



Town of North Topsail Beach
Zoning Board of Adjustment Special Meeting
Thursday, February 29, 2024, at 6:00 PM
2008 Loggerhead Court, North Topsail Beach, NC 28460
(910) 328-1349 | www.northtopsailbeachnc.gov

Present: Hanna McCloud - Chair, Paul Dorazio - Vice Chair, Scott Morse, Kip Malcolm, Lisa Lee Kozlowski - Alternate, Susan Meyer – Alternate (not voting).

Staff Present: Deb Hill, MPA AICP CFM AZO - Planning Director; Town Attorney Brian Edes (via Teams); Ricky Schwisow – IT Director; Kate Winzler - CMC, NCCMC - Clerk to the Board of Adjustment.

I. CALL TO ORDER

Chair McCloud called the meeting to order at 6:00 p.m.

II. ADOPTION OF AGENDA

Mr. Malcolm made a motion to adopt the agenda as received. Ms. Kozlowski seconded the motion. The motion passed unanimously, 5-0.

III. APPROVAL OF MINUTES

A. January 24, 2024 Special Meeting

Mr. Malcolm made a motion to approve the minutes from the January 24, 2024 special meeting. Vice Chair Dorazio seconded the motion. The motion passed unanimously, 5-0.

IV. NEW BUSINESS

A. Case V-24-02 Variance Request Jeff Lucas

Chair McCloud introduced the variance.

Clerk Winzler swore in property owner Jeff Lucas, David Sasser of NDS Inc., John Cassidy, and Planning Director Deb Hill.

Attorney Edes reviewed the quasi-judicial process. He polled the Board regarding their roles as impartial decision makers. He asked the Board if anyone had any basis that would prevent them from being fair and impartial and to base their votes solely on the competent evidence produced during the hearing. All Zoning Board of Adjustment members responded to the questions in the negative. There were no positive responses.

Chair McCloud reviewed the order of business for the hearing, opened the public hearing on Case #V-24-02 at 6:08 p.m., and asked for testimony from staff.

Planning Director Hill reviewed the staff report including exhibits A-F.

Mr. Malcolm asked when the application was received.

Ms. Hill replied January 11, 2024.

Mr. Morse asked when the lot was shortened by the right-of-way.

Ms. Hill responded she did not know.

Mr. Malcolm asked for confirmation that the recommendation was to reorient the home, not keep the current position that runs lengthwise along Island Drive but change the position of the structure. He noted if the structure remains where it is, it drastically overshoots the setbacks.

Planning Director Hill confirmed, noting that the structure encroaches into the side setback by six and a half feet, and the front deck goes right up to the front property line.

Chair McCloud noted that the recommendation allowed for adequate room on each side and front and back.

Ms. Hill confirmed, noting the potential room for decks and parking outside of the right-of-way.

Vice Chair Dorazio noted the three-foot variance from the front setback.

Ms. Hill offered that solution, or a three-foot variance from the rear setback to meet the twenty-foot front setback.

Attorney Edes asked Ms. Hill if she would like to enter into evidence exhibits A-F.

Ms. Hill confirmed.

Attorney Edes asked Mr. Lucas if he had any objections to exhibits A-F coming into evidence.

Mr. Lucas did not object.

Attorney Edes recommended accepting exhibits A-F as offered into evidence without objection.

Chair McCloud agreed.

Attorney Edes asked Ms. Hill when using the term non-conforming if she meant pre-existing legal non-conforming.

Ms. Hill replied non-conforming as it is written, and that there was a certificate of occupancy that was issued January 22, 1999.

Attorney Edes asked if the configuration of the footprint had changed since then.

Ms. Hill replied that it did not appear to have changed based upon the 2008, 2015, and 2021 aerials in Exhibit B- Figures 2, 3, and 4, other than the new rear deck and the new reconfigured front deck.

Attorney Edes asked Ms. Hill if approved, her position in criteria four was to add a condition to the approval.

Planning Director Hill responded that if the variance were approved with that condition, than the requested variance would be consistent with the spirit, purpose, and intent of the regulation, such that safety is secured and substantial justice is achieved.

Attorney Edes provided clarification that the condition would be to reduce the front setback from twenty feet to seventeen feet. He stated it was not clear if that was what the applicant applied for.

Planning Director Hill responded that proposal was not proffered in the application.

Attorney Edes stated that the condition needed to be clear to the applicant if the Board was included to consider that type of condition.

Jeff Lucas of 109 Spring Lane, Lillington, North Carolina, and property owner of 2399 Island Drive, North Topsail Beach, provided testimony. He stated his intention was to protect his property from storm surge, as it is sitting on cinder blocks and could wash out. He stated that he knew the recommendation was to turn the house, which he did not object to. Mr. Lucas explained the septic tank is in the back yard where the back porch is, and could impact the repositioning of the structure, or require him to connect to expensive county sewer service.

Mr. Malcolm asked if Mr. Lucas' request was to maintain the structure in the current orientation, or if he was willing to reposition.

Mr. Lucas replied that he was willing to do whatever was best for the Town. He ventured that moving it might be more expensive or could look funny.

Mr. Malcolm explained that ultimately it was Mr. Lucas' decision how to present it to the Board and how to make the request. What Ms. Hill presented was only a three-foot variance on the front end. If approved in the current position, it would be a greater violation. Mr. Malcolm asked when Mr. Lucas found out about the change of orientation.

Mr. Lucas replied when he read the email two days ago. He also noticed the drawing of the true setbacks on the survey by Johnny Williams, which Mr. Lucas highlighted.

Mr. Cassidy presented the document to Ms. Hill.

Mr. Malcolm asked Mr. Lucas if he wished to have the evidence submitted into evidence for the Board's consideration.

Mr. Lucas agreed.

Mr. Malcolm recommended to Chair McCloud entering this document into evidence as Exhibit G. Chair McCloud agreed.

Mr. Malcolm identified Exhibit G as an enlargement of page 9, the plot map.

Ms. Hill clarified that Exhibit G was a blowup of Exhibit E with the zoning setbacks for MHR highlighted with twenty feet in the front, eight feet on both sides, and ten feet in the rear, indicated by a dashed line and highlighted in yellow.

Attorney Edes asked if Ms. Hill had any objections to entering Exhibit G into evidence.

Planning Director Hill stated no.

Attorney Edes recommended to Chair McCloud that they accept it into evidence without objection as Exhibit G.

Chair McCloud and the Board agreed.

Mr. Malcolm clarified that Exhibit G appeared to be an enlargement of the plot map presented in the staff report.

Mr. Lucas agreed, stating that he did not know why Mr. Williams included it on the survey.

Ms. Hill explained that it was a requirement to indicate the setbacks on a plat.

Mr. Malcolm explained that the enlarged plot map illustrated the current position of the structure exceeds the dashed lines of the setbacks.

Mr. Lucas agreed and offered that there was minimal room on the left side, the right side was close to the setback, and the front and the back. He did not realize that his lot was reduced by twenty-five feet. Mr. Lucas admitted to making mistakes in his due diligence.

There was discussion among the Board.

Planning Director Hill explained that Exhibit D came from the legal description in Mr. Lucas' deed, including the eighty-seven point one feet and the eighty-seven point eight feet.

Mr. Lucas explained that when he bought the lot, it was not disclosed that it was non-conforming. He learned afterward.

Ms. Hill and Mr. Lucas discussed the legal description in the deed further.

Planning Director Hill explained Mr. Lucas' house was considered personal property because it is situated on cinder blocks with anchors. If it was elevated and placed upon an elevated engineered piling system, it would be considered real estate. When this occurs, the structure should be placed to fit in the best way possible.

Mr. Lucas stated he would rather it be a compliant lot for future activity.

Ms. Hill suggested that by making the lot as compliant as possible, Mr. Lucas would be protecting his investment.

Vice Chair Dorazio suggested it could have a higher resale value.

Mr. Lucas agreed. He thought the structure looked better the way that it is, but he did not object to turning it to become a compliant lot.

Planning Director Hill asked the Board to consider the images in figures 2, 3, and 4, and suggested that since 2000, when Mr. Lucas purchased the property, he had invested to keep his property in good repair.

Mr. Malcolm stated that his concern for Mr. Lucas was that Mr. Lucas understood and was willing to accept the recommendation to turn the structure ninety degrees, unless Mr. Lucas wanted the Board to consider keeping it oriented the way that it was.

Mr. Lucas stated his only question for the Board would be if it was turned, that it would be a compliant lot.

Mr. Malcolm stated that he thought the lot size made it a non-compliant lot, because it could not be made any larger.

Planning Director Hill confirmed.

Mr. Malcolm explained that the variance being discussed was the overage beyond the buildable lines, the setbacks. He pointed out that Exhibit G clearly showed that the home was outside of the setback lines. The Board was considering repositioning the structure while elevating it to minimize the variance. Mr. Malcolm recognized that Mr. Lucas was made aware of this only two days prior and was being asked to figure out the additional costs of doing so. Mr. Malcolm suggested perhaps Mr. Lucas' contractors could answer that during the hearing.

Mr. Lucas voiced additional concerns for the placement of steps, could he have a front porch.

Chair McCloud brought up the septic setbacks.

Mr. Lucas acknowledged the septic impact, and suggested that with turning the structure, the septic would be impacted.

There was discussion between Ms. Hill and Mr. Lucas.

Mr. Malcolm asked Attorney Edes for guidance on how to proceed.

Attorney Edes explained that if the Board were to issue a variance with the condition that staff recommended, that would not preclude the applicant from returning later to apply for a variance without the condition. The applicant would not be stuck with the variance. If he were to be granted the variance with the condition, he could elevate and reorient the house pursuant to that variance. He does not have to. He could decide that he does not want to, or that it would be too expensive, and come back. Conversely, if the Board was inclined to hear about the financial implications, they could recess the hearing and reconvene later.

Mr. Malcolm stated that he did not want Mr. Lucas' contractors to have to return later. He asked Mr. Lucas if he wanted to think about it and allow the contractors to present their information for the Board's consideration.

Chair McCloud suggested taking a recess.

Mr. Lucas stated that he would like to confer with his contractors.

The Board recessed at 6:50 p.m.

The Board returned at 7:01 p.m.

Chair McCloud asked Mr. Lucas if he would like to continue.

Mr. Lucas confirmed.

Mr. Malcolm asked Mr. Lucas if he wanted to make any statements.

Mr. Lucas stated that he wanted to continue with the variance.

Planning Director Hill asked Mr. Lucas and Mr. Cassidy for more information.

Mr. John Cassidy, the owner of Pilings and More explained that he had been doing piling work, raising houses, and moving houses for thirty years. Mr. Cassidy explained that he had advised Mr.

Lucas to elevate the house and mitigate liability. He asked the Board to consider helping Mr. Lucas secure the house on pilings. He stated that Mr. Lucas was willing to twist the house, move the house, have it surveyed and make it fit on the property. Mr. Cassidy asked the Board for the three-foot variance in the back.

Mr. Malcom asked Mr. Cassidy if he foresaw any issues with the septic or septic field.

Mr. Cassidy stated that he visited the site that day and stepped the distance off, keeping in mind the five-foot setback from the septic tank. He stated that he believed the house would fit after it was twisted. He did not think the septic tank would come into play.

Mr. Malcolm asked if Mr. Cassidy thought they could make it work with the re-orienting.

Mr. Cassidy confirmed and said they would have the septic surveyed to make sure they have adequate room before turning in the permits.

Ms. Hill asked if Mr. Cassidy believed it would be more advantageous to do the variance in the front.

Mr. Cassidy confirmed, saying that would give Mr. Lucas and any possible septic tank contractor more room to do their work.

Mr. Malcolm asked Mr. Cassidy if he understood if the Board of Adjustment approved the variance with the recommendation that it be re-oriented with a three-foot variance in the front. Deviating to anything outside of that would require the applicant to resubmit.

Mr. Cassidy agreed. He suggested that he believed the power lines were on the other side of the road, so they did not have a concern with encroaching into any high-tension wires with Jones Onslow.

Chair McCloud asked if it would be more advantageous to recess the hearing and return once Mr. Lucas had more information relating to the condition, rather than the Board making a recommendation and Mr. Lucas having to request another variance.

Planning Director Hill stated that she would work with Mr. Lucas to resubmit the variance. If the Board did grant the variance and it did work, then Mr. Lucas would be all set.

Mr. Malcolm reiterated the scenario to Mr. Lucas.

Planning Director Hill repeated her recommendation to grant the variance as written in the report to reduce the front setback from twenty feet to seventeen feet.

Mr. Cassidy added that they wanted to proceed as soon as possible to have the project completed prior to hurricane season.

Mr. Malcolm asked how long the project was expected to take.

Mr. Cassidy stated they should have engineering within a few weeks and would then proceed with permits.

Attorney Edes stated that if a variance was issued during the meeting, and what the applicant proposed to construct differed from that variance, the applicant would have to return before the Board to acquire another variance.

Chair McCloud asked if the property owner, applicant, and contractor understood.

Mr. Lucas, Mr. Cassidy, and Mr. Sasser confirmed.

Mr. Malcolm asked Attorney Edes if he had any additional questions for the owner.

Attorney Edes responded that his only concern was that Mr. Lucas understood if the Board was inclined to grant the variance, and it turned out to be not feasible, that they would have to come back.

Mr. Malcolm asked Mr. Lucas if he understood.

Mr. Lucas nodded in confirmation.

Mr. Malcolm asked Ms. Hill if the neighbors were notified on the matter.

Ms. Hill said the sign was posted and the public notices were made as was required. She received no comments from the public or any agencies.

Chair McCloud asked to hear from those opposing the request. No one came forth.

Planning Director Hill had no further comments.

The Board had no further questions of staff.

The other parties had no further questions of staff.

Mr. Malcolm stated that he believed Mr. Lucas understood the variance. Mr Malcom stated that he was comfortable considering the three-foot front setback variance. He thought re-orienting the structure was the least egregious option and a good recommendation.

Mr. Dorazio made a motion to grant the variance, changing it to a three-foot adjustment on the front or street-side of the structure. Ms. Kozlowski seconded the motion. Attorney Edes offered a point of clarification that would be a motion to grant the variance with the condition that the variance will be a reduction of the front setback from twenty feet to seventeen feet.

Mr. Malcolm acknowledged Mr. Cassidy.

Mr. Cassidy offered the Board letters written by neighbors in support of the variance.

Mr. Malcolm asked Attorney Edes for guidance on the offered letters.

Attorney Edes cautioned the Board to acknowledge the letters as hearsay, as the people were not sworn in, and were not subject to cross examination. This was a properly noticed variance hearing, with no negative feedback, served the same purpose as he anticipated the gentleman's proffering the letters for.

Planning Director Hill stated that she would be willing to accept the letters as letters from the neighbors, and one was certified.

Attorney Edes addressed Chair McCloud, stating that the letters were hearsay documents. He asked for confirmation that Chair McCloud had previously asked if anyone was sworn in and attending in opposition, and no one was.

Chair McCloud confirmed, stating that no one came forward.

Attorney Edes continued that if staff had no objection to them coming in, he was not going to stand in the way, though technically, they are hearsay documents.

There was discussion.

The motion passed unanimously, 5-0, as follows:

<u>Roll call</u>	<u>Vote</u>
Ms. Kozlowski	Aye
Vice Chair Dorazio	Aye
Chair McCloud	Aye
Mr. Morse	Aye
Mr. Malcolm	Aye

V. DISCUSSION: Training

Planning Director Hill and Attorney Edes guided the Zoning Board of Adjustment through a Board orientation training, reviewing their roles, the quasi-judicial hearing process, due process principles, the life cycle of a case, evidentiary hearing process, order of proceedings, conflicts of interest, ground for recusal, standing, hearing evidence, burden of proof and basis for decisions, written decisions, responsibilities, avoiding bias, and best practices.

There was discussion.

VI. ADJOURNMENT

Vice Chair Dorazio made a motion to adjourn. Ms. Kozlowski seconded the motion. The motion passed unanimously, 5-0.

The Zoning Board of Adjustment meeting adjourned at 7:50 p.m.

APPROVED

CERTIFIED

This 27th day of March 2024

This 27th day of March 2024

Chair

Clerk to the Zoning Board of Adjustment

exhibit G

STORAGE ENCROACHES 1.9' NORTH OF R

WILL SAME
1/2" EIP
1" BG

N 53°54'01" E 49.99'

5/8" EIS
1" BG
(117)

10' REAR SETBACK

8' SIDE SETBACK

STEPS

STEPS

DECK

HVAC PAD

N 36°04'26" W 67.45'

S 36°05'06" E 67.12'

EXISTING 23.7'x40.3'
ONE STORY HOME
HOME

8' SIDE SETBACK

20' FRONT SETBACK

7.8'

STEPS

DECK

STEPS

(500)

5/8" EIS
1" BG
(501)

S 53°31'37" W 50.00'