



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

Members Present

Vada Palma
Norm Livengood
Curt Winbourne, Alternate
Neil Chamblee, Alternate
Fred Dean, Alternate

Members Absent

John Kurek, Chair
Eddie Briley
Michael Bosse, Alternate
David Cox, Alternate

*Gary Plough resigned on
Nov. 13, 2018

Others Present

Derek Taylor, Town Attorney
Michelle Eitner, Planner
Katrina Tyer, Clerk

Mayor Cooper
Councilmember Rich Johnson
Councilmember Austin Waters

Attorney Taylor advised the board to appoint a Chairperson for tonight's meeting. Winbourne made a motion *to appoint* by acclamation Vada Palma to serve as Chair. Seconded by Livengood. Vote was unanimous, 5-0.

CALL TO ORDER

Palma called the meeting to order at 6:02 pm and introduced those seated on the board.

EXCUSE ABSENT MEMBERS

Winbourne made a motion *to excuse* Kurek, Briley, Bosse and Cox. Seconded by Chamblee. Vote was unanimous, 5-0.

APPROVAL OF MINUTES

Winbourne made a motion *to approve* the August 20, 2018 Minutes. Seconded by Chamblee. Vote was unanimous, 5-0. Motion carried.

Mr. Yeomen was not present so the board agreed to put his case on hold until he arrived.

VAR-18-12: 409 A & B WEST BOGUE BOULEVARD

Opening remarks and swearing in of witnesses

Joan Leibert, property owner of 409 A and B West Bogue Boulevard, has requested a variance in order to combine her two lots into one that would be smaller than required by UDO Section 18.3.3.F.2.

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.

Joan Leibert and Michelle Eitner were sworn in by Katrina.

Staff Presentation

This property is within the Residential Single-family/Duplex (RSD) zoning district and was developed in 1979 as a quadraplex. Each unit is on separately deeded parcels "townhouse-style", with the parcel lines running along the dividing walls of each unit. As with most structures in Atlantic Beach, this quadraplex was damaged by wind and wind-driven rain during Hurricane Florence. Joan owns units A and B, the eastern half of the structure, and both units have been gutted to the studs at this point to remove all of the ruined insulation, drywall, ceilings, carpet, etc. Joan would like to take this need for rebuilding as an opportunity and combine the two sides into one unit to better serve her family. The issue is that a single-family home cannot span two lots and if the two lots are combined, they do not have enough square footage to equal a new conforming lot. This variance is a request to create this one lot, which would be 208.4 square feet smaller than required, to combine units A and B into one single-family home. This would actually reduce density, which was part of the goal when the UDO prohibited quadraplexes in this zoning district.

The floorplans provided by Joan show only minor exterior changes. The front door and back sliding door on unit B would be closed and replaced with windows. One front door and one back door, like most single-family homes, would be installed. All other renovation plans are interior and do not propose to change the number of bedrooms.

Michelle confirmed proper notice of the public hearing was given to adjoining property owners. Letters notifying the six property owners abutting the subject property and one to the owner of the subject property were sent on October 29 and a sign notifying the public of this hearing was posted on the property the same day.

Applicant Presentation – Applicant and/or Agent

Joan was a teacher for 25 years in Craven County. She bought Unit B in 1993 and Unit A in 2000. Her family has grown to include five grandchildren and the extra space is needed. She wanted to introduce letters from the adjoining property owners who do not oppose the plan, but was cautioned by Attorney Taylor the board could not consider them. She detailed some of the remodeling plans she has for the interior.

Response to the variance requirements:

- 1) *Will unnecessary hardship result from strict application of the ordinance?*
Yes, her grandson has special needs and sharing one home would enhance their family time.
- 2) *Does the hardship result from conditions that are peculiar to the property?*
Yes, if the units are combined into one unit the family can eat under one roof.
- 3) *Did the hardship result from actions taken by the applicant or the property owner?* No.
- 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, this upgrade would enhance family safety.

Public Hearing

No comments.

Palma closed the public hearing at 6:33 pm.

Board of Adjustment Discussion and Evaluation

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

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
Livengood – yes, due to family dynamics
Dean – yes, because they are dissolving an imaginary line
Winbourne – yes, denying this would be an unusual hardship on her family
Palma – agrees unnecessary hardship to the family, the outside of the structure will not be changed
Chamblee – this does not affect setbacks or cause a hardship to the neighborhood
Vote was 5-0.
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*
Livengood – yes, due to family dynamics
Dean – yes, because they are dissolving an imaginary line
Winbourne – yes, denying this would be an unusual hardship on her family
Palma – agrees unnecessary hardship to the family, the outside of the structure will not be changed
Chamblee – yes, a personal hardship is the only hardship
Vote was 5-0.
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
All voted no, noting applicant did not do anything to intentionally worsen the property. Vote was 5-0.
- 4) *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.*
Winbourne – yes, because it will be making the property better and more in line with what we want for the area
Palma – yes, because all conditions for a variance have been met
Chamblee- yes, but is concerned with setting precedence
Vote was 5-0.

Chamblee made a motion *to grant* the Variance Request to combine two lots at 409-A West Bogue Boulevard and 409-B West Bogue Boulevard into one lot. Seconded by Winbourne. Vote was 5-0.

VAR-18-13 and VAR-18-14: 137 SOUND DRIVE

Opening remarks and swearing in of witnesses

Jason and Sharon Yeomans request a variance to build a new single-family home that is two feet closer to the side property lines than required by Section 18.3.3.C.2 and five feet closer to the street-adjacent property line than required by Section 18.10.2.D.1.b. of the UDO at 137 Sound Drive within the Residential Single-family Wide yard (RSW) zoning district.

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.

Jason Yeomans was sworn in by Katrina. Michelle Eitner is still under oath.

Staff Presentation

The proposed house would be about 2,900 impervious square feet, including the two-car garage and pool. Michelle noted that there are three proposed variances on this site plan – two under consideration tonight, and one for review at another time regarding the driveway.

The neighboring structure with the shortest street setback, 135 Sound Drive, was built in 1997 and is approximately 2,000 square feet. The Yeoman's street setback is measured from that property, making the street setback 30.5 feet. The proposed structure exceeds that limit by 5 feet, but the majority of the proposed residence itself seems to meet the street setback requirement. As far as the side setbacks are concerned, the proposed site plan shows setback encroachment of about 2 feet on each side, for a total of 4 extra feet of width in the building envelope. There are some single-family districts that allow 5 foot setbacks like this, but the current requirements are for 7 foot side setbacks. The entire building envelope, including current setbacks and CAMA buffer, is about 2,800 square feet, or 36% of the lot.

Michelle confirmed proper notice of the public hearing was given to adjoining property. Letters notifying the five property owners abutting the subject property, and one to the owner of the subject property, were sent on October 29, and a sign notifying the public of this hearing was posted on the property the same day.

Applicant Presentation – Applicant and/or Agent

Jason Yeomans, 125 West Fort Macon Road, Atlantic Beach, feels his lot is subject to past building and history in the area. He feels some of the land was lost due to erosion and the location the bulkhead was built. He feels he is doing what he can do to make the lot buildable. The street setback is the major problem with construction on this lot due to meeting CAMA regulations on the waterside. He can reconfigure the side setbacks to meet the UDO requirements. When asked about the bulkhead, Yeomans assumes CAMA dictated where the bulkhead would be installed. He can tell from old GIS maps that the lot has eroded. One neighbor's bulkhead sticks out further than his. His bulkhead is even with the other neighbor's because they were owned by the same person at the time.

Response to the variance requirements:

- 1) *Will unnecessary hardship result from strict application of the ordinance?*
Yes, the neighbor's house is dictating and squishing his building, making it difficult.
- 2) *Does the hardship result from conditions that are peculiar to the property?*
Yes, the sea wall was installed approximately a year prior to him purchasing the property and it sets further back than the neighbor's lot.
- 3) *Did the hardship result from actions taken by the applicant or the property owner?*
No, he did not do anything to cause the hardship. It was out of their control.

- 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, they are not harming public safety. He understands the neighbor's lot dictating his setbacks area, but the neighbor's home sits closer to the water than his proposal.

Public Hearing

No comments.

Palma closed the public hearing at 7:17 pm.

Board of Adjustment Discussion and Evaluation

Palma polled the board members for VAR-18-13: 137 Sound Drive side setback:

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
No was the consensus of the board. Palma feels there is too much going on with that size lot; Winbourne feels the UDO set seven feet as the standard for a reason. Vote was 5-0.
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*
No was the consensus of the board. Palma feels it was clear what the parameters should have been when planning the house. Dean agrees. Vote was 5-0.
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
Yes was the consensus of the board. Chamblee noted if the home had been designed within the setbacks there would not be an issue.
- 4) *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.*
No was the consensus of the board. Winbourne stated because the intent of the UDO was to have a seven foot setback, as designed it is a lot of house on that lot. Palma agrees, the intent of the ordinance was to have certain setbacks that were not met. Vote was 5-0.

Chamblee made a motion *to deny* the Variance Request to build a new single-family home at 137 Sound Drive that is two feet closer to the side property lines than required by Section 18.3.3.C.2. Seconded by Winbourne. Vote was 5-0.

Break 7:23pm

Resume 7:27pm

Palma polled the board members for VAR-18-14: 137 Sound Drive street setback:

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
Winbourne yes, believes it is a hardship because there are other houses that have a setback closer to the street than allowed and other variances have been granted on the street. Livengood, yes, because you cannot build the house proposed on that lot. Dean, Palma, Chamblee all voted no.
Vote was 2-3.
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*
Palma stated there is nothing peculiar to the property like the rest of the street. Dean Agrees. Vote was 5-0.
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
Yes was the consensus of the board. Palma feels it could be designed smaller to fit the property. Vote was 5-0.
- 4) *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.*
No was the consensus of the board. Dean said it is not consistent with setbacks. Palma stated no because it did not meet requirements of the UDO. Vote was 5-0.

Livengood made a motion *to deny* the Variance Request to build a new single-family home at 137 Sound Drive that is five feet closer to the street-adjacent property line than required by Section 18.10.2.D.1.b.of the UDO. Seconded by Chamblee. Vote was 5-0.

VAR-18-06 through VAR-18-11: 600 AND 604 ATLANTIC BEACH CAUSEWAY

Opening remarks and swearing in of witnesses

Mary Cheatham King, agent for S and J Holdings LLC, has requested six variances in order to create three lots at that have smaller width and square footage than required by Section 18.3.5.D.2.

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.

Mary Cheatham King was sworn in by Katrina, Michelle Eitner is still under oath.

Staff Presentation – Michelle Shreve

These six cases, VAR-18-06, 07, 08, 09, 10, and 11, are requests for variances by Mary Cheatham King, agent for S and J Holdings LLC, in order to create three lots at 600 and 604 Atlantic Beach Causeway that have smaller width and square footage than required by Section 18.3.5.D.2. of the UDO. These properties are within the Commercial Corridor zoning district.

S and J Holdings LLC purchased the five lots a couple of months ago with the intention of development and/or redevelopment. Their first phase of work would be to build on the currently vacant lots addressed as 600 and 604 Atlantic Beach Causeway. They want to build three single-family homes – one to the left of The Insurance Center and two to the right. In order to do that, they would have to split the lots to have one lot for each individual structure. The UDO currently requires 60ft-wide lots with 6,000 square feet, which none of the three proposed lots have.

These properties were originally platted decades ago in 50ft-wide lots along the Causeway, which is why the lots are 100 feet wide now. The applicants have proposed to split the lots back into 50ft-wide lots at 604 Atlantic Beach Causeway. The lot on the left would have to be 47.5ft-wide, due to the location of The Insurance Center building on the lot. Each lot would have less than 60ft-width and less than 6,000 square feet, so there are two variances for each of the three lots.

Michelle discussed the option of a text amendment for the Commercial Corridor zoning district – allow 50ft-width and 5,000sf to be able to revert to the original plats. While that would suffice for lots 20 and 21, they would still have to get a variance to be able to split out 600 AB Causeway. (Note: this width and square footage requirement is the same as is in our low density residential zoning districts. The higher density residential districts, such as RSD and RMF allow 50ft-width and 5,000sf for single-family residential lots). The setbacks for the Causeway are different from other districts: where the lot line is adjacent to a residential use, a 10ft setback is required. Where the lot line is adjacent to a commercial or mixed use, a 0 foot setback is required. The street setback would be 10 feet and the rear setback is zero.

The Causeway is designated as an Urban Waterfront for CAMA permitting, which means that they can increase impervious surfaces within the 30ft buffer as long as they have engineered stormwater management, which is required for Atlantic Beach permitting anyway.

Michelle confirmed proper notice was given to adjoining property owners of the holding of the public hearing. Letters notifying the seven property owners abutting the subject property, and one to the owner of the subject properties, were sent on October 29, and a sign notifying the public of this hearing was posted on the property the same day.

Applicant Presentation – Applicant and/or Agent

Mary Cheatham King, 126 Camp Morehead Drive, Morehead City, detailed the plan of the developer for the property. The third request is smaller (47.5 feet) because they do not want to interfere with the current business on The Insurance center lot (610). Altering that business would affect the lease.

Response to the variance requirements:

- 1) *Will unnecessary hardship result from strict application of the ordinance?*
Yes, because the property was purchased to develop as residential units.
- 2) *Does the hardship result from conditions that are peculiar to the property?*
Yes, because the lot size requirements changed causing the hardship.
- 3) *Did the hardship result from actions taken by the applicant or the property owner?*
No, the developer did not do anything to cause the hardship, the UDO requirement changed.
- 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, because the lot lines were originally 50 feet. If this was a proposal to build a commercial building, there would not be a lot line.

Public Hearing

No comments.

Palma closed the public hearing at 7:36 pm.

Board of Adjustment Discussion and Evaluation

Palma polled the board members for VAR-18-06: 600 Atlantic Beach Causeway (Lot 23) width:

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
Chamblee – no, property was purchased knowing a 50 foot lot line was established
Livengood – yes
Dean – no, not complying with the UDO because it doesn't do what they want it to is not a hardship
Winbourne – no
Palma – no, it does not comply with the ordinance
Vote was 4-1, with Livengood voting yes.
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*
Winbourne – yes
Dean – yes, because lot size allowed in other places
Chamblee, Palma, Livengood all voted No. Vote was 2 yes; 3 no.
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
All voted yes because the lot was purchased with plans to develop knowing it did not meet the requirements of the UDO.
- 4) *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.*
No was the consensus of the board with Palma noting the UDO clearly requires more footage than they have.
Vote was 5-0.

Dean made a motion to deny the Variance Request adjusting the width of Lot 23 at 600 Atlantic Beach Causeway. Seconded by Livengood. Vote was 5-0.

Palma polled the board members for VAR-18-07: 600 Atlantic Beach Causeway (Lot 23) square footage:

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*
All voted yes, except for Chamblee. Vote was 4-1.
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
No was the consensus of the board. Vote was 5-0.
- 4) *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.*
No was the consensus of the board. Vote was 5-0.

Winbourne made a motion *to deny* the Variance Request adjusting the square footage of Lot 23 at 600 Atlantic Beach Causeway. Seconded by Chamblee. Vote was 5-0.

Palma polled the board members for VAR-18-08: 600 Atlantic Beach Causeway (Lot 21) width:

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
Palma, Winbourne and Livengood all voting yes. Chamblee and Dean voting no. Vote was 3 yes; 2 no.
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*
Winbourne, Palma and Livengood all yes.
Dean – no, too small
Chamblee – no, outside parameters of the UDO and their decision to do so.
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
Yes was the consensus of the board with Winbourne noting they bought the lot knowing it did not meet the requirements of the UDO. Vote was 5-0.
- 4) *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.*
No was the consensus of the board. Vote was 5-0.

Chamblee made a motion *to deny* the Variance Request adjusting the width of Lot 21 at 600 Atlantic Beach Causeway. Seconded by Winbourne. Vote was 5-0.

Palma polled the board members for VAR-18-09: 604 Atlantic Beach Causeway (Lot 21) square footage:

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
Winbourne – yes, unable to build on lot
Palma and Livengood, yes
Dean and Chamblee - no, not in compliance
Vote was 3 yes; 2 no
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*
Winbourne Palma and Livengood yes. Dean – yes, too small. Chamblee - no
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
Yes was the consensus of the board. Vote was 5-0.
- 4) *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.*
No was the consensus of the board. Vote was 5-0.

Winbourne made a motion *to deny* the Variance Request adjusting the width of Lot 21 at 600 Atlantic Beach Causeway. Seconded by Dean. Vote was 5-0.

Palma polled the board members for VAR-18-10: 604 Atlantic Beach Causeway (Lot 20) width:

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
Winbourne – yes, unable to build on lot
Palma and Livengood - yes
Dean and Chamblee - no
Vote was 3 yes; 2 no
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*
Winbourne, Palma, Dean and Livengood yes
Chamblee – no
Vote was 4 yes; 1 no
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
Yes was the consensus of the board. Vote was 5-0.
- 4) *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.*
No was the consensus of the board. Vote was 5-0.

Dean made a motion *to deny* the Variance Request adjusting the width of Lot 11 at 604 Atlantic Beach Causeway. Seconded by Winbourne. Vote was 5-0.

Palma polled the board members for VAR-18-11: 604 Atlantic Beach Causeway (Lot 20) square footage:

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
Chamblee – no
Winbourne and Palma - yes
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*
Chamblee and Palma – no
Winbourne, Dean and Livengood - yes
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
Yes was the consensus of the board. Palma noted the lot not properly sized. Vote was 5-0.
- 4) *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.*
No was the consensus of the board. Vote was 5-0.

Dean made a motion *to deny* the Variance Request adjusting the width of Lot 11 at 604 Atlantic Beach Causeway. Seconded by Livengood. Vote was 5-0.

OTHER BUSINESS

None.

ADJOURNMENT

There being no further business the meeting adjourned. The time was 8:28 p.m.

These minutes were approved at the February 18, 2019 meeting of the Atlantic Beach Board of Adjustment.


Katrina Tyer, Clerk

Approved by:


Chair