



MINUTES
Board of Adjustment Meeting
Wednesday, May 18, 2022 Pender County Public Assembly Room 9:00 AM

MEMBERS PRESENT: Max Kipfer
Kyle Breuer
Andrew Olsen
Jeffrey Snider

MEMBERS ABSENT: Samantha Nelson

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

1 CALL TO ORDER
Chairman called the meeting to order at 9:00 am

2 ROLL CALL

3 PLEDGE OF ALLEGIANCE

4 ADOPTION OF AGENDA

a) Motion to adopt the agenda as is

Moved by Kyle Breuer, seconded by Douglas Scott Rivenbark

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			
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CARRIED.

5 MOMENT OF SILENCE

6 ADOPTION OF MINUTES

a) April 20, 2022 Meeting Minutes

Moved by Kyle Breuer, seconded by Douglas Scott Rivenbark

Motion approved with the exception of number 9, subtitle A, Greg Feldmans title to be changed from Planning Director to Planner 1 in minutes from 4-20-2022.

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson				x
Andrew Olsen	x			
Douglas Scott Rivenbark	x			
Jeffrey Snider	x			
	5	0	0	1

CARRIED.

7 PUBLIC COMMENT

8 VARIANCE

a) VAR 2022-10

The County Attorney swore in and/or affirmed Travis Henley, Greg Feldman, Justin Brantley, Jennifer Roper, Jason Roper, Benjamin Kane, and Gordon Hall as to their testimony being truthful and relevant to the respective case.

VARIANCE CASE 2022-10 – Applicants Jason Roper and Jennifer Roper

Mr. Greg Feldman, Planner, presented the Staff Report. This matter was tabled from April 20, 2022, meeting to allow the Planning Department to meet with the Environmental Health Department to gain more clarification of the septic system and drain lines.

Environmental Health Specialist, Benjamin Kane, addressed the Board. Mr. Kane stated that a drain line needs to be moved but due to no fault of the applicants. The need to move the drain line is due to the applicant's neighbor's well or septic system. Mr. Kane stated that the drain line would need to be moved regardless of the variance outcome. His concern was if the building was moved ten feet further onto the property, it would be in the repair area, which would not be acceptable. The current location of the building is meeting all Environmental Health setback requirements.

Mr. Kipfer asked Mr. Kane if the drawing was reviewed by Environmental Health and if the drawing is accurate. Mr. Kane affirmed that both drawings were reviewed and are accurate. Mr. Kipfer then questioned as to whether the building was on the property line and Mr. Kane affirmed that the building is on the property line, but the building is on blocks and not in the ground. This building has no foundation. Mr. Olsen stated that the two maps provided are similar but still different. Mr. Kane clarified that there is the preliminary map that was used when the permit was originally approved, and the second map is more accurate to the actual system.

Mr. Jason Roper and Mrs. Jennifer Roper presented the Board with a slide show. They stated that they had the drain lines located professionally and marked on the property. The back area of the lot is wooded and then drops off into a lake, there is a drainage ditch on the edge of the property, and the repair field area affects their ability to move the building to any other location on the property.

Mr. Kipfer questioned whether this size of the building would have been approved if the correct permitting process had taken place originally. Mr. Henley responded by stating that it would not have been permitted due to the setback issues.

Attorney Trey Thurman informed the Board that if the applicants would have applied for the proper permits originally, they could have asked for a variance at that time.

Mr. Kipfer stated that he feels this is a hardship for the applicant's own creation.

Mrs. Roper stated that they had no idea a permit was necessary, or they would have obtained them originally. They were relying on the advice of the contractors and were told that permitting was not needed. As soon as they were informed that permitting was necessary, they came to the Planning Department immediately to try and remedy the situation.

Mr. Olsen stated that due to the slope of the property, it would probably not be possible to place this exact building anywhere else on the property. He questioned whether a building of this size would have been approved if the necessary permits were obtained originally. Mr. Olsen also questioned the effect this building would have on the immediate adjacent neighbors.

Mrs. Roper stated that their immediate two adjacent neighbors have no issue with the building's location. One neighbor was present at April 20, 2022, meeting and the other neighbor was not able to be present due to work, so they wrote a letter which was provided to the Planning Board. Mr. Olsen questioned whether it would create a hardship for surrounding properties. He stated that the property to the North shares a wetland cove. Mr. Olsen stated that the size of the building probably could have made a big difference and that 1,400 square feet is a big storage building.

Mr. Roper stated that the 1,400 square feet encompass the concrete patios also. The actual size of the building is 30 by 40 equaling 1,200 square feet.

Mr. Breuer stated that the Board probably needs to go through each of the four Findings of Fact together to help as a guide.

Mr. Kipfer stated that the size of the building would have made a big difference in the beginning.

Mr. Olsen stated that of the four required Findings of Fact that he felt that hardship could be proven on all but the third. He is having an issue with the third Finding of Fact. Putting a different size building on this property could have possibly solved the current issues.

Mr. Snider also stated that he is having an issue with Finding Fact number three.

Mr. Breuer stated that since the drain line can and will be moved, is this being tailored to the situation that the applicants have created? Due to this, he cannot agree to the variance and made a motion to deny the variance.

Mrs. Roper stated that the drain line will need to be moved regardless of the building. It has nothing to do with the building itself and is no fault of her or Mr. Roper.

Mr. Breuer stated that he cannot support granting this variance due to the Finding of Fact number three. This is the owner's doing and due to that, he made a motion to deny the variance.

Mr. Rivenbark asked about the contractor's knowledge and responsibility to obtain the necessary permits needed.

Mrs. Roper stated that the contractor told them that permits were not necessary for the placement of the building.

Mr. Kipfer questioned the applicants that if the building was properly permitted, would engineering documents would have been needed?

Mr. Roper stated that they were presented with different options by the contractor. They were told it would be built to code by the contractor so it was assumed that the contractor would

know and be responsible for any needed permits. The Ropers chose at that time to not purchase the option that included the engineering documents due to relying on their assumption that the contractor would handle all necessary permitting.

Mr. Kipfer asked the applicants if they had to buy the engineering documents later anyways.

Mr. Roper stated that once they found out that a permit was required, the purchase of the engineering documents was necessary.

Attorney Trey Thurman suggested to the applicants that they contact the Contractor's Licensing Board due to their relying on the contractor to handle the process correctly and that is not what transpired.

Mrs. Roper stated that she does have the number of the licensing board and will proceed with contacting them. She does not want this situation to happen to anybody else.

Mr. Kipfer stated that he does not think that the Board can allow this by granting the variance. It is the responsibility of the landowner to verify with the county if permits are necessary.

Mr. Olsen stated that he is willing and open to hearing the other board members' arguments as to why this variance should be granted.

Attorney Trey Thurman stated that the contractor should have known the proper permitting process, but the contractor is not responsible. Ultimately, it is the homeowner's responsibility.

Mr. Kipfer stated that the applicants should have asked permission, especially with a building of this size. With a structure of this size, the applicants should have known to contact the Planning Department regardless of what they were told by the contractors.

Mrs. Roper stated that they did not intentionally place this building on their property without the proper permits. There are several buildings in their neighborhood that have about the same size buildings and due to this information and the fact that they were told by the contractor that they did not need permits, they had the building placed on their property.

Attorney Trey Thurman stated that the Board must follow state statutes and cannot deviate from those statutes.

Mrs. Roper stated that they did not intend to do wrong, and she feels that Finding Fact number three is a very gray area.

Mr. Olsen seconded Mr. Breuer's motion to deny the variance.

Mr. Rivenbark questioned if the building would need to be moved regardless of the variance outcome.

Mr. Kane stated that the issue with Environmental Health is not the building itself but the drain line. It needs to be moved regardless of this outcome. The drain line needs to be moved to no fault of the applicants, rather due to the neighbor's well and septic system.

Moved by Kyle Breuer, seconded by Andrew Olsen

Motion to Deny

	For	Against	Abstained	Absent
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Max Kipfer	x			
Kyle Breuer	x			
Samantha Nelson				x
Andrew Olsen	x			
Douglas Scott Rivenbark	x			
Jeffrey Snider	x			
	5	0	0	1

CARRIED.

b) VAR 2022-11

Mr. Greg Feldman, Planner, presented the Staff Report. Mr. Feldman provided that Ronald Anderson, applicant, and owner, is requested a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 8.3.2C, "Single row terminal landscape island requirements." Specifically, the request is to seek relief from the requirement of installing a landscape island with more than 120' linear feet of consecutive parking spaces. The subject property is located at 14840 US HWY 17, approximately 0.25 miles north of the intersection of US HWY 17 and NC HWY 210 in the Topsail Township. There is one tract totaling approximately 1.2 acres of land associated with this request which may be further identified by Pender County PIN 3282-97-7548-0000.

Mr. Feldman stated that the site has an existing church that is currently being elevated. The rear portion of the property is paved. The applicant is proposing a land use of a full-service restaurant and bar. This particular use would need forty-eight parking spaces and due to the island requirement, there would be a loss of four parking spaces.

Mr. Feldman stated that the Unified Development Ordinance requires a landscape island if there are more than 120' linear feet of consecutive parking spaces. There are two proposed parking areas consisting of 127.4 and 161.6 linear feet. The applicant is asking for a variance relief in the amount of 7.4 and 41.6 linear feet.

Mr. Feldman stated that the elevation changes drastically at the rear of the property where wetlands exist.

Mr. Breuer questioned if the parking area butted up to the wetlands and the response was that it was.

Mr. Kipfer asked if the islands are existing, and Mr. Feldman stated that the islands are not existing, and the applicant is asking for a variance to not be required to install the two islands.

Mr. Snider asked if a parking requirement variance was explored instead of an island variance.

Mr. Feldman stated that a parking space variance was explored and was found to not be possible. The Planning Department worked with the applicant and explored the actual amount of square footage of the building to reach the total number of parking spaces to be forty-eight. Due to working with the square footage of the building, the required number of

spaces has already been lowered to the minimum. Mr. Feldman stated that he is concerned with the effect that parking may have on adjacent property owners.

Mr. Henley stated that the Planning staff does have some leeway with the parking requirements.

Architect and Applicant Representative Gordon Hall spoke to the Board. He stated that this project started back at the beginning of 2020, and the applicant is desiring a place for "fellowship" in this neighborhood. From the beginning, handicapped accessibility and parking were major concerns.

Mr. Hall stated that there is a major drastic change in grade on this property. In the front of the property, the grade is forty-eight or forty-nine and drops to twenty-eight at the back of the property. The property also has wetlands at the back of the property that they had to be mindful of.

Mr. Hall stated that there was only one wheelchair access which was a wooden wrap-around ramp. Now that the building is being elevated, a wooden ramp would not be an option due to safety concerns. He stated that many different options were reviewed and that installing an elevator would be the best option.

Mr. Hall inquired as to whether landscaping can be used to break up the parking lot instead of parking islands. He stated that this land use plan does not require landscaping buffers and any landscaping would be elective. The applicant is planning on adding elective landscaping around the parking lot for visual effects.

Mr. Hall stated that the property shares a driveway with the adjacent property owner and there is also a cemetery that is accessed by the same drive.

Mr. Kipfer asked Mr. Hall if the variance was granted and the two traffic islands were not needed, would they still be short parking spots? Mr. Hall responded if the Board did not require the traffic islands, then there would be no shortage and all forty-eight spots would be possible.

Mr. Breur inquired about the intent of parking spaces seven and forty-two as they are pictured differently on the site plan.

Mr. Hall stated that they are regular parking spaces and the reason they are pictured differently is due to the fact that the area is where the existing pavement ends.

Mr. Breur asked whether the additional parking spots would be constructed of gravel material, and can the Board impose a condition of

what material is used for the new parking spots. Mr. Breur feels that using a material such as #57 gravel would be a good option to help protect runoff into the wetlands.

Mr. Trey Thurman responded and stated that yes, the Board could put a condition in the variance that a certain type of material must be used for the new parking spaces in an attempt to keep the wetlands disturbance to a minimum. He stated that trying to keep the wetland disturbed.

Mr. Hall stated that if the Board requires the applicant to use #57 gravel, then they would not have an issue with that.

Mr. Olsen stated that the current parking area would most likely need to be re-surfaced, and the new parking area is a different material. He also stated if pavers would be an option to use also or if would that be too costly.

Mr. Hall said that the applicant would be open to using alternative materials.

Mr. Olsen stated that he agrees with having a condition as to what material is used to help minimize the effects of run-off into the wetlands.

Mr. Henley stated that the Department is also open to the applicant using a different material besides pavement.

Mr. Kipfer inquired as to whether there were any other public people who would like to speak, and it was determined that there were not.

Mr. Snider inquired if the parking islands were not present in the parking lot, would it create a dangerous situation?

Mr. Henley stated that it would not create a dangerous situation and that the parking islands are more for appearance and environmental issues.

Mr. Kipfer asked the Board members if there were any further questions or need for discussions and no members responded.

Moved by Kyle Breuer, seconded by Douglas Scott Rivenbark

Mr. Breur made a motion to approve the variance with two conditions. The first condition would be that any parking areas identified in blue on the site map be constructed with a pervious material that is sufficient and or approved by the Department and the second condition is that the landscaping shown on the site map no longer be elective, but rather required. Mr. Rivenbark seconded the motion, and the motion was unanimously approved.

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

Jeffrey Snider	x			
	5	0	0	1

CARRIED.

9 APPEAL

10 DISCUSSION ITEMS

11 NEXT MEETING DATE

- a) June 15, 2022
Commissioners' Chambers
805 S. Walker Street
Burgaw, NC 28425

12 ADJOURNMENT