

The Morehead City Board of Adjustment conducted a regular monthly meeting on Thursday, February 28, 2008, in the Municipal Building Auditorium, 202 South Eighth Street, which started at 5:30 p.m. The following were present:

MEMBERS: Chairman James Walker, presiding
Holly Briggs, Laura Drewyor, Dick Gambill, and Joe Green

ABSENT: Richard McIntyre, David Robertson, Beth Taylor, and Bill Ward

OTHERS PRESENT: Zoning Enforcement Officer Joyce Veltman, Planning Director Linda Staab, Building Inspector Dean Lombreglia, Secretary Jeannie Vaughan, City Attorney Derek Taylor, Corinne Geer, Eddie Cameron, Albert Monk, Christopher Ives, John Mazur, David McDonald, Theodora McDonald, Tameka Ware, Mary Sutton, Ken Tootle, Ophelia Tootle, and Buck Matthews.

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

The roll was called and Laura Drewyor made **MOTION**, seconded by Holly Briggs, to excuse the absences (Richard McIntyre, David Robertson, Beth Taylor, and Bill Ward). The motion carried unanimously.

MINUTES: November 29, 2007

Revised minutes were handed-out to the Board Members. Chairman Walker called for changes or amendments to the submitted minutes. Laura Drewyor made **MOTION**, seconded by Holly Briggs, to adopt the revised minutes and dispense with the reading. The motion carried unanimously.

BUSINESS:

A. Request submitted by Christopher Ives for a variance from Article 13-1 of the Unified Development Ordinance (UDO) to allow the lot width requirement to be reduced from 100' to 90' on property located at 2362 and 2368 Crab Point Loop Road (Tax Pin #'s 638713048991 and 638713140646), which is zoned R20 (Single-Family Residential) District.

Laura Drewyor made **MOTION**, seconded by Joe Green, to open the public hearing. The motion carried unanimously.

Those wishing to give testimony were sworn in.

Zoning Enforcement Officer Joyce Veltman introduced the request. Mr. Ives is requesting a variance from the 100' lot width requirement for an R20 zoned lot required by the development standards in Article 13-1 of the UDO. A slide showing the location of the site with surrounding zoning (R20 to the south and southeast and R15SM to the north and northeast) was viewed. The property is currently not developed and contains woods as does the property to the south and southeast. Property to the north and northeast is developed with single-family homes as well as mobile homes scattered throughout, and there is water to the northwest. The Land Use Plan shows the property in Neighborhood 7 and classified as low-density residential. The request does not appear to conflict with the Land Use Plan policies. When peculiar conditions exist which are not the result of the applicant's actions or when literal enforcement of regulations result in unnecessary and undue hardship, a variance may be granted as long as the situation is not contrary to the public interest. Ms. Veltman reviewed the variance criteria under Article 5-3.2:

A. Special conditions and circumstances exist peculiar to the land which are not applicable to other lands in the same district. All newly subdivided R20 lots are required to provide a minimum of 20,000 square feet and a minimum lot width of 100'. If the 100' width is not met at the front property line, the minimum building line is moved, not only the setback distance, which is 30' in R20, but it goes even further until the minimum lot width is met. The point where that 100' lot width becomes available becomes the minimum building line. In this case because of the width of the property,

the layout of the lots has resulted in off-set home sites on a 4.45 acre tract. Staff does agree that off-set home sites on a 4.45 acre tract is extreme and peculiar.

B. *Literal interpretation of the Ordinance provisions deprive the applicant of rights commonly enjoyed by other properties in the same district.* The applicant is not requesting to increase density per acre or to increase the number of lots. The request is to allow placement of home sites side-by-side, in line with each other.

C. *Special conditions and circumstances do not result from actions of the applicant.* This property was previously not zoned, split under no zoning and then, upon extension of Morehead City's jurisdiction, the lots were assigned the R20 zoning classification. Due to the minimum lot width requirement in the R20 District, the circumstance of the off-set home sites arose. This was not due to any action by the applicants.

D. *Hardship is of a physical and not economic nature.* There are currently two lots and the two lots will remain if the variance is granted. The only thing the applicant wishes to change is the off-set of home sites.

E. *The granting of the variance will not confer upon the applicant a special privilege to use the property in a manner denied to other owner's of land within the same district, meaning purpose, activities, or kind of occupancy intended, designed and arranged to take place upon the property.* The current use allowed on these two lots would be two single-family dwellings. The proposed use will be two single-family dwellings. Staff has found no negative issues should the Board decide to grant the variance. Staff finds that the application is complete, that the hearing has been advertised, and that notices were mailed to property owners within 100' to notify them of the request.

Christopher (Chad) Ives of 800 Ocean Ridge Drive, Atlantic Beach, spoke in favor of the request. He stated that the property was subdivided as part of an estate in the 1980's and then again in 2007. The property is wide enough on the north side to subdivide into 2 parcels that would meet the lot width requirements; however, the property narrows to the south and falls below the lot width requirement. Mr. Ives clarified that he does not want more density; he only wants to be able to build one home per lot, side-by-side with access from Crab Point Loop Road. The lot sizes will be approximately 2 acres each. As for the variance criteria, the shape of the parcel is irregular due to estate divisions in both the 1980's and in 2007. Other properties in the area have been able to split and meet the requirements. The hardship is of a physical nature, not economic. The current shape of the 2 parcels is the hardship. There are no plans to sell the property. The granting of the variance will not confer any special privilege to the applicant. It will simply allow Mr. Ives and his cousin to split the parcels equally and then build 2 single-family homes to be used as their own primary residences.

Dick Gambill questioned access to the property and Mr. Ives responded by saying that Crab Point Loop Road would be used, not the dirt road to the east. Laura Drewyor inquired about the setbacks and Ms. Veltman said that the front setback is 30 feet, the side setback is 10 feet, and the rear setback is 25 feet. Chairman Walker asked if any neighbors had voiced objections to the city and Ms. Veltman answered no. Chairman Walker suggested R15 zoning to the applicant but Mr. Ives said that if the lots are ever sold, R15 could create more density which he does not want.

No one spoke in opposition to the request.

Laura Drewyor made **MOTION**, seconded by Joe Green, 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 exist peculiar to the land which are not applicable to other lands in the same district.* Laura Drewyor stated that the shape of the parcel is special due to the estate divisions.

B. *Literal interpretation of the Ordinance provisions deprive the applicant of rights commonly enjoyed by other properties in the same district.* Laura Drewyor stated that other owners in the area have more options as to the placement of structures on their property.

C. *Special conditions and circumstances do not result from actions of the applicant.* Joe Green stated that the special conditions were inherited from an estate subdivision, not from actions of the applicant.

D. *Hardship is of a physical and not economic nature.* Laura Drewyor stated that the request has not been made so that the property can be sold. The request is so that the applicants can build two single-family dwellings side-by-side.

E. *The granting of the variance will not confer upon the applicant a special privilege to use the property in a manner denied to other owner's of land within the same district, meaning purpose, activities, or kind of occupancy*

intended, designed and arranged to take place upon the property. Dick Gambill stated that no special privilege will be conferred to the applicant by granting the variance, only a convenience.

Laura Drewyor questioned whether or not conditions could be placed on a variance, and Attorney Taylor said no.

Laura Drewyor made **MOTION**, seconded by Holly Briggs, to grant the variance request. The motion passed 4 to 1 with Chairman Walker voting to deny the request.

B. Request submitted by David McDonald for a special-use permit under Article 11 of the Unified Development Ordinance to permit the location of a church on property located at 702 Arendell Street (Tax PIN #638620715447), which is zoned DB (Downtown Business) District.

Laura Drewyor made **MOTION**, seconded by Holly Briggs, to open the public hearing. The motion carried unanimously.

Those wishing to give testimony were sworn in.

Zoning Enforcement Officer Joyce Veltman introduced the request. Mr. McDonald is requesting a special-use permit to open a church at 702 Arendell Street which is the old theater and skating rink building owned by Andy Blades, to the east of the Hamilton Building. A slide showing the location with the zoning, DB, as well as the surrounding zoning of DB to the east, west and south and O&P to the north was viewed. Surrounding development includes offices to the east and west, and parking lots to the north and south. The Land Use Plan includes the property in Neighborhood 1 and classifies the property as downtown mixed-use. The request does not appear to conflict with the policy statements of the Land Use Plan. Article 11 of the UDO does allow a church with a special-use permit issued by the Board of Adjustment. The additional requirements for the DB district were reviewed and no inconsistencies were found with that section. The proposed use is a church and traditionally this use is not a health or safety issue. The location is on a major thoroughfare and due to the hours they will operate, nights and weekends, the traffic should not be an issue. The hearing has been advertised, and notices were mailed to property owners within 100' to notify them of the request.

With regard to the special use criteria, a written application was received. The proposed development does not affect adversely the general plans for physical development of the town. No inconsistencies were found with the Land Use Plan or the UDO. Furthermore, the proposed use will fill a currently vacant building in the downtown area which should positively affect the downtown revitalization efforts of the Town by increasing the auto and foot traffic by the people who will attend the facility. The proposed use will not be contrary to stated purposes of the regulations. No issues were detected with the ordinance or district purposes and the use is allowed with a special-use permit. The proposed use will be placed on a lot of sufficient size to satisfy space requirements of said use. The proposed use will be going into an existing vacant building. There is off-street parking to the north as well as on-street parking to the south, east and north. However, the site is in a parking exempt area. Standards for each particular use for which a permit may be granted have been met. This is an existing building with parking surrounding and alternate-hour usage from other surrounding uses. The use is subject to minimum area, setback and other locational requirements of the district.

David McDonald of 215 Bell Creek in Beaufort spoke in favor of the request. He addressed the special-use criteria: The proposed use will not adversely affect the health and safety of residents or workers in the town. The facility is being upgraded and bathrooms are being added. The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses. The cocktail lounge at 715 Arendell Street already exists and Rev. McDonald knew of the bar when he rented the property to use as a church. The proposed use will not be adversely affected by the existing uses. There will be Sunday morning traffic and possibly Thursday evening traffic to and from the church. The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, of the vehicular movement, or noise or fumes or of the type of physical activity. The maximum capacity of the church is 150 persons. There are no kitchen facilities in the church building, so local restaurants will be used for functions that include food.

Attorney Taylor addressed the issue of the cocktail lounge at 715 Arendell Street. He stated that because the cocktail lounge/bar was in business before the proposed church, there is no conflict with city ordinances.

No one spoke in opposition to the request.

Laura Drewyor made **MOTION**, seconded by Joe Green, to close the public hearing. The motion carried unanimously.

CONSIDERATION AND DETERMINATION OF CASE HEARD:

There was no other discussion of the case.

Joe Green made **MOTION**, seconded by Holly Briggs, to grant the special-use request. The motion carried unanimously.

C. Request submitted by Jason Leopold, on behalf of SunCom Wireless, to amend the special-use permit under Article 11 of the Unified Development Ordinance for the modification of a communication tower site on property located at 1411 Fisher/206 North 15th Street (Tax PIN #638618422193), which is zoned CD (Downtown Commercial) District.

Laura Drewyor made **MOTION**, seconded by Joe Green, to open the public hearing. The motion carried unanimously.

Those wishing to give testimony were sworn in.

Zoning Enforcement Officer Joyce Veltman introduced the request. This site is at the southeast corner of North 15th and Fisher Streets. It is zoned CD with surrounding property zoned R5 to the north, CD to the south and east and IU to the west. Surrounding development includes single-family dwellings to the north, an office to the south, a parking lot to the west, and the fire station to the east. This site has been before the Board three times in the past; first in May 1997, then May 2001, and again in July 2005. Communication towers are not allowed as either permitted or special-use in the CD District. Therefore, it is a nonconforming-use and must come before the Board for a special-use permit for modification to a nonconforming-use. The current request is to modify the foundation of the monopole to increase its strength for additional co-locations by SunCom, and also to modify the fenced area by adding an additional access gate on the west side. Mr. Mazur has indicated that they would be willing to relocate the plants that will be displaced which serve as a buffer between the site and the surrounding residences. The Town traditionally has supported co-locations on existing towers.

With regard to the special-use criteria, a written application has been submitted. The development does not adversely affect general plans for physical development of the town. The proposal to co-locate has traditionally been favored by the Town. The use cannot be contrary to stated purposes. No inconsistencies with the purposes or ordinances were detected. This is an ongoing use since 1997. The use will be placed on a lot of sufficient size to satisfy space requirements. The 50' x 70' site size will remain the same. Standards for a particular use have been met. The only requirement is for a special-use permit for the non-conformity. The use is subject to minimum area, setback and other locational requirements of the district. There are no development standards to be met. The use is subject to off-street parking and service requirements of the regulations. The proposed plan retains vehicle access on the northeast corner.

The Town requested that a condition be placed upon any approval to amend the special-use permit noting that plants that are displaced by the addition of an access gate need to be relocated on the property. The hearing has been advertised, and notices were mailed to property owners within 100' to notify them of the request.

Mr. Mazur, representing SunCom, spoke in favor of the project. He addressed the special-use criteria: The proposed use will not adversely affect the health and safety of residents or workers in the town. The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses. The proposed use will not be adversely affected by the existing uses. The use is not changing. The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, of the vehicular movement, or noise or fumes or of the type of physical activity. A technician will inspect the equipment on the tower once a month. No other activity will take place at the site. Mr. Mazur stated that he had no objections to the condition requested by the Town. He did request however, that Ms. Veltman assist him in determining the locations of the plants needing to be relocated.

Chairman Walker requested that the Town and/or the applicant trim the plants/shrubs that currently protrude into the street because they cause difficulty for motorists.

No one spoke in opposition to the request.

Laura Drewyor made **MOTION**, seconded by Joe Green, to close the public hearing. The motion carried unanimously.

CONSIDERATION AND DETERMINATION OF CASE HEARD:

There was no discussion of the case.

Holly Briggs made **MOTION**, seconded by Laura Drewyor, to amend the special-use permit with the condition that the plants that are displaced by the addition of an access gate need to be relocated on the property, and that the relocation needs to be coordinated with the City Zoning Enforcement Officer. The motion carried unanimously.

D. Request submitted by Eddie Cameron Construction for an administrative review under Article 5-2 of the Unified Development Ordinance for an appeal to the Zoning Enforcement Officer's decision to halt work based on the non-conforming status of 3301 Evans Street.

Laura Drewyor made **MOTION**, seconded by Joe Green, to open the public hearing. The motion carried unanimously.

Those wishing to give testimony were sworn in.

City Attorney Derek Taylor explained the Board's duties by reviewing a hand-out on Administrative Reviews.

Zoning Enforcement Officer Joyce Veltman introduced the case. Mr. Cameron came before the Board of Adjustment in November 2007 to apply for a special-use permit to expand a non-conforming use, a guest house, in the front yard at 3301 Evans Street. Photographs of the property as it was in November 2007 were shown to the Board. A survey was also presented into evidence which labeled the guest house as a garage. Ms. Veltman stated that she contacted the surveyor and confirmed that the labeling was incorrect. The structure had always been a guest house, not a garage. A copy of the application from Mr. Cameron for the special-use permit from November 2007 was introduced into evidence. On December 10, 2007, following the hearing in November where the special-use permit was granted, Mr. Cameron submitted an application to the Town for permits to renovate the structure. The application indicated that the first floor was to be renovated and that there was to be the addition of a second floor to the guest house. The building permit was issued on December 21, 2007, for a residential addition and renovation. On or about January 11, 2008, calls were received in the Planning and Inspections Office which prompted a site visit. At the site inspection, it was discovered that the guest house was essentially gone. The only thing remaining was the floor system/foundation. Pictures taken at the time of the site inspection were shown to the Board. Upon returning to the office, city officials reviewed the building application files. It was determined that Mr. Cameron had applied for building, electrical, plumbing, and mechanical permits for the work. No application was ever received for demolition. Ms. Veltman testified that upon reviewing the files, she questioned whether or not Mr. Cameron had gone beyond the scope of the special-use permit granted in November 2007. She stated that her understanding of the special-use approval was that Mr. Cameron was given permission to renovate the structure and to build an addition in the northeast corner of the building for the stairway to access the second floor. It was not her understanding that Mr. Cameron was given permission to demolish the structure down to the foundation. A meeting was then held in the Planning and Inspections Office with Mr. Cameron, Chief Building Inspector Rick Schulz, Planning Director Linda Staab, and Ms. Veltman to discuss the work that had taken place. During that meeting, it was revealed that upon beginning the renovations, major termite damage was discovered resulting in the removal of the walls. The Town wanted to help the situation so other options were discussed. For instance, an addition attached to the main structure could be built, which would have allowed square footage to be added and would have kept the building in compliance with the ordinances. Mr. Cameron agreed to stop working at the site until further discussions could take place. On January 23, 2008, Ms. Veltman issued a letter to Eddie Cameron stating that he was out of compliance with the special-use permit. Mr. Cameron is appealing that determination. The hearing has been advertised, and notices were mailed to property owners within 100' to notify them of the appeal.

For informational purposes, Ms. Veltman described the three non-conforming situations described in the ordinance: 1) a non-conforming lot, 2) a non-conforming structure, and 3) a non-conforming use. For this application, non-conforming structure and non-conforming use apply. A non-conforming structure is a structure that doesn't meet the

setbacks, as the guest house was only 2.2 feet from the side property line. The Town ordinances do allow for additions to non-conforming structures going up, but not out. The non-conformity cannot be expanded. A non-conforming use is when a use is occurring, but not allowed in a particular area. For the property in question, it is zoned R5S, Residential Single-Family. A second residence on a single property is not allowed in the R5S District. Because the guest house is a second dwelling on the property, it is considered to be a non-conforming use.

Ms. Veltman further testified about the building permit application that was submitted by Eddie Cameron. Copies of the application were handed out to the Board for review. Ms. Veltman pointed out that at the top of page 2 of the application, next to "Explanation of Construction:" the words "Renovation of first floor and addition of second floor to guest house" are written. Dick Gambill asked if the meaning of "renovation" is to upgrade within the dimensions of the existing structure. Ms. Veltman answered yes, but she suggested that the Building Inspector, Dean Lombreglia, speak about renovations. Town Attorney, Derek Taylor asked if Mr. Cameron could build directly on the existing foundation left after the demolition. Ms. Veltman responded by saying that in the non-conforming section of the UDO, Article 8-4.2, rebuilding, reconstruction and restoration of non-conforming structures is addressed. The ordinance states that "the rebuilding, reconstruction, or restoration of any zoning non-conforming structure which was damaged or partially destroyed by: the exercise of eminent domain; man-made acts such as fire, accident, explosion; or flood, lightning, wind, or other calamity or natural act, requires a special-use permit from the Board of Adjustment if one or more of the following apply. A) The cost of the rebuilding, reconstructing, and restoring is seventy-five (75) percent or more of the replacement cost of the original non-conformity as determined at the time such damage or destruction occurred. B) A completed application for a building permit to substantially rebuild, reconstruct, or restore the non-conformity has not been submitted to the building inspection department within one year of the occurrence of the damage or destruction. Permission may be granted for the restoration of a non-conforming structure if the Board of Adjustment finds from the evidence that the provisions of subsection 3-7.2 are met."

The non-conforming structure is now gone, not due to any of the above-mentioned causes, but because Eddie Cameron Construction demolished the structure; therefore, the non-conforming use is also gone.

Town Building Inspector, Dean Lombreglia, testified concerning the building permit. The application submitted was for a residential renovation and addition to a guest house for which Mr. Lombreglia issued a building permit based upon the special-use permit granted by the Board of Adjustment. No demolition permit was requested. Laura Drewyor asked if demolition permits are normally requested or required when interior renovations are being done, and Mr. Lombreglia answered no. Holly Briggs asked if only the shell of the building had remained, would it still be a renovation? Mr. Lombreglia stated that renovation normally means interior work, although removing and replacing exterior siding would also be considered a renovation; so yes, it still would've been considered a renovation. Attorney Taylor questioned when a demolition permit would be required and Mr. Lombreglia responded that any time exterior walls are to be removed a demolition permit would be required.

Eddie Cameron testified in his own defense stating that he believes miscommunication to be the issue. His company's reputation is very important and he tries very hard to stay within the rules of the Planning and Inspections Department. Long before coming to the Board of Adjustment last November, a set of demolition plans was prepared indicating all but one wall was to be torn down in the guest house. Those plans were not shown to the Board. He stated that he probably should have had a demolition permit but he thought that the Inspections Department would inform him if that need arose. Renovations are renewing of a product and that's why he put "renovation" on the building permit application. When at the November hearing Mr. Green asked Mr. Cameron if he was planning to tear down the wall going to the stairway, Mr. Cameron answered yes. He stated that he didn't say that he was planning to tear all of them down because he knew they were going to tear all of them down at that point. Their intention was to leave one wall standing, but when they got to it, the way it was constructed and with the termite damage, it was easier to tear it down. Mr. Cameron asked the Board to allow him to continue with the special-use permit that was already granted so that he could get the building back. He also suggested that termites could be construed as something that is not man-made. Mr. Cameron thought that because he was in a non-conforming situation and requesting a special-use permit, that the special-use permit superseded the non-conformity.

Chairman Walker asked whether or not the Town had ever seen the demolition plans that Mr. Cameron previously described. Mr. Cameron answered yes, but that the Town's position is that on those plans, one wall remained standing and that wall has now been removed. The original intent of that particular wall was to leave it standing so as to retain the non-conformity into the setback. Dick Gambill asked for clarification of Mr. Cameron's intentions last November to tear down the structure, leaving only the one wall. Mr. Cameron responded by saying that his intention was to take the exterior walls down because they were insufficient to hold the structure that they were trying to build. Mr. Green

commented that at the November meeting when he asked Mr. Cameron if the walls were to be removed to accommodate the stairwell, the answer given was yes, but only to include the stairway to have access to a new second floor. Laura Drewyor commented that she did not understand that three walls were to be removed. Chairman Walker and Mr. Green also questioned why the kitchen mattered if the entire guest house was to be torn down anyway. Mr. Cameron responded by saying that in the reconstruction the kitchen would matter and he again stated that the foundation is still present. His intention was not to change what was there but to rebuild the structure in the exact location that it had been except for the expansion for the stairwell and building the structure up. Mr. Green asked Mr. Cameron to very specifically describe his plans if the Board were to give the go-ahead for the project. Mr. Cameron stated that they are planning to put walls up exactly where they were before, no taller, no wider, no longer, exactly what was on the plans associated with the building permit application, including the addition for the stairwell to the second floor.

Corinne Geer of 3207 Evans Street commented that she would like to see the oak tree in the middle of the yard at 3301 Evans Street saved if at all possible. Mr. Cameron testified that he had an arborist inspect and trim the tree because their intention is to save the tree.

Attorney Taylor explained the three options to the Board; 1) to uphold the zoning officer's determination, 2) to overturn in part or whole the zoning officer's determination, or 3) to modify the zoning officer's determination. Laura Drewyor asked Mr. Cameron if termites were in the foundation and he said no. Ms. Veltman asked Mr. Cameron what, if anything, would need to be done to the foundation to accommodate the rebuilding of the guest house? Mr. Cameron responded by saying that piers would have to be added for support but none of the foundation would be removed. Laura Drewyor asked if the footprint of the foundation would be expanded when the piers are added and he said no. Mr. Gambill commented that bulldozing the structure down all the way to the brick foundation is not expansion and renovation, it is demolition.

Mr. Matthews of 3303 Evans Street, on the west side of 3301 Evans Street, spoke in favor of Eddie Cameron rebuilding the guest house.

Mr. Albert Monk, the property owner of 3301 Evans Street, apologized to the Board for the misunderstandings associated with this project. He stated that he needs the additional space to accommodate his growing family and now that the guest house is gone, not only has he lost the additional space for his family, but his property value has decreased. Mr. Monk testified that he has never had any intentions to rent the guest house. It will only be used as an extension of the main house to accommodate his family. The plan is to have one electric meter and one water meter for both houses.

Holly Briggs asked the City if these kinds of misunderstandings with mixing-up plans happen often, and Mr. Lombreglia answered that they are not uncommon in the inspection process. He stated that often a set of plans is received and then upon going out to the location, deviations from the submitted plans are observed. Attorney Taylor added that although these kinds of misunderstandings occur often between the Inspections Department and contractors, they are not common when a special-use permit is involved. Mr. Green asked about consequences if the Board were to approve the reconstruction of the guest house and another misunderstanding were to occur. Planning Director Staab responded by saying that everyone involved now understands what the scope of the project is, that the perimeter of the foundation is to remain and that the piers are the only thing that will change. Everyone now understands what Mr. Cameron's intentions are, what can and cannot be done, and what can and cannot be permitted by the Planning and Inspections Office and therefore, there should be no more misunderstandings. Ms. Staab also said that although confusion between non-conforming uses and non-conforming structures is very common, Staff cannot permit the continuance of the project because of city ordinances. Mr. Cameron received a special-use permit to expand a non-conforming use but now the non-conforming use has been altered and the majority of it is gone. According to Mr. Cameron's own testimony, the foundation is the only part still existing. Ms. Staab went on to say that there could be room for interpretation in the ordinance itself in that "natural acts" are not defined and that the City has always thought of things like hurricanes as natural acts or calamities. In addition, the City has never interpreted termite damage as a natural act. Ms. Drewyor asked if the Board decides to interpret natural acts or calamities to include bugs, would that determination be specific to this case only and Ms. Staab answered no, saying that it would apply to other non-conforming structures. Attorney Taylor also responded by saying that unless the ordinances were changed, the interpretations made in this case by the Board of Adjustment would apply to all future circumstances of the same. Mr. Gambill questioned the rebuilding criteria of a non-conforming structure/use by asking if the guest house had caught fire and burned down instead of being bulldozed down, could it be rebuilt in an R5 district where only one dwelling per lot is permitted. Ms. Staab answered by saying that it could be reconstructed to its original form, a single-story building. Chairman Walker asked if Mr. Cameron had found termites in the wall that was to remain standing, stopped working on the project, and come to the City with the information, what would have happened. Ms. Staab responded by saying that the City would have probably advised him

not to take down the wall but to try to repair it because it was the wall that was preserving the non-conforming structure. This particular wall was only 2.2 feet from the side property line instead of seven feet which is required in an R5S district as the side setback. This is why the guest house is a non-conforming structure. Ms. Staab stated that the City would have worked with Mr. Cameron as much as possible to get the project done.

Laura Drewyor made **MOTION**, seconded by Joe Green, to close the public hearing. The motion carried unanimously.

CONSIDERATION AND DETERMINATION OF CASE HEARD:

Laura Drewyor questioned the issue for the Board. She stated that she thought it was to decide whether or not the Zoning Enforcement Officer had made her determination based on her interpretation of the ordinance and whether or not the Board agreed. Attorney Taylor responded by saying that the issue before the Board is whether or not the special-use permit granted by the Board in November 2007 has been violated. Ms. Staab added that the other issue is that Mr. Cameron wants the new building to be 2.2 feet from the side property line. Attorney Taylor asked two things: 1) could the special-use permit have included tearing down the entire building; and 2) would the ordinances have allowed the building to be torn down to the foundation and then be rebuilt? Ms. Staab answered by saying that had Mr. Cameron presented his request to include the demolition of the entire building the Planning Department would not have suggested a special-use permit but would have looked at alternatives. She went on to say that there is an alternative that has been discussed and that is to attach an addition to the main house by way of an enclosed, heated breezeway; however, the new addition would have to meet the required setbacks.

Ms. Staab stated that Ms. Veltman determined that the special-use permit is no longer valid because now that the building is gone, the use is also gone. Another issue is the side setback requirement. The foundation, which is part of the structure, still exists and the City will need to determine whether the building is 75% destroyed or more. The City has always interpreted the Unified Development Ordinance, Article 8-4.2 to say that a "natural act" is a God thing and termites have never been thought of as a natural act. Chairman Walker commented that when the special-use permit was granted, he thought that some interior improvements would be done to the guest house and that a wall would be removed to install a staircase. Ms. Drewyor agreed. Joe Green commented that termites did not do the damage, a bulldozer did; the building was still standing until the bulldozer demolished it. Ms. Drewyor asked Ms. Staab for a copy of the Ordinance that applies to this case and Ms. Staab complied. Chairman Walker asked the other Board Members if they agreed that the fourth wall that was to be still standing was the unit that kept everything in place, no matter whether one wall or three walls were removed, and Holly Briggs said yes.

Joe Green made **MOTION**, seconded by Holly Briggs, to re-open the public hearing. The motion carried unanimously.

Mr. Green questioned whether or not the Building Inspector would have put a Stop Work Order on the project if the one wall had still been standing and Mr. Lombreglia responded by saying that he did not place a Stop Work Order on the project. Mr. Lombreglia continued by saying that if he had gone to the site and seen only one wall standing, he would have returned to the office to review what the permit had been issued for and seeing no demolition permit, would have gone back and issued a Stop Work Order.

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

Chairman Walker reviewed the three determinations that the Board could make. The Board can uphold the Zoning Officer's determination, overturn the determination, or modify the determination. Ms. Drewyor asked if the Board could modify the ruling by deciding that their interpretation of the ordinance is different from the Zoning Officer's interpretation. Attorney Taylor responded by saying that the first step for the Board is to interpret which ordinances apply and what they say. The second step is to take the facts presented into evidence and determine whether or not there is agreement or disagreement that the facts presented support the Zoning Officer's interpretation of the ordinance. If not, why not? Ms. Drewyor commented that the Zoning Officer's determination was based on the non-conforming use being gone more than the non-conforming structure.

Attorney Taylor said that the two issues are related in that the non-conforming use was there when the building was there. A second dwelling is not allowed; however, the building has been there for years and has been used as a dwelling. A special-use permit can allow the expansion of a non-conforming use by building up and therefore expanding the structure. The structure itself also happened to be non-conforming because it was located in the setback area. The Town's position is that as long as some part of that structure was present, it could still be called a non-conforming use that was being expanded. Once the building had been taken to the ground, the foundation could not be used for the previous non-conforming use; therefore, they could no longer allow the expansion that was part of the special-use permit.

Chairman Walker stated that the Board needs to determine if termites are an act of God. Ms. Drewyor said that if termites had caused the building to collapse, she would consider that an act of God; but she stated that she was hesitant to say that termites, on their own, are an act of God.

Attorney Taylor reviewed the Board's duties once again. He said that to overturn the decision of the Zoning Officer, four out of five Members must vote to overturn; therefore, he suggested that whatever motion is made be made in the form of "to overturn" even if Members intend to vote against their own motion.

Laura Drewyor made **MOTION**, seconded by Joe Green, to overturn the Zoning Officer's determination. Holly Briggs, Laura Drewyor and Joe Green voted to overturn. Dick Gambill and Chairman Walker voted to oppose the motion. The ruling of the Zoning Enforcement Officer stands because a super-majority is required to overturn her determination.

NEW BUSINESS:

No new business was discussed.

ADJOURNMENT:

Laura Drewyor made **MOTION**, seconded by Holly Briggs, to adjourn the meeting. The motion carried unanimously and the meeting was adjourned at 8:10 p.m.

Jeannie Vaughan
Secretary