



**Minutes**  
**Town of Atlantic Beach-Board of Adjustment Meeting**  
**January 19, 2021-6:00p.m.**  
**Town Hall Boardroom**  
**1010 West Fort Macon Road-Unit 18**  
**Atlantic Beach, NC 28512**

**Members Present**

Eddie Briley  
Vada Palma  
Michael Bosse  
Harrison Smith  
Fred Dean, Alternate

**Members Absent**

Norm Livengood

**Others Present**

Derek Taylor, Town Attorney  
Michelle Eitner, Director of Planning  
Betty Odham, Planning Admin  
Julian Griffee, Planner

**CALL TO ORDER**

Briley called the meeting to order at 6:00 p.m. and introduced those seated on the board.

**EXCUSE ABSENT MEMBERS**

Vada made a motion *to excuse* Livengood who was absent due to medical concerns. Seconded by Smith. Vote was unanimous 5-0, motion carried.

Fred Dean, Alternate will sit on the Board tonight in place of Livengood. Winbourne was released as he will not be needed.

**ELECTION OF CHAIRMAN AND VICE CHAIRMAN**

Palma made a motion *to re-elect* Eddie Briley for Chairman of the Board of Adjustment for 2021. Seconded by Smith. Vote was unanimous 5-0. Motion carried.

Smith made a motion *to re-elect* Vada Palma for Vice Chairman of the Board of Adjustment for 2021. Seconded by Bosse. Vote was unanimous 5-0. Motion carried.

**APPROVAL OF MINUTES**

Bosse made a motion *to approve* the June 15, 2020 and October 19, 2020 minutes. Seconded by Palma. Vote was unanimous, 5-0. Motion carried.

**VAR-21-1 Peppertree-715 West Fort Macon Road**

**Opening Remarks and swearing in of witnesses**

Festiva Development Group, agent for Peppertree Atlantic Beach II Association, requests a variance from the 25' street setback required in the Mixed-use High Intensity zoning district per Section 18.3.4.C in order to build a bathhouse near their access to the beach on the southern edge (along Ocean Ridge Drive) of their property at 715 West Fort Macon Road.

There were no 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. Derek Taylor attorney asked the applicant to confirm he did not have any objections to any of the seated Board Members. All stated no. Attorney Taylor also noted only testimony allowed are individuals present at the meeting. No testimony could be accepted on Zoom.

Michelle Eitner and Marcel Lopez, agent representing Festiva Development Group were sworn in by Betty. Chairman Briley opened the Public Hearing at 6:26 p.m.

**Staff Presentation**

Michelle stated Peppertree Atlantic Beach II Association is one of two owners' associations for the timeshare development Peppertree. Festiva Development is the property management company for this half of Peppertree and has coordinated repairs and updates through Marcel Lopez of CRM of the Carolinas. Staff has worked with Marcel for several years now as he's applied for permits (especially for repairs after Florence) and discussed development on behalf of Peppertree.

Festiva (via Marcel) has requested a variance to encroach into the street setback along the Ocean Ridge Drive edge of the Peppertree property in order to build a bathhouse to serve Peppertree owners and guests as they come and go from the newly built beach access structure. The bathhouse would be directly south of the existing stairwells of building #23, which is the closest to the new beach access. The bathhouse would provide one men's bathroom, one women's bathroom, three outdoor showers, and storage for the beach umbrellas that Peppertree owners may use. The bathhouse would only be for Peppertree owners and guests and would be within their fenced property.

The entire Peppertree property is within the Mixed-use High Intensity zoning district. The street setback in this district is 25' (10' for single-family and duplex uses). The bathhouse structure is proposed to be located almost entirely within the 25' street setback. Based on the provided architect's site plan the structure would be 5' from the street-side property line. The property line is approximately 15' from the edge of the paved street, so the structure would be about 20' from Ocean Ridge Drive.

While this project will not likely adversely affect the community, staff believes it is not fundamentally a hardship in accordance with Section 18.2.4.X. and as such is not a good candidate for variance. The ordinance itself cannot be the hardship. According to UNC School of Government professor Adam Lovelady covers in his "Variance Standards" Coates' Canons Blog post, "The hardship must be more than mere inconvenience or a preference for a more lenient standard." That posting has been included with this report for reference.

**Staff Recommendation:**

1. *Will unnecessary hardship result from the strict application of the Ordinance? (Note: It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)*

Strict application of the ordinance would preclude the ability for this amenity to be built within closest proximity to the development's access to the beach. The structure could be built elsewhere on site, but the proximity to the beach access is important to the use of the amenity.

2. *Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography? (Note: Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)*

The hardship does not result from location, size or topography. The hardship results from the desired location of the additional amenity.

3. *Did the hardship result from actions taken by the applicant or the property owner? (Note: 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.)*

Staff does not think that the hardship resulted from actions taken by the applicant or property owners.

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?*

Staff does not think that the requested variance is consistent with the spirit, purpose, and intent of the Ordinance, but staff also does not think that it is directly contrary to the Ordinance

Michelle asked for the staff report be placed into evidence. No objections. Attorney Taylor noted the report had now been entered into evidence and Taylor instructed the Board to note the findings.

**Applicant Presentation-Applicant and/or Agent**

Marcel Lopez-agent for applicant. Applicant chose to have no attorney present. Lopez read the applicant's responses to the requirements provided in the application.

1. *Will unnecessary hardship result from the strict application of the Ordinance?*

Festiva Development Group, Inc., as the Developer for Peppertree Atlantic Beach Villas II wishes to build a bathroom and shower building near the boardwalk located at 111 Ocean Ridge Drive. This will allow the owners and renters at the Peppertree Atlantic Beach Resort to have a more convenient bathroom facility when they are coming to and from the beach. Festiva wishes to place the bathroom facility in this location (which encroaches

completely within the 25-foot set back) so that it is as close as possible to the board walk and does not interfere with the current parking lot and other structures located on the parcel. If the variance is not granted and the bathroom location is required to be moved, guests will have to travel over 100 yards to get to the nearest bathroom.

2. *Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography?*

The hardship does not necessarily result from the specific conditions of the property. However, due to the desire to have the bathroom close to the boardwalk, coupled with the location of the parking lot, the variance request is necessary.

3. *Did the hardship result from actions taken by the applicant or the property owner?*

As noted above, the hardship is the result of the desire to have the bathrooms close to the boardwalk and to refrain from encroaching on the current parking area.

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?*

The stated purpose for the Mixed-Use High Intensity Zoning Ordinance (“MHI Zoning Ordinance”) is “to provide areas, which, due to their location, natural features and access, have an extremely high potential for both permanent and tourist types of residential development.” Code of Ordinances of Town of Atlantic Beach North Carolina § 18.3.4. Additionally, commercial uses are permitted in these areas which are oriented to tourist related activities and are family oriented. *Id.* The building of the bathroom facility in the proposed location would support the purpose of the MHI Zoning Ordinance in that it will allow tourist to better enjoy the beach. Granting the variance would allow the facility to be close to the boardwalk which will reduce the distance a tourist has to travel from the beach to a bathroom/shower.

Bosse asked Lopez what other locations had been considered on the site. Lopez stated they looked at several other options, but they did not see they would work because they would cause people to have to walk further from the beach. One option would require them to lose several parking spaces.

Attorney Taylor confirmed there were no other audience members that wanted to speak.

Public Hearing was closed at 6:47 p.m.

### **Board of Adjustment Evaluation**

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

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*  
No, Vote was 5-0.  
Palma-No, some hardship but not enough to vote yes  
Smith-No, not enough hardship  
Dean-No, not enough hardship  
Bosse-No, believes Peppertree does have space to build the bathhouse elsewhere on the property  
Briley-No, for reasons already stated by other board members
- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*  
No, Vote was 4-1. Palma voted Yes  
Palma-Yes, bathroom is a necessity there to be close for people coming off the beach.  
Smith-No, conditions are not particular to the Peppertree property.  
Dean-No, conditions are not specific to the Peppertree property  
Bosse-No, for reasons already stated from other board members  
Briley-No, for reasons already stated from other board members
- 3) *The hardship did not result from actions taken by the applicant or the property owner.*  
All voted no, Vote was 5-0.  
Palma-No, it is a result of the land  
Smith-No, it is a result of the land  
Bosse-No, it is a result of the land

Briley-No, it is a result of position of the land and walkover

- 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-vote was 4-1. Palma voted Yes.

Palma-yes, this building would allow tourist to better enjoy the beach

Smith-No, it sets a precedent and will make it hard in the future to apply equally

Dean-No, the variance request is not special to Peppertree and they need to build within the ordinances.

Bosse-No, because of reasons already stated by other Board members

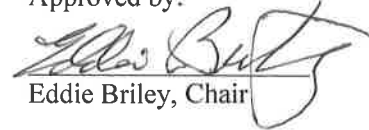
Briley-No, because of reasons already stated by other Board members

In this case the Board has found that not all of the requirements have been met. Bosse made a motion *to deny* the variance request to encroach into the 25-foot setback in order to build a bathroom and shower house. Seconded by Dean. Vote was 5-0.

#### ADJOURNMENT

There being no further business the meeting was adjourned at 6:54 p.m. These minutes were approved at the April 19, 2021 meeting of the Atlantic Beach Board of Adjustment.

Approved by:

  
Eddie Briley, Chair

  
Katrina Tyer-Clerk

Minutes prepared by Betty Odham-Planning Board Secretary