

Town of North Topsail Beach

Mayor Daniel Tuman
Mayor Pro Tem Mike Yawn
Aldermen:
Richard Farley
Deborah Lanci
Dick Macartney
Robert Swantek



Steven H. Foster
Town Manager

Carin Z. Faulkner, MPA
Town Clerk

Board of Adjustment
April 15, 2010
6:30 p.m.

Page

-
- I. Call to Order, Announcements and Petitions
 - II. Swear in new member - Marianna Harness
 - III. Adoption of Agenda
 - IV. Approval of Minutes (Note: available for review at Town Hall)..... 3
 - V. Public Comment
 - VI. Review of DRAFT and Approval of Variance Order V-06-02..... 6
 - VII. Review of DRAFT and Approval of Variance Order V-10-02..... 8
 - VIII. Adjournment

Notice to citizens who wish to speak: As a courtesy to others, a citizen speaking on an agenda item or making a petition is normally limited to three minutes. Persons who are organizing a group presentation and who wish to speak beyond the three minute limit are requested to make prior arrangements through the Zoning Administrator's Office by calling 328-1349. If you wish to address the Board this evening, please go to the front right corner of the conference room and sign up with the Recording Secretary. The Board may also change the order in which agenda items are presented.

Attorneys: If you are representing a person with an interest in a quasi-judicial proceeding on this agenda and believe you may wish to cross examine a witness, please identify yourself as such to the Recording Secretary. For the sake of maintaining an accurate public record all speakers must be prepared to speak into an amplified microphone and must provide their name to the Secretary.

**NORTH TOPSAIL BEACH
BOARD OF ADJUSTMENT**
(As approved by the Board of Aldermen on April 1, 2010)

MEMBER	POSITION	TERM EXP
Gary Miller 4452 Island Drive North Topsail Beach, NC 28460 (h) 328-4737 beachjeanne@webtv.net	Chairman	May 1, 2011
Paula K. Rowland 127 S. Permuda Wynd NTB NC 28460 (h) 328-7127 GARPKR@charter.net	Vice Chair	May 1, 2013
Debra Swantek 3772 Island Dr NTB NC 28460 (h) 328-0393 topsailbeachdeb@aol.com	Regular	May 1, 2012
Gary Rowland 127 S. Permuda Wynd NTB NC 28460 (910) 328-7127 GARPKR@charter.net	Regular	May 1, 2013
Jim Milligan 3720 Island Dr/PO Box 2476 Surf City, NC 28445 (h) 328-2617 (f) 328-4128 Jmilligan2617@charter.net	Regular	May 1, 2012
Richard Peters 601 New River Inlet Rd. North Topsail Beach, NC 28460 (910) 328-2488 email: Rpeters2000@msn.com	Alternate	
Marianna Harness 3539 Island Dr NTB NC 28460 (910) 381-5794 email: stumar_99@yahoo.com	Alternate	
Vacant	Alternate	
Vacant	Alternate	

**TOWN OF NORTH TOPSAIL BEACH
BOARD OF ADJUSTMENT
MINUTES
JANUARY 21, 2010
6:30 P.M.**

PRESENT: Paula Rowland- Vice Chairman, Debra Swantek, Jim Milligan, Marcia Hamilton, Gary Rowland- Alternate, Richard Peters- Alternate, Deborah Hill- Planning & Zoning Administrator, Terrie Woodle- Secretary

NOT PRESENT: Gary Miller- Chairman

I. CALL TO ORDER: Mrs. Rowland called the Board of Adjustment meeting to order at 6:30 p.m. in the North Topsail Beach meeting room.

A. SWEAR IN NEW MEMBER: RICHARD PETERS- Mrs. Rowland swore in Mr. Richard Peters.

II. ADOPTION OF AGENDA: Mr. Rowland made a motion to approve the agenda.
Mrs.

Hamilton seconded the motion, motion passed unanimously.

III. APPROVAL OF MINUTES: Mrs. Hamilton made a motion to approve the minutes.
Mr. Rowland seconded the motion, motion passed unanimously.

IV. PUBLIC COMMENT: No one from the Public came forward to speak.

V. REQUEST FOR RECUSAL BY HUNTER BROADWELL, ATTORNEY FOR THOMAS E. & TERRY L. LEONARD: Mrs. Swantek was recused by majority vote from the Board of Adjustment.

VI. PUBLIC HEARING: APPEAL # A-09-01:

(Included in these minutes under separate cover is the Transcript of Public Hearing in the Matter of Appeal #A-09-01 of the Notice of Violation dated August 14, 2009 by Hunter Broadwell, Attorney for Thomas E. and Terry L. Leonard, 218 Coastal Drive, North Topsail Beach, North Carolina Reported by Peter Brown Ruffin, III. Notary Public and Court Reporter Aurelia Ruffin & Associates, Inc).

Mr. Rowland made a motion to open the Public Hearing, Mr. Peters seconded the motion, motion passed unanimously. Mrs. Rowland swore in Ms. Hill, Alderman Swantek, Mrs. Leonard & Mr. Leonard.

Mrs. Hamilton made a motion to rehear Variance #A-09-01. Mr. Peters seconded the motion, motion passed unanimously.

Mr. Peters made a motion to recess the Board of Adjustment meeting. Mr. Rowland seconded the motion, motion passed unanimously.

**TOWN OF NORTH TOPSAIL BEACH
BOARD OF ADJUSTMENT
MINUTES
FEBRUARY 18, 2010
(CONTINUED FROM JANUARY 21, 2010)**

PRESENT: Gary Miller- Chairman, Paula Rowland – Vice Chairman, Jim Milligan, Marcia Hamilton, Debra Swantek, Gary Rowland-Alternate, Richard Peters- Alternate, Deborah Hill-Planning Director, Terrie Woodle- Recording Secretary

I. CALL TO ORDER: Mr. Miller called the Board of Adjustment meeting to order at 1:00 p.m. in the North Topsail Beach meeting room.

II. ADOPTION OF AGENDA: Mrs. Hamilton made a motion to adopt the Agenda. Mr. Milligan seconded the motion, motion passed unanimously.

III. APPROVAL OF CORRECTED MINUTES JULY 16, 2009: Mrs. Rowland made a motion to approve the minutes as amended. Mrs. Hamilton seconded the motion, motion passed unanimously.

IV. PUBLIC COMMENT: Mr. Rowland made a motion to open the Public Comment. Mr. Milligan seconded the motion, motion passed unanimously. No one from the Public came forward to speak. Mr. Rowland made a motion to close the Public Comment. Mr. Peters seconded the motion, motion passed unanimously.

V. PUBLIC HEARING CASE # A-09-01/V-06-02 CONTINUED:
(Included in these minutes under separate cover is the Transcript of Public Hearing in the Matter of Appeal #A-09-01 of the Notice of Violation dated August 14, 2009 by Hunter Broadwell, Attorney for Thomas E. and Terry L. Leonard, 218 Coastal Drive, North Topsail Beach, North Carolina p. 3-144. Reported by Peter Brown Ruffin, III. Notary Public and Court Reporter Aurelia Ruffin & Associates, Inc).

Mrs. Rowland swore in Mr. & Mrs. Leonard, Attorney Broadwell and Ms. Hill. Mr. Rowland made a motion to open the Public Hearing. Mr. Peters seconded the motion, motion passed unanimously.

Mr. Rowland made a motion to close the Public Hearing. Mr. Milligan seconded the motion, motion passed unanimously.

Mrs. Hamilton made a motion to approve the Variance CASE # A- 09-01/V-06-02 with the additional conditions that the six foot landing be removed and the tread run be reduced to allow no more than two additional feet of encroachment on top of the four feet that the Town allows for a total of no more than six feet of encroachment. Mr. Peters seconded the motion, motion passed 4-1 with Mrs. Rowland voting against.

VI. PUBLIC HEARING CASE # A-10-01/V-10-02:

(Included in these minutes under separate cover is the Transcript of Public Hearing in the Matter of Case #A-10-01/V-10-02, an appeal of the Notice of Violation dated January 28, 2010 by Kenneth G. Ording, Attorney for Jihad Ghabra and wife, Ghada Bistanji 4338 Island Dr. North Topsail Beach, North Carolina, and an Application for a Variance request from North Topsail Beach Town Code Section 7-143, Height Limit Exceptions p. 144-235. Reported by Peter Brown Ruffin, III. Notary Public and Court Reporter Aurelia Ruffin & Associates, Inc).

Mrs. Hamilton made a motion to open the Public Hearing. Mrs. Swantek seconded the motion, motion passed unanimously. Mr. Miller swore in Ms. Hill. Mr. Milligan made a motion to close the Public Hearing. Mrs. Hamilton seconded the motion, motion passed unanimously.

Mrs. Rowland made a motion to grant the Variance CASE # A-10-01/V-10-02 with a maximum of one foot exception as constructed, neither the Owner nor his Agents will take any steps to increase the height any further. Mrs. Hamilton seconded the motion, motion passed unanimously.

VII. ADJOURNMENT: Mr. Milligan made a motion to adjourn. Mrs. Swantek seconded the motion, motion passed unanimously.

The Board of Adjustment adjourned at 5:47 p.m. February 18, 2010.

Gary Miller
Chairman

Date: _____

Terrie Woodle
Recording Secretary

Date: _____

VI. **DRAFT Variance Order V-06-02**

**Town of North Topsail Beach
Variance Order #V-06-02**

The Board of Adjustment for the Town of North Topsail Beach, having held a public hearing on Thursday, February 18, 2010, to reconsider application number V-06-02, submitted by Thomas E. & Terry L. Leonard, a request for a variance from Town Code Sec. 7-142, so that the existing front stairway of a single family residence located at 218 Coastal Drive (Onslow County Tax Map # 778C-108) may continue to intrude approximately 16.3 feet into the required 20-foot front setback on property, a manner which is not permissible under the literal terms of the North Topsail Beach Town Code, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

- 1) It is the Board’s CONCLUSION that there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography that are not applicable to other lands or structures in the same district. This conclusion is based on the following FINDINGS OF FACT:

Placement of the proposed dwelling was influenced by several mature live oaks on the property. The concrete driveway required that the owners install an engineered storm water system, which was constructed directly under the stairs. The property is in an AE Special Hazard Flood Area with a base flood elevation of 13 feet. A 2-foot freeboard is required. The top of the bottom floor was constructed at 19.3 feet. Top of the concrete slab is at 5.3 feet. The surveyor did not indicate the bottom of the lowest horizontal structural members. However, it appears that the bottom of the lowest horizontal member exceeds the minimum required by 2.3 feet. The higher floor required a longer run for the stairs. These factors contributed to the special circumstances of the inclusion of the front stairway into the front setback, exceeding the 4 feet allowed by Sec. 7-142.

- 2) It is the Board’ CONCLUSION that granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the zoning district in which the property is located. This conclusion is based on the following FINDINGS OF FACT:

The variance with conditions, if granted, will be in harmony with the general purpose and intent of the ordinance and the public safety and welfare is secured. The variance with conditions, if granted, does substantial justice as the benefits to the applicant will not outweigh the benefit to the public.

- 3) It is the Board’s CONCLUSION that a literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the zoning district in which the property is located. This conclusion is based on the following FINDINGS OF FACT:

The owners have been unable to obtain a Certificate of Occupancy as the stairs intrude approximately 16.3 feet into the required 20-foot front setback on property, a manner which is not permissible under the literal terms of the North Topsail Beach Town Code.

- 4) It is the Board’s CONCLUSION that the requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare. This conclusion is based on the following FINDINGS OF FACT:

The applicant’s hardship can be overcome with careful attention to building plans and by complying with the terms of the Zoning Ordinance, NC Building Code and any condition placed on the variance, if granted.

- 5) It is the Board’s CONCLUSION that the special circumstances are not the result of the actions of the applicant. This conclusion is based on the following FINDINGS OF FACT:

The special circumstances are due to the intrusion of the front stairway, which was constructed by a contractor hired by the owners. An owner is responsible for their property and for work done by those hired by the owner.

- 6) It is the Board’s CONCLUSION that the variance requested is the minimum variance that will make possible the legal use of the land, building or structure. This conclusion is based on the following FINDINGS OF FACT:

Removing the six (6) foot landing and reducing the total run by meeting the minimum requirements of the NC Building Code is the minimum variance that will make possible the legal use of the structure.

THEREFORE, on the basis of all of the foregoing, IT IS ORDERED:

- a) that a VARIANCE from Sec. 7-142 be GRANTED for the front stairs of 218 Coastal Drive; and
- b) that the six foot landing be removed; and
- c) that the total run be reduced to allow no more than two additional feet of encroachment with the four feet that the Town allows for a total of no more than six (6) feet of encroachment into the front setback.

NOTE TO APPLICANT: *Prior to commencement of work, applicant is responsible for obtaining all required permits by submitting design plans with required building, zoning and flood applications for compliance review with 2002 NC Building Code in effect of initial permit dated July 20, 2004, for placement of a modular home at 218 Coastal Drive.*

If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Onslow County within thirty (30) days after this notice is served on you, or the date the decision is filed in the office of the Planning Director, whichever is later. See Section 7-105 (Appeals from the board of adjustment).

Ordered
this 15th day of April, 2010:

Approved as to Form:

Certified:

Gary Miller, Chairman
Board of Adjustment

Brian Edes, Town Attorney

Terrie Woodle, Secretary
Board of Adjustment

VII. **DRAFT** Variance Order V-10-02

**Town of North Topsail Beach
Variance Order #V-10-02**

The Board of Adjustment for the Town of North Topsail Beach, having held a public hearing on Thursday, February 18, 2010, to reconsider application number V-10-01, submitted by Kenneth G. Ording, attorney for Jihad Ghabra, a variance from NTB Town Code Sec. 7-143. Height limit exceptions, so that a single family residence structure - currently under construction and located at 4338 Island Drive - may exceed the height limit of 45 feet, a manner which is not permissible under the literal terms of the North Topsail Beach Town Code, and having heard all of the evidence and arguments presented at the hearing, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS:

- 1) It is the Board's CONCLUSION that there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography that are not applicable to other lands or structures in the same district. This conclusion is based on the following FINDINGS OF FACT:

The special circumstances are due to the apparent misunderstanding of the correct elevation from mean sea level (MSL) of the benchmark indicated by a PK nail on a front piling by the original contractor, Benjamin Barnes and not extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography that are not applicable to other lands or structures in the same district. Although there is no hardship upon the land, the Town's definition of "variance" provides for the Board's consideration of a variance from height restrictions.

- 2) It is the Board' CONCLUSION that granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the zoning district in which the property is located. This conclusion is based on the following FINDINGS OF FACT:

The variance with conditions, if granted, will be in harmony with the general purpose and intent of the ordinance and the public safety and welfare is secured. The variance with conditions, if granted, does substantial justice as the benefits to the applicant will not outweigh the benefit to the public.

- 3) It is the Board's CONCLUSION that a literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the zoning district in which the property is located. This conclusion is based on the following FINDINGS OF FACT:

The owners will be unable to obtain a Certificate of Occupancy as the building height exceeds 45 feet, a manner which is not permissible under the literal terms of the North Topsail Beach Town Code.

- 4) It is the Board's CONCLUSION that the requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare. This conclusion is based on the following FINDINGS OF FACT:

The requested variance is not in harmony with the purpose and intent of this ordinance, as variances are to be granted due to a hardship on the land, not to correct errors of construction in violation of this ordinance; however the inclusion is not anticipated to cause injury to the neighborhood or to the general welfare.

- 5) It is the Board’s CONCLUSION that the special circumstances are the result of the actions of the applicant. This conclusion is based on the following FINDINGS OF FACT:

The special circumstances are due to the apparent misunderstanding of the correct elevation from mean sea level (MSL) of the benchmark indicated by a PK nail on a front piling by the original contractor, Benjamin Barnes. The permit holder is responsible for work performed. The contractor is an agent of the owner and the owner is ultimately responsible for their property and for work done by those hired by the owner.

- 6) It is the Board’s CONCLUSION that the variance requested is not the minimum variance that will make possible the legal use of the land, building or structure. This conclusion is based on the following FINDINGS OF FACT:

The variance requested is the minimum variance that will make possible the legal use of the land, building or structure. Neither reconstruction of the roof, nor shortening the pilings are considered reasonable remedies to the special circumstances.

THEREFORE, on the basis of all of the foregoing, **IT IS ORDERED**:

- a) that a VARIANCE from Sec. 7-143 be GRANTED for 4338 Island Drive for a maximum of one (1) additional foot, as constructed; and
- b) that neither the owner nor his agents will take any steps to increase the height any further.

NOTE TO APPLICANT: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Onslow County within thirty (30) days after this notice is served on you, or the date the decision is filed in the office of the Planning Director, whichever is later. See Section 7-105 (Appeals from the board of adjustment).

Ordered

this 15th day of April, 2010:

Approved as to Form:

Certified:

Gary Miller, Chairman
Board of Adjustment

Brian Edes, Town Attorney

Terrie Woodle, Secretary
Board of Adjustment