



Town of Edenton  
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## Board of Adjustments

January 23, 2024

Meeting was called to order.

Blaine Charak, Frank Edmondson, George Little, Owen Maxwell, John Sams, and John Grant and were present.

Mr. Maxwell calls Case No. BOA A24-01: An appeal from Vincent Burgher, 121 W. King Street, to the Town of Edenton Board of Adjustment (BOA), disputing the Edenton Historic Preservation Commission's (EPC) decision to deny a Certificate of Appropriateness (COA) application on July 10, 2023.

Mr. Maxwell introduces Mr. Hood Ellis representing the town, Mr. Ben Gallop representing the Board of Adjustments, and Mr. Mitch Armbruster representing Mr. Burgher.

Mr. Gallop provides the board with an overview and information on how the quasi-judicial hearing is to take place.

Mr. Gallop explains conflict of interest and asks the board if anyone has a conflict of interest.

Mr. Little states that his father in law lives on the property adjacent to Mr. Burgher's property but states that he can consider the facts from the EPC and apply the law.

Mr. Ellis has no objections.

Mr. Burgher states that he had conflict of interest as part of his presentation and that Mr. Little's father in law has been vocal about the pier, but if Mr. Little is not biased by that then it was okay for Mr. Little to remain.

Mr. Gallop provides an outline as how the meeting will take place. He states that per Mr. Burgher's application, the issues raised further limits the boards review of whether or not the EPC decision violated his due process rights, whether the findings were supported by competent, material, and substantial evidence in view of the entire record, and whether or not the decision and findings of the EPC were arbitrary or capricious.

Mr. Gallop states that the board will be tasked with affirming the EPC decision, reverse the EPC decision and remand the case with appropriate instructions, or remand the case back to the EPC for further proceedings. He states that 160-1402(k) guides the board on how this works. He asks for questions.

Mr. Sams asks if each party will speak once or will they have an opportunity to asks questions after hearing.

Mr. Gallop gives the order of procedure. He asks Mr. Burgher if he would like to go first.

Mr. Burgher states yes.

Mr. Ellis and Mr. Armbruster agree.

Mr. Maxwell asks both parties if they have any other preliminary motions.

Mr. Burgher states that one had already been addressed but there was another conflict of interest related to emails and text messages.

Mr. Gallop asks who is Mr. Burgher objecting.

Mr. Burgher states that Frank Edmondson had correspondence with a town council member during the last meeting. He asks that Mr. Edmondson recuse himself.

Mr. Edmondson explains that he was letting the town council member know the outcome of the vote.

Mr. Gallop asks Mr. Edmondson if he could be fair and apply the facts.

Mr. Edmondson affirms and doesn't wish to recuse himself.

Mr. Maxwell asks for a motion to recuse Mr. Edmondson.

Hearing no motion, Mr. Maxwell asks for a motion not to recuse Mr. Edmondson.

Mr. Little motions.

Mr. Sams seconds.

All in favor not to recuse Mr. Edmondson.

Mr. Maxwell asks for Mr. Burgher to present.

Mr. Burgher presents his application and discusses the information listed in the Record of Decision. He explains how the EPC decision violated his due process rights, the findings were not supported by competent, material, and substantial evidence in view of the entire record, and the decision and findings of the EPC were arbitrary and capricious.

Mr. Maxwell asks if the board has any questions for Mr. Burgher.

Mr. Grant asks if Mr. Burgher had already repaired the bulkhead and what materials were used.

Mr. Burgher states yes and that vinyl was used.

Mr. Grant asks if the pier would be vinyl.

Mr. Burgher states that it would be wood and gives the dimensions.

Mr. Grant asks why Mr. Burgher has to put it out at a perpendicular angle.

Mr. Burgher states that he has to go at a ninety-degree angle to get to the channel because CAMA is requiring him to do so.

Mr. Sams states that he lives on Pembroke Creek and the reason for the angle was to protect the riparian rights of the neighbors.

Mr. Burgher states that the pier is 50 feet to hit deeper water.

Mr. Maxwell asks for any further questions. Hearing none, he asks for the town to present.

Mr. Ellis presents the town's position. He states that the issue before the board is to see whether the EPC made a mistake in denying the pier. Mr. Ellis discusses how the EPC decision did not violate Mr. Burgher's due process rights, the findings were supported by competent, material, and substantial evidence in view of the entire record, and the decision and findings of the EPC was not arbitrary and capricious.

Mr. Maxwell asks if there are any questions from the board.

Mr. Sams asks about the pictures down Granville Street and Water Street that were listed as exhibits.

Mr. Sams asks about the term obscure as found in the findings of fact.

Mr. Ellis states that a pier added to where a pier previously wasn't there, obscures the view.

Mr. Sams asks about viewscape and states that it is not a word.

Mr. Ellis states that architects would have more expertise.

Mr. Sams states that on page 39 of the guidelines, it says "the view from Water Street and the southern end of Broad Street is unchanged from the view of the earliest settlers." He asks Mr. Ellis if he believes that is a correct statement from the EPC's point of view.

Mr. Ellis states that maybe in 2006 it was a true statement.

Mr. Sams asks if Mr. Ellis wrote the email to Elizabeth Bryant.

Mr. Ellis states yes.

Mr. Sams states for the record that he has only spoken to Mr. Burgher one time for three sentences and that he votes based on facts.

Mr. Maxwell asks for any further questions. Hearing none, he asks Mr. Burgher if he has anything further.

Mr. Burgher states that the EPC didn't sit down with him before the applications were heard and that they could be more proactive. He states that no pier in the downtown area that's not looking at other piers. He asks how is the corner that he owns considered a vista or a view. He states that in his letter, Reid Thomas says that it appears to be compatible with historic pier construction and would have little to no impact. He states that opinions don't matter, only facts. Mr. Burgher states that this has been a long process.

Mr. Armbruster asks what is the evidence to say the pier would obscure the views and vistas. He states that the reason Mr. Burgher has to pay more taxes is because he has rights as a property owner that owns waterfront property. He states that riparian rights give owners a right to have a pier so you can access deeper water, hence the reason CAMA is requiring the angled pier. He states that the evidence doesn't deny his right to a pier.

Mr. Maxwell asks if the town has any further. Hearing none, he asks the board to deliberate. He asks for a motion to affirm the EPC decision, reverse the EPC decision, or remand the case with appropriate instruction.

Mr. Sams votes to reverse the EPC decision.

Mr. Maxwell asks for a second. Hearing none, he asks for a motion to affirm the EPC's decision.

Mr. Little asks for Mr. Sams's reasoning for reversing the decision.

Mr. Sams states the letter from Reid Thomas and CAMA's approval. He states there's no evidence in the findings of fact that the view is obscure. Mr. Sams references the view from Granville and Water Street being unchanged since the earliest settlers and disagrees.

Mr. Little asks if Mr. Sams believes the EPC addressed number six in the guidelines.

Mr. Sams states that it's a matter of judgement and they produced no evidence to show it would be obscured.

Mr. Little states he may need some clarity but he thought the burden of proof was on Mr. Burgher.

Mr. Sams states that he disagrees and believes the meeting should have started with the town going first.

Mr. Gallop states that the burden of proof when in front of the EPC is on Mr. Burgher. He reads from the UDO.

Mr. Gallops states that this is an appeal in the nature of certiorari and burdens of proof and persuasion is at the fact-finding level and what the BOA acts as an appellate court reviewing on the record. He states the process of appeals in the nature of certiorari.

Mr. Maxwell asks for the board to make a motion to approve, deny, or remand back to the EPC.

Mr. Little makes a motion to affirm their decision because the EPC used the guidelines.

Mr. Maxwell asks for a second. Mr. Maxwell seconds the motion.

Mr. Sams states that the record says obscure and there is no evidence to support their findings.

Mr. Little asks if the EPC has to submit evidence.

Mr. Gallop states the EPC is a board and does not have to submit evidence. He states there have been questions where boards have made decisions in reliance of observable facts that were presented by board members themselves.

Mr. Armbruster states that he agrees but the record test requires that there is evidence in the findings of fact that the pier is going to obscure someone's view. He states that if it goes to court, they would ask for evidence for obscuring the view.

Mr. Little asks how would they provide evidence of something being obscured if nothings there now.

Mr. Grant asks if it should be sent back to the EPC and how them prove it would be an obstruction.

Mr. Little states that he would like to withdraw his motion and make a motion to remand it back to the EPC with instruction to provide additional findings of fact for how the proposed pier fails to satisfy guideline number 6.

Mr. Burgher asks if the record is closed and if the EPC can offer any new evidence.

Mr. Gallop states that he cannot determine what the EPC would do when it goes back to them.

Mr. Grant seconds the motion.

Mr. Edmonson votes aye.

Mr. Maxwell votes aye.

Mr. Sams votes nay.

Motion passes 4-1 to remand the matter back to the EPC for additional findings of fact relating to how the proposed pier fails to satisfy guideline number six of the Design Guidelines for Piers, Docks, and Bulkheads un the 2006 Edenton Historic District Design Guidelines.

Mr. Gallop states that the Board needs to vote on whether he could bring the Record of Decision to the Chairman or to the entire board.

Mr. Little makes a motion that Mr. Gallop write the order and give it to the Chair.

Mr. Edmondson seconds.

All vote in favor.

No old business.

Mr. Maxwell asks for a motion to adjourn

Mr. Edmondson motions to adjourn.

Mr. Grant seconds.

Meeting was adjourned.