

MINUTES

ZONING BOARD OF ADJUSTMENT

BRUNSWICK COUNTY, N.C.

**6:00 P.M., Thursday
June 10, 2021**

**Commissioners Chambers
David R. Sandifer Administration Building
Brunswick County Government Center
Old Ocean Highway East, Bolivia**

MEMBERS PRESENT

Robert Williamson, Chairman
Ron Medlin
Clayton Rivenbark
Virginia Ward, alternate
James Goodman, alternate

MEMBERS ABSENT

Marian Shiflet
Mary Ann McCarthy

STAFF PRESENT

Helen Bunch, Zoning Administrator
Bryan Batton, Assistant County Attorney
Miranda Garmenn, Planning Technician
John Shirk, Floodplain Administrator

OTHERS PRESENT

Jimmy Womack
Richard Ferrell

I. CALL TO ORDER.

The Chairman called the meeting to order at 6:00 p.m.

II. ROLL CALL.

Ms. Shiflet and Ms. McCarthy were absent. Ms. Ward and Mr. Goodman were alternates.

III. CONSIDERATION OF MINUTES OF THE APRIL 8, 2021 MEETING.

Mr. Rivenbark made a motion to accept the minutes of the April 8, 2021 meeting as written. The motion was seconded by Mr. Medlin and unanimously carried.

IV. AGENDA AMENDMENTS.

Ms. Bunch removed the oath of office as Mr. Goodman received it in the days prior to the meeting.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Ms. 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.

Ms. Ward said that the public hearing is not to solicit broad public opinion about how the Board should vote on a matter; rather, it is a time for submittal of relevant, factual evidence in the record 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.

Ms. Ward 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 3.5.9.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.

Ms. Ward 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.

VI. SWEARING IN OF APPLICANT, WITNESS, AND OTHER INTERESTED PARTIES.

The Chairman swore in and or/ affirmed Helen Bunch, Jimmy Womack, Richard Ferrell, and John Shirk as to their testimony being truthful and relevant to the respective case.

VII. New Business.

- A) 21-15V Variance
Applicant: Jimmy Womack
Location: 7225 Bo-Tuck Road SW, Ocean Isle Beach, NC 28469
Tax Parcel 242MB018
Applicant requests a variance from Section 4.3.3.B. of the Brunswick County Unified Development Ordinance (UDO) to allow a Class II Mobile Home (Singlewide) to be located 6' 8" from the rear property line as opposed to the 9 foot (9') rear yard setback required by the ordinance.

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

Applicant, Jimmy Womack, addressed the Board. Mr. Womack stated he did not have intentions to place the home outside of setbacks. Mr. Womack added that when the set-up contractors arrived, he gave them the Authorization to Construct from Environmental Health showing the five-foot (5') setback from the septic tank. Mr. Womack stated that by keeping the mobile home five feet (5') from the existing septic tank that the nine-foot (9') rear setback could not be maintained. Mr. Womack added that Environmental Health had drawn a thirty-four-foot (34') front setback on the Authorization to Construct but after placing the mobile home on the property, the correct distance was thirty-six-feet (36') from the front property line. Mr. Womack stated that two-feet (2') was lost from that mistake.

Mr. Williamson asked if the septic tank was already existing. Mr. Womack answered yes, he had applied for a septic re-check.

Mr. Williamson asked how it was determined where to place the mobile home. Mr. Womack responded that the set-up contractors placed the mobile home five-feet (5') from the septic tank as required by the Environmental Health Permit as opposed to meeting the setback requirements of the Building Permit.

Mr. Williamson asked how far the septic tank is from the rear property line. Mr. Womack stated that he did not know.

Mr. Williamson stated that a shorter mobile home could have been placed on the property. Mr. Womack stated that the sixty-foot (60') mobile home was approved on the original site plan for the building permit.

Mr. Womack stated that the mobile home has been wired, blocked, and tied down and if he had been told previously that the placement was not acceptable, he would have understood.

Mr. Williamson asked if a building permit had been issued for the mobile home placed on the property. Ms. Bunch responded yes. She added that the minimum front setback requirement is twenty-five feet (25') however, the home is placed further back on the lot to accommodate the existing septic system.

Mr. Batton stated that septic setbacks are public health rules from the State of North Carolina. He added that if the mobile home is placed where it is currently, it would be in violation of zoning. However, if Mr. Womack were to move the mobile home further forward, he would be in violation of the public health rules.

With no further questions, the Chairman summarized that Mr. Womack is asking for a variance of two-feet four-inches (2' 4") from the rear property line. He added that due to interpretation of the septic tank permit the mobile was placed the proper distance from the septic tank but not the required nine-feet (9') from the rear property line. He added that the septic tank was pre-existing. Mr. Williamson stated that the process to move the mobile home would be expensive. He noted that there were no concerns expressed regarding the mobile home being too close to the rear property line.

The Chairman asked if there were any comments to the summation. Mr. Womack addressed the Board. Mr. Womack stated that he was unable to purchase insurance on the mobile home that was placed on the lot until a Certificate of Occupancy was released. He added that he is concerned about hurricane season, fires, etc.

The Chairman asked if there were any further questions. There were none. The Board discussed the worksheet and determined the following:

DECISION: Having held a public hearing to consider Case Number 21-15V, submitted by Jimmy Womack, a request for a variance to use the property located at 7225 Bo-Tuck Road, Ocean Isle Beach, NC, in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACTS** and draws the following **Conclusions**:

1. It is the Board's **CONCLUSION** by a vote of 5-0 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 made application for

a re-check of the existing septic system to ascertain if it could be used. Brunswick County Environmental Health inspected the system and found that the system was acceptable as long as all structures remained a minimum of five feet (5') from any part of the septic system. The septic site plan approved by Environmental Health showed the home to be placed five feet (5') from the septic system and thirty-four (34') from the front property line. The distance from the rear property line to the home was not provided on the approved site plan. The Setback Survey showed the home being thirty-six feet, three inches (36' 3") from the front property line due to the location of the existing septic system, which placed the home into the rear yard setback.

2. It is the Board's **CONCLUSION** that by a vote of 5-0 the hardship does 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 grant a variance. This conclusion is based on the following **FINDINGS OF FACT**: The septic is a pre-existing system. If the home is relocated to accommodate the rear yard setback, the septic requirements will be violated.
3. It is the Board's **CONCLUSION** by a vote of 5-0 that the hardship does 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. This conclusion is based on the following **FINDINGS OF FACT**: The initial permit application showed the required setbacks. The changes were a result of the Environmental Health requirement that the home be a minimum of five-feet (5') from the existing septic system.
4. It is the Board's **CONCLUSION** by a vote of 5-0 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**: It would be an extreme hardship to relocate both the home and the septic an addition two feet, four inches (2'4") from the rear property line, and it is unclear if the septic could be relocated.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be GRANTED, as motioned by Mr. Rivenbark and seconded by Mr. Medlin by a vote of 5-0.

- B) 21-16V Variance
Applicant: Richard Ferrell
Location: 451 Colonial Landing Road SE, Bolivia, NC 28422
Tax Parcel 168EA018
Applicant requests a variance from Section 5.4.1.C. of the Brunswick County Unified Development Ordinance (UDO) to place an accessory structure (carport) seventy-eight feet (78') from the front property line as opposed to the 134-foot (134') front yard setback required by the UDO for accessory structures in the R-7500 Zoning District, which must be located behind the front wall of the home.

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

Mr. Ferrell, applicant, addressed the Board. Mr. Ferrell stated he would like to place the proposed carport in front of the front wall of the home to keep the carport out of the flood zone as much as possible. He added his property slopes significantly and would not like to raise the structure to keep it even with his home. Mr. Ferrell continued that there were previously two structures in the rear of the home that had to be removed due to flooding.

Mr. Williamson asked how the carport would be constructed. Mr. Ferrell answered that the carport would be on a 20' x 21' concrete slab and would only have a back wall, the rest would be open.

Mr. Williamson asked why the proposed carport would need to be raised. Mr. Ferrell responded that he was informed that structures in flood zones would need to be raised.

Mr. Rivenbark asked if there is a significant difference in the topography of the front yard as opposed to the rear yard. Mr. Batton responded that based on what was in the Staff Report, the building would need to be raised due to the floodplain, not the topography.

John Shirk, Brunswick County Floodplain Administrator, addressed the Board. Mr. Shirk stated that the parcel in question is divided by three (3) different flood zones. He explained the X-zone has minimal risk for flood and the Floodplain Prevention Ordinance has no greater elevation requirements for building within that zone. He continued that the Shaded-X zone has a 0.2% chance in any given year that a flood will happen within that zone and the Floodplain Prevention Ordinance does not require greater elevations for

building within that zone. He continued that the AE Zone establishes a base flood elevation, and the Floodplain Prevention Ordinance adds two-feet (2') to the base flood elevation for constructing in that zone. Mr. Shirk clarified that were the applicant's house is located, it is not prohibited to place an accessory structure (parking, limited storage, and access) behind the home as long as the structure is constructed of flood resistant materials and is in line with wet proofing. He continued that the structure can be constructed at ground level.

Mr. Rivenbark asked if the structure could be located behind the front wall of the home if it is constructed of the right materials. Mr. Shirk responded yes and it could be placed at-grade.

Mr. Williamson asked if there are certain locations on the lot where the structure would have to be elevated. Mr. Shirk responded that habitable structures are required to be elevated but accessory structures are not. He added that if an accessory structure has four walls, an elevation certificate would have to be submitted.

Mr. Goodman asked if a special permit was required for construction. Mr. Shirk responded that a Floodplain Development Permit would be required to construct anywhere within the AE Flood Zone.

With no further questions, the Chairman summarized that Mr. Ferrell is asking for a variance of fifty-six feet (56') in order to construct a carport in front of the front wall of the home. He added that the applicant would like to keep the structure as far out of the flood zone as possible. Mr. Williamson continued that Mr. Shirk clarified that the carport could be constructed in the rear and it would not be necessary to raise the structure, however, special materials and permits would be required.

The Chairman asked if there were any comments to the summation. There were none. The Board discussed the worksheet and determined the following:

DECISION: Having held a public hearing to consider Case Number 21-16V, submitted by Richard Ferrell, a request for a variance to use the property located at 451 Colonial Landing Road SE, Bolivia, NC 28422 in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACTS** and draws the following Conclusions:

1. It is the Board's **CONCLUSION** by a vote of 5-0 that, unnecessary hardship will not 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 Brunswick County Floodplain Administrator stated that the structure "can be placed on-grade

because it is not a habitable structure. It will be required to be constructed with flood resistant materials. Elevation Certifications will be required.”

2. It is the Board’s **CONCLUSION** that by a vote of 5-0 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 grant a variance. This conclusion is based on the following **FINDINGS OF FACT**: There are topography issues with the subject parcel, but the requirements of the ordinance do not cause a hardship, as the structure will not have to be raised.
3. It is the Board’s **CONCLUSION** by a vote of 5-0 that the hardship does 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. This conclusion is based on the following **FINDINGS OF FACT**: The land is the same as it was when purchased. There is nothing that would make this a hardship.
4. It is the Board’s **CONCLUSION** by a vote of 5-0 that the requested variance is not 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**: The applicant can construct a structure behind the front wall of the home with proper construction.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be DENIED, as motioned by Mr. Rivenbark, seconded by Ms. Ward by a vote of 5-0.

C) 21-17V Variance
 Applicant: Richard Ferrell
 Location: 451 Colonial Landing Road, Bolivia, NC 28422
 Tax Parcel 168EA018
 Applicant requests a variance from Section 5.4.1.C of the Brunswick County Unified Development Ordinance (UDO) to place an accessory structure (storage building) fifty feet (50’) from the front property line as opposed to the 147-foot (147’) front yard setback required by the ordinance for accessory structures in the R-7500 Zoning District, which must be located behind the front wall of the home.

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

Mr. Ferrell, applicant, addressed the Board. Mr. Ferrell stated that he would like the proposed storage building to be moved out of the flood zone as much as possible. He added the property slopes farther in the rear of the property where he is proposing the structure. Mr. Ferrell added that the proposed storage building would be a metal building on a concrete slab.

Mr. Rivenbark asked if the storage structure will be completely enclosed. Mr. Ferrell responded yes and that it will have a garage door.

Mr. Shirk, Brunswick County Floodplain Administrator, addressed the Board. Mr. Shirk stated that break-away walls for completely enclosed structures are only required in VE or coastal high hazard zones. He added that the only additional requirements are hydrostatic vents if the structure is at-grade or above the regulatory flood level. Mr. Shirk continued the floor level can be elevated to be above the regulatory flood level as well but it is not a requirement as long as the structure is constructed of flood resistant materials.

With no further questions, the Chairman summarized that Mr. Ferrell is asking for a variance of eighty-four feet (84') in order to keep a proposed storage building out of the flood zone as much as possible. He continued that the building is not required to be elevated but flood vents would be necessary.

The Chairman asked if there were any comments to the summation. There were none. The Board discussed the worksheet and determined the following:

DECISION: Having held a public hearing to consider Case Number 21-17V, submitted by Richard Ferrell, a request for a variance to use the property located at 451 Colonial Landing Road SE, Bolivia, NC 28422 in a manner not permissible under the literal terms of the ordinance, and having heard all of the evidence and arguments presented at the hearing, makes the following **FINDINGS OF FACTS** and draws the following **Conclusions**:

1. It is the Board's **CONCLUSION** by a vote of 5-0 that, unnecessary hardship will not 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 desires to construct a metal building on a concrete pad. Brunswick County Floodplain Administrator stated that the structure "can be placed on-grade because it is not a habitable structure. It will be required to be constructed with flood resistant materials. Elevation Certifications will be required."

2. It is the Board's **CONCLUSION** that by a vote of 5-0 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 grant a variance. This conclusion is based on the following **FINDINGS OF FACT**: There are topography issues with the subject parcel, but the requirements of the ordinance do not cause a hardship, as the structure will not have to be raised.
3. It is the Board's **CONCLUSION** by a vote of 5-0 that the hardship does 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. This conclusion is based on the following **FINDINGS OF FACT**: The land is the same as it was when purchased. The topography and flood zone area of the property allow for the type of building desired by the applicant.
4. It is the Board's **CONCLUSION** by a vote of 5-0 that the requested variance is not 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**: The applicant can construct a structure behind the front wall of the home with proper construction. No demonstration of an unusual hardship was provided.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be DENIED, as motioned by Ms. Ward, seconded by Mr. Rivenbark by a vote of 5-0.

VIII. Staff Report.

Ms. Bunch indicated there will be a July 8, 2021 meeting.

IX. Adjournment.

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