

In the matter of Application for)
A Special-Use Permit by)
Darius A. Ballou III)

ORDER

**THE TOWN OF MOREHEAD CITY, NORTH CAROLINA
ORDER FOR DENIAL OF A SPECIAL-USE PERMIT**

The Board of Adjustment for the Town of Morehead City, NC, having held a public hearing on February 24, 2022, to consider application number BOA22-0001, submitted by Darius A. Ballou III, a request for 303 Georgia Avenue for a special-use permit to allow for an alteration and expansion of a nonconforming use and structure in the R20 (Single-Family Residential) District, and having heard all of the evidence and arguments presented at the hearing makes the following **FINDINGS OF FACT**:

1. A complete application was submitted indicating the correct section of the ordinance and that section does allow for the expansion, extension, or alteration of a nonconforming use with a special-use permit; and

2. The public hearing was properly advertised, notices were mailed to property owners adjacent to the site, and the property was posted per the statutory requirements; and

3. The proposed development does not affect adversely the general plans for the physical development of the town as embodied in these regulations or in any plan or portion thereof adopted by the Planning Board and/or the Council. The structures and use are existing and built before zoning. An expansion, extension, or alteration of a nonconforming use is permitted with a special-use permit; and

4. The proposed use will not be contrary to the purposes stated in the regulations. The current structures and use are nonconforming. The nonconformity will continue; and

5. The proposed use is required to be placed on a lot of sufficient size to satisfy space requirements of the use, standards set forth for the use be met, minimum area, setback and other locational requirements of the district and parking requirements be met. In nonconforming circumstances as described in Subsection 8-1, these items do not have to be met. The proposed docks will exceed the required five-foot (5') side setback from each property line.

Based on the foregoing Findings of Fact, the Board of Adjustment makes the following **CONCLUSIONS OF LAW**. The following represent items D, E, F, and H, respectively, of the Special-Use Criteria:

1. ***The proposed use will not affect adversely the health and safety of residents and workers in the Town.*** Bill Stompf said that Mr. Ballou indicated that the request would not affect adversely the health and safety of residents and workers in the Town because it is already a non-conforming use and the applicant will be reducing the number of dock spaces and not adding anything further to the condition. Sarah West said that she found that the request will affect adversely the health and safety of residents because there will be more boats causing a higher volume of boat traffic and the safety of the residents

will be affected. Chairman Sewell said that he did not see that anything would be changing as the non-conforming dock was being used presently and if the proposed new docks were to be approved, they would be an improvement over what is existing. He said the request would not affect adversely the residents and workers in the Town. Judson Walton said that based on the evidence provided, the request will not affect adversely the residents and workers in the Town. Bobby Schultz said that the Board was unable to force Mr. Ballou to create a conforming use here. He said that the Board needs to consider what is on site currently and compare that to the proposal. He said that what is existing on the site is a nonconforming use which existed prior to the adoption of the ordinance. There are eight (8) boat slips in total, and from the testimony, it was learned that two (2) of those were added after the adoption of this ordinance. When comparing the existing to the proposed site plan, the Board should be comparing six (6) to six (6) boat slips. Mr. Schultz said that he understands the concerns about boat traffic and health and safety of kayakers and paddle boarders; however, with six (6) boat slips existing and six (6) boat slips proposed, he said there was no health and safety risk between the existing and proposed uses; and

2. *The proposed use WILL be detrimental to the use or development of adjacent properties or other neighborhood uses.* Bill Stompf said that the Board had heard statements from residents that it would be detrimental from an environmental standpoint and potentially cause a devaluation of their property. Looking at it logically, Mr. Stompf said that the docks are already existing on the property. There was testimony about increased boat traffic, and Mr. Stompf said his personal feeling was an increase in any boat traffic would affect the use or development of adjacent properties so the applicant had not proved that the request will not affect the adjacent properties. Sarah West agreed with Mr. Stompf and stated that her opinion was that the request would be detrimental to the adjacent properties. Chairman Sewell said that he viewed the situation as presently having docks in use which have problems due to age and not being user-friendly. He said that if the request is approved and the dock usage continued, nothing would change for the adjacent properties. Chairman Sewell said that the plan presented by Mr. Ballou would be an improvement over the existing site conditions. He said that many of the speakers gave reasonable opinions about traffic in the boat channel, but that was not what the Board is being asked to decide on. Chairman Sewell said that he did not find the request to be detrimental to the use or development of adjacent properties. Judson Walton agreed with Chairman Sewell, stating the request would not be detrimental to the adjacent properties because the new docks would be inside the quarter channel line and would open the waterway based on the numbers presented. The property owners have a certain number of boats, and that number will not change so Mr. Walton said he did not see any detrimental effect to neighboring properties. Bobby Schultz said that he understood that the applicant had made an effort to improve the visual appearance of his property and had plans to improve it. Mr. Schultz said he also thought that Mr. Smith made a convincing case that at least a portion of the proposal, specifically the floating dock / slips, which were not currently permitted were detrimental to adjacent properties. He said that the Board members are not experts on the movement of sediment, but that the photos that were presented showed that at least a portion of the proposal will cause issues for at least one of the adjacent property owners. Mr. Schultz said for that reason, he found the request to be detrimental to the use of adjacent properties; and

3. *The proposed use will not be affected adversely by existing uses.* Bill Stompf said the use would not be affected by existing uses. Mr. Stompf said that most of the concern expressed appeared to be based on floating docks which would remain with the proposal. Sarah West said that she agreed. The applicant is not proposing a marina on the property and the uses are not being changed. Chairman Sewell said that he also agreed, nothing would change between the uses. Judson Walton said that the floating docks were not proposed to change regardless of approval or denial of the request and said it would not be adversely affected by existing uses. Bobby Schultz said he agreed it would not be affected by existing uses for the same reasons as previously expressed by the Board; and

4. *The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use such facility, of the vehicular movement, or noise or fumes or of the type of physical activity.* Bill Stompf said that the request would not constitute a nuisance or hazard because the applicant would not be increasing the number of boats on the property. Mr. Ballou is not able to control traffic in the waterway. Sarah West said that the request would not be a nuisance or hazard because the new design would open-up the space between the docks across the waterway. Chairman Sewell agreed, stating it would not be a nuisance or hazard, but would actually be an improvement due to the improvements shown on the proposal. Mr. Sewell said that nothing would really change in how the property was used. Judson Walton said he heard all the speakers talking about the floating dock and the sediment on the bottom of the waterway, but the Board must vote on what the use is, and the use does not change. Mr. Walton said that he personally does not like floating docks, but that does not change the fact that the use would not constitute a nuisance or hazard. Bobby Schultz said the request would not be a nuisance or hazard because the choice before the Board was a determination between the existing and proposed uses.

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the Board of Adjustment of the Town of Morehead City, North Carolina by unanimous vote orders the **denial** of a Special-Use Permit to allow for an alteration and expansion of a nonconforming use and structure in the R20 (Single-Family Residential) District at 303 Georgia Avenue due to the applicant not having satisfied item (E) of the special-use criteria.

ORDERED, this the 24th day of February, 2022.

Charles Sewell, Chairman

NORTH CAROLINA
CARTERET COUNTY

I, _____, Notary Public, do hereby certify that Charles Sewell, Chairman to the Board of Adjustment for the Town of Morehead City, personally appeared before me this day and acknowledged the due execution of the foregoing certification, for the purposes therein expressed.

WITNESS my hand and notarial seal this the _____ day of _____, 2022.

Notary Public Signature

My commission expires on: _____