

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

6:00 P.M., Thursday
January 14, 2016

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

MEMBERS PRESENT

Robert Williamson, Chairman
Virginia Ward, Vice Chairman
Jervie Babson
Mary Ann McCarthy
Clayton O. Rivenbark, Alternate

MEMBERS ABSENT

Robert Cruse

STAFF PRESENT

Helen Bunch, Zoning Administrator
Bryan Batton, Assistant County Attorney
Reggie Hucks, Chief Building Inspector
Kyna Bryant-Hardy, Office Assistant

OTHERS PRESENT

Rick Nelson

I. CALL TO ORDER.

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

II. ROLL CALL.

Mr. Robert Cruse was absent. Mr. Clayton O. Rivenbark served as Alternate.

III. CONSIDERATION OF MINUTES OF THE OCTOBER 8, 2015 MEETING.

Mr. Babson made a motion to accept the minutes of the October 8, 2015 meeting as written. The motion was seconded by Mrs. McCarthy and unanimously carried.

IV. AGENDA AMENDMENTS.

There were none.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Mrs. McCarthy explained 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.

Mrs. McCarthy 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.

Mrs. McCarthy 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.

Mrs. McCarthy 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 Ms. Helen Bunch, Mr. Rick Nelson, and Mr. Reggie Hucks as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

- A). 15-13V Variance
Applicant: Coastal Construction of Eastern NC, LLC
Location: 745 Beaufain Street, Supply NC 28462
Request: Tax Parcel 232EB041
Applicant requests a Variance from Section 7.1.5.B.1. of the Brunswick County Flood Damage Prevention Ordinance, which states “New construction...shall have the reference level, including basement, elevated two feet above the flood elevation, as defined in Article 2 of this ordinance.” The applicant is requesting an elevation of 14 feet above sea level as opposed to the 16.0 feet required by the ordinance.

Ms. Helen Bunch, Zoning Administrator, addressed the Board. Ms. Bunch read the Staff Report (attached). She stated that the applicant, Coastal Construction of Eastern NC, LLC, has filed an application for a Variance from Section 7.1.5.B.1. of the Brunswick County Flood Damage Prevention Ordinance which states “New construction...shall have the reference level, including basement, elevated two feet above the flood elevation, as defined in Article 2 of this ordinance.” She further stated that the applicant is requesting an elevation of 14 feet above sea level as opposed to the 16.0 feet required by the ordinance. She continued that the subject property contains 0.773 acres in total, is zoned Medium Density Residential (R-7500), and is in the AE Flood Zone. Ms. Bunch stated that Coastal Construction of Eastern NC, LLC was issued Building Permit Number 2015007606 on October 30, 2015 to construct a single family residence at 745 Beaufain Street, Supply NC 28462. She stated that it was established at the time of permitting that the structure must have an elevation of 16.0 feet above sea level. She said that Brunswick County Code Enforcement checks the building elevation as part of the plan review and at final inspection. Ms. Bunch stated that the base flood elevation is established through the Federal Emergency Management Agency (FEMA) issued Flood Insurance Rate Map. She stated that on these maps, the special flood hazard areas and the risk premium zones applicable to the community and delineated. She further stated that the freeboard is the height added to the base flood elevation by the adopted Brunswick County Flood Ordinance which establishes the “Regulatory Flood Protection Elevation”. She said that this is the design elevation for the building. Ms. Bunch stated that the purpose in the freeboard is to allow for fluctuations in the flood height calculated for a selected size flood condition and to assist Brunswick County in earning discounts to our flood insurance rates if we participate in the Community Rating System that is offered by FEMA. She stated that the cost of not having a two foot freeboard could be as much as an addition \$1000 per year to a homeowner’s flood insurance premium, per FEMA, who regulates flood insurance. She said Brunswick County added

this safety measure to the flood prevention ordinance to help homeowners save money on flood insurance. She continued that this can impact the County as a whole; not just individual parcels that would not be compliant. Ms. Bunch stated that the applicant advised Brunswick County Code Enforcement that their client wishes to enclose a portion of the area under the home for storage, with the ability to convert the space to habitable living space if the base flood elevation changes at a later date. She stated that the applicant indicates that the new FEMA Flood Maps will have the base flood elevation at 12.0 feet and with the freeboard added by the County, the new base flood elevation would be 14.0 feet. She further stated that while the current elevation of the home exceeds that requirement, the addition of a floor under what is currently the first floor of the home would put the "new" first floor at 14 feet, which is 2 feet less than the current requirement and would require a 2 foot variance. Ms. Bunch stated that Section 9.1.4.E.9.iv. of the Flood Prevention Ordinance indicates that variance requests shall be made prior to development permit approval. She concluded that Reggie Hucks, Chief Building Inspector and Floodplain Administrator for Brunswick County, is available to provide testimony if needed.

Mr. Rick Nelson, of Coastal Construction of Eastern NC, LLC, addressed the Board. Mr. Nelson stated that he is requesting a Variance to allow a home, currently under construction, to remain at an elevation of 14 feet above sea level as opposed to the 16.0 feet required by the ordinance. He stated that currently the subject parcel has a base flood elevation of 14.0 feet. He further stated that the ground floor of the home was designed based on the proposed Flood Insurance Rate Maps which indicate that the new base flood elevation will be reduced to 12.0 feet. Mr. Nelson stated that his client desires to construct a floored storage area beneath the first floor of his home with a ceiling height that would allow habitation in the area, once the new base flood elevation is adopted. He stated that in order to comply with the current ordinance the floor would have to be raised 2.0 feet. He further stated that the proposed will not impact the exterior of the proposed home, the structural height and/or surrounding properties.

The Chairman asked Mr. Nelson when the proposed Flood Insurance Rate Maps will be finalized and published? Mr. Nelson stated that the Federal Emergency Management Agency (FEMA) has issued new flood maps that are under review. He stated that he understood the review period should be reached in approximately two weeks. He further stated that the maps will then go under review and consideration by local jurisdictions. He continued that the adoption of the new maps could take up to six (6) months or more by local jurisdictions.

Mrs. McCarthy asked Mr. Nelson if a building permit was issued by the County stating that the home must be constructed at an elevation of 16 feet? Mr. Nelson replied yes that the proposed must be constructed at an elevation of 16 feet or the structure could not be enclosed. Mrs. McCarthy asked Mr. Nelson why he would construct a home at the lowest elevation if he knew the owner desired to have a floored storage area and eventually make the area habitable? Mr. Nelson stated that based on the published new draft Flood Insurance Rate Maps the requirements would be less restrictive and that it is his belief that local jurisdictions would not adopt a more restrictive policy. Mrs. McCarthy asked Mr. Nelson what is the status of construction? Mr. Nelson stated that they are in the framing stages of

construction. Mrs. McCarthy asked Mr. Nelson if considered applying for a Letter of Map Amendment (LOMA) or a waiver from FEMA? Mr. Nelson stated that his company met with Brunswick County Chief Building Inspector and Floodplain Administrator Reggie Hucks and discussed the issue. He continued that it was decided that applying for a variance was the best course of action for this situation.

Mrs. Ward asked Mr. Nelson how difficult would it be to continue with construction under the current guidelines and in the make the space habitable after the adoption of the new Flood Rate Maps? Mr. Nelson stated that construction wise it would be cost efficient to construct for the allowance of habitable space in the future while constructing the home from scratch.

Mr. Reggie Hucks, Brunswick County Chief Building Inspector and Floodplain Administrator, addressed the Board. Mr. Hucks stated that the current first floor of the proposed home meets the ordinance. He stated that the applicant proposes to construct an intermediate floor in the garage, which will then become the first floor of record and the ceiling would have to be raised to meet International Building Code with North Carolina Amendments. Mr. Hucks stated that he contacted the North Carolina Department of Public Safety and asked officials how to handle this situation being that the Flood Insurance Maps have been released to the public for a ninety-day (90) review period, which ends soon. He stated that once appeals have been vetted the maps will be turned over to local jurisdictions for review and adoption, which could take up to six (6) months. He further stated that the North Carolina Department of Public Safety acknowledged that per the draft maps the base flood elevation will decrease from 14.0 feet to 12.0 feet and recommended that a Variance be sought to remedy this matter. He continued that he is very confident that the proposed Flood Insurance Rate Maps will be adopted as presented.

Mrs. McCarthy asked Mr. Hucks what will the impact be if the Variance request is denied and the home is constructed as proposed? Mr. Hucks stated that he could not issue a Certificate of Occupancy (CO). He stated that the flood ordinance allows for the storage area to be constructed out of flood resistant materials that would not restrict the flow of water however, once the area is made habitable you have a new referenced first floor that would not meet the International Building Code with North Carolina Amendments. He further stated that if the Variance is not granted and the new maps are adopted, at that time the applicant could add habitable space.

The Chairman asked if there were any comments? There were none. The Chairman summarized that the applicant, Coastal Construction of Eastern NC, LLC, has filed a request for a Variance from Section 7.1.5.B.1. of the Brunswick County Flood Damage Prevention Ordinance which states "New construction...shall have the reference level, including basement, elevated two feet above the flood elevation, as defined in Article 2 of this ordinance." He stated that the applicant is requesting to construct a floored storage area beneath the first floor of the home that will not restrict the flow of water. He further stated that if the applicant chooses to turn the storage into habitable space, it cannot meet the ceiling height requirements specified in the International Building Code with North Carolina Amendments without the Variance. He continued that the applicant testified that it is more

efficient to construct for the allowance of habitable space in the future while constructing the home from scratch. The Chairman stated that testimony was provided that the Federal Emergency Management Agency (FEMA) has issued new draft flood maps that are under review and that the County is currently in its Flood Map review period. He stated that following the review period and any subsequent changes, the County will have 6 months to adopt the revised flood ordinance and maps. He further stated that the proposed base flood elevation for the subject parcel is 12.0 feet and that with the 2 foot freeboard adopted by the County, the new base flood elevation would be 14.0 feet. The Chairman asked if there were any questions to the summation? There were none.

The Board discussed the worksheet and determined the following:

1. It is the Board's CONCLUSION that the issuance of the Variance will not make the structure in violation of other Federal, State, or Local laws, regulations, or ordinances. This conclusion is based on the following FINDINGS OF FACT:

No evidence or testimony was presented to the Board to the contrary.

2. It is the Board's CONCLUSION that the issuance of the Variance will not result in any increase in flood levels during the base flood discharge. This conclusion is based on the following FINDINGS OF FACT:

The applicant is asking to construct a floored storage area beneath the first floor of the home. The proposed area will not restrict the flow of water.

3. It is the Board's CONCLUSION that the Variance is the minimum necessary, considering the flood hazard, to afford relief. This conclusion is based on the following FINDINGS OF FACT:

The applicant has requested a storage area with a ceiling height that would allow habitation in the area, if the base flood elevations for the lot change.

4. It is the Board's CONCLUSION that a showing of good and sufficient cause has been provided. This conclusion is based on the following FINDINGS OF FACT:

Federal Emergency Management Agency (FEMA) has issued new draft flood maps that are under review. The proposed base flood elevation for the parcel is 12.0 feet. With the 2 foot freeboard adopted by the County, the new base flood elevation would be 14.0 feet. The County is currently in its Flood Map review period. Following the review period and any subsequent changes, the County will have 6 months to adopt the revised flood ordinance and maps. If approved, the new proposed base flood elevation would allow the proposed structure.

5. It is the Board's CONCLUSION that failure to grant the Variance will result in exceptional hardship. This conclusion is based on the following FINDINGS OF FACT:

If the applicant chooses to turn the storage into habitable space, it cannot meet the ceiling height requirements without the variance. It is more efficient to construct for the allowance of habitable space in the future while constructing the home from scratch.

6. It is the Board's CONCLUSION that granting the Variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances. This conclusion is based on the following FINDINGS OF FACT:

The Federal Emergency Management Agency (FEMA) has made the preliminary changes in the maps, with the base flood elevation of this parcel at 12 feet above sea level. The County is in the process of map adoption. With the County required freeboard of 2 feet, the base flood elevation would become 14 feet for habitable living space. The proposed floor will meet the base flood elevation of 14 feet.

On the basis of all the foregoing, Mrs. Ward made a motion to Grant the Variance with the condition that the structure may be used for the purpose of storage only with the base flood elevation of 14 feet. It is only at such time that the base flood elevation of 12 feet is approved by FEMA and Brunswick County that the applicant may convert the storage area to a habitable living space. The motion was seconded by Mr. Rivenbark. The vote was four (4) "Yes" and one (1) "No" with the no vote being Mrs. McCarthy.

VIII. STAFF REPORT.

Ms. Helen Bunch addressed the Board. Ms. Bunch provided each Board Member with information from the Local Government Federal Credit Union. She stated that by being a member of the Board of Adjustment each person qualifies to open an account at the local credit union.

IX. ADJOURNMENT.

With no further business, Mrs. Ward made a motion to adjourn. The motion was seconded by the Chairman and unanimously carried.