

CAROLINA BEACH

Board of Adjustment Meeting

Monday, September 20, 2021 - 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 (arrived at 6:02 PM)

Board Member Teresa Shue

Board Member Ken Thompson

ABSENT

Chairman Wayne Hartsell

Board Member Amanda Nestor

ALSO PRESENT

Planning Director Jeremy Hardison

Planner Gloria Abbotts

APPROVAL OF MINUTES

Approval of BOA Meeting Minutes from February 2021

ACTION: Motion to approve the minutes as they stand

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

Voting Yea: Vice Chairman Boykin, Board Member Shelley, Board Member Shue, Board Member Thompson

Motion passed 4-0

Vice Chairman Boykin recognized Matt Nichols, attorney for the Board of Adjustment.

DISCUSSION ITEMS

Variance to the required 20' front yard setback to 5' for 206 Lake Drive Lot 10R Block 51A

Individuals planning to speak on the matter were sworn in.

Mr. Nichols explained that Board Members should have no ex parte communication or conflict of interest regarding this matter. All Board Members indicated they had none.

Applicant The Freeman Group LLC is requesting a variance of 5 feet from Section Sec. 40-75. - Dimensional standards for accessory structures that requires a 20-foot front yard setback. The property is located at 206 Lake Drive and is in the R-1 zoning district. A three-story two-unit townhome is currently under construction on the property. The property consists of one 7,656-square-foot lot that was recombined in 2020 (LOT 10R BLK 51A). The lot is considered double frontage because it fronts both Birmingham Avenue and Lake Drive rights-of-way. The minimum front yard setback is to be utilized for both frontages. Staff presented a text amendment in May 2021 proposing a 5-foot setback for pools in the designated rear yard of through lots, and Council decided to take no action on the amendment. To resolve the situation, the applicant is seeking a variance of 5 feet from the front property line on Birmingham Avenue. If approved, the pool would be located out of the wetlands delineated on the lot. The applicant is seeking a variance from the front setback requirement on Birmingham Avenue because it is an unimproved right-of way.

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 proposed pool only, and any new structures on the property shall conform to the setback requirements.

Ms. Abbotts presented the details.

Sam Franck, who represents the landowner and applicant, said they are asking the Board to treat the back yard of this lot like a back yard. He said the request meets all four required findings and that a back yard is the only reasonable way to interpret what this is. Mr. Franck said the character of the

neighborhood supports the variance, and it will pose no burden on neighboring property owners. He said declining the request would effectively take away 10-15 feet of the property with no benefit.

Board Member Levy asked if the applicant considered turning the pool to 90 degrees or otherwise changing the shape so it comes just within the setback line or very close to it. Vinson Lutheran of Vince Lutheran Homes said because it's a commercial pool, there is a required 6-foot barrier. He said turning the pool would result in shrinking the width of the walkway, which would create unnecessary safety risks relative to the design that's proposed.

Board Member Shelley asked about the wetlands and whether there are living creatures on the property that need to be addressed. Mr. Franck said the project has been designed to protect the wetlands and not encroach on them in any fashion. Board Member Shelley asked if there is a permit for the wetlands. Mr. Lutheran said this was done by the developer prior to his involvement in the project. He said they have followed the process and left the wetlands fully intact and preserved. Mr. Franck said wetlands delineations have a limited life because the U.S. Army Corps of Engineers recognizes that they change and are dynamic. He said the permit is only good for five years.

Board Member Levy asked if the Board would be here six months from now talking about the same variance for the adjacent lot. Applicant Emily Krawiecki said yes, they would also like to add a pool at 204 Lake Drive, which would require a variance. Mr. Franck said variances are granted on a case-by-case basis, and the Board's decision to grant this variance tonight doesn't mean the applicant is guaranteed one on another property. He said the applicant would have to demonstrate facts and circumstances on the other property. Board Member Levy said his personal opinion is that this could set a precedent for the adjacent lot.

No one else requested to speak. Vice Chairman Boykin closed the hearing.

Vice Chairman Boykin said Board Members should go through each required finding.

Regarding finding 1, the following voted yea: Board Member Shelley and Board Member Thompson; the following voted nay: Vice Chairman Boykin, Board Member Levy, and Board Member Shue. Therefore, finding 1 failed 2-3.

Regarding finding 2, the following voted yea: Board Member Shue and Board Member Thompson; the following voted nay: Vice Chairman Boykin, Board Member Shelley, and Board Member Levy. Therefore, finding 2 failed 2-3.

Regarding finding 3, the following voted nay: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, and Board Member Thompson. Therefore, finding 3 failed 0-5.

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

Vice Chairman Boykin asked what the votes mean for the variance. Mr. Hardison said in order for the variance to be granted, it has to meet all four required findings. Vice Chairman Boykin said with only one of the required findings passing, the variance is not approved.

Variance to the required 25' front yard setback of 9.1' for 511 Harper

Individuals planning to speak on the matter were sworn in.

Mr. Nichols again explained that Board Members should have no ex parte communication or conflict of interest regarding this matter. All Board Members indicated they had none.

Applicants Jack and Lisa Greene are requesting a variance of 9.1 feet from Section Sec. 40-74. - Dimensional standards for lots and principal structures, which requires a 25-foot front yard setback. The property is located at 511 Harper Avenue and is in the R-3 zoning district. The property consists of one 8,779-square-foot lot, Lot 7R, that was recombined in 2020 (LOT 7 TRACT 2 and LOTS 8-10 TRACT 1 LK 101). The owner of the property owns both lots, 511 and 515 Harper Avenue. The house under construction was staked incorrectly by the surveyor and built with a setback of 15.9 feet from the front property line along Harper Avenue. The original site plan submitted along with the permit application proposed the home be placed 16 feet from the front property line. Staff asked the applicant to change the site plan and bring it into compliance with the required 25-foot setback. The approved site plan for construction had a proposed setback of 26 feet from the front property line. Per Sec. 40-73(a)(5), a front yard setback may be reduced to no less than the calculated average front yard setback distance for existing buildings on all lots located wholly or partly within 200 feet. All lots must be in the same zoning district, front the same side of the street, be considered as having the minimum required front yard setback if the lot is vacant, and shall not be reduced to less than 50 percent of the required setback. Per the survey submitted by the applicant, the average setback within 200 feet is 22.3 feet. To resolve the situation, the applicant requests a 9.1-foot variance to the required 25-foot front yard setback. The home under construction meets the minimum required side (7.5 feet) and rear (10 feet) yard setbacks. To come into compliance with the ordinance, the home would have to be torn down and rebuilt.

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 under construction only, and any new structures on the property shall conform to the setback requirements.

Ms. Abbotts presented the details.

Board Member Levy asked whether the practice of the Town not checking the survey stakes or foundation until framing is typical of just the Town, just the County, just the State, or a general practice. Mr. Hardison said every community handles this situation differently. He said the Town tries to take an approach to reduce these types of errors and require a foundation survey.

Sam Potter, who represents the applicants, said they are here with the unfortunate situation of having a house that's been constructed in a setback. He said it's not something that anybody wanted, and the applicants, who currently live next door to the east of the house under construction, were shocked when they discovered the house was built within the setback. Mr. Potter said Harper Avenue is abnormal because it has an 80-foot-wide right-of-way and the property lines are almost 30 feet from the road, so that's why it was difficult to recognize that the home was being constructed within the 25-foot setback. He said properties to the east are much closer, and if rights-of-way or setbacks were in force here those people wouldn't have driveways at all.

Mr. Greene said he was born in Wilmington and has strong family ties to the Town. He said his parents gave them the lot where the house is under construction, and the Greenses decided to hire Hagood Homes as their builder. Mr. Greene said the house looks like it belongs where it currently sits on the lot and in relation to the road and other houses.

Mr. Potter asked what kind of hardship the Greenses would incur if the Board denies the request. Mr. Greene said it would be a huge loss of time, effort, and resources because the structure is close to being finished. He said they have a goal to get out of the house next door so his parents can move in there. Mr. Greene said he needs to help care for his dad, who has Alzheimer's disease.

Board Member Thompson asked Surveyor Josh Taylor how this mistake happened. Mr. Taylor said the most likely answer is that someone hit the wrong key when the first plan was submitted to Hagood. He said when the error was caught, the stakes were not moved to reflect that change. Vice Chairman Boykin asked who was responsible for moving those stakes. Mr. Taylor said he and his associates would've been responsible for that.

Mr. Potter said Ms. Abbotts pointed out that front yard setbacks can be reduced based on the average, which was not included in this request. He said there is a 2.7-foot difference between 25 feet and what the actual average is, so if you take the current encroachment of 9.1 feet and adjust it for the average of the surrounding properties, that brings the requested variance to 6.4 feet.

Board Member Thompson asked how small the garage would be if it was brought into compliance. Patrick Kennedy of Hagood Homes said it would not be wide enough for two cars.

Mr. Potter asked Mr. Kennedy to describe the events that led up to the need for a variance. Mr. Kennedy said they place the house with the help of a surveyor and then turn it in for a building permit. He said after the Town rejected the building permit due to an incorrect front setback, Hagood Homes revised the plan and assumed Paramounte Engineering had replotted the house based on the new site plan. Mr. Kennedy said they had framed the house and were about to do the foundation survey when they found out this had not been done. He said they stopped work and have not progressed since, so the error was self-reported.

Vice Chairman Boykin opened public comment.

Wayne Rouse of 508 Monroe Avenue, who is the applicants' neighbor, said he has known the Greenes for many years and they have been good neighbors. He said the Greenes were upset when they found out about the mistake, and all of the surrounding neighbors have no objection to this variance being granted. Mr. Rouse said if you were riding down the road, you would never know there was a setback issue. He said not granting the variance would have a negative impact not only on the applicants but also on all the neighbors having to watch the house being torn down and rebuilt. Mr. Rouse asked the Board to find a way to help the Greenes because they have been good to the community.

No one else requested to speak. Vice Chairman Boykin closed the hearing.

Vice Chairman Boykin said Board Members should go through each required finding.

Regarding finding 1, the following voted yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, and Board Member Thompson. Therefore, finding 1 passed 5-0.

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

Regarding finding 3, the following voted yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, and Board Member Thompson. Therefore, finding 3 passed 5-0.

Regarding finding 4, the following voted yea: Vice Chairman Boykin, Board Member Shelley, Board Member Levy, Board Member Shue, 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.

NON-AGENDA ITEMS

None

ADJOURNMENT

ACTION: Motion to adjourn

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

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

Motion passed 5-0

The meeting adjourned at 7:20 PM.