

CAROLINA BEACH

Board of Adjustment Meeting

Monday, July 17, 2023 - 6:00 PM

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



MINUTES

CALL TO ORDER

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

PRESENT

Vice Chairman Patrick Boykin
Board Member Jullena Shelley
Board Member Paul Levy
Board Member Ken Thompson
Board Member Tim Howard

ABSENT

Chairman Wayne Hartsell
Board Member David Marshall

ALSO PRESENT

Planning Director Jeremy Hardison
Senior Planner Gloria Abbotts
Planner Haley Moccia

APPROVAL OF MINUTES

1. June 19, 2023 – Board of Adjustment minutes

ACTION: Motion to approve the minutes

Motion made by Vice Chairman Boykin, seconded by Board Member Howard

Voting yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Thompson, Board Member Howard

Motion passed 5-0

PUBLIC HEARING

2. Variance to Chapter 40, Article VII Fence Regulations from the required 4-foot height limitation for fences located within the 20-foot front yard setback for 300 South Lake Park Boulevard

Applicant Pleasure Island Holdings LLC is requesting a variance to allow fencing over 4 feet within the 20-foot front yard setback from Sec. 40-204 – Height Restrictions, which requires that no fence shall exceed 4 feet in height when located in the front yard setback. The property is located at 300 South Lake Park Boulevard and is in the MX zoning district. Dry Dock Inn and its pool are located on the property.

Gator Strong Services, a fence contractor, applied for a fence permit on behalf of the property owner in March 2022 to replace the fencing surrounding the pool located on the property. The application and supporting site plan materials proposed a 54-inch fence. Gator Strong Services was advised by the planning reviewer that the fencing within the front setback could not exceed 4 feet. They were told they would need to provide an updated site plan with an adjusted fence height to meet Town ordinance regulations. Danny Vulin of Gator Strong Services inquired about any fence exceptions or variance process. Mr. Hardison and Ms. Moccia advised Mr. Vulin there were no exceptions in the ordinance and spoke to him about the variance process. Mr. Vulin did not indicate a desire to apply for a variance at the time and was told to submit an updated site plan with a conforming fence height for fence permit approval.

No updated site plan was submitted, and the fence permit was left unissued. It was discovered in March 2023, through a code enforcement audit of all unissued and open permit applications, that a fence was installed surrounding the pool at Dry Dock Inn without an issued permit. The fence height surrounding the pool measured 56.5 inches. Town staff contacted Mr. Vulin and Deanna Lanni, the property owner listed on the fence application, to inform them the fence was too tall within the front setback and that it would need to be reduced to 48 inches to meet the Town's 4-foot fence height requirement. Mr. Vulin said the property owner contacted the County and received the N.C. Administrative Code addressing fence requirements surrounding pools. Ms. Lanni said she sent the information from the County to Mr. Vulin and was unaware he proceeded without a permit.

Mr. Vulin and the owner of Dry Dock Inn met on site to determine appropriate avenues to meet the Town ordinance. It was suggested they could alter or replace the section of fencing located within the front setback to meet the fence height requirements.

To resolve the situation, the applicant is seeking a variance to the required 4-foot fence height limitation for fences located within the 20-foot front yard setback for 300 South Lake Park Boulevard. If approved, the fence would not need to be replaced or altered to meet the 4-foot fence requirement.

Individuals planning to speak on the matter were sworn in.

Ms. Moccia presented the details. She reviewed the four required findings the Board must consider in the decision:

1. Unnecessary hardship would result from strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.
3. The hardship did not result from actions taken by the applicant or property owner.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such as that public safety is secured and substantial justice is achieved.

Ms. Moccia also presented a timeline of events as well as past and present photos of the fence. She said if the Board supports the findings, staff recommends the following condition for the variance: The variance is granted for the pool fencing only, and any new structures or redevelopment on the property shall conform to the setback height requirements.

Ladd Gasparovic, representing the applicant as an attorney and part owner, said his group purchased the property in late 2021 to breathe new life into it. He said they found a lot of things that had not been permitted properly in the past, so it was their intent to do everything by the book. Mr. Gasparovic said the fence issue was an honest mistake and not an intentional effort to break the rules. He said they did not see the March 2023 notification from the Town to Gator Strong Services and were unaware the fence was not permitted, instead believing the fence was approved because the County regulated the pool.

Mr. Gasparovic said having to replace or alter the custom fence would result in unnecessary hardship. He said the current fence looks great and is less obstructive than what was there before, plus the height makes it safer, stronger, and better. He said there are many fences along Lake Park Boulevard that are higher. Mr. Gasparovic said the issue is peculiar to the property, which abuts a public street with lots of access to the property. He said he believes the purpose of the ordinance is aesthetics, so the fence is consistent with the spirit, purpose, and intent because it does not obstruct views and enhances safety. He said he thinks this issue checks off all the boxes to be granted a variance.

Board Member Thompson asked what the rationale is for the Town's 48-inch fence height maximum. Mr. Hardison said this is for aesthetics so people don't wall up their front yards. He said once you get beyond the front setback, the fence height may go to 6 feet.

Mr. Vulin said he has been in business for 10 years and deals with the Town regularly. He said he has never had a situation like this in which the County approved something that was not approved by the Town. Mr. Vulin said the standard pool code fence is 54 inches and referenced aluminum fencing directly across the street that is 6 feet tall. He said changing the fence would cost thousands of dollars, and cutting the top will not look good. Mr. Vulin said he hopes common sense will prevail because the current fence looks great, is safe, and meets all pool code requirements.

Vice Chairman Boykin asked if an application was completed when dealing with the County. Mr. Vulin said he didn't have anything to do with that portion of it. He said he received an email response that stated things could proceed.

Ms. Lanni said there was no application but that she emailed Andrea Thomas from the County for feedback and ultimately received the green light to proceed with the pool inspection. She said the pool was inspected by the County on April 22 and passed with the current fence.

Mr. Hardison said reference to the County is specifically the New Hanover County Health Department, which governs commercial pools.

Vice Chairman Boykin said he is trying to understand the miscommunication that led to the taller fence height. Ms. Lanni said they never knew the pool had to go through the Town because they were solely working with the County. She said they assumed taller was better to keep kids from jumping the pool fence, and the wooden fence that was there previously was at least 6 feet tall.

Vice Chairman Boykin asked if the new owners received copies of the 2018 and 2019 fencing permits. Ms. Lanni said they didn't receive any permits or other documents from the old owners.

Mr. Gasparovic clarified that he was aware that the Town has jurisdiction for permitting and there is an overlap with the County's involvement, but he and those from Gator Strong Services thought everything was fine with the pool. He said the new fence had been up for a year when they received a notice of violation from the Town and realized there was a mistake.

Mr. Vulin said the new fence was installed in May or June 2022. He said a 54-inch height is standard and much safer than 48 inches.

Mr. Hardison said the ordinance setting the maximum height of 4 feet at the front setback was adopted in 2009. He said there were fences surrounding this property that had been previously permitted to be 6 feet.

ACTION: Motion to open the public hearing

Motion made by Vice Chairman Boykin

Voting yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Thompson, Board Member Howard

Motion passed 5-0

No one requested to speak.

ACTION: Motion to close the public hearing and allow Board discussion

Motion made by Vice Chairman Boykin, seconded by Board Member Howard

Voting yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Thompson, Board Member Howard

Motion passed 5-0

Board Member Levy said he used to work in health care and is aware of how health department and local building codes are not necessarily consistent.

Board Member Thompson said he sees no reason why the fence shouldn't be allowed to stand, and he thinks the Town should change the rule to prioritize safety over aesthetics.

Board Member Levy agreed and asked the Town to review the current ordinance and consider making the rules consistent with pool code. He said he's comfortable with allowing the current fence to remain.

Board Member Shelley agreed that the fence should stay as is.

Board Members went through each required finding.

Regarding finding 1, the following agreed: Board Member Shelley, Board Member Levy, Board Member Howard, and Board Member Thompson. The following disagreed: Vice Chairman Boykin. Therefore, finding 1 passed 4-1.

Vice Chairman Boykin said ignorance of the law is no excuse, so that's why he disagrees with finding 1. Board Member Thompson said he thinks ambiguity between different levels of the law creates uncertainty, and rules should be harmonized across various levels of government.

Regarding finding 2, the following agreed: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Howard, and Board Member Thompson. Therefore, finding 2 passed 5-0.

Regarding finding 3, the following agreed: Board Member Shelley, Board Member Levy, Board Member Howard, and Board Member Thompson. The following disagreed: Vice Chairman Boykin. Therefore, finding 3 passed 4-1.

Board Member Levy said he thinks it's confusion between the two sets of rules.

Regarding finding 4, the following agreed: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Howard, and Board Member Thompson. Therefore, finding 4 passed 5-0.

Vice Chairman Boykin said with all four of the required findings passing, the variance is approved.

ACTION: Motion to approve a variance of the fence height in Sec. 40-204 from the 4-foot fence height requirement in the front yard setback located at 300 South Lake Park Boulevard and that it meets the four findings of fact

Motion made by Vice Chairman Boykin, seconded by Board Member Thompson

Voting yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Thompson, Board Member Howard

Motion passed 5-0

DISCUSSION ITEMS

None

NON-AGENDA ITEMS

None

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Vice Chairman Boykin, seconded by Board Member Howard

Voting yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Thompson, Board Member Howard

Motion passed 5-0

The meeting adjourned at 6:55 PM.