

CAROLINA BEACH

Board of Adjustment Meeting

Monday, March 3, 2025 - 6:00 PM

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



MINUTES

CALL TO ORDER

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

PRESENT

Vice Chairman Wayne Rouse
Board Member Wayne Hartsell
Board Member Patrick Boykin
Board Member David Marshall
Board Member Dan Adams

ABSENT

Chairman Ken Thompson

ALSO PRESENT

Community Development Director Jeremy Hardison
Senior Planner Gloria Abbotts
Planner Haley Anderson
Board Attorney Matt Nichols

APPROVAL OF MINUTES

1. November 18, 2024 – BOA Minutes

ACTION: Motion to approve the minutes as written

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

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

Motion passed unanimously

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 201 Fayetteville Avenue
Applicant: Pleasure Island Holdings, LLC

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 201 Fayetteville Avenue and is in the MX zoning district. Dry Dock Inn and its pool are located on the property. Dry Dock Inn consists of 2 buildings and 2 pools that span across 2 parcels of land (300 South Lake Park Boulevard and 201 Fayetteville Avenue). Each parcel has its own building and pool. The property associated with this variance is a 12,499.7-square-foot lot adjacent to Fayetteville Avenue. The building and pool on the lot are considered legal non-conforming structures because they do not meet the minimum setback standards for the zoning district for pools and buildings. Any fencing located within 20 feet of the front property line can be no taller than 4 feet or 48 inches.

The pool decking the fence is located on is raised above the natural grade of the lot. The Town ordinance requires fence height to be measured from the highest point of the fence, not including columns or posts, to the existing natural grade. N.C. Building Code requires that “the top of the barrier shall be at least 48 inches above grade measured on the side of the barrier that faces away from the swimming pool.” Because the elevated pool deck is raised above the natural grade of the lot and could be used as a step to climb a shorter fence, the fence height would need to be measured from the height of the raised pool deck. Therefore, the Town would approve a 4-foot fence measured from the pool deck rather than the natural grade because N.C. Building Code requires an adequate barrier.

Kyle Sears with Sears Fence, LLC, is the contractor who applied on behalf of the property owner in March 2024 to replace the fencing surrounding the pool located on the property. The application and supporting site plan materials proposed a 52-inch-tall fence, approximately 4 inches over the allowed 48 inches height. Mr. Sears was advised by the Town plan reviewer that the fencing within the front setback could not exceed 48 inches. They were told they would need to provide an updated fence section with an adjusted fence height to meet the Town ordinance regulations.

On April 9, 2024, Mr. Sears reached out to the Town plan reviewer and asked for a permit update. The plan reviewer reminded Mr. Sears the fence railing cannot go over 48 inches and the Town would need a new fence height. On May 10, 2024, Mr. Sears replied to the plan reviewer and asked if a variance would be possible. The plan reviewer told Mr. Sears the owners of Dry Dock Inn already went through a variance a year prior for a similar issue where the fence was installed without a fence permit and it was installed too tall, so the owners should be aware of this issue. The plan reviewer suggested they try to find other alternatives to avoid a variance. The plan reviewer suggested installing a different type of fence that would meet the height requirements and asked if it was possible to anchor the fence posts on the outside of the pool deck so the bottom horizontal bar sits flush with the pool deck.

After emailing the contractor, the plan reviewer called Andrea Thomas with New Hanover County Health & Human Services to check if the suggested fencing would meet N.C. Building Code and Health Department requirements. She said the suggestions were valid and could meet N.C. Building Code and Health Department requirements while also adhering to the Town ordinance. Ms. Thomas also mentioned she had heard a new fence was already installed on site. Upon hearing a new fence had been installed, the Town plan reviewer conducted a site visit and confirmed a new fence was installed without a permit and the fence was over 48 inches. The plan reviewer emailed the fence contractor and the owner of the property about the fence height violation. When told what their options were, owner Deanna Lanni decided they would pursue a variance.

To resolve the violation 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 201 Fayetteville Avenue. 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. Anderson presented the details. She reviewed the 4 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 the 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.

Ms. Anderson also presented a timeline of events and said the Board can make conditions on approval, and if the Board supports the findings, staff recommends that the variance is granted for the existing pool fencing and any fence replacement in the future would need to meet Town ordinance height requirements.

ACTION: Motion to open the public hearing

Motion made by Vice Chairman Rouse

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

Motion passed unanimously

Ladd Gasparovic, a licensed attorney and partner in Pleasure Island Holdings, LLC, said they purchased the property in 2021, and among the renovation work that needed to be done was repair and replacement of the existing fence. He said they don't think a chain-link fence is an option due to safety concerns. Mr. Gasparovic said the situation was an honest mistake that resulted from a plate that is necessary for the fence door to swing, and he asked the Board to approve the variance.

Mr. Sears said the fence is at 50 inches because of the post-on-plate construction that was necessary for the elevated pool surface. He said the bottom rail can't go any lower, and the fence is 48 inches from the bottom rail, not the concrete. Mr. Sears said the current fence is at its lowest point when considering its position on an elevated concrete surface.

Board Member Hartsell asked if a Town permit was issued prior to installation of the current fence. Mr. Sears said the permit was in progress but not completed, but they had approval by email from the County, although a later email stated the matter was awaiting Town approval.

Board Member Marshall asked if a fence a couple of inches shorter could have been installed to keep it within the Town ordinance. Mr. Sears said to his knowledge, the lowest adequate pool fence the County will allow is 48 inches from rail to rail, not ground to rail. Board Member Marshall asked if the County and Town ordinances conflict with each other. Mr. Sears said that could be assumed.

Mr. Gasparovic said no one intended to install a fence without a permit, and this resulted from confusion over communication with the County. He said a shorter fence would not have met County requirements, so there is a conflict and no leeway, which he suggested should be addressed by offering some flexibility. Mr. Gasparovic pointed out that on Lake Park Boulevard and other roads there are new fences that are higher than theirs, so he doesn't think their fence being 2 inches off is going to cause a problem. He said the situation is peculiar to the property due to the pool, did not result from actions taken by the property owner due to conflicting Town and County rules, and still satisfies aesthetic and safety concerns.

Vice Chairman Rouse asked Ms. Anderson if she believes there is a conflict between the Town and County rules. Ms. Anderson said in the strictest sense, no, there is not a conflict because the Town requires no taller than 4 feet and the County requires a minimum of 4 feet. She said they would have to put the rail on the ground to meet 48 inches.

Mr. Hardison said new pools are not allowed in the front yard setback, so this is only an issue with a handful of older developments and parking lot pools. He said this issue could come up for other properties in the future when they change their fencing.

ACTION: Motion to close the public hearing

Motion made by Vice Chairman Rouse

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

Motion passed unanimously

Mr. Nichols said he wanted to note for the record that General Statutes also state that a variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

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

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

Board Member Boykin said the applicant did not go in blind and knew the rules based on the previous situation.

Vice Chairman Rouse said this was an unfortunate action taken by the applicant, and he thinks there was a way to comply with the ordinance.

Regarding finding 2, the following agreed: Vice Chairman Rouse, Board Member Adams, and Board Member Marshall. The following disagreed: Board Member Boykin and Board Member Hartsell. Therefore, finding 2 passed 3-2.

Vice Chairman Rouse said he believes the situation is peculiar to that type of pool and the fact that it has been a remodel.

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

Board Member Marshall said if the applicant had understood the rules and ensured all permits were obtained, there would've been a clear understanding of the requirements.

Board Member Boykin and Board Member Hartsell both pointed to the applicant's previous experience with their other pool as a reason why this resulted from their actions.

Vice Chairman Rouse said he thinks the hardship was caused by the applicant based on reviewing the timeline Ms. Anderson presented and the emails associated with it.

Regarding finding 4, the following agreed: Vice Chairman Rouse, Board Member Boykin, Board Member Hartsell, Board Member Adams, and Board Member Marshall. Therefore, finding 4 passed 5-0.

Board Member Marshall said he thinks the goal is to create a safe environment around the pool.

Board Member Boykin said this is consistent with safety, but he still thinks there was a way safety could be achieved without a variance.

Vice Chairman Rouse said they wanted to do the right thing but put the cart in front of the horse regarding the permit.

The variance request was denied.

ACTION: Motion to deny the variance of 4 inches to Sec. 40-204 from the 4-foot fence height requirement in the front yard setback located at 201 Fayetteville Avenue because it did not meet the 4 findings of fact

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

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

Motion passed unanimously

Mr. Gasparovic pointed out that the fence is only a 2-inch discrepancy, not 4 inches as stated in the motion.

Mr. Hardison said anything over 48 inches, the height regulation that the ordinance references, would need a variance, and the Board did not grant the variance.

Vice Chairman Rouse asked if he should make another motion. Mr. Nichols said no, the variance has been denied.

Board Members took a short break. Upon returning, Vice Chairman Rouse said he would resubmit the motion for a vote.

Mr. Gasparovic said he wanted to clarify that the fence is about 2 inches over, not 4 inches, and this is because they can't go below that because of safety. He said the bottom rail must go directly on the ground, and there is not a feasible construction alternative for that. Mr. Gasparovic reiterated that there are fences on the main drag that are higher than theirs, and he feels like they satisfied the 4 conditions.

ACTION: Motion to deny the variance to exceed the maximum the 4-foot or 48-inch fence height requirements for the front yard setback in Sec. 3.20 located at 201 Fayetteville Avenue because it did not meet the 4 findings of fact

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

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

Motion passed unanimously

Mr. Nichols clarified that the Board's decision was based upon the findings previously made.

3. Variance to the Required 20-Foot Front Yard Setback for 1621 South Lake Park Boulevard
Applicant: Philip Humphrey, pghARCHITECTURE, PC

Applicant Philip Humphrey, pghARCHITECTURE, PC, is requesting a variance of up to 7 feet from Article 3 of the Unified Development Ordinance (UDO) that requires a 10-foot front yard setback. The property is located at 1621 South Lake Park Boulevard and is in the MF zoning district. The property consists of a 0.68-acre lot, Lots 1-3, 20-22 BLK 2 Wilmington Beach. The existing use is a motel, and there is an existing permit for renovation work at the property.

There is an existing walkway structure that is 3 feet and 11.75 inches from the front property line. The existing walkway is raised and has steps leading to the front door. The applicant would like to provide an accessible route for entry to the common spaces of the building. The applicant would like to construct an ADA-compliant ramp in the current footprint of the walkway. To meet ADA requirements, the ramp would have to be expanded by 10.5 inches. The ramp railing is proposed to be greater than 30 inches from the adjacent grade. Structures below 30 inches are permitted within the setback. However, a variance must be granted to accommodate the railing.

To resolve the situation, the applicant requests up to a 7-foot variance to the required 10-foot front yard setback. The structure meets the minimum required side (7.5 feet), corner side (12.5 feet), and rear (10 feet) yard setbacks.

Individuals planning to speak on the matter were sworn in.

Ms. Anderson presented the details. She reviewed the 4 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 the 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.

Ms. Anderson also presented the background and said the Board can make conditions on approval, and if the Board supports the findings, staff recommends that if the site is redeveloped then the new structure would need to meet Town building setbacks.

ACTION: Motion to open the public hearing

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

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

Motion passed unanimously

Attorney Alan Solana, representing the applicant, went over the physical characteristics of the building that resulted in this situation. He said they are required to have a leveled landing for ADA compliance, but they cannot have more than a half-inch rise when going over the threshold into the building, so they have to raise the landing to get to door height to get in, which brings it over 30 inches. Mr. Solana said otherwise, they would not be required to put in a railing. He said there is no other way internally to change the building, and the width of the land is dictated from ADA code. He said this is the least obtrusive way they can make it compliant, and there isn't really another way to modify the existing structure. Mr. Solana said the building was constructed in 1968 prior to the zoning ordinance and adoption of the ADA, and they are limited by the structure and its placement. He said his client would agree to the condition Ms. Anderson mentioned.

Board Member Marshall asked Mr. Solana if he has information about what the railing will look like. Mr. Solana said this is not on the plan, but they are trying to make it as unobtrusive as possible. Mr. Hardison said on the rendering it shows that it will match the siding of the building.

ACTION: Motion to close the public hearing

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

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

Motion passed unanimously

Vice Chairman Rouse said he doesn't have an issue with the request. Board Member Marshall said he agreed.

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

Regarding finding 1, the following agreed: Vice Chairman Rouse, Board Member Boykin, Board Member Hartsell, Board Member Adams, and Board Member Marshall. Therefore, finding 1 passed 5-0.

Vice Chairman Rouse said he believes a hardship would result for those who need that entrance, and he doesn't believe there is another way for a handicapped person to access the building.

Mr. Nichols asked the Board to clarify for the record that no one from the public wanted to speak on the matter. No one came forward.

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

Vice Chairman Rouse said this is because the building was constructed before ADA compliance was necessary.

Regarding finding 3, the following agreed: Vice Chairman Rouse, Board Member Boykin, Board Member Hartsell, Board Member Adams, and Board Member Marshall. Therefore, finding 3 passed 5-0.

Vice Chairman Rouse said this was not due to anything the applicant did, and they did try to remodel the building, although certain characteristics existed previously and this is the only reasonable way for access.

Regarding finding 4, the following agreed: Vice Chairman Rouse, Board Member Boykin, Board Member Hartsell, Board Member Adams, and Board Member Marshall. Therefore, finding 4 passed 5-0.

Board Member Boykin said public safety is secured because they are putting up a fence there.

The variance request was approved.

ACTION: Motion to approve a variance of 6 feet and 11 5/8 inches to Article 3, Sec. 3.13 Dimensional Requirements from the 10-foot front setback requirement at 1621 South Lake Park Boulevard and that it meets the 4 findings of fact with the condition that should anything else put be on the property other than this ADA ramp for this specific purpose that we heard tonight then the setback encroachment shall be eliminated either through reconstruction or razing the building and redevelopment

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

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

Motion passed unanimously

NON-AGENDA ITEMS

Vice Chairman Rouse said the next Board of Adjustment meeting is on March 17 at 6:00 PM.

ADJOURNMENT

ACTION: Motion to adjourn

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

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

Motion passed unanimously

The meeting adjourned at 7:20 PM.