



**Minutes**  
**Town of Atlantic Beach**  
**Board of Adjustment Meeting**  
**125 West Fort Macon Road**  
**April 17, 2023**

**Members Present**

Eddie Briley, Chair  
Vada Palma, Vice  
Michael Bosse  
Bradley Jones  
Harrison Smith

**Members Absent**

Tony Engrassia, Alternate  
Michael Mortali, Alternate

**Others Present**

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

**CALL TO ORDER AND ROLL CALL**

Chairman Briley called the meeting to order at 6:00pm.

**EXCUSE ABSENT MEMBERS**

Planner Elisabeth Webster called the roll. All present.

**ELECTION OF CHAIR AND VICE-CHAIR**

Bosse nominated Briley as Chair. Briley declined since he is not seeking reappointment to the board. Palma noted that she is not seeking a reappointment either.

Palma nominated Bosse to serve as Chair. Seconded by Briley. Vote was 4-0, with Bosse not voting.

Harrison nominated himself to serve as Vice Chair. Seconded by Jones. Vote was 5-0.

Members changed seats and Bosse presided over the meeting.

**APPROVAL OF VARIANCE ORDER, VAR 23-1: 207 FAIRVIEW STREET**

Bosse read the Variance Order for 207 Fairview Street out loud. Bosse asked for a vote *to approve, adopt and ratify* the order. Vote was 5-0.

**VAR 23-2: 114 BROOKS STREET**

Lee Lanier has applied for a variance at 114 Brooks Street to allow the encroachment of front steps into the required 15-foot front minimum setback in the Single-family Residential (RSW) Zoning District.

**Opening remarks and swearing in of witnesses**

Attorney Taylor confirmed 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. The applicant confirmed he did not have a conflict with the members seated. The alternates were given the opportunity to leave the meeting, but they stayed.

Katrina swore in Elisabeth Webster and Lee Lanier.

**Presentation by Town Staff**

Elisabeth briefly reviewed the rules for quasi-judicial proceedings, then an overview of the case. Mr. Lee Lanier has applied for a variance from the Unified Development Ordinance to allow an encroachment into the street setback to reconstruct the front steps of the home. Currently, there are two sets of steps coming down from the front deck to a landing and then one set which continues to the ground. The steps collapsed when the tenant was walking down the steps to the landing.

In looking at how to best rebuild the collapsed steps, Mr. Lanier felt that replacing the steps as they were originally built was not the safest option as the two sets of steps coming off the deck were only attached to the house and had no other structural support. Additionally, the current configuration of the steps does not meet the NC Residential Code. Mr. Lanier is proposing to build a front deck completely across the upstairs living area and have one set of steps come down from the deck. The goal is to continue to provide a means of egress from the master bedroom and kitchen and have the steps meet the code. The house was

built in approximately 1970, prior to our current Unified Development Ordinance. The current steps encroach 57 ½ inches into the front setback. The proposed steps would encroach an additional 42 inches into the front setback.

Bosse asked for clarification on the current setback calculation. Elisabeth stated the setback is calculated from the property line, not the street.

Katrina located a photo of the property on Google and displayed it on the PowerPoint so the Board could see the current steps design. There was additional discussion of the proposed design of the steps.

Palma asked if the steps were grandfathered in. Derek explained that was not applicable in this case.

Briley asked Elisabeth what the staff recommendation was. She reminded him this was a quasi-judicial proceeding and that since staff could not approve this, it was brought to the Board. Attorney Taylor reviewed additional quasi-judicial procedures.

### **Presentation by Parties in Favor**

Lee Lanier, a Contractor from Snow Hill, was hired by the property owner to repair or construct new steps. The homeowner is unavailable due to a long-term illness. The current deck does not meet Code. He wants to remove the existing four (4) side steps and create a deck all the way across the home and add steps downward that meet Code requirements. The proposed steps will need to encroach an additional 42 inches to meet the slope requirements. He will not have to move the existing tree. The steps must be designed this way to provide for a second means of egress from the master bedroom. The proposal is still 18 feet from the payment, which as stated before, is not the property line. He commented that he has met with the County Building Inspector and this proposal meets Code. Attorney Taylor reminded the Board that conversations with the inspector were hearsay. He stated he could increase each step height to get a few inches back, but he does not want to do that because the homeowner is 70 years old.

Jones asked if he had considered another location. The Applicant stated due to the location of the two garage doors, there is not any other location for pilings or steps. Vada asked if there was another set of steps and the Applicant confirmed there was a small set of steps on the north side of the house.

Attorney Taylor reminded Applicant to ask that the application be submitted as evidence in this hearing. The Board accepted it for the record.

Based on the Applicant's application, the required findings were made a part of the record:

1. *Will unnecessary hardship result from strict application of the ordinance?*  
Unless the variance is granted, a new deck will not be built to Code and therefore will not be safe. I have discussed this detail with the building inspector and planning department. It seems to be the only solution.
2. *Does the hardship result from conditions that are peculiar to the property?*  
The house has a limited front yard due to the setback.
3. *Did the hardship result from actions taken by the applicant or the property owner?*  
Not created by the Property owner, purchased as a home built in 1970.
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?*  
Yes, needs to be upgraded to meet the existing Code for safety. Also provides primary means of egress for the front bedroom.

### **Presentation by Parties in Opposition**

No comments. No one else was present.

Chairman Bosse closed the public hearing at 6:43pm.

### **Board of Adjustment Discussion and Evaluation**

Chairman Bosse 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.*  
Briley: Yes, he asked if the steps could be built to code without a variance and his answer was it could not be built back to Code without being in the setbacks.

Bosse: Yes, from testimony and orientation of garage doors. It could not be rebuilt as is and meet Code.

Smith: Yes, because no deck on the front of the house would be a hardship.

Jones: Yes, he struggled with whether the deck could be built differently, but hearing testimony that he spoke with the building inspector it seems there is no other way the deck could be built. He agrees there is no other way.

Palma: No, thinks steps could be moved somewhere else. Thinks there could be another way.

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

Briley: Yes, because of the driveways and the way it must be calibrated.

Bosse: Yes, based on current construction and design from the 70s, the garages, and factoring in location on the lot.

Jones: Peculiar property. This is not the current owner's design, but due to the prior to 1970s construction, it is an odd house design based on the garage door location.

Smith: No, it is common to other houses in the neighborhood with setbacks and 1970s design.

Palma: No, hardship does not exist because of the topography. She thinks another plan could be designed. In this area, people know they should stay on top of their deck repairs and maintenance.

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

Bosse: No, not by the property owner, it is the existing design of the structure.

Jones: No, there is evidence. This is a 1970s property.

Smith: No, not caused by the property owner.

Briley: Agrees No.

Palma: No.

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.*

Briley: Yes.

Bosse: Yes, regarding the safety factor due to safety for residents for egress from the bedroom. New steps would meet that requirement.

Palma: Yes, this is sort of a dead-end street and does not jeopardize public safety.

Smith: Yes, to public safety.

Jones: Yes, to egress from the bedroom. He does not see how this will affect public safety.

Briley wanted to discuss his reply to question number 1. He voted yes and others no. He wanted to make sure he heard the criteria correctly. Attorney Taylor explained other members just had a different opinion.

Attorney Taylor reminded the board to think about the ordinances and why the Council decided they wanted the ordinance written the way it is and to consider variances from the public viewpoint, not the applicant. Is granting this going to harm the community in any way?

Jones does not see how this will affect public safety. No one will really notice since the landscaping will not change.

Briley made a motion *to grant* the Variance Request to allow encroachment of front steps into the required 15-foot setback at 114 Brooks Street. Seconded by Jones. Vote was 3-2 with Harrison and Palma voting against. **Variance request was denied.**

### OTHER BUSINESS

No other business.

### ADJOURNMENT

There being no further business the meeting adjourned. The time was 7:01 p.m.

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

Approved by:

  
Mike Bosse, Chair

  
Katrina Tyer, Clerk

