

# CAROLINA BEACH

Board of Adjustment Meeting

Monday, November 18, 2024 - 6:00 PM

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



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## 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 Wayne Hartsell

Board Member Patrick Boykin

Board Member Dan Adams

### ALSO PRESENT

Community Development Director Jeremy Hardison

Senior Planner Gloria Abbotts

Planner Haley Moccia

Board Attorney Matt Nichols

### APPROVAL OF MINUTES

**September 18, 2024 – BOA Minutes**

**ACTION:** Motion to approve the minutes as written

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

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

*Motion passed unanimously*

### PUBLIC HEARING

**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 201 Fayetteville Avenue**

**Applicant: Pleasure Island Holdings, LLC**

Ms. Moccia said after the applicant confirmed the ability to attend tonight, they realized they had a scheduling issue and emailed a letter asking for a continuance. She said the Board may vote tonight or continue this item until the next meeting.

**ACTION:** Motion to approve the continuance

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

Voting Yea: Chairman Thompson, Vice Chairman Rouse, Board Member Hartsell, Board Member

Boykin, Board Member Adams  
*Motion passed unanimously*

**Appeal of Article 3: Zoning, Article 5: Flood Damage Prevention, and Article 7: Definitions and Measurement, of the Town's Unified Development Ordinance for 315 Carolina Beach Avenue North  
Applicant: Travis Sherry**

Applicant Travis Sherry has filed for an appeal of staff's determination that the structure in the northwest corner of the property at 315 Carolina Beach Avenue North is to be used as storage only. The applicant purchased the property in July 2021. The property consists of the main house, which has been divided into 2 units – 1st floor and 2nd floor – another unit in the southwestern corner, and the storage building in the northwestern corner.

The applicant applied for and received a building permit to renovate the main home on the property. As renovations continued, Town staff noticed that work was being done to the storage structure in the rear. Staff met with the owners to discuss options because the work was not listed on the description of work for the building permit.

In 2015, the previous owners of the property applied for a permit to convert the existing non-conforming northwestern cottage into a storage building. They removed the bathroom and installed 2 large double doors to utilize the building for storage.

The only way the building could be converted into living space would be through a change of use permit. The structure shall meet all current requirements for setbacks, flood elevations, and parking, and have a Type A landscape buffer. Parking must be provided for all 4 units on the property.

The applicant informed staff that they would like the storage area to be used as another living unit. However, because the previous owners converted the cottage to storage, any renovations to make this structure a livable unit must meet current code. The existing structure is non-conforming to setbacks and flood. The structure is located below the base flood elevation (BFE) + 2-foot freeboard. The property is in AE 13 feet, and the topography is approximately 9 feet. The addition of another livable unit on this property requires parking via an approved parking surface and maneuvering requirements. A Type A landscape buffer of 5 feet would have to be installed on the property. Type A buffers are required for 3-5 units on one property.

The applicant could renovate the existing storage building to the 2015 conditions up to 49% of the value of the building. The proposed lofted area shall be used as storage only and not exceed 15 feet in height to meet accessory structure requirements.

Building permit 24-014536 was applied for at New Hanover County, and staff denied the permit on the basis that the existing use for this building is a shed, the structure is in a flood zone, no living space is permitted below BFE + 2, and repairs are permitted for storage only.

The Board shall hear and decide appeals of decisions of administrative officials charged with enforcement of the zoning ordinance. The Board can uphold or reverse staff's interpretation of the Unified Development Ordinance (UDO) Articles 3, 5, and 7.

Individuals planning to speak on the matter were sworn in.

Chairman Thompson asked if any Board Members have any ex parte communication, bias, or conflict of interest to disclose in this matter. Vice Chairman Rouse said the applicant called him asking general questions about the Board, and Vice Chairman Rouse told him he couldn't talk about this matter coming before the Board. Vice Chairman Rouse said the conversation was not substantive. Mr. Sherry, the applicant, said he did not have any objection to Vice Chairman Rouse voting on this matter.

Mr. Hardison presented the details. He reviewed the history of the property and the timeline of events.

Vice Chairman Rouse asked if the applicant may consider other plans to put an additional dwelling unit on this property in another location should the Board affirm staff's decision. Mr. Hardison said yes, as long as it meets zoning and flood requirements for a dwelling unit.

Board Member Boykin asked how much parking would be required if this was turned into a residential building. Mr. Hardison said 6-7 spaces. Board Member Boykin asked if staff has looked at the property to see if the lot can accommodate this. Mr. Hardison said no and added that if the structure is treated as an existing residential unit, current parking would be grandfathered in and there would be no trigger to add more. However, he said if the determination is upheld that the structure is storage and they apply for it to become a residential unit, then that would trigger additional parking requirements.

**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 Hartsell, Board Member Boykin, Board Member Adams

*Motion passed unanimously*

Mr. Sherry of 1708 Carolina Beach Avenue North gave background about his family and their interest in the property. He said they put in an offer to buy the Smith Cottages in August 2021 and were selected from 5 other offers because they are not developers and planned to modernize the historic structures while retaining their charm and offering them as an upscale place for island visitors to stay. He said they applied for the permit to renovate the structure in question and it was granted, so they began renovation work, only to be informed by the Town 1 month later that they must stop because the permit would be canceled. Mr. Sherry said he was told Town staff thought the permit was for the front structure, which is a 2-story 25-foot house. He said they had already spent \$7,000 on the renovations.

Mr. Sherry said when he was told he needed a new permit because the structure was considered storage and not residential, he learned someone had applied in 2015 as a contractor on behalf of the previous owners for the change of use. He said the previous owners told him they never applied to change the use and had never hired or even talked to the person who applied on their behalf. Mr. Sherry said the previous owners certified that the previous applicant never did any work for them and

they had never seen the permit application or received any correspondence from the Town about it. In addition, he said there is no copy on file of a finalized permit issued based on this 2015 application, and he presented a November 2020 survey that shows the property as a dwelling. Mr. Sherry also said County tax records list this structure as a dwelling, and it has always and continuously been taxed as a dwelling. He showed examples of work done on the other buildings and said as a dwelling, this structure would bring \$100,000 of annual revenue to the island for restaurants and other businesses. He asked the Board to deem this structure a dwelling based on the facts he presented.

Board Member Adams asked if the previous owners showed any proof of payment to indicate who actually did the work on the structure in question. Mr. Sherry said another contractor – not the one who submitted the 2015 application – did all the work for them, adding that any work done was not based on that application.

Board Member Boykin asked if the former property owners were aware there had been modifications to the structure. Mr. Sherry said yes, but they were not aware there was a change of use from residential to storage.

Chairman Thompson asked how long the previous property owners owned the property. Mr. Sherry said the same family owned the property since the 1950s and operated the structures as rentals.

Vice Chairman Rouse asked how they would be renting out the structure in question after the bathroom was removed. Mr. Sherry said the previous owners were renting out this structure until they decided to put a golf cart in it and have it for their own use. He said although a toilet is not in the structure, the plumbing is still there. Vice Chairman Rouse asked if it is the same structure it was before they began storing the golf cart in it. Mr. Sherry said they switched doors, but it's the same structure.

Chairman Thompson asked if anyone from the public wanted to speak. No one came forward.

Mr. Sherry added that if staff's decision is upheld and the structure is affirmed as storage, they likely will not be able to meet the parking requirements to change the use to residential. He said they have not presented a plan for this because in their mind, the use of the structure was not changed and it is currently residential.

Chairman Thompson asked about the process for changing a use. Mr. Hardison said once an application is submitted, paid for, and approved by staff, then a property would be authorized for the work required to change the use. He said once the work is done, then the change of use has actually occurred, but if the work is never done and the permit is revoked or discontinued, then it would not be considered a change of use.

Chairman Thompson asked if there is a validation process for people authorized to file a change of use permit. Mr. Hardison said the person who filed the 2015 application was a contractor, and he would not think a contractor would rip out a bathroom and store a golf cart in the structure without permission of the property owners. He said he hesitates to believe the previous property owners had

no knowledge of what was occurring on their property. However, Mr. Hardison said a homeowner is not required to sign an application requesting a change of use.

In addition, Mr. Hardison read a real estate advertisement from 2021 that states, "The 4th building that serves as a laundry and storage area could easily be turned into a 4th cottage as it once had a bedroom where the storage area is and a bathroom," so he contended there was some acknowledgment that the structure was storage.

Mr. Sherry said although the advertisement stated the building was being used for storage, it did not say there was a change of use, and he contended that no one would claim it could "easily be turned into a 4th cottage" knowing the stringent requirements for changing a use from storage to residential. He said the previous owners did not live here and simply wanted a place to store their golf cart when they were not present.

Chairman Thompson asked for a summary of what would have to be done to get the structure considered residential if the current storage interpretation stands. Mr. Hardison said the applicant would have to raise it, move it away from the property lines, and meet the parking requirements. Chairman Thompson asked if any neighbors were opposed to what the applicant is seeking and said he assumed they were not because no one requested to speak earlier. A man from the audience spoke up and was sworn in.

Albert Taylor of 317 Canal Drive, an owner of Joy Lee Apartments, which is next door to the structure in question, said he was not planning to speak but wanted to clear up some missing key components. Mr. Taylor said when the work was being done in 2015, the previous property owners told his family they were turning the structure into a personal garage. He said the man who did the work was not a contractor and speculated that the name on the 2015 application was an alias used by this person because he didn't want to use his real name. Mr. Taylor said he wants to see the structure put back to something because for the past 3 years it has been a deteriorating open shell and an eyesore allowing elements to enter. He said he is also concerned that if the current owners have to meet setback requirements, the earth being moved could damage his property. Mr. Taylor said he has no objections to the structure being a residential unit and wants to see it get fixed one way or the other, but he contends it was the previous owners' intention to convert it to storage.

**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 Hartsell, Board Member Boykin, Board Member Adams

*Motion passed unanimously*

Mr. Nichols reminded the Board that because this is an appeal, they simply need to vote on whether staff's determination should be upheld, reversed, or modified. He said unlike a variance hearing, only a simple majority is required, not a 4/5 vote. Mr. Nichols encouraged the Board to state the basis for their decision for the record.

Chairman Thompson mentioned that perhaps the County has been charging residential tax rates for the structure because the process for a change of use does not call for paperwork being shared with the County. Mr. Hardison said he doesn't know what the County's process is for updating records, but they do get copies of the permits.

Chairman Thompson brought up the possibility that the person who applied for the 2015 was not authorized to do so, but he said it seems to him that the criteria to convert this property to storage was met and as a result there are a new set of regulations for changing it back to residential. He said he doesn't see any place where it looks like the Town made a mistake in this scenario.

Board Member Adams said he is concerned that the Town granted the recent permit based on the application that describes the structure as 15 feet tall. Chairman Thompson said he doesn't see that as confirmation that the structure in question is a residential unit, just that it was an error to assume it was for the main house. He asked for some details about how much the applicant has spent on renovating the structure.

**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 Hartsell, Board Member Boykin, Board Member Adams

*Motion passed unanimously*

Mr. Sherry said they have spent over \$7,000, and had they not been granted the permit by the Town they would never have done any work, including ripping off the roof and leaving it vacant and exposed as they have tried to find ways to move forward. He said he does not believe the structure is storage, and the previous owner sent a signed letter saying he doesn't know the person who submitted the 2015 application.

Mr. Hardison said staff acknowledges there was not a unit number on the recent permit application, but staff was under the impression from the contractor that the work being applied for was in the main house because the contractor met with Town staff within the main house and work was being done in there.

Mr. Sherry said he thinks it was clear based on the application saying it was for a 1-story 15-foot structure, and that's the permit that was given. He said to his knowledge, there was never any meeting in the main house between the contractor and Town staff.

Vice Chairman Rouse said he has a lot of empathy for the applicant and would like to see a way to make the situation work, but the neighbor's testimony that the structure was changed to storage with intention swings him to think Town staff was not wrong in their determination. He said the work was done, the structure was used for golf cart storage, and the advertisement said the space was being used as storage, so it seems like it's storage and he doesn't see how it can be determined that staff was wrong. Vice Chairman Rouse said it is not uncommon on the island for people to do work under someone else's contractor license if they don't have one.

Board Member Hartsell asked Mr. Taylor if he remembers the structure in question being rented. Mr. Taylor said yes, up until 2015.

A woman from the audience spoke up and was sworn in.

Heather Sherry of 1708 Carolina Beach Avenue North, wife of the applicant and an owner of the property at 315 Carolina Beach Avenue North, said she does think it was the intent of the previous owners to turn the structure into storage, but she doesn't believe they had any idea that by doing that it would create a ripple effect of not being able to convert it back, and she and her husband were not aware of this when they purchased it, again referencing the advertisement that said it could "easily be turned into a 4th cottage," just as it was easily used for storage. Mrs. Sherry said there is a lot of ambiguity with this situation, and if they are not able to make this a residence as it currently is, they will likely have to demolish this structure and lose out on a place to offer for rent to visitors. She said she thinks some mistakes were made, and she has a hard time grasping that they are going to be penalized for those mistakes when they are trying to put something back better than it was to improve the Town and the property.

Mr. Sherry asked what testimony the Board would need to hear to believe that the 2015 permit was not a valid permit based on the previous owners. Mr. Nichols said the applicant has the burden of setting forth evidence and having people present to testify on his behalf, and it's not the Board's position to provide an answer to this type of question. Mr. Sherry said he did this with the signed letter from the previous owners, but Mr. Nichols said that is not the same as having someone here to answer questions of the Board under oath.

**ACTION:** Motion to close the public hearing

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

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

*Motion passed unanimously*

**ACTION:** Motion to affirm staff's determination

Motion made by Board Member Adams, seconded by Board Member Boykin

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

Voting Nay: Board Member Hartsell

*Motion passed 4-1*

**DISCUSSION ITEMS**

**Scheduling Next Meeting for 3rd Week in December**

Mr. Hardison said there are a couple of items that will need to go before the Board soon, and the next date for a meeting would be December 16.

Vice Chairman Rouse said he is in favor of December 16 because it's about as far away as they can get from the approaching holidays, and that's the latest it should be scheduled.

Board Member Hartsell said he would like to skip a December meeting and move it to January, but Vice Chairman Rouse said he thinks the two pending matters have the right to be heard in a timely manner. Chairman Thompson agreed that he would rather not have applicants wait until January 20. There was consensus among the Board for the next meeting to be on December 16.

#### **NON-AGENDA ITEMS**

Mr. Hardison brought up the possibility of scheduling training for the Board before the January meeting. There was consensus among the Board for the training to be on January 10 at 1:00 PM, although Board Member Boykin said he would not be available that day.

#### **ADJOURNMENT**

**ACTION:** Motion to adjourn

Motion made by Board Member Boykin, seconded by Board Member Adams

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

*Motion passed unanimously*

The meeting adjourned at 7:20 PM.