



**City of Southport  
Board of Adjustment Minutes  
113 W. Moore Street, Southport, NC 28461  
August 30, 2022 at 4:30 p.m.**

**Present:** Harley Lemons, Jason Robbins, Amy Aycock, Kate Seigler, Pete Haislip, and Josh Cline McGee

**Absent:** Loten Masker and Lisa Fosbury

**Board Liaison:** Alderman Tom Lombardi

**Staff Present:** Dorothy Dutton, City Clerk/ Interim Planner  
Tanya Shannon, Deputy Clerk

**Others Present:** Ron and Lois Thompson

**Meetings are now open to the public.**

- 1.) Call to order by Chairman Harley Lemons at 4:30 p.m.
- 2.) The Pledge of Allegiance was led by Chairman Lemons.
- 3.) A review of the process and procedures for a quasi-judicial hearing was given by Chairman Lemons. He explained that a quasi-judicial hearing differs from a land-use or legislative decision. The Board's discretion is limited. The Board must base its decisions upon the facts. It is a decision constrained by the standards in the Unified Development Ordinance and based on the facts presented. He stated that if a witness is speaking, they should focus on the facts and standards, not opinions. Individuals with standing are allowed to speak, but only evidence and facts presented should be used to make a decision.
- 4.) Chairman Lemons asked the Board if there were any conflicts of interest that would prevent them from participating in this hearing. They should request to be recused if they have a fixed opinion about the matter, a financial interest in the case's outcome, or a close relationship with an affected person. There were no conflicts of interest from any members of the Board.
- 5.) Chairman Lemons introduced the applicant Mr. Thompson and asked him if he had any questions or concerns before the testimony began. Mr. Thompson requested that the liaison to the Board of Adjustment, Alderman Lombardi, be excused from any discussion. Mr. Thompson explained that since he was denied a text amendment for parking by the Aldermen at the July 14, 2022 meeting, he felt there would be a biased opinion from Alderman Lombardi. Although it was explained to Mr. Thompson that the Alderman Liaison does not participate in the meetings and is there to observe and report back to the Aldermen. Mr. Thompson still felt uncomfortable with his presence but was willing to accept it. Chairman Lemons asked for a vote for Alderman Lombardi to be excused from attending the meeting.

***A motion was made by Mr. Robbins to excuse Alderman Lombardi from his presence at the meeting at the request of the applicant, who felt uncomfortable with his attendance due to his potential bias and was seconded by Ms. Siegler. Ayes: Mr. Robbins, and Ms. Siegler. Nays; Mr. Haislip, Ms. Aycock, and Mr. McGee. 2-3, motion denied.***

- 6.) Chairman Lemons opened the public hearing and called City Clerk/Interim Planner Dorothy Dutton to the podium to be sworn in and explain the variance request. Ms. Dutton was sworn in by Mr. Lemons. She stated that the request is for an exception from the off-street parking requirements at 413 N. Howe Street near W. St. George. She explained that the two parcels are located in the Business District, and there is no minimum lot size in the Business District. The total of the two parcels is 0.06 acres or 2,613 sft. She said prior to the update to the UDO there was a provision when there is off-street parking available, the off-street parking requirements can be reduced by 50% for lots under a certain size. However, she stated that the revised and current UDO does not allow for that exemption. Ms. Dutton said there are only a couple of parcels within the City that would have similar circumstances. She said the Planning Board originally reviewed and recommended a text amendment that would waive the parking requirement for all lots in the BD that were less than 6,000 sft; and were existing lots prior to 1973. After further discussion, the Board of Aldermen did not feel comfortable approving the request for a text amendment and recommended that Mr. Thompson apply for something more specific to his property.

Ms. Dutton said the two parcels that Mr. Thompson is including in this variance request were platted prior to 1973, the year the City adopted its first zoning ordinance. She said the lots are currently vacant. Mr. Thompson does not have any immediate plans to build a structure but would like to have flexibility with the parking requirement resolved for future use. She said considering the parcels are so small, it is likely the building would have to be less than 2,000 sft. Ms. Dutton said if the Board sees fit to approve the variance request, they can place certain conditions on the approval.

Chairman Lemons questioned why the provision for off-street parking exemptions were removed from the revised UDO. Ms. Dutton said she was unsure why that provision was removed from the UDO, but it was typical to make amendments and updates as needed.

Mr. Robbins asked if there were any other possible accesses to the lot such as an alley. Ms. Dutton said there that there were not.

Mr. Ron Thompson was sworn in by Chairman Lemons. First, Mr. Thompson thanked the Board and Staff for their time and assistance. He said that he is requesting a variance for a parking exemption at 413 N. Howe Street because the lots are too small to provide off-street parking. He feels that this is a hardship because there are no options for off-street parking on this size lot. The NCDOT was not in favor of a curb cut for ingress or egress into a driveway, and he said also it would be dangerous to enter and exit from this point onto Howe St. He explained that he had first applied for a variance, but since there were four other lots in the Business District that have similar situations with lots under 6,000 sft; it was thought that a text amendment may be more appropriate to prevent each property from requesting a variance. He then said that the Aldermen suggested he apply for Conditional Zoning, but it was suggested that this would create spot zoning. Mr. Thompson said now he is again applying for a variance that would be specific to his lot.

He said a variance is a grant for relief from the requirements of the UDO that permits construction in a manner otherwise prohibited by the UDO. He said a variance will not be granted if the property owner is at fault for causing the need for the variance. He explained that he has not altered the property in any way. He said the only thing that he and his wife have done to the property is keep it clean and maintained. Mr. Thompson said that the potential construction on the property is safe and secure and will meet all the requirements and sufficient permits for building. He presented photos of the lot in question, and other properties in the Business District from Nash St. and around W. St. George St; that he said shows the spirit of the Ordinance and what has been done in the past. Mr. Thompson said that there is no off-street parking for nearly all of the buildings and businesses in the Business District. He concluded that he and his wife are simply requesting that they be approved for the variance so that they can enjoy the property like the surrounding buildings that do not have off-street parking available.

Ms. Siegler asked if the other businesses in this district applied for a variance. Mr. Thompson said that it was not required for them at that time. Ms. Aycock asked if this was the first request for a variance in this section of the Business District. Ms. Dutton said it was the first variance request for parking in the BD since the UDO was revised. She explained that the other businesses were probably exempt under the old UDO provisions. Mr. Lemons questioned if the variance request was for both parcels. Mr. Thompson said that it would be both. Mr. Thompson stated there is no space on for off-street parking on either of the lots. Mr. Lemons asked if he would consider combining the two lots. Mr. Thompson said that he would likely combine them. Mr. Haislip asked if both lots were to be combined would that affect the variance. Ms. Dutton said that it would not have any effect. Mr. McGee said he appreciated that both lots will be combined because the tiny back lot would not have any street access to emergency vehicles. Mr. McGee also had concerns about the large Live Oaks on the property and asked what his plans were. Mr. Thompson said that he is aware of the Tree Ordinance and the procedures. He said that there are two Live Oaks on the property, and he would like to preserve them, but he would be unable to build on the property if they remained. He said he will follow the guidelines and procedures that are in accordance with the UDO.

Since there were no other questions or comments for the applicant, Chairman Lemons closed the Public Hearing. Mr. Thompson stepped down from the podium.

Mr. McGee asked if there were any comments from the adjacent property owners. Ms. Dutton said she had only received a few calls from the adjacent property owners with questions about what was happening with the property, but there were no concerns once it was explained.

Ms. Aycock asked if any surrounding properties in the BD have driveways. Ms. Dutton said there was one or two that she knew of that had a small alleyway.

## **7.) Finding of Facts and Conclusions of Law**

1. Mr. Robbins motioned that an unnecessary hardship would result from a strict application of the ordinance and was seconded by Ms. Aycock. ***Unanimous vote; motion carried***

Mr. Robbins gave an explanation of the motion. He said that a full implementation of the ordinance would essentially erode the use of the property for anything other than a parking lot. He said because of the size of the lot, the use would be extremely limited. He does not think that restricting the property to minimal use would be in the best interest of the Business District.

2. Ms. Siegler made a motion that there would be hardship results from conditions that are peculiar to this property, such as location, size, or topography , and was seconded by Mr. Robbins.  
***Unanimous vote; motion carried.***

3. Mr. Robbins motioned that the hardship did not result from actions taken by the applicant or property owner and was seconded by Mr. McGee. ***Unanimous vote; motion carried.***

Mr. Robbins explained that knowing that a variance might be required to utilize the property use is not a self-inflicted hardship, and the owner did not take any actions to the property to cause any such conditions.

4. Mr. McGee wanted to clarify that stipulations or conditions could be placed on a variance. Ms. Dutton said that could be done within reason. Mr. McGee also commented that the adjacent properties are at different setbacks. He said the property to the left (The Mercantile) is setback at a further distance from the road than the property in question and the one to the left is setback closer to the road. Mr. McGee would like to add a condition that Mr. Thompson move the setbacks to match the Mercantile Shop to improve the chance to preserve the Live Oak trees. Ms. Dutton explained that any conditions that are subject to be placed on the approved variance will be discussed and voted on in the final motion.

A motion was made by Ms. Aycock that the requested variance is consistent with the spirit, purposed, and intent of the ordinance, such that public safety is secured, and substantial justice achieved, and was seconded by Mr. McGee. ***Unanimous vote; motion carried.***

There was more discussion on the preservation of the Live Oaks on the property. Ms. Dutton explained that a condition could be added that prior to any development on the property an evaluation of the trees must be completed for the purpose of necessary preservation. However, she said that a tree survey will have to be submitted prior to the issuance of any permits, and the Tree Ordinance must be adhered to. Mr. McGee explained that for justification of possibly approving a variance for parking, a good trade off would be to place potential setback requirements so that the Heritage Oaks could be saved. Ms. Dutton said that if a condition was placed that states “tree(s) must” be preserved, that could hinder the owner from construction. She stated that before any building takes place a site plan will be submitted for review and mitigation for keeping and replacing any trees will be done before any approval of development.

5. Chairman Lemons determined that the above finding of facts have been reviewed and approved, and now the qualifications for conditions can be discussed and decided. He stated that the recommendation for a condition for tree preservation had been stated, and he would like to add that the two lots be combined. He also said that he would like to put a condition that a time period for application for any development be established prior to approval of the variance. He said the grant for the variance would be for the property owner, even if it is sold. A time limit would ensure that the approval would not continue for an extensive long period of time.

A motion was made by Mr. McGee to approve the variance application with the condition that both lots will be combined, and that the setbacks will align with the adjacent building to the left of the property “The Mercantile”. There was discussion on the condition for adjusting the setbacks. Mr. Thompson stated that the setbacks have nothing to do with the variance request. Mr. Robbins said that moving the setbacks will decrease the use of the property even more. It was the consensus of the Board that putting setback requirements on the conditions would not be justifiable. Mr. McGee withdrew his motion.

Ms. Siegler made a motion for approval of the variance application for an exemption from the off-street parking requirements, at 413 N. Howe St; submitted by Mr. Ron Thompson with the conditions that: Both lots shall be combined. Submission of site plans for construction and applications for permits must be submitted within 5 years of the approval for this variance from the owner of the property within this time limit, or the variance will be null and void. The motion was seconded by Ms. Aycock.

***Unanimous vote; motion carried.***

A motion was made by Mr. Robbins to approve the June 15, 2022 minutes and was seconded by Amy Aycock.

***Unanimous vote; motion carried.***

#### **8.) Other Business or Comments**

Chairman Lemons commented that he and several other members had been receiving calls from citizens regarding the Indigo Plantation Phase II development project. He said that he directed them to the Planning Board and Board of Aldermen for more information.

Mr. Robbins commented that he would like to see more information on why the off-street parking exemption was removed from the UDO audit in 2020.

#### **Adjournment:**

Being that there were no further questions or comments Mr. Robbins made a motion to adjourn and was seconded by Ms. Aycock. ***Unanimous vote; motion carried.***

Adjourn 5:35 p.m.

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Chairman, Harley Lemons

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Deputy Clerk, Tanya Shannon