

CAROLINA BEACH

Board of Adjustment Meeting

Thursday, May 22, 2025 - 6:00 PM

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



MINUTES

CALL TO ORDER

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

PRESENT

Chairman Ken Thompson

Vice Chairman Wayne Rouse

Board Member Patrick Boykin

Board Member Dana White

Board Member Dan Adams

ABSENT

Board Member Wayne Hartsell

ALSO PRESENT

Community Development Director Jeremy Hardison

Senior Planner Gloria Abbotts

Planner Haley Anderson

Board Attorney Matthew A. Nichols

Chairman Thompson introduced new Board Member White.

APPROVAL OF MINUTES

1. March 3, 2025, and March 17, 2025 – BOA Minutes

ACTION: Motion to approve the minutes as written

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

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Boykin, Board Member White, Board Member Adams

Motion passed unanimously

PUBLIC HEARING

2. Variance to Section 3.13 Dimensional Requirements for Minimum Setbacks, Maximum Lot Coverage, and Maximum Impervious Coverage at 817 Canal Drive in the R-1 Zoning District
Applicant: Pamela Capel and Martha Breslin

The applicant is requesting a variance from Section 3.13 of the Unified Development Ordinance (UDO) to setbacks, lot coverage, and impervious surface regulations. The property is located at 817 Canal

Drive and is in the R-1 zoning district. The property consists of 1,571 square feet of upland area directly adjacent to the Town yacht basin. The property lines of the lot extend past the bulkhead over water because the lot was created from dredge spoils from dredging the yacht basin in 1939. The property lines that were created were not based on the existing land area. The property was bulkheaded in 2023, so the upland area is 25 feet wide and 61.5 feet long up to the bulkhead. Lot coverage and impervious surface coverage limits are based on the amount of upland area that is landward of the high-water line (HWL). The existing lot is nonconforming to R-1 dimensional standards, which require a lot be at least 50 feet wide and 5,000 square feet. The property is located in a Federal Emergency Management Agency (FEMA) flood zone and would be required to meet FEMA flood regulations. It is also located in a Coastal Area Management Act (CAMA) Area of Environmental Concern and would need to meet all CAMA regulations due to its proximity to estuarine waters.

If the applicant utilized the minimum setbacks to build a new structure to meet the ordinance, the maximum size the structure could be is 10 feet wide x 51.5 feet long. Meeting all setbacks would leave the applicant with a maximum footprint of 515 square feet. The 40% lot coverage would allow up to 628.4 square feet of building (but this is more limited by the required setbacks), and the 65% maximum impervious coverage would allow up to 1,021.15 square feet of coverage.

The applicant would like to build a new single-family home that would meet all flood, parking, building code, and CAMA requirements. A three-bedroom three-story home on pilings is proposed. The proposed structure would be approximately 19 feet x 51 feet. Three parking spaces are required, and will be provided underneath and in front of the home. The structure is within the AE11 flood zone. All living space in the new structure must be elevated $11+2=13$ feet Design Flood Elevation. The maximum height limit in R-1 is 50 feet. The proposed structure will be approximately 42 feet tall. The HVAC and utilities will be placed at the rear of the house and will meet the required setbacks. CAMA will require an engineered stormwater system that captures 100% of the impervious surface runoff. The applicant does not have this system engineered yet, but Town staff will require it for the building permit application.

Setbacks:

The proposed structure meets the 10-foot front and 10-foot rear building setbacks from the front and rear property lines as required by Town ordinance. CAMA would allow the building to be built up to the bulkhead. The applicant proposes a variance to encroach into the side setbacks. These side setbacks are required by Town ordinance to be 7.5 feet. The applicant proposes a 3-foot side setback on both sides of the building to the side property lines.

Lot coverage:

The Town ordinance requires no more than 40% of the lot to be covered by the footprint of the building, elevated decks, covered decks, and staircases. Because the buildable area of the lot is 1,571 square feet, 40% of this area would be 628.4 square feet. The applicant is requesting a variance to the 40% allowed lot coverage, proposing a lot coverage amount of 59.3% (932 square feet).

Impervious surface:

The Town ordinance requires the impervious surface on a lot to be limited to 65% coverage. This would allow only up to 1,021.15 square feet to be covered by impervious surface. The applicant is requesting

a variance to the impervious surface limit to allow a total impervious surface limit of up to 77.6% (1,219 square feet).

To resolve the situation, the applicant requests the following:

- A 4.5-foot variance to the required 7.5-foot side setbacks
- A 19% increase in maximum lot coverage
- Up to a 12.6% increase in maximum impervious coverage

Ms. Anderson presented the details. She reviewed the four required criteria the Board must consider in the decision-making process:

1. Unnecessary hardship would result from the 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 that public safety is secured and substantial justice is achieved.

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 the UDO.

ACTION: Motion to open the public hearing

Motion made by Vice Chairman Rouse, seconded by Board Member Adams

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Boykin, Board Member White, Board Member Adams

Motion passed unanimously

Amanda Capel of 817 Carolina Beach Avenue North, daughter and niece of the property owners, said they want to sell the property, and when her grandmother bought it in the 1950s there were different setbacks and they didn't foresee these problems. She said throughout the years, her late father granted encroachments and variances requested by neighbors, and these same neighbors will likely oppose this request today. Ms. Capel said her family needs to sell this property so they can have money to fix things at their own homes, and under the current setbacks nothing can be built on that lot. She said because they have allowed encroachment by neighbors, they cannot put a dock on the property.

Jenne Kendziora of 1218 Mackerel Lane, a real estate agent who works with the family who owns the property, said they never planned to sell this property, but they need to do so for their financial future. She said without being able to build a home on the property, the value goes down significantly.

Pamela Capel of 817 Carolina Beach Avenue said she wants to be able to keep her home, but taxes and insurance are going up and she is a retired teacher, so she is looking at assets that can be sold and wants to sell this property to someone who can build a nice house on it and enjoy it.

Mr. Nichols clarified for the record that the property is currently owned by the Martha C. Breslin Trust.

Paul Groff of 815 Canal Drive said he bought his house with the understanding that the setbacks were what they were, and he paid a premium because he knew any structure built next door would be of a limited size. He expressed concerns about emergency vehicle access and what would happen to his three palm trees on the property line. Mr. Groff said this is basically giving a financial advantage to the applicant at a disadvantage to neighbors. He said the property has had a low tax value of \$36,000 up until this year because of its limited development capabilities, and the proposal will add to runoff and exacerbate flooding problems on Canal Drive. He asked if he could read an email from a neighbor, but Mr. Nichols said anyone who wishes to speak on this matter would need to be present and sworn in, otherwise it would be considered hearsay.

Ashley Mann of 819 Canal Drive said he built his property six years ago and had to abide by the setbacks, including having to make changes to the tune of \$12,000 due to being 6 inches over. He said he thinks the impervious surface coverage rules are important because of flooding and the liability that the Town would be accepting, and he contended it's a bad idea to go over the impervious surface and setback limits. Mr. Mann said this lot is one of the lowest on Canal Drive in that area, and he understood that a house of this size could not be built and therefore he paid more for his property.

Joe Hinkle of 900 Carolina Beach Avenue North expressed concerns about flooding and said he doesn't think it's wise to change regulations and requirements that have been in existence for a long time. He said he wishes the property owners well but hopes the Board will make the right decision for everyone.

Ms. Kendziora pointed out that the plan for the proposed house came from an approved house on Georgia Avenue that was 28 feet wide, and the variance was approved to build this home on a lot that has 3 more feet. She said the owners are selling the property to someone who wants to build a house, and it is under contract. Ms. Kendziora said the property would be worth a lot more with a dock, but when the owners asked neighbors if they would sign off saying they could build within 15 feet to keep within the rules allowed, they were turned down, even though they gave those neighbors permission to build their docks closer. She said the property owners moved past that and found potential buyers who were OK with building a small house, but they just need a little more room so the property isn't so narrow that someone can lie down and touch the wall on both sides.

Amanda Capel said while Canal Drive has a massive flooding problem, this particular lot does not typically flood during a normal tide.

Mr. Groff said his house is slightly elevated from that property and it's been flooded before, so to say that lot doesn't flood is not true.

ACTION: Motion to close the public hearing

Motion made by Vice Chairman Rouse, seconded by Board Member Adams

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Boykin, Board Member White, Board Member Adams

Motion passed unanimously

Vice Chairman Rouse asked if the property on Georgia Avenue referenced previously was an existing structure. Ms. Anderson said yes, this was an existing duplex or townhouse and one half was torn down and rebuilt, so that's where these plans originated.

Mr. Hardison said that structure did meet the front, side, and rear setbacks before and after completion.

Vice Chairman Rouse said the Planning and Zoning Commission is going to be working on rules for 41 lots in the Town that are 2,500 square feet or less and 366 that are less than 5,000 square feet.

Mr. Hardison said the Commission has directed staff to bring back this matter to possibly provide some relief for those nonconforming lots for setbacks.

Vice Chairman Rouse said coming up with an ordinance for these 407 lots will go through the Commission and then Council, and this could result in rules becoming looser or tighter. He said he's a little uncomfortable making a rule for one lot when there are another 406 that could potentially be heard, knowing in the short run that the Town is going to address this through the proper ordinance and text amendment changes.

Chairman Thompson asked if the Board makes a decision on this tonight and the Town deals with the rest of the lots through another mechanism later whether that would affect this property in the future.

Mr. Nichols said the Board should evaluate this application based on the ordinance in effect now. He said if the ordinance changes in the future, which is not uncommon, then it would apply to any property in the applicable district. Mr. Nichols said if the Board turns down a variance and the ordinance changes later, that makes the variance no longer necessary and the applicant can do what the ordinance allows without having a strike against them. He suggested that the Board evaluate the application tonight based on the facts heard this evening, the ordinance currently in effect, and the four criteria required for evaluating all variances.

Board Members went through each required finding for the variance request.

Regarding finding 1, the following disagreed: Chairman Thompson, Vice Chairman Rouse, Board Member White, Board Member Boykin, and Board Member Adams. Therefore, finding 1 failed 0-5.

Regarding finding 2, the following agreed: Chairman Thompson, Vice Chairman Rouse, Board Member White, Board Member Boykin, and Board Member Adams. Therefore, finding 2 passed 5-0.

Regarding finding 3, the following disagreed: Chairman Thompson, Vice Chairman Rouse, Board Member White, Board Member Boykin, and Board Member Adams. Therefore, finding 3 failed 0-5.

Regarding finding 4, the following disagreed: Chairman Thompson, Vice Chairman Rouse, Board Member White, Board Member Boykin, and Board Member Adams. Therefore, finding 4 failed 0-5.

The variance request was denied.

NON-AGENDA ITEMS

None

ADJOURNMENT

ACTION: Motion to adjourn

Motion made by Vice Chairman Rouse, seconded by Board Member Adams

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Boykin, Board Member White,
Board Member Adams

Motion passed unanimously

The meeting adjourned at 6:50 PM.