



**TOWN OF ATLANTIC BEACH
BOARD OF ADJUSTMENT AGENDA
Monday, February 21, 2022 – 6:00PM**

1. Call to Order
2. Roll Call Board Members
3. Excuse Absent Board Member(s)
4. Election of Board Chair
5. Election of Board Vice Chair
6. Approval of April 19, 2021 Minutes
7. **VAR-22-1 Peppertree** – *Allen & Susan Fisher of 101 Sea Dreams Drive have applied for a variance from the 20' rear setback in order to add a garage to their home in the RSW zoning district.*
 - A. Opening remarks and swearing in of witnesses
 - B. Public Hearing
 - a. Presentation by Town Staff
 - b. Presentation(s) by Parties in Favor
 - c. Presentation(s) by Parties in Opposition
 - C. Board of Adjustment Discussion and Evaluation
8. Other Business
9. Adjournment



DRAFT Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
April 19, 2021

Members Present

Eddie Briley, Chair
Vada Palma, Vice Chair
Michael Bosse
Harrison Smith
Curt Winbourne, Alternate
Fred Dean, Alternate (left after
board was seated)

Members Absent

Norman Livengood

Others Present

Derek Taylor, Town Attorney
Michelle Eitner, Planner
Julian Griffiee, Planner
Katrina Tyer, Clerk

CALL TO ORDER AND ROLL CALL

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

EXCUSE ABSENT MEMBERS

Winbourne made a motion *to excuse* Livengood due to medical reasons. Seconded by Palma. Vote was unanimous, 5-0.

APPROVAL OF MINUTES

Bosse made a motion *to approve* the January 19, 2021 and March 15, 2021 Minutes. Seconded by Smith. Vote was unanimous, 5-0. Motion carried.

VAR-21-2: 117 ATLANTIC BOULEVARD, ATLANTIC BEACH

Opening remarks and swearing in of witnesses

Janice Bynum, owner of Tacklebox Properties LLC, requests a variance from the 5-foot side setback from a public walkway required in the Circle, Subzone A zoning district per Section 18.3.5.B.2.J. in order to build a handicap access ramp from the beach walkway to their front deck abutting the western edge of their property at 117 Atlantic Boulevard.

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 she did not have any objections to any of the seated board members.

Katrina swore in Janice Bynum, applicant; Jane Gordon, Attorney with Kirkman, Whitford, Brady, Berryman & Gordon, P.A.; and Julian Griffiee, Planner.

Julian presented the case to the board. The application was submitted on February 12, 2021, letters were mailed to abutting properties on February 22 and the property was posted on February 24. The Americans with Disabilities Act requires commercial structures to provide access compliant with ADA standards. The building was constructed with a handicap-accessible lift, but due to weather elements it does not work properly. Applicant proposes a 70' handicap-accessible ramp located entirely within the 5-foot alley setback between the Tackle Box Tavern and the cobblestone walkway to the beach. The ramp will run alongside the current fence (installed to prevent traverse through the HOA parking lot owned by FMB at the Grove, LLC) and end about 5 feet from the adjacent residential structure.

The UDO setback in the Circle Development district reads, "In cases where the lot abuts an unbuilt public right-of-way, an alleyway, a bike path, or a public walkway, the minimum side setback shall be five (5) feet."

Staff recommends the following based on the Variance questions:

- a. *Will unnecessary hardship result from strict application of the ordinance?*

Strict application of the ordinance would preclude the ability for this access ramp to be built within the alley setback. Handicap access is required to be provided to the structure and although alternative methods to allow access may not be conducive, they are possible.

b. *Does the hardship result from conditions that are peculiar to the property?*

The hardship does not result from location, size or topography. However, the shape of the parcel is only 41' in length (north to south) and would not be able to accommodate the length of an ADA ramp under the ordinance. The hardship results from weather that leads to the frequent dysfunctionality of the handicap lift, thus leading to the desire to construct something more reliable.

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

Staff does not think that the hardship resulted from actions taken by the applicant or property owners. Owners of the Tackle Box did have a great influence in designing the building, however, they did not choose what method of ADA access would be implemented into the construction. As such, the lift was installed.

d. *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 neither consistent nor inconsistent with the spirit, purpose, and intent of the Ordinance.

Attorney Taylor reminded the board it was their decision, they did not have to go by staff recommendation. He asked for further clarification on the current fence, it was confirmed there is no access through the parking lot. Asked how the encroached 5ft setback would affect access to and from the beach, staff does not feel it will due to the fence and the cobblestone walkway.

Palma asked if the Fire Marshal had reviewed this plan and if it was acceptable. Julian noted that it was and approved by the State.

Smith asked if the topography of the area would be considered a hardship under number two. Julian feels it is acceptable for this design, they tend to consider incline of the land more than sandy soil.

Bosse wanted confirmation the ramp will not encroach on the cobblestone walkway

Winbourne did not have any issues.

Briley asked for more cosmetic details of the ramp to avoid litter and debris from building up under the ramp. Ms. Bynum stated she would install pickets down the side of the ramp, just like what is on the Tackle Box building now. Briley suggested an access door under the ramp at the top to allow for cleanup and emergencies.

Applicant Presentation – Applicant and/or Agent

Attorney Gordon started off by asking Ms. Bynum to provide a history of this building. This was not the original Tacklebox Tavern, the original was to the south of the current structure and was ground level. Eighteen years ago when Ms. Bynum leased the original building from Fred Bunn, she was told she could only have her business for three (3) years, after that he would need the space for a parking lot for the new homes he was going to construct. The three years turned into 17 ½ years. After receiving complaints for making her close, he told her he would build her another Tacklebox. She was a part of the design process with her input on cosmetics and interior layout. Originally the design had a ramp to the south of the building, where the parking lot is now. About three to four weeks before completion of construction, she tried to formalize a lease amount. He finally provided her a lease with options for a 5-10 year lease, 10-15 lease, etc. or offered her to purchase the building. She agreed to purchase the building rather than a short-term lease. When she purchased the building, it had a lift, which has not handled the weather well. She assumes that when he started planning for parking for the houses he realized he needed the spaces for them. The Tacklebox parcel owns the strip of land where the parking lot is, where the ramp was supposed to be. When she purchased the property, it came with a permanent Easement for the parking spaces. The ramp has hardly worked since opening the business, it has been repaired 12-14 times. She feels a ramp is the only solution. She does not think there is anywhere else to place the ramp, the building covers the entire parcel.

Response to the variance requirements:

1) *Will unnecessary hardship result from strict application of the ordinance?*

She cannot provide ADA access unless she can construct the ramp in the 5ft setback. She has talked with two different companies about a lift and both stated due to the weather and location a lift will not work.

2) *Does the hardship result from conditions that are peculiar to the property?*

The wind, sand and salt is a hardship to this property based on location. There is nowhere else on property to install the lift. Other businesses on the Circle have ramps, but they had more property to install them.

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

No, she did not have any input on installation of the ramp during construction.

- 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?*

It is consistent. She does not think her ramp will adversely affect the open space and viewing of the beach. The way it is designed, there will not be a tunnel feeling walking to the beach.

The footprint of a wheelchair is 4ft, so with the pickets and handrails, the ramp will be 5ft wide. She is unsure how close it will be to the fence, she would think it would difficult for trash to get in between the ramp and fence. She addressed the PVC pipe covering phone utilities at the end of the ramp and stated that a contractor actually placed the PVC piping there to replaced the 2-3 foot tall phone pedestal that kept falling over, and it looks much nicer. She does not think the wheelchair ramp will make it a trip hazard. If needed, she will ask the contractor to bury it deeper in the sand. The ramp is not the only ingress and egress to the building.

Palma asked why she cannot use the current lift entrance for the ramp area. Ms. Bynum explained the ramp is designed for incline. She chose to utilize the front of the Tacklebox property to keep it away from the adjacent home, which is better in terms of fire safety.

Briley thinks this is a perfect time to have all of the phone pedestals cleaned up. He asked Michelle to look into ownership and having them removed. He asked about a concrete pad or landing at the bottom of the ramp. She noted a landing is required and is in addition to the 70 foot ramp. Julian noted that structures 12 inches or less are allowed to encroach in the setback. Fred Bunn has agreed to give permission to build the ramp within the 5ft buffer strip.

Attorney Taylor clarified they needed a 70-foot variance. Per the Planning Department, structures 12 inches or less can encroach in the setback. The pad will not fall under the need for a variance. Bosse pointed out pavers are already at the northern end and the pad should not be a problem at the south end.

Attorney Taylor clarified this is an encroachment into the 5-foot setback, it does not affect Town property.

Public Hearing

No comments.

Briley closed the public hearing at 6:53 pm.

Board of Adjustment Discussion and Evaluation

Briley 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.*

Palma: Yes, because of the limitations on the property. This is a resort area and we need to make the building accessible to everyone. There is nowhere else to put it.

Harris: Yes, because the lack of ADA access is a hardship for the business.

Bosse: Yes, due to limitations of the property and the original design. The original access does not function and the lack of anywhere else to install a new one.

Winbourne: Yes, strict application of the ordinance would make it impossible. The lift is not a good option.

Briley: Yes, anything mechanical that is exposed does not work in this environment and she will always have problems.

Vote was 5-0.

- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, or topography.*

Winbourne: Yes, the shape of the parcel is only 41 feet, it cannot accommodate it located anywhere else.

Bosse: Yes, due to the limitations of the property and the existing location of the building on the property.

Smith: Yes, location of the building and size of the property with nowhere else for ramp to go.

Palma: Yes, this is an odd shaped piece of property. This is an ideal location it does not bother the adjacent property owners.

Briley: Yes, thinks it is a good location

Vote was 5-0.

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

Briley: No, she did not design the building and did not cause the hardship. She acquired the hardship and this is her only remedy.

Winbourne: No, it is obvious this was not her design and now she is in a dilemma.

Bosse: No, for the same reasons.

Smith: No, she was told a ramp would be on one side and then the owner redesigned. The hardship was not created by her actions.

Palma: No, because it was not her design, she inherited the problem.

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.*

Bosse: Yes, supports complying with the ADA requirements.

Smith: Yes, complying with the ADA requirements is in the spirit of the ordinance.

Palma: Yes, it is an excellent and accommodating curtesy for our tourist

Winbourne: Yes, a non-working lift is not accommodating or safe and this ramp achieves that.

Briley: Yes, for all of the above reasons.

Vote was 5-0.

Briley confirmed all of the conditions for allowing a Variance have been met. With direction from Attorney Taylor conditions on a gate and alcohol consumption were discussed.

Winbourne made a motion *to grant* the Variance from the 5-foot alley setback required in the Circle, Subzone A zoning district per Section 18.3.5.B.2.J. in order to build a handicap access ramp from the beach walkway to the front deck of the Tackle Box Tavern (117 Atlantic Boulevard) abutting the western edge of their property *with conditions*:

- The ramp be constructed with pickets preventing access to the underneath of the structure except by way of an incorporated access door; and
- The ramp must be equipped with prohibition notices as well as a gate at the top of the handicap accessible ramp to inhibit patrons from consuming alcohol on the structure.

Seconded by Bosse. Vote was 5-0.

Ms. Bynum thanked everyone for their time and consideration.

OTHER BUSINESS

None.

ADJOURNMENT

There being no further business the meeting adjourned. The time was 7:06 p.m.

These minutes were approved at the _____ meeting of the Atlantic Beach Board of Adjustment.

Approved by:

Chair

Katrina Tyer, Clerk



TOWN OF ATLANTIC BEACH PLANNING & ZONING DEPARTMENT
125 WEST FORT MACON ROAD ATLANTIC BEACH, NC 28512

CASE NUMBER:

VARIANCE APPLICATION

Please read each item below and initial upon agreement.

- ADF I understand that this is a quasi-judicial public hearing and I must provide factual evidence to prove my case.
- ADF I understand that the Town recommends that I have an attorney represent my case.
- ADF I understand that the owner and/or applicant, and attorney if applicable, will have to be present at the hearing.
- ADF I understand that I will have to present my responses to the "Required Findings" during the hearing.
- ADF I understand that discussing my case with a BOA member may cause them to be unable to hear my case.
- ADF I have been provided with the Board of Adjustment variance information packet (either digital or hard copy).

Owner's Name: Allen Fisher
 Mailing Address: 1101 Anchor Ct, Raleigh, NC 27615
 Primary Telephone: (919) 971-5186
 Primary E-mail: susanf.sher@nc.rr.com

Applicant's Name: Allen Fisher
 Mailing Address: 1101 Anchor Ct, Raleigh, NC 27615
 Primary Telephone: (919) 971-5186
 Primary E-mail: susanfisher@nc.rr.com

Attorney's Name: _____
 Attorney's Firm: _____

Variance Address: 101 Sea Dreams Drive, Atlantic Beach, NC
 Zoning District: RSW PIN: 638516833185000
 Flood Zone: X Deed Bk/Pg: 1605/447

From what section of the Unified Development Ordinance are you requesting a variance?
Section 18.10.2.D

Required Findings

The following four questions are the "Required Findings" that must be proven for a variance to be granted. The burden of proof is on the applicant. Answer the questions in full sentences. Confirm compliance with factual explanation.

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.)

If the Ordinance is strictly applied, unnecessary hardship will result. Current zoning setbacks for 101 Sea Dreams Drive prevent good and common use of the property. Specifically relevant is the odd shape of the property, with the true right side of the property line having a rear setback of 20 feet. Normally, the side would be 7 feet. This restricts the ability to add a two-car garage and future room above. The addition of the garage is needed to house the owners' vehicles from the harsh environment and salt air.

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 is a result of the property's odd shape and house orientation. The location of a garage addition is limited to the right side of the property line. But the current setback requirement of 20 feet prohibits such an addition.

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.)

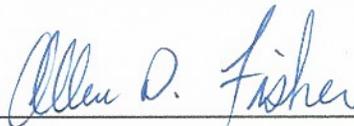
The hardship did *not* result from actions taken by the applicant/property owner. It is an inherent characteristic of the lot.

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 requested variance is consistent with the spirit, purpose and intent of the Ordinance, such that public safety is secured and substantial justice is achieved. The addition of the garage has no negative impact to other property owners. The rear of the home backs directly to East Fort Macon Road, with the left side running parallel to Sea Dreams Drive. The right side has ample space to construct a two-car garage with no negative impact.

**Please attach additional information, including site plan(s), description of proposed variance,
and other evidence as available.**

Submitted by: Allen Fisher



Date: January 21, 2022

Description of Proposed Variance for 101 Sea Dreams Drive

We — Allen and Susan Fisher of 101 Seas Dreams Drive in Atlantic Beach, North Carolina — are requesting a variance, which would reduce the 20-foot setback on the true right side of our property. A reduced setback is needed to enable the construction of an attached two-car garage and future room over the garage. Due to our property's oddly shaped, non-rectangular lot, such construction is only feasible on the right hand side. That's because the rear of the home backs directly to East Fort Macon Road, with the left side and front of the house running parallel to Sea Dreams Drive. However, the shape of the lot combined with the current 20-foot setback on the right hand side of the property will make such construction unfeasible. A reduced setback of 7 feet is needed to make the proposed construction possible. (Please see the attached site plan for additional insight and clarity.)

We originally purchased the property as a second home. But after spending many months in Atlantic Beach and becoming a part of this special community, we have fallen in love with the "Crystal Coast" and want to make 101 Sea Dreams Drive our permanent home. To make this dream a reality, we need the addition of a garage and storage space to provide shelter for ourselves and property during inclement weather. We thank you for your time as you consider granting us this proposed variance.

Staff Report: VAR-22-1 – 101 Sea Dreams Drive Rear Setback

Application Details:

Applicant: Allen & Susan Fisher
Address: 101 Sea Dreams Drive
Zoning: Residential Single-family Wide-yard (RSW)
Flood Zone: X & Shaded X

Variance Review Procedure:

- Pre-application Conference – January 10, 2022
- Submit Application – January 24, 2022
- Public Notification – January 31, 2022
 - Letters sent to abutting properties
 - Sign posted on site
- Board of Adjustment Review and Decision – February 21, 2022

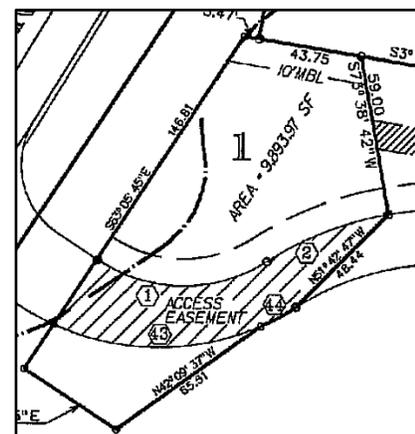
Description of Variance Request:

Allen and Susan Fisher are the owners of 101 Sea Dreams Drive – the first home in the Sea Dreams subdivision that has a bridge over the road to a “lighthouse”. They desire to build a garage with bonus room on top as an addition to their home that they purchased in 2020. All other dimensional requirements – front and side setbacks, impervious coverage, height, etc. – would be compliant for the project, except for the 20ft rear setback.

Most lots in the Planned Unit Development (“PUD”, a type of subdivision) of Sea Dreams are oddly shaped and smaller than what the UDO now requires for lots in the RSW district. The subject lot is split in half by the winding public street, so while the lot is 10,000sf, much of it is unusable due to setbacks. Due to the odd configuration of the subject lot, the functional front, rear, and sides of the house do not match the front, rear, and side setbacks of the lot. The UDO sets out rules of measurement to describe what are considered the street (“front”), side, and rear setbacks on a lot. Based on staff’s interpretation of the application of these rules to 101 Sea Dreams Drive, the rear setback prohibits the construction of the proposed garage on the side of the house.

This lot is oddly shaped and application of the setbacks renders much of the lot with a front or rear setback. The buildable area (square footage between the setbacks) is small, even though the lot is large. If the 10’ setback used with the originally developed Planned Unit Development plat (see inset) is applied, there is sufficient area to construct the addition. Allowing a reduction in this setback will allow better use of this residential lot which would otherwise not be possible.

Staff recommends allowing a 10’ reduction in the rear setback to match the 10’ setback applied at establishment of the PUD. This would allow for the proposed addition and maintain consistency with the remainder of the neighborhood.



Staff Report: VAR-22-1 – 101 Sea Dreams Drive Rear Setback

Staff Review of Required Findings:

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 construction of an addition onto this single-family home, which would include a garage and bonus room above. Indoor storage of vehicles is important in this harsh, salty environment, and it is not provided at this home.

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 results from lot shape & configuration of the road through the Planned Unit Development.

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.)**

The property owners/applicants did not create the oddly shaped lot with street running through it.

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 believes that the requested variance is consistent with the spirit, purpose, and intent of the Ordinance.

Report Completed by: Michelle Eitner, Planning Director