



**Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
January 21, 2020**

Members Present

Eddie Briley
Michael Bosse
Vada Palma
Harrison Smith
Curt Winbourne, Alternate

Members Absent

Norm Livengood
Neil Chamblee, Alternate

Others Present

Derek Taylor, Town Attorney
Arey Grady, Board Attorney
Jerry Eatman, Attorney for Jim and Katie Ward
John Way, Attorney for Appellants
Katrina Tyer, Clerk
Michelle Eitner, Planner
Nick Krebs, Planner

Fred Dean, Alternate was present for the training session, but left after the board was seated for the regular meeting.

Katrina swore in Harrison Smith and Michael Bosse prior to the meeting. At 5:03pm, Chairman Briley instructed the Clerk to begin the UNC School of Government training "Appeals of staff decisions and interpreting the ordinance". The training lasted approximately 40 minutes and then the board had a break and dinner.

CALL TO ORDER

Chairman Briley called the meeting to order at 6:00pm and the members seated on the board introduced themselves. Also present were Arey Grady, Board Attorney, and Katrina Tyer, Secretary to the Board.

EXCUSE ABSENT MEMBERS

Winbourne made a motion *to excuse* Norm Livengood due to sickness. Seconded by Palma. Vote was unanimous, 5-0. Alternate member Fred Dean was dismissed.

APPROVAL OF MINUTES

Bosse made a motion *to approve* the February 18, 2019 Minutes. Seconded by Winbourne. Vote was unanimous, 5-0. Motion carried.

ELECTION OF CHAIRMAN AND VICE CHAIR

The UDO requires a Chair and Vice Chair to be elected for one-year terms at the first meeting of every calendar year. Palma made a motion *to nominate* Eddie Briley to serve as Chairman. Seconded by Bosse. Vote was unanimous, 5-0. Motion carried.

Winbourne made a motion *to nominate* Vada Palma to serve as Vice Chair. Seconded by Bosse. Vote was unanimous, 5-0. Motion carried.

APPEAL- 20-1: 204 GLENN STREET

Opening remarks and swearing in of witnesses

Chairman Briley began the meeting by stating: The North Carolina State Supreme Court requires this Board base its decisions only on testimony given under oath. Any other comments can only be used as arguments and not as evidence in the case being presented. This is a quasi-judicial hearing and as such will be conducted according to special rules that must be followed. This citizen volunteer Board cannot make ordinances or change them, but can only act on the ordinances that have been voted on and approved by the Town Council and interpret them based on evidence presented for each case. We will now hear an appeal of the Planning & Inspection Departments' issuance of permits for land disturbance and floodplain development for filling and grading on 204 Glenn Street. This hearing is judicial in nature and will be conducted in accordance with special due-process safeguards.

Chairman Briley polled the board members to reveal possible conflicts and to withdraw from the case if necessary. Each board member confirmed they did not have a financial interest, personal interest or fixed opinion in the case. They have not had any conversations or received any correspondence regarding this matter prior to this hearing, other than the information packets provided by staff. They do not have any information or special knowledge about this case that may not come out at the hearing.

Attorney Taylor and the parties associated with the case confirmed they did not have any objections to any of the seated board members.

All potential witnesses were sworn in as a group by Katrina.

Chairman Briley continued: This is an appeal of a decision of the Planning and Building Inspection Department. If an appellant does not agree with a decision of the department, they may appeal such a decision to the BOA in the form of a request for Administrative Review. In this case, five neighboring property owners have appealed the issuance of a land disturbance permit to Ward Holdings LLC at 204 Glenn Street.

Chairman Briley opened the hearing at 6:09pm.

Staff Presentation

Attorney Taylor's Opening Statements

Attorney Taylor explained to the board their job tonight was to listen to the testimony and decide if the Town's decision met the ordinances. This appeal is for the issuance of two permits at 204 Glenn Street, Land Disturbance and Floodplain Development. If the permit meets the ordinance, the board must uphold it. Michelle will explain how the decision was made. Nick will testify to the flood plain ordinance and requirements. Chase Cullipher will testify to the plan and why it was designed the way it was. Jonathan McDaniel was hired by the Town to review and give opinion on the Cullipher plan. The board is going to hear a lot about flooding, that is not the issue before the board. The issue is also not about enforcement

Michelle's Presentation

Michelle Eitner, Planning and Inspections Director, provided her education, training, and certifications to the board then proceeded with background information on the case.

Aside from the CAMA Minor permit issued in Spring of 2019, the first permit for development at 204 Glenn Street was issued in July 2019. While it is not typical to receive an application for a land disturbance permit without a building permit application, we knew the structure would follow soon behind because of the CAMA Minor permit we had issued earlier that year, and because the footprint of the anticipated structure is shown on the plans. Through discussion with concerned neighbors following the start of work, we became aware of some issues with the plans submitted with the first permit application. For one, filling and grading qualifies as development, and as this project is in the floodplain, warrants a floodplain development permit. Most floodplain ordinances and requirements have to do with buildings, and we did not have a building application yet. We compiled a list of concerns with the project and sent them to the development group (engineer Chase Cullipher, architect Maggie Chalk, contractor Eddie Cameron, and developer/property owner Jim Ward) requesting they re-submit their plans to address the concerns. The Application Details is the third page of the Board's information packet. The development group submitted revised plans to address the list of concerns, and provided them in two separate pages so that all the details would not crowd. The additional floodplain development requirements were outlined on the plan and certified by the engineer. Through discussion with the State Floodplain Manager's office in Raleigh we became aware of a floodplain development provision that prohibits the use of an erosion control stem wall within the VE flood zone. Nick will discuss that in more detail, but this is essentially an issue raised with the proposed construction of a house that we have not yet seen structural plans for or permitted. Because proceeding with this land disturbance plan would bring an issue with permitting the house later, the development group rescinded their application so that they could redesign the plan, removing the wall and addressing other issues. That brings us to the permit we are discussing today. We received the updated plans with the grading further changed so that the future issue with the building was removed. She reviewed the plans for compliance with land disturbance requirements and Nick reviewed the plans for floodplain development requirements and found the plan to be compliant.

With such concern and scrutiny from the neighbors, we hired a third-party engineer, Jonathan McDaniel of Bell and Phillips, to review the plans to ensure all the details and ordinances were followed. He had recently submitted several plans for other properties in Town that were compliant with our land disturbance and floodplain ordinances. Mr. McDaniel met with Michelle on site to walk the property, knowing of course that the fill placed on the lot was for a prior plan and would not remain under the currently discussed plan. They discussed some of the details of the plan, such as the proposed swales. He pointed out that the 8.5ft MSL finished floor elevation of the yet-to-be proposed structure would be similar to that of the duplex at 206 Glenn Street. Mr. McDaniel submitted a signed and sealed report on November 6.

Having finished staff reviews and with extra assurance from a third-party engineer's review, we issued the land disturbance permit on November 8. The permit application, engineered plans, third-party engineer's report, permit record, land disturbance plan review, floodplain development plan review, and permit card have been included in the Board's information packet.

The Land Disturbance Permit ordinances were updated this spring and adopted in May 2019. They were updated again in November. The permit discussed tonight was issued under the May version of the ordinance, the only version being discussed.

This permit is only for land disturbance, the filling and grading as proposed in the plans. Each permit submitted identifies which reviews are necessary (land disturbance, zoning, floodplain, or building). We do not issue separate permits for each type of review. This land disturbance permit has been reviewed for compliance with land disturbance and floodplain ordinances. We have not reviewed the zoning requirements, such as stormwater retention for impervious surfaces, as no impervious surfaces are proposed under this permit. The land disturbance permit is applicable to this project as fill, grading, or disturbance or land.

Michelle passed out a copy and reviewed Ordinance 18.2.4.M: Chapter 18, Unified Development Ordinance; Article 2, Procedures; Section 4, Specific Review Procedures; Subsection M, Land Disturbance Permit.

1. *Applicability. In order to avoid groundwater contamination, sediment accumulation in drainage conveyances and surface waters, unnecessary loss of erodible soils, and increased stormwater runoff onto abutting lots, land-disturbing activities require approval of a land disturbance permit in accordance with this section, prior to commencement. For the purposes of this section, "land-disturbing activities" include any fill, grading, or disturbance of land other than activities listed in Section 18.2.4.M.2, Exemptions.*
2. *Exemptions. The following activities are exempted from the requirement to obtain a land disturbance permit:*
 - a. *Land-disturbing activities subject to permit approval by the North Carolina Department of Environmental Quality;*
 - b. *Gardening and landscaping that does not alter the preexisting topography;*
 - c. *Movement of sand or soil in an amount not exceeding one hundred (100) square feet of surface area*
4. *Land Disturbance Permit Review Standards.*
 - b. *An engineered plan is required if the project alters the pre-existing topography of the subject lot and/or includes fill. A land disturbance permit with an engineered plan shall be approved provided that:*
 - i. *Land disturbance may not increase the amount or velocity of stormwater onto abutting lots.*
 - ii. *The first two inches of stormwater generated from new impervious surfaces are retained on site in accordance with*
 - iii. *Fill is shown as allowed only in the following instances:*
 1. *As required by onsite wastewater system permit issued by the County*
 2. *As required by the NC Building Code in order to drain surface water away from building foundations. The amount of fill shall be limited to the amount required to achieve minimum standards stated in the NC Building Code.*
 3. *As necessary under driveways and walkways to connect a structure to the street.*
 4. *As necessary to provide a consistent grade between the above elements provided that no fill is placed within 5 feet of a property line.*
 - iv. *Stormwater runoff in excess of the retained two inches may leave the subject parcel provided that:*
 1. *The excess stormwater runoff does not increase the amount or velocity of stormwater onto abutting lots.*
 2. *The excess stormwater runoff is not diverted into a piped conveyance towards the property line.*
 3. *The excess stormwater runoff is sheet-flowed through vegetated conveyances, such as swales.*
 4. *The sheet-flowed excess stormwater runoff flows into swales or other approved retention method within the Town-owned right-of-way, to be installed and maintained by the applicant.*
 - v. *Activity requiring a land disturbance permit shall not cause sediment, trash, debris or other material to leave the site subject to the permit;*
 - vi. *Disturbed land shall be stabilized by vegetation, mulching, sodding, or other approved means no later than twenty-one (21) days after the land-disturbing activity takes place.*
 - vii. *Silt fencing or other approved soil erosion prevention device shall be installed along the perimeter of the project for the duration of the work.*
 - viii. *The plan is designed and sealed by a Professional Engineer licensed by the State of North Carolina*
 - Section 4.b is required for this permit because they have proposed to alter the pre-existing topography and use fill (subsection a applies to smaller projects).
 - Section 4.b.i. states, land disturbance may not increase the amount or velocity of stormwater onto abutting lots. The use of "abutting lots" is very deliberate, as Mayor Cooper and Council intended to protect the neighboring lots and allow

overflow to the street. On the page labeled Land Disturbance Plan, there is a section of wording in the center of the page with the heading Town of Atlantic Beach Engineering Certifications. Certification number one states, "Upon completion of development, runoff from this site shall not flow onto abutting lots with an increase in volume or velocity during normal rain events." This suffices for subsection i.

- The next subsection harkens to the stormwater retention requirements for impervious surfaces, but since no impervious surfaces are proposed, no review was necessary.
- Section 4.b shows the four instances where fill can be allowed. The first allows fill for a septic system, this does not apply to this project, but on the sound-side it is a very important provision. The second provision allows fill as necessary for positive drainage as required by the Building Code. In the Engineering Certifications section of the Land Disturbance Plan, you will see that certifications numbered 6 and 7 identifies that the fill material is provided as necessary for positive drainage due to conditions on this lot. This suffices for this provision. The third provision allows for fill to be utilized under a driveway to connect the structure to the street. Certification number 2 identifies that fill under the driveway is to connect it from the parking slab under the structure to the street. This suffices for this provision. The fourth provision allows for fill between the first three items to create a continuous grade, as long as no fill is placed within 5 feet of a property line. We can see on the plans that swales are proposed within the 5 feet of the property line on both the west and east sides, such that there is a reduction in elevation within this 5 feet. Engineering certifications numbered 3 and 4 address the location of these swales and confirms that no fill will be placed within 5 feet of the property line. The two cross sections found below the engineering certifications show the proposed configuration of these swales, both on the west and east sides, showing the reduction in elevation below existing grade. These suffice for this provision.

There is currently fill within 5 feet of the property line. A considerable amount of filling and grading work was done under the first issued permit, prior to raised concerns by the neighbors, and they did not get to finish moving everything around. This existing fill will not remain as it stands now and is not compliant with the currently issued permit. The site as it stands now is not indicative of the proposed finished product being reviewed tonight.

- Roman number four provides for stormwater runoff in excess of that required to be retained. This was drafted by Mayor Cooper and adopted by Council.
 - Subsection one rehashes that the stormwater cannot increase in amount or velocity onto abutting lots, which we saw sufficed in Engineering Certification number 1.
 - Subsection two prohibits piped conveyances, which this plan does not have.
 - Subsections three and four require that excess stormwater flow through vegetated conveyances such as swales that are installed and maintained by the applicant. Engineering certification number 5, the swale cross sections, and proposed topographical changes show that these swales are provided. The property line essentially ends two feet from the edge of the paved street, so there is no space within the Town-owned right-of-way to install these swales.
- Roman number five requires that sediment, trash, debris, and other materials must stay on site. This is a standard requirement for any permit, but is especially important for land disturbance permits as unconsolidated sediment can blow and flow away. Staff has implemented a weekly town-wide patrol to ensure that all permits are in compliance with requirements like these.
- Roman number six requires that disturbed land must be stabilized after land disturbance takes place. Since land disturbance was not complete, the land was not stabilized prior to the application for appeal. As we know, the application for appeal calls for a "stay of execution", which requires that no further work be done on the project while the appeal is under review. That is why the project has been on hold on and off through reviews of permits and one prior application of appeal.
- Roman number seven requires that silt fencing or other soil erosion prevention device be installed for the duration of the work, which is pretty standard for land disturbance projects. This is enforced during our weekly patrols.
- Roman number eight requires that the plan be designed and sealed by a North Carolina Professional Engineer. Chase Cullipher, the Professional Engineer, is here tonight.

The permit was issued on November 8 following consideration of all of these applicable ordinances. An email was sent from Town Manager David Walker to Wally Courie, and copied Jim Ward, Susan Hatchell, Flavius Hall, Katrina Tyer, me, Derek Taylor, Betty Odham, Chase Cullipher, and John Way with the approved plans attached. This email advised that the new plans were approved and the permit was issued effective that day, and discussed further steps depending on whether the recipient wanted to appeal the issuance of the permit or not. The deadline for appeal of a decision is 30 days from the date that the decision was made known, so the deadline for application for appeal was December 9.

An application for appeal was made in opposition for the issuance of this permit on December 3 via email from Wally Courie to Michelle, and copied Susan Hatchell, LC Beck, Tom O'Briant, David Boul, John Way, and Flavius Hall. This email had an

attached appeal application form, which has been included in the Board's information packet as the second page. The form lists several neighbors, which are included in the Application Details (the third page of the packet). The description of appeal reads, "Land disturbance permit 3315 and associated flood permit, grading, and drainage plans because they do not comply with UDO sections 18.6.1 and 18.2.4.M." We have not approved anything under Section 18.6.1, which requires stormwater retention for impervious surfaces and they have not applied to build any impervious surfaces yet, so we are to focus simply on the appeal of 18.2.4.M, which is the land disturbance permit procedures that were just reviewed.

No further information or description was offered on the basis of the appeal in the application form or email. It stated that the appellants "appreciate the progress that has been made, but feel there is more improvement necessary." within the submission email. The basis of appeal needs to accompany the appeal submission, so Attorney Taylor emailed Wally Courie and copied Michelle on December 11 asking whether the prior appeal submittal should be considered to be the supporting documents for the current appeal or if they would be submitting additional or new documentation. To my knowledge, no response was made to that email, so we move forward with only the application form for the basis of the appeal.

The three emails dated November 8, December 11, and December 11 had been previously passed out to the board and appellants. There were not any objections from the parties or attorneys to admittance as evidence. Michelle requested that her report and the agenda packet also be entered into evidence. There were not any objections.

Chairman Briley asked Michelle if she could think of anything she missed. She confirmed not on the Land Disturbance Permit. Attorney Taylor asked Michelle if she thought the permit met the ordinances. She stated yes. Appellant attorneys did not have any questions for Michelle.

Nick's Presentation

Nick Krebs, with the Town's planning staff introduced himself and provided his background and education. As a Certified Floodplain Manager "CFM", he is required to attain 16 Continuing Education Credits every 2 years. Last year, he spent 40 hours in the classroom and over 9 months studying for the CFM exam.

He started with a very brief overview of what governs floodplain development in Atlantic Beach. The federal government (FEMA) has a set of regulations on development in areas that are designated as Special Flood Hazard Areas (also known as the floodplain). In order for homeowners in these areas to be eligible for federal flood insurance, municipalities must adopt regulations that are consistent with the federal standards found in the Code of Federal Regulations, Title 44, Section 60.3. To make this easier for municipalities in North Carolina, the state created a model flood damage prevention ordinance based on the federal requirements. Our ordinances follow this model and therefore reflect the federal requirements. To simplify, floodplain development must comply with both federal and town regulations, which are basically one in the same.

He reviewed the following Unified Development Ordinances for the Board:

Section 18.6.3.B.3 Establishment of Floodplain Development Permit

A floodplain development permit shall be required in conformance with the provisions of these standards prior to the commencement of any development activities within special flood hazard areas as determined in Section 18.6.3.B.2, Basis for Establishing the Special Flood Hazard Areas.

Development includes filling and grading. 204 Glenn Street is within the VE11 SFHA, therefore this project requires a floodplain development permit from the Town.

Section 18.6.3.B.6 Interpretation. *In the interpretation and application of these standards, all provisions shall be:*

b) Liberally construed in favor of the applicant; and

We typically issue floodplain development permits for structures in the floodplain, and most of our ordinances as well as the federal regulations and recommendations are geared toward regulating structures. There is only one relevant section regarding fill, but there is another section relevant to all applications for floodplain development permits. While this floodplain development permit is very straight forward, we are required to abide by this ordinance if there is a need for interpretation.

Section 18.6.3.D.2.e Nonstructural Fill. *Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios, and walkways, provided:*

- i. The fill material is similar and consistent with the natural soils in the area;*
- ii. The placement of site-compatible, non-structural fill under or around an elevated building is limited to two (2) feet;*

- iii. *Fill greater than two (2) feet in thickness shall include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runoff and wave reflection that would increase damage to adjacent elevated buildings and structures;*
- iv. *Nonstructural fill with finished slopes that are steeper than five (5) horizontal units to one (1) vertical unit shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runoff and wave reflection that would increase damage to adjacent elevated buildings and structures.*

- Section i. On the plans, under FEMA Technical Bulletin 5 Notes on the right hand side of the page, note 4 clearly states that Fill Material shall be similar to natural soils in the area and free of large rocks or debris.
- Section ii. On the plans, FEMA Technical Bulletin 5 Notes it clearly states that the maximum depth of fill under the frangible slab is 13 inches and does not require engineering analysis.
- Section ii. Because the fill shown on the site plan is less than 2 feet, this does not apply and an analysis is not required.
- Section iv. Because the cross sections on the site plan show a maximum finished slope of 5:1, this also does not apply and an analysis is not required.

Lastly, he reviewed some of the guidance from the federal level. FEMA produces technical bulletins that provide guidance for compliance with the Code of Federal Regulations. Technical Bulletin – 5 (or TB-5) provides guidance on the NFIP regulation concerning obstructions to flood waters below elevated buildings and on building sites in Coastal High Hazard Areas (Zones V, VE and V1-V30). Slabs should be frangible (break away), “floating” slabs that are supported by compacted soil, are not attached to the building foundation, and are designed and constructed with a maximum thickness (traditionally 4 inches), without reinforcement and without turned down edges.

The issue of fill in the V-zone special flood hazard area guidance can be found on pages 21-24. He highlighted the relevant considerations that are mentioned in this document.

- Type of fill. FEMA states that if the fill is similar to and compatible with natural soils, there is no need for communities to require designers to investigate or certify whether the fill has a tendency for “excessive natural compaction” (a common requirement in many floodplain regulations). The plans clearly state that the fill will be similar to the natural soils in the area.
- Height or elevation of fill. FEMA states that “Generally, it is unreasonable to expect that the addition of 1 to 2 feet of site-compatible, non-structural fill in a V zone will lead to adverse effects on buildings. Thus, placement of up to 2 feet of fill under or around an elevated building can be assumed to be acceptable (without engineering analysis or certification).” The plans show less than 2 feet of fill, so the amount proposed is acceptable.
- Site drainage requirements. FEMA states that “Much steeper slopes (generally one unit vertical to three units horizontal, or steeper) are required to enhance wave run up.” The plan shows a maximum slope of 5:1, so there are no concerns here.
- Compaction of fill. FEMA states that “For floodplain management purposes, compaction of fill below and around elevated buildings in order to support parking slabs, in-ground pool decks, patios, sidewalks, and similar site amenities is consistent with the intent of the regulations.” While a slab has not yet been permitted, we know that this is the reason for filling and grading and FEMA clearly finds this intent to be consistent with the intent of the federal regulations.

In summary, the site plan clearly shows that the proposed project either meets or exceeds all of the applicable TB-5 recommendations and is also consistent with the Town’s flood damage prevention ordinances.

Attorney Taylor advised staff cannot make comments on the plan for the home since plans have not submitted yet. Attorney Eatman wanted confirmation that Nick Krebs qualifications as an expert were admitted into the record.

Presentation of Witnesses

Chase Cullipher, 505 Kysers Cove Lane, Beaufort, NC. He is the Vice President at The Cullipher Group. License number 37378. He grew up in Carteret County and graduated in 2006. He spent some time working in the RTP and moved home in 2015, working with his father at Stroud Engineering. Presently he and his father own The Cullipher Group. He has been a licensed engineer for 10 years.

Attorney Taylor asked Cullipher how many of these types of permits has he applied for. He stated about 25 working with Michelle and about the same with the prior Planner. He has probably applied for another 30-40 similar in nature.

There were no objections from the attorneys as to Cullipher's qualification as an expert in engineering and his testimony as to whether this permit was issued properly.

Cullipher testified that he has worked with the Town's public works department regarding drainage in this area. Under the current rules Easements are needed on either side of the property. At the time he worked the site with the Town he did not realize he would be working with the property owner.

Cullipher identified the plans in the agenda packet and certified they contained his seal. Attorney Taylor requested they be admitted into evidence. There were no objections.

Cullipher testified in his effort to save paper he tries to fill everything on one page. Due to that he was asked to submit more detailed plans to the Town. He reached out to the Dept. of Public Safety and was told they had no objections to the plan except the wall had fill material. He was told he could have the wall, but not fill material. He got rid of the breakaway wall and submitted this third plan. He worked with Nick and Michelle and made sure each item was addressed. In his effort to get the revisions back out so fast, an error was made. He had to check stormwater calculations to ensure land disturbance/flood compliance. He does not want to talk about stormwater since that is not what they are here for, but he did have to address it in his review.

Chairman Briley asked if the plan meets everything it is supposed to. Cullipher confirmed it did. Chairman Briley did not see any need to proceed. There were no objections from the board. Cullipher noted Michelle has already reviewed the plans.

Cullipher reviewed FEMA's Technical Bulletin 5 Memo which states: If the fill is similar to and compatible with natural soils, there is no need for communities to require designers to investigate or certify whether the fill has a tendency for "excessive natural compaction. And placement of up to 2 feet of fill under or around an elevated building can be assumed to be acceptable (without engineering analysis or certification). For floodplain management purposes, compaction of fill below and around elevated building in order to support parking slabs in-ground pool decks, patios, sidewalks, and similar site amenities is consistent with the intent of the regulations

In conclusion, it is his professional opinion that the plans and permits adhere to the Town of Atlantic Beach Unified Development Ordinance per sections: 18.2.4.M – land disturbance permit and 18.6.3 – flood damage prevention; as well as the FEMA Technical Bulletin 5.

Attorney Taylor asked him to confirm what a sealed document is. He stated that it is prepared under his supervision and he approved it, meaning he is liable.

Attorney Way asked him about the drainage issue on the side of the property. Cullipher stated at the time, he knew easements were needed. He did not know if the problem had been resolved yet. Attorney Taylor objected that it is not part of the testimony. Attorney Way reminded that Cullipher brought it up as part of his testimony. Attorney Taylor clarified that he brought it up to detail his knowledge of the property and objected that as far as testimony is concerned, we need to speak on this specific lot. The current proposed plan for the Ward property meets the Town's requirements. These are 2 separate issues. Attorney Taylor qualified as before, there has not been a house permit yet.

Attorney Eatman confirmed the easement is on his desk and parties are waiting for the case to be over before signing.

Wally Courie (appellant) directed Cullipher's attention to catch basin, asking if it impacts the swale design. Cullipher stated it is not relevant to this hearing from what he understands. Courie then asked if Cullipher had tested or taken post hole diggers to test the area. Attorney Taylor interjected asking if that was a requirement for him to obtain the permit. Cullipher stated no. Cullipher was asked if you needed fill for positive drainage. He replied yes, for the surface to be flat and to support a vehicle. Attorney Taylor rephrased the question and asked if you always need fill for positive drainage. Cullipher confirmed you do for this lot.

There were no further questions for Cullipher.

Jonathan McDaniel, 114 Elm Street, Swansboro. He grew up in Morehead City. He is the Vice President of Bell and Phillips in Jacksonville and works from the satellite office in Swansboro. His License number is 37928. He has been a licensed engineer for 9 years. His primary experience in Onslow County. His work ranges from single family to multiple acres of development. He was the engineer on the RV Resort project. The resort had a history of drainage problems since developed in the 1950s. He

developed a drainage fix a year before Hurricane Florence and they did not have any problems from Florence. He has completed three land disturbance permits in Atlantic Beach. He was presented the plan and the Town ordinances for his review. He thinks Atlantic Beach is a unique scenario since they do not have an engineer on call or retainer. The Town's ordinance was not very lengthy. He used to work with Stroud Engineering so he has experience looking at Cullipher's work. They have a good reputation, but are also a competitor. He found the land disturbance permit compliant with the Town's ordinances.

There were no objections from the attorneys as to McDaniel's qualification as an expert in engineering and his testimony.

There were no questions for McDaniel.

Attorney Taylor asked McDaniel to identify the November 6, 2019 letter in the agenda packet. He confirmed it is his professional opinion and contains his license number. Attorney Taylor requested, based on his experience and qualifications, to admit the letter into evidence. There were no objections. McDaniel began to give an example of another project. Attorney Way objected as it was not related to the case. Mr. Currie questioned if he could discuss rain barrels since they were mentioned in the report and asked if he did any hydrology work. Chairman Briley stated Mr. McDaniel could not testify to something he was not asked to do.

Attorney Taylor summarized what the board should consider. Did the owner's application meet the Town's ordinance? Does the Land Disturbance Permit and the Floodplain Development Permit meet the relevant ordinances? The board just heard four witnesses testify that the permits meet the ordinances and the permits should have been issued. The town has to follow the ordinances as written and approved by Council.

We are not dealing with a zoning permit, foundation, impervious surface, or a building permit. This appeal is not about what is out there on the lot now. The Town acknowledges that what is currently on the lot is not correct. The owners are aware the lot will have to be brought up to code. This appeal is not about whether we like the ordinances or not. It is not about neighborhood flooding. We have to be conscious of property owners and they have a right to use their property.

Recess 7:37pm
Resume 7:46pm

Appellant Presentation

Attorney John Way lives in Beaufort and has his office in Morehead City. He has been doing this about 40 years. He apologized to the board for having to listen to so many attorneys in one room. He fully believes in the property rights of the owner and his right to use it, just objects to the plan. Wants to see the owner be able to use his property in a usual way. He represents all of the appellants expect for Wally Courie, who is pro se. He would like to tender Susan Hatchell as an expert witness and any ordinances used in review and emails. Also, since the previous plan was submitted, that it be entered as evidence and any required permit and anything else as necessary or needed for the record.

Susan Hatchell's husband passed out binders containing her testimony and presentation to the board as she presented her credentials. She has a master's degree in landscape architecture from NCSU with 36 years in practice. Attorney Taylor objected to her credentials to give opinion testimony. Attorney Eatman believes an engineer is required to give opinion testimony. Attorney Way argued she is qualified as a landscape architect and recommended listening to her whether anyone agreed with her opinion or not.

Attorney Grady informed the board they can determine Hatchell to be an expert or not, or like Attorney Way stated, listen to her opinion, they do not have to agree with it.

Chairman Briley asked Hatchell if she had ever designed a stormwater plan for a lot or anything similar. She stated she does grading and drainage for parks, downtowns, streetscapes. She does drainage plans and has to certify them. The board overruled Attorney Taylor's objection to her as a qualified expert and let her continue.

Hatchell objects to neighborhood flooding. She does not understand why she cannot talk about these things when they are listed on the plan. She feels the land disturbing permit should be rescinded because it violates numerous federal, state and local regulations and has numerous discrepancies and errors. She does not think fill material should be allowed due to increased risk of flooding to adjacent neighbors.

Attorney Taylor objected to the global statements as to what it could do. Hatchell argued she brings this up because the town is well aware of what filling one lot can do to adjoining lots.

Chairman Briley stopped her testimony stating she needed to discuss this one lot and the permit.

Attorney Eatman objected stating her presentation does not show anything except flooding. It doesn't show where it comes from. Chairman Briley sustained. She showed additional photos of fill material and water in the street.

Winbourne understands the picture she is showing of fill is not the way the lot will be when it is completed.

Chairman Briley reminded her she has to have expertise evidence to go against the engineers' testimony.

Winbourne stated we need to keep focused on what we are here for and asked Attorney Grady if we are here to discuss all of her testimony or as he understands, just to hear the issue regarding the permit.

Attorney Grady stated we have not heard from an expert on the flooding she is talking about and advised the board they should not allow testimony on neighborhood flooding.

She discussed errors on the square footage and impervious surface calculation. Cullipher confirmed for Chairman Briley the lot was surveyed by Prestige Surveying and he was aware of the issue and addressed it for the land disturbance permit.

McDaniel stated when he did his initial review it met the smaller lot requirements. He did not pick it apart after that.

She stated the topography does not show the 7' contour at the western property boundary. The catch basin rim elevation is 6.91, so the 7' contour should be shown. Cullipher stated you can see the 7 on the plan.

She further testified to the topographic mapping, stating when you stand on the property there is a low spot adjacent to the Hall cottage. She showed readings taken on site with a digital level. There was an objection to this testimony and her qualification to conduct this type of testing.

Chairman Briley stopped her testimony to remind we are here to discuss issuance of the permit only.

She testified there are no swales to the south or the east and the topography is uphill. More space is needed on both sides of the building to provide room for drainage and swales. After objection, Attorney Way asked the board to accept her testimony on the swales as an expert. She told this board she has credibility to talk about these swales.

Chairman Briley stated she would be allowed fifteen more minutes to continue with her testimony.

She listed violations she saw with the UDO and the NC Building Code.

Winbourne asked if they were supposed to be addressing and worrying about the building code.

She continued to discuss swales. There is not a swale near the Currie property. The UDO requires positive drainage. She is concerned where they will be located onsite and does not think they are large enough to maintain water.

Chairman Briley asked if she had reviewed the grading plans and if she has calculated this data. She confirmed she has not.

Attorney Way stated she is explaining the handout given to them by the Town. He thinks she has the right to say what she thinks.

Bosse does not think her discussing building code and has nothing to do with this case. Smith agrees.

She proceeded to talk about infiltration. The plan that was presented is not capturing two inches of stormwater.

Chairman Briley asked her if she had ever designed anything like this before and she confirmed she has not.

Attorney Way would like her testimony be admitted into evidence. Attorney Taylor objected stating he has already sustained for relevance. It is full of hearsay.

L.C. Beck asked from the audience about water running on his property. He left the meeting at 8:27.

Attorney Grady reminded anyone who was sworn could speak and that their testimony subject to objection. Attorney Way told the board Mr. Beck is a veteran 76 years old. He thinks the witnesses are being badgered. They should be allowed to talk then the board deliberate.

Wally Courie 400 Money Island Drive and 206 Glenn Street. He is going to give more of a closing statement so he does not have to list qualifications. Told the board in their deliberations they do not have to give up common sense. They do not have to believe everything engineers say as gospel. There is fill all over Town, use common sense. Asked do you always need fill, what is the purpose? He was disappointed Cullipher was evasive about the easement. Due to efforts of Mrs. Hatchell the fill has been brought down substantially. Chairman Briley asked if he knew the fill laws were changed. He confirmed he did. He thanked everyone for their time.

Chairman Briley told everyone in the audience we are not trying to be against you, we are all neighbors.

Attorney Taylor reminded the board the applicant had a right to speak.

Attorney Eatman of the Lynch Eatman firm in Raleigh has practiced since 1982. He thinks the board has heard evidence tonight that this permit meets the code. If there are any additional questions with engineers they can be called now.

Winbourne asked Cullipher if he listened to the swale issue Hatchell discussed and if he thinks the swales will do the job intended. In his opinion, he does think the swales will do their job. There is not an issue with the swale and it will not affect any property but the Wards.

Attorney Eatman asked Cullipher if he had a problem with anything presented by Hatchell. Cullipher stated he did not regarding the Land Disturbance Plan.

Other Presentations

None.

Board of Adjustment Discussion and Evaluation

Chairman Briley polled the board for their opinions. Harrison's opinion is to uphold the Land Disturbance Permit. Bosse agrees it should be upheld. Palma agrees with the opinions the professionals presented this evening and the permit should be upheld. Winbourne agrees with the professionals also and the permit should be upheld. Chairman Briley agrees also.

Winbourne made a motion to uphold the decision of the Planning and Inspection Department and that the permit issued on September 20, 2019 for Land Disturbance and Floodplain Development at 204 Glenn Street is valid. Seconded by Harrison. Vote was unanimous, 5-0. Motion carried.

OTHER BUSINESS

None.


ADJOURNMENT

There being no further business the meeting adjourned. The time was 8:42pm. These minutes were approved at the _____ meeting of the Atlantic Beach Board of Adjustment.

Approved by:


Katrina Tyer, Clerk




Eddie Briley, Chair