

The Morehead City Board of Adjustment conducted a regular monthly meeting on Thursday, June 26, 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  
Laura Drewyor, Dick Gambill, Joe Green, and Bill Ward

ABSENT: Holly Briggs, Richard McIntyre, Dave Robertson, and Beth Taylor

OTHERS PRESENT: Zoning Enforcement Officer Joyce Veltman, Building Inspector Robert Davis, Building Inspector Dean Lombreglia, Planning Director Linda Staab, Secretary Jeannie Vaughan, City Attorney Derek Taylor, Mike Shutak of the Carteret News-Times, Jennifer Stallings of the Gam, Jerry Bell, Lee Fredrickson, William Kingery, and Sammy Ballou.

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

The roll was called and Bill Ward made **MOTION**, seconded by Dick Gambill, to excuse the called-in absences (Holly Briggs, Richard McIntyre, Dave Robertson, and Beth Taylor). The motion carried unanimously.

*MINUTES: April 24, 2008*

Chairman Walker called for changes or amendments to the minutes. Bill Ward made **MOTION**, seconded by Joe Green, to adopt the minutes as submitted and dispense with the reading. The motion carried unanimously.

**BUSINESS:**

*A. Request submitted by S. F. Ballou for a special-use permit under Article 11 of the Unified Development Ordinance (UDO) to allow a self-service storage facility at 1015 North 20<sup>th</sup> Street (Tax PIN 638609250411), which is zoned CN (Commercial Neighborhood District)..*

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

Those wishing to give testimony were sworn in (Joyce Veltman and Sammy Ballou).

Zoning Enforcement Officer Joyce Veltman introduced the request. Sammy Ballou is applying for a special-use permit under Article 11 of the UDO to provide a self-service storage facility at 1015 North 20<sup>th</sup> Street. This property is zoned CN (Commercial Neighborhood) and surrounding zoning is CN to the north, south and east, and R7 (Single-Family Residential) to the west. Surrounding development includes a vacant lot to the north, a contractor's office to the south, an automobile repair garage to the east and a single-family residential subdivision to the west. Development standards for the district are a front setback of twenty-five (25) feet and side setbacks which are dependent on the adjacent zoning district. Front setbacks are shown to be met on the east and west and there are no setbacks on the north and south sides. The height limit for the CN district is fifty (50) feet. Landscape strips are required on the north, south and east sides and a buffer B is required on the west side which is adjacent to the R7 district. The strip widths and number of plantings are shown to be met. Regarding parking, the ordinance doesn't specifically list this use but warehouses are required to provide one (1) space for every six hundred (600) square feet of building. Using that rate, this seven thousand (7,000) square foot building would require twelve (12) spaces. The building is one hundred forty (140) feet wide which could accommodate fifteen (15) spaces, each being nine (9) feet wide. The maximum lot coverage (roof area) for the CN district is forty percent (40%). The proposed plan shows thirty-five percent (35%) lot coverage. There are two outstanding issues: 1) a drainage impact statement and 2) a DOT driveway permit for access to North 20<sup>th</sup> Street. Both of these items can be submitted at the time application is made for the building permit. All development standards have been met or exceeded. The Land Use Plan shows the property in Neighborhood 5 and classified as undeveloped. The proposal

does not appear to conflict with any of the policy statements. Ms. Veltman requested that the Board consider conditioning any approval upon not allowing vehicular access via the North Yaupon Terrace side of the property. The hearing has been advertised, and notices were mailed to property owners within one hundred (100) feet to notify them of the request.

Sammy Ballou spoke in favor of the request and addressed the special-use criteria: 1) the proposed use will not adversely affect the health and safety of residents or workers in the town, this is a storage facility involving no chemicals, by-products, or processes that pose health risks to anyone; 2) the proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses because of a buffering strip that will be installed; 3) the proposed use will not be adversely affected by the existing uses because the uses are similar; and 4) 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.

Dick Gambill questioned outside storage of vehicles and Mr. Ballou said that there will be no outside storage of vehicles. There will not be a gate or lighting for the area per Mr. Ballou.

No one spoke in opposition to the request.

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

**CONSIDERATION AND DETERMINATION OF CASE HEARD:**

Bill Ward made **MOTION**, seconded by Joe Green, to grant the special-use request with the stipulation that no entrance or exit can be on North Yaupon Terrace. The motion carried unanimously.

***B. Request submitted by William D. Kingery for a variance from Article 19-3.2 of the Unified Development Ordinance (UDO) to allow a sign on the roof (of entry-way) at 509 Evans Street (Tax PIN 638620802884), which is zoned DB (Downtown Business 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 (William Kingery).

Zoning Enforcement Officer Joyce Veltman introduced the request. Mr. Kingery has submitted an application for a variance from the requirements of Article 19-3.2 of the UDO which prohibits roof signs. Mr. Kingery has recently obtained the location for operation of a business he intends to call Ruddy Ducks. The property is zoned DB (Downtown Business) as is the surrounding property. An aerial slide of the site was shown to the Board. This property has most recently been occupied by a restaurant called Key West Seafood Company and prior to that it was known as Dee Gee's. A slide of the site from October 2003 showed a banner that was installed between the posts on the roof. A slide from March 2004 showed that the banner had been removed. The banner was removed after two violations of the UDO were processed. One of the violations was the installation of a sign without a permit and the other violation was the installation of a roof sign, both are violations of Article 19 of the UDO. Mr. Kingery has now installed new bracing and a new sign, without a permit and on the same roof. Upon contacting Mr. Kingery to advise him of the violation, he indicated he wished to request a variance from the Board of Adjustment to allow the sign to remain. Ms. Veltman 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.* There is nothing peculiar about this land, structure or building. It is a waterfront lot with part of the structure extending over the water. There are walls that can be used to display signage. The applicant can apply for permission to post a sign on the sidewalk under Article 12-2.10 of the UDO which was enacted for businesses in the CD and DB districts in the downtown area. No other businesses are allowed to install signs on roofs or to install freestanding signs exceeding the height of the roof, or twenty (20) feet, whichever is lower.

*B. Literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.* Other businesses have not been granted the right to install roof-top signs in this district or any other district in the town's jurisdiction.

C. *Special conditions and circumstances do not result from the actions of the applicant.* The applicant has installed the roof sign without applying for a permit. Had the applicant applied for a permit or approached the staff to ask questions, he would have been denied permission to install the sign.

D. *The hardship is of a physical nature and not economic.* In this case the hardship may be of a physical nature but it is also economic. Granting the variance will afford the applicant a means of advertising not available to other businesses in the area.

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 ordinance specifically prohibits roof signs or signs installed on roofs. It also regulates the height of freestanding signs so they may not exceed the height of a roof.

Staff suggests that this variance be denied. The hearing has been advertised, and notices were mailed to property owners within 100' to notify them of the request.

William Kingery of 2698 Lennoxville Road in Beaufort spoke in favor of the request. He stated that he only repaired a sign that was already on the roof when he rented the building. He said that the sign had been there for a very long time and he assumed that he could repair it. Pictures were shown of the progression of the sign repairs. The applicant addressed the variance criteria: A) the special circumstance that exists is that the building is designed with windows covering all walls; B) the nearby Sanitary Restaurant has a roof-top sign and therefore the applicant would be deprived of rights commonly enjoyed by other properties in the same district if he were to be required to remove the sign; C) the applicant did not install the sign, he simply repaired an existing one by removing and replacing the center section; D) the hardship is of a physical nature because there is no other place to put the sign; and E) the granting of the variance will not confer upon the applicant any special privilege because other's in the area also have roof-top signs.

No one spoke in opposition to the request.

Chairman Walker suggested that the applicant should have spoken with the city to review all options before coming before the Board. Bill Ward commented that the Town should have addressed the illegal sign before this applicant rented the property; however, Attorney Taylor stated that the determination of the Board needs to be based on the current situation and the appropriate ordinance.

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 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 no special conditions or 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 others in the area do not have the right to install roof-top signs per the UDO.

C. *Special conditions and circumstances do not result from the actions of the applicant.* The Board Members all agreed that the applicant installed the sign without a permit.

D. *The hardship is of a physical nature and not economic.* The Board Members all agreed that there are other areas to place advertising, including over windows and on the sidewalk.

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 be conferred upon the applicant should the variance request be granted.

Joe Green made **MOTION**, seconded by Dick Gambill, to grant the variance request. Joe Green and Bill Ward voted to approve and Dick Gambill, Laura Drewyor, and Chairman Walker voted to deny. The motion failed 2 to 3.

***C. Request submitted by Jerry Bell for a variance from Articles 13-1 and 14-3(B) of the Unified Development Ordinance (UDO) to allow the enclosure of a porch in a front setback on the east side of the structure at 2300 Evans Street (Tax PIN 638617016537), which is zoned R5S (Residential Single-Family 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 (Jerry Bell and Lee Fredrickson).

Zoning Enforcement Officer Joyce Veltman introduced the request. The applicant is requesting a variance for property they own in the 2300 block of Evans Street. This property is located in the triangle area inside the access to and from the bridge to Atlantic Beach. A zoning map showing the area was displayed for review along with an aerial of the site. Mr. Bell's lot is the double lot on the west side of 23<sup>rd</sup> Street which is where traffic coming from Atlantic Beach stacks at the stop light at Arendell Street. Mr. Bell and Ms. Fredrickson submitted an application for a building permit in September of 2007. This was following an ordinance amendment in July that allowed unenclosed porches and steps to encroach into front setbacks in R5 and R5S Districts provided that the unenclosed porches contain no walls or screening. The application that was submitted was a request to "extend front and side porch with roof on top". Included with the application was a picture showing the south side of the house with a small porch at the front door and a porch on the east side of the property. The plan included with the application shows how they wanted to construct a porch on the entire south/front side of the house, wrap it around the west side, and extend it around the east side. Also included was a finished drawing of a house with the type of roof and porch that was to be built. A survey dated 2006 was also provided showing the property and setbacks of the house. The Bell property was originally two city lots, 50' x 100'. As part of the bridge relocation, DOT obtained a portion of the property for the right-of-way. However, they still have a lot and a half. The building permit was issued for construction of the open porch and at some point during construction Mr. Bell exceeded the work allowed by the permit and began enclosing the side porch. Mr. Bell was contacted and he decided to request a variance. The Town allowed the work to continue on the porch on the south side (the legal portion). In November 2007 the Town contacted Mr. Bell again and Mr. Bell indicated that he wanted to wait until the January Board of Adjustment meeting so that he could obtain an attorney. As of April of this year, no application had been received and a stop work order was posted which resulted in the application for a variance. Now, Mr. Bell has indicated that the fumes, noise and light from the traffic will be intrusive. Ms. Veltman 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.* Every house along Arendell Street at a stop light is subject to fumes and noise from traffic waiting at a red light. The R5S district has a fifteen (15) foot setback from front property lines, but the recent July 2007 ordinance amendment allows for open porches to be constructed within the front setback in that district. There are no special conditions or circumstances for this property.

B. *Literal interpretation of the provisions of the Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district.* Previously, Mr. Bell had a covered porch and deck on the east side for which he decided to expand and replace the roof. Then Mr. Bell changed his mind and decided to enclose the area which was in violation of the ordinance and exceeded the building permit. The applicant then came to the Board to request a variance to legalize it. Other properties in the same district are not allowed to have enclosed porches in front setbacks.

C. *Special conditions and circumstances do not result from the actions of the applicant.* Mr. Bell was issued a permit for a porch addition and roof work. The porch addition can continue. All other R5 and R5S properties can apply for porch additions up to their front property lines but after building the open porch it cannot be enclosed. This condition is not special and the circumstances have resulted from the actions of the applicant.

D. *The hardship is of a physical nature and not economic.* This is a physical issue but an enclosed porch could be built on the west or north side of the house.

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 Council was very specific about what was allowed to encroach into the front setback - open porches and steps only. To allow one property owner to construct an enclosed addition into a front setback because of traffic would be conferring a special privilege.

Staff suggests that this variance be denied. The hearing has been advertised, and notices were mailed to property owners within 100' to notify them of the request.

Jerry Bell and Lee Fredrickson of 2300 Evans Street spoke in favor of the request. No windows have been installed and no work has been done since the stop work order was issued. Mr. Bell said the noise is intolerable and he needs an enclosed area to be able to enjoy the property. Ms. Fredrickson stated that this property is different than all others in Morehead City because it is so close to a 4 lane road and a stoplight. Mr. Bell also said that houses across the street all have enclosed porches. The applicants addressed the variance criteria: A) the special circumstances that exist are that there is no access from either street to the property so they have to use the alley to access their property and the traffic noise from a 4-lane road and a traffic light is unbearable; B) standing traffic causes noise and therefore the applicant is deprived of rights commonly enjoyed by other properties in the same district; C) the State took 20 feet of Mr. Bell's property and therefore the special conditions and circumstances did not result from the actions of the applicants; D) the hardship is of a physical nature because an enclosure cannot be built to block the noise from the 4 lanes of traffic; and E) the granting of the variance will not confer upon the applicant any special privilege because other's in the area don't have the traffic and noise to deal with.

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 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.* Joe Green commented that a porch can be built but it cannot be enclosed per the UDO. Laura Drewyor stated that the special condition is that a lot of traffic comes off of the Atlantic Beach Bridge, more than anywhere else in Morehead City.

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 others in the area do not have the right to build enclosed porches in the front setback per the UDO.

C. *Special conditions and circumstances do not result from the actions of the applicant.* Chairman Walker said that no specific evidence had been presented to support this item. All Board Members agreed.

D. *The hardship is of a physical nature and not economic.* The Board Members all agreed that no evidence had been presented 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.* Laura Drewyor said that if the variance were to be approved a special privilege would be conferred upon the applicant. All Board Members agreed.

Bill Ward stated that based on the evidence presented, none of the criteria had been met by the applicant.

Laura Drewyor made **MOTION**, seconded by Bill Ward, to grant the variance request. All members voted to deny the request. The motion failed 0 to 5.

**NEW BUSINESS:** No new business was discussed.

Laura Drewyor made **MOTION**, seconded by Bill Ward, to adjourn the meeting. The motion carried unanimously and the meeting was adjourned at 7:30 p.m.

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Jeannie Vaughan  
Secretary