



Board of Adjustment

MINUTES
19 December 2024
6:00 PM

Members Present

Donald Brooks
Gary Silverman
Brenne Orozco
Veronica Mitchell-Rozier

Absent Members

Linda Amos, Chair
Marva Lucas-Moore-Vice Chair
Vickie Mullins
Kenneth Turner
Jovan Bowser

Staff/Others Present

David Moon
Timothy Doersam
Amanda Ozanich
Priscilla Whitney
Robert Hasty (Asst County Attorney)

Deputy Director Moon called the meeting to order at 6:03 p.m. in Public Hearing Room #3 of the Historic Courthouse.

1. Motion for Chair selection by Orozco and Seconded by Silverman. All were in favor.
2. Deputy Director Moon announced himself and new clerk of the Board.
3. Oath of office administered for new board members; Donald Brooks & Veronica Mitchell-Rozier.
4. Orozco motion to appoint Brooks as Chair of the meeting. Silverman seconded the motion.
5. INVOCATION

Deputy Director Moon read the invocation.

PLEDGE OF ALLEGIANCE

Recited by all.

6. ROLL CALL

Deputy Director Moon called the roll and made note of the absence of Kenneth Turner, Linda Amos, Marva Lucas-Moore, Vickie Mullins, Jovan Bowser. Mr. Moon stated we do have a quorum.

SWEAR IN OF STAFF

Chair Brooks swore in staff David Moon and Timothy Doersam.

7. ADJUSTMENTS TO THE AGENDA

There were none.



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8. APPROVAL OF THE AUGUST 15TH & SEPTEMBER 19, 2024, MINUTES

Mr. Donald Brooks made a motion to approve the minutes from August 15th & September 19, 2024, meeting as written, seconded by Orozco. Approved by All.

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

There were none.

10. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

11. POLICY STATEMENT REGARDING APPEAL PROCESS:

Deputy Director Moon read the policy statement.

12. PUBLIC HEARING(S)

Chair Brooks read:

- A. BOA-2024-0018:** Variance from Section 1104 District Dimensional Provisions, County Zoning Ordinance, to request reduction in M(P) Planned Industrial District rear and side yard setbacks for a proposed subdivision on a lot containing 4.15 +/- acres, located at 2405 Wilmington Highway; submitted by Mike Adams (agent) on behalf of Waste Container Repair Services Inc (Owner)

David Moon: Deputy Director Moon then explained what a variance is and the Boards role and responsibilities. Deputy Director Moon then explained the required vote for approval/denial of the variance with only four members in attendance. Mr. Moon then explained the variance must be addressed under the four criteria and the burden of proof is on the property owner.

Timothy Doersam: Planner Doersam presented the staff report and explained the property owner is requesting a variance from section 1104 of the Cumberland County Zoning ordinance. Planner Doersam explained the exhibits incorporated throughout the staff report and the current setbacks of the property. Planner Doersam also presented a photo of the proposed changes to the property line. Planner Doersam reviewed staff concerns if the variance was approved.

David Moon: Deputy Director Moon addressed Chair Brooks requesting an addition to the staff presentation, the staff report for variance case BOA-2024-0018 is submitted as exhibit A, for this evening. Then the slide show presentation as a whole is submitted as exhibit B, and the slide depicting the proposed setbacks and buildings is exhibit C demonstrating the limitation of the encroachments into the rear and side yard setback. These exhibits are important because they may be addressed in the motion. The applicant recognized this within the staff report under exhibit I is the applicants justification to the four variance criteria.

Chair Brooks: Asked if there were any questions from the staff.



Gary Silverman: What part of the County is the project located?

Timothy Doersam: The central southern portion, within the airport overlay district.

Chair Brooks: Asked to review Exhibit C. Asked if the purpose of the applicants request for a variance.

David Moon: Explained the property owner would be able to explain his reason and intent for requesting the variance.

Chair Brooks: Is this for one building on the property or all the buildings?

David Moon: This is for Lot 1 and 2. If the variance request is approved by the Board the applicant will submit a plat to register the creation of Lot 1 and 2. If the Board should deny the variance request the property owner will be unable to split the property or submit a plat to create a lot 1 and lot 2. This will remain as all one parcel.

Gary Silverman: Clarified that due to the date of construction all three buildings are currently not in conformance with setback standards.

David Moon: Correct. The buildings do not currently meet the setback requirements. The setback standards weren't established until after the building was constructed based on the current zoning code.

Chair Brooks: Opened public hearing.

David Moon: We have one speaker listed this evening, the property owner/applicant Jesus Benitez.

Chair Brooks: Swore in the speaker/ property owner.

Jesus Benitez: Property Owner provided his name and address. Property Owner addressed the board and then explained he would need to demolish at least one building on the property to comply with the current setback requirements.

Chair Brooks: Asked if anyone had any additional questions

Chair Brooks: Asked if the variance would only apply if the land were to be sold.

David Moon: Reviewed the current setback.

Brenee Orozco: Asked the applicant how long ago he purchased the property and when did he become aware of the setback requirements.

Jesus Benitez: Purchased the property four years ago. He found out about the setback requirements when he looked into the possibility of dividing the property or possibly sell a portion of the property.



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David Moon: The property owner contacted a surveyor to submit a plat to split the property and code enforcement division and current planning office identified the lot split could not occur to create two lots unless a variance was approved by the Board of Adjustment.

Gary Silverman: Asked the applicant if Building C was the portion of the property that would be sold.

Jesus Benitez: Advised he wanted to sell Building A & B together as one lot and keep Building C for his business.

Gary Silverman: Asked the applicant more about his business of fabrication repair.

Jesus Benitez: Explained more about his business of fabrication repair and waste management.

Chair Brooks: Asked when the current setback requirements first went into effect.

David Moon: Advised he did not have that information and would need to look it up.

Chair Brooks: Asked an approval would create precedence if the Board were to approve the applicants request for a variance?

David Moon: Explained how each property and variance is unique and how each property would be reviewed on an individual basis. If the variance in this case was approved, it would only apply to this property.

Robert Hasty: Advised that every situation is reviewed on a case-by-case basis to meet specific factors of each individual case.

Chair Brooks: Asked if anyone had any additional questions.

David Moon: Advised the Chairman there were no additional speakers and the chair could close the public hearing.

Brenee Orozco: Asked the applicant if neighboring property owners were notified about the case.

Jesus Benitez: Advised only one neighbor asked him about the case.

Brenee Orozco: Asked the applicant if he was requesting a variance to sell the property.

David Moon: Advised the Board to review the affidavit attached to the packet and legal notice placed in the Fayetteville Observer advising citizens of the meeting.

Gary Silverman: Asked if the buildings were purchased as is and if any structures were changed.



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Jesus Benitez: Explained he purchased the property as is and did not make any structural changes at the time of purchase. Applicant advised the appearance of the property would remain the same, the use and purpose would remain the same.

David Moon: Advised the board Planning staff coordinates with the fire marshal's office to address safety concerns to the property.

Gary Silverman: Asked if approval or denial would have an effect on the structure of the property as it is currently configured.

Brenee Orozco: Asked to see a better copy of the notice that was sent out about the meeting.

David Moon: Provided the Board with a digital copy of the public notice hearing from the Fayetteville Observer advising citizens of the meeting.

Chair Brooks: Asked that each member review the correct digital copy of the public hearing notice.

David Moon: Advised the staff report contained an incorrect copy of the notice and directed the board to review the digital copy of the notice. Explained the legal notice is a pre-requisite for approval/denial of the proposed variance.

Chair Brooks: Closed public hearing and asked members of the board if they had any comments.

David Moon: Asked the Board to make a motion. Suggested the board make a motion to approve the requested variance side and rear yard setback encroachments based on exhibit A of the staff report and that such setback are limited to that which is displayed within exhibit C and the Boards action is base on exhibit B, the applicants response to the four criteria.

Brenee Orozco: Motion to approve variance of case BOA-2024-0018 that the property owner request for a variance from section 1104 district dimensional provisions Cumberland county zoning ordinance, to allow 3 existing buildings to encroach the minimum side, rear, or side yard setbacks lines currently assigned to zoning district of M(P) planned industrial district a minimum side yard setback standards applicable to the owners parcel of 50 feet based upon exhibit A slide show that we the Board were able to observe as evidence that being exhibit B, exhibit C, and exhibit I; specifically noting that the property was already illegally non-confirming and as much as it was in existence and from 1957 Building A in 1957, Building C in 1965, and Building B in 1969, and that property being unique and having its own characteristics does not necessarily mean that anyone else moving for a variance would automatically obtain a variance because of the variance in this case that is my motion, and it meets the criteria set out in section 1605 as written.

Gary Silverman: Seconded the motion. All were in Favor.



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Members Vote

Donald Brooks

Gary Silverman

Brenee Orozco

Veronica Mitchell-Rozier

In Favor

Yes

Yes

Yes

Yes

13. DISCUSSION/UPDATE(S):

- a. Proposed 2025 Board of Adjustment Meeting Schedule. Schedule approved.
- b. Gary Silverman motion to approve the schedule and Brenee Orozco 2nd. All were in favor.

14. ADJOURNMENT

Chair Brooks Adjourned at 7:04pm.