



**Minutes  
Town of Atlantic Beach  
Board of Adjustment Meeting  
March 19, 2018**

**Members Present**

Eddie Briley  
Vada Palma  
Fred Dean  
Michael Bosse, Alternate  
Curt Winbourne, Alternate

**Members Absent**

John Kurek, Chair  
David Cox  
Gary Plough, Vice Chair

**Others Present**

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

**OATHS OF OFFICE Eddie Briley, Fred Dean and Michael Bosse, Alternate**

Oaths of Office were administered by the Clerk to Eddie Briley, Fred Dean and Michael Bosse, Alternate

Attorney Taylor stated that since the Chairman and Vice-Chairman were absent, an acting Chair needed to be selected for tonight's meeting. Alternates Michael Bosse and Curt Winbourne were asked to come forward and serve.

Attorney Taylor asked for a nomination for Chairman for tonight's meeting. Winbourne nominated Vada Palma to serve as Chairman. Seconded by Dean. Winbourne made a motion *to appoint* Vada Palma to serve as Chairman for tonight's meeting. Seconded by Briley. Vote was unanimous. He then turned the meeting over to Palma.

**CALL TO ORDER**

Palma called the meeting to order at 7:00 pm and introduced those seated on the board.

Winbourne made a motion *to amend* the agenda to include Excusal of Board Members and Election of Chair and Co-Chair. Seconded by Dean. Vote was unanimous.

Briley made a motion *to excuse* Chairman Kurek, Vice Chairman Plough and Alternate David Cox. Seconded by Winbourne. Vote was unanimous.

**ELECTION OF CHAIR AND VICE CHAIR**

Due to the absence of current Chairman Kurek and Vice Chairman Plough, Briley made a motion *to table* election of a Chair and Vice-Chair until the next meeting. Seconded by Winbourne. Vote was unanimous.

**APPROVAL OF MINUTES**

Briley made a motion *to approve* the June 19, 2017 and January 15, 2018 Minutes. Seconded by Winbourne. Vote was unanimous. Motion carried.

**CASE VAR-18-01: 115 Sound Drive**

**Opening remarks and swearing in of witnesses**

Chase Cullipher of The Cullipher Group, appointed agent of Judge James Llewellyn, has requested a variance to build a new single-family home at 115 Sound Drive with a 6 foot street setback, which is 24 feet closer to the street-side property line than would be allowed as measured according to Section 18.10.2.D.1.b. of the UDO.

There were not any conflicts or objections from the seated members on the Board. Each board member confirmed individually they did not have a financial interest, personal interest, business interest, fixed opinion, previous conversations or correspondence, or have any information or special knowledge in the case.

The applicant confirmed he did not have any objections to any of the seated board members.

The following were sworn in by Katrina:

Chase Cullipher, licensed engineer and VP of Cullipher Engineering, Morehead City  
Michelle Shreve, Town Planner

#### **Staff Presentation – Michelle Shreve**

This property is within the Residential Single-Family Wide Yard (RSW) zoning district, formerly called R-1(7). This property is currently vacant, and to town knowledge has never been developed. James Llewellyn purchased this property in April 2017 with the intent to develop it. He has been working with General Contractor Brian Fowler of Fowler Contracting and Engineer Chase Cullipher of The Cullipher Group to navigate the obstacles of building a custom home. Michelle met on site with CAMA Field Rep Ryan Davenport, builder, property owner, and others on August 16, 2017. The house was designed by CAMA and Health Department requirements but without the street setback. The Cullipher Group has been the engineer for the septic system and the stormwater system.

Brian Fowler of Fowler Contracting submitted permit applications to build on February 9, 2018, which initiated the zoning review.

The street setback is the front setback for this structure, and in the RSW zoning district the street setback is measured based on where the adjacent structures are. Section 18.10.2.D.1.b. reads, "Except for lots within the RCN district, the minimum street setback shall be the same as the shortest distance from the right-of-way edge to the front of an existing principal structure on an adjacent residentially-zoned lot located on the same block face." For this property, the existing principal structure to the west has a shorter distance to the right-of-way edge, so the minimum street setback is the same as that structure, 30.32 feet.

The house as designed is 20.95 feet from the right-of-way edge, with steps that come forward 6.8 feet from the right-of-way edge. The applicant points out that this is approximately 15 feet from the edge of the paved road. The applicant is requesting a variance to be able to build a house that is 6.8 feet away from the right-of-way edge, rather than 30.32 feet as measured according to the UDO.

Staff responses to the items on the variance evaluation form:

- 1) Proper notice was given to adjoining property owners of the holding of the public hearing to consider the variance. Letters notifying the 4 property owners abutting the subject property and James Llewellyn were sent on February 27 and a sign notifying the public of the hearing was posted on the property the same day.
- 2) Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- 3) This house as designed is not necessarily bigger than any other house built on the street, but it is not permitted because of the location of the adjacent structure. Unnecessary hardship lies in the fact that the street setback is based on an older structure that is located 30 feet from the right-of-way edge.
- 4) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardship resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- 5) This property has likely not been developed until now due to lack of septic suitability. The septic system as designed is a newer technology that is allowing for development on previously undevelopable lots. This property is subject to CAMA regulations, which precludes the placement of a house within the 30 foot buffer, rather than a 20 foot rear setback that typically applies to a lot in this district.
- 6) This issue could be construed as common to the neighborhood, as many of these lots are uniform in shape and size and are subject to the same septic and CAMA requirements, but it is doubtful that they would be held to the same "street" setback, since that varies throughout neighborhoods.

- 7) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship.
- 8) Staff is not aware of any action the applicant or property owner could have taken to create the hardship.

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 suggests that granting this variance would not adversely affect public safety and would be consistent with the spirit, purpose, and intent of the UDO.

Winbourne confirmed the main issue for moving the house toward the street is the CAMA buffer.

### **Applicant Presentation**

Jim Thompson, attorney from Morehead City since 1973, commented that from the aerial view of other houses on Sound Drive it is obvious they are positioned in a variety of facades. He questioned the legality of the setback ordinance and the fairness in an ordinance that dictates what a man can do on his property based on what his neighbors do to their property. Attorney Taylor reminded him it was not up to this board to debate the constitutionality of an ordinance.

Chase Cullipher noted the site constraints for the property: AE6 Flood Zone, Town Stormwater Ordinance, County on-site septic, 30' CAMA Buffer and 30.32 Town Front Setback

Attorney Taylor asked if the steps were designed out as far as they are due to the height of the building. Cullipher confirmed and stated the current CAMA setback on the back of the house will not allow for a set of steps.

The variance is requested because a front setback to 6.8 feet is necessary due to front egress steps and the proposed home is located at 21.0 feet from street from existing edge of pavement.

The variance request will not affect the neighbor's viewshed, vehicular access, pedestrian access and utility access. The front of the house is elevated due to flood zone requirements. It will consist of a single floor living space and have minimal impact on neighbor's view. The 10 foot distance from the pavement will not interfere with utility vehicle or pedestrian trespass. Approval of the variance allows for two means of emergency egress from the house.

In the neighborhood, there are 50 homes that encroach upon the 30' CAMA buffer and there are 29 homes that encroach the street buffer.

Additional facts for consideration are the previous owner lived out-of-state and the Town experienced code enforcement issues, having to provide maintenance on the property. A developed parcel can increase tax revenue for the Town. Mr. Llewellyn has incurred a lot of expenses. He has had four sets of plans drawn to develop this single floor plan. He has redone the septic for a peat system to allow for driveways.

### **Response to the variance requirements:**

- 1) Will unnecessary hardship result from strict application of the ordinance?  
Yes – strict application of ordinance 18.10.2.d.1.b minimum street setback combined with the other site constraints will result in an undesirable building envelope for construction of a permanent residence. It will also restrict emergency egress from the living level of the home.
- 2) Does the hardship result from conditions that are peculiar to the property?  
Yes – the size of the property is limiting. However, it is a combination of minimum street setback ordinance, the 30' CAMA buffer, the need for on-site septic and on-site stormwater treatment. Many of the nearby homes were not subject to all or any of these constraints when constructed.
- 3) Did the hardship result from actions taken by the applicant or the property owner?  
No – nothing has been developed on this property by the owner creating a hardship.

- 4) Is the requested variance consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved?  
Yes – public safety will not be negatively impacted should the variance be approved and the spirit, purpose and intent of the ordinance will remain intact.

Briley confirmed the distance from the street, steps and edge of payment again. He inquired about the total square footage of the house, which is 2,500.

### **Public Hearing**

No public comment. No one was present in opposition.

Palma closed the public hearing at 7:41 pm.

### **Board of Adjustment Discussion and Evaluation**

Palma 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 Michelle's testimony. Vote was 5-0.
- 2) Unnecessary hardship would result from the strict application of the ordinance. Briley noted the CAMA rules require the street sides to be different. He feels it would not be right to deny this request. Vote was 4-1, with Palma voting No.
- 3) The hardship does not result from conditions that are peculiar to the property, such as location, size or topography. Vote was 5-0.
- 4) The hardship is a result of personal circumstances suffered only by the applicant, rather than neighbors or the general public. Winbourne noted Cullipher's testimony that demonstrated 50 homes in the area already encroach the CAMA buffer. Briley noted that no one was present to object to the request. Vote was 5-0.
- 5) The hardship does not result from actions taken by the applicant. Vote was 5-0.
- 6) The variance is consistent with the spirit, purpose and intent of the ordinance, such as public safety is secured, and substantial justice is achieved. Vote was 5-0.
- 7) 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.

The Board has found all of the requirements for a Variance have been met and motioned *to grant* the Variance Request to build a new single-family home with a six foot street setback, which is 24 feet closer to the street-side property line than would be allowed as measured according to Section 18.10.2.D.1.b of the UDO at 115 Sound Drive. The site plan dated February 22, 2018 will be incorporated with the Variance Order for recording. Vote was unanimous, 5-0.

### **CASE CUP-18-02: 112 Pond Drive**

#### **Opening remarks and swearing in of witnesses**

This is a request by Mark and Patricia Ferrell for a variance to install mechanical equipment four feet away from the side property line, which is one-and-a-half feet closer to the side property line than would be allowed according to Section 18.3.3.C.2.G of the UDO at 112 Pond Drive. This property is within the Residential Single-Family Wide Yard (RSW) zoning district, formerly called R-1(7).

There were not any conflicts or objections from the seated members on the Board. Each board member confirmed individually they did not have a financial interest, personal interest, business interest, fixed opinion, previous conversations or correspondence, or have any information or special knowledge in the case.

The applicant confirmed he did not have any objections to any of the seated board members.

The following were sworn in by Katrina:  
Mark Ferrell, 112 Pond Drive

### **Public Hearing**

Palma opened the public hearing. The time was 7:56pm.

### **Staff Presentation – Michelle Shreve**

This property was developed with a new single-family home for the Ferrells in 2015, built by Brian Deanhardt of BRIMCO Builders. At the time when the house was being designed, it was intended as a vacation home. Since 2015, however, the Ferrells have decided to make Atlantic Beach their full-time residence, and want to make some changes to the house to accommodate everyday living, not just vacations.

One of these changes would include building a front entry on the structure, the current entrances are through the carport on the first floor, and up the stairs along the side to the back door. The front entry itself, including landing and stairs, would conceivably be permitted, but that area is currently utilized by the heat pump and AC units that serve the structure. The units will need to be moved to allow the front entry and the most ideal location is along the west side of the house, which places the mechanical units within the setback.

The RSW zoning district has a side setback of seven feet, but has a couple of allowable encroachments into the setback. Section 18.10.2.E. allows electrical, mechanical, or other equipment to encroach into a side setback no more than 18 inches. That means that the outermost edge of the mechanical units could be no closer than five-and-a-half feet to the side property line.

According to an assessment done by Brian Deanhardt of BRIMCO, the outermost edge of the units would be approximately four feet to the property line. Now, the walls of the house are eight feet from the side property line, but with the required clearances for the mechanical units and the space for the units themselves, they will not fit, even with the 18 inches allowable encroachment.

No permit applications have been submitted for this project, the applicant was advised by Deanhardt that he would need a variance before he could really move forward.

Staff responses to the items on the variance evaluation form:

- 1) Proper notice was given to adjoining property owners of the holding of the public hearing to consider the variance. Letters notifying the 6 property owners abutting the subject property, and to Mark and Patricia Ferrell, owners of the subject property, were sent on February 27, and a sign notifying the public of this hearing was posted on the property the same day.
- 2) Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. It has been advised that it is unlikely that the mechanical units would be able to fit anywhere else near the structure.
- 3) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardship resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Because this property is within the AE flood zone, the mechanical units cannot be under the deck because they wouldn't meet required clearances.
- 4) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship. Staff is not aware of any action the applicant or property owner could have taken to create the hardship.
- 5) 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 suggests that granting this variance would not adversely affect public safety and would be consistent with the spirit, purpose, and intent of the UDO.

### **Applicant Presentation**

When he built their home, it was for the purpose of vacationing and he did not really consider the safety of only having one entrance. Currently all visitors enter through the back door, where there are glass doors which you can look directly into the home.

He adopts all of the findings that Michelle stated in here testimony.

### **Public Hearing**

No public comment. No one was present in opposition.

Palma closed the public hearing at 8:05 pm.

### **Board of Adjustment Discussion and Evaluation**

Palma 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 Michelle's testimony. Vote was 5-0.
- 2) Unnecessary hardship would result from the strict application of the ordinance. Vote was 5-0.
- 3) The hardship does not result from conditions that are peculiar to the property, such as location, size or topography. Vote was 5-0.
- 4) The hardship is a result of personal circumstances suffered only by the applicant, rather than neighbors or the general public. Vote was 5-0.
- 5) The hardship does not result from actions taken by the applicant. Vote was 5-0.
- 6) The variance is consistent with the spirit, purpose and intent of the ordinance, such as public safety is secured, and substantial justice is achieved. Vote was 5-0.
- 7) 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.

The Board has found all of the requirements for a Variance have been met and motioned *to grant* the Variance Request to install mechanical equipment four feet away from the side property line, which was closer to the side property line than would be allowed according to Section 18.3.3.C.2.G of the Udo at 112 Pond Drive. Screening, such as lattice, shall be installed around the mechanical units. The proposed drawing will be incorporated with the Variance Order for recording. Vote was unanimous, 5-0.

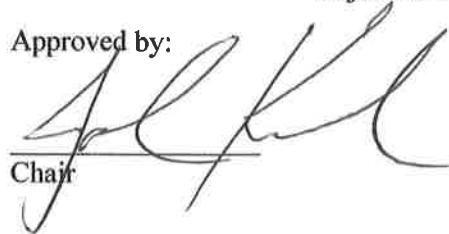
Briley recommends Council review the mechanical ordinance and consider amending.

### **ADJOURNMENT**

There being no further business the meeting adjourned. The time was 8:09 p.m.

These minutes were approved at the June 18, 2018 meeting of the Atlantic Beach Board of Adjustment.

Approved by:



Chair



Katrina Tyer, Clerk