# **KITTY HAWK BOARD OF ADJUSTMENT**

# **MINUTES**

**August 13, 2013 - 4:00 p.m.**

**Kitty Hawk Municipal Building**

**AGENDA**

1. Call to Order / Attendance

2. Approval of Minutes from July 9, 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. 313 Jejac Drive - Section 42-247(d)(3) of the Town Code requires a minimum front and rear building setback requirement of twenty-five feet (25’) in the Beach Residential (BR-1) district. The applicant is requesting a variance of five feet (5’) from the minimum front building setback in order to construct a single-family residence as close as twenty feet (20’) from the front property line. The applicant is also requesting a variance of twelve feet (12’) from the minimum rear building setback in order to construct a single‑family residence as close as thirteen feet (13’) from the rear property line.

 a. Public Hearing

 b. Board Deliberation & Decision

5. 319 Jejac Drive - Section 42-247(d)(3) of the Town Code requires a minimum front and rear building setback requirement of twenty-five feet (25’) in the Beach Residential (BR-1) district. The applicant is requesting a variance of five feet (5’) from the minimum front building setback in order to construct a single-family residence as close as twenty feet (20’) from the front property line. The applicant is also requesting a variance of twelve feet (12’) from the minimum rear building setback in order to construct a single‑family residence as close as thirteen feet (13’) from the rear property line.

a. Public Hearing

b. Board Deliberation & Decision

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. After roll call by Town Clerk Morris, the Chair noted Alternate Jenkins has recused himself.

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

 Pat Forrester / Jim Geraghty / David Morton / Gary Muir, Alternate

**BOARD MEMBER ABSENT:** Chris Jenkins, Alternate

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

Lynn Morris, Town Clerk

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**2. APPROVAL OF MINUTES FROM JULY 9, 2013 MEETING**

With hearing no corrections or discussion regarding the minutes of the last meeting, **Chairman Spencer moved that the Board approve the minutes of the July 9th meeting as to form and substance.** With a call for the vote, **the motion carried 5-0, unanimously.**

**3. SWEARING IN OF SPEAKERS**

At this time, Chairman Spencer invited persons participating in the variance application review for the first item, 313 Jejac Drive, to come forward and be sworn. Town Clerk Lynn Morris then swore in by oath those persons who would be offering testimony during the public hearing:

* Floyd Bibbee – 307 Jejac Drive, Kitty Hawk, NC
* James Edwards – 412 Cameron Street, Kill Devil Hills, NC
* Robert Miloshevsky, Jr. – 410 Cameron Street, Kill Devil Hills, NC
* Frank Soles – 1104 Kyle Court, Chesapeake, VA
* Mike Robinson – PO Box 2852, Kill Devil Hills, NC
* Joe Heard, Director of Planning and Inspections for the Town of Kitty Hawk

Addressing the Town Attorney, Chairman Spencer stated for the record he has just recognized Mr. Bibbee, having had an occasion to work professionally with Bibbee a few years ago on an unrelated matter. Indicating he feels there is no conflict of interest, the Chair said that association will not influence in any way his decision on this proceeding.

At this point, Attorney Michael asked the Chair to explain also for the record why Alternate Jenkins recused himself, and it was stated Jenkins, through his work, has had dealings with both applicants and did not feel comfortable considering the subject variance requests because of the prior involvement.

The Chair then moved the agenda forward, proceeding first with the Planner presenting his testimony.

**4. 313 Jejac Drive - Section 42-247(d)(3) of the Town Code requires a minimum front and rear building setback requirement of twenty-five feet (25’) in the Beach Residential (BR-1) district. The applicant is requesting a variance of five feet (5’) from the minimum front building setback in order to construct a single-family residence as close as twenty feet (20’) from the front property line. The applicant is also requesting a variance of twelve feet (12’) from the minimum rear building setback in order to construct a single‑family residence as close as thirteen feet (13’) from the rear property line.**

**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 July 28, 2013, properly advertising the hearing for the subject application. Also, the Clerk was given documentation of the Notice of Public Hearing being mailed to property owners adjoining 313 Jejac Drive, verifying they were duly notified. The subject property was properly posted advertising the public hearing (posted at least 15 days prior to this hearing). 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 Tuesday, August 13, 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:*

***Application for a variance of five feet (5’) from the minimum front building setback standards in Section 42-247 (d)(3) of the Town Code in order to construct a single-family residence as close as twenty feet (20’) from the front property line at 313 Jejac Drive. The applicant is also seeking a variance of twelve feet (12’) from the minimum rear building setback standards in Section 42-247 (d)(3) of the Town Code in order to construct a single-family residence as close as thirteen feet (13’) from the rear property line at 313 Jejac Drive. Presently, the minimum building setbacks in the Beach Residential (BR-1) district are 25 feet from the front and rear property lines.***

*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.*

Next, Planner Heard reviewed with the Board his staff memorandum dated August 13, 2013, which details the two-fold variance request. The proposed site plan [Exhibit #B] was referenced during the discussion. Said memo is entered into the record:

***Requested Variances***

***(1)*** *Application for a variance of five feet (5’) from the minimum front building setback standards in Section 42-247 (d)(3) of the Town Code in order to construct a single-family residence as close as twenty feet (20’) from the front property line at 313 Jejac Drive. Presently, the minimum front building setback in the Beach Residential (BR-1) district is 25 feet.*

***(2)*** *Application for a variance of twelve feet (12’) from the minimum rear building setback standards in Section 42-247 (d)(3) of the Town Code in order to construct a single-family residence as close as thirteen feet (13’) from the rear property line at 313 Jejac Drive. Presently, the minimum rear building setback in the Beach Residential (BR-1) district is 25 feet.*

***Proposed Project***

*The applicant is seeking to construct a single-family residence on the subject property. The attached Exhibit A shows an architectural rendering of the proposed single-family residence. The proposed residence is approximately 1,600 square feet in size (28’ x 47’ footprint), with a 171 square foot (9’ x 19’) deck and stairway on the front.*

*The attached Exhibit B shows the proposed location of the residence on the lot. Note that the front wall of the residence is located 29 feet from the front property line. Only the proposed deck and stairway encroach into the required front setback.*

***Supporting Documentation***

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

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

***Exhibit A (2 pages) –*** *Architectural renderings showing all four (4) sides of the proposed residence at 313 Jejac Drive prepared by Linda Ihle Design & Drafting and dated July, 2013.*

***Exhibit B –*** *Site plan showing the proposed development of 313 Jejac Drive prepared by professional land surveyor William S. Jones, Jr. and dated July 13, 2013. The survey shows the dimensions of the subject property and the proposed location of the residence and driveway.*

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

***Exhibit 1 –*** *Aerial photograph of 313 Jejac Drive and surrounding properties obtained from the geographic information system (GIS) on Dare County’s website.*

***Exhibit 2*** *– Letter dated July 29, 2013 submitted by Floyd Bibbee, owner of the adjoining property at 307 Jejac Drive. Please note that some of the information in Mr. Bibbee’s letter is inaccurate. The facts regarding the other residences along Jejac Drive are provided below.*

***Ordinance References***

*Town of Kitty Hawk Zoning Code, Section 42-247(d)(3), Dimensional requirements:*

*The minimum yard setbacks shall be in accordance with the following chart:*

|  |  |  |
| --- | --- | --- |
|   Dwelling Size(in square feet)    | Side Setback(in feet)    | Front and RearSetbacks (in feet)    |
| 3,000 and under    | 10    | 25    |
| 3,001--3,500    | 12.5    | 25    |
| 3,501--4,000    | 15    | 25    |
| 4,001--5,000    | 17.5    | 25    |
| 5,001--6,000    | 20    | 25    |
| 6,001 and over    | 25    | 25    |

***Property & Area Information***

*The subject property is presently undeveloped and zoned Beach Residential (BR-1). The property is a rectangular lot 10,150 square feet in size. Although the property has 145 feet in frontage along Jejac Drive, it is only 70 feet in depth off the road.*

*The abutting property to the east is zoned Beach Residential (BR-1) and contains a single-family residence. The adjoining parcel to the west is currently undeveloped, zoned BR-1, and also seeking to obtain a variance to construct a single-family residence. The large property across Jejac Drive to the north is approximately 8.15 acres in size, zoned Beach Residential (BR-2), and presently undeveloped. The three (3) abutting properties to the south are located in the Town of Kill Devil Hills. Each of these properties contains a single-family residence.*

*Seven (7) of the eleven (11) residential properties along the southern side of Jejac Drive are presently developed. The following chart notes the size, depth, approximate front and rear setback, and construction date for each of these residences.*

 *Approximate Approximate Date*

 *Address Square Footage Depth of House Front/Rear Setback Constructed*

*107 Jejac Dr 960 sq. ft. 31 ft. 23/16 ft. 1978*

*113 Jejac Dr 1,040 sq. ft. 33 ft. 19/18 ft. 1985*

*119 Jejac Dr 888 sq. ft. 24 ft. 26/20 ft. 1978*

*201 Jejac Dr 1,040 sq. ft. 33 ft. 25/12 ft. 1985*

*213 Jejac Dr 1,116 sq. ft. 39 ft. 17/14 ft. 1986*

*301 Jejac Dr 1,944 sq. ft. 37 ft. 17/16 ft. 1978*

*307 Jejac Dr 1,792 sq. ft. 36 ft. 22/12 ft. 1984*

 ***AVERAGE 1,254 sq. ft. 33.3 ft. 21.3/15.4 ft.***

## PROPOSED

***313 Jejac Dr 1,600 sq. ft. (approx.) 37 ft. 20/13 ft.***

## It appears that as many as five (5) of the existing residences encroach into the front building setback. All seven (7) of the existing residences encroach into the rear building setback. Staff has not found a record of any variances granted on the other properties along Jejac Drive.

## Additional Background Information

* *The subject property and ten (10) other parcels along the south side of Jejac Drive were created as part of the Kitty Dunes II subdivision, approved by Dare County in 1971, ten (10) years prior to the incorporation of Kitty Hawk.*
* *The size of the subject property (10,150 square feet) is nonconforming as the Town’s current minimum standard for lots in the BR-1 district is 15,000 square feet.*
* *Although narrow, the depth of the subject property (70 feet) is not nonconforming as the subdivision ordinance does not state minimum standards for lot depth. However, the ordinance does outline a minimum lot width of 75 feet for all newly created lots.*
* *With a depth of only 70 feet, application of the front (25 feet) and rear (25 feet) setbacks leaves a building area only 20 feet in depth on the subject property.*
* *At a size of approximately 1,600 square feet, the proposed residence is smaller than most residences recently constructed in Kitty Hawk. The sixteen (16) residences permitted in Kitty Hawk so far in 2013 have an average size of 1,902 square feet.*
* *The applicant has requested variances of five feet (5’) from the minimum front setback requirement and twelve feet (12’) from the minimum rear setback requirement. If the location of the residence is shifted, it would still require the same total amount of variance (17 feet). For example, if the location of the residence is shifted forward five feet (5’) to avoid the need for a front setback variance, it would result in increasing the rear setback variance to 17 feet.*

***Directions to the Subject Property***

*From Kitty Hawk Post Office, Hwy. 158 & Kitty Hawk Road, drive 0.9 mile south on N. Croatan Highway (Hwy. 158). Turn right onto Jejac Drive (just before Henry’s restaurant). Drive west for approximately 0.3 mile. 313 Jejac Drive is located on the left side of the road (just past the residence at 307 Jejac Drive). The four corners of the lot are staked out and flagged.*

Additional comments made by the Planner addressed:

* There has been no new construction on the street in 27 years.
* All seven of the existing residences on the street encroach into the rear setback, anywhere from 13’ to 5’. Five of the seven houses presently encroach into the front setback, ranging from 8’ to 2’, with two of the properties appearing to comply with the current setback standard.

The Planner then reviewed conclusions made by staff, which is being entered into the record:

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

***1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved which are not applicable to other land structures, or buildings in the same zoning district?***

***Yes. The minimal depth of the subject property (70 feet) does not allow for the construction of a typical, reasonably sized residence. With minimum building setbacks of 25 feet from the front and rear property lines, the remaining building area is only 20 feet in depth (not much wider than a single-wide mobile home). For comparison’s sake, most lots created under the Town’s current subdivision standards have a depth of 150 feet or more. Even the smallest, older lots in the areas “between the highways” have depths of 100 feet, which provides a more traditional building area.***

***2. Would a literal interpretation of the zoning code deprive the applicant of rights commonly enjoyed by other properties in the same district?***

***Yes. The applicant is seeking to construct a modest sized, single-family residence (approximately 1,600 square feet) on the subject property. A majority of the other similarly situated properties along Jejac Drive already contain a single-family residence.***

***3. Do the special conditions and circumstances result from the actions of the applicant?***

***No. The current dimensions of the subject property were created by a subdivision plat approved by Dare County and recorded in 1971, prior to the incorporation of the Town of Kitty Hawk and long before the applicant entered into a contract to purchase the property.***

***4. Would granting the variance confer special privileges to the applicant that are denied to other land structures, or buildings in the same zoning district?***

***No. The proposed residence is relatively modest in size at approximately 1,600 square feet. The average size of the existing residences along Jejac Drive is 1,254 square feet, but the two nearest residences average 1,868 square feet. Five (5) of the seven (7) residences along Jejac Drive encroach into the front setback and all of these residences encroach into the rear setback. The average size of residences recently constructed in Kitty Hawk in 2013 is 1,904 square feet. So, the applicant is not asking for anything out of character or scale with the surrounding area or Town in general.***

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

***No. The requested variances are the minimum possible to accommodate the dimensions of the proposed residence in the proposed location. The applicant has turned the house plan sideways to lessen the amount of the variance. However, it certainly appears that the size of the front deck could be reduced and orientation of the front stairway amended without significantly impacting the size or functionality of the proposed residence. Shortening the depth of the front deck and stairs by five feet (5’) would eliminate the need for a front setback variance or reduce the distance of the requested rear setback.***

***6. Is the requested variance in harmony with the general purpose and intent of the zoning code?***

***Yes. Setback requirements are generally adopted for the purposes of securing safety from fire, providing privacy, preventing overcrowding, and achieving a desired pattern of development. The proposed residence would be at least 55 feet away from any other residence. Therefore, it appears that the purpose and intent of the setback standards would still be met if the proposed variances are approved.***

***7. Would granting the variance be injurious to the neighborhood or detrimental to the public welfare?***

***No. The proposed single-family residence is consistent with the size, character, and development pattern of the other residences along Jejac Drive. Therefore, granting the variances would have minimal impact on the surrounding properties.***

***Summary:***

***It is staff’s opinion that the requested variances meet the standards of Findings 1, 2, 3, 4, 6, and 7. As staff did not find in the applicant’s favor on Finding 5, staff is recommending DENIAL of the setback variances, as requested. With a minor adjustment to the size of the front deck and stairway, staff would find that all standards have been met and recommend APPROVAL of a lesser variance.***

***KEY POINTS:***

***Positive***

* ***There appears to be a legitimate physical hardship due to the narrow depth of the subject property and small remaining building area.***
* ***As the existing dimensions of the lot were created by a prior owner in 1971, the applicant has not created the need for a variance.***
* ***The applicant has attempted to minimize the requested variances by proposing a modest sized residence and turning it sideways on the lot.***
* ***The scale and location of the proposed residence is consistent with the existing residences along the south side of Jejac Drive.***
* ***It does not appear that granting the variance would create any type of unsafe situation or nuisance to any of the surrounding properties.***

***Negative***

* ***The dimensions of the front deck could be reduced to eliminate the need for a front setback variance or minimize the distance of the requested rear setback.***

At this time, Chairman Spencer thanked the Planner for his presentation and invited the applicant and his representative to address any questions with Planner Heard, noting the applicant’s presentation would be made later in this review. [Time was approximately 4:22 p.m.]

The public hearing, however, began to unfold with neighboring property owners speaking first.

With a question by Bibbee [307 Jejac Drive] regarding how tall the proposed structure is to be, Heard replied, according to the elevation drawings provided by the applicant, it would be a one and one-half story structure – actually, one story with a peaked roof. The structure is proposed to be raised; therefore, it would be the equivalent of a two-story structure with a pitched roof. The traditional front of the building would face west. As to how far the deck would extend, the front side has a proposed 9’ wide deck, according to the site plan, which would be 20’ from the front property line. In response to a question, the Planner noted to Bibbee that his deck is 22’ away from the front property line. The current minimum setback is 25’. Also mentioned by the Planner after a question was posed by Bibbee if a variance was ever granted for his property, Heard indicated he has researched the issue and not found any record of variances for any of the properties along Jejac Drive.

At this point, the Board was invited to ask questions of the Planner.

Forrester indicated there is only one PIN number listed but the property reference shows Lot 10 and Lot 11, inquiring if the lot is going to have to be subdivided. Recognizing a good point being made, Planner Heard explained the property is presently shown in Dare County tax records as being a single parcel and has a single PIN number, although it has always been two separate parcels and has never been combined at any point in time. He posed that said lots may have been combined into one PIN for the purpose of a single tax bill.

The owner of the property has requested Dare County to assign two numbers and show on the official record that they are two separate parcels. At the point in time when this information was being prepared for the staff report, such had not been done yet, but in the future, separate PIN numbers will be assigned to each parcel.

As to grandfathering, nothing is changed. If the two parcels had been combined at some point in time (if the property line between the lots had been abandoned), then they would no longer be able to use the parcels as two separate parcels because it would be creating nonconforming lots. Since the nonconforming lots already exist, the owner has the right to develop both parcels as the zoning allows.

Upon Morton asking if the Town has a minimum encroachment for stairs landing into a setback, the Planner explained that if the stairs are facing forward, anything below 30” in height can encroach up to 4’. In other words, the bottom few steps of a set of stairs could encroach.

Robert Miloshevsky, a neighboring property owner at 410 Cameron Street, Kill Devil Hills, indicated it is his understanding that with a lot over 6,000 sq. ft., there would be a 25’ variance on all four sides. The Chair clarified the question deals with if the minimum setback lines. Planner Heard pointed out the minimum setback is 10’ on the sides.

At this time, the applicant was invited to offer testimony and comments. Bibbee stated what he believes his neighbors are mostly worried about is infringement, outwards or behind, particularly closer to the road. The properties surrounding the subject location has a view of the bay, but if someone were to build right in front of another, which could happen, it would be preferred that the structure be located 22’ or 25’ back, as the existing structures have. Whether remodeling or building, he said he is one to go by the rules.

James Edwards [412 Cameron Street, Kill Devil Hills] described he lives directly behind where the proposed structure is to be built. Indicating he has a problem with the encroachment on the existing setback line, Edwards said the proposal would put it 12’ from the property line, causing his house to basically become a structure with three sides of 10’ setbacks and making his property “boxed in” with setback lines. He asked the Board to take such into consideration, explaining he has a real problem with it, asking the Board to recognize the fire hazard as well.

Edwards commented the area has remained unchanged in 27 years, and though the applicant’s proposed house is of a reasonable size, *“it’s kind of like a pig in a poke. The thing is sitting there. You can’t really do anything with it the way it is, the applicant, but just to change variances to suit this particular lot, it’s kind of like telling your child, you got two kids, if one kid throws a brick through the window, you gonna let the second one throw it through there and tell him it’s okay? I mean, no, it’s not right to change these variances from what the intent is. The intent is to keep the house off of the road a certain distance and to keep it off of your neighbor a certain distance. Am I correct?”*

Chairman: *“That’s part of the reason for it, as I understand it.”*

Edwards: *“And, if you do this, I think the biggest thing, you’re going against your own variances, and you’re opening a can of worms down the road, I think, even though it doesn’t set a legal precedence at all, I know that because anything before it doesn’t set a legal precedence. But still, I just want you to know I am extremely concerned about the fire hazard and the fact that I’ll, basically, have the side of a house in my back yard versus someone’s back of their house, like normal lots that back up to one another would do. That’s basically all I have to say about it, and I would hope that you would take that into consideration. I know the staff has looked this thing over, and they don’t have an opposite … they’re not opposed to it, sounds like they are trying to push it through, but I would hope that y’all would look down the road a little further than just this one particular small lot, and I would hate to see the Town set a precedence for itself. Thank you.”*

Chairman: *“Thank you, sir. Appreciate your comments.”*

The Chair then called for any other comments from neighbors.

Miloshevsky: *“I’m not aware, but I was looking at these laws, and from what I’ve seen from North Carolina statutory law is that the applicant needs to prove some kind of hardship and some kind of unreasonable … in other words, that he would be unable to use this land without this variance. Whether or not there are other houses on that street who have gotten variances prior to 1986 really has no bearing on this property or this issue.*

*“So, I knew he brought up these seven points, yet none of them was the hardship, or if there are any other alternatives. Now knowing that it’s only going to be a 10’ setback on either side, that means he’s got like 25,000 sq. ft. to build a house on that lot, as is, as the variances are, so I don’t understand where the need is to change it when there’s no loss, there’s no financial hardship. That’s what I’ve got to say, thank you.”*

Chair: *“Thank you for your comments, sir. If there are no other neighbors or interested people in opposition, then at this time I would like to ask the applicant or the representative to come forward and present any evidence you wish for us to consider.”*

Frank Soles, the applicant, addressed the Board. Apologizing for repeating anything the Planner has already noted, Soles said Lot 11 is 10,150 sq. ft., 70’ deep and 145’ wide, with current setbacks of 25’ on the front and rear, leaving approximately 20’ in the middle of the lot on which to build a structure. The variance request of 5’ off the front setback requirement and 12’ off the back would be setbacks similar to other homes located on Jejac Drive and would accommodate the proposed house. The structure would be turned to the side, like others along Jejac Drive, and would be 67’ long and 37’ wide, including the decks and stairway. The house itself would be 47’ long and 28’ wide, four bedrooms with three baths, approximately 1,600 sq. ft., with a ground floor, a second floor, and an overall roof height of 27’. There are currently seven homes already on Jejac Drive, all which have had a variance at some time dealing with the front and/or rear current setbacks. Soles commented he is not asking for anything more or anything less than what already exists along Jejac Drive, and the proposed house would be similar in size, lot coverage and appearance to those already existing in the area.

The Chair called for any questions from the Board to ask of Soles.

Geraghty noted the survey does not show a covered porch on the front but on the elevation drawings there is a porch, and Soles stated there would be a covered porch inside the footprint of the home itself, a small covered porch for the front door, adding *“I think it has a 5’ or 6’ deck that leads to the stairway overtop of the proposed driveway area.”*

Chairman Spencer asked if there were reasons peculiar to this lot as to why he could not eliminate the need for the front 5’ variance by moving the entry stairway, and Soles responded, *“well, in order on this house here, in order to make the stairway work, I do have to take the steps out at least 8’. I could take a foot off the deck and make it work. I could even … like I said, I need the width, but I can … I’m not opposed to setting the house back by a little bit more, but with the current steps in front of the house like that, I do need a minimal of 8’ on the deck itself.*

 *“The only thing in the setback itself is the deck. The house itself is not … I mean, matter of fact, I’ve been by Mr. Bibbee’s house and I understood he had some concerns, and I took my house plans by and I showed him, ‘this is the home I’m going to build.’ I didn’t want him to have to wonder about it or worry about what was going next door, and again, my idea, actually, I took a set of plans there, and I showed him the house and I tried to reassure him that the house itself is not going to obstruct any views. The deck itself, the way this house is situated, is not going to obstruct any views.*

*“In order to see the water there, or with any kind of view that is worth anything, you have to be up. So, anything ground level, you can’t see the water anyway. I’m not obstructing any views, and I’ve positioned the house so I didn’t obstruct any views, ‘cause I did take that into consideration by the way I drew the house on the site plan.”*

Chairman: *“You probably know that Mr. Heard has recommended that we find in your favor on six of the seven questions that we have to answer. The one that he does not recommend we rule in your favor on is the issue of the location of the entry stair and suggested that it could be reconfigured. That was the reason for my question, and maybe I didn’t understand the answer, but you’re saying there’s no possible way to move that entry stair to a different spot to eliminate that front encroachment, and therefore, you could move the whole house forward and minimize some of the back yard setback problem … if you eliminated the entry stair and put it somewhere else.”*

Soles: *“I mean, there’s things I could possibly do. I could run the stairway down the back side of the house, but the house that I’ve designed, that I’m proposing to put there, I mean, that’s what I currently have. Can I change it? Yes. Will I need some deck on that side? I will. I will need some deck, probably, even if I took the deck along the back of the house and run it parallel down the back of the house and entered into the carport area, I could possibly do that. That takes away from the front, from the road view of the house, just appearance purposes.”*

Chair: *“How long have you owned the lot?”*

Soles: *“I’m currently under contract. I haven’t bought the lot. The lot is contingent upon this variance, being able to build on it.”*

Chairman Spencer thanked Soles for his input, opening the floor for questions by the Board, but no further questions were posed. Upon invitation for anyone else to speak on behalf of Soles, Soles indicated he has presented everything he wants to. As to any other party, no one else came forward, **and the Chair then moved that the Board close the public hearing and move on to the Board’s discussion.** Upon call for the vote, **the motion carried unanimously, 5-0.**

**b. Board Deliberation & Decision.** To open the discussion, Chairman Spencer summarized Planner Heard is recommending the Board rule in favor of the applicant on six issues and against one issue, then asked if any Board member disagreed with any of the six issues as being in favor of the applicant. Forrester indicated she agrees with the staff’s findings, though she has problems on the fifth issue. The Chair noted he, too, agrees with the staff’s findings and shares the concern of the fifth element, offering Soles has acknowledged there are other ways to go about resolving the primary conflict. Geraghty concurred that there probably is an alternative.

Chairman: *“Certainly, Mr. Michael, anything we do today is not prejudicial to this applicant coming up with a new plan, is it?”*

Attorney: *“No, it’s not ….”*

Chairman: *“… and asking for another variance.”*

As to procedure, Attorney Michael indicated Soles would have to come back unless the Board imposes some conditions that the Board would deem appropriate and the applicant accept which would provide a solution to the identified problem. Otherwise, the Board has to deny the current variance request and the applicant would have to go through the process again.

Chairman: *“I don’t know. I don’t have the background to be suggesting options. Mr. Morton does, but the question is …, and Mr. Geraghty does …, but is that what we’re supposed to be doing here? I’m not comfortable doing it. Personally, if it were put to me, I wouldn’t make a suggestion for how to fix this. I would decide it based on what we’ve got in front of us.”*

Attorney Michael: *“And, you can do that.”*

Chairman: *“But, if anybody disagrees with me, let me know. I’m willing to change my mind.”*

Morton: *“Let me ask, what we have in front of us, if #5 is not allowed and he has to either decrease the size of the deck or potentially move the house forward, then it decreases … let me go back so I’m not suggesting something … if he decreases the size of the deck to meet the front yard setback, then we’re dealing with the rear yard setback, and that’s the staff’s findings on what they’re saying they agree with. Is that what we’re getting at here? Do I understand that correctly?”*

Chairman: *“I don’t want to speak for Mr. Heard, but as I understand it, what he is saying is, quite simply, that it is apparent to him that there are ways that the encroachment into the setback can be minimized and still use the basic footprint of this house.”*

Geraghty: *“Are we allowed to just approve the variance for the rear and not the front?”*

Attorney: *“Certainly, and that would be a condition that you could impose on the granting of the variance. In other words, you could say, ‘we’re not going to grant a variance for the front setback but we will grant a variance of ‘x’ for the rear setback.’ That’s within your ability to do that, but that’s not what he’s asked for.”*

Morton: *“I guess my question is, that if we agree with staff’s finding … [change of recording tape] … I’ve gotcha.”*

Chairman: *“If I could think of an immediate simple solution to this, I would be proposing it, but I don’t have the background to do it, and I can’t think of one, other than, unfortunately, trying again with a different design.”*

Geraghty: *“But, what I’m going to do is maybe try to save the applicant ….”*

Chairman: *“… I hear you ….”*

Geraghty: *“… from going through the whole process again, and if we could ask the applicant if he would accept that, could we do that?”*

Attorney: *“Not at this point.”*

Forrester: *“It’s all or nothing, unfortunately.”*

Geraghty: *“I was trying to save him a step.”*

Chairman: *“Well, we have a very narrow building envelope in a fairly unusual situation, and personally, as I’ve said, I agree with the findings of staff, as this application’s been presented to us, and if we put it to a vote right now, I wouldn’t get into a discussion about what design options Mr. Soles has. I would, unfortunately, vote to deny it based on the staff’s findings, and of course, I’m only one vote, and we haven’t voted yet, but that’s where I am with it.”*

Morton: *“Well, I have to agree only because, I think, he’s got options to rearrange and to either make the variance less or these setbacks not as much, the variance request not as much, or to redesign.”*

Chairman: *“They could be eliminated entirely. It wouldn’t be the house that he wants.”*

Morton: *“Right.”*

Forrester: *“I agree with David and Matt. I really don’t think that we’ve got much choice but to deny the application.”*

Geraghty: *“But, we do have a choice. Michael said we could approve just the rear part of the variance, approve that, and see if he wants to work within the front yard setback and just move everything, since he agrees with the rear yard setback, and it does meet the criteria.”*

Connery: *“Is it possible to approve the variance with the caveat that the applicant come back with a new plan for the north side, the front, the Jejac side, that removes the 5’ encroachment into the setback and is acceptable in regards to the Town Planner?”*

Geraghty: *“That’s pretty much what I’m saying.”*

Chairman: *“Well, let me throw this out there. You know, we’re talking about the front, and that is the change that can be made, but really, to my mind, that entry way is not the biggest problem. To my mind the rear encroachment is the biggest problem. I would, frankly, like to see that reduced - that encroachment into the setback reduced to the extent that it can, because if we approve a 13’ rear setback, then, yes, he could eliminate the front entry stairs and, no problem, he’s good to go, but that would mean that we would have to disregard any concern of the property owners about the closeness of the house to the rear line when it could be potentially minimized.”*

Connery: *“I would disagree with you for a couple of reasons. I don’t think the applicant is asking for anything other than what is currently enjoyed by the neighboring properties … 13’ is clearly not a very long distance, but to the gentleman, for instance, who lives on Cameron, his property, his home, is certainly not backing up to the back of his lot. So, I don’t see this as being any more of a safety concern or a burden or anything else that anyone of his neighbors currently enjoy.*

*“If you look at that aerial, and you look at 301 and 307 [Jejac Drive], they are right up there in exactly, basically, the same location. If I’m reading Mr. Heard’s chart correctly, it is actually encroaching 1’ less than the immediate neighbor at 307 [Jejac Drive], and I think that the front with the porch and the stairway is, frankly, a more cosmetic feature than the overall size of the home.*

*“If you are inclined to move the entire dwelling forward to increase the rear setback, then I would say, ‘yeah, you might be making the folks on Cameron happy,’ but you certainly would not be making the immediate next door neighbor happier because then his view is totally shot, and to me, there’s a whole lot more encroaching, then, in front of the lot than there is currently … I mean, we’re basically talking about an open deck at 8’ above grade. We’re not even talking about the covered deck, if I’ve understood correctly.*

*“We’re just talking about the open deck, and the back and the staircase is what the front encroachment is, so that, to me, is a relatively minimal encroachment, and while the applicant may say, ‘yeah, but that’s gonna give me a funny looking house and I would opt to not buy the lot based on that,’ well, that’s his decision, and it seems to me to be a more sensible, perhaps, way to make that front go away, and that seems to be staff’s concern is the fact that the front is indeed workable more so than the back. Staff could not say, did not seem to have any problems with the front.”*

Chairman: *“Well, I think you have some agreement from Mr. Geraghty. Unless we want to discuss it further, as I understand it, you are proposing that we approve the rear setback variance and deny the front, which would mean that as to the front, we agree with all the staff findings, but as to the rear, we disagree with staff if, once we put it to a vote, then we disagree with staff finding #5, and that we do believe, as to the rear, that this is the minimum possible to accommodate a reasonable use of this property. Is that a fair statement of what you are proposing?”*

Connery: *“I’m not … what I would move,* ***that we accept this variance request with the condition that the front encroachment be removed and that new plans be brought to the Town Planner showing us this change; and if it is acceptable within the building code of the Town, without the encroachment, that the variance be granted.”***

After the Chair confirmed Connery’s statement as her motion, Geraghty offered the second.

When the Chair began to call for the vote on the motion, Attorney Michael interjected:

*“I have a question about whether you can do this … I think you, obviously, can grant the variance to the rear and deny the request for the variance for the front in the sense of that, but you’ve got a very specific plan that has been presented to you that shows where it’s going to be. If you do it like you’re doing it, and you can’t do it contingent on bringing back a plan – that’s an unknown – you’ve got to deal with what you have before you, so you have to deal with the plan that you have, and you can approve this specific plan without that front encroachment.*

*“As far as saying, ‘we’re going to bring back a different plan and look at it,’ I don’t think you can do that. I think you’ve got to deal with the facts that you have before you right now, and if you approve a 13’ rear encroachment, then you’re approving it all the way across the lot, so the next plan that might be presented may, instead of 48’ long, it may be 60’ long if it can fit within the width of that lot.”*

Chairman: *“I’d want to put the matter to a vote based on, you know, in the proper fashion … I can’t say ….”*

Connery: *“May I withdraw my motion and present an alternative motion, then, if it’s not going to be something that we can ...?”*

Attorney: *“… I’m not telling the Board what you can do. I just have a question about that motion, if that motion has a problem.”*

Chairman: *“So, as I understand it, we could vote to grant the rear and deny the front, but Mr. Michael does not want us to place a condition on a new plan being presented. It’s got to be judged based on what’s in front of us today.”*

Connery: ***“I would amend my motion to conform ….”***

Chairman: *“… so, your motion is that we take a vote to approve the rear, deny the front, which means that we would be agreeing with the staff findings as to the front setback and disagreeing as to the rear for issue #5,* ***and I will second that motion and put that to a vote.****”*

Upon call for the vote to allow the variance as to the rear setback and denying it as to the front**, the motion carried 3-2, with Chairman Spencer and Morton casting the dissenting votes.**

The Chair then stated the motion fails, noting the result of the vote means the whole variance request is denied, to which he asked for the Attorney’s confirmation, and Attorney Michael offered, *“unless there is another motion to approve it in a different form.”*

Chairman Spencer: *“Well, I would move that we deny this application as it has been presented to us, but if nobody wants to put … we can take that to a vote, but, as we stand right now, we don’t have a consensus, and it’s denied. I don’t have a new motion to propose. Does anyone else?”*

With hearing no further input, the Chair stated for the record the variance request as presented is denied, adding it is without prejudice to the applicant’s right to present a different plan.

At this time, the Board took a brief recess at 5:00 p.m. until 5:07 p.m.

**5. 319 Jejac Drive - Section 42-247(d)(3) of the Town Code requires a minimum front and rear building setback requirement of twenty-five feet (25’) in the Beach Residential (BR-1) district. The applicant is requesting a variance of five feet (5’) from the minimum front building setback in order to construct a single-family residence as close as twenty feet (20’) from the front property line. The applicant is also requesting a variance of twelve feet (12’) from the minimum rear building setback in order to construct a single‑family residence as close as thirteen feet (13’) from the rear property line.**

With calling the meeting back to order, Chairman Spencer indicated the Board is proceeding to this next variance application request and invited persons wishing to offer testimony to come forward to be sworn.

David Hines was sworn by oath, administered by Clerk Morris. It was noted Planner Heard remained under oath as well.

The floor was then opened for the Planner’s presentation.

**a. Public Hearing.** Joe Heard, the Director of Planning and Inspections, noted for the record that although this matter is substantially similar to the previous variance request, it is a separate application and would need to be undertaken as such, reviewing and presenting the details.

The Planner stated that a copy of the legal advertisement has been provided to the Town Clerk. The legal notice appeared in *The Coastland Times* on July 28, 2013, properly advertising the hearing for the subject application. Also, the Clerk was given documentation of the Notice of Public Hearing being mailed to property owners adjoining 319 Jejac Drive, verifying they were duly notified. The subject property was properly posted advertising the public hearing (posted at least 15 days prior to this hearing). 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 Tuesday, August 13, 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:*

***Application for a variance of five feet (5’) from the minimum front building setback standards in Section 42-247 (d)(3) of the Town Code in order to construct a single-family residence as close as twenty feet (20’) from the front property line at 319 Jejac Drive. The applicant is also seeking a variance of twelve feet (12’) from the minimum rear building setback standards in Section 42-247 (d)(3) of the Town Code in order to construct a single-family residence as close as thirteen feet (13’) from the rear property line at 313 Jejac Drive. Presently, the minimum building setbacks in the Beach Residential (BR-1) district are 25 feet from the front and rear property lines.***

*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.*

Next, the Planner summarized his staff memorandum dated August 13, 2013, which details the two-fold variance request. A site plan was referred to during the presentation. Said memo is entered into the record:

***Requested Variances***

***(1)*** *Application for a variance of five feet (5’) from the minimum front building setback standards in Section 42-247 (d)(3) of the Town Code in order to construct a single-family residence as close as twenty feet (20’) from the front property line at 319 Jejac Drive. Presently, the minimum front building setback in the Beach Residential (BR-1) district is 25 feet.*

***(2)*** *Application for a variance of twelve feet (12’) from the minimum rear building setback standards in Section 42-247 (d)(3) of the Town Code in order to construct a single-family residence as close as thirteen feet (13’) from the rear property line at 319 Jejac Drive. Presently, the minimum rear building setback in the Beach Residential (BR-1) district is 25 feet.*

***Proposed Project***

*The applicant is seeking to construct a single-family residence on the subject property. The proposed residence is approximately 1,420 square feet in size (28’ x 54’ footprint), with a 72 square foot (9’ x 8’) deck and stairway on the front.*

*The attached Exhibit A shows the proposed location of the residence on the lot. Note that the front wall of the residence is located 29 feet from the front property line. Only the proposed deck encroaches into the required front setback.*

***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 (2 pages) –*** *Site plan showing the proposed development of 319 Jejac Drive prepared by engineer/land surveyor Michael W. Robinson and dated August 6, 2013. The survey shows the dimensions of the subject property and the proposed location of the residence, driveway, and septic system. A portion of the site plan has been blown up for increased readability.*

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

***Exhibit 1 –*** *Aerial photograph of 319 Jejac Drive and surrounding properties obtained from the geographic information system (GIS) on Dare County’s website.*

***Exhibit 2*** *– Letter dated July 29, 2013 submitted by Floyd Bibbee, owner of a nearby property at 307 Jejac Drive. Please note that some of the information in Mr. Bibbee’s letter is inaccurate. The facts regarding the other residences along Jejac Drive are provided below.*

***Ordinance References***

*Town of Kitty Hawk Zoning Code, Section 42-247(d)(3), Dimensional requirements:*

*The minimum yard setbacks shall be in accordance with the following chart:*

|  |  |  |
| --- | --- | --- |
|   Dwelling Size(in square feet)    | Side Setback(in feet)    | Front and RearSetbacks (in feet)    |
| 3,000 and under    | 10    | 25    |
| 3,001--3,500    | 12.5    | 25    |
| 3,501--4,000    | 15    | 25    |
| 4,001--5,000    | 17.5    | 25    |
| 5,001--6,000    | 20    | 25    |
| 6,001 and over    | 25    | 25    |

## Property & Area Information

*The subject property is presently undeveloped and zoned Beach Residential (BR-1). The property is a rectangular lot 10,150 square feet in size. Although the property has 145 feet in frontage along Jejac Drive, it is only 70 feet in depth off the road.*

*The abutting property to the east is zoned Beach Residential (BR-1) and contains a single-family residence. The adjoining parcel to the west is currently undeveloped, zoned BR-1, and also seeking to obtain a variance to construct a single-family residence. The large property across Jejac Drive to the north is approximately 8.15 acres in size, zoned Beach Residential (BR-2), and presently undeveloped. The three (3) abutting properties to the south are located in the Town of Kill Devil Hills. Each of these properties contains a single-family residence.*

*Seven (7) of the eleven (11) residential properties along the southern side of Jejac Drive are presently developed. The following chart notes the size, depth, approximate front and rear setback, and construction date for each of these residences.*

 Approximate Approximate Date

 Address Square Footage Depth of House Front/Rear Setback Constructed

107 Jejac Dr 960 sq. ft. 31 ft. 23/16 ft. 1978

113 Jejac Dr 1,040 sq. ft. 33 ft. 19/18 ft. 1985

119 Jejac Dr 888 sq. ft. 24 ft. 26/20 ft. 1978

201 Jejac Dr 1,040 sq. ft. 33 ft. 25/12 ft. 1985

213 Jejac Dr 1,116 sq. ft. 39 ft. 17/14 ft. 1986

301 Jejac Dr 1,944 sq. ft. 37 ft. 17/16 ft. 1978

307 Jejac Dr 1,792 sq. ft. 36 ft. 22/12 ft. 1984

 **AVERAGE 1,254 sq. ft. 33.3 ft. 21.3/15.4 ft.**

## PROPOSED

**319 Jejac Dr 1,420 sq. ft. 37 ft. 20/13 ft.**

## It appears that as many as five (5) of the existing residences encroach into the front building setback. All seven (7) of the existing residences encroach into the rear building setback. Staff has not found a record of any variances granted on the other properties along Jejac Drive.

## Additional Background Information

* *The subject property and ten (10) other parcels along the south side of Jejac Drive were created as part of the Kitty Dunes II subdivision, approved by Dare County in 1971, ten (10) years prior to the incorporation of Kitty Hawk.*
* *The size of the subject property (10,150 square feet) is nonconforming as the Town’s current minimum standard for lots in the BR-1 district is 15,000 square feet.*
* *Although narrow, the depth of the subject property (70 feet) is not nonconforming as the subdivision ordinance does not state minimum standards for lot depth. However, the ordinance does outline a minimum lot width of 75 feet for all newly created lots.*
* *With a depth of only 70 feet, application of the front (25 feet) and rear (25 feet) setbacks leaves a building area only 20 feet in depth on the subject property.*
* *At a size of only 1,420 square feet, the proposed residence is smaller than most residences recently constructed in Kitty Hawk. The sixteen (16) residences permitted in Kitty Hawk so far in 2013 have an average size of 1,902 square feet.*
* *The applicant has requested variances of five feet (5’) from the minimum front setback requirement and twelve feet (12’) from the minimum rear setback requirement. If the location of the residence is shifted, it would still require the same total amount of variance (17 feet). For example, if the location of the residence is shifted forward five feet (5’) to avoid the need for a front setback variance, it would result in increasing the rear setback variance to 17 feet.*

***Directions to the Subject Property***

*From Kitty Hawk Post Office, Hwy. 158 & Kitty Hawk Road, drive 0.9 mile south on N. Croatan Highway (Hwy. 158). Turn right onto Jejac Drive (just before Henry’s restaurant). Drive west for approximately 0.3 mile. 319 Jejac Drive is located on the left side of the road. The four corners of the lot are staked out and flagged.*

It was noted the site plan which was referred was, basically, “flipped” from the application for 313 Jejac Drive. Of the two houses closest to the subject property, the average size is 1,868 sq. ft. The proposed house is 1,420 sq. ft.

The Planner then reviewed the staff’s findings, which are being entered into this record:

***STAFF FINDINGS - 319 JEJAC DRIVE***

***1. Do special conditions and circumstances exist which are peculiar to the land, structure, or building involved which are not applicable to other land structures, or buildings in the same zoning district?***

***Yes. The minimal depth of the subject property (70 feet) does not allow for the construction of a typical, reasonably sized residence. With minimum building setbacks of 25 feet from the front and rear property lines, the remaining building area is only 20 feet in depth (not much wider than a single-wide mobile home). For comparison’s sake, most lots created under the Town’s current subdivision standards have a depth of 150 feet or more. Even the smallest, older lots in the areas “between the highways” have depths of 100 feet, which provides a more traditional building area.***

***2. Would a literal interpretation of the zoning code deprive the applicant of rights commonly enjoyed by other properties in the same district?***

***Yes. The applicant is seeking to construct a modest sized, single-family residence (approximately 1,420 square feet) on the subject property. A majority of the other, similarly situated properties along Jejac Drive already contain a single-family residence.***

***3. Do the special conditions and circumstances result from the actions of the applicant?***

***No. The current dimensions of the subject property were created by a subdivision plat approved by Dare County and recorded in 1971, prior to the incorporation of the Town of Kitty Hawk and long before the applicant entered into a contract to purchase the property.***

***4. Would granting the variance confer special privileges to the applicant that are denied to other land structures, or buildings in the same zoning district?***

***No. The proposed residence is relatively modest in size at approximately 1,420 square feet. The average size of the existing residences along Jejac Drive is 1,254 square feet, but the two nearest residences average 1,868 square feet. Five (5) of the seven (7) residences along Jejac Drive encroach into the front setback and all of these residences encroach into the rear setback. The average size of residences recently constructed in Kitty Hawk in 2013 is 1,904 square feet. So, the applicant is not asking for anything out of character or scale with the surrounding area or Town in general.***

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

***No. The requested variances are the minimum possible to accommodate the dimensions of the proposed residence in the proposed location. The applicant has turned the house plan sideways to lessen the amount of the variance. However, it certainly appears that the size of the front deck could be reduced without significantly impacting the size or functionality of the proposed residence. Shortening the depth of the deck by five feet (5’) would eliminate the need for a front setback variance or reduce the distance of the requested rear setback.***

***6. Is the requested variance in harmony with the general purpose and intent of the zoning code?***

***Yes. Setback requirements are generally adopted for the purposes of securing safety from fire, providing privacy, preventing overcrowding, and achieving a desired pattern of development. The proposed residence would be at least 55 feet away from any other residence. Therefore, it appears that the purpose of intent of the setback standards would still be met if the proposed variance is approved.***

***7. Would granting the variance be injurious to the neighborhood or detrimental to the public welfare?***

***No. The proposed single-family residence is consistent with the size, character, and development pattern of the other residences along Jejac Drive. Therefore, granting the variance would have minimal impact on the surrounding properties.***

***Summary:***

***It is staff’s opinion that the requested variances meet the standards of Findings 1, 2, 3, 4, 6, and 7. As staff did not find in the applicant’s favor on Finding 5, staff is recommending DENIAL of the setback variances, as requested. With a minor adjustment to the size of the front deck, staff would find that all standards have been met and recommend APPROVAL of a lesser variance.***

***KEY POINTS:***

***Positive***

* ***There appears to be a legitimate physical hardship due to the narrow depth of the subject property and small remaining building area.***
* ***As the existing dimensions of the lot were created by a prior owner in 1971, the applicant has not created the need for a variance.***
* ***The applicant has attempted to minimize the requested variances by proposing a modest sized residence and turning it sideways on the lot.***
* ***The scale and location of the proposed residence is consistent with the existing residences along the south side of Jejac Drive.***
* ***It does not appear that granting the variance would create any type of unsafe situation or nuisance to any of the surrounding properties.***

***Negative***

* ***The dimensions of the front deck could be reduced to eliminate the need for a front setback variance or minimize the distance of the requested rear setback.***

With thanking the Planner for his review and summary, Chairman Spencer asked if the applicant has any questions of the Planner, and with hearing none, it was noted the applicant would be provided an opportunity to speak. Next, a call for questions from Board members was given. No comments or questions were offered.

The floor was then opened for the applicant to present his testimony and remarks. Speaking on behalf of the applicant was engineer Mike Robinson, who prepared the site plan on the proposed variance request. His comments begin:

 *“It seems like, having the benefit of already going through this once, we kind of know what we have to do here, and I’ve talked to the applicant, and what we would like to try and do is minimize the amount of variance that we’re going to be requesting today, and we can clip this front deck off and, thereby, we won’t be requesting a front setback variance but we can still request the rear setback variance.*

 *“Now, we could also put this deck off, put the house slightly forward, putting it slightly off the rear setback, and you know, the item … have we minimized the amount of variance we’re going to request. I don’t see how the Town ever gets to the point, what it says, ‘you have absolutely minimized it,’ because there is a 20’ wide building envelope. It’s not a practical building envelope, but how do you ever get to that point? So, I think we can minimize.*

 *“This is a model that they have built quite successfully throughout Kill Devil Hills, several times, at least ten times. It’s a nice looking model. It’s a three-bedroom house, one story, over parking and storage. It’s in harmony. It’s not going to stand out on this street. It’s going to fit right in. It’s in harmony with everything else that’s up and down this road.*

 *“So, what we’ve got to do is … how do we get around or how do we, say, convince the Town that we have minimized our request by reducing the amount of variance. We can do that by clipping off this portion of the deck and we can say, ‘we’re not going to need a front setback,’ the extension of the deck that runs to the north. That’s 5’ into the setback. That can be eliminated. We can move that to the front of the house. We can do whatever we want to do, or just leave it. It doesn’t affect access to the house, and it would reduce any variance needed for the front setback. Now, that doesn’t eliminate the need for the rear setback variance, and if it is … but … I mean, where do we go?*

*“Do we come back in here with another proposal?, and then, ‘oh, no, we want it forward a foot,’ … if we could do this tonight, if you want to flip this deck, eliminate the front setback variance, go with the rear setback variance … which again, is not out of harmony with the neighbors, and it’s not out of harmony with rear setbacks in other subdivisions or other towns, which, typically, are about 20% up to a maximum.*

*“So, this is not too far off from that. That’s kind of where we’re at. I mean, if we can fix this right now, and we would like to do that right now, rather than having to come back and ask for a foot in the back, a foot in the rear … if we can have some guidance ….”*

Chairman: *“That was the problem with the last application ….”*

Robinson: *“… I understand. That’s why we’re going to say right now we’re going to clip that deck off, and we’re not asking for any front setback. We want the rear setback. I could draw it up and sign it right now.”*

Chairman: *“Well, we’re going to consider that, and without … and once again, you can come back with any proposal you want to come back with. We’re not here to try and make things difficult for you. You’ve got some sympathy on this Board for the situation on the ground, but I don’t believe that we can sit here and tell you and give you a firm commitment that if you do ‘x’, ‘y’ and ‘z,’ you’ve got ‘this.’ That was the problem with the last one.”*

Robinson: *“Well, the applicant’s here. I’m the engineer here. We can look at ….”*

Chairman: *“… let me re-phrase that … I don’t know that you have the support for that. We can do it, but I don’t know that we have the consensus ….”*

Attorney Michael: *“… what’s a little bit different in this one than in the last one, is the public hearing was closed in the last one, so you could not engage in this discussion with the last applicant. Now, you do have an applicant here who is telling you, ‘I’m willing to cut this off right here, remove that offending deck in the front setback,’ and so you do have the benefit of that now that you didn’t have with the last one ‘cause you couldn’t go back and have that discussion.”*

Geraghty: *“How wide does the staircase have to be coming down there?”*

Robinson: *“I believe it’s either 3’ or 4’ wide … I can’t remember how wide exactly. It’s probably a 3’ wide staircase.”*

Geraghty: *“If you do a 3’ wide staircase, and you’ve got 5’ there, we could actually move the house 2’ more closer to the road, and that would gain 2’ on the rear yard setback.”*

Robinson: *“Well, we could do that, but at that point we would be asking for an encroachment into the front setback ….”*

Geraghty: *“… Mr. Michael said we could be asking these questions now, with the public hearing still open ….”*

Robinson: *“… and that was kind of the point I was trying to bring up, is where are we going to put it? Do we keep it all the way back? Do we keep it all the way forward? Do we eliminate where we go and how many reiterations we have to go through to get to that point?*

 *“In my mind, it’s better to, because of the aesthetics of the road, let’s eliminate the front setback, okay, that keeps the road portal clean. It eliminates the concerns of the neighbor who was concerned about having his view blocked, and then, obviously, we’re not going to block his view because we’re going to be further back from the road than he is. It doesn’t help the neighbor in the rear, but this lot has to have some relief to be practically buildable.*

 *“Could they build a 20’ wide house by 120’ long? Yes, they could, by right. I don’t think that, personally, it would sell, but it’s obviously something that nobody wants to build.”*

The Chair asked if there were other questions for Robinson, and another speaker came forward.

David Hines indicated he has been in real estate full-time since 2003, starting Shoreline Development Group three years ago *“when everything was falling apart,”* that the business takes huge risks daily in its operations. His comments continue:

*“I’m trying to understand, and it’s kind of like how the insurance broker gets with a new flood insurance … these lots don’t meet zoning today, but they did at the time, so it’s kind of similar, to me, just like somebody in the flood plain, so they’re going to pay all this extra insurance but they built to code at the time.*

*“The correlation I’m trying to make is I don’t think this is … I mean, we’re not going to the top height, which would really block the neighbors, and it’s a modest beach box, which is scattered throughout all of the Outer Banks. I guess it’s more of a comment … I’m just trying to ….”*

Chairman Spencer interjected: *“… well, I think you’ve got some sympathy on this Board for that situation, the same as Mr. Soles, that this is a very narrow building envelope that is peculiar to this area, and that’s why Mr. Heard is backing you up on that. Where we get hung up is, have you done the best you could? That’s where the hang up was.”*

Hines: *“And, I maybe would like to add to that a little bit. As a real estate broker, the first thing I hear from people is, ‘I like decks. I want a deck. I want to sit on a deck,’ and this house fits fine on a 50’ by 100’ lot. We can’t do the side deck, but the biggest problem I’ve always heard on those is, ‘well, I wish I had more deck.’ That’s not really … is that 4’? We’re not asking for … I try to look at what I would want if I were buying a house. Obviously, I would like to have more deck, at least 5’ gives us … ok, I have no problem, but even if you put it out to the front, it may be better, but I guess I’m just trying to understand what that one hang up is on that little bit of decking. I’m not trying to challenge it … I’m just trying to understand it.”*

Chairman: *“I can answer that – because we, by law, have to answer seven specific questions, and one of which is, is this, your request, is it the minimum possible to make reasonable use of the land, building or structure, and that’s the reason. We don’t have a choice but to decide on the questions that the law allows us to decide. We can’t go beyond those.*

 *“Really, the other side of that coin is you could build a 100’ long double-wide, and we understand that nobody wants to buy that. But, I hope I’ve explained … I hope I’ve answered your question, because, basically, the law says we have to answer seven specific questions and no others, and that’s one of them – is this the minimum possible?”*

Hines: *“Well, I guess to answer that – I’m fine with, if you guys would agree, in getting rid of that little bit of a deck and putting it out front. It may even end up making it a better property any way as far as the decking. Initially when Mike and I got together on this, I’m just going on the rest of the street. I didn’t get out and measure things because of walking on people’s property, but, so to answer your question, I thought we did, the best we could. But, I’m fine with that deck coming off of there and it being moved to the front … which you can configure, right?”*

Robinson: *“Yes.”*

The Chair thanked Hines for his comments, calling for further questions. An invitation was given to any party to offer additional comments or questions.

Supporting the subject application, Soles stated when developing his proposal, he looked at the other properties along Jejac Drive, indicating though his preference would be to have a second floor or even a third floor and a deck to be at 35’. However, taking into consideration the existing properties was the right thing to do, to eliminate any worries that the neighbors would have. Continuing his remarks, he said:

 *“You’ve got to take into consideration the surrounding neighbors, the guy beside him, Mr. Bibbee, which I went over there and spoke with him and told him what we were going to do. We took all that into consideration before we ever went through the cost of developing a plan, having the lot surveyed, a site plan, the permit to come here and propose this … we took all that into consideration.*

*“We’re considering the smallest possible … I’m not saying it’s as small as possible, but it’s along that street, and I have, I’ve taken my tape measure up and down Jejac Drive, and I’ve measured from the front to the back, and I am, we are, because my setbacks are identical to these, 13’ to 5’, we’re well within what already exists along Jejac. Unfortunately, that’s only a 70’ deep lot. I’d love to have a house facing the street. We don’t want to turn the house sideways but we have to, to conform with what’s already there. You know, it’s not by choice – we’re trying to make it look like what already exists. The size of the house, like I’ve said, I’d love to go up, but I’m not going to. It doesn’t cost any more to go up.*

*“I’ve taken out and measure it, the front yards and back yards from the setbacks. They’re 10’, 11’, 12’. We’re requesting 13’. Some of them are even less than what we are requesting ….”*

Chairman Spencer interrupted by saying, *“Mr. Soles, that’s something to take up with the Town Council. That’s one of the things we absolutely have no authority over. We’ve got to work with the ordinances we’ve got and give variances where necessary to prevent hardship, and I’m sure you’re right – that other places have less stringent setbacks, but we’ve got what we’ve got ….”*

Soles: *“… and I’m just talking about along Jejac in Kitty Hawk. I mean, we have taken these site plans and we have conformed them with what’s already there. We haven’t done anything … actually, less than what’s there, and that’s all. Even if we took the front away…, and so you’re stuck with the 25’, you know, do we continue?*

*“I guess my question … I’m speaking on his behalf, I suppose, or certainly this lot right here … do we come back in a month from now to pay another fee to come back and say, ‘okay …?’ We still have … we’ve eliminated that side deck, but it’s an open deck, it’s not a covered deck.*

*“There’s not a house on that road or behind me that that deck could even come close to blocking any kind of view that they may have, but I’m going to eliminate that deck, and I’m going to set a stairway of steps 4’ along side of the house within the 25’ setback. I’m not going to interfere with that at all, but in order to do that, I need to be 13’ from the back to build that house, the same house, but I’m just going to rearrange the stairway.*

*“So, do we come back and say, ‘we’ve got a guy two houses down but he’s 8’ from the property line … I’m requesting only 13’ which is more than most along that road, and then be denied again? Is there any kind of ...? It’s a front-sided question. I promise I will not come back and ask for another 5’ variance on the front, but I am coming back for the rear, but when I come back, I’m going to request a 13’, the same as I am requesting here, and that’s the minimum I can do.*

*“It’s only a 28’ house, 28’ wide, with a 4’ set of steps. None of us want a 3’ wide set of steps, but a 4’ wide set of steps along the side of the house that goes to the back and enters into the carport … bare bones, minimum. I mean, that’s what I’m going to bring back, but at the same time, I wait a month, I pay $300 and fill out another application, pay to have another site plan developed, pay to have another set of plans developed, go through all the expense and the time that that involves, and I don’t mind it and that’s part of it. I don’t have any problem with it whatsoever, but … I come back, I’ve got the same folks sitting up here, the same guys that are oppose to it, and it’s denied again for 13’.*

*“Before I go through those steps again, I just … some sort of a … maybe you can or maybe you can’t … but some sort of an okay, and I’m not asking for you to say 13’ is good, but we need something to go back on, and I don’t want to continue doing this and a year from now I’m down to 8’. Excuse me. That’s all I’m trying to do.”*

Chairman: *“I understand, Mr. Soles, and there’s a couple of differences about your case, and I think it’s fair to say to you, that the main difference is - we have an engineer here who has a specific proposal. You said you had options, I asked you, but we’ve got a specific proposal from Mr. Robinson that we can now consider that we didn’t have the opportunity to consider in your case. I’m not suggesting that you have to have an engineer, you don’t, but we closed your public hearing without a specific proposal from you on what you can do today.*

*“That’s the difference with what we’re having with Mr. Robinson because he’s sitting here telling us, ‘I am basically amending my application to eliminate this deck of encroachment and move the whole house 5’ to the street to minimize the rear.’ I don’t know … you’ve just said you’re not able to do that, and we’re not going to be able to give you a commitment as to what we would do when you come back.”*

Soles: *“It’s the same house, basically, you know, and that’s all I’m going by, and I understand that, and I’ve never been here before. I wasn’t trying to debate anybody or question …* [an interjecting comment says *“you’ve done fine”*] *… I don’t know exactly how it works, but I’m sitting back there wanting to ask these questions, but I wanted to hang on, am kind of out of line by asking them, so that’s why I’ve sat there till now.*

 *“It’s the same house, the same footprint, and I could do the same thing that he’s done. I could bring the steps off the side of the house versus the deck ….”*

Chairman: *“… Mr. Soles, I’ve got to cut you off because we’ve got to consider the application that we have, but I’m glad you’re here so you can understand what the major difference is, in my mind, between this application and yours, that we’ve got a specific proposal now, and it’s regrettable that you do have to start this process over again, but it appears that that’s the case.”*

Robinson: *“Just so we can make sure that there’s no misunderstanding, we’re asking now, at this point, to eliminate any variance into the front setback and we’re asking to maintain the variance we have requested in the rear.”*

Chairman: *“So, you’re not suggesting that when you eliminate the deck in the front, that the entire house can be slid forward 5’ …?”*

Robinson: *“… no, no. What we’re saying is, see that bump out on that deck? We’re talking about chopping that off. That would eliminate the encroachment into the front setback, but we want to maintain the encroachment that we’ve already applied for in the rear.”*

The Chair acknowledged a clear understanding of the applicant’s request, and with hearing no further comments, **Chairman Spencer moved to close the public hearing.** **A second was given by Forrester,** and with the vote taken, **the motion carried unanimously, 5-0.**

**b. Board Deliberation & Decision.**

Chairman Spencer reiterated that he is clear on what Robinson has described for the amended variance request.

Referencing the staff memo, Geraghty suggested the Board consider eliminating the first variance request and vote on the second variance request, and Board members gave a consensus. The Chair said his only concern is the Board being constrained by issue #5 of the staff findings, that it has to be determined if the variance distance requested is the minimum possible, and in his mind, the answer is *“no, because when you eliminate that front deck bump out, you’ve got 5’ to work with to move the house and minimize the rear setback. So, how can we say that that is the minimum possible?”*

Geraghty: *“I’m going by Staff Findings … Staff Findings states the rear is the minimum, that they didn’t have a problem with* [variance request] *#2. They only had a problem with* [variance request] *#1.”*

Chairman: *“But you see, my point, that eliminating the front frees up 5’ in the back that you don’t have to have ….”*

Connery: *“… but it creates …, recreates the 5’ variance requirement in the front ….”*

Chairman: *“… no, it doesn’t ….”*

Connery: *“… yes, it does ….”*

Chairman: *“… it does? Am I not picturing this correctly in my head? Am I?”*

Geraghty: *“Yes it does, because if they put the stairs out, yes it does.”*

Connery: *“Yeah.”*

Chairman: *“Well, then I’m not ….”*

Connery: *“…* [inaudible] *… the whole house forward ….”*

Chairman: *“… no, just the bump out part. If they just remove the bump out on the deck where the stairs went, that frees up … if you cut that off, that frees up 5’. Does it not?”*

Connery: *“Yes.”*

Geraghty: “No, it doesn’t because ….”

Attorney: *“… that 5’ is ….”*

Geraghty: *“… the stairs is in that 5’ ….”*

Chairman: *“… okay, alright … I see ….”*

Geraghty: *“… and they can’t move it, cause the stairs would be sticking out ….”*

Chairman: *“… I see, I see … I was mistaken about that, alright. Okay.”*

The Chair asked if there were further comments or questions, and Forrester stated:

*“The way this is presented, #5 goes away because all the staff is denying is that front yard setback* [a consensus of the Board was given in agreement]*, and they recommend that we approve it if the adjustment on the front deck is made, which Mike has proposed.*

***“I move that with the withdrawal, so to speak, of the variance request #1 that we approve #2.”***

**A second was given by Geraghty.**

Attorney Michael interjected to address the Board, for clarification purposes:

 *“Your rear variance that you are granting is only for the encroachment by the applicant’s structure that is shown on here into the setback. You are not creating a 13’ setback across the lot. I just wanted to make that clear.”*

Chairman: *“Just for the proposed structure as it is shown.”*

The Chair verified with Forrester that such is the intent of the motion offered, and she said, *“yes.”*

Upon call for the vote on the motion, **the motion carried 4-1, with Morton casting the dissenting vote.**

To summarize, Chairman Spencer stated the variance is granted as to the rear variance but not to the front variance.

Directing his remarks to Robinson, the Chair clarified the granted variance does not provide for a variance 13’ across the rear setback but only for the specific structure encroachment as shown on the proposed site plan.

**6. OTHER BUSINESS:**

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

**b. Board of Adjustment Members.**

**Former Chairman Earl Taylor.** Board members expressed their condolences regarding the news of Earl Taylor passing away on Sunday, August 11. Mr. Taylor served the Board of Adjustment many years as the chairman and will be missed.

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

**d. Planning Director.** Planner Heard recalled that at last month’s meeting, preliminary mention was made regarding the State legislature, in its last session, adopting a variety of changes dealing with zoning boards of adjustment and how municipalities process variance and appeal requests.

The new standards need to be reviewed by the Planning Board and the Town Council for adoption so the Town may maintain compliance with the State law.

The Planner presented everyone with a copy of the proposed ordinance amendments to be reviewed by the Planning Board on Thursday, August 15, at 6:00 p.m. Invitation was given for BOA members to attend if interested.

A brief BOA training session will be scheduled later to go over the changes once adopted.

**7. ADJOURN**

Hearing no further comments or questions, **Chairman Spencer adjourned the meeting. Forrester gave a second.**

A brief explanation by the Town Attorney noted voting on a motion to adjourn is not necessary, unless someone is objecting to the adjournment. Time was approximately 5:48 p.m.

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 Matthew Spencer, Chairman

These minutes were approved \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2013.

Minutes Transcribed and Respectfully Submitted By: Betty Moore Williams

**Exhibits Filed with the Town Planner’s Office:**

**313 Jejac Drive - Supporting Documentation**

*The applicant submitted the following exhibits for the Board’s consideration:*

***Exhibit A (2 pages) –*** *Architectural renderings showing all four (4) sides of the proposed residence at 313 Jejac Drive prepared by Linda Ihle Design & Drafting and dated July, 2013.*

***Exhibit B –*** *Site plan showing the proposed development of 313 Jejac Drive prepared by professional land surveyor William S. Jones, Jr. and dated July 13, 2013. The survey shows the dimensions of the subject property and the proposed location of the residence and driveway.*

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

***Exhibit 1 –*** *Aerial photograph of 313 Jejac Drive and surrounding properties obtained from the geographic information system (GIS) on Dare County’s website.*

***Exhibit 2*** *– Letter dated July 29, 2013 submitted by Floyd Bibbee, owner of the adjoining property at 307 Jejac Drive. Please note that some of the information in Mr. Bibbee’s letter is inaccurate.*

**319 Jejac Drive - 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 (2 pages) –*** *Site plan showing the proposed development of 319 Jejac Drive prepared by engineer/land surveyor Michael W. Robinson and dated August 6, 2013. The survey shows the dimensions of the subject property and the proposed location of the residence, driveway, and septic system. A portion of the site plan has been blown up for increased readability.*

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

***Exhibit 1 –*** *Aerial photograph of 319 Jejac Drive and surrounding properties obtained from the geographic information system (GIS) on Dare County’s website.*

***Exhibit 2*** *– Letter dated July 29, 2013 submitted by Floyd Bibbee, owner of a nearby property at 307 Jejac Drive. Please note that some of the information in Mr. Bibbee’s letter is inaccurate.*