

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

**6:00 P.M., Thursday
April 12, 2018**

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

MEMBERS PRESENT

Robert Williamson, Chairman
Robert Cruse
Mary Ann McCarthy
Clayton Rivenbark, Alternate

MEMBERS ABSENT

Virginia Ward, Vice Chairman

STAFF PRESENT

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

OTHERS PRESENT

Dan Womble

I. CALL TO ORDER.

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

II. ROLL CALL.

Mrs. Virginia Ward was absent and there is a vacancy on the Board. Mr. Clayton Rivenbark served as an Alternate.

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

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

IV. AGENDA AMENDMENTS.

There were none.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Mrs. McCarthy 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.

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 and/or affirmed Ms. Helen Bunch and Mr. Dan Womble as to their testimony being truthful and relevant to the respective case.

VII. NEW BUSINESS.

- A). 18-01V Variance
Applicant: Easystreet Properties, LLC
Location: 1930 Stone Ballast Way SE, Ocean Isle Beach NC 28469
Tax Parcel 244ED01309
Applicant requests a Variance from Section 4.14.4.B.3. of the Brunswick County Unified Development Ordinance (UDO) to allow a single-family residence to be setback nine feet (9') from one of the property liens as opposed to the 25-foot (25') setback required in the UDO for double-fronted parcels.

The Chairman explained to the applicant that there is only four (4) members present and all members must vote affirmative for the matter to be granted. The Chairman asked Mr. Dan Womble if he would like to proceed with this matter? Mr. Womble replied, yes.

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.

The Chairman asked Ms. Bunch if the displayed aerial map is accurate, as to the location of the homes from the property lines, as it appears some of the homes are located within the right-of-way? Ms. Bunch stated that when the photography is taken and the maps are overlaid on the Brunswick County Geographical Information System (GIS), there is sometimes a slight difference. She stated that some of the homes located on Stone Ballast Way SW are approved for reduced front yard setbacks.

Mr. Dan Womble, Member Manager of Easystreet Properties, LLC, addressed the Board. He stated that the subject parcel has historically been used as a septic repair area for the Beach at Bricklanding Association. He further stated that Brunswick County is currently installing sewer in the area and the designated repair area will no longer be required. Mr. Womble stated that the restrictive covenants of the Beach at Bricklanding Association requires that the septic repair area be removed and the removal will create a buildable parcel. He stated that they discovered the subject parcel is considered a through lot (or double-frontage lot) having two front yards instead of one front and one rear yard, by the Brunswick County Unified Development Ordinance (UDO). He further stated that he is requesting a variance to allow a single-family residence to be setback nine-feet (9') from one of the property lines as opposed to the 25-foot (25') setback required in the UDO for double-fronted parcels. Mr. Womble provided the Board with Exhibit A, a diagram of the buildable footprint of the subject parcel, with the useable areas with the 25' rear yard setback and the 9' rear yard setback denoted. He stated that the buildable footprint with a 25-foot (25') rear yard setback is 1,313.7 square feet. He further stated that with a nine-foot (9') rear yard setback the buildable footprint would be 3,324.1 square feet. He continued that he has not received any feedback from the surrounding property owners.

Mrs. McCarthy asked Mr. Womble who accesses the existing 30' private easement? Mr. Womble stated that he was unsure who accesses the existing private easement. He stated that there is an existing Single Family Residence at the end of the easement and that appears to be the only entrance for that parcel. He further stated that residences along Stone Ballast Way SW and Goose Creek Rd SW (SR 1155) do not access their parcels via the existing easement.

The Chairman summarized that the applicant, Dan Womble, Member Manager of Easystreet Properties, LLC, has requested a Variance to allow a single-family residence to be setback nine feet (9') from one of the property lines as opposed to the 25-foot (25') setback required in the UDO for double-fronted parcels. He stated that the subject parcel has been used as a septic repair area and will no longer be required as sewer is being installed in the area. He further stated that a sign was posted on the subject parcels and adjoining property owners were notified of the meeting. He continued that many of the homes in the area have reduced front yard setbacks. The Chairman asked if there were any comments to the summation? There were none.

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:

Documentation (Exhibit A) provided by the applicant indicates the buildable area would be limited to approximately 1313.7 square feet as opposed to 3324.1 square feet if the variance is granted. The aerial photography indicates that homes in the area have reduced front yard setbacks.

2. It is the Board's CONCLUSION that 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 granting a variance. This conclusion is based on the following FINDINGS OF FACT:

The existing shape of the subject parcel prohibits the necessary buildable area to meet zoning setbacks and have a usable residence.

3. It is the Board's CONCLUSION that the hardship does not result from the 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:

Testimony provided that the subject parcel has historically been used as a septic repair area and will no longer be required as sewer is being installed in the area. The applicant stated that the property owners have an opportunity to redevelop the space.

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 Brunswick County Unified Development Ordinance (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 to allow a 9' building setback from the existing 30' access easement. The motion was seconded by Mr. Cruse and unanimously approved.

VIII. STAFF REPORT.

Ms. Bunch stated that as a result of BOA Case 18-01V, Staff will be making a recommendation to the Brunswick County Planning Board to require a survey by a North Carolina Licensed Surveyor as part of the permitting process. She stated that surveys will not be required in every situation, but in instances when it appears that the proposed will not meet the minimum requirements of the UDO. Attorney Batton stated that surveys will not be required on large tracts of land unless structures are proposed to be placed near property lines. He stated that Staff does not want to force additional costs upon citizens, but research conducted determined that many contractors are currently providing surveys with permit applications. Mr. Rivenbark made a motion for Staff to draft a text amendment based on the discussed concept, and that a copy of the proposal be provided to all board members. The motion was seconded by the Chairman and unanimously carried.

Ms. Bunch advised the Board that there will be a meeting on Thursday, May 10, 2018 as there are three (3) cases for consideration.

IX. ADJOURNMENT.

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