

**NEW BERN BOARD OF ADJUSTMENT  
MINUTES**

**June 25, 2012**

The New Bern Board of Adjustment held its regularly scheduled meeting on Monday, June 25, 2012 at 6:30 PM in the City Hall Courtroom, 2nd floor, 300 Pollock Street. The meeting was preceded by a 5:30 PM workshop on board functions, policies and procedures.

**Members Present:** Mr. Edward Risty, Chairman  
Mr. John Paul Andrews  
Mr. Starlin Beatty  
Mr. Barry Evans  
Mr. Thomas Hardin  
Mr. David Herndon  
Mr. Jeffrey Midgette  
Mr. Phil Urick  
Mrs. Beth Walker

**Members Excused:** Mrs. Sarah Afflerbach  
Mr. Willie Newkirk, Jr.  
Mr. John Reichenbach

**Members Absent:** Mrs. Renee Murphy

**Staff Present:** Mr. Bernard George, Planning Division Manager

Chairman Risty called the meeting to order. A prayer for guidance was given by Mr. George.

Roll call was taken and a quorum declared.

**Minutes:** Reading of the minutes from the regular meeting of May 21, 2011 was waived by unanimous consent. Minutes were approved with motion by Mr. Barry Evans, second by Mr. Mr. Starlin Beatty, and unanimous vote of the Board.

**Witnesses were sworn.**

**New Business:**

- A. **Consideration of a sign variance at 236-D Middle Street from Section 15-324 of the Land Use Ordinance for: (1) an additional sidewalk sign, and (2) located more than five feet from the building where the business is located.**

Mr. George noted that this is a situation unique to this property. He further stated that 4/5ths or 8

of 10 regular board members have to vote positively on the three findings of fact the board is required to make for approval. The applicant is a business, Coopers Snowballs, located in a multi-tenant building at 236-D Middle Street. However, the entrance to the business is at the building's rear where it fronts a parking lot. Section 15-324 states in part, "***Portable sidewalk signs. Said signs cannot exceed a total sign surface area of six square feet, may be displayed only during normal operating hours of the business being advertised, and must be located within five feet of such commercial building.***" Presently as allowed by the sign ordinance, the Coopers have a portable sidewalk sign on Middle Street and are seeking a variance to allow an additional portable sidewalk sign on Pollock Street near James Reed Alley. Adjacent property owners within 100 feet were notified and the property was posted as required by Section 15-102 of the Land Use Ordinance.

**Applicant Comments:** Businesses downtown are allowed one sidewalk sign and need a variance to get a second sign. The maximum size of a sidewalk sign is six square feet and must be located within five feet of the building. There are no other tenants on Middle Street that have a sign on Pollock Street; therefore, this would be an exception. The applicant stated that people tell her they have trouble finding her business due to its location. The applicant placed a second sign on Pollock Street and was informed that this sign had to be removed.

**Public Comments:** There being none, the public hearing was closed.

**Motion** by Mr. Beatty that the strict adherence to the ordinance would create practical difficulties and unnecessary hardship to the applicant, due to the unique location of the business entrance. Second by Mr. Evans. Motion carried unanimously.

**Motion** by Mr. Urick that the variance would be consistent with the intent and purpose of the ordinance by providing essential additional signage on Pollock Street. Second by Mr. Andrews. Motion carried unanimously.

**Motion** by Mr. Beatty that the variance would be consistent with the overall public welfare and substantial justice will be done in granting the variance by allowing minimal additional signage. Second by Mr. Hardin. Motion carried unanimously.

**Motion** by Mr. Urick to grant the variance. Second by Mr. Evans. Motion carried unanimously, variance granted.

**B. Consideration of a variance from Section 15-418(b) of the land Use Ordinance for relief of 2'6" from the minimum 5' side yard setback requirement at 222 Change Street in the Downtown Historic District.**

Mr. George introduced the application and stated the property is located at 222 Change Street and is further identified in Craven County Tax Book 8, Block 003, as Lot 188. The applicant is proposing a major renovation of the existing structure which will include relocating the existing kitchen approximately 20 feet to the rear and constructing a new 2-story addition and rear porch.

The existing house has several side setback encroachment areas ranging from approximately one to four feet.

Following a series of project plan reviews, the Historic Preservation Commission granted the applicant a Certificate of Appropriateness on June 20, 2012 for the proposed renovations. Included in your previous packet for the May 21 Board of Adjustment meeting is a letter from John Wood, State Historic Preservation Office, who provided guidance as to design options that would not adversely affect the historic character and integrity of the property. According to the architect's plans, the proposed renovated building footprint will encroach approximately one foot less into the side yard setback than the present building footprint. There is a nine foot easement in the driveway. Staff has reviewed this application with the HPC. The applicant submitted a site plan that shows the encroachment, layout, full plan and building elevations. There were conditions to the COA and those conditions have now been met and final approved granted by the HPC. Those conditions have no bearing on BOA's actions – they were design conditions regarding how the kitchen would be moved back. The encroachment they were asking for was about 1.8 feet which was adjusted and approved at the last HPC meeting. Configuration of the house is not different from what was considered at the last meeting. The HPC is concerned with the design elements and did not review the encroachment issue as they felt it was a BOA issue. The HPC approved the height, dimensions and proportions of the building. Minimum setback has increased from 1.8' to 2.5', which would increase the distance away from the lot line. They reviewed the changes requested noting that the change of .7 brings the house further away from the encroachment and the neighbors. The minimum side yard setback in the district is five feet. The front of this lot is 28' and the rear is 25' creating an angle that has caused some of this problem. According to Mr. George the revised setbacks will actually relieve some of the encroachment depicted on the prior application.

**Applicant Comments:** Owner/General Contractor states they have gone to great lengths to provide an additional buffer to the western property line. The relocated kitchen will be 8.4" further away than if it was moved straight back. The applicant is aware that the western neighbor has some historical rose bushes and this additional buffer should be sufficient. Documentation presented is much clearer than the information previously provided. HPC has approved and the historic character of the building will be preserved. Both sides of the house have a shared driveway with a 9' ingress easement which was added several years after the house was built. They are reducing the ingress easement by shifting the kitchen back so that the property line encroachment is less.

**Public Comments:** William White, 226 Change Street has two points of opposition – Encroachment of D/W easement and relaxation of the 5' setback will affect drainage. His concern is that the renovated structure will effect drainage and send water onto his property. This issue was brought up at the HPC review, and he believes that a few of the other neighbors within 100 feet had some objections. This property is higher than his so the drainage will flow down.

The applicant's contractor stated that they did fill in the property but they are still lower than the neighbors. Plans are in place to put a brick fence around the backyard which should provide

relief from any water going onto Mr. White's property. They need to shoot elevations to see if they can get gravity flow between the property on the east side through 222 Change Street and to the street. If they cannot do this they will put in a dry well with a sump pump and pump the water to the street. The problem with this is that the street cannot handle excess water during a storm and there is a definite problem with storm drains on Change Street. There are plans to address this, but it is major work. The eastern side already has a brick wall and they want to continue to all the way around (approved by HPC). The major problem now is that currently the street can't handle the water. There is an additional problem with Middle Street, which also floods. Since BOA is here to discuss encroachment and a variance issue, the owner will go on the record that she will agree to work with Mr. White. Gutters would still put water in the backyard. The proposed renovation will actually reduce the present encroachment easement – the overall area, the side yard and the set back will be essentially the same.

Mr. White stated he is at the meeting to prevent any damage to his property. Mr. Risty responded this is a variance for setbacks and it is increasing the distance between the two buildings. Mr. White stated he supports the improvement of the property but is concerned about the easement and drainage. The owner is at 40% lot coverage with his projected renovations total existing and proposed. This is 20% less than the 60% maximum lot coverage for the historic district.

According to the contractor, the encroachment into the setback is not illegal; it is an ordinance and he wants a variance to the ordinance. The easement was put into place after the house was originally built – the house was there before the easement and now they are increasing the easement with this addition. The unique configuration of the house doesn't set a precedent because the granting of a variance should be based upon a unique condition on a lot not shared by other sites. This would not be a precedent that could be cited in another application- this is not the first time a building has encroached on an easement.

#### **Public hearing was closed.**

The Chair entertained a motion that strict adherence to the ordinance would create practical difficulties and unnecessary hardships due to the unique configuration of the lot and house. Motion by Mr. Beatty, seconded by Mr. Evans. **Motion carried unanimously.**

The Chair entertained a motion that the variance would be consistent with the intent and purpose of the ordinance by allowing the minimum variance to permit renovation of the house. Motion by Mr. Andrews and seconded by Evans. **Motion carried unanimously.**

The Chair entertained a motion that the variance would be consistent with the overall public welfare and substantial justice will be done in granting the variance based on the fact that the Land Use Ordinance allows reduced setback for substandard lots. Motion by Mr. Beatty, Seconded by Mr. Hardin. **Motion carried unanimously.**

**An additional motion to grant the variance was made by Mr. Andrews, seconded by Mr. Beatty, and carried unanimously.**

Following further discussion, meeting adjourned

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Edward Risty, Chairman

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Bernard George, AICP, Secretary