

# BOARD OF ADJUSTMENT AGENDA

**May 26, 2020, 8:30 a.m.**

**Zoom - Virtual Meeting**

YouTube Live Broadcast: <https://www.youtube.com/watch?v=i1s0AApxFRs&feature=youtu.be>

BOA Meeting Link: [https://zoom.us/webinar/register/WN\\_Rcx1mBQ3TjGJ383JjAYdZQ](https://zoom.us/webinar/register/WN_Rcx1mBQ3TjGJ383JjAYdZQ)

Call-in Number\*: (929) 205-6099 - Webinar ID: 921 6201 7309

\*Standard calling charges may apply

1. Call To Order
2. Roll Call
  - Chris Burnham
  - Fredrick Davis
  - Regina deLacy
  - Myca Jeter, Alternate
  - Ian Kipp
  - Jessica Major, Designated Alternate
  - Chad Meadows, Vice Chair
  - Michael Retchless
  - Jacob Rogers, Chair
  - Teisha Wymore, Alternate
3. Approval Of Minutes For February 25, 2020

Documents:

[BOA MINUTES - 2020-02-25.PDF](#)

4. Approval Of Orders
  - a. **Case B1700052** – County: A minor special use permit for an educational facility (middle school) in a residential zoning district. The subject site is located at 701 Orange Factory Road, is zoned Residential Rural (RR); Lake Michie/Little River Critical Area (M/LR-A), and in the Rural Tier.
  - b. **Case B1900050** - County: A minor special use permit requested for a development with new project floor area over 5,000 square feet within the Commercial Neighborhood (CN) zoning district without a development plan. The subject site is located at 12907 N. Roxboro Road, 12807 N. Roxboro Road & 123 Bill Poole Road, is zoned Commercial Neighborhood (CN); is in the Little River Protected Area (M/LR-B) and Rougemont Rural Village, and in the Rural Tier.

Documents:

[B1700052 DISCOVERY CHARTER 2-25-2020 ORDER-WITH DATE.PDF](#)  
[B1900050 GLANDON FOREST LLC ORDER 3-3-20 \(2\).PDF](#)

5. Old Business
6. New Business
7. Adjournment

**Notice under the Americans with Disabilities Act** - A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice 919.560.4197 or [ADA@DurhamNC.gov](mailto:ADA@DurhamNC.gov), as soon as possible but no later than 48 hours before the event or deadline date.

**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 [BOA@durhamnc.gov](mailto:BOA@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.

**Aviso bajo el Plan de Acceso al Idioma** - Personas que requieran asistencia lingüística para participar efectivamente en este evento pueden comunicarse con el Departamento de Planificación de la Ciudad y el Condado al 919-560-4137 o [BOA@durhamnc.gov](mailto:BOA@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.

**Staff Contact:** Jessica Dockery, Planning Manager  
919.560.4137 x28210. [BOA@DurhamNC.gov](mailto:BOA@DurhamNC.gov)



DRAFT

February 25, 2020, 8:30 a.m.  
Committee Room, 2nd Floor, City Hall  
101 City Hall Plaza, Durham, NC

**I. Call to Order**

Chair Jacobs called the meeting to order at 8:40 a.m.

**II. Roll Call**

**Members Present:**

- Jacob Rogers, Chair
- Chad Meadows, Vice Chair
- Chris Burnham
- Fredrick Davis
- Regina deLacy
- Ian Kipp
- Jessica Major, Alternate
- Michael Retchless
- Myca Jeter, Designated Alternate

**Members Absent:**

- Teisha Wymore, Alternate

**Staff Present:**

- Jessica Dockery, Planning Manager
- Bo Dobrzanski, Senior Development Services Manager
- Crista Cuccaro, City Attorney’s Office
- Bryan Wardell, County Attorney’s Office
- Cole Renigar, Planner
- Eliza Monroe, Planner
- Susan Cole, Clerk

**III. Closed Session**

The Board went into closed session.

**IV. Adjustments to the Agenda**

None.

**V. Swearing-In of Witnesses**

**Chair Jacobs read the following statement:**

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 (Vice 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, five (5) of the seven (7) voting Board members must approve the request. For a County variance request, North Carolina law requires that in order for an applicant's request to be granted, six (6) of the seven (7) voting Board members must approve the request. For other County requests, including applications for a minor special use permit, four (4) of the seven 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 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 at this hearing. Forms for this purpose are available from the City-County Planning Staff.

## **VI. Hearing and Determination of Cases**

**Case B1900052** – City: A request for a variance from the street yard requirements for the addition of a roof over an existing front deck. The subject site is located at 2202 Eastwood Drive, is zoned Residential Suburban (RS-20), and in the Suburban Tier.

**Seated:** Burnham, Davis, deLacy, Kipp, Meadows, Rogers, Retchless.

**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:** Hyrum Lee spoke in support. No one spoke in opposition

**MOTION:** Davis made a motion that application B1900052, an application for a variance from the street yard setback requirements for the addition of a roof over an existing deck on property located at 2202 Eastwood Drive 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 information submitted to the Board as part of the application.

(Davis, Retchless, 2<sup>nd</sup>)

**ACTION:** Carried, 7-0.

**Case B2000002** – City: A minor special use permit to allow for a reduction of the setback requirement for a wireless communication facility (WCF) from each property line. The subject site is located at 2801 Courtney Creek Boulevard, is zoned Office and Institutional (OI), and in the Suburban Tier.

**Seated:** Burnham, Davis, deLacy, Kipp, Meadows, Rogers, Retchless.

**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. He made two corrections to the staff report. They were the cell tower height is now 169 instead of 160. The second change was that this resulted in a greater fall zone.

**Speakers:** Patrick Byker, Jeremy Anderson, Michael Oglesby, and Rich Kirkland spoke in support. Laura Goode spoke on behalf of Crown Castle for the record. No one spoke in opposition.

**MOTION:** Retchless made a motion that application B2000002, an application for a minor special use permit to allow for a reduction of the setback requirement for a wireless communication facility (WCF) from each property line on properties located at 2801 Courtney Creek Boulevard has successfully met the applicable requirements of the unified development ordinance and is hereby granted subject to the following conditions:

1. The applicant will submit a revised site plan to reflect the revised tower height.
2. The city acknowledges that the tower is subject to eligible facilities requests pursuant to state and federal law, NC GS 160a-400.53.
3. Prior to the issuance of a certificate of compliance, the applicant will install or preserve landscaping necessary to meet the location, dimensional and opacity standards in UDO section 5.3.3.N.4.F(1)(d).

(Retchless, deLacy, 2<sup>nd</sup>)

**ACTION:** Carried, 6-1, Meadows voting no.

**BREAK FROM 10:22 a.m. to 10:27 a.m.**

**Case B1700052** – County: A minor special use permit for an educational facility (middle school) in a residential zoning district. The subject site is located at 701 Orange Factory Road, is zoned Residential Rural (RR); Lake Michie/Little River Critical Area (M/LR-A), and in the Rural Tier.

**Seated:** Burnham, Davis, deLacy, Kipp, Meadows, Rogers, Retchless.

**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.

**MOTION:** LeAnn Brown made a motion to have the case continued. (Kipp 2<sup>nd</sup>)

**ACTION:** Motion failed 2-5. (deLacy, Davis, Meadows, Rogers, Retchless voting no).

**Speakers** Patrick Byker, Dan Jewell, Steven Medlin, Don Wells, Don Sever, Lyle Overcash, Kevin Davidson, Aric Geda, Rich Kirkland, and Toni Shellady spoke in support.

**BREAK 11:40 a.m to 11:50 a.m.**

LeAnn Brown, Travis Fluitt, Angela Sarvis, James Ventrilla, James and Darleena Wolak, Steven Rogers, Marie and Patrick Mahony, Brenda Hare, Doug Winter, and Kathy Chambers spoke in opposition.

The concerns centered around traffic, noise, well and septic issues for residents close by.

**LUNCH BREAK FROM 12:03 p.m. to 1:07 p.m.**

**MOTION:** Retchless made a motion that application B1700052, an application for a minor special use permit on property located at 701 Orange Factory Road 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 case D1900330 and all information submitted to the Board as part of the application.
2. The educational facility shall serve the middle school level.
3. The enrollment of the school shall be a maximum 528 students.
4. The site plan will accurately portray areas of temporary rip rap and include a cross section of the proposed wildlife corridor passage.

(Meadows, Burnham 2<sup>nd</sup>)

**ACTION:** Carried, 7-0.

**VII. Approval of Orders**

**Case B1900052**

**MOTION:** Approve the order for case B1900052 (deLacy, Burnham 2<sup>nd</sup>).

**ACTION:** Carried, 7-0.

**Case B2000002**

**MOTION:** Approve the order for case B2000002 (Davis, deLacy 2<sup>nd</sup>).

**ACTION:** Carried, 6-1. (Meadows, voting no)

**VIII. Approval of Summary Minutes from December 10, 2019, and January 28, 2020.**

**MOTION:** Approve the December 10, 2019 minutes. (deLacy, Majors 2<sup>nd</sup>)

**ACTION:** Carried, 7-0.

**MOTION:** Approve the January 28, 2020 minutes. (Davis, deLacy 2<sup>nd</sup>)

**ACTION:** Carried, 5-0.

**IX. Old Business** – Bryan Wardell stated that the order for case B1900050 was not complete but would be brought back at the March meeting for approval.

**X. New Business - None**

**XI. Adjournment**

The meeting adjourned at 3:06 P.M. (deLacy, Rogers 2<sup>nd</sup>)

Respectfully Submitted,  
Susan Cole, Clerk to the Board

CITY/COUNTY OF DURHAM  
ORDER GRANTING, UPON CERTAIN CONDITIONS, A MINOR SPECIAL USE PERMIT ALLOWING FOR AN  
EDUCATIONAL FACILITY IN A RESIDENTIAL ZONING DISTRICT  
(B1700052)  
PID(S): 188074

The Board of Adjustment ("Board") of the City/County of Durham conducted a hearing on the "Discovery Charter School" application for a minor special use permit (Case 81700052) on February 25, 2020. Appearing on behalf of the applicant, Hubrich Contracting, Inc., was Attorney Patrick Byker ("Mr. Byker") of the Morningstar Law Group, and appearing on behalf of Rhonda Coates, Timothy Ellis, Patrick and Marie Mahoney, Kenneth Price, Bryan and Angela Sarvis, James Ventrilla and James and Darleena Wolak, neighboring landowners, was Attorney LeAnn Nease Brown ("Ms. Brown") of Brown and Bunch. Sworn testimony was also received from other property owners not specifically represented by Ms. Brown but who purported to have an interest in the matter being presented to the Board.

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 Ordinance requirements for the granting of a minor special use permit in this case have been met, and that the Use Permit should be granted upon certain conditions.

**THE BOARD HEREBY MAKES THE FOLLOWING FINDINGS AND CONCLUSIONS**, based on the evidence presented at the public hearing:

The proposed use, as described in the application, with such further conditions as may be described below, meets the requirements of Section 3.9.6 of the Unified Development Ordinance, and:

1. Is in harmony with the area and not substantially injurious to the value of properties in the general vicinity. Ms. Brown presented several individual homeowners as witnesses in opposition to the project who testified that a school would be injurious to the value of the properties in the general vicinity. In addition to their individual testimony, Ms. Brown tendered the expert testimony of Mr. Douglas G. Winner ("Mr. Winner") of All Property Appraisal Corporation in support of this proposition. The substance of Mr. Winner's testimony was that a school placed on the subject property would have the same effect as if a subdivision were being placed on the property. As such, he opined that a subdivision would result in a decrease in value to the surrounding properties. Mr. Winner presented a formal expert opinion with an accompanying report. The Board thoroughly considered the testimony of Mr. Winner in addition to the expert testimony of Mr. Richard C. Kirkland, Jr. ("Mr. Kirkland") presented by the Applicant on the issue of property valuation.

2. On the issue of value, the applicant presented expert testimonial evidence, and a formal opinion, from Mr. Richard C. Kirkland, Jr., MAI a North Carolina Certified General Real Estate Appraiser, confirming that the intended land use is consistent with the surrounding area and would not negatively impact the value of the surrounding properties. Mr. Kirkland performed a

comparison approach, matching paired sales of similar middle school projects including Lucas Middle School in Durham, Thales Academy in both Knightdale and Raleigh, and Southern Wake Academy in Holly Springs. Mr. Kirkland addressed the compatibility of the project with the surrounding properties given the scale, design and use of the school. Mr. Kirkland also provided the Board with a substantial report detailing the facts, data and analysis relied upon to reach his opinion. Mr. Kirkland's testimony and supporting documentation constitute substantial, competent and material evidence that the proposed project is in harmony with the area and will not negatively affect surrounding property values.

3. The project conforms with all general and special requirements applicable to the use (including but not limited to Section 5.3.3(k) of the Unified Development Ordinance), and the Review Factors identified in Section 3.9.8(8). The property is located in the RR District and Schools are expressly permitted in the RR district.

4. The applicant presented expert testimony from Mr. Kevin D. Davidson ("Mr. Davidson") of Agri- Waste Technologies, Inc., a specialist in the design and installation of residential, commercial and large single user wastewater systems. Mr. Davidson: (i) has been a lecturer at North Carolina On-Site Water Protection conferences, (ii) conducts training for the Chatham County Department of Health on septic installation and has authored several professional publications. Mr. Davidson testified about the nature and structure of the proposed wastewater system and the placement of the same on the property. He also testified that the design of the system had been vetted and approved by both state and local wastewater treatment officials. Specifically, the system design has been reviewed by Durham County's Environmental Health Division and the North Carolina Department of Health and Human Services on-site regional soil sciences department. The system requires a manager and is subject to annual inspections by the Durham County Department of Public Health. Mr. Davidson's opinion is that the wastewater system is state of the art and poses no danger to the health or welfare of surrounding properties. Mr. Davidson's testimony constitutes substantial, competent and material evidence that the use of the wastewater system as designed will not present a health risk or effect the quality of the water on surrounding properties.

6. The applicant presented testimony from Mr. Lyle Overcash, P.E. ("Mr. Overcash") a regional/metropolitan transportation and planning specialist and a licensed engineer concerning: (i) general circulation, parking and loading areas; (ii) the location of access points to the property and the proposed structures and uses including automotive, bicycle, mass transit and pedestrian safety and convenience; and, (iii) traffic flow and control and access. Mr. Overcash has extensive experience performing complex traffic flow, capacity, and planning analyses for arterials, freeways, rural roadways, signal systems, and isolated intersections. Mr. Overcash testified that he conducted a Traffic Impact Analysis for the proposed school and presented two (2) video simulations of the traffic flow during peak hours at the school. Additionally, the applicant has committed to install a traffic signal (already approved by NCDOT) at the intersection of Orange Factory and Roxboro Roads as well as an eastbound left-turn lane with 150 feet of full width storage and appropriate tapers on Orange Factory Road at the site of the access driveway to the school. The applicant will also construct an exclusive westbound right turn lane with 100 feet of full width storage and appropriate taper on Orange

Factory Road at the school access driveway. Finally, the driveway entering the school will be designed to allow full access movement and consist of a four-lane cross-section (two ingress and two egress lanes) separated by a concrete monolithic island to facilitate entering the school site. The egress lanes will consist of an exclusive left turn and an exclusive right-turn lane each with 150 feet of full width storage. Mr. Overcash testified that it is his professional opinion that the school will not negatively affect traffic flow on Orange Factory Road.

7. In opposition to this application Ms. Brown offered the testimony of Mr. Travis Fluitt a Civil Engineer whose experience included conducting more than 200 traffic impact analyses for public and private developments and capacity analyses for roadway design projects. Although Mr. Fluitt did not conduct a Traffic Impact Analysis for this particular development project, he was of the opinion that the school could result in traffic issues for some of the neighboring residents. Having weighed the testimony presented by both the Applicant and those in opposition, the Board concludes that Mr. Overcash's testimony and the Applicant's committed elements for the project constitute substantial, competent and material evidence that the project will not place a traffic burden on Old Factory Road or have a negative effect on surrounding properties.

8. The subject property is in the Lake Michie/Little River Critical Area (M/LR-A) watershed protection overlay district. In this regard the Board has considered the Little River Corridor Open Space Master Plan (the "Little River Plan" or "Plan" adopted in 2001, in determining compliance with the comprehensive plan and its consistency with the development of the subject property. The Plan was adopted by the legislative bodies of Durham County and City with recommendations on how development of property within the Little River Corridor should occur. The purpose of the plan is to preserve and enhance multiple connections between habitat areas and corridors; and, to use the existing network of perennial and intermittent streams as the framework for movement corridors.

9. The Applicant presented the expert testimony of Mr. Steven Medlin, retired Planning Director for the City/County of Durham Planning Department. Mr. Medlin served as Planning Director from 2008-2016 and worked in the Planning Department for more than 30 years total. Mr. Medlin evaluated the Applicant's site plan for consistency with the Little River Corridor Open Space Plan. He explained that the Little River Corridor Plan was adopted in 2001 as an aspirational document and that it does not carry the weight of law. According to Mr. Medlin, it is simply a policy document. By contrast the Uniform Development Ordinance (UDO) was passed in 2006 which carries the force of law and is the governing authority for all development in the City and County of Durham. At no time has the UDO expressly incorporated the aspirational goals of the Little River Corridor Open Space Plan. Mr. Medlin testified that in his professional opinion there was no element of the Little River Corridor Open Space Plan which is required by the UDO for new development in Durham.

10. Mr. Medlin's review of the Applicant's proposal, nonetheless, shows meticulous adherence to the aspirational principles of the Little River Open Space Corridor Plan. For example, the Little River Open Space and Corridor Plan suggests that prohibiting community wastewater systems has the unintended consequence of forcing non-clustered development, thereby resulting in less acreage being preserved for new development than otherwise may be

possible with a community wastewater system. According to Mr. Medlin, the Applicant's use of a single-use septic system, which is strictly regulated by both the State of North Carolina and Durham County achieves the desired goals of the Little River Corridor Plan. Additionally, in seeking to preserve corridors for wildlife movement as suggested by the Little River Corridor Plan the Applicant will be using a fish and wildlife passage bridge that simultaneously allows cars and pedestrians to pass on the road above, animals to pass under the driveway in chambers, and water to flow naturally with the grade.

11. Mr. Medlin further testified that the plan does not use fencing except for that which is required around the stormwater pond for safety and preserves a 300-ft wide buffer along creeks, the reservoir, and other places. The 300-ft measure is well in excess of any buffer required by the UDO. The Applicant's Plan provides almost a 1,000-ft buffer along the reservoir and provides a 300-ft wide buffer on each side of the stream, plus an additional 10-ft no build for a total of 620-ft of buffer. This level of buffering meets or exceeds even the aspirational language in the Little River Corridor Open Space Plan.

12. To further show compliance with the Little River Open Space and Corridor Plan the Applicant offered the expert testimony of Mr. Daniel A. Jewell, RLA ("Mr. Jewell") of Coulter Jewell Thames, P.A. Mr. Jewell has served as Project Manager on a wide variety of projects including commercial and office design, residential land planning and site development feasibility studies. Mr. Jewell testified that he was involved in the development and drafting of the Little River Corridor Open Space Plan and was intimately familiar with its intent and purpose. Mr. Jewell testified at length about how the applicant's design was not only in conformity with the standards set forth in the Plan but exceeded those standards. In addition, Mr. Jewell also testified about a balloon test that was performed by the applicant to determine if the proposed project would impact the scenic view along Orange Factory Road. It was Mr. Jewell's expert professional opinion that based upon the balloon test and the fact that the school was at least  $\frac{1}{4}$  of a mile from Orange Factory road that there would not be a negative effect on the scenic nature of Orange Factory Road. Mr. Jewell's testimony, in addition to that of Mr. Medlin constitutes substantial, competent and material evidence that the project is in conformity with the Little River Open Space and Corridor Plan, is in harmony with the surrounding area and will not have a negative effect on surrounding properties or the scenic quality of Orange Factory Road.

13. The Board has also considered the expert testimony of Mr. Donald A. Sever, P.E. with Summit Design and Engineering Services. Mr. Sever is the design and site engineer for the subject property. Mr. Sever testified that the project was in full compliance with § 5.S.3(k) of the UDO and provided specific examples of how the review factors set forth in § 3.9.8 of the UDO had been satisfied. He testified about how the site plan was specifically designed for the protection of water quality, stream buffers, open space, and natural features of the property. He went through the site plan and addressed stream buffers, impervious services, and the project's harmony with the surrounding area. Mr. Sever has an M.S. in Civil Engineering and an M.S. in Public Works Engineering and Administration from the University of Pittsburgh. He has been a practicing engineer since 1980. In Mr. Sever's opinion the site plan substantially exceeds the UDO requirements for environmental protection, is consistent with the comprehensive plan and compatible with the surrounding properties. The foregoing constitutes substantial, competent

and material evidence that the Applicant has met its burden of showing that the design satisfies the comprehensive plan as well as the issues presented by the Little River Corridor Plan and the UDO.

14. The Applicant presented testimony from Mr. Donald L. Wells (“Mr. Wells”) of Soil & Environmental Consultants, P.A. Mr. Wells is a North Carolina Licensed Soil Scientist and Certified Well Driller. He has over 25 years of experience working as a professional Soil Scientist. He manages his company's Phase I Environmental Program and has helped prepare over 500 Phase I Environmental Assessments on all types and sizes of properties. He performs in-situ Hydraulic Conductivity and Infiltration Measurements in the Vadose Zone, Water Balance Analysis, Aquifer Testing and Analysis and Groundwater Monitoring. Mr. Wells testified about his evaluation of the proposed well on the site and how it would affect other wells in the surrounding area. After evaluation Mr. Wells was of the professional opinion that the well on the subject site does not have an adverse impact on the wells for the surrounding properties.

15. Mr. Aric V. Geda, P.E. of Modulus, PLLC testified on behalf of the Applicant about the affect of the proposed development on endangered species in the area and to perform an environmental site assessment. Mr. Geda conducted several field studies during different seasons to collect any evidence of the presence of endangered species. It was Mr. Geda’s professional opinion that it is highly unlikely that any endangered species exist on the proposed site.

16. Attorney Brown was provided the opportunity to cross-examine all expert and non-expert witnesses proffered by the applicant at the close of the applicant's evidentiary presentation. Both sides asked relevant and probing questions prior to the close of the hearing.

17. Having considered all substantial, competent and relevant evidence; and, after lengthy discussion, the Board finds the requested use is consistent with the Comprehensive Plan, Little River Corridor Master Plan and applicable development tier guidelines, overlay purposes, and zoning district intent statements in Article 4, Zoning Districts and the School will not adversely affect the health or safety of the public.

**IN SUPPORT OF THESE FINDINGS AND CONCLUSIONS, 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 proposed use, surrounding conditions, and ordinance requirements and the Board adopts by reference and includes in this decision and order all such facts and, in particular, the conclusions in the staff report entitled "Staff Analysis" as if set forth herein.

**THEREFORE, THE BOARD HEREBY GRANTS THE MINOR SPECIAL USE WITH THE FOLLOWING CONDITIONS:**

1. The improvements shall be substantially consistent with the plans submitted and as amended to the Board as part of the application.
2. The educational facility shall serve the middle school level.

3. The enrollment of the school shall have a maximum of 528 students.
4. The site plan shall accurately portray areas of temporary rip rap and include a cross section of the proposed wildlife corridor passage.

**WRITTEN CONSENT TO CONDITIONS IMPOSED THROUGH A DEVELOPMENT PERMIT**

**N.C. GEN. STAT. § 160A-393.2**

Type of development permit: Minor Special Use Permit

Case # (B1700052):

Applicant Information (should mirror the application):

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Mailing address: \_\_\_\_\_

As the applicant for this Case, I am providing my written consent to the following conditions or committed elements (The wording of conditions or text committed elements stated below shall match the language approved by the decision-making body. If committed elements are graphic, the documents that present the graphical committed elements shall be attached to this form or clearly included by reference to a specific set of documents identified below):

- 1. The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.**

\_\_\_\_\_  
Applicant's printed name, signature, and date of execution

\_\_\_\_\_  
Planning staff printed name, signature, and date of execution

**IN ADDITION**, as indicated in Section 3.9.15 of the Unified Development Ordinance this permit will become null and void in the following cases:

1. If a site plan is not approved within 12 months of the date of permit approval.
2. Where an approved site plan or building permit expires.
3. Where a building permit is not issued within two years of the date of approval, in cases where a site plan is not required.
4. If a substantial violation of the conditions of the permit, as determined by the Planning Director or designee occurs.

**IN WITNESS WHEREOF**, the Board of Adjustment of the City/County of Durham has caused this Minor Special Use Permit to be issued in its name, together with all conditions, as binding on the applicant, and their successors in interest.

An appeal of a Board of Adjustment action can be filed pursuant to procedures noted in the North Carolina General Statutes, Chapter 160A, Article 19, Part 3, Section 160A-388 or Chapter 153A, Article 18, Part 3, Section 153A-345.1 with the Superior Court of Durham County within 30 days after the date this order is served on you.

**Ordered this the 26th day of May, 2020**

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Staff Planner

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date Mailed

**CITY/COUNTY OF DURHAM**  
**ORDER GRANTING, UPON CERTAIN CONDITIONS,**  
**A MINOR SPECIAL USE PERMIT TO ALLOW A BUILDING WITH A FOOTPRINT**  
**GREATER THAN 5,000 SQUARE FEET IN THE CN ZONING DISTRICT.**  
**(B1900050)**

PID(S): 189743, 189742, 189744

The Board of Adjustment (“Board”) of the City/County of Durham conducted a hearing on the “Glandon Forest Equity, LLC’s” application for a minor special use permit (**Case B1900050**) on January 28, 2020. The applicant testified about the proposed project and presented evidence from a civil engineer and traffic engineer. Sworn testimony was also received from an adjacent property owner in opposition to the application and having an interest in the matter.

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 Ordinance requirements for the granting of a minor special use permit in this case have been met, and that the Use Permit should be granted upon certain conditions.

**THE BOARD HEREBY MAKES THE FOLLOWING FINDINGS AND CONCLUSIONS,** based on the evidence presented at the public hearing:

The proposed use, as described in the application, with such further conditions as may be described below, meets the requirements of Section 3.9.8 A & B of the Unified Development Ordinance, and:

1. The competent, material and substantial evidence presented by the applicant established that the proposed use is as a Dollar General Store (the “Dollar General” or “Property”) and is in the Rural Development Tier in the Village of Rougemont. The evidence presented established that the project conforms with all general and special requirements applicable to the use (including but not limited to Section 5.1.2 of the Unified Development Ordinance), and the Review Factors identified in Section 3.9.8(B). The property is in the Commercial Neighborhood (“CN”) zoning District where retail uses are expressly permitted by right. A special use permit is necessary because the proposed project has a total square footage greater than 5000 square feet.
2. The evidence presented showed that the Dollar General will have a total square footage of 9,100 square feet. The applicant is proposing two access driveways, one off North Roxboro Road and one off Bill Poole Road, to access the site. The width of these driveways and the

drive aisle show that there is adequate access area for all vehicles, including emergency vehicles.

3. The proposed building will be serviced by county water and sewer will operate on a septic system in conformity with Durham County and State waste-water standards. The Property is surrounded on the northwest by a convenience center, on the southeast by single family and vacant lots, on the northeast by residential lots and on the southwest by a place of worship. Based upon the evidence presented the applicant has established that the use is in harmony with the surrounding structures and not injurious to the values of nearby properties.
4. Per UDO Section 6.10.1 A.1, there is no requirement for open space to be located on the site. The site is in the Lake Michie/Little River Protected Area (M/LR-B) Watershed Protection Overlay District and has an impervious surface limit of 24% utilizing the high-density option for Rural Villages, per UDO Section 8.7.2B.1. The proposed impervious surface is .57 acres, or 23.99 %.
5. There was testimony from Russell Markham in opposition to the application relating to the use of commercial wells and increased traffic. Mr. Matthew Landers, a civil engineer, testified on behalf of the applicant that the Property only had two bathrooms and will have a minimal effect on the water supply. The applicant also presented testimonial evidence from Ryan Stevenson, a traffic engineer, about the mitigation on traffic trips and how the design minimizes lane crossings to enter the Property.
6. Having considered all substantial, competent and material evidence the Board finds the requested use is consistent with the Comprehensive Plan, overlay purposes, and zoning district intent statements in Article 4, Zoning Districts and the Property will not adversely affect the health or safety of the public.

**IN SUPPORT OF THESE FINDINGS AND CONCLUSIONS,** 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 proposed use, surrounding conditions, and ordinance requirements and the Board adopts by reference and includes in this decision and order all such facts and, in particular, the conclusions in the staff report entitled "Staff Analysis" as if set forth herein.

**THEREFORE, THE BOARD HEREBY GRANTS THE MINOR SPECIAL USE WITH THE FOLLOWING CONDITIONS:**

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

**WRITTEN CONSENT TO CONDITIONS IMPOSED THROUGH A DEVELOPMENT PERMIT N.C.  
GEN. STAT. § 160A-393.2**

Type of development permit: Minor Special Use Permit Case

# **(B1900050)**:

Applicant Information (should mirror the application):

Name: George Venters

Firm: Glandon Forest Equity, LLC

Phone: 919-459-2602

Email: gventers@vanguardpg.com

Mailing address: 3825 Barrett Drive, Ste 100, Raleigh NC 27609

As the applicant for this Case, I am providing my written consent to the following conditions or committed elements (The wording of conditions or text committed elements stated below shall match the language approved by the decision-making body. If committed elements are graphic, the documents that present the graphical committed elements shall be attached to this form or clearly included by reference to a specific set of documents identified below):

- 1. The improvements shall be substantially consistent with the plans submitted to the Board as part of the application.**

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(Applicant's printed name, signature, and date of execution)

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(Planning staff printed name, signature, and date of execution)

**IN ADDITION**, as indicated in Section 3.9.15 of the Unified Development Ordinance this permit will become null and void in the following cases:

1. If a site plan is not approved within 12 months of the date of permit approval.
2. Where an approved site plan or building permit expires.
3. Where a building permit is not issued within two years of the date of approval, in cases where a site plan is not required.
4. If a substantial violation of the conditions of the permit, as determined by the Planning Director or designee occurs.

**IN WITNESS WHEREOF**, the Board of Adjustment of the City/County of Durham has caused this Minor Special Use Permit to be issued in its name, together with all conditions, as binding on the applicant, and their successors in interest.

An appeal of a Board of Adjustment action can be filed pursuant to procedures noted in the North Carolina General Statutes, Chapter 160A, Article 19, Part 3, Section 160A-388 or Chapter 153A, Article 18, Part 3, Section 153A-345.1 with the Superior Court of Durham County within 30 days after the date this order is served on you.

**Ordered this the 26<sup>th</sup> day of May, 2020**

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Staff Planner

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Date Mailed