



MINUTES
Board of Adjustment Meeting
Wednesday, February 16, 2022 Pender County Public Assembly Room 9:00 AM

MEMBERS PRESENT: Max Kipfer
Kyle Breuer
Andrew Olsen
Jeffrey Snider

MEMBERS ABSENT:

OTHERS PRESENT: Travis Henley, Planning Director
Trey Thurman, County Attorney
Donna Sarye, Administrative Assistant
Other Staff and Members of the Public.

1 CALL TO ORDER
Called to order at 9:00 AM

2 ROLL CALL

3 PLEDGE OF ALLEGIANCE

4 MOMENT OF SILENCE

5 ADOPTION OF AGENDA

a) Motion to adopt the agenda

Moved by Max Kipfer, seconded by Jeffrey Snider

Motion Approved

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson				x
Andrew Olsen	x			

Douglas Scott Rivenbark				x
Jeffrey Snider	x			
	4	0	0	2

CARRIED.

6 ADOPTION OF MINUTES

a) Motion to Table minutes

Moved by Kyle Breuer, seconded by Andrew Olsen

Motion approved

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson				x
Andrew Olsen	x			
Douglas Scott Rivenbark				x
Jeffrey Snider	x			
	4	0	0	2

CARRIED.

7 PUBLIC COMMENT

8 VARIANCE

a) VAR 2021-09 Greg Pfountz

Mr. Kipfer stated that due to only having four board members present, the applicant has the choice of moving forward or to table until the following month. Mr. Pfountz chose to continue moving forward with the hearing.

Mr. Greg Feldman, Planner I, presented the Staff Report. Mr. Feldman provided that Greg Pfountz, applicant and owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 5.3.3. A 'Accessory Building Setbacks and Separation Requirements.' The applicant is requesting relief from rear and side yard setback requirements for the RP, Residential Performance zoning district, along with structure separation

requirements for 3 accessory structures in the form of a pool deck, pool shed, and garage. Specifically, the request is to seek a 4'6" relief from the required 10' rear and side yard setbacks for a 64 square foot pool equipment shed, a 14'8" relief from the required 25' rear yard setback for a 354 square foot deck that would surround an existing above-ground pool, and a 5' relief from the required 10' side yard setback for an 884 square foot detached garage. The subject property is located at 108 Wyndham Way (private), approximately 440 feet north of the intersection of Wyndham Way and Scotts Hill Loop Road (SR 1571), in Topsail Township. There is one (1) parcel associated with this request totaling 0.46 acres and may be further identified by Pender County PIN 3280-09-0128-0000.

Mr. Feldman stated that there is an above-ground swimming pool and a 12x16 (192 square foot) tool shed present on the property.

Mr. Kipfer asked if this request is all or nothing. Could a partial approval be possible? Mr. Feldman stated that a partial approval could be approved. Each request could be reviewed and decided on separately.

Mr. Feldman stated that the 1st request is for an 8x8 (64 square feet) pool equipment shed. Option A would require a 4'6" side and rear setback variance from the required 10' for all accessory structures less than 599 square feet. Option B would require a 4'6" side setback variance from the required 10 feet. Option B would also result in an encroachment of 7' into the required 10' structure separation from the existing above-ground pool.

Mr. Feldman stated that the 2nd request is pertaining to the elevated pool deck. The combined square footage of the proposed deck and existing pool totals approximately 654 square feet. Option A results in an 18'8" encroachment and Option B results in a 14'8" encroachment into the required 25' rear setback.

Mr. Feldman stated that the 3rd request is for an 884-foot detached garage that would encroach 5' into the required 10' side setback.

Mr. Breuer asked what was the reason behind constructing the retaining wall. Mr. Feldman stated he was not sure of the original reason due to the wall being constructed by the previous owners.

Mr. Breuer asked if the pool was existing when the applicant purchased the home. Mr. Feldman stated that the pool was existing and most likely the retaining wall and pool were installed at the same time.

Mr. Breuer asked if the pool equipment currently exists, and Mr. Feldman stated that the current tool shed does not house the pool equipment. The reason for the pool house would be to house it.

Mr. Breuer clarified that the equipment is existing but just not inside any building. Mr. Feldman responded with yes.

Mr. Snider asked if there are any pool regulations and Mr. Feldman stated that Environmental Health already granted a variance for the location of the well.

Mr. Olsen questioned if Environmental Health grants a variance, are there any Findings of Facts or reasons why the variance was granted?

Mr. Feldman responded that Environmental Health would need to answer that question. He stated that the variance was approved and or granted by the state and not Environmental Health themselves. Environmental Health and the applicant applied for the variance together.

Attorney Trey Thurman stated (he was on virtually by phone and I could not understand what he was stating, no matter how high I made the volume)

Mr. Kipfer asked if the existing tool shed is out of compliance and Mr. Feldman stated that it is.

Mr. Kipfer asked if the building was put there before the Ordinance was enacted and Mr. Feldman replied that is the Department's assumption.

Mr. Henley stated that based on aerial pictures, the building was probably placed on the property sometime between 2003 and 2008. Mr. Kipfer stated that it was not necessary before the ordinance then.

Mr. Henley stated that he would have to confirm this, but it appears as though the building was placed there under the old zoning ordinance.

Mr. Breuer stated that he thinks since the existing building is "grandfathered", then it is not possible to enforce its setbacks now.

Mr. Feldman stated that if the existing building is not expanded on then it will remain grandfathered.

Mr. Kipfer asked the board if they had any other questions for the Department and the response was negative.

Mr. Kipfer invited the applicant, Greg Pfountz, to speak to the Board.

Mr. Pfountz stated that his yard is very small approximately 100' across the front and 98' in the rear. He wants to do so much with the property and loves the area. He does not want to move as he feels this is a good area to live in with great neighbors around him.

Mr. Pfountz stated that the grade in the rear is about eight or nine feet (not sure if I stated this correctly) which are high enough for the pool. The pool itself is 24-foot round by 4 feet deep and contains 13,500 gallons of water.

Mr. Pfountz stated that the retaining wall is actually a "sloped" wall.

Mr. Pfountz stated that the existing equipment is currently sitting on a 4x4 concrete slab.

Mr. Pfountz stated that due to the size of the pool and the deck the rear setback would need to be 25 feet. The deck will not be of any solid material so that water can drain to the sand or grass below.

Mr. Pfountz stated that besides having the steps to access the property, he will install an aluminum ramp so that his son with Spinal Bifida will be able to use the ramp to access the pool with his wheelchair. His son using the pool is a good form of therapy. Mr. Pfountz plans on eventually adding a pool heater so that his son can use the pool earlier in the spring and later into the fall.

Mr. Pfountz stated that he has a six-foot wooden fence all around his property line.

Mr. Pfountz stated that he has spoken to his neighbors about his possible plans but has not received any feedback. He stated that from the road, the area of the pool is not visible due to the slope.

Mr. Pfountz stated that the garage will be constructed of all metal so that termites would not be an issue. The garage will have a 12-foot overhang with 4 posts on the slab where a truck with a trailer could be pulled under. The actual building itself would be 24 feet with a roll-up garage door in the front.

Mr. Pfountz stated that the well cap is currently sealed about 2 feet above the ground. He has consulted with professional well installers, and they plan on elevating the well cap another two feet to keep it in compliance when the slab is poured.

Mr. Kipfer asked if the well is going to remain where it is currently located, and Mr. Pfountz replied yes.

Mr. Kipfer asked if Option B is used for the garage, wouldn't the well not be included? Mr. Pfountz stated that Mr. Kipfer is correct and that the well would be up and over.

Mr. Pfountz stated he is doing a lot in a little space due to the size of the lot.

Mr. Kipfer asked if the pool equipment will be outside of the building and Mr. Pfountz responded that is correct.

Mr. Pfountz stated that the pool shed will be used to house pool chairs, chemicals, and pool tools. It will be an 8x8 building with dual doors in the front.

Mr. Kipfer asked how high off the ground will the deck be. Mr. Pfountz said at the highest point at the back corner will be four feet and the lowest point will be approximately two feet. He also told the Board that the deck will be below pool sides by four to five inches and will not run right up to the top of the pool.

Mr. Pfountz stated that he recently planted a hedge row of Leland Cypress bushes ten feet apart across the back of his property. The bushes are currently about six feet tall and are placed 4'6" off the property line.

Mr. Kipfer asked to clarify if the actual garage will be 24 feet and the overhang will be 12 feet. Mr. Pfountz stated that the building will be 22 feet and 26 feet in depth.

Mr. Kipfer asked if it could be a two-car garage and Mr. Pfountz responded that yes it could be used as a two-car garage with a double door, but he plans on using it just for his hobby.

Mr. Kipfer asked if the pool equipment could be put in the garage instead of needing a smaller pool building also? Mr. Pfountz stated that

yes, the equipment could be stored in the garage as they would just have to carry the items from the pool area to the building.

Mr. Kipfer stated that he is trying to determine if part of the bigger building could be allocated to pool equipment and toys. Mr. Pfountz responded that yes it could, if necessary.

Mr. Kipfer asked if a door could be put at the end of the building closest to the pool. Mr. Pfountz stated that there are many different building options to choose from and he most likely is able to find one with a door at the end.

Mr. Olsen asked if a building of 22x30 in size would require side yard setbacks. Mr. Feldman stated that the structure under 600 square feet would need to be ten feet from all property lines.

Mr. Kipfer asked the board members if they had any additional questions for the applicant.

Mr. Olsen asked what is hardship the applicant is facing. Mr. Pfountz stated that there is no hardship but is just trying to keep everything neat and orderly. In the future, he hopes to purchase a boat and would like to keep it under the overhang when it is not in use.

Mr. Breuer stated that he has no additional questions but would like to bring to the attention of the Board that General Statute 160d does provide hardship leniency for the Federal Fair Housing Act for Persons with a Disability and he feels certain aspects of the application and of the applicant's testimony specifically referring to the pool deck.

Mr. Olsen stated that he does not have a problem with the deck but does feel that the pool house may not be absolutely necessary but that is also not a great matter of consequence.

He does have a problem with the garage. The applicant is stating that he has a very small lot but wants to put a large garage on it and Mr. Olsen does not feel that he cannot in good conscience approve the building as proposed. He does state that he does feel he can approve the deck and pool house as proposed.

Mr. Kipfer stated for clarification purposes, that if the applicant chooses to do Option B, then a variance would not be needed.

Mr. Olsen asked if a 25' setback is needed for a 34x26 building. Mr. Henley answered that the 25' setback is the rear setback with a 10' setback for the sides.

Mr. Henley stated that this is not really an overhang situation but rather a carport.

Mr. Kipfer asked if the overhang would be enclosed on the right side. Mr. Pfountz stated that no, the right side and back would be left open. Only the left side would be closed in if a person is backing in.

Mr. Olsen stated that he thought the applicant wanted the smaller deck, so he is not sure of the purpose of having Option A drawn on the site plan.

Mr. Pfountz stated that Option A was a much bigger deck, and this was the size that he originally wanted but the Department advised him to go smaller. Option B will work fine for him and his family.

Mr. Olsen stated that he would vote in favor of Option A due to noise being an issue if the deck is right on the property line.

Mr. Kipfer asked if the Board members had any other questions for the applicant and there was a negative response. Mr. Kipfer then thanked the applicant for his testimony.

Mr. Kipfer asked if any other person had signed up to testify and Mr. Feldman informed him that the applicant was the only person.

Mr. Kipfer stated that he does not think the pool building is necessary, but that building is not of great significance. Applicant can store the pool equipment and toys in either the garage or under the deck. He agrees with Option B on the deck due to that option making more sense. Mr. Kipfer also states that he feels that Option B for the garage is better though he does realize it put the garage closer to the house. He would suggest the pool shed and Option B on both the deck and garage.

Mr. Feldman stated that the pool shed would need a zoning permit but not a building permit. Any structure less than 12x12 would not need a building permit.

Mr. Breuer made a motion to approve Option B on the site plan pertaining to the pool shed but cannot support Option A for the garage due to not being able to find a hardship for this request.

Mr. Kipfer stated that he needs to clarify if Mr. Breuer was referring to approval for Option A on all 3 requests, as indicated on the drawing. Mr. Breuer indicated that this is what he is proposing.

Mr. Kipfer spoke to the applicant telling him that he realizes that the variance granted was not exactly what he may have wanted but the Board got as close as possible while staying within certain guidelines.

Moved by Kyle Breuer, seconded by Andrew Olsen

Motion to approve Option B site plan also with addition of 160.D

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson				x
Andrew Olsen	x			
Douglas Scott Rivenbark				x
Jeffrey Snider	x			
	4	0	0	2

CARRIED.

9 DISCUSSION ITEMS

- a) Mr. Breuer asked for an update on the by-law revisions and who is working on the revisions.
- Mr. Henley stated that there is a county-wide effort to amend almost every board's by-laws, especially in reference to the attendance policy. A general review of the by-laws is also taking place. Numerous people, including himself, are working on the project.
- Mr. Olsen asked what are the marketing strategies to get people interested in serving on different boards.
- Mr. Henley stated that the openings are advertised on a regular basis. He stated that with the Board of Adjustment meeting taking place at 9:00 a.m. on Wednesdays, it does make availability difficult for some people due to work.
- Mr. Kipfer stated that he knows some people who are interested in serving on a board but are out of the district needed.
- Mr. Henley stated that even if the individual is not in the needed district, to have them contact him.

Mr. Kipfer questioned whether future agendas can have the subject line added pertaining to the swearing-in of individuals so that it is not forgotten in the future and a verbal reminder will not need to be given.

Mr. Feldman and Mr. Henley both responded that Mr. Kipfer's request can happen in all future agendas.

Mr. Henley asked Mr. Feldman if there are any items on March's agenda. Mr. Feldman responded that there is one item on the agenda.

Mr. Kipfer wanted to put the Board on notice that he will not be in attendance for the April 2022 meeting.

10 NEXT MEETING DATE

March 16, 2022

805 S. Walker Street

Burgaw, NC 28425

11 ADJOURNMENT

Meeting adjourned at 9:51 AM