Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
November 21, 2016

Members Present	Members Absent	Others Present
John Kurek, Chair	Vada Palma	Michelle Shreve, Planning Director
David Cox		Nelson Taylor, Town Attorney
John Lotspih		Katrina Tyer, Clerk
Gary Plough		Arrington Moore, Management Assistant
Cynthia Chamblee, Alternate		John Harrell, Inspections Director
		Judy French, Alternate (sat in audience)

CALL TO ORDER

Chairman Kurek called the meeting to order at 7:00pm.

OATHS OF OFFICE

Oath of Office was administered to Judy French by Katrina Tyer, Town Clerk.

ELECTION OF A CHAIRMAN AND VICE-CHAIRMAN

Plough nominated John Kurek to serve as Chairman. Seconded by Lotspih. Vote was unanimous. Motion carried.

Kurek nominated Gary Plough to serve as Vice Chairman. Seconded by Cox. Vote was unanimous. Motion carried.

APPROVAL OF SEPTEMBER 19, 2016 MINUTES

Lotspih made a motion to approve the September 19, 2016 Minutes. Seconded by Cox. Vote was unanimous. Motion carried.

CASE VAR-16-03

Chairman Kurek introduced the variance request to the Board. Bobby Jenkins, agent for David Ball Trustee of Jenkins' Family Trust, has applied for a variance on the side setbacks as required in Section 5.6 of the UDO to build a single-family home at 108 Needle Rush Drive.

There were not any conflicts or objections from the seated members on the Board.

The following were sworn in by Katrina Tyer:
Michelle Shreve, Planner
Bobby Jenkins, Agent for Applicant, 1500 E. Fort Macon Road, Atlantic Beach and Raleigh, NC.

Chairman Kurek opened the public hearing.

Staff Presentation

Michelle stated in order to build the desired house on this lot, Mr. Jenkins would require a variance of 1.4 feet on the west side setback and 1.7 feet on the east side setback, a total of 3.1 feet, making the side setbacks are 5.6 feet on the west side and 5.3 on the east side.

This lot is one of many platted over a decade ago in the Needle Rush Bay subdivision. The original plat map dictates that the side setbacks were 5 feet in 2007. This did not vest their rights in this side setback measurement, but it does explain the misconception. This was also during the UDO updates, finalized in 2008. These lots are now being developed under new ownership. The new owner was given a line beyond which could have no development, the "Limit of Coastal Wetlands" line, as dictated by the US Army Corps of Engineers and the Division of Coastal Management. This line significantly limited the amount of developable space in each parcel, so several parcels were combined in order to create lots with enough square footage to support a house. The uplands were bulkheaded off

and backfilled to separate from the Federally-regulated 404 wetlands, which can have pilings driven into them but cannot be filled in without mitigation. The State-regulated coastal wetlands are off limits for this type of development, so the majority of the area of these parcels cannot be developed.

The first two houses built by the developers were on combined lots, so side setbacks were not an issue until applications were submitted to the Planning Department on September 13, 2006 for this property. The Planning Department notified the developers that the site plan did not meet zoning requirements due to the side setbacks. After discussing their options, the developers decided to request a variance because there was no way to fit the approximately 900 square foot house on this lot otherwise. Any houses since this discovery have been compliant with current zoning standards.

Staff confirms the following:

1) Proper notice was given to adjoining property owners of the public hearing to consider the variance. Letters notifying the 8 property owners within 150 feet of the subject property were sent on October 28, 2016, and a sign notifying the public of this hearing was posted on the property the same day.
2) The variance does not result in the extension of a nonconforming situation in, or authorize the initiation of a nonconforming use of land. This is a single-family residential zoning district, and this case is regarding the construction of a single-family home.
3) If the applicant complies strictly with the provisions of the Ordinance, he will suffer substantial hardship. The size and shape of the home that the property owner desires to construct will not fit within the setbacks required by Section 5.6 of the UDO.
4) The hardship relates to the applicant's land, rather than personal circumstances, such as shape, size, or unusual characteristics. This property is unusual in that the majority of the lot is undevelopable due to the Limits of Coastal Wetlands line agreed upon by the US Army Corps of Engineers and the Division of Coastal Management.
5) The hardship is not a result of the applicant's own actions. Staff is not aware of any action the applicant or property owner could have taken to create the hardship.
6) 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. Staff confirms that granting this variance would not adversely affect public safety and would be consistent with the spirit, purpose, and intent of the UDO.

There were no objections to admitting Michelle's statement into evidence.

The Board discussed if granting this variance would be setting precedence for other applications in the area. Attorney Taylor confirmed that each case would be considered individually, so this would not set precedence.

Applicant Presentation

Bobby Jenkins, agent for the applicant, stated the following:

1) Proper notice was given.
2) The plan conforms with the use of the land.
3) A financial hardship would be created if the owner has to hire an engineer to redraw the house footprint.
4) Applicant submitted into evidence invoices demonstrating the amount already spent on engineering and surveying.
5) When this plan was drawn, they were acting on what they thought was accurate per the UDO. It was a clerical mistake.
6) The hardship is not a result of the applicant's own action.

Public Hearing

No comments. No opposition from audience.

Board Discussion and Evaluation

Closed Public Hearing at 7:24.

Chairman Kurek polled the Board members and each agreed the following criteria have been met:

1) Proper notice was given to adjoining property owners of the holding of the public hearing to consider the variance, pursuant to Michelle's testimony.
2) The variance does not result in the extension of a non-conforming situation in, or authorize the ignition of a non-conforming use of land, pursuant to Michelle's testimony.
3) If the applicant complies strictly with the Ordinance, he will suffer unnecessary hardship.
4) The hardship relates to the applicant's land, rather than personal circumstances.
5) The hardship is a result of personal circumstances suffered only by the applicant, rather than neighbors or the general public.
6) The hardship is not a result of the applicant's own actions.
7) The variance is consistent with the spirit, purpose and intent of the ordinance, such as public safety is secured, and substantial justice is achieved.

The Board has found all of the requirements for a Variance have been met and the Variance Request for the new single-family home to be constructed at 108 Needle Rush Drive with side setbacks that are 5.6 feet on the west side and 5.3 feet on the east side, which is 1.4 feet and 1.7 feet less, respectively, than is required by Section 5.6 of the Atlantic Beach Unified Development Ordinance is granted. Vote was unanimous, 5-0.

CASE VAR-16-04

Chairman Kurek introduced the variance request to the Board. It is a request by Joe and Cathy Durrett and agent Dan Byrum for a variance on the front setback as required in Section 5.6 of the UDO to build an addition on a single-family home at 809 Ocean Ridge Drive.

There were not any conflicts or objections from the seated members on the Board.

The following were sworn in by Katrina Tyer:
Joe Durrett, Applicant, 809 Ocean Ridge Drive

Chairman Kurek opened the public hearing at 7:33pm.

Staff Presentation

This is a request for a variance by Joe and Cathy Durrett for a front setback that is less than would be required by Section 5.6 of the Unified Development Ordinance. In order to construct an addition to their existing single-family home, the Durretts would require a variance of 14 feet, so that the front setback from the road is 57.5 feet. The proposed addition would include a garage and elevator to increase the accessibility to and within this single-family home for the aging full-time residents.

Staff confirms the following:

1) Proper notice was given to adjoining property owners of the public hearing to consider the variance. Letters notifying the 25 property owners within 150 feet of the subject property were sent on October 28, 2016, and a sign notifying the public of this hearing was posted on the property the same day. Michelle stated she received inquiries and requests for additional information from citizens, but no negative comments or objections were submitted.
2) The variance does not result in the extension of a nonconforming situation in, or authorize the initiation of a nonconforming use of land. This is a single-family residential zoning district, and this is for the addition to a single-family home.
3) If the applicant complies strictly with the provisions of the Ordinance, he will suffer substantial hardship. The property owner would not be able to construct an addition to their home within the setbacks required by Section 5.6 of the UDO.
4) The hardship relates to the applicant's land, rather than personal circumstances, such as shape, size, or unusual characteristics. The front setback, measured from the road to the structure, is measured by averaging the front setbacks of the two adjacent structures. This lends peculiarity to nearly every front

setback in Atlantic Beach. In this case, the house at 811 Ocean Ridge Drive has a front setback of 87.5 feet and the house at 807 Ocean Ridge Drive has a front setback of 55.5 feet, which makes the front setback for 809 Ocean Ridge Drive 85.5 feet. These homes are oceanfront and subject to the CAMA setback from the static line, so building a bigger home farther south on this lot is not an option.

5) The hardship is not a result of the applicant's own actions. Staff is not aware of any action the applicant or property owner could have taken to create the hardship.
6) 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. Staff confirms that granting this variance would not adversely affect public safety and would be consistent with the spirit, purpose, and intent of the UDO. Several homeowners in this neighborhood and in Atlantic Beach are increasing accessibility for aging residents, which oftentimes requires additions to the primary structure.

There were no objections to admitting Michelle's statement into evidence.

Applicant Presentation

Mr. Durrett and his wife have been residents of Atlantic Beach for over 25 years and lived at this residence for 14 years. Like many others, they have gotten older and need an elevator and a garage to house the elevator. They are not asking for any more than what they need. Their proposed plan will be set back further than their adjoining neighbor.

He stated the following:

1) The home will still be a single family home and conforming situation.
2) If they are unable to build the addition, they will have to move to another home.
3) There are not any options to attach the addition other than what is presented, they have to build toward the street.
4) This is not a hardship they created on their own, the setbacks are set in the UDO.
5) This will not be a hardship on his neighbors, obscure any of their views or cause them problems.

He did not obtain a design scheme due to expense if he was not able to proceed with the project.

Public Hearing

No Comments.

Closed Public Hearing at 7:46pm.

Board Discussion and Evaluation

Chairman Kurek polled the Board members and each agreed the following criteria have been met:

1) Proper notice was given to adjoining property owners of the holding of the public hearing to consider the variance, pursuant to Michelle's testimony.
2) The variance does not result in the extension of a non-conforming situation in, or authorize the ignition of a non-conforming use of land, pursuant to Michelle's testimony.
3) If the applicant complies strictly with the Ordinance, he will suffer substantial hardship.
4) The hardship relates to the applicant's land, rather than personal circumstances.
5) The hardship is a result of personal circumstances suffered only by the applicant, rather than neighbors or the general public.
6) The hardship is not a result of the applicant's own actions.
7) The variance is consistent with the spirit, purpose and intent of the ordinance, such as public safety is secured, and substantial justice is achieved.

The Board has found all of the requirements for a Variance have been met and the Variance Request for the addition to be constructed at 809 Ocean Ridge Drive with a front setback that is 14 feet less than is required by Section 5.6 of the Atlantic Beach Unified Development Ordinance is granted. Vote was unanimous, 5-0.

Recess 7:49
Resume 7:56

CASE CUP-16-01

Chairman Kurek introduced the Conditional Use Permit request to the Board. Brandon Rigsbee is requesting a Conditional Use Permit to operate a bar/pub in the Resort Services zoning district located at 2610 West Fort Macon Road.

There were not any conflicts or objections from the seated members on the Board.

The following were sworn in by Katrina Tyer:
Brandon Rigsbee, applicant, Emerald Isle
Ken George, 104 Pelican Drive
Samer Hamad, 2610 West Fort Macon Road

Chairman Kurek opened the public hearing at 8:00pm.

Staff Presentation

This case, CUP-16-01, is a Conditional Use Permit proposal to establish a craft beer and wine bar at 2610 West Fort Macon Road, Unit E by Brandon Rigsbee. This property located on the west end of town on the corner of Knollwood Drive and West Fort Macon Road, in the former White Sands Mini Mart. This property is in the Resort Services District and the tavern/bar use type requires a Conditional Use Permit to operate. Most of the surrounding properties are also zoned Resort Services, except for the DoubleTree hotel property, which is zoned Community Business.

In accordance with Article 14, Section 14.3.5(E): The Board of Adjustment shall issue a conditional use permit if it has evaluated an application through a quasi-judicial process and determined that:

1) The proposed use will have either a minimal effect or positive effect on the public health or safety;
2) The use meets all required conditions and specifications;
3) The proposed use will have no material adverse effect on the value of adjoining or abutting properties unless the use is a public necessity; and
4) The proposed use is in harmony with the Town Land Use Plan and/or other plans adopted by the Town Council.

Section 6.33 sets out standards that must be met or exceeded by a tavern/bar. Staff confirms the following:

1) The property has been vacant for some time now, and the gas pumps and canopy have been removed from the front of the building. By utilizing the existing building, lighting, parking, trash receptacles, and mechanical equipment, the physical impact on the surrounding area will be less than or equal to the pre-existing impact from the White Sands Mini Mart. No additional lighting is proposed.
2) The impact of the noise will be less than or equal to the pre-existing noise levels of the previous business, because all of the business transactions are inside the building, rather than at gas pumps or outdoor sales.
3) The impact of the traffic would be less than or equal to the pre-existing traffic of the previous business, because there will be no coming and going of gas station traffic and less idling of cars.
4) The impact of the refuse collection areas will be less than or equal to the pre-existing refuse of the previous business, because there will be the same number of roll-out carts for trash and recycling, with opaque screening. If a dumpster is needed in the future, it has been proposed to be screened similarly.

Mr. Rigsbee proposed to operate his bar seasonally, May to September, leaving seven months of the year without business hours at all, but would like the option to extend months of operation if business is still good. Mr. Rigsbee has also proposed to operate his bar no later in the evenings than midnight, which considerably cuts down on the late night noise, lighting, traffic, and trash.

The Technical Review Committee met on October 27, 2016 to review the project. In addition to compliance with Section 6.33 as previously described, Police Chief Jeff Harvey noted on his Project Evaluation Form, "Lighting would need to be arranged as to not bother the condo area and NC 58. Parking would need to be well identified or in areas that are permitted for the bar. Proper shutting of doors and windows to help keep noise from going outside". Fire Marshal Mike Simpson noted, "Verify capacity of restroom facilities with change of use and increased occupancy usage." Planning Board member Neil Chamblee added that noise from entertainment, hours of operation, light abatement, and cookouts would need to be addressed. Michelle noted that the applicant should update the site plan to show existing lighting, refuse screening, windows, and doors. The TRC unanimously recommended this project to the Planning Board for review.

The Planning Board held a public hearing on November 15, 2016. Concerns of trash, noise, lighting, and traffic were mentioned by the board and the audience. Mr. Rigsbee was given the opportunity to respond to the concerns.

Llewellyn Ramsey, Planning Board member, confirmed the Board voted to recommend this project with five votes in approval and one vote in opposition. She stated they discussed the parking issue and the fact that he the felt majority of his business would be walking. Overall the Board felt it would be an asset to the area. Chief Harvey had contacted Emerald Isle Police Department and the only issues that had been reported were from customers already drunk when arriving.

Applicant Presentation

Mr. Rigsbee read a prepared statement expressing his plan to minimize the effects on the neighbors and the Town and identified the positive effects he sees. He feels this is a good area to assist people from having to drive miles to get food or drink. It is no secret that people on vacation come to this area in search of a good craft beer. He will focus on NC craft beers with a coastal vibe. He will model this location around his Emerald Isle establishment.

Mr. Rigsbee stated the following:

1) His intent is to open a craft beer bar/tap room. His customers are the type to try several new beers, staying for only one or two. It will be a low key environment. He will not offer a dollar beer night with people hanging round all night drinking. He will train staff to handle customers appropriately.
2) He has addressed and complied with all the items in Section 6.33 of the UDO.
3) He believes opening this establishment will be an asset to the value of abutting properties, especially since this property has been vacant for so long.
4) This establishment will be in harmony with the area.

The Board questioned the applicant of his intent for outdoor cookouts and live music. He stated he has not considered cookouts or outside gatherings at this time.

Plough suggested applicant close in the trash receptacles for appearance sake. Mr. Rigsbee agrees and is happy to address the issue.

The Board discussed available parking. Michelle stated there are 33 total spaces for the entire building to share.

Public Hearing

Ken George: He wants to ensure the Board is aware the conditions of the permit stay with the land. He feels the area would like to see something there, rather than the abandoned gas station. He is pleased with the proposal to lessen the lighting issues. If there is music, he would like to make sure it is just acoustics and not amplified. He has been working with the Town for a sidewalk to and from Seaside Villas, but hasn't made any headway.

Samer Hamad: He is the owner of this property and Dairy Queen. He went to Mr. Rigsbee's place in Emerald Isle and thinks a pub is a better word than bar. It is a low key upscale place. He admits the more sidewalks to Dairy Queen, the better. 25% of Dairy Queens traffic is pedestrian and bicycle, he can provide the difference in numbers from when the Doubletree closed.

Closed Public Hearing at 8:41pm.

Board Discussion and Evaluation

Chairman Kurek polled the Board members and each agreed the following criteria have been met:

1) The proposed use will have a positive effect on public health and safety.
2) This use meets all required conditions and specifications from Section 6.3. (pursuant to Michelle's testimony).
3) The proposed use will have no material adverse effect on the value of adjoining or abutting properties unless the use is a public necessity.
4) The proposed use is in harmony with the Town Land Use Plan and other plans adopted by the Town Council. (pursuant to Michelle's testimony).
5) Proper notice was given to adjoining property owners and concerns have been heard at the Technical Review Committee and Planning Board.

Plough made a motion to grant the Conditional Use Permit to operate a bar/pub in the Resort Services Zoning District located at 2610 West Fort Macon Road with the addition of Addendum #1. Seconded by Lotspih. Motion carried, Vote was 5-0.

Plough made a motion to allow applicant to stay open year round if he chooses. Seconded by Lotspih. Motion carried. Vote was 5-0.

Conditions in Addendum #1:

1) Business hours of operation shall be no earlier in the day than 10:00am and no later than 12:00am at night.
2) Approval from the Carteret County Environmental Health Department shall be required for operation.
3) No additional lighting shall be installed unless required for safety of employees and/or patrons as approved by the UDO Administrator and Police Chief. Approved additional lighting shall have reduced impact to traffic along West Fort Macon Road and on neighboring residential areas to the maximum extent practicable.
4) Windows and doors shall remain closed as much as possible to reduce noise pollution to outside areas.
5) Outside entertainment shall not be permitted without a Special Event Permit from the Town of Atlantic Beach.
6) Outside cookouts, gatherings, parties, or events beyond the typical comings-and-goings of patrons are not permitted.
7) One or more signs shall be installed to direct employees and patrons to utilize existing parking spaces as approved.
8) Refuse areas shall be screened at 50% or greater opacity on at least three sides and shall confine receptacles to the maximum extent practicable.
9) Seasonal operation may be extended to year-round operation.

ADJOURNMENT

There being no further business the meeting adjourned. The time was 8:46 p.m.

Approved by:

John Kurek, Chair

Katrina E Tyer

Katrina Tyer, Town Clerk