

**MINUTES**  
**ZONING BOARD OF ADJUSTMENT**  
**BRUNSWICK COUNTY, N.C.**

**6:00 P.M., Thursday**  
**March 8, 2018**

**Commissioner's Chambers**  
**David R. Sandifer Admin. Bldg.**  
**Brunswick County Government Center**  
**Old US 17 East, Bolivia**

MEMBERS PRESENT

Virginia Ward, Vice Chairman  
Robert Cruse  
Mary Ann McCarthy  
Ron Medlin, Alternate  
Clayton Rivenbark, Alternate

MEMBERS ABSENT

Robert Williamson, Chairman

STAFF PRESENT

Helen Bunch, Zoning Administrator  
Bryan Batton, Assistant County Attorney  
Kyna Bryant-Hardy, Office Assistant

OTHERS PRESENT

Nicolas Kanipe  
Jeff McIntosh  
Dean Edwards

John Shirk  
Brent Kanipe

I. CALL TO ORDER.

The Vice Chairperson called the meeting to order at 6:15 p.m.

II. ROLL CALL.

Mr. Robert Williamson was absent and there is a vacancy on the Board. Mr. Ron Medlin and Mr. Clayton Rivenbark served as Alternates.

III. CONSIDERATION OF MINUTES OF THE FEBRUARY 8, 2018 MEETING.

Mr. Medlin made a motion to accept the minutes of the February 8, 2018 meeting as written. The motion was seconded by Mr. Cruse and unanimously carried.

IV. AGENDA AMENDMENTS.

Ms. Bunch stated that Mrs. Kirstie Dixon, Planning Director, will make an announcement.

V. CAPE FEAR COUNCIL OF GOVERNMENTS PLANNER OF THE YEAR 2017.

Mrs. Kirstie Dixon, Planning Director, addressed the Board. Mrs. Dixon stated that on February 22, 2018 the Cape Fear Council of Government presented Ms. Helen Bunch with the Cape Fear Council of Governments Planner Of The Year 2017 Award. She stated that Ms. Bunch was awarded for her contributions to Planning in the Cape Fear Region. Vice Chairperson Ward and Board Members congratulated Ms. Bunch on her accomplishment.

VI. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Vice Chairperson Ward explained that the Board of Adjustment is a quasi-judicial Board assigned the function of acting between the Zoning Administrator or Planning Director, who administer the Unified Development Ordinance (UDO), and the courts, which would have the final say on any matter. The Board's duties are to hear and decide appeals from and review any order, requirement, decision or determination made by the Zoning Administrator or Planning Director; to grant Special Use Permits and to grant Variances.

The Vice Chairperson said that the public hearing is not to solicit board public opinion about how the Board should vote on a matter; rather, it is a time for submittal of relevant, factual evidence in the records by the applicants, proponents, opponents and staff. All parties involved must be affirmed or sworn in as required by the North Carolina General Statutes. The opposing parties have the right to cross examine witnesses and file documents into the record.

The Vice Chairperson stated that the Chairman will announce the case; the Zoning Administrator will submit into evidence the Staff Report; the applicant or person filing the application will present relevant evidence to the Board as it relates to the Approval Criteria outlined in Section 3.3.9.B. of the UDO; the opposition will have an opportunity to speak; and then the Zoning Administrator will provide recommended conditions based on the approval criteria and information provided during the public hearing. Once all parties have addressed the Board, all parties will have the opportunity for rebuttals and the Chairman will summarize all evidence presented. All parties will have the

opportunity to comment on the summation given to the Board. Once the summary is accepted, the public hearing session will be over and the Board will discuss the matter amongst themselves and vote to grant or deny the Special Use Permit and/or Variance.

The Vice Chairperson informed the audience that if anyone was not satisfied with the outcome of the Board's decision, they may file an appeal to Superior Court.

## VII. SWEARING IN OF APPLICANT, WITNESS, AND OTHER INTERESTED PARTIES.

The Chairman swore in and/or affirmed Ms. Helen Bunch, Mr. Nicolas Kanipe, Mr. John Shirk, Mr. Jeff McIntosh, Mr. Brent Kanipe and Mr. Dean Edwards as to their testimony being truthful and relevant to the respective case.

## VIII. NEW BUSINESS.

- A). 18-01V Variance  
Applicant: Nicolas Kanipe  
Location: 1761 Harbor Drive, Ocean Isle Beach NC 28469  
Tax Parcel 243PB010  
Applicant requests a Variance from Section 4.3.3.B. of the Brunswick County Unified Development Ordinance (UDO) to allow a single-family residence to be 20.8 feet (20.8') from the front property line as opposed to the 25-foot (25') setback required in the UDO.

Ms. Helen Bunch, Zoning Administrator, addressed the Board. Ms. Bunch read the Staff Report (attached). She identified the subject property and surrounding properties on a visual map.

Mr. Nicolas Kanipe addressed the Board. Mr. Kanipe provided the Board with three (3) photographs of the subject parcel and home. He stated that he is constructing a home on the subject parcel. He said that he was notified, after the home was 80% completed and during the fifth (5<sup>th</sup>) inspection, that the home appeared to not meet the twenty-five-foot (25') front yard setback required by the Brunswick County Unified Development Ordinance (UDO). He further stated that he is requesting a Variance to allow a single-family dwelling to be 20.8 feet (20.8') from the front property line as opposed to the 25-foot (25') setback required by UDO. Mr. Kanipe stated that he and the Building Inspector located the property corners prior to pouring the footers. He stated that after the inspector approved the house location and footers he began construct of the home. He said that he purchased the subject parcel in 2017 and there was an existing septic system on the parcel. He further stated that the septic system was installed in the early 2000's. Mr. Kanipe stated that the Brunswick County Environmental Health Department requires a minimum of five feet (5') between the septic system and the structure. He identified the first (1<sup>st</sup>) photograph, labeled Exhibit A, as the distance between the

existing septic system and the pier footings. He said that the home is approximately 5' 8" from the septic system. He stated that the septic repair area is located on the left side of the property and that no structures can be built in that area. He further stated that there is a drop in elevation from the left to the right side of the subject parcel. Mr. Kanipe identified Exhibit B as a picture showing the right side of the subject parcel. He stated that due to poor soil conditions the right side is very low and unsuitable for construction. He stated that he has added approximately 80" of fill dirt, under the home, to accommodate for the drop in contour. He further stated that he has maximized the lot coverage of the home on all sides due to the setback restrictions. Mr. Kanipe stated that his home will be no closer than many of the surrounding homes in his neighborhood that have been constructed within the setback requirements. He stated that because the Building Inspector initially approved the location of his home; the location of the existing septic system; the contour with poor soil conditions of the subject parcel; and the location of adjacent and surrounding homes, he is requesting that the Variance request be granted. He concluded that the proposed will not be detrimental to the health and safety of the public.

Mrs. McCarthy asked Mr. Kanipe if he had the subject parcel surveyed prior to purchase or construction of the home? Mr. Kanipe replied no that he did not obtain a survey because the property corners were marked and visible. She asked if he had received a permit to construct the home from the County? He responded "yes".

Mr. John Shirk, Brunswick County Building Inspector, addressed the Board. Mr. Shirk stated that he was assigned to perform an inspection of a temporary power pole and footings on December 20, 2017 but that did not take place until the next day. He stated that he arrived on the subject parcel at 6:40 a.m. and performed the inspections on December 21, 2017. He said he failed the inspections due to several violations (i.e., plans not on site, card too wet, footings, soil compaction, etc.). Mr. Shirk stated that he conducted a second inspection on December 27, 2017 and that he passed the temporary power pole and footings because they were consistent with the International Building Code with North Carolina Amendments. He stated that he could not verify the setbacks, but advised Mr. Kanipe to obtain a survey. He indicated that he stated in the project notes "No surveyors report on site. Structure appears to meet setbacks but not able to verify." He further stated that he later conducted a foundation inspection and that he approved it because the foundation was compliant with the International Building Code with North Carolina Amendments.

Mrs. McCarthy asked Mr. Shirk if a survey is required to construct a home in Brunswick County? Mr. Shirk replied no, that it was his understanding, at that time, that Building Inspectors are to monitor setbacks and if homes appear to not meet the setbacks the contractor or owner are advised to obtain a survey of the property to verify setbacks. Mrs. McCarthy asked Mr. Shirk if setbacks are required to be marked on plans submitted to the Building Inspections Department for review? Mr. Shirk stated that reviews of applications are conducted by several departments (i.e., Planning, Environmental Health, etc.). He stated that Building Inspections Plan Review Officers only review commercial constructions plans not residential. He stated that Building Inspectors perform field

verifications for residential code compliancy. Ms. Bunch stated setbacks are shown on the site plan and that Planning reviews to ensure the proposed meets the setback requirements of the UDO. She stated that approved site plans along with building plans should be located on the construction site for review by Building Inspectors to ensure that the proposed meets the setbacks on the property.

Mr. Jeff McIntosh, Brunswick County Building Inspector, addressed the Board. Mr. McIntosh stated that he was assigned to conduct a framing inspection on the subject parcel which did not pass. He stated that later, he performed a second framing inspection and that he and Mr. Kanipe discussed adding a porch to the front of the home. He further stated that the property corners were not marked and that he measured from the utility box located on the corner of the property and determined that without the addition of a porch, the home was constructed in the front yard setback. He continued that he discussed the matter with Mr. Kanipe and was advised that the applicant stated that he measured the distance from the street and not the property corners. Mr. McIntosh stated that Building Inspections does not review residential construction plans unless the property is located within a flood zone. He stated that the building card states that it is the responsibility of the contractor and/or owner to obey all County, State and Local Ordinances. He further stated that the building card also states that constructions plans have not been reviewed for code compliancy. He concluded that he advised Mr. Kanipe to contact Ms. Bunch to determine the next steps.

Mrs. McCarthy asked Mr. Kanipe if he is a North Carolina Licensed Contractor? Mr. Kanipe replied yes. Mrs. McCarthy asked Mr. Kanipe if he was aware of the 25-foot (25') front yard setback requirement? Mr. Kanipe stated that he resides in Watauga County and that parcels are not as limited in the mountains as in Brunswick County. He stated that the site plan he submitted stated that the home would be placed 25-foot (25') from the front property line. Mrs. McCarthy asked Mr. Kanipe if he has ever retained a surveyor for a construction project? Mr. Kanipe replied no that this is the first time he has ever received a survey for a construction project. Mrs. McCarthy asked Mr. Kanipe if he has previously constructed a home in Brunswick County? Mr. Kanipe replied no that this is his first construction project in Brunswick County and that it is a vacation home for his family as his primary residence is in Watauga County.

Mr. Kanipe stated that the property line is approximately 15' from the edge of the road and the four (4) corners of the property were located. Mr. Medlin clarified with Mr. Kanipe that Kanipe had stated that the corners of the property were marked and that he knew the home had to be located 25-feet (25') from the front property line.

Mr. Brent Kanipe, father of the applicant, addressed the Board. Mr. Kanipe stated that he is a resident of Brunswick County and was the Planning Director of the Town of Williamston for twenty-two (22) years. He stated that Watauga County, like many other counties in North Carolina, does not have zoning. He further stated that his son made an error in judgement. Mr. Kanipe stated that the Zoning Administrator has the ability to provide an administrative adjustment to allow the home to be located closer to the front property line. He further stated that the subject parcel is limited due to the location of the

septic system and repair area, the poor soil conditions and nearby wetlands. He continued by thanking the Board for their consideration of this matter.

Mr. Dean Edwards, neighboring property owner, addressed the Board. Mr. Edwards stated that Mr. Kanipe has constructed a beautiful home on the subject parcel. He stated that the variance request appears to be a result of a breakdown in communication between the owner, Planning and/or Building Inspections. He further stated that the setback error should have been discovered during the first (1<sup>st</sup>) inspection and not after the home is 80% completed.

Vice Chairperson Ward summarized that the applicant, Mr. Nicolas Kanipe, requests a Variance to allow a single-family residence to be 20.8 feet (20.8') from the front property line as opposed to the 25-foot (25') setback required in the UDO. She stated that Building Inspector Shirk testified that he advised the applicant to obtain a survey of the parcel but approved the footings inspection. She further stated that during a later inspection, Building Inspector McIntosh determined that the home did not meet the required twenty-five-foot (25') setback. Vice Chairperson Ward stated that testimony was provided that the County does not require a survey to obtain building permits. She stated that the applicant testified that he measured the setback distance from the street and not from the property line. She further stated that setback requirements were provided to the applicant during the application process. Vice Chairperson Ward asked if there were any comments to the summation? There were none.

Mr. Cruse made a motion to close the public hearing. The motion was seconded by Mr. Rivenbark and unanimously carried.

The Board discussed the worksheet and determined the following:

1. It is the Board's CONCLUSION that, unnecessary hardship will 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. This conclusion is based on the following FINDINGS OF FACT:

The applicant testified that an existing septic system is located in the rear of the property and the repair area is on the left side of the property. The applicant testified that the size of the lot, poor soil, drop in elevation, and septic area leave insufficient room to push the home further back on the lot or towards either side. The applicant testified that he reduced the size of the home to accommodate for the limitations of the property and setback requirements. Strict application of the ordinance would result in a hardship for the applicant.

2. It is the Board's CONCLUSION that the hardship does not result 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. This conclusion is based on the following FINDINGS OF FACT:

The hardship does not result from conditions that are peculiar to the property, such as location, size, or topography. The subject parcel must meet the same requirements as other lots in the neighborhood. The hardship is the way that the applicant placed the home on the property.

3. It is the Board's CONCLUSION that the hardship does result from the actions taken by the applicant or the property owner by a vote of 3-2. 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. This conclusion is based on the following FINDINGS OF FACT:

The hardship does result from the actions of the applicant. The applicant failed to comply with the front yard setback. It was his responsibility to know the requirements and where his property line was located. The applicant is a contractor and his site plan showed that the structure would be 25' from the front property line.

[Mrs. McCarthy, Mr. Cruse and Mr. Medlin voted that the hardship does result from the actions taken by the applicant. Vice Chairperson Ward and Mr. Rivenbark voted that the hardship does not result from the actions of the applicant.]

4. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT:

No evidence of a public safety issue was articulated or provided. The UDO is written to protect the property rights of all.

On the basis of all the foregoing, Mr. Rivenbark made a motion to Grant the Variance. The motion was seconded by Vice Chairperson Ward, but the motion did not pass with three (3) votes to deny the Variance (McCarthy, Cruse and Medlin). Mrs. McCarthy made a motion to Deny the Variance. The motion was seconded by Mr. Cruse and was carried three (3) "Yes" and two (2) "No" with no votes being Vice Chairperson Ward and Mr. Rivenbark.

IX. STAFF REPORT.

Ms. Bunch advised the Board that there will be a meeting on Thursday, April 12, 2018 as there is one (1) case for consideration.

X. ADJOURNMENT.

With no further business, Mr. Rivenbark made a motion to adjourn. The motion was seconded by Mrs. McCarthy and unanimously carried.