



Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
125 West Fort Macon Road
Monday, May 15, 2023 at 6:00pm

Members Present

Michael Bosse, Chair
Harrison Smith, Vice Chair
Eddie Briley
Bradley Jones
Tony Engrassia, Alternate

Members Absent

Vada Palma
Michael Mortali, Alternate

Others Present

Derek Taylor, Town Attorney
Elisabeth Webster, Planner
Katrina Tyer, Clerk
Chase Cullipher, Engineer
Kathy McGehee, Alternate

CALL TO ORDER

EXCUSE ABSENT MEMBERS

Briley made a motion *to excuse* Palma due to medical reasons. Seconded by Smith. Vote was unanimous, 4-0. Chairman Bosse asked Engrassia and McGehee to sit on the board.

Engrassia disclosed that he knows one of the applicants from Rotary but does not see this as an issue in his decision-making.

APPROVAL OF VARIANCE ORDERS

Smith made a motion *to amend* the Agenda to include approval of Variance Orders. Seconded by Engrassia. Vote was unanimous, 5-0. Motion carried.

Briley made a motion *to ratify* approval of Order Denying Variance 23-2 (114 Brooks Street), a request by Lee Lanier on behalf of A. Jack and Kay Harell. Seconded by Smith. Vote was unanimous, 5-0. Motion carried.

Smith made a motion *to ratify* approval of Order Approving Variance 23-3 (115 West Fort Macon Road), a request by AB Sandals Ventures, LLC. Seconded by Jones. Vote was unanimous, 5-0. Motion carried.

ENCROACHMENT AGREEMENT 23-1: 401 MONEY ISLAND

Charles Cullipher, PE, Cullipher Group, on behalf of Island Grille Restaurant, is requesting approval of a right-of-way encroachment to run a proposed force main from the existing Island Grille (401 Money Island), west down Caswell Street then crossing Money Island Drive to 209 West Caswell to a proposed drain field.

Opening remarks and swearing in of witnesses

Attorney Taylor began by confirming with the board members that none of them had a conflict, financial or personal interest, conversation, or special knowledge about the case. Each confirmed no, they did not. The parties in the audience did not have conflict.

Katrina administered oaths to Engineer Chase Cullipher, Planner Jennifer Ansell and Planner Elisabeth Webster.

Public Hearing

Chairman Bosse opened the public hearing at 6:13pm.

Chase Cullipher is applying for a right-of-way encroachment to run a proposed force main from the existing Island Grille to a drain field across the street. Property Owner David Bradley and Chef Josh were present. He realized this morning while preparing for the case, that his application did not contain all the specific Board of Adjustment criteria and prepared an amendment (included in these minutes). The restaurant building has been here for over 70 years. They currently pump and haul their septic. The system is too old for repairs, and they feel very lucky to get this sliver of land for the drain field area. He worked with the town's public works department while designing the plan. The public works department did not provide any comments to staff. The applicant feels there is no other alternative for this property; this design does not affect anyone else, and no utilities will need to be moved. The County Health Department would not permit repair at the current location, the only way

for a repair on the lot would be to demo the building. The 150-foot force main must be bored and will disrupt the right-of-way for about a week, they will work with the town and notify of any temporary street closures. Any asphalt or damage will be replaced by Island Grille.

Cullipher asked that his testimony just now be admitted as part of the public hearing for the record. There were no objections.

Chairman Bosse closed the public hearing at 6:24pm

Board Discussion and Evaluation

Pursuant to Section 18.2.4.N.3, Right-of-Way Encroachment Review Standards, of the Unified Development Ordinance, a right-of-way encroachment shall be approved if the applicant demonstrates the proposed encroachment:

- a. *Is necessary for the applicant's reasonable use of their property and no reasonable alternative is available?*

Jones: Cullipher answered all the questions and there is no other way to do it at the current location.

Attorney Taylor recommended they clarify and state if it is unreasonable to continue to pump and haul.

Smith: No, and there are environmental issues.

Engrassia: This does not interfere with town services and improves environmental issues.

Briley: Agrees.

Bosse: Concur.

- b. *Will not interfere with the public's use of the affected right(s)-of-way and is not in violation of any State, federal, or local regulation?*

Engrassia: No, it would not

Briley: No.

Smith: No, it does not affect the right of way

Jones: No, there are not any right-of-way or state or fed violations.

Bosse: No.

- c. *Will not interfere with any Town service or service from any public service company, including without limitation: provision of water, sewer, electricity, telephone, cable, drainage, garbage collection, or emergency services?*

Smith: No, this will not affect the town or public services.

Jones: The testimony evidence stated permittee is responsible if anything goes wrong.

Briley: No objection.

Engrassia: Same.

Bosse: Same.

Attorney Taylor reminded the board the town can take the property back if they need it, an Encroachment Agreement is similar to a lease.

Jones made a motion *to approve* the Encroachment Agreement for 401 Money Island Drive. Seconded by Engrassia. Vote was unanimous, 5-0. Motion carried.

ENCROACHMENT AGREEMENT 23-2: 220 OLD CAUSEWAY

William Williamson is applying for a right-of-way encroachment to allow his septic drain field to be located in the Town's right-of-way along Old Causeway Road.

Opening remarks and swearing in of witnesses

Attorney Taylor began by confirming with the board members that none of them had a conflict, financial or personal interest, conversation, or special knowledge about the case. Each confirmed no, they did not. The parties in the audience did not have conflict.

Katrina administered an oath to Applicants William and Teresa Williamson.

Public Hearing

Chairman Bosse opened the public hearing at 6:31pm.

Jennifer reminded the board, that Old Causeway Road has a 100-foot right-of-way due to the bridge. The Williamsons septic system has to be replaced and the new CAMA rules will not let new septic systems be installed on the waterward side of the

property. So, the Williamsons are asking for a 15x26ft area on the roadside for the installation of a septic tank. The septic will be solely on their property, only the drain field will be on the Town's right-of-way. They have talked with the public works department, and they will have to work with a surveyor, so the meets and bounds are accurate on the agreement.

The applicant stated their septic is giving them problems and gurgling. They do not want to give up their parking area in the front, but they do not have a choice since CAMA will not let them install a new one on the waterside. They have already had it pumped several times. The lines are terra cotta, so you cannot blow them out.

Attorney Taylor confirmed with the applicant they will not interfere with any cable, electric or town utilities. They confirmed they have spoken with the town's water department about the location of the water lines. The County told them they must stay 10 feet from the main water line. They understand they have to pay to have a water line moved.

No one was present in opposition.

Chairman Bosse closed the public hearing at 6:45pm.

Board Discussion and Evaluation

Pursuant to Section 18.2.4.N.3, Right-of-Way Encroachment Review Standards, of the Unified Development Ordinance, a right-of-way encroachment shall be approved if the applicant demonstrates the proposed encroachment:

a. *Is necessary for the applicant's reasonable use of their property and no reasonable alternative is available?*

Engrassia: No, it is their home, and it is going to cost a lot.

Briley: No, there is not another alternative.

Jones: No, there is not a reasonable alternative.

Smith: No, no alternative use if do not have a working septic.

Bosse: No alternative due to CAMA restrictions.

b. *Will not interfere with the public's use of the affected right(s)-of-way and is not in violation of any State, federal, or local regulation?*

Engrassia: No, only what they have stated. Staff will make sure requirements are met.

Briley: No. They were asked if they had any surveys, but they did not. Attorney Taylor will need this information for the preparation of the Encroachment Agreement.

Jones: No, no indication.

Smith: No, does not affect or violate. Staff noted this is an archaic right-of-way.

Bosse: No, it will not interfere with water. The right-of-way is much larger than most streets in town.

c. *Will not interfere with any Town service or service from any public service company, including without limitation: provision of water, sewer, electricity, telephone, cable, drainage, garbage collection, or emergency services?*

Engrassia: No, staff testimony.

Briley: No.

Jones: No, double coverage. The town will check and balance. Agrees that none of these will interfere.

Smith: No, it does not interfere with town services. Staff will ensure.

Bosse: No, it will not interfere with any town services.

Bosse made a motion *to approve* the Encroachment Agreement for 220 Old Causeway Road subject to the applicant providing documentation they will not interfere with town services. Seconded by Smith. Vote was unanimous, 5-0. Motion carried.

Break at 6:54pm

Resume at 6:57pm

SUP 23-1: 2610 WEST FORT MACON ROAD, UNIT A

Candice Bass has applied for a Special Use Permit to operate an Arcade at 2610-A West Fort Macon Road.

Opening remarks and swearing in of witnesses

Katrina administered oaths to Property Owner Samar Hamad and Applicant Candace Bass.

Public Hearing

Chairman Bosse opened the public hearing at 7:01pm.

2610 West Fort Macon Road is a 0.84-acre tract of land located at the corner of Knollwood Drive and West Fort Macon Rd. On the site currently, there is a 4-unit shopping center (including Dairy Queen), The Growler, and manufactured homes.

The arcade is intended for families providing classic arcade games. Under the Unified Development Ordinance (UDO) an arcade is classified as commercial recreation, indoor. Per the Use Table in Section 18.4.1 this use requires a Special Use Permit in the MHI zoning district.

Candace stated she will use the same business model as their Morehead City arcade except they will not sell alcohol. The hours will be open weekly 11-9 and 11-10 on weekends, closed on Monday.

Smith asked if she had any overflow parking issues with the adjoining businesses or the Doubletree Hilton across the street. She does not and she expects the people who will go to her business will also be going to the adjoining businesses.

Samar, the property owner, who has owned Dairy Queen for over 20 years stated the parking lot does get full, but he thinks that is a good thing and thinks the arcade will be a great compliment to Dairy Queen and their customers.

Candace stated they regulate all of the machine volumes, and she does not expect any noise issues.

Chairman Bosse closed the public hearing at 7:08pm.

Board of Adjustment Discussion and Evaluation

Pursuant to Section 18.2.4.R.3, Special Use Permit Review Standards, of the Unified Development Ordinance, a special use permit shall be approved if the applicant demonstrates the proposed special use:

- a. *Will not materially endanger the public health or safety if located where proposed?*

Smith: It does not endanger public safety or health. It is in line with other items in the shopping center according to testimony.

Engrassia: Yes, since everything is compliant. It will be good for kids.

Briley: Agrees this meets all the standards for a SUP in this area.

Bosse: Concurs with other comments. This is not endangering and complies with standards.

- b. *Complies with all required standards, conditions, and specifications of this Ordinance, including Article 18-4: Use Standards, or is considered to be the use type, "Government facility, major"?*

Jones: Yes

Engrassia: Yes

- c. *Will not substantially injure the value of the abutting land, or the special use is a public necessity?*

Jones: Yes

Engrassia: Yes

- d. *Will be in harmony with the area in which it is to be located?*

Jones: Yes

Engrassia: Yes

- e. *Is in general conformity with the Town's adopted policy guidance?*

Jones: Yes, it is beside an ice cream business, seems like a good match. The hours are reasonable as well.

Engrassia: Yes.

Attorney Taylor asked staff to confirm this is in compliance with the Land Use Plan.

Briley made a motion *to approve* the Special Use Permit at 2610 West Fort Macon Road, Unit A to operate an arcade. Seconded by Jones. Vote was unanimous, 5-0. Motion carried.

SUP 23-2: 2610 WEST FORT MACON ROAD, UNIT D

Syndee Pope has applied for a Special Use Permit to operate a clothing store at 2610-D West Fort Macon Road.

Opening remarks and swearing in of witnesses

Sydnee Pope has applied for a special use permit to operate a clothing store at 2610-D West Fort Macon Rd. 2610 West Fort Macon Road is a 0.84-acre tract of land located at the corner of Knollwood Drive and West Fort Macon Road. On the site currently, there is a 4-unit shopping center (including Dairy Queen), The Growler, and manufactured homes. Under the Unified Development Ordinance (UDO), the use is classified as Retail sales, minor. Per the Use Table in Section 18.4.1, this use requires a Special Use Permit in the MHI zoning district.

Katrina administered an oath to Applicant Syndee Pope.

Public Hearing

Chairman Bosse opened the public hearing at 7:16pm.

Sydnee has owned an online boutique geared towards 18–24-year-olds for a couple of years and is ready for a brick-and-mortar store. She does not anticipate a traffic problem and looks forward to the walking traffic between businesses.

Samar thinks a ladies' boutique would be a good asset and welcomes her and walkers and golf carts.

Smith asked her since she's near a residential neighborhood if she expected any loud noise or shoppers. She does not expect a noise issue.

Chairman Bosse closed the public hearing at 7:23pm.

Board of Adjustment Discussion and Evaluation

Pursuant to Section 18.2.4.R.3, Special Use Permit Review Standards, of the Unified Development Ordinance, a special use permit shall be approved if the applicant demonstrates the proposed special use:

- a. *Will not materially endanger the public health or safety if located where proposed?*

Smith: it does not affect public safety.

Jones: Does not see a danger to public health.

Briley: Yes

Engrassia: Agrees it does not affect public safety.

Bosse: Concurs with other comments. This is not endangering and complies with standards.

- b. *Complies with all required standards, conditions, and specifications of this Ordinance, including Article 18-4: Use Standards, or is considered to be the use type, "Government facility, major"?*

Smith: Complies with other uses in the shopping center

Jones: Yes Briley: Yes

Engrassia: Yes

- c. *Will not substantially injure the value of the abutting land, or the special use is a public necessity?*

Jones: Yes

Briley: Yes

Engrassia: Yes, it will not injure any land since the structure is already there.

- d. *Will be in harmony with the area in which it is to be located?*

Smith: It is in harmony with the area.

Jones: Yes, there are already existing businesses.

Briley: Yes, there have always been businesses in the area.

Engrassia: Yes

- e. *Is in general conformity with the Town's adopted policy guidance?*

Smith: According to testimony it is compliant with the town's Land Use Plan.

Jones: Yes, it conforms.

Briley: Yes

Briley made a motion *to approve* the Special Use Permit at 2610 West Fort Macon Road, Unit D to operate a clothing boutique. Seconded by Jones. Vote was unanimous, 5-0. Motion carried.

SUP 23-3: 2610 WEST FORT MACON ROAD, UNIT C

Al Somair has applied for a Special Use Permit to operate a tobacco shop at 2610-C West Fort Macon Road.

Opening remarks and swearing in of witnesses

Al Somairi has applied for a special use permit to operate a tobacco store at 2610-C West Fort Macon Road. 2610 West Fort Macon Road is a 0.84-acre tract of land located at the corner of Knollwood Drive and West Fort Macon Road. On the site currently, there is a 4-unit shopping center (including Dairy Queen), The Growler, and manufactured homes. Under the Unified Development Ordinance (UDO), the use is classified as Retail sales, minor. Per the Use Table in Section 18.4.1 this use requires a Special Use Permit in the MHI zoning district.

Public Hearing

Chairman Bosse opened the public hearing at 7:28pm.

Samar apologized for the store owner not being able to attend tonight's meeting due to business at his Morehead City store and, as the property owner, would like to speak on his behalf. His Morehead City store is in the Belk's shopping center. He thinks this would be an asset to The Growler and their patrons.

There was discussion about noise, flashing neon lights, and smoking in the parking lot. Samar stated they had to abide by the terms of their lease agreement with him, he can monitor and control behavior. He agreed to add a restriction regarding loitering in the parking lot. There will not be any neon signs and dark tinted windows are against the fire code.

Jones expressed concern over the number of kids visiting Dairy Queen and the arcade with a tobacco store next door.

Elisabeth explained retail minor complies with the Town's Land Use Plan regardless of the product being sold.

Chairman Bosse closed the public hearing at 7:46pm.

Board of Adjustment Discussion and Evaluation

Pursuant to Section 18.2.4.R.3, Special Use Permit Review Standards, of the Unified Development Ordinance, a special use permit shall be approved if the applicant demonstrates the proposed special use:

- a. *Will not materially endanger the public health or safety if located where proposed?*

Engrassia: Agrees, it will not endanger public safety.

Briley: Yes

Smith: There is not anything specific that will endanger public health.

Jones: It will not.

- b. *Complies with all required standards, conditions, and specifications of this Ordinance, including Article 18-4: Use Standards, or is considered to be the use type, "Government facility, major"?*

Engrassia: Yes

Briley: Yes

Smith: Yes

Jones: Yes, it complies with standards.

Bosse: Yes

- c. *Will not substantially injure the value of the abutting land, or the special use is a public necessity?*

Engrassia: Yes

Briley: Yes

Smith: Yes

Jones: It is not going to injure anything. There shopping center has been there and the Growler bar has been too.

Bosse: The shopping center has been there a long time as well as other retail.

- d. *Will be in harmony with the area in which it is to be located?*

Engrassia: Yes

Briley: Yes

Smith: Yes

Jones: Yes

Bosse: As mentioned in the hearing, the owner has to comply with laws.

- e. *Is in general conformity with the Town's adopted policy guidance?*

Engrassia: Yes

Briley: Yes

Smith: Yes

Jones made a motion *to approve* the Special Use Permit at 2610 West Fort Macon Road, Unit C to operate a tobacco store. Seconded by Briley. Vote was unanimous, 5-0. Motion carried.

OTHER BUSINESS

Staff will present a UNC School of Government training session for the Board on June 8 at 1:00pm. Attorney Taylor will be present.

ADJOURNMENT

There being no further business the meeting adjourned. The time was 7:53 p.m.

These minutes were approved at the September 18, 2023 meeting of the Atlantic Beach Board of Adjustment.

Approved by:


Chair


Katrina Tyer, Clerk