

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

6:00 P.M., Thursday
January 10, 2019

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

MEMBERS PRESENT

Robert Williamson, Chairman
Robert Cruse, Vice Chairman
Alan Lewis
Virginia Ward
Clayton Rivenbark, Alternate

MEMBERS ABSENT

Mary Ann McCarthy

STAFF PRESENT

Helen Bunch, Zoning Administrator
Bryan Batton, Assistant County Attorney
Jeff Isenhour, Code Enforcement Officer
Anthony Fensore, Code Enforcement Officer
Justin Brantley, Cape Fear Council of Governments

OTHERS PRESENT

Charles Milliken
Cheryl Milliken

I. CALL TO ORDER.

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

II. ROLL CALL.

Ms. Mary Ann McCarthy was absent. Mr. Clayton Rivenbark served as an Alternate.

III. CONSIDERATION OF MINUTES OF THE DECEMBER 13, 2018 MEETING.

Ms. Ward made a motion to accept the minutes of the December 13, 2018 meeting as written. The motion was seconded by Mr. Lewis and unanimously carried.

IV. AGENDA AMENDMENTS.

There were none.

V. FUNCTIONS OF THE BOARD OF ADJUSTMENT.

Mr. Lewis 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.

Mr. Lewis 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.

Mr. Lewis 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.

Mr. Lewis 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, Jeff Isenhour, Charles Milliken, and Cheryl Milliken as their testimony being truthful and relevant to the respective case.

VII. New Business.

A) 19-01V: Variance

Applicant: Charles Milliken dba Waccamaw Mini Mart

Location: 5204 Whiteville Road NW, Ash NC 28420

Tax Parcel 1020001102

Applicant requests a Variance from Section 4.5.3.B of the Brunswick County Unified Development Ordinance (UDO) to allow a nonconforming gasoline island canopy damaged by more than 75% of its value by Hurricane Florence to be replaced at its same location, 0 feet from the front property line, as opposed to the 25' from the front property line required by the Ordinance.

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

Brunswick County Code Enforcement Officer Jeff Isenhour stated that he was asked by Ms. Bunch to view the site and post the notice of the variance request. Mr. Isenhour shared photographs that were taken at the site. Mr. Isenhour stated that while part of the canopy does meet the setback requirement, a portion of the canopy fronting Whiteville Road does not meet the twenty-five-foot (25') setback requirement. Mr. Isenhour displayed photos showing such. He continued that staff took pictures of the canopy to verify that the canopy was damaged. Mr. Isenhour identified the photo of the footer of the canopy and stated that it can be re-used.

Mr. Williamson asked Mr. Isenhour to elaborate on the damage to the canopy. Mr. Isenhour stated that he can't testify with expert knowledge in terms of the structural damage. Mr. Isenhour responded that the corner of the structure is damaged and added that the framing is rusted. Mr. Williamson asked if that corner was the only one damaged. Mr. Isenhour responded that the corner photographed was the corner with the most visible damage.

Ms. Ward asked Mr. Isenhour to show where the footprint support was located and asked if this part is still usable. Mr. Isenhour identified the footer and responded that the footer and support was still useable. Ms. Ward asked if it was just the top that needed to be replaced. Mr. Isenhour stated that just the canopy needs to be replaced.

Mr. Charles Milliken, Owner of the Waccamaw Mini Mart, addressed the board. Mr. Milliken stated that the reason the canopy needs to be replaced is that one corner was broken and separated from the canopy. Mr. Milliken stated that it was evaluated by an engineer and it was determined that said the whole canopy needs to be replaced from a structural perspective.

Mr. Williamson asked if Mr. Milliken has been selling gas since the recent Hurricane. Mr. Milliken responded that they have been able to continue selling gas since the storm. He continued that he had to dig the hole around the footer so that the engineer could evaluate the structural integrity of the footer.

Mr. Milliken stated that the property line on the map was incorrect as the post of the canopy is 20' from the state roadway.

Mr. Williamson asked for the width of the canopy. Mr. Milliken responded that the canopy is twenty-four feet (24') wide. Mr. Williamson asked what Mr. Milliken would do if the variance is not granted. Mr. Milliken responded that he would take down the canopy because it is dangerous in its current condition. Mr. Williamson asked if the gas pumps would stay in that location. Mr. Milliken responded that the gas pumps would stay in the same location. Mr. Williamson asked if there was anywhere else on the property to put the gas pumps and the canopy. Mr. Milliken responded that there isn't anywhere else on the property where the pumps can be relocated.

Ms. Ward asked for the dimensions of the canopy. Mr. Milliken responded that the canopy is 24' wide and 30' long.

Mr. Lewis asked if the foundation and supporting column still has structural integrity. Mr. Milliken responded that they are in good condition. Mr. Lewis asked if the post would have to be replaced. Mr. Milliken responded that the post would not have to be replaced, but he wants to replace the post because it has been there a long time and they rust over time.

Mr. Rivenbark asked if taking down the canopy would impact the business. Mr. Milliken responded that removing the canopy would hurt the business because there would be an absence of lighting for the gas pumps.

Mr. Williamson asked if there are currently lights on the canopy. Mr. Milliken responded that there are currently six lights. Mr. Milliken added that the new canopy would have six (6) recessed LED lights.

Mr. Rivenbark asked Ms. Bunch if the new canopy would have to meet the current ordinance in regards to lighting. Ms. Bunch responded that yes, the new canopy would need to meet current lighting requirements. Mr. Rivenbark asked if he was willing to meet the lighting requirements. Mr. Milliken responded that yes, he would meet the lighting requirements.

Assistant County Attorney Batton stated that the application mentioned lighting and safety and added that the conversation should address this area. Mr. Rivenbark stated that he did mention the issue of safety in terms of lighting.

Ms. Bunch stated that Mrs. Milliken, who also represents Waccamaw Mini Mart, can testify further on issues involving safety.

Ms. Cheryl Milliken stated that she has discussed issues such as lighting with Ms. Bunch and has provided drawings from the canopy company, McGee Corporation. She continued that the biggest reason the canopy is needed is due to the lack of lighting in the area coming from Whiteville into Brunswick County. She stated that there is a long stretch of road in this area that lacks night lighting and without lighting potential customers cannot see the store until they are upon it. Mrs. Milliken continued that there has been a decline in business since the hurricane because they have had to put up barrels, orange cones, and tape around the area. Mrs. Milliken stated that people have been asking if the pumps work. Mrs. Milliken stated that the canopy is the issue. Mrs. Milliken stated that they are requesting to replace the canopy in the same location. Mrs. Milliken stated that it is important to be able to have lighting that would let workers read license plates as well as be able to see who is walking up to the store. Mrs. Milliken stated that it is important for the safety of the workers and the customers of the store, continuing that if there was no canopy, then customers would be less likely to stop in bad weather conditions. Mrs. Milliken stated that if they couldn't replace the canopy it could cause them to go out of business. Mrs. Milliken stated that they are not asking for anything that they didn't have previously but are only requesting to rebuild the canopy in the same location.

Mr. Lewis asked if Mrs. Milliken was aware of any neighbors or adjacent property owners who have complained or objected to the replacement of the canopy. Mrs. Milliken responded that no neighbors have any issues with the replacement of the canopy

With no further comments, the Chairman summarized that Mr. and Mrs. Milliken are requesting a 25' Variance to rebuild a gasoline pump canopy. Mr. Williamson added that it is evident that the canopy is close to the property line. He added that from looking at the property and hearing testimony it has been determined that it would be impractical to move the pumps to another location on the site. Mr. Williamson added that the canopy is nonconforming but it is legal because it was built before the zoning ordinance was adopted in Brunswick County. Mr. Williamson stated that the primary reason the canopy is needed is to provide adequate lighting for the safety of workers, customers, and the community. He continued that Mr. Milliken had indicated that if the canopy could not be rebuilt, the gas pumps would stay in the same location without a canopy.

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 19-01V, submitted by Charles Milliken, dba Waccamaw Mini Mart, a request for a variance to use the property located at 5204 Whiteville Road NW, Ash NC 28420 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** 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 topography of the land, coupled with the lack of unoccupied area to place a canopy along with the related drive aisles and tanks in a location that will totally comply with the ordinance is unavailable.
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 public, may not be the basis for grant a variance. This conclusion is based on the following **FINDINGS OF FACT**: There is no separate location on the property that is large enough to place the gasoline tanks, drive area and canopy on the property. The canopy is an accessory to the convenience store, which did not receive hurricane damage.
3. It is the Board's **CONCLUSION** 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 hardship is a result of the actions of Hurricane Florence. The canopy was installed prior to the enactment of zoning in Brunswick County. The location of the canopy met the standards in effect for the project at the time it was constructed.
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**: The Staff Report indicated that the hardship was a result of an Act of God (Hurricane). There is no other area on the parcel that the canopy, tanks and related drive aisle will fit. The applicant stated that without

the canopy there is inadequate lighting for the gas pump area, making the area unsafe for patrons and employees.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a 25' front yard VARIANCE be GRANTED, as motioned by Ms. Ward, seconded by Mr. Lewis and unanimously carried with the conditions that canopy must not exceed the size of the previous canopy (24x30), must be placed in the same location and all canopy lighting must meet the standards for canopy lighting outlined in Section 6.9. of the Brunswick County Unified Development Ordinance.

VIII. Staff Report.

Ms. Bunch stated that there is no staff report.

IX. Adjournment.

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