



Town of Beaufort, NC

701 Front St. - P.O. Box 390 - Beaufort, N.C. 28516
252-728-2141 - 252-728-3982 fax - www.beaufortnc.org

Town of Beaufort Board of Adjustment Regular Meeting 6:00 PM Monday, March 25, 2024 – Town Hall Conference Room, 701 Front Street, Beaufort, NC 28516 Monthly Meeting

Call to Order

Roll Call

Agenda Approval

Minutes Approval

- [1.](#) BOA Draft Minutes for 2.26.24

Items of Consent

- [1.](#) Approval of the Order to Deny a Variance for 307 Front Street

Commission / Board Training

Staff Comments

Adjourn

DRAFT



Town of Beaufort, NC

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**Town of Beaufort Board of Adjustment Regular Meeting
6:00 PM Monday, February 26, 2024
Minutes**

Call to Order

Chair Oliver called the February 26, 2024 Board of Adjustment regular meeting to order at 6:00 pm.

Roll Call

Members Present: Wendi Oliver, Cathy Reeve, Ann Carter, Clark Patton, and Bruce Sheldon

Members Absent: Nick Wilson

A quorum was declared with five members present.

Staff Present: Kyle Garner, Town Attorney Jill Quattlebaum, and Laurel Anderson

Agenda Approval

Chair Oliver asked if there were any changes to the Agenda.

Member Carter made the motion to approve the Agenda and Vice-Chair Reeve made the second. Chair Oliver took a vote that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Election of Officers

Member Carter made the motion to open nominations of officers and Member Patton made the second. Town Attorney Quattlebaum took a vote that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Member Carter made the motion to nominate Wendi Oliver for Chair and Vice-Chair Reeve made the second. Chair Oliver took a vote that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Member Carter made the motion to close nominations for Chair and Member Patton made the second. Town Attorney Quattlebaum took a vote that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Town Attorney Quattlebaum took a vote to approve Wendi Oliver for Chair that was unanimous.

Member Patton made the motion to nominate Cathy Reeve for Vice-Chair and Chair Oliver made the second. Town Attorney Quattlebaum took a vote that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Member Carter made the motion to close nominations for Vice-Chair and Chair Oliver made the second. Town Attorney Quattlebaum took a vote that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Town Attorney Quattlebaum took a vote to approve Cathy Reeve for Vice-Chair that was unanimous.

Member Patton made the motion to nominate Laurel Anderson for Secretary and Chair Oliver made the second. Town Attorney Quattlebaum took a vote that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Town Attorney Quattlebaum took a vote to approve Laurel Anderson for Secretary that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Administration of Oaths

Chair Oliver read the Quasi-Judicial Statement.

This hearing is a quasi-judicial evidentiary hearing. That means it is like a court hearing. State law sets specific procedures and rules concerning how this board must make its decision. The board must base its decision upon competent, relevant and substantial evidence in the record. It is a decision constrained by the standards in the Ordinance and based on the facts presented. A quasi-judicial decision is not a popularity contest. It is a decision constrained by the standards in the ordinance and based on the facts presented. All applications for variances must be consistent with the Town of Beaufort’s Land Development Ordinance. If you will be speaking as a witness, please focus on the facts and standards, not personal preference or opinion. Participation is limited. This meeting is open to the public. Everyone is welcome to watch. Parties with standing have rights to participate fully. Parties may present evidence, call witnesses and make legal arguments. Parties are limited to the applicant, the local government and individuals who can show they will suffer special damages. Other individuals may serve as witnesses when called by the board. For certain

topics, this board may hear opinion testimony from expert witnesses. Individuals providing expert opinion must be qualified as experts and provide factual evidence upon which they base their expert opinion. Witnesses must swear or affirm their testimony.

Secretary Anderson then administered the Oath to Town Planner Michelle Eitner, Christina Colucci of Align Interiors, Structures & Design, and Mike Peters, Business and Operations Manager at the Beaufort Maritime Museum.

Quasi-Judicial Proceeding

1. Variance Request for 307 Front St.

Town Planner Michelle Eitner gave the Staff Report for the request as follows: Mary Ellen Nixon-Moore, owner of subject property 307 Front Street, has requested a variance from LDO Section 9.A. to build an addition onto the back of the house that maintains the 2 foot 8 inch setback of the existing structure and has a 2 foot 3 inch setback for the newly added section. Mrs. Eitner noted that the existing structure has a 2 foot 8 inch setback, rather than the 2 foot 6 inch setback mistakenly identified in the staff report. The required side setback for this property is 8 feet. Specifically, this is a request of 5 foot 4 inch encroachment for the vertical addition on existing footprint and a 5 foot 9 inch encroachment for the proposed carport. The application materials are included in the agenda packet and the applicant has additional information to provide during their presentation.

Ms. Colucci, designer for the applicant, gave the Board members an application addendum detailing the applicant’s Findings of Fact responses and she presented the application.

Member Sheldon asked if the current mechanical units were already encroaching and asked where the new unit would go. Ms. Colucci stated that there were many options for heating and cooling and if the variance was approved they would ensure any new units would not encroach any further. Member Sheldon later noted that the footings for the new apartment could also not encroach further.

Member Carter asked if an additional apartment was being created or was it an expansion and Ms. Colucci stated that it was an expansion of an existing apartment on the second level which would sit on top of an existing apartment that already has the setback. Ms. Colucci further stated that they were essentially asking to build above the existing apartment and it would line up with the apartment below.

Member Patton asked if they were also building further back and Ms. Colucci stated that they were and it was a bump-out.

Member Carter noted that the structure was already nonconforming and the application was requesting increasing nonconformity and also the hardship would be self-created as the increased nonconformity would not be created if the apartment were not built.

Town Attorney Jill Quattlebaum stated that Section 11 of the Land Development Ordinance (LDO) addresses nonconformity; quoting “Nonconforming structures shall not be enlarged and shall not be altered in any way which increases their nonconformity but may be altered to minimize their nonconformity.” She noted that two issues for the Board to consider were building straight up on the existing structure and whether that increases the nonconformity, and a new addition which is not in the 8-foot setback required by the LDO. She also directed the Board to “D” of the Findings of Fact standard for a variance which requires the requested variance is consistent with the spirit, purpose and intent of the LDO.

Ms. Colucci gave an overview of the applicant’s stated hardships and there was a short discussion.

Member Reeve gave the motion to close the hearing and Member Patton gave the second. Chair Oliver took a vote:

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Chair Oliver requested a motion and the Board voted on the following Findings of Fact:

- a. Unnecessary hardship would result from the strict application of this Chapter. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*

Member Carter made the motion to deny Finding of Fact #1 as the structure is already in full use, and Member Sheldon made the second. Chair Oliver took a vote that was unanimous:

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*

Member Carter made the motion to deny Finding of Fact #2 because there are a lot of properties in Beaufort like this one and there is nothing unusual about this one, and Member Sheldon made the second. Chair Oliver took a vote that was unanimous:

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

- c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.*

Member Carter made the motion to deny Finding of Fact #3 as the homeowner's actions would result in the hardship, and Member Sheldon made the second. Chair Oliver took a vote that was unanimous:

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

- d. Based on the neighbors being consulted and testimony of the applicant the spirit of the ordinance was being upheld. The requested variance is consistent with the spirit, purpose, and intent of this Chapter, such that public safety is secured, and substantial justice is achieved.*

Member Carter made the motion for Finding of Fact #4 because if the variance does not meet the spirit, purpose, and intent of the LDO, and Member Sheldon made the second. Chair Oliver took a vote that was unanimous:

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Chair Oliver then asked for a motion for the denial of the variance.

Member Carter made the motion for the denial of the variance as the application did not meet any of the four criteria granting the variance and Member Sheldon made the second.

Chair Oliver took a vote that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

Commission / Board Comments

There were no Board comments.

Staff Comments

There were no Staff comments.

Adjourn

Chair Oliver asked for a motion to adjourn the meeting.

Vice-Chair Reeve made the motion to adjourn and Member Carter made the second. Chair Oliver took a vote that was unanimous.

Voting yea: Chair Oliver, Vice-Chair Reeve, Member Carter, Member Patton, and Alternate Member Sheldon

The meeting adjourned at 6:45 p.m.

Wendi Oliver, Chair

Laurel Anderson, Board Secretary



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**Town of Beaufort Board of Adjustment Regular Meeting
6:00 P.M. March 25, 2024 – 701 Front Street – Town Hall**

AGENDA CATEGORY: Consent
SUBJECT: Approval of the Order to Deny a Variance for 307 Front Street

BRIEF SUMMARY:

As part of the new General Statutes (160D), prior to Evidentiary Hearing Orders being signed and sent to the applicant/property owners, the Board in which conducted the hearing is to review the order for accuracy.

Staff has consulted with the Town Attorney and now asks that the Board of Adjustment Members review the order for such accuracy and be prepared to make a motion to recommend approval of the Order or to approve with Board recommend changes.

REQUESTED ACTION:

Review the order for such accuracy and be prepared to make a motion to recommend approval of the Order or to approve with Board recommend changes

EXPECTED LENGTH OF PRESENTATION:

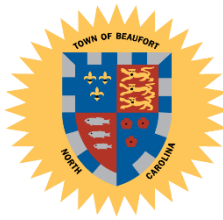
0 Minutes (Presentation From Staff)

SUBMITTED BY:

Kyle Garner, AICP Planning Director

BUDGET AMENDMENT REQUIRED:

N/A



TOWN OF BEAUFORT ORDER DENYING A VARIANCE

The Board of Adjustment for the Town of Beaufort, having held an evidentiary hearing on February 26, 2024, to consider Case # 24-01, submitted by applicant Christina Colucci, on behalf of property owner Mary Ellen Nixon-Moore, a request for a variance from the 8” setback requirement to build an addition on to the back of the house which maintains the current non-conforming 2’6” setback for a proposed second story addition to an existing one-story portion of the house and creates a 2’3” setback for a proposed new two-story addition on the property located at 307 Front Street, PIN # 730617100471000, Beaufort, NC, in a manner not permissible under the literal terms of the Town’s *Land Development Ordinance* (hereby known as “the *Ordinance*”), and having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACT** and draws the following **CONCLUSIONS**:

1. It is the Board’s **CONCLUSION/FINDING OF FACT** after hearing testimony and reviewing the staff report and exhibits that strict application of the *Ordinance*, which would result in the denial of the requested variance, **would not** result in an unnecessary hardship due to the fact that the intent/desire to create more space in the existing apartment is not a hardship and based on the setbacks required by the Ordinance.
2. It is the Board’s **CONCLUSION/FINDING OF FACT** after hearing testimony and reviewing the staff report and exhibits that the alleged hardship of which the applicant complains **does not** result from conditions peculiar to the applicants’ property as there are many similarly shaped lots throughout the Town.
3. It is the Board’s **CONCLUSION/FINDING OF FACT** after hearing testimony and reviewing the staff report and exhibits that the applicants purchased the property in its present configuration and therefore the alleged hardship of which the applicant complains **did** result from the applicant’s own actions in seeking to enlarge the existing apartment.
4. It is the Board’s **CONCLUSION/FINDING OF FACT** after hearing testimony and reviewing the staff report and exhibits that if granted, the variance **would not** be consistent with the general spirit, purpose and intent of the *Ordinance*, such that public safety is secured, and substantial justice achieved, as it does not comply with the setbacks required by the *Ordinance* and would result in the enlargement of a non-conforming structure in such a way that would increase the non-conformity.

Therefore, on the basis of all the foregoing, **IT IS ORDERED** that the application for a **VARIANCE** be **DENIED**.

Ordered this ___ day of _____, 2024.

Wendi Oliver
Chair

Laurel Anderson
Board Secretary

NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Clerk of Superior Court of Carteret County within thirty (30) days after the date this order is served on you. See Section 21-M of the Town of Beaufort’s *Land Development Ordinance*.