



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, January 24, 2022 - Virtual Via Zoom Monthly Meeting

Call to Order

Roll Call

Agenda Approval

Minutes Approval

- [1.](#) BOA Draft Minutes for 11.22.21

Administration of Oaths

New Business

- [1.](#) Variance Request for 302 Cedar Street
- [2.](#) Approval of the Order for 204 Turner Street Variance

Public Comment

Commission / Board Comments

Staff Comments

Adjourn

DRAFT



Town of Beaufort, NC

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**Town of Beaufort Board of Adjustment Regular Meeting
6:00 PM Tuesday, November 22, 2021 - Held via Zoom due to the COVID-19 Pandemic
Minutes**

Call to Order

Chair Davis called the November 22, 2021 Board of Adjustment regular meeting to order at 6:00 pm.

Roll Call

Board Secretary Anderson took roll call and the following members were present: Chair Charles Davis, Barry Evans, Allison Long, Wendi Oliver, and Cathy Reeve. Chair Davis declared a quorum with five members present.

Also present for the meeting were Town Attorney Jill Quattlebaum, Kyle Garner, Gene Foxworth, and Laurel Anderson.

Agenda Approval

Chair Davis asked if there were any changes to the Agenda and hearing none, the Chair asked for a motion.

Member Oliver made the motion to approve the Agenda and Member Reeve made the second. Chair Davis took a roll call vote that was unanimous.

Voting yea: Chair Davis, Member Evans, Member Long, Member Oliver, Member Reeve

Minutes Approval

Chair Davis asked if there were any changes to the October 25, 2021 Meeting Minutes and hearing none, the Chair asked for a motion.

Member Oliver made the motion to approve the Minutes and Member Reeve made the second. Chair Davis took a roll call vote that was unanimous.

Voting yea: Chair Davis, Member Evans, Member Long, Member Oliver, Member Reeve

Administration of Oaths

Secretary Anderson administered the Affirmation to Mr. Garner and the applicants Jay Horton, Ryan Edwards, and witnesses Gene Foxworth and Paul Snow.

New Business

1. Case #21-04, 204 Turner Street – Variance Request

Chair Davis read a statement regarding how quasi decisions are made and who had standing and could participate. He opened the hearing and asked Mr. Garner to give an overview of the request.

Mr. Garner stated that the applicants had submitted a request to reduce the rear setback from 25’ to 10’ and the side setback from 8’ to a 0’ lot line setback. The existing building is a non-conforming property of record and the zoning is in the transitional zone. He further stated that the Masonic building is not compliant on one side setback and the front setback, but as it was built approximately in the 1860’s it predates zoning ordinances and laws currently on file.

Chair Davis asked the Board if they had any questions for Mr. Garner; there being none he then asked Jay Horton for his testimony.

Mr. Horton stated that they originally looked at renovating the existing lodge building and removing the current rear addition to make the current building into a boutique hotel. After going before the Historic Preservation Commission and hearing their thoughts and concerns they decided to remove the rear addition and add a 14-room boutique hotel on the east (rear) side of the property, with a courtyard between the two structures. The current structure is in the setback on the south side up to the property line, but there is a 10’ wide shared driveway between that property and the church property. In order to fit the hotel into the property they needed to move into the 25’ rear setback at 10’ off the property line.

Mr. Horton stated that he met with Mr. Gene Foxworth, Carteret County Planning & Inspections Director, who shared some fire safety concerns as the proposed hotel will be nine feet from the county building.

Chair Davis thanked Mr. Horton and asked the Board if they had any questions. Chair Davis then asked if the parking lot on the north side of the building was on the applicants’ property, and Mr. Horton stated that it was.

Member Oliver asked who owns the 10-foot joint driveway between the property and the cemetery and if there was an easement. Mr. Horton explained that the driveway is not deeded to anyone at this time and there is no easement. Mr. Garner stated that based on county records there is no ownership of the driveway.

Chair Davis then asked if there were any questions from the Board for Mr. Horton at that time. There were none and Mr. Garner asked the Board if there was a current demolition Certificate of Appropriateness for the Masonic Lodge in effect and Mr. Horton stated that there was. Chair Davis then asked if anyone else would like to speak. Mr. Gene Foxworth, Assistant County Manager for Carteret County, then stated that Mr. Garner and Mr. Horton had both been to see him at separate times. Mr. Foxworth said that there were two concerns and he asked that if approval for the variance was granted that these concerns would be stated as conditions, but acknowledged that Mr. Horton had already addressed those concerns during the meeting. The first concern was separation between the two buildings from a fire safety standpoint and the second was stormwater being directed to Turner Street. The natural topography directs rainwater toward the Old Burying Ground, and he requested that Mr. Horton direct the stormwater toward Turner Street. Mr. Horton agreed with both requests.

Chair Davis then asked if there were any questions from the Board for Mr. Foxworth, and anyone else to speak for the applicant. There being none he asked Mr. Garner if there were any letters or phone calls in opposition and Mr. Garner answered that there was a representative from the church who was not in opposition and the only other person was Mr.

Foxworth who had been contacted by Mr. Horton. Chair Davis then polled the Board to see if there were any questions or discussion.

Member Oliver stated that she had no issue with the setback on the east side but had concerns about the north and south side. She did not go to see the property but had driven by it many times.

Member Reeve stated that she had been to see the property and wanted to be clear that there were no changes to the area adjacent to the old library and the 10-foot driveway. Mr. Horton explained that the proposed new structure would not encroach further than the existing structure. Member Reeve then asked about parking and Mr. Garner stated that transportation and parking issues had been taken into consideration.

Mr. Horton then screen-shared the site plan of the existing building and parking lot and the proposed 14-room boutique hotel with a courtyard between the old and new buildings. Proposed materials for the new hotel will match the existing Masonic Lodge. Member Reeve was concerned that the site plan shows 12 parking spaces including two handicapped spaces for a 14-room hotel. Mr. Horton explained that they are attempting to make arrangements for other parking including valet parking. Member Reeve asked about the stairwells and elevator and Mr. Ryan Edwards, the architect for the project, stated that regulations require the two means of egress including an elevator.

Chair Davis then asked Members Long and Evans if they had any questions or concerns, and they had none. Chair Davis then stated that he had no concerns. Member Oliver then asked about possible impact to vegetation and Mr. Horton stated that one of the oaks on the southeast corner of their property would be lost as it is in the hotel footprint.

Chair Davis then asked for a motion for the four Findings of Fact.

Member Evans made an inclusive motion to affirmatively approve all four Findings of Fact. Chair Davis took a roll call vote and the motion to approve all four Findings of Fact failed.

Voting yea: Chair Davis, Member Long, Member Evans

Voting nay: Member Reeve, Member Oliver

The Board then discussed the need to address each Finding of Fact separately, in order to identify all specific concerns. Further discussion by the Board regarding each proposed Finding of Fact followed.

Four subsequent motions approving each Finding individually were each approved unanimously after further discussion. The motion on each Finding and votes are as follows:

- a) Unnecessary hardship would result from the strict application of the Land Development Ordinance.

Voting yea: Chair Davis, Member Evans, Member Long, Member Oliver, Member Reeve

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

Voting yea: Chair Davis, Member Evans, Member Long, Member Oliver, Member Reeve

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

Voting yea: Chair Davis, Member Evans, Member Long, Member Oliver, Member Reeve

- d) 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.

Voting yea: Chair Davis, Member Evans, Member Long, Member Oliver, Member Reeve

Chair Davis then asked for a motion to reconsider and rescind the original failed vote.

Member Evans made the motion to reconsider and rescind the earlier vote and Member Reeve made the second. Chair Davis took a roll call vote that was unanimous for rescission of the earlier vote, based on the fact that the subsequent motions/votes approving each Finding of Fact independently had superseded the original vote.

Voting yea: Chair Davis, Member Evans, Member Long, Member Oliver, Member Reeve

Chair Davis then asked for a motion to approve the variance with conditions.

Member Evans made the motion to approve Case 21-04 with the condition that the stormwater runoff be directed to Turner Street, and Member Long made the second. Chair Davis took a roll call vote that was unanimous.

Voting yea: Chair Davis, Member Evans, Member Long, Member Oliver, Member Reeve

Chair Davis stated that Variance Request 21-04 had been approved with conditions and he closed case 21-04.

2. 2022 Board of Adjustment Meeting and Submittal Calendar

Chair Davis asked for a motion to approve the 2022 Meeting and Submittal Calendar

Member Reeve made the motion to approve and Member Oliver made the second. Chair Davis took a roll call vote that was unanimous.

Voting yea: Chair Davis, Member Evans, Member Long, Member Reeve, Member Oliver

Public Comment

There was no public comment.

Commission / Board Comments

Chair Davis asked if there were any comments; there were no comments.

Staff Comments

Mr. Garner introduced Board Secretary Laurel Anderson. Mr. Garner stated that staff was working with the attorneys on training after the new year for all the boards. Staff had no further comments.

Adjourn

Chair Davis asked for a motion to adjourn the meeting.

Member Oliver made the motion to adjourn and Member Reeve made the second. Chair Davis took a roll call vote that was unanimous.

Voting yea: Chair Davis, Member Evans, Member Long, Member Oliver, Member Reeve

Chuck Davis, Chair

Laurel Anderson, Board Secretary



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**Town of Beaufort Board of Adjustment Regular Meeting
6:00 P.M. January 24, 2021 – Via Zoom**

AGENDA CATEGORY: New Business
SUBJECT: Variance Request for 302 Cedar Street

BRIEF SUMMARY:

Applicant is requesting a variance to allow for:

- ◆ A reduction of the northwest side setback from 5’ feet to 1 foot (for a 4 foot encroachment) at a distance of 38.3 feet of length for a total area of 153 sq. ft. and;
- ◆ A reduction to the southwest rear setback from 25 feet to 8.18 feet (for a 16.82 foot encroachment) at a width of 26.7 feet for a total area of 449 sq. ft.

REQUESTED ACTION:

Conduct Evidentiary Hearing
Decision on Request

EXPECTED LENGTH OF PRESENTATION:

15 Minutes (Presentation From Staff)

SUBMITTED BY:

Kyle Garner, AICP Planning Director

BUDGET AMENDMENT REQUIRED:

N/A

Memo

To: Beaufort Board of Adjustment
From: Kyle Garner, AICP, Planning Director
Date: January 6, 2022
Re: Side & Rear Yard variance request for 302 Cedar Street

Variance Request

Applicant: Porter Casey Jr. **Property Owner:** Same
Property Address: 302 Cedar Street **PIN:** 730617117684000
Property Zoning District: R-8 (Residential) **Flood Zone:** Shaded X

Lot Dimensions: See Attached Survey in application dated December 12, 2018. The survey shows that the front width, overall square footage and the eastern portion of the structure of the lot are non-conforming to the R-8 Zoning District. (Approximately 43' x 55')

Existing use: Single Family Residential

Request:

- ◆ Reduction of northwest side setback from 5' feet to 1 foot (for a 4 foot encroachment) at a distance of 38.3 feet of length for a total area of 153 sq. ft. and a;
- ◆ Reduction to the southwest rear setback from 25 feet to 8.18 feet (for a 16.82 foot encroachment) at a width of 26.7 feet for a total area of 449 sq. ft.

Description of Project:

This property is an existing lot of record and the structure was created prior to the implementation of the R-8 zoning and the setback requirements. As shown in the survey, the structure is within 1 foot tot the southwestern side property line. The applicant has submitted a written description as to why they request the variance.

The side yard setback for the R-8 zoning district is 5 feet due the non-conforming lot requirements per Table 11-1 of the LDO. In this situation the applicant would like to add

a second story to the existing structure consisting of an increase of 284 sq. ft. of non-conforming area (see highlighted area on proposed map).

This increase in non-conformity will not increase the non-conforming foot print, just area.

SECTION 8. TABLE OF AREA, YARD, AND HEIGHT REQUIREMENTS

District and Use	Minimum Lot Area (sq.ft.)	Minimum Lot Width (ft.)	Minimum Yards (ft.) Including Corner Lots			Maximum Building Height (ft)
			Front	Side	Rear	
R-8	8,000 sq. ft.	60 ft.	25ft. 20ft.	8ft.	25ft.	35ft.

Facts:

- The property is zoned R-8 (Residential 8).
- The property and structure have been in existence prior to adoption of any zoning standards.
- A portion of the existing structure is non-conforming and encroaching 4 feet into the required 5 foot side yard setback.
- A portion of the existing structure is non-conforming and encroaching 16.82 feet into the rear yard setback.
- The minimum lot width is non-conforming as it does not meet the 60 foot minimum at 43 feet of frontage.
- The lot is non-conforming as it is less than 8,000 sq. ft. (2366.99 sq. ft.)
- This property is located within the local historic district and if a Variance is granted then will have to go before the Historic Commission for approval for a Certificate of Appropriateness prior to any construction.
- If this were a vacant lot of record the building envelope would be 15' x 33' for a total of 495 sq. ft. of buildable area.

Case # 22-01 - Variance Request - 302 Cedar Street

1.



<u>OWNER</u>	<u>AIL_HOU</u>	<u>MAIL_ST</u>	<u>MAIL_CITY</u>	<u>IL_ST</u>	<u>MAIL_ZI</u>	<u>MAIL_ZI5</u>
BARGER,GARY T	307	CEDAR STREET	BEAUFORT	NC		28516
BOYCE,DEBORA SUE	414	ORANGE STREET	BEAUFORT	NC		28516
CASEY,PORTER C ETUX TIMPLA S	326	PAGE STREET	CLAYTON	NC		27520
DAVIS,JOHNNA	322	ORANGE STREET	BEAUFORT	NC	1821	28516
DEBUTTS,RICHARD E JR ETUX ANNA	320	ORANGE STREET	BEAUFORT	NC		28516
FLAKE,DONNA B ETVIR JERRY A	134	PARTRIDGE ROAD	WILMINGTON	NC		28412
HART,KAREN CHURCHILL TRUSTEE	6605	REXFORD LANE	WILLIAMSBURG	VA		23188
MCFAYDEN,W DAVID JR	608	MADAM MOORE LANE	NEW BERN	NC		28562
MEISLOHN,PETER R ETAL BARTA	208	LIVE OAK STREET	BEAUFORT	NC		28516
NEWTON,J JEFFERSON	710	CEDAR ST	BEAUFORT	NC	1906	28516
SWARTZ,W. BRUCE ETAL M. TR	304	ROSLYN ROAD	RICHMOND	VA		23226

SECTION 21 Board of Adjustment

The Board of Adjustment (BOA) is a “quasi-judicial” administrative body whose purpose is (i) to hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of this Ordinance; (ii) to issue variances as authorized by this section and state law; and, (iii) to issue special use permits when required by this Ordinance. The responsibilities of the BOA are authorized and set forth by N.C.G.S. 160A, Article 19 (3).

A) Organization of the Board of Adjustment.

1) Board Membership.

The BOA shall consist of five regular and two alternate members. Three regular and one alternate member shall reside within the corporate limits of the Town of Beaufort and be appointed by the Town’s Board of Commissioners (BOC). Two regular and one alternate member shall be appointed by the Carteret County Board of Commissioners (CC BOC) and shall reside within the Town’s extraterritorial jurisdiction (ETJ). If despite good faith efforts, enough residents of the ETJ cannot be found to fill the seats reserved for such residents, the CC BOC may appoint other residents of the county to fill these seats. If the CC BOC fails to appoint ETJ members needed within ninety days after receiving a resolution requesting such action from the Town, the BOC may make the necessary appointments.

2) Term Limits.

BOA regular members and alternate members shall be appointed to serve a three-year staggered term and members may continue to serve until their successors have been appointed. Members may be reappointed to successive terms without limitation. Vacant seats and unexpired terms shall be filled by the BOC or the CC BOC as necessary.

3) Removal from Board.

a) Regular BOA members may be removed by the BOC at any time for failure to attend three consecutive meetings or for failure to attend seventy-five percent (75%) of the meetings within any twelve month period or for any other good cause related to performance of duties. Such failure will constitute a voluntary resignation of the member. Upon the request of the member proposed for removal, the BOC shall hold a hearing on the removal before it becomes effective.

b) Alternate members may also be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with BOA established procedures. Upon request of the alternate member proposed for removal, the Town’s BOC shall hold a hearing on the removal before it becomes effective.

c) If a regular member or alternate member moves outside their particular planning jurisdiction within the Town it shall constitute a resignation of the member from the BOA.

d) If for reasons other than mentioned herein a member resigns from the board, a written notice shall be delivered to the Town Clerk at the member’s earliest convenience.

4) ETJ Members Rights.

ETJ regular members shall have equal rights, privileges, and duties as town members and may vote on all matters considered by the board regardless of whether or not the property affected lies within their planning jurisdiction.

5) Notification of Absences.

Regular members shall promptly notify the board secretary if they are unable to attend or participate in an upcoming meeting. The secretary shall notify an alternate member to attend when necessary. Assignments shall be rotated among the alternate members. When seated, any alternate member in attendance shall have the same powers and duties as the regular member they replace, including the ability to constitute a quorum for the purpose of the meeting regardless of whether the alternate is a regular or ETJ member.

B) **Meetings of the Board of Adjustment.**

- 1) The BOA shall establish a regular meeting schedule and shall meet frequently enough so the board can take action on the issues for which they are appointed.
- 2) All meetings of the board shall be open to the public and whenever feasible, the agenda for each board meeting shall be made available to the public at least three business days in advance of the meeting.
- 3) The minutes of all meetings and hearings of the BOA shall be retained by the board secretary or his/her designee and all minutes shall be a public record once adopted by the BOA. This shall include all findings of fact and decisions of the board.
- 4) The Chairman of the BOA will have the authority to cancel a meeting of the BOA when notified by the Planning and Inspections Department there is no business to be considered at the meeting.

C) **Quorum.**

1) Quorum Requirements.

- a) A majority of the members of the BOA board in attendance shall constitute a quorum at all meetings of the BOA. A quorum for the Board of Adjustment shall consist of a minimum of four members of the board qualified to vote.
- b) All actions of the BOA shall be taken by majority vote, a quorum being present.

2) Withdrawal from Meeting.

Any member who has withdrawn from the meeting without being excused shall be counted as present for the purposes of determining whether a quorum is present.

D) **Deciding Cases.**

1) Voting.

- a) The concurring vote of four-fifths of the board shall be necessary to grant a variance.
- b) A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.
- c) For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

2) Failure to Vote.

Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with subsection D-3 of this section or has been allowed to withdraw from the meeting in accordance with subsection D-4 of this section.

3) Conflicts.

A member of the board shall not participate in or vote on any quasi-judicial matter in a manner which would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include but are not limited to the following:

- a) A member having a fixed opinion prior to hearing the matter which is not susceptible to change;
- b) A member having undisclosed ex-parte communications;
- c) A member having a close familial business, or other associational relationship with an affected person;
- d) A member having direct or indirect financial interest in the outcome of the matter.

4) Voting Procedures Due to Conflict.

If an objection is raised to a member's participation and the member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

5) Roll Call Vote.

A roll call vote shall be taken upon request of any member.

E) **Board of Adjustment Officers.**

1) Election of Officers.

- a) Officers will be elected during the first February meeting of the year of the BOA and by majority vote of its entire membership (excluding vacant seats).
- b) The board shall elect one of its members to serve as chairperson (chair) and preside over the board's meetings. The chair should always be one of the regular members. No chair may succeed them self for more than two consecutive terms.
- c) The board shall elect one member to serve as vice-chairperson (vice-chair). The vice-chair shall serve as acting chair in the chair's absence and at such times, he/she shall have the same powers and duties as the chair.
- d) A secretary will be appointed by majority vote of the members either from within its membership or outside. The secretary shall produce all necessary clerical items for the board including public notices, minutes, correspondence, etc. as directed by the chair.
- e) The persons so designated to fill these positions shall serve in these capacities for a term of one year. The officers may be eligible for reappointment.
- f) Vacancies may be filled for the unexpired terms of the chair and vice-chair only by majority vote of the board membership (excluding vacant seats).

2) Rules of Order.

The chair shall decide on all points of order and procedure consistent with the *The Zoning Board of Adjustment*, by Michael B. Brough and Philip P. Green, Jr., as updated; and the modified version of *Roberts Rules of Order*, as updated.

3) Chairpersons Rights.

- a) The chair or any member temporarily acting or appointed by the chair may administer oaths to witnesses coming before the board.
- b) The chair and vice-chair may take part in all deliberations and vote on all issues.

F) **Powers and Duties of Board of Adjustment.**

1) The BOA shall hear and decide:

Land Development Ordinance for the Town of Beaufort

- a) Appeals from and review of any order, decision, requirement, or determination made by the administrative official charged with the enforcement of this Ordinance, as provided in subsection H of this section.
 - b) Applications for variances, as provided in subsection I of this section.
 - c) Questions involving interpretations of the location boundary lines on the Official Zoning Map or ordinance text requirements as provided in subsection J of this section.
 - d) Any other matter the board is required to act upon by any other Town Ordinance or state law.
- 2) The board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this chapter.

G) Public Notice of Hearings of the Board.

- 1) Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property which is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land which is the subject of the hearing, and to all owners of parcels within 100 feet of such land, and to any other persons entitled to receive notice as provided by this section. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within the same time period, the planning staff shall also prominently post a notice of the hearing sign on the site which is the subject of the hearing or on an adjacent street or highway right-of-way. Such sign(s) shall be at least eighteen inches by twenty-four inches (18"x24") in dimension. The sign shall contain the following message:

NOTICE

This property is subject to a Zoning Hearing.

Contact Town Hall for more information at 252-728-2141.

Such sign may include additional information deemed relevant by the administrator of this Ordinance. If more than one contiguous lot or parcels of land are included in the variance application proposal, the Town may nonetheless post only one sign.

- 2) A public hearing shall be held by the BOA for an appeal, a variance, or an interpretation as described in subsection F of this section. A notice of the public hearing shall be given once a week for two successive calendar weeks and published in a newspaper having general circulation in Town. The notice shall be published the first time not less than ten days or not more than twenty-five days before the date affixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.
- 3) The person or persons mailing the notice of hearing pursuant to this section shall certify to the BOA the proper notice has been provided and such certificate shall be deemed conclusive in the absence of fraud.

H) Appeals.

1) Appeal Procedures.

- a) An appeal from any final order, decision, requirement, or determination of a Town official charged with the enforcement of this Ordinance may be taken to the BOA

Land Development Ordinance for the Town of Beaufort

by any person aggrieved. An appeal is taken by filing a written notice of appeal specifying the grounds thereof to the Town and the BOA. A notice of appeal shall be considered filed with the Town and the BOA when delivered to the Town’s Planning and Inspections Department, and the date and time of filing shall be entered on the notice of appeal by staff.

- b) An appeal must be made within thirty days after the date of the decision or order appealed from.
- c) Whenever an appeal is filed, Town staff shall forthwith transmit to the BOA all papers constituting the record relating to the action of the appeal.

2) Stay of the Appeal.

An appeal stays all actions by the Town official seeking enforcement of or compliance with the order or decision appealed from, unless the official certifies to the BOA, because of the facts stated in the certificate, a stay would, in his/her opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed except by order of the BOA or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the official.

3) Modifications to Appeals.

The BOA may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination which in its opinion should be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal was taken.

D) ***Variances.***

The power of variances is to be sparingly exercised and only in rare instances and under exceptional circumstances and with due regard to the main purpose of this Ordinance: to preserve the property rights of others. No change in permitted uses may be authorized by variance.

1) Application Submittal.

An application for a variance shall be submitted to the BOA by filing a copy of the application with the Town.

2) Findings for the Variance.

When practical difficulties or unnecessary hardships would result from carrying out the strict letter of this Ordinance, the BOA shall have the power to vary or modify any of the regulations or provisions of the Ordinance so the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. A variance may be granted only upon an affirmative finding of the following:

- 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;
- 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;
- 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

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may justify the granting of a variance shall not be regarded as a self-created hardship; and,

- d) 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.

J) Interpretations.

- 1) The BOA is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the zoning official, they shall be handled as provided in subsection H of this section.
- 2) An application for a map interpretation shall be submitted to the BOA by filing a copy of the application with the Town. The application shall contain sufficient information to enable the board to make the necessary interpretation.
- 3) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:
 - a) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
 - b) Boundaries indicated as approximately following lot lines in the Town or ETJ limits shall be construed as following such lines, limits, or boundaries;
 - c) Boundaries indicated as following shorelines shall be construed to follow such shorelines and in the event of a change in the shoreline shall be construed as continuing to follow such shorelines;
 - d) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement using the scale of the Official Zoning Map; and,
 - e) Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply only to the portion of such streets or alleys added thereto by virtue of such vacation or abandonment.

K) Burden of Proof in Appeals, Interpretations, and Variances.

- 1) When an appeal is taken to the BOA in accordance with subsection H of this section, the appellant has the burden of proof and persuasion.
- 2) The applicant for a variance shall have the burden of proof and persuasion.

L) Board Action on Appeals and Variances.

1) Appeals.

With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include insofar as practicable, a statement of the specific reasons or findings of fact which support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption, a motion to uphold the decision appealed from shall be in order. This motion is adopted as the board's decision if supported by more than one-fifth of the board's voting membership in attendance. (excluding vacant seats)

2) Granting a Variance.

Before granting a variance, the BOA must take a separate vote and vote affirmatively by a four-fifths majority, on each of the four required findings stated in subsection I-2

Land Development Ordinance for the Town of Beaufort

of this section. A motion to make an affirmative finding on each of the requirements set forth in subsection I-2 of this section shall include a statement of the specific reasons or findings of fact supporting such motion.

3) Denying a Variance.

A motion to deny a variance shall be made if any one or more of the four required findings set forth in subsection I-2 of this section are not satisfied or if the application is incomplete. A motion to deny a variance shall include a statement of the specific reasons or findings of fact which were not met and therefore caused the denial of the variance. This motion is adopted as the board's decision if supported by more than one-fifth of the board's voting membership in attendance (excluding vacant seats).

M) ***Review of Board's Decisions.***

Every decision of the board shall be subject to review by the Superior Court by proceedings in the nature of certiorari. Any petition for review by the Court shall be filed with the Clerk of Superior Court within thirty days after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or the chairperson of the board at the time of its hearing of the case, whichever is later. The decision of the board should be delivered to the aggrieved party either by personal service, or by registered or certified mail.

N) ***Deadlines for Applications to the Board.***

All applications and supporting materials shall be submitted to the Town's Planning and Inspections Department fifteen business days prior to the next regularly scheduled BOA meeting. Informational packets shall be delivered to board members seven days prior to the scheduled meeting.

SECTION 11 Nonconformities

A) Intent.

Nonconforming situations may continue subject to certain limitations, until they are removed, discontinued, or made conforming. Nonconforming situations shall not be enlarged, expanded, extended, enhanced, or used as grounds for adding other prohibited structures or prohibited uses. Nonconforming uses are declared to be incompatible with permitted uses within the various zoning districts.

B) Application.

This Ordinance shall affect all land, structures, and uses of land and structures and shall apply as follows:

1) New Uses and Construction.

After the effective date of this Ordinance, all new uses, structures, and development shall comply with this Ordinance, including their specific zoning district regulations.

2) Conforming Uses and Structures.

Land, structures, and uses of land or structures which comply with this Ordinance including the zoning district regulations, may be continued provided any structural changes, additions, or changes in use must conform fully to this Ordinance.

3) Nonconforming Uses and Structures.

Nonconforming situations may be continued only subject to the limitations stated herein, and should eventually be discontinued under the provisions of this Ordinance.

C) Continued Use of Nonconforming Property.

Nonconforming properties may be continued in use as set forth below:

1) Nonconforming Lots of Record.

In any zoning district permitting residential dwellings by right, a residential dwelling and customary accessory building may be erected on any single nonconforming lot lawfully recorded before the adoption of this Ordinance or amendment hereto provided this single lot is not adjacent to another lot of record under the same ownership and, if combined, would allow for the meeting of all area and setback requirements established within this Ordinance. This provision shall apply if the single lot fails to meet the minimum lot size or width requirement of the zoning district. Yard space and other dimensional requirements of the zoning district shall continue to apply, however, variances of such requirements shall be obtained by action of the Board of Adjustment (BOA) except no petition for a variance is necessary if other yard spaces are met and the following setbacks are met:

Table 11-1 Minimum Nonconforming Lot Requirements

<i>Width – Lot of Record</i>	<i>Side Setback</i>	<i>Front Setback</i>
30-49 feet	5 feet	15 feet
50-59 feet	6 feet	15 feet
60-69 feet	7 feet	20 feet

2) Adjoining Lots.

When two or more lots with continuous frontage are in single ownership at any time after the adoption of this Ordinance and such lots are individually less than the

minimum area or width required in a district, such lots shall be considered as a single lot or several lots of required area and width (if sufficient land exists) and shall be combined to the extent necessary to achieve a lot or lots of the area and width required in the district. Such lots shall comply with all yard space and other dimensional requirements of the district.

D) *Nonconforming Structure.*

A lawful structure which existed at the time of adoption or amendment of this Ordinance, or was grandfathered under the previous zoning ordinance, but which does not comply with this Ordinance by other restrictions relating to the structure, may be continued so long as it remains otherwise lawful, subject to the following limitations:

1) Enlargements, Alterations.

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.

2) Moving.

If nonconforming structures are moved off the lot or moved within the lot for any reason, they shall thereafter conform to the regulations of the Ordinance.

3) Repairs and Maintenance.

Ordinary maintenance, repairs, and alterations of a nonconforming structure are permitted provided they do not increase the area or the nonconformity. Normal maintenance, repairs, and alterations shall be considered work not exceeding fifty percent (50%) of the structure's replacement cost within any twelve-month consecutive period.

4) Deteriorated and Dilapidated Structures.

If any nonconforming structure becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by an authorized official to be unsafe or unlawful by reason of its physical condition, the structure shall not be restored, repaired, or rebuilt except in conformity with this Ordinance. This shall not prevent strengthening or restoring to a basically safe condition of any unsafe building or part thereof directed by the authorized official charged with protecting public health or safety.

5) Substantially Damaged Structures.

If a nonconforming structure or nonconforming portion of a structure is damaged or destroyed by any means to an extent greater than fifty percent (50%) of its replacement cost at the time of the damage, it may be reconstructed only in conformity with this Ordinance.

6) Residential Exception.

When a single-family residential nonconforming structure is damaged by fire, flood, wind, or act of God, the structure may be repaired and restored to its pre-event dimensions on the pre-event footprint provided the structure meets all applicable building codes.

E) *Nonconforming Uses.*

A use of land and/or structure which was lawful prior to the adoption of this Ordinance but which does not comply with the use regulations of this Ordinance, may be continued so long as it remains otherwise subject to the following provisions:

Land Development Ordinance for the Town of Beaufort

1) Extensions, Enlargements.

No nonconforming use of land or structures shall be enlarged, expanded, increased, or extended beyond the floor space and land area occupied or be carried on in a more intensive manner than existed at the time of the adoption of this Ordinance, except a nonconforming use may be extended within a structure to any parts already clearly arranged and designed for such use.

2) Relocation on Lot.

No nonconforming use of land shall be relocated or significantly rearranged in whole or in part on the same lot unless it thereafter conforms to this Ordinance.

3) Discontinuance.

If active operation of a nonconforming use is discontinued for any reason for a continuous period of one hundred eighty days or superseded at any time by a permitted use, any subsequent use of the land shall conform fully to this Ordinance.

4) Changes of Use.

A nonconforming use of land (only) shall not be changed to any use other than a use permitted in the zoning district. A nonconforming use of a structure and premises may be changed to another nonconforming use if:

- a) No significant structural alterations are made; and,
- b) The approved new use is more in character with the uses normally permitted in the zoning district than the previous nonconforming use.

5) Deteriorated and Dilapidated Structures.

If a structure or part thereof occupied by a nonconforming use is damaged, destroyed, or becomes deteriorated to an extent greater than fifty percent (50%) of its replacement cost at the time of damage or discovery of deterioration, the structure may not be repaired for or to a nonconforming use.

6) Uses Permitted as Special Exceptions.

Any use which is permitted as a special exception in a district shall not be considered a nonconforming use but shall, without the necessity of further action, be considered a conforming use. This provision shall not diminish the right of the Board of Commissioners (BOC) to impose conditions on such use in a proceeding initiated by any interested part and considered in the manner of a special exception.

7) Residential Exceptions.

Nonconforming single-family detached residential uses shall comply with all requirements of this section. However, an existing nonconforming single-family detached residential use may be enlarged, expanded, and/or altered provided no enlargement, expansion, or alteration will:

- a) Result in the structure exceeding building height limits in the zoning district;
- b) Reduce the building site area required in the zoning district; and,
- c) Encroach into any required front yard, side yard, and rear yard setback areas. If approved, such use shall be considered a special exception and may be accompanied by appropriate conditions and safeguards as required by this Ordinance.



APPLICATION FOR A VARIANCE OF LAND DEVELOPMENT STANDARDS FOR THE TOWN OF BEAUFORT

Instructions:

Please complete the application below, include all the required attachments, and the **application fee of \$300.00** and return to the Beaufort Town Hall, 701 Front Street or P.O. Box 390, Beaufort, N.C., 28516. Incomplete applications will not be processed but **will be** returned to the applicant. Please contact Planning and Inspections at 252-728-2142 with any questions.

APPLICANT INFORMATION

Applicant Name: Porter Casey

Applicant Address: 302 Cedar St., Beaufort, NC, 28516

Phone Number: 919-395-2607 Email: Portercaseyjr@gmail.com

Property Owner Name: Porter Casey and Timpla Stewart

Address of Property Owner: 326 Page St., Clayton, NC 27520

Phone Number: 919-395-2607 Email: Portercaseyjr@gmail.com

PROPERTY INFORMATION

Property Address: 302 Cedar St., Beaufort, NC

15-Digit PIN: 730617117684000 Lot/Block Number: _____

Size of Property (in square feet or acres): .054 Acres / 2,352 sq/ft

Current Zoning: R-8 Is the property in the Historic District? Yes

Current Use of Property: Residential Vacant Commercial Other: _____

Porter Casey Jr. 1/3/2022
Applicant Signature Date of Signature

Property Owner Signature (if different than above) Date of Signature

An application fee of \$300.00, is to be paid by either cash, money order, or check made payable to the "Town of Beaufort" and must accompany this application. The complete application, payment, and supporting material must be received by Town Staff at least 15 working days prior to a regularly scheduled Board of Adjustment meeting date.

Please refer to the Town's **Land Development Ordinance, Section 3** and all other pertinent sections, for the information required to accompany this application.
The Town's website address is www.beaufortnc.com.

OFFICE USE ONLY *Revised 8/2020*

Received by: _____ Reviewed for Completeness By: _____

Date: _____ Date Deemed Complete and Accepted: _____

REQUIRED ATTACHMENTS FOR A VARIANCE TO THE BEAUFORT ZONING REGULATIONS

Please provide the following as attachments to the variance request form:

- 1. A statement explaining the following:
 - The **specific requirements** of the Town of Beaufort that the applicant is asking to be varied (for example: the number of required parking spaces, any yard setbacks, height of a structure etc.) Please reference the exact chapter and section of the Land Development Ordinance (LDO) in question.
 - The **EXACT amount** of variance that is being requested. For example, the reduction of a placement of a structure by 5 feet within a setback area; a reduction of parking spaces by 7; or an increase in the amount of permitted signage by 16 square feet, etc.
 - The **reason for requesting the Variance**, including an explanation of why the Variance should be considered based on the criteria outlined in Section 21-I (1) of the LDO and any other relevant Sections of the Ordinance that may specifically pertain to the project (see attached excerpts of the code).

- 2. A site plan of the property drawn to scale and includes:
 - A North Arrow;
 - All property lines and accurate property line dimensions;
 - The adjacent streets and names;
 - The location of all easements (if applicable);
 - The location of all existing structures (if applicable);
 - The proposed location of new or expanded structures;
 - The current and proposed building setbacks from all property lines; and,
 - All parking areas, landscaping, and any other requirements of the zoning regulations.

- 3. A TYPED list all property owners (with addresses) within 100 feet of the boundary lines of all properties requesting the variance (notification of adjacent property owners by the Town is required by North Carolina law).

- 4. Any additional materials such as photographs of the surrounding properties, elevations of proposed structures or information that the applicant would like to present to the Board of Adjustment relevant to the requested variance.

- 5. Plans or other documents submitted for the Variance should be in an electronic/digital method as well as one paper copy.

APPLICATIONS ARE DUE 15 WORKING DAYS BEFORE A REGULAR BOARD MEETING.

Section 21. Board of Adjustment

I) *Variances.*

The power of variances is to be sparingly exercised and only in rare instances and under exceptional circumstances and with due regard to the main purpose of the *Land Development Ordinance* (herein known as *the LDO* or *the Ordinance*): to preserve the property rights of others. No change in permitted uses may be authorized by variance.

1) Application Submittal.

An application for a variance shall be submitted to the Board of Adjustment (BOA) by filing a copy of the application with the Town.

2) Findings for the Variance.

When practical difficulties or unnecessary hardships would result from carrying out the strict letter of the LDO, the BOA shall have the power to vary or modify any of the regulations or provisions of the Ordinance so the spirit of the Ordinance shall be observed, public safety and welfare secured, and substantial justice done. A variance may be granted only upon affirmative finding of the following:

- 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;
- 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;
- 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; and,
- d) 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.

K) *Burden of Proof for Variances.*

2) The applicant for a variance (request) shall have the burden of proof and persuasion.

L) *Board Action on Variances.*

2) Granting a Variance.

Before granting a variance, the BOA must take a separate vote and vote affirmatively by a four-fifths majority, on each of the four required findings stated in subsection I-2 of this Section. A motion to make an affirmative finding on each of the requirements set forth in subsection I-2 (see above reference) of this Section shall include a statement of the specific reasons or findings of fact supporting such motion.

3) Denying a Variance.

A motion to deny a variance shall be made if any one or more of the four required findings set forth in subsection I-2 (see above reference) of this Section are not satisfied or if the application is incomplete. A motion to deny a variance shall include a statement of the specific reasons or findings of fact which were not met and therefore caused the denial of the variance. The motion is adopted as the board's decision if supported by more than one-fifth of the board's voting membership in attendance (excluding vacant seats).

Application for a Variance of Land Development Standards

Applicant: Porter & Timpla Casey

Property: 302 Cedar St.

Attachment 1

This variance request pertains to section 7C (R-8 Residential Medium Density District) and section 11 (Non-conformities) of the Beaufort Land Development Ordinance.

Table 7-9 Interior Lot Requirements

<i>District</i>	<i>Front Setback (Right-of-Way)</i>	<i>Rear Setback</i>	<i>Side Setback</i>	<i>Building Height Limitation</i>
R-8	25 feet	25 feet	8 feet	35 feet

Table 11-1 Minimum Nonconforming Lot Requirements

<i>Width – Lot of Record</i>	<i>Side Setback</i>	<i>Front Setback</i>
30-49 feet	5 feet	15 feet
50-59 feet	6 feet	15 feet
60-69 feet	7 feet	20 feet

We are requesting a building setback variance for a second-floor addition over the existing footprint of the rear of our home at 302 Cedar Street. The structure is non-conforming on a non-conforming lot (2366.99 square feet).

We request to reduce the southwest rear setback from 25 feet to 8.18 feet (for a 16.82-foot encroachment) at a width of 26.7 feet for a total area of approximately 449 square feet. We also request to reduce the northwest side setback from 5 feet to 1 foot (a 4-foot encroachment) at a distance of 38.3 feet of length for a total area of approximately 153.2 square feet. The requested variance is highlighted on the submitted survey.

This home is a historic home, plaqued as the P.D Garner house, and was built in 1888 when no zoning laws were in place in Beaufort. The amount of encroachment requested would be to support a second-floor addition as the first floor was already encroaching. We do not plan to build any closer to our neighbors than what is already there, but only build vertically. The home is currently 1,508 square feet and the proposed square footage is 1,792 square feet.

This home needs extensive structural repair. Our goal is to restore the historic home on its existing footprint, while bringing the interior up to today’s building code and current standards for livability. The hardships incurred by strict adherence to the current setback requirements would prevent this type of restoration due to the unique nature of this property. The proposed renovation and use of the property conforms with the current land use in this section of Cedar Street and remains in harmony with adjoining properties and will not injure the value of our neighbors’ property. We hope this completed renovation will improve the aesthetic of Cedar Street and add to the overall historic character and charm of the neighborhood.

Application for a Variance of Land Development Standards

1.

Applicant: Porter & Timpla Casey

Property: 302 Cedar St.

Property Owners with 100 feet of 302 Cedar Street, Beaufort, NC

Barger, Gary T
NCPIN: 730617119742000

Physical Address: 307 Cedar Street, Beaufort, NC
Mailing Address: 307 Cedar Street, Beaufort, NC

Boyce, Debora Sue
NCPIN: 730617118757000

Physical Address: 303 Cedar Street, Beaufort, NC
Mailing Address: 414 Orange Street, Beaufort, NC

Davis, Johnna
NCPIN: 730617117617000

Physical Address: 322 Orange St., Beaufort, NC
Mailing Address: 322 Orange St., Beaufort, NC

Debutts, Richard E Jr Etux Anna
NCPIN: 730617117579000

Physical Address: 320 Orange St., Beaufort, NC
Mailing Address: 320 Orange St., Beaufort, NC

Flake, Donna B Etvir Jerry A
NCPIN: 730617118810000

Physical Address: 301 Cedar St., Beaufort, NC
Mailing Address: 134 Partridge Road, Wilmington, NC

Hart, Karen Churchill Trustee
NCPIN: 730617118595000

Physical Address: 308 Cedar St., Beaufort, NC
Mailing Address: 6605 Rexford Lane, Williamsburg VA

Mcfayden, W David Jr
NCPIN: 730617118621000

Physical Address: 304 Cedar St., Beaufort, NC
Mailing Address: 608 Madam Moore Lane, New Bern, NC

Mcfayden, W David Jr
NCPIN: 730617118534000

Physical Address: 306 Cedar St., Beaufort
Mailing Address: 608 Madam Moore Lane, New Bern, NC

Meislohn, Peter R etal Barta
NCPIN: 730617117629000

Physical Address: 324 Orange St., Beaufort, NC
Mailing Address: 208 Live Oak Street, Beaufort, NC

Newton, J Jefferson
NCPIN: 730617119704000

Physical Address: 305 Cedar Street, Beaufort, NC
Mailing Address: 710 Cedar St, Beaufort, NC

Swartz, W. Bruce Etal M. Tr
NCPIN: 730617117535000

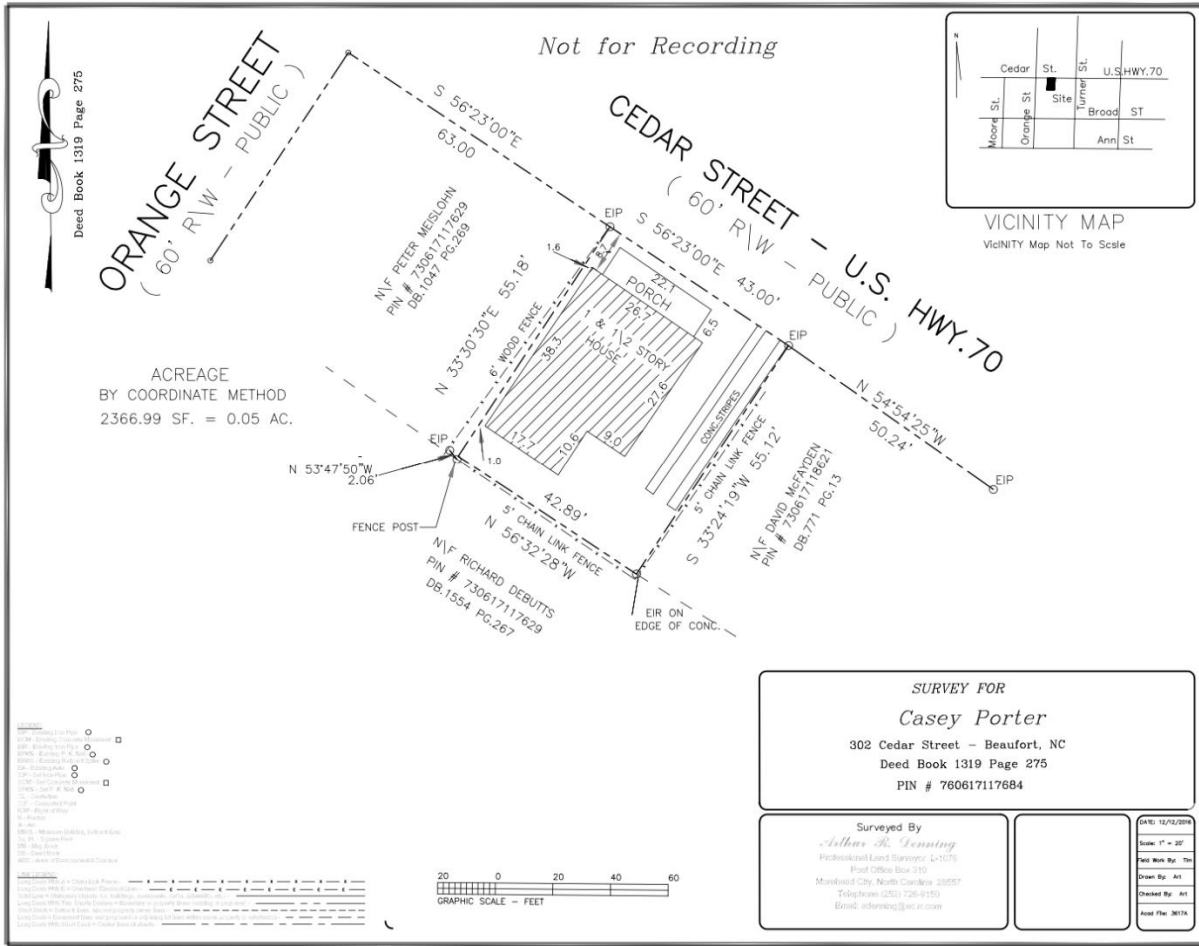
Physical Address: 318 Cedar Street, Beaufort, NC
Mailing Address: 304 Roslyn Road, Richmond, VA

Application for a Variance of Land Development Standards

Applicant: Porter & Timpla Casey

Property: 302 Cedar St.

Existing Survey of 302 Cedar St., Beaufort, NC

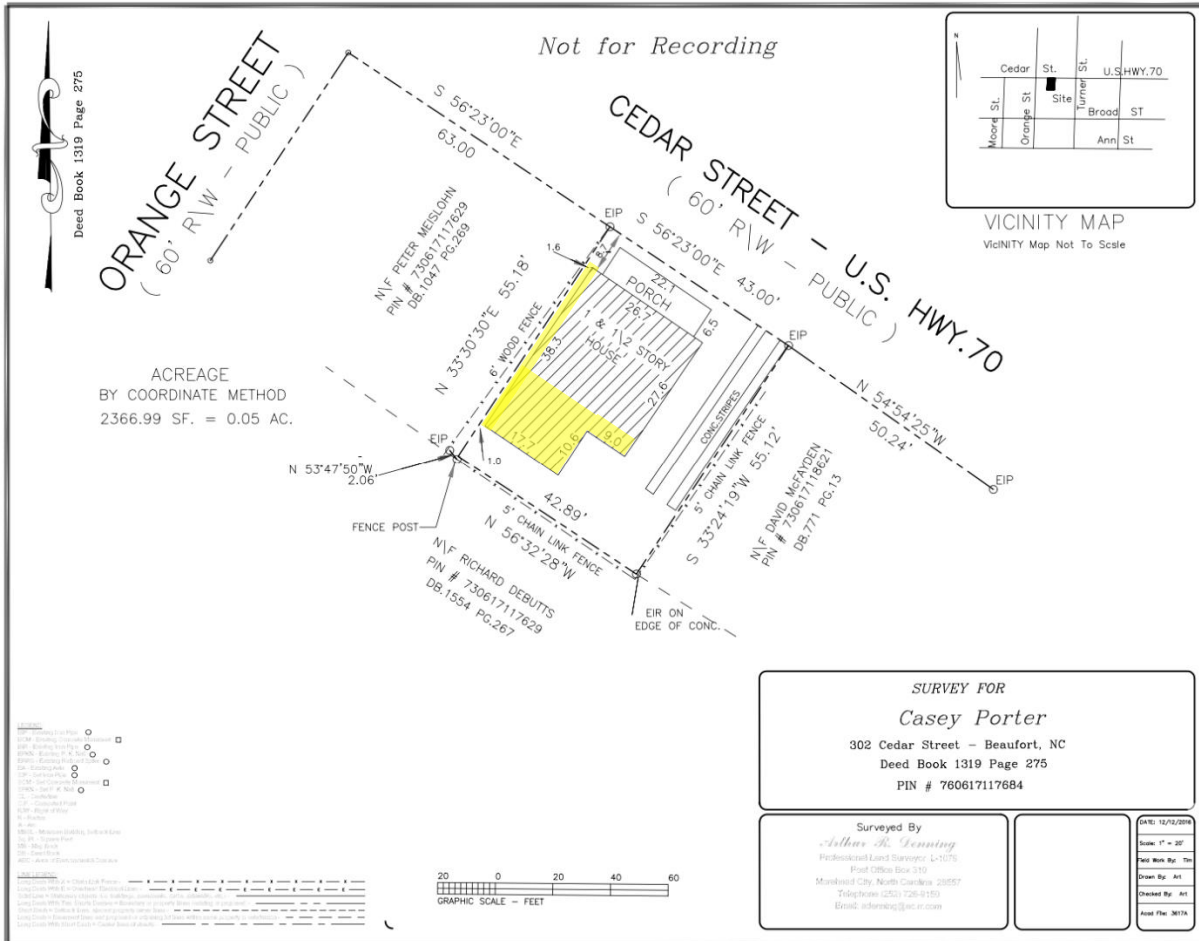


Application for a Variance of Land Development Standards

Applicant: Porter & Timpla Casey

Property: 302 Cedar St.

Existing Survey of 302 Cedar St., Beaufort, NC, with highlighted variance request



Application for a Variance of Land Development Standards

Applicant: Porter & Timpla Casey

Property: 302 Cedar St.

302 Cedar Street Photos (exterior)



Front view of 302 Cedar Street



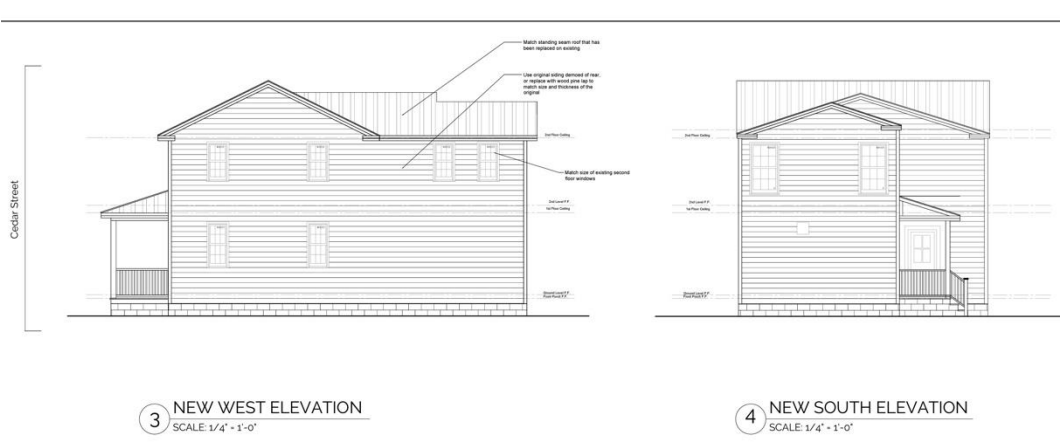
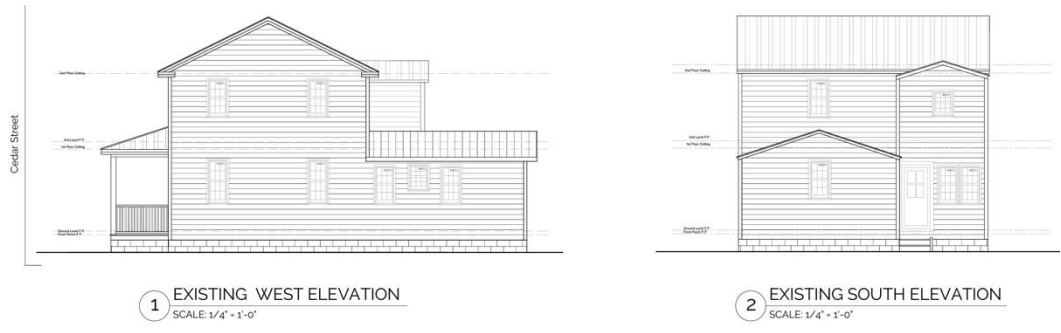
Rear view of 302 Cedar Street (proposed location for new addition)

Application for a Variance of Land Development Standards

Applicant: Porter & Timpla Casey

Property: 302 Cedar St.

302 Cedar Street elevations (Existing & Proposed)





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 P.M. January 24, 2021 – Via Zoom**

AGENDA CATEGORY: New Business
SUBJECT: Approval of the Order for 204 Turner Street Variance

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. We understand that this is a new process and from now on this will be the standard procedure for all orders.

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 Conduct Evidentiary Hearing

EXPECTED LENGTH OF PRESENTATION:

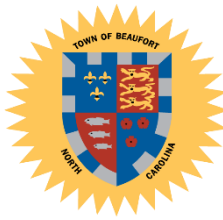
15 Minutes (Presentation From Staff)

SUBMITTED BY:

Kyle Garner, AICP Planning Director

BUDGET AMENDMENT REQUIRED:

N/A



TOWN OF BEAUFORT ORDER APPROVING A VARIANCE

The Board of Adjustment for the Town of Beaufort, having held an evidentiary hearing on November 22, 2021, to consider Case # 21-04, submitted by Filter Design Studio/Jay Horton, a request for a 0 side setback for the north and south property lines and a rear setback of ten feet for property located at 204 Turner Street, PIN # 730617107777000, 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** result in an unnecessary hardship due to the difficulty of new construction which would incorporate the existing historic structure based on insufficient depth and width of the property and also based on the goals of the Town and Board to preserve existing historic structures.
2. It is the Board’s **CONCLUSION/FINDING OF FACT** after hearing testimony and reviewing the staff report and exhibits that the hardship of which the applicant complains **does** result from conditions peculiar to the applicant’s property, including minimal depth and width of the property and an existing, non-conforming structure which was built before the implementation of current setback requirements which encroaches 8 feet into the south side setback, resulting in an existing 0 setback on the south property line.
3. It is the Board’s **CONCLUSION/FINDING OF FACT** after hearing testimony and reviewing the staff report and exhibits that the applicant purchased the property in its present configuration and therefore the hardship of which the applicant complains **did not** result from the applicant’s own actions.
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** be consistent with the general spirit, purpose and intent of the *Ordinance*, such that public safety is secured, and substantial justice achieved, considering the existing setback of 0 for the historic structure on the south property line, that an access road abuts the south property line and a cemetery abuts the rear property line, and considering that the variance as granted will allow for the retention of the existing historic structure located on the property.

Therefore, on the basis of all the foregoing, **IT IS ORDERED** that the application for a **VARIANCE** be **APPROVED TO ALLOW A SETBACK ON BOTH THE NORTH AND SOUTH SIDE OF THE PROPERTY OF ZERO (0) FEET AND A REAR SETBACK OF TEN (10) FEET MEASURED FROM THE PROPERTY LINE TO THE REAR OF THE STRUCTURE OR ANY APPURTENANCES THERETO, INCLUDING, BY WAY OF EXAMPLE AND NOT LIMITATION, DECKS, PORCHES, AND STEPS, WITH THE CONDITION THAT STORMWATER RUNOFF BE DIRECTED TO TURNER STREET.**

Ordered this 24th day of January, 2022.

Charles Davis
Chairman

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*.

2.