

The Morehead City Board of Adjustment conducted a special meeting on Thursday, October 27, 2022, at City Hall, 1100 Bridges Street, Morehead City, NC, at 5:30 p.m. The following people were present:

BOARD MEMBERS PRESENT: Chuck Sewell, Bill Stompf, Patrick Conneely, Judson Walton, and Sarah West.

BOARD MEMBERS ABSENT: Bobby Schultz, Brandon Sutton, and Taylor Ricketts.

STAFF PRESENT: Planning Director Sandi Watkins, Zoning Enforcement Officer Jeannie Drake, Code Enforcement Officer Barb Lynch, Secretary Annie Bunnell, and City Attorney Derek Taylor.

OTHERS PRESENT: Walter Davis, Samer Hamad, Attorney Jane Gordon, Ralph “Buddy” Brittingham, Kristy Brittingham, Lonnie Pierce, Donna Pierce, Nora Webb, David Carter, Scott Stelling, Kelli Stelling, and other concerned citizens.

Chairman Chuck Sewell called the meeting to order.

The roll was called, and Taylor Ricketts, Brandon Sutton, and Bobby Schultz were absent. Bill Stompf made **MOTION**, seconded by Judson Walton, to excuse the called-in absences. The motion carried unanimously.

OATHS OF OFFICE:

Mayor Jones administered the oaths of office for reappointed In-City Members Chuck Sewell and Judson Walton, reappointed In-City Alternate Member Sarah West, reappointed Extraterritorial Member Bill Stompf, and newly elected Extraterritorial Alternate Member Patrick Conneely.

MINUTES: July 28, 2022, and August 10, 2022

Chairman Chuck Sewell called for changes or amendments to the minutes. Bill Stompf made **MOTION**, seconded by Sarah West, to adopt the minutes for July 28, 2022, as submitted. The motion carried unanimously.

Bill Stompf made **MOTION**, seconded by Judson Walton, to adopt the minutes for August 10, 2022, as submitted. The motion carried unanimously

BUSINESS:

A) Request submitted by Ralph W. Brittingham, Jr., on behalf of BKB Flowers, Inc., for a special use permit under Articles 4-8 and 11 of the Unified Development Ordinance (UDO) to allow a Business Residence at 4702 Arendell Street, zoned CH (Highway Commercial) District.

There were no objections from either side to the five members seated. Voting members were: Chuck Sewell, Bill Stompf, Patrick Conneely, Sarah West, and Judson Walton.

Those wishing to give testimony were sworn in (Jeannie Drake, Ralph Brittingham, and Kisty Brittingham).

Judson Walton made **MOTION**, seconded by Bill Stompf, to open the public hearing. The motion carried unanimously.

Zoning Enforcement Officer Jeannie Drake introduced the case. Ralph W. Brittingham, Jr., on behalf of BKB Flowers, Inc., has submitted a request for a special-use permit to allow a “Business residence” at 4702 Arendell Street. According to the Carteret County tax record, the commercial building, including the second-floor apartment, was constructed in 1978.

A zoning map of the property was shown. The property is zoned CH (Highway Commercial); surrounding properties include the North Carolina Railroad to the north, CH to the east and south across Arendell Street, and CH-CZ (Highway Commercial – Conditional Zoning) to the west.

An aerial map of the property was shown. Sandy’s Flower Shoppe and Carolina Crawlspace Solutions are on the bottom floor of the structure. Carteret Village which includes Circa 81 is to the east; Coral Bay Marina is to the southeast; Capt. Jim’s Seafood and the old EJW building are across Arendell Street to the south; Mansfield Parkway is to the southwest; and Parkview Baptist Church is to the west. Photographs of the property and surrounding areas were shown.

Regarding the business residence criteria in subsection 14-20, a business residence may be established in the CD, O&P, CN, CH, and DB districts subject to the requirements of the district and the following limitations: Not more than one (1) residence shall be permitted for each structure in the O&P, CN, and CH districts. There is only one residence currently in the structure and only one residence is proposed. The residence in the O&P, CN, and CH districts shall not exceed the gross floor area of the business operation. According to the Carteret County tax record, the existing businesses occupy four thousand seven hundred twenty (4,720) square feet of space and the existing second floor apartment occupies eight hundred sixty-four (864) square feet of space. The residence does not exceed the gross floor area of the business operation. Residences may be located above the business, but in no case shall be located in the front yard of the business. The residence is located above the businesses. Any residence must be in the same structure as the business. The residence is in the same structure as the businesses.

Regarding the special-use criteria of Article 4-8.3, the application was submitted indicating the correct section of the ordinance and that section does allow “Business residence” with a special-use permit. 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 property is located in Neighborhood 6 of the CAMA Land Use Plan and is classified as General Commercial. Neighborhood 6 consists of a strip commercial area adjacent to both the north and south side of the US 70 corridor and an older, established residential area located on the east and west sides of Peletier Creek and on the east side of Spooners Creek. Land Use Plan section 4.2.7 Areas of Local Concern, Policy 3 seems to promote the request: “Morehead City will continue to promote a variety of land uses which complement the residential, commercial, institutional, recreational and industrial needs of the community.” The request does not appear to conflict with any of the Neighborhood 6 policy statements. The proposed use will not be contrary to the purposes stated in the regulations. The proposal has not been found to be contrary to the purposes outlined in the UDO. Items D, E, F, and H will be addressed by the applicant. Items G, I, J, and K require the proposed use 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. Standards set forth for the use have been met. No additional

parking is required for the business residence because the proposed location is within an existing building. No additional landscaping is required.

The hearing was advertised, notices were mailed to property owners adjacent to the site, and the site was posted per the statutory requirements. Staff received no inquiries concerning the public hearing signs. Ms. Drake requested that her written report be accepted into evidence.

Chairman Sewell asked the Board if there were any questions for the Town and the Board had none.

Applicants Ralph "Buddy" Brittingham and Kristy Brittingham of 4702 Arendell Street in Morehead City spoke and addressed each of the special-use criteria.

D) The proposed use will not affect adversely the health and safety of residents and workers in the town. Mr. Brittingham said that the residence is located on the back side of the building, upstairs. He said that the site has ample parking and with the residence located on the back side of the business there will be nothing near the highway. There is nothing that would affect anyone's health or safety.

E) The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses. Mr. Brittingham said that regarding adjacent properties, there is a church beside the property, a driveway that goes around to the rear of the property on the west side, and Circa 81 and a few other businesses to the east. Mr. Brittingham said that the business residence would not affect any of the businesses. Mr. Brittingham said that there are regular deliveries to the business. The rear of the property provides a large enough area for turnaround along with plenty of parking room for any potential tenant of the business residence.

F) The proposed use will not be adversely affected by existing uses. Mr. Brittingham said nothing will be changed about how they use or access the property, and the business residence will not be affected by existing uses. He said that he and his wife just acquired the building a few months ago, and the second-floor apartment is in desperate need of repairs. Mr. Brittingham said that after contacting the Town, he was told that they would need a special-use permit in order to do what needed to be done.

H) 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. Mr. Brittingham said that there would absolutely not be any nuisance or hazard created by allowing a business residence at this location. The only change will be one additional vehicle belonging to a tenant. Due to businesses operating at the location, there are already floral delivery trucks, employees, trash trucks, and other daily comings and goings from the property.

Bill Stompf questioned whether or not there was currently a residence on the property. Mr. Brittingham said that the residence existed but there was currently no tenant. Mr. Brittingham said that the residence had been located on the site since 1978 and was in need of new decks and other repairs.

Sarah West had several questions: do the business tenants have access to the residence; is the eight hundred (800) square-foot apartment proposed to be rented to a single person; and does Mr. Brittingham have previous property management experience. Mr. Brittingham responded saying that the business tenants did not have access to the upstairs apartment and that he and his wife had been in business for themselves for thirty (30) years but did not have specific property management

experience. Ms. West asked the applicants if they would be ensuring the structure was up to code and permitted prior to renting to any tenants. Mr. Brittingham replied yes.

Chairman Sewell asked if the applicant had any other evidence to present to support their case. Mr. Brittingham said that there was no additional evidence he wished to submit.

Bill Stompf asked if there were any conditions recommended by the Town. Ms. Drake replied no.

Attorney Taylor asked, for the record, if the applicant planned to rent to one tenant or two since the unit has two bedrooms. Kristy Brittingham said that she already runs Sandy's Flower Shop and will only rent to one tenant.

Sarah West asked if the applicant had spoken with Parkview Baptist Church in regard to the church-owned vacant lots located to the west of the subject property. Mr. Brittingham said that he had employees cutting through those lots at one time but put a stop to it around two (2) years ago. Mr. Brittingham said that they had also spoken with the Pastor of Parkview Baptist Church. The church has been a good neighbor, and Ms. Brittingham said that it's good to have a church located adjacent to their property.

Bill Stompf made **MOTION**, seconded by Patrick Conneely, to close the public hearing. The motion carried unanimously.

The Board entered into deliberations on each of the special-use criteria addressed by the applicant. For item (D), Chairman Sewell said that there was nothing that the applicant would be doing that would affect the health or safety of any person. All Board members agreed.

For item (E), the proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses, Chairman Sewell said that he did not feel that what is proposed would be detrimental to anyone. All Board members agreed.

For item (F), the proposed use will not be adversely affected by existing uses, Chairman Sewell said he did not see anything changing regarding what will be happening with the businesses on the property. All Board members agreed.

For item (H), 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. Chairman Sewell said that there will be minimal change to traffic patterns and no large degree of change under the proposed use. All Board members agreed that the proposed use would not be a nuisance or hazard.

Chairman Sewell said that the Town provided evidence that items A, B, C, G, I, J, and K have been met and no contrary evidence was submitted.

CONSIDERATION AND DETERMINATION OF CASE HEARD:

Regarding the special-use criteria contained under section 4-8.3, Board Members agreed on the following:

- D) The proposed use will not affect adversely the health and safety of residents and workers in the town;
- E) The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses;
- F) The proposed use will not be affected adversely by the existing uses; and
- H) 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.

Chuck Sewell made **MOTION**, seconded by Sarah West, to grant the Special-Use Permit. The motion carried unanimously.

B) Request submitted by Samer Hamad, on behalf of HV Shepard, LLC, for a special-use permit under Articles 4-8 and 11 of the Unified Development Ordinance (UDO) to allow a Restaurant at 812 Shepard Street, zoned OP (Office and Professional District).

There were no objections from either side to the five members seated. Voting members were: Chuck Sewell, Bill Stompf, Patrick Conneely, Sarah West, and Judson Walton.

Those wishing to give testimony were sworn in (Jeannie Drake, Samer Hamad, and Attorney Jane Gordon).

Sarah West made **MOTION**, seconded by Bill Stompf, to open the public hearing. The motion carried unanimously.

Zoning Enforcement Officer Jeannie Drake introduced the case. Samer Hamad on behalf of HV Shepard, LLC, has submitted a request for a special-use permit to allow a “Restaurant” to be located in an existing building at 812 Shepard Street. According to the Carteret County tax record, the commercial building was constructed in 1935.

A zoning map of the property and surrounding area was shown. The property is zoned O&P (Office and Professional District). Surrounding properties include DB (Downtown Business District) across Evans Street to the north and northeast, O&P, CM (Commercial Marina District), and DB to the east, CM to the south across Shepard Street, PD (Planned Development District) to the southwest across Shepard Street, and O&P and R5S (Residential Single-Family District) to the west.

An aerial view of the property was shown. The existing structure at 812 Shepard Street was formerly Harborview Rehabilitation Center into which the Bask condotel is being expanded. Photographs of the property were shown depicting the Bask condotel in relation to the proposed restaurant. The Morehead City Library is located to the northeast; a parking lot and commercial shops and restaurants are to the east; Olympic Dive Center is to the southeast across Shepard Street; Jaycee Park is to the south across Shepard Street; there are single-family homes to the west; and up South 9th Street are a parking lot, a cell tower, and the Webb Library.

The Morehead City Unified Development Ordinance (UDO) definition of a “condotel” was revised by the Town Council on October 11, 2022, to remove the limitation that no full-service restaurant or bar shall be operated on the premises. Restaurant is a permitted use in the O&P district with a special-use permit from the Board of Adjustment. The UDO definition of “restaurant” is *an establishment designed, in whole or in part, to cater to or accommodate the consumption of food and/or beverage on premises*. Because restaurant allows for the “consumption of...beverages”, staff interprets that alcohol may be served in the restaurant. If there is a specific area within a restaurant

designated for the consumption of alcohol, it would be required to be an integral part of the restaurant. A stand-alone bar is not permitted in O&P. The restaurant is proposed to be part of the condotel and open to the public.

Regarding the special-use criteria of Article 4-8:3, an application was submitted indicating the correct section of the ordinance and that section does allow "Restaurant" with a special-use permit. 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 property is located in Neighborhood 1 of the CAMA Land Use Plan and is classified as Downtown Mixed Use. The Downtown business area is zoned for a variety of commercial, retail, marine commercial, and professional uses. Land Use Plan section 4.2.7 Areas of Local Concern, Policy 3 seems to promote the request: "Morehead City will continue to promote a variety of land uses which complement the residential, commercial, institutional, recreational and industrial needs of the community." Section 4.2.8 Areas of Local Concern, Policy 1 also seems to promote the request: "Morehead City will encourage the redevelopment and restoration of the central business district as a retail, business, and professional services, office, and commercial marine center of the community. The town will encourage uses which provide for a multi-purpose central business district which includes living space as well as shopping and services. The town will promote the adaptive reuse of buildings in the central business district. The request does not appear to conflict with any of the Neighborhood 1 policy statements. The proposed use will not be contrary to the purposes stated in the regulations. The proposal has not been found to be contrary to the purposes outlined in the UDO. Items D, E, F, and H will be addressed by the applicant. Items G, I, J, and K require the proposed use 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. Standards set forth for the use have been met. No additional parking is required for the restaurant because the proposed location is within an existing building. No additional landscaping is required.

The hearing was advertised, notices were mailed to property owners adjacent to the site, and the site was posted per the statutory requirements. Staff has received two (2) inquiries concerning the public hearing sign. Ms. Drake requested that her written report be accepted into evidence.

Attorney Jane Gordon from Kirkman Whitford Brady Berryman and Gordon law firm at 710 Arendell Street spoke on behalf of applicant Samer Hamad of HV Shepard, LLC. Attorney Gordon said that the applicant would like to build a restaurant inside of the former Harborview Rehabilitation Center. She said that adding a restaurant at the location would add an important and desirable amenity which would primarily enhance the condotel guest experience but is also proposed to be open to the public. The addition of a restaurant would make the Bask a full-service condotel and gives the owner potential to attract national chains such as Hilton or Marriott which require a restaurant to be located in the building.

Attorney Gordon addressed each of the special-use criteria:

D) The proposed use will not affect adversely the health and safety of residents and workers in the town. The restaurant is proposed to be located within the footprint of an existing building, although new decking is proposed. Ms. Gordon said that while the nursing home was in operation there was food service where meals were prepared for residents. She said that a restaurant for the condotel guests would be along the same lines of the past use of the structure.

E) The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses. Attorney Gordon said that the restaurant will be located in an existing

building. The former use had no detrimental affect on adjacent properties and the similar proposed use will not be detrimental to surrounding uses.

F) The proposed use will not be adversely affected by existing uses. Attorney Gordon said that, in fact, the applicant would be developing the site as an addition to the existing Bask condotel adjacent to the property and the addition of the restaurant would enhance the guest's experience.

G) 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. Attorney Gordon said that the request is to add a restaurant inside of an existing building, primarily for condotel guests, and would not increase noise, fumes, or traffic in the area.

Applicant Samer Hamad of HV Shepard, LLC, spoke stating that he owns the Bask condotel adjacent to the subject property and is looking to expand the condotel into the former Harborview Rehabilitation Center building. He said that the addition of a restaurant would be a great asset to the surrounding community and that he has been talking with local restaurateurs to find someone to operate the restaurant.

Chairman Sewell asked if the applicant would be using the existing kitchen or if the restaurant was proposed to go into a different area. Mr. Hamad said that the building was built in 1935 and had to be gutted almost entirely. He said that the restaurant would be in a different location.

Sarah West asked if the condotel expansion into the former Harborview Rehabilitation Center building would be within the same footprint. Mr. Hamad said that the building footprint would not change but he would like to add some decking around the outside. Ms. West said that she appreciated the reuse of the building and stated that a restaurant would be a welcomed amenity because nothing downtown is currently open on Tuesdays or at breakfast time. Ms. West said that she was unsure about the exhaust from a more modern kitchen, saying that it may be a bit much in downtown. She stated that she would appreciate the applicant's thoughtful consideration regarding kitchen exhaust.

Bill Stompf asked if there was currently access from the Bask into the proposed expansion. Mr. Hamad said that currently there is not, but the buildings are butted together and there will be access.

Sarah West said she realized as part of the development of the Mainstreet program to enhance the downtown environment, that parking requirements for downtown businesses were relaxed. Ms. West said that because the restaurant is proposed to go into an existing building that we not be that particular. Ms. West said that she was happy that people are starting to understand that downtown is the destination, not just the restaurant. She asked if there would be an agreement for locals to be able to use the parking lot which is owned by the Webb family or to park across the street at the South 9th Street parking area (when dining at the restaurant). Mr. Hamad said that the Bask has a lease to rent the parking lot from the Webb family and that it was in the applicant's best interest to make sure the restaurant is successful.

Ms. West asked if the Wallace's (owner of the parking area located at 800 Shepard Street adjacent to the Harborview Rehabilitation Center) had weighed in on the proposed expansion. Mr. Hamad said he knew Mr. Wallace was not interested in selling his property.

Chairman Sewell asked the applicant if he had any additional materials to submit into evidence for the record. Mr. Hamad said that he did not. With no further questions for the applicant, Chairman Sewell asked Ms. Drake if the Town had any conditions for the request and Ms. Drake said no.

Bill Stompf made **MOTION**, seconded by Sarah West, to close the public hearing. The motion carried unanimously.

The Board entered into deliberations on each of the special-use criteria addressed by the applicant. For item (D), the proposed use will not affect adversely the health and safety of residents and workers in the town, Chairman Sewell said that he did not see anything that would have a detrimental effect. Bill Stompf agreed, stating that the applicant would be reusing an existing building. All Board members agreed.

For item (E), the proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses, Chairman Sewell said the proposed use would not change anything in the neighborhood. All Board members agreed.

For item (F), the proposed use will not be adversely affected by existing uses, Chairman Sewell said that he felt the proposed use would actually enhance the existing uses. All Board members agreed.

For item (H), 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. Chairman Sewell said that the proposed expansion will not change the facility in a way that would affect vehicular movement as they lease their own parking facility. Bill Stompf agreed stating that the Town indicated that no additional parking would be required. All Board members agreed.

Chairman Sewell stated that the Town provided evidence that items A, B, C, G, I, J, and K had been met and no contrary evidence was submitted.

CONSIDERATION AND DETERMINATION OF CASE HEARD:

Regarding the special-use criteria contained under section 4-8.3, Board Members agreed on the following:

- D)* The proposed use will not affect adversely the health and safety of residents and workers in the town;
- E)* The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses;
- F)* The proposed use will not be affected adversely by the existing uses; and
- H)* 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 made **MOTION**, seconded by Sarah West, to grant the Special-Use Permit. The motion carried unanimously.

C) Request submitted by Walter Davis, on behalf of BMG Associates, for a variance under Article 5-3 of the Unified Development Ordinance (UDO) and from Article 13-1 to allow for a reduction of the east side yard setback from seven feet (7') to one foot (1') and a reduction of the

west side yard setback from seven feet (7') to five feet (5') at 910 Evans Street, zoned R5S (Single-Family Residential) District.

There were no objections from either side to the five members seated. Voting members were: Chuck Sewell, Bill Stompf, Patrick Conneely, Sarah West, and Judson Walton.

Those wishing to give testimony were sworn in (Jeannie Drake, Barb Lynch, and Walter Davis).

Judson Walton made **MOTION**, seconded by Bill Stompf, to open the public hearing. The motion carried unanimously.

Code Enforcement Officer Barb Lynch introduced the case. Walter Davis, on behalf of BMG Associates, submitted a variance request from Article 5-3 and from Article 13-1 to allow for a reduction of the east side yard setback from seven feet (7') to one foot (1') and a reduction of the west side yard setback from seven feet (7') to five feet (5') at 910 Evans Street, zoned R5S (Single-Family Residential) District. According to the Carteret County tax record, the lot is approximately twenty-five feet (25') by one hundred feet (100'). Setbacks for the R5S District are fifteen feet (15') front and rear and seven feet (7') side. Per the Carteret County tax record, the existing single-family dwelling was constructed in 1918. Per the Carteret County Register of Deeds, the half lot configuration has been in place since at least 1972.

A zoning map of the property located at 910 Evans Street and surrounding area was shown. The property is zoned R5S (Single-Family Residential District) and is surrounded by CD (Downtown Commercial District) to the north and R5S to the east, south, and west. An aerial view of the property was shown. Commercial businesses in the CD district to the north include Casa San Carlo Restaurant, Attorneys Beswick, Goines, Wickizer, and Meeks, PLLC, and The Promised Land Market. There is an alley to the east; single-family dwellings to the east; single-family dwellings to the south across Evans Street; and single-family dwellings and a city park to the west. Photographs of the subject property and surrounding areas were shown.

A site plan of the existing conditions on the site was shown. There is an eighteen-inch (18") encroachment into the alley on the east side and a nine-foot (9') encroachment into the front setback on the south side. A proposed site plan was shown. The slide showed the proposed setbacks of five feet (5') on the west side and one foot (1') on the east side. Front and rear setbacks of fifteen feet (15') will be met. All other development requirements will also be met.

The hearing was advertised, notices were mailed to property owners adjacent to the site, and the site was posted per the statutory requirements. Staff has received two (2) inquiries concerning the public hearing sign. Ms. Lynch requested that her written report be accepted into evidence.

Sarah West asked Ms. Lynch if the property was in a flood zone. Ms. Lynch replied that the subject property is in zone "X". Ms. West asked if the new structure was proposed to be elevated. Ms. Lynch said the new structure will have to meet district setbacks (except for granted variances), lot coverage, and height requirements. Chairman Sewell asked if the alley was proposed to be closed and Ms. Lynch said no.

Walter Davis of 3307 Country Club Road spoke on behalf of the request. He said that he was not only a representative for BMG Associates, but also the potential buyer of the subject property. Mr. Davis said that he presently owns the property to the north and west of the subject property. He testified that he was interested in acquiring the property because of its proximity to property he already owns, but he said he wanted to be sure that he would be able to build on the property. The existing

structure is twenty-three (23) feet wide, and Mr. Davis said that he is only requesting to put a nineteen (19) foot-wide structure in its place.

Mr. Davis addressed the variance criteria:

1) *Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.* Mr. Davis testified that there is presently an eighteen (18) inch encroachment into the alley which will be removed as part of the request. The distance between the proposed structure and the property to the east across the alley would nearly double. Mr. Davis said that there is also currently a nine (9) foot encroachment into the front setback which will be removed if the variances are granted. Mr. Davis said that there is unnecessary hardship because if he were to stay within the setbacks for the district, he would only be permitted an eleven (11) foot-wide home.

2) *The hardship results from conditions that are peculiar 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.* Mr. Davis said the lot is only twenty-five (25) feet wide, which is unique because it is only half the width of most downtown lots. He said that the existing structure was constructed across a property line and nine (9) feet into the front setback. The removal and rebuilding of a new home on the property would improve the look of the area.

3) *The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship.* Mr. Davis stated that the existing structure on the property is in poor condition with only one possible addition (a deck on the rear of the home) since its' construction in 1918.

4) *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.* Mr. Davis stated that the granting of a variance is consistent with the purpose of the ordinance because it is a residential property and the home is proposed to be moved out of the front setback and the town-owned alley. The new single-family dwelling will be constructed within the property boundaries of the lot. If the variance were to be granted, the new structure would meet all setbacks except for the side yard setbacks.

Chairman Sewell asked about the eaves of the proposed new structure. Mr. Davis said that the Town does not allow the eaves of a roof to hang over the property line, so the eaves will be no greater than one (1) foot-wide and will be fully contained within the property boundaries.

Sarah West said that she believed Mr. Davis to be a talented architect and stated that the new residence would be an asset to the neighborhood. She asked if Mr. Davis was currently residing at 912 Evans Street. Mr. Davis said that he owned that property but was presently renting it out. He said that he was also working on renovations to the structure at 912 Evans Street but had only completed the roof and fascia on the outside of the structure before it was rented. Mr. Davis said that he also owns a nonconforming property at 1301 Evans Street which is under construction and should be habitable in the next few months.

Ms. West asked if employees of the law firm were currently using the parking area behind the subject property. Mr. Davis said yes and occasionally there is overflow from the Promise Land Market. Mr. Davis said that owners of the Promise Land Market sought him out to tell him they were in favor of his variance request, although Mr. Davis said he was aware the Board could not accept that information into evidence.

Ms. West asked Mr. Davis if he had plans already prepared for the site. Mr. Davis said he did not have plans at the meeting, but he has an interest in making the subject property nice with an area for parking underneath the home with access from the alley and an area for parking in front of the structure. The plan will allow the proposed structure to get air and light around it.

Chairman Sewell asked the Town if there were any conditions to be added onto any approval of the request and Ms. Drake replied no.

With no other questions for the applicant or speakers on the request, Chairman Sewell called for a motion to close the public hearing.

Bill Stumpf made **MOTION**, seconded by Sarah West, to close the public hearing. The motion carried unanimously.

CONSIDERATION AND DETERMINATION OF CASE HEARD:

Findings of Fact:

For item one (1), unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. Bill Stumpf said that the house would be limited to eleven (11) feet in width without the requested variances. Chairman Sewell said he agreed, and that the present building is located in an odd position and is not usable as a residence. The Board members agreed.

For item two (2), the hardship would result from conditions that are peculiar to the property, such as location, size, or topography and were not self-created. Chairman Sewell said that the property is very narrow and that limits the amount of development that can occur to improve the property. Chairman Sewell said that he determined the applicant met the requirements for this item and the Board members all agreed.

For item three (3), the hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship. Chairman Sewell said that the existing building is already in violation of setbacks and by not granting a variance for the property a situation may be created where nothing could be built on the property. All Board members agreed.

For item four (4), the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Chairman Sewell said that the applicant is trying to make improvements on a property that needs improvements and has presented a plan that better meets the Town's setback requirements and corrects deficiencies that exist with the existing structure. Chairman Sewell said that he felt that would meet the spirit, purpose, and

intent of the ordinance. Bill Stompf said that the request would also restore the alley to the proper width as it is currently being invaded by eighteen (18) inches. All Board members agreed.

Chuck Sewell made **MOTION**, seconded by Patrick Conneely, to grant a variance to allow for a reduction of the east side yard setback from seven feet (7') to one foot (1') and a reduction of the west side yard setback from seven feet (7') to five feet (5') at 910 Evans Street. The motion carried unanimously.

D) Request submitted by David Lee Carter for a variance under Article 5-3 of the Unified Development Ordinance (UDO) and from Article 13-1 to allow for a reduction of the front yard setback from thirty feet (30') to twenty-two feet (22') at 214 Glenn Abby Drive, zoned R20 (Single-Family Residential) District.

There were no objections from either side to the five members seated. Voting members were: Chuck Sewell, Bill Stompf, Patrick Conneely, Sarah West, and Judson Walton.

Those wishing to give testimony were sworn in (Jeannie Drake, David Lee Carter, Attorney Jane Gordon, Lonnie Pierce, Donna Pierce, Scott Stelling, and Kelli Stelling).

Judson Walton made **MOTION**, seconded by Bill Stompf, to open the public hearing. The motion carried unanimously.

Zoning Enforcement Officer Jeannie Drake introduced the case. David Lee Carter submitted a variance request from Article 5-3 and from Article 13-1 to allow for a reduction of the front yard setback from thirty feet (30') to twenty-two feet (22') at 214 Glenn Abby Drive. A zoning map of the area was shown. The property is zoned R20 (Single-Family Residential District) and is surrounded by R20. An aerial view of the property was shown followed by photographs of the site and surrounding areas.

Surrounding property includes a single-family dwelling to the west; the Bay Colony community pool and Bogue Sound to the south; single-family dwellings to the east; and single-family dwellings to the northeast and north. The subject property is considered a flag lot for zoning purposes. It has a pole-like entrance and opens to an area that resembles a flag. Setbacks are based upon the definitions for *lot lines* in the UDO and were shown on a slide as follows:

- 2-2.147 *Lot line*. A line dividing one (1) lot from another lot or from a street or alley.
- 2-2.148 *Lot line, front*. The line dividing a street right-of-way from a lot as defined in this Ordinance. All lot lines which are parallel to the street right-of-way shall be considered front lot lines.
- 2-2.149 *Lot line, rear*. The lot line not intersecting a front lot line that is most distance from and most closely parallel to the front lot line.
- 2-2.150 *Lot line, side*. Any lot line not a front or rear lot line.

The setbacks in the R20 district are thirty feet (30') front; ten feet (10') sides; and twenty-five feet (25') rear. The front lot line for 214 Glenn Abby Drive is the property line running north to south along the eastern side of the property and the western side of the dwelling at 216 Glenn Abby Drive.

The rear lot line is the line not intersecting the front lot line that is most distance from and most closely parallel to the front lot line. The final subdivision plat for Bay Colony subdivision was shown depicting specific setbacks that do not align with the UDO definitions for front or rear yards. The Bay Colony subdivision is zoned R20 with no conditional zoning approval. Staff only has the authority to apply the UDO setbacks. The plat setbacks are enforceable by the HOA or other owners in the subdivision by way of a court order requiring removal of structures violating more restrictive setbacks in private covenants and/or plats. The final subdivision plat was shown which depicted the property line running north to south along the eastern side of the property and the western side of the dwelling at 216 Glenn Abby Drive as a side lot line with a ten-foot (10') setback. Staff interprets the property line to be a front with a thirty-foot (30') setback. The applicant is requesting a reduction of eight feet (8') from the thirty-foot (30') requirement. If granted, the front setback will be twenty-two feet (22'). All other development requirements will be met.

The public hearing was properly advertised, and notices were mailed to property owners adjacent to the site. The property was posted per the statutory requirements. Staff received three (3) inquiries concerning the public hearing sign. Ms. Drake requested that her written report be accepted into evidence.

Chairman Sewell asked when the Bay Colony subdivision was approved and whether it was located within the county or Morehead City's extraterritorial jurisdiction (ETJ) at the time of approval. Ms. Drake replied that the plat is dated 1999 and has signatures from Town employees so it was part of Morehead City's ETJ at the time of approval. Ms. Drake said that if the subdivision had gone through the approval process as conditional zoning or as a Planned Development, it would be allowed to have setbacks which differ from the zoning regulations in the R20 single-family residential zoning district. Because it did not, each lot must meet the setbacks that are in the UDO. Chairman Sewell thanked Ms. Drake for the explanation and asked if the other setbacks would be met. Ms. Drake said yes, the property owner is only requesting a variance from the front setback requirement.

Chairman Sewell asked if the Town had any recommended conditions to add to the request, if granted, and Ms. Drake replied no.

Attorney Jane Gordon spoke on behalf of applicant David Lee Carter. Attorney Gordon said that the applicant is only seeking a reduction of the front setback by eight (8) feet. The side and rear setbacks would still be met. Attorney Gordon said that the applicant's wife, Nora Webb, is from this area and they are looking forward to coming home to build a house and move and live here full time. Attorney Gordon said that the applicants wish to enjoy the water view and to have a home built that looks like it belongs in the Bay Colony neighborhood.

Attorney Gordon addressed the variance criteria:

1) *Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.* Attorney Gordon said the lot is unique because it is a flag lot, and without the "flagpole" there is no access to the street. Because of that, the longer lot line which would typically be considered a side becomes a front with a thirty (30) foot setback. She showed the survey of the subdivision and said that the developer and surveyor of the property both had considered the lot line in question to be a side, as the longer lot line of nearly all the lots in the neighborhood were side lot lines. The longer lot line as a side allows the property owner to build a nicer home. Attorney Gordon stated that in the absence of a variance, the buildable area of the lot is reduced by sixty (60) percent. She stated that the applicant is not requesting to change the setbacks.

2) *The hardship results from conditions that are peculiar 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.* Attorney Gordon said again that the uniqueness of the lot is because it is a flag lot unlike any other lot in the subdivision. She said that a house built within the existing setbacks would not look as though it belonged in Bay Colony and significantly reduces the plans for the house than can be built there.

3) *The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship.* Attorney Gordon said that the setbacks of the property did not result in actions taken by the property owner as it was a flag lot when purchased. Attorney Gordon said that the applicant thought that the lot line in question was a side lot line, as depicted on the final plat for the neighborhood, with a ten (10) foot setback. Only after consulting with the Town did Mr. Carter come to find out that the lot line would be considered a front. With this information, Mr. Carter is seeking a variance so that he is able to build a usable house on the property. Attorney Gordon said that Mr. Carter wishes to work within the setbacks as much as possible but is in an unusual situation, so he is seeking a minimal variance to be able to accomplish what he wants for the property.

4) *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.* Attorney Gordon stated that the request is consistent with the ordinance because it will enable the property owner to build a home that is consistent with the neighborhood without being too close to other lots. The adjacent neighbor's home is only ten (10) feet away from the subject property and has a ten (10) foot setback on that side. Attorney Gordon stated that the applicant wants to build a suitable home for the property and neighborhood.

Applicant David Lee Carter spoke and said that he and his wife had reviewed the subdivision plat from 1999 and the properties on either side of 214 Glenn Abby Drive including the lot on the west side which is not part of the Bay Colony subdivision. Both have ten-foot (10') side setbacks and can build up to ten (10) feet away from the subject property. Mr. Carter's desire is to center the home on the property and that he does not want to complicate matters by requesting two (2) variances.

Sarah West stated that Mr. Carter's neighbors used ten-foot (10') setbacks but his property has a thirty-foot (30') front and twenty-five-foot (25') rear setback along the long lot lines. Ms. West asked Mr. Carter if the Bay Colony homeowner's association (HOA) required a minimum square footage be built per lot. Mr. Carter replied that the minimum square footage for the development is two thousand (2000) square feet. Ms. West then asked if he would be allowed to have a garage facing the street. Mr. Carter said that his house plans must be submitted to the HOA and that there are strict criteria which must be met including no metal roof or vinyl siding. There are very nice houses that back up to the water and Mr. Carter said that he and his wife would like as much of a water view as possible.

Ms. West stated that the property was purchased in 2019 and asked Mr. Carter if his realtor told him that he had ten (10') foot side setbacks at that time. Attorney Gordon said that the lot was purchased in December of 2019 and in conversation with builders, a survey was requested. Mr. Carter asked his lender for a copy of the survey and was told that surveys are not done any longer with the

purchasing of a property. Mr. Carter hired a surveyor to create a survey for him in February of 2022. Attorney Gordon said that the survey also showed the long side of the property as a side setback.

Mr. Carter spoke and said that the owner of the adjacent property to the west was his wife's cousin who had purchased the subject property for additional parking for her church group as well as a place to put her mailbox since it was vandalized on Highway 24. He said that he and his wife had purchased the property from his wife's cousin. Ms. West said that the lot size was pretty fair. She also said that she felt the ten-foot (10') setback from the community pool area was tricky as well and that she had walked the property and saw numerous orange flags. Ms. West asked if those had been placed by Mr. Carter. Mr. Carter said that he asked the surveyor to place those when he surveyed the property earlier in the year.

Chairman Sewell asked if the only information received concerning setbacks was that the long lot lines were side ten-foot (10') setbacks when he purchased the property in 2019 and Mr. Carter replied yes.

Chairman Sewell asked Ms. Drake when the requirements came into effect for the R20 setbacks. Ms. Drake replied that she was unsure, but the setbacks had been as they are today since she came to the Town sixteen (16) years ago. Sarah West asked if the subdivision was in the County at one point. Ms. Drake replied, yes, but that was before the subdivision was created. In 1999, the area was part of Morehead City's ETJ.

Attorney Gordon spoke and said that she would like to request the final plat for Bay Colony subdivision and survey of the subject property be entered into evidence for the hearing. Attorney Gordon showed the subdivision plat again for the Board and said that it was clear that all of the lots with the exception of the subject property are rectangular lots with the long lot lines being sides which allows a home to be built that looks nice and like other homes in the neighborhood. Mr. Carter wishes to build a home that looks like it belongs and allows him to enjoy the water view of the lot that he and his wife purchased. Mr. Carter recognizes the Towns' setbacks and has figured out a way to put a house on that lot except that he needs another eight feet (8') in the front. He has thought long and hard about how to place the house on the lot to allow an open floor plan that he and his wife as well as guests can enjoy – not a “shotgun” house with a limited water view that contains mostly hallways. That becomes a hardship for the applicant.

Sarah West asked how the applicant knows which way the lot is supposed to face. Attorney Derek Taylor said that the Town's UDO says where the front of the lot is. Mr. Carter said that he found out because he had a question about the cutout for the well pump of the community swimming pool, assuming the abutting property line would be the rear. Mr. Carter said that he already had a builder lined up and building plans completed and were lucky to have figured out what the setbacks were when they did. Mr. Carter said that he and his wife still wouldn't have known had he not called the Town. Ms. West said that she was curious if there was an opportunity for the orientation of his proposed home to be changed. Attorney Taylor replied that for the purpose of the variance request before the Board, there is not. Attorney Taylor said that Mr. Carter had done the right thing by requesting a variance.

With no other speakers on behalf of the request, Chairman Sewell called for a brief five-minute intermission prior to hearing from opposing parties of the request. At the end of the break, Chairman Sewell called the meeting back to order and Attorney Taylor explained what it meant for someone in

opposition to have standing. Attorney Gordon requested time after hearing from the opposition to clarify anything brought up by the opposition. Chairman Sewell asked if there would be any conditions required by the Town, if approved, and Ms. Drake replied no.

Scott Stelling of 210 Glenn Abby Drive spoke in opposition to the request. He said that his property abuts the flag lot and that he also serves as the HOA President for Bay Colony. Mr. Stelling said that he was mostly present at the meeting as a concerned neighbor. The subject property is over a half-acre lot. Mr. Stelling said that he read through the hardship criteria and does not find there to be a hardship due to the lot size. He felt that most any size home could be built there. Mr. Stelling said that he personally feels that protecting the setbacks is important for the neighborhood and that he is not interested in seeing those reduced, for the integrity of the neighborhood and for property values. Chairman Sewell said that all the homes in the neighborhood were constructed under the "old setbacks" and using the long lot lines as sides. Mr. Stelling said most, but not all, because 213 Glenn Abby Drive is similar to the subject property in that the long lot lines are not sides.

Donna and Lonnie Pierce of 217 Glenn Abby Drive spoke in opposition to the request. Mr. Pierce said that he built his home twenty (20) years ago and he just wanted to reiterate that the subject property is a half-acre lot. Ms. Pierce said that they love their neighbors and said it's sad that all of this is happening prior to Mr. Carter getting to build his home. She stated that there is no hardship since the lot has a lot more space than many others in the neighborhood. Ms. Pierce said it is likely that Mr. Carter already had a specific set of plans, and that particular house does not fit on the lot. She said that she objects to Mr. Carter building closer to their home and hoped that the variance request is not granted. She said that the lot can accommodate the square footage home that the applicant desires without having to encroach into the setback, closer to Ms. Pierce's property. Ms. Pierce said that reducing the setback will reduce her property value and that the back of the neighborhood is very spacious and the space between homes on the water is very large. She said that if the variance is granted, the new house will be an eyesore. Attorney Gordon objected to Ms. Pierce's testimony regarding reduced property values. Mr. Pierce said that he heard during the applicant's testimony that he wishes to build a home that is consistent with the neighborhood, but if the applicant were to build within the front setback, that would be very inconsistent with how the waterfront homes are currently situated. Mr. Pierce said that he and his wife are requesting that the variance be denied so that the applicant must stay within the current requirements. Mr. Pierce said that he brought a letter from an architect, since he and his wife were not experts, which says a home could be built on the subject property with a water view from every room that is not from a cookie-cutter house plan.

Patrick Conneely asked Attorney Taylor if the Board can accept the architect's letter into evidence. Attorney Taylor said that an architect is an expert by trade and it was up to the Board if they accepted it into evidence and used in their deliberations. Chairman Sewell said that he did not think it was necessary. Attorney Taylor told Attorney Gordon that she may question any of the parties in opposition. Ms. Gordon declined but said that she did have one final comment. Ms. Gordon said a home could be built on the subject property, but she wished to make the argument that a thirty-foot (30') setback is not consistent with the approved plat. Ms. Gordon said that anyone looking at the plat can see exactly what the developer envisioned which was a ten-foot (10') setback along the longer sides of the lot. A flag lot is unique to the development, and no one realized what the setbacks were until after the lot was purchased. The setbacks of front and rear on the longer sides of the lot reduces the buildable area of the lot by sixty (60%) percent resulting in a narrower home with much less livable space and that does constitute a hardship under the variance criteria.

With no other questions for the applicant or speakers on the request, Chairman Sewell called for a motion to close the public hearing.

Bill Stompf made **MOTION**, seconded by Sarah West, to close the public hearing. The motion carried unanimously.

CONSIDERATION AND DETERMINATION OF CASE HEARD:

Findings of Fact:

For item one (1), unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. Chairman Sewell said the unnecessary hardship would be the configuration of the lot being a flag lot which was different than others in the community. Bill Stompf said that he understood what Chairman Sewell was saying but was having a difficult time classifying the applicant's situation as an unnecessary hardship. The shape of the lot affected what the applicant is intending to build, but Mr. Stompf said he did not see that as an unnecessary hardship. Sarah West said that she also did not find there to be an unnecessary hardship, as it was only an eight-foot (8') difference. Judson Walton said that, to lose sixty percent (60%) of the buildable space on a lot as Attorney Gordon had stated, he considered to be a hardship. Bill Stompf and Sarah West did not find there to be an unnecessary hardship, the remaining three board members agreed that there was an unnecessary hardship.

For item two (2), the hardship would result from conditions that are peculiar to the property, such as location, size, or topography and were not self-created. Chairman Sewell said that the lot is a different size and shape from other lots in the subdivision. Sarah West said that the front lot line has a unique placement and it's the only flag lot in the neighborhood. The Board Members all agreed that this item had been met.

For item three (3), the hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of the variance shall not be regarded as a self-created hardship. Chairman Sewell said from what he understood from the applicant, Mr. Carter did not know when he purchased the lot that there would be any issue with setbacks. Sarah West said that it was not due to his actions, but rather, his inactions. Judson Walton said that he had walked the lot and in doing so, he thought that the front was the water side of the property. Board Members all agreed that this item had been met.

For item four (4), the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. Chairman Sewell said he felt conflicted regarding the evidence supporting this item, and that Mr. Carter has a lot of property to develop. He said the Board cannot change the ordinances already in place. Sarah West said that the applicant wants justice so that his home could be more in line with the rest of the neighborhood, but some of the Board members have said under item one to change the plans. Patrick Conneely said that a larger house would be more in line with the neighborhood but the closeness to adjacent homes would not be in line with the neighborhood. Bill Stompf said that he felt the request was not consistent with this item. Sarah West and Patrick Conneely agreed it was not consistent.

Chuck Sewell made **MOTION**, seconded by Bill Stompf, to deny the variance to allow for a reduction of the front yard setback from thirty feet (30') to twenty-two feet (22') at 214 Glenn Abby Drive. The motion carried unanimously.

UNFINISHED BUSINESS:

The Order from the August 10, 2022, special meeting agenda item was presented by Staff. Chairman Chuck Sewell called for changes or amendments to the ORDER.

Sarah West made **MOTION**, seconded by Judson Walton, to approve the McCarty Boat Storage Special-Use Permit ORDER as submitted. The motion carried unanimously.

NEW BUSINESS: Election of Officers

Bill Stompf nominated Chuck Sewell for Chairman, Patrick Conneely seconded the nomination, and the vote was unanimous.

Chuck Sewell nominated Bill Stompf for Vice-Chairman, Patrick Conneely seconded the nomination, and the vote was unanimous.

ADJOURNMENT:

There being no further requests or comments, the meeting was adjourned at 8:29 p.m.

Annie Bunnell, Secretary