

**City of Southport
Board of Adjustment
December 21st, 2021
223 E. Bay Street
4:30 p.m.**

Present: Harley Lemons, Pete Haislip, Jennifer Fontaine, Jason Robbins, and Josh Cline McGee

Absent: Lisa Fosbury

Staff Present: Dorothy Dutton, City Clerk
Thomas Lloyd, Developmental Services Director

Others Present: Jennifer Stenner, Mr. DiGuiseppe, Rich Bandera, Mr. and Mrs. Lightbourne, Lowe Davis, Tom Lombardi, Margaret Campbell

Meetings are now open to the public.

- 1.) Call to order by Chairman Harley Lemons at 4:38 p.m.
- 2.) Harley Lemons led everyone in saying the Pledge of Allegiance.
- 3.) Board Chair asked each member of the Board to state their name and where they reside. He described the quasi-judicial process. A quasi-judicial hearing is different than a land-use or legislative decision. Individuals with standing are allowed to speak, but only evidence and facts presented should be used to make a decision. Mr. Lemons asked that speakers identify themselves and state their address. He explained that he will stop any testimony that is redundant or not relevant. He defined expert testimony.
- 4.) Harley Lemons stated that one Board member is absent. The alternate, Jason Robbins, would need to be voted into the meeting as a voting member. After a motion made by Pete Haislip and seconded by Josh Cline McGee, Jason Robbins was voted in as a regular voting member of the Board for this meeting. All ayes. Motion carried. Mr. Lemons stated that anyone who would be speaking this evening would be sworn in. He further explained that an impartial hearing is required by law and that any Board member who might be biased should recuse themselves from the hearing. At that time, Jason Robbins stated that he must recuse himself due to the proximity to the project and his familial relationship to the opposing parties. The Chair accepted his recusal and Jason Robbins left the room. Mr. Lemons explained that ex parte communication goes against the rules of procedure for a quasi-judicial hearing. No one on the Board had taken part in any ex parte communication.
- 5.) Harley Lemons opened the public hearing at 4:47 p.m. to hear a request for a Special Use Permit at 508 Brunswick Avenue. **Mr. Lemons swore in Development Services**

Director, Thomas Lloyd. Mr. Lloyd stated that a simple majority vote from the Board was what is required for the request to be approved. Mr. Lloyd stated that the Special Use Permit is for a 0.19-acre lot and involves an existing structure. The existing structure was unfinished and never received a certificate of occupancy. In July, the property owner obtained permits to bring the structure up to the current building code standards. They want to add a bathroom and kitchen to the structure. The current zoning standards allow one accessory dwelling allowed, so this structure would meet the requirement. The footprint is 788 square feet. Utilities are connected to the main house and the accessory would remain in the same ownership. The updated site plan indicates the parking standards are met.

Josh Cline McGee asked Thomas to provide his opinion on the ordinance standard that mentions the accessory dwelling shall not exceed 800 square feet. Does the standard refer to the total area or just the footprint? Thomas Lloyd explained that the way it is written is problematic for accessory dwellings and the same for garages. Because garages that are larger have been approved in the past, he interprets it to mean that it is the footprint standard. But there is definitely a conflict in the ordinance. Pete Haislip asked if there was no building there now, and the owner applied for a building permit, is there anything that would prohibit them from getting a permit for the structure? Mr. Lloyd said that it meets all the standards including setbacks and a permit could be issued.

Harley Lemons asked the applicant, Jennifer Stenner and her party, including Rich Bandera, and her attorney Ray DiGuiseppe to come forward and he swore them all in together. Attorney DiGuiseppe asked his client to state her name. Jennifer Stenner stated her name and said she is the property owner at 508 Brunswick Avenue. She stated that she and her husband purchased the property in 2019 and it was a foreclosure. They fell in love with the house, but it needed some TLC. They planned to renovate while they spent time there. The property is not their primary dwelling. When Covid-19 progressed, they had to table the work for a while. Their goal was to make it better for the neighborhood.

They started working in the crawlspace first with exterminators and replacing rotten wood. They installed hurricane shutters, replaced deck boards, fixed termite damage, replaced kitchen appliances, and painted everything. The former owner had messed up the fireplaces, so they had to be repaired. There was also a koi pond in the front yard. They had the pond removed and the porch re-done. Attorney DiGuiseppe asked Mrs. Stenner about the engineer and the items that were identified as being a danger. Mrs. Stenner said that they will have to do something to make the structure safe. The options are to make improvements to the existing structure or tear it down and build something from scratch. Attorney DiGuiseppe asked what the structure would be used for? Mrs. Stenner stated that it would be used for family/guest overflow. She is a new grandmother. She explained that she is completely comfortable with the condition that the structure is not used as a short-term rental. Mr. Rich Bandera approached the stand. Mr. DiGuiseppe asked Mr. Bandera if he was a licensed architect and if he is comfortable stating that all of the items that make the structure unsafe will be brought up to code by doing the proposed renovations. Mr. Bandera stated that was true. Mr. Bandera stated that the identified parking spaces exceeds the code requirement. Mr. Bandera also stated that the project does not materially endanger, and it is consistent. The project seems to meet the criteria to grant the permit.

Harley Lemons asked for clarification on the setbacks. Rich Bandera said that the survey indicates a 7-foot distance between the building and the property line. Harley

Lemons asked for clarification between a landing and a deck. Mr. Lloyd stated that steps/stairways/chimneys could extend into the setbacks no more than four feet. Mr. Lloyd said that he would consider the landing part of the staircase.

Board Chair Harley Lemons swore in Peggy Campbell, resident at 516 Brunswick Street. The adjacent property owners designated her to represent them at the hearing. She stated that the Special use Permit request raises several areas of concern. The proposed structure would increase the unpermitted and unsafe structure. It was originally supposed to be a lawnmower shed. She said the engineer's report speaks for itself. There is a laundry list of items that need to be corrected. The problems didn't originate with the current owner, but Mrs. Stenner wants to make it worse. Pete Haislip asked Ms. Campbell how the project decreases safety and welfare? He asked her to focus on the facts of the case. Ms. Campbell said that the building does not comply with the standards of the UDO and she asked if the size of the structure is allowed? Ms. Campbell further mentioned that the owners had paved or bricked the entire yard and driveway area, and it exceeds the impervious surface requirements. She stated that the project is out of character for the area. There are no other accessory dwellings in the area, especially not a 2-story accessory structure.

Ms. Campbell thanked the Board for listening and asked them to deny the permit request.

Josh Cline McGee asked Thomas Lloyd if the property was in the special flood hazard area. Thomas Lloyd stated that it is in the AE special flood hazard area. Mr. DiGuseppe said that all of the issues mentioned in the engineers report are the items that are going to be addressed. It seems better for them to be handled than to let the building just sit there unfinished. The existing structure footprint is not being expanded, so it will not have any impact on water run-off, etc. There is no real reason to deny the request.

Richard Bandera stated that the property is in an AE zone, not a coastal A zone. The lowest adjacent grade is well above the base flood elevation for Southport. He also stated that the 50% rule is not applicable in this case. The lower level is not habitable and cannot be used as a residence. The lower level is a workshop and golf cart storage.

Board Chair, Harley Lemons asked if there were any other questions. Vice Chair, Pete Haislip restated that the opposition has raised issues about the construction and how the structure does not meet code. Mr. Lloyd agreed. Thomas Lloyd also added that there is a stormwater exemption for residential development and particularly for lots that are 10,000 square feet or less. Mr. Lloyd said that there are floodplain concerns and that flood venting is required for the lower level of the accessory structure. One square inch of flood venting is required for every square foot of footprint. The top of the habitable space flooring is 19.5 feet high, which is far over the freeboard established by the City.

Mr. Harley Lemons closed the public hearing at 5:50 p.m., so that the Board could deliberate. Josh Cline McGee stated that the unified development ordinance regarding the maximum square footage of an accessory structure is not clear. Mr. Lloyd explained that the required setbacks change based on the size of the structure. While there was some clarification, the Board suggested that section of the UDO be amended for clarity.

Findings of Fact

A. Pete Haislip made a motion that the use will not materially endanger the public health, safety or general welfare if located where proposed and developed

according to the plan as submitted and approved. Jenna Fontaine seconded the motion. All ayes. Motion carried 4-0.

- B. Pete Haislip made a motion that the use meets all of the required conditions and specifications. Jenna Fontaine seconded. All ayes. Motion carried 4-0.
- C. Pete Haislip made a motion that the use will not adversely affect the use or any physical attribute of adjoining or abutting properties. Jenna Fontaine seconded. Chair Harley Lemons said that there was no evidence that any physical attribute would harm any of the other properties. Mr. Haislip said that he sees the project as a positive thing because it is taking a problem and making it better. All ayes. Motion carried, 4-0.
- D. Josh Cline McGee made a motion that the location and character of the use, if developed according to the plan, will be in harmony with the area in which it is located. Jenna Fontaine seconded. All ayes. Motion carried 4-0.

Based on the findings of fact and the evidence presented, Pete Haislip recommended approval of the Special Use Permit with the following conditions:

- 1. The dwelling must be compliant with the Short-term Vacation Rental Ordinance. If the property is to be rented for more than (30) days, it must be rented with the primary structure.**
- 2. The renovations to the structure must make the building compliant with the building code and the structural deficiencies will be corrected.**

Jenna Fontaine seconded the motion. Mr. Harley Lemons asked Ms. Stenner if she agreed to the conditions, and she said that she did agree.

All members of the Board voted in favor of the motion. Motion carried 4-0.

Mr. Lemons stated there would be a short recess at 6:40 p.m.

- 6.) Board Chair Harley Lemons called the meeting back to order at 6:50 p.m. Jason Robbins joined the proceedings. Chairman Lemons opened the next Public Hearing at 6:52 p.m. **The Lightbourne's approached the podium and were sworn in by Mr. Lemons.** Thomas Lloyd was already sworn in and began his presentation. He explained that at the Lightbourne's property at 316 W. West Street, there was already an accessory structure. The Lightbourne's want to add a bathroom to the structure. He said that it will remain under the same ownership, and the structure meets all of the standards as an accessory dwelling. It could theoretically be used as an accessory dwelling. Mr. Lloyd said that it is a standard request. Jenna Fontaine confirmed that it was just a request to add a bathroom to an existing accessory structure. Josh Cline McGee said that to his frustration, he can't read the site plan, including the setbacks. Mr. Jim Lightbourne stated his name and address. He said that he wants to use the accessory structure as a gym, outdoor facility or a place for their guests to stay. He wants to add an outdoor shower, too. The left side setback is (7) feet. The right side is (10) feet from the property line. With the addition of the shower, the right side setback would reduce to (7) feet. Mr. Lightbourne said that he wants to square the building off, so that the outside of the shower will look like the outside of the shed. Harley Lemons asked for clarification about the number of sheds that are on the property, and Mr. Lightbourne stated that they were all connected into one. Thomas stated that the rear setback is (5) feet. Rich approached the Board and stated that he

is a neighboring property and would like to offer his support for the project, but he did not have any evidence to offer. Josh Cline McGee asked about whether the structure would have a roof, and Mr. Lightbourne stated that it would. Mr. Lemons closed the public hearing at 7:06 p.m. The Board did not have anything further to deliberate. Jenna Fontaine stated that she was not feeling well and made arrangements to be picked up from the meeting. There was still a quorum present.

Findings of Fact

- A. *Josh Cline McGee made a motion that the proposed use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan submitted. Pete Haislip seconded the motion. All ayes. Motion carried 4-0.*
- B. *Pete Haislip made a motion that the use meets all the required conditions and specifications. Josh Cline McGee seconded the motion. All ayes. Motion carried 4-0.*
- C. *Pete Haislip made a motion that the use will not adversely affect the use of physical attributes of adjoining or abutting properties. Josh Cline McGee seconded the motion. All ayes. Motion carried 4-0.*
- D. *Jason Robbins made a motion that the location and character of the use are in harmony with the area and the Land Use Plan, as long as it is developed according to the plan as submitted. Josh Cline McGee seconded the motion. All ayes. Motion carried 4-0.*

Josh Cline McGee made a motion that that based on the findings of fact and the evidence presented, the Board recommends approval of the Special Use Permit with no special conditions. Pete Haislip seconded the motion All ayes. Motion carried 4-0.

- 7.) Board Chair Lemons stated that at the last meeting, Jenna Fontaine stated that she did not want to serve again and her term was expiring. But then she put in an application. The plan is to have the Board of Aldermen consider the appointments in February. Harley Lemons said that he will be absent at the January meeting. Mr. Lemons asked the Board to look at their rosters. The Board needs (2) ETJ positions and (1) ETJ alternate, and (1) City position-which would be Jenna Fontaine's. Mr. Lemons stated that if there are (3) consecutive absences, a member could be removed from the Board.
- 8.) The Board asked Ms. Dutton to listen to the audio of the November meeting to make sure that Josh Cline McGee's condition was stated correctly. The Board deferred the approval of the minutes until the next meeting.
- 9.) Cline McGee asked if Ms. Dutton could summarize the quasi-judicial procedure information and provide copies to those who attend the meetings.

After a motion made by Jason Robbins and seconded by Josh Cline McGee, the Board of Adjustment meeting was adjourned at 7:32 p.m. by Board Chair Harley Lemons. All ayes. Motion carried.

Harley Lemons, Chairman
Zoning Board of Adjustment

Dorothy Dutton, City Clerk

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