

Town of Pine Knoll Shores Board of Adjustment
January 30, 2024
10:00 am

Chairman Andy Wheatcraft called the January 20, 2024, Board of Adjustment meeting to order at 10:00 a.m. and led the Pledge of Allegiance. Present for the meeting were Board of Adjustment members Fred Fulcher, John Tilyard, Pete Miller, and Kathy Coakley. Town Clerk Missy Shine and Town Planner Charlie Rocci were in attendance.

Chairman Wheatcraft started off by stating that he was the new chairman of the board and the member that left, Richard Seale provided him with a lot of information. The Board of Adjustment needs to understand that we are not setting ordinance and property use rules. We need to consider individual property uses unfairly impacted by the ordinances passed by our own government. We are not here to set government; we are here to interpret that.

The Oath of Office was given to Andy Wheatcraft, Pete Miller and John Tilyard.

Agenda

Member Tilyard made a motion to approve the agenda as amended with a second by Member Fulcher and passed unanimously.

Variance Request: 114 Yaupon Road

Town Planner Charles Rocci stated that on December 5th, 2023, he received a building permit for a roof addition at 114 Yaupon Road. In this building permit it was noted that they did not include the new impervious coverage with this roof addition and after sending this information to the contractor they were able to pull that impervious coverage from the GIS data since there was not a current survey. From the GIS data the contractor found that the driveway and walkways totaled 2248.25 square feet and the house and garage totaled 2,134 square feet for a total of 4,382.25 square feet. The lot is .275 acres or 11,979 square feet. That brings the impervious coverage of this property to 36.2%. This is a flood prone area which is noted as properties bounded on the south by NC Hwy 58 on the west by Maple Court and the Pine Knoll waterway and on the north by Cypress Drive which is where 114 Yaupon is located. In this area the ordinances require that impervious coverage not exceed 25%. In speaking with the property owner, the contractors and the engineers the only solutions that I found that would adhere to the code requirement would be to replace the existing driveway and have the entire driveway be a pervious solution or purchasing the vacant lot to the north and then combining those lots which would allow them to meet the impervious coverage for their property and add that roof addition. Mr. Fountain came into the office on January 2nd to see myself and Town Manager, Julie Anderson, in that discussion we talked about seeking a variance to find a different solution for this impervious limitation that would allow them to construct this roof overhang. With that variance, I have three options I have noted for a potential variance. The first would be to negate all impervious coverage limitations and allow the roof expansion. To require the impervious solution to meet the current impervious coverage of 36.2% so it would be a tradeoff for exactly the new roof addition. The third option would be to wave the flood prone standard for these lots with the installation of the Phase II Stormwater project which Brian Kramer will discuss.

Project Manager Kramer, DeVan Barbour (resident) and Jody Fountain (homeowner) took the oath administered by Clerk Shine to present testimony for the case.

Project Manager, Brian Kramer stated that he was made aware of this issue after the meeting between Charlie, Julie, and the homeowner. Julie called me to ask me about the easement that exists in the rear of the home for the phase two stormwater project. The roof expansion that Charlie is talking about is actually, they have a deck out back and they want to screen it in. The rules are that decks are considered pervious; I am very familiar with that deck from the phase two stormwater project. I am not real sure it is pervious, but the rules say it is pervious. Member Tilyard asked if it was a deck without a roof. Brian answered that is correct, it is an open deck. They don't want to expand their home they want to screen it in. When Julie told me about the issue and they were willing to trade off concrete, I looked at the variance criteria and I do think there are unique circumstances here and that is really what I wanted to bring up. The phase two stormwater project, for anyone who is not familiar with it. We have a vault at Myrtle Court two streets east of this property. We have a stormwater line that runs through the flood prone area of the east end of town. It is a stormwater pipe that is inground about three to four feet depending on where it is and its perforated so as the water table rises and it rises first there during storms, water moves through there and eventually gets to that vault and is pumped to the golf course pond network and eventually to an infiltration chamber down at the sound. Integral to the stormwater system is the Watkins Pond. It is one of two ponds that exist on the east end that were built by early developers to collect stormwater. The water table rises in those as the flooding occurs. When we put the system in there is a drop inlet right at the southern end of the Watkins Pond. As the water table rises the Watkins Pond level rises and water goes into that drop inlet and goes into that pipe system. That pond is as integral as is the other pond where there is another drop inlet behind Eddie Winfrey's place on Yaupon. This pond is an integral part of the system, it is also as any standing water in town is a mosquito haven. To the extent that the homeowners may have a unique situation with a pond that is integral to our stormwater system I thought that would be worth bringing up. That is really the just of my argument. This home by the way, if you look at that graphic, the easement is depicted there. This home, what we tried to do when we received easements for this, we put the easement, the pipe right along the property line so it was in the ten-foot setback so it would not impact anyone's future ability to develop or expand a home if they could. This property is one of the exceptions to that. The easement is not at his rear property line, it is closer to the home.

Chairman Wheatcraft asked if standing water ponds were an unusual condition in Pine Knoll Shores? Mr. Kramer answered yes. Not just a bucket of water but there are only two ponds like this that I know of in the town. Mr. Fulcher stated that as those ponds fill up, they will dump into the takeoff and you control, you keep the pond from flooding over, correct? Mr. Kramer answered yes. Mr. Fulcher continued by saying that any adverse water condition, most likely as the water got high enough, would go into that drop inlet that you show there, and it would run off into the system as it is designed to onto the golf course. Is that right? Mr. Kramer answered that the water level in the pond is the water table level. As that pond water level rises so is the water table level rising. So, getting it out of there is integral to the system because it helps manage the water table and create capacity for flood control. Mr. Fulcher said it prevents a flooding situation by carrying water off, so if we put another small roof there, I think the water coming off the roof would not flood the whole world and Noah would need an ark to get out. Chairman Wheatcraft asked Mr. Kramer as the former town manager. The coverage of this lot is already over even the standard for everywhere else in town. To prevent flooding no matter where we are at. Either a). Can you speak to why this approved at this level it is now at and or worst-case scenario, that is not proper use of the right term, or should we consider, staying within if this flooding system is now doing a better job is the 25% less of a thing or should we be targeting the 36%.

Mr. Kramer stated that he doesn't have an answer for that. I am not sure why the town allowed him to put that much concrete there. Julie went back and looked at google earth photos and it was in the 90's. I am not sure if we were in the 25% in the east end area. Assume the 25 or even the 35 existed then, Charlie can speak to that.

Mr. Kramer stated that in regard to the impervious surface, the owner can speak to this. They are not looking to add impervious surface. One of the options is talking about removing however much square footage of the screened in area, about 600 square feet they are willing to remove that much of the concrete drive. So given this pond issue and the mosquitos, I thought that was a reasonable request on their part. If they remove that much concrete so they are not, even though it's over now, there would not be any net increase in impervious surface limit on that parcel.

Mr. Tilyard asked that we stay within the ordinance if we pick one of those three options, right? You said they had three options they could take? Mr. Rocci explained that those three options were outside of the ordinance. The only options inside the ordinance are replacing the driveway and buying the adjacent lot. Chairman Wheatcraft asked instead of doing the 672, of course the ordinance is at 25% but if we accepted the 35% as reasonable because the flood issues being resolved what would be the number they would need to get down, what would be needed to add to the 672. Rocci calculated 672 square feet to cover the entire back porch. It would be 1.2% of 11,000. That is in addition to the 672 square feet. I just wanted to touch on a few points. There was a question about the slatted wood decking being pervious coverage. That is how the town identifies it in the code. Chapter 74 section 289 identifies impervious coverage as including but not limited to roofs, driveways, paved walkways, and paved patios. This is also supported by chapter 143 article 21 section b2 of the NC general statues. For the purposes of implementing stormwater programs built upon area means impervious surface, impartially impervious surface to the extent of that the particularly impervious surfaces do not allow water to infiltrate through the surface and into the sub soil built a upon area does not include slatted wood deck so all slatted wood deck we identify as pervious surface. The roof is impervious, the deck is pervious. As for the driveway being built and whether the 25% restriction was enacted when that was done. The 25% restriction was part of the flood prevention ordinance which is chapter 30 of the town code. The town adopted the code once we became part of the NFIP program and we call this point the firm date. Post firm construction means construction or development that started on or before January 1st, 1975. This house was built in 1987. When this house was built that 25% rule was already in place. For the driveway, I cannot speak to exactly when that was done. The arial photos show it was there in the 90's. It is possible at some point along the road Chairman Wheatcraft asked if they were required to come and put a permit to put in that paved driveway, correct? Apparently, from what the record shows maybe that didn't happen. Rocci stated that it's possible it was done without a permit, or it was erroneously permitted at some point. We don't keep permit files from that far back. This was the situation they came into when they purchased the house. They just purchased this house in July of last year.

Devan Barbour – 137 Yaupon, we are neighbors. Brian hit most of the points I wanted to make. I guess the points I would like to make, while I don't understand the 25% or 35% but it's hard to penalize someone now for something that was allowed some time in the past. If he is allowed to cover a portion of that deck, and I understand that by definition the deck is pervious, but if anybody walked on it, I don't know who built it, if you poured a 5-gallon bucket it is tight as my kitchen floor, so in reality the effect on to the property would be minimal. The important part is that the pond that we are talking about is, it is right there, it is not far off, the livability perspective, in the summertime and that thing retains water, half of that yard is virtually unlivable. I live at the other end of Yaupon and it's wet. I have a screened in porch because you will be eaten alive. It is part of that flood area, from a livability perspective I think if there is a solution or a variance, I think it would benefit them.

They are great neighbors; anyone who is familiar with that property is a tremendous improvement. It was probably the eyesore of the neighborhood at one point in time from a health, from the way it was overgrown, from the police department, everybody will tell you it was a nightmare property. If there is a way to make it more livable for them, once again, a variance, for a roof over a portion of that deck, in reality, the affects will be minimal, and with the location of that land the only place it will affect will be his property it won't affect anyone else's because it is going nowhere except on his property or draining on the pond.

Kathy Coakley said by looking at the photos and it looks like there are cracks and spaces between the boards which is typical of a wood deck, pervious and impervious, water is going through those spaces, its going into the ground. That is pervious.

Mr. Barbour replied that I am not saying that there will not be any water that gets through those cracks, but it is as tight of a deck as I have ever seen. And the part that they showed when I was over there, I am not going to tell you that some water will not drip through it. The effect will be minimal. It would be only that portion. It is already guttered; the stormwater is already being directed. The only person it would be affecting is the family.

Mrs. Coakley replied that it would seem that it is becoming impervious. Right now, it is classified as pervious so it's not included in the count. It would become impervious, the water is coming down the roof and potentially redirected, I have not seen the gutters proposed for the roof. That fact actually increases, as we know, they are proposing to take some concrete away to minimize it, but it also adding to impervious brings the water table up the fact is its 25% in that area for a reason and what we have existing is 36.2 and now we are making a change, it would be time to correct, the problem is imperviousness adds to that water table. So, you next door might have more mosquitoes if we keep adding more roofs and surfaces. Maybe right now 36.2 percent is contributing to its own problem.

Mr. Barbour replied I understand, and I agree, it's a basic discussion between theory and reality. Theoretically you are absolutely right. In reality that water is running right off that deck for the most part, not much different than if it were actually covered.

Chairman Wheatcraft asked how long the deck had been on the house?

Mr. Barbour replied that he was never invited over. It appears to have been there, it has been there for a while. It is functional but you can't sit out there and enjoy it. If it was mine, I would want it screened in.

Chairman Wheatcraft stated that doesn't it make it functional if it has been there for a while?

Mr. Barbour replied that It is functional but you can't sit out there and enjoy it. If it was mine, I would want it screened in.

Mr. Fulcher stated that basically pervious adds to the water table and impervious is runoff, that is the bottom line.

Chairman Wheatcraft asked if there was any more from the town and asked if the applicant would like to speak.

Mr. Fountain introduced himself and his wife Debbie along with his son-in-law PJ who works with soil and water in Pitt County who was there to attend and be a part of this. One of the things we did not submit is that we are all alike, that we love this town and appreciate the town. One of the reasons we buy a property is the same as yours. And it's family. We are older, I am retired, she is going to retire soon, like many of you have and we are looking for an ideal place to live. We have searched all over the Crystal Coast and other places and Pine Knoll Shores is amazing. What you are doing, what Charlie, Missy and what you folks here are doing, we are so proud to be a part of. We have been residents of Raleigh for 28 years and we have been part of a small community in North Raleigh, and we love to support the town and what they are doing. What you have done here for the stormwater system with Brian and your approvals has done amazing things as testified by the

people who are here. To my knowledge, there is little to no flooding going on, at least impactful flooding since this system has been put in. And yes, certainly there are 50- and hundred-year storms that will come and test the system. But from a functional daily standpoint this property has been at 36.2 for over 20 something years. The pond has been there as a regulator and then this enhances it, this new system we are a part of. It's bumped up right next to our property. Anytime you ask for a permit there is an opportunity for the town to benefit at the expense of the residents. This is a unique situation as Brian has testified to. We are not looking to increase our impervious area, but we are looking to have it livable for our family in the future. We would love to buy the property next door but property values being as they are that can be prohibitive, and you need the seller to cooperate with that. That would be ideal, it's a win-win for everyone, we are pursuing that but who knows where that is going to happen. With summer coming we would love to move forward with getting our screeded porch down and in place. The fact that the property has been grandfathered in with the existing, for whatever reason, blame wherever it is, we are faced, together with how we do this. The impervious surface is not adding but five to five and a half percent of where we are now. The flood conditioning from Brian's work and the work of the town has improved the situation greatly. We are just asking, ideally, for a waiver for the unique property. And in the ordinances, I cannot remember the actual piece on the ordinance it says at no fault to the resident. The situation has made an undesirable hardship, I think you can agree this is an undesirable hardship. The water table comes up even under your house. So, to say the runoff is going to present more of a flood risk it does but it goes into the ground, the whole area perked. The retention pond will come up and the water table will come up. The concrete in our driveway is full of cracks so like the deck it is semi-permeable. The deck that we are going to cover, the section is for all intents and purposes impermeable. We are just using that as we are not increasing what is going on. We are completely in agreement with what the town is trying to do because we would be a victim of the flooding, it would be our property, not DeVan's down the street and not many of you in other places. This history that we hear that this wonderful system which is going to continue to evolve is going to make it a very safe neighborhood. The other thing that is important is your intention is to make it safe for the community and for your residents. It doesn't increase any hardship on anyone else. It's provable and it's theoretical. It will not impair the adequate supply of light; it doesn't prevent fire or safety damage it will not impair or damage the property value it will also not impact public health. Also, the last thing I want to make in the flood provision 30-36 says what we are doing is not a substantial improvement. And the addition and improvement must be designed to minimize flood damage and we have agreed to do that. We have even talked about putting a gutter system which would put the water under the deck. That being said, there are nuances between environmental and flood which Charlie had pointed out. Let me reiterate that the professionalism of the staff that are here and even with this organization are just confirming what we believe about the Town of Pine Knoll Shores, and we are in full agreement with whatever you decide. We would like to have a variance considering we bought into a grandfathered situation unbeknownst to not only you, our realtor, and other people. And now we are just trying to make a healthy place for our family, a legacy that's going forward. Chairman Wheatcraft asked if there has been a plan presented to the town. Member Fulcher went to the site and spoke to the owner. If you look at his pictures, he indicated that he would remove from the double window to the steps. Charles Rocci mentioned he would like to make a procedural point. This is still the evidence presenting section. Once the board deliberates you will need to disclose any discussions you had with the property owner. Member Fulcher stated that was the extent of his disclosure. Member Wheatcraft stated in the future, pretty much in the guidance for these boards we are not to meet with owners prior to the day of the hearing. We can go and look but we cannot talk to them. Member Fulcher stated he cannot go into someone's back yard and start walking around the house like I own it. I am going to go to the owner and get their permission, I don't

care what the reason is behind the board, but you can't go in people's yards and start walking around and if you don't go look you don't know what you are seeing. Mr. Fountain stated that he can testify that he just asked for permission, and he was not allowed to discuss it anyway, which we did not. I walked him around to the back, let him look and he left. Chairman Wheatcraft stated that Member Fulcher did not need to be confrontational about it, I am telling what the rules are, we have been taught and trained. Mr. Fulcher stated that some rules are not workable. That is why we are here today, we are here to talk about rules that are not workable, we have a person here who has a problem. Let's continue. Member Coakley asks just to clarify as it is proposed now, your roof addition, if you will, does not have or does have gutters included. Mr. Fountain stated it does have gutters included, but we can direct the water under, which is what I asked, under the deck to add it to the water table. Chairman Wheatcraft asked if there were any other questions. Mr. Fountain stated he appreciated the board considering their hardship. Member Tilyard asked that you talk about hardship in the fact that you cannot use the deck in the summer due to mosquitoes. That is your hardship? Mr. Fountain said yes, yes sir. Mr. Kramer addressed what Member Coakley asked about the gutters, I believe, if a variance is granted, I believe we can condition the building permit on those type of things. Chairman Wheatcraft stated as a board member trying to evaluate a case that this it would be nice to have a plan that shows exactly what is being done. Mr. Kramer stated he just wanted to make the board aware a building permit can be conditioned. Chairman Wheatcraft asked if there was anybody else that wanted to speak on this. This portion is closed and it's time to deliberate. I would like to start with you Pete. This is the deliberation phase to discuss this. Member Miller asked that it was discussed to run the water under the deck. Is the town in favor of that? Mr. Kramer stated yes but then asked the code enforcement officer to speak to that. Mr. Rocci stated he thinks we could be satisfied with that as long as we are making efforts to spread the water dispersion as much as possible. Mr. Miller asked if the owner agreed with that. Mr. Fountain said yes, we suggested that from the beginning. Another question I want to ask is if stone based considered as pervious as pervious pavers? Mr. Rocci stated that he had a standard in his notes on how the state recognizes pervious concrete. 57 stone, which is your stone size, it has to be at least 4 inches under the previous layer or pervious concrete, and it has to have a layer of landscape fabric. We will verify that in their design submittal for a pervious concrete solution and approve it as a pervious drive. Member Miller then asked pervious concrete and stone based are considered the same amount of perviousness? Yes, it is at a rate of 1.41 inches per hour and the state has pulled that standard to meet that requirement. Chairman Wheatcraft stated that taking up the present concrete and just putting gravel is an option or just removing it and putting in grass. Mr. Rocci said yes, gravel is an option. The one challenge that would come with replacing the driveway is they have a parking pad on the left side of the house that butts up to the property line, town ordinance require driveways be at least 5 feet set off the property line, so if they were to replace the entire existing driveway with a pervious solution we would not be able to permit the driveway on that side of the house because it encroaches into the setback. Chairman Wheatcraft asked even if it were pervious? Mr. Rocci stated for that location. If they were to leave that and have a solution that makes the interior part pervious without touching the existing parking pad there, we would be able to approve because it is not modifying that section of the driveway if that makes sense. Chairman Wheatcraft asked if this was a situation that there is existing concrete, not only is it over the size limit and there is no record of any approval of anything? Mr. Rocci replied that is correct.

Town Manager Julie Anderson took the oath administered by Clerk Shine

Town Manager, Julie Anderson stated that on the county's gis system you can go to an individual property and look at their advanced parcel cards and you can see building permits issued for that

property. There was never a building permit issued for this property. Which means this driveway, where it was placed and how far it was placed into the setback was never permitted by the town. So, just for point of clarification and to answer your most recent question, it was not a permitted driveway, there was no building permit for that. Chairman Wheatcraft asked Mr. Rocci from a planning standpoint, addressing an issue such as this where are we at here? Mr. Rocci stated that what we have here is a non-conforming structure which does not meet the current code requirements of the town, under the ordinances these properties are allowed to exist, but you cannot permit improvements that would expand a nonconformity. In this situation where you're replacing an existing non-conforming, such as a driveway encroaching into a setback we would require it to adhere to the most recent rules, which would mean it has to be five feet off the property line. Chairman Wheatcraft asked if there was any history of a board of adjustment addressing a non-conforming, non-permitted use? Do we have the power as a board to request the removal of the non-conforming structures that are creating this issue in the first place. Mr. Rocci answered that he cannot say for certain. If you are suggesting removal of the driveway, either way, I don't think I would recommend that. Sorry, I am not completely understanding. Chairman Wheatcraft stated this is a non-permitted use, so they are asking to expand above that, I am having a struggle, we are here to follow the regulations our town created. In my mind, there is no wiggle room no matter what case was presented, we are really just dealing with an impervious coverage issue that already is a problem because it was built non-permitted. And I realize that these people bought this, I am not sure what the process is to make sure you bought property that has all the necessary permits, and you want to expand on that. This is a real conundrum, I would say. Mr. Kramer stated he does not know of any similar case where we addressed a non-conforming issue. Just a comment on the term expansion. Charlie read that to me, to the extent that the board of adjustment thinks it is appropriate, I agree there should be no expansion of impervious surface. That is, if you allow them to screen in their porch, the six hundred and odd feet, there should be a like six hundred and odd feet removal of impervious concrete driveway. Chairman Wheatcraft asked, not necessarily to the 35%? Mr. Kramer replied no, I don't, again, I am not sure 35% means anything here because here it is 25%. Chairman Wheatcraft stated that is why I am going back and forth. There is some issue that you have addressed that issue from the flood runoff system you have put there, and maybe this is something we can discuss at a later time, but whether it goes back to the board to consider this area an adjustment of that. I am trying to be reasonable about that, but the fact is the 35% is a hard and fast rule for the entire town and this was done without a permit. Mr. Kramer stated that is true. I just wanted, to my second half of that, to my understanding, to show that what the owner is proposing there is no expansion of pervious surface, you are right it still does violate the 35% and 25% rule, as long as he is required to remove a like amount of concrete driveway. Mr. Fountain states that I come back to the initial hardship situation that is caused by other people's actions. Not only the homeowners in the past that may have done this without a permit, and thank you Julie for bringing that up, we did not know that, nor has it been disclosed. But since then, a retention pond put in on a right of way that cuts through and across the back of our house, the town has built a fabulous storm drain system which has abated all the, most of the flooding from normal situations. All that has occurred but not once has anyone in the town said, Brian testified, we put it right against that property line. In variance to the rules, he testified to that. Chairman Wheatcraft did not understand what Mr. Fountain meant by that. Mr. Fountain replied that there has to be a ten-foot setback from the property, so they put the storm drain less than that 10 foot and right against our property line, creating a hardship. Mr. Kramer stated that we did not build that pond back there, along with the pond behind Eddie Winfrey's on Yaupon, there is a picture that was in Kevin Reed's office, those ponds have been there since the 50's. The other thing is just to clarify the setback for Mr. Fountain and everyone. His property line is actually on the pond. The red dash, I just put there

so you could clearly see where it is. The lighter gray is the surveyed limits of that low area. Everywhere else, for the 11 easements we got for Phase II, 9 of them the stormwater line is right along that dash property line, again so it would not impact future development. The reason this one had to be in his backyard and not along the property line is because we could not have the stormwater line in the pond. Chairman Wheatcraft stated that the easement is not subject to the code. Mr. Kramer stated, correct, there is no violation of anything in getting an easement. Mr. Tilyard stated that the natural pond sets the ground water level, you said it has been there from the beginning. Mr. Kramer stated he did not know if they were natural, but God made them. Mr. Tilyard said the groundwater level at that property is very shallow. Mr. Kramer said the groundwater level in that area of town is the same as everywhere but it's closer to the surface because of low ground elevation. Mr. Fulcher stated that the area is the lowest in the town. It has a design in it to carry off the excess water to prevent flooding in that area. Chairman Wheatcraft stated a lot of the town flows into that area. Mr. Kramer stated it is the lowest elevation in the area and we have proven through studies the water wanted to flow east to Hoop Pole Creek and it was blocked. Mr. Fulcher stated to the Chairman that the occupant has a problem with mosquitoes and wants to close part of the porch in order to enjoy the home like the other residents do around that and it seems to be a problem that is unique to this house, if it wasn't we would have heard about it a lot sooner. So, it appears to me that is what we need to decide, we need to address the problem with a small, enclosed porch with a roof on it and maybe address the water runoff underneath to the satisfaction of the town engineers and the building crew. I think that is the question before us. Mrs. Coakley stated that she is brand new, but my question is a little bit different than others that have come up. Which goes to this legal process where we don't have the authority in order to change the rules unless the criteria are met, the first is the unnecessary hardship. If this house has been there for 25 years without an enclosed deck, you know, I have a hard time unless someone, I have not heard it yet, but this has been an unusable deck for 25 years, but now because the new homeowner would like to have an enclosure back there it is brought before the board. I am just not sure, you have been doing this a lot longer than I have, does it meet the criteria of our ability to go outside what is already in place that is going to benefit the rest of Pine Knoll Shores. Chairman Wheatcraft stated that I agree with you on the fact that if the house existed, we are not here to discuss mosquitoes. That is not a planning issue, that is not what we do. The issue we have before us is impervious surface coverage and we found on this particular property is that they are already well over the standard. I guess theoretically we should only be talking about just the 25% and if that is the case they are already over that and then they are asking to increase it by 5 more percent. We have heard a lot of testimony here. Maybe it could be 35%, maybe that is an issue that needs to be addressed. But in the same breath, this application as it is presented to us does not call to coming to 35% the only thing they have offered us that even gets close is taking out 672 of the existing pervious concrete there, but they still would be at 36.2% so they would still be over. So, from a Board of Adjustment from what we are addressing of what we should be doing here it seems to be that in my opinion we don't have the ability to do that. Mr. Fulcher doesn't agree with the statement that we are here to make a judgment on whether or not they meet the codes but the purpose of this body as I understand it is a Board of Adjustment and we have a right to do that. Charlie gave us a list and highlighted some of the requirements and one of them the concept echoes the requirement that hardship must be peculiar to the property not shared by the community. We have a right to make a judgment on a hardship whether it meets the code or not and we don't have to enforce the code. Mr. Tilyard stated codes are to protect the interest of the public. Those codes are good. In this case I don't see a negative result by granting the variance, I personally don't see anything negative. Chairman Wheatcraft stated that everyone in town has to follow the 35% rule of the impervious surface coverage. That is what Pine Knoll Shores is. There is treatment we do, and it works well and

there are times of day you normally go inside. Mr. Fulcher stated that this is atypical. Not everyone has a mosquito pond.

PJ Andrews (son-in-law of property owners) took an oath administered by Clerk Shine.

My name is PJ Andrews. I am the son-in-law of Jody and Debbie Fountain. I have been working for soil and water conservation for 15 years in Pitt County. I would say we have a big stormwater problem in our area as well. Every town has its own issues. With the population of our county booming and growing, stormwater retention areas have been popular. We are now having to retrofit. These stormwater regulations have changed over the years. However, we know storms are going to continue to come and get stronger. I think if you go back rules are meant to be regulated but at the same time trying to regulate past projects is hard. I think that as they evolve, and they should evolve as they go along, I think that is something to just take into consideration. If we had the forethought to do those projects in the past, we may not have the problem we have now, or it may not be as bad, it is really hard to retrofit stuff that has been here since the 1970's and now you are trying to conform it to 2024 stormwater regulation rules, the permitting process may not have been the same. It may not have been regulated at the time. Thank you for listening to my comment.

Chairman Wheatcraft stated that we can move into the decision phase. Mr. Rocci stated that he did not get a set request for what they are trying to determine so you have the options I have listed, and you can make a motion based on those options or consider a different solution. Mr. Rocci stated that I believe the Fountain's request would be to negate all considerations for added impervious, other options I have discussed are negating just the addition of the roof or reducing to 35% which sounds like it is not the option we are looking at here. Chairman Wheatcraft asked as the first time as Chair it seems like we hear a lot of iterations in this proposal and maybe collectively we come to different terms to that. Can this be a step-down process if something is recommended and denied can it be amended. Mr. Rocci replied yes, you can make a motion and second it, the variance needs to be passed at 4/5 majority. You can start at one end with a motion and if that motion doesn't pass you can go down to the next one with a different motion. Chairman Wheatcraft made a motion to approve the variance with the following condition that sufficient impervious surface is removed to reach the current level of 35%. Is there a second? Mr. Fulcher stated no. Mr. Fulcher motioned that we agree to screen the deck at 694 square feet for the simple reason that it is a mosquito problem and a hardship for this case with a second from Member Tilyard. All in favor and failed with 3 yeas and 2 nays. Nays from Coakley and Miller. Chairman Wheatcraft asked that his understanding is that if its not a majority rule the variance is denied. He asked if someone would like to give another option. Mr. Rocci stated that you can amend the motion but whatever is proposed needs to be a 4/5 majority. Mr. Fulcher stated that there is talk of cutting off part of the driveway to compensate for it. That would be a much greater expense. I don't think they would be able to get a permit based on where the driveway is located so I think that is a moot point. Mr. Rocci said that if we were to maintain the existing impervious coverage, they could cut out that 672 feet in the base driveway area and not in the side section, if they were to do that, they could keep that side driveway as it exists. Chairman Wheatcraft asked if that had been discussed as a solution before. Mr. Rocci said it had but they had not finalized any plans to do anything. Chairman said at this point as the applicant would you be willing to take out the 672 square feet of your impervious surface? Mr. Fountain said yes if we cannot get an agreement otherwise. Chairman Wheatcraft asked that giving this variance under those certain terms are we going to have to put the words in there that they must submit a plan. Mr. Rocci explained that they will have certain requirements in their permit application that they will have to meet to verify what their pervious driveway would be, if in fact it will be pervious,

the size of the section to remove and the standards for the back deck. It is a regular permit, but we will use the variance as the code to reference for approval. Chairman Wheatcraft asked if he needed to do that verbally or will be that by rules and regulations. My understanding is that we can amend the original motion and pick option two. Mr. Fountain asked if he could hear what option 2 was again? Mr. Rocci stated that option two states the variance would require the impervious solution to meet the current impervious coverage percentage of the lot which is 36.2% any impervious addition would have to have an equal removal of impervious coverage. Mr. Tilyard made a second and it passed with 4 yeas and 1 nay. Mrs. Coakley was the nay.

A five-minute recess was taken.

Variance Request: 118 Roosevelt Drive

Mr. Rocci stated that the case we are looking at is a variance request for 118 Roosevelt Drive. The request is to reduce the number of tree plantings from 19 trees down to 11 trees which you have in your package today. There is also a request that the size of the replanting tree be reduced based on availability and the need to plant during the prime planting season which starts next month. Chairman Wheatcraft asked if there is an exact size on what that reduction is? Instead of the one and a half inches what are we talking about, do we know? Has it been told to us? Mr. Rocci did not have that exact information. The town received a single-family landscape permit application for 118 Roosevelt Drive on September 18th, 2022. The plan was submitted by the builder Dempsey Hodges and surveyed by Kevin Barefoot Surveying. The original plan showed 11 existing trees on lot 8 of which were proposed for removal. Of those 8 trees 6 were directly inside or adjacent to the building footprint. The other two trees, I questioned their need for removal in my review comments I sent back. The surveyor commented back that I would normally say yes. They definitely could and should be saved. Look at the existing topo and the proposed topo, this is going to be approximately 2 – 3 feet of fill to put on tree 109. That tree will die because of it. There will be some fill on tree 110, not as much on 109 but the fact that the lowest spot will be condensed will likely make it wetter is a good chance the tree will not survive either. Because of that we decided to accept the removal of both of those trees. From the planning department, the plan was approved as presented. Normally, the appearance commission would have a site visit following planning approval, at the time we were getting many requests for lots at Roosevelt Beach, since those lots didn't have many trees and there were not trees to look at for saving, I emailed the chair and the vice chair about the need for that meeting and the response was to cancel that single family site plan visit. Looking back, I see that as a mistake now. Member Miller asked if Mr. Rocci could review the ordinance that applies to this particular variance, section 74-64 subsection D paragraph 3. Mr. Rocci stated that it reads each property for which a tree plan is required by this section, the tree plan must allow for a minimum tree density standard as follows: For each 1,000 square feet of pervious surface, excluding septic field, two trees, six inches in diameter or greater measured at diameter breast height or 3.5 feet above natural grade, as applicable. New and/or existing trees that do not survive the development process must be replaced by new 1.5" diameter trees at measurement height as specifically approved by the community appearance commission so that the minimum standard tree density is maintained. The property owner shall be responsible for maintaining all replacement trees required by this section in a healthy condition for a period of two years from planting. Any dead, unhealthy or missing trees shall be replaced, and replacement shall occur at the earliest suitable planting season as determined by the town. Palm trees may not be used to meet the minimum density requirement. In the event that an oceanfront property cannot meet the required tree density based on six-inch trees, the community appearance commission may recommend that

the tree density be considered based on three-inch trees. Mr. Miller said the way that is worded 6 inches or more, a 5-inch tree should be approved but according to this it doesn't look like it is. Mr. Rocci replied that it's not. So, when we receive a site survey, we only get pins of the trees existing that are 6 inches or greater in diameter. So, a five inch would not be approved but they can put in a one and half inch and it be approved. Mr. Rocci also stated that when he was reviewing the landscape plan for the variance, I noticed a mistake I made back in 2022 with the calculation for the tree survey. So, on their plan they have it noted that 19 trees will be replaced due to the lot coverage. So, if you see this area right here along the outside that is Roosevelt Drive. These are unique in that the property line goes in the middle of the road and in the tree survey calculation that was counted as pervious area. That area needs to be subtracted from the tree density requirement which would remove 2,062 square feet from the remaining pervious calculation which would be total impervious to 8,757 square feet. That would bring the required tree density to 18 trees, and we subtract the 3 trees that are still existing on the lot. The owner is required to plant 15 trees not 19. He has submitted a tree bond for the 19 and we would approve releasing that bond with 15 trees planted. Chairman Wheatcraft asked Mr. Rocci if he had talk to the owner directly since you recalculated, so far, we are up to 11 trees now we are talking about 4 additional. Is there some chance that can be agreed to, and this issue becomes moot. Mr. Rocci said that is possible, but I will defer that to the homeowner. But first, Mr. Rocci wants to raise some concerns that this lot brings into question. I think we have an ongoing problem with the code as it is exemplified by this lot even though pervious area is noted on your post instruction survey should it be counted for tree planting if you are not physically able to plant in that area. On this lot there is a 15-foot landscaping easement on the north side of the property. That is about 1700 square feet of pervious area of the lot that cannot be planted on by the owner but is included in the tree calculation. There is also a 25-foot utility easement extending from the center line of Roosevelt Drive to the building setback. That is about 1200 square feet of pervious area counted towards tree density that he cannot use. On the west side there is existing vegetation that extends about 5 feet into the property line. That adds about 450 square feet of pervious area that he can only plant on if he removes the existing vegetation which is a counter to chapter 74-64 of the code, we strive to preserve the remaining vegetation. So, in total that is about 3,350 square feet of pervious area or 7 trees to be added on an area that he cannot physically plant on. I think this is a problem for several properties on Roosevelt Drive and rather than coming to the town and saying we must pack all of these trees in here it is likely that we are spending all this money, and they are not going to survive. Their solution has been to fit the trees wherever they can whether they live or die. Mr. Rocci had an article from the Arbor Day Foundation that shows that if you are planting small trees, you want the spacing to be at least 6 feet apart per tree. Once you get to native species like dogwoods, live oaks and myrtles that extends to 30 feet of space per tree. This is a challenge we have for a lot of properties south of 58, oceanfront lots. This applies to the dune area that is added pervious coverage that you cannot count, you have to count for tree density requirement, but you are not allowed to plant in that area. And adjacent to highway 58 you have the 100-foot right of way, again area counted towards pervious for tree planting, but you cannot plant in that area. So, what we have are lots that try to fit trees wherever physically possible, usually that is directly around the house or directly around the driveway. I think when we consider preserving the natural environment of the town does cramming trees wherever they fit, fit that strategic value? Chairman Wheatcraft asked if you are saying that it doesn't? Based on what I am hearing from your perspective as the town planner, the code needs to be adjusted to address these types of lots. I would hope as a planner you would take something to the town manager or the board of commissioners making a recommendation. Is that the correct feeling of what you are saying? Mr. Rocci said that was a correct assessment and I thought this case exemplified this

issue. Chairman Wheatcraft asked Mr. Rocci based on what he just said what is the number of trees that you are recommending to be put on this property. Mr. Rocci replied he is recommending eleven trees be planted based on Mr. Sparrows proposal. Mr. Steve Felch, Chairman of the Appearance Commission stated that he has some new information. He agrees with what Charlie said, I did not know he had changed the number of trees. I met with Avery yesterday and we came up with 14 that I am looking at. Adding 3 trees in the corner. Avery stated that he was told originally that because of the power lines he could not put anything there. I have one caveat to that, I would ask, we had proposed seven trees to go along the back of the wall, if we go with the live oaks, we just heard that we need to have those more spread out. Mr. Felch stated that he agrees with you, if you were looking at specimen trees, all the trees that are around on the west side, those are all sand live oaks they all grow together, so that challenge is that they should be planting those close together. You can stagger those, rather than a straight line. Mr. Felch stated that there are 3 red bays that are going to die of laurel wilt disease. I think he is getting ahead of losing some trees. Also, if you count on the west side there are some that are 3 inches but less than 6 inches. I would highly recommend you approve this variance. If they allow you to have eleven, I agree with that too. Avery asked if they are going to be dying, how do I replace those? Ideally, I would like those to be pushed out of my yard as much as possible to avoid the septic field. Mr. Felch said it would be perfect to put them along the edge. Chairman Wheatcraft asked if he could see Mr. Felch's plan and make it part of the record? Mr. Felch will make a copy to give to the board. Chairman Wheatcraft said we have a very strong case here. I am going to move into the deliberation stage. Mr. Fulcher had a question about an area where there were 4 trees. Avery stated they are yaupon hollies. Mr. Fulcher asked how far apart those trees are. Avery stated there is not much room, if you look at the map, the area in yellow is the only area outside of the easement to put trees. Mr. Fulcher stated he had a giant holly beating against his house and the roof. These trees grow out to twenty or thirty feet. Chairman Wheatcraft stated that those are very slow growing. Mr. Fulcher stated it doesn't matter if it is slow growing, it's the size when it's grown. Mr. Felch stated that he can keep it pruned to not cause a problem. Mr. Fulcher stated, if you are willing to prune it. Avery stated he did not want any trees close to the house, I would much rather have them along the perimeter. Mr. Tilyard asked if they could get the commissioners to revisit this ordinance, it doesn't make sense to me. The mayor stated that it doesn't make sense, especially because of the way the property line goes to the center of the road and then the fence and the landscaping that already exists there is part of the homeowner's association. And then the natural buffer on the west side as well. All of those things have to be taken into consideration. We are in the process of coming up with a unified development ordinance. If you asked me right now if all of the issues that have come up with this property are in the udo, but I would ask Charlie to weigh in on that opinion. Mr. Fulcher made a motion to accept the plan from the appearance commission with a second from Mr. Tilyard and passed unanimously. The variance was approved. Mr. Rocci wanted to clarify that it was modified from 17 trees to 14 trees so 14 trees must be planted.

A motion to adjourn was made by Member Fulcher with a second by Member Miller and passed unanimously.

Missy B. Shine, Town Clerk