



APPROVED

**TOWN OF DUCK
BOARD OF ADJUSTMENT MEETING
WEDNESDAY, OCTOBER 12, 2022
MINUTES**

The Board of Adjustment for the Town of Duck convened at the Paul F. Keller Meeting Hall at 2:00 p.m. on Wednesday, October 12, 2022.

BOARD OF ADJUSTMENT MEMBERS PRESENT: Chair Olin Finch, Tom O'Brien, Carol Powell, Ed Sadler, Robert Wetzel, Alternate David Flowers, and Alternate John Pucciano. **Staff present:** Attorney Ben Gallop, Attorney Robert Hobbs, Director of Community Development Joe Heard, Board of Adjustment Clerk Sandy Cross and Deputy Town Clerk Kay Nickens,

MEMBERS ABSENT: None.

OTHERS PRESENT: Attorney Kevin Hornik, Brough Law Firm; Starkey Sharp, Sharp, Baker, Graham & Varnell, LLP; Property Owners Henry and Carol Blaha, Property Owners Lauren and David Liess.

CALL TO ORDER

Chair Finch called the meeting to order at 3:00 p.m.

OPENING COMMENTS

Attorney Ben Gallop outlined functions of Board of Adjustment and its procedures and decision-making process.

Appeal BOA-2022-001: An application submitted by Henry Blaha, owner of the property at 121 Ocean Bay Boulevard, appealing the Zoning Administrator's approval of a subdivision of property at 123 Ocean Bay Boulevard.

Attorney Hornik, representing property owners of the subject of the appeal, Lauren and David Liess, requested to dismiss the appeal based on two arguments.

1. Present appeal is moot and therefore the Board does not have subject matter jurisdiction.
2. Appellant does not have standing to bring this appeal.

Attorney Hobbs stated the Town has no position or motions to present.

Attorney Starkey Sharp, representing appellant Henry Blaha, stated a new survey with static line information had been received over the weekend. Sharp explained that this information should have been provided in the beginning of the subdivision review. He stated the subdivision approval shouldn't have been granted until all information regarding static and stable lines of vegetation were determined.

Member Ed Sadler questioned the square footage of the property on the most recent survey.

Attorney Sharp stated the October 3, 2023 survey shows the first line of natural stable vegetation seaward, adding an an additional 2,912 square feet, which conflicts with Blaha's expectations based on information provided initially.

Chair Finch questioned Sharp if there was a motion for dismissal.

Sharp indicated that based on the information now in his possession it did not make sense to further contest the subdivision.

Attorney Hobbs had no response.

Attorney Hornik motioned for dismissal as the property in question meets or exceeds the Town's minimum requirement criteria to be subdivided and that Town staff by law was required to certify the exempt plat. He stated that despite the appellants' issue with the methodology of how square footage was determined, the original survey provided and the new survey with additional lines drawn, meets local ordinances as it relates to lot area requirements. In addition, Hornik stated that the appellant had no proof of damages.

Chair Finch questioned which line, the lesser or the greater, be used to determine the lot area.

Attorney Hornik explained the definition of lot area as described in the appeal application, noting that the greater of the two measurements is used.

Attorney Gallop clarified the decision is based on whether lots meet the standard of the Town Code, which it does.

Attorney Hornik stated that CAMA regulation's definition of development does not include subdivisions or other divisions of land. He explained that the type of decision being made would not be in the scope of CAMA and would be separate.

Attorney Hobbs stated the Town staff agreed with the reading of the lot area definition. He questioned Sharp as to comments related to the appellants damages.

Sharp described the special damages issue as related to the impacts of building an additional house on Blaha's property value, traffic noise and light. He stated he was prepared to present more supporting evidence but was not required to do so in the application for the appeal. He added the issue is with the Town staff not following the ordinance and the current lot size information not being provided at the beginning.

Gallop questioned Sharp to determine if he can agree with statements that the Board can affirm, reverse, and wholly or partly modify the decision appealed. Gallop also asked if Sharp agreed that the Town and/or CAMA local permitting official Sandy Cross can also make any order requirement decision or determination that ought to be made related to that decision.

Attorney Sharp agreed to Gallop's questions and mootness of the appeal. He argued the Blaha's had the right to make the appeal, which was not frivolous, and that lines to determine the square footage should have been determined at the beginning of the subdivision review process.

Gallop referenced G.S. 160D-1402(j)(3) regarding competent evidence required before a quasi-judicial hearing and stated that evidence dealing with property values and increased traffic cannot be made by opinion testimony or lay witnesses. Gallop questioned Sharp if any expert witnesses are present.

Sharp responded that no expert witnesses were present and he was not going to waste the Board's time.

Gallop recommended dismissal based on mootness and lack of evidence for special damages. He also clarified that under the survey presented, the analyses are the definition of the three different measurements, all of which are greater than the minimum lot area necessary to subdivide the property.

Finch asked Sharp if he wanted to make a motion.

Sharp stated no motion.

Member Powell motioned to grant dismissal for lack of standing and mootness.

Member Wetzell seconded.

Motion carried 5-0

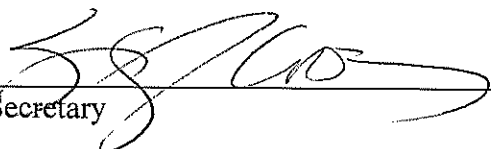
Gallop recommended Finch to direct Hornik to prepare the Board's order.

Finch so directed.

Finch expressed appreciation to Board members and the public.

Sandy Cross thanked members who attended training.

Finch adjourned the meeting at 3:55 p.m.

Approved: 
Secretary