



NORTH CAROLINA STATE BOARD OF BARBER EXAMINERS

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Raleigh, NC 27699-7000

Minutes for Public Meeting Held May 3, 2021, at 4:00 p.m. Videoconference

Board Members

Don Beal, Chair
Sherod Holloway, Vice Chair
Carolyn Q. Coleman
Michael T. Swinney
David L. Williams

Executive Director

Dennis Seavers

Counsel to the Board

M. Jackson Nichols

The meeting of the North Carolina State Board of Barber Examiners was called to order at 4:00 p.m., on May 3, 2021.

The following board members were present by video- or teleconference: Don Beal, Sherod Holloway, Carolyn Q. Coleman, Michael T. Swinney, and David L. Williams. No board members were absent.

Also in attendance were Dennis Seavers, Executive Director, and M. Jackson Nichols, Counsel to the Board.

OPEN SESSION

Ethics awareness and conflict of interest

Mr. Beal read the statement required by G.S. § 138A–15(e) on ethics awareness and conflicts of interest. No board members indicated that they had any potential or actual conflicts.

Request for declaratory ruling

The board continued discussion of the request for a declaratory ruling that had been previously discussed on April 1 and 20. Lenoir Community College was represented by John Paul Black, Maria Robles, and Angela Bullock.

CLOSED SESSION

Mr. Holloway made a motion to go into closed session under G.S. § 143–318.11, and Mr. Williams seconded. The motion passed, 3–0.

Vote	Don Beal	Sherod Holloway	Carolyn Q. Coleman	Michael T. Swinney	David Williams
Yes	X	X			X
No					
Abstain					
Not present					
Not voting			X	X	

The board entered closed session at 4:46 p.m. The board emerged from closed session at 5:11 p.m.

OPEN SESSION

The board decided that an ad hoc committee of members (Sherod Holloway and Michael Swinney) would travel to examine the proposed school site and report back to the board. At 5:17 p.m., the board recessed until May 10, 2021.

MAY 10, 2021 OPEN SESSION

The board resumed its meeting on May 10, 2021 at 5:06 p.m. All board members were present except Michael Swinney, who joined at 5:11 p.m.

Ms. Coleman made a motion to approve the minutes from April 20, 2021. Mr. Williams seconded, and the motion passed, 4-0.

Vote	Don Beal	Sherod Holloway	Carolyn Q. Coleman	Michael T. Swinney	David Williams
Yes	X	X	X		X
No					
Abstain					
Not present				X	

The board resumed its discussion of the declaratory ruling. After discussion, Mr. Holloway made a motion to issue the declaratory ruling in Attachment 1. Ms. Coleman seconded the motion, which passed, 4-0. (Mr. Swinney left the meeting during discussion and before the vote.)

Vote	Don Beal	Sherod Holloway	Carolyn Q. Coleman	Michael T. Swinney	David Williams
Yes	X	X	X		X
No					
Abstain					
Not present				X	

Mr. Beal adjourned the meeting at 5:20 p.m.

Minutes approved on _____

 Don Beal
 Board Chair

BEFORE THE NORTH CAROLINA
STATE BOARD OF BARBER EXAMINERS

In re:
Request for Declaratory Ruling of
Lenoir Community College

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|
DECLARATORY RULING
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THIS CAUSE comes before the North Carolina State Board of Barber Examiners (the “Board”) pursuant to N.C. Gen. Stat. §§ 150B-4, and 21 N.C. Admin. Code 06B .0501 *et seq.* The Board, at a duly-noticed public meeting and with a quorum present, accepted the Request for a Declaratory Ruling.

PROCEDURAL HISTORY

On March 10, 2021, Lenoir Community College (“Petitioner”) filed a request for declaratory ruling. A true and accurate copy of Petitioner’s filing is attached hereto as **Exhibit A**. Petitioner submitted an addendum to the request on March 26, 2021, and that filing is attached hereto as **Exhibit B**. The Board voted timely to grant Petitioner’s request for declaratory ruling at a public meeting held on April 1, 2021, and as a result, to issue a declaratory ruling on the merits within 45 days from the date of the Board’s decision to grant the request, in accordance with N.C.Gen.Stat. § 150B-(a1)(1). Following is the Board’s declaratory ruling.

QUESTIONS

1. Is it permissible in North Carolina, under the Board’s laws and rules as currently written, to have the practical and classroom areas required by 21 N.C. Admin. Code 06F .0101 separated by 0.75 miles?
2. Is it permissible in North Carolina, under the Board’s laws and rules as currently written, to have the classroom area used for purposes other than barber instruction when barber instruction is not occurring?

RULING

Pursuant to N.C. Gen. Stat. § 150B-4(a), an agency, upon request from a person aggrieved, shall issue a declaratory ruling concerning the validity of a rule or the application of a statute or rule to a particular set of facts. This ruling is based solely on the facts provided to the Board and to the extent the Board can glean pertinent facts necessary to apply the statutes and regulations under its jurisdiction. Pursuant to *In re Ford*, this Declaratory Ruling and Petitioner’s request for declaratory ruling shall constitute the record for judicial review. *See* 52 N.C. App. 569, 572, 279 S.E.2d 122, 124 (1981).

The Board is charged by the North Carolina General Assembly with enforcing Chapter 86A of the North Carolina General Statutes by regulating barbers, barber shops, and barber schools to protect the public health, safety, and welfare. *See* N.C. Gen. Stat. §§ 86A-1 & 86A-5. As an initial matter, for the purposes of issuing this declaratory ruling, the Board finds that Petitioner—a North Carolina community college with one licensed barber school and looking to license a second barber school—is a “person aggrieved” as that term is defined in N.C. Gen. Stat. § 150B-2(6). In reaching this determination, the Board considered that it previously has taken the informal position that North Carolina’s existing laws and rules governing the practice of barbering might prohibit a classroom area used for purposes other than barber instruction, given the language in 21 N.C. Admin. Code 06F .0101(b)(14). Petitioner also has an interest in a formal ruling from the board on the applicability of its laws to the specific set of presented facts because constructing and opening the barber school would require the capital investment of public funds. For these reasons, the Board finds that Petitioner is a “person aggrieved” in that it is indirectly affected by

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the Board's existing interpretation and application, however informal, of certain of the Board's laws and rules.

Response to Question 1

Regarding the substance of Petitioner's request, to resolve the first question, the Board takes note of the specific set of facts in Petitioner's March 26, 2021 addendum to its request for a declaratory ruling. That addendum referred to the school's practical-space needs in a particular town in Jones County, North Carolina, with that town's specific commercial-space availability. The addendum also identifies a distance relationship between the practical and classroom areas that apply specifically to that location in Trenton, North Carolina. The Board also takes notes of the claims made by representatives from Lenoir Community College at the April 1, 2021 board hearing. Based on the set of facts presented in this request, for the purpose of a pilot program, the Board finds that the distance between the practical and classroom areas would not present a licensure problem.

Response to Question 2

To resolve Petitioner's second question—whether the classroom area may be used for purposes other than barber instruction—the Board relies on the language in N.C. Gen. Stat. § 86A-15(a)(1)(b), which states that any “area where barber service is rendered or where a combination of barber service and cosmetology service is rendered shall be separated by a substantial partition or wall from areas used for purposes other than barber services, cosmetology services, or shoe shining services.” The “area where barber service is rendered” corresponds to the phrase “practical area” in 21 N.C. Admin. Code 06F. The statute only refers to the practical area and not to the classroom area. Although 21 N.C. Admin. Code 06F .0101(b)(14) refers to the school as a whole

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being separate from other business, and not just the practical area, this rule relies on N.C. Gen. Stat. § 86A-15 for its authority, and that statute only refers to the practical area. Therefore, with the exception of barber services, Petitioner can use the classroom area for purposes other barber instruction while barber instruction is not occurring.

EFFECT OF RULING

Based on the state of facts presented to the Board and contained in this Declaratory Ruling, his ruling is binding on Petitioner and the Board pursuant to N.C. Gen. Stat. § 150B-4(a), unless altered by future Board action, or set aside by a Superior Court ruling

Issued by the North Carolina State Board of Barber Examiners, this 10th day of May 2021.

THE NORTH CAROLINA STATE BOARD OF
BARBER EXAMINERS

DON BEAL
Board Chairperson
N.C. State Board of Barber Examiners
7001 Mail Service Center
Raleigh, N.C. 27699-7000

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned has this date served this **Declaratory Ruling** on the persons below by placing a copy of the same in the U.S. Mail, postage prepaid, **Certified Mail, Return Receipt Requested**, and properly addressed to counsel for the Petitioner, as follows:

Lenoir Community College
PO Box 188
Kinston, NC 28502

This 11th day of May 2021.

DENNIS SEAVERS
Executive Director
N.C. State Board of Barber Examiners
7001 Mail Service Center
Raleigh, N.C. 27699-7000