

# CAROLINA BEACH

Board of Adjustment Meeting

Tuesday, May 2, 2023 - 6:00 PM

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



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## MINUTES

### CALL TO ORDER

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

### PRESENT

Chairman Wayne Hartsell

Vice Chairman Patrick Boykin

Board Member Jullena Shelley

Board Member Paul Levy

Board Member Ken Thompson

### ABSENT

Board Member Tim Howard

### ALSO PRESENT

Planning Director Jeremy Hardison

Senior Planner Gloria Abbotts

### APPROVAL OF MINUTES

1. September 20, 2021 – BOA Minutes

**ACTION:** Motion to accept the minutes

Motion made by Board Member Shelley, seconded by Board Member Thompson

Voting Yea: Chairman Hartsell, Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Thompson

*Motion passed 5-0*

### PUBLIC HEARING

2. Variance to Chapter 30 Flood Damage Prevention, Article V. - Provisions for Flood Hazard Reduction  
Sec. 30-124. - General standards (d) and Sec 30-125 Specific Standards (d)(4)

Individuals planning to speak on the matter were sworn in.

Chairman Hartsell introduced Town Attorney Noel Fox, who gave a brief overview of the matter.

The applicant, Town of Carolina Beach, is requesting a variance to Chapter 30 Flood Damage Prevention ordinance, specifically to the elevation requirement for plumbing fixtures and relief from

the breakaway wall requirement for just the placement of the utility chases for plumbing. The Town would like to rebuild the current one-story brick-and-cinderblock Boardwalk bathroom that is located oceanfront at 9 Boardwalk. The proposed bathroom footprint would be approximately 700 square feet, and it will be a two-story structure with access from the elevated wooden walkway (second level) while also providing access from the concrete area of the Boardwalk adjacent to businesses (first level).

The bathrooms are located within a special flood hazard area (SFHA) as determined by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), Panel 3130 Map #3720313000, effective August 28, 2018. The property is designated as a coastal high hazard area (VE zone) subject to wave actions.

The National Flood Insurance Program (NFIP) variance procedures are designed to help local governments protect their citizens and property from flood damage. Allowing variances to the local floodplain management standards may significantly increase the property's flood insurance rate and decrease the community's resilience. Therefore, by implementing NFIP variance procedures, a community will ensure that alternative actions are taken to protect and encourage safe development in the floodplain.

A variance is an authorization that grants relief by a community from the terms of a floodplain management regulation. Variances are meant to address unique, site-specific, and individual circumstances where the strict application of the ordinance may result in hardship to a property owner. While the variance is intended to provide relief, it still enables the community to:

- Preserve the purpose and intent of the ordinance
- Protect the safety, health, and welfare of the public and emergency responders

The authority to grant a variance is delegated to the Board of Adjustment. In some cases, a variance granted for floodplain management purposes can result in a project that does not meet NFIP minimum standards.

The current bathrooms are located in a VE-16 flood zone. VE means that flooding may result in wave action from storm surge. The 16 represents base flood elevation (BFE), the height of flooding, including wave height, having a 1 percent chance of being equaled or exceeded in any given year. BFE is the basis of insurance and floodplain management requirements and is shown on the flood map. The Town has adopted added protection to buildings constructed in the flood zone by requiring 2 feet over BFE. The added 2 feet above the required elevation is referred to as freeboard. The property elevation of the grade is 8.3 feet. The required flood protection level of the building is 16 feet + 2 feet = 18 feet.

For a variance request to waive the elevation requirement, the community review board must require the "minimum necessary" actions. For example, the minimum actions necessary for a non-residential structure may include meeting other provisions in the local floodplain management ordinance.

The proposed design will meet the following flood requirements:

- Flood vents
- Electrical and mechanical equipment
- Utilizing piling construction

- First horizontal member will meet freeboard (18-foot BFE)
- Constructed using flood-resistant materials

Mr. Hardison presented the details.

Ms. Fox gave a summary of the 11 variance criteria, and Mr. Hardison responded to each.

(1) Danger that materials may be swept onto other lands to the injury of others.

There will be no additional threats to public safety. The new building will be designed to better accommodate flooding than the existing building and will be the minimum possible to afford relief. It will employ flood vents to relieve hydrostatic forces and pressure on the walls to prevent materials from being swept away.

(2) Danger to life and property due to flooding or erosion damage.

The building will be built to be flood-resilient. The current building does not meet flood requirements. The facility will be closed to the public when flooding conditions are expected. The federal storm damage reduction project has served the Town well over the years, and continued nourishment of the project will continue to provide storm damage reduction to the Town's infrastructure and development within the Town. The Town has a beach management plan approved by the Coastal Resources Commission (CRC). The Town must provide a progress report to the CRC every five years describing the condition of the project and an update of the requirements that address the funding sources and construction and maintenance details needed to achieve a design life of shore protection.

(3) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

It will be designed to accommodate water-utilizing water-resistant materials. There will not be any finished materials used in the design, and a pressure washer will be utilized to clean the facility that will produce large volumes of water that the facility will be designed to withstand.

(4) Importance of the services provided by the proposed facility to the community.

Lack of access to public bathroom facilities is a detriment to those visiting the beach. There is potential negative biological impact from failing to provide adequate access to public bathroom facilities. Lack of convenient access to public bathroom facilities creates a significant hardship. The proposed two-story bathroom facility will significantly increase the number of stalls and provide direct access to those facilities from the Boardwalk.

The variance requested by the Town will secure public safety and welfare. The proposed two-story bathroom facility will replace the inadequate, non-ADA-compliant existing facilities. The proposed two-story bathroom facility will provide the disabled public the ability to access a bathroom directly from the Boardwalk. As proposed, the two-story bathroom facility is 1) adjacent to a handicap ramp and 2) in close proximity to the location where the Town installs beach mats. The Town routinely allows

organizations supporting those with disabilities to hold special events and camps in this location. Additionally, the two-story bathroom facility will provide adequate access to the general public.

(5) Necessity to the facility of a waterfront location, as defined under Article II of this chapter as a functionally dependent facility, where applicable.

The proposed location to rebuild the public bathroom is on the uniquely Town-owned public beach within the Town's Central Business District (CBD). The bathroom serves beach patrons and the oceanfront Boardwalk area that is in close proximity to the beach and CBD. The expanded bathroom facility will have more total stalls by having two floors and will enhance public access along the beach and Boardwalk by replacing the existing facilities.

The property upon which the proposed two-story bathroom facility is to be located is unique public property. This property was raised from the tides of the Atlantic Ocean by taxpayer-funded beach nourishment efforts first undertaken by the U.S. Army Corps of Engineers in the mid-1960s and uniquely was deeded to the Town by the N.C. General Assembly pursuant to the provisions of the governing 1963 Session Law. The 1963 Session Law balances public and private property rights by recognizing that the Corps' publicly funded beach nourishment project extinguished the common law littoral rights of the impacted oceanfront property owners by deeding the raised lands to the Town and requiring the Town to use those raised lands for public street and public park purposes. This allowed the Town to improve the property in such a manner to significantly increase public access to all able-bodied and disabled individuals to better meet the demand to provide capacity to Boardwalk and beach visitors.

(6) Availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

The Boardwalk area is located in a flood zone, and it would be impossible to locate a bathroom out of the flood zone in this area to serve the visitors and citizens of the Boardwalk and beach.

(7) Compatibility of the proposed use with existing and anticipated development.

The bathrooms will be at the same location as the existing bathroom facility, which is convenient to the Boardwalk, beach mats, and Town-owned area. The variance would secure public safety and welfare and preserve substantial justice. The proposed bathroom expansion is designed to increase access to the public beach and Boardwalk for all disabled visitors and improve restroom access for the public at large through more stalls, including ADA-compliant stalls, and is conveniently located next to and connected to the Boardwalk. The Town is committed to improving access for the increasing and anticipated visitors, especially those with disabilities, and is keeping with the goals of the Town.

(8) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area.

The bathrooms are located in the Boardwalk commercial area and CBD of the Town. This area is pedestrian-oriented with street-level services. The downtown area and Boardwalk are the recreational

and social hub of the Town, providing a family-friendly experience that has come to define the Town for visitors. The appearance of this area was also identified as an opportunity for improvement in the Town's 2020 Land Use Plan with maintaining the pedestrian-scaled environment with active ground-floor uses. In the 2023 Strategic Plan, it was listed to expand public bathroom facilities at the Boardwalk for priorities and objectives.

(9) Safety of access to the property in times of flood for ordinary and emergency vehicles.

The facility will be closed to the public if flooding is predicted. Once the area is safe for public access, it will be open.

(10) Expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

The first horizontal member will be 18 feet BFE, 9.7 feet from the ground. The building will be built better to withstand velocity occurrence. The beach management plan and beach storm reduction project have reduced wave action and impacts of buildings in this area.

(11) Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

The cost will be minimal, as the fixtures will be designed to accommodate water and the building will be made of flood-resistant materials. The electrical and mechanical components will be elevated 2 feet above flood stage. The horizontal member will be located 2 feet above flood stage as well to allow the flow of water. Backflow preventers will be installed to eliminate infiltration of floodwater into the sanitary sewage system.

The Board of Adjustment may attach conditions to the grant of variances. The proposed conditions for this variance are as follows:

1. Plumbing fixtures and connections are permitted below BFE provided that the fixtures and connections are designed and installed to minimize or eliminate infiltration of floodwaters into the sanitary sewage system and discharges from sanitary sewage systems into floodwaters.
2. Anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy during conditions of the base flood.
3. Constructed of flood-damage-resistant materials.
4. Install flood vents.
5. Mechanical and electrical systems located above BFE.
6. Install breakaway walls to the maximum extent possible.

Board Engineer Mark Weiss of Ardurra Group North Carolina approached the podium for testimony.

Ms. Fox asked if it's possible to meet the Town's flood ordinance and construct this bathroom as designed. Mr. Weiss said it's not possible as it currently sits without modifications to it.

Ms. Fox asked which parts of the proposed construction would meet the Town's flood ordinance. Mr. Weiss said fixtures on the ground floor and utility chases going up to the second floor.

Ms. Fox asked if the current building meets the flood ordinance. Mr. Weiss said no.

Ms. Fox asked Mr. Weiss to expand on the concept of flood resiliency. Mr. Weiss said it involves the use of flood panels, breakaway walls, or a combination of both to ensure the structure itself with storm surge doesn't impact such a force on the building to where it would overcome the structure and cause it to topple.

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

Board of Adjustment Attorney Matt Nichols asked the Board to consider the 11 criteria when voting on this item.

**ACTION:** Motion to approve the variance from the Town's Flood Damage Prevention ordinance for minimum relief of the plumbing and breakaway wall requirements where the plumbing fixtures will be located. The variance supports the 11 criteria, and public safety will be secured and substantial justice achieved.

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

Voting Yea: Chairman Hartsell, Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Thompson

*Motion passed 5-0*

Chairman Hartsell said it's outstanding for both residents and visitors that Town has decided to do this. He commended Mr. Hardison and his staff for a well-prepared presentation.

## **NON-AGENDA ITEMS**

None

## **ADJOURNMENT**

**ACTION:** Motion to adjourn

Motion made by Board Member Shelley, seconded by Board Member Thompson

Voting Yea: Chairman Hartsell, Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Thompson

*Motion passed 5-0*

The meeting adjourned at 6:40 PM.