

**CURRITUCK COUNTY
BOARD OF ADJUSTMENT MEETING**

October 12, 2006

The Currituck County Board of Adjustment met on October 12, 2006 at 7:30 p.m. in the Historic Currituck County Courthouse. The following members were present: Larry Etheridge, Aubrey Dowdy, Donald Ferebee, and Earl Wemer, Jr.,. Tammy Glave, Planner, Donna Voliva, Planner, and Ike McRee, Attorney, were also present.

Mr. Etheridge called the meeting to order and announced a quorum had been met with Mr. Wemer as the voting alternate. None of the members disqualified themselves from voting on any of the items on the agenda.

APPROVAL OF MINUTES

Mr. Wemer motioned to approve the September 14, 2006 minutes as presented. Mr. Ferebee seconded the motion and the motion passed unanimously.

BOA 06-18 OUTER BANKS FRAMING, LLC: Variance from Section 405 (3) of the UDO to allow a driveway width of 65' (36' required) and a variance from Section 414 (4) of the UDO to allow a 0' setback for the driveway (10' required) located at 6339 Caratoke Hwy, PIN 0094-000-135A-0000, Poplar Branch Township.

Tammy Glave and Melissa McAllister appeared before the board and were sworn in.

Mrs. Glave presented the following case analysis to the board:

BOARD OF ADJUSTMENT CASE ANALYSIS

Meeting Date: October 12, 2006
Case Number: BOA 06-18
Applicant: George Shultz
Property Owner: Outer Banks Framing
PIN: 0094-000-0135A-0000
Address: 6339 Caratoke Highway
Zoning District: General Business (GB)
Township: Poplar Branch

Request

Variance from Section 405 (3) of the UDO to allow a driveway width of 65' (36' required) and a variance from Section 414 (4) of the UDO to allow a 0' setback for the driveway (10' required).

Narrative

1. The Board of Adjustment granted a conditional use permit for this property on August 10, 2006 for a commercial condominium.
2. The UDO States:

Section 405 Required Widths of Parking Area Aisles and Driveways, Excluding Residential Lots within Planned Unit Developments. (Amended 11/1/04)

 1. Residential driveways shall not exceed 24 feet in width measured at the front (street) property line. Commercial and manufacturing driveways shall not exceed 36 feet in width measured at the front (street) property line. The maximum driveway width shall not apply to fire stations. (Amended 11/1/04)

Section 414 Driveways.

 4. Excluding residential lots within planned unit developments, all residential driveways shall not exceed 24 feet in width measured at the front (street) property line. Commercial and manufacturing driveways shall not exceed 36 feet in width measured at the front (street) property line. Driveways shall maintain a ten-foot (10') setback from any side and rear property line, except for required shared driveways, cul-de-sac lots, and camper lots where it is determined by the Zoning Administrator that the setbacks can not reasonably be met. Residential driveways shall extend ten feet (10') into the property before establishing drive aisles and parking spaces. Commercial and manufacturing driveways shall extend 20 feet into the property before establishing drive aisles and parking spaces. The maximum driveway width shall not apply to fire stations. **(Amended 11/1/04, 10/05)**
3. According to the NCDOT *July 2003 Policy on Street and Driveway Access to North Carolina Highways*:
 - a. The width of a driveway is measured parallel to the edge of travel way and from edge of pavement to edge of pavement at the narrowest width.
 - b. A driveway with two-way operations shall have a minimum 20 foot and a maximum of 36 foot width.
 - c. The need for wider driveways will be considered on a case-by-case basis only after justification of actual necessity, but should not exceed 50'.
 - d. Street type connections with multi-lane ingress or egress may exceed 50 feet based on traffic operation requirements as demonstrated in the Transportation Improvement Study. These values are based on edge of pavement dimensions not including the width of gutter if a curb-and-gutter section is proposed.
4. Staff contacted NCDOT on September 27, 2006 and October 2, 2006 to see if they would grant approval of this 65' driveway request. As of the mailing date of this agenda package, NCDOT has not yet responded.
5. The 10' driveway setback from the side property lines was a part of the November 1, 2004 amendment to the UDO to provide proper stormwater drainage at the street property line.
6. The applicant states: "The project is proposed to have one access driveway to Caratoke Highway with a deceleration lane and a right and left turn lane (exit lanes). There is only 8' from the existing curb of Caratoke Highway to the front property line of the project. The north turning radius is 30' and the south turning radius of the deceleration lane is 20'. This makes the driveway width at the property line 65'. To prevent vehicles from having to come to a complete stop before turning off of Caratoke Highway the radii are necessary for safety. To move slowing vehicles out of the flow of traffic the deceleration lane is necessary for safety as well. The north

radius encroaches in the required 10' setback from the property line but is necessary for safety.”

Variance Criteria

(The Board must find that the applicant meets all six criteria in order for a Variance to be approved.)

1. If the applicant complies strictly with the provisions of the Ordinance, he can make **no** reasonable use of his property;
2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the public;
3. The hardship relates to the applicant's land, rather than personal circumstances;
4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
5. The hardship is not the result of the applicant's own actions; and,
6. The variance will neither result in the extension of a nonconforming situation in violation of Article 15 nor authorize the initiation of a nonconforming use of land.

Discussion

1. There are currently over 100 permitted uses in the General Business zoning district.
2. Curb and gutter is installed along this portion of Caratoke Highway to assist in stormwater drainage.
3. NCDOT has not responded to staff's request regarding approved this driveway as of the mailing date of this agenda package.

Staff Comments

1. If the Board denies the variance, the applicant shall be required to adhere to Section 405 (3) and Section 414 (4) of the UDO.
2. If the Board grants the variance, staff recommends the Board adopt the following language and conditions:
 - a. “The board grants a variance from Section 405 (3) of the UDO to allow a driveway width of 65' (36' required) measured at the property line and a variance from Section 414 (4) of the UDO to allow a 0' setback for the driveway (10' required).”
 - b. Pavement markings or channelization shall be installed to help guide the driver to the appropriate portion of the driveway. “Without the guidance of markings, drivers exiting a driveway tend to position themselves left of the driveway center. Double yellow paint lines help in guiding exiting drivers to the proper exit position. This helps ensure that the intended driveway width is available to drivers making an entry maneuver”. *Source: Transportation and Land Development, 2002, Stover*

DISCUSSION

Mr. Etheridge questioned staff if NCDOT must approve the driveway before action by the board.

Ms. Glave responded no approval is required from NCDOT prior to action by the BOA.

Ms. McAllister, engineer for M & M Designs, stated there will be lane striping that will separate travel lanes. Stormwater will be handled by storm inlets. The necessary driveway radius for safe access to the property creates the wider driveway at the property line. The intended uses will not require tractor trailer deliveries.

Ms. Glave added the site is unique in that only a limited area between the property and the existing curb and gutter which requires the driveway radius that makes for a width greater than 36 feet at the property line.

ACTION

Mr. Wemer motioned that:

If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property because turning into the driveway at that distance would be unsafe.

Mr. Etheridge seconded this motion and the motion passed unanimously.

Mr. Etheridge motioned that:

The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the public based on the uniqueness of the property.

Mr. Wemer seconded this motion and the motion passed unanimously.

Mr. Etheridge motioned that:

The hardship relates to the applicant's land, rather than personal circumstances based on the uniqueness of the property and the location of the entrance.

Mr. Dowdy seconded this motion and the motion passed unanimously.

Mr. Etheridge motioned that:

The hardship is unique, or nearly so, rather than one shared by many surrounding properties because of the uniqueness of the property.

Mr. Dowdy seconded this motion and the motion passed unanimously.

Mr. Etheridge motioned that:

The hardship is not the result of the applicant's own actions because of the uniqueness of the property.

Mr. Dowdy seconded this motion and the motion passed unanimously.

Mr. Wemer motioned that:

The variance will neither result in the extension of a nonconforming situation nor authorize the initiation of a nonconforming use of land because this will solve the problem.

Mr. Ferebee seconded this motion and the motion passed unanimously.

Mr. Etheridge motioned to grant the following variance:

1. The board grants a variance from Section 405 (3) of the UDO to allow a driveway width of 65' (36' required) measured at the property line and a variance from Section 414 (4) of the UDO to allow a 0' setback for the driveway (10' required).
2. Pavement markings or channelization shall be installed to help guide the driver to the appropriate portion of the driveway. "Without the guidance of markings, drivers exiting a driveway tend to position themselves left of the driveway center. Double yellow paint lines help in guiding exiting drivers to the proper exit position. This helps ensure that the intended driveway width is available to drivers making an entry maneuver". *Source: Transportation and Land Development, 2002, Stover*

Mr. Dowdy seconded the motion and the motion passed unanimously.

BOA 06-19 RYANEE AND JOHN WHITEHURST, JR: Variance from Section 203 Minimum Lot Width of the UDO to allow a 31.24' wide lot (125' required) located at 124 Carotauk Dr, PIN 0050-000-113B-0000, Crawford Township.

John Whitehurst, Jr. appeared before the board and was sworn in.

Mrs. Glave presented the following case to the board:

BOARD OF ADJUSTMENT CASE ANALYSIS

Meeting Date: October 12, 2006
Case Number: BOA 06-19
Applicant: Ryanee & John Whitehurst Jr
Property Owner: Same
PIN: 0050-000-113B-0000
Address: 124 Carotauk Drive
Zoning District: Residential
Township: Crawford

Request:

Variance from UDO Section 203 Minimum Lot Width to allow a lot to be 31.24' wide (125' required). The parcel is located south of Currituck on the Sound at the southern terminus of Caratauk Drive.

Narrative:

1. The ordinance states:

Section 203 Minimum Lot Widths.

2. The following lot widths shall be deemed presumptively to satisfy the standard set forth in Subsection 1.

- (a) in all Zoning Districts: one-hundred and twenty-five feet (125'). This provision shall not apply to lots in Planned Unit Developments, Planned Residential Developments Open Space Subdivisions and as provided in Section 115, Every Lot Must Abut a Street or Road. (Amended 2-20-95)

Article 25 - Definitions

Lot of Record. A lot which is a part of an approved Subdivision, a Plat of which has been recorded in the Office of the Register of Deeds of Currituck County, or a lot described by metes and bounds, the description of which has been so recorded and which at the time of recordation and the time it was originally subdivided met all applicable Subdivision and Zoning regulations then in effect. In addition, this definition shall include lots for which a plat and/or deed is recorded in the Office of the Register of Deeds and the lot was created prior to August 2, 1965; a lot upon which an existing structure is located provided a valid building permit was obtained for the construction; or, a lot which at the time of creation met all subdivision and zoning requirements provided a plat is approved by the administrator and recorded with the Register of Deeds containing a certification as to having met the then existing regulations in effect.

- 2. It appears that this lot was created by deed prepared by William Brumsey III without the required lot width without Planning Department approval on May 10, 1988. (See Attachment 1)
- 3. A parcel of land can be sold, but unless the parcel is approved by the county as part of the subdivision review process, no building permit can be issued for the lot.
- 4. Mr. and Mrs. Whitehurst purchased this lot in 1988 not knowing this was not a legal lot of record.
- 5. Earlier this year Mrs. Whitehurst approached the county attorney about the status of this lot. Upon investigation, it was determined that this was not a legal lot of record.
- 6. Without the variances as requested above, Mr. and Mrs. Whitehurst cannot obtain any kind of building permit (dwelling, shed, etc.) for the lot from Currituck County.

Variance Criteria:

(The Board must find that the applicant meets all six criteria in order for a Variance to be approved.)

- 1. If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property;
(It is not sufficient that failure to grant the variance simply makes the property less valuable. Ordinarily some physical problem preventing development of the property in an authorized manner should be shown).
- 2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the public; (If other property owners in the area suffer

from the same hardship then the proper action would be to seek relief through an amendment to the Ordinance from the Board of Commissioners)

3. The hardship relates to the applicant's land, rather than personal circumstances; (Hardships suffered by the applicant should relate to the applicants land and not result from the Ordinance simply prohibiting).
4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties; (Note: hardships suffered by the applicant in common with his neighbors does not justify a variance, the proper remedy is not a variance, but rather an amendment of the Ordinance. Courts have held that a Board's granting a Variance based on such factors amounts to an attempted usurpation of legislative power).
5. The hardship is not the result of the applicant's own actions; and, (Where a property owner has either knowingly or unknowingly violated the Ordinance by erecting a forbidden structure, he/she cannot cite expenses as a hardship, otherwise no one would ever comply with the Ordinance. Similarly, when a person buys property and certain restrictions exist, he/she cannot be said to suffer hardship if those restrictions are enforced; such hardship would be self imposed).
6. The variance will neither result in the extension of a nonconforming situation in violation of Article 15 nor authorize the initiation of a nonconforming use of land. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the Ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted will not create a new nonconformity)

Staff Comments:

1. If the Board denies the variance, this land can only be used for activities that do not require a building to be erected, such as agricultural uses.
2. If the Board grants the variance, staff recommends the Board adopt the following language:
 - a. The Board grants a variance from Section 203 Minimum Lot Width to allow a lot to be created at 31.24' wide. This is a 93.76' variance.
 - b. The applicant shall submit a one lot minor subdivision plat for review and approval.
 - c. The subdivision shall meet all other applicable standards of the Currituck County Unified Development Ordinance.
 - d. The subdivision shall be recorded in the Currituck County Register of Deeds before a building permit is issued.

DISCUSSION

Mr. Wemer questioned the lot size.

Mr. Whitehurst stated the lot is 1.23 acres. Mr. Whitehurst did know the lot was not a legal subdivided lot; however, he did not know there would be a problem to build.

Mr. Wemer questioned other accesses to the property.

Mrs. Glave stated the easement located on the north side of the property is a recorded easement and is unimproved.

ACTION

Mr. Etheridge motioned that:

If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property because no building can be placed on the nonconforming lot.

Mr. Dowdy seconded this motion and the motion passed unanimously.

Mr. Etheridge motioned that:

The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the public based on the fact not too many people are in this situation.

Mr. Dowdy seconded this motion and the motion passed unanimously.

Mr. Wemer motioned that:

The hardship relates to the applicant's land, rather than personal circumstances based on the road ends at the property line.

Mr. Ferebee seconded this motion and the motion passed unanimously.

Mr. Wemer motioned that:

The hardship is unique, or nearly so, rather than one shared by many surrounding properties based on the fact that the road ends at the property line.

Mr. Ferebee seconded this motion and the motion passed unanimously.

Mr. Dowdy motioned that:

The hardship is not the result of the applicant's own actions because he can not make reasonable use of the land.

Mr. Ferebee seconded this motion and the motion passed unanimously.

Mr. Etheridge motioned that:

The variance will neither result in the extension of a nonconforming situation nor authorize the initiation of a nonconforming use of land because it is already a nonconforming lot and will remain as such without the variance.

Mr. Dowdy seconded this motion and the motion passed unanimously.

Mr. Dowdy motioned to grant the following variance:

1. The Board grants a variance from Section 203 Minimum Lot Width to allow a lot to be created at 31.24' wide. This is a 93.76' variance.
2. The applicant shall submit a one lot minor subdivision plat for review and approval.
3. The subdivision shall meet all other applicable standards of the Currituck County Unified Development Ordinance.

4. The subdivision shall be recorded in the Currituck County Register of Deeds before a building permit is issued.

Mr. Ferebee seconded the motion and the motion passed unanimously.

BOA 06-20 GUY C LEE BUILDING MATERIALS: Variance from Section 405 (3) of the UDO to allow a driveway width of 50' (36' required) located at 8418 Caratoke Hwy, PIN 0124-000-068G-0000, Poplar Branch Township.

Mr. Derrick Dail, Quible & Associates, and Mr. Corey Jameson, Guy C. Lee, appeared before the board and were sworn in.

Mrs. Glave presented the following case to the board:

BOARD OF ADJUSTMENT CASE ANALYSIS

Meeting Date: October 12, 2006
Case Number: BOA 06-20
Applicant: Guy C Lee Building Materials
Property Owner: The Lampe Company Inc
PIN: 0124-000-068G-0000
Address: 8418 Caratoke Highway (Ballast Rock Commerce Center)
Zoning District: General Business (GB)
Township: Poplar Branch

Request

Variance from Section 405 (3) of the UDO to allow a driveway width of 50' (36' required).

Narrative

1. The Board of Adjustment granted a conditional use permit for this property on August 10, 2006 for outdoor storage of materials associated with a proposed building supply business.
2. The UDO states:
Section 405 Required Widths of Parking Area Aisles and Driveways, Excluding Residential Lots within Planned Unit Developments. (Amended 11/1/04)
 2. Residential driveways shall not exceed 24 feet in width measured at the front (street) property line. Commercial and manufacturing driveways shall not exceed 36 feet in width measured at the front (street) property line. The maximum driveway width shall not apply to fire stations. **(Amended 11/1/04)**
3. According to the NCDOT *July 2003 Policy on Street and Driveway Access to North Carolina Highways*:
 - a. The width of a driveway is measured parallel to the edge of travel way and from edge of pavement to edge of pavement at the narrowest width.

- b. A driveway with two-way operations shall have a minimum 20 foot and a maximum of 36 foot width.
 - c. The need for wider driveways will be considered on a case-by-case basis only after justification of actual necessity, but should not exceed 50'.
 - d. Street type connections with multi-lane ingress or egress may exceed 50 feet based on traffic operation requirements as demonstrated in the Transportation Improvement Study. These values are based on edge of pavement dimensions not including the width of gutter if a curb-and-gutter section is proposed.
4. Staff contacted NCDOT on September 27, 2006 and October 2, 2006 to see if they would grant approval of this 65' driveway request. As of the mailing date of this agenda package, NCDOT has not yet responded.
 5. The applicant states: "The primary concern in the placement and design of this entrance is the flow of tractor-trailer traffic through the entrance....The entrance is proposed to consists of three 12' wide lanes (one incoming and two outgoing) with the incoming and outgoing lanes separated by a 14' wide striped island. This striped island will allow incoming trucks to swing through the island in order to accomplish their turn without encroaching into the traffic lanes of US 158 or encroaching into the outbound lanes of the entrance. ... It should be noted that the entrance, as proposed, does not contain more than 36 feet of delineated travel aisles (one 12' wide incoming lane and two 12' wide exiting lanes) and clearly channelizes traffic into three distinct lanes. ... The requested variance is justified based on the fact that the entrance, as proposed, accomplishes both the goals of the UDO (channelizing incoming and outgoing traffic into three distinct 12' wide lanes) and public safety (allowing free movement of delivery vehicles into the site independent of traffic flow on US 158).

Variance Criteria

(The Board must find that the applicant meets all six criteria in order for a Variance to be approved.)

1. If the applicant complies strictly with the provisions of the Ordinance, he can make **no** reasonable use of his property;
2. The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the public;
3. The hardship relates to the applicant's land, rather than personal circumstances;
4. The hardship is unique, or nearly so, rather than one shared by many surrounding properties;
5. The hardship is not the result of the applicant's own actions; and,
6. The variance will neither result in the extension of a nonconforming situation in violation of Article 15 nor authorize the initiation of a nonconforming use of land.

Discussion

1. There are currently over 100 permitted uses in the General Business zoning district.
2. NCDOT has not responded to staff's request regarding approved this driveway as of the mailing date of this agenda package.

Staff Comments

1. If the Board denies the variance, the applicant shall be required to adhere to Section 405 (3) of the UDO.
2. If the Board grants the variance, staff recommends the Board adopt the following language and conditions:
 - a. "The board grants a variance from Section 405 (3) of the UDO to allow a driveway width of 50' (36' required) measured at the property line."
 - b. Pavement markings or channelization shall be installed to help guide the driver to the appropriate portion of the driveway. "Without the guidance of markings, drivers exiting a driveway tend to position themselves left of the driveway center. Double yellow paint lines help in guiding exiting drivers to the proper exit position. This helps ensure that the intended driveway width is available to drivers making an entry maneuver". *Source: Transportation and Land Development, 2002, Stover*

DISCUSSION

Mr. Derrick Dail, Quible and Associates, stated the center island area will be striped and will not contain a structural barrier such as a curb. The driveway will also contain a turfstone shoulder to accommodate the rear wheels of a tractor trailer. The turfstone will increase the width of the driveway by 15 feet. The need for the wide traffic pattern is for safety purposes to prevent large sweeping turns from travel lanes of Caratoke Highway. The rough width of the driveway including the turfstone shoulder will be 63-65 feet.

Mr. Wemer questioned if the variance application must be amended to include the additional 15' turfstone shoulder.

Mr. Jameson stated tractor trailer traffic will be almost 70 feet in length. A 36' wide driveway will work at this location; however, it will create a huge safety concern for traffic along Caratoke Highway.

ACTION

Mr. Wemer motioned that:

If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property because of safety concerns of the restricted driveway.

Mr. Ferebee seconded this motion and the motion passed unanimously.

Mr. Wemer motioned that:

The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the public based on the fact the unique property and use.

Mr. Etheridge seconded this motion and the motion passed unanimously.

Mr. Ferebee motioned that:

The hardship relates to the applicant's land, rather than personal circumstances.

Mr. Dowdy seconded this motion and the motion passed unanimously.

Mr. Etheridge motioned that:

The hardship is unique, or nearly so, rather than one shared by many surrounding properties because the business requires large trucks and driveway width which will create a safety hazard.

Mr. Dowdy seconded this motion and the motion passed unanimously.

Mr. Ferebee motioned that:

The hardship is not the result of the applicant's own actions.

Dowdy seconded this motion and the motion passed unanimously.

Mr. Etheridge motioned that:

The variance will neither result in the extension of a nonconforming situation nor authorize the initiation of a nonconforming use of land because each case can be heard and driveways widened on a case by case basis.

Mr. Ferebee seconded this motion and the motion passed unanimously.

Mr. Wemer motioned to grant the following variance:

1. The board grants a variance from Section 405 (3) of the UDO to allow a driveway width of 65' (36' required) measured at the property line as follows:
 - a. 50' paved surface width with an additional 15' turfstone shoulder.
2. Pavement markings or channelization shall be installed to help guide the driver to the appropriate portion of the driveway. "Without the guidance of markings, drivers exiting a driveway tend to position themselves left of the driveway center. Double yellow paint lines help in guiding exiting drivers to the proper exit position. This helps ensure that the intended driveway width is available to drivers making an entry maneuver". *Source: Transportation and Land Development, 2002, Stover*

Mr. Etheridge seconded the motion and the motion passed unanimously.

OLD BUSINESS

Mrs. Glave stated that with the two driveway variance requests before the board, the board may consider proposing an ordinance amendment.

Mr. Dowdy stated that a minimum 50' will be necessary for tractor trailer delivery trucks.

Mr. Etheridge reviewed the following letter that was sent to Kate McKenzie, County Attorney, regarding Ms. Laura Umphlett conditional use permit amendment:



Currituck County

Department of Planning and Inspections

Post Office Box 70
Currituck, NC 27929
252-232-3055 /Fax 252-232-3026

October 12, 2006

Katherine F. McKenzie, Esq.
Currituck County Attorney
P.O. Box 39
Currituck, NC 27929-0039

Re: Laura Umphlett

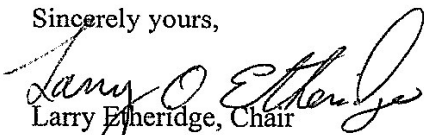
Dear Kate:

I am writing in response to your letter dated September 5, 2006 in which you explain that Currituck County does not interpret Section 1403(19)(a) of the Unified Development Ordinance to prohibit structures within tower fall zones. On that basis, you requested on behalf of the Board of Commissioners that the Currituck County Board of Adjustment rehear Ms. Umphlett's application to amend the conditional use permit applicable to her property.

Pursuant to Section 2022 of the Unified Development Ordinance, the Board of Adjustment may not reconsider the disapproval of a conditional use permit at a later time unless the applicant clearly shows that (1) circumstances affecting the property has substantially changed or, (2) new information is available that could not with reasonable diligence have been presented at a previous hearing which request must be filed with the Board of Adjustment within 30 days from the date the board's decision is entered. As there has been no showing as of this date that the elements for rehearing have or can be met the Board of Adjustment is without authority to rehear Ms. Umphlett's application.

As provided by Section 2306 of the Unified Development Ordinance, Ms. Umphlett could have appealed the Board of Adjustment's decision to Superior Court for review of the board's decision. Absent appeal to Superior Court or showing that grounds for rehearing exists the Board of Adjustment would like to suggest that Ms. Umphlett apply for a text amendment to the Unified Development Ordinance that clearly provides that structures are allowed within tower fall zones. A legislative solution appears to be the most appropriate and direct means to resolve Ms. Umphlett's issues regarding placement of a structure within the tower fall zone.

Sincerely yours,


Larry Etheridge, Chair
Currituck County Board of Adjustment

Mr. McRee stated that he has had conversation with the county attorney. Although a text amendment will not entirely relieve the conditions of the use permit. It would change the facts relative to the case which would warrant another hearing before the board. It would ultimately be the board's decision as to whether the condition should be removed from the permit.

ADJOURNMENT

There being no further business to discuss, Mr. Wemer motioned for adjournment. Mr. Etheridge seconded the motion and the motion passed unanimously. The meeting adjourned at 8:45 p.m.

Respectfully Submitted,

Donna Voliva/s/

Donna Voliva
Planner