



**Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
August 20, 2018**

Members Present

John Kurek, Chair
Gary Plough, Vice Chair
Fred Dean
Vada Palma
Michael Bosse, Alternate

Members Absent

Eddie Briley
David Cox, Alternate
Curt Winbourne, Alternate
(present but left when not
needed)

Others Present

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

CALL TO ORDER

Kurek called the meeting to order at 6:00 pm and introduced those seated on the board.

EXCUSE ABSENT MEMBERS

Plough made a motion *to excuse* Briley due to recent marriage. Seconded by Palma. Vote was unanimous, 5-0.

APPROVAL OF MINUTES

Palma made a motion *to approve* the July 16, 2018 Minutes. Seconded by Plough. Vote was unanimous, 5-0. Motion carried.

CASE VAR-18-05:

Opening remarks and swearing in of witnesses

Joseph and Tonya Page have requested a variance to build a shed with covered patio in place of their existing shed at 224 Pelican Drive. The proposed shed/covered patio would be two feet from the rear and side lot lines, which is closer than allowed by Section 18.4.8.D.11.a.i.a. 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:

Joseph and Tonya Page
James and Kathy Bennett, opponents
Michelle Shreve, Town Planner

Staff Presentation – Michelle Shreve

Joseph and Tonya Page purchased the property in 2015 and have been working on updating the house, yard and existing shed. The property consists of two lots combined for one 100' x 100' lot. The principal structure, a doublewide, straddles the property lot line, everything on the property is generally in conformance with current setbacks, height, and impervious coverage limits. According to the UDO, residential accessory structures can be as close as five feet to the side property line and as close as 10 feet to the rear property line. This helps many property owners, since the required setbacks within the RSW zoning districts are seven feet from side and 20 feet from rear property lines.

When inquiring about permit requirements to replace and expand the existing deteriorating shed, Mrs. Page became aware that current regulations may not allow the replacement to occur. The existing shed is approximately 10'x12' and stands within the setbacks. They are proposing a 12'x16' building with an attached 12'x16' covered patio. The shed and covered patio is proposed to be built as close as two feet from the side and rear property lines, which would be three feet too close to the side property line and eight feet too close to the rear property line as allowed for residential accessory structures. The proposed shed is bigger and closer to the property lines than the current shed, but is similar in use.

Notification for this variance was made on July 31 by posting a sign on the property and letters sent to six neighboring properties. Herbert Loy of 407 Knollwood Drive came in town hall to discuss the variance request and stated that he had no objection to the request. Cathy Bennett of 405 Knollwood Drive called about the variance request and objects.

Staff responses to the items on the variance evaluation form:

- Unnecessary hardship would result from the strict application of the Ordinance.
Under strict application of the Ordinance, the proposed shed with covered patio will not be able to be built as close to the property line as desired.
- The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
The house existing on the lot is nearly centered on the lot, so there is as much front yard as there is back yard. Residential accessory structures can only be in the side or rear yards, so there are limited options as to where the shed can be placed upon the lot.
- 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.
Staff is unaware of actions taken by the applicant or property owner that would result in a 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 agrees that granting this variance would not adversely affect public safety and would likely be consistent with the spirit, purpose, and intent of the UDO.

Applicant Presentation

Mrs. Page clarified they intend to tear the current shed down and use the existing concrete slab for the covered patio area of the new shed. She explained that they are unable to move the shed closer to the home due to the ac units and decking. When asked why they could not put the shed on the other side of the property, she noted it was because of the driveway and they wish to keep it in the same footprint.

Response to the variance requirements:

- 1) Will unnecessary hardship result from strict application of the ordinance?
Yes – due to not being able to improve the storage building purchased with the property.
- 2) Does the hardship result from conditions that are peculiar to the property?
Yes – the home is positioned on the back half of the lot, limiting the area for a storage building.
- 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 – by updating the storage unit, it will upgrade the appearance of the property.

Public Hearing

James Bennett. 4547 Watson Seed Farm Road, Whitaker, NC and 405 Knollwood Drive. He asked for clarification again on where the shed will be located.

Kathy Bennett, 405 Knollwood Drive. She opposes this project because it is not in accordance with the ordinance. They do not want the shed within two feet of their property. They feel if they ever try to sell their property, the shed will be too close to their line. If the applicants step off of the property from the shed or drive a mower out, they will be trespassing on their property. They do not object to a shed, just not one that close.

Attorney Taylor asked applicant if they are requesting three feet or two feet from line, based on the site being flagged at three feet instead of two. Mr. Page respects his neighbor's opinions and requests two feet. Mrs. Page stated they asked for two feet and they are under the impression the board will make a ruling. Attorney Taylor asked the applicant again to determine if they want to keep the original petition amount of two feet or change to three. The applicants agreed that three feet is acceptable to them and even four feet, which would allow them to rebuild in the same footprint. They do not repeat this variance process.

Michelle confirmed if the variance request is denied, they can repair the existing non-conforming structure, but cannot make it more non-conforming.

Kurek closed the public hearing at 6:49 pm.

Board of Adjustment Discussion and Evaluation

Kurek 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. Vote was 5-0.
- 2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Yes, if they tear this shed down and build in the allowable area, the shed will be too close to the steps entering the home. There is only a small area to work with due to the home being centered on the lot. Vote was 5-0.
- 3) 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. No, the shed was already there when they purchased 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. Palma feels these ordinances are in effect for a reason, to protect neighbors and provide them space. Plough agrees, but so many other things in town are non-conforming. Vote was 4-1, with Palma voting No.

Kurek made a motion *to grant* the Variance Request to build a new shed with covered patio in place of the existing shed, as close as 4 feet from the rear property line and as close as 3 feet from the side property line at 224 Pelican Drive. Seconded by Dean. Vote was 4-1, with Palma in opposition.

ADJOURNMENT

There being no further business the meeting adjourned. The time was 6:58 p.m.

These minutes were approved at the October 15, 2018 meeting of the Atlantic Beach Board of Adjustment.

Approved by:



Chair



Katrina Tyer, Clerk