



Nice Matters!

Emerald Isle
Planning and Inspections
7500 Emerald Drive
Emerald Isle, NC 28594

252-354-3338 voice
252-354-5068 fax

www.emeraldisle-nc.org

Planning Director
Christopher D. Seaberg
cseaberg@emeraldisle-nc.org



Town of Emerald Isle Board of Adjustment Meeting Agenda
Monday, August 26, 2024, 6:00PM
Town Board Meeting Room

1. **Call to Order**
2. **Roll Call (excuse absent board members as necessary)**
3. **Approval of July 22, 2024, Board of Adjustment Meeting Minutes**
4. **Approval of August 8, 2024, Board of Adjustment Meeting Minutes**
5. **Adjourn**

TOWN OF EMERALD ISLE
BOARD OF ADJUSTMENT
DRAFT SPECIAL MEETING MINUTES
MONDAY, JULY 22, 2024

The meeting was called to order at 6:00 PM by Chairman Kenny Sullivan. Members present were Kenny Sullivan, Susan Monette, Athan Parker, Ty Cannon, and Alternate Chad MacAvery. Members absent were Andrea Beasley and Alternate Jim Dubovec. Also attending was the Planning Director, Christopher Seaberg.

Chairman Sullivan stated that Alternate Chad MacAvery will be filling the seat of member Andrea Beasley for this meeting.

The first order of business was to excuse the absences of both Andrea Beasley and Jim Dubovec. Athan Parker made a motion to excuse both Andrea Beasley and Jim Dubovec from the meeting. Chad MacAvery seconded the motion. The Board voted unanimously (5-0) to approve the motion.

The second order of business was to review and take potential action on the draft May 20, 2024 meeting minutes drafted by the Board Secretary. Athan Parker made a motion to approve the minutes as written. Susan Monette seconded the motion. The Board voted unanimously (5-0) to approve the motion.

The third order of business was to review and take potential action on the draft June 24, 2024 meeting minutes drafted by the Board Secretary. Chad MacAvery reminded the members that he was present for the June 24, 2024, meeting but the minutes do not reflect that. Chad MacAvery made a motion to approve the minutes with the change to include his presence at the meeting. Susan Monette seconded the motion. The Board voted unanimously (5-0) to approve the motion.

There being no further business to come before the Board, a motion to adjourn was made by Susan Monette. The motion was seconded by Athan Parker and passed unanimously (5 to 0). The meeting was adjourned at 6:04 PM.

TOWN OF EMERALD ISLE
BOARD OF ADJUSTMENT
DRAFT SPECIAL MEETING MINUTES
MONDAY, AUGUST 8, 2024

The meeting was called to order at 6:11 PM by Chairman Kenny Sullivan. Members present were Kenny Sullivan, Athan Parker, Ty Cannon, Susan Monette, and Andrea Beasley. Also attending was Planning Director, Christopher Seaberg and Town Attorney Jill Quattlebaum. Also in attendance were the applicant, Brent Quick and his legal representative Katie Coyle. There were some citizens also in attendance.

The first order of business on the agenda was to reopen Variance Case VAR-24-001 that was tabled on May 20, 2024 requesting the applicant to provide the Board a survey of the property. Case #VAR-24-001 is a variance request submitted by James Brent Quick to Section 5.1 of the Emerald Isle Unified Development Ordinance. The property is located at 1310 Emerald Drive. The variance would allow for the replacement of decking and access in the front of 1310 Emerald Drive to adhere to a 14-foot front yard setback versus the minimum 30-foot front yard setback.

Mr. Seaberg administered the oath to Brent Quick. Chairman Sullivan administered the oath to Mr. Seaberg. Chairman Sullivan administered the oath to Mr. Seaberg as the secretary and a witness. Mr. Seaberg asked if there were anyone in the audience that wish to provide testimony on this case. Noone from the audience expressed a desire to provide testimony on this case.

Mr. Seaberg began with the presenting information provided at the May 20, 2024, meeting of the Board including the sworn testimony and evidence provided by both Town Staff and the Applicant at that meeting. He reminded the Board that on April 9, 2024, Mr. Quick submitted a development application to remove and replace the existing deck for the structure at 1310 Emerald Drive (See Exhibit #1). Mr. Quick was notified via email by Greg Hayes, Assistant Town Planner, expressing concerns with the location of the existing deck within the code required front yard setback (See Exhibit #2). Town Customer Service Representative, Tony Sermarini, documented in email format that Mr. Quick informed him over the phone on April 11, 2024, that the stairs and decking were removed (See Exhibit #3). Both actions occurred without any permit being issued by the Town. Mr. Seaberg provided the Board and audience with a visual presentation of Exhibit #1,2, and 3. All three exhibits are attached to these minutes for reference.

Mr. Seaberg further stated that on April 12, 2024, Mr. Hayes received an email from Attorney Kathleen Coyle representing Mr. Quick arguing that the deck should be permitted (See Exhibit #4). On April 15, 2024, Town Planning Director Christopher Seaberg answered Ms. Coyle's email (See Exhibit #5). That April 15, 2024, email documented the specific portions of Town code relevant to Mr. Quick's project. The email also stated that Town Manager Matt Zapp and Planning Director Christopher Seaberg made a site visit to verify the measurements from the Right-of-Way of NC Hwy 58/Emerald Drive. Measuring from a concrete Right-of-Way marker located at the corner of NC Hwy 58/Emerald Drive and Raleigh Street, the front line of the house, not including any portion of the footprint of the previous deck or stair structures, was 30 feet. Mr. Seaberg provided the Board and audience with a visual presentation of Exhibit #4 and 5. Both exhibits are attached to these minutes for reference.

Mr. Seaberg further stated that on April 23, 2024, Mr. Quick submitted his application for a variance (See Exhibit #6) of Section 5.1 of the Emerald Isel Unified Development Ordinance (See Exhibit #7). Mr. Seaberg provided the Board and audience with a visual presentation of Exhibit #6 and 7. Both exhibits are attached to these minutes for reference.

Mr. Seaberg further stated that Section 2.3.5 of the Emerald Isle Unified Development ordinance requires Town staff to publish a notice of the public hearing in the newspaper at least 10 days and not more than 25 days before the hearing. The notice must be in circulation once a week for two successive weeks. The notice of this public hearing was published in the May 8, 2024, and May 15, 2024, editions of the Carteret News Times (See Exhibit #8). Mr. Seaberg provided the Board and audience with a visual presentation of Exhibit #8. Exhibit #8 is attached to these minutes for reference.

Mr. Seaberg further stated that Section 2.2.3(4)(B) of the Emerald Isle Unified Development Ordinance requires Town staff to notify the applicant and adjacent property owners via USPS First Class Mail to the mailing address documented on the Carteret County Tax Records accessed through <https://arcgisweb.carteretcountync.gov/maps/>. The notices were drafted and mailed on May 2, 2024 (See Exhibit #9). Mr. Seaberg provided the Board and audience with a visual presentation of Exhibit #9. Exhibit #9 is attached to these minutes for reference.

Mr. Seaberg further stated that Section 2.3.5(4) of the Emerald Isle Unified Development Ordinance requires a posted notice on both the property in which the application is pertaining to and the normal meeting postings for Town reviews. A Town Public Notification Sign was place on the property at 1310 Emerald Drive on May 1, 2024. The public notice for the hearing was posted at the Emerald Isle Administration Building and the Emerald Isle Board Meeting Room on May 13, 2024.

Mr. Seaberg stated that the Public Notification Sign previously posted on the property on May 1, 2024, disappeared likely due to one of the recent rain events that the Town has experienced in early July 2024. Mr. Seaberg stated that the sign was placed back on the property on July 24, 2024. A Special Meeting notice was published on July 25, 2024 and posted at the Emerald Isle Administration Building and the Emerald Isle Board Meeting Room that same day.

Mr. Seaberg also presented the evidence provided at the May 20, 2024, meeting by the applicant which included eight (8) photographs of the site along with a Carteret County Building Permit AC24-0203 issued for this site.

Mr. Seaberg reminded the Board that this case was tabled at the May 20, 2024, meeting until the applicant could provide a survey for the Board to review before rendering a decision on this matter. Mr. Seaberg stated that the applicant has provided a survey by Jeremy T. McCombs with Stroud Engineering dated July 3, 2024. He stated that the survey show a proposed 20-foot x 16-foot deck which encroaches in the minimum 30-foot front yard setback 10.8 feet on the east side and 9.6 feet on the west side. Mr. Seaberg also stated that Staff had provided the Board with a signed copy of the May 20, 2024, meeting minutes for references on item from that meeting.

Mr. Seaberg pointed out to the Board that the requested 14-foot variance is now reduced to 11-foot variance based off the information provided in the survey.

Mr. Seaberg also stated that when making a decision on a variance application, the Board must follow Section 2.4.17(3) of the Emerald Isle Unified Development Ordinance which states “A variance from any of the terms of this Ordinance...shall be granted by a concurring vote of four-fifths ($\frac{4}{5}$) of the present members of the Board of Adjustment upon a showing of all of the following:” (A) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. (B) 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability. (C) 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 a variance is not a self-created hardship. And (D) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved.

Chairman Sullivan stated to Mr. Quick that according to the survey provided, you should have 8.2 feet to build the deck without a variance. Chairman Sullivan stated that the Town code does allow the encroachment of 3 feet into a setback for uncovered decking. Athan Parker stated that he agreed with Chairman Sullivan that there is adequate room to reasonably fit a deck without the need of a Variance. Chairman Sullivan stated that he does not believe that only an 8-foot deck is a hardship. He further stated that it is pretty common for a house to have an 8-foot deck.

Mr. Quick stated that the original deck, when it was built and listed on the building permit was 20x16 and it was an offset. He stated that on the Raleigh Street side, it was 16 feet out. He further stated that on the Bobby Wheller side it actually extended into the driveway, but 3 feet of that was taken out. Mr. Quick stated that they made adjustments to make sure that the stairs met code. He stated that they were including a landing on the left-hand side of the house for these purposes. He further stated that would allow for a 6-foot drop then a second 6-foot drop. Athan Parker stated that the stairs are not shown on the site plan. Mr. Quick stated that it was part of the documentation submittal to Carteret County for the building permit. Mr. Quick stated that their goal was to build back the footprint that was previous on-site.

Athan Parker stated that he didn't believe that the NC State Building Code will require a landing for this project.

Ty Cannon stated that he had a question regarding the subdivision plat in which this site was created. He stated that the plat shows the original lot dimensions was 150 feet. When did it change? It is now only 137 feet. He asked if the State took the property. Mr. Seaberg stated that the plat has a date of 1954. He stated that there have been many land changes between 1954 and 2024 to include updating the road widths to accommodate traffic for the

Town. He further stated the property was likely acquired by NC Department of Transportation for their needs reducing the property size. Mr. Quick did confirm that a portion of the property was acquired by the NC Department of Transportation and the previous owners was compensated for the land. Katie Coyle, Mr. Quick's attorney, stated that the plat shows a 60-foot right-of-way. She further stated that the NC Hwy 58 Right-of-way is now 80 feet.

Susan Monette asked Mr. Quick if this front deck is the main entrance into the property? Mr. Quick confirmed that it was. Mrs. Monette also asked if this site was a duplex? Mr. Quick stated that it was an over/under duplex without interior stairs accessing either level. He further stated that there are two addresses for the site, 1308 and 1310 Emerald Drive. Mrs. Monette asked if there is access to the upper level in the rear of the property? Mr. Quick confirmed that there was access in the rear.

Athan Parker stated that technically you are asking for a larger deck than what was there before. He stated you are proposing a 16 x 20 deck along with the stairs for the deck. Mr. Quick stated that he is only looking to be able to replace the deck and stairs exactly how it previously was.

Chairman Sullivan stated that the deck could be rebuild within the existing codes without the need for a variance. He further stated that the stairs may need a variance. Chairman Sullivan asked Mr. Quick if he would be satisfied with an 8-foot deck. Mr. Quick stated that he would not be satisfied with an 8-foot deck. He further stated that he would like his replacement deck to be the same footprint before it fell apart. Mr. Quick stated that was what was on file with Carteret County, and he should be able to replace it as such. Chairman Sullivan stated that there have been a lot of rule changes since you purchased the property in 1973. Mr. Quick confirmed that statement. He further stated that is what he pays taxes on and that is what he is requested to put back.

Chairman Sullivan stated that he does not view this a hardship. Susan Monette stated that she disagrees. Mr. Quick stated that you can see the Ocean from that deck. He further stated that was the reason for the deck. Chairman Sullivan stated that he understood that statement, but he still doesn't feel that it is a hardship. Andrea Beasley stated that the Planning Board voted earlier this year to changes the setback requirements for Ocean Front property due to hardship concerns. She asked if this request was any different. Susan Monette agreed with Mrs. Beasley that the situations were similar. Chairman Sullivan stated that this was a site-specific case versus a Town-wide situation. He further stated that in order for this Board to grant a Variance, there must be evidence of a hardship. Susan Monette stated that she feels it is a hardship seeing that he cannot replace what he had bought. She stated that you are taking his investment away. Chairman Sullivan state that codes can change affecting investments, which is permissible. Chairman Sullivan stated that the applicant stated that this was a 50-year-old deck that just fell down. Replicating what was present 50 years ago is not always possible. Athan Parker stated that he agreed with Chairman Sullivan that there is no hardship to permit granting a variance. He stated that the applicant can still construct the deck within the parameters of the code for access. He just wants more than permitted by the code.

Susan Monette asked Athan Parker if you bought property with a deck that overlooked the water; and that was the purpose of you buying that property. The deck then collapses, and you find out that it was encroaching within the setbacks and cannot not be completely replaced. Is that fair? Athan Parker stated that a second level deck above a boat lift is no longer permissible by the NC Division of Coastal Management. He stated that if it were to fall, you would not be able to replace that second level. He further stated that an owner can maintain it as long as it stays up, but the code no longer permits it. Therefore, when it falls, it will not be able to be replaced no matter how long it was there nor if it was the only purpose of the purchase of the property. Mr. Parker further stated that he is not seeing where Mr. Quick's application is showing a hardship as defined in documents provided by the UNC School of Government on this issue.

Mr. Seaberg reminded the Board when making a decision on a variance application, the Board must follow Section 2.4.17(3) of the Emerald Isle Unified Development Ordinance which states "A variance from any of the terms of this Ordinance...shall be granted by a concurring vote of four-fifths ($\frac{4}{5}$) of the present members of the Board of Adjustment upon a showing of all of the following:" (A) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. (B) 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. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability. (C) 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 a variance is not a self-created hardship. And (D) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved. Mr. Seaberg stated that is the Code's instruction on how the Board shall render decision on this application.

Chairman Sullivan stated that a lot has changed since the Town was incorporated in 1956 to now. He stated that there are hundreds of nonconforming properties in the Town. He further stated that through time, those nonconformities are corrected. Chairman Sullivan stated that is what he feels with this application. The previous deck did not conform with the code, but the replacement should. He further stated that there would be a hardship is he couldn't place stairs to the front door. Chairman Sullivan stated that was not the case on this project. Stairs could be placed within the setback requirements, but the applicant wants a larger deck that would encroach into the setbacks.

Mr. Quick stated that he would be happy just to construct the replacement decking in the original footprint of what was previously there. Chairman Sullivan stated that was not being able to do that is not a hardship. Mr. Quick stated that it is a hardship due to the loss of money. He further stated that it is a devaluation of my property. Katie Coyle expressed to the Board that she could not find a definition of a hardship in the code. She further stated that determining a hardship is based on your interpretation. Mrs. Coyle stated that she agrees with Mr. Quick that taking away his usable property is devaluing it. That is a hardship. Chairman Sullivan stated that he doesn't feel that not granting the

variance would devalue the home. Susan Monette stated that she feels it would. Chairman Sullivan stated that the previous deck was 50 years old. Replacing it with a smaller deck does not devalue the property. Athan Parker asked if financing has anything to do with creating a hardship. He stated that he feels it doesn't.

Andrea Beasley stated that she just Googled a legal definition of a hardship. She stated that there is no set legal definition of a hardship, but the courts have recognized that a long term negative financial impact on the party is considered a hardship. She stated that she feels not granting this application for variance would be a long term negative financial impact on the applicant. Athan Parker stated that the Town has ordinances that this Board must go by. He further stated that we cannot Google for information that could contradict the code that must be followed. Mr. Parker stated that some are interpreting that a 16-foot deck is necessary, but an 8-foot deck can serve the same purpose without the need of a variance of our codes. He further stated that not granting the ability to construct a 16-foot deck is not a hardship since an 8-foot deck could still be constructed for access to the second level of the house. That 8-foot deck can be constructed to meet the Town's current code.

Susan Monette stated that replacing a nonconforming house is permissible if the cost is less than 50%. Mrs. Monette stated that she feels that the deck is part of the house, and the deck should be able to be replaced if it does not exceed 50% of the value of the home. Chairman Sullivan stated that 100% of a nonconforming structure was destroyed. The 50% percent rule does not come into play on this issue. Mrs. Monette stated that the deck was part of the home.

Mr. Seaberg stated that Town staff's interpretation of the code is that the deck is not part of the house. Therefore, when it was 100% destroyed by the applicant, it was required to follow the current code when it was to be replaced. Mr. Seaberg stated that interpretation was verified with the Town's legal staff. He further stated that is why Mr. Quick applied for consideration of this variance.

Katie Coyle stated that if you look at this code, some situations are nonconforming due to changes in law that will later, through time, become compliant with the law. She stated that there should not be many cases in Town in which this is a situation. She stated that the code it says that since there are so little incidents such as her client's situation, that the Town can allow some grace on the code. Multiple Board members expressed to Mrs. Coyle that there are many cases in Town like her client's application and disagreed with her interpretation.

Chairman Sullivan stated that Mrs. Coyle is asking the Board to emotionally rule on this application. He stated that the Board can only use facts to decide on this matter. He further stated that the facts are not showing him any evidence of hardship for this project. Chairman Sullivan stated that hardship is somewhat a subjective term that could be interpreted differently by others.

Mr. Quick stated that he is not asking to the Board to make an emotional decision on this request. He stated that he has a picnic table that will not fit on an 8-foot deck and be comfortably used. He stated that he does not need a 16-foot deck. That was what was originally on the house. He stated that he would like to have a reasonably sized deck that could be used as intended.

Susan Monette stated that an 8-foot deck would be difficult for the applicant to use his deck as he previously did. She stated that she feels the Board could consider either a 10- or 12-foot deck versus his initial proposed 16-foot deck. She further stated that the applicant would, at least, retain some of the abilities that he had with the previous deck. Mr. Quick stated that they have a polywood picnic table and two rocking chairs. He stated that there is no way that you could use those with an 8-foot deck.

Athan Parker asked Mr. Quick what would prevent the expansion of the rear deck so that the picnic table and rocking chairs could be placed there? You wouldn't have the ocean views but at least there will be the sound views. Mr. Quick stated that the entry level to the bottom of the house along with the driveway and parking area would make it difficult.

Katie Coyle stated that the purpose of her client's petition is that they feel the strict interpretation is not correct and they are asking the Board to consider her client's hardship. Chairman Sullivan stated that it is an inconvenience that the deck would be smaller than preferred but I do not think it is a hardship. The smaller deck still allows access to the front door.

Susan Monette stated that she feels the applicant should be able to build back what he had before. She further stated that she would consider a variance that would allow a smaller deck than the 16-foot proposed. She stated that the applicant could still use the deck as intended such as having dinner outside or hanging out with friends. He could also see the ocean view that he purchased the property for. Mrs. Monette stated that she has a hard time with the Town taking away what she paid for. She further stated that is what the Town is doing on this case.

Ty Cannon stated that he feels that this request does show a hardship on the applicant who should be able to reconstruct what was previously there. He stated that there could be a smaller deck but that would not provide the same use that the home was originally purchased for.

Athan Parker stated that he would be OK with a 4-foot encroachment mainly to accommodate for the stairs for access.

Katie Coyle asked if the Town had a lot of homes in Towns that could not access their upstairs? Athan Parker stated that there are many homes in Emerald Isle that have deck access to a second level. He further stated that her client could still construct a deck for access to the front door. To meet code, it would need to be smaller than what was there previously.

Mr. Seaberg stated that there needs to be some clarification. He stated that the applicant's attorney stated that the house current has no access to the second level, which is incorrect. There is access to the second level via the deck in the rear of the property.

Mr. Quick stated that not allowing access on the front provides another type of hardship because the driveway for the second level is on the front of the house. That would cause conflict when trying to carry groceries up to the second level. Athan Parker stated that no one has suggested restricting access from the front. He stated that access to the front can still take place while meeting code. There is just a desire to have a larger than permitted deck in place of what was previously there. Chairman Sullivan agreed with Mr. Parker. He stated that access to the front can occur without needing a variance, which has been stated multiple times during this meeting. Katie Coyle stated that her client would not be able to use his home as initially intended.

Susan Monette asked if members of the Board would consider a variance that would allow for a 12-foot deck versus a 16-foot deck. Chairman Sullivan stated the application is for a variance to allow for a 16-foot deck. Mr. Seaberg stated that the applicant could verbalize to the Board that he wishes to amend his request for enough of a variance to allow for a 12-foot deck versus a 16-foot deck. Mr. Quick spoke up and stated that he would like to amend his application to request for enough of a variance to allow for a 12-foot deck versus a 16-foot deck. He also stated that he will make sure that the stair will be within those parameters. Mr. Seaberg stated that, per the staff report, a 16-foot deck would require a 11-foot variance from the front yard setbacks. If the Board would consider the applicant's amended request, they would be considering a 6.8-foot variance, 7-foot if the Board wishes to round it up.

Chairman Sullivan made a motion to approve a 6.8-foot variance of the front yard setback for 1310 Emerald Drive. Susan Monette seconded the motion. Chairman Sullivan stated as part of that motion, the Board would need to answer the four items staff pointed out earlier in the meeting.

Chairman Sullivan asked the members of the Board if they felt the unnecessary hardship would result from the strict application of the regulation. The Board voted with Kenny Sullivan, Ty Cannon, Susan Monette, and Andrea Beasley voting that it does and Athan Parker voting that it doesn't.

Chairman Sullivan asked the members of the Board if they felt the hardship results from conditions that are peculiar to the property, such as location, size, or topography. The Board voted with Kenny Sullivan, Ty Cannon, Susan Monette, and Andrea Beasley voting that it does and Athan Parker voting that it doesn't.

Chairman Sullivan asked the members of the Board if they felt the hardship did not result from actions taken by the applicant or the property owner. The Board voted with Kenny Sullivan, Ty Cannon, Susan Monette, and Andrea Beasley voting that it does and Athan Parker voting that it doesn't.

Chairman Sullivan asked the members of the Board if they felt the requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved. The Board voted unanimously that it does.

Therefore, with a 4/5 concurrence of the motion for a 6.8-foot variance of the front yard setback for 1310 Emerald Drive, the motion is approved, and the variance is granted.

There being no further business to come before the Board, a motion to adjourn was made by Athan Parker. The motion was seconded by Andrea Beasley and passed unanimously (5 to 0). The meeting was adjourned at 8:15 PM.