



- 1 - Josh Johnson PE, variance applicant, 422 Highway 24 Morehead City
- 2 - Melinda Gray, neighbor, 208 Cedar Street
- 3 - Barbara Morgan, neighbor, 211 Cedar Street
- 4 - Kaye Batchelor, neighbor, 203 Cedar Street

5  
6 Eitner further identified additional points to consider. She explained hearsay evidence and identified that  
7 it is not permissible to base decisions upon testimony from someone to ask questions of. Finally, Eitner  
8 provided statutory language to assist in decision making: "It shall not be necessary to demonstrate that,  
9 in the absence of the variance, no reasonable use can be made of the property." NCGS 160D-7-5(d)(1).

10  
11 Sullivan opened the evidentiary public hearing. Eitner presented facts about the application and case:

- 12 • Josh Johnson, PE of Stroud Engineering, agent for property owner Betty Moore, has requested a  
13 variance to build a 20'x35' detached garage at 205/207 Cedar Street with a 17.5ft front setback,  
14 which is 12.5ft closer than is allowed in Section 5.1 of the Emerald Isle UDO.
- 15 • Procedure:
  - 16 ○ Application – December 13, 2022
  - 17 ○ Notification
    - 18 ■ Mailing – February 6 (& January 3)
    - 19 ■ Sign – February 13 (& January 5)
    - 20 ■ Newspaper – February 8 & 15 (& January 4 & 11)
  - 21 ○ Meeting – February 27, 2023 (January 23, 2023)

22  
23 Eitner then provided a slide with a map of Emerald Isle with a red circle over the property, for reference.  
24 The following slide provided the tax parcel information next to a zoomed-in map of the neighborhood with  
25 the subject property outlined in blue. The final slide of Eitner's testimony included the proposed site plan  
26 with site features colored-in to better delineate them on the large screen.

27  
28 The applicant, Josh Johnson, began his presentation by identifying that the goal of the project is to build  
29 a detached garage on what is naturally a plateau. The lower area of the property naturally collects and  
30 infiltrates stormwater. It's the desire to maintain the natural topography of as much of the property as  
31 possible because a lot of the neighborhood has experienced adverse effects of development. Several  
32 old, large trees exist on the lot as well.

33  
34 Johnson continued to state that Cedar Street is a 50'-wide right-of-way with 20' of pavement, which  
35 means that the property line begins 15' from edge of pavement. The proposed structure would be about  
36 33.5' from the edge of the paved street. He identified that no utilities would be affected and that it wouldn't  
37 affect views coming down the street. Discussion was held regarding plans for the driveway and the  
38 location of the septic field.

39  
40 Discussion was held regarding the location of the large trees and topographical changes. Parker asked  
41 whether a hydraulic analysis had been performed to determine the effects of constructing the building  
42 within the building envelope. Johnson said he had not. Further discussion was held regarding potential  
43 impacts to surrounding utilities and trees.

44  
45 Eitner requested that Johnson discuss the required findings as it relates to proving the variance case.  
46 Johnson reviewed the findings and responses similarly to that provided in the initial application. Parker

1 requested if the garage would be living space and Johnson confirmed that it would not. Parker asked if  
2 there are any other structures on that street that encroach into the 30' front setback. Johnson mused that  
3 there are likely two structures across the street which encroach into the front setback by approximately  
4 7 or 8 feet.

5  
6 MacAvery asked Eitner if an engineered stormwater plan had been submitted for this project, as it meets  
7 that threshold. Eitner and Johnson identified that they wanted to make sure the location would be feasible  
8 before designing stormwater retention for the project. Monette asked to review the property on the  
9 county's GIS website.

10  
11 Eitner confirmed via GIS that several principal structures on Cedar street are within the 30ft front setback.  
12 Discussion was held regarding the size of the lot with regard to houses within setbacks. Sullivan pointed  
13 out that plenty of older structures around town encroach into the setbacks because they were built before  
14 the Town was incorporated and zoning regulations were in place. Additionally, Sullivan pointed out that  
15 the request is for 12.5ft of the 30ft requirement, which is huge.

16  
17 Eitner then led the Board to hear testimony from other witnesses if they were satisfied with the applicant's  
18 presentation. Sullivan agreed that the applicant could be seated and invited the sworn witnesses to  
19 testify.

20  
21 Melinda Gray, 208 Cedar Street – Gray has owned the house across the street for twelve years. She  
22 spoke highly of the property owners' property maintenance and enhancement. She stated initially she  
23 was concerned because the proposed garage would be built in front of her house. In reviewing the  
24 application, she felt that the building would look good and be well built. She had no concerns with where  
25 it's located or how far it's set back. Her house is within the setback so the proposed building across the  
26 street would seem in keeping. She is also a fan of leaving the properties as natural as possible and  
27 worries what would happen if trees were removed and/or the hole filled in based on previous experience  
28 with development on the street and stormwater problems.

29  
30 Barbara Morgan, 211 Cedar Street – Morgan questioned as to whether she could provide testimony,  
31 since she is not a neighbor abutting the property (there is an undeveloped lot in between the subject  
32 property and hers). The board asked staff for clarity on who may testify. The board agreed to hear the  
33 testimony, but not base decisions on it. Morgan agrees with the proposed project due to the vegetation  
34 and natural area preservation aspects of it. She mentioned that she spoke with neighbors on the street  
35 that live there full-time about it and they voiced no concerns but understood that speaking for other people  
36 would be considered hearsay.

37  
38 Kaye Batchelor, 203 Cedar Street – Batchelor noted she's the closest adjoining neighbor to the proposed  
39 project, to the south side. She was not aware of the proposed initiative until she received a letter from  
40 staff. She made efforts to discuss the project with neighbors and made contact with Barbara Morgan to  
41 discuss it. She got in contact with the applicant and met on site to review the proposed project. She likes  
42 some aspects of the project, but has concern for the impacts to traffic. She stated that when trying to  
43 back out of her driveway she would have impeded view of traffic coming from the main highway.  
44

1 Sullivan thanked the witnesses and asked if the board had any further questions for them. They did not.  
2 Sullivan asked if staff had any further testimony. Eitner indicated she did not and advised that they could  
3 close the public hearing if satisfied with testimony and enter deliberation.  
4

5 Cannon asked what staff's recommendation was. Eitner identified that staff's recommendations were  
6 included in the case review and that staff recommends approval of the request. Eitner clarified that the  
7 Required Findings for Variances had been updated in the UDO on January 10<sup>th</sup> so the findings included  
8 in staff's recommendation and those that the Board would be discussing are different, but that staff's  
9 general recommendation of approval still stands.  
10

11 Sullivan closed the evidentiary public hearing. Eitner guided the board that they would review four  
12 required findings, discuss, then individually indicate whether they agree or disagree that the finding had  
13 been proven and what evidence or testimony proved it.  
14

15 **A. Unnecessary hardship would result from the strict application of the regulation. It is not**  
16 **necessary to demonstrate that, in the absence of the variance, no reasonable use can be**  
17 **made of the property.**  
18

19 **CONCLUSION:**

- 20 - **Parker:** Disagree. There is plenty of room on the property to meet the 30ft front setback and the  
21 other development restrictions such as 35% natural area on the lot.
- 22 - **Cannon:** Agree. The detached garage would result in greater filling and grading and be a greater  
23 problem (if it were made to meet the regulations). Agree with staff findings.
- 24 - **MacAvery:** Disagree. They could choose another location if it was turned and pushed back to  
25 meet the setback without removing a lot of trees. It could be done without a lot of fill, like with a  
26 filled foundation/retaining wall.
- 27 - **Sullivan:** Disagree. There is sufficient space on the lot to site the structure without significant  
28 vegetation loss or filling/grading.
- 29 - **Monette:** (Discussion was held as to what counts as an unnecessary hardship and whether that  
30 would reasonably apply to an accessory structure.) Disagree. The unnecessary hardship does  
31 not apply to an accessory structure.  
32

33 Agree or **Disagree?**                      **Vote:   1   Agree   4   Disagree**  
34

35 This conclusion is based on the following findings of fact: There is sufficient space on the property  
36 to meet the setback requirements without adversely affecting existing vegetation or stormwater  
37 storage, as it is a double lot.  
38

39 **B. The hardship results from conditions that are peculiar to the property, such as location, size,**  
40 **or topography. Hardships resulting from personal circumstances, as well as hardships**  
41 **resulting from conditions that are common to the neighborhood or the general public, may**  
42 **not be the basis for granting a variance.**  
43

44 **CONCLUSION:**

- 45 - **Parker:** Disagree. The alleged hardships are common to many other lots in town.

- 1 - **Cannon:** Agree. The large trees and topographical change throughout the lot are peculiar to the
- 2 property.
- 3 - **MacAvery:** Disagree. The alleged hardships are common to many other lots in town.
- 4 - **Sullivan:** Disagree. The alleged hardships are common to many other lots in town.
- 5 - **Monette:** Disagree. The alleged hardships are common to many other lots in town.

6  
7 This conclusion is based on the following findings of fact: Topographical change across the lot and  
8 established trees are features that owners commonly have to accommodate.

9  
10 **C. The hardship did not result from actions taken by the applicant or the property owner. The**  
11 **act of purchasing property with knowledge that circumstances exist that may justify the**  
12 **granting of a variance is not a self-created hardship.**

13  
14 **CONCLUSION:**

- 15 - **Parker:** Agree. The trees were in place prior to considering development, and they did not grade
- 16 their property to accept stormwater from Cedar Street and adjoining properties.
- 17 - **Cannon:** Agree. Same reasons.
- 18 - **MacAvery:** Agree. Same reasons.
- 19 - **Sullivan:** Agree. Same reasons.
- 20 - **Monette:** Agree. Same reasons.

21  
22 This conclusion is based on the following findings of fact: The existing vegetation and stormwater  
23 storage is existing prior to the request.

24  
25 **D. The requested variance is consistent with the spirit, purpose, and intent of the regulation,**  
26 **such that public safety is secured and substantial justice is achieved.**

27  
28 **CONCLUSION:**

- 29 - **Parker:** Disagree. Too close to edge of pavement for neighbors to back out of driveway per
- 30 Batchelor's testimony. Emerald Isle has 30ft front setbacks for a reason.
- 31 - **Cannon:** Agree. No safety issues. 33ft from edge of pavement gives enough space. Existing
- 32 encroachments along the same street so they're not asking for too much.
- 33 - **MacAvery:** Agree. It's in spirit with ordinance to preserve vegetation and minimize stormwater.
- 34 - **Sullivan:** Disagree. There's no injustice to correct.
- 35 - **Monette:** Disagree. Not consistent with intent of regulation. Two wrongs don't make a right.

36  
37 This conclusion is based on the following findings of fact: While the preservation of existing old  
38 growth trees and a natural stormwater retention area is consistent with the ordinance, establishment  
39 of accessory buildings closer than allowed to the public right-of-way is not good for public safety.

40  
41 MacAvery asked whether allowing a variance on this property would set precedent for future development  
42 on the site and whether or not the board could place conditions on the variance. Eitner advised that  
43 conditions can be placed on a variance, as long as they're directly pertaining to the variance request and  
44 agreed upon by the applicant.

1 **Motion was made by Parker to deny the variance, with a second by Sullivan. The Board voted**  
2 **with Sullivan, MacAvery, Monette, and Parker in favor of denial, and Cannon opposing. Motion**  
3 **carried four to one.**

4  
5 Sullivan asked what the applicant's next steps would be, superior court? Eitner identified that an appeal  
6 of the decision would be filed with Superior Court, or a redesign of the project that meets the setbacks  
7 could be proposed and discussed with staff. Applicant agreed that they would attempt to redesign the  
8 project.

9  
10 A brief intermission was held while the applicant and witnesses were leaving. General discussion was  
11 held between the Planning Board and the witnesses regarding the required 35% natural area,  
12 enforcement of the provision, and the effects of hurricane devastation of trees.

13  
14 Brief discussion was held regarding setbacks.

### 15 16 **5. UDO Updates Phase Two – Business Registration and Satellite Merchants**

17  
18 Sullivan reoriented the Board of Adjustment to Planning Board and introduced this agenda item.

19  
20 Eitner gave a presentation regarding "food trucks" ordinances – enclosed for reference.

21  
22 Sullivan identified that Marina Village, one of the mixed-use zoning districts, had been excluded from  
23 proposed draft's list of allowable districts, and that it should be included because it's similarly regulated  
24 to the other districts listed to be consistent with the intent.

25  
26 **Motion was made by Cannon to recommend the proposed amendments with the condition that**  
27 **Marina Village zoning district be added to the allowed zoning districts in Section 10-43.2.b.i.1,**  
28 **with a second by Parker. The Board voted unanimously in favor. Motion carried.**

29  
30 Eitner agreed to update the proposed amendment and statement of consistency and have Sullivan come  
31 to the office to sign the updated version.

### 32 33 **5. Report from Planning Director**

34  
35 Eitner identified UDO Updates Phase Two proposed amendments. General discussion was held  
36 regarding stone construction entrances, foundation surveys, and parking space size requirements.  
37 Process for review and adoption for Phase Two amendments was reviewed.

### 38 39 **6. Board Comments**

40  
41 No board comments were provided.

### 42 43 **7. Adjourn**

44  
45 **Motion was made by MacAvery to adjourn the meeting with a second by Parker. The Board**  
46 **unanimously in favor. Motion carried. The meeting concluded at approximately 7:45PM.**