



**CURRITUCK COUNTY
NORTH CAROLINA**

August 13, 2020
Minutes – Regular Meeting of the Board of Adjustment

CALL TO ORDER

The Board of Adjustment met for their regular meeting at 7:00 PM in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina.

Attendee Name	Title	Status	Arrived
Troy Breathwaite	Chairman	Present	
Steven Craddock	Vice Chairman	Present	
Carol Bell	Board Member	Present	
Cathy Bontemps	Board Member	Present	
Lynn L. Hicks	Board Member	Present	
Lauren Arizaga-Womble	Board of Adjustment Attorney	Present	
Ike McRee	County Attorney	Present	
Laurie LoCicero	Planning Director	Present	
Cheri Elliott	Clerk to the Board	Present	
William (Bill) Brumsey IV	Attorney for Applicant	Present	
Joseph Edwards	Applicant	Present	

Chairman Breathwaite called the meeting to order at 7:08 PM and asked the Clerk to the Board, Cheri Elliott, to call roll.

A Announce Quorum Being Met

Chairman Breathwaite announced a quorum met with five board members present.

B Election of Chairman & Vice-Chairman

Chairman Breathwaite asked the Clerk to the Board to proceed with this agenda item.

Ms. Elliott asked for nominations for the election of the Chairman. Mr. Craddock nominated Mr. Breathwaite to continue as the Chairman. Ms. Bontemps seconded the motion and the motion carried unanimously.

Ms. Elliott asked for nominations for the election of the Vice-Chairman. Chairman Breathwaite nominated Mr. Craddock. Ms. Bontemps seconded the motion of the motion carried unanimously.

C. Approval of Agenda

Chairman Breathwaite asked if there were any changes to the agenda. Mr. Craddock

motioned to approve as presented. Ms. Bontemps seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Carol Bell, Board Member, Cathy Bontemps, Board Member, Lynn L. Hicks, Board Member

D. Approval of Minutes for August 15, 2019

Chairman Breathwaite asked if there were any changes needed for the August 15, 2019 meeting minutes. Mr. Craddock motioned to approve as presented. Mr. Hicks seconded the motion and the motion carried unanimously.

RESULT:	APPROVED [UNANIMOUS]
AYES:	Troy Breathwaite, Chairman, Steven Craddock, Vice Chairman, Carol Bell, Board Member, Cathy Bontemps, Board Member, Lynn L. Hicks, Board Member

1. BOA Meeting Minutes - August 15, 2019

E. Ask for Disqualifications

Chairman Breathwaite asked if there were any board members having a known conflict of interest with respect to the matter coming to the board tonight.

Chairman Breathwaite disclosed he has known the applicant, but will remain impartial.

No issues were noted from the Board of Adjustment Attorney, the County Attorney, and the Applicant's Attorney.

OLD BUSINESS

No old business was discussed.

NEW BUSINESS

A. BOA 19-08 Justin Old - Glenmore Ridge Dewatering Violations - Applicant has requested and was granted a continuance to the October 8th Board of Adjustment Meeting: Appeal of violation #1197 and violation #1198 for improperly pumping excess water not in accordance with the rules of the Unified Development Ordinance for property located on Campus Drive, Tax Map 22, Parcels 78A & 78B, Moyock Township.

*Update - This Appeal will be heard October 15th at 7:00 PM.

RESULT:**CONTINUED TO FUTURE MEETING****Next: 10/15/2020 7:00 PM**

B. BOA 20-01 Joey & Laurie Edwards - Variance Request: Variance request for property located at 436 Shawboro Road, Parcel Identification Number 0033-000-0002-0000, Crawford Township, due to the residential single-family dwelling encroaching on the 50 foot minimum setback.

The Planning & Community Development Director, Laurie LoCicero, presented the staff report. She referenced page 13 of the agenda packet showing the aerial photo for Joey and Laurie Edwards property. Ms. LoCicero gave the history leading up to the variance request. On April 13, 2016, the County issued a demolition permit for the removal of an existing single family dwelling at 436 Shawboro Road. The house was removed and a final inspection was completed March 7, 2018. On December 17, 2019, the county issued a building permit to construct a single family dwelling that would utilize the existing septic system installed in 1982. Rackley Land Surveying prepared a site plan based on recorded information, but this was not a survey with them actually measuring on-site. Ms. LoCicero referenced page 36 of the agenda packet showing the site plan given to Zoning with a 66.60 ft. setback. After the house was constructed, a citizen called the County to report the house not meeting the required front setback. Upon inspection, the front porch of the house was found to be in the setback by 2.26 ft.

The County Attorney, Ike McRee, questioned Ms. LoCicero about the setback requirements and specifically which roads had the 50 ft setback. Ms. LoCicero said the main arterial roads such as US 158, NC-168, NC-34, and NC12 are required to have the 50 ft. setback.

Mr. McRee asked what was encroaching on the setback and how it could be fixed. Ms. LoCicero stated the front porch was encroaching and the porch would have to be cut off to meet compliance with the setback.

Discussion was held on what was allowed to encroach, such as structures that are not covered.

The applicant's attorney, Mr. Brumsey, cross examined Ms. LoCicero. He asked what was the purpose of the 50 ft. setback. Ms. LoCicero said to give extra space if a major arterial road needs to be expanded in width. Mr. Brumsey pointed out that allowing the brick foundation of the porch to encroach does not achieve that goal. Mr. Brumsey asked if this variance were allowed, would it be a threat to public safety. Ms. LoCicero said it would probably not be a threat to public safety. He asked Ms. LoCicero if she thought Mr. Edwards knew he was in the setback and Ms. LoCicero said no.

Board members asked Ms. LoCicero questions concerning granting the variance with the condition of not being able to enclose the porch in the future.

The Board of Adjustment Attorney, Lauren Womble, and Mr. Brumsey had discussion on whether variances could have conditions attached. Mr. Brumsey stated the last paragraph of GS 160A-388(d) saying appropriate conditions may be imposed as long as the conditions are reasonably related to the variance.

GS 160A-388(d) - Below for reference:

(d) Variances. - When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

Board members held discussion on the rules in the Unified Development Ordinance concerning pervious and impervious within the setback.

Ms. LoCicero said if the applicant would have let us know in advance of building that they could not meet the required setback, we may have been able to give them an administrative adjustment. She also said without a survey, it is an estimate and we are not comfortable using the GIS aerial photo.

Mr. McRee admitted without objection:
County Exhibit #1 - Staff Report BOA 20-01 Joey and Laurie Edwards Variance Request, Board of Adjustment, August 13, 2020.

Mr. Brumsey stated GS 168-388 section (d) allows the Board of Adjustment to attach conditions. Mr. Edwards will comply with not enclosing the porch. Mr. Brumsey said Mr. Edwards made a good faith error.

Mr. Brumsey cited a prior case where a variance was given for approximately 7.2 inches.

Mr. Brumsey admitted without objection:

Applicant Exhibit #1 - Turik v. Town of Surf City, 642 S.E.2d 251, 182 N.C. App 427 (N.C. App. 2007)

Mr. Brumsey called Mr. Edwards to the stand. He stated his address as 463 Snowden Road and his place of employment as HRSA Shipping. Mr. Edwards said he has had his contractors license for 16 years. He obtained the house from his grandparents and his mother had lived there. Mr. Brumsey referenced p. 30 and p. 31 of the agenda packet showing the original septic permit. Mr. Edwards said it would have cost \$20,000 for a new engineered system. Mr. Edwards said he used the same footprint of the old home for the new one. Mr. Brumsey asked Mr. Edwards if he would enclose the porch and he said no.

Board members asked various questions. Chairman Breathwaite asked Mr. Edwards how he measured for the setback. Mr. Edwards said he measured from the road. Chairman Breathwaite asked how much it would cost to change the porch and Mr. Edwards said \$5,000 or more. Chairman Breathwaite asked how much it cost to build the house and Mr. Edwards said about \$100,000.

Discussion was held on how the porch could be modified.

Mr. McRee cross examined Mr. Edwards. He asked him various questions concerning measuring for the setback and how the surveyor created the site plan. Mr. Edwards said he searched for the pins but could not find them so the neighbor told him to measure from the middle of the ditch. Mr. Edwards said the surveyor did find the pins and did the site plan from that. Mr. McRee asked if the surveyor came out to the property. Mr. Edwards said he did not know and we would have to ask him. Mr. McRee asked if Mr. Edwards will be living in the house and he said no.

Mr. Brumsey clarified that Mr. Rackley did the first survey without coming on the property, but he did actually survey after the problem with the setback was found. Mr. Edwards said that was correct.

Ms. Womble instructed the board she had pulled the statute and verified they can put conditions on a variance.

Chairman Breathwaite asked for public comment. There was no comments heard and the public hearing was closed.

Ms. Womble instructed the board to give the attorneys time for their argument period.

Mr. McRee highlighted requirements for hardship. He referenced the Turik case and said the facts of this case are not the facts of the case tonight. In our case, Mr. Edwards has been a contractor for 16 years and has built 16 to 32 houses. He did not have the appropriate survey done, but after the encroachment, then he has the survey done. Something different and unique from other properties - not unique. Ms. Locicero testified that these setbacks are not unusual and have to be complied by other people on these major arterial roads. The hardship is a result of the applicant's own actions

since he did not survey properly which resulted in this encroachment. In reference to the last variance case heard by our Board of Adjustment, that did not pass where a house encroached on the setback. It was denied. One lucky person should not be relieved by this variance when others will not receive the same.

Mr. Brumsey made his closing remarks. He said the septic changes would have caused a hardship. He said building a stickbuilt house is what the county wants and this was a good faith unintentional error. He referenced the Turik saying the Edwards' case was also a good faith error and only a 4 percent error which was less. He said the home is an improvement to the area. He said if you look at the whole record and all the facts, you have to conclude the variance should be granted.

Chairman Breathwaite said he thought the hardship would be to redo the roof which would be 5 percent more that the total cost of the house.

Mr. Hicks, Ms. Bontemps, and Ms. Bell agreed it is a hardship.

Ms. Bontemps said without the porch it would not look right. Ms. Womble gave guidance reminding the board they cannot consider this.

Chairman Breathwaite said we must look at each question for the variance. Variances shall be approved if they meet all five of the requirements.

#1 The alleged hardship is suffered by the applicant as a result of the application of this ordinance.

Mr. Craddock said the Unified Development Ordinance which stated the required setbacks was in place before they began construction.

#2 The hardship relates to the applicant's land, such as location, size, or topography rather than personal circumstances.

Chairman Breathwaite said this was unique due to the septic existing. The applicant stated if it had been a big house he would have had a surveyor come out - he did not - the house design could have been changed.

#3 The hardship is unique, or nearly so, rather than one shared by may surrounding properties.

Chairman Breathwaite said he was confused on whether a surveyor was present on the property. Mr. Craddock said by the testimony of Mr. Edwards, he gave the measurements to the surveyor and the surveyor drew it out; He was not onsite. Ms. Womble said the Turiks actually hired a surveyor to do a full survey. Note page 6, highlighted section, the Hunters survey was before the building permit, the neighbor surveyed and then they hired a third surveyor. Where did the hardship start? Who caused it? Ms. Womble said if there was a formal survey, the applicant would have known where to put the house.

#4 The hardship is not the result of the applicant's own actions.

Ms. Womble said the site plan says this is not a formal survey. Mr. Craddock said, with this, we can make the assumption that the surveyor did not go out to the property since

the readings were inaccurate. Mr. Hicks said without the pins it was hard to get the measurement.

#5 The variance will not authorize the initiation of a nonconforming use of land. Same as the staff report - if variance is granted, it will not create a new nonconformity.

Mr. Craddock motioned to deny since only one of the required five variance review standards have been met.

Ms. Bontemps said she would like to make a motion with a stipulation. Ms. Womble said we already have a motion on the floor which is Mr. Craddocks.

Chairman Breathwaite asked for a second to Mr. Craddock's motion to deny. There was no second and the motion failed.

Ms. Bontemps motioned to approve with the stipulation that the porch will never be enclosed. Ms. Bontemps said she didn't think there was any malice.

Ms. Womble said there are a lot of people who never intend to cause something.

Mr. Craddock said we need a second on the motion to approve.

Ms. Bell seconded the motion.

The board had more discussion. Ms. Womble gave guidance; We have a motion and a second that needs to be voted. This motion is to approve with the condition to not enclose the porch to become part of the home.

A vote was held and the motion carried 4-1 with 4/5 approval; Mr. Craddock was opposed.

RESULT:	APPROVED [4 TO 1]
AYES:	Troy Breathwaite, Chairman, Carol Bell, Board Member, Cathy Bontemps, Board Member, Lynn L. Hicks, Board Member
NAYS:	Steven Craddock, Vice Chairman

ANNOUNCEMENTS

Ms. LoCicero announced the Glenmoor Ridge Appeal for de-watering violations will be hard in September. *Update - This case will be heard October 15th at 7:00 PM.

Ms. LoCicero said 40,000 square ft, or less, new construction is now required to have asbuilt surveys. This will help catch some of the setback issues. Mr. Craddock asked if the asbuilts are being recorded. Ms. LoCicero said they are kept in the staff's files, but the builders has the option to record them.

ADJOURNMENT

Ms. Bell motioned to adjourn the meeting. Mr. Craddock seconded the motion and the motion carried unanimously with the meeting ending at 9:38 PM.