



**Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
February 21, 2017**

Members Present

John Kurek, Chair
David Cox
John Lotspih
Vada Palma
Cynthia Chamblee, Alternate

Members Absent

Gary Plough

Others Present

Michelle Shreve, Planning Director
Derek Taylor, Town Attorney
Katrina Tyer, Clerk
Arrington Moore, Management Assistant

CALL TO ORDER

Chairman Kurek called the meeting to order at 7:00pm.

Palma made a motion to excuse Gary Plough from the meeting due to wife's sickness. Seconded by Lotspih. Vote was unanimous. Motion carried.

APPROVAL OF NOVEMBER 21, 2016 MINUTES

Lotspih made a motion to approve the November 21, 2016 Minutes. Seconded by Cox. Vote was unanimous. Motion carried.

CASE VAR-17-01

Chairman Kurek introduced the request for a variance by Kim Smith of Mark Hannula Construction, agent for property owner Thomas Long, for a two-foot side setback, which is three feet less than would be required by Section 5.6 of the Unified Development Ordinance for a new home at 401 Greenville Avenue.

There were not any conflicts or objections from the seated members on the Board.

The following were sworn in by Chairman Kurek:

Kim Smith of Mark Hannula Construction, 101 Palmer Way, Morehead City
Michelle Shreve, Planning Director

Chairman Kurek opened the public hearing.

Staff Presentation

Michelle Shreve explained the former duplex at 401 Greenville Avenue was demolished in 2016 to allow for redevelopment. The single-family residence currently under construction was permitted last August. Front setbacks for single-family residences are measured as the average of the front setbacks of the two adjacent structures along the street-side property lines. This property has frontage on three streets: Greenville Avenue, East Atlantic Boulevard, and East Boardwalk Boulevard. The setbacks are as follows: north (E Atlantic Blvd) = 30', west (Greenville Ave) = 11', south (E Boardwalk Blvd) = 20', and east (interior/side) = 5'. The three front setbacks reduce the building envelope of this already nonconforming lot. It is nonconforming in that the lot is only 4,000 square feet, and newly platted lots in this zoning district are required to be 5,000 square feet.

The applicant has requested an interior/side setback of 2' in order to accommodate the two HVAC units on 4'-tall elevated platforms. The location of HVAC units are not required to be submitted at the time of permitting, so this issue was not evident until the later stages of building. The units cannot go within the enclosed portion of the ground floor. The applicant wants to avoid placement of the units along the street-fronting sides (north, west, and south) due to aesthetics. The units would be able to meet the manufacturer's side clearance specifications of 12" if placed on the lot as proposed.

Staff confirms the following based on the Variance Check List:

- 1) Proper notice was given to adjoining property owners of the public hearing to consider the variance. Letters notifying the 26 property owners within 150 feet of the subject property were sent on February 3, and a sign notifying the public of this hearing was posted on the property the same day.
- 2) The variance does not result in the extension of a nonconforming situation in, or authorize the initiation of a nonconforming use of land. This is a residential zoning district allowing single-family homes and duplexes.
- 3) If the applicant complies strictly with the provisions of the Ordinance, he will suffer substantial hardship. The HVAC units will not fit within the setbacks required by Section 5.6 of the UDO.
- 4) The hardship relates to the applicant's land, rather than personal circumstances, such as shape, size, or unusual characteristics. This property is unusual in that it has three front yards, which are typically larger than side or rear setbacks, and restrict this lot to a small building envelope.
- 5) The hardship is not a result of the applicant's own actions. Staff is not aware of any action the applicant or property owner could have taken to create the hardship.
- 6) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Staff confirms that granting this variance would not adversely affect public safety and would be consistent with the spirit, purpose, and intent of the UDO.

Planner Shreve stated she has not received any communication from the adjoining property owner to the East. She had other curious inquires, but no objections.

Chamblee addressed fire hazards. Planner Shreve stated this plan has been reviewed by the Inspections Department and since this home is openly accessible on three sides, fire safety shouldn't be a concern.

There were no objections to admitting Planner Shreve's statement into evidence.

Applicant Presentation

Kim Smith, agent for the applicant, stated the following:

- 1) Proper notice was given.
- 2) The plan conforms with the use of the land.
- 3) A hardship would be created aesthetically if the owner has to place the units on an outer side of the property.
- 4) This is not a hardship they created on their own, the setbacks are set in the UDO. Regardless of which side they desire to place the units, a Variance would be required.
- 5) This will not be a hardship on his neighbors, obscure any of their views or cause access issues.
- 6) The hardship is not a result of the applicant's own action.

Applicant requested the Site Plan submitted with the application be considered as supporting evidence. It was allowed.

Public Hearing

No comments. No opposition from audience.

Board Discussion and Evaluation

Closed Public Hearing at 7:23pm.

Chairman Kurek polled the board members and each agreed the following criteria have been met:

- 1) Proper notice was given to adjoining property owners of the holding of the public hearing to consider the variance, pursuant to Planner Shreve's testimony.
- 2) The variance does not result in the extension of a non-conforming situation in, or authorize the ignition of a non-conforming use of land, pursuant to Planner Shreve and applicant's testimony.

- 3) If the applicant complies strictly with the Ordinance, they will suffer substantial hardship.
- 4) The hardship relates to the applicant's land, rather than personal circumstances.
- 5) The hardship is a result of personal circumstances suffered only by the applicant, rather than neighbors or the general public.
- 6) The hardship is not a result of the applicant's own actions.
- 7) The variance is consistent with the spirit, purpose and intent of the ordinance, such as public safety is secured, and substantial justice is achieved.


The Board has found all of the requirements for a Variance have been met and the Variance Request for a two-foot side setback, which is three feet less than would be required by Section 5.6 of the Unified Development Ordinance for a new home at 401 Greenville Avenue be granted. Vote was unanimous, 5-0.

ADJOURNMENT

There being no further business the meeting adjourned. The time was 7:27 p.m.

These minutes were approved at the May 15, 2017 meeting of the Board of Adjustment.

Approved by:



John Kurek, Chair



Katrina Tyer, Town Clerk