Minutes
Town of Atlantic Beach
Board of Adjustment Meeting
Town Boardroom - 125 West Fort Macon Road
Monday, September 16, 2024

Members Present	Members Absent	Others Present
Michael Bosse, Chair	Tony Engrassia	Jonathan Eure, BOA Attorney
Harrison Smith, Vice Chair	Stephen Rea, Alternate	Katrina Tyer, Town Clerk
Bradley Jones	Shannon Vance, Alternate	Elisabeth Webster, Planner
Bonnie Pitts		Joyce Livengood, Alternate
Kathy McGehee, Alternate		

CALL TO ORDER
Chairman Bosse called the meeting to order at 6:00 p.m.

ROLL CALL/EXCUSE ABSENT BOARDMEMBER(S)/APPOINTMENT OF ALTERNATES
Engrassia was absent due to family matters. Alternate Kathy McGehee was seated.

Jones made a motion *to excuse* Engrassia. Seconded by Smith. Vote was unanimous, 5-0. Motion carried.

AMEND AGENDA
Jones made a motion *to amend* the Agenda to include Approval of Appeal 1015 Ocean Ridge Drive. Seconded by Pitts. Vote was unanimous, 5-0. Motion carried.

APPROVAL OF MEETING MINUTES
Jones made a motion *to approve* the May 15, 2024 Minutes. Seconded by Smith. Vote was unanimous, 5-0. Motion carried.
Smith made a motion *to approve* the June 17, 2024 Minutes. Seconded by Pitts. Vote was unanimous, 5-0. Motion carried.

APPROVAL OF ORDER APPEAL 24-1: 1015 OCEAN RIDGE DRIVE
Per recommendation from Attorney Eure, Chairman Bosse read the Findings of Fact for the record:
Based upon the foregoing findings of fact, the Board of Adjustment hereby makes the following conclusions of law:

1. The language used in Section 18.5.7 of the Ordinances limits its applicability to retaining walls, screening walls, and fences.
2. The Lewis Fence falls within the definition of fence and/or wall under Section 18.10.5 of the Ordinances.
3. As described by the Application and by the competent, material, and substantial evidence presented during the appeal hearing, the Lewis Fence does not fall within the definition of "screening" or "retaining wall" as defined by Section 18.10.5 of the Ordinances.
4. As described by the Application, and by the competent, material, and substantial evidence presented during the appeal hearing, the Lewis Fence is constructed of materials which are permitted for fences pursuant to Section 18.5.7(E)(l) of the Ordinances.
5. As the Lewis Fence falls within the definition of fence and/or wall but does not fall within the definition of screening or retaining wall, the Town Planner properly determined that the Lewis Fence should be defined as a "fence" for the purpose of applying the requirements of Section 18.5.7 of the Ordinances to the Application.
6. As a fence as described within Section 18.5.7(C)(2)(a) of the Ordinances, the Lewis Fence may be located within a required easement. Accordingly, the Town Planner properly determined that the Lewis Fence could be located in the 10th Street Easement and removed the requirement that a title opinion be submitted in support of the Application.
7. The decision of the Town Planner did not violate Section 18.2.4(D)(3)(c), in that there were no prior permits or development approvals issued in relation to the Lewis Fence.
8. The decision of the Town Planner did not violate Section 18.2.4(D)(3)(d) of the Ordinances, in that the Town Planner's decision did not violate any applicable requirements of the Ordinances, State Law, or Federal Law, and specifically did not violate Section 18.5.7 of the Ordinances.
9. The Town Planner properly approved the Application based upon the details provided in the Application, the additional documentation provided by the Applicant, and the application of the relevant Ordinances.
10. To the extent any of the Findings of Fact above are considered to be Conclusions of Law by a court of competent jurisdiction, they are hereby incorporated herein by reference.

Jones made a motion *to approve, adopt, and ratify* the Order issued August 19, 2024 regarding the appeal of an administrative decision to issue a zoning permit for a wall at 1015 Ocean Ridge Drive. Seconded by Pitts. Vote was unanimous, 5-0. Motion carried.

REPEAL RULES OF PROCEDURE FROM 2006

After the last case and the involvement of multiple attorneys, the 2006 Rules of Procedure were brought to our attention. The UDO allows the Board to adopt its own rules, but since approval of the UDO, the Board has been following the UDO. For consistency, staff requests that the 2006 Board of Adjustment Rules of Procedures be repealed.

Jones made a motion *to repeal* the 2006 Board of Adjustment Rules of Procedure. Seconded by Smith. Vote was unanimous, 5-0. Motion carried.

Chairman Bosse confirmed with the seated 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 Applicants in both cases confirmed they did not have any objections to the seated board members.

Katrina Tyer, Town Clerk, administered an oath to Elisabeth Wester, Planner; Kendall Hollis, Stroud Engineering for Applicant; Brad Holt; Joe Edwards, applicant property owner; Joseph Harris, Applicant; John Nicks, witness.

RIGHT-OF-WAY OF ENCROACHMENT 24-1: 514 EAST FORT MACON ROAD

Stroud Engineering, P.A. has submitted a right-of-way encroachment on behalf of Joe Edwards, owner of 514 West Fort Macon Road. The request is for 1.5 linear feet (57 sq./ft) encroachment into the Town's existing right-of-way to the east of the property for a portion of the septic drain field for a proposed mobile home.

Chairman Bosse opened the Public Hearing at 6:16 p.m.

Elisabeth Webster, Planner, testified that according to GIS, when the walkway from East Fort Macon Road to the ocean was platted, the section of walkway from East Fort Macon Road to Tryon Street is further east than the rest of the southward walkway. Public Services and the Water Dept have reviewed this application and do not see any issues; therefore, they consent to the encroachment.

Harrison clarified that the alleyway is a 6 ft walkway allowing walkable beach access for the neighborhood. Jones asked if anyone anticipates any issues getting to the beach or other issues. Chairman Bosse asked if any state or federal issues had arisen. Elisabeth commented, not to her knowledge.

Kendall Hollis, intern with Stroud Engineering, is not quite a PE yet. This is already a tight situation because the neighboring lot has encroached. There is no other way we can figure out how to fit this home or septic onto this property. The mobile home proposed for the property is compact, measuring 11.6 x 33.5. The plan they have presented seems to have the least impact on all parties involved. They already have a septic permit. The County told them they had to have a drainfield, which is determined by the number of bedrooms and the home's low-flow fixtures. The County has other stipulations, such as installing barriers. Without an Encroachment Agreement, they could not get this proposed home. He admitted there are lower-profile and more costly systems available, but not typical for a mobile home or non-oceanfront home.

Brad Holt, Apex, owns the mobile home to the left. It was his father's; he passed away on May 6 of this year. They also own at Triple ESS. His parents have owned all four of those lots since 1974 and have maintained them for 30-plus years. They used to park on the north side until the state widened Fort Macon Road. Now the trailer is almost on the sidewalk. They were told that when the trailers got decrepit, they could not be replaced. They will not have parking. The septic system for the other lot is on the property line. They still use the trailer next door. The encroachment would adversely affect him by not giving him anywhere to park.

Joe Edwards, 2600 Davidstown Rd, Wendell and 514 East Fort Macon Road, and applicant. He bought the property a few months back. He and his wife want to live life at the beach. They made the purchase thinking, let's take a chance. They probed the property to ensure there was no septic system on it from the adjacent property. He has spoken to Bogue Septic, and they have worked out the best septic system for that property. The lot survey came back smaller than they had thought when they purchased. He found a place in Georgia that manufactures HUD mobile homes small enough to fit on this lot.

Closed Public Hearing at 6:41pm

Chairman Bosse reminded the board 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:

1. Is necessary for the applicant's reasonable use of their property, and no reasonable alternative is available:

Jones: feels septic is a reasonable use. There does not seem to be a reasonable alternative.
Bosse: without a septic field, the property is useless based on what was proposed.
Harrison: based on Hollis' testimony, there are other options, but they are not reasonable.
Pitts: agrees based on the testimony because the dimensions of the lot are limited.
McGehee: Agrees with all.
In summary, a septic field is necessary for the placement of a house; without a septic field, the lot loses its reasonable use. The small size prevents placement of the septic field entirely on the property. There may be alternatives, but they are not reasonable.

2. 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; and

Jones: The town did not have any comments on it affecting public use, and Stroud Engineering agreed there would not be any interference.
Bosse: The town confirmed public services did not feel this would interfere with pedestrian access.
Harrison: He did not make a site visit, but does have family property there. The access is only used for foot traffic, and he does not think public use will be impeded.
Pitts: Does not think the public's use will be impeded because it is not used by anyone other than local property owners walking.
McGehee: Agrees with everyone's comments.

3. 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.

Jones: town staff, Stroud Engineering, and as Bosse and Smith pointed out this is an access only used for foot traffic so there should not be any interference of town services if granted.

Jones made a motion *to approve* the Right of Way Encroachment at 514 East Fort Macon Road for a septic system pursuant to UDO Section 18.2.4.N.3. Seconded by McGhee. The vote was unanimous, 5-0. The time was 6:50pm.

RIGHT-OF-WAY ENCROACHMENT EA 24-2: 229 MOONLIGHT DRIVE

Joseph Harris, owner at 229 Moonlight Drive, is requesting 15.34 linear feet (333.1 square feet) of existing Town right-of-way for a portion of a septic drain field and pump tank.

Chairman Bosse opened the public hearing at 6:51pm.

Since this is a waterfront lot, CAMA now has setbacks that probably did not exist when the original septic was installed. Public Services and the Water Dept have viewed this. The homeowner is working with the water department to have a meter moved.

Joseph (Jay) Harris, 229, Moonlight Drive, petitioner. In 1970, his in-laws bought the property, and in 1999, they built a house. Last year, they had the septic pumped, which triggered the need for a new septic. He has been working with the County and must meet the new 50-foot setback rules, so he is proposing the location be near the town's right-of-way. He is proposing a new, more efficient, smaller system. They can put it where the driveway is and repave it so they can drive over it. He began answering questions for the board, based on the County's opinion, this is the best system they can have for this lot. He does not think it will affect his driveway, but it may affect a parking spot by a couple of feet. It will not affect the neighbors. The only issue was relocating the water meter.

John Nix, 100 North Shore 2 Drive, land surveyor. He has an office in Kinston and Carteret Co. He is familiar with Harris and the neighboring property to the North, owned by Jim Capps. In 2020, he conducted a topo survey of the Capps lot and the lot next to him. He is not here to testify as a land surveyor; he finished that job with full disclosure. He is not giving an opinion. He is here to represent Capps and his concerns.

Attorney Eure interrupted, stating that, since Capps is not here, he cannot speak for Capps because that would be hearsay. Bosse explained he could speak as a surveyor and give his expert opinion, but he could not give an opinion for Capps. Nix stated he wanted to speak on drainage. Attorney Eure explained that to be qualified as an expert, he must provide education and background information.
Nix has been a licensed PE in North Carolina since June 2001, license number 4268. He has a 50/50 business partner in Kinston and seven employees. He graduated in 1986 with a degree in industrial tech and drafting. He works in this area most of the time. He has performed thousands of surveys, he has to keep buying filing cabinets. He moved here because he likes it. He did

a topo for three properties surrounding Capps approximately five years ago, when they were trying to build a seawall.

Bosse advised that he is comfortable proceeding with Nix as an expert, not as Capps' spokesperson.

Nix produced pictures of rainwater in the driveway (included in the Minutes). It is his professional opinion that drainage is a problem in the area. He confirmed he is familiar with this area and knows what it looks like when it rains. He would like to see a system installed to address the area's drainage issues. He requested a drainage study.

Pitts asked how the pump tanks work. Edwards stated that due to the elevation, the water will go to the pump tank, then to the drain field.

Edwards stated that he and Capps are friends and neighbors, so that testimony was a bit of a surprise.

Closed the Public Hearing at 7:17pm.

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:

1. Is necessary for the applicant's reasonable use of their property, and no reasonable alternative is available:

Bosse: The County has found a solution, and this is the best solution based on the homeowner's testimony. Without a septic system, this house would be unusable, so no other alternative.
Harrison: He agrees. You need a functioning septic system to use the property.
Jones: There is no reasonable alternative based on the homeowner's testimony.
McGehee: The property owner worked hard with the town to come up with this solution. There is no evidence that this will affect any town functions.

2. 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; and

Bosse: The town right-of-way really only affects the homeowner and limits their parking.
Jones: No testimony that this would affect the public, only the homeowner.
Harrison: He agrees. The existing septic system is affecting the shellfish. This new one avoids the public waterways and safety.
Pitts: She agrees with Jones, this lot is hindered by size; he is only impeding himself.

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

Bosse: Per testimony, an encroachment will not interfere with any town services. The water supply service is being taken care of by the water department and the homeowner.
Jones: He agrees. The water meter issue is being taken care of. He does understand and sympathizes with Nix's testimony about a drainage issue but does not feel granting the encroachment will add to the drainage problem. Drainage is a problem townwide.
Bosse: Agrees, he does not think granting it would add to the townwide drainage problem.

Pitts made a motion *to approve* the Right of Way Encroachment at 229 Moonlight Drive for a septic system pursuant to UDO Section 18.2.4.N.3. Seconded by McGhee. The vote was unanimous, 5-0. The time was 6:50pm.

BOARD/STAFF COMMENTS
No comments.

Jones made a motion *to adjourn*. Seconded by Pitts. Vote was unanimous, 5-0. Motion carried. The time was 7:28 p.m.

These minutes were approved at the April 20, 2026 meeting of the Atlantic Beach Board of Adjustment.

Approved by:

Mike Bosse, Chair

Katrina Tyer, Clerk