Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
Emergency Operations Center
125 West Fort Macon Road
Monday, August 19, 2024 at 6:00 p.m.

Members Present
Michael Bosse, Chair
Harrison Smith, Vice Chair
Tony Engrassia
Bradley Jones
Bonnie Pitts

Members Absent
Kathy McGehee, Alternate
Stephen Rea, Alternate
Shannon Vance, Alternate

Others Present
Jane Gordon, TOAB Attorney
Jonathan Eure, BOA Attorney
Katrina Tyer, Clerk
Jennifer Ansell, Planner
John O'Daniel, Manager
Joyce Livengood, Alternate
Matthew Vanhorn, Attorney for Appellant Ocean Ridge Homeowners Association
John Harris, Attorney (and assistant Mansell Carloni) with White and Allen, for Property Owner Phil Lewis

PUBLIC HEARING: APPEAL 24-1: 1015 OCEAN RIDGE DRIVE
An appeal has been filed from an administrative decision to issue a zoning permit for a fence at 1015 Ocean Ridge Drive. The Board will conduct a public hearing and make a decision to: affirm the decision or interpretation (in whole or in part), modify the decision or interpretation (in whole or in part), OR reverse the decision or interpretation (in whole or in part).

CALL TO ORDER AND ROLL CALL

Chairman Bosse called the meeting to order at 6:01 p.m. Since all the regular members were seated, he did not call the roll.

Chairman Bosse confirmed with the board members that no one had a conflict, financial or personal interest, conversation, or special knowledge about the case. They confirmed they did not. The applicant and the appellant both confirmed they did not have any objections. Jones stated that he had made a site visit and reviewed the record of appeal. Attorney Van Horn and Attorney Harris confirmed they still had no objections to the board seated to hear the case.

Katrina Tyer, Town Clerk, administered oaths as a group to Jane Gordon, Attorney for the Town of Atlantic Beach; Matthew Van Horn, Attorney for Appellant; John Harris, Attorney for Property Owner; Mansell Carloni, Assistant Attorney; Jennifer Ansell, Planning Director; John Finch, Attorney; Randall Parker, homeowner; Phil Lewis, Property Owner; Ron Cullipher, Engineer.

Chairman Bosse opened the Public Hearing at 6:06 p.m.

Attorney Eure clarified with Chairman Bosse that the town should present its case first, followed by the Appellant HOA and then the Applicant/Respondent. At the end of each presentation, the chairman may wish to cross-examine and rebuttal. Board members will be allowed to ask questions. Any objections should be given at the time they are presented.

Attorney Jane Gordon began by noting that the town had prepared and certified the record on appeal. There were no objections to admitting the Record of Appeal (TOAB).

Jennifer Ansell, the Town of Atlantic Beach's planning and development director, approached the stand and began answering Attorney Gordon's questions.

After the appeal was filed and before the hearing, she provided notice of the hearing to the public by mailing, publishing, and posting notice on the property. This is for a fence permit located at 1015 Ocean Ridge Drive that was constructed before June 2023. The property owner did not apply for a permit before installing the fence. She became aware of the fence when she received a complaint from the former HOA president, George Barnes, via email stating that the fence was constructed within the easement areas and provided supporting documents (TOAB Pages 2-4). Ansell listed the documents in George Barnes' May 18, 2023, email, stating that she reviewed them following the email.

She consulted the Town's Attorney (Clerk's note: the Town Attorney at the time was Derek Taylor) and the County GIS department. There was a discrepancy about the width of the easements, which at that time were not mapped out on GIS, so they reached out to Maureen Dougherty (TOAB Pages 38-40). She consulted with Attorney Taylor and a copy of the Plat (TOAB Page 41) provided by Maureen to determine that the width of the easement is 20 feet.

She received a permit application in August while conducting this research. At that time, she issued a Letter of Denial until she could obtain more information (TOAB Page 55). The Letter was issued to Scott Cottrell, the Builder, asking for a V-Zone Certificate and a survey. She did not get a response. On November 3, she issued a Notice of Violation (TOAB Page 58) again asking for a survey and an opinion of title. She ultimately dropped the request for an opinion of title because, according to Ordinance Section 18.5.7, fences are allowed to be constructed within an easement area subject to an easement agreement, so there was no basis to deny the permit at that time. She received the revised survey and V-Zone certificate and issued the permit.

In February, we issued another Notice of Violation requesting a revised application and V-Zone certificate (TOAB Page 62). We received those documents and issued the permit per Ordinance 18.5.7 (TOAB Page 72). The owner signed a document stating that the town does not conduct a title search before issuing the building permit and is not responsible for determining property rights (TOAB Page 67). Ordinance 18.5.7.c.2 concluded that a fence could be built. A fence is not considered an accessory structure.

Based on the survey provided with the application and GIS, the property boundary is the center line of 10th Street (TOAB Page 37). Setbacks are measured from the boundary line between two properties. She understands this is a dispute between the Ocean Ridge Homeowners Association and the property owners violating the easement. The town considers this to be a civil matter between the property owners.

Attorney Vanhorn confirmed with Ansell she determined that the structure was a fence. Based on the ordinance (TOAB Page 72), the description for fences or walls calls out screening or retaining walls, and it is neither of those, so we determined it to be a fence for permitting. He questioned her, asking what had changed regarding the June 17 agenda on the appeal of the wall installation and tonight's agenda reading on the appeal of a fence. She stated we use those terms interchangeably.

She has seen pictures of this fence. She again referred to Ordinance 18.5.7.a. where she determined that this was a fence because it was not a retaining or screening wall. She reviewed the application again for a fence (TOAB Pages 33-35). The survey was prepared after the installation and referred to as a masonry wall.

Attorney Harris objected, stating that Ansell had already stated that the fence and wall were the same in the ordinance. Attorney Eure recommended taking arguments and making a decision. Chairman Bosse asked Ansell to define a fence again. She read Ordinance 18.5.7.a again, stating it fell under a fence.

Attorney Vanhorn asked her what the definition of a wall is, but she did not have that in front of her to answer.

Attorney Harris asked if he could introduce pictures in binders he had prepared. He wanted the board to review only the pictures at this time; other things in the binder do not need to be reviewed and have not been presented as evidence. Binders were passed out to the Board, and the Clerk instructed the Board to review Tab A only and displayed the photos on PowerPoint.

Attorney Vanhorn reviewed the pictures of the fence's construction. Attorney Harris argued that Attorney Vanhorn was testifying while he was questioning her about masonry and construction. Chairman Bosse agreed and instructed him to move along.

Attorney Vanhorn pointed out and asked Ansell to re-read the following documents, discussing each one again, mainly pointing out that she used the term wall: the August Notice of Permit Denial (TOAB Page 55), the Notice of Violation (TOAB Page 58), and the February Notice of Violation (TOAB Page 62). Chairman Bosse ordered to expedite this; the board realized it read wall.

The February Notice of Violation does not require a Legal Opinion (TOAB Page 62) because the Ordinance allows fences to be constructed in an easement area. He asked again for clarification on a wall and fence.

Attorney Gordon objected that he was mischaracterizing her testimony. She has already answered these questions about fences and walls and why the town no longer requires legal opinion. She does not recall anyone telling her to waive that; her decision was based on the ordinance.

Attorney Vanhorn asked for a minute. The Board spoke amongst themselves. Inaudible.

Attorney Vanhorn asked her if she sent emails calling it a wall. She assumes she probably did but does not recall. Attorney Vanhorn requested to ask her questions about a 2023 email. Attorney Harris objected, stating that this was repetitive. Attorney Gordon reviewed the email (OR Exhibit O4) and agreed to allow him to question. Yes, she used the word "wall."

Attorney Harris introduced himself to Ansell and the room. She stated that this is not a screening wall or a retaining wall. This is a public easement, private for Ocean Ridge, serving those property owners. He presented a copy of the Town Ordinance definition section of a fence and wall. It reads a fence or a wall, which is basically the same thing in this context (the Clerk does not have a copy of this in the record).

Attorney Vanhorn referenced the ordinance (TOAB Page 72) and asked her to define screening and retaining walls. She said it is not a retaining wall because it does not hold anything back, and it is not a screening wall because of its height. He questioned subsection f and what a required easement is. She would argue ingress and egress but does not believe our UDO defines a required easement. Chairman Bosse ruled she is not an attorney and cannot be expected to read a legal document.

Attorney Vanhorn continued with questions regarding the definition of a wall and fence. After multiple objections, Attorney Gordon asked Ansell to refer to the Town Ordinance (TOAB top of Page 73) and read aloud the section regarding materials. This fence is made of block; masonry is permitted for fences. She then referred to the Town Zoning Fence Permit (TOAB Page 75), stating that the town does not distinguish between a wall and a fence on the permit.

The Board was then directed to ask their questions.

Engrasia wants to understand the validity of why an hour was spent on a difference in a wall or fence when it was determined that it was not a screening or retaining wall. Ansell stated that, per Ordinance 18.5.7, it is not a retaining wall or screening wall.

Jones, per Ordinance 18.5.7.a, asked if applicants are responsible if they violate the easement agreement. Ansell stated that is the town's position. The town is not responsible because it is allowed by ordinance.

Attorney Gordon does not have any other witnesses. She wanted to make sure the record on appeal has been admitted in evidence, which Chairman Bosse confirmed. She reserved the right to call Ansell again.

Attorney Eure and Chairman Bosse confirmed with Attorney Vanhorn that closing arguments will be allowed at the end.

Attorney Vanhorn clarified that we used the term HOA, but this is a volunteer association.

John Finch, Attorney. Attorney Vanhorn has known him for 25 years. He asked him to prepare an opinion of the title for the easement. Testimony has stipulated to the easement. He heard testimony that if you call it a fence, you do not have to provide an opinion, but if you call it a wall, you do.

Attorney Harris objected, stating that Ansell had already testified that a legal opinion was not required, so why was he giving one? This is not needed.

Chairman Bosse overruled. Based on Attorney Eure's recommendation and a wall/fence determination.

He has been practicing real estate and estate planning for 38 years. He is a Carolina undergrad. He was asked to do this in June, a couple of days before the last hearing. He has completed over 3,000 title searches and real estate closings. He knows closing attorneys have to hurry, and if they are in a hurry, some attorneys could misunderstand this. He researched in Carteret County.

Attorney Harris would like to hear about his qualifications as an expert witness. He went to Cambell Law School in 1986. He has done about a dozen in Carteret County; the laws are the same in Wake and Vance counties. He is not doing this out of the kindness of his heart; he is paid by the owner's association. He is not board-certified. Attorney Harris did not have any objections to his testimony.

Attorney Eure stated it is not a rule to be certified. Chairman Bosse ruled that he is qualified as an expert.

Attorney Vanhorn referred the Board to (OR Exhibit B). Attorney Harris stated this is a Plat of the Ocean Ridge subdivision recorded in Book 10/Page 67 of the Carteret County Register of Deeds. He thinks it is 48 lots. The Clerk displayed the documents on PowerPoint for easier reading. Attorney Harris read from (OR Exhibit B, Page 1). "The streets, alleys, roads, and ways shown on this map are dedicated only to owner(s) in each respective block, and no dedication to the public is intended, owners of property in Blocks A-M include. Are to have access to the ocean through streets between Block 1-11 street as shown may be changed or closed by consent of all property owners in adjoining blocks". He discussed the enlarged blowup of the Map (OR Exhibit B) of Blocks 11-Block 8 on an easel. It shows ten streets, which are 20-foot-wide paths to the beach. To his knowledge, they were never paved or driven on.

This was filed in 1948. It clearly states these are beach access easements. They vary, but all are unobstructed except one on the other end that has vanished. And this one is gone for all practical purposes. You cannot get to the beach by Lewis' side. This structure prevents you from accessing the beach. You can jump the fence to get to it. According to the survey, it is 5 feet in the easement; the rest looks like someone's yard. If you wanted to get into an argument, you could walk into someone's yard to get to the beach. I am not a surveyor and was not asked to look at the others, but some have A/C units sticking out.

He acknowledged (OR Exhibit C)– Limited Power of Attorney Book 404/Page 354.

He stated that (OR Exhibit D) is a Deed of Dedication signed by almost all of the front-row owners. It says all easements are transferred to specific individuals. This document appears to state that the front-row owners own all those easements as tenants in common. He was asked to explain the difference between easement and ownership. An easement is a right that goes with the land to use the land for a particular purpose. You do not have a right to obstruct an easement or any part of one so that someone cannot use their property. You do not have to obstruct all 20 feet. It is an obvious obstruction if there is an easement attached to it and there is an ingress and egress with this. He did not find this easement was extinguished. Lewis is obstructing it. He would need the consent of all the oceanfront property owners to construct the wall.

Chairman Bosse thinks the Board understands the HOA, the plat, and the dedication, so he can expedite this.

Attorney Vanhorn said he did not have to discuss (OR Exhibit E), the Deed of Withdraw Book 466/Page 152. The Deed of Withdraw was filed first and consistent with the statute, states that ownership transfers to adjoining property owners. Half of the easement became the property of the adjoining property owner at the time.

(OR Exhibit G), Judgement and Order Book 967/Page 100 was issued in 2002. It clarified that it is owned by adjoining property owners.

Engrassia wanted to ensure this refers to lots 1-11, not just lots 1-5. Attorney Eure reminded the board they could address at the end. Attorney Vanhorn said they could address now.

Attorney Finch read paragraph 2, page 3, and summarized that adjoining lot owners of the streets at the time of the 2002 judgment owned the easement area. At the time of judgment, the owner of Lot 8 was James Ficklin, Jr., and wife, June. He read the NCGS referenced in the Judgement.

Ms. Ficklin, assumed to be a widow then, sold Lot 8 to Vincent Taylor Murray and her husband for 20% in 2005 for estate purposes. The remaining 80% was transferred in April 2017 from the Ficklin Family Trust to the Murrays. The Deed reads all of Lot 8 and half of Lot 7 of Block 10. The deed from the Ficklins to the Murrays does not transfer. It was omitted. Unlike the deeds in the corresponding easements. He referenced Deeds Book 1125/Page 475 and Book 1572/Page 186. Property can be transferred to NC by deed or will. The Deeds transferring from the Ficklins to the Murrays did not include that easement.

Today, Phil Lewis owns Lot 8 and half of Lot 7. He purchased it from the Murrays on October 18, 2021. There is no mention of the easement in his deed, and he thinks it is because the Murrays did not own it. You have to own it before you can sell it. When a lawyer does title work, you do it to the current day; you can only do it to the current day. He updated it today and found a non-warranty deed for the 10-foot Easement from the Murrays to Lewis for the 10-foot easement they do not own. (OR Exhibit R). This is a legal nullity. The deed was trying to transfer the 10-foot strip to Phil Lewis, but it was from someone who had never owned it.

When the town contacted the contractor about the violation, they tracked down the wrong people. They should have tracked down the Ficklin heirs.

Attorney Eure asked if Attorney Vanhorn wanted to submit his exhibits. Attorney Vanhorn motioned to submit the written opinion (OR Exhibit N). Attorney Harris did not object to the letter's admittance. He noted he is admitting case law and license. Chairman Bosse admitted.

Attorney Vanhorn referred to Ansell's earlier testimony on Ordinance 18.5.7 (TOAB Page 72). Attorney Finch confirmed you have to own the land before building a fence on it. The ordinance does not allow you to build a fence on property you do not own. The purpose of that easement is to provide beach access. If you look at this, it is larger than life and obstructs the easement.

Attorney Gordon did not have any questions.

At 8:03 p.m., Chairman Bosse asked the board if they wanted a 10-minute break. They did not.

Attorney Harris crossed Attorney Finch. He did not walk to the beach because he did not want to look like he was straying into the neighbor's yard. He did not feel like jumping over the wall. There is not an opening in the wall. You have to trespass onto Lewis' property to get through. If you thread the needle, you can walk through the four-foot opening, but if I walk down there with my kids and dog, it looks like you're trespassing; yes, there is an easement. But if you are renting on the second row, you would not know. Their access has been taken away from them by a retroactive stamp from the town.

He looked at the other accesses on Ocean Ridge. He did a title search on the easement we are talking about and the corresponding lots and consistently found that those were deeded the 10-foot easement. He is concerned about the Blands easement because they paid for a survey that does not show it. He would file a title insurance claim and sue the closing attorney (TOAB Page 37 Survey). He did not look at the tax office map or the GIS department because they do not determine ownership, and relying on their work product is malpractice. But he did look at it to see things they missed. That wall is to keep people off that property, obviously prohibiting access. He does not know the intent in 1948. He does not think the intent was to park a camper. He thinks it was for pedestrian beach access. It is his opinion that Phil Lewis does not own it; he never has. A Superior Court Judge might determine otherwise, but he feels he would determine it is owned by the Ficklin heirs, not Phil Lewis. The town has issued a building permit for someone to build a structure on this land they do not own. He has examined the title since the June meeting, and a deed has been recorded by Vinton Taylor Murray, the wrong person, who is not the current easement owner. Ms. Ficklin was the current owner before, owning it before the Murrays owned it. She owned it in 2002 at the time of Judgement. The deeds of the other lots reference the 10-foot strip of land.

Attorney Vanhorn objected that Attorney Harris was testifying and could not provide his opinion until closing arguments. Chairman Bosse granted.

Attorney Harris continued. Attorney Finch did not examine the Ficklin estate file, he did enough searching to determine there is no way Phil Lewis owns the property.

Attorney Harris stated that he recorded a deed on Friday from Murray to Phil Lewis. Attorney Finch said it was not recorded to the right person. Attorney Harris said that Venton Taylor Murry was an heir, Ms. Ficklin's niece. Ms. Ficklin did not have any children, just siblings. She created trust and, in her Will, left her property to the trust.

Attorney Finch stated in this hypothetical, if that is the case, then he would say that Phil Lewis owns a fractional interest in that easement. He would not change his mind because her estate should be filed in Carteret County otherwise there is no way of knowing if the information is correct. It is not filed here. He does not know if anything Attorney Harris is saying is accurate. Attorney Harris stated it was filed in Greenville.

There were no questions from the Board.

Attorney Vanhorn directed the Board to the August 18th Notice of Permit Denial (TOAB Page 55), where the town requested a title opinion. He is not aware of another opinion of the title. He said the town decided to call it a fence and approve it retroactively. The developer developed the Plat with those easements. We are only here to discuss this 20th Street bed that this easement crosses; he is not here to discuss any other ones.

Attorney Gordon objected that Attorney Finch was not qualified to testify to municipal law, only his real estate opinion. Attorney Vanhorn withdrew his questioning.

Attorney Eure directed the Board to ask questions. They did not have any.

Attorney Vanhorn asked for a five-minute break to speak to his clients.

A lady stood up, stating she would like to testify on her behalf as an Ocean Ridge property owner, and walked to the podium. Attorney Vanhorn said she would testify. She is a HOA board member. Chairman Bosse said she could speak during public comment and stepped away.

There was an informal break. The board members talked amongst themselves, and the attorneys spoke with their clients. The time was 8:29 p.m.

Attorney Vanhorn asked that his binder (Applicant Ocean Ridge Owners' Association, Inc.'s Exhibit Notebook) be admitted. Attorney Gordon did not have any objections. Chairman Bosse confirmed it was admitted. The Clerk stated she did not have a paper copy and asked if her digital copy was the same. Attorney Vanhorn stated it was.

Attorney Vanhorn rested. The time was 8:30 p.m.

Attorney Harris called Randal because he has to leave. Next, he will call Phil Lewis.

Randall Parker, a property owner on Ocean Ridge, believes it is 1100. His family used to own the Bland property. He has a second-row home and has used the area where Phil Lewis has a fence. It does not hinder his access at all. He does not think it needs to be 20 feet wide. He has not stopped me or anyone he knows from using the beach.

Attorney Vanhorn and Attorney Gordon had no questions.

Engrassia asked him where his home is located in relation to Phil Lewis. He could not see, so he walked to the map Attorney Vanhorn had on display (OR Exhibit B). Attorney Harris confirmed he pointed to the 50-foot section east of Lot 5 Block M.

No other questions.

Phil Lewis, Greenville, NC. He has been on Ocean Ridge for almost 25 years. In 2021, he bought the house from the Ficklins. He was friends with all of them. He had the first right of refusal on this house at the time. One of the board members made an offer on this house, so he was forced to make an offer, which created some problems. When he bought the house, the Murrays told him they had an agreement with Scott Cottrell, the contractor for the Blands at 1101, who were building a new home. He does not think he had ever met him before. But he came to him and said we think the wall is on the ninetieth foot, and if you let us park our cars there, we will probably mess up your wall. If you let us park there, we will replace your wall on the ninety-fifth foot. He did not pay for the wall, not a dime on the fence; the Blands did. He lives on Swindell and walks on some of the worst accesses. Some of them are a foot and a half wide. He thinks the Blands did a nice job. They only talked when they reached out to him and discussed making this access nice with Bermuda grass, not vines like some others. Of the access, he owns five feet on the west side of the fence, and the Blands owns the rest, giving about an eight-foot walkway access. He did not pay anything for it. Cottrell built it to mimic the Bland's fence in the front. He never got with the Blands and tried to block anyone's access. He has never tried to block anyone's access. He loves the beach and wants people to use the beach. He does not want it to be public. He understood Ocean Ridge wants to keep it private and did not want twenty-foot easements where people could drop people off. George Barnes is the past president of the Ocean Ridge Association. He wrote him an email. (Attorney Harris passed Lewis a copy of the email chain between Barnes and Lewis in 2023. The Clerk asked for a copy, which is included in the minutes). Attorney Vanhorn shook his head, acknowledging he had seen the email. He had written a letter asking about the fence. Lewis returned his call, which is what the 2023 email is about.

Attorney Vanhorn objected to his testimony, claiming this was hearsay. Attorney Eure explained to the Board that hearsay is not competent evidence and recommended objecting to it. Attorney Harris argued that Barnes filed the complaint. Attorney Eure recommended overruling.

Lewis read the email aloud word for word. He pays almost $1,600 in taxes on the ten feet each year. It is shown on the GIS mapping. No one has told him he did not own it.

No other witnesses.

Chairman Bosse opened up for cross-examination. Attorney Gordon had no questions.

Attorney Vanhorn crossed. Lewis stated Attorney Harris is the best real estate attorney in Morehead City. He does not remember if he used him when he developed the lots on First Street.

Chairman Bosse asked what relevance First Street has to do with 10th Street. Attorney Vanhorn stated he opened the door, discussing his intentions on 10th Street. Lewis said he did not say anything about his intentions. Attorney Gordon argued what he did on another street was not competent evidence. Chairman Bosse agreed that First Street is irrelevant.

Lewis stated he is not a developer. He is an insurance salesman. He owns three lots on the second row.

Attorney Harris objected that the other lots are irrelevant.

Lewis is not that familiar with the permitting process. He has no other evidence of ownership; he will let his attorney answer that.

Chairman Bosse asked for clarification on whether Blands built the wall through the contractor. Lewis stated they built on 1101 per the Murrays' agreement with the Ficklin heirs. This was done before he ever bought the house. He does not know who paid for it, but he did not. He owned the property in 2021, and the wall was built in 2023. It took a while to build the house. The Blands built the wall on his property as part of the agreement with the Ficklin heirs. He still owns the property.

Attorney Vanhorn questioned. Lewis stated he did not pull the permit; the contractor pulled the permit. He was not involved in much.

Attorney Vanhorn asked if the Blands were paying his legal bills. Chairman Bosse overruled.

Mansell Carloni, an associate for Attorney Harris, took some pictures on June 6 (pictures are included in the Minutes as part of the PowerPoint. Lewis PowerPoint Slides 11-16). Attorney Vanhorn did not object.

Attorney Harris has been practicing law longer than anyone in the room. He started in 1984 on the Causeway when there was still a drawbridge. He has also been doing real estate for a long time and is familiar with Ocean Ridge. He scrolled through the pictures showing the condition of the other accesses.

Attorney Carloni stated Attorney Harris prepared a title opinion if the board would like to qualify Attorney Harris as an expert and have it admitted. Attorney Harris said he did not intend to submit one unless the Board requested it.

Attorney Vanhorn objected, stating he could not be a witness and an advocate for them. Attorney Eure advised the Board against it. Jones agreed it would conflict with him. Attorney Vanhorn reminded him that he would be crossed on it if he submitted it. Based on it being after 9:00 p.m., Attorney Carloni agreed not to submit. After discussion, Chairman Bosse determined that at the end of this hearing, they could request it then.

Katrina, Town Clerk, administered oath to Susan Hackney.

Susan Hackney, 1113 Ocean Ridge Drive. They have owned an oceanfront property since 2004, initially with partners, but now they own it outright. Her husband's family has owned another lot since 1949, so they have been a community member for a long time through his grandparents. She is not representing the board in that capacity. She is an administrative law attorney; she does not practice property law but is familiar with various regulations. She does not want to repeat the story but wants to provide some background information to help everyone understand some of the testimony. She referenced the original 1949 easements and the plat Attorney Vanhorn had shown, pointing out that in the 1100 block, the second row was not part of the original plat. He does not have the right to any of those street beds. They do not object to him using it; he has no vested interest other than his own personal access. In (OR Exhibit C) that Attorney Vanhorn handed up, James Ficklin was the original owner of Lot 10, Block 8, and one-half of Block 7; rather than a 60-foot lot, he had a 90-foot lot. In 1977, he provided a limited power of attorney to Kenneth Kirkman to execute documents, including the Deed of Withdraw and the Deed of Dedication. This is important because it shows his intent and read from the document. It says the dedicated private roads still had the easement running through them. This shows no intent to extinguish or merge them into adjacent properties; it was to preserve those streetbeds and provide access to the ocean. (OR Exhibit E) the Deed of Withdraw only withdrew the street beds from public

dedication pursuant to general statutes. The 10 feet given to the adjacent property owner was not merged into their property; it is a separate tract of land. In 1977, the dedication conveyed the title of those street beds as tenants in common. The language is very confusing. They acquired streets 1-11 through the Deed of Withdraw. After the 1977 Deed of Dedication, the oceanfront owners owned the street beds; they were not merged into the adjacent property owner. (OR Exhibit G), the 2002 Judgment provided title and property rights for the street beds to the adjacent property owners. The street beds remained, not merged into adjacent property owners' land. Lewis testified that he owned 100 feet. No, that 10-foot space that Ficklin owned was a separate title. She owned 90 feet of her lot and 10 feet from her lot to the center line of the street bed. The same applies to the adjacent property owner, who lives 10 feet to the east. The judgment also stated they were still subject to the Deed of Dedication. Lewis' recently recorded deed acknowledges that those street beds remained separate property and were not merged into his property. Why would he attempt to get a deed if he did not need to get a title? It is important to understand that the streets remained a street bed, and the 10 feet to the east and west required separate deeds. There was an earlier discussion about a very wide access that does not have anything obstructing it, and she thinks it is 3rd Street. If you buy into the fact that Lewis thought he owned the property, then the wall is an accessory structure under Ordinance 18.10.5. She read the definition of an accessory structure aloud. The problem is that Ordinance 18.4.8.c.2 says all accessory structures must be on the same lot as the principal structure, not within any street on the right-of-way. This easement is a right-of-way. Ordinance 18.c.5. accessory structures may not be in an easement unless the owner states the allowance in writing. In this case, the easement is owned by every oceanfront and second-row owner in the 1948 plat to allow the accessory structure, the wall. The town allowed the accessory structure to be built, which violated that ordinance. We discussed the definition of a fence and a wall, and Ordinance 18.10.5 talks about them equally. Logically, what defines the difference between a fence and a wall? A wall has a foundation, and we saw a picture of it going into the ground. A fence has posts, and we do not see any posts. She wanted to review the Record of Appeal and point out that (OR Exhibit H) Survey calls it a wall. (TOAB Page 3) in the email with Barnes, he says a wall obstructing access is being constructed. She mentioned (TOAB Page 55).

Chairman Bosse stopped her stating that the difference between a fence and a wall had been established.

(TOAB Page 55) shows that, as Attorney Vanhorn pointed out, there are multiple references for it being a wall. (TOAB Page 22) the Notice of Violation to Lewis did not see anything he did that pulled him back from that. In the letter, Attorney Vanhorn asked why she did not require notice of the title. The issue of appeal in the June 17 meeting was a wall, and in today's meeting, it was a fence. Ansell stated they had determined it was a fence and not a wall. So, did they only make that determination between June 17 and now? In February, she still referred to it as a wall.

Chairman Bosse stated I think we have already established that.

She said the title opinion requirement was withdrawn because it was a fence. According to the language in Ordinance 18.5.7, on (TOAB Page 72), it was in Lewis' best interest to call it a fence because it could not be built if it was a wall.

Chairman Bosse stated that was her opinion. She confirmed that it was her opinion. He reminded her to stick to the facts.

Why would Lewis need the deed on Friday if he owned the 10-foot portion?

Chairman Bosse again stated that was her opinion, which she confirmed.

Attorney Eure stated it was a good time to see if she had any other evidence. Chairman Bosse asked her to continue if she had actual evidence.

She referenced the email between Barnes that Attorney Harris sent out. (Attorney Finch got up and handed Attorney Vanhorn a piece of paper – the Clerk does not have this). Lewis signed the Owners Beware Notice because the town required him to sign (TOAB Page 80). She respectfully Requests them to reverse the permit.

The Clerk administered an oath to Rory Vincent.

Rory Vincent, 612 Ocean Ridge. She has been here since 1953. She has pictures of this area that used to be flat; a hurricane took out cottages, and they put in a seawall in the late 50s, early 60s. She owned a sailboat, pulled it to the wall, and carried it down to sail. She cannot get her sailboat through that narrow opening on 10th Street. He prevented her from using it as intended when her granddad bought the property. She lives in the back row and has been put down the whole time for being the slum part of Ocean Ridge, millionaires on the front and slums on the back.

Chairman Bosse stated she was giving her opinion. She confirmed she was.

She stated the intent was for us to access the beach. The town backdated the permit. She began talking to the audience about not being mad except for them not putting in a sand fence.

Chairman Bosse asked her to clarify that she was discussing this property. She stated she was talking about the easement that he has blocked, and she cannot access the beach; she cannot get her boat and does not know if she can get her kid's wagons either. She has a deed saying that she has access.

Closing comments

Attorney Gordon stated we heard a lot of testimony on easements and property ownership. The Town relied on information given by the applicant and GIS. It is not the town's job to certify the title. The town recognized the existence of an easement, applied the ordinance, and granted the permit, which allowed the fence to be constructed in the easement. Testimony about the ordinance and an accessory structure; it is not an accessory structure. The section of the ordinance that Attorney Vanhorn and Vincent referred to regarding accessory structures is not an accessory. (OR Exhibit L2) talks about accessory dwellings; it does not refer to fences. It is not any of the things listed, nor is it a boat ramp or home occupation. It is a fence. Nowhere in this ordinance does it talk about walls and fences. They are addressed in 18.5.7.c., which the town relied on when granting the permit. Whether it is a fence or a wall, referring to (TOAB Page 75), it is a fence because it was not a retaining wall or a screening wall. They built the fence without applying for a permit. The town had to go through the process to see if a permit could be issued. They did not backdate a permit. They reached a conclusion based on the ordinance allowing a fence to be constructed in an easement. They determined not to get into all these title issues; they are private civil matters, not the town's job when determining whether to issue a permit.

Attorney Vanhorn wanted to pick up from where Attorney Harris left off. He showed pictures of the obstructed street beds. Over the years, he is sure this has happened, with hurricanes taking away and new adjacent people added. The difference is the town did not approve these. They were now asking you to approve the obstruction of an easement. They also ask you to look at a wall and say it is a fence. There is confusion about the ordinance that you did not draft. Attorney Gordon is right; it is not the town's responsibility to do title searches. The process has worked because we are here and must figure out who owns the land. The only evidence presented is from experts. It has been diligently searched. If this were his wall and he wanted it to stay, he would have gotten a title search. But no, we had to do the title search. They say it is not the town's job to do a title search; more importantly, it is not the town's job to allow someone to build or to obstruct property they do not own. Now we do not even know who built it or who is responsible for it. The only issue before you is whether this issue was properly issued. That wall was not properly authorized. As his now co-counsel, Attorney Hackey, stated, the decision was rendered to allow it without calling it a wall or fence; before that, it was always a wall. The contractor wrote in pencil, calling it a fence. The survey attached to it calls it a wall. The June 17 agenda called it a wall, and tonight's agenda a fence. So now we are here calling it a fence. This was never explained in writing anywhere until today. The town said no to the permit, then they said yes. Mid-flight changed it to a fence. The first time he heard it referred to as a fence was when he got the agenda. Ordinance 18.9.9. says this was not correctly entered, and the wall should be torn down and put back the way it was. The defense of looking at all of the other streets because they are doing it is not a legal defense. Asking for forgiveness when there is no permission. This is private property; the applicant does not own it. If they allow this encroachment, then are you ready for the new forgiveness requests to come? He does not think it is appropriate to enforce this permit.

Engrassia asked if there was a wall there before that was torn down and moved over?
Attorney Vanhorn stated he did not know if he mentioned it, but there was a crosswalk painted in the street that has been painted over now. Now that the wall has been moved, they painted over the crosswalk. The town did not do this. The intent was to expand the boundaries of his property. He expects an application soon to subdivide this lot.

Attorney Harris has the same thoughts as Attorney Gordon regarding what is done according to town ordinance. We can keep talking about walls and fences, but it does not make any difference. The ordinance defines these. Lewis has not denied anyone access. He does not know anything about painting lines. This is a private access that everyone recognizes. He is not stopping anyone. If Vincent wants to pull her boat five blocks to that access, she can. He does not see where a title opinion is required. Lewis owns the property; it is foolish to think anyone owns 10 feet beside him. He has paid taxes on it. He prepared a title opinion on Friday. We got a deed on Friday from the heirs of the Ficklins because it was suggested in June that he did not own it. The town does not need to get involved in a private matter between property owners on the first and second row. The board must ensure they follow the ordinances and that the permit was issued correctly. He does not see anywhere that a title opinion

is required. Lewis owns some other property, and they are attacking him and his surveyor. There are cases in NC about private easement rights. They should file a lawsuit and not make the town do the dirty work. He thinks the permit was issued appropriately. He is sorry we have been here for so long. He is done unless there are any questions.

Chairman Bosse closed the Public Hearing at 9:50 p.m.

Board Deliberation

The board talked amongst themselves.

Attorney Eure instructed the board to follow the ordinance and facts. They have to affirm, modify, or reverse the town's decision. They need to look at the ordinance, apply facts, and determine if the town's decision was reasonable.

Chairman Bosse calmed the audience down from talking.

Engrasia stated the town's purpose is to promote access to the beach and asked if there is a compromise.

Chairman Bosse reminded the board that they must review the ordinance, determine whether the standard was met, and determine whether the decision-maker made an error. They have to affirm, modify, or reverse the town's decision. They cannot orchestrate a compromise. They are not planners, judges, or attorneys. They have to review what has been submitted and the ordinances. In the beginning, there was a discussion on the definition of a wall or a fence, a discussion of Ordinance 18.5.7, the original application, letters, and some agenda items. We have used the terms interchangeably. Reviewing the ordinance, he can logically see why this was determined to be a fence. Based on Ordinance 18.5.7.c.2.a. a fence can be built in an easement. He is not a contractor, fence, or wall builder, but if you look at the definition in the ordinance, it applies. We have heard a lot about ownership, but he does not know if any of that applies or is related to the permit issuance.

Smith's opinion is the ownership issue is not relevant to their scope. It probably should be discussed, but not in front of this board. The same is true with easements; the fact that some easements are open and some are not is not their scope either. Their scope is whether or not this is a fence, a screening wall, or a retaining wall. Per testimony, they agreed it was not a screening or retaining wall. They determined it was a fence. Common sense is that it is not a fence but a wall not covered by the ordinance.

Chairman Bosse spoke again, reading the ordinance; regardless of what the definition of a fence is, Section e.1.a. lists the permitted materials for a fence, which allows for mason or stone. In our mind, that might not be what we consider a fence, but based on the ordinance, that appears to be what a fence is. And a fence is allowed in an easement per Ordinance 18.5.7.c.2.a.

Engrassia asked what the difference is, whether it is a fence or a wall. It is all under the same ordinance.

Chairman Bosse started that the testimony that it was not a screening wall or a retaining wall.

Pitts confirmed that if it is not one of those two, it is automatically a fence.

Harrison asked if it was automatically a fence or was the supposition that it was a fence. That is the question he has concerns about.

Chairman Bosse reminded that the ordinance does not say anything about that. The ordinance reads that it shall, it does not say it should. It also lists the materials for a fence as masonry and stone. In your mind, that might not be what a fence should be, but based on the ordinance, it appears to be what a fence is. A fence may be located in an easement per Ordinance 18.5.7.c.2.a.

Pitts commented, but you do not think of a fence as blocking.

Chairman Bosse stated that the ordinance does not say anything about that. It says the materials can be masonry or stone.

Engrassia asked if the question was whether the wall was impeding access. Based on the testimony, they still have access.

Chairman Bosse reminded that they should refer back to the ordinance that it may be located in an easement.

Pitts commented that it would burden the other property. She knows they are okay with it now, but 20 years from now. She knows we are only addressing the ordinance. It will overburden that other piece of property because they are strictly on the other side. You could go down Lewis' property if that piece was not running east and west. Now, you have to jump the wall to get to it.

Attorney Eure reminded the board not to consider hardship they have to follow the ordinances.

Jones stated that a fence and a wall can be interchangeable as the ordinance is written. As the Chairman pointed out permitted material, it is clear in the pictures that it is a stone fence. He thinks it could go either way: a fence or a wall. Based on the evidence, our job is to determine if that could be a fence. Yes, based on the evidence. This should be heard in another venue, such as the Superior Court in Beaufort. But we have to determine if what the town did was reasonable and the fence could be in the easement. The applicant could have done something wrong, but we are not here to determine that. We are here to determine if the town did anything wrong. There was testimony from the town that the owner was responsible. The closing from Attorney Gorden could be reasonable. That does not mean this ends here.

Engrassia confirmed it is up to them to determine if the permit was issued properly.

Chairman Bosse stated that was correct and added that the wall, the concrete fence, was built before the permit was issued.

Jones stated that based on testimony, this is not the first time that it has happened and someone gets a love letter from the town.

Chairman Bosse asked the board if they were ready to vote.

Jones asked, based on the hour, if they vote tonight, will they get time to draft the findings to ensure they get it right?

Attorney Vanhorn asked if it was possible to take it under advisement and make a decision later.

Attorney Eure told the board that they do not have to make a decision tonight; they can recess, but a decision has to be made within 30 days. They will have to reconvene, make a motion, and vote at that time. In either event, the next step is for him to draft an order and circulate it amongst the parties.

Attorney Vanhorn recommends, based on the amount of evidence provided, that they take it under advisement for 30 days.

Jones acknowledged all of the hard work they have put into it and that it is fair.

Attorney Eure made it clear that when they recess, they can review the materials but cannot deliberate outside of the public eye. They must do it in public.

Jones asked Attorney Eure if they could vote tonight and that the findings could be determined later. The order would not have to be on the fly.

Attorney Eure advised that the best option would be when they decide and, at that time, determine the findings so they are clear for the record.

Attorney Harris asked for clarification. Attorney Eure stated they would reconvene at a public hearing and vote then. Attorney Harris asked if that would require everyone to be back again. Attorney Eure confirmed. Attorney Vanhorn clarified they could not submit any more evidence. Attorney Eure stated the board could call up more witnesses if they wanted. All of that would require motions.

The Clerk noted that if the parties did not want to travel and be present, she could air the meeting via Zoom if there were no objections.

After a recommendation by Chairman Bosse and discussion, Jones made a motion to take a 10-minute break. Seconded by Smith. Motion passed. The time was 10:10 p.m.

The board talked amongst themselves, and people moved around the room talking. The Clerk spoke with the attorneys, trying to obtain all of the exhibits mentioned. The Zoom feed continued to record, but nothing is audible.

The Board resumed at 10:20 p.m. Chairman Bosse reminded the board they will continue to deliberate. As mentioned before, the decision of the board shall be based on competent evidence, subsequent material, and record, and based on Ordinance Section 18.2.4.c.4. The board must decide if the decision-maker, the town, made an error in interpretation of this ordinance and whether the standard of this ordinance was met. The board shall be one of the following in whole or in part: affirmation of the decision or interpretation, modification of the decision or interpretation, or reverse of the decision or interpretation. He asked if there were any comments before the vote. He thinks it has been discussed, but the decision should be relevant to the Atlantic Beach Ordinance 18.5.7 and the definition of fences. And the location of a fence in an easement per Ordinance c.2.a. The board is not judges or attorneys; we are limited to what the ordinance tells us. Given the number of people in this audience, regardless of the decision, this will probably be heard at another venue. He asked for a motion for any of the decision options. He began to make a motion to affirm the decision. Attorney Eure interrupted him, stating that another board member needed to make the motion.

Chairman Bosse stated it appears we need more deliberation. That is okay; that is what we get paid for. Everyone laughed. Again, we are here to make a decision based on the ordinance. Given the definition in Ordinance 18.5.7, paragraph a as far as applicability. We are talking about a fence, not a screen wall or a retaining wall; if we apply that to Ordinance 18.5.7.c.2., a fence can be installed in an easement. And if we further apply that, in paragraph e, they can be stone. Based on that, he believes the town did not err in making their decision.

Jones does not think their decision tonight reflects on the quality of work. The testimony of the lawyer has been impressive. Their decision is just limited.

Jones made a motion to affirm the decision of the town. Chairman Bosse asked if he could second the motion. Attorney Eure advised him to ask one of the other board members. Chairman Bosse asked for a second. After no response, he asked for a motion to modify the decision in whole or in part. After no response, he asked for a motion to reverse the decision in whole or in part. Smith made a motion to reverse the decision. There was not a second.

Attorney Eure suggested it may be beneficial if they cannot decide to recess and deliberate. Chairman Bosse asked the board if they needed additional time or if anyone had any questions.

Jones stated that by looking at the ordinance, the evidence is clear that it is not a screening wall; it is not a retaining wall. It is clear it is a fence based on ordinance. A fence and a wall are pretty interchangeable. It is a fence, according to what the town planner did at her discretion and handled it. If we call it a fence, which he believes it is, we get down to the easements and have to look at Ordinance c.2.a., it is subject to an easement. Whether or not Lewis is blocking the easement is not up to us, but if you take the ordinance, you can see the town did not err in their interpretation. The ordinance is not perfect, but if the decision is reasonable and there is a reasonable capriciousness to the interpretation, There was also testimony the town is not responsible for a potential mistake by the homeowner; there is language where the homeowner could be liable, but that is something for another venue not for this board. He thinks the town tries to help. If you look at the ordinance and if what the town did was reasonable and if they followed it, then yes. It is a difficult case, there are a lot of things out of our jurisdiction, but looking at the ordinance, it is appropriate. We have a very limited role as members of the Board of Adjustment.

Engrassia does not like the spotlight and likes to keep peace. A wall was there, taken down and put up. Intent is not for us to decide. We have to determine whether the town erred in issuing the permit. If we are looking at if it is a fence or a wall, in reading, he does not think it is obstructing anything. If it is something he can ask for, he would like to see some lines and a sign letting everyone know they have access. If you paint the lines on the right-hand side showing it as an access with signage. He does not see that the town errored in issuing the permit based on what they were given. In his opinion, the town is justified in issuing the permit.

Smith stated that Engrassia made a good point and asked if they could modify the decision to add signage and walkway striping based on those suggestions.

Attorney Eure advised they could not modify the decision that way.

Smith referred to the language, which can be broad or strict. Two different types of walls are mentioned. It does not say all fences and walls; it says all fences, screening walls, and retaining walls. He thinks some types are not mentioned. Based on that, there might be an error in decision-making, unfortunately. The ownership and easement blocking portion has already been iterated. The zoning interpretation is what it is, and he is not sure it passes muster. Materials were discussed: a masonry fence; it looks like a wall, and it is a wall. It looks like a fence; he does not know if it passes that step.

Chairman Bosse reminded him that is how it is defined.

Pitts agrees with everything Harrison said, but based on what was presented to the town, she does not see anything in violation based on what was provided.

Chairman Bosse asked for another motion.

Jones made a motion *to affirm* the issuance of the permit for 1015 Ocean Ridge Drive. Seconded by Engrassia. Vote was 4-1 with Smith opposing. Motion carried.

Chairman Bosse stated a majority is required for approval and they have a majority, therefore the motion is approved.

BOARD/STAFF COMMENTS
None.

OTHER BUSINESS
None.

ADJOURNMENT
Jones made a motion *to adjourn*. Seconded by Engrassia. The vote was unanimous, 5-0. The time was 10:38 p.m.

These minutes were approved at the October 20, 2025, meeting of the Atlantic Beach Board of Adjustment.

Approved by:

Katrina Tyer, Clerk

Mike Bosse, Chair

Clerk's Note:
Exhibits referenced as:
Town of Atlantic Beach: (TOAB Page_)
Ocean Ridge Homeowners: (OR Exhibit_)