



**Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
June 18, 2018**

Members Present

John Kurek, Chair
Gary Plough, Vice Chair
Eddie Briley
Vada Palma
Fred Dean
Michael Bosse, Alternate
Curt Winbourne, Alternate

Members Absent

David Cox

Others Present

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

Prior to the meeting, an Oath of Office was administered to Gary Plough by Katrina Tyer. His term will expire June 30, 2020.

CALL TO ORDER

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

ELECTION OF CHAIR AND VICE CHAIR

Plough made a motion *to nominate* John Kurek to serve as Chairman. Motion was seconded by Briley. Vote was unanimous. Motion carried, 5-0.

Kurek made a motion *to nominate* Gary Plough to serve as Vice-Chairman. Motion was seconded by Palma. Vote was unanimous. Motion carried, 5-0.

APPROVAL OF MINUTES

Palma made a motion *to approve* the March 19, 2018 Minutes. Seconded by Briley. Vote was unanimous. Motion carried, 5-0.

CASE VAR-18-03: 107 North Kinston

Opening remarks and swearing in of witnesses

Kurek provided an overview of the request by Rexanne Smith for a variance to rebuild a shed approximately one foot closer to the adjacent manufactured home than is allowed by Section 18.4.7.A.1.b.i.d.i of the UDO at 107 North Kinston Avenue.

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:

Glenn Herring, applicant's agent, 107 North Kinston Ave.
Michelle Shreve, Town Planner
Rexanne Smith, applicant and property owner

Kurek opened the hearing at 7:07pm.

Staff Presentation – Michelle Shreve

The applicant, Rexanne Smith, is requesting to rebuild a shed approximately one foot closer to the adjacent manufactured home than is allowed by Section 18.4.7.A.1.b.i.d.i of the UDO at 107 North Kinston Avenue. This

property is within the Commercial Corridor (COR) zoning district, formerly called General Business. This property is currently developed with a three-unit manufactured home park. Rexanne owns the land and one of the manufactured homes within the park. Glenn Fleming is a resident at another manufactured home in the park and has been assisting Rexanne with the process. Glenn and Rexanne have been working to upgrade the property with structures, landscaping, and decking. This past spring, Glenn and Rexanne removed a badly deteriorating shed and applied to rebuild in a slightly different footprint, which would not be permitted according to the UDO because it would be one foot too close to the adjacent manufactured home to the north. The shed cannot be placed within 5 feet of the septic system or on the street-side or "front" yards, so this general location is the only place that they can install a shed on the property. She believes they could rebuild a similar shed in the same footprint as before within the requirements of the ordinances, but they desire to build the shed with space between it and the manufactured home that it is associated with.

Staff responses to 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 eight property owners abutting the subject property and property owner were sent on May 29. 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. Under strict application of the Ordinance, the shed cannot be built in the desired location, and it is unlikely that they could build a new one somewhere else on the property other than the original footprint.
- 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. Subsection e of the manufactured home parks section of the UDO does not allow accessory buildings within the street-side yards. With septic systems occupying some of the available interior space, the resulting available area is limited upon which to place a shed.
- 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 var. shall not be regarded as a self-created hardship. The property owner removed the shed that needs to be replaced, but due to the condition that the applicant asserts that the shed was in, they did not have a choice but to remove it, rather than repair it. A demolition permit was not required.
- 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 supposes that granting this variance would not adversely affect public safety and would likely be consistent with the spirit, purpose, and intent of the UDO.
- 6) 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.

Michelle's Staff Report included in the agenda packet was admitted into evidence.

Plough questioned if the Town would be liable if they allowed the shed to be built closer to the other unit. Attorney Taylor stated he did not feel the Town would be liable, but only the fire marshal can determine fire safety.

Michelle confirmed she has not received any objections from adjoining property owners.

Applicant Presentation

Rexanne and Glenn presented together reading from the application. Glenn clarified the shed will be two feet from the mobile home to prevent rot and it will be one foot larger than the old shed.

They responded to the variance requirements:

- 1) Will unnecessary hardship result from strict application of the ordinance?

- Yes – they need the shed for yard tools, chairs and fishing equipment.
- 2) Does the hardship result from conditions that are peculiar to the property?
Yes – space is limited due to the location of the septic system, adjacent homes and the street.
- 3) Did the hardship result from actions taken by the applicant or the property owner?
The mobile home park was in existence prior to the need to replace the shed.
- 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 – continued upkeep is encouraged to all residents on the property.

The board did not have any questions.

Public Hearing

No public comment. No one was present in opposition.

Kurek closed the public hearing at 7:29 pm.

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 Michelle's testimony. Vote was 5-0.
- 2) Unnecessary hardship would result from the strict application of the ordinance. Vote was yes, 5-0.
- 3) The hardship does not result from conditions that are peculiar to the property, such as location, size or topography. Vote was yes, 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 yes, 5-0.
- 5) The hardship does not result from actions taken by the applicant. Vote was yes, 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 yes, 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. Vote was yes, 5-0.

Upon Attorney Taylor's reminder, Plough made a motion to approve the Variance Request with a condition that it be approved by the fire marshal. No one made a second.

The Board found all of the requirements for a Variance have been met and motioned *to grant* the Variance Request without condition to rebuild a shed approximately one foot closer to the adjacent manufactured home than is allowed by Section 18.4.7.A.1.b.i.d.i of the UDO at 107 North Kinston Avenue. Vote was unanimous, 5-0.

OTHER BUSINESS

None.

ADJOURNMENT

There being no further business the meeting adjourned. The time was 7:34 p.m.

These minutes were approved at the July 16, 2018 meeting of the Atlantic Beach Board of Adjustment.

Approved by:


Chair


Katrina Tyer, Clerk