

CAROLINA BEACH

Board of Adjustment Meeting

Tuesday, February 16, 2021 - 6:00 PM

Council Chambers, 1121 N. Lake Park Boulevard, Carolina Beach, NC



MINUTES

CALL TO ORDER

Chairman Hartsell called the meeting to order at 6:00 PM.

PRESENT

Chairman Wayne Hartsell

Board Member Jullena Jones Shelley

Board Member Paul Levy

Board Member Teresa Shue

ABSENT

Board Member Amanda Nestor

Board Member Patrick Boykin

ALSO PRESENT

Planning Director Jeremy Hardison

Chairman Hartsell said with only four members present, any motion would have to have all four in favor to pass. He gave the applicant the option to delay until the next meeting or proceed. The decision was made to proceed.

APPROVAL OF MINUTES

Approval of BOA Meeting Minutes from November 2019

ACTION: Motion to approve the minutes

Motion made by Board Member Shue, Seconded by Board Member Jones Shelley

Voting Yea: Chairman Hartsell, Board Member Jones Shelley, Board Member Levy, Board Member Shue

Motion passed 4-0

DISCUSSION ITEMS

Variance to the required 7.5' side yard setback to 5.9' for 167 Delaware Ave Lot 18

The following individuals were sworn in: Ned Barnes, Steve Shuttleworth, and Jeremy Hardison.

The applicant, J&S Land Development LLC, is requesting a variance of 1.6 feet from Section Sec. 40-74: Dimensional Standards for Lots and Principal Structures, which requires a 7.5-foot side yard setback. The property is located at 167 Delaware Avenue and is in the R-1B zoning district. It consists of two 60-by-105-foot lots that were platted in 1939 as part of the Northern Section of Carolina Beach (Lots

18/19 Blk 204). The former owner of the property purchased the two lots in 1955 and built the current single-family house in 1963. The house was built 4.1 feet over the property line that encroaches onto Lot 19. When a building is proposed over property lines, the lots should have been combined into one lot at the time of permitting. This was never done, and the heirs of the property sold both lots to the applicant.

To resolve the situation, the applicant proposes to relocate the interior property line 10 feet to the north to create a 50-foot lot width for Lot 19 from the original 60-foot width. The minimum lot width of the R-1B zoning district and per the subdivision regulations is 50 feet. The existing house would then be reconfigured on a 70-foot-width lot (Lot 18) to solve the encroachment issue onto Lot 19. Any new property line would need to meet the required 7.5-foot side yard setback from the existing house. The existing structure is setback 5.9 feet from the proposed property line. Lot 19 currently has an accessory structure that is proposed to be removed. The applicant is seeking a variance to build on Lot 19 without having any encroachments from Lot 18 on the property.

Required Findings

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. 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.
3. 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.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

Conditions

In granting any variance, the Board may prescribe reasonable and appropriate conditions and safeguards in conformity with this ordinance. Violation of any such conditions or safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Article 19 of the Zoning Ordinance:

If the Board supports the findings, staff recommends the following condition for the variance: The variance is granted for the existing house only, and any new structures on the property shall conform to the setback requirements.

Mr. Hardison presented the details. He said Town staff cannot create variances, so that is why Board consideration of the four required findings is necessary. He said he would answer any questions from the Board.

Board Member Shue asked what the applicant plans to do with the house on the property. Mr. Hardison said his understanding is the reason the applicant has requested the variance is to keep the house and fix it up.

Board Member Levy asked if in the future someone would be allowed to put a second story on the house if it has a 5.9-foot setback. Mr. Hardison said normally what would occur in the situation when something is non-conforming is a 50 percent rule. If the improvements exceed 50 percent of the value of the home, then the property must conform. He said the Board may put something in the ordinance to strengthen that language if needed.

Board Member Shue asked what is going to happen to Lot 19. Mr. Hardison said it will become a buildable lot without any types of encroachments if the variance is granted and the applicant can move the property line over 10 feet.

Board Member Levy asked if it was in the plans to take down the garage so the lot can be developed. Mr. Hardison said yes, the applicant would have to remove the garage.

Board Member Shue asked if water and sewer are connected to Lot 19. Mr. Hardison said yes, water and sewer are in front of that lot.

Board Member Jones Shelley asked if the house on Lot 18 is vacant. Mr. Hardison said he does not think anyone is living there at this time. Board Member Jones Shelley asked if the house has been inspected to see if it's up to code. Mr. Hardison said the Building Inspector has not been out there. He said it's a 58-year-old home that the applicant wants to cosmetically improve.

Ned Barnes of 814 Carolina Beach Avenue North addressed the Board on behalf of the applicant. He gave the following responses to the four required findings:

1. If this is enforced, it would require the applicant to demolish a section of the house on Lot 18, which would be a hardship. The proposed variance would be a win for everyone, including future owners of Lot 19 and the Town for tax revenue purposes.
2. The incident with the former owner not having consideration for setback rules is peculiar to this particular situation. No one knows what occurred with the Inspection Department back during the time this happened.
3. The applicant bought the two lots and discovered the encroachment after having a survey done, so the applicant was not involved with the situation that led to the encroachment.
4. If approved, there is still a buildable lot on Lot 19 by completely removing the encroachment of the structure onto the property.

Mr. Barnes said he and the applicant had discussed that if the variance is approved, they would record the agreement with the Register of Deeds so it's on record that the side setback is 5.9 feet. He said anyone taking title in the future would know that the setback was changed and be fully aware of the situation. He said he or applicant Mr. Shuttleworth would answer any questions from the Board.

Board Member Levy asked if the side setback requirement in other parts of the Town where duplexes are allowed is 6 feet. Mr. Hardison said it's 7.5 feet everywhere other than the downtown area, where there are no setback requirements, or through consideration for a Conditional Use Permit for a special project. He said as far as zoning districts, the minimum is 7.5 feet.

Mr. Shuttleworth said he plans to put a new roof on and new cabinets in the structure, which is not currently occupied but has operating utilities. He said it's a nice beach cottage, and his intent is to keep it as a long-term rental. He said he would like to remove the garage on the lot next door and build on it, but he didn't want to do that and then deal with the encroachment in the future when a new buyer comes in and questions it. He said he doesn't believe the house is structurally sound enough to build on a second story and that he understands the 50 percent rule. He said he is trying to improve conditions as they are right now.

Mr. Barnes said if the variance is not granted, the applicant would have to disclose the encroachment to a prospective buyer and that it would be hard to get title insurance on the property with the structure encroaching. He said Lot 19 is unbuildable as it stands today.

Chairman Hartsell opened the meeting for public comment. No one requested to speak. Chairman Hartsell closed the meeting for public comment.

Mr. Hardison asked the Board to go through each of the four required findings when they are ready to vote so it will be on record. Each Board Member indicated agreement with each of the four required findings.

ACTION: Motion to grant the variance with the stipulations that it is for the existing house only and any new structure on the property shall conform to the setback requirements at the time, no second story shall be added, and the garage shall be removed from Lot 19

Motion made by Chairman Hartsell, Seconded by Board Member Jones Shelley

Voting Yea: Chairman Hartsell, Board Member Jones Shelley, Board Member Levy, Board Member Shue
Motion passed 4-0

NON-AGENDA ITEMS

Nominate and Select a Chairperson and a Vice Chairperson for BOA

Chairman Hartsell opened the floor for nominations.

ACTION: Nomination of Chairman Hartsell to stay in the role of Chairman

Motion made by Board Member Shue, Seconded by Board Member Jones Shelley

ACTION: Motion to close nominations

Motion made by Board Member Levy

Chairman Hartsell said it was so moved and that nominations were closed. He said he will accept the nomination to continue as Chairman.

ACTION: Nomination of Patrick Boykin as Vice Chairman
Motion made by Chairman Hartsell, Seconded by Board Member Shue

ACTION: Motion to close nominations
Motion made by Chairman Hartsell
Voting Yea: Chairman Hartsell, Board Member Jones Shelley, Board Member Levy, Board Member Shue
Motion passed 4-0

Chairman Hartsell said Board Member Boykin is the new Vice Chairman.

ADJOURNMENT

ACTION: Motion to adjourn
Motion made by Board Member Shue, Seconded by Chairman Hartsell
Voting Yea: Chairman Hartsell, Board Member Jones Shelley, Board Member Levy, Board Member Shue
Motion passed 4-0

The meeting adjourned at 6:26 PM.