

In the Matter Of:

IN RE: ROY C. ADKINS APPEAL HEARING

HEARING

June 28, 2022

LEGAL | MEDIA | EXPERTS

1 A P P E A R A N C E S:

2 THE BOARD:

HARRY HUMPHRIES, Chairperson
Kurt Bartley
Bryant Bass
Randy McNeely
John Nadeau
Scott Selig (Alternate)

6 James Eldridge, Esq., Town Attorney

7 Mandy Sanders, Town Clerk

8 Beth Chase, Deputy Town Clerk

9

10 I N D E X T O W I T N E S S E S

11 Mandy Sanders 9
12 Roy C. Adkins 10
13 Bethany White 17

14

15 I N D E X T O E X H I B I T S

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20 4	Application for an Appeal	9
21 5	E-mail (6/27/22) link to agenda packet	9
22 6	Memo (5/3/22) Bethany White	17

23

24 (Exhibits attached to transcript)

25

1 P R O C E E D I N G S

2 CHAIRMAN HUMPHRIES: Call the meeting of the Board
3 of Adjustment to order. First thing I need to do is I need
4 a motion to add -- I need to make, I guess an amendment to
5 the agenda to add a motion to swear in John Nadeau and Scott
6 Selig as members of the Board.

7 A motion?

8 MR. BASS: I'll make a motion to swear in.

9 MR. BARTLEY: Second.

10 CHAIRMAN HUMPHRIES: Who's going to do that?

11 MS. CHASE: I need a vote.

12 CHAIRMAN HUMPHRIES: Pardon?

13 MS. CHASE: I need a vote. All in favor?

14 CHAIRMAN HUMPHRIES: All in favor?

15 (Response of "Aye".)

16 Opposed?

17 (There was no response.)

18 MS. CHASE: Thank you.

19 CHAIRMAN HUMPHRIES: Who's going to do the swearing
20 in?

21 MS. CHASE: Mandy is.

22 MS. SANDERS: We're going to do that now? Okay.

23 If one of you will come down, John. Left hand on
24 the Bible and raise your right hand.

25 I, John Nadeau.

1 MR. NADEAU: I, John Nadeau.

2 MS. CHASE: Swear that I will support and maintain
3 the Constitution and laws of the United States.

4 MR. NADEAU: Swear that I will support and maintain
5 the Constitution and the laws of the United States.

6 MS. SANDERS: And the Constitution and laws of the
7 state of North Carolina.

8 MR. NADEAU: And the Constitution and the laws of
9 the state of North Carolina.

10 MS. SANDERS: Not inconsistent therewith.

11 MR. NADEAU: Not inconsistent therewith.

12 MS. SANDERS: And that I will faithfully discharge
13 my duties as a full member of the Board of Adjustment for
14 the town of Kure Beach, so help me God.

15 MR. NADEAU: And that I will faithfully discharge
16 my duties as a full member of the Board of Adjustment for
17 the town of Kure Beach, so help me God.

18 MS. SANDERS: Thank you.

19 Left hand on the Bible, raise your right hand.

20 I, Scott Selig.

21 MR. SELIG: I, Scott Selig.

22 MS. SANDERS: Swear that I will support and
23 maintain the Constitution and laws of the United States.

24 MR. SELIG: Swear that I will support and maintain
25 the Constitution and laws of the United States.

1 MS. SANDERS: And the Constitution and laws of the
2 state of the North Carolina.

3 MR. SELIG: And the Constitution and laws of the
4 state of the North Carolina.

5 MS. SANDERS: Not inconsistent therewith.

6 MR. SELIG: Not inconsistent therewith.

7 MS. SANDERS: And that I will faithfully discharge
8 my duties as an alternate member of the Board of Adjustment.

9 MR. SELIG: That I will faithfully discharge my
10 duties as an alternate member of the Board of Adjustment.

11 MS. SANDERS: For town of Kure Beach, so help me
12 God.

13 MR. SELIG: For the town of Kure Beach, so help me
14 God.

15 CHAIRMAN HUMPHRIES: Welcome, gentlemen.

16 Next order of business is the approval of the
17 minutes from February 22nd, 2022.

18 Do I have any discussion about them?

19 (There was no response.)

20 Can I get a motion to approve the minutes?

21 MR. McNEELY: Motion to approve the minutes as
22 written.

23 MR. BASS: Second.

24 CHAIRMAN HUMPHRIES: Second.

25 All in favor, approve.

1 (Response of "Aye".)

2 All opposed?

3 (There was no response.)

4 Next order of business is a quasi-judicial hearing
5 of the appeal of the administrative decision which was filed
6 by Roy Adkins.

7 So what I'm going to do is I'm going to open the
8 hearing and I'm going to read a statement.

9 This is a hearing under the town of Kure Beach Code
10 of Ordinances 12.06.040 for the appeal of an administrative
11 decision filed by Roy C. Adkins. The decision being
12 appealed from is a determination by Bethany White, the
13 Code Enforcement Officer, that the porch on the Adkins'
14 residential property at 203 F Avenue is in violation of Kure
15 Beach Code 11.02.040(A), 15.20.030 and 15.36.010 by being
16 constructed without a building permit and in violation of
17 applicable setback requirements.

18 I'm going to make instructions to the Board
19 members, that in making final determinations, Board members
20 may only consider substantial, competent and material
21 evidence from parties with standing.

22 Hearsay and non-expert opinion testimony, including
23 opinions related to diminution of property values and of
24 traffic safety issues, may not be considered in making
25 findings of fact.

1 The Board shall make findings of fact and identify
2 the evidence supporting each finding.

3 In deciding the appeal, the Board shall, by
4 majority vote, reverse or affirm, wholly or partially, or
5 may modify the decision appealed from and shall make any
6 order, requirement, decision, or determination that ought to
7 be made.

8 The Board's decision will be set forth in a writing
9 and delivered to the appellant in accordance with the
10 provisions of Kure Beach Code 12.06.050(J).

11 For purposes of this hearing, the Town Attorney
12 will be appearing in an advisory capacity to the Board and
13 not an as advocate for the Code Enforcement division.

14 Right now what I'm going to do is I'm going to poll
15 the Board members. Each Board member shall state whether a
16 conflict of interest exists due to direct financial benefit,
17 bias or fixed opinion, undisclosed outside contacts, or a
18 close family or commercial tie. Should such a conflict
19 exist, the Board member shall recuse him or herself from the
20 hearing and the Board shall excuse that member from voting
21 on the matter.

22 So we'll start down here to my right, do you have
23 any on conflict of interest in this case?

24 MR. McNEELY: No conflict of interest.

25 MR. BASS: I have no conflict.

1 CHAIRMAN HUMPHRIES: I have no conflict.

2 MR. BARTLEY: I have no conflict.

3 MR. NADEAU: I have no conflicts.

4 CHAIRMAN HUMPHRIES: Okay. With that done, I guess
5 we need to swear in anyone who's going to be testifying
6 before the Board.

7 Mr. Adkins.

8 MR. ADKINS: Yes, sir.

9 CHAIRMAN HUMPHRIES: Bethany, Mandy?

10 MR. ELDRIDGE: You can do them all at one time.

11 MS. SANDERS: Do you want us to do it all at one
12 time?

13 CHAIRMAN HUMPHRIES: Yes. It would be easier if
14 you did it that way.

15 MS. SANDERS: Okay. We have to use the Bible.

16 Three of you, do you solemnly swear to tell the
17 truth, the whole truth and nothing but the truth, so help me
18 God.

19 MS. WHITE: I do.

20 MR. ADKINS: I do.

21 (Whereupon, Mr. Adkins and Ms. White were duly
22 sworn by the Town Clerk.)

23 CHAIRMAN HUMPHRIES: You're sworn.

24 All right. I guess, Bethany, you need to be the
25 first.

1 MS. CHASE: Mandy Sanders is first, Town Clerk.

2 CHAIRMAN HUMPHRIES: I'm sorry. Mandy.

3 MS. SANDERS: My name is Mandy Sanders. I'm the
4 Town Clerk for Kure Beach. I'm hereby tendering Exhibits 1
5 through 5 into the record. Copies -- well, I'm going to go
6 ahead and identify. Number 1 is Certification of Mailed
7 Notice; number 2 is Certification of Posted Notice; number 3
8 is the publisher's affidavit; number 4 is the record; and
9 number 5 is actually the e-mail of the agenda link to
10 everyone.

11 Copies were provided to Board members and the
12 appellant on June 27th via e-mail.

13 With respect to Exhibit Number 4 it is available to
14 be put on the screen should anyone need to refer to a
15 specific page. That's all I have for now.

16 Do you have a copy, Mr. Adkins?

17 MR. ADKINS: Yes, ma'am.

18 MS. SANDERS: Okay.

19 (Exhibits 1 through 5 marked for identification,
20 same are entered and made a part of the record.)

21 CHAIRMAN HUMPHRIES: Thank you.

22 Do we have any questions?

23 (There was no response.)

24 Bethany?

25 MR. ELDRIDGE: I think Mr. Adkins will present his

1 case.

2 CHAIRMAN HUMPHRIES: Okay. Mr. Adkins presents his
3 case. I'm sorry. I can't read.

4 MR. ADKINS: Good evening, Mr. Chairman, Board,
5 ladies and gentlemen. My name is Chris Adkins or Roy Chris
6 Adkins. I am the partial owner, one of the owners at 203 F
7 Avenue in Kure Beach along with my mother, my brother. We
8 have right of survivorship and unfortunately he passed in
9 January, so it's my mother and I, et al. with Marsha Martin
10 and her family. This is an old duplex that we basically own
11 together but it's split down the middle from the old days
12 and it's the way it's drawn up on the deed, but in essence
13 we are the owners of 203 F Avenue, she owns 201 F Avenue but
14 if you -- if you look in the documents it's -- I think the
15 prefix of it is et al. where we all own it together, so to
16 speak.

17 The reason I'm here today is I want to preface this
18 by saying the violation of a non-permit and the violation of
19 the setback is viable. I accept responsibility for that
20 ultimately. I took over the maintenance for my mother about
21 2011 -- 2012, Excuse me. I have been up quite a bit. Along
22 the lines of 2014 we commissioned a gentleman out of
23 Wilmington to do some upgrades. When I say upgrades,
24 painting and some minor work here and there and Sheetrock
25 work, and he was a former Vietnam guy who just started a

1 business and he was recommended to me, and so we hired him,
2 the Martin family and my family, and he did the upgrades and
3 he called me -- and let me preface this, I'm only down here
4 about three times a year, so I'm not overseeing things on a
5 daily basis. I come down to make sure that we open up and
6 things are working. I close and things are closed up and
7 family and friends will come down a couple weeks out of the
8 year, so it's not used all that often, but so we hired this
9 gentleman and he did a very good job and he called and said,
10 hey, I'm finished and I've got a surprise for your mom, and
11 the surprise was he had taken it upon himself to build a
12 small 8 by 12 front porch, covered it, and he said you often
13 said your mom would love to come out here and sit and look
14 across the street at the ocean, and I said, yeah, but, you
15 know, we didn't ask you to do that. He said, I know, I
16 wanted to do that for your mother, so he did and that's how
17 that came to pass.

18 I did not know -- I was remiss, I did not know
19 there wasn't a permit pulled and, to be honest, I didn't
20 know if he was even a licensed contractor, but he did -- he
21 did a good job and so we were thankful. We thought, wow,
22 this is great, and he wouldn't let me pay him.

23 Unfortunately, Jim would be here today but he
24 passed several years ago and -- but that's how that came --
25 that's how that came to be. So there wasn't a permit pulled

1 and the setback violation, which I understand in general
2 terms that it's violated because this is a non-conforming
3 property. Again, I'm just learning about that and Miss
4 White has helped me, and so has Mr. Batson, understand as
5 much as I can about setback and non-conformity, but this
6 whole place was moved over, it was originally an officer's
7 quarters at the Air Force base and about somewhere in the
8 '60s it was moved over on F Avenue and my dad, who has since
9 passed, he did the -- he did an addition on the back of it
10 which was under code and approved and like a bonus room. So
11 this is more to me -- it's more sentimental to me than it is
12 anything else.

13 So I wanted to give you a little bit of back
14 history how that came to be. It wasn't that we set out to
15 build a porch or build a covered porch and not pull permits
16 and not do the proper things that should have been done. So
17 as I told Beth and I told John that, look, that falls on me
18 as an owner and I understand that.

19 The reasoning -- or the interpretation, the only
20 thing I can understand from or think why Jim built that was
21 he did want to do something for my mother and he did, but
22 there was a footprint there. The original porch, as I've
23 provided documentation in both picture and in word, the
24 original porch was raised for egress and regress (sic) and
25 there was a step down in front of that and there was another

1 concrete pour in front of that. So the only thing I can
2 think, the original guy that built it, gentleman, is that he
3 considered that to be a footprint and he just built a little
4 8 by 12 porch on the front and put a covered roof on it. So
5 when I was filling out this paperwork and asked for the
6 interpretation, I would probably interpret it the same way
7 that that's a footprint, although I understand now that the
8 setback rules probably wouldn't even allow what we had to
9 begin with. So that was probably the intent and the
10 interpretation of the gentleman that built the structure.

11 Along the line about 2016 when the last -- one
12 storm came in prior to that it tore that porch apart because
13 we're in the alleyway from the Lutheran retreat center and
14 it's a funnel there and Mr. Lane, who I don't think is still
15 living, with M/E Contracting from Kure Beach, you gentlemen
16 may know of him or knew of him, he built that porch and he
17 did that in 2016. So that porch had been standing right or
18 wrong or indifferent, that porch had been standing since
19 2014 and apart from my neighbor, Mike, tearing down that old
20 block building that was next to us, old block house and
21 building a beautiful beach home I probably wouldn't be here
22 today because nobody would have ever known any different,
23 and to be honest, in looking at it, I guess our concerns
24 when we look at code, we look at setback violation, I would
25 think it would be for the public safety and would also be

1 whether it impeded fire, police, utilities, whether it
2 encroached on my neighbor's property, whether it caused a
3 problem with folks going to the beach back and forth but it
4 doesn't. It doesn't do any of those things, and by way of
5 it sitting there for six to seven years like it was and only
6 noticed when there was a new structure built next door, I
7 don't know. It doesn't mean it was right in the beginning
8 but it's there.

9 The other part of that is these old non-conforming
10 homes, this home is 70-some years old and to try to make it
11 attractive which we've spent time and effort to try to keep
12 up with buildings and the beautification in Kure Beach, we
13 keep it freshly painted. We keep it as nice as we can for
14 an old structure. That little bitty porch adds so much curb
15 appeal to that piece of property -- and we all know what
16 we're trying to do here too at the end of the day. We want
17 beautification of this community and we want historic things
18 preserved and we want beautification of this community to
19 move forward, and I think that has to be considered to a
20 degree.

21 With that said, I'm here today. As I told Beth,
22 you know, I don't expect to win; I don't. I don't expect
23 you to overturn that. I hope you would consider it, but my
24 expectations are to say if we're going to beautify and we're
25 going to improve this community with these old homes that we

1 have around here there's got to be -- there's got to be some
2 give and take. There's got to be. And if we don't, then we
3 might as well tear down all these old places that have been
4 here 70, 80, 90 years. We've seen Hazel take the first
5 street and us move up a notch but to try to keep those
6 upgraded is something that benefits all of us, our entire
7 community. People that come in on vacation, tell their
8 friends, these are nice, and we look at it from that
9 perspective. Does it make sense? Yeah, it kinda does.

10 I'm not here to ask and say, hey, I want complete
11 relief and forget about the building permit, forget about
12 the setback; I'm not. I just feel like having to demolish
13 that and go back to a stone step out front and that plain
14 look that it had as you can see in the pictures, I think the
15 penalty far outweighs the violation, and I don't -- I
16 wouldn't expect to get off without some sort of recompense.
17 Like my wife told me too, she said -- she is a public
18 servant, Iredell County Sheriff's Department -- ignorance of
19 the law is no excuse, never has been. I said, honey, I know
20 that, but I also know there's criteria that come into play
21 with if it's for the betterment of the community, I think
22 there's got to be some leeway.

23 So with that said, that pretty much sums up why I'm
24 here today, and I hate to drag you away from your families
25 in the evening but I appreciate you showing up and listening

1 to me.

2 Anybody have any questions?

3 CHAIRMAN HUMPHRIES: So the porch was actually
4 built in 2014?

5 MR. ADKINS: Yes, sir. That was the -- it was
6 rebuilt again in 2016 and then in 2020 I received
7 notification from the city and, again, that was with -- when
8 Mike built the really nice big blue house next to the
9 property, and if you folks -- if you have an opportunity, I
10 know you're busy in your daily lives, drive by and look at
11 it. Like I say, it's 8 by 12. That's all it is.

12 CHAIRMAN HUMPHRIES: Yeah. I'm actually familiar
13 with that property.

14 MR. ADKINS: Yes, sir.

15 CHAIRMAN HUMPHRIES: Something to do with the
16 Lutheran church years ago, so I'm familiar with that
17 property.

18 MR. ADKINS: I have been coming down since I was 12
19 years old. I'm 67. You come to that place of property, the
20 old ice cream place with a pool hall built up on the top.
21 Kure Beach means a lot to me. In fact, my family and I,
22 when my wife retires from the state, this is going to be our
23 new home. We've decided to move down. We'll see in about
24 five years, then we're going to build a new home down here
25 on the island. So thank you. Appreciate your time and

1 consideration.

2 Any other questions?

3 CHAIRMAN HUMPHRIES: Questions?

4 (There was no response.)

5 MR. ADKINS: Okay. Thank you very much.

6 MS. WHITE: Good evening, Chairman, members of the
7 Board. I'm the Code Enforcement Officer for Kure Beach.
8 First, I have a memo which I would like to submit for the
9 record. I believe it's Exhibit 6 now?

10 MR. ELDRIDGE: 6 or 5?

11 MS. SANDERS: 6.

12 (Exhibit 6 marked for identification, same is
13 entered and made a part of the record.)

14 MS. WHITE: This memo basically summarizes kind of
15 the timeline of what happened with this violation, so I
16 would like to summarize it a little bit.

17 203 F Avenue is a non-conforming duplex. It was
18 built in the 1940s and owned by the Martin family and Adkins
19 family. The house is located in the RA-3 Zoning District.

20 The application for appeal before you today is for
21 the allowance of an existing 8 by 12 porch roof extending
22 into a required side yard setback. The house itself is
23 already non-conforming to the side yard setback.

24 In March 2020, Building Inspector John Batson was
25 made aware of the non-permitted addition of the porch roof

1 into the side yard setback while inspecting the new house
2 behind built behind Mr. Adkins' property.

3 On March 23, 2020, I then sent the violation letter
4 to the property owner notifying them that the porch roof was
5 in violation of 11.02.040(A) and 15.20.030. Since it is on
6 a corner lot, the side setback on that street is ten feet.
7 His house which is non-conforming, I believe, is about five
8 feet from the property line and this new addition of the
9 porch roof goes basically right to the property -- yeah,
10 right to the property line. Excuse me. It has been in
11 existence for about eight years now.

12 MR. ADKINS: Yes.

13 MS. WHITE: Mr. Adkins said it was built in 2014.
14 That's about right. We have a Google picture that shows it
15 was not in existence in 2012 and shows again that it was in
16 existence in 2014 but, again, we were not made aware of this
17 until 2020 when the new house was built behind him.

18 We met with Mr. Adkins at his residence and
19 discussed his options and he decided to appeal the violation
20 and that's why we're here today.

21 CHAIRMAN HUMPHRIES: What options did you --

22 MS. WHITE: I sent him the applications for text
23 amendment, appeal of the Zoning Enforcement Officer's
24 decision and application for variance.

25 CHAIRMAN HUMPHRIES: And you say this comes

1 directly to the property line, so how far would the setback
2 be?

3 MS. WHITE: So he's on a corner lot which means his
4 frontage is actually on Fort Fisher Boulevard. His side is
5 on F Avenue where his front door and his porch actually are,
6 is actually his side lot.

7 CHAIRMAN HUMPHRIES: Okay.

8 MS. WHITE: On a corner lot you have a ten-foot
9 setback on the street frontage side. So his house is
10 non-conforming because it is only five feet from the
11 property line so it already doesn't meet the setbacks on
12 that side. The addition of the porch roof then brought it
13 back to the property line.

14 CHAIRMAN HUMPHRIES: To the property line.

15 MS. WHITE: That's correct.

16 MR. BASS: Is there a survey of this property?

17 MS. WHITE: We do not have a survey on file. I
18 don't know if Mr. Adkins does.

19 MR. ADKINS: I don't think so. We have an aerial.

20 MR. BASS: How do we know that it's non-conforming?

21 MS. WHITE: It's pretty obvious that it's
22 non-conforming.

23 MR. BASS: I understand that.

24 MS. WHITE: When the property was built behind it
25 we had it surveyed so you can see where the property line is

1 on the side.

2 MR. BARTLEY: Has there ever been a permit pulled
3 on that house since 2014?

4 MS. WHITE: No, sir. I believe Mr. Adkins said
5 that it was built originally, the porch roof, I'm sorry, it
6 was built originally -- it was an existing ground level
7 porch prior to that.

8 MR. ADKINS: No, it was a --

9 MS. WHITE: Slab?

10 MR. ADKINS: -- slab raised about 15 inches and it
11 was probably three feet by three feet with blocks -- block
12 steps.

13 Beth, if I may, let me give you that.

14 MS. WHITE: Oh, yeah.

15 MR. BARTLEY: Let me ask it this way. Was there
16 ever a permit other than the porch pulled since '14?

17 MS. WHITE: No, sir. None of the work was
18 permitted at all.

19 MR. BARTLEY: Okay.

20 MS. WHITE: We don't have any permits on file for
21 this property.

22 MR. McNEELY: Not even the house?

23 MS. WHITE: I believe it's too old.

24 MR. ADKINS: You probably would have gone back when
25 my dad built -- I'm sorry, I apologize. When my dad built

1 the bonus on the back side he did pull permits, he did have
2 permits, and I remember him telling me about the inspector
3 coming by for the wiring and things of that nature, so that
4 would probably go back in the mid-'90s, probably be when the
5 last structure was permitted, properly permitted.

6 MS. WHITE: So in the memo I also put the ordinance
7 for Continuance of Non-Conforming Situation and this applies
8 to this property, 15.38.020, Subsection A, extension into
9 yard setback space. So since this house on that side, the
10 structure was already non-conforming, it is non-conforming
11 and he is allowed to keep it, the structure as is. Once you
12 add on to it then you're in violation of this particular
13 ordinance. So that's why the addition of the porch roof on
14 top of what was already non-conforming was in violation
15 because it was not permitted, we were not aware of it until
16 2020.

17 CHAIRMAN HUMPHRIES: Anybody have any other
18 questions?

19 (There was no response.)

20 Thank you.

21 MR. ELDRIDGE: Chairman, I have the order reversed
22 on rebuttal. Mr. Adkins can go first since Miss White just
23 testified.

24 CHAIRMAN HUMPHRIES: Okay.

25 MR. ELDRIDGE: And if I could interrupt for a

1 minute. Do we have an extra copy of Miss white's memo so I
2 can refer to it? I've got it. Thank you.

3 CHAIRMAN HUMPHRIES: Mr. Adkins, if you would like
4 to come up and talk about any rebuttal that you might have?

5 MR. ADKINS: As far as -- no, sir. What she said
6 was -- is accurate as I can understand it to be. We are on
7 a side street that -- we face a side street, not the front,
8 and I think her description is very accurate.

9 CHAIRMAN HUMPHRIES: Thanks. Okay.

10 Any rebuttal?

11 MS. WHITE: I have nothing, sir.

12 MR. ELDRIDGE: And, Chairman, although on your
13 order of business you have close the hearing, I would
14 suggest that you close it after you make your findings of
15 fact just in case you have any more questions.

16 CHAIRMAN HUMPHRIES: Okay.

17 MR. ELDRIDGE: And if we're at the findings of
18 fact -- so we're going to put close of hearing after 9. If
19 we're at 9, I would like to pass out a decision worksheet
20 and facilitate the discussion. You're charged with findings
21 of fact which will be set forth in a writing.

22 CHAIRMAN HUMPHRIES: Yes.

23 MR. ELDRIDGE: And you also have to identify the
24 evidence that supports those facts. I've got a decision
25 worksheet and I'm prepared to facilitate the discussion in

1 making those findings and identifying that evidence if the
2 Board thinks that would be useful.

3 CHAIRMAN HUMPHRIES: I do believe that would be
4 quite useful. Thank you, sir.

5 MR. ELDRIDGE: I would ask you to keep in mind that
6 I'm a trial attorney so when it comes to findings of fact
7 and conclusions of law it's just like any other judgment
8 that I have been fortunate enough to draft as the prevailing
9 party or unfortunately been obliged to read as a losing
10 party, but I have a firm understanding of findings of fact
11 and conclusions of law and the important function they play
12 in creating a record in the event any decision in a quasi-
13 judicial hearing is forwarded to Superior Court for judicial
14 review. So you might think it's overly comprehensive but it
15 lays out the record and it lays out the facts. So let's
16 walk through those, if I can find my pen. And I'm not
17 proposing those facts. You see I've asked them as a
18 question each time.

19 So the first finding of fact, subject property is
20 or is not located at 203 F Avenue within the RA-3 Zoning
21 District. And we'll do this by consensus. We'll do a vote
22 when it comes to decision but this part where we're finding
23 the facts we need consensus. And I'll tell you, the
24 evidence that you will be identifying is either the record
25 itself, the testimony of Miss White, the testimony of Mr.

1 Adkins or a combination of the two.

2 So do we have a consensus that this property is
3 located at 203 F Avenue within the RA-3 Zoning District?

4 (Response of "Yes".)

5 CHAIRMAN HUMPHRIES: Based on the testimony.

6 MR. NADEAU: Testimony and the record.

7 MR. ELDRIDGE: Testimony, record, and Miss White's
8 Exhibit 6.

9 The appellant, which is -- number 2, the appellant,
10 Mr. Adkins, has been or has not been an owner of the
11 property since 2011?

12 I know you all read the property carefully and have
13 a good recollection of it. I would suggest to you that the
14 answer to that question is in the record.

15 MR. NADEAU: There's also testimony.

16 MR. BARTLEY: I would say yes.

17 MR. ELDRIDGE: I couldn't hear that.

18 MR. BARTLEY: I would say yes, based on the copy
19 that was presented to us, on the deed of the property.

20 MR. ELDRIDGE: So a consensus is Mr. Adkins has
21 been a partial owner of the property since 2011 and the
22 record supports that finding.

23 CHAIRMAN HUMPHRIES: Yes, that's correct.

24 MR. ELDRIDGE: All consensus on that?

25 CHAIRMAN HUMPHRIES: Yes.

1 MR. ELDRIDGE: Recalling Miss White's memo and
2 perhaps Mr. Adkins' testimony and, again, in the record.

3 Number 3, the residential structure on the property
4 was or was not a non-conforming structure prior to the
5 addition set forth below, the porch and the roof covering?

6 CHAIRMAN HUMPHRIES: I think based on both
7 testimonies that it was in non-compliance when he moved in
8 there.

9 MR. ELDRIDGE: It was non-conforming before he
10 built.

11 CHAIRMAN HUMPHRIES: Yes, it has been.

12 MR. BASS: The record shows that too.

13 MR. ELDRIDGE: Second page, 14 -- I mean, 4, In
14 2014, an 8 by 12 porch and roof cover was or was not added
15 to the residential structure?

16 MS. CHASE: Can we go back to 3? Was that a
17 consensus?

18 MR. ELDRIDGE: Yes.

19 CHAIRMAN HUMPHRIES: Yes.

20 MS. CHASE: Thank you.

21 MR. ELDRIDGE: Number 4, was the 8 by 12 porch
22 added to the structure in 2014?

23 CHAIRMAN HUMPHRIES: Yes, Mr. White's testimony,
24 plus some of the evidence that he submitted said that it was
25 built in 2014.

1 MR. ELDRIDGE: Record, testimony. I think both
2 witnesses testified to that.

3 Number 5, said porch and roof cover were or were
4 not rebuilt in 2016 following storm damage to the original
5 addition?

6 CHAIRMAN HUMPHRIES: Again, Mr. Adkins indicated
7 that it was rebuilt after the storm in 2016.

8 MR. ELDRIDGE: And, again, what we're doing is
9 setting forth the facts because you have to base your
10 decision on the facts.

11 Number 6, the building permit was or was not
12 obtained from the town prior to the construction of the
13 aforementioned 2014/2016 additions?

14 MR. NADEAU: It was not.

15 CHAIRMAN HUMPHRIES: It was not. Testimony.

16 MR. ELDRIDGE: Testimony and record.

17 MR. BASS: Testimony of Mr. Adkins.

18 MR. ELDRIDGE: Number 7, the porch and roof cover
19 do or do not meet the town's setback requirements?

20 MR. NADEAU: Do not.

21 MR. ELDRIDGE: I think the evidence is the same
22 basically. We don't have to repeat that.

23 CHAIRMAN HUMPHRIES: Yes.

24 MR. ELDRIDGE: There's only so much evidence.

25 Number 8, top of page 3, by adding the porch and

1 roof cover, the already non-conforming residential structure
2 was or was not enlarged and extended into the required
3 setback area?

4 MR. BASS: Enlarged.

5 CHAIRMAN HUMPHRIES: Yeah, it was enlarged, both by
6 testimony that it was built into the setbacks.

7 MR. ELDRIDGE: I think that was Miss White's
8 testimony.

9 Number 9, appellant, Mr. Adkins, did or did not
10 receive a letter dated March 23, 2020 from Bethany White,
11 Code Enforcement Officer, notifying him that the porch and
12 roof cover were in violation of the Town Code for having
13 been constructed without obtaining a building permit and for
14 encroaching into the required setback?

15 CHAIRMAN HUMPHRIES: Miss White testified that she
16 did. It's in the record too.

17 MR. ELDRIDGE: A copy of the letter is on page 9 of
18 the record.

19 Number 10. Following delays associated with the
20 COVID pandemic, appellant was or was not notified by Miss
21 White in an April 8th, 2022 e-mail that the aforementioned
22 violations remained open and needed to be resolved?

23 MR. BASS: Was.

24 MR. ELDRIDGE: If you look at the record on page
25 31. We have consensus? I'm sorry, was there a question?

1 MR. NADEAU: As to COVID pandemic, I'm not certain.

2 MR. ELDRIDGE: Well, the record is replete by
3 e-mails showing that the parties had a difficult time
4 resolving the issue because of COVID restrictions and COVID
5 lockdown. The main thrust of that particular fact --

6 CHAIRMAN HUMPHRIES: E-mail showing the back and
7 forth.

8 MR. NADEAU: E-mail April 8, 2022, absolutely.

9 MR. ELDRIDGE: Number 11, appellate did or did not
10 file his appeal of the administrative decision on April
11 29th, 2022? If you look at the first page of the record.

12 CHAIRMAN HUMPHRIES: Yes, he did.

13 MR. ELDRIDGE: As an aside, it's important to note
14 those facts because there's a 30-day limit for appealing an
15 administrative decision. If the original letter was in
16 2020, what was the decision that's being appealed from in
17 2022? That's why the questions are there about the
18 informative e-mail and the filing date.

19 Number 12, appellant is requesting an
20 interpretation of the zoning map and a reconsideration of
21 the Code Enforcement Officer's administrative decision and
22 did or did not offer an interpretation of the applicable
23 code provisions supporting his requested relief?

24 Did he offer an interpretation that differed from
25 what the code says?

1 MR. BASS: No, testimony.

2 MR. ELDRIDGE: Those are the findings of fact that
3 I feel lead up to the conclusions, and the conclusions,
4 let's review those real quickly.

5 Appellant did, number 1 -- and I'm talking about
6 conclusions on page 4 -- appellant did or did not timely
7 file his appeal of the administrative decision?

8 Again, that conversation we just had. He filed on
9 April 29th following the April, whatever it was, e-mail.

10 CHAIRMAN HUMPHRIES: He was notified back in 2020,
11 so I don't know if that 30 days started in 2020 or 2022.

12 MR. ELDRIDGE: Go back to the page with the April
13 8th e-mail from Miss White to Mr. Adkins, that's page --
14 page 31. Tell me if you think that -- we're not dealing
15 with citation.

16 MR. McNEELY: Your page numbers are different.

17 MR. ELDRIDGE: No, you should have Adkins record,
18 page 31 on the bottom of that exhibit.

19 MR. BASS: Right here.

20 MR. ELDRIDGE: Now, keep in mind we're not dealing
21 with a citation or a formal notice of violation; it's an
22 administrative decision which can take many forms. It's a
23 very general term. So in order to determine whether he
24 timely filed his appeal you have to determine whether the
25 April 8th, 2022 e-mail is an administrative decision. It

1 reads as saying, hey, look, this violation is still open
2 and needs to be resolved. Under the definition of an
3 administrative decision set forth in our code it may very
4 well constitute a decision making his appeal timely.

5 MR. BARTLEY: Would that have been the signing of
6 2021?

7 MR. ELDRIDGE: I'm sorry?

8 MR. BARTLEY: 30 days, still a signed code of 2020.

9 MR. BASS: It sounds to me while he was informed on
10 the 8th and he needed to make a decision which he did, he
11 did make it in a timely manner.

12 MR. ELDRIDGE: And, no, the code didn't have that
13 particular provision in it back in 2020, that's a recent
14 addition to the code, the 30-day notice. It's based on
15 General Assembly statutory enactments in 2019 that we had to
16 conform to by 2021, I think, so it's a new provision.

17 So do we have a consensus?

18 CHAIRMAN HUMPHRIES: I believe that he did.

19 MR. NADEAU: For clarification, 30 days, where
20 would I find that in writing? 30 days that the clock starts
21 when you are notified, when you are formally served?

22 MR. ELDRIDGE: I'll be precise in answering your
23 question. Time to appeal, 12.06.040(B) -- I mean (C), the
24 owner or other party has 30 days after receiving the written
25 notice of the decision within which to file an appeal.

1 Somewhere in the code we actually have another provision
2 telling you how you count days. So if you view the April
3 8th, 2022 e-mail as the decision and he filed his appeal on
4 April 29th that would be within the 30 days.

5 CHAIRMAN HUMPHRIES: That's what I think we need to
6 base that on is that he was notified on the 8th. We need to
7 make that decision.

8 MR. ELDRIDGE: Okay.

9 MR. NADEAU: Thank you.

10 MR. ELDRIDGE: What makes this case challenging is
11 that we don't have an argument or an interpretation that
12 challenges the meaning of the particular code provisions
13 that Miss White felt were applicable to this situation. It
14 would be a different story if Miss White said you're in
15 violation of these ordinances and he came in and said, well,
16 that's not how I interpret those things. So it's difficult.
17 I often wonder whether the title Board of Adjustment makes
18 the layperson think you've got the power to adjust.

19 What we've got in this case without a
20 countervailing logic or interpretations, your function is to
21 determine whether the code provisions that were applied were
22 applied correctly based on the facts of the case that we've
23 already established. So if you go to -- if you turn to page
24 -- after page 5 of the decision worksheet, you have the
25 first of the three code provisions that Miss White felt were

1 in -- felt the property was in violation of. Number 1, that
2 the porch and roof covers were built without a permit. So
3 your job is how would you interpret 11.02.040(A) which
4 you've got in your packet, sub part 1. You've got in there
5 in front of you, if you could look at it.

6 CHAIRMAN HUMPHRIES: It's pretty explanatory that
7 any construction, repair, replacement, and so forth,
8 services, and so forth, has to have a permit.

9 MR. ELDRIDGE: So if you apply that description to
10 the facts of the case, what's your end result?

11 CHAIRMAN HUMPHRIES: That he did not get the
12 required permit.

13 MR. ELDRIDGE: For the porch and roof covering.

14 CHAIRMAN HUMPHRIES: Correct.

15 MR. BASS: Agreed.

16 MR. ELDRIDGE: Turn to the next page, you should
17 have a copy of 15.20.030, these are the requirements for
18 RA-3 district where the property is located. Again, how
19 would you interpret this provision with respect to the facts
20 of this case, recalling the testimony and the evidence?

21 MR. BASS: Well, if the house is already set back,
22 then the porch is further in the setbacks, so it doesn't
23 meet these minimum requirements.

24 MR. ELDRIDGE: We got two more provisions to look
25 at.

1 MR. NADEAU: To be clear, he did not meet them
2 before the porch was added.

3 CHAIRMAN HUMPHRIES: Yeah, but I think --

4 MR. ELDRIDGE: That's a legal non-conforming
5 situation that under the code is allowed to persist. The
6 focus here is on what impact the porch and roof cover have
7 on this requirement.

8 MR. BASS: He also doesn't meet any of the
9 exceptions, walkovers, pavers, and so forth.

10 MR. ELDRIDGE: So we have a consensus that the
11 required setbacks were not met by the porch and roof cover
12 in this case.

13 CHAIRMAN HUMPHRIES: Yes.

14 MR. ELDRIDGE: Turn the page to look at 15.36 --
15 that's what you're referring to, Mr. Bass, the exceptions
16 under 15.36.010.

17 MR. BASS: Correct.

18 MR. ELDRIDGE: That's fine. Do we have a consensus
19 on that?

20 MR. BASS: Yes.

21 MR. ELDRIDGE: There's one other provision that
22 Miss White brought out that is not covered in her original
23 letter to the property owner but which may be applicable to
24 this case. If you've got her memo in front of you with the
25 red ink on it, if you -- and you'll see that we've already

1 walked through permits, dimensional requirements on the
2 first page, but if you go down on the second page to the
3 15.38.020 and you look at sub part A, a structure that is
4 non-conforming as to yard setback requirements but conforms
5 to permissible use shall not be enlarged or extended in any
6 direction into the required open space of the yard setback
7 area.

8 So the question is did the additions of the porch
9 and roof cover to this already non-conforming structure
10 extend that non-conforming structure into a required setback
11 area?

12 CHAIRMAN HUMPHRIES: Yes, it did.

13 MR. ELDRIDGE: If you turn back to page 4 of your
14 decision worksheet, I think we're at the point where we can
15 make a decision, but I wanted to make sure there was no
16 other questions that the Board had for the witnesses or for
17 me. And before we make that decision we'll close the
18 hearing and somebody make a motion.

19 CHAIRMAN HUMPHRIES: Anybody have any questions of
20 the witnesses, Mr. Eldridge, the attorney?

21 MR. NADEAU: No questions.

22 MR. ELDRIDGE: So, Chairman, I recommend that you
23 close the hearing and then let me make a few comments and
24 then you all can make your decision.

25 CHAIRMAN HUMPHRIES: Okay. At this time I make a

1 motion to close the hearing.

2 Second?

3 MR. MCNEELY: Second.

4 CHAIRMAN HUMPHRIES: All in favor?

5 (Response of "Aye".)

6 The hearing is now closed.

7 MR. ELDRIDGE: Your decision has got to be based on
8 the facts. I did want to point out that under the code and
9 under the enable statute that you can affirm, reverse or
10 modify and that you can also make any other award that ought
11 to be made.

12 So with those charges in mind, I think it's time
13 for the Board to make a decision in this matter, and if you
14 feel like there's any other order that ought to be made in
15 conjunction with that decision, then you need to go through
16 that procedure as well.

17 CHAIRMAN HUMPHRIES: So now we'll discuss -- any
18 discussion on the testimony -- first of all, it's pretty
19 evident that by oath testimony and evidence that has been
20 presented to us that no permit was pulled on the property
21 for this porch/roof and, therefore, that is a violation of
22 our code ordinances.

23 Do we have any discussion on that at all?

24 MR. BARTLEY: It's pretty clear.

25 MR. NADEAU: No dispute. Property owner admits

1 there were no permits, it violates the code, so now what?

2 CHAIRMAN HUMPHRIES: Well, that's basically the
3 first finding of fact and that's what he's doing, the fact
4 that he didn't get the permit, I think we would affirm that
5 he needed a permit.

6 Next thing that we need to consider is the
7 requirements of the setback. Yes, the home itself is -- the
8 structure itself is non-conforming but there are many, many
9 houses that are non-conforming and they basically have been
10 accepted into the town, but you can't make it any worse than
11 it is, you can't exceed and go into -- you know as a builder
12 that you've got to follow the setbacks, you've got to make
13 sure all of the setbacks are done. So I think it's pretty
14 clear that this is definitely an extending -- violation by
15 extending it more -- more so into the setback.

16 I said I do remember this structure. I knew -- as
17 a matter of fact, I knew somebody that rented the first part
18 of that unit and I remember back in just before 1999 that
19 there was no porch there. So, I mean, yeah, it may be a
20 beautification type thing but still needs to -- as far as
21 I'm concerned still needs -- the required setbacks need to
22 do something that's not going to violate any of our
23 ordinances because then everybody in town will.

24 MR. BASS: The fact that it's also on a corner,
25 that extra setback on the corner is for vision, driving.

1 You know, you're already restricting that with the house
2 being non-conformed.

3 MR. BARTLEY: Also if you look at it was destroyed
4 in 2016 by the hurricane, 2016.

5 CHAIRMAN HUMPHRIES: All right. Listening to Mr.
6 Bass, expecting the house was being built next door, I
7 wouldn't have driven up the street to look at every
8 non-conforming, take a picture of the house, it's just not
9 feasible to do that so it came to his attention when he was
10 inspecting the house next door.

11 MR. BASS: It's a clear violation of 15.20.030.

12 CHAIRMAN HUMPHRIES: So in that regard those are
13 really the two major concerns we have to decide here is
14 whether or not a permit to allow him to keep it or make an
15 alteration of any kind.

16 MR. ELDRIDGE: I think the point that you're at
17 right now is to affirm Miss White's decision -- remember,
18 this is an appeal of the decision.

19 CHAIRMAN HUMPHRIES: That's kind of where I'm
20 getting to, sir.

21 MR. ELDRIDGE: Okay.

22 CHAIRMAN HUMPHRIES: So as the attorney said at
23 this point in time we need to make a decision as to whether
24 or not we're going to affirm Miss White's decision and what
25 she has given to Mr. Adkins or not, reversal.

1 In my vote I would say that I would affirm her
2 decision, that it's non-conforming, he didn't get the
3 permits and, therefore, her decision, I am affirming her
4 decision.

5 What about you?

6 MR. McNEELY: Based on the facts, I affirm.

7 MR. BASS: Based on the facts I affirm it too.

8 MR. BARTLEY: I also affirm it.

9 MR. NADEAU: I affirm it.

10 CHAIRMAN HUMPHRIES: We have a unanimous --

11 MS. CHASE: Can I get an actual motion?

12 CHAIRMAN HUMPHRIES: Make a motion to affirm the
13 decision of the Code Enforcement Officer in reference to
14 this hearing.

15 MR. BASS: I'll second.

16 CHAIRMAN HUMPHRIES: All in favor?

17 (Response of "Aye".)

18 All opposed?

19 (There was no response.)

20 It carries.

21 MR. ELDRIDGE: Now you need a motion to go back in
22 to open session and adjourn if there's no other business.

23 CHAIRMAN HUMPHRIES: I didn't hear you, sir.

24 MR. ELDRIDGE: I'm sorry. You need a motion to go
25 back into your regular meeting session and adjourn or -- if

1 there's nothing else.

2 CHAIRMAN HUMPHRIES: Okay. Do I have a motion to
3 go back into our hearing?

4 MR. ELDRIDGE: Go back into open session.

5 MR. NADEAU: Second.

6 CHAIRMAN HUMPHRIES: All in favor?

7 MR. BASS: Aye.

8 CHAIRMAN HUMPHRIES: Opposed?

9 (There was no response.)

10 Okay. Reopen it. Open the meeting.

11 Mr. Eldridge, do we need to give any more
12 information as to the final facts to be delivered to Mr.
13 Adkins?

14 MR. ELDRIDGE: I'll be responsible for drafting the
15 written decision. It will be presented to you for a
16 signature, the code says within a reasonable time. Given my
17 schedule a reasonable time is definitely going to be next
18 week and then the code goes on to provide the minutes will
19 be provided to Mr. Adkins. We'll also mention at the end of
20 the decision his right to seek judicial review if he wishes
21 to.

22 I'll take it from here, you'll sign and Mandy or
23 Beth will get the decision to him and see what develops.

24 CHAIRMAN HUMPHRIES: Thank you, sir.

25 Can I have a motion to adjourn?

1 MR. NADEAU: Second.
2 CHAIRMAN HUMPHRIES: All in favor?
3 MS. CHASE: Was there a second? Sorry.
4 MR. BARTLEY: Yes.
5 CHAIRMAN HUMPHRIES: All in favor?
6 (Response of "Aye".)
7 Opposed?
8 (There was no response.)
9 We're adjourned.
10 (Whereupon, at 7:00 p.m., the hearing was
11 concluded.)
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1 STATE OF NORTH CAROLINA)
2 COUNTY OF NEW HANOVER)

3

4 CERTIFICATION

5 I, MELISSA A. MATTHEWS, C.S.R., Certified Shorthand
6 Reporter, do hereby certify that I attended at the time and
7 place above-mentioned and took a stenographic record of the
8 proceedings and testimony in the above-entitled matter, and
9 that the foregoing is a true and correct copy of the same
10 and the whole thereof, according to the best of my ability.

11

12

13

MELISSA A. MATTHEWS, C.S.R.

14

Certified Shorthand Reporter

15

16 DATE: _____

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