



**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 February 21, 2022 meeting of the Atlantic Beach Board of Adjustment.

Approved by:


Chair


Katrina Tyer, Clerk

