

The Morehead City Board of Adjustment conducted a regular meeting on Thursday, January 28, 2010, in the Municipal Building Auditorium, 202 South Eighth Street, which started at 5:30 p.m. The following were present:

MEMBERS: Chairman James Walker  
Holly Briggs, Laura Drewyor, Dick Gambill, Tripp Mudge, Dave Robertson, and Beth Taylor

ABSENT: Joe Green and Bill Ward

OTHERS PRESENT: Zoning Enforcement Officer Joyce Veltman, Secretary Jeannie Vaughan, Planning Director Linda Staab, City Attorney Derek Taylor, Mike Shutak of the Carteret News-Times, and John Phillips.

Chairman James Walker called the meeting to order and gave the invocation.

The roll was called and Joe Green and Bill Ward were absent. Dave Robertson made **MOTION**, seconded by Holly Briggs, to excuse the called-in absences. The motion carried unanimously.

**MINUTES:** *January 7, 2010*

Chairman James Walker called for changes or amendments to the minutes. Dave Robertson made **MOTION**, seconded by Holly Briggs, to adopt the minutes as submitted and dispense with the reading. The motion carried unanimously.

**BUSINESS:**

***A. Request submitted by John Phillips for a variance from Article 13-1 of the Unified Development Ordinance (UDO) to allow a twenty-foot variance from the front setback off of South Shore Drive at 411 Tennessee Avenue (Tax PIN 636615620640000), which is zoned R20 (Residential District).***

Tripp Mudge made **MOTION**, seconded by Holly Briggs, to open the public hearing. The motion carried unanimously. Laura Drewyor asked to be excused from the hearing due to a possible conflict because her parents own property next door to 411 Tennessee Avenue. Holly Briggs made **MOTION**, seconded by Beth Taylor, to excuse Laura Drewyor from the hearing and seat Dave Robertson in her place. The motion carried unanimously. Dick Gambill was also excused as only 5 members were needed. Voting members were: Chairman James Walker, Holly Briggs, Tripp Mudge, Dave Robertson and Beth Taylor.

Those wishing to give testimony were sworn in (Joyce Veltman and John Phillips).

Zoning Enforcement Officer Joyce Veltman introduced the case. John Phillips has submitted an application for a variance to allow a twenty-foot variance from the front setback off of South Shore Drive at 411 Tennessee Avenue. This case was brought before the Board in September 2004 and the variance was granted at that time. A building permit was not obtained within six months, and per Article VI-D-3 of the Board's Rules of Procedure, the permit expired. Mr. Phillips is back before the Board to request the same variance again. Slides were shown depicting the location of the property at the northeast corner of Tennessee Avenue and the relocated portion of South Shore Drive. The property is zoned R20 (Residential) and surrounding zoning is R20 to the east, west, and north and R15 to the south. This lot is nonconforming in size. The district requires 20,000 square feet and the lot has just over 5, 300 square feet. The width along Tennessee Avenue is also nonconforming at 50 feet instead of the required 100 feet. Surrounding development includes residences to the east and north and vacant lots to the west and south. The application and conditions appear to be the same. Initially, this property was an interior lot, as depicted on old tax maps, when South Shore Drive was

positioned further to the south. As an interior lot, the setbacks were 30 feet for the front, 25 feet for the rear, and 10 feet for each side, of which there were 2. Those setbacks would have allowed for a 30-foot-wide house. Once South Shore Drive was relocated north, adjacent to this lot, the lot became a corner lot and the setbacks changed to 2 fronts of 30 feet each and 2 sides of 10 feet each. That would have reduced the useable area along South Shore Drive from 30 feet to 10 feet. The applicant has proposed the same plot plan as in September 2004, meeting the required 30-foot setback from the west, the 10-foot setback from the north, the 25-foot setback from the east and changing the front setback along South Shore Drive from 30 feet to 10 feet.

In response to City Attorney Derek Taylor, Ms. Veltman testified to the authenticity of the September 2004 Board of Adjustment (BOA) Minutes. Ms. Veltman entered into evidence the September 2004 BOA Minutes. The variance criteria to consider are the same as in 2004. The applicant included his answers with the new application. Staff has no objections to the granting of the variance. The hearing has been advertised, and notices were mailed to property owners within 100' to notify them of the request. A few telephone calls were received by the Planning and Inspections Department from concerned citizens, but once they were told that the request was the same as in 2004, there were no objections.

The applicant, John Phillips, requested approval of the variance.

Mr. Phillips reviewed the variance criteria under Article 5-3.2:

A. *Special conditions and circumstances must exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.* The subject lots are existing lots of record whose plat dates back to July 1925. They were originally platted as interior lots located approximately 110 feet to the north of South Shore Drive as shown on the old Carteret County Tax Map 13-15C. As originally platted, setbacks were not an issue and did not adversely affect the subject lots. Special conditions and circumstances were created when the Town of Morehead City agreed to move South Shore Drive northward, resulting in the subject lots becoming a corner parcel.

B. *Literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.* Literal interpretation of the current setbacks will not practically allow construction of a single-family residence.

C. *Special conditions and circumstances do not result from the actions of the applicant.* The special conditions and circumstances arose when the Town of Morehead City agreed to move South Shore Drive northward to abut 411 Tennessee Avenue, creating a corner lot with two, rather than one, street fronts, and two, rather than one, front setbacks.

D. *The hardship is of a physical nature and not economic.* If current setbacks apply, then the maximum single-family residence that could be constructed would be 10 feet wide by 50 feet long.

E. *Granting of the variance will not confer upon the applicant any special privilege to use the applicant's property in a manner that is denied to other owner's of land, structures or buildings within the same zoning district.* Granting the variance will not confer upon the applicant any special privilege. Mr. Phillips testified that he is requesting the same usage and the same setbacks present before the Town of Morehead City agreed to move South Shore Drive northward to abut 411 Tennessee Avenue.

Mr. Phillips requested an extension on the variance, if granted, due to the current economic conditions. City Attorney Taylor stated that the current Rules of Procedure will be re-evaluated and that an extension will not be necessary. Attorney Taylor suggested that Mr. Phillips contact the Planning and Inspections Department every six months with an update on his situation.

No one spoke in opposition to the request.

Dave Robertson made **MOTION**, seconded by Holly Briggs, to close the public hearing. The motion carried unanimously.

#### **CONSIDERATION AND DETERMINATION OF CASE HEARD:**

The Board discussed the variance criteria:

A. *Special conditions and circumstances must exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.* The Board Members all agreed that special conditions and circumstances exist.

B. *Literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.* The Board Members all agreed that due to the setback changes by the City, literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.

C. *Special conditions and circumstances do not result from the actions of the applicant.* The Board Members all agreed that the applicant did not cause the special conditions and circumstances, the City relocated the road.

D. *The hardship is of a physical nature and not economic.* The Board Members all agreed that the hardship is of a physical nature.

E. *Granting of the variance will not confer upon the applicant any special privilege to use the applicant's property in a manner that is denied to other owner's of land, structures or buildings within the same zoning district.* The Board Members all agreed that a special privilege would not be conferred upon the applicant should the variance request be granted.

Holly Briggs made MOTION, seconded by Beth Taylor, to grant the variance request. The motion carried unanimously.

***NEW BUSINESS:***

No new business was discussed.

***ADJOURNMENT:***

Tripp Mudge made MOTION, seconded by Dave Robertson, to adjourn the meeting. The motion carried unanimously and the meeting was adjourned at 5:55 p.m.

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Jeannie Vaughan  
Secretary