

**MINUTES OF THE MEETING OF THE  
CITY OF SEAFORD BOARD OF ADJUSTMENT AND APPEALS**

January 3, 2018

12:00 p.m.

Mayor David Genshaw called the meeting to order with Dolores Slatcher, City Manager and James A. Fuqua, Jr., City Solicitor in attendance. Mike Bailey, Building Official was also present.

Mayor Genshaw turned the meeting over to Mr. Bailey.

Mr. Bailey stated that the Board had a request to move New Business item #2, to be the first thing discussed, as Mr. Vincent had another commitment he needed to go to.

Mayor Genshaw called for a motion to move New Business #2, to be discussed first.

City Solicitor Fuqua made a motion to discuss New Business #2 first. City Manager Slatcher seconded the motion; motion so passed with all present voting in favor.

Mr. Bailey presented **Case No. V-02-18: Michael and Elaine Vincent**, property owner of Tax Map and Parcel 531-10.18-59.00, located at 736 E Ivy Drive, Zoning District R1 Low Density Residential District, are seeking a variance to construct a garage on a property without a principal building.

Mr. Bailey asked Mr. Vincent to come forward to present any information on the request and answer any questions that the Board members may have.

City Solicitor Fuqua asked if Mr. Vincent owned the lot and if it is currently vacant.

Mr. Vincent explained that the lot is adjacent to the property that he lives on. There was a house on the lot years ago, but after a fire took place, his wife and himself purchased the lot, and it has since just been a barren lot with grass and landscaping.

He plans on having the 2-3 car garage built so they will be able to park in the garage versus on the street, and it will allow them extra storage.

City Manager Slatcher asked if Mr. Vincent had any drawing or plans of the proposed building with him, to see the look of the building.

Mr. Vincent stated no. But the building will face the street, and will look as close to his house as he is able to have it.

Mayor Genshaw asked if the building will be a pole building.

Mr. Vincent stated either a pole building or stick built. Whichever they choose it will look very similar to their house.

City Solicitor Fuqua asked if the building would be used for anything that may be considered a nuisance.

Mr. Vincent, stated no. It will just be used for parking and storage.

Mr. Bailey stated that the building will follow the same set-backs that a house would follow, since there is not an existing structure on the property.

City Solicitor Fuqua stated that although the lot did not have an existing principal building he did not see any reason that a garage could not be built on this property as an accessory building for Mr. Vincent's current property, 734 E Ivy Dr, located next door. The building will not affect value of surrounding homes and will not be used for any reasons considered to be nuisance.

There were no questions or comments from the public.

Mayor Genshaw called for a motion.

City Solicitor Fuqua made a motion to approve of the variance to construct a garage on the property, 736 E Ivy Drive, without a principal building. City Manager Slatcher, seconded the motion. Motion so passed with all present voting in favor.

Mayor Genshaw called for a motion to approve the minutes of the Board of Adjustment meeting held on December 6, 2017. City Solicitor Fuqua made a

motion to approve the minutes. City Manager Slatcher seconded the motion; motion so passed with all present voting in favor.

Mr. Bailey presented Case **No. V-01-18: Richard L Ewing**, property owner of Tax Map and Parcel 531-13.05-179.00, located at 639 N Phillips Street, Zoning District C-2 Highway Commercial District, is seeking a variance from the front yard setback for an addition to an existing non-conforming structure.

Mr. Bailey asked Mr. Ewing to come forward to present any information on the request and answer any questions that the Board members may have.

Mr. Ewing stated that he is looking to add a total of 1422 sq. ft. to allow for additional storage for his sauce that he currently sells from the existing space. Mr. Ewing stated that the setback standard has changed since the property was purchased and the existing building is right on the property line. Mr. Ewing is looking to add an additional 52 ft. to the front of the building. Mr. Ewing presented a drawing of the proposed addition to the existing building and addition of a gravel parking lot to the Board members.

City Manager Slatcher stated that a gravel parking lot is not permitted by code.

Mr. Ewing asked if he has to have a parking lot.

Mr. Bailey stated that he would have to review to see if a lot is required for that property, being that it is commercial, and a store front.

Mr. Ewing stated that he is only open to the public two days a week.

City Solicitor Fuqua asked what was located south of Mr. Ewing's lot.

City Manager Slatcher stated that there is a residential home south of the property.

There were no questions or comments from the public.

Mayor Genshaw called for a motion.

City Solicitor Fuqua stated that the addition of the property is a reasonable use of the property, and would not adversely affect any surrounding properties. The setbacks are not new setbacks, they are ones that have already been established for the property. Based on that information, City Solicitor Fuqua made a motion to

approve the variance from the front yard setback for an addition to an existing non-conforming structure. City Manager Slatcher seconded the motion; motion so passed with all present voting in favor.

City Solicitor Fuqua stated that he saw no reason to not approve the variance request from the front yard setback for an addition to an existing non-conforming structure.

### **Old Business**

Mr. Bailey presented Case **No. V-16-17: Joseph Balsamo**, property owner of Tax Map and Parcel 331-5.00-4.14, located at N. Market St Extended, (on behalf of First Baptist Church), is seeking a variance from section 15-40 Uses by Right (a) (1) of the zoning ordinance to allow a church to be built on the property.

Mr. Brad McWilliams, Chairman of Board of Trustees of First Baptist Church, came forward to answer any questions the Board may have.

Mr. McWilliams stated that the Church is in the process of purchasing the property located at N. Market St Extended, as long as the variance is passed to allow a Church to be built on this property. Church services are Sundays and Wednesdays, with possible Saturdays, for events such as weddings, dinners, etc.

City Manager Slatcher stated that this case was to be presented at the December Board of Adjustment meeting, but there was no representation at that time, so it was advertised again, and put on the January agenda.

City Solicitor Fuqua, asked if the property was owned by the City.

City Manager Slatcher stated no. The property is owned by Mr. Balsamo.

City Solicitor Fuqua stated that the variance requested is to locate a Church, a Religious Use, on an existing land zoned C-2, Highway Commercial. C-2 Zoning allows as a permitted use, a wide variety of commercial uses (as listed in Section 15-29) including restaurants, cafes, and taverns, government offices and other public or semi-public offices, indoor recreational facilities, including theaters and bowling alleys, libraries and museums, motels-hotels with meeting rooms and auditorium spaces, treatment centers and instructional, business or trade schools.

City Solicitor Fuqua stated that he sees no reason that a Church could not be built on the existing land.

There were no questions or comments from the public.

Mayor Genshaw called for a motion. City Solicitor Fuqua made a motion to approve the variance from section 15-40 Uses by Right (a) (1) of the zoning ordinance to allow a church to be built on the property. City Manager Slatcher seconded the motion; motion so passed with all present voting in favor.

Mayor Genshaw called for a motion to close the Board of Adjustment meeting. City Solicitor made a motion to adjourn the meeting. City Manager Slatcher seconded the motion; motion so passed.

The Board of Adjustment meeting was closed at 12:20 p.m.

### **Decision**

City Solicitor Fuqua had explained that special considerations are required in the application of the requirements of the Zoning Ordinance to proposed religious uses. While Religious uses can be prohibited in appropriate situations, under Federal Law, a City must have a “compelling governmental interest” to impose a burden or prohibition on the practice of Religion. In addition, Federal Law prohibits a City from discriminating in its land use regulations against Religious Use. A Religious assembly or institution must be treated on equal terms with a non-religious assembly or institution.

The variance requested is to locate a Church, a Religious Use, on an existing land zoned C-2, Highway Commercial. C-2 Zoning allows as a permitted use, a wide variety of commercial uses (as listed in Section 15-29) including restaurants, cafes, and taverns, government offices and other public or semi-public offices, indoor recreational facilities, including theaters and bowling alleys, libraries and museums, motels-hotels with meeting rooms and auditorium spaces, treatment centers and instructional, business or trade schools.

All of the listed permitted uses involve assembly of people for non-religious use. The proposed Church creates no more impact, and more likely much less impact, than the uses already permitted.

Because the parcel is already zoned C-2, Commercial Use is already permitted and a Church would be subject to all other applicable ordinances of the City controlling noise or nuisance, in the same manner as permitted uses. There is no “compelling governmental interest” to prohibit a Religious use that would have an impact no different than uses already permitted by the Zoning Ordinance.

City Solicitor Fuqua made a motion to approve the variance request from Section 15-40 (a) (1) of the Zoning Ordinance to allow a Church to be built on the property in that the requested use results in no adverse impact on neighboring properties or the area any different than impacts similar to those of uses already permitted in the C-2 Zoning District. As such the variance will not be contrary to the public interest and the literal enforcement of the ordinance would result in unnecessary hardship and exceptional practical difficulties to the Church and be contrary to the mandate of applicable Federal Law addressing regulation of Religious land use.

City Manager Slatcher seconded the motion and the motion was unanimously approved dated January \_\_\_\_\_, 2018.

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James A. Fuqua, Jr., City Solicitor

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David Genshaw, Mayor

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Dolores Slatcher, City Manager