



Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
125 West Fort Macon Road
Monday, June 19, 2023 at 6:00pm

Members Present

Michael Bosse
Bradley Jones
Harrison Smith
Tony Engrassia, Alternate
Bonnie Pitts, Alternate

Members Absent

Eddie Briley, Chair
Vada Palma, Vice Chair

Others Present

Derek Taylor, Town Attorney
Jennifer Ansell, Planner
Elisabeth Webster, Planner
Katrina Tyer, Clerk
Kathy McGehee, Alternate

CALL TO ORDER AND ROLL CALL

EXCUSE ABSENT MEMBERS

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

APPROVAL OF MINUTES

Smith made a motion *to approve* the March 20, 2023 and April 17, 2023 Minutes. Seconded by Pitts. Vote was unanimous, 5-0. Motion carried.

APPROVAL OF SPECIAL USE ORDERS

Jones made a motion *to approve, adopt, and ratify* the order that was recorded in Book 1803, Page 113, Carteret County Registry on July 3, 2023, which granted Candice Bass a Special Use Permit to allow an arcade under "Commercial Recreation, Indoor" in the Mixed-Use High-Intensity zoning district at 2610 West Fort Macon Road, Unit A. Seconded by Engrassia. Vote was unanimous, 5-0. Motion carried.

Smith made a motion *to approve, adopt, and ratify* the order that was recorded in Book 1803, Page 114, Carteret County Registry on July 3, 2023, which granted Sydnee Pope a Special Use Permit to allow a clothing store under "Retail Sales, Minor" in the Mixed-Use High-Intensity zoning district at 2610 West Fort Macon Road, Unit D. Seconded by Bosse. Vote was unanimous, 5-0. Motion carried.

Jones made a motion *to approve, adopt, and ratify* the order that was recorded in Book 1803, Page 115, Carteret County Registry on July 3, 2023, which granted Al Somairi a Special Use Permit to allow tobacco sales under "Retail Sales, Minor" in the Mixed Use High-Intensity zoning district at 2610 West Fort Macon Road, Unit C. Seconded by Bosse. Vote was unanimous, 5-0. Motion carried.

VAR-23-4: 300 EAST TERMINAL BOULEVARD

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. Jones advised he did walk past the home and see the hearing notice sign, but he did not look closely at the property. Applicant confirmed he had no objections to the board seated to hear the case.

Katrina administered sworn-in Planner Jennifer Ansell, Contractor James, O'Brien, and Property Owner Craig Gibson.

Public Hearing

Chairman Bosse opened the public hearing at 6:06pm.

James O'Brien of O'Brien and Sons Construction, LLC submitted an application for a variance to allow the encroachment of HVAC equipment into the side setback in the Residential Single-Family & Duplex (RSD) zoning district.

The Residential Single-Family and Duplex zoning district establishes a minimum side setback of five (5) feet. Section 18.10.2., Rules of Measurement, Table 18.10.2.E, Allowable Encroachment into Setbacks, sets out the kinds of features that are permitted to encroach within a required setback. Mechanical, electrical, or other similar equipment may encroach into side setbacks no more than 48 inches, as long as the equipment is no closer than three (3) feet to the property line. The current equipment is located at 2.2 feet from the interior side property line per the as-built survey dated May 3, 2023. This issue was brought to our attention when the owner requested a Certificate of Occupancy.

Presentation by Applicant

James O'Brien, before tearing the previous house down, submitted the 2019 survey of the original house to ensure they had the space to build the design they had planned. At that time, Planner Michelle Eitner told him everything looked fine. He provided the email confirming her response did not mention the mechanical unit and setbacks. He has a septic and stormwater map from Cullipher Engineering that was submitted with those permits. The backyard (ocean side) has a septic system that requires a five-foot setback. The Greenville Boulevard side on the west shows the stormwater tanks and how they extend along the side of the house into the patio area. The East Terminal side is the front of the home and driveway, which has already been poured. There is just nowhere else for the unit to be placed. The County made them install two septic systems because they could not add fill dirt. The County inspector did not have any issues with the air conditioning unit at the current location. Mr. O'Brien thought they were good for final occupancy.

Staff confirmed the adjoining property owners did receive notice and the property was posted with signage notifying of the hearing. Staff confirmed the 2019 site plan was submitted with the original permit application and that the construction abuts setbacks on other sides of the property.

O'Brien confirmed the platform base is 36 inches and thinks it is about the same size as the previous one. The house was constructed on a smaller footprint with less bedrooms because the previous home was a duplex. He reviewed his justification for the variance:

- a. *Will unnecessary hardship result from the strict application of the Ordinance?*
The platform has already been built and the HVAC units are installed and functioning. Moving them now is restricted by the location of the home on the lot with the installed septic system and underground stormwater storage tanks.
- b. *Does the hardship result from conditions that are peculiar to the property, such as location, size, or topography?*
The location of the HVAC units matches the location of the units on the preexisting residence. During permitting and plan review for the new residence, it was not brought up that a unit could not go back in the same spot.
- c. *Did the hardship result from actions taken by the applicant or the property owner?*
No, the applicant and property owner tore down an existing residence and built a new residence with the HVAC units in the same location.
- 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?*
The requested variance would not affect public safety. Moving the HVAC units to another location on the property, if one could be found, may impact public safety, and block clear access to the stairs. It would not be in the interest of public safety to put the unit next to the road. Feels it is safer for the public next to the existing neighbor.

Craig Gibson, the property owner, stated placing the unit at the front of the home is not aesthetically pleasing for his home or the neighborhood. He stated the unit is closer to the house now than the previous unit was, the previous unit was on a concrete pad that went all the way to the property line.

Presentation by Parties in Opposition

No comments.

Chairman Bosse closed the public hearing at 6:41 pm.

Board of Adjustment Discussion and Evaluation

Pursuant to Section 18.2.4.X.3, Variance Review Standards, a variance shall be approved on finding the applicant demonstrates all of the following, Chairman Bosse polled each member.

- 1) *Unnecessary hardship would result from the strict application of the Ordinance.*
Smith: Yes, because the options are to not have a unit, which is a hardship; or to place it in the front of the house, which is aesthetically unpleasing.
Engrassia: Yes, if you have to move the unit from the side it will cause a hardship with rewiring, etc.

Jones: Yes, based on the testimony, the client thought he was doing everything correctly and to move the unit at this point would be an unnecessary hardship to them and the town.

Pitts: Yes, and based on the options presented, it does not appear that there are any other options that would not create a hardship.

Bosse: Yes, O'Brien submitted plans and built according to the plans to fit on the property without knowledge of the setback.

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

Engrassia: Yes, based on the size of the lot and the existing unit there before. The testimony was that the previous concrete pad went all the way to the property line.

Smith: Yes, the minimum for lots is 50 feet wide, but this lot is peculiar with a side and front setback.

Jones: Yes, it is a strange lot for that area.

Pitts: Yes, based on the limitations that were put on the construction due to the septic and stormwater.

Bosse: Yes, based on the original construction and location of the previous unit. The contractor did what he could to ensure the construction would fit on the property.

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

Pitts: Yes, however, due to the email received by the planning department they thought they were compliant. She does not think the hardship should be borne by them based on the email.

Engrassia: No, the email mentioned the setbacks but did not mention anything about mechanical units. Also, due to the submission of the drawing.

Smith: No, the location of the previous house had the same footprint. There did not appear to be an issue when the site plan was submitted.

Jones: No, they did not create the hardship. They did not increase the footprint and the unit appears to be more streamlined without the large concrete pad.

Bosse: No, Agrees with previous comments. The survey found this issue.

- 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.*

Engrassia: Yes, it is not affecting public safety at all where it is. Locating it somewhere else could.

Pitts: Yes, for the same reason.

Smith: Yes, there is nowhere else for the unit to go.

Jones: Yes, he agrees it is best to leave it where it is.

Bosse: Yes, as stated.

Bosse made a motion *to grant* the Variance Request from James O'Brien of O'Brien and Sons Construction, LLC, to allow the encroachment of HVAC equipment into the side setback in the Residential Single-Family & Duplex (RSD) zoning district at 300 East Terminal Boulevard. Seconded by Pitts. Vote was 5-0.

OTHER BUSINESS

Will have a meeting next month to approve this meeting.

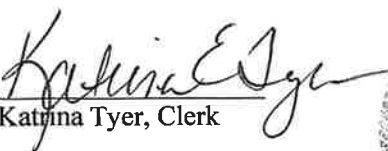
ADJOURNMENT

There being no further business the meeting adjourned. The time was 6:48 p.m.

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

Approved by:


Mike Bosse, Chair


Katrina Tyer, Clerk

