



Board of Adjustment

MINUTES
August 17, 2023
6:00 PM

Members Present

Gregory Parks-Chair
Linda Amos, Vice-Chair
Robert Davis-Alt
Marva Lucas-Moore
Kenneth Turner- Alt

Absent Members

Gary Silverman
Vickie Mullins
Jovan Bowser

Staff/Others Present

David Moon
Christopher Portman
Amanda Ozanich
Brenee Orozco-Alt
Donald Brooks-Alt

Robert Hasty (Asst County Attorney)

Chair Parks called the meeting to order at 6:00 p.m. in Public Hearing Room #3 of the Historic Courthouse.

1. INVOCATION

Chair Parks read the invocation.

PLEDGE OF ALLEGIANCE

Recited by all.

Chair Parks stated the procedural matters are to turn off all cell phones or to place them on silent and requested to limit time per speaker to 5 minutes. If any Board member wishes to speak, please ask to be recognized by the Chair.

2. ROLL CALL

David Moon called the roll and made note of the absences of members: Vickie Mullens, Jovan Bowser and Gary Silverman. Mr. Moon stated we do have a quorum.

SWEAR IN OF STAFF

Chair Parks swore in staff Christopher Portman and David Moon.

3. ADJUSTMENTS TO THE AGENDA

There were none.

4. APPROVAL OF THE July 20, 2023, MINUTES

Mr. Kenneth Turner made a motion to approve the minutes from the July 20, 2023, hearing minutes as written. This was seconded by Linda Amos. All are in Favor.

5. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES (SITE VISITS AND/OR PERSONAL AFFILIATIONS)

There were none.



6. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

7. POLICY STATEMENT REGARDING APPEAL PROCESS:

David Moon read the policy statement.

8. PUBLIC HEARING(S)

David Moon: Deputy Director of planning and inspections department. The case before you this evening is **BOA-2023-0003**. This is a request for variance from Section 1002, Incidental Uses, Paragraph E., Accessory Structures, requesting accessory structure setback at 12.7 feet instead of required minimum of 15 feet, Cumberland County Zoning Ordinance, for 0.96 +/- acres located at 2753 Wade-Stedman Road; submitted by James McVeigh (applicant/owner).

As you see on the screen, the subject slide, is located in the eastern area of the county. The request is for a variance. A variance is for a reduction in the terms of the ordinance, where such variants will not be contrary to the public interest and where only conditions particular to the property and was not a result of the action of the applicant and a literal enforcement of the ordinance would result in unnecessary and undue hardship. To comply with the variance hardship, four criteria must be met. The board is familiar with those criteria.

The first is the unnecessary hardship that would result from the strict interpretation of the code.

Second, is the hardship results from conditions that are particular 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. A variance may be granted when necessary and appropriate to make reasonable accommodations under the Federal Fair housing Act for persons with disability.

The third criteria is the hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances existed may justify the granting of a variance that shall not be regarded as a self-graded hardship.

Finally, the variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

The BOA has the authority to approve, deny or approve with conditions to the requested variance, based on the requirements set forth in our zoning ordinance, delegated for the adjustments. Four Affirmative votes is necessary by the board, a super majority, to approve a variance. So, for the variance request to be approved, four out of five votes will be necessary. Hopefully with those four criteria, the burden of proof is placed on the applicant to demonstrate that they've complied with those hardship criteria. The property owner is present this evening, to present his case to the board.

At this time, I'll turn the floor over to Chris Portman, senior planner with requirement to go over the site conditions and site information.

Chris Portman: Chris Portman, senior planner in the current planning office. The Applicant owner James McVeigh is requesting a variance to reduce their side yard setback from 15 feet to 12.3 feet to allow 2.7 feet of an encroachment for their storage building garage. The property is 0.96 plus or minus acres. Here is the site plan that



was submitted to our office. The arrow is showing the location of the corner that is within the setback. It is 12.3 feet away from the property line, which in the zoning district calls for 15 per the applicable zoning setbacks. This property is zoned A1, but it does follow our zoning setbacks, which as you can see. Here is the side yard for 15 feet and I'll explain here in a second. This falls under section 1002 incident on uses for any accessory structure greater than 700 square feet must be located inside the building envelop.

David Moon: And we defined the building envelope as the minimum set back distance from the property line.

Chris Portman: Section 1101D. Lot regulations. As you can see highlighted below, the dimensional requirements of the RR rural residential district and the A1 agricultural district. This lot was, by deed, then created May 27th, 1997, from Deed Book 2598 page 309, Making it a lot recorded less than the minimum requirements, following section 1101. Lots created after August 22nd, 1984, must comply with the zoning dimensional provisions set forth in the zoning ordinance. Since this lot was created before 1984, it would default to the RR rural Residential zoning District setback standards. As you can see, it does follow in the A1 zoning district. There's R40 surrounding it, as well as some R40 conditional zoning across the street, down the road.

Here is the subject property and the surrounding uses. As you can see, there's some wooded land, farmland across the street and residential directly behind it. There are no hydric or hydric inclusions soils. There is a water line, but no sewer is present, so it would be required to be serviced by septic tank. This is the subject property. If you follow my mouse, so this is the location of the accessory structure here. If you can see, my mouse moving, this is the South view, looking down Wade Stedman Rd. This is the Westview, looking across the street and this is the North view along Wade Stedmon Rd. This is the area directly behind the home. Again here, is the site plan where you can see the rear corner and the encroachment of the setback by 2.7 feet. (12:02)

David Moon: Again, the board will consider the four criteria in your decision this evening. As the next slide will state is, you can consider that there are special limitations that would apply to the action if you are in favor of the variance. Such as, the variance is limited to a 900 square foot shed and it's limited to a 2.7-foot encroachment into the side yard setback. So, the applicant, in your package, has provided a response to the four criteria. Mr. McVeigh is present to provide further explanations regarding the request. That concludes staff presentation. We can address any questions that you may have. If not, then we may proceed to the public hearing portion.

Chair Parks: I have a question. Is the pad already poured?

Mr. McVeigh: yes

Chair Parks: Mr. McVeigh, please come to the podium and state your name and address.

Mr. McVeigh: James Edward McVeigh, 2753 Wade Steadman Rd.

Chair Parks: Place your hand on the bible and raise your right. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God.

Mr. McVeigh: yes, sir.

Chair Parks: Ok, now go ahead and tell me about it.

Mr. McVeigh: Well, what exactly happened. If you look well at the site. Can you put the Site plan back up there.



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There we go. When I initially turned were you see how my allotment kind of parallelogram and my house was kind of slanted. And when I initially turned in my drawing it was even. With the setback line there, you know, 15 feet, but then I went out and staked it out and I said, you know what, it would look a lot better if the building was the same angle as my house, but in doing so, when the concrete contractor, you know, tilted it at the same angle as the house instead of tilting, Like the corner, the furthest back corner off of the setback line, he rotated off center and that's how it is now is encroached into the setback area. (14:48)

Chair Parks: And so you did come down to the permit office and get permits and everything proceeded in the proper way. And when you went out, you were doing the drawing and it was squared up and you decided to take it on yourself to make it cock-eyed. To make it look like the angle of the house.

Mr. McVeigh: Right. And then after the slab was poured, because I had this, I had a surveyor come out and stacked it all out, and after the survey, of course I said you know what, that looks awful close. And then I got there and measured and my rough measurement it was it was 2 1/2 that 10s, but probably. About 10Sq ft of the building or the slab was about 2 1/2 foot inside the setback area. (15:24)

Kenneth Turner: Were the corners staked before the slab was poured by anybody but you. Like, did the engineer stake it? Did you? You said you had a licensed GC blueprint and all that. Did they stake it or did you stake it.

Mr. McVeigh: With the building itself or the property line?

Kenneth Turner: The building itself.

Mr. McVeigh: No, I'd staked it, originally to see what it looked like.

Kenneth Turner: OK and you had already managed to make it 15 feet off the property line.

Have you spoken to the concrete guy, the person that you hired to do this to ask him. His idea on anything on correcting it.

Mr. McVeigh: Well, you did the corrected you'd probably have to be completely. Because, I mean, because the slab is pour specification respecting the footers are, you know, 16 or 18 inches or whatever specification is. I mean, there's a lot of concrete there. It had to be demolished to install it, overfill.

Kenneth Turner: You wouldn't have to demolish the whole thing just what is encroaching, and I'm just curious about some things. Could you not cut off? And we would be looking at the east side by three feet and just extend the area towards the road that three feet and report just three feet and then be in compliance with everything. (16:48)

Mr. McVeigh: I'd really don't think that's a possibility, because then my concrete will not all be one piece at that point.

Chair Parks: If you want to say something, you need to come to the podium. State your name and address.

Michael Green: Michael Green.

Chair Parks: You swear to tell truth the whole truth and nothing but the truth.



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Michael Green: Yes, sir. But the truth initially was put on a twist for aesthetic reasons because of the layout didn't look pleasing to the road and surrounding areas. Those turn, and one corner to my one corner went over. Not the entire building. We did do an open footings inspection with the county. They came out and everybody satisfied that everything was fine and.

Chair Parks: And with the footing. It was turned at that angle.

Michael Green: Yes, so we were approved to pour, and it was so small in such a tight area that was crossing the line, the offset. It didn't really stand out to the eye until somebody walked out to check the mail and looked down and said you know what, that might of went over. So, we addressed obviously, we got the plans for the fitting from the metal building contractor which is designed with fittings with steel. Lot different things in place on the perimeter of it. So, cutting it back, letting it down to a six-inch slab. It was not feasible for the structure integrity of the building. To cut it back, it was addressed right? It wasn't. You know 3 feet. Off here, 3 feet over here, but this is not a flat slab. It was designed with exterior load fittings and rebar and a lot of variables behind the actual metal building contractors. Plans that they submitted to us to be built that way. So, the entire fitting would have redone. Well, Because, you know it was going to have an impact on the structural integrity of the building if it is cut. So, these are the strongest when they're monolithic. So, anyway, like I said we're talking about approximately 20-22 square feet out of the 900 square foot slab that's crossing the, it's the one triangle for about 10 feet by 2.7 feet at the deepest point. So, we're not talking about the whole field, we're talking about a small little bit, the bottom left corner as you're looking at it.

Chair Parks: To that, has nobody opposed in your neighborhood, with your sign up.

Michael Green: Access easement that's on the adjacent side is nothing but access easements.

David Moon: No one else is signed up to speak. All the abutting property owners were notified by letter of the hearing tonight and a notice was placed in the Fayetteville Observer on two different dates.

Chair Parks: Now my question to you, David. What responsibility would building inspectors have? I mean, when you come out for a job and you've got it laid out at that point, should they have not, have caught the difference in that situation?

David Moon: That may have been or may not have been on inspection, but at the time of the building permit application. The staff at that point would have identified the encroachment into the set back and indicated to the applicant that a variance application would be necessary. Whether the slab was poured prior to the building permit application, the applicant would have to address that. But the project was halted until such time as the variance was approved so that a building permit could be issued.

Chair Parks: OK, and at what part of the process was it halted? When they came out to improve and to approve your footing. Was anything said then?

Mr. McVeigh: No, I actually have my permit with where the inspector signed off on it.

Chair Parks: On the footings?

Mr. McVeigh: yes, beforehand.

Chair Parks: When did they come out and say you are encroaching?



Mr. McVeigh: They didn't. I brought it down to the planning and zoning. We discovered and came in and tried to do the right thing.

Michael Green: We knew it was a problem, so we tried to do the right thing.

Chair Parks: You all want to discuss it.

Robert Davis: Did you say 900 sqft or 700sqft?

Mr. McVeigh: the footprint is 900 sqft

Robert Davis: If we approve it, would it have to 700?

David Moon: If it exceeds 700sqft, the setbacks are then the primary structure setbacks. If it is 700 sqft or less then the accessory structure setbacks apply. So, for example if this building was 600 sqft then it would only have to be a 5' side yard setback instead of the 15'. 15' is what is required for a primary structure.

Kenneth Turner: What is the structure for?

Mr. McVeigh: Parking and my projects. I think a little bit of my own personal stuff but mostly, I have a classic car, I'm gonna buy like I'm looking for a 357 Chevrolet truck, my zero-turn mower. I mean it's for my stuff. Yeah, this has been going on and waiting on since November.

Chair Parks: So, it's a metal building to put stuff in.

Kenneth Turner: At what point do the inspectors become culpable for knowing that it's encroaching? Our city and county inspectors? When do they know or not know that? (23:37)

Chair Parks: When are they responsible, is what he wants to say?

Kenneth Turner: Is that their responsibility to check site plans and surveys?

David Moon: The initial plan that was submitted, to staff, was hand drawn and it wasn't based on a survey. At the time of the time of the variance request, the staff held up the application until the applicant submitted an actual survey, prepared by a licensed surveyor. So, the building department was basing its review of the code enforcement plan review decision, would have been based this decision that hand drawn diagram. It turned out not to be accurate.

Chair Parks: So, to me, that's why when an inspector goes out to check footings out on the building. At that time, he needs to make sure it meets whatever needs to meet, at that particular time.

David Moon: Well, those particular cases, unless the property line is stacked by a surveyor, it's difficult to conduct and actual measurement.

Chair Parks: did you have a survey done on the property before you did the footings and what not? (25:08)



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Mr. McVeigh: Yes, I did. I had a guy come out and uh according to the co-ordinance on my deed, he found all the deed stakes in the ground, and I had a guy come out and find approximate then stake, put 4 stakes in that area where I was gonna put the building at. As matter fact there are still stakes up there.

Kenneth Turner: I am having a problem with this is a self-made problem. Which is item number 3 and 4. That's the problem that this was created by the property owner.

Chair Parks: That should have been, yeah, that should. What are y'all thinking here?

David Moon: Please speak into the mic because we have to keep records of the meeting.

Robert Hasty: Mr. Chairman, I don't know if they want to put any more evidence on or not before you all deliberate.

Chair Parks: You don't have any more evidence?

Michael Green: Yeah, well, I mean. No, no more evidence, I mean, but. We did have all proper property line state at the time of the inspection, of the open footing inspection. And obviously, if it was called at that time, we would have made adjustments, at that point. As soon as the concrete went in place. I mean, that's where the problem came from.

Chair Parks: Well, we know that absolutely did say when he, when he had it staked out that he decided to turn it on an angle. Yeah, I'm giving him considerations you guys have done everything that you're trying to or suppose to do. I mean, in fact, to the extent of coming back down and saying, hey, you know, we think we messed up here. So, we just need to.

Michael Green: I hope that you agree that the impact is minimal. It's not the entire building, it is a small corner that we're all talking about. 2.7' is the worst-case scenario, approximately 9 to 10 feet down. It's twisted, so just the corner went across not the entire building because.

Chair Parks: Mr. Davis, what's your thoughts on this?

Robert Davis: I understand what you're saying.

Linda Amos: I have a question. Chris, did you say it was within the building envelope by 2.7'?

Christopher Portman: No, it's encroaching the side yard setback by 2.7'.

Kenneth Turner: Well, there's almost 2 issues. One is the encroachment and it kind of goes hand in hand with the difference between the 700 sqft versus the 900 sqft. If it was 700 sqft?

David Moon: the side yare set back, in that situation, would be 5'.

Kenneth Turner: Right, so then that would not impact this gentleman.

David Moon: Correct if it was 700 sqft or less.

Kenneth Turner: is there any thought to make it at 700 sqft just to try and get through this process?



Mr. McVeigh: Not really. Like 700 square feet would not be able to park three vehicles and a zero-turn mower and that's not going to be big enough for that.

Michael Green: Well, that would still need to redesign the footing too. I mean if we could redesign the other half then we could do, I mean.

Kenneth Turner: You know, sometimes. We're put in a position that we hate to be put in, but I'm afraid that because this is property owner induced which is line item three, it just cannot be the fault of the property owner. I'm inclined to not grant the variance in this. We'll make a motion for that reason.

David Moon: is that a motion?

Chair Parks: No, we are still in discussion here. No that's not a motion.

Linda Amos: So, I have a question and it might have been answered, but I just want clarification. So, when they presented the diagram or of what they were trying to do. You always under impression that it was going to be one way placed, before they slanted it. Is that correct? Was it slanted after the fact that was presented to you all down at the board, at planning?

Chair Parks: Yes, that's the way it was when he brought the initial and I'm trying to tell what y'all said to me. Y'all brought it down. You just hand drew it in and it was, let's say, parallel or whatever. And then they decided the owner decided to make it cockeyed to match the house angle. And that's where the problem came.

Marva Lucas-Moore: But you all, staff was not aware of that change? Is that correct? (30:27)

David Moon: We are aware of the encroachment at the time the applicant brought it to the attention to staff.

Marva Lucas-Moore: Once it's brought to the attention of the staff.

David Moon: Correct

Chair Parks: and the applicant actually came back and said, listen, I think I'm encroaching. So, I want to do the right thing. So, that's where we stand. Ken's correct in that aspect that it was induced by the owner, but you know you gotta vote. It's a tough vote here.

Marva Lucas-Moore: I agree. We have rules and we have rules in place for a reason.

Chair Parks: Ok, that's your opinion on this. How about you Robert?

Brenee Orosco [alternate member]: I'm sorry can we ask everyone to speak up so everyone can hear over here please.

Marva Lucas-Moore: I am not considering it because it's not in the building envelope.

Chair Parks: Mr. Davis, do you have any discussion on it?

Robert Davis: I am still trying to figure out why it would be a hardship on him?



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Michael Green: A financial hardship because we can't just adjust the footing.

Robert Davis: What happened?

Michael Green: It would be a financial hardship. So, we cannot just adjust the footing. It's a very expensive slab to be done correctly.

Ken Turner: Unfortunately, that is a hardship created by the owner, again. Cudo's to you guys and I hate that I'm trying to.

Robert Davis: See now that's my question. I don't know if it was partially created by homeowner. The first gentleman said he asked him to turn it. The homeowner asked his contractor to turn it and his contractor simply left this one corner in place and simply turned it this way instead of lifting it up and turning it and moving it over. By rotating it, it created the problem when the guy rotated it instead of moving it over and then he didn't catch it till he came back out and saw it, but as soon as he saw it he said, Ooops.

Michael Green: exactly and that's why you see one corner.

Robert Davis: We can't allow variances to be what we so desire, can we? We can allow it.

Chair Parks: We can give them a variance, but we have to go by the 4 criteria that we have and that's our rules. We can't change that. And the situation is, what Mr. Turner said, that the applicant was the one that changes the sides of the building. Um, yeah you can take that slab and cut that corner off and you can make that slab, and you can go under there and make that foundation or what not. You can cut that corner off. Now I know that your building is not going to look right. you can also. But that slab can be cut off and I know your building is probably going to be 30x30. Now how are you going to make that look worth a hoot, I don't know.

Michael Green: Well also adjusting that exterior footing, I know you can cut it off but as for placing it back and potentially dialing in, Like I said it is designed to be a monolithic slab and if you are gonna put it into a negative moment it's not gonna be structurally sound on that point.

Kenneth Turner: you're going to have to get a structural engineer involved in that case.

Michael Green: yes, I am a structural engineer.

Chair Parks: So you know what it's gonna take to fix this.

Michael Green: And that's what I'm trying to say, is that I don't think that that's a good feasible solution and the solution is to ask for your mercy here.

Kenneth Turner: the other thing is to tear the slab up and redo it and that is the only other thing you got to do. We are up here trying to figure out a way to help.

Michael Green: I understand completely and like I said at one corner we are in the 15 but the other is up to 18.

Kenneth Turner: If we continue to bring up the one corner the one corner, the rest is to move that one corner. I mean 1 corner is as good as 10'.



Michael Green: No, I understand what you are saying but structurally wise that's very difficult even though it 2.5' and in the building, it's easier said than done.

Chair Parks: I agree with you 100%. I am just trying to find a way to help.

Michael Green: We have address all of that.

Chair Parks: But our hands are tied by the 4 different things we've got to go by. Yes, sir.

Kenneth Turner: which is why I said I hated to do it but I'm gonna make a motion now to deny the variance because the situation was created by the property owner himself and or principle of the property owner.

David Moon: The chair would need to close the public hearing before you could entertain a motion.

Chair Parks: Do we have anymore to add to the public hearing? Public hearing is closed David. Alright, do I have a motion?

Mr. Kenneth Turner made a motion to deny the variance because the hardship is created by the property owner or a principle of the property owner. Mr. Robert Davis seconds the motion. The motion was passed by a vote of four in favor and one opposed.

	Vote in Favor
Parks	Ney
Amos	Yes
Davis	Yes
Lucas-Moore	Yes
Turner	Yes

David Moon: Chair there are no other items on the agenda this evening. So that concludes our meeting unless you have other items to bring up.

Chair Parks: I do not.

Robert Davis: motion to adjourn.

Kenneth Turner: second

Chair Parks: We are adjourned.

Meeting adjourned at 6:39pm.