



**Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
June 15, 2020**

Members Present

Eddie Briley
Vada Palma
Michael Bosse
Norm Livengood
Harrison Smith
Curt Winbourne, Alternate
Fred Dean, Alternate

Members Absent

Others Present

Derek Taylor, Town Attorney
Michelle Eitner, Director of Planning
Katrina Tyer, Clerk
Julian Griffee, Planner
Councilmember Rich Johnson

CALL TO ORDER

Briley called the meeting to order at 6:05 pm and introduced those seated on the board.

EXCUSE ABSENT MEMBERS

All members present.

APPROVAL OF MINUTES

Palma made a motion *to approve* the January 21, 2020 Minutes. Seconded by Smith. Vote was unanimous, 5-0. Motion carried.

VAR-20-1: 111 Ocean Ridge Drive, Atlantic Beach

Opening Remarks and swearing in of witnesses

VAR-20-1, a request by Mike Baldwin of Baldwin Design Associates, agent for property owner Phil Lewis (DBA PALCO Investments LLC), to request a variance from the maximum allowable fill of Section 18.2.4.M.4, Land Disturbance Permit Review Standards, as shown in engineer's plan sealed dated February 17, 2020.

There were not any conflicts or objections from the seated members on the Board. All Board members also agreed they did not have a financial interest, personal interest, business interest, fixed opinions, previous conversations or correspondence, or have any information or special knowledge in the case. Derrick Taylor attorney asked the applicant to confirm he did not have any objections to any of the seated Board Members. All stated no.

6:05pm-Alternates Dean and Winbourne left the meeting as they were not needed.

Michelle Eitner, Michael Baldwin-Baldwin Design Associates-agent for property owner Phil Lewis-1700 D East Arlington Blvd. Greenville, NC, Phil Lewis-1010 Rock Spring Road, Greenville, NC were sworn in by Katrina. Chairman Briley opened the Public Hearing at 6:10pm

Staff Presentation

Michelle began by reviewing the Land Disturbance Ordinances.

iii. Except for the instances set forth below in Section 18.2.4.M.b.iv, fill material may be used to **raise the grade of the subject lot up to, but not above**, the average finished grade elevation of abutting lots.

iv. **The only instances in which fill material may be used to raise the grade of the subject lot above the averaged finished grade elevation** of abutting lots are as follows:

1. As required by onsite wastewater system permit issued by the County. **(SEPTIC)**
2. As necessary in order to drain surface water away from building foundations. The amount of fill shall be limited to the amount required to achieve positive drainage. **(HOUSE)**
3. As necessary under driveways and walkways to connect a structure to the street. **(DRIVEWAY)**
4. As necessary to provide a consistent grade between the elements listed above in Subsections 1, 2 and 3 of Section 18.2.4.M.b.iv., provided that no fill is placed within 5 feet of a property line. **(CONTINUITY)**

5. As necessary for shoreline stabilization in accordance with state and federal regulatory and permitting requirements, in which case fill may be placed within the first 5 feet from the landward edge of the shoreline stabilization device. **(BULKHEAD)**

The ordinance states you are allowed to fill up to the grade of the abutting lot, which in this case is the Moye lot with a finished grade elevation of 13 feet. There are varying elevations that are proposed on this lot. Most are between 13-15 feet, but some of it will be 24 feet because of the dune height. We don't run into this situation very often because most of the ocean front lots in Atlantic Beach are already developed. There is only one other ocean front lot on Ocean Ridge that is not developed and that is next to the lot in question and there are no plans to develop at this time. CAMA is requiring the crested primary dune stay preserved. There is no way to keep the dune preserved and meet the Land Disturbance requirements which is why the variance is necessary.

There was additional open discussion about the elevation on the lot. Most of it will be 13-15, some of it will remain 24, they will slightly adjust that Dune so that it doesn't cave. Map below includes the proposed finished grade elevations for this project.



Chairman Briley asked Mr. Baldwin to explain the 5 foot setback. Baldwin explained project would meet all setback requirements.

Applicant Presentation-Applicant and/or Agent

Michael Baldwin-representing property owner Phil Lewis provided the applicant's responses to the requirements provided in the application. He stated, Phil owns a home on Swindell land here in Atlantic Beach so he is not someone coming into town to develop and then leave. He does have a vested interest in AB.

Chairman Briley noted for the record he does not recall ever doing any work with Baldwin during his career.

1. *Will unnecessary hardship result from the strict application of the Ordinance?* Yes, as previously stated tonight, the elevation of this lot provides a hardship.
2. *Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography?* Yes
3. *Did the hardship result from actions taken by the applicant or the property owner?* No, Phil had no knowledge when he bought this property in November that he would need a variance to make the lot developable.
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?* Public safety is paramount on any variance. This lot falls into the 5% of the lots in AB that the ordinances are not designed to regulate. The variance process was meant for lots such as this one. We have gone through all the proper channels to try to comply with both town ordinances and CAMA regulations and it just can't be done.

Attorney Derek Taylor asked Mike if he was aware of the staff's report regarding the 4 criteria he just spoke about. Mike read the staff report and stated he did not object to their findings. The report is entered into evidence and Taylor instructed the Board to note the findings. Taylor also confirmed with the audience there were no further people that wanted to speak.

Public Hearing was closed at 6:36pm

Chairman Briley asked all Board Members for a vote of the following:

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

In this case the Board has found that all of the requirements have been met. Palma made a motion to grant the variance request to perform land disturbance at 111 Ocean Ridge drive in accordance with the engineer's plan dated February 17, 2020. Seconded by Livengood. Vote was 5-0.


Attorney Derek Taylor noted since finding were not noted for each checklist item, we will be adopting the testimony provided by the applicant and staff as a basis for the determination that was just made.

ADJOURNMENT

There being no further business the meeting was adjourned at adjourned at 6:42pm. These minutes were approved at the January 19, 2021 meeting of the Atlantic Beach Board of Adjustment.

Approved by:


Eddie Briley, Chair


Katrina Tyler, Clerk

Minutes prepared by: Betty Odham