# **KITTY HAWK BOARD OF ADJUSTMENT**

# **MINUTES**

**November 20, 2013 - 4:00 p.m.**

**Kitty Hawk Municipal Building**

**AGENDA**

1. Call to Order / Attendance

2. Approval of Minutes from September 16, 2013 Meeting

3. Swearing In of Speakers

*\*\*Note: The Board of Adjustment is a quasi-judicial body and anyone participating in a public hearing before the Board must be sworn in prior to speaking. When appearing before the Board, please state your name and address for the record and address the Board members in a courteous manner.*

4. 3619 Windgrass Circle – Section 42-360(c)(2)d of the Town Code establishes a maximum length of 100 feet for a private pier. The applicant is requesting a variance of 100 feet from the maximum pier length requirement in order to construct a pier 200 feet in length extending into Kitty Hawk Bay.

 a. Public Hearing

 b. Board Deliberation & Decision

5. Newly Adopted Board of Adjustment Regulations:

 a. Summary of David Owens’ Presentation / Overview of Key Changes

 b. Evaluation of Variance Application Form

6. Other Business:

 a. Chairman Spencer

 b. Board of Adjustment Members

 c. Town Attorney

 d. Planning Director

7. Adjourn

**1. CALL TO ORDER / ATTENDANCE**

Chairman Spencer called the meeting to order at approximately 4:00 p.m. A brief overview of meeting procedures was given for the benefit of the audience and participants.

 **BOARD MEMBERS PRESENT:** Matthew Spencer, Chairman / Barbara Connery, Vice Chair

 Pat Forrester / Jim Geraghty / David Morton

Chris Jenkins, Alternate / Gary Muir, Alternate

 **STAFF PRESENT:** Joe Heard, Director of Planning and Inspections / Steve Michael, Town Attorney

Lynn Morris, Town Clerk

**2. APPROVAL OF MINUTES FROM SEPTEMBER 16, 2013 MEETING**

With hearing no corrections or discussion regarding the minutes of the last meeting on September 16, 2013, **Chairman Spencer moved that the Board adopt the minutes as drafted.** With a call for the vote, **the motion carried unanimously, 5-0.**

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**3. SWEARING IN OF SPEAKERS**

First, Morton asked to make a statement concerning the subject matter before the Board of Adjustment, wanting to inform everyone he ran into Harold Olds (a representative of the applicant) during the second week of October. At that time, casual pleasantries were exchanged between them, and when Olds explained he was applying for a permit to build a pier and might need a variance for such, Morton acknowledged being a BOA member and indicated he could not discuss the situation any further.

Upon poll by Chairman Spencer, no one present felt it necessary for Morton to recuse himself from the subject deliberation.

Chairman Spencer then invited all persons participating in the variance review to come forward. Town Clerk Lynn Morris swore in by oath those persons who would be offering testimony during the public hearing:

* Howard Olds – contractor (Northeast Marine Construction)
* Gopal (Paul) Sharma – property owner
* Bill Jones – pier builder (Northeast Marine Construction)
* Danny W. Joyner – neighboring property owner (mailing address: 5285 Laithbank Lane, Johns Creek, GA 30022)
* Joe Heard, Director of Planning and Inspections for the Town of Kitty Hawk

The Chair then moved the agenda forward, proceeding next with the Planner presenting staff testimony.

**4. 3619 Windgrass Circle – Section 42-360(c)(2)d of the Town Code establishes a maximum length of 100 feet for a private pier. The applicant is requesting a variance of 100 feet from the maximum pier length requirement in order to construct a pier 200 feet in length extending into Kitty Hawk Bay.**

**a. Public Hearing.** Joe Heard, the Director of Planning and Inspections, noted for the record a copy of the legal advertisement has been provided to the Town Clerk. The legal notice appeared in *The Coastland Times* on November 3, 2013, properly advertising the hearing for the subject application (meeting the required 15 days prior). Clerk Morris was also given verification of the Notice of Public Hearing having been mailed to the applicant/property owner and to each property owner adjoining 3619 Windgrass Circle. No notifications were returned. The subject property was properly posted initially on October 31, 2013, for advertising the public hearing, and due to wind damage, a reposting was made on Friday, November 15, 2013.

Said Notice of Public Hearing is entered into this record of review:

*THE TOWN OF KITTY HAWK*

***NOTICE OF PUBLIC HEARING***

*NOTICE is hereby given that the Kitty Hawk Board of Adjustment will hold a public hearing on Wednesday, November 20, 2013, at 4:00 p.m., at the Kitty Hawk Town Hall, 101 Veterans Memorial Drive in the Town of Kitty Hawk, Dare County, North Carolina, concerning the following variance application:*

***3619 Windgrass Circle – Application for a variance of 100 feet from the standards for maximum length of a private pier in Section 42-360(c)(2)d of the Town Code in order to construct a pier 200 feet in length extending into Kitty Hawk Bay. Presently, the maximum length of a private pier in the Sound Waters district is 100 feet.***

*During the public hearing, all interested persons will be given the opportunity to comment on the above referenced matter. The Board of Adjustment may thereafter act upon the proposed variance application, which action may include approval, denial, approval with conditions, modification, or deferral of action until a subsequent meeting.*

*For more information about the proposed variance or Board of Adjustment meeting, please contact Joe Heard with the Planning & Inspections Department at (252)261-3552.*

The Planner then reviewed with the Board his staff memorandum dated November 20, 2013, which details the variance request and submitted exhibits. During the Planner’s presentation, Exhibit 1 was displayed on the overhead projection screen for reference. Said memo is entered into the record:

***Requested Variance***

*Application for a variance of 100 feet from the standards for maximum length of a private pier in Section 42-360 (c)(2)d of the Town Code in order to construct a pier 200 feet in length extending into Kitty Hawk Bay at 3619 Windgrass Circle. Presently, the maximum length of a private pier in the Sound Waters extraterritorial zoning district is 100 feet.*

*The attached Exhibit A shows the proposed location and dimensions of the pier.*

***Supporting Documentation***

*The applicant has submitted an application form describing the rationale for the variance request.*

*In addition, the applicant has submitted the following exhibit for the Board’s consideration:*

***Exhibit A –*** *Site plan showing the proposed pier at 3619 Windgrass Circle drawn by the applicant’s contractor in preparation for a CAMA permit application. The survey shows the shoreline of the subject property and the dimensions of the pier extending into Kitty Hawk Bay.*

*Staff has submitted the following exhibits for the Board’s consideration:*

***Exhibit 1 –*** *Aerial photograph showing 3619 Windgrass Circle and surrounding properties, including piers stretching into Kitty Hawk Bay, obtained from the geographic information system (GIS) on Dare County’s website.*

***Exhibit 2*** *– Aerial photograph showing all piers within the Town of Kitty Hawk in Kitty Hawk Bay obtained from the Google Earth website on October 23, 2013.*

***Exhibit 3 –*** *A copy of Ordinance 94-9 establishing the location of the Town’s extraterritorial jurisdiction and standards for the Sound Waters extraterritorial zoning district (adopted June 27, 1994).*

***Exhibit 4 –*** *A copy of Ordinance 99-25 amending the standards of the Sound Waters zoning district, including maximum length requirements for piers.*

***Background Information***

*State law authorizes municipalities to establish an area of extraterritorial jurisdiction (ETJ) for the purpose of establishing zoning and development standards in designated areas abutting, but outside of, municipal boundaries. On June 27, 1994, the Kitty Hawk Town Council established an ETJ area along the entire western boundary of the Town extending one mile westward into Kitty Hawk Bay and the Currituck Sound. At the same time, the Town Council adopted zoning and standards for uses and development within the ETJ area.*

*On December 6, 1999, the Kitty Hawk Town Council adopted a text amendment that, among other changes, established the standards for the maximum length of piers in the Sound Waters zoning district now found in the Kitty Hawk Zoning Code, Section 42-360(c)(2)d:*

***Sec. 42-360. - Sound waters district.***

*(c) Conditional uses.*

*(2) Private, community or commercial piers and boat slips, subject to continuing compliance with the following requirements:*

*d. The pier or marine improvements shall not extend further waterward of the mean high‑water mark of the bay or sound than provided as follows:*

|  |  |
| --- | --- |
| *Private pier and boat slips* |  *100 feet* |
| *Community pier and boat slips* |  *200 feet* |
| *Commercial pier and boat slips* |  *200 feet* |

*Prior to the establishment of these standards on December 6, 1999, the N.C. Division of Coastal Management was the only agency responsible for the issuance of permits for piers. With the adoption of standards for piers, the Town of Kitty Hawk established its authority to review and permit piers located within the Sound Waters zoning district in the Town’s ETJ area.*

***Rationale for Maximum Pier Length Standards***

*At its meeting on July 22, 1999, the Kitty Hawk Planning Board first discussed the adoption of standards for maximum pier length. Concerns expressed included the aesthetic appearance of piers, piers blocking views of other residents, and boaters running into longer piers. The shallow depth of water and presence of aquatic vegetation in some areas were mentioned as reasons for needing an adequate pier length. At one point, a pier length of 200 feet was suggested. It was also noted that the difference in water depth from 100 feet to 200 feet was minimal.*

*On October 4, 1999, Kitty Hawk Town Council held an initial public hearing on proposed standards for piers, which included restrictions on maximum pier length. After a couple of public comments, the Council members decided to send the ordinance back to the Planning Board to add a grandfather clause for existing piers and clarify a few minor details. The minutes from the Town Council meeting at which the pier length ordinance was adopted (December 6, 1999) do not reference any additional discussion or provide additional rationale for the pier length restriction.*

**P*roperty & Area Information***

*The subject property is presently zoned Beach Residential (BR-1) and was developed with a single-family residence in 1995. The current owners purchased the property in 2011. The property is 29,230 square feet (0.67 acre) in size, approximately 88 feet in width, and over 400 feet in depth off the road. The rear of the property is clearly defined by a bulkhead along Kitty Hawk Bay. The area of Kitty Hawk Bay adjoining the western boundary of the property is located within the Town’s extraterritorial jurisdiction in the Sound Waters zoning district.*

*The abutting property to the north is zoned Beach Residential (BR-1) and contains a single-family residence. This property has a pier 200 feet in length (permitted by the N.C. Division of Coastal Management in 1986). The adjoining parcel to the south is also zoned BR-1 and contains a single-family residence. This property has a pier 100 feet in length that was permitted by the Town of Kitty Hawk and constructed in 2005.*

*The Town of Kitty Hawk contains fourteen (14) properties along the eastern side of Kitty Hawk Bay that have been developed with piers. The following chart notes the length and construction date for each of these piers.*

|  |  |  |
| --- | --- | --- |
| ***Address*** | ***Length of Pier*** |  ***Date Constructed*** |
| *3400 Bay Drive* | *62 feet* | *1993* |
| *3518 Bay Drive* | *200 feet* | *1997* |
| *3530 Bay Drive* | *100 feet* | *2005* |
| *3617 Windgrass Circle* | *200 feet* | *1986* |
| *207 Harbour Bay Drive* | *101 feet* | *2005* |
| *512 First Flight Run* | *100 feet* | *2013* |
| *510 First Flight Run* | *100 feet* | *2006* |
| *508 First Flight Run* | *100 feet* | *2006* |
| *First Flight Ridge* *(community pier)* | *100 feet* | *2005* |
| *112 Dosher Lane* | *100 feet* | *2005* |
| *108 Dosher Lane* | *100 feet* | *2007* |
| *104 Dosher Lane* | *100 feet* | *2001* |
| *100 Dosher Lane* | *100 feet* | *2003* |
| *3801 Moor Shore Road* | *75 feet* | *2005* |

*Twelve (12) of the fourteen (14) piers in Kitty Hawk Bay are 100 feet in length or shorter, making them compliant with the Kitty Hawk’s current standards for the maximum length of a pier. The two (2) piers of a greater length were both permitted by the N.C. Division of Coastal Management and constructed prior to the Town’s adoption of standards for maximum pier length in 1999. These two (2) piers are legal, nonconforming (“grandfathered”) structures that can be repaired and replaced in case of a catastrophic event, but cannot be increased in length.*

***Prior Pier Variance Requests***

*At its meeting on May 17, 2000, the Kitty Hawk Board of Adjustment considered an application for a variance of 370 feet to construct a community pier with boat slips 570 feet in length for the Harbour Bay Subdivision. The developer/applicant expressed a desire for the longer pier in order to reach deeper water and allow more functional boat slips for residents of the subdivision. After evaluating the information presented and circumstances of that particular situation, the Board members voted unanimously (5-0) to deny the requested variance.*

*At its meeting on September 5, 2001, the Kitty Hawk Board of Adjustment considered an application for a variance of 50 feet to construct a private pier 150 feet in length associated with the residence at 104 Dosher Lane. The applicant stated that he wanted the variance to allow his boats to be moored in deeper water farther from the shoreline. After evaluating the information presented and circumstances of that particular situation, the Board members voted unanimously (5-0) to deny the requested variance. The meeting minutes reflect comments from one of the Board members that he did not see a unique hardship, as all properties along Kitty Hawk Bay have the same issues with the shoreline and depth of the water.*

*\*\* NOTE: Although it can be instructive to study prior decisions of the Board dealing with similar situations, it is important to note that the denial of these prior variances does not necessarily create a precedent for the variance presently being considered at 3619 Windgrass Circle. Differences in the subject properties and circumstances surrounding the current variance request may lead the Board members to make different findings for this application.*

***Directions to the Subject Property***

*From Kitty Hawk Post Office, Hwy. 158 & Kitty Hawk Road, drive nearly 0.8 mile south on N. Croatan Highway (Hwy. 158). Turn right onto W. Tateway Road (just after Carolina Shores Vacation Rentals). Drive west for approximately 0.3 mile. Turn right onto Windgrass Circle. 3619 Windgrass Circle is the first driveway on the left.*

*\*\* NOTE – The owners have granted permission for the Board members to park in their driveway and walk around to the back yard in order to view the proposed location of the pier and other piers on nearby properties.*

It was noted that Exhibits 1 and 2 are not date current, in that they do not show all existing fourteen piers. At least one of the piers built within the past year does not show up on either aerial photograph.

The Planner stated staff has reviewed the proposed variance application and has provided its opinion and recommendations on the findings. Also provided by the applicant was a list of answers as to why he believes he does comply with the current standards. Heard then reviewed the formal conclusions made by staff, which is being entered into the record:

***STAFF FINDINGS - 313 JEJAC DRIVE***

***1. Would an unnecessary hardship be created by strict application of the ordinance??***

***No. It is not clear that any hardship is being created by the maximum pier length requirement. First, the applicant has not provided any justification for why mooring a large boat is necessary to make reasonable use of the property or a pier.***

***Secondly, the applicant estimates the water depth at high tide to be 10-12 inches 100 feet from the shoreline and 24 inches 200 feet from the shoreline. However, the applicant has not provided any information documenting how this difference creates a hardship. There is no evidence supporting the claim that the current maximum pier length will prevent mooring of a large boat or that increasing the length to 200 feet will accommodate mooring of a large boat.***

***As eleven (11) other piers with a length of 100 feet or shorter have been constructed in Kitty Hawk Bay since the adoption of the maximum pier length standards in 1999, it seems clear that the ordinance has not created a significant hardship for other property owners in similar circumstances.***

***2. Does the hardship result from conditions peculiar to the subject property, such as location, size, or topography?***

***No. There do not seem to be any topographic features offshore of the property that would create a hardship peculiar to the subject property. The relatively shallow depth of Kitty Hawk Bay appears to be consistent along the entire shoreline and is not unique to the subject property.***

***3. Is the hardship a result of actions taken by the applicant or property owner?***

***No. The current property owners purchased the subject property in 2011. The hardship being claimed (shallow depth of the bay) is a natural occurrence that was not caused by the applicant.***

***4. Is the requested variance in harmony with the spirit, purpose, and intent of the ordinance?***

***No. Concerns expressed by Planning Board members during the initial consideration of an ordinance establishing maximum pier lengths included the aesthetic appearance of piers, piers blocking views of other residents, and boaters running into longer piers. It could be fairly argued that the adjoining 200 foot long pier at 3617 Windgrass Circle already impacts these concerns and the construction of another pier of the same length would not significantly change the visual impact or safety for boaters. However, adding another 200 foot pier would only seem to exacerbate the negative impacts of the adjoining pier. Therefore, the proposed variance would not be in harmony with the spirit, purpose, and intent of the ordinance.***

***5. Is the requested variance the minimum possible to make reasonable use of the land, building, or structure?***

***No. At this point in time, the applicant has not provided any evidence supporting the claim that the current maximum pier length will prevent mooring of a large boat, increasing the length to 200 feet will accommodate mooring of a large boat, or 200 feet is the exact distance at which the water depth reaches the appropriate level. Is there a particular boat the applicant is seeking to accommodate? If so, what is the draft (depth under water) of this boat? Is this depth reached at a shorter distance than 200 feet? Is it even reached at a pier length of 200 feet?***

***There is no information provided about why mooring a large boat is even necessary for reasonable use of the property or pier. As eleven (11) other piers with a length of 100 feet or shorter have been constructed in Kitty Hawk Bay since the adoption of the maximum pier length standards in 1999, it seems clear that the ordinance has not prevented the reasonable use and enjoyment of the bay for other property owners in similar circumstances.***

***Summary:***

***It is staff’s opinion that the requested variance meets the standards of Finding 3. However, as staff did not find in the applicant’s favor on Findings 1, 2, 4, and 5, staff is recommending DENIAL of the proposed pier length variance.***

***Key Points:***

***Positive***

* ***The requested variance is not a result of actions taken by the applicant.***

***Negative***

* ***The applicant has provided no evidence that the variance is reasonable or necessary to meet the applicant’s needs.***
* ***The hardship referenced by the applicant applies to dozens of properties along Kitty Hawk Bay and is not peculiar to the subject property.***
* ***Eleven (11) other property owners have faced the same issue and constructed a pier that complies with Town standards since 1999.***

***The requested variance seems inconsistent with the spirit, purpose, and intent of the maximum pier length standards***

At the end of the staff review, Planner Heard indicated to the Chairman his presentation was complete.

An opportunity was given to the applicant to ask any questions of the Planner. Harold Olds, representing the applicant, inquired about the date when the pier to the south was permitted, and the Chairman offered if it was built before 1999, that would be the important marker. Heard then indicated both the referenced nearby 200’ piers were built prior to 1999. The pier on the property just to the north was constructed in 1986, and the second pier, which is four lots to the south (3518 Bay Drive), was constructed in 1997.

The Chair noted for the record there were no further questions for Planner Heard by either the applicant’s party or Board members.

The floor was next given to the applicant and his representatives.

Gopal (Paul) Sharma, the property owner, commented that, basically, a 100’ pier would be of no use. He bought the property with a pier in mind in order to dock a boat, describing, though, how just the other day a jet ski got all choked up. If a longer pier is not possible, he might sell the property and choose something else. A picture taken this date was presented to the Board which showed little water being present in the bay at 100’, and the Chair acknowledged he visited the subject site today and was aware of the water depth. Sharma respectfully requested the Board reconsider the 100’ restriction, to allow a pier of a longer length to extend further into the water.

Referencing the subject photo, Olds said he used to own the pier to the north, which he built with Bill Jones with Northeastern Marine. Olds and Jones would also be the builders for the proposed pier, which is why they are present as representatives on the applicant’s behalf. It was reiterated the shoreline today was dry, and Olds stated he has never seen any water craft able to come inside of that pier unless it was a hurricane and something was floating in. There’s no other way to access it. The subject pier would be 60’ to the south of it, approximately 70’ to the north of the shorter 100’ pier, so it’s kind of boxed in between the two, because my old pier was a little longer than 200’ with the platform on the end.

Olds noted he authored the applicant’s response because of his knowledge of the history and personal ownership of two cited properties. A word of appreciation was next expressed to recognize the Planner’s efforts with reviewing the variance request, with Olds noting Heard has been very professional in representing the Town and in trying to help the applicant.

Olds next commented about the right-of-way along Moor Shore Road and problems with debris (i.e., broken bottles and concrete) in the water. If one was to walk from the edge of the property and out into the water, it would be mucky grass and sand.

Chairman Spencer asked how deep the water is currently at the end of the 200’ pier, and Olds replied that in normal conditions it is approximately 24” at high tide and 12” at low tide; however, currently, there is not enough water in the sound.

An opportunity was given for anyone to ask questions of Olds, and after a brief pause, the Chair moved forward with hearing from the applicant’s neighbor, Danny Joyner.

Joyner explained he currently lives in Atlanta, GA but has a house under construction (about 60% completed) on Bay Drive, several lots to the south of the subject property. He has owned the property since May 1985, and it is his hope to have an access for boating. Joyner also talked about how the water depth this day is pushed out because of the wind, but most days the water depth is 6”. His comments continue:

 *“I’ve heard your viewpoint on … it has shown no value that a change in the ordinance would make any difference, but I differ with that completely because it’s absolutely unusable without a 200’ dock. Personally, I will not put one in. I’d love to put one in. I’ve dreamed of having one there. I’ve got a neighbor who’s got 200’. He’s too old – he doesn’t boat any more, but I’ve been there many times with my wife and my kids, and we’ve been coming down here for over 30 years, and when his boat was there, he was kind enough to take us out when my kids were real little so we could enjoy the bay.*

 *“I think the real issue here is that the waters are not navigable of any sort – you couldn’t put a canoe in there at 100’, so it’s really a waste of any type of navigation. For me, I don’t want a big boat, but I’d certainly like to be able to go fishing and have a boat I could put up on a lift, if I have to, to get it out of the water, or if it’s not high tide, but at 100’, I could go for tadpoles.”*

Chairman Spencer interjected, offering the Board agrees with and understands the conditions at the subject location; however, as the Chair explained, the Board is not about changing policy - whereas the Board’s task is to determine if specific conditions have been met for the variance application on Mr. Sharma’s property.

In closing comments, Joyner stated the 100’ piers serve little purpose, reiterating the presence of two 200’ piers, as well as noting the existing piers under the jurisdiction of the Town of Kill Devil Hills having piers 200’. *“I understand your positions,”* he continued, *“but if it isn’t navigable, then, I think, to me, in his position … I’ll probably be back here myself…, is to say it would be great to have a variance and a policy to be able to access the water and put a boat in. Whether or not that meets the total of the five criteria, in my opinion it does, so … thank you, very much.”*

Geraghty asked if the applicant or others present have considered requesting Council to re‑examine the ordinance. Joyner indicated he has not, in that he has only retired during the last year and has been busy arranging the financing for his construction, though he has plans to become an active Kitty Hawk citizen in the near future. Joyner then acknowledged he understands the role of the BOA to be that of hearing a variance request and not re‑writing policy.

Chairman Spencer called attention to the Board needing to focus on receiving facts at this time, summarizing that Joyner’s comments have leaned towards a different view in terms of what the situation ought to be and what the ordinance ought to be. The Chair asked that comments be directed at facts concerning the matter at hand, not policy.

An opportunity was given to the applicant to respond to Joyner’s comments, and Sharma indicated he has already said what he has wanted to.

At this time, the Chair closed the public hearing and opened the floor for discussion by the Board.

**b. Board Deliberation & Decision.** To open the discussion, Chairman Spencer reiterated he visited the subject site this date, observing the water depth, indicating he does not disagree with any of the statements by the applicant or his representatives or the neighbor. He continued:

 *“My whole problem is, the Town probably needs to have a different standard for a place like that that has different bottom contours or it’s shallow or needs to have a longer pier, but we’re not here to do that. That’s the way I see it.”*

Geragthy agreed the ordinance may need to be changed and that problem cannot be resolved by the BOA.

General discussion by several persons cited the problem of a northeast wind, how it has produced the current low water tide revealing the sound bottom. The Chair reminded everyone the public hearing has been closed and the Board is in its deliberation.

Forrester agreed the problem is *“peculiar only in that’s the way the bay is, but it’s not unique to his piece of property. So, it really does not appear to be a hardship.”*

Jenkins concurred a zoning amendment would better address the situation.

Upon Chairman Spencer polling the Board for agreement as to Issue #2, that the applicant has not met his burden to show a hardship, **he moved the Board adopt the staff findings in this particular case and find that that there are no hardships resulting from conditions that are peculiar to this property and not shared by others in the area, and on that basis, deny the application. VC Connery seconded. The vote carried unanimously, 5-0.**

The Chair respectfully stated the variance request has been denied and suggested the matter be taken before the Town Council.

**5. NEWLY ADOPTED BOARD OF ADJUSTMENT REGULATIONS:**

**a. Summary of David Owens’ Presentation / Overview of Key Changes.** Planner Heard noted he was unable to attend the recent presentation by David Owens with the UNC School of Government, and the floor was opened for comments by those who were able to attend.

Chairman Spencer indicated he was able to attend half the workshop, the portion regarding BOA variance procedures reviewed. Owens had stated the BOA is like a court where evidence is considered and facts are determined, not entertaining people’s opinions unless receiving expert opinion.

Forrester spoke about what was covered regarding appeals, that the BOA is quasi-judicial and members must mind their “p’s & q’s” to not overstep and get opinions or such – deliberation must be made strictly on the facts as they are presented. She then commended Owens’ excellent manner of thoroughly delivering the legal responsibility of the BOA.

Attorney Michael noted the Board is not doing anything that is so different than before – the issues being considered are phrased differently, the 4/5ths majority to grant a variance still remains although an appeal to overturn is now a majority vote. The motion of action must also state why a variance is or is not being granted. Owens had indicated that a BOA can adopt staff findings as a way to enter into the record its resolution and position reached.

A question posed by the Attorney asked the Planner if he would be drafting the order, and Heard explained he would, which would then be forwarded to the Chairman to ascertain the Board’s action.

**b. Evaluation of Variance Application Form.**

Forrester gave a nod to the new variance application form, which she said should be less confusing to applicants.

Morton asked if it is assumed Board members are sworn in for testimony, and Attorney Michael explained Board members take an oath of office to serve as a BOA member. BOA members are not presenting evidence to testify at proceedings, so members do not need to be sworn for any reason.

Heard noted the Board has received an updated ordinance copy of the new procedures.

Planner Heard then explained he spoke with this agenda’s applicant prior to when the State’s amendments were made, that the changes took effect October 1, 2013. Because of it being State law, the applicant had to be reviewed under the newly adopted procedures.

Planner Heard further explaine that the State Law also deals with conditional use and special use permits. Some further amendments may need to be addressed to cover these types of permits.

The application form has incorporated the new criteria of the findings. The Planner invited Board members to review the form and always feel welcome to offer suggestions in the future how it can be better serve both the applicant and the Board.

With an agreeing nod from the Chair, Vice Chair Connery said the new application form helps the applicant better know what needs to be presented to the Board. Attorney Michael recognized how planning staff goes out of its way to help an applicant know how to proceed with the variance request and what needs to be presented, and the Chair echoed that the applicant’s representative stated how helpful Planner Heard was in the process. Even when there is a difference of opinion, the staff and applicant are clear on that up front as the application process goes forward. For every variance heard, staff has probably held four or five discussions with the applicant about the potential variance and what has to be addressed, or even what alternatives may be doable.

Heard explained this agenda’s applicant did consider the option of a text amendment but chose to go forward with the variance request so that it would apply to the specific subject property (and possibly have fewer stumbling blocks) and not all waterfront properties. With the Chair mentioning how Council should consider piers in the bay differently, Planner Heard noted an area would have to be defined so it is not treating a property individually. Also, it was pointed out the actual standard CAMA currently has for a pier is 100’, and a variance from Coastal Resource Commission would be a very long drawn out process.

**6. OTHER BUSINESS:**

**a. Chairman Spencer.** There were no items brought forward by the Chair.

**b. Board of Adjustment Members.** No items were discussed by Board members.

**c. Town Attorney.** Nothing was brought forward by the Attorney.

**d. Planning Director.** No further items were brought forward by the Planner.

**7. ADJOURN**

Hearing no further comments or questions, **Chairman Spencer adjourned the meeting.** Time was approximately 5:05 p.m.

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 Matthew Spencer, Chairman

These minutes were approved \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2014.

Minutes Transcribed and Respectfully Submitted By: Betty Moore Williams

**Supporting Documentation:**

The applicant submitted an application form describing the rationale for the variance request. In addition, the applicant submitted the following exhibit for the Board’s consideration:

**Exhibit A –** Site plan showing the proposed pier at 3619 Windgrass Circle drawn by the applicant’s contractor in preparation for a CAMA permit application. The survey shows the shoreline of the subject property and the dimensions of the pier extending into Kitty Hawk Bay.

Staff submitted the following exhibits for the Board’s consideration:

**Exhibit 1 –** Aerial photograph showing 3619 Windgrass Circle and surrounding properties, including piers stretching into Kitty Hawk Bay, obtained from the geographic information system (GIS) on Dare County’s website.

**Exhibit 2** – Aerial photograph showing all piers within the Town of Kitty Hawk in Kitty Hawk Bay obtained from the Google Earth website on October 23, 2013.

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