



Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
125 West Fort Macon Road
March 20, 2023

Members Present

Eddie Briley, Chair
Michael Bosse
Harrison Smith
Tony Engrassia, Alternate
Kathy McGehee, Alternate

Members Absent

Vada Palma, Vice Chair
Bradley Jones

Others Present

Derek Taylor, Town Attorney
Elisabeth Webster, Planner
Katrina Tyer, Clerk
Bonnie Pitts, Alternate

Prior to the meeting, Town Clerk Katrina Tyer administered an Oath to Tony Engrassia.

CALL TO ORDER AND ROLL CALL

EXCUSE ABSENT MEMBERS

Smith made a motion *to excuse* Palma and Jones. Seconded by Bosse. Vote was unanimous, 5-0. Chairman Briley asked Engrassia and McGehee to seat on the board.

APPROVAL OF MINUTES

Smith made a motion *to approve* the December 12, 2022 Minutes. Seconded by McGehee. Vote was unanimous, 5-0. Motion carried.

APPROVAL OF PALM SUITES VARIANCE ORDER (602 WEST FORT MACON ROAD)

Engrassia made a motion *to approve, adopt, and ratify* the order that was recorded in Book 1788, Page 437, Carteret County Registry on January 6, 2023, which granted Palm Suites of Atlantic Beach Owners Association, Inc. a variance from the setback requirements of relevant Town ordinances. (ratify and adopt the date of the Chairman's execution of the order as the date of the Board's approval pursuant to any relevant provisions of 160D-406). Seconded by Bosse. Vote was unanimous, 5-0. Motion carried.

ELECTION OF CHAIR AND VICE CHAIR

Bosse made a motion *to table* the election of Chair and Vice Chair until the next meeting due to the absence of Palma and Jones. Vote was unanimous, 5-0. Motion carried.

VAR-23-1: 207 FAIRVIEW STREET

Opening remarks and swearing in of witnesses

Attorney Taylor began by confirming with the board members that no one had a conflict, financial or personal interest, conversation or special knowledge about the case. Each confirmed no, they did not. Applicant confirmed he did not have any objections to the board seated to hear the case.

The remaining alternates were given the opportunity to leave the meeting, but they stayed.

Katrina administered sworn-in Jennifer Ansell and Bryant Inscoc.

Public Hearing

Opened public hearing at 6:21pm.

Town Staff Presentation

On February 27, 2023, Bryant Inscoe applied for a variance from the Unified Development Ordinance in order to get a Certificate of Occupancy for the newly constructed home at 207 Fairview Street where the uncovered deck and front steps extend into the required 7-foot minimum side setback. The uncovered deck encroaches by 4.8 inches at the front of the house and 7.2 inches at the rear of the house. The uncovered steps encroach 6 inches. The front steps also encroach into the front set back 1.1 feet or 13.2 inches. This case only deals with the encroachment into the side setback. When Mr. Inscoe applied for his building permit, the plot plan submitted showed the steps located within the required setbacks. He did not realize that the steps and deck encroached until he received his as-built survey, and the house was completed. Mr. Inscoe built the homes at 207 and 209 Fairview Street. The site was posted and letters to abutting properties were sent on March 7, 2023.

The property is in the Residential Single-Family Wide Yard (RSW) zoning district. Pursuant to Table 18.10.2.E Allowable Encroachments into Setbacks: decks are subject to the setbacks applied to principal structures. Porch steps, uncovered, may encroach into a front or rear setback no more than four (4) steps or eighteen (18) inches, whichever is less. Uncovered porches, stoops, decks, patios, terraces, walkways, or driveways may extend into or be located in any required setback, if less than twelve (12) inches above grade.

Dimensional Standards*

- Minimum Street Setback (feet): 15'
- Minimum Side Setback (feet): 7'
- Minimum Rear Setback (feet): 20'

Staff recommends the following based on the Variance questions:

- a. *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.)*
The strict application of the ordinance would require the side deck and front steps to be reconfigured.
- b. *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 configuration and septic location
- c. *Did the hardship result from actions taken by the applicant or the property owner? (Note: The act of purchasing property with the 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 knowingly create the non-conforming steps/uncovered deck.
- 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 believes that the requested variance is consistent with the spirit, purpose, and intent of the Ordinance.

There were no questions from the applicant.

Presentation by Applicant

The applicant thanked the staff for their help, regardless if the variance is granted or not. He provided the following findings based on his application:

- a. *Will unnecessary hardship result from strict application of the ordinance?*
Yes, if the variance is not granted, there will be a substantial financial burden. The owner of the lot will be left with a new construction home that is unable to be occupied and the contractual buyers (who have already sold their primary residence in Atlantic Beach) will be without a home.
- b. *Does the hardship result from conditions that are peculiar to the property?*
Yes, the property was purchased as one large lot in 2018. After much due diligence, it was determined that with a Peat septic system, the lot could be divided, and two homes built on the lot with each home sharing a septic field. The septic was installed for home one and the home was sold to a new homeowner, at this time, the setbacks were not what they are currently. Home two (subject) was then built, and the septic was signed off on with no knowledge of a setback change with the intention of continuing to share the existing septic field. The septic system location and

field have determined the location of this subject property (house). The county's requirement of two Peat Systems instead of one shared for each property reduced usable lot size.

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

No, a deck was constructed (by code and signed off on by the inspection dept) approx. 4-6 inches within the setback area. The placement of this deck was determined by engineered plans. The placement of the actual house was dictated by the previously installed septic field (see notes above). Owner/applicant/builder was unaware of such setback changes from the completion of house 1 (the house constructed on the subdivided tract) to house 2 (subject). To this date, the owner is still unaware of when the setback changes occurred and did not receive any info regarding such change until the as-built survey was submitted and the house was already complete.

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?

Yes, the two houses that have been built from once an insignificant building lot add value, curb appeal, and tax revenue to the county. The issue of 4-6 inches is not a harm to anyone. The adjoining property only consists of a telephone service location.

Presentation by Parties in Opposition

No comments.

Chairman Briley closed the public hearing at 6:56pm.

Board of Adjustment Discussion and Evaluation

Chairman Briley polled the board members regarding the following criteria:

1) *Unnecessary hardship would result from the strict application of the Ordinance.*

Harrison: Yes, if you do not grant this, they cannot occupy the house.

Bosse: Same.

Engrassia: Same

McGehee: Yes, because buyers have already closed on the property.

Briley: Yes, it is a hardship.

Vote was 5-0.

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

Harrison: Yes

Engrassia: There was not a setback change. (After Attorney Taylor comments, Engrassia struck his comment about setbacks.

McGehee: Yes

Briley: Yes

Bosse: Yes, they purchased one large lot in 2018 that could be divided and share a septic.

Vote was 5-0.

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

Harrison: No, due to the difference in what he thought was the code.

Bosse: No, for the same reason

Engrassia: No.

McGehee: Yes, she agrees.

Briley: Yes, he agrees but the as-builts came back a little different.

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.*

Harrison: Yes, great for the property owner.

Bosse: Yes, it was built with the spirit of ordinance in mind, just missed the step measurement.

Engrassia: Yes, agrees.

McGehee: Yes, the home added value to the area.

Briley: Yes, it was approved, the as-built was just a little off.

Bosse made a motion *to grant* the Variance Request from Bryant and Greta Insko to allow a 4.8 – 7.2 inch encroachment of the 7-foot minimum side setback for the uncovered porch and a 6-inch encroachment of the 7-foot minimum setback of the uncovered steps located at 207 Fairview Street. Seconded by Engrassia. Vote was 5-0.

OTHER BUSINESS

None.

ADJOURNMENT

There being no further business the meeting adjourned. The time was 6:36 p.m.

These minutes were approved at the June 19, 2023 meeting of the Atlantic Beach Board of Adjustment.

Approved by:


Katrina Tyer, Clerk




Mike Bosse, Chair