



**Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
February 18, 2019**

Members Present

John Kurek
Eddie Briley
Michael Bosse, Alternate
Vada Palma
Fred Dean, Alternate
Neil Chamblee, Alternate (dismissed prior to meeting starting)

Members Absent

Norm Livengood
David Cox, Alternate
Curt Winbourne, Alternate

Others Present

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

CALL TO ORDER

Kurek called the meeting to order at 6:03pm and introduced those seated on the board. The agenda was amended to include the annual appointment of chair and vice chair.

ELECTION OF CHAIRMAN AND VICE CHAIR

Attorney Taylor advised the board that per the UDO, it was time to appoint a new chairman. Kurek advised he intends to resign from the board in June, following his retirement.

Palma made a motion *to nominate* Eddie Briley to serve as Chairman. Kurek made a motion *to appoint* by acclamation Eddie Briley as Chairman. Motion was seconded by Briley. Vote was unanimous. Motion carried, 5-0.

Chairman Briley took the chair seat and presided over the remainder of the meeting. Kurek made a motion *to nominate* Vada Palma to serve as Vice-Chairman. Briley made a motion *to appoint* by acclamation Vada Palma as Vice-Chairman. Motion was seconded by Dean. Vote was unanimous. Motion carried, 5-0. Attorney Taylor stated the minutes should reflect this was a peaceful changing of the board.

EXCUSE ABSENT MEMBERS

Kurek made a motion *to excuse* Livengood. Seconded by Dean. Vote was unanimous, 5-0.

APPROVAL OF MINUTES

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

VAR-19-01: 309 ATLANTIC BEACH CAUSEWAY

Opening remarks and swearing in of witnesses

Garry Potts of Professional Permits, agent for property owner Thuraia Hamad, has requested a variance to rebuild the Scotchman/Exxon gas station fuel pump canopy two feet from the property line along Old Causeway Road, which is eight feet closer than allowed in Section 18.3.5.D.2 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.

William Barlow, Construction Project Manager, Wilmington NC and Michelle Eitner were sworn in by Katrina. Chairman Briley opened the public hearing at 6:18pm.

Staff Presentation

Michelle provided a brief review of the request to rebuild the canopy that fell during Hurricane Florence and was removed from the site soon after. The applicant first contacted our office to inquire about building permits the week after Thanksgiving, and through discussion it was determined that the project did not meet the ordinance. Oftentimes with damage from storms or fire structures are grandfathered, or are protected under ordinances specifically allowing nonconforming structures to continue.

A gas station fuel pump canopy is not protected the same way. This proposal is to rebuild the canopy the same size, shape, height, and location prior to damage. The site plan shows the canopy about two feet from the property line along Old Causeway Road, and the ordinance requires a 10 foot street setback. This lot is peculiarly shaped, as the two roads it abuts do not meet at a right angle. Letters notifying the seven property owners abutting the subject property were sent on January 29 and a sign notifying the public of this hearing was posted on the property the same day. Staff received an inordinate amount of phone calls and emails from residents at North Shore Mobile Home Park due to a misunderstanding on what the applicant was requesting. It was explained to the residents that the canopy was not going to be installed two feet from the road, but two feet from the lot line, which is about 40 feet apart. Once the relation of the lot line to the edge of the paved street was explained, all concerned residents rescinded their complaints. For reference, the property line along AB Causeway is about 75 feet from the edge of the paved street.

Applicant Presentation – Applicant and/or Agent

Chairman Briley read the applicant's responses to the requirements provided in the application:

- 1) *Will unnecessary hardship result from strict application of the ordinance?* Yes, the strict application of the ordinance will prevent us installing a new fuel canopy in the exact footprint of the previous fuel canopy.
- 2) *Does the hardship result from conditions that are peculiar to the property?* Yes, the lot is pie-shaped and the setback along Old Causeway Road of 10' cannot be met because of the shape of the lot and canopy.
- 3) *Did the hardship result from actions taken by the applicant or the property owner?* No. The hardship was created when the hurricane destroyed the fuel canopy and it was determined that the replacement canopy was too close to the setback along Old Causeway Road.
- 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, the request is consistent with the spirit and intent of the Ordinance. The fuel canopy will have a clearance of 15'-6' and although is technically within the 10' setback, it does not pose a public safety risk as vehicles and pedestrians will not be negatively impacted by its proposed location at such height.

The applicant adopted this as his testimony and explained that the proposed canopy will be a rectangle, not trapezoid shape so it will actually be smaller.

Public Hearing

No comments.

Board of Adjustment Discussion and Evaluation

Briley polled the board members and each agreed by vote of 5-0 the following criteria have been met:

- 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.*
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*
- 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.*

Kurek made a motion to grant the Variance Request to rebuild the Scotchman/Exxon gas station fuel pump canopy two feet from the property line along Old Causeway Road, which is eight feet closer than allowed in Section 18.3.5.D.2 of the UDO. Seconded by Dean. Vote was 5-0. The time was 6:29 pm.

OTHER BUSINESS

Michelle proposed to the board presenting 30-minute training sessions prepared by the School of Government. All members agreed to meet at 5:30pm for the next few meetings to receive the training sessions.

ADJOURNMENT

There being no further business the meeting adjourned. The time was 6:40pm. These minutes were approved at the January 21, 2020 meeting of the Atlantic Beach Board of Adjustment.


Katrina Tyer, Clerk

Approved by:


Eddie Briley, Chair