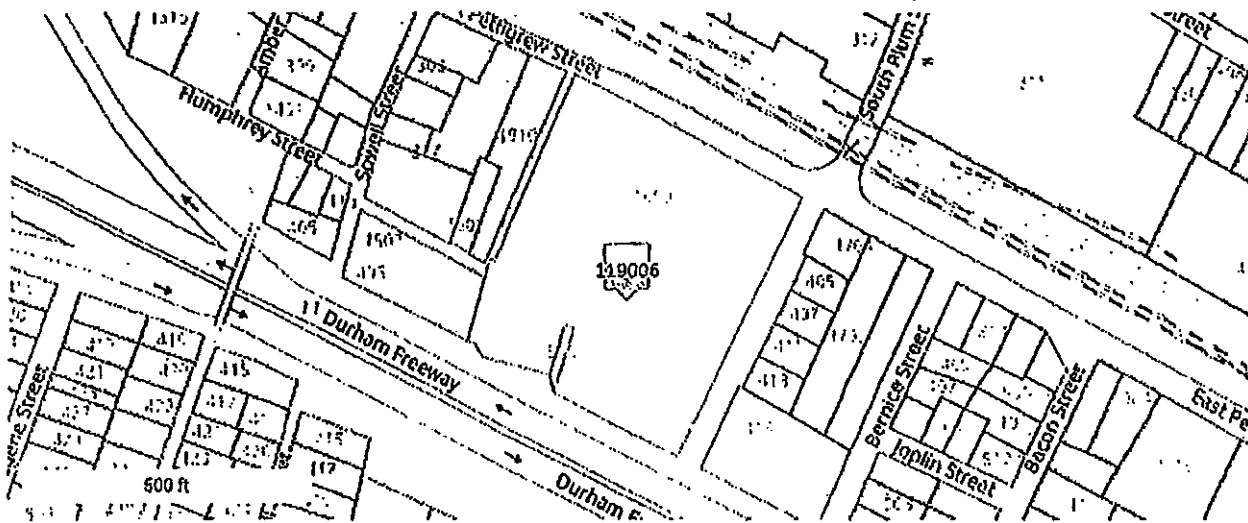
Tax District	CNTY-DRHM/CITY-DRHM	PIN	0831-18-42-0210
Account	8623102	Neighborhood	C831C
Land Use Code	440	Land Use Desc	COM/ WHSE-STORAGE
Subdiv Code	0000	Subdiv Desc	N/A - NO SUBDIVISION
Deed Book & Page	007730 / 000327	Plat Book & Page:	000086 / 000034
Last Sale Date:	06/23/2015	Last Sale Price:	\$699,000
Jan 1st Owner:	DURHAM GREEN FLEA MARKET LLC		
Legal Description:	PROP-SOUTHERN STATES TOBA CCO CO INC/GREEN FLEA MRT		

ASSESSMENT DETAILS

Land Fair Market Value	\$307,590
Improvement Fair Market Value	\$508,225
Total Fair Market Value	\$815,815

RESIDENTIAL BUILDING (1)

Year Built:	1981	Built Use / Ranch	STORAGE WAREHOUSES
Current Use	STORAGE WAREHOUSES	Percent Complete:	100%
Heated Area (S/F):	13,546	Full Bathroom(s):	0
Half Bathroom(s):	0	Bedroom(s):	0
Fireplace (Y/N):	N	Basement (Y/N):	N
Basement Unfinished:	-	Basement Finished:	-
Basement Partially Finished:	-	Attached Garage (Y/N):	N
Assessed Building Value:	\$508,225		





LIMITED LIABILITY COMPANY ANNUAL REPORT

NAME OF LIMITED LIABILITY COMPANY: Durham Green Flea Market, L.L.C.

SECRETARY OF STATE ID NUMBER: 1144908 STATE OF FORMATION: NC

REPORT FOR THE CALENDAR YEAR: 2019

Filing Office Use Only
E-Filed Annual Report
1144908
CA201907704455
3/18/2019 02:00
<input type="checkbox"/> Changes

SECTION A: REGISTERED AGENT'S INFORMATION

1. NAME OF REGISTERED AGENT: Per ry, Robert T.

2. SIGNATURE OF THE NEW REGISTERED AGENT: _____

SIGNATURE CONSTITUTES CONSENT TO THE APPOINTMENT

3. REGISTERED OFFICE STREET ADDRESS & COUNTY

601 Fayetteville Street, Suite 300

Durham, NC 27701 Durham County

4. REGISTERED OFFICE MAILING ADDRESS

601 Fayetteville Street, Suite 300

Durham, NC 27701

SECTION B: PRINCIPAL OFFICE INFORMATION

1. DESCRIPTION OF NATURE OF BUSINESS: Flea Market

2. PRINCIPAL OFFICE PHONE NUMBER: (919) 308-7657

3. PRINCIPAL OFFICE EMAIL: Privacy Redaction

4. PRINCIPAL OFFICE STREET ADDRESS & COUNTY

601 Fayetteville Street, Suite 300

Durham, NC 27701

5. PRINCIPAL OFFICE MAILING ADDRESS

601 Fayetteville Street, Suite 300

Durham, NC 27701

6. Select one of the following if applicable. (Optional see Instructions)

☐

The company is a veteran-owned small business

☐

The company is a service-disabled veteran-owned small business

SECTION C: COMPANY OFFICIALS (Enter additional company officials in Section E.)

NAME: Trans Perry

NAME: _____

NAME: _____

TITLE: General Manager

TITLE: _____

TITLE: _____

ADDRESS: _____

ADDRESS: _____

ADDRESS: _____

601 Fayetteville Street, Suite 300

Durham, NC 27701

SECTION D: CERTIFICATION OF ANNUAL REPORT. Section D must be completed in its entirety by a person/business entity.

Trans Perry

3/18/2019

SIGNATURE

DATE

Form must be signed by a Company Official listed under Section C of This form.

Trans Perry

General Manager

Print or Type Name of Company Official

Print or Type Title of Company Official

This Annual Report has been filed electronically.

MAIL TO: Secretary of State, Business Registration Division, Post Office Box 26626, Raleigh, NC 27626-0526

3.7.2 Applicability

All proposed development or changes of use, except as indicated below, shall be subject to the site plan review process. The following are exempt from site plan review:

- A. Single-family and two-family development on existing single lots of record.
- B. Development that does not require review by any City or County department for conformance with the standards of this Ordinance; or does not require a permit such as but not limited to fences or flagpoles. In instances where these types of development require a certificate of appropriateness (COA) or a special use permit, a site plan will not be required.
- C. Change of use where no additions to buildings or structures, or exterior land improvements, are proposed and the change of use:
 - 1. Does not require additional parking or stacking.
 - 2. Does not require additional landscaping.
 - 3. Does not require a Traffic Impact Analysis (TIA) or no improvements are required as a result of a TIA analysis.
 - 4. Only requires Architectural Review per Section 3.22.

D. Public Right-of-Way Improvements

Development projects consisting only of public utility improvements within the public right-of-way, improvements to the public right-of-way (repairing, surfacing, striping, widening, stabilizing, landscaping), or other improvements in the right-of-way where the Planning Director, or designee, determines another City or County approval process verifies conformance to this Ordinance. Exceptions are as follows:

- 1. In Design Districts, a separate site plan application can be filed or site plan review can occur through another technical review by the City or County for that development project.
- 2. In local historic districts, a separate site plan application can be filed or site plan review can occur through review of the required COA application.

15.1.2 Violation

- A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.
- B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.
- C. Each day of a violation may be considered a separate and distinct violation.

The Durham Unified Development Ordinance is current through legislation effective:

Durham County: December 1, 2019

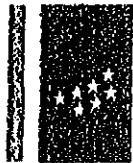
City of Durham: December 1, 2019

Disclaimer: The Durham City-County Planning Department office has the official version of the Durham Unified Development Ordinance. Users should contact the Planning Department for amendments subsequent to the amendment cited here.

City Website: durhamnc.gov

Code Publishing Company

DURHAM



1869
CITY OF MEDICINE

CITY OF DURHAM
Office of the City Clerk
101 CITY HALL PLAZA | DURHAM, NC 27701
919.560.4166 | F 919.560.4835


www.durhamnc.gov

TIME: 1:20 AM (M)
RECEIVED



DURHAM CITY-COUNTY
PLANNING DEPARTMENT

TO: Patrick Young, Director of City/County Planning

THRU: Diana Schreiber, CMC
City Clerk 

FROM: Tonette Amos
Assistant City Clerk

DATE: March 10, 2020

SUBJECT: Request for Appeal - 1600 E. Pettigrew Street, Durham, NC

I am attaching the above mentioned request for appeal application for your review.

Location of Violation(s): PIN#: 0831-18-42-0210
PARCEL ID#: 119006

APPLICANT: Trans Perry and Robert Perry
c/o Robert Perry
601 Fayetteville Street, Suite 300
Durham, NC 27701

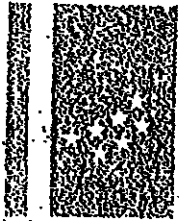
City of Durham, North Carolina
Statement of Account

Name: Durham Green Flea Market Phone Number: _____
Address: PO Box 2051 City: Durham State: NC Zip: 27702

Item Description	Quantity	Cost	Trans./R.A.P. Code of Account Number	Amount Due
BOA Appeal Request 1600 E. Pettigrew St.	1	\$683	829	\$683.00
Tech Surcharge	1	\$12	802	\$12
CK# 13435				

For Revenue Billing & Collections Use Only

DURHAM



1869
CITY OF MEDICINE

For Department/Division Use Only

Check Total	695.00
Cash Total	
Non-Cash Total	
Total Received	695.00

Amos City Clerk
Department/Division DTC

Date Received

Received By

DISTRIBUTION: WHITE (COLLECTION) CANARY (CUSTOMER) PINK (DEPARTMENT/DIVISION)

EXHIBIT

C



BOARD OF ADJUSTMENT

AGENDA

September 22, 2020 8:30 a.m.
Zoom – Virtual Meeting

I. Call to Order

II. Roll Call

Jacob Rogers, Chair
Chad Meadows, Vice-Chair
Regina deLacy
Myca Jeter
Ian Klipp

Michael Retchless
Telsha Wymore
Jessica Major, Designated Alternate
Michael Tarrant

III. Approval of Minutes from August 25, 2020 (Attachment: [DRAFT Minutes August 25, 2020.pdf](#))

IV. Cases

B2000031 – City: A request for a variance from the required 20-foot maximum street yard, the longest building façade located within the maximum street yard, and the building occupying 60% of the total street frontage. The subject site is located at 3301 Hillsborough Road, is zoned Light Industrial (IL), and in the Urban Tier.

B2000022 – City: Appeal of an administrative decision to administer a Notice of Violation for improvements made to the Durham Green Flea Market without an approved site plan. The building is located at 1600 E. Pettigrew Street, within the Alston Avenue Compact Neighborhood Development tier, and is zoned Light Industrial (IL). (Attachment: [B2000022.pdf](#))

B2000033 – City: A request for multiple variances from the project boundary buffer requirements on the north and east sides of the parcel. The subject site is located at 402 North Buchanan Boulevard, within the Urban Development tier, and is zoned Residential Urban – 5 (RU-5). (Attachment: [B2000033.pdf](#), Applicant Materials: [DCC SP5.0 Planting Plan REV 2020-09-21.pdf](#), [DCC SP6.1 Wall Elevations REV 2020-09-21.pdf](#))

B2000034 – City: A request for a minor special use permit for an expansion of over 20% of the area that was originally approved in the previous minor special use permit. The subject site is located at 402 North Buchanan Boulevard, within the Urban Development tier, and is zoned Residential Urban – 5 (RU-5). (Attachment: [B2000034.pdf](#), Applicant Material: [DCC SP5.0 Planting Plan REV 2020-09-21.pdf](#))

B2000037 – City: A request for a minor special use permit to allow an addition of more than 10% of the existing floor area to a non-conforming structure and a height increase. The subject site is located at 1307 W. Knox Street, within the Urban Development tier, and is zoned Residential Urban-5(2) [RU-5(2)]. (Attachment: [B2000037.pdf](#), Applicant Materials: [B2000037 1307 W. Knox - Updated Exterior Elevation Plan.pdf](#); [B2000037 1307 W. Knox - Updated Floor Plan.pdf](#)).

B2000038 – City: A request for a variance from the parking requirements for a single-family dwelling. The subject site is located at 1307 W. Knox Street, within the Urban Development tier, and is zoned Residential Urban-5(2) [RU-5(2)]. (Attachment: [B2000038.pdf](#))

B2000039 – City: A request for a variance from the vehicular use area landscaping requirements. The subject site is located at 3829 S. Miami Boulevard, within the Research Triangle Park North Compact Neighborhood Development tier, and is zoned Light Industrial (IL). (Attachment: [B2000039.pdf](#))

B2000040 – City: A request for a variance from the rear yard setback requirements to construct a single-family dwelling. The subject site is located at 1611 Maryland Avenue, within the Urban Development tier, and is zoned Residential Urban – 5 (RU-5). (Attachment: [B2000040.pdf](#) Applicant Material: [B2000040 Updated Information.pdf](#))

V. Old Business

VI. New Business

VII. Approval of Orders

B1900053 (from August Meeting)

B2000030 (from August Meeting)

B2000031

B2000022

B2000033

B2000034

B2000037

B2000038

B2000039

B2000040

VIII. Adjournment

Public Review: The agenda can be viewed on the BOA website <https://durhamnc.gov/1372/Board-of-Adjustment-BOA>. For further information, contact BOA@DurhamNC.gov, or contact Eliza Monroe at 919-560-4137 ext. 28245.

How to Access the Virtual Meeting

- BOA members will receive a special email link to access the virtual meeting.
- Members of the public can speak at the meeting by registering at https://zoom.us/webinar/register/WN_Z3oQr9c8SquakOB6hs5bvQ or by calling 1-301-715-8592 (Webinar ID: 941 8967 1574) by 5 p.m. on September 15, 2020. Standard calling charges may apply.
- The meeting will also be live streamed on YouTube at <https://www.youtube.com/user/CityofDurhamNC>

Cómo acceder a la reunión virtual

- Los miembros del BOA recibirán un enlace especial por correo electrónico para acceder a la reunión virtual.
- Los miembros del público pueden acceder a la reunión registrándose en https://zoom.us/webinar/register/WN_Z3oQr9c8SquakOB6hs5bvQ o llamando al 1-301-715-8592 (ID del seminario web 941 8967 1574) antes de las 5 PM del 15 de septiembre. Se pueden aplicar cargos de llamadas estándar.
- La reunión también se transmitirá en vivo en YouTube en <https://www.youtube.com/user/CityofDurhamNC>

Notice under the Language Access Plan Persons requiring language assistance to effectively participate in this event may contact the City-County Planning Department at 919-560-4137, or Sara.Young@durhamnc.gov to request interpretation and/or translation services as soon as possible but no later than 48 hours before the event or deadline date.

Notice under the Americans with Disabilities Act (ADA)

Persons with disabilities may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice 919-560-4197, fax 560-4196 or ADA@durhamnc.gov, as soon as possible but no later than 48 hours before the event or deadline date.

Aviso bajo el Plan de Acceso al Idioma

Personas que requieran asistencia lingüística para participar efectivamente en este evento pueden comuníquense con el Departamento de Planificación de la Ciudad y el Condado al 919-560-4137 o Sara.Young@durhamnc.gov para solicitar los servicios de interpretación y / o traducción tan pronto como sea posible pero no menos de 48 horas antes del evento o fecha límite.

Aviso bajo la Ley sobre Estadounidenses con Discapacidades (ADA, siglas en Inglés)

Personas con discapacidades pueden recibir asistencia para participar efectivamente en actividades del gobierno de la ciudad al comuníquense con el Coordinador de ADA al 919-560-4197, fax 560-4196 o ADA@durhamnc.gov, tan pronto como sea posible pero no menos de 48 horas antes del evento o fecha límite.

Staff Contact: Jessica Dockery, Planning Manager
919.560.4137 x28210 • BOA@DurhamNC.gov

EXHIBIT

D



**APPEAL OF AN
ADMINISTRATIVE DECISION
STAFF REPORT**

**DURHAM GREEN FLEA MARKET
B2000022**

Date: September 22, 2020

To: Members of the Board of Adjustment
Through: Sara Young, AICP, Interim Planning Director
From: Eliza Monroe, Planner

Subject: Appeal of an administrative decision to administer a Notice of Violation for improvements made to the Durham Green Flea Market without an approved site plan.

Summary. On March 10, 2020, Trans Perry and Robert Perry of Perry Law Firm, submitted an application for an Appeal of an Administrative Decision. Mr. Trans and Mr. Robert Perry, hereby referred to as the appellants, would like to appeal the Notice of Violation received by the appellants on February 18, 2020.

Background: On January 19, 2009, a change of use site plan, D0800251 (Attachment 4), was approved for a change of use from warehouse to retail. The building is located at 1600 E. Pettigrew Street, within the Alston Avenue Compact Neighborhood Development tier, and zoned Light Industrial (IL). The site plan approved the continued utilization of the existing building and parking for the new retail use. The site plan also approved of 4,840 square feet of new impervious surface in the form of a gravel driveway and required the applicant to replace any missing sidewalk pieces.

An amendment to the approved site plan, D0900162 (Attachment 5), was reviewed by staff and approved on November 18, 2009. The amendment allowed the relocation of the dumpster area to the rear of the building, at the end of the existing gravel driveway. An additional 2,245 square feet of impervious surface in the form of gravel was added to the existing driveway to provide access to the new dumpsters. The site plan amendment also permitted the use of outdoor space to accommodate 12 outdoor retail tenants. These were to be located on an existing concrete pad adjacent the parking lot.

An additional site plan, case D1300045, was routed for review on February 14, 2013, in response to a December 2012 Notice of Violation. The proposal identified the following existing changes to the site:

- The conversion of a portion of the existing parking lot into an outdoor vending location.
- A new entrance off of Plum Street.

- The location of outdoor storage.
- The site plan was approved on September 17, 2014.

On January 17, 2020, Kim Roberts, Code Enforcement Officer, conducted a field inspection. During this inspection, a zoning violation was observed as the structures located on site do not comply with the approved site plan which Roberts mentioned as D1300045 in the letter. Code Enforcement Officer Roberts drafted and issued the Notice of Violation on February 10, 2020. The applicant was instructed to correct the violation by removing all alterations inconsistent with the site plan within thirty (30) days of the receipt of the notice.

Staff Analysis

Appeal:

In their 'Basis for Appeal' (Attachment 3) the appellant's state:

"We believe the actions taken by the City representative is discriminatory and done without consideration to the services provided by the City of Durham. Specifically, based on prior notices of violations and decisions by the Planning Department, it was agreed minor violations would be not be noticed as violations considering similar violations by the other business owners in the City of Durham."

The Notice of Violation was administered under UDO Section 15.1.2, referencing UDO Section 3.7.2. This section establishes the basis for site plan review. Specifically:

UDO Section 3.7.2 Applicability

All proposed development or changes of use, except as indicated below, shall be subject to the site plan review process. The following are exempt from site plan review:

C. Change of use where no additions to buildings or structures, or exterior land improvements, are proposed and the change of use:

- 1. Does not require additional parking or stacking.*
- 2. Does not require additional landscaping.*
- 3. Does not require a Traffic Impact Analysis (TIA) or no improvements are required as a result of a TIA analysis.*
- 4. Only requires Architectural Review per Section 3.22.*

UDO Section 15.1.2 Violation

A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is

Inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.

B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.

C. Each day of a violation may be considered a separate and distinct violation.

The Code Enforcement Officer administered the Notice of Violation consistent with UDO sections 3.7.2 and 15.1.2. The improvements done on site were not reviewed or approved through a site plan review process and bring the site out of compliance with previously approved site plans. Modifications to the site since the last site plan approval were completed without regard to the regulations and standards within the UDO.

Legislative Intent:

UDO sections 3.7.2 and 15.1.2 have been components of the UDO since its adoption in 2006. Since then, hundreds of Notices of Violations have been administered as well as remedied through appropriate channels of review.

Per UDO Section 3.7.1, the intent of site plan review is to verify that a proposed development:

- A. Complies with all applicable Ordinance requirements, including any applicable development plan;*
- B. Complies with all previously approved applicable plans, including open space and trails plans, and bicycle and pedestrian plans;*
- C. Provides for trash handling, recycling, grease bins, and other waste related facilities employed in the normal operation of the use;*
- D. Provides adequate locations of parking areas, and pedestrian and vehicular access points and circulation;*
- E. Provides adequate design of traffic patterns, traffic control measures, and street pavement areas, with provisions for maintaining traffic flows and reducing unfavorable effects of traffic on nearby properties;*

Case B2000022 Durham Green Flea Market
Appeal of an Administrative Decision

F. Provides adequate stormwater facilities, water supply, sanitary sewer service, and fire protection, as evidenced by conformance with department standards, specifications, and guidelines;

G. Complies with requirements for easements and dedications;

H. Where a TIA has been submitted, accommodation for the traffic generated by the development with the existing or funded transportation system, or adequate traffic mitigation measures, are provided.

When development occurs without going through this process, there is no way to ensure that the site was developed with regards to the overall purpose of the Ordinance; to promote the health, safety, and general welfare of the residents of Durham City and County.

The Intent in adopting UDO Section 15 *Enforcement* was to provide guidelines for such situations, by which a Notice of Violation shall be issued as well as the options available to the Violator in response to the issuance of a Notice of Violation. It specifically prescribes that the Planning and/or Inspections Director, or an appropriate designee, such as a Code Enforcement Officer, has the power and responsibility to enforce the Ordinance and the remedies authorized under UDO Section 15.

Recommendation: Staff recommends that the Board of Adjustment uphold the Notice of Violation Issued on February 10, 2020, by Code Enforcement Officer Kim Roberts as the site has unapproved improvements and Roberts was operating under the authority given by UDO Section 15.

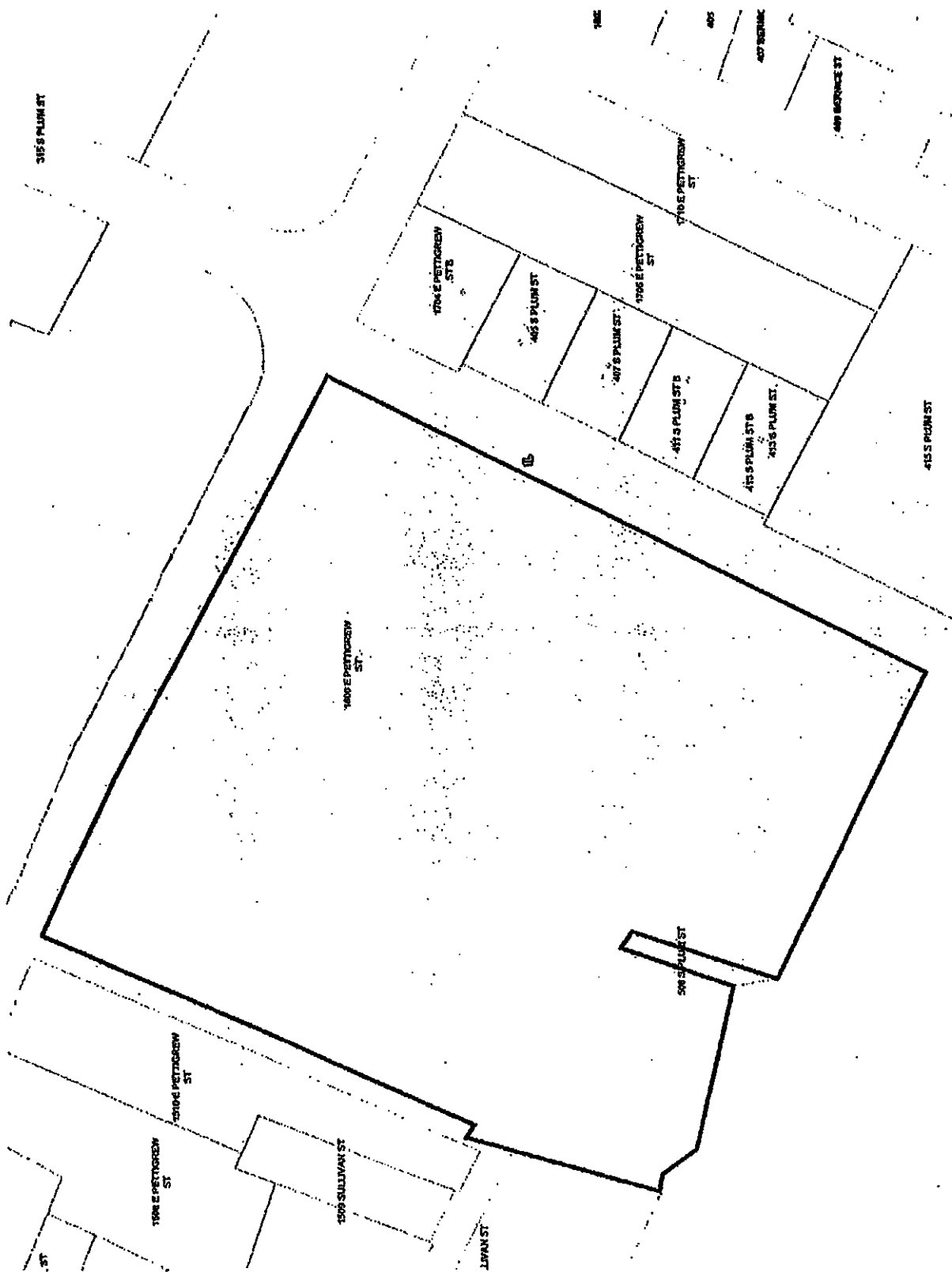
Attachments:

1. Context Map
2. Aerial
3. Application & Materials Submitted
4. D0800251 Approved Site Plan
5. D0900162 Approved Site Plan
6. February 2020 Notice of Violation
7. D1300045 Approved Site Plan
8. UDO Section 3.7.2 and UDO Section 15.1.2

POSSIBLE MOTION

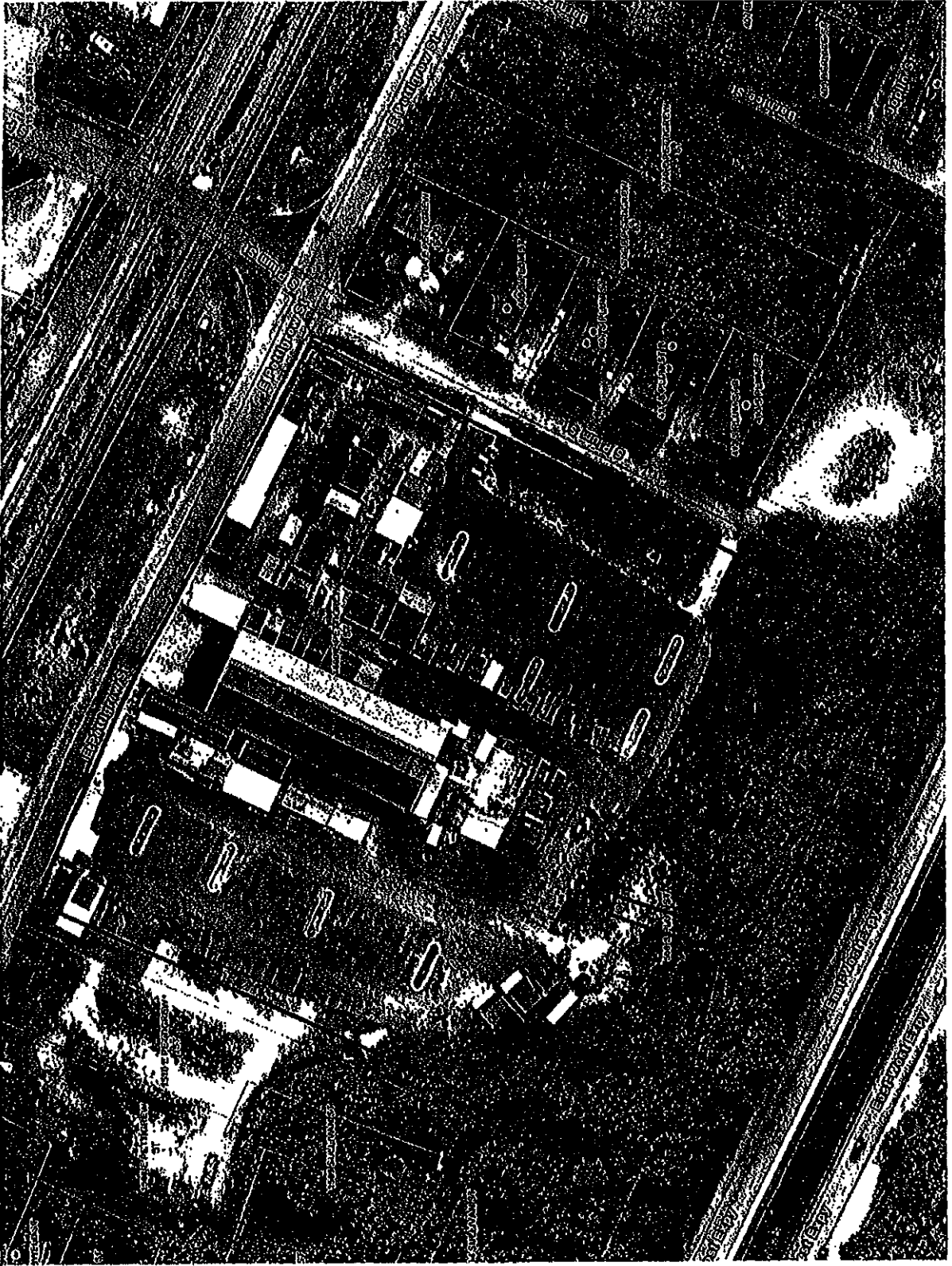
1. I hereby make a motion that application no. B2000022, an application for an appeal of an administrative decision to administer a Notice of Violation for improvements made to the Durham Green Flea Market without an approved site plan on property located at 1600 E. Pettigrew Street

Context Map



B2000022 Durham Green Flea Market Appeal of an Administrative Decision

Aerial Map

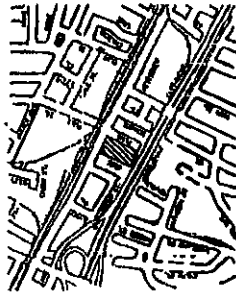


CHANGE OF USE SITE PLAN DURHAM GREEN FLEA MARKET FOR ROBERT PERRY

P.O. BOX 1852, DURHAM, N.C. 27702
(919) 539-9316

CREDLE ENGINEERING COMPANY, INC
ENGINEERS/PLANNERS/SURVEYORS 204 E. MARKET AVE. DURHAM, N.C. 27701 (919) 682-2006 FAX (919) 682-2003 FX

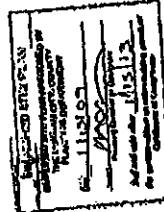
VICINITY MAP
SHE 0801-18-02-000
NO. 110008



CHANGE OF USE
USE
A PROPOSED FLEA MARKET USE

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SIMPLIFIED SITE PLAN
CASE #D0800251

CREDLE ENGINEERING COMPANY, INC
ENGINEERS/PLANNERS/SURVEYORS
DURHAM GREEN FLEA MARKET
ROBERT PERRY
1852 DURHAM ST. DURHAM, N.C. 27702
CHANGE OF USE SITE PLAN

C0.1

ADDENDUM TO SITE PLAN D0800251 DURHAM GREEN FLEA MARKET FOR ROBERT PERRY

P.O. BOX 1852, DURHAM, N.C. 27702
(919) 539-9316

CREDLE ENGINEERING COMPANY, INC
ENGINEERS/PLANNERS/SURVEYORS 304 E. MORRIS AVE. DURHAM, N.C. 27701 (919) 652-7000 FAX (919) 422-1005 EX

VICINITY MAP
SHEET NO. 10000
P.O. 10000



ADDENDUM TO SITE PLAN D0800251

1. ADDENDUM TO SITE PLAN

INDEX OF SHEETS

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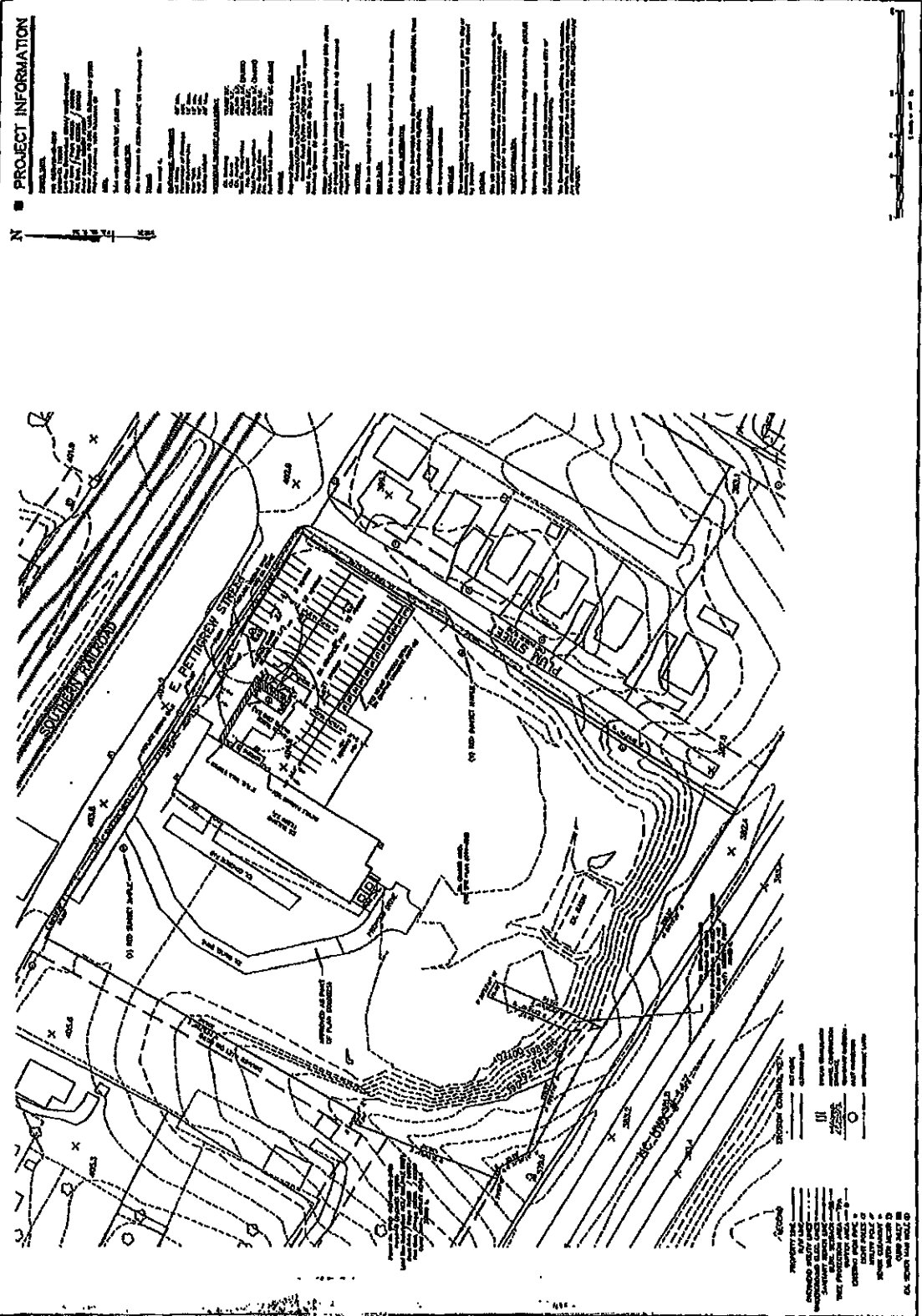
THESE SHEETS ARE THE PROPERTY OF CREDLE ENGINEERING COMPANY, INC. AND ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF CREDLE ENGINEERING COMPANY, INC.

SIMPLIFIED SITE PLAN
CASE #D0900162

C0100

CREDLE ENGINEERING COMPANY, INC.
ENGINEERS/PLANNERS/SURVEYORS
304 E. MORRIS AVE. DURHAM, N.C. 27701 (919) 652-7000 FAX (919) 422-1005 EX



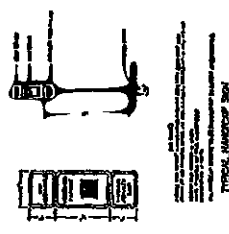
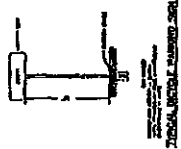
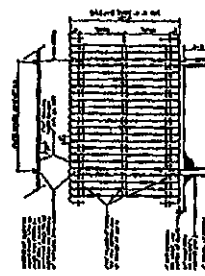
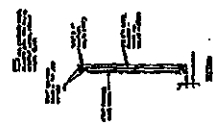
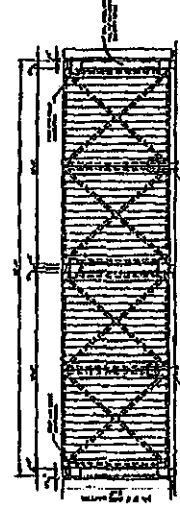
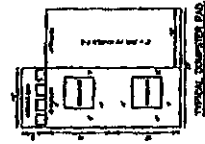


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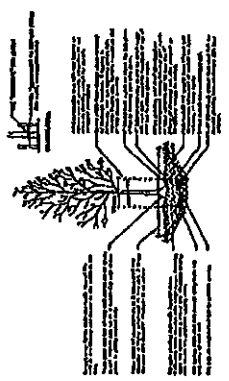
REVISIONS	DATE	BY	DESCRIPTION
1	10/1/77	W. J. BERRY	ISSUED FOR CONSTRUCTION
2	10/1/77	W. J. BERRY	REVISIONS
3	10/1/77	W. J. BERRY	REVISIONS
4	10/1/77	W. J. BERRY	REVISIONS
5	10/1/77	W. J. BERRY	REVISIONS
6	10/1/77	W. J. BERRY	REVISIONS
7	10/1/77	W. J. BERRY	REVISIONS
8	10/1/77	W. J. BERRY	REVISIONS
9	10/1/77	W. J. BERRY	REVISIONS
10	10/1/77	W. J. BERRY	REVISIONS

CREDBL ENGINEERING COMPANY, INC.
1000 WEST 10TH AVENUE
DENVER, COLORADO 80202
TELEPHONE 333-1111
FAX 333-1111

67
DETAILS



NO.	DESCRIPTION	DATE	BY
1	10/1/77	W. J. BERRY	ISSUED FOR CONSTRUCTION
2	10/1/77	W. J. BERRY	REVISIONS
3	10/1/77	W. J. BERRY	REVISIONS
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6	10/1/77	W. J. BERRY	REVISIONS
7	10/1/77	W. J. BERRY	REVISIONS
8	10/1/77	W. J. BERRY	REVISIONS
9	10/1/77	W. J. BERRY	REVISIONS
10	10/1/77	W. J. BERRY	REVISIONS





CITY OF DURHAM | DURHAM COUNTY
City-County Planning Department
101 CITY HALL PLAZA | DURHAM, NC 27701
919.560.4137 | F 919.560.4641



NOTICE OF VIOLATION

RECEIVED FEB 10 2020

February 10, 2020

Robert T. Perry
Durham Green Flea Market LLC
601 Fayetteville St, Suite 300
Durham, NC 27701

2E19-1117
Certified Mail
7014 2120 0001 2285 7659
Return Receipt Requested
Copy Via First Class Mail

The following zoning violation was observed during a recent field inspection:

Address: 1600 E. Pettigrew St	Durham Tax Parcel ID#: 119006
Zoning: IL	PIN #: 0831-18-42-0210
Violation: Failure to comply with an approved site plan (D1300045)	
To be corrected as noted below	

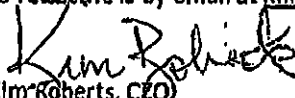
The above condition constitutes a violation of the Durham Unified Development Ordinance, Section 3.7.2, Applicability, Site Plan and 15.1.2 Violation (see attached).

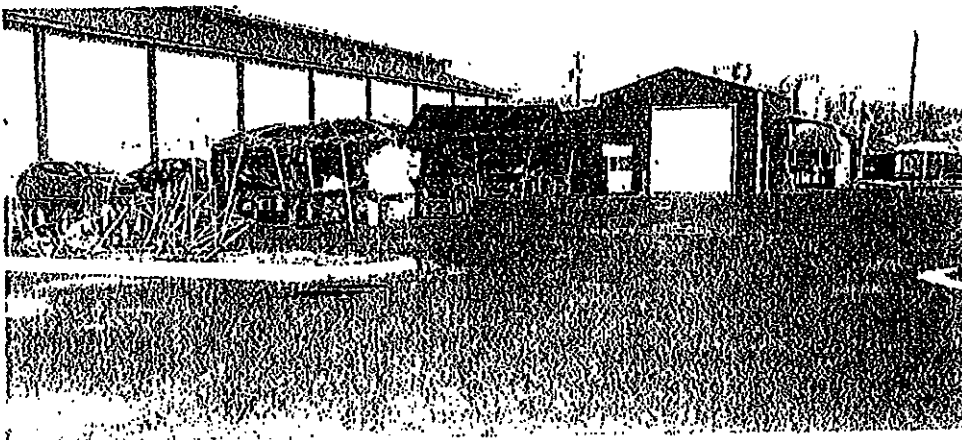
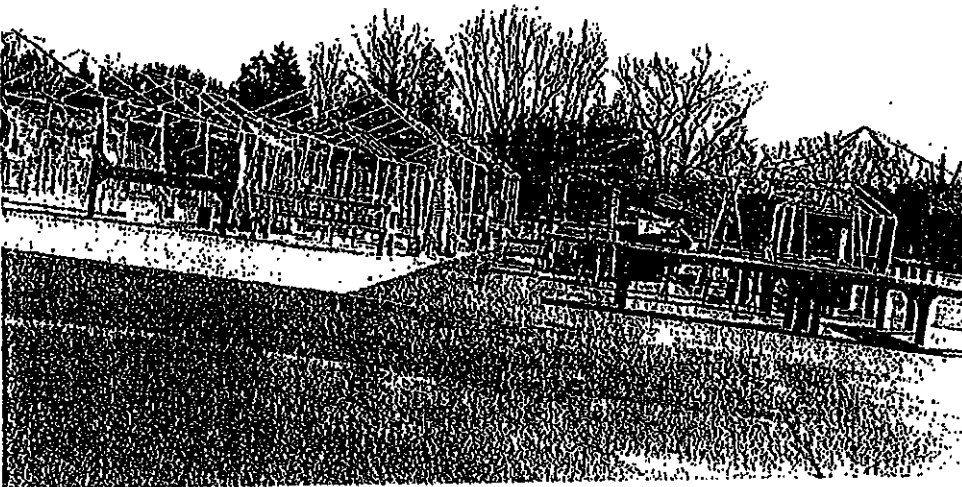
Correction of this violation will require the violator to remove all alterations inconsistent with the approved site plan within thirty (30) days of the receipt of this notice.

This notice serves as a warning and explains what steps must be taken to comply with the ordinance. If you do not contact us and begin the process to correct this violation within the time frame specified above, you are subject to the imposition of civil penalties in an amount up to \$500.00 per day for each day the violation exists after the deadline. The Durham UDO allows for the pursuit of (a) prosecution of this violation as a criminal misdemeanor, and (b) Injunctive relief through the Durham County Courts. Additionally, Section 15.2.2(A) of the UDO allows a person charged with a violation of the Zoning Code the right to appeal the determination to the Durham Board of Adjustment within 30 days from the date of receipt of this notice.

Please note that if the same violation as noted above is repeated within the next two years, the violation will be viewed as a continuation of this violation and may subject the violator to civil penalties without prior notification, as allowed in Section 15.2.

If you notify me when you have corrected the violation I will close out this case. The best way to reach me is by email at Kim.Roberts@DurhamNC.gov.


Kim Roberts, CEO
Senior Planner, Site Compliance Officer

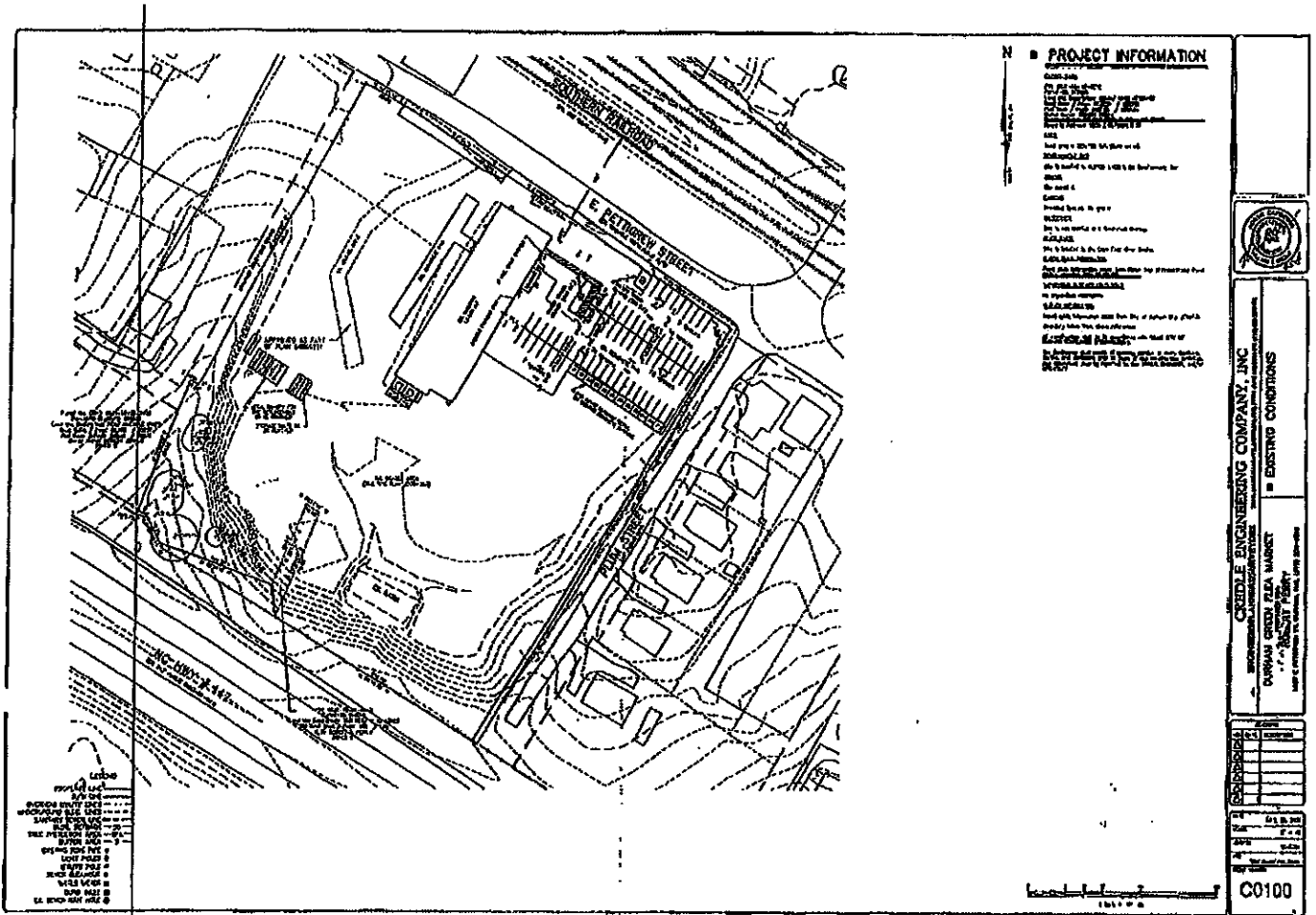


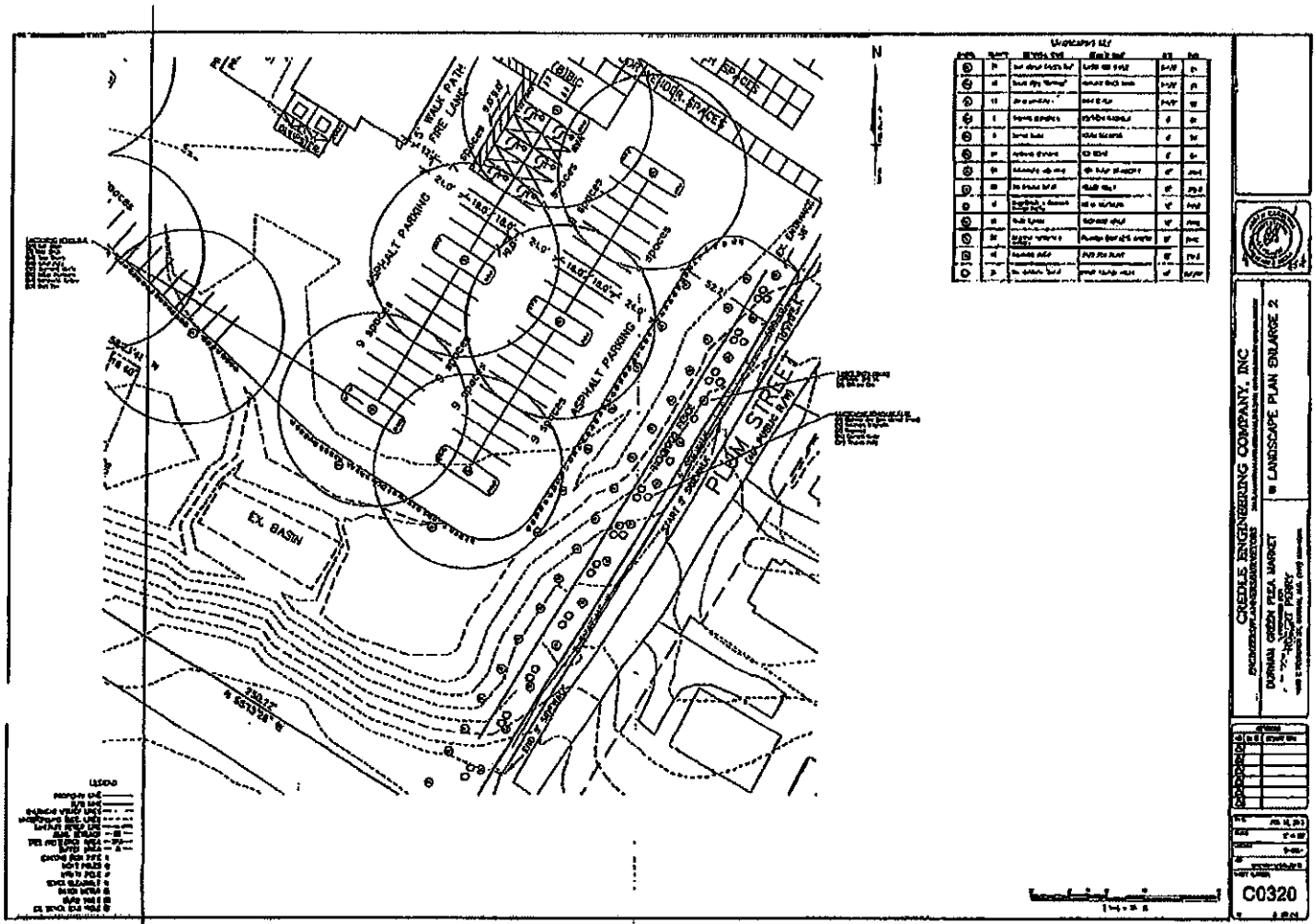
1600 E Pettigrew St, 01/17/20 by KFR



1600 E. Pettigrew Street, 01/17/20 by KFR





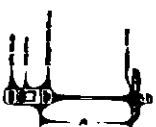




CREDIT ENGINEERING COMPANY, INC.
ENGINEERS/LANDSCAPE ARCHITECTS
1000 E. ASHBOURN AVE., DUNSMITH, WIS. 53004-1010
TEL: 414-251-1000 FAX: 414-251-1011
HOURS: 9:00 AM TO 5:00 PM, MONDAY THROUGH FRIDAY
CREDIT ENGINEERING COMPANY, INC.
1000 E. ASHBOURN AVE., DUNSMITH, WIS. 53004-1010
TEL: 414-251-1000 FAX: 414-251-1011
HOURS: 9:00 AM TO 5:00 PM, MONDAY THROUGH FRIDAY

DATE	10/1/80
BY	J. J. PERRY
CHECKED	
APPROVED	
SCALE	AS SHOWN
PROJECT	ROCKY PERRY
SHEET	80

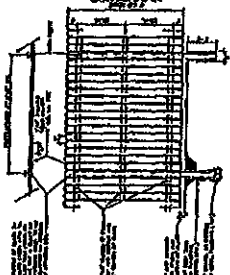
C0500
CREDIT ENGINEERING COMPANY, INC.
1000 E. ASHBOURN AVE., DUNSMITH, WIS. 53004-1010
TEL: 414-251-1000 FAX: 414-251-1011
HOURS: 9:00 AM TO 5:00 PM, MONDAY THROUGH FRIDAY



TYPICAL STORAGE ENCLOSURE
This enclosure is designed to protect the contents of the storage area from weather and theft. It is constructed of heavy-duty metal and is equipped with a heavy-duty door and a small window for ventilation. The enclosure is designed to be easy to install and maintain.



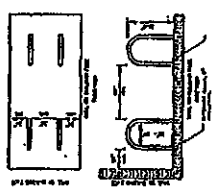
TYPICAL PARKING FENCE DETAIL
This detail shows the connection of the parking fence to the ground. The fence is designed to be easy to install and maintain.



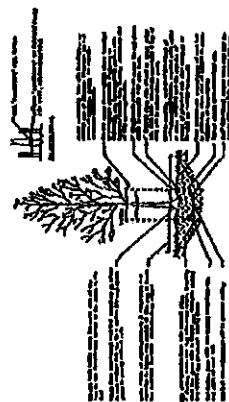
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TYPICAL PARKING FENCE DETAIL
This detail shows the connection of the parking fence to the ground. The fence is designed to be easy to install and maintain.



TYPICAL INVERTED 'Y' BICYCLE RACK
This rack is designed to hold bicycles in a secure and easy-to-access manner. It is constructed of heavy-duty metal and is equipped with a heavy-duty door and a small window for ventilation. The rack is designed to be easy to install and maintain.



TYPICAL STORAGE ENCLOSURE
This enclosure is designed to protect the contents of the storage area from weather and theft. It is constructed of heavy-duty metal and is equipped with a heavy-duty door and a small window for ventilation. The enclosure is designed to be easy to install and maintain.



TYPICAL PARKING FENCE DETAIL
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TYPICAL STORAGE ENCLOSURE
This enclosure is designed to protect the contents of the storage area from weather and theft. It is constructed of heavy-duty metal and is equipped with a heavy-duty door and a small window for ventilation. The enclosure is designed to be easy to install and maintain.

3.7.2 Applicability

All proposed development or changes of use, except as indicated below, shall be subject to the site plan review process. The following are exempt from site plan review:

- A.** Single-family and two-family development on existing single lots of record.
- B.** Development that does not require review by any City or County department for conformance with the standards of this Ordinance; or does not require a permit such as but not limited to fences or flagpoles. In instances where these types of development require a certificate of appropriateness (COA) or a special use permit, a site plan will not be required.
- C.** Change of use where no additions to buildings or structures, or exterior land improvements, are proposed and the change of use:
 - 1. Does not require additional parking or stacking.
 - 2. Does not require additional landscaping.
 - 3. Does not require a Traffic Impact Analysis (TIA) or no improvements are required as a result of a TIA analysis.
 - 4. Only requires Architectural Review per Section 3.22.

D. Public Right-of-Way Improvements

Development projects consisting only of public utility improvements within the public right-of-way, improvements to the public right-of-way (repairing, surfacing, striping, widening, stabilizing, landscaping), or other improvements in the right-of-way where the Planning Director, or designee, determines another City or County approval process verifies conformance to this Ordinance. Exceptions are as follows:

- 1. In Design Districts, a separate site plan application can be filed or site plan review can occur through another technical review by the City or County for that development project.
- 2. In local historic districts, a separate site plan application can be filed or site plan review can occur through review of the required COA application.

The Durham Unified Development Ordinance is current through legislation effective:

Durham County: July 13, 2020

City of Durham: July 1, 2020

Disclaimer: The Durham City-County Planning Department office has the official version of the Durham Unified Development Ordinance. Users should contact the Planning Department for amendments subsequent to the amendment cited here.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: durhamnc.gov

Code Publishing Company

15.1.2 Violation

- A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.
- B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.
- C. Each day of a violation may be considered a separate and distinct violation.

The Durham Unified Development Ordinance is current through legislation effective:

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[City Website: durhamnc.gov](http://durhamnc.gov)

[Code Publishing Company](#)

EXHIBIT

E



APPROVED

September 22, 2020 8:30 a.m.
Zoom – Virtual Meeting

I. Call to Order

Chair Jacobs called the meeting to order at 8:30 a.m.

II. Roll Call

Members Present:

Jacob Rogers, Chair
Chad Meadows
Regina deLacy
Myca Jeter
Ian Kipp
Michael Retchless
Teisha Wymore
Jessica Major, Designated Alternate
Michael Tarrant

Members Absent:

Staff Present:

Jessica Dockery, Planning Manager
Crista Cuccaro, City Attorney's Office
Bryan Wardell, County Attorney's Office
Cole Renigar, Planner
Eliza Monroe, Planner
Susan Cole, Clerk

Chair Jacobs read the following statement:

- The meeting will now come to order. Welcome to the September 22, 2020, meeting of the City of Durham Board of Adjustment. My name is Jacob Rogers and I am the Chair of the board.
- I would like to start by acknowledging that we are conducting this meeting using a remote, electronic platform as permitted by Session Law 2020-3. This is the second remote meeting of the Durham Board of Adjustment and the first remote BOA meeting with quasi-judicial hearings. I would ask for your patience today as we proceed. There may be slight delays as we transition between speakers.
- The Board of Adjustment is a quasi-judicial body that is governed by the North Carolina General Statutes and the City's Unified Development Ordinance. The Board typically conducts evidentiary hearings on requests for variances special use permits, among other requests.
- Today's meeting will proceed much like an in-person meeting of the Board of Adjustment. On the screen, you will see the members of the Board of Adjustment. Additionally, Planning staff and representatives from the City and County Attorney's Offices are attending in the remote meeting. Applicants were required to register in advance and are also attending the remote meeting. When a case is called for its hearing, applicants and witnesses will be promoted within the remote platform so their video can be seen. The Chair will swear in applicants and witnesses at the beginning of each case. Staff will present each case and applicants will then provide their evidence. Control of the presentation and screen sharing will remain with Planning staff. Today's meeting is being broadcast

live on the City's YouTube site and a link to this broadcast is on the website for the Board of Adjustment.

- The meeting will now come to order. Welcome to the DATE, 2020 meeting of the City of Durham Board of Adjustment. My name is Jacob Rogers and I am the Chair of the board. I would like to start by acknowledging that we are conducting this meeting using a remote, electronic platform as permitted by Session Law 2020-3.
- The Board of Adjustment is a quasi-judicial body that is governed by the North Carolina General Statutes and the City's Unified Development Ordinance. The Board typically conducts evidentiary hearings on requests for variances special use permits, among other requests.
- Today's meeting will proceed much like an in-person meeting of the Board of Adjustment. On the screen, you will see the members of the Board of Adjustment. Additionally, Planning staff and representatives from the City and County Attorney's Offices are attending in the remote meeting. Applicants, proponents, and opponents were required to register in advance and are also attending the remote meeting. When a case is called for its hearing, speakers will be promoted within the remote platform so their video can be seen. The Chair will swear in applicants and witnesses at the beginning of each case. Staff will present each case and applicants will then provide their evidence. Control of the presentation and screen sharing will remain with Planning staff. Today's meeting is being broadcast live on the City's YouTube site and a link to this broadcast is on the website for the Board of Adjustment.
- Before we begin the evidentiary hearings on today's agenda, I would like to provide some important information about the steps taken to ensure that each parties' due process rights are protected as we proceed in this remote platform.
 - Each applicant on today's agenda was notified that this meeting would be conducted using a remote, electronic platform. During registration, every applicant on today's agenda consented to the Board conducting the evidentiary hearing using this remote platform. We will also confirm today at the start of each evidentiary hearing that the participants in the evidentiary hearing consent to the matter proceeding in this remote platform. If there is any objection to a matter proceeding in this remote platform, the case will be continued.
 - Notice of today's meeting was provided by publishing notice in the newspaper, mailed to property owners within 600 feet of the subject properties, posting a sign at the property, and posting on the City's website. The newspaper, website, and mailed notices for today's meeting contained information how the public can access the remote meeting, as the meeting occurs. These notices also contained information about the registration requirement for the meeting, along with information about how to register.
 - All individuals participating in today's evidentiary hearings were also required to submit a copy of any presentation, document, exhibit or other material that they wished to submit at the evidentiary hearing prior to today's meeting. All materials that the City received from the participants in today's cases, as well as a copy of City staff's

presentations and documents, were posted on the Board of Adjustment website, as part of the agenda. No new documents will be submitted during today's meeting.

- All decisions of this Board are subject to appeal to the Durham Superior Court. Anyone in the audience, other than the applicant, who wishes to receive a copy of the formal order issued by this Board on a particular case, must submit a written request for a copy of the order.

III. Approval of Summary Minutes from August 25, 2020.

MOTION: Approve the August 25, 2020, minutes.

ACTION: Carried, 7-0. (deLacy, Meadows 2nd)

IV. Adjustments to the Agenda

Eliza Monroe announced that Case B2000031 had been withdrawn by the applicant.

IV. Hearing and Determination of Cases

B2000022 – City: Appeal of an administrative decision to administer a Notice of Violation for Improvements made to the Durham Green Flea Market without an approved site plan. The building is located at 1600 E. Pettigrew Street, within the Alston Avenue Compact Neighborhood Development tier, and is zoned Light Industrial (IL).

Mr. Robert Perry announced at the beginning of the case that he did not consent to the virtual format of the meeting. This case is continued until the Board resumes in-person meetings.

B2000033–City: A request for multiple variances from the project boundary buffer requirements on the north and east sides of the parcel. The subject site is located at 402 North Buchanan Boulevard, within the Urban Development tier, and is zoned Residential Urban – 5 (RU-5). Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: deLacy, Meadows, Rogers, Retchless, Wymore, Jeter, Major

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Rob Emerson, Fr. Michael Martin, Ellen Cassilly, and Gordon Caudle spoke in support. No one spoke in opposition.

MOTION: Retchless made a motion that application number B2000033, an application for a request for a Multiple variance request from the project boundary buffer requirements on the north and east sides of the parcel. On property located at 402 North Buchanan Boulevard has successfully met the applicable requirements of the unified Ordinance and is hereby granted subject to the following conditions: The improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.

ACTION: Carried, 6-1 with Meadows voting no. (Retchless, deLacy 2nd)

B2000034 – City: A request for a minor special use permit for an expansion of over 20% of the area that was originally approved in the previous minor special use permit. The subject site is located at 402 North Buchanan Boulevard, within the Urban Development tier, and is zoned Residential Urban – 5 (RU-5).

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: deLacy, Kipp, Meadows, Rogers, Retchless, Jeter, Wymore

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Fr. Michael Martin and Rob Emerson in support. No one spoke in opposition.

MOTION: Meadows made a motion that application no. B2000034, an application for a minor special use permit on property located at 402 North Buchanan, has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The Improvements shall be substantially consistent with the all information submitted to the Board as part of the application.

ACTION: Carried, 7-0. (Meadows, Retchless 2nd)

Case B2000037 - City: A request for a minor special use permit to allow an addition of more than 10% of the existing floor area to a non-conforming structure and a height increase. The subject site is located at 1307 W. Knox Street, within the Urban Development tier, and is zoned Residential Urban-5(2) [RU-5(2)].

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: deLacy, Kipp, Meadows, Rogers, Retchless, Jeter, Wymore

Staff Report: Eliza Monroe presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Talib Graves-Manns spoke in support. No one spoke in opposition.

MOTION: Jeter made a motion that application no. B2000037, an application for a Minor Special Use Permit on property located at 1307 W Knox Street has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The Improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.

ACTION: Carried, 7-0. (Jeter, deLacy 2nd)

Mr. Wardell provided an clarification regarding Case B2000022. He stated that while the case is waiting for the appeal to be heard in person, there will be a stay of enforcement.

CHAIR ROGERS ALLOWED THE BOARD TO TAKE A BREAK FROM 10:10 AM to 10:20 AM

Case B2000038 – City: A request for a variance from the parking requirements for a single-family dwelling. The subject site is located at 1307 W. Knox Street, within the Urban Development tier, and is zoned Residential Urban-5(2) [RU-S(2)].

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: deLacy, Kipp, Meadows, Rogers, Retchless, Jeter, Wymore

Staff Report: Eliza Monroe presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Talib Graves-Manns, spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion that application no. B2000038, an application for a request for a variance from the parking requirements for a single-family dwelling on property located at 1307 W. Knox Street has successfully met the applicable requirements of the unified development ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.

ACTION: Carried, 7-0. (Meadows, DeLacy 2nd)

Case B2000039 City: A request for a variance from the vehicular use area landscaping requirements. The subject site is located at 3829 S. Miami Boulevard, within the Research Triangle Park North Compact Neighborhood Development tier, and is zoned Light Industrial (IL).

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: deLacy, Kipp, Meadows, Rogers, Retchless, Jeter, Wymore

Staff Report: Eliza Monroe presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Mark Ferris spoke in support. No one spoke in opposition.

MOTION: deLacy made a motion the application no. B2000039, an application for a request for a variance from the vehicular use area landscaping requirements on property located at 3829 Miami Boulevard has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The Improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.

ACTION: Carried, 7-0. (deLacy, Retchless 2nd)

Case B2000040 City: A request for a variance from the rear yard setback requirements to construct a single-family dwelling. The subject site is located at 1611 Maryland Avenue, within the Urban Development tier, and is zoned Residential Urban – 5 (RU-5).

Applicant and all witnesses swore or affirmed their testimony and consented to the remote meeting format.

Seated: deLacy, Kipp, Meadows, Rogers, Retchless, Jeter, Wymore

Staff Report: Eliza Monroe presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Michael Barbaza and Rob Fields spoke in support. No one spoke in opposition.

MOTION: Jeter made a motion that application B2000040, an application for a request for a variance from the rear yard setback requirements to construct a single-family dwelling. The subject site is located at 1611 Maryland Avenue has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

- The improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.
- 6-foot rear yard setback requires a 25-foot side yard setback on the north side of the lot for the portion outside of the flag pole.

ACTION: Carried, 6-1, Meadow voting no. (Jeter, DeLacy 2nd)

V. Old Business – None

VI. New Business –

Approval of Orders

Case B1900053

MOTION: Approve the order for case B1900053 (deLacy, Retchless, 2nd).

ACTION: Carried, 5-0.

Case B2000030

MOTION: Approve the order for case B2000030 (Meadows, Retchless, 2nd).

ACTION: Carried, 5-0.

Case B20000022- Continued

Case B2000033

MOTION: Approve the order for case B2000033 (Jeter, deLacy 2nd).

ACTION: Carried 6-0.

Case B2000034

MOTION: Approve the order for case B2000034 (deLacy, Retchless, 2nd).

ACTION: Carried 7-0.

Case B2000037

MOTION: Approve the order for case B2000037 (Klpp, Retchless 2nd).

ACTION: Carried, 7-0.

Case B2000038

MOTION: Approve the order for case B2000038 (Jeter, Wymore 2nd).

ACTION: Carried, 7-0.

Case B2000039

MOTION: Approve the order for case B2000039 (Meadows, deLacy, 2nd).

ACTION: Carried, 7-0.

Case B2000040- To be drafted

Bryan Wardell updated the Board on the Appeal coming in October. He asked for the Board to spend time reviewing the two Orders that will be before them.

Adjournment

The meeting adjourned at 11:52 a.m. (deLacy, Jeter 2nd)

Respectfully Submitted,
Susan Cole, Clerk to the Board

EXHIBIT

F

EXHIBIT

G



BOARD OF ADJUSTMENT

AGENDA

June 21, 2022 8:30 a.m.
Committee Room, 2nd Floor, City Hall
101 City Hall Plaza, Durham, NC

I. Call to Order

II. Roll Call

Jacob Rogers, Chair

Jessica Major, Designated Alternate

Chad Meadows, Vice-Chair

Chase Pickett, Alternate

Natalie Beauchaine

George Kolasa, Alternate

Ian Kipp

David Paletta

Michael Retchless

Michael Tarrant

III. Adjustments to the Agenda

IV. Approval of Minutes from May 24, 2022

Attachment: [DRAFT BOA May 24 Minutes.pdf](#)

V. Cases

B2000019 – City: A request for a minor special use permit to allow a hotel where the property line is 200 feet or less from a residential district or the property line of a single-family residential use. The property is located at 3114 Hillsborough Road, is zoned Office and Institutional (OI), and is within the Urban Development Tier.

Attachments: [B2000019.pdf](#)

B2000022 – City: Appeal of an administrative decision to administer a Notice of Violation for improvements made to the Durham Green Flea Market without an approved site plan. The property is located at 1600 E. Pettigrew Street, is zoned Light Industrial (IL) and is within the Alston Avenue Compact Neighborhood Development Tier.

Attachments: [B2000022.pdf](#)

B2200014 – City: A request for a variance from riparian buffer and no-build setback standards. The property is located at 1608 Gunter Street, is zoned Residential Urban – S(2) (RU-5(2)), and is within the Urban Development Tier.

Attachments: [B2200014.pdf](#)

B2200019 – City: A request for a variance from the infill development standards street yard requirements. The property is located at 524 and 526 Lakeland Street, is zoned Residential Urban – S(2) (RU-5(2)), and is within the Urban Development Tier.

Attachments: [B2200019.pdf](#)

B2200020 – City: A request for a variance from the infill development standards setback requirements. The property is located at 1203 N. Driver Street, is zoned Residential Urban – S(2) (RU-S(2)), and is within the Urban Development Tier.

Attachments: [B2200020.pdf](#)

VI. Old Business - None

VII. New Business - None

VIII. Approval of Orders -

B2000019

B2000022

B2200014

B2200019

B2200020

IX. Adjournment

Public Review: The agenda can be viewed on the BOA website <https://durhamnc.gov/1372/Board-of-Adjustment-BOA>. For further information, contact BOA@DurhamNC.gov, or contact Leigha Larkins at 919-560-4137 ext. 28263.

- The meeting will also be live streamed on YouTube at <https://www.youtube.com/user/CityofDurhamNC>.
- La reunión también se transmitirá en vivo en YouTube en <https://www.youtube.com/user/CityofDurhamNC>.

Notice under the Language Access Plan

Persons requiring language assistance to effectively participate in this event may contact the City-County Planning Department at 919-560-4137, or Sara.Young@durhamnc.gov to request interpretation and/or translation services as soon as possible but no later than 48 hours before the event or deadline date.

Notice under the Americans with Disabilities Act (ADA)

Persons with disabilities may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice 919-560-4197, fax 560-4196 or ADA@durhamnc.gov, as soon as possible but no later than 48 hours before the event or deadline date.

Aviso bajo el Plan de Acceso al Idioma

Personas que requieran asistencia lingüística para participar efectivamente en este evento pueden comuníquense con el Departamento de Planificación de la Ciudad y el Condado al 919-560-4137 o Sara.Young@durhamnc.gov para solicitar los servicios de interpretación y / o traducción tan pronto como sea posible pero no menos de 48 horas antes del evento o fecha límite.

Aviso bajo la Ley sobre Estadounidenses con Discapacidades (ADA, siglas en Inglés)

Personas con discapacidades pueden recibir asistencia para participar efectivamente en actividades del gobierno de la ciudad al comuníquense con el Coordinador de ADA al 919-560-4197, fax 560-4196 o ADA@durhamnc.gov, tan pronto como sea posible pero no menos de 48 horas antes del evento o fecha límite.

EXHIBIT

H



CITY OF DURHAM | DURHAM COUNTY
NORTH CAROLINA



APPEAL REPORT

Date: June 21, 2022
To: Members of the Board of Adjustment
Through: Sara M. Young, AICP, Planning Director
From: Leigha Larkins, Planner
Subject: Appeal of an administrative decision to administer a Notice of Violation for Improvements made to the Durham Green Flea Market without an approved site plan

Summary. On March 10, 2020, Trans Perry and Robert Perry of Perry Law Firm, submitted an application for an Appeal of an Administrative Decision. Mr. Trans and Mr. Robert Perry, hereby referred to as the appellants, would like to appeal the Notice of Violation received by the appellants on February 18, 2020. The Board of Adjustment attempted to hear this case at a virtual meeting on September 22, 2020, but that platform was denied by the applicant until such time as the hearing could be held in person.

Background: On January 19, 2009, a change of use site plan, 00800251 (Attachment 4), was approved for a change of use from warehouse to retail. The building is located at 1600 E. Pettigrew Street, within the Alston Avenue Compact Neighborhood Development tier, and zoned Light Industrial (IL). The site plan approved the continued utilization of the existing building and parking for the new retail use. The site plan also approved of 4,840 square feet of new impervious surface in the form of a gravel driveway and required the applicant to replace any missing sidewalk pieces.

An amendment to the approved site plan, 00900162 (Attachment 5), was reviewed by staff and approved on November 18, 2009. The amendment allowed the relocation of the dumpster area to the rear of the building, at the end of the existing gravel driveway. An additional 2,245 square feet of impervious surface in the form of gravel was added to the existing driveway to provide access to the new dumpsters. The site plan amendment also permitted the use of outdoor space to accommodate 12 outdoor retail tenants. These were to be located on an existing concrete pad adjacent the parking lot.

An additional site plan, case D1300045, was routed for review on February 14, 2013, in response to a December 2012 Notice of Violation. The proposal identified the following existing changes to the site:

Case B2000022 Durham Green Flea Market
Appeal of Administrative Decision

- The conversion of a portion of the existing parking lot into an outdoor vending location.
- A new entrance off of Plum Street.
- The location of outdoor storage.

The site plan was approved on September 17, 2014.

On January 17, 2020, Kim Roberts, Code Enforcement Officer, conducted a field inspection. During this inspection, a zoning violation was observed as the structures located on site do not comply with the approved site plan which Roberts mentioned as D1300045 in the letter. Code Enforcement Officer Roberts drafted and issued the Notice of Violation on February 10, 2020. The applicant was instructed to correct the violation by removing all alterations inconsistent with the site plan within thirty (30) days of the receipt of the notice.

Staff Analysis

Appeal:

In their 'Basis for Appeal' (Attachment 3) the appellant's state:

"We believe the actions taken by the City representative is discriminatory and done without consideration to the services provided by the City of Durham. Specifically, based on prior notices of violations and decisions by the Planning Department, it was agreed minor violations would not be noticed as violations considering similar violations by the other business owners in the City of Durham. "

The Notice of Violation was administered under UDO Section 15.1.2, referencing UDO Section 3.7.2. This section establishes the basis for site plan review. Specifically:

UDO Section 3.7.2 Applicability

All proposed development or changes of use, except as indicated below, shall be subject to the site plan review process. The following are exempt from site plan review:

C. Change of use where no additions to buildings or structures, or exterior land improvements, are proposed and the change of use:

- 1. Does not require additional parking or stacking.*
- 2. Does not require additional landscaping.*
- 3. Does not require a Traffic Impact Analysis (TIA) or no improvements are required as a result of a TIA analysis.*
- 4. Only requires Architectural Review per Section 3.22.*

UDO Section 15.1.2 Violation

- A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.**
- B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.**
- C. Each day of a violation may be considered a separate and distinct violation.**

The Code Enforcement Officer administered the Notice of Violation consistent with UDO sections 3.7.2 and 15.1.2. The improvements done on site were not reviewed or approved through a site plan review process and bring the site out of compliance with previously approved site plans. Modifications to the site since the last site plan approval were completed without regard to the regulations and standards within the UDO.

UDO sections 3.7.2 and 15.1.2 Have been components of the UDO since its adoption in 2006. Since that time, hundreds of Notices of Violation have been administered as well as remedied through appropriate channels of review.

Per Section 3.7.1, the intent of site plan review is to verify that a proposed development:

- A. Complies with all applicable Ordinance requirements, including any applicable development plan;**
- B. Complies with all previously approved applicable plans, including open space and trails plans, and bicycle and pedestrian plans;**
- C. Provides for trash handling, recycling, grease bins, and other waste related facilities employed in the normal operation of the use;**
- D. Provides adequate locations of parking areas, and pedestrian and vehicular access points and circulation;**
- E. Provides adequate design of traffic patterns, traffic control measures, and street pavement areas, with provisions for maintaining traffic flows and reducing unfavorable effects of traffic on nearby properties;**
- F. Provides adequate stormwater facilities, water supply, sanitary sewer service, and fire protection, as evidenced by conformance with department standards, specifications, and guidelines;**
- G. Complies with requirements for easements and dedications;**
- H. Where a TIA has been submitted, accommodation for the traffic generated by the development with the existing or funded transportation system, or adequate traffic mitigation measures, are provided.**

Case B2000022 Durham Green Flea Market
Appeal of Administrative Decision

When development occurs without going through this process, there is no way to ensure that the site was developed with regards to the overall purpose of the Ordinance; to promote the health, safety, and general welfare of the residents of Durham City and County.

The intent in adopting UDO Section 15 *Enforcement* was to provide guidelines for such situations, by which a Notice of Violation shall be issued as well as the options available to the Violator in response to the issuance of a Notice of Violation. It specifically prescribes that the Planning and/or Inspections Director, or an appropriate designee, such as a Code Enforcement Officer, has the power and responsibility to enforce the Ordinance and the remedies authorized under UDO Section 15.

Recommendation: Staff recommends that the Board of Adjustment uphold the Notice of Violation issued on February 10, 2020, by Code Enforcement Officer Kim Roberts as the site has unapproved improvements and Roberts was operating under the authority given by UDO Section 15.

Attachments:

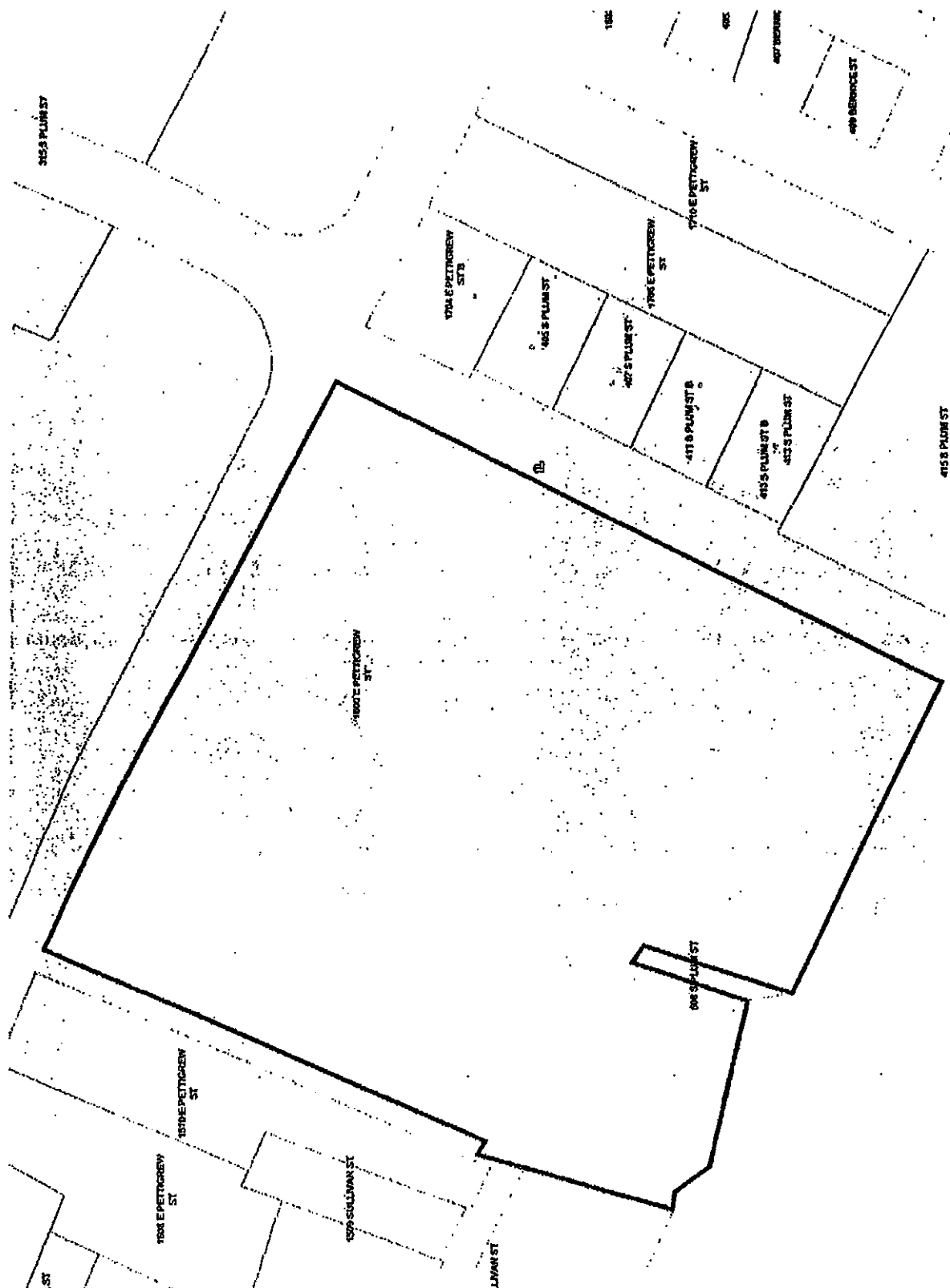
1. Context Map
2. Aerial Map
3. Application & Materials Submitted
4. D0800251 Approved Site Plan
5. D0900162 Approved Site Plan
6. D1300045 Approved Site Plan
7. February 2020 Notice of Violation
8. UDO Section 3.7.2 and UDO Section 15.1.2

POSSIBLE MOTION

This matter having been reviewed by the Board on Application for Appeal of and administrative decision to administer a Notice of Violation for Improvements made to the Durham Green Flea Market without an approved site plan by the Director of Planning, Sara Young, c for property located at 1600 E. Pettigrew Street in Durham, North Carolina; and, after hearing the presentation of evidence and reviewing the appeal submittals and all substantial, material and competent evidence, I hereby make a motion that the application appealing the Planning Director's Interpretation be GRANTED.

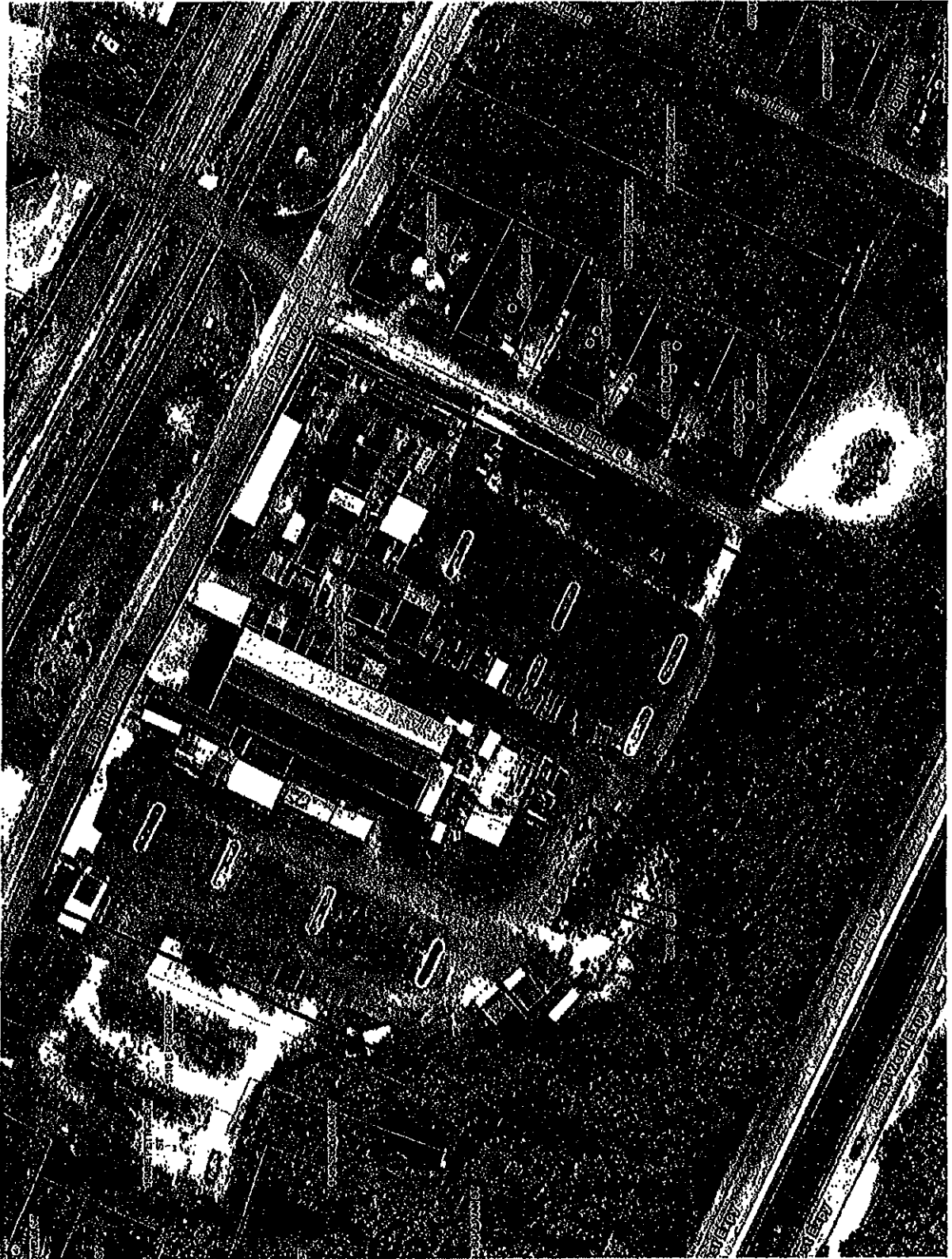
Note: A vote granting the appeal overturns the Planning Director's letter.

Context Map



B2000022 Durham Green Flea Market Appeal of an Administrative Decision

Aerial Map





Application For Appeal

A Pre-submittal meeting is not required prior to submission

City-County Development Services Center

Planning

101 City Hall Plaza, Durham, NC 27707 | <https://dsc.durhamnc.gov> | 919-560-4137

Submittal: Applications are due within 30 days of receipt of the decision being appealed and are available online at: <http://dsc.durhamnc.gov/174/Permits-and-forms>. Application submittals must be made in-person to the City Clerk's Office, if in City's jurisdiction, or the County Clerk's Office, if in the County's jurisdiction. Fees are due at time of submittal. **ONLY COMPLETE APPLICATIONS CAN BE ACCEPTED.**

Appeal applications are heard by the Board of Adjustment as a quasi-judicial public hearing. The application is a form of written testimony and is used to provide evidence. In addition to the application materials, the applicant may provide any other written, drawn or photographed material to support his/her request and as permitted by the Board of Adjustment. Any such additional material submitted will become part of the application, and as such cannot be returned.

Attendance at the hearing is required. Applicants may represent themselves or may be represented by someone appropriate for quasi-judicial public hearings. The public hearing will allow the applicant, proponents, opponents and anyone else the opportunity to speak and ask questions in regards to the request.

An "Appeal of an Administrative Decision" is permitted in accordance with Section 3.15, and an "Appeal of an Interpretation of Zone Boundaries" is permitted in accordance with Section 4.1.4, of the Unified Development Ordinance (UDO).

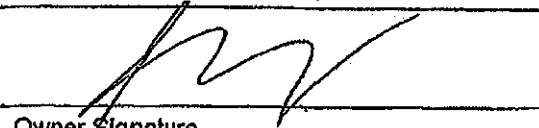
Action by the Board of Adjustment (Section 3.15.6A of the UDO): The Board of Adjustment may reverse or affirm (wholly or partly), or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken. Decisions can be appealed to Superior Court within 30 days.

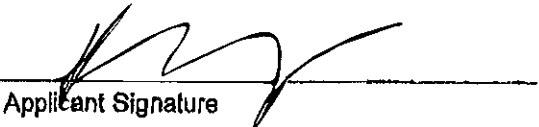
Tracking Information (Staff Only)		
Case Number:	Date/Time rec'd:	Rec'd by:

Application Requirements	Applicant Initial	Staff Initial
Completed application and responses: ORIGINAL signatures required	<i>ML</i>	
Fee: \$695, payable to City of Durham or County of Durham, as applicable	<i>ML</i>	
Supplemental material, as applicable: <ul style="list-style-type: none"> Written Order or decision being appealed Copy of Notice of Violation Site plan or plot plan Other documents 	<i>ML</i>	

Case # _____

Property Information	
Site Address: 1600 E. Pettigrew St	Site size (in acres): 5.5
Zoning District(s) : J1	PIN(s): 0831-18-42-0210
Zoning Overlay District(s):	PID(s):
Development Tier:	<input checked="" type="checkbox"/> City <input type="checkbox"/> County <input type="checkbox"/> Both

Property Owner	
Name(s) (Print): Trans Perry and Robert Perry	Phone: Trans-919-308-7657, Robert-919-683-8685
Contact Person: Trans Perry and Robert Perry	Email: transperry@gmail.com, robert.perrylaw@frontier.com
 Owner Signature	3-9-20 Date

Applicant Information	
Name(s): Trans Perry and Robert Perry	
Contact Person: Robert T. Perry	Phone: 919-683-8685
Address: 601 Fayetteville St., Suite 300	Fax: 919-688-7930
City/State/ZIP: Durham, NC 27701	Email: robert.perrylaw@frontier.com
<i>I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information, and belief.</i>	
 Applicant Signature	3-9-20 Date

Agent (if different than applicant)	
Name:	
Contact Person's Mailing Address:	Phone:
Address:	Fax:
City/State/ZIP:	Email:

Case # _____

For General Appeals (UDO 3.15): Complete and respond to the following in the space provided, or with an attachment (Suggested):

I, Trans Perry and Robert T. Perry, wish to appeal the following decision by
Kim Roberts, CZO (Administrative official)

The ruling was based on the following Unified Development Ordinance provision(s):
Section 3.7.2, Applicability, Site Plan and 15.1.2 Violation (see documents attached to the Notice of Violation)

A copy of the written decision/interpretation is attached. This ruling was made with respect to the property located at:

Address: 1600 E. Pettigrew St., Durham, NC 27703

PIN or PID: 0831-18-42-0210

Summarized below, and on other sheets as necessary (attached), is my rationale for arguing that the administrative ruling is an improper or erroneous interpretation of the Ordinance:

We believe the actions taken by the City representative is discriminatory and done without consideration to the services provided by the City of Durham. Specifically, based on prior notices of violations and decisions by the Planning Department, it was agreed minor violations would not be noticed as violations considering similar violations by other business owners in the City of Durham.

Case # _____

For Appeals of Zoning Boundary Interpretations (UDO 4.1.4): Complete And Respond To The Following In The Space Provided, Or With An Attachment (Suggested):

I, _____, wish to appeal the interpretation of the zoning district boundary at a location generally described as:

N/A

Section 4.1.4B states the methods of interpreting zoning boundaries that do not follow lot lines. Explain how your circumstances are not covered by Section 4.1.4B:

N/A

OR Explain how physical or cultural features existing on the ground vary with those shown on the Official Zoning Map:

N/A



CITY OF DURHAM | DURHAM COUNTY
City-County Planning Department
101 CITY HALL PLAZA | DURHAM, NC 27701
919.560.4137 | F 919.560.4641



NOTICE OF VIOLATION

RECEIVED FEB 10 2020

February 10, 2020

Robert T. Perry
Durham Green Flea Market LLC
601 Fayetteville St, Suite 300
Durham, NC 27701

2E19-1117
Certified Mail
7014 2120 0001 2285 7659
Return Receipt Requested
Copy Via First Class Mail

The following zoning violation was observed during a recent field inspection:

Address: 1600 E. Pettigrew St	Durham Tax Parcel ID#: 119006
Zoning: IL	PIN #: 0831-18-42-0210
Violation: Failure to comply with an approved site plan (D1300045)	
To be corrected as noted below	

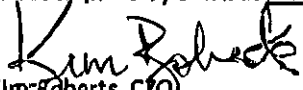
The above condition constitutes a violation of the Durham Unified Development Ordinance, Section 3.7.2, Applicability, Site Plan and 15.1.2 Violation (see attached).

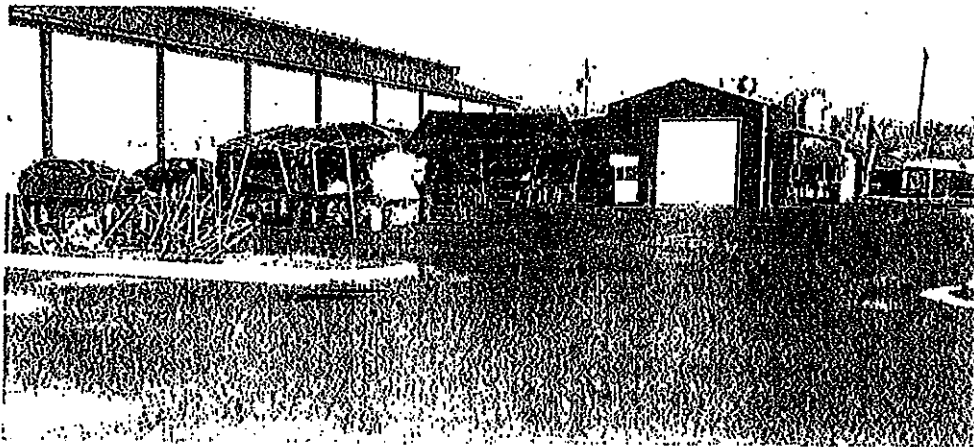
Correction of this violation will require the violator to remove all alterations inconsistent with the approved site plan within thirty (30) days of the receipt of this notice.

This notice serves as a warning and explains what steps must be taken to comply with the ordinance. If you do not contact us and begin the process to correct this violation within the time frame specified above, you are subject to the imposition of civil penalties in an amount up to \$500.00 per day for each day the violation exists after the deadline. The Durham UDO allows for the pursuit of (a) prosecution of this violation as a criminal misdemeanor, and (b) Injunctive relief through the Durham County Courts. Additionally, Section 15.2.2(A) of the UDO allows a person charged with a violation of the Zoning Code the right to appeal the determination to the Durham Board of Adjustment within 30 days from the date of receipt of this notice.

Please note that if the same violation as noted above is repeated within the next two years, the violation will be viewed as a continuation of this violation and may subject the violator to civil penalties without prior notification, as allowed in Section 15.2.

If you notify me when you have corrected the violation I will close out this case. The best way to reach me is by email at Kim.Roberts@DurhamNC.gov.

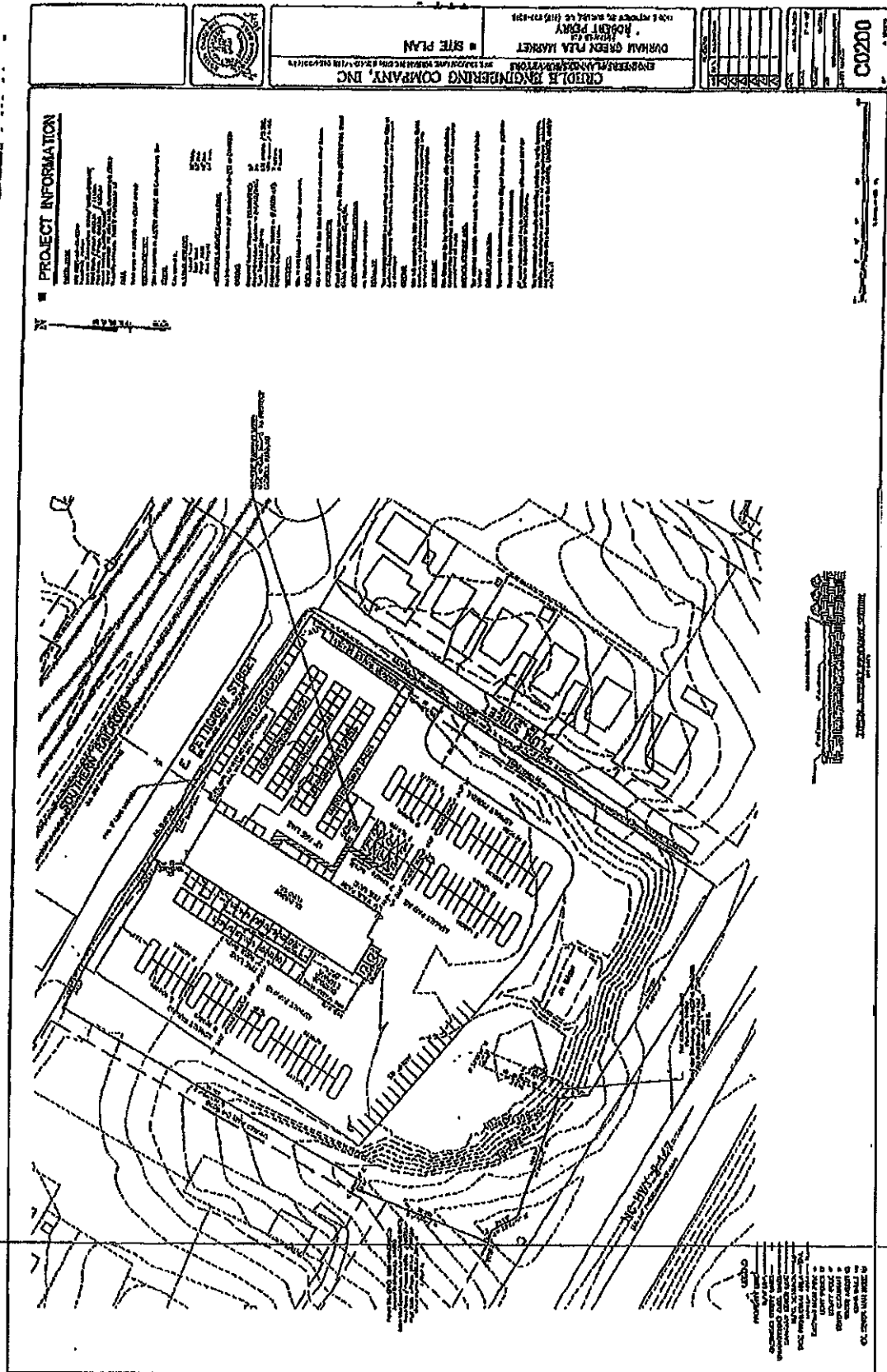

Kim Roberts, CIO
Senior Planner, Site Compliance Officer



1600 E Pettigrew St, 01/17/20 by KFR



1600 E. Pettigrew Street, 01/17/20 by KFR





DURHAM PROPERTY RECORD SEARCH

119006
1600 E PETTIGREW ST

CURRENT
DURHAM GREEN FLEA MARKET LLC
321 E CHAPEL HILL ST
DURHAM, NC, 27701

Total Assessed Value
\$815,815

KEY INFORMATION

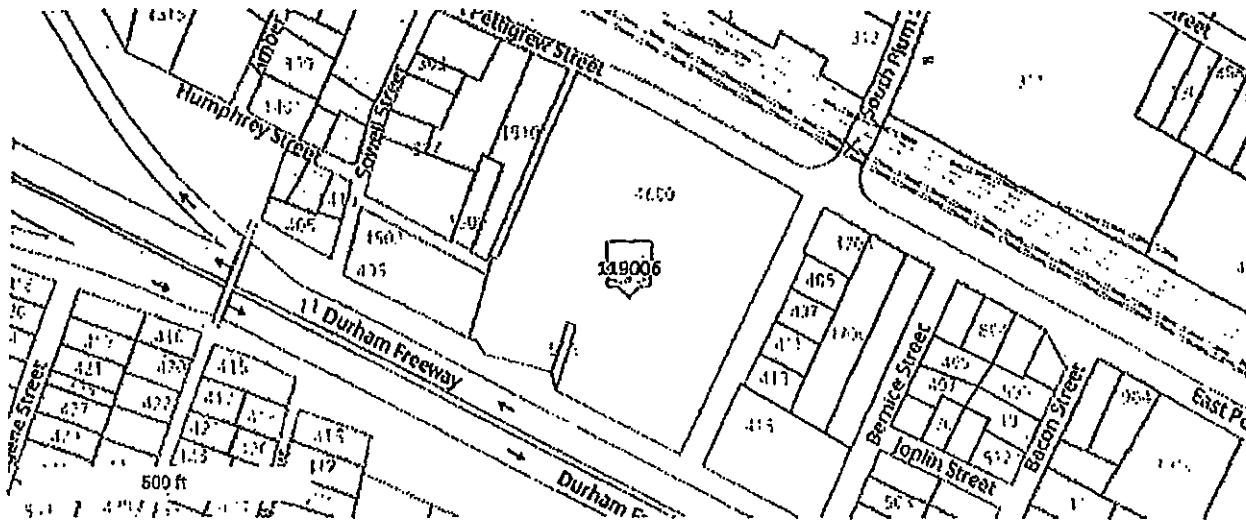
Tax District	CNTY-DRHM/CITY-DRHM	PIN	0831-18-42-0210
Account	8629102	Neighborhood	C831C
Land Use Code	440	Land Use Desc	COM/ WHSE-STORAGE
Subdiv Code	0000	Subdiv Desc	N/A - NO SUBDIVISION
Deed Book & Page	007730 / 000327	Plat Book & Page:	000086 / 000034
Last Sale Date:	06/23/2015	Last Sale Price:	\$699,000
Jan 1st Owner:	DURHAM GREEN FLEA MARKET LLC		
Legal Description:	PROP-SOUTHERN STATES TOBA CCO CO INC/GREEN FLEA MRT		

ASSESSMENT DETAILS

Land Fair Market Value	\$307,690
Improvement Fair Market Value	\$508,225
Total Fair Market Value	\$815,815

RESIDENTIAL BUILDING (1)

Year Built:	1981	Built Use / Ranch	STORAGE WAREHOUSES	Assessed Total Improvement Value	\$608,225
Current Use	STORAGE WAREHOUSES	Percent Complete:	100%		
Heated Area (S/F):	13,546	Full Bathroom(s):	0		
Half Bathroom(s):	0	Bedroom(s):	0		
Fireplace (Y/N):	N	Basement (Y/N):	N		
Basement Unfinished:	-	Basement Finished:	-		
Basement Partially Finished:	-	Attached Garage (Y/N):	N		
Assessed Building Value:	\$508,225				





LIMITED LIABILITY COMPANY ANNUAL REPORT

NAME OF LIMITED LIABILITY COMPANY: Durham Green Flea Market, L.L.C.

SECRETARY OF STATE ID NUMBER: 1144908 STATE OF FORMATION: NC

REPORT FOR THE CALENDAR YEAR: 2019

<small>File Office Use Only</small>
E - Filed Annual Report
1144908
CA201907704456
3/18/2019 02:00
<input type="checkbox"/> Changes

SECTION A: REGISTERED AGENT'S INFORMATION

1. NAME OF REGISTERED AGENT: Perry, Robert T.

2. SIGNATURE OF THE NEW REGISTERED AGENT: _____

SIGNATURE CONSTITUTES CONSENT TO THE APPOINTMENT

3. REGISTERED OFFICE STREET ADDRESS & COUNTY

601 Fayetteville Street, Suite 300

Durham, NC 27701 Durham County

4. REGISTERED OFFICE MAILING ADDRESS

601 Fayetteville Street, Suite 300

Durham, NC 27701

SECTION B: PRINCIPAL OFFICE INFORMATION

1. DESCRIPTION OF NATURE OF BUSINESS: Flea Market

2. PRINCIPAL OFFICE PHONE NUMBER: (919) 308-7657

3. PRINCIPAL OFFICE EMAIL: Privacy Redaction

4. PRINCIPAL OFFICE STREET ADDRESS & COUNTY

601 Fayetteville Street, Suite 300

Durham, NC 27701

5. PRINCIPAL OFFICE MAILING ADDRESS

601 Fayetteville Street, Suite 300

Durham, NC 27701

6. Select one of the following if applicable. (Optional see instructions)

☐

The company is a veteran-owned small business

☐

The company is a service-disabled veteran-owned small business

SECTION C: COMPANY OFFICIALS (Enter additional company officials in Section E.)

NAME: Trans Perry

NAME: _____

NAME: _____

TITLE: General Manager

TITLE: _____

TITLE: _____

ADDRESS: _____

ADDRESS: _____

ADDRESS: _____

601 Fayetteville Street, Suite 300

Durham, NC 27701

SECTION D: CERTIFICATION OF ANNUAL REPORT. Section D must be completed in its entirety by a person/business entity.

Trans Perry

3/18/2019

SIGNATURE

DATE

Form must be signed by a Company Official listed under Section C of This form.

Trans Perry

General Manager

Print or Type Name of Company Official

Print or Type Title of Company Official

This Annual Report has been filed electronically.

MAIL TO: Secretary of State, Business Registration Division, Post Office Box 29525, Raleigh, NC 27626-0525

3.7.2 Applicability

All proposed development or changes of use, except as indicated below, shall be subject to the site plan review process. The following are exempt from site plan review:

- A. Single-family and two-family development on existing single lots of record.
- B. Development that does not require review by any City or County department for conformance with the standards of this Ordinance; or does not require a permit such as but not limited to fences or flagpoles. In instances where these types of development require a certificate of appropriateness (COA) or a special use permit, a site plan will not be required.
- C. Change of use where no additions to buildings or structures, or exterior land improvements, are proposed and the change of use:
 - 1. Does not require additional parking or stacking.
 - 2. Does not require additional landscaping.
 - 3. Does not require a Traffic Impact Analysis (TIA) or no improvements are required as a result of a TIA analysis.
 - 4. Only requires Architectural Review per Section 3.22.
- D. **Public Right-of-Way Improvements**

Development projects consisting only of public utility improvements within the public right-of-way, improvements to the public right-of-way (repairing, surfacing, striping, widening, stabilizing, landscaping), or other improvements in the right-of-way where the Planning Director, or designee, determines another City or County approval process verifies conformance to this Ordinance. Exceptions are as follows:

- 1. In Design Districts, a separate site plan application can be filed or site plan review can occur through another technical review by the City or County for that development project.
- 2. In local historic districts, a separate site plan application can be filed or site plan review can occur through review of the required COA application.

15.1.2 Violation

- A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.
- B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.
- C. Each day of a violation may be considered a separate and distinct violation.

The Durham Unified Development Ordinance is current through legislation effective:

Durham County: December 1, 2019

City of Durham: December 1, 2019

Disclaimer: The Durham City-County Planning Department office has the official version of the Durham Unified Development Ordinance. Users should contact the Planning Department for amendments subsequent to the amendment cited here.

City Website: durhamnc.gov

Code Publishing Company



CITY OF DURHAM
Office of the City Clerk
101 CITY HALL PLAZA | DURHAM, NC 27701
919.560.4166 | F 919.560.4835

www.durhamnc.gov

TIME: 1:20 AM (M)
RECEIVED



DURHAM CITY-COUNTY
PLANNING DEPARTMENT

TO: Patrick Young, Director of City/County Planning
THRU: Diana Schreiber, CMC
City Clerk
FROM: Tonette Amos
Assistant City Clerk
DATE: March 10, 2020
SUBJECT: Request for Appeal - 1600 E. Pettigrew Street, Durham, NC

I am attaching the above mentioned request for appeal application for your review.

Location of Violation(s): PIN#: 0831-18-42-0210
PARCEL ID#: 119006

APPLICANT: Trans Perry and Robert Perry
c/o Robert Perry
601 Fayetteville Street, Suite 300
Durham, NC 27701

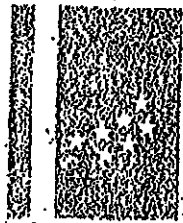
City of Durham, North Carolina
Statement of Account

Name: Durham Green Flea Market Phone Number: _____
Address: PO BOX 2051 City: Durham State: NC Zip: 27702

Item Description	Quantity	Cost	Trans./R.A.P. Code or Account Number	Amount Due
BDA Appeal Request 1600 E. Pettigrew St.	1	\$683	829	\$683.00
Tech Surcharge	1	\$12	802	\$12
CK# 13435				

For Revenue Billing & Collections Use Only

DURHAM



1869
CITY OF MEDICINE

For Department / Division Use Only

Check Total	695.00
Cash Total	
Non-Cash Total	
Total Received	695.00
James City Clerk Department/Division DTC	
Date Received	Received By

DISTRIBUTION: WHITE (COLLECTION) CANARY (CUSTOMER) PINK (DEPARTMENT/DIVISION)

Attachment 4 - D0800251 Approved Site Plan

CHANGE OF USE SITE PLAN

DURHAM GREEN FLEA MARKET

FOR

ROBERT PERRY

P.O. BOX 1852, DURHAM, N.C. 27702
(919) 539-9316

CREDLER ENGINEERING COMPANY, INC.
ENGINEERS/PLANNERS/SURVEYORS
204 E. MAIN ST. DURHAM, N.C. 27701 (919) 682-2000 FAX (919) 682-2005

CHANGE OF USE S PLAN

CREDLER ENGINEERING COMPANY, INC.
ENGINEERS/PLANNERS/SURVEYORS
204 E. MAIN ST. DURHAM, N.C. 27701 (919) 682-2000 FAX (919) 682-2005

CHANGE OF USE
A. Proposed FLEA MARKET USE

INDEX OF SHEETS
SHEET 1 OF 1
SITE PLAN
SYMBOLS
NOTES

VICINITY MAP (SEE SHEET 1)
PLOT 0433-10-42-0270
PLOT 118000

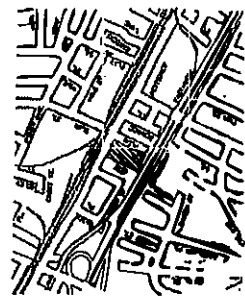
THUNDER
Please note of file in
for the 4-11-10

SIMPLIFIED SITE PLAN
CASE #D0800251

CO.

Attachment 4 - D0800251 Approved Site Plan

VICINITY MAP NO SCALE
PIN QK31-13-02-0270
PD: 119006



CHANGE OF USE

NOT RECORDED ON A MARKET LOT

INDEX OF SHEETS

DATE	1/20/01
TIME	1700Z
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TO	0000Z
INFO	0000Z
REMARKS	0000Z

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for this & file it.

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FROM THE
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SOLICITOR GENERAL
U. S. DEPT. OF JUSTICE
RECEIVED AT BOSTON MAY 24 1864
FROM THE
OFFICE OF THE
SOLICITOR GENERAL
U. S. DEPT. OF JUSTICE

[illegible][illegible]

**SIMPLIFIED SITE PLAN
CASE #D0800251**

8.

371

Attachment 5 - D0900162 Approved Site Plan

ADDENDUM TO SITE PLAN D0800251
DURHAM GREEN FLEA MARKET
FOR
ROBERT PERRY

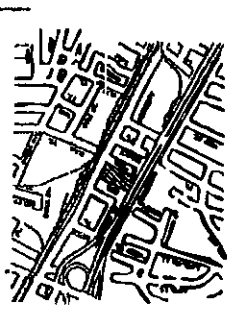
P.O. BOX 1852, DURHAM, N.C. 27702

(919) 539-9516

CREDLE ENGINEERING COMPANY, INC

ENGINEERS/PLANNERS/SI VEYORS 204 E. MARKHAM AVE. DURHAM, N.C. 27701 0150 002-3004 PM 0150 002-3003 PK

VICINITY MAP
SEE D0800251-1
P.O. 18000



ADDENDUM TO SITE PLAN D0800251

1. DURHAM GREEN FLEA MARKET
2. ADDENDUM TO SITE PLAN

INDEX OF SHEETS

SHEET 1
GENERAL
SITE DETAILS

1. DURHAM GREEN FLEA MARKET
2. ADDENDUM TO SITE PLAN



SIMPLIFIED SITE PLAN
CASE #D0900162


ADDENDUM TO SITE PLAN

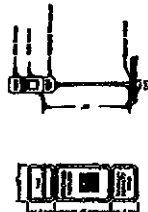
DURHAM GREEN FLEA MARKET
ROBERT PERRY
ADDENDUM TO SITE PLAN

ADDENDUM TO SITE PLAN

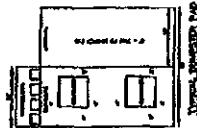
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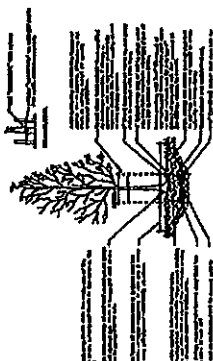
	CRADLE ENGINEERING COMPANY, INC. 240 BENTLEY AVENUE, SUITE 200, NEWTON, MASSACHUSETTS 02459 TEL: (617) 552-1234 FAX: (617) 552-1235 WWW.CRADLE-ENG.COM	WASH DETAILS DURHAM GREEN PLEA MARKET 1000 10th St 1000 10th St, Durham, N.C. 27703-3204	C0300 PROJECT NO. DRAWING NO. DATE SCALE SHEET NO. OF
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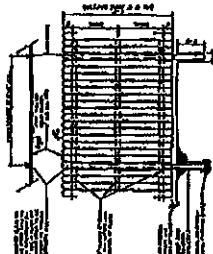
TYPICAL ELEVATION, SIDE




TYPICAL ELEVATION, END



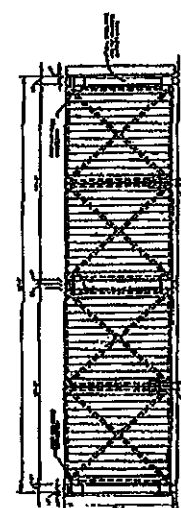
TYPICAL ELEVATION, SIDE



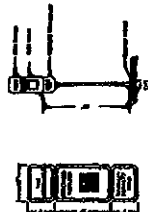
TYPICAL ELEVATION, END



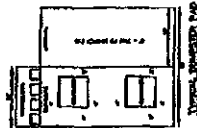
TYPICAL ELEVATION, SIDE



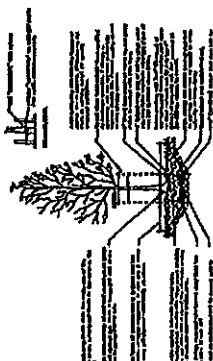
TYPICAL ELEVATION, END



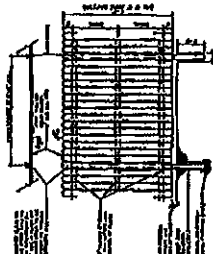
TYPICAL ELEVATION, SIDE




TYPICAL ELEVATION, END



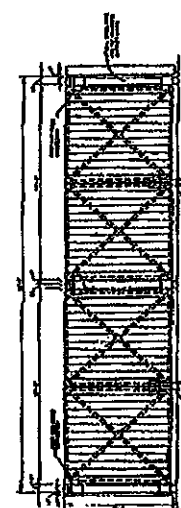
TYPICAL ELEVATION, SIDE



TYPICAL ELEVATION, END



TYPICAL ELEVATION, SIDE

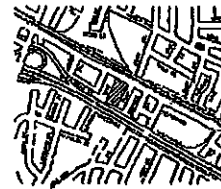


TYPICAL ELEVATION, END

IMPROVEMENTS TO DURHAM GREEN FLEA MARKET FOR ROBERT PERRY

P.O. BOX 1852, DURHAM, N.C. 27702
(919) 539-9316

VICINITY MAP
SHEET 0001-18-12-0110
RD 115000



INDEX OF SHEETS

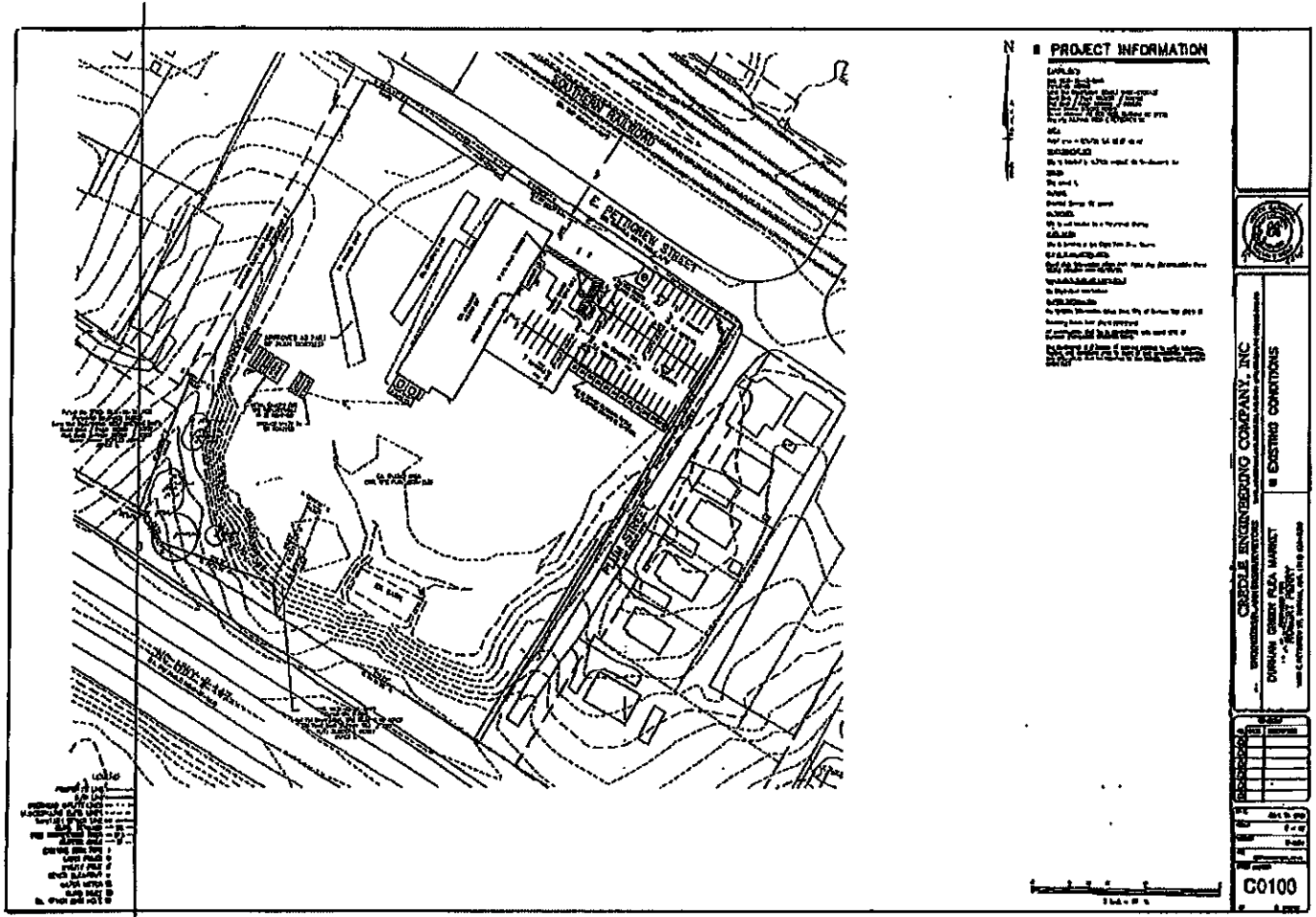
SHEET #	DESCRIPTION
0001	COVER
0002	GENERAL NOTES
0003	EXISTING CONDITIONS
0004	PROPOSED PLAN
0005	PROPOSED PLAN CHANGE 1
0006	PROPOSED PLAN CHANGE 2
0007	PROPOSED PLAN CHANGE 3
0008	PROPOSED PLAN CHANGE 4
0009	PROPOSED PLAN CHANGE 5
0010	PROPOSED PLAN CHANGE 6
0011	PROPOSED PLAN CHANGE 7
0012	PROPOSED PLAN CHANGE 8
0013	PROPOSED PLAN CHANGE 9
0014	PROPOSED PLAN CHANGE 10
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0072	PROPOSED PLAN CHANGE 68
0073	PROPOSED PLAN CHANGE 69
0074	PROPOSED PLAN CHANGE 70
0075	PROPOSED PLAN CHANGE 71
0076	PROPOSED PLAN CHANGE 72
0077	PROPOSED PLAN CHANGE 73
0078	PROPOSED PLAN CHANGE 74
0079	PROPOSED PLAN CHANGE 75
0080	PROPOSED PLAN CHANGE 76
0081	PROPOSED PLAN CHANGE 77
0082	PROPOSED PLAN CHANGE 78
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0098	PROPOSED PLAN CHANGE 94
0099	PROPOSED PLAN CHANGE 95
0100	PROPOSED PLAN CHANGE 96
0101	PROPOSED PLAN CHANGE 97
0102	PROPOSED PLAN CHANGE 98
0103	PROPOSED PLAN CHANGE 99
0104	PROPOSED PLAN CHANGE 100

CREDLE ENGINEERING COMPANY, INC
ENGINEERS/PLANNERS/SURVEYORS 201 E. MARKHAM AVE. DURHAM, N.C. 27701 (919) 539-3062 (919) 539-3063 FAX

<p>APPROVED COPY FOR INSPECTION</p> <p>SIMPLIFIED SITE PLAN CASE #D1300045</p>		<p>APPROVED COPY FOR INSPECTION</p> <p>SIMPLIFIED SITE PLAN CASE #D1300045</p>
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CREDLE ENGINEERING COMPANY, INC
ENGINEERS/PLANNERS/SURVEYORS
201 E. MARKHAM AVE. DURHAM, N.C. 27701 (919) 539-3062 (919) 539-3063 FAX

C0001



PROJECT INFORMATION

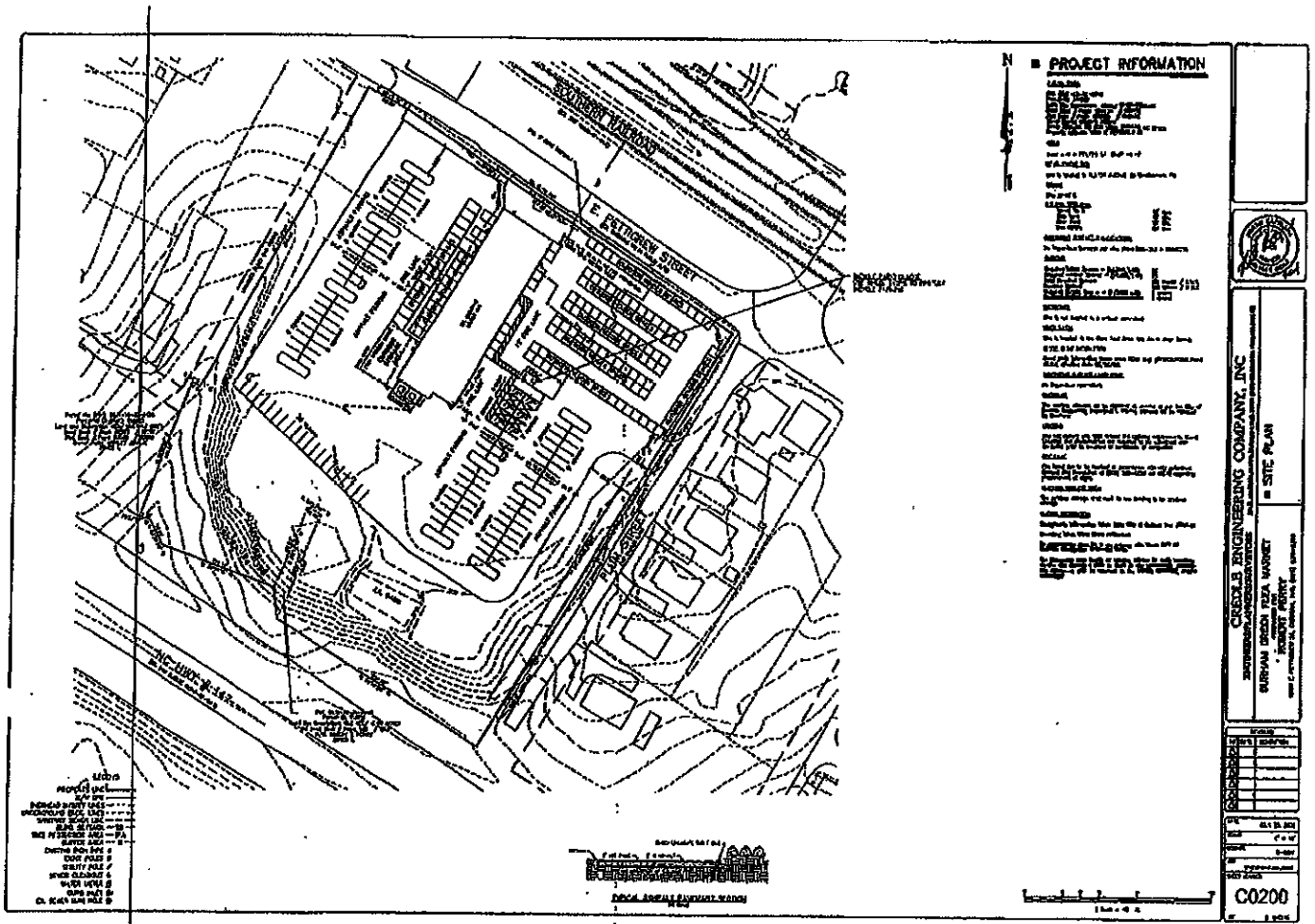
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 CHECKED BY: [illegible]
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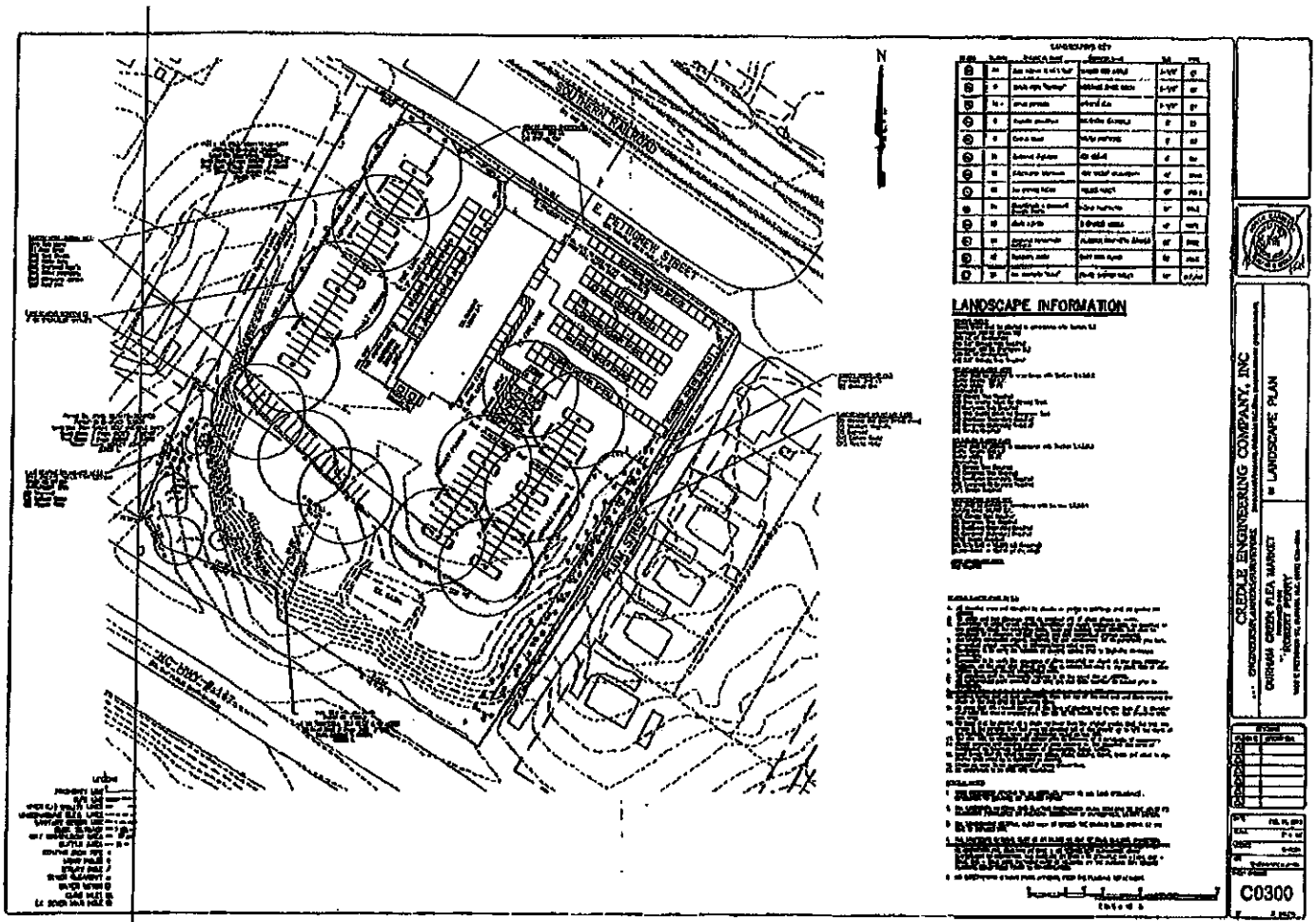
CARDLE ENGINEERING COMPANY, INC.
 ENGINEERS
 1000 E. 1st Street, Suite 100
 Oklahoma City, Oklahoma 73101
 (405) 241-1234
 FAX (405) 241-1235
 WWW.CARDLEENGINEERING.COM

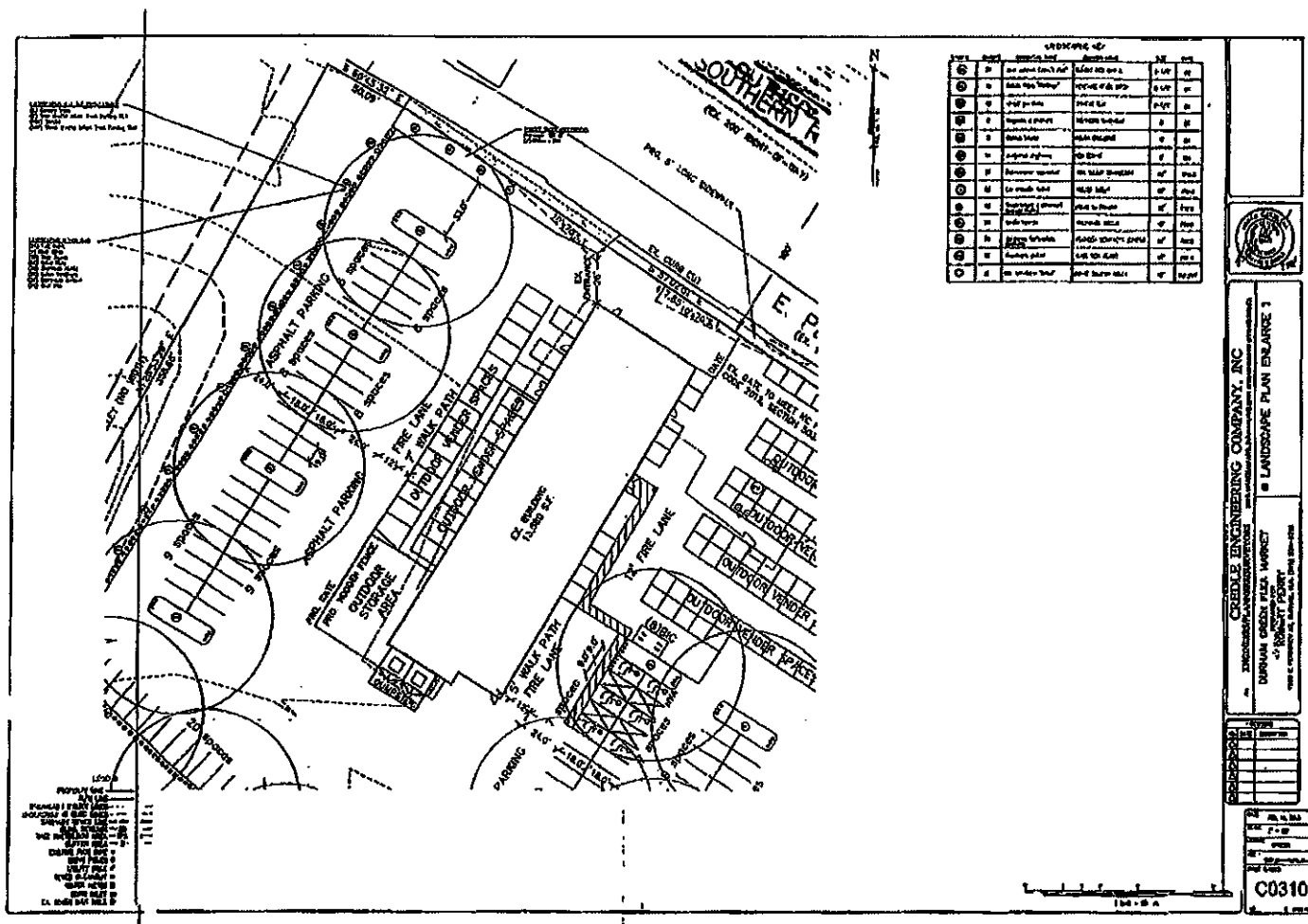
EXISTING CONDITIONS

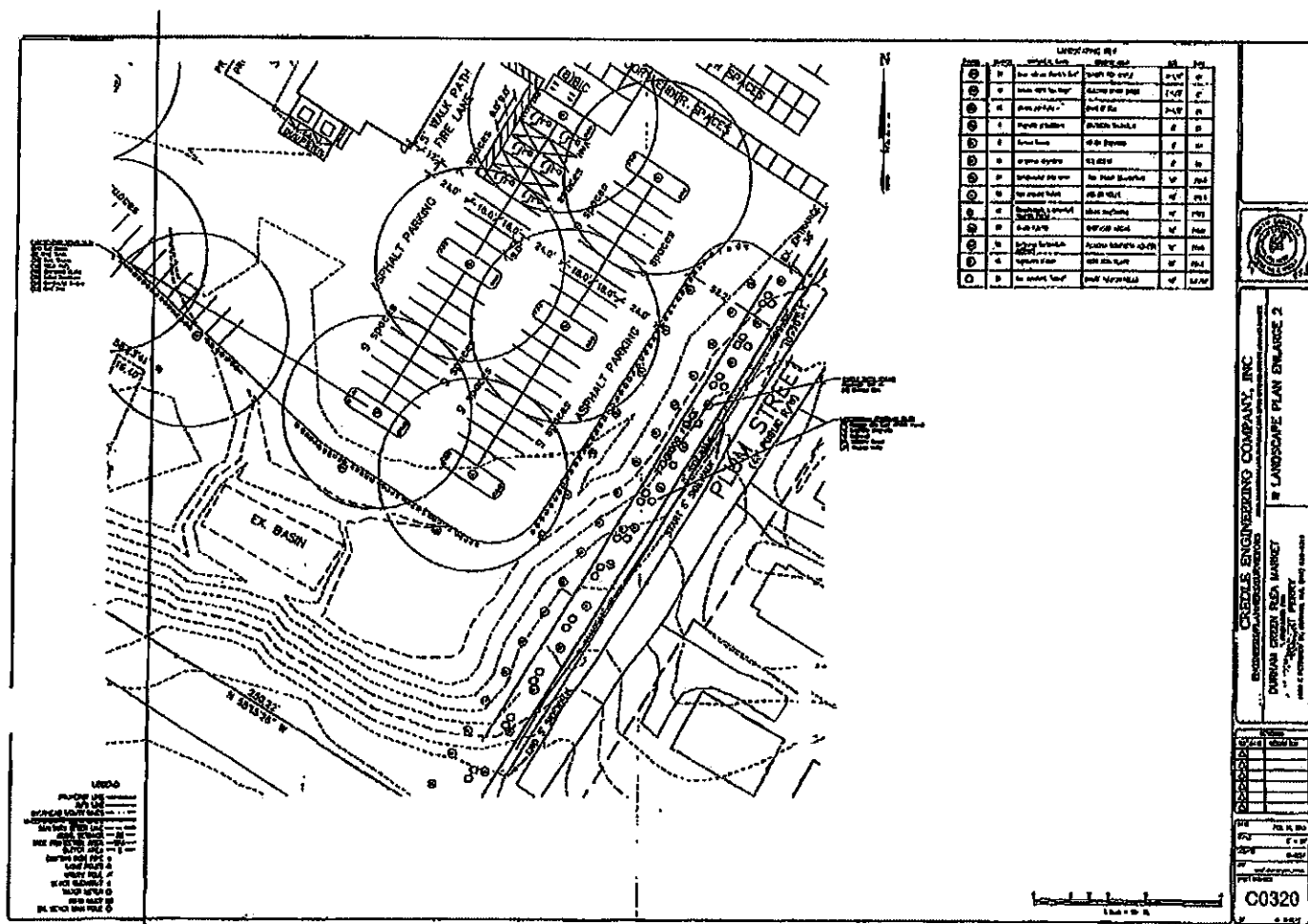
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C0100









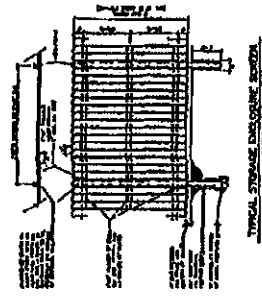


CRDLE ENGINEERING COMPANY, INC.
 ENGINEERING AND ARCHITECTURAL SERVICES
 1000 E. PLYMOUTH ST., DALLAS, TEXAS 75201
 (214) 342-4341
PROJECT: DURNHAM GREEN FLEA MARKET
LOCATION: HOUSTON, TEXAS
DATE: 10/1/77
SCALE: AS SHOWN
BY: J. PERRY
CHECKED BY: J. PERRY
APPROVED BY: J. PERRY

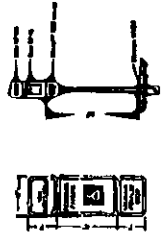
C0500	
NO.	1
DATE	10/1/77
BY	J. PERRY
CHECKED BY	J. PERRY
APPROVED BY	J. PERRY
SCALE	AS SHOWN
PROJECT	DURNHAM GREEN FLEA MARKET
LOCATION	HOUSTON, TEXAS
DATE	10/1/77
BY	J. PERRY
CHECKED BY	J. PERRY
APPROVED BY	J. PERRY



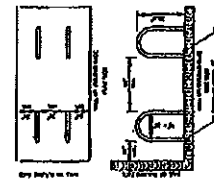
TYPICAL PARKING DECK ENTRY



TYPICAL STORAGE ENCLOSURE ENTRY



TYPICAL ENTRANCE GATE

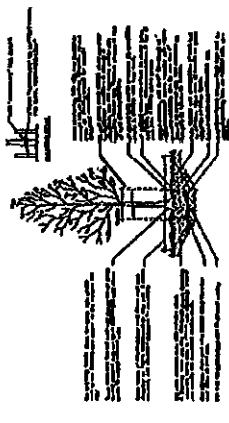


TYPICAL INVERTED "U" BICYCLE RACK

1. RACK SHALL BE MANUFACTURED OF GALVANNEAL STEEL WITH A MINIMUM THICKNESS OF 1/8" (2.0 MM).
 2. RACK SHALL BE PAINTED WITH A DURABLE, WEATHER-RESISTANT PAINT.
 3. RACK SHALL BE DESIGNED TO WITHSTAND A MINIMUM OF 100 LBS. OF WEIGHT PER CYCLE.
 4. RACK SHALL BE DESIGNED TO WITHSTAND A MINIMUM OF 100 CYCLES OF USE.
 5. RACK SHALL BE DESIGNED TO WITHSTAND A MINIMUM OF 100 CYCLES OF USE.

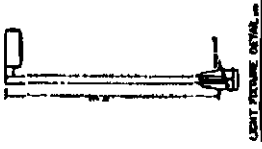


TYPICAL ENTRANCE GATE



TYPICAL ENTRANCE GATE

1. GATE SHALL BE MANUFACTURED OF GALVANNEAL STEEL WITH A MINIMUM THICKNESS OF 1/8" (2.0 MM).
 2. GATE SHALL BE PAINTED WITH A DURABLE, WEATHER-RESISTANT PAINT.
 3. GATE SHALL BE DESIGNED TO WITHSTAND A MINIMUM OF 100 LBS. OF WEIGHT PER CYCLE.
 4. GATE SHALL BE DESIGNED TO WITHSTAND A MINIMUM OF 100 CYCLES OF USE.
 5. GATE SHALL BE DESIGNED TO WITHSTAND A MINIMUM OF 100 CYCLES OF USE.



LIGHT FIXTURE DETAIL



POLE LIGHT



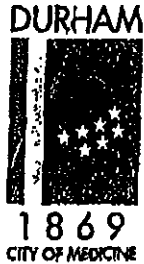
WALL-PARK LIGHT



LIGHTING SHIELD (NAIL-PAD)



LIGHTING SHIELD (SQUARE)



CITY OF DURHAM | DURHAM COUNTY
City-County Planning Department
101 CITY HALL PLAZA | DURHAM, NC 27701
919.560.4137 | F 919.560.4641



NOTICE OF VIOLATION

RECEIVED FEB 10 2020

February 10, 2020

Robert T. Perry
Durham Green Flea Market LLC
601 Fayetteville St, Suite 300
Durham, NC 27701

2619-1117
Certified Mail
7014 2120 0001 2285 7659
Return Receipt Requested
Copy Via First Class Mail

The following zoning violation was observed during a recent field inspection:

Address: 1600 E. Pettigrew St	Durham Tax Parcel ID#: 119006
Zoning: IL	PIN #: 0832-18-42-0210
Violation: Failure to comply with an approved site plan (D1300045)	
To be corrected as noted below	

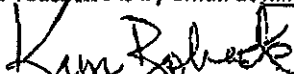
The above condition constitutes a violation of the Durham Unified Development Ordinance, Section 3.7.2, Applicability, Site Plan and 15.1.2 Violation (see attached).

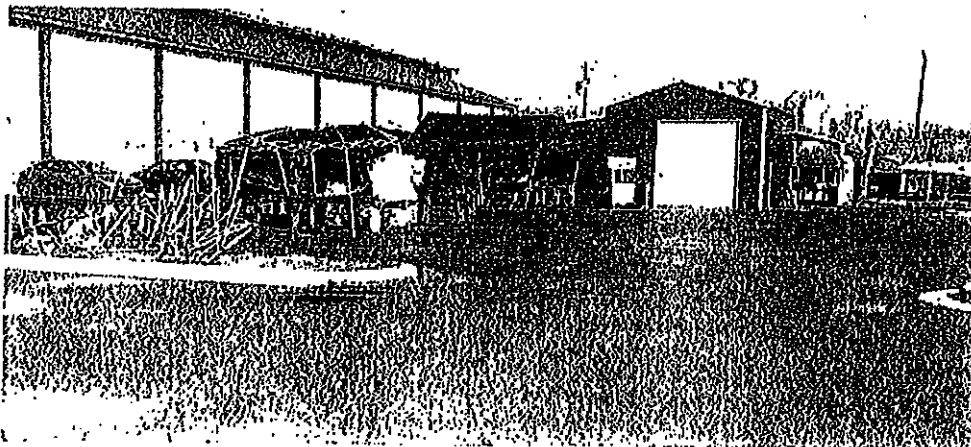
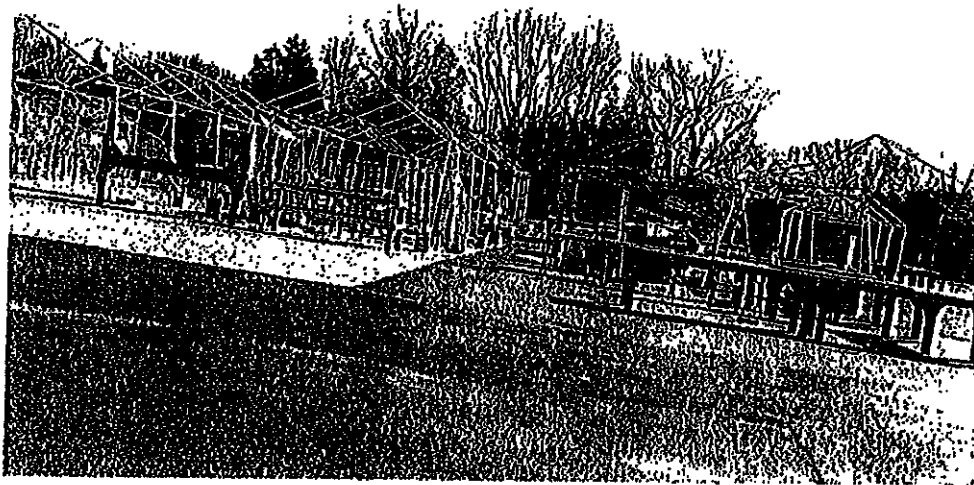
Correction of this violation will require the violator to remove all alterations inconsistent with the approved site plan within thirty (30) days of the receipt of this notice.

This notice serves as a warning and explains what steps must be taken to comply with the ordinance. If you do not contact us and begin the process to correct this violation within the time frame specified above, you are subject to the imposition of civil penalties in an amount up to \$500.00 per day for each day the violation exists after the deadline. The Durham UDO allows for the pursuit of (a) prosecution of this violation as a criminal misdemeanor, and (b) Injunctive relief through the Durham County Courts. Additionally, Section 15.2.2(A) of the UDO allows a person charged with a violation of the Zoning Code the right to appeal the determination to the Durham Board of Adjustment within 30 days from the date of receipt of this notice.

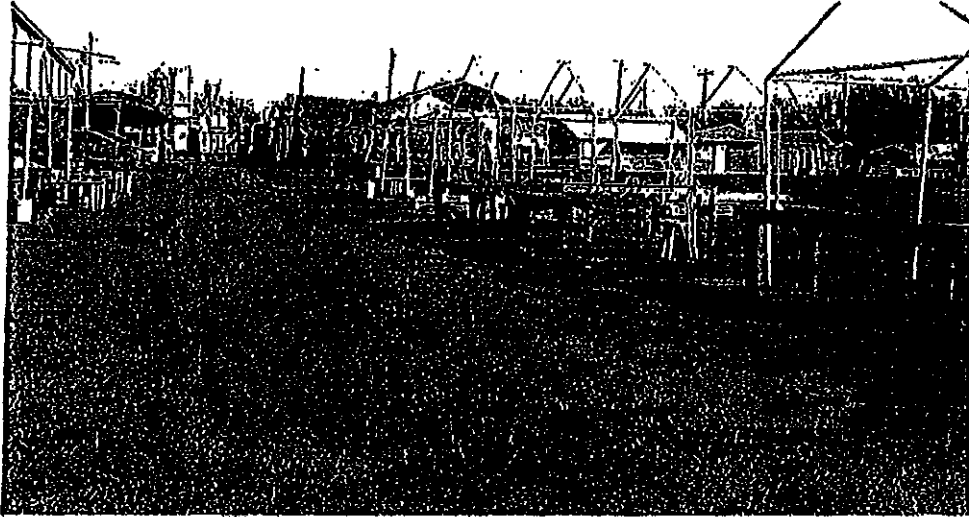
Please note that if the same violation as noted above is repeated within the next two years, the violation will be viewed as a continuation of this violation and may subject the violator to civil penalties without prior notification, as allowed in Section 15.2.

If you notify me when you have corrected the violation I will close out this case. The best way to reach me is by email at Kim.Roberts@DurhamNC.gov.

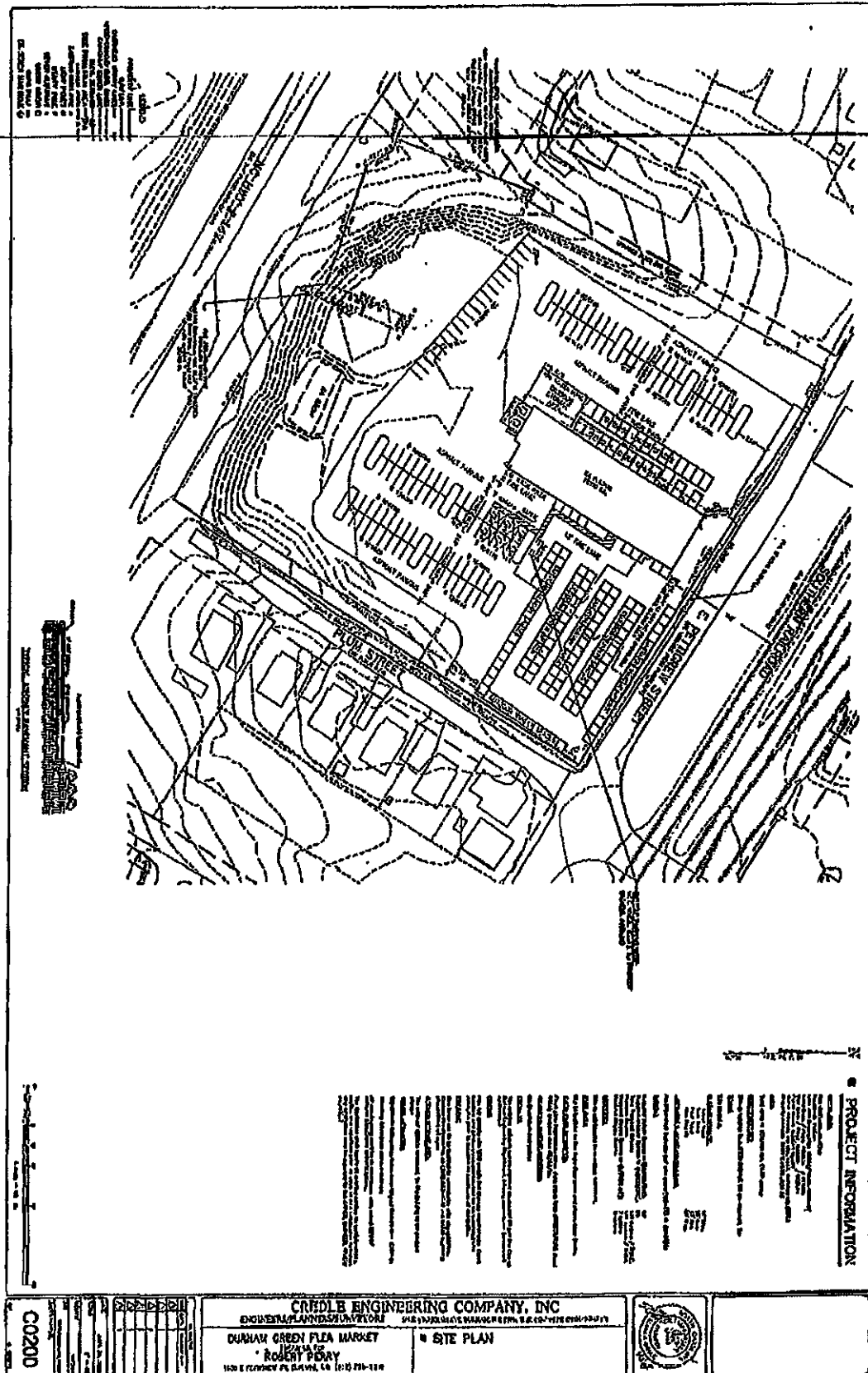

Kim Roberts, CEO
Senior Planner, Site Compliance Officer

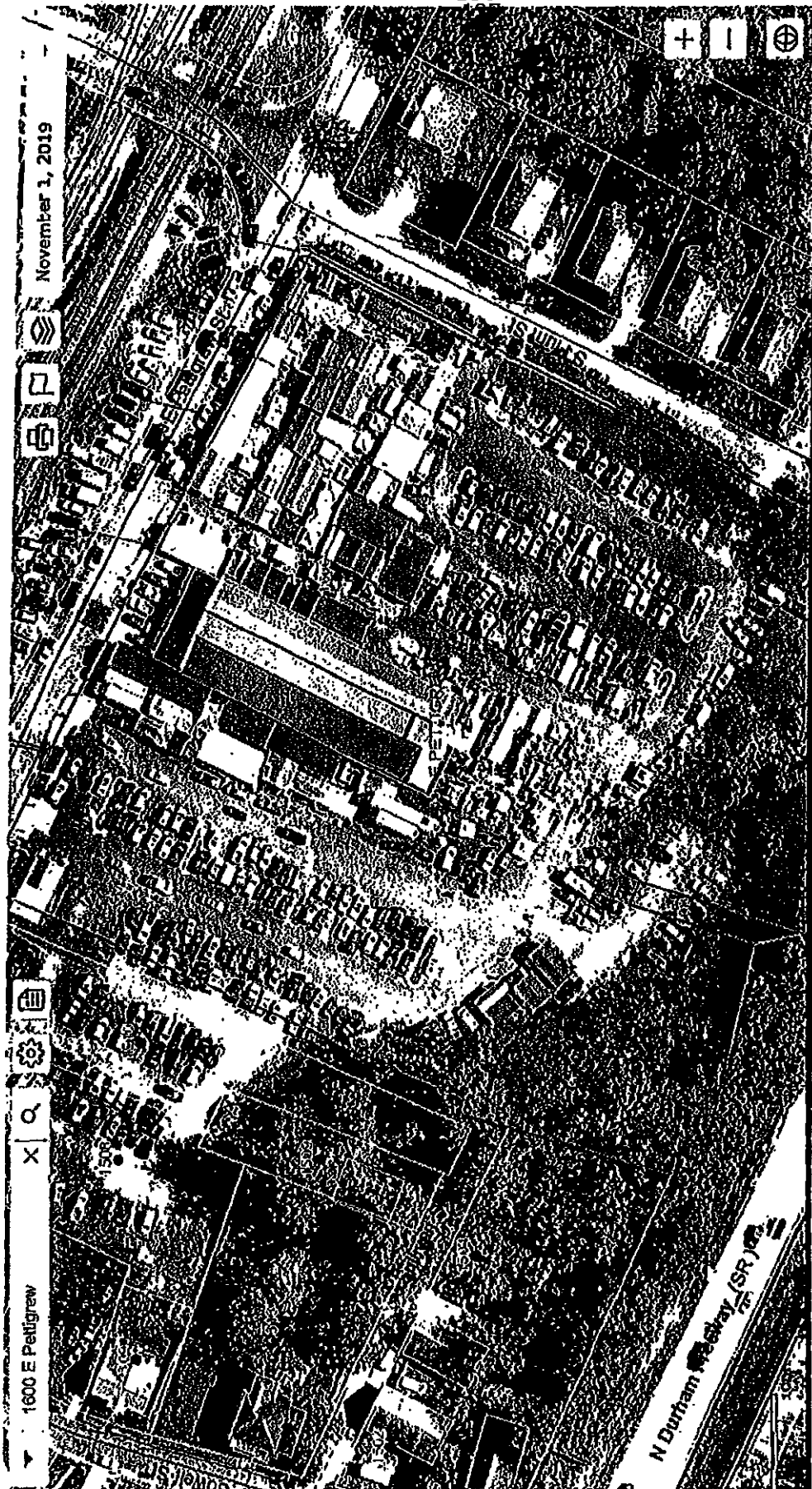


1600 E Pettigrew St, 01/17/20 by KFR



1600 E. Pettigrew Street, 01/17/20 by KFR





3.7.2 Applicability

All proposed development or changes of use, except as indicated below, shall be subject to the site plan review process. The following are exempt from site plan review:

- A. Single-family and two-family development on existing single lots of record.
- B. Development that does not require review by any City or County department for conformance with the standards of this Ordinance; or does not require a permit such as but not limited to fences or flagpoles. In instances where these types of development require a certificate of appropriateness (COA) or a special use permit, a site plan will not be required.
- C. Change of use where no additions to buildings or structures, or exterior land improvements, are proposed and the change of use:
 - 1. Does not require additional parking or stacking.
 - 2. Does not require additional landscaping.
 - 3. Does not require a Traffic Impact Analysis (TIA) or no improvements are required as a result of a TIA analysis.
 - 4. Only requires Architectural Review per Section 3.22.

D. Public Right-of-Way Improvements

Development projects consisting only of public utility improvements within the public right-of-way, improvements to the public right-of-way (repairing, surfacing, striping, widening, stabilizing, landscaping), or other improvements in the right-of-way where the Planning Director, or designee, determines another City or County approval process verifies conformance to this Ordinance. Exceptions are as follows:

- 1. In Design Districts, a separate site plan application can be filed or site plan review can occur through another technical review by the City or County for that development project.
- 2. In local historic districts, a separate site plan application can be filed or site plan review can occur through review of the required COA application.

The Durham Unified Development Ordinance is current through legislation effective:

Durham County: July 13, 2020

City of Durham: July 1, 2020

Disclaimer: The Durham City-County Planning Department office has the official version of the Durham Unified Development Ordinance. Users should contact the Planning Department for amendments subsequent to the amendment cited here.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: durhamnc.gov

Code Publishing Company

15.1.2 Violation

- A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.
- B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.
- C. Each day of a violation may be considered a separate and distinct violation.

The Durham Unified Development Ordinance is current through legislation effective:

Durham County: July 13, 2020

City of Durham: July 1, 2020

Disclaimer: The Durham City-County Planning Department office has the official version of the Durham Unified Development Ordinance. Users should contact the Planning Department for amendments subsequent to the amendment cited here.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: durhamnc.gov

Code Publishing Company

EXHIBIT

I



BOARD OF ADJUSTMENT APPROVED MINUTES

June 21, 2022, 8:30 a.m.
Committee Room, 2nd floor, City Hall
101 City Hall Plaza, Durham, NC

I. Call to Order

Chair Rogers called the meeting to order at 8:30 a.m.

II. Roll Call

Members Present:

Jacob Rogers, Chair
Chad Meadows, Vice Chair
Jan Kipp
Michael Retchless
David Paletta
Michael Tarrant
Chase Pickett, Designated Alternate
George Kolasa, Alternate

Members Absent:

Jessica Major, Alternate
Natalie Beauchaine

Staff Present:

Jessica Dockery, Planning Manager
Don O'Toole, City Attorney's Office
Bryan Wardell, County Attorney's Office
Cole Renigar, Planner
Leigha Larkins, Planner
Terri Elliott, Clerk
Chris Peterson, Technology Liaison
Kim Roberts, Zoning Compliance Officer
Landus Robertson, Planning Manager

Chair Rogers read the following statement:

The meeting will now come to order. Welcome to the June 21, 2022 meeting of the City of Durham Board of Adjustment. My name is Chair Jacob Rogers and I am the Chair of the board.

This Board is a quasi-judicial Board of record and, as such, all testimony will be recorded. The proceedings of this Board will be governed by the Unified Development Ordinance, as recorded

As Chair of the Durham Board of Adjustment, I would like to explain the procedures used for Board hearings. The hearings are quasi-judicial. The process is similar to a court proceeding. First, a staff member of the City County Planning Department will present an overview of the case. Then the applicant presents its evidence. The opponents, if there are any, will present their evidence. The applicant may then present its rebuttal. Board members are asked to refrain from questions until each speaker has completed his or her presentation. All testimony is given under oath. In a few moments, I will give the oath to all witnesses as a group. All witnesses are asked to sign the roster at the podium if you have not done so.

Testimony should consist of facts each witness knows, not hearsay. All witnesses should come forward to the podium and identify themselves each time they approach the podium. Speak directly into the microphone so their testimony can be recorded on tape. Before each application I will read the findings that must be made to approve an application, and any testimony should be relevant to the criteria that the Board uses to determine whether to approve an application.

Any written evidence or exhibits must be presented to the Chair and a determination will be made whether it should be accepted. Written evidence or exhibits can be inspected by the opposing party. All evidence, written or oral, or exhibits can be objected to.

Witnesses are subject to cross examination. Opposing representatives will have an opportunity to question witnesses after all witnesses for the other side have testified. If you wish to cross-examine, you may raise your hand when I ask for other speakers in favor or against the application and I will recognize you. I would also like to remind everyone in attendance to be courteous and ask questions respectfully. If there are numerous people who will be providing the same or similar testimony either for or against an application, in the interest of time, I would request that you please select a representative to present that testimony.

I would like to note that Board members may have visited each site under consideration as part of their preparation for this meeting.

The Board will vote on each case after the presentation of all the evidence, for and against an application, and discussion among themselves concerning the case. North Carolina law requires that in order for an applicant's request to be granted for a City application before the Board, 5 of the 7 voting Board members must approve the request. (If less than 7 voting members present, state 5 of the 5 voting members or 5 of the 6 voting members). For a county variance request, North Carolina law requires that in order for an applicant's request to be granted, 6 of the 7 voting Board members must approve the request. For other county requests, including applications for a minor special use permit, 4 of the 7 Board members, or a simple majority, must approve the request.

All decisions of this Board are subject to appeal to the Durham Superior Court. Anyone in the audience, other than the applicant, who wish to receive a copy of the formal order issued by this Board on a particular case, must submit a written request for a copy of the order at this hearing. Forms for this purpose are available for the City/County Planning Staff.

III. Approval of Summary Minutes from May 24, 2022.

MOTION: Approve the May 24, 2022 minutes.

ACTION: Carried, 7-0. (Meadows, Retchless 2nd)

IV. Adjustments to the Agenda – None

Hearing and Determination of Cases

B2000019 – City: A request for a minor special use permit to allow a hotel where the property line is 200 feet or less from a residential district or the property line of a single-family residential use. The property is located at 3114 Hillsborough Road, is zoned Office and Institutional (OI), and is within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Jessica Dockery (staff) requested a continuation to a date certain of August 23, 2022, due to a failure to provide special advanced notice of this hearing as promised via email by former staff member Eliza Monroe.

Tom Miller, representing Watts-Hillandale Neighborhood Association (opponents), spoke in support of the request for the continuance. Patrick Byker, representing the applicant, spoke against the continuance. After discussion, Mr. Byker withdrew his objection.

Seated: Meadows, Paletta, Rogers, Retchless, Tarrant, Pickett, and Kipp

MOTION: To continue case B2000019 to a date certain of August 23, 2022 in-person meeting.

ACTION: Carried, 6-1 (Meadow, Pickett 2nd) (Rogers voting no)

B2000022 – City: Appeal of an administrative decision to administer a Notice of Violation for Improvements made to the Durham Green Flea Market without an approved site plan. The property is located at 1600 E. Pettigrew Street, is zoned Light Industrial (IL) and is within the Alston Avenue Compact Neighborhood Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Meadows, Paletta, Rogers, Retchless, Tarrant, Pickett, and Kolasa (Kipp recused)

Staff Report: Leigha Larkins presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Appellant: Robert Perry (Attorney)

Appellee, City of Durham: Don O'Toole (Attorney in the Durham City Attorney's Office) represented the City. Durham Code Enforcement Office, Landus Robertson, presented the basis for the Notice of Violation at 1600 E. Pettigrew Street and confirmed on the record that photographs were submitted as part of the staff report and were taken by Kim Roberts.

Both Landus Robertson and Kim Roberts appeared as witnesses.

MOTION: Tarrant made a motion that this matter, having been reviewed by the Board on Application for Appeal of an administrative decision to administer a Notice of Violation for Improvements made to the Durham Green Flea Market, without an approved site plan, by the Director of Planning, Sara Young, for property located at 1600 E. Pettigrew Street in Durham, North Carolina; and, after hearing the presentation of evidence and reviewing the appeal submittals and all substantial, material and competent evidence, that the application appealing the Planning Director's interpretation be granted.

ACTION: Failed, 1-6. (Tarrant, Kolasa 2nd) (Paletta voting yes)

The Board took a break 9:58 a.m. – 10:10 a.m.

B2200014 – City: A request for a variance from riparian buffer and no-build setback standards. The property is located at 1608 Gunter Street, is zoned Residential Urban – 5(2) (RU-S(2)), and is within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Kipp, Meadows, Paletta, Rogers, Retchless, Tarrant, and Pickett

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Uriah Dortch spoke in support. Gordon Williams and Clifford Heindel spoke in opposition.

MOTION: Retchless made a motion that case number B2200014, an application for a request for a variance from riparian buffer and no-build setback requirements, on property located at 1608 Gunter Street, has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted subject to the following conditions:

1. The improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.

Meadows suggested adding an amendment to the motion to add an additional condition to the motion that the deck be located to the northwestern side of the structure as far out of the riparian buffer as feasibly possible. (Meadow, Retchless 2nd)

ACTION (on amended motion): Carried, 5-2. (Tarrant, Meadows 2nd) (Paletta, Pickett voting no)

B2200019 – City: A request for a variance from the infill development standards street yard requirements. The property is located at 524 and 526 Lakeland Street, is zoned Residential Urban – 5 (RU-5), and is within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Kipp, Meadows, Paletta, Rogers, Retchless, Tarrant, and Pickett

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: Uriah Dortch, applicant, spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion the application number B2200019, a request for a variance from the infill development standards setback requirements, on properties located at 524 & 526

Lakeland Street, has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted, subject to the following conditions:

1. The improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.

ACTION: Carried, 7-0. (Meadows, Kipp 2nd)

B2200020 – City: A request for a variance from the Infill development standards street yard requirements. The property is located at 1203 N. Driver, is zoned Residential Urban – 5(2) (RU-5(2)), and is within the Urban Development Tier.

Applicant and all witnesses swore or affirmed their testimony.

Seated: Kipp, Meadows, Paletta, Rogers, Retchless, Tarrant, and Pickett

Staff Report: Cole Renigar presented the case and asked that all staff reports and materials submitted at the meeting be made part of the permanent record with any additions, deletions, or corrections that may be necessary.

Speakers: John Black, applicant, spoke in support. No one spoke in opposition.

MOTION: Meadows made a motion that application number B2200020, a request for a variance from the Infill development standards street yard requirements, on property located at 1203 N. Driver St., has successfully met the applicable requirements of the Unified Development Ordinance and is hereby granted, subject to the following conditions:

1. The improvements shall be substantially consistent with the plans and all information submitted to the Board as part of the application.

ACTION: Carried, 7-0. (Meadows, Retchless 2nd)

V. Old - None

VI. New Business - None

VII. Approval of Orders

Case B2200019

MOTION: Approve the order for case B2200019 (Meadow, Retchless 2nd)

ACTION: Carried, 7-0.

Case B2200020

MOTION: Approve the order for case B2200020 (Meadows, Tarrant 2nd)

ACTION: Carried, 7-0.

VIII. Adjournment

The meeting adjourned at 11:07 a.m.

The next meeting will be June 28, 2022, virtual via Zoom

Respectfully Submitted,
Terri Elliott, Clerk to the Board

CLASS

FIRST CLASS

146 -

EXHIBIT

J

EXHIBIT

K

CITY/COUNTY OF DURHAM
ORDER DENYING THE APPEAL OF AN ADMINISTRATIVE DECISION OF
THE PLANNING DIRECTOR ISSUING A NOTICE OF VIOLATION FOR IMPROVEMENTS
MADE TO THE DURHAM FLEA MARKET WITHOUT AN APPROVED SITE PLAN
(B2000022)
PIN(s): 0831-18-42-0210

On June 21, 2022 the Board of Adjustment ("Board") of the City/County of Durham conducted a hearing on Mr. Robert Perry and Mr. Trans Perry's (the "Appellants") appeal of a Notice of Violation issued to them as owners/operators of The Green Flea Market located at 1600 E. Pettigrew Street (the "Property"). The Notice of Violation cited Appellants for violations of Section 3.7.2 and 15.1.2 of the Unified Development Ordinance for making improvements to the Durham Green Flea Market without an approved site plan.

Procedural Background

On January 19, 2009, a change of use site plan was approved for a change of use from warehouse to retail. The building is located at 1600 E. Pettigrew Street, within the Alston Avenue Compact Neighborhood Development tier, and zoned Light Industrial (IL). The site plan approved the continued utilization of the existing building and parking for the new retail use. The site plan also approved of 4,840 square feet of new impervious surface in the form of a gravel driveway and required the applicant to replace any missing sidewalk pieces.

An amendment to the approved site plan was reviewed by staff and approved on November 18, 2009. The amendment allowed the relocation of the dumpster area to the rear of the building, at the end of the existing gravel driveway. An additional 2,245 square feet of impervious surface in the form of gravel was added to the existing driveway to provide access to the new dumpsters. The site plan amendment also permitted the use of outdoor space to accommodate 12 outdoor retail tenants. These were to be located on an existing concrete pad adjacent the parking lot.

An additional site plan was routed for review on February 14, 2013, in response to a December 2012 Notice of Violation. The proposal identified the following existing changes to the site:

- The conversion of a portion of the existing parking lot into an outdoor vending location.
- A new entrance off of Plum Street.
- The location of outdoor storage.

The site plan was approved on September 17, 2014.

On January 17, 2020, Kim Roberts, Site Compliance Officer, conducted a field inspection. During this inspection, a zoning violation was observed as the structures located on site do not comply with the approved site plan. Ms. Roberts drafted and issued the Notice of Violation on February 10, 2020. The applicant was instructed to correct the violation by removing all alterations inconsistent with the site plan within thirty (30) days of the receipt of the notice.

The Notice of Violation was administered pursuant to UDO Section 15.1.2, referencing UDO Section 3.7.2. This section establishes the basis for site plan review. Specifically, UDO Section 3.7.2 requires all proposed development or changes of use, except as indicated below, shall be subject to the site plan review process. The following are exempt from site plan review:

- C. Change of use where no additions to buildings or structures, or exterior land improvements, are proposed and the change of use:
 - 1. Does not require additional parking or stacking.
 - 2. Does not require additional landscaping.
 - 3. Does not require a Traffic Impact Analysis (TIA) or no improvements are required as a result of a TIA analysis.
 - 4. Only requires Architectural Review per UDO Section 3.22.

UDO Section 15.1.2 states:

A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.

B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.

C. Each day of a violation may be considered a separate and distinct violation.

The purpose of the foregoing provisions of the UDO is to ensure that a site is developed in conformity with the overall purpose of the ordinance and to promote the health, safety, and general welfare of the residents of Durham City and County.

Standard of Review

The burden of proof is upon the City of Durham to establish by clear and convincing evidence that the Notice of Violation was issued in conformity with the provisions of the UDO and that the Appellant was in violation of the provisions cited therein.

Presentation of Evidence

Appellants were represented by Attorney Robert Perry. Mr. Perry served as both a fact witness and an advocate for the Appellants. He disputed the accuracy of the Notice of Violation asserting that it was too general to place the Appellants on notice of the specific violations being cited. He denied receiving any notice of a violation for outdoor storage and disputed testimony provided by Landus Robertson that Appellants had numerous violations of the UDO. Mr. Perry testified that the closure of Pettigrew Street has caused significant financial problems for the Green Flea Market, asserting that the City of Durham was not diligent in opening up that road for public use. Mr. Perry further testified that in an effort to comply with the Notice of Violation he re-designated parking spaces on another portion of the property as reserved for handicapped drivers to comply with applicable UDO requirements. Mr. Perry also presented testimonial evidence that he felt his business was being treated differently than another flea market in Durham that had little, if any, restrictions on its planning and/or development activities.

On cross examination by Mr. Don O' Toole, Deputy City Attorney, Mr. Perry admitted that he was familiar with the planning process and was aware of the general requirements set forth by the UDO for his business. Mr. Perry testified that his son, and co-owner, Trans Perry was a builder and spent significant time at the planning department on a variety of projects. Mr. Perry admitted receiving the Notice of Violation, but disputed that it was specific enough to identify anything other than general issues.

Ms. Kim Roberts, Senior Planner and Site Compliance Officer for the City of Durham testified that she was personally at the flea market, witnessed the violations set forth in the NOV, drafted and sent the same to Mr. Robert Perry. Included and attached to the NOV were pictures showing the specific violations. Mr. Landus Robertson, Zoning Administration Planning Manager provided testimony about the history of violations and enforcement actions related to the Property in support of the City's contention that Mr. Perry was aware of the violations and understood what was necessary to bring the property into compliance.

Board Discussion

Mr. Paletta expressed his concern about the general nature of the NOV and felt that it should have specifically cited each and every violation on the Property. Mr. Tarrant, Mr.

Meadows and Mr. Retchless all felt the specificity set forth in the NOV and site plan were sufficiently clear such that the Appellants understood the violations needing attention. The Board voted 6-1 to deny the appeal of the NOV with Mr. Paletta voting in favor.

Decision

Having considered all written and oral evidence presented at the hearing and addressing competent and material facts as required by N.C. Gen. Stat. §§ 160A-388 (e2)(1) and 153A-349, THE BOARD hereby determines that the requirements for reversing the Notice of Violation in this case have NOT been met, and that the appeal is DENIED.


IN SUPPORT OF THIS DECISION, THE BOARD finds as fact, in addition to the evidence received through documentary and witness testimony, that the descriptions and statements of fact set forth in the staff report presented as evidence to the Board are the facts describing the use, surrounding conditions, and ordinance requirements and the Board adopts by reference and includes in this decision all such facts and, in particular, the conclusions in the staff report entitled "Staff Analysis" as if set forth herein.

An appeal of a Board of Adjustment action can be filed pursuant to procedures noted in the North Carolina General Statutes, Chapter 160D, Sections 406, 1402, and 1405, with the Durham County Superior Court within 30 days (as defined by N.C. Gen. Stat. §60D-1405(d)).

Ordered this the 26th day of July, 2022


Chairman


Staff Planner


Clerk


Date Mailed

STATE OF NORTH CAROLINA) IN THE GENERAL COURT OF JUSTICE
COUNTY OF DURHAM) SUPERIOR COURT DIVISION
FILE NO. 22 CVS 3973

7223 MAY 17 A 11:32
DURHAM GREEN FLEA MARKET)
DURHAM CC., ES.)
Petitioner,)
BY)

v.
CITY OF DURHAM

Respondent.

)
) THE RECORD
) DURHAM BOARD OF ADJUSTMENT
) BOA Case #2000022
) TRANSCRIPT OF EXHIBIT J
)
)
)
)

Respondent filed the Record in Durham Board of Adjustment case B2000022 on January 3, 2023. For use by the Court, Respondent now files a transcript of the June 21, 2022 Board of Adjustment hearing (Exhibit J of the Record), which was prepared by Huseby Global Litigation at Respondent's request.

This the 17th day of May, 2023.

By: Donald T. O'Toole
Donald T. O'Toole (N.C.S.B.#29369)
Senior Deputy City Attorney
101 City Hall Plaza
Durham, North Carolina 27701
Phone: (919) 354-2752
Email: donald.o'toole@durhamnc.gov


Attorney for Respondent

CERTIFICATE OF SERVICE

I, do hereby certify that the foregoing was served on all counsel of record, as permitted by Rule 5 of the North Carolina Rules of Civil Procedure. The names and address of the attorney served appears below.

Robert P. Perry
Chelsi Edwards
PERRY, PERRY & PERRY, P.A.
601 Fayetteville Street, Ste. 300
Durham, NC 27701
Attorney for Petitioner

This the 17th day of May, 2023.

By: 
Donald T. O'Toole (N.C.S.B.#29369)
Senior Deputy City Attorney
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Attorney for Respondent

CITY OF DURHAM
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7	CITY OF DURHAM
8	BOARD OF ADJUSTMENT HEARING
9	JUNE 21, 2022
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11	
12	
13	
14	TIME: 8:30 a.m.
15	PLACE: Committee Room, 2nd Floor
16	City Hall
17	101 City Hall Plaza
18	Durham, NC 27701
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<p align="center">Page 2</p> <p align="center">A P P E A R A N C E S</p> <p>1</p> <p>2</p> <p>3 DON O'TOOLE, ESQUIRE</p> <p>4 Senior Deputy City Attorney</p> <p>5 101 City Hall Plaza</p> <p>6 Durham, North Carolina 27701</p> <p>7</p> <p>8 ALSO PRESENT:</p> <p>9 Jacob Rogers, Chair</p> <p>10 Terri Elliott, Clerk</p> <p>11 Chad Meadows, Vice-Chair</p> <p>12 Ian Kipp</p> <p>13 David Paletta</p> <p>14 Michael Retchless</p> <p>15 Michael Tarrant</p> <p>16 Chase Pickett, Alternate</p> <p>17 George Kolasa, Alternate</p> <p>18 Leigha Larkins, Planner</p> <p>19 Jessica Dockery, Planning Manager</p> <p>20 Landus Robertson, Planning Manager</p> <p>21 Robert Perry, Appellant</p> <p>22 Bryen Wardell, County Attorney's Office</p> <p>23</p> <p>24</p> <p>25</p>	<p align="center">Page 4</p> <p align="center">P R O C E E D I N G S</p> <p>1</p> <p>2 CHAD ROGERS: Good morning and welcome to the June 21st,</p> <p>3 2022, meeting of the Durham Board of Adjustment.</p> <p>4 This Board is a quasi-judicial Board of record and, as</p> <p>5 such, all testimony will be recorded. Proceedings of this</p> <p>6 Board will be governed by the Unified Development Ordinance.</p> <p>7 As Chair of the Durham Board of Adjustment, I'd like to</p> <p>8 explain the procedures used for Board hearings. The hearings</p> <p>9 are quasi-judicial. The process is similar to a court</p> <p>10 proceeding.</p> <p>11 First, a staff member of the City/County Planning</p> <p>12 Department will present an overview of the case; then the</p> <p>13 applicant presents it's evidence; the opponents, if there are</p> <p>14 any, will present their evidence; the applicant may then</p> <p>15 present it's rebuttal. Board members are asked to refrain</p> <p>16 from questions until each speaker has completed his or her</p> <p>17 presentation.</p> <p>18 All testimony is given under oath. In a few moments, I</p> <p>19 will give the oath to all witnesses as a group. All</p> <p>20 witnesses are asked to sign the roster, actually when you</p> <p>21 walk in the room back there, if you have not done so already.</p> <p>22 Testimony should consist of fact each witness knows, not</p> <p>23 hearsay. All witnesses should come forward to the podium and</p> <p>24 identify themselves each time they approach the podium, speak</p> <p>25 directly in to the microphone so your testimony can be</p>
<p align="center">Page 3</p> <p align="center">I N D E X</p> <p>1</p> <p>2</p> <p>3 OPENING REMARKS:</p> <p>4 By Mr. Larkins.....3</p> <p>5</p> <p>6 APPELLANT'S TESTIMONY.....17</p> <p>7</p> <p>8 APPELLANT'S WITNESS:</p> <p>9 ROBERT PERRY;</p> <p>10 Cross-Examination by Mr. O'Toole.....34</p> <p>11</p> <p>12 VOTE.....48</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p align="center">Page 5</p> <p>1 recorded. Before each application I will read the findings</p> <p>2 that must be made to approve an application, and any</p> <p>3 testimony should be relevant to the criteria that the Board</p> <p>4 uses to determine whether to approve an application.</p> <p>5 Any written evidence or exhibits must be presented to</p> <p>6 the Chair and a determination will be made whether it should</p> <p>7 be accepted. Written evidence or exhibits can be inspected</p> <p>8 by the opposing party. All evidence, written or oral, or</p> <p>9 exhibits can be objected to.</p> <p>10 Witnesses are subject to cross-examination. Opposing</p> <p>11 representatives will have an opportunity to question</p> <p>12 witnesses after all witnesses for the other side have</p> <p>13 testified. If you wish to cross-examine, you may raise your</p> <p>14 hand when I ask for other speakers in favor or against the</p> <p>15 application and I will recognize you. I would like to -- I</p> <p>16 would also like to remind everyone in attendance to be</p> <p>17 courteous. Ask questions respectfully. If there are any --</p> <p>18 if there are numerous people who would be providing the same</p> <p>19 or similar testimony either for or against an application, in</p> <p>20 the interest of time, I would request that you please select</p> <p>21 a representative to present that testimony.</p> <p>22 I would like to note that Board members may have visited</p> <p>23 each site under consideration as part of their preparation</p> <p>24 for this meeting.</p> <p>25 The Board will vote on each case after presentation of</p>

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<p style="text-align: right;">Page 6</p> <p>1 the evidence for and against an application and discussion 2 among themselves concerning the case. North Carolina law 3 requires that in order for an applicant to request -- 4 applicant's request to be granted for a City application 5 before the Board, five of the seven voting members must 6 approve the request. 7 Skip some of this. 8 All decisions of this Board are subject to appeal to the 9 Durham Superior Court. Anyone in the audience, other than 10 the applicant, who wish to receive a copy of the formal order 11 issued by this Board on a particular case -- excuse me -- 12 must submit a written request for a copy of the order at this 13 hearing. Forms for this purpose are available from the 14 City/County Planning Staff. 15 All right. Terri, would you like to call the roll? 16 MS. ELLIOTT: Yes. Jacob Rogers? 17 MR. ROGERS: Here. 18 MS. ELLIOTT: Chad Meadows? 19 MR. MEADOWS: Here. 20 MS. ELLIOTT: Natalie Beauchaine? 21 (no response) 22 MS. ELLIOTT: Ian Kipp? 23 MR. KIPP: Here. 24 MS. ELLIOTT: David Paletta? 25 MR. PALETTA: Here.</p>	<p style="text-align: right;">Page 8</p> <p>1 case, on Pettigrew. 2 CHN ROGERS: Okay. B2000022, correct? 3 MR. KIPP: Yes. 4 CHN ROGERS: All right. Thank you. 5 All right. Any adjustments to the agenda? 6 (no response) 7 CHN ROGERS: All right. Terri, would you like to call 8 the next case, please? 9 MS. ELLIOTT: Mm-hmm. The next -- this is Terri, Clerk, 10 and the next case is B2000022. It's a City case. It's an 11 appeal of an administrative decision to administer a Notice 12 of Violation for improvements made to Durham Green Flea 13 Market without an approved site plan. The property is 14 located at 1600 East Pettigrew Street, and it's zoned 15 Industrial Light, and it's with the Alston Avenue Compact 16 Neighborhood Development Tier. 17 CHN ROGERS: Would you clarify the seating for this 18 case? 19 MS. ELLIOTT: Seating for -- 20 CHN ROGERS: With Mr. Ian Kipp recusing himself from 21 it. 22 MS. ELLIOTT: Okay. Seating for this case is Meadows, 23 Paletta, Rogers, Retchless, Tarrant, and Pickett. 24 CHN ROGERS: Yeah. All right. Ian, would you mind 25 sitting (indicates where by pointing) just for the -- just</p>
<p style="text-align: right;">Page 7</p> <p>1 MS. ELLIOTT: Michael Retchless? 2 MR. RETCHLESS: Here. 3 MS. ELLIOTT: Michael Tarrant? 4 MR. TARRANT: Here. 5 MS. ELLIOTT: Jessica Major. She's not here. 6 Chase Pickett? 7 MR. PICKETT: Here. 8 MS. ELLIOTT: And George Kolasa? 9 MR. KOLASA: Here. 10 CHN ROGERS: All right. One thing I'd like to remind 11 all the Board members is we have to speak in to the 12 microphones. Every time you speak, please press the button 13 here. When you're not speaking, please turn it off. 14 I want to make sure that also every time you start 15 speaking to announce your name first and then question or 16 whatever it is so we can make sure that it is recorded 17 properly and that the audio can be heard and it's understood 18 who that question or comment is coming from. 19 First of all, does anyone -- anybody on the Board want 20 to disclose any conflicts of interest or ex parte 21 communication? 22 (no response) 23 CHN ROGERS: All right. Seeing none. 24 Does anyone plan to recuse themselves from any cases? 25 MR. KIPP: Yes, I plan to recuse myself from the first</p>	<p style="text-align: right;">Page 9</p> <p>1 for this case. 2 All right. Turn it over to you. Thank you. 3 MS. LARKINS: Okay. Good morning. My name is Leigha 4 Larkins with Planning Staff, City of Durham. This is my 5 first presentation in front of the Board of Adjustment and 6 certainly first time back in person in quite a while, so 7 happy to see all of you. 8 Yes, as Terri said, this is B2000022, Durham Green Flea 9 Market appeal of a Notice of Violation. This site is located 10 at 1600 East Pettigrew Street and it's zoned Light Industrial 11 in the Alston Avenue Commercial -- excuse me -- see, I told 12 you I was a little nervous -- Development Tier. The site is 13 approximately 5.25 acres and there are no zoning overlays. 14 The applicants are Trans Perry and Robert Perry, and 15 this is an appeal of an administrative decision to a Notice 16 of Violation for improvements made to the Durham Green Flea 17 Market without an approved site plan. So, there were a 18 number of -- there was an approved site plan with a number of 19 amendments over the course of several years, but additional 20 improvements have been made without amendments to the site 21 plan. 22 This case was initially scheduled to be heard in 23 September of 2020. Parties with standing exercised their 24 right to refuse consent to the virtual meeting platform and 25 the Board is now able to meet in person, so this case was</p>

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<p>1 scheduled and noticed in accordance with all State statutes.</p> <p>2 You are now viewing a Zoning Context Map. You can see</p> <p>3 that this site, again, zoned Light Industrial is surrounded</p> <p>4 largely by other light industrial sites. And here we have an</p> <p>5 aerial where you can see a number of structures and temporary</p> <p>6 structures and also metal structures have been added over the</p> <p>7 years.</p> <p>8 And now Staff is available for questions.</p> <p>9 CHAIR ROGERS: All right. Terri? Excuse me.</p> <p>10 MS. ELLIOTT: Yes. This case has been advertised for</p> <p>11 the required period of time and notarized affidavits</p> <p>12 verifying the signed postings and letter mailings are on</p> <p>13 file.</p> <p>14 CHAIR ROGERS: Thank you for that.</p> <p>15 Any questions for Leigha?</p> <p>16 MR. MEADOWS: I have a few.</p> <p>17 CHAIR ROGERS: Chair?</p> <p>18 MR. MEADOWS: Thank you sir.</p> <p>19 Good morning and welcome. So, if you could -- could you</p> <p>20 go back to the last slide you had, which was the -- I believe</p> <p>21 the photograph of the site? Very helpful. Thank you.</p> <p>22 So, as I understand it, what was done to this site --</p> <p>23 and these are questions -- conversion of parking area to</p> <p>24 outdoor vending area, there's a new entrance in to the site</p> <p>25 from Plum Street, and I guess that's in the southeast corner?</p>	<p>1 something other than accessory? Is it -- I'm trying to</p> <p>2 understand the permitting requirements associated with it. I</p> <p>3 understand there's a site plan issue here. Were there other</p> <p>4 permits that were necessary, as well?</p> <p>5 MS. LARKINS: I'm not sure.</p> <p>6 MS. DOCKERY: Jessica Dockery, Planning Department.</p> <p>7 So, an accessory structure used for retail, in this</p> <p>8 case, they still would need a site plan even to place if it</p> <p>9 was just a -- like a tool shed --</p> <p>10 MR. MEADOWS: Mm-hmm.</p> <p>11 MS. DOCKERY: -- on a property. So, it's sort of a gray</p> <p>12 area because they're -- technically, they're accessory</p> <p>13 structures, but it's being used for a retail purpose and</p> <p>14 accessory structures don't usually get used for that purpose.</p> <p>15 MR. MEADOWS: Mm-hmm.</p> <p>16 MS. DOCKERY: So, regardless, we would've needed to see</p> <p>17 it. And I believe one of them is over a handicap parking</p> <p>18 space, so.</p> <p>19 MR. MEADOWS: Understood. What about the outdoor</p> <p>20 storage? And I assume that that is the material that appears</p> <p>21 to run sort of parallel to the building on that first row of</p> <p>22 parking spaces?</p> <p>23 MS. DOCKERY: So, outdoor storage is it's own use in our</p> <p>24 UDD --</p> <p>25 MR. MEADOWS: Mm-hmm.</p>
Page 11	Page 13
<p>1 The gravel sort of thing? Can you clarify that that's the</p> <p>2 right -- that's what you mean?</p> <p>3 MS. LARKINS: Yes, that is correct.</p> <p>4 MR. MEADOWS: Okay. Okay. And then --</p> <p>5 MR. ROGERS: Here?</p> <p>6 MR. MEADOWS: Correct, sir. Correct. Because I believe</p> <p>7 the other entrance was on the site plan from 2013.</p> <p>8 And, so, there's -- the third issue is placement of</p> <p>9 outdoor storage. Right?</p> <p>10 MS. LARKINS: Yes, that's correct.</p> <p>11 MR. MEADOWS: Okay. Okay. So, what's the required</p> <p>12 number of parking space for this use and how many spaces are</p> <p>13 provided? It looks like there's ample parking, but I don't</p> <p>14 know the answer to that question.</p> <p>15 MS. LARKINS: So, what I can tell you now is that, to</p> <p>16 our knowledge, additional structures -- temporary structures</p> <p>17 have been added that are covering required parking.</p> <p>18 MR. MEADOWS: Mm.</p> <p>19 MS. LARKINS: I don't have the exact number of required</p> <p>20 spaces for you, but it would be on the approved site plan.</p> <p>21 We do know -- and Landus is here, as well, to speak to</p> <p>22 what's been seen on site for the Notice of Violation that</p> <p>23 they have placed structures over required parking.</p> <p>24 MR. MEADOWS: So, these temporary structures and the</p> <p>25 outdoor storage, is that accessory or is that considered</p>	<p>1 MS. DOCKERY: -- and that would require a site plan, as</p> <p>2 well, and they did not come forward for that amendment,</p> <p>3 either.</p> <p>4 MR. MEADOWS: Thank you.</p> <p>5 CHAIR ROGERS: Any other questions for Staff?</p> <p>6 MR. TARRANT: I have a few, Mr. Chair.</p> <p>7 CHAIR ROGERS: Mr. Tarrant?</p> <p>8 MR. TARRANT: Mike Tarrant. Good morning, Ms. Larkins.</p> <p>9 I just had a few clarifications that weren't clear to me</p> <p>10 looking at the aerial imagery -- excuse me -- related to the</p> <p>11 site plan.</p> <p>12 It appears that there was proposed landscaping and</p> <p>13 lighting approved on the site plan that don't appear to have</p> <p>14 been installed. Is that accurate?</p> <p>15 MS. LARKINS: I believe that would be an appropriate</p> <p>16 question for Landus, who's actually been out on to the site.</p> <p>17 (to Mr. Robertson) Do you know if those have been --</p> <p>18 MR. ROBERTSON: (in background) They have not been.</p> <p>19 MS. LARKINS: They have not been, for the record.</p> <p>20 MR. TARRANT: Okay. It also looks like perhaps there</p> <p>21 was additional parking that was striped that may not have</p> <p>22 been included on the site plan, as well.</p> <p>23 MS. LARKINS: So, you're asking if that was included in</p> <p>24 the Notice of Violation?</p> <p>25 MR. TARRANT: Just clarifying exactly what the violation</p>

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<p style="text-align: right;">Page 14</p> <p>1 encompasses.</p> <p>2 MR. ROBERTSON: Hello, everybody. I'm Landus Robertson,</p> <p>3 CEO of Durham Planning Department.</p> <p>4 The Notice of Violation -- and I didn't issue it, my</p> <p>5 staff did -- Planning Manager -- the Notice of Violation was</p> <p>6 improvements to the property without site plan approval.</p> <p>7 There was a wide variety of things that was done to the</p> <p>8 property at the time that was without site plan approval, one</p> <p>9 of which was a permanent structure that covered handicap</p> <p>10 parking. Also, his site plan got approved in 2013 for --</p> <p>11 which has an outdoor vending area approved on there. He's</p> <p>12 expanded that in to other parts of the parking, also adding,</p> <p>13 once again, outdoor storage to the site.</p> <p>14 So, we issued a Notice of Violation for numerous things.</p> <p>15 We didn't want to list just one thing because there were</p> <p>16 several different issues and things that he has done to the</p> <p>17 property without site plan approval.</p> <p>18 MR. TARRANT: Thank you. The final question I had</p> <p>19 related to that, just looking at Google Earth historic</p> <p>20 imagery, it looks like the site improvements associated with</p> <p>21 the site plan were generally implemented around 2015, and</p> <p>22 then over the course of the next several years these things</p> <p>23 started to come online. Was there any communication with the</p> <p>24 appellant or the owner in advance of issuing the Notice of</p> <p>25 Violation or was that sort of the first step that the</p>	<p style="text-align: right;">Page 16</p> <p>1 Notice of Violation?</p> <p>2 MR. ROBERTSON: Yes.</p> <p>3 MR. PALETTA: Okay. And reading the Notice of</p> <p>4 Violation, I was unable to determine what the violation was.</p> <p>5 It was general. Why weren't some of the specific violations</p> <p>6 included in the Notice of Violation?</p> <p>7 MR. ROBERTSON: Because, like I said, there were several</p> <p>8 different violations -- several different improvements to the</p> <p>9 property without a site plan. We don't want to issue</p> <p>10 something that says, "Hey, fix this, this, this, and this,"</p> <p>11 when there was a whole lot of things that were improved on</p> <p>12 the site. So, if we went through and listed it, he could fix</p> <p>13 those things and not fix the others.</p> <p>14 Basically, what the NOV says, in general, is submit a</p> <p>15 site plan showing the changes that were made. If you submit</p> <p>16 something showing the changes -- all the changes that were</p> <p>17 made, we don't have a problem or no questions come up at the</p> <p>18 end saying, "Hey, you didn't fix this or you didn't show</p> <p>19 this." So, usually what we like to do is keep it very broad</p> <p>20 in that type of situation because there were several</p> <p>21 different things on the property that were improved. So, if</p> <p>22 we were to list, "Hey, the parking -- the building that was --</p> <p>23 -- that you covered the handicap parking, you need to get a</p> <p>24 building permit and a site plan approval," he might not</p> <p>25 submit the one -- or the property -- and this is not just</p>
<p style="text-align: right;">Page 15</p> <p>1 Planning Department takes?</p> <p>2 MR. ROBERTSON: Usually, with property in commercial</p> <p>3 use, it's a Notice of Violation. Our Notice of Violation is</p> <p>4 exactly what it is: a Notice of Violation. There's no</p> <p>5 citation attached to it. It's basically saying, "Hey, this</p> <p>6 is a problem. Please correct it." We give them a certain</p> <p>7 amount of time. I think he had 30 days to submit a site</p> <p>8 plan. Usually, in these situations, if you are working with</p> <p>9 us, we'll work with you. So, we work that way.</p> <p>10 This property has been written up in the past for this</p> <p>11 exact same violation. So, over the years, he'll expand;</p> <p>12 we'll issue a Notice of Violation; he'll come in and submit a</p> <p>13 site plan; he'll expand; we'll issue a Notice of Violation;</p> <p>14 we'll submit a site plan -- he'll submit a site plan -- the</p> <p>15 (inaudible) will submit a site plan. This is not the first</p> <p>16 time that this has happened with us.</p> <p>17 MR. TARRANT: Thank you.</p> <p>18 CHAN ROGERS: All right. Any other questions for Staff?</p> <p>19 David.</p> <p>20 MR. PALETTA: David Paletta.</p> <p>21 Is Kim Roberts going to be a witness today?</p> <p>22 MR. ROBERTSON: Yes, she's here.</p> <p>23 MR. PALETTA: Okay. Couple questions about the Notice</p> <p>24 of Violation.</p> <p>25 The photos in the packet, were they attached to the</p>	<p style="text-align: right;">Page 17</p> <p>1 him, this is everybody -- might not submit for the entrance</p> <p>2 at the bottom on Plum Street. So, we kept it -- we wanted</p> <p>3 him to put everything that he did to improve the property on</p> <p>4 the site -- on the new, amended site plan.</p> <p>5 CHAN ROGERS: Any other questions for Staff?</p> <p>6 (no response)</p> <p>7 CHAN ROGERS: Thank you. And thank you, Leigha.</p> <p>8 Who do we hear from next? Do I hear from the applicant?</p> <p>9 Would the applicant like to come forward? Please state your</p> <p>10 name.</p> <p>11 MR. PERRY: Am I the applicant? I'm the owner of the</p> <p>12 property.</p> <p>13 CHAN ROGERS: Yes, sir.</p> <p>14 MR. PERRY: Okay. Thank you. My name is Robert Perry.</p> <p>15 The -- I certainly take issue with regards to what Mr.</p> <p>16 Landus Robertson said with regards to whether we received the</p> <p>17 proper -- whether we received notice of the violation. He</p> <p>18 stated that -- the violation, he stated that they gave notice</p> <p>19 of a general nature, and we were under the impression that</p> <p>20 the violation that existed at the flea market was a violation</p> <p>21 that -- with regards to a handicap parking. The outdoor</p> <p>22 storage he said was a permanent building with respect to</p> <p>23 outdoor storage. I know of no outdoor storage that was</p> <p>24 erected by us to -- at the Durham Green Flea Market.</p> <p>25 We've been in existence since 2008, and we did have some</p>

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<p style="text-align: right;">Page 18</p> <p>1 problems starting off at the flea market and then we 2 submitted a site plan. And then we had to -- when we paved 3 the flea market, we submitted a site plan. There were not 4 numerous violations, as Mr. Robertson stated. If you review 5 the records of the City, there just hasn't been a lot of 6 violations.</p> <p>7 When we got this violation, quite frankly, we did ask 8 Mr. Robertson, "Why didn't you come to us and tell us about 9 the handicap -- it was handicap parking that was in dispute 10 and just tell us about it?" And, of course, he said, "We 11 don't have to." And, of course, they didn't have to. But we 12 have -- he makes it seem like there was a lot of violations 13 at the flea market. There aren't a lot of violations at that 14 flea market. We invested a substantial sum of money in to 15 that property. The property was dilapidated and the property 16 was improved and the citizens of Durham are experiencing a 17 wholesome environment there on the property.</p> <p>18 And we are experiencing a wholesome experience at the 19 flea market in spite of not having the City of Durham working 20 with us to allow proper egress and ingress of the traffic 21 flow there at the flea market. The primary road there at the 22 flea market -- the primary road is Pettigrew Street. And 23 that Pettigrew Street has been closed for four and a half 24 years. Four and one-half years we have been without adequate 25 traffic flow because the primary road -- Pettigrew Street --</p>	<p style="text-align: right;">Page 20</p> <p>1 approved in 30 days. It's just not going to happen. You're 2 going -- it's going to take you a long time to get a site 3 plan approved. And we have been diligent with regard -- 4 various requirements with regards to the site plan. He -- 5 and, so, if they had come to us -- if they had just simply 6 come to us and asked us to submit the changes, we would've 7 done it. We would've done it. And we'll do it now. We've 8 been in consultation with the engineer, Cliff Credle, to 9 submit a site plan, but it's going to require -- to correct -- 10 -- what the problem is with regards to -- and we did build on 11 top of a handicap parking space, but we also allow -- we have 12 -- we redesignated -- on the west side of the building, we 13 redesignated handicap parking spaces to replace that parking 14 that was covered by the structure that was referenced 15 earlier. So, we -- but it's going to require -- in order to 16 correct that -- to make a permanent correction to that 17 problem, though, because the standard parking was converted 18 to the handicap parking, now we -- the engineer tells us we 19 are below -- we need additional paved parking in order to 20 comply with the City regulations. Well, in order to do that, 21 then if we -- we have some additional land that adjoins the 22 primary property that can be converted to paved parking. But 23 if you're going to convert that to paved parking, then you're 24 going to be -- you're not going -- you're going to have to 25 comply with some impervious requirements and things of that</p>
<p style="text-align: right;">Page 19</p> <p>1 has been closed. I can think of no project in the City of 2 Durham save the widening of Interstate 85, maybe, and 3 certainly there's been delays with regard to the East End 4 Corridor, but this one entrance to Pettigrew Street has been 5 closed because there had been an overpass that passes over 6 Alston Avenue that has been torn down and we have not had 7 proper access to the flea market. And the reason that's 8 important is because that has impacted upon our ability to 9 attract more citizens of Durham and outlying areas.</p> <p>10 If we -- in order to correct the parking that Mr. 11 Robertson referred to, it's going to require us to submit a 12 site plan and he said, "Well, if they submitted a site plan 13 within 30 days, then there's no problem." When we submitted 14 the original site plan for the flea market, it took about a 15 year to get that site plan (inaudible). And have the 16 engineer to devise the landscaping and whatever requirements 17 there are, it takes about -- it takes then about three months 18 to prepare it, and then you got to submit it to the City. 19 And by the time the City routes it to everyone within their 20 departments -- whether it's electrical, whether it's the 21 plumbing, whether it's the traffic, whether it's erosion -- 22 all those departments have to submit their approval and we 23 get that back about two or three months. And then once we -- 24 they have their correction, and then the engineer has to make 25 his correction, and so you're not going to get a site plan</p>	<p style="text-align: right;">Page 21</p> <p>1 nature. And, so, then we're going to have to install a 2 retention pond to -- so the water can flow appropriately.</p> <p>3 So, it's not a simple thing as just removing that 4 particular structure, which is a temporary structure, and 5 then converting it to standard parking, since we've -- and 6 then we have to submit, of course, a site plan on the west 7 side of the building to comply with the handicap parking.</p> <p>8 So -- but the point I'm making without getting too 9 detailed in this, we're willing to work with the City with 10 respect to this, but it's going to take a lot of money to 11 comply with the standard parking and the handicap parking 12 there at the flea market.</p> <p>13 And it would help if the City would speed up the process 14 of allowing us to have the primary entrance way to the flea 15 market repaired in a timely manner. Four and a half to five 16 years, that's ridiculous for one overpass to be causing us 17 not to have the proper traffic flow. And the problem 18 presents a safety issue because if that street is closed, 19 then all the majority of the traffic has to flow over to Plum 20 Street, which adjoins the flea market, Pettigrew, and it goes 21 over a railroad track. And just week before last, we had an 22 accident involving a train and a pedestrian -- a car there, 23 and we also had other incidents involving a train hitting 24 pedestrians and/or cars. And, so, something needs to be done 25 there, as well, but nobody pays attention to that.</p>

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<p style="text-align: right;">Page 22</p> <p>1 In addition, there's a water tower about two blocks west 2 of the flea market. That water tower, they changed -- they 3 had to change the utilities -- the lines -- the water lines 4 from the southern side of Pettigrew Street to the northern 5 side of Pettigrew Street. That's taken over three and a half 6 years to do that. And because there's constant construction 7 about two blocks away, all of the big trucks come down 8 Pettigrew Street and distribute their dust and dirt directly 9 in front of the flea market. And if you want to see it, just 10 ride by there. Just ride by there and see all the dirt and 11 the dust that we have to contend with from the construction 12 that the City has allowed to go on for the last three and a 13 half, last four and a half years.</p> <p>14 And, so, we would like the City also to cooperate with 15 us in allowing us to have a nice place that we can entertain 16 people and to also work with us as far as making these 17 amendments to the site plan, but it's not going to be done in 18 30 days.</p> <p>19 Thank you.</p> <p>20 CHAN ROGERS: All right. Mr. Perry, I got one -- I have 21 one question and then I'm going to let others ask questions.</p> <p>22 MS. DOCKERY: (in background) Mr. Rogers, can I 23 interrupt you just a second?</p> <p>24 CHAN ROGERS: Yeah.</p> <p>25 MS. DOCKERY: (in background) You forgot to swear in all</p>	<p style="text-align: right;">Page 24</p> <p>1 CHAN ROGERS: Okay.</p> <p>2 MR. PERRY: So, basically, everything is in place.</p> <p>3 CHAN ROGERS: All right. Yeah --</p> <p>4 MR. PERRY: Let me say this. And I'm not trying to hide 5 from it. There is a requirement for lighting there -- 6 parking that was not there, but when we paved the parking -- 7 the flea market about three years ago, we installed lines 8 that would make it possible for us to have lighting at the 9 flea market. So, it's not going to be cumbersome for us to 10 comply with that, quite frankly.</p> <p>11 CHAN ROGERS: Yeah, I --</p> <p>12 MR. PERRY: Although we don't operate at nighttime, we 13 primarily operate during the daytime.</p> <p>14 CHAN ROGERS: -- I think a lot of the things that you're 15 experiencing are what a lot of growing businesses in Durham 16 are experiencing, as well, when it comes to growth in the 17 business.</p> <p>18 Does anybody have questions for Mr. Perry? Any Board 19 members. Mr. Paletta?</p> <p>20 MR. PALETTA: David Paletta.</p> <p>21 Mr. Perry, when you received the NOV, were you able to 22 determine the specific violations that were alleged and what 23 specific action you needed to take to correct the violations?</p> <p>24 MR. PERRY: No, I did not. Because I was not under the 25 impression that the entrance to the southeastern part of the</p>
<p style="text-align: right;">Page 23</p> <p>1 of the Staff and speakers for this case.</p> <p>2 CHAN ROGERS: I did it.</p> <p>3 MS. DOCKERY: (in background) You did at the very 4 beginning or did you just --</p> <p>5 CHAN ROGERS: I did at the very beginning for all of 6 them. Everybody stood and --</p> <p>7 MS. DOCKERY: (in background) Mr. Perry, were you here 8 for the swearing in at the very beginning?</p> <p>9 CHAN ROGERS: When you raise your hand --</p> <p>10 MR. PERRY: I was not here for the swearing in.</p> <p>11 CHAN ROGERS: Okay. Well, we need to do that. I'm 12 sorry, I thought you were here. There was quite a few people 13 here. Will you please raise your right hand?</p> <p>14 Do you swear or affirm that the testimony you will give 15 today is the truth and nothing but the truth?</p> <p>16 MR. PERRY: I swear the testimony I've given and the 17 statements I make here forth will be truthful.</p> <p>18 CHAN ROGERS: Thank you.</p> <p>19 All right. Mr. Perry, are there differences or would 20 there be differences between your 2023 site plan and what 21 would be on a site plan today?</p> <p>22 MR. PERRY: There would be -- the primary difference, as 23 I indicated before, is that we have to redesignate handicap 24 parking. It has been done on a temporary basis, but it has 25 not been formally done by submission of a site plan.</p>	<p style="text-align: right;">Page 25</p> <p>1 flea market was a problem. That -- if you -- and I know -- 2 that entrance was there -- if you look at some of the old 3 pictures, it was old fencing that went up Plum Street. And 4 prior to my being involved in the flea market, there was 5 another gentleman involved in the flea market and when the 6 property was dilapidated and abandoned. And what this 7 gentleman did, he filled in the debris when Few Gardens was 8 torn down -- and Few Gardens is on Morning Glory and off of 9 Alston Avenue -- but when Few Gardens was torn down, the 10 debris from Few Gardens -- the bricks and everything -- were 11 deposited in the back of the flea market land. And, so, it 12 was raised up. And the City brought an action against the 13 owner at that time, and I remember there being an entrance 14 for the trucks to enter. It was two entrances: one in the 15 middle of the property, from the eastern side of the 16 property, and one further down, where reference is made to 17 the southeastern part of the flea market. There was an 18 entrance there also. So, the entrances have always been 19 there. And, so, I wasn't aware of that particular violation. 20 And -- because I don't think it is a violation because the 21 entrance was already there. Now -- and, so, I was under the 22 impression when we got the violation and the reason I was 23 coming here today was to confront the issue with respect to 24 the handicap parking that was covered up by a temporary 25 structure.</p>

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<p style="text-align: right;">Page 26</p> <p>1 MR. PALETTA: So, my focus as a Board member is on the 2 Notice of Violation you received, and also in your appeal you 3 raised a defense of discriminatory action. Is there anything 4 in the record -- is there any evidence that supports your 5 defense that you've been discriminated against? 6 MR. PERRY: Well, if you go throughout, you know, having 7 gone through this process of getting a site plan approved and 8 what it entails, you often times look at other pieces of 9 property to see if they're complying with their site plan. 10 And there are numerous entities here in Durham, for instance, 11 even for Lowe's with regards to how they put the lawn mower 12 and the vegetation out in front of their building and the 13 storage facilities they have in the parking lot and the 14 security system they have, those are all violations of the 15 site plan. 16 And they have a flea market, quite frankly, that's 17 operating on Club Boulevard -- where the old theatre used to 18 be, there's a Compare grocery store there -- where the 19 Planning Department gave approval for them to continue the 20 operation of their mini flea market there and say, "You don't 21 have to comply with any regulations whatsoever. You don't 22 have to have plumbing, you don't have to have anything." 23 MR. O'TOOLE: (in background) objection. This is 24 hearsay. I don't (inaudible) -- 25 MR. PERRY: Well, (inaudible) --</p>	<p style="text-align: right;">Page 28</p> <p>1 water tower, so we -- that's not something we can really 2 respond to. 3 That's all I have. 4 CHAN ROGERS: All right. Any other questions for Mr. 5 Perry? 6 (no response) 7 CHAN ROGERS: All right. Thank you, Mr. Perry. 8 Don? 9 MR. O'TOOLE: I'd like to cross-examine Mr. Perry. 10 CHAN ROGERS: I think -- Mr. Wardell? 11 MR. WARDELL: Bryan Wardell, County Attorney's Office. 12 Just wanted to clarify. Earlier you referred to the 13 appellant as the applicant. And, so, the applicant is 14 actually the appellant. 15 CHAN ROGERS: That's right. 16 MR. WARDELL: And, so, you treat it slightly differently 17 because they're not really asking for anything. They're 18 appealing the Notice. So, you have to look at the Notice and 19 the Notice is what determines whether or not they get the 20 relief that they need. So, when you look at the Notice, you 21 have to determine, as a Board, whether or not the Notice is 22 adequate, whether there was proper notice given, and whether 23 the violations were actually sufficient. And, so, they're 24 not applicants, they're appellants. So, you treat it a 25 little bit differently.</p>
<p style="text-align: right;">Page 27</p> <p>1 MR. O'TOOLE: -- testifying -- 2 CHAN ROGERS: Mr. Perry, that is true. We can't take -- 3 MR. PERRY: It's not hearsay, Your Honor, because I've 4 seen it with my own eyes. And I'm just responding to the 5 question. 6 CHAN ROGERS: I understand. But -- 7 MR. PERRY: And, so -- so, yes. Yes, I believe -- 8 CHAN ROGERS: -- the question before us is your 9 property. And, you know, we have no point of reference or 10 anything to these others that you're mentioning. That's why 11 it's irrelevant to the -- 12 MR. PERRY: Well, it's relevant to me because it shows 13 that, again, if they had respected us and come to us and ask 14 us to comply with the site plan, we would've done it. But 15 they didn't bother to ask us or come to us at all. They just 16 sent out the Notice and said, "Submit it within 30 days." 17 And you can't submit a site plan within 30 days. 18 CHAN ROGERS: Mr. Paletta? 19 MR. PALETTA: Mr. Chairman, I would say if the facts 20 supported it, an applicant could raise an equal protection 21 defense. So, it's not a theory that's irrelevant in terms of 22 application of the ordinance. 23 But my focus is the NOV. I think you've answered that. 24 Just to share with you, with regard to the street 25 problem, we don't have jurisdiction over the street or the</p>	<p style="text-align: right;">Page 29</p> <p>1 MR. PALETTA: And am I correct -- 2 CHAN ROGERS: David, would you mind speaking in to the 3 microphone? 4 MR. PALETTA: David Paletta. 5 And since this is an appeal, am I correct the appellant 6 needs to get five votes to overturn the decision of Staff? 7 MR. WARDELL: I believe it's still a majority vote. Or 8 is it -- 9 MR. O'TOOLE: No, it's -- 10 MR. WARDELL: -- super majority? 11 MR. O'TOOLE: -- it's super majority, since it's a City 12 case. 13 MR. WARDELL: Super majority. It's a City case. 14 MR. PALETTA: Okay. 15 MR. WARDELL: I represent the County, typically. 16 MR. O'TOOLE: Typically. 17 MR. WARDELL: Typically. 18 MR. PALETTA: So, this is different from -- 19 MR. WARDELL: Right. 20 MR. PALETTA: Gotcha. 21 MR. WARDELL: So, just to clarify that, in terms of the 22 testimony and how you weigh and apply the facts that are 23 being presented, everything is geared towards the actual 24 Notice. So, the issues would be was the Notice adequate, 25 were the actual violations pointed out in the Notice, and</p>

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<p style="text-align: right;">Page 30</p> <p>1 should the Notice be upheld. That's what the applicant --</p> <p>2 the applicant is saying that it's not.</p> <p>3 Does anybody have any questions about that?</p> <p>4 MR. PALETTA: Yeah, I do.</p> <p>5 CHAN ROGERS: Go ahead, Dave.</p> <p>6 MR. PALETTA: To either of the attorneys. So, in this</p> <p>7 appeal, who has the burden of proof?</p> <p>8 MR. WARDELL: The appellant has the burden of proof that</p> <p>9 the Notice of Violation was not -- should not be</p> <p>10 substantiated.</p> <p>11 MR. PALETTA: Okay.</p> <p>12 MR. O'TOOLE: I'm just going to have to object to the</p> <p>13 advice that the Board is getting because I don't think that's</p> <p>14 accurate.</p> <p>15 MR. WARDELL: Well, okay. And Don is representing the</p> <p>16 City, and I'm sure he'll address any inaccuracies that he</p> <p>17 feels in terms of the application of the facts to the actual</p> <p>18 appeal and the burden.</p> <p>19 CHAN ROGERS: All right. Any more questions for Bryan</p> <p>20 before --</p> <p>21 MR. PALETTA: Well, we certainly need to hear both</p> <p>22 attorneys on where the burden of proof is.</p> <p>23 CHAN ROGERS: Yeah, but Bryan has been -- has given us</p> <p>24 advice on behalf of -- for the Board --</p> <p>25 MR. WARDELL: So, because this is a City case and the</p>	<p style="text-align: right;">Page 31</p> <p>1 one urinal in the restroom and we had only two stalls for the</p> <p>2 women. We invested over -- and my son, Trans Perry, who</p> <p>3 build houses here in Durham and does substantial construction</p> <p>4 work -- we invested about \$125,000 in changing the bathroom -</p> <p>5 - the restrooms. We converted the men's restroom to having</p> <p>6 two stalls and two urinals and having -- and two sinks and</p> <p>7 converting the woman restroom to having four stalls and three</p> <p>8 sinks. And it's a completely new structure up in the front</p> <p>9 part of the building. And so -- and we went through numerous</p> <p>10 -- we submitted a site plan, we submitted -- we got our</p> <p>11 permit, and we complied with the City's regulation with</p> <p>12 regards to this new restroom that was installed there at the</p> <p>13 flea market. And, so, we're not adverse to complying with</p> <p>14 regulations from the City. My son is building houses on</p> <p>15 Cleveland Street, north central Durham, and he knows how to</p> <p>16 comply with the regulations and the ordinance of the City of</p> <p>17 Durham. He works constantly with the Planning Department</p> <p>18 with regards to complying with regulations with respect to</p> <p>19 the City of Durham. I'm an attorney, and I've been an</p> <p>20 attorney here for 39 years, and I know how to comply with</p> <p>21 regulations with respect to conducting a business here in the</p> <p>22 city of Durham. And, so, for them not to contact us and ask</p> <p>23 us to make a revision that they perceive to be a relative</p> <p>24 minor violation but really it may involve more is just an</p> <p>25 insult to our operation and the owners at the Durham Green</p>
<p style="text-align: right;">Page 31</p> <p>1 City issued the Notice of Violation, the City will be</p> <p>2 advising you and representing the City.</p> <p>3 CHAN ROGERS: That's right.</p> <p>4 MR. PALETTA: We still appreciate your advice, though.</p> <p>5 MR. WARDELL: Right. But I'm just giving you the</p> <p>6 distinction. And, so, since the City can't also advise the</p> <p>7 Board because they are a party --</p> <p>8 CHAN ROGERS: Right.</p> <p>9 MR. WARDELL: -- that's why I'm giving you advice.</p> <p>10 CHAN ROGERS: Yes. That's what I was getting -- sorry.</p> <p>11 He did it much better than I could.</p> <p>12 All right. Any other questions for Bryan?</p> <p>13 (no response)</p> <p>14 MR. WARDELL: Thank you.</p> <p>15 CHAN ROGERS: Let's move this along. Don, did you want</p> <p>16 to cross-examine? Or did you want to give any more</p> <p>17 information?</p> <p>18 MR. O'TOOLE: I'd like to cross-examine, Mr. Perry,</p> <p>19 please.</p> <p>20 CHAN ROGERS: Okay.</p> <p>21 MR. O'TOOLE: Mr. Perry.</p> <p>22 MR. PERRY: Let me say this, also, before he starts his</p> <p>23 cross-examination of me. We actually did substantial</p> <p>24 improvements to the property by converting an old restroom</p> <p>25 from where we had one stall for the men in the restroom and</p>	<p style="text-align: right;">Page 33</p> <p>1 Flea Market, quite frankly.</p> <p>2 CHAN ROGERS: All right. Thank you, Mr. Perry.</p> <p>3 Mr. O'Toole, you want to start the cross-examination.</p> <p>4 Oh, Chad, do you have a question of --</p> <p>5 MR. MEADOWS: I have one quick question either for Mr.</p> <p>6 O'Toole or Staff. I'm looking at the Notice of Violation,</p> <p>7 which is page 11 of the packet, and it says, "The violation</p> <p>8 is failure to comply with an approved site plan, D1300045."</p> <p>9 One paragraph below that is the remedy, "Correction of this</p> <p>10 violation will require the violator to remove all alterations</p> <p>11 inconsistent with the approved site plan within 30 days of</p> <p>12 the receipt of this Notice." Is that accurate?</p> <p>13 MR. O'TOOLE: That's accurate.</p> <p>14 MR. MEADOWS: There's nothing in here about site plans</p> <p>15 or anything else. It's remove what's in -- what's</p> <p>16 inconsistent with the approved site plan. That was the</p> <p>17 correction.</p> <p>18 MR. O'TOOLE: Don O'Toole, City Attorney's Office.</p> <p>19 Not to make the City's argument, Mr. Perry is well aware</p> <p>20 that another alternative is to submit a new site plan to</p> <p>21 bring the site in to compliance. So, I would say it's either</p> <p>22 comply with the third approved site plan for this parcel or</p> <p>23 submit a revised site plan to bring the site in to compliance</p> <p>24 with the current improvements in place. Neither of those</p> <p>25 things were done.</p>

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<p style="text-align: right;">Page 34</p> <p>1 MR. MEADOWS: Understood. Understood. But the Notice 2 of Violation was remove material inconsistent with the 3 approved plan. It didn't say 'or submit a revised plan.' 4 Which I understand is a possible remedy, but, you know, as 5 far as the NOV goes, that's what it said. 6 MR. O'TOOLE: Correct. 7 MR. MEADOWS: Thank you. 8 COW ROGERS: All right. Mr. O'Toole. 9 MR. O'TOOLE: Don O'Toole, City Attorney's Office, here 10 on behalf of the Planning Department. 11 CROSS-EXAMINATION BY MR. O'TOOLE: 12 Q. Mr. Perry, just want to clarify, I think you just 13 said on the record you are an attorney. Right? 14 A. Yes. 15 Q. And you practice here in the city of Durham? 16 A. Yes. 17 Q. Okay. And you and your son are also the owners of 18 this property. Is that correct? 19 A. My son has a 57 percent ownership in the flea 20 market and I have a 43 percent ownership in the flea market. 21 Q. And you're both member -- managers of Durham Green 22 Flea Market, LLC -- 23 A. Yes. 24 Q. -- that owns this site. Correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 It's not like it's multiple parking spaces. There are two 2 handicap parking spaces that have been covered. And, as I 3 indicated also, from a temporary standpoint, without having 4 submitted the site plan, we relocated those handicap parking 5 to the west side of the building. 6 Q. Okay. The NOV at issue in this appeal was issued 7 in January of 2020. Is that correct? 8 A. Well, you know, it is -- no, I'm not going to 9 dispute -- 10 Q. It's been -- 11 A. -- I'm not going to dispute that. 12 Q. -- it's been over two years, hasn't it been? 13 A. It's been over four and a half years since we had 14 adequate entrance by cars to get to the flea market. 15 Q. Okay. But that wasn't -- 16 A. So, two years to me is less than four and a half 17 years that the City has allowed -- and the City owns the 18 property that the State is using to store their cars and 19 vehicles. And, so, well, yes, yes, it's been over -- it's 20 probably been two years due to the pandemic that you -- 21 Q. Okay. 22 A. -- made reference to in the other case, as well as 23 this case that has caused us to -- we wanted an in-person 24 hearing and because we wanted an in-person hearing, it 25 necessitated a delay.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. So, you're responsible for whether this site is in 2 compliance with the approved site plan or not. Correct? 3 A. Yes. 4 Q. Okay. I think you've already testified on the 5 record that the third approved site plan -- and it's D1300045 6 -- was approved by the Planning Department. Correct? 7 A. You know, as I stand here now, I'm going to say I 8 have no reason to disagree with you. If there is a site plan 9 of record, we have complied with the site plan and we've had 10 -- like I say, that may have entailed the plans with regards 11 to the restroom, it may have been with regards to the paving 12 that was done. So, what was done at that particular time 13 that necessitated our having to submit that site plan I can't 14 say just standing up here. 15 Q. Okay. But I think you've already testified in 16 response to Mr. Rogers' question that there are improvements 17 that have been made to the property that are inconsistent 18 with the D1300045 site plan. Is that correct? 19 A. The improvements of covering the handicap parking 20 that's been referenced, that's what I'm familiar with. 21 Q. Okay. So, changes have been made to the site that 22 are not in compliance with that site plan. Isn't that -- 23 A. With regards to the parking, yes. 24 Q. Okay. 25 A. Those -- and there's two parking spaces, okay?</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. Let me ask you, after you received the NOV in the 2 early part of 2020, did you or your son take any steps to 3 bring the site in to compliance? 4 A. Well, as I told you, now, we did relocate the 5 handicap parking spaces to the west side of the building. If 6 you go want to go there now and look at it, it's six spaces 7 there on the west side of the building that has handicap 8 parking that was not there -- that was not a designated 9 handicap parking space, but it's designated now. 10 Q. Okay. Are the relocated handicap parking spaces in 11 compliance with the approved site plan for this property? 12 A. Not the present site plan. 13 Q. Okay. 14 A. No, it's not. 15 Q. So, the site -- it sounds like your own testimony 16 is that the site does not currently comply with the existing 17 site plan for the property. 18 A. Well, I've answered that question. 19 Q. Okay. This appeal was originally scheduled for a 20 virtual hearing of September 2020. Do you recall that? 21 A. No, I do not recall, but I know it was scheduled in 22 the past. 23 Q. Okay. But you were present at the beginning of 24 that virtual hearing, weren't you? 25 A. Yes.</p>

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<p style="text-align: right;">Page 38</p> <p>1 Q. Okay. And, at that hearing, you refused to grant 2 permission for the appeal to be heard virtually. Isn't that 3 correct? 4 A. I'm not going to use the word "refuse." I just 5 want to say I exercised my right to have an in-person 6 hearing. 7 Q. Very good. So, we did not have the virtual hearing 8 in September 2020. Is that correct? 9 A. That's correct. 10 Q. Okay. After September 2020, did you or your son do 11 anything further to bring the site in to compliance with the 12 existing site plan? 13 A. Well, the only violation is that we -- as I stated 14 before, there is a temporary structure on top of two 15 designated handicap parking spaces and those spaces have been 16 redesignated on the west side of the building. 17 Q. Let me rephrase that so I state it as clearly as 18 possible. As Mr. Meadows said, have you brought the site in 19 to compliance with the existing site plan? 20 A. I think we have because -- I think we have because 21 -- 22 Q. Wait a second. You just said that you moved -- 23 A. -- well, let me answer the question. Let me answer 24 the question. 25 Q. -- handicap parking spaces.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Sure. 2 A. So, they said they saw the temporary structure on 3 top of a handicap parking space and so they called the City 4 Planning Department. 5 Q. Let me just -- do you -- are you aware that the 6 County Health Department was concerned that a restaurant had 7 been constructed and was operating in the parking lot? 8 A. No. No. Absolutely not. Because they come there 9 every so often to inspect all the trucks, and we don't have 10 any type of food vendors -- we never have had any type of 11 food vendors inside the flea market. So, there can't be a 12 restaurant with -- on a food truck. There's only food trucks 13 that sell the food at the flea market. 14 Q. Okay. As far as I know, the two Planning Staff 15 members most involved with this NDV are Ms. Roberts and Mr. 16 Robertson. In your earlier testimony, you said that City 17 Staff had not respected you. Can you explain to me how did 18 Ms. Roberts or Mr. Robertson not respect you? 19 A. I thought they should've called us. They deal with 20 -- Trans is down at the Planning Department all the time. 21 Q. Is -- 22 A. Let me finish my question. 23 Q. Sure. 24 A. He -- Trans, my son -- and he would've been here 25 today, but he took his wife and five children down to</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Let me finish answering your question. We have, 2 We designated six handicap parking spaces on the west side of 3 the building. 4 Q. Okay. 5 A. And I think the Planning Department has, in its 6 discretion, to accept those handicap parking spaces as being 7 in compliance with the site plan. If they have the 8 discretion to allow a flea market to operate without any 9 compliance, any submission of any type of site plan, 10 certainly they have the authority to accept those 11 redesignated handicap parking spaces on the west side of the 12 building as in compliance with the site plan. 13 Q. Let me ask you, do you know why Planning Staff went 14 out to investigate this site prior to issuing the Notice of 15 Violation in January 2020? 16 A. In my conversation with Mr. Robertson, he said that 17 they received a complaint from Department of Health and Human 18 -- the Department of Social Services. When they went to -- 19 when Department of Social Services went to inspect the food 20 trucks, they noticed that the -- one of the vendors had their 21 operation on top of a handicap parking space. So -- 22 Q. Do you recall -- 23 A. -- let me finish. Let me finish. 24 Q. -- do you -- 25 A. Let me finish.</p>	<p style="text-align: right;">Page 41</p> <p>1 Disneyland. That's where they are now. But he deals with 2 the Planning Department on a constant basis. And, so, while 3 he's down here at the Planning Department, they could've 4 spoken to him and told him of those violations. Or just call 5 him or call me. I've dealt with Mr. Robertson before on 6 other matters. 7 Q. Mr. Perry -- 8 A. And we have -- he's -- we've talked. We've talked 9 before. And Ms. Roberts, I've dealt with her on various 10 matters. When we -- 11 Q. Mr. Perry -- 12 A. Let me finish. 13 Q. Sure. 14 A. And when we -- my office is on Fayetteville Street, 15 and we converted -- we did approximately \$700,000 worth of 16 renovations to the property on Fayetteville Street, and we 17 complied with the regulations then and we will comply with 18 them in the future. And, so, we have no problem complying 19 with these regulations. Only thing we want is open 20 communication. 21 Q. Mr. Perry, you're an attorney. Correct? 22 A. We've said that numerous times, sir. 23 Q. Okay. Have you ever read the UDO provisions that 24 dictates how the Planning Department is to issue Notices of 25 Violation?</p>

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<p style="text-align: right;">Page 42</p> <p>1 A. I've read parts of it, but I can't recite -- you 2 know, I haven't looked at it recently. 3 Q. Okay. Isn't it required that it be in writing to 4 the property owner? 5 A. Well, again, there's a requirement that if you're 6 going to give a formal Notice of Violation, you should send 7 it out, as we've mentioned here in this case as well as the 8 previous case, and so -- but sometimes a lot of things that 9 we do as citizens and people with the City does, we talk, we 10 communicate, and we don't send out formal notices. And 11 they've done that in the past. And I was wondering why they 12 didn't do it in this case. 13 Like the renovations to the restroom. We just finished 14 that about a year and a half or two ago. We just did that 15 renovation. It was a major renovation. And if you like -- 16 you know, you need to come down and look at it. And see -- 17 and look at the records at the -- look at the records that 18 indicate what we did to comply with the various regulations 19 of the City with respect to installing those restrooms. So, 20 we've made -- we have cooperated with the City with regards 21 to their regulations. 22 CHAN ROGERS: All right. Excuse me. Mr. O'Toole, are 23 you -- does that wrap it up for you? 24 MR. O'TOOLE: (Inaudible) 25 CHAN ROGERS: All right. Let's bring it back to the</p>	<p style="text-align: right;">Page 44</p> <p>1 procedure is a written Notice and this Notice is generic; 2 it's not specific. And so the City hasn't met its burden. 3 CHAN ROGERS: All right. Anyone else? Chad? 4 MR. MEADOWS: So, I'm not sure that I agree with Mr. 5 Paletta, and I don't know that that makes any difference. 6 When I look at the site plan that's been approved for 7 this site, it lists outdoor vending area, it lists 8 ingress/egress. I look at the aerial photo that's included 9 in the record and I see an additional access that's been 10 added; I see additional outdoor equipment, storage, whatever 11 it is in the parking lot, and that's not reflected on the 12 site plan that was approved. I heard testimony from the 13 staff that placement of stuff like what I saw in the aerial 14 photo requires site plan approval. That site plan has not 15 been submitted or approved, so the site is in violation of 16 the ordinance. While I agree that the Notice of Violation 17 could have been more detailed and perhaps would have been 18 helpful had it been more detailed and perhaps even have 19 stopped us from having to be here had it been more detailed, 20 the main issue is the stuff that's on the site that wasn't 21 shown on the plan needs to be removed within 30 days and that 22 seemed fairly clear to me. 23 The timing of the site plan, et cetera, I'm not sure 24 that that's relevant. I'm sure that perhaps submittal of a 25 site plan application or an indication of a site plan</p>
<p style="text-align: right;">Page 43</p> <p>1 table here for the Board discussion. Mr. Wardell, do you 2 have something before we do this? 3 MR. WARDELL: I wanted to further address the issue of 4 burden of proof because clearly that's going to be an 5 important issue. 6 I went back and looked at the statutes and because this 7 is a violation that carries potential fines and penalties, 8 the burden is on the Agency -- or the City -- by clear and 9 convincing evidence they have to show that the Notice of 10 Violation is proper. 11 CHAN ROGERS: Thank you, Bryan. 12 All right. Discussion among the Board. Thoughts? 13 David, I saw your hand move first, so. Out of the 14 corner of my eye. 15 MR. PALETTA: I'm influenced by my experience of 16 reviewing over 100 Notices of Violations. 17 I cannot support the City's action due to the wording of 18 the Notice of Violation. I would respectfully disagree with 19 Mr. Robertson with regard to -- in my opinion, the Notice of 20 Violation must list the violations. If there's 20 or 30, it 21 must list 20 or 30. What this Notice of Violation is is a 22 boilerplate form and it doesn't meet the standards. I 23 thought the burden of proof would be on the City, and even if 24 there's numerous obvious violations going on, the City must 25 follow the correct procedures. The first step of the</p>	<p style="text-align: right;">Page 45</p> <p>1 submittal might've helped hold that period or prevented us 2 from having to be here today, but I don't know that that was 3 done. I've not heard any evidence that that took place. 4 So, I believe that the Notice of Violation indicated 5 what it could indicate, that there's material on this site 6 that needed to be approved via site plan and that wasn't 7 approved, and the fastest and easiest way to address that 8 would be to remove it. And, so, for that reason, you know, I 9 believe that the interpretation made by the Planning Director 10 was correct in this case. 11 Thank you. 12 CHAN ROGERS: Thank you, Mr. Meadows. Tarrant? 13 MR. TARRANT: I agree with Mr. Paletta and Mr. Meadows. 14 I think, you know, in my position and understanding of site 15 plans is that the site plan is, for all intents and purposes, 16 the list of things that must be adhered to. And, so, for 17 that reason I feel like just referencing the most recent 18 approved site plan is, in fact, the document that lists the 19 conditions that need to be approved. 20 I certainly appreciate everything that Mr. Perry has 21 done to improve this property and the efforts he has made to, 22 you know, really create a special place for Durham and to 23 improve these, and the amount of investment he's put in to 24 this facility, however, when I look at the date of the Notice 25 of Violation, the approved site plan, it is very clear to me</p>

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<p align="right">Page 46</p> <p>1 that the property is being used in ways that were not 2 approved on the approved site plan. So, I'm inclined to 3 support Staff in the decision they made to notice the -- 4 issue the Notice of Violation.</p> <p>5 Thank you.</p> <p>6 CHAN ROGERS: All right. Thank you, Mr. Tarrant.</p> <p>7 Anyone else?</p> <p>8 (no response)</p> <p>9 CHAN ROGERS: I'll go.</p> <p>10 Mr. Meadows, I completely agree with you. I looked at 11 the same materials, looked at the question in hand, and I 12 actually agree a hundred percent with what you said about the 13 site plan and, you know, it not being what it is today. I 14 think that was my first question is, you know, before -- 15 after we heard Mr. Perry's testimony. So, I agree.</p> <p>16 All right. Anyone else? Anybody else have any 17 thoughts? Mr. Retchless?</p> <p>18 MR. RETCHLESS: Retchless here.</p> <p>19 Yeah, I've dealt with Notice of Violations and they all 20 go back to a site plan. And when you're not following one, I 21 don't think it's a boilerplate notification, I believe it's 22 clear when it states that, you know, you had a plan and you 23 didn't follow it, so, you know, you're in a Notice of 24 Violation. So, I concur with the other -- Mike and Chad and 25 yourself.</p>	<p align="right">Page 48</p> <p>1 MR. PALETTA: Paletta will second the motion.</p> <p>2 CHAN ROGERS: All Right.</p> <p>3 MS. DOCKERY: (in background) So you would vote in the 4 negative because this is a motion for the approval.</p> <p>5 CHAN ROGERS: Yes. So, if that is the case, if that is 6 the way you decide to vote.</p> <p>7 Terri, I'm going to let you go through -- call each one.</p> <p>8 We had a motion by Mr. Tarrant, had a second by Mr. David 9 Paletta. Terri, I'm going to let you go down the line.</p> <p>10 MS. ELLIOTT: Meadows?</p> <p>11 MR. MEADOWS: No.</p> <p>12 MS. ELLIOTT: Paletta?</p> <p>13 MR. PALETTA: Yes.</p> <p>14 MS. ELLIOTT: Rogers?</p> <p>15 MR. ROGERS: No.</p> <p>16 MS. ELLIOTT: Retchless?</p> <p>17 MR. RETCHLESS: No.</p> <p>18 MS. ELLIOTT: Tarrant?</p> <p>19 MR. TARRANT: No.</p> <p>20 MS. ELLIOTT: Pickett?</p> <p>21 MR. PICKETT: No.</p> <p>22 CHAN ROGERS: Kolasa.</p> <p>23 MS. ELLIOTT: And Kolasa.</p> <p>24 MR. KOLASA: No.</p> <p>25 MS. ELLIOTT: Motion fails six to one.</p>
<p align="right">Page 47</p> <p>1 CHAN ROGERS: All right. Unless there is further 2 discussion, which should be happening right now -- please 3 raise your hand -- is there a motion? Would anybody like to 4 offer a motion?</p> <p>5 MR. TARRANT: Tarrant. I'll make a motion.</p> <p>6 CHAN ROGERS: Mr. Tarrant.</p> <p>7 MR. TARRANT: The matter having been reviewed by the 8 Board on Application for Appeal of an administrative decision 9 to administer a Notice of Violation for improvements made to 10 the Durham Green Plea Market without an approved site plan by 11 the Director of Planning, Sarah Young, for property located 12 at 1600 East Pettigrew Street in Durham, North Carolina, and 13 after hearing the presentation of evidence and reviewing the 14 appeal submittals and all substantial, material, and 15 competent evidence, I hereby make a motion that the 16 application appealing the Planning Director's interpretation 17 be granted.</p> <p>18 MR. PALETTA: I have a question about that motion.</p> <p>19 CHAN ROGERS: Yes.</p> <p>20 MR. PALETTA: Are we granting the appeal or are we 21 denying the appeal?</p> <p>22 MS. DOCKERY: (in background) All motions must be in 23 positive form.</p> <p>24 CHAN ROGERS: That's right. Okay. Well, that answers 25 that, I guess.</p>	<p align="right">Page 49</p> <p>1 CHAN ROGERS: All right. By a vote of six to one, your 2 request for an appeal of administrative decision has not been 3 granted.</p> <p>4 All right. Do we want to take -- does anybody need a 5 quick 5, 10-minute break?</p> <p>6 (background)</p> <p>7 CHAN ROGERS: All right. Let's -- it's 9:59. Let's 8 return at 10:10. We'll see you then.</p> <p>9 MR. PERRY: (in background) Mr. Chairman, can we get a 10 transcript of this hearing?</p> <p>11 CHAN ROGERS: Yes, it is available. It's on YouTube. 12 Actually, streaming live on YouTube right now, too.</p> <p>13 MR. PERRY: Okay.</p> <p>14 CHAN ROGERS: Yes.</p> <p>15 (Chairman Rogers bangs gavel)</p> <p>16 (END OF RECORDING)</p> <p>17 (END OF TRANSCRIPT)</p>

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<p>1 CERTIFICATE PAGE</p> <p>2</p> <p>3 I, Angela P. Ferreira, Transcriptionist,</p> <p>4 do hereby certify that this transcript</p> <p>5 is a true and accurate record of the</p> <p>6 electronically recorded proceedings,</p> <p>7 transcribed under my direction</p> <p>8 this 7th day of April, 2023.</p> <p>9 <u>Angela P. Ferreira</u></p> <p>10</p> <p>11</p> <p>12 ANGELA P. FERREIRA</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 50</p>
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STATE OF NORTH CAROLINA
COUNTY OF DURHAM

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2023 JUN -9 FILED 22 CVS 3973

DURHAM CO. C.S.C.

DURHAM GREEN FLEA MARKET

Petitioner,

v.

CITY OF DURHAM

Respondent.

ORDER

THIS CAUSE came before the undersigned judge during the May 22, 2023 Civil Term of Durham County Superior Court for hearing on Petitioner's Petition for Writ of Certiorari. The hearing of this matter was held on May 23, 2023. Petitioners appealed the decision of the Board of Adjustment for the City of Durham and Durham County ("BOA") that denied, through an Order issued on July 26, 2022, Petitioner's appeal of a Notice of Violation ("NOV") that was served on Petitioner on February 10, 2020 by the staff of the City-County Planning Department.

The Court considered the Record that was filed with the Court on January, 3, 2023, and the applicable North Carolina General Statutes, case law, Durham Unified Development Ordinance ("UDO") provisions, and the arguments of counsel that were presented at the hearing of this matter. In considering all of the evidence in the Record and the arguments of the Parties, the Court finds as follows with respect to the two claims alleged by Petitioner:

1. Alleged Due Process Violation

A. Petitioner's initial contention is that its due process rights were violated because the City did not attempt to resolve this matter through "informal" means before issuing the written NOV on November 10, 2020.

B. In reviewing this claim, the Court employed the *de novo* standard of review, and based upon the Record, N.C. Gen. Stat. § 160D-404(a), and UDO § 15.2.1.A, concludes that petitioner's due process rights were not violated, and the NOV was properly issued by the City of Durham ("City").

2. Allegation that the BOA's Decision Denying Petitioner's Appeal of the NOV was Arbitrary and Capricious

A. Petitioner contends that the BOA's decision denying its appeal of the NOV was arbitrary and capricious, and not supported by the Record.

B. On March 8, 2023 Petitioner filed additional exhibits, labelled Exhibits in Support of Petitioner's Writ of Certiorari and Complaint, containing Exhibits A through K, that are not part of the Record ("Petitioner's Exhibits").

C. At the hearing of this matter, Respondent objected to the Court's consideration of Petitioner's Exhibits.

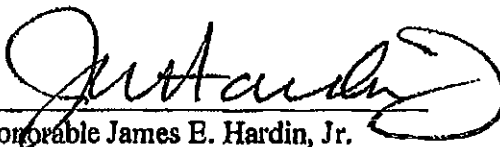
D. Relying on N.C. Gen. Stat. § 160D-1402(h), the Court concluded that Petitioner's Exhibits are not evidence in this case, and thus, did not consider Petitioner's Exhibits in deciding this matter or in issuing this Order.


E. Petitioner requested that Petitioner's Exhibits be admitted as an "offer of proof," and the Court admitted them for that purpose only.

F. Based upon its review of the Record, the legal authority submitted by the Parties, and the arguments by counsel for both Parties, the Court affirms the BOA's decision denying Petitioner's appeal of the NOV issued by the City.

In light of the Courts rulings above, the Court issues the following ORDER: Petitioner's appeal is DISMISSED and is, accordingly, ORDERED to bring the property at 1600 East Pettigrew St., Durham, NC (PIN# 0831-18-42-0210) into full compliance with a site plan, approved by the Durham City-County Planning Department, within thirty-six (36) months of the filing of this ORDER.

SO ORDERED this, the 6th day of June, 2023.


The Honorable James E. Hardin, Jr.
Presiding Superior Court Judge

FILED
2023 JUN -9 A 8:03
DURHAM CO. S.C.
BY 


CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing Order in the above captioned action on all parties by depositing a copy hereof in a postpaid wrapper in a post office depository under the exclusive care and custody of the United Postal Service, addressed as follows:

Robert T. Perry
Attorney at Law
POST OFFICE BOX 2051
DURHAM, NC 27702

Donald T. O'Toole
Attorney at Law
101 CITY HALL PLAZA
DURHAM, NC 27701

This the 9 day of June, 2023.


Asst. ~~DEPUTY~~ CLERK OF SUPERIOR COURT

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2023 JUN -9 4:03
CLERK OF SUPERIOR COURT
PMM

NORTH CAROLINA
COUNTY OF DURHAM

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 22 CVS 3973

DURHAM GREEN FLEA MARKET,
Plaintiff

v.

CITY OF DURHAM,
Defendant.

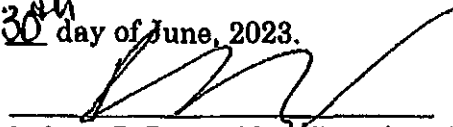
NOTICE OF APPEAL FROM
FINAL JUDGMENT


TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiff-Appellant, Durham Green Flea Market, hereby gives notice of appeal to the Court of Appeals of North Carolina from the final Judgment entered by the Honorable James E. Hardin, Jr. on June 6, 2023, in Superior Court, Durham County, in favor of the Defendant, City of Durham, and against the Defendant, City of Durham.

By this appeal, the Plaintiff, Durham Green Flea Market, will ask the Court of Appeals of North Carolina to reverse the final Judgment entered on June 6, 2023.

Respectfully submitted this the ^{30th}~~30~~ day of June, 2023.


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **PLAINTIFF-APPELLANT'S NOTICE OF APPEAL FROM FINAL JUDGMENT** by depositing the same, by first class mail, under exclusive care and custody of the United States Post Office Department addressed to:

Donald T. O'Toole
101 City Hall Plaza
Durham, N.C. 27701
Email: Donald.O'Toole@durhamnc.gov

Service being in accordance with Rule 26 of North Carolina Rules of Appellate Procedure.

Respectfully submitted this the 30th day of June, 2023.


Robert T. Perry, Attorney at Law


Chelsi C. Edwards, Attorney at Law

STATE OF NORTH CAROLINA
SUPERIOR COURT DIVISION

IN THE GENERAL COURT OF JUSTICE
DURHAM COUNTY

NO.: 22 CVS 3973

DURHAM GREEN FLEA MARKET, LLC

Plaintiff(s),

v.

CITY OF DURHAM

Defendant(s).

Appellate Division
Transcript Contract

(N.C. R. App. P. 7)

Requestor Information

Name: CHELSI EDWARDS

Phone Number: 919-683-8685

E-mail Address: ChelsiEdwards@perrypointlaw.com

Address: P. O DRAWER 2051
DURHAM, NC 27702

Firm/Agency: PERRY, PERRY & PERRY, P.A.

State Bar No.: 58024

Attorney For: PLAINTIFF, DURHAM GREEN FLEA
MARKET, LLC

Transcriptionist Information

Name: Carrie E. Rice

Phone Number: 919-808-3249

E-mail Address: carrie.e.rice@nccourts.org

Address: Durham County Courthouse

Proceedings to Be Transcribed

Date	Location (County and Courtroom)	Judge Presiding	Description
5-23-23	Durham County - 7A		
<input type="checkbox"/> Additional proceedings are identified on page(s) _____			

Agreement

This constitutes an agreement between the requestor and the transcriptionist for a transcript of the proceedings identified in the "Proceedings to Be Transcribed" section, above.

1. The transcriptionist's fee for the transcript is \$7.00 per page. *(Required Entry)*
The estimated length of the transcript is 53 pages. *(Optional Entry)*
Accordingly, the estimated total cost of the transcript is \$370.00. *(Optional Entry)*
2. The requestor agrees to pay the transcriptionist's per-page rate for the transcript with a refundable deposit of \$0 to be paid to the transcriptionist upon execution of this contract. *(Insert "0" if no deposit is required.)*
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10. The requestor and the transcriptionist may agree by addendum to additional terms, but those additional terms do not supersede these terms.

Requestor's Signature: <u>Carris C. Rice</u>	Date: <u>7-13-23</u>
Transcriptionist's Signature: <u>Helmi Zoh</u>	Date: <u>7-13-23</u>

Service of Form Required

Rule 7 of the North Carolina Rules of Appellate Procedure requires the requestor to serve a completed copy of this form on each party and on the transcriptionist. The requestor's certificate of service may be added to the end of this form as an attachment.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **APPELLATE DIVISION TRANSCRIPT CONTRACT** by depositing the same, by first class mail, under exclusive care and custody of the United States Post Office Department addressed to:

Donald T. O'Toole
101 City Hall Plaza
Durham, N.C. 27701
Email: Donald.O'Toole@durhamnc.gov

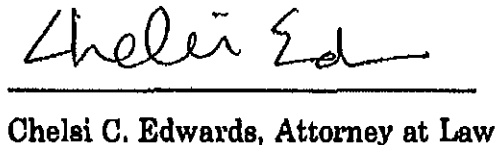
Carrie E. Rice
510 S. Dillard St.
Durham, N.C. 27701
Email: carrie.e.rice@nccourts.org

Service being in accordance with the North Carolina Rules of Appellate Procedure.

Respectfully submitted this the 12th day of July, 2023.



Robert T. Perry, Attorney at Law



Chelsi C. Edwards, Attorney at Law

No. _____

F | FOURTEENTH JUDICIAL DISTRICT

22CV5 3973

NORTH CAROLINA COURT OF APPEALS

DURHAM CO. 888 *****

BY _____

DURHAM GREEN FLEA MARKET,
Plaintiff-Appellant,

vs.

CITY OF DURHAM
Defendant-Appellee.

From Durham County

MOTION and ORDER FOR EXTENSION OF TIME TO PRODUCE AND
ELECTRONICALLY DELIVER TRANSCRIPT

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

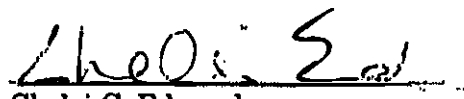
Plaintiff-Appellant, Durham Green Flea Markert, respectfully moves the Trial Court, Durham County Superior Court, under Appellate Rule 7(b) and Rule 27(c) for an extension of time of 30 days, up to and including 9 November 2023, in which to produce and electronically deliver the transcript in this matter. In support of this motion, Plaintiff-Appellant shows:

1. The Notice of Appeal was filed on 30 June 2023. (Exhibit A)
2. The Appellate Division Transcript Contract dated 13 July 2023 was signed on 12 July 2023. (Exhibit B)

3. The Transcript was due to be served on 10 October 2023.
4. The Transcript was not produced and electronically delivered on 10 October 2023.
5. On 11 October 2023, Plaintiff-Appellant was informed the Transcriptionist needed additional time to produce and electronically deliver the transcript in this matter. (Exhibit C)
6. Under the North Carolina Rules of Appellate Procedure, an extension of time to produce and electronically deliver the transcript may be granted by the trial tribunal for good cause shown.
7. There is good cause to extend the time to produce and electronically deliver the transcript in this matter.

WHEREFORE, Plaintiff-Appellant respectfully moves the Trial Court, under Appellate Rule 7(b) and Rule 27(c) for an extension of time of 30 days, up to and including 9 November 2023, in which to produce and electronically deliver the transcript in this matter.

Respectfully submitted, this the 12th day of October, 2023.


Chelsi C. Edwards
N.C. State Bar # 58024
PERRY, PERRY & PERRY, P.A.
Attorneys for Plaintiff-Appellant
Post Office Drawer 2051
Durham, North Carolina 27702
Email: ChelsiEdwards@perrypointlaw.com

ORDER

This matter coming before the undersigned Superior Court Judge under Appellate Rules 7(b) and 27(c) for an extension of time of 30 days, up to and including 9 November 2023, in which to produce and electronically deliver the transcript in this matter.

The Durham County Superior Court orders as follows:

Plaintiff-Appellant's motion for motion for extension is:

☐ Granted.

☐ Denied.

The Transcript is due to be filed on 9 November 2023.

So Ordered:

The Honorable _____

Superior Court Judge

Date



NORTH CAROLINA
COUNTY OF DURHAM

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 22 CVS 3973

2023 JUN 20 P 2:54)
DURHAM GREEN FLEA MARKET,)
Plaintiff)
v.)
CITY OF DURHAM,)
Defendant.)

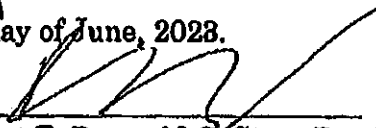
NOTICE OF APPEAL FROM
FINAL JUDGMENT

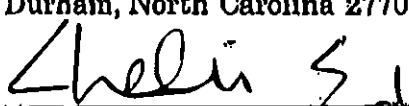
TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiff-Appellant, Durham Green Flea Market, hereby gives notice of appeal to the Court of Appeals of North Carolina from the final Judgment entered by the Honorable James E. Hardin, Jr. on June 6, 2023, in Superior Court, Durham County, in favor of the Defendant, City of Durham, and against the Defendant, City of Durham.

By this appeal, the Plaintiff, Durham Green Flea Market, will ask the Court of Appeals of North Carolina to reverse the final Judgment entered on June 6, 2023.

Respectfully submitted this the 30th day of June, 2023.


Robert T. Perry, N.C. State Bar #11051
PERRY, PERRY & PERRY, P.A.
Attorneys for Plaintiff
601 Fayetteville Street, Suite 300
Post Office Drawer 2051
Durham, North Carolina 27702


Chelsi C. Edwards, N.C. State Bar #58024
PERRY, PERRY & PERRY, P.A.
Attorneys for Plaintiff
601 Fayetteville Street, Suite 300
Post Office Drawer 2051
Durham, North Carolina 27702

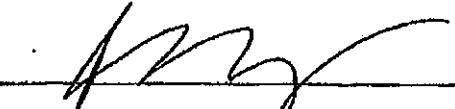
CERTIFICATE OF SERVICE

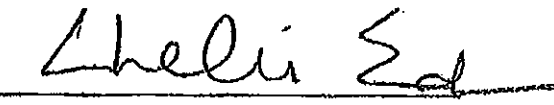
I hereby certify that I have this day served a copy of the **PLAINTIFF-
APPELLANT'S NOTICE OF APPEAL FROM FINAL JUDGMENT** by
depositing the same, by first class mail, under exclusive care and custody of the
United States Post Office Department addressed to:

Donald T. O'Toole
101 City Hall Plaza
Durham, N.C. 27701
Email: Donald.O'Toole@durhamnc.gov

Service being in accordance with Rule 26 of North Carolina Rules of Appellate
Procedure.

Respectfully submitted this the ^{30th}30 day of June, 2028.


Robert T. Perry, Attorney at Law


Chelsi C. Edwards, Attorney at Law

STATE OF NORTH CAROLINA
SUPERIOR COURT DIVISION

IN THE GENERAL COURT OF JUSTICE
DURHAM COUNTY

NO.: 22 CVS 3973



DURHAM GREEN FLEA MARKET, LLC

Plaintiff(s),

v.

CITY OF DURHAM

Defendant(s).

Appellate Division
Transcript Contract

(N.C. R. App. P. 7)

Requestor Information

Name: CHELSI EDWARDS

Phone Number: 919-683-8685

E-mail Address: ChelsiEdwards@perrypointlaw.com

Address: P.O. DRAWER 2051

DURHAM, NC 27702

Firm/Agency: PERRY, PERRY & PERRY, P.A.

State Bar No.: 58024

Attorney For: PLAINTIFF, DURHAM GREEN FLEA
MARKET, LLC

Transcriptionist Information

Name: Carrie E. Rice

Phone Number: 919-808-3249

E-mail Address: carrie.e.rice@nccourts.org

Address: Durham County Courthouse

Proceedings to Be Transcribed

Date	Location (County and Courtroom)	Judge Presiding	Description
5-23-23	Durham County - 7A		
<input type="checkbox"/> Additional proceedings are identified on page(s) _____			

Agreement

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Accordingly, the estimated total cost of the transcript is \$370.00. (*Optional Entry*)
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10. The requestor and the transcriptionist may agree by addendum to additional terms, but those additional terms do not supersede these terms.

Requestor's Signature: <u>Carrie E. Rice</u>	Date: 7-13-23
Transcriptionist's Signature: <u>Helmi Ed</u>	Date: 7-13-23

Service of Form Required

Rule 7 of the North Carolina Rules of Appellate Procedure requires the requestor to serve a completed copy of this form on each party and on the transcriptionist. The requestor's certificate of service may be added to the end of this form as an attachment.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **APPELLATE DIVISION TRANSCRIPT CONTRACT** by depositing the same, by first class mail, under exclusive care and custody of the United States Post Office Department addressed to:

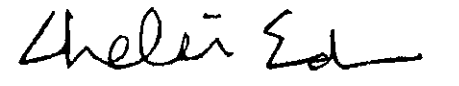
Donald T. O'Toole
101 City Hall Plaza
Durham, N.C. 27701
Email: Donald.O'Toole@durhamnc.gov

Carrie E. Rice
510 S. Dillard St.
Durham, N.C. 27701
Email: carrie.e.rice@nccourts.org

Service being in accordance with the North Carolina Rules of Appellate Procedure.

Respectfully submitted this the 12th day of July, 2023.


Robert T. Perry, Attorney at Law


Chelsi C. Edwards, Attorney at Law



Chelsi Edwards

From: Barrier, Deneen <E.Deneen.Barrier@nccourts.org>
Sent: Wednesday, October 11, 2023 8:09 PM
To: Chelsi Edwards
Cc: Rice, Carrie E.
Subject: RE: Extension to Complete Transcript.

Attorney Edwards:

Ms. Rice texted me and informed me that she will need an extension.

We apologize.

Best,



E. Deneen Barrier
Trial Court Administrator/Court Administrator I
North Carolina Judicial Branch
Fourteenth Judicial District
Durham County Courthouse
510 S. Dillard Street, 9th Floor
Durham, North Carolina 27701

O 919-808-3250 (Direct)
F 919-808-3037

Justice for all
www.NCcourts.gov



From: Barrier, Deneen
Sent: Wednesday, October 11, 2023 4:28 PM
To: Chelsi Edwards <ChelsiEdwards@perrypointlaw.com>
Subject:



E. Deneen Barrier
Trial Court Administrator/Court Administrator I
North Carolina Judicial Branch
Fourteenth Judicial District
Durham County Courthouse
510 S. Dillard Street, 9th Floor
Durham, North Carolina 27701

ORDER

This matter coming before the undersigned Superior Court Judge under Appellate Rules 7(b) and 27(c) for an extension of time of 80 days, up to and including 9 November 2023, in which to produce and electronically deliver the transcript in this matter.

The Durham County Superior Court orders as follows:

Plaintiff-Appellant's motion for motion for extension is:

☒ Granted.

☐ Denied.

FILED
2023 OCT 17 AM 11:11
CLERK OF SUPERIOR COURT
BY [Signature]

The Transcript is due to be filed on 9 November 2023.

So Ordered:

The Honorable

John M. Dunbar
Superior Court Judge

10-12-23

Date

No. _____

FOURTEENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

DURHAM GREEN FLEA MARKET,)	
Plaintiff-Appellant,)	
)	
vs.)	<u>From Durham County</u>
)	
CITY OF DURHAM)	
Defendant-Appellee.)	
)	

MOTION FOR EXTENSION OF TIME TO PRODUCE AND ELECTRONICALLY
DELIVER TRANSCRIPT

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiff-Appellant, Durham Green Flea Markert, respectfully moves the North Carolina Court of Appeals, under Appellate Rule 27(c)(2) for an extension of time of 30 days, up to and including 9 December 2023, in which to produce and electronically deliver the transcript in this matter. In support of this motion, Plaintiff-Appellant shows:

1. The Notice of Appeal was filed on 30 June 2023. (Exhibit A)
2. The Appellate Division Transcript Contract dated 13 July 2023 was signed on 12 July 2023. (Exhibit B)


3. The Transcript was due to be served on 10 October 2023.
4. The Transcript was not produced and electronically delivered on 10 October 2023.
5. On 11 October 2023, Plaintiff-Appellant was informed the Transcriptionist needed additional time to produce and electronically deliver the transcript in this matter. (Exhibit C)
6. Pursuant to North Carolina Rules of Appellate Procedure, Rules 7(b) and 27(c)(1), Plaintiff-Appellant filed a motion with the Trial Court, Durham County Super Court, for an extension of time of 30 days, up and including 9 November 2023, to produce and electronically deliver the transcript in this matter on 12 October 2023.
7. Plaintiff-Appellant's 12 October 2023 motion, for good cause shown, was granted on 12 October 2023. (Exhibit D)
8. On 17 October 2023, the transcriptionist apologized for the delay and indicated she would produce and electronically deliver the transcript no later than Friday (20 October 2023). (Exhibit E)
9. The transcriptionist did not produce and electronically deliver the transcript on 20 October 2023.
10. To date, the transcriptionist has not produced and electronically delivered the transcript.
11. Upon information and belief, the transcriptionist needs additional time to produce and electronically deliver the transcript in this matter.

12. Under the North Carolina Rules of Appellate Procedure, an extension of time to produce and electronically deliver the transcript may be granted for good cause shown.

13. There is good cause to extend the time to produce and electronically deliver the transcript in this matter.

WHEREFORE, Plaintiff-Appellant respectfully moves the North Carolina Court of Appeals, under Appellate Rule 27(c)(2) for an extension of time of 30 days, up to and including 9 December 2023, in which to produce and electronically deliver the transcript in this matter.

Respectfully submitted, this the 8th day of November, 2023.



Chelsi C. Edwards
N.C. State Bar # 58024
PERRY, PERRY & PERRY, P.A.
Attorneys for Plaintiff-Appellant
Post Office Drawer 2051
Durham, North Carolina 27702
Email: ChelsiEdwards@perrypointlaw.com



NORTH CAROLINA
COUNTY OF DURHAM

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 22 CVS 8973

2023 JUN 30 P 2:54)
DURHAM GREEN FLEA MARKET,)
Plaintiff)

v.)

CITY OF DURHAM,)
Defendant.)

NOTICE OF APPEAL FROM
FINAL JUDGMENT

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA:

Plaintiff-Appellant, Durham Green Flea Market, hereby gives notice of appeal to the Court of Appeals of North Carolina from the final Judgment entered by the Honorable James E. Hardin, Jr. on June 6, 2023, in Superior Court, Durham County, in favor of the Defendant, City of Durham, and against the Defendant, City of Durham.

By this appeal, the Plaintiff, Durham Green Flea Market, will ask the Court of Appeals of North Carolina to reverse the final Judgment entered on June 6, 2023.

Respectfully submitted this the ^{30th}~~30~~ day of June, 2023.


Robert T. Perry, N.C. State Bar #11051
PERRY, PERRY & PERRY, P.A.

Attorneys for Plaintiff
601 Fayetteville Street, Suite 300
Post Office Drawer 2051
Durham, North Carolina 27702


Chelsi C. Edwards, N.C. State Bar #58024
PERRY, PERRY & PERRY, P.A.

Attorneys for Plaintiff
601 Fayetteville Street, Suite 300
Post Office Drawer 2051
Durham, North Carolina 27702


CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **PLAINTIFF-APPELLANT'S NOTICE OF APPEAL FROM FINAL JUDGMENT** by depositing the same, by first class mail, under exclusive care and custody of the United States Post Office Department addressed to:


Donald T. O'Toole
101 City Hall Plaza
Durham, N.C. 27701
Email: Donald.O'Toole@durhamnc.gov

Service being in accordance with Rule 26 of North Carolina Rules of Appellate Procedure.

Respectfully submitted this the 30th day of June, 2023.



Robert T. Parry, Attorney at Law



Chelsi C. Edwards, Attorney at Law

STATE OF NORTH CAROLINA
SUPERIOR COURT DIVISION

IN THE GENERAL COURT OF JUSTICE
DURHAM COUNTY

NO.: 22 CVS 3973



DURHAM GREEN FLEA MARKET, LLC

Plaintiff(s),

v.

CITY OF DURHAM

Defendant(s).

Appellate Division
Transcript Contract

(N.C. R. App. P. 7)

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DURHAM, NC 27702

Firm/Agency: PERRY, PERRY & PERRY, P.A.

State Bar No.: 58024

Attorney For: PLAINTIFF, DURHAM GREEN FLEA
MARKET, LLC

Transcriptionist Information

Name: Carrie E. Rice

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E-mail Address: carrie_e.rice@nccourts.org

Address: Durham County Courthouse

Proceedings to Be Transcribed

Date	Location (County and Courtroom)	Judge Presiding	Description
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Requestor's Signature: <u>Carrie C. Rice</u>	Date: 7-13-23
Transcriptionist's Signature: <u>Helmi Ed</u>	Date: 7-13-23

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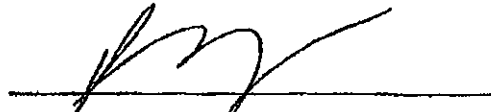
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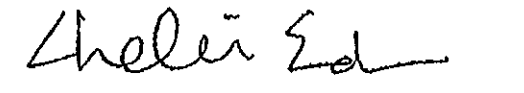
Donald T. O'Toole
101 City Hall Plaza
Durham, N.C. 27701
Email: Donald.O'Toole@durhamnc.gov

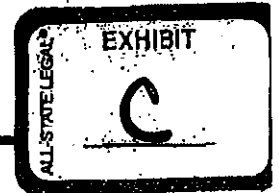
Carrie E. Rice
510 S. Dillard St.
Durham, N.C. 27701
Email: carrie.e.rice@nccourts.org

Service being in accordance with the North Carolina Rules of Appellate Procedure.

Respectfully submitted this the 12th day of July, 2023.


Robert T. Perry, Attorney at Law


Chelsi C. Edwards, Attorney at Law



Chelsi Edwards

From: Barrier, Deneen <E.Deneen.Barrier@nccourts.org>
Sent: Wednesday, October 11, 2023 8:09 PM
To: Chelsi Edwards
Cc: Rice, Carrie E.
Subject: RE: Extension to Complete Transcript.

Attorney Edwards:

Ms. Rice texted me and informed me that she will need an extension.

We apologize.

Best,



E. Deneen Barrier
Trial Court Administrator/Court Administrator I
North Carolina Judicial Branch
Fourteenth Judicial District
Durham County Courthouse
510 S. Dillard Street, 9th Floor
Durham, North Carolina 27701

O 919-808-3250 (Direct)
F 919-808-3037

Justice for all
www.NCcourts.gov



From: Barrier, Deneen
Sent: Wednesday, October 11, 2023 4:28 PM
To: Chelsi Edwards <ChelsiEdwards@perrypointlaw.com>
Subject:



E. Deneen Barrier
Trial Court Administrator/Court Administrator I
North Carolina Judicial Branch
Fourteenth Judicial District
Durham County Courthouse
510 S. Dillard Street, 9th Floor
Durham, North Carolina 27701



ORDER

This matter coming before the undersigned Superior Court Judge under Appellate Rules 7(b) and 27(c) for an extension of time of 30 days, up to and including 9 November 2023, in which to produce and electronically deliver the transcript in this matter.

The Durham County Superior Court orders as follows:
Plaintiff-Appellant's motion for motion for extension is:
☒ Granted.
☐ Denied.

FILED
2023 OCT 17 AM 11:11
BY [Signature] C.S.C.

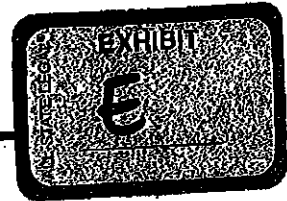
The Transcript is due to be filed on 9 November 2023.

So Ordered:

The Honorable John M. Deane
Superior Court Judge

10-12-23

Date



Chelsi Edwards

From: Rice, Carrie E. <carrie.e.rice@nccourts.org>
Sent: Tuesday, October 17, 2023 1:17 PM
To: Chelsi Edwards
Subject: Re: Green Flea Market v City of Durham

Ms. Edwards,
Sorry for my delay.
I will have your transcript to you no later than Friday.
Sincerely,
Carrie Rice

From: Chelsi Edwards <ChelsiEdwards@perrypointlaw.com>
Sent: Friday, October 13, 2023 9:11 AM
To: Barrier, Deneen <E.Deneen.Barrier@nccourts.org>; Rice, Carrie E. <carrie.e.rice@nccourts.org>
Cc: Hansen, Suzanne L. <suzanne.l.hansen@nccourts.org>
Subject: RE: Green Flea Market v City of Durham

Received. Thanks everyone!

From: Barrier, Deneen <E.Deneen.Barrier@nccourts.org>
Sent: Thursday, October 12, 2023 6:26 PM
To: Chelsi Edwards <ChelsiEdwards@perrypointlaw.com>; Rice, Carrie E. <carrie.e.rice@nccourts.org>
Cc: Hansen, Suzanne L. <suzanne.l.hansen@nccourts.org>
Subject: FW: Green Flea Market v City of Durham

Attorney Edwards and Ms. Rice:

Please see the attached order.

It was signed this afternoon after the Clerk's Office closed.

It will be file stamped tomorrow.

Ms. Edwards, I will make a copy for your records to pick up at the front desk.

Best,



E. Deneen Barrier
Trial Court Administrator/Court Administrator I
North Carolina Judicial Branch
Fourteenth Judicial District
Durham County Courthouse
510 S. Dillard Street, 9th Floor
Durham, North Carolina 27701

O 919-808-3250 (Direct)
F 919-808-3037



North Carolina Court of Appeals

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

EUGENE H. SOAR, Clerk
Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600
From Durham
(22CVS3973)

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. P23-747

DURHAM GREEN FLEA MARKET

v.

CITY OF DURHAM

ORDER

The following order was entered:

The motion filed in this cause on the 8th of November 2023 and designated 'Motion for Extension of Time to Produce and Electronically Deliver Transcript' is allowed. Transcript shall be prepared and delivered on or before 11 December 2023.

By order of the Court this the 9th of November 2023.

WITNESS my hand and official seal this the 9th day of November 2023.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Chelsi C. Edwards, Attorney at Law, For Durham Green Flea Market - (By Email)
Mr. Robert T. Perry, Attorney at Law - (By Email)
Mr. Donald O'Toole, Deputy City Attorney, For City of Durham - (By Email)
The Honorable Clerk of , Durham County

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NO.: 22 CVS 3973

DURHAM GREEN FLEA MARKET

Plaintiff(s),

v.

CITY OF DURHAM

Defendant(s).

**Appellate Division
Transcript Documentation**

(N.C. R. App. P. 7)

Part 1. Transcripts for the Appeal

The undersigned party has ordered a transcript of the trial tribunal proceedings identified below for this appeal. *(Please list transcripts ordered both before and after notice of appeal.)*

Date	Location (County and Courtroom)	Judge Presiding	Description
05/23/2023	DURHAM; COURTROOM 7A	HARDIN	HEARING


☐ Additional proceedings are identified on page(s) _____.

Part 2. Issues on Appeal

Complete this section if only a part of the trial tribunal proceedings are being transcribed for the appeal.

The undersigned party intends to raise the following issues on appeal:

A large, empty rectangular box with a black border, likely a placeholder for a drawing or image. The box is oriented horizontally and occupies most of the page area below the header. It is completely blank, with no text or markings inside.

Name: CHELSI C. EDWARDS	
Attorney For: DURHAM GREEN FLEA MARKET	
Signature: 	Date: 12/4/2023

Service of Pre-Notice of Appeal Transcripts Required

If a party ordered a transcript before notice of appeal and intends to designate that transcript as part of the record on appeal, then that party must electronically serve a copy of the transcript on all other parties during the record-settlement process.

Service of Form Required

Rule 7 of the North Carolina Rules of Appellate Procedure requires a completed copy of this form to be served on each party. A certificate of service may be added to the end of this form as an attachment.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **APPELLATE DIVISION
TRANSCRIPT DOCUMENTATION** by email addressed to:

Donald T. O'Toole
101 City Hall Plaza
Durham, N.C. 27701
Email: Donald.O'Toole@durhamnc.gov

Service being in accordance with the North Carolina Rules of Appellate Procedure.

Respectfully submitted this the 4th day of December, 2023.

A handwritten signature in black ink, appearing to read "Chelsi C. Edwards", written over a horizontal line.

Chelsi C. Edwards, Attorney at Law

STATEMENT OF TRANSCRIPT

Pursuant to North Carolina Rules of Appellate Procedure 7(b) and 9(c) the entire verbatim transcript of 23 May 2023 session of Durham County Civil Superior Court the proceedings in Durham County Superior Court will be electronically submitted, after the Record of Appeal is docketed. The 23 May 2023 transcript is numbered consecutively from pages 1-56.

The 23 May 2023 transcript was transcribed by Ms. Carrie Rice, Registered Professional Reporter.

PETITIONER-APPELLANT'S ISSUE(S) ON APPEAL

Pursuant to Rules 9 and 10 of the North Carolina Rules of Appellate Procedure, the Plaintiff intends to present the following proposed issue on appeal:

1. Whether the trial court erred in its statutory construction of UDO § 15.21.A.
2. Whether the trial court erred in concluding Petitioner's Due Process rights were not violated, and the NOV was properly issued by the City of Durham?
3. Whether the trial court erred in concluding Petitioner's Due Process rights were not violated, where the issued NOV did not detail the specific alleged violations.
4. Whether the trial court erred in concluding the competent evidence within the record support the finding of fact City of Durham's decision to issue a NOV was not arbitrary and capricious.
5. Whether the trial court abused its discretion by ordering Petitioner to bring the property at 1600 East Pettigrew St., Durham, NC (PIN# 0831-18-42-0210) into full compliance with a site plan, approved by the Durham City-County Planning Department, within thirty-six (36) months of the filing of the Order.

STIPULATION SETTling THE RECORD ON APPEAL

The forgoing constitutes the Record on Appeal in this matter.

The record was settled in the following manner:

_____ by order of the Court, a copy of which is included on Appeal.

 X by agreement of the parties, as evidenced by the signatures of the
counsel below:

For Petitioner-Appellant

This the 21st day of March, 2024.

By:



Chelsi C. Edwards
Perry, Perry & Perry, P.A.
Post Office Drawer 2051
Durham, North Carolina 27702
Telephone: (919) 683-8685
Fax: (919) 688-7930
State Bar No. 58024
chelsiedwards@perrypointlaw.com

Robert T. Perry
Perry, Perry & Perry, P.A.
Post Office Drawer 2051
Durham, North Carolina 27702
Telephone: (919) 683-8685
Fax: (919) 688-7930
State Bar No. 11051
Robert.perrylaw@frontier.com

For Respondent-Appellee

This the 21st day of March, 2024.

By: *p.p. Aarin Miles*
John Roseboro
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Telephone: (919) 354-2752
Fax: (919) 560-4660
State Bar No. 26680
John.roseboro@durhamnc.gov

Aarin K. Miles
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Telephone: (919) 354-2752
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Aarin.miles@durhamnc.gov

IDENTIFICATION OF COUNSEL

Counsel for Petitioner-Appellant

Chelsi C. Edwards
Perry, Perry & Perry, P.A.
Post Office Drawer 2051
Durham, North Carolina 27702
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Counsel for Respondent-Appellee

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Durham, North Carolina 27701
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Fax: (919) 560-4660
State Bar No.: 53048
Aarin.miles@durhamnc.gov

CERTIFICATE OF FILING

The undersigned attorney for Petitioner-Appellant hereby certifies that he has filed the Record of Appeal with the North Carolina Court of Appeals, this the 15th day of March, 2024 by electronic means by use of the electronic-filing site at <https://www.ncappellatecourts.org>.

Chelsi C. Edwards
Robert T. Perry
Perry, Perry & Perry, P.A.
Post Office Drawer 2051
Durham, North Carolina 27702
Telephone: (919) 683-8685
Fax: (919) 688-7930


CERTIFICATE OF SERVICE

This is to certify that the foregoing PROPOSED RECORD ON APPEAL was this day served upon the following by depositing same in the United States mail, postage prepaid, and addressed as follows:

John Roseboro
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Telephone: (919) 354-2752
Fax: (919) 560-4660
State Bar No. 26680
john.roseboro@durhamnc.gov

Aaarin Miles
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Telephone: (919) 354-2752
Fax: (919) 560-4660
State Bar No.: 53048
aarin.miles@durhamnc.gov

This the 3rd day of January, 2024.



Chelsi C. Edwards
Robert T. Perry
Perry, Perry & Perry, P.A.
Post Office Drawer 2051
Durham, North Carolina 27702
Telephone: (919) 683-8685
Fax: (919) 688-7930

No. P23-747

FOURTEENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

DURHAM GREEN FLEA MARKET,)	
Plaintiff-Appellant,)	
)	
vs.)	<u>From Durham County</u>
)	
CITY OF DURHAM)	
Defendant-Appellee.)	
)	

PLAINTIFF-APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE
RECORD ON APPEAL

Plaintiff-Appellant, Durham Green Flea Markert, respectfully moves the Court for a thirty-five (35) day extension, up until March 15, 2024, to compose and serve the Proposed Record on Appeal, and file the settled Record on Appeal. In support of said motion, Plaintiff-Appellant says the following:

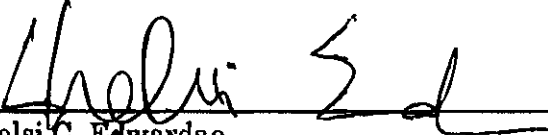
1. Plaintiff-Appellant filed the Notice of Appeal on 30 June 2023.
2. Plaintiff-Appellant served Defendant-Appellee with Plaintiff-Appellant's Proposed Record on Appeal on 3 January 2024.

3. Defendant-Appellee served Plaintiff-Appellant with their Amendment and Objections to Proposed Record on Appeal Pursuant to N.C.App.p.11(c) on 2 February 2024.
4. Thereafter, on February 9, 2024, Plaintiff-Appellant and Defendant-Appellee, met to discuss the settlement of the Record on Appeal. During said meeting, Plaintiff-Appellant and Defendant-Appellee, were able to come to an amicable agreement.
5. Plaintiff-Appellant requires additional time to prepare and serve Defendant-Appellee with the Revised Proposed Record on Appeal.
6. Plaintiff-Appellant's attorney is scheduled to be out of the state the week of February 12, 2024, and part of the week of February 19, 2024.
7. Continuing this matter for an additional thirty-five (35) days will give Plaintiff-Appellant's attorney time to compose and serve the Revised Proposed Record on Appeal.
8. Continuing this matter for an additional thirty-five (35) days will give Plaintiff-Appellant's attorney time to file the settled Record on Appeal.
9. This motion is made in good faith and not for the purpose of delay.
10. No party with an interest in this proceeding will be prejudiced in any way by granting the requested relief.
11. Defendant-Appellee's attorneys consent to Plaintiff-Appellant's motion.

WHEREFORE, Plaintiff-Appellant respectfully requests that the Court grant Plaintiff-Appellant a thirty-five (35) day extension, up until March 15, 2024, to

compose and serve the Proposed Record on Appeal, and file the settled Record on Appeal.

Respectfully submitted, this the 9th day of February, 2024.

A handwritten signature in black ink, appearing to read "Chelsi C. Edwards", is written over a horizontal line.

Chelsi C. Edwards

N.C. State Bar # 58024

PERRY, PERRY & PERRY, P.A.

Attorneys for Plaintiff-Appellant

Post Office Drawer 2051

Durham, North Carolina 27702

Email: ChelsiEdwards@perrypointlaw.com

CERTIFICATE OF SERVICE

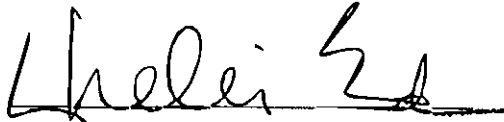
I hereby certify that I have this day served a copy of the **PLAINTIFF-APPELLANTS MOTION FOR EXTENSION OF TIME TO SERVE PROPOSED RECORD ON APPEAL** by email to:

John Roseboro
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Telephone: (919) 354-2752
Fax: (919) 560-4660
State Bar No.: 26680
john.roseboro@durhamnc.gov

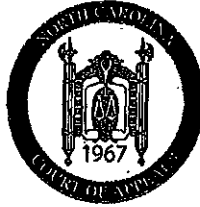
Aarin Miles
City of Durham
101 City Hall Plaza
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Telephone: (919) 354-2752
Fax: (919) 560-4660
State Bar No.: 53048
aarin.miles@durhamnc.gov

Service being in accordance with Rule 26 of North Carolina Rules of Appellate Procedure.

Respectfully submitted, this the 9th day of February, 2024.

A handwritten signature in black ink, appearing to read "Chelsi C. Edwards", written over a horizontal line.

Chelsi C. Edwards, Attorney at Law



North Carolina Court of Appeals

EUGENE H. SOAR, Clerk

Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600

From Durham
(22CVS3973)

Fax: (819) 831-3615
Web: <https://www.nccourts.gov>

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. P23-747

DURHAM GREEN FLEA MARKET

v.

CITY OF DURHAM

ORDER

The following order was entered:

The motion filed in this cause on the 9th of February 2024 and designated 'Plaintiff-Appellant's Motion for Extension of Time to File Record on Appeal' is decided as follows: The settled record on appeal shall be filed on or before 15 March 2024.

By order of the Court this the 12th of February 2024.

WITNESS my hand and official seal this the 12th day of February 2024.

A handwritten signature in black ink, appearing to read "Eugene H. Soar".

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:

Ms. Chelsi C. Edwards, Attorney at Law, For Durham Green Flea Market - (By Email)
Mr. Robert T. Perry, Attorney at Law - (By Email)
Mr. Donald O'Toole, Deputy City Attorney, For City of Durham - (By Email)
The Honorable Clerk of Superior Court, Durham County

DURHAM BOARD OF ADJUSTMENT RULES OF PROCEDURE

April 2023

SECTION 1: ORGANIZATION

- 1.1. Purpose
- 1.2. Membership/Participation
- 1.3. Alternates
- 1.4. Term
- 1.5. Vacancies
- 1.6. Removal
- 1.7. Officers/Term
- 1.8. Materials
- 1.9. Clerk/Staff to the Board
- 1.10. Rules of Procedure
- 1.11. Annual Report

SECTION 2: CONDUCT OF MEMBERS

- 2.1. Attendance
- 2.2. Reporting Absences
- 2.3. Taxes
- 2.4. Ethics Policy
- 2.5. Conduct Outside of Hearings
- 2.6. Disqualification from Hearing or Voting

SECTION 3: MEETINGS, NOTICE, AGENDA

- 3.1. Public Hearings
- 3.2. Other Meetings
- 3.3. Public Access/Hearing Tapes
- 3.4. Notice of Public Hearings
- 3.5. Mailing of Agenda/Staff Report
- 3.6. Setting of Agenda/Order of Business

SECTION 4: HEARING PROCESS; WRITTEN DECISIONS; TRANSMITTAL

- 4.1. Quorum/Voting
- 4.2. Parliamentary Procedure
- 4.3. Process for Determining Cases
- 4.4. Written Decision; Findings; Transmittal and Filing
- 4.5. Reconsideration/Reopening
- 4.6. Extensions
- 4.7. Procedures Ensuring Expedited Review of First Amendment Activities

SECTION 5: PARLIAMENTARY PROCEDURE

- 5.1. Authority of Chair
- 5.2. Motions
- 5.3. Voting/Consideration of Cases

SECTION 1: ORGANIZATION

1.1. Purpose

The function of the Board of Adjustment ("the Board") is to hold quasi-judicial public hearings in order to determine requests made by property owners in the City and County of Durham for special use permits, variances, appeals of administrative interpretations, and any other matters delegated to the Board under State law and local law and ordinance.

1.2. Membership/Participation

The Interlocal Agreement agreed to by the Durham City Council and the Durham Board of Commissioners establishes a merged Board of Adjustment to hear cases from both the City and the portions of the County outside the City. The merged Board has 7 regular members and 3 alternate members ("alternates"). When an alternate is seated to hear a case, the alternate is a member for purposes of these rules. Cases are heard at public hearing by 7 members (or as few as 5, if 7 are not present), who vote on all cases whether the property is located inside or outside the Durham City limits. The 7 regular members are seated first at hearings. Alternates are seated when regular members are absent, tardy, excused early from the hearing, not eligible to vote due to a conflict of interest, or regular member seats are vacant. Regular and alternate members who are not present at the call to order are considered tardy. Nonseated regular or alternate members do not participate in discussions, ask questions, or vote in hearings. However, both regular and alternate members are seated and may vote at work sessions and during the consideration of business other than cases at public hearings.

1.3. Alternates

- a. Alternates prepare themselves for hearings in the same manner as regular members and are subject to the same attendance policies as regular members. The order in which they are called to sit is determined through a pre-arranged schedule prepared by the Clerk.
- b. Alternates who were present for the initial hearing and presentation of evidence in a case will be seated at subsequent hearings of that case prior to members/alternates who were not present.

**Durham Board of Adjustment
Rules of Procedure
Revised: April 2023**

1.4. Term

The terms of Board members, except for the initial terms of members appointed to the initial merged Board in 1994, are 3 years. Terms begin and end on June 30th. A member's term may be continued beyond 3 years if a successor member has not been appointed. A Board member may also serve successive terms. A successor, if appointed late, is considered to have started on the June 30th the term should have started.

Note: Although terms are not limited in the Interlocal Agreement, the **City** has a policy of limiting successive terms to **two**, and the **County** to **three**.

1.5. Vacancies

Vacancies are filled by the body that appointed the departing member in accordance with the Interlocal Agreement. If the departing member resigns or is removed mid-term, the appointee serves the balance of replaced member's term.

Note: Under the Interlocal Agreement, members who resign mid-term are replaced with alternates from the jurisdiction that appointed the departing member. In addition, when vacancies arise after members complete full terms, the City and County have a policy of giving the respective alternates they have appointed first consideration for nomination to regular membership.

1.6. Removal

Members may be removed from the Board by the appointing governing body for cause, which includes violation of **SECTION 2: CONDUCT OF MEMBERS**. It is requested that, prior to taking action, the appointing body notify a member being considered for removal of the reasons for removal and give such member an opportunity to respond.

1.7. Officers/Term

- a. The officers of the Board consist of a Chair and Vice Chair. The Chair presides at all hearings/meetings, excuses members from hearings as provided in these Rules, makes other decisions provided for in these Rules, and determines all issues, or a process for deciding such issues, not governed by these Rules. The Vice Chair serves as Chair in the Chair's absence or incapacity. If neither officer is present or able to lead the meeting, the regular member with the longest current term of service will serve as Chair.

**Durham Board of Adjustment
Rules of Procedure
Revised: April 2023**

- b. Officers must be regular members of the Board. They are elected by majority vote of all members present at the hearing in June each year and take office in July. They serve a term of 1 year or until their successors are elected. Officers are eligible for re-election.
- c. A vacancy in the office of the Chair is filled by the Vice Chair for the balance of the Chair's term. The Board shall elect a Vice Chair at its earliest possible meeting.

1.8. Materials

The Clerk of the Board shall provide to every new Board member the current ordinances applicable to land development and to the Board's operation and a notebook containing the Board's Rules of Procedure, the City-County Interlocal Agreement, the County Ethics Policy, the booklet "The Board of Adjustment" by the Institute of Government, and the last annual report of the Board. The Planning key leader shall provide an orientation for each regular and alternate Board member after appointment.

1.9. Clerk/Staff to the Board

The Clerk of the Board and the primary staff person (the "key leader") shall be employees of the City-County Planning Department. Requests to the staff during a meeting that could interfere with the Board's activities should be made through the Chair.

1.10. Rules of Procedure

The Board, by majority vote, shall adopt Rules of Procedure. These Rules may be amended by majority vote provided that the general substance of such amendment is presented in writing at a meeting preceding the meeting at which the amendment is adopted. The Rules may be suspended for good cause by a vote of 4/5 of a majority of members eligible to vote on the matter being considered.

1.11. Annual Report

The City-County Planning Department shall prepare a report of the Board's activities for the past fiscal year (July 1 - June 30) and shall submit it to the Board in July of each year. The report shall include a summary of the number of cases of each type heard (use permits, variances, appeals, and boundary interpretations), their disposition, the number of hearings and meetings held by the Board, members' attendance, the composition of the Board, the officers for the year, the date new members began their

terms, and any other matters the Board requests the staff to include. This report shall be approved by a majority of the Board and shall be presented to the governing bodies by September.

SECTION 2: CONDUCT OF MEMBERS

Members must observe the following rules concerning their conduct. Failure to do so shall be reported by the Chair to the governing body responsible for the member's appointment. If there is a question concerning whether a member has or has not followed these rules, the matter shall be determined by a majority vote of all members of the Board.

2.1. Attendance

- a. Board members, including alternates, must faithfully attend meetings and perform their duties. In accordance with the Interlocal Agreement, members and alternates must attend at least 75% (typically nine (9)) of the yearly meetings/hearings of the Board, including work sessions, and may be removed for failure to meet this standard. The Board Clerk shall keep a record of attendance. When a Board member has missed three (3) of the hearings/meetings held within any twelve (12) month period, the governing body shall be notified. In addition, under County policy, County-appointed members are obligated to resign if they are absent from more than 50% (typically, six (6)) of the meetings of a year, calculated year to year from the date of first appointment.
- b. The "designated alternate" has a special obligation to remain throughout a day's hearings. If all three alternates are present at a meeting, the Chair may choose to excuse an alternate after the roll call if it is clear that they will not be needed to fill in for members who must leave early, or who have a conflict of interest, or who otherwise cannot hear a case.
- c. Once a meeting or hearing has begun, Board members may request to be excused by the Chair from a meeting or hearing when an important conflict exists. In such cases, the member shall inform the Board at the beginning of the meeting/hearing. The member shall be counted as absent unless (s)he attends at least 3 hours of a meeting, assuming such meeting is at least 3 hours long. Frequent requests to be excused after 3 hours are not encouraged. The Chair may refuse to excuse a member when the member's absence would leave fewer than 7 members to hear a case or where circumstances otherwise warrant the member's remaining.

**Durham Board of Adjustment
Rules of Procedure
Revised: April 2023**

- d. For the purposes of these Rules of Procedure, attendance means physical presence or participation by a method of simultaneous communication as authorized by North Carolina General Statutes Section 166A-19.24.

2.2. Reporting Absences

Members, including alternates, who are unable to attend a meeting, must give the Clerk or Chair at least 2 business days' advance notice (by Friday morning of a Tuesday meeting) and indicate the general reason for being absent. **Earlier notification is encouraged.** At the meeting/hearing, the Clerk will inform the Board of the absence and the member's reasons. The Board shall vote by a simple majority on whether to excuse the absence.

2.3. Taxes

All members must be current in payment of their local property taxes at the time of their appointment and throughout their term.

2.4. Ethics Policy

Members shall observe applicable state statutory requirements, and, in addition, the Ethics Policy adopted by the Board of Commissioners, as provided in the Interlocal Agreement, as well as these Rules.

2.5. Conduct Outside of Hearings

- a. Board members shall not discuss any case with, or receive any information from, any parties or other interested persons outside the public hearing on a case. This does not include information received or solicited from the Chairman, the City or County Attorney's office, or the staff or Clerk to the Board. In addition, it does not include site visits to the properties for which applications have been made, as long as Board members do not discuss the merits of the case or matter with persons at the site.
- b. Board members shall not express opinions concerning a case before that case is heard, except for opinions regarding procedural or scheduling issues.
- c. Board members shall keep in mind that they serve as impartial, quasi-judicial decision-makers, and shall avoid the appearance of impropriety.

2.6. Disqualification From Hearing or Voting

**Durham Board of Adjustment
Rules of Procedure
Revised: April 2023**

- a. **Conflict of Interest/Bias.** A Board member shall not participate in a vote when a member has an impermissible conflict of interest. Impermissible conflicts include, but are not limited to:
- a member having a fixed opinion prior to hearing the matter that is not susceptible to change;
 - undisclosed ex parte communications;
 - a close familial, business, or other associational relationship with an affected person or entity;
 - or a financial interest in the outcome of the matter.

If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

A member with a potential conflict of interest or bias in a hearing matter shall, preferably at least two business days prior to the day of the meeting, consult with the Chair and, if necessary, with the Planning Director and/or Board attorney regarding the potential conflict. The member may excuse himself on account of the potential conflict, or may ask the Chair to make a determination. The Chair shall announce any recusals prior to the hearing affected by such recusals.

- b. **Disclosure of facts or prior knowledge.** Prior to or during a hearing, Board members should disclose pertinent facts they are aware of through site visits or through other prior knowledge if such facts or knowledge may affect a member's opinions regarding the case. Other than this type of disclosure, a member seated for a hearing should not testify in a hearing.
- c. **Testifying.** If a member is personally or financially involved in the subject property or property within the notification area, and wishes to testify or be heard in the matter, (s)he should consult with the Chair, recuse him/her self before the hearing (see "a" above) and not take part in the hearing of any case being heard on the same date. Members are discouraged from testifying even in cases in which they are financially involved. (A member with such an interest would, of course, have to recuse him/herself whether or not the member testifies.)
- d. **Voting.** No Board member shall vote in any final determination of the merits of a case unless that member was present for the hearing of the case or has reviewed the taped recording of the hearing and all evidence submitted. This

**Durham Board of Adjustment
Rules of Procedure
Revised: April 2023**

prohibition shall not apply to procedural issues, extensions, continuances, decisions to appeal, or other similar issues.

SECTION 3: MEETINGS, NOTICE, AGENDA

3.1. Public Hearings

The Board shall regularly hold public hearings for the disposition of cases on the fourth Tuesday of each month at 8:30 a.m. in City Hall or remotely as authorized by state law. Hearings may be rescheduled by the Chair if a scheduled public hearing cannot be held because of a holiday, weather, lack of a quorum or other unusual circumstance. The Board may hold additional public hearings if necessitated by a heavy caseload. Such hearings must be approved by the Chair with at least two weeks advance notice given to members. An emergency public hearing may be called without two weeks' notice if the Chair determines that a case is urgent and/or unusual circumstances require its immediate resolution, assuming that the public notice required by Ordinance can be given.

3.2. Other Meetings

The Board may hold other meetings as necessary for training, work sessions, or the conduct of business. Such meetings shall be set by the Chair, with at least two weeks' notice given to members, unless the meeting is an emergency meeting regarding matters that need immediate resolution in which case at least 48 hours advance notice shall be given. For all meetings, a written or oral agenda for the meeting shall be given to each member.

3.3. Public Access/Hearing Tapes

- a. All meetings, hearings, records, and minutes of the Board shall be open to the public. Public hearings, "special" public hearings, and meetings shall be advertised in accordance with the open meetings law
- b. Any interested party may get a digital file of the recording of a hearing by requesting a copy from the Clerk, and such file shall generally be provided within 7 working days of the request.

3.4. Notice of Public Hearings

The Planning Staff shall post one or more signs on the premises for which the application has been made, and, if necessary, at nearby locations that are easily visible to properties near the subject property. First-class letter notice for the first date at

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which a case is to be heard shall be given to all property owners as required by law. Applicants may be required to furnish information or materials for mailed notice, and affidavits that they have provided the same, if required by ordinance or Planning policies. Inadequate notice should generally result in a delay of the applicant's hearing date. A continuance of a properly noticed public hearing is not required to comply with this section.

3.5. E-malling of Agenda Link

- a. The agenda will be posted on the Durham Board of Adjustment webpage. A link to the agenda for each meeting and hearing, consisting of a listing of cases and other business, and the order in which they will be heard, shall be prepared by the Clerk and shall be e-mailed concurrently to all members, landowners, applicants, and interested persons who requested an agenda or information about a particular case no less than 10 days prior to the hearing, except for emergency meetings/hearings. For meetings in which cases will not be heard, the agenda will be delivered or orally transmitted, as appropriate, no less than 2 days prior to the meeting.
- b. The Clerk shall include, within the posted agenda, links to staff reports. These reports shall include: a map of the location of the property, existing land use and zoning of the property and surrounding property, factual information regarding the findings under the Ordinance, a listing of all relevant Ordinance sections, and the application submitted by the applicant. This report shall be made available to the general public by posting on the Board of Adjustment webpage at the same time it is e-mailed to members.

3.6. Setting of Agenda/Order of Business

- a. Use permits, variances, appeals of decisions of administrative officials, and any other matters requiring hearing shall be placed on the agenda by filing of necessary applications within the deadlines shown on the Board's annual calendar, or, if such deadlines are not met, by the staff's determination that special circumstances apply. The Clerk shall place business and procedural matters on the agenda after verification with the Chair. If a member requests to the Chair (or Vice Chair in the Chair's absence) prior to the e-mailing of the agenda that a matter be included on the agenda it shall be included if the Chair approves.
- b. Items may be added to the agenda at a meeting/hearing by approval of a majority of the Board.

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- c. The order of business at public hearings shall be as follows, unless varied by majority vote:
 - a. Call to Order
 - b. Roll Call (includes requests for members to identify conflicts or early departures)
 - c. Adjustments to the Agenda
 - d. Explanation of Quasi-Judicial Procedure for Cases by Chair
 - e. Swearing In of Witnesses
 - f. Hearing and Determination of Each Case
 - g. Approval of Summary Minutes for Previous Meeting(s)
 - h. Approval of Written Findings for Prior Decisions
 - i. Old Business
 - j. New Business
 - k. Adjournment

SECTION 4: HEARING PROCESS; WRITTEN DECISIONS; TRANSMITTAL

4.1. Quorum/Voting

Five (5) seated members constitute a quorum for public hearings and meetings. An applicant in a case shall have the right to a rescheduled hearing if fewer than seven (7) members are seated for a hearing, in which case the Board shall vote to continue the hearing. If no quorum is present, the hearing shall be automatically continued to the next regularly scheduled meeting and no vote is required.

Voting for each jurisdiction is as follows:

County Cases, sites located outside of the Durham City Limits:

- a) Variances and reasonable accommodations: A vote to approve a variance or reasonable accommodation must receive a 4/5 majority vote from the Board — for example, six (6) Board members out of seven (7).
- b) Use Permits and Appeals: A vote to approve a use permit or uphold an administrative decision requires a *simple* majority vote — for example, four (4) Board members out of seven (7).

City Cases, sites located within the Durham City limits:

- a) All city cases require a 3/5 majority vote to approve a request for a special use permit, variance, reasonable accommodation, or uphold an

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administrative decision — for example, five (5) out of seven (7). See City Charter § 93.

For purposes of voting, vacant positions on the Board and members who are disqualified from voting due to an impermissible conflict as defined in Rule 2.6(a) shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members at the hearing. See GS 160A-388(e)(1) and 153A-345.1.

City example: If there are 2 vacant regular member positions and 1 regular member is absent and 1 alternate member is in attendance at the hearing, then the number of members of the Board for calculation of the requisite majority would be 6. In order to approve a special use permit, variance, or uphold an administrative decision in this situation 4 affirmative votes would be required ($3/5 \times 6 = 3.6$, round up to 4).

Other votes, including determinations regarding whether to appeal to the appellate courts, and determinations regarding whether to comply with, or seek a stay of a judicial order, require only majority approval unless otherwise specified in these rules. Where majority approval is not otherwise defined in these rules, it means a majority of those members present and voting at a meeting where a quorum is present. In the case of abstention or failure to vote by a Board member who is seated and has not been excused under these Rules, the member's vote shall be counted in the affirmative.

4.2. Parliamentary Procedures

Consideration of cases and other business shall be in accordance with the Board's Rules of Parliamentary Procedures, Section 5, which are adopted and incorporated into these Rules. If Section 5 or these Rules of Procedure are silent on an issue of parliamentary procedure, the current edition of Robert's Rules of Order shall govern.

4.3. Process for Determining Cases

- a. A vote on a request for a variance, special use permit, reasonable accommodation, or an appeal of an administrative interpretation shall be in the form of a motion to approve the request. See Rule 4.1 above for the number of votes needed to approve a request.
- b. If an applicant withdraws a request, the case is closed. A new application and fee must be submitted if the request is thereafter reviewed.

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- c. Cases continued by the Board for lack of information or for necessary actions to be taken by the applicant shall be to a date certain. If the applicant does not submit the information or take the actions by the continuance date, the Board shall either continue the case again or dismiss the case without prejudice to the applicant's right to initiate a new application. The Board shall not grant multiple continuances without good cause.
- d. A written explanation of the quasi-judicial nature of the hearing that explains, among other things, the right to ask questions and to object to evidence shall be available to all persons attending the hearing.
- e. The Chair, prior to the swearing in of witnesses, shall briefly explain the nature of a quasi-judicial hearing and shall call attention to the written explanations available.
- f. Board members with a conflict of interest or bias who do not become aware of the conflict until the time of the hearing should excuse themselves prior to the start of the hearing. At the same time, all members, including alternates, who have special knowledge about a case, should disclose it so that the parties may address such information in their cases.
- g. Evidence shall be presented as follows: 1) staff report; 2) applicant's evidence; 3) opponent's evidence; 4) rebuttal (if requested). All administrative materials presented by staff shall become a part of the hearing record.
- h. Expert testimony is required on the issues of property valuation and traffic safety impacts from increased vehicular traffic; opinion testimony from lay witnesses on these topics is conclusively incompetent and the Board cannot rely on it.
- i. The Chair shall rule on any objections or requests from participants in the hearing regarding the procedure of the hearing or evidence presented.
- j. The Chair must recognize speakers and Board members before they may be heard.

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- k. The Chair shall allow every speaker to be heard, but may limit and/or cut off evidence or testimony that is irrelevant, repetitive, incompetent, or hearsay.
- l. The Chair shall allow direct and cross-examination and presentation of rebuttal evidence if such are requested.
- m. The Board may limit the length of a public hearing or set a time for adjournment by majority vote.
- n. After all evidence has been presented; the Chair may ask the parties if there is additional relevant information that has not been presented that would make a continuance in order.

4.4. Written Decisions; Findings; Transmittal and Filing

- a. A written decision shall be issued for every case. Such a decision shall include: the pertinent ordinance sections that were met or were not met. In the case of denials and contested approvals, subsidiary factual findings relating to the evidence heard by the Board shall also be included. Approvals shall include any conditions that the Board placed upon the permit. The Chairman, Planning key leader, and the Board Clerk shall sign each decision. Additionally, if conditions are imposed on the approval, the Applicant shall also sign a statement noting consent to such conditions.
- b. In addition to the vote that determines the outcome of a case, the Board shall vote on a written decision including factual findings for all denials and for contested approvals in which the Board deems such findings necessary. A majority of the Board members who voted on the prevailing side shall vote on the content of the decision. (For example, if In a City case, a motion to approve receives a 4-3 vote, resulting in denial, then the majority of those voting to deny, in this case, 2 of 3 members, must approve the written decision supporting the denial. If, In a contested City case, a motion to approve receives a 6-1 vote, a majority of 6 members, or 4, must approve the written decision.
- c. Written factual findings may be approved at the same meeting or at a later meeting, which shall generally be the next scheduled meeting. A party may

submit proposed findings to the staff and/or Board for incorporation into the written decision. Proposed findings may also be the subject of emails shared amongst Board members prior to the final vote on the wording of the decision. Where absences result in the inability to get majority approval of findings at the next scheduled meeting by the members necessary for consideration of such findings, absent members may be polled by phone, with confirmation in writing. Any such approvals rendered by phone, email, or mail shall be recorded in writing and added to the Board's minutes.

- d. For denials, the members voting for denial shall discuss what sections of the ordinance were not met and the factual information that was relevant to their decision to deny. For contested approvals, members shall discuss the factual information that was relevant to the decision to approve.
- e. The written decision for each case shall be delivered in compliance with the Durham UDO to the applicant and to any person who has filed a written request with the Clerk or with the Chair of the Board. The Clerk shall maintain a file of all decisions. A decision shall be considered "filed" on the date that the final necessary signature on such decision is obtained and the decision is ready for distribution.
- f. The Clerk shall also transmit a copy of every decision concerning property within the City to the City Clerk's office, and a copy of every decision concerning property within the County to the County Clerk's office.

4.5. Reconsideration/Reopening

Except as may be specifically provided by ordinance, substantive decisions on the merits of a request cannot be reconsidered and decided cases cannot be reopened following the approval of a written decision. If criteria for a change in circumstances are met, the case may be submitted as a new case under the zoning ordinance.

4.6. Extensions

The Board may not grant extensions to Minor Special Use Permits.

4.7. Procedures Ensuring Expedited Review of First Amendment Activities

When an applicant appeals an administrative decision or requests a special use permit or variance regarding a protected First Amendment activity, and other applicable law does not provide that the activity may be initiated or continued during the pendency

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of the Board of Adjustment's decision-making, the Board shall expedite its process for hearings and final decisions. The following procedures shall apply:

- a. The time between the point the applicant submits a completed application and fee and the point a final written decision is approved by the Board and mailed to the applicant shall not exceed three months. If necessary, in order to comply with this deadline, hearings may be scheduled more quickly than normal, and polling of members, following the procedures of 4.4.c *infra*, may approve written decisions.
- b. If the applicant requests judicial review, the Board shall stipulate to the granting of a writ of certiorari within five working days of legal receipt of notice of the petition for certiorari, except in cases where improper procedure or process or other procedural defects raise jurisdictional issues.
- c. The Planning staff on behalf of the Board shall file the official record within fifteen working days of date the Board legally receives notice that the writ of certiorari has been granted. Where the appealing party has not provided a written transcript of the hearing, the record may include a recording of the proceeding, which recording shall be replaced by a transcript prior to the hearing.
- d. The Board will stipulate to expedited scheduling of court hearings on the review of the Board's decision, including motions for summary judgment, to the end that, if desired by the appealing party, a court hearing concerning the Board's decision will be available within 60 days of the date a petition for certiorari is served on the Board of Adjustment.

SECTION 5: PARLIAMENTARY PROCEDURES

The Durham Board of Adjustment shall observe the following parliamentary procedures. Seated members may suspend these procedures by a 4/5 vote. Deviations from these procedures shall not be grounds for voiding a vote unless the deviation is called to the attention of the Chair at the same meeting when it occurs and members by majority vote agree that as a result of the deviation a previous vote should be voided.

5.1. Authority of Chair

If a situation is not covered by these Rules, the Chair shall determine the appropriate procedure, which procedure may be changed by a majority vote of seated members.

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5.2. Motions

- a. Formal decisions including but not limited to approval of Rules of Procedure, all actions concerning cases, selection of officers and recommendations concerning ordinance changes shall be made by motion, which, except as provided below, must be seconded. The mover may withdraw the motion at any time before it is voted on. Only one substantive motion and friendly amendment to such motion may be considered at a time.
- b. Motions may be made to approve a request, or to approve with conditions. If the request is for a special use permit, variance, or for reversal of an administrative decision, a vote to grant the request must be approved as provided in 4.1. Other votes, such as procedural matters need only be approved by a majority of those voting, a quorum being present, unless otherwise specified in these Rules.
- c. Friendly amendments are the norm in Board proceedings, and all amendments to a motion must be offered as friendly amendments. A motion proposing a friendly amendment does not need a second. A friendly amendment is valid only when accepted by the maker of the original motion and, once accepted, it becomes a part of the original motion. An unlimited number of friendly amendments are allowed. If a friendly amendment is not accepted by the motion maker it may be offered as a subsequent motion after the vote on the first motion has occurred, assuming that only one substantive vote has then occurred on the case.
- d. **Motions to continue are encouraged if additional information would be useful in determining the case** or if there are other reasons a continuance is advisable. A motion to continue may be made at any time and takes precedence over substantive motions/amendments on the table. It requires a simple majority of seated members for approval. When the matter is reopened after continuance, any substantive motions on the table at the prior meeting will still be on the table. A motion to adjourn is not in order if there are motions/amendments pending on a case that has not been continued.

5.3. Voting/Consideration of Cases

- a. For a vote to occur the Chair may call for a vote or a member may call the question and the Chair must agree.
- b. Cases may be voted on more than once if the votes are taken at the same meeting or at a subsequent meeting that is a continuance of a prior meeting

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concerning the case. Examples of situations in which additional votes may need to be taken are 1) cases in which a first vote has not resulted in sufficient votes to approve, where the addition of conditions could result in approval; 2) approved cases in which, after consideration, it appears necessary to either add conditions or clarify conditions.

- c. Before a vote, motions as they may have been amended shall, upon request, be restated by the Chair, the Clerk, or a member who proposed either the motion or amendments to such motion, unless the motion was made immediately prior to the vote. The restatement shall include all conditions that are proposed.
- d. Voting on cases shall be by roll call. Votes on other matters may be taken by ayes and nays, by a show of hands, or in any other reasonable fashion determined by the Chair.
- e. **Because decided cases cannot be reopened, the granting of continuances when information is lacking is encouraged.** After debate but prior to the first vote on a case the Chair shall ask applicants and opponents if there is any information that has not been presented that is relevant, or if there is any information that needs to be clarified. If it appears that additional information would be relevant but cannot be presented at the hearing, a motion to continue is in order.

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History of Rules of Procedure

The Durham Board of Adjustment Rules of Procedure was originally adopted February 26, 1996 to be effective March 26, 1996.

Revisions:

- April, 1996**
- July, 1996**
- September, 1997**
- April, 1998**
- April, 1999**
- September, 1999**
- October, 2000**
- December, 2001**
- October, 2002**
- May, 2004**
- December, 2005**
- May, 2007**
- September, 2011**
- April, 2016**
- August, 2018**
- June, 2021**
- April, 2023**

No. P23-747

FOURTEENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

DURHAM GREEN FLEA MARKET,)	
Plaintiff-Appellant,)	
)	
vs.)	<u>From Durham County</u>
)	
CITY OF DURHAM)	
Defendant-Appellee.)	
)	

PLAINTIFF-APPELLANT'S MOTION FOR EXTENSION OF TIME TO FILE
RECORD ON APPEAL

Plaintiff-Appellant, Durham Green Flea Markert, respectfully moves the Court for a seven (7) day extension, up until March 22, 2024, to file the settled Record on Appeal. In support of said motion, Plaintiff-Appellant says the following:

1. Plaintiff-Appellant filed the Notice of Appeal on June 30, 2023.
2. Plaintiff-Appellant served Defendant-Appellee with Plaintiff-Appellant's Proposed Record on Appeal on January 3, 2024.
3. Defendant-Appellee served Plaintiff-Appellant with their Amendment and Objections to Proposed Record on Appeal Pursuant to N.C.App.p.11(c) on February 2, 2024.

4. Thereafter, on February 9, 2024, Plaintiff-Appellant and Defendant-Appellee, met to discuss the settlement of the Record on Appeal. During said meeting, Plaintiff-Appellant and Defendant-Appellee, were able to come to an amicable agreement regarding a Procedural History stipulation.
5. On February 9, 2024, Plaintiff-Appellant, with consent of Defendant-Appellee, filed Plaintiff-Appellant's Motion for Extension of Time to File the Record on Appeal. Plaintiff-Appellant's motion was granted February 12, 2024, requiring the settled record on appeal to be filed on or before March 15, 2024.
6. As the date of this motion, the Parties have not agreed on the language of the Procedural History stipulation.
7. The Parties may require additional time to come to an agreement regarding the language of the Procedural History stipulation.
8. Continuing this matter for an additional seven (7) days will give the Parties time to settle the stipulation dispute.
9. This motion is made in good faith and not for the purpose of delay.
10. No party with an interest in this proceeding will be prejudiced in any way by granting the requested relief.
11. Defendant-Appellee consents to this motion.

WHEREFORE, Plaintiff-Appellant respectfully requests that the Court grant Plaintiff-Appellant a seven (7) day extension, up until March 22, 2024, to file the settled Record on Appeal.

Respectfully submitted, this the 14th day of March, 2024.

A handwritten signature in black ink, appearing to read "Chelsi Ed", written over a horizontal line.

Chelsi C. Edwards
N.C. State Bar # 58024
PERRY, PERRY & PERRY, P.A.
Attorneys for Plaintiff-Appellant
Post Office Drawer 2051
Durham, North Carolina 27702
Email: ChelsiEdwards@perrypointlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the **PLAINTIFF-
APPELLANTS MOTION FOR EXTENSION OF TIME TO SERVE RECORD
ON APPEAL** by email to:

John Roseboro
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Telephone: (919) 354-2752
Fax: (919) 560-4660
State Bar No.: 26680
john.roseboro@durhamnc.gov

Aarin Miles
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Telephone: (919) 354-2752
Fax: (919) 560-4660
State Bar No.: 53048
aarin.miles@durhamnc.gov

Service being in accordance with Rule 26 of North Carolina Rules of Appellate Procedure.

Respectfully submitted, this the 14th day of March, 2024.

A handwritten signature in black ink, appearing to read "Chelsi C. Edwards", written over a horizontal line.

Chelsi C. Edwards, Attorney at Law



North Carolina Court of Appeals

Fax: (919) 831-3615
Web: <https://www.nccourts.gov>

EUGENE H. SOAR, Clerk
Court of Appeals Building
One West Morgan Street
Raleigh, NC 27601
(919) 831-3600
From Durham
(22CVS3973)

Mailing Address:
P. O. Box 2779
Raleigh, NC 27602

No. P23-747

DURHAM GREEN FLEA MARKET

v.

CITY OF DURHAM

ORDER

The following order was entered:

The motion filed in this cause on the 14th of March 2024 and designated 'Plaintiff-Appellant's Motion for Extension of Time to File Record on Appeal' is allowed. Settled record on appeal shall be filed on or before 22 March 2024.

By order of the Court this the 14th of March 2024.

WITNESS my hand and official seal this the 14th day of March 2024.

Eugene H. Soar
Clerk, North Carolina Court of Appeals

Copy to:
Ms. Chelsi C. Edwards, Attorney at Law, For Durham Green Flea Market - (By Email)
Mr. Robert T. Perry, Attorney at Law - (By Email)
Mr. Donald O'Toole, Deputy City Attorney, For City of Durham - (By Email)
The Honorable Clerk of Superior Court, Durham County

STIPULATION OF PROCEDURAL HISTORY

Counsel for the Petitioner-Appellant and Respondent-Appellee stipulate as follows:

1. The Board of Adjustment order that is under review in this appeal was the subject of an earlier appeal in the Durham County Superior Court and United States District Court. Petitioner-Appellant voluntarily dismissed the earlier appeal. The procedural history of the earlier appeal is as follows:

a. The City of Durham issued a Notice of Violation to Robert Perry as the record owner of the Durham Green Flea Market, LLC on February 10, 2020, for a zoning violation.

b. Petitioner-Appellant filed an application for appeal of the Notice of Violation with the Board of Adjustment on March 9, 2020.

c. The Board of Adjustment held a hearing for case number B2000022, virtually on September 22, 2020. The case was continued until the Board of Adjustment resumed in person hearings.

d. The Durham Board of Adjustment held an in-person hearing on June 21, 2022. The Board of Adjustment voted 6 to 1 to deny the appeal.

e. Petitioner-Appellant appealed the denial by filing a Petition for Writ of Certiorari and Complaint in the Durham County Superior Court on July 29, 2022 (File No. 22CV3114), naming the City of Durham as the only respondent-defendant.

f. Petitioner-Appellant filed an amended Petition of Writ of Certiorari and Complaint on August 18, 2022, adding North Carolina Railroad Company, Norfolk Southern Railway Company, and CSX Transportation ("the "Railroad Defendants") as defendants.

g. The Railroad Defendants removed the case to the United States District Court for the Middle District of North Carolina (File No. 1:22CV0086). Petitioner-Appellant voluntarily dismissed the earlier appeal by filing *Plaintiff's Notice of Dismissal* (ECF Doc. No. 17) on October 19, 2022.

2. After the earlier appeal was dismissed, Petitioner-Appellant initiated a new, second appeal that led to this case being before the North Carolina Court of Appeals. The procedural history of the second appeal is as follows:

a. On October 27, 2022, Petitioner-Appellant filed a new Petition for Writ of Certiorari and Complaint in the Durham County Superior Court (File No. 22CVS3973), naming the City of Durham as the only Respondent-Appellee.

b. On November 15, 2022, Defendant-Appellee filed a Motion to Dismiss pursuant to N.C. Rule of Civil Procedure 12(b)(2) and (5). There was no hearing held to hear this motion because Petitioner served Respondent-Appellee pursuant to N.C. Gen. Stat. § 160D-1402(e) on November 30, 2022.

c. On December 8, 2022, Respondent-Appellee filed a Motion for Extension of Time pursuant to N.C. Rule of Civil Procedure 6(b), until January 3, 2023, to prepare and file the Record with the Court reasoning the Writ of Certiorari on Respondent was not served until November 30, 2022, and that the time for filing the Record as specified in the Writ of Certiorari expired on November 15, 2022.

d. On January 3, 2023, Respondent-Appellee filed in the Durham County Superior Court the Record for Durham Board of Adjustment case No. B200022. A transcript of Exhibit J to the Record for the Durham Board of Adjustment BOA case No. B2000022 was subsequently filed on May 17, 2023.

e. On March 8, 2023, Petitioner-Appellant filed Exhibits in Support of Petitioner's Writ of Certiorari and Complaint.

f. On May 23, 2023, the hearing on this matter, 22CVS3973, was held. Respondent-Appellee did not ask to be heard on any motion to dismiss.

g. The Superior Court found Petitioner-Appellant's due process rights were not violated, and the notice of violation (NOV) was properly issued by Respondent-Appellee and affirmed the BOA's decision denying Petitioner's appeal of the NOV issued by Respondent-Appellee.

h. On June 6, 2023, the Superior court entered an order requiring Petitioner-Appellant "to bring the property at 1600 East Pettigrew St., Durham, NC (PIN# 0831-18-42-0210) into full compliance with a site plan, approved by the Durham City-County Planning Department, within thirty-six (36) months of the filing of the Order.

i. Petitioner-Appellant filed Notice of Appeal from Final Judgment to the North Carolina Court of Appeals on June 30, 2023.

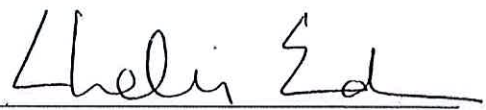
CERTIFICATE OF SERVICE

This is to certify that the foregoing REVISED PROPOSED RECORD ON APPEAL was this day served upon the following by email-transmission addressed to:

John Roseboro
City of Durham
101 City Hall Plaza
Durham, North Carolina 27701
Telephone: (919) 354-2752
Fax: (919) 560-4660
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John.roseboro@durhamnc.gov

Aarin K. Miles
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101 City Hall Plaza
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Telephone: (919) 354-2752
Fax: (919) 560-4660
State Bar No.: 53048
Aarin.miles@durhamnc.gov

This the 19th day of March, 2024.


Chelsi C. Edwards
Robert T. Perry
Perry, Perry & Perry, P.A.
Post Office Drawer 2051
Durham, North Carolina 27702
Telephone: (919) 683-8685
Fax: (919) 688-7930

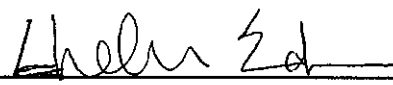
CERTIFICATE OF SERVICE

This is to certify that the foregoing RECORD ON APPEAL was this day served upon the following by email-transmission addressed to:

John Roseboro
City of Durham
101 City Hall Plaza
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Aarin.miles@durhamnc.gov

This the nd~~22~~rd day of March, 2024.


Chelsi C. Edwards
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