



**CITY OF SOUTHPORT
BOARD OF ADJUSTMENT
REGULAR MEETING
223 E BAY ST SOUTHPORT, NC 28461
February 24, 2026, 4:30 PM
Minutes**

Present Members: Chair Pete Haislip, Vice Chair Jason Robbins, Harley Lemons, Tuck Masker, Rodney Ross, John Allen, Chris Eckert

Staff Present: Ray DiGiuseppe, Board of Adjustment Attorney; Brady Herman, City Attorney; Maureen Meehan, Planning Services Director; Wendell City Planner Biddle, City Planner; ChyAnn Ketchum, Public Information Officer; Scott Baillargeon, Deputy City Clerk

Board Liaison: Alderman Mark Spencer

Absent: None

A. Call to Order

Chair Haislip called the meeting to order at 4:30 p.m.

Chair Haislip asked for a motion to recess the meeting due to a change of venue to the Southport Fire Department Emergency Operation Center located on 1011 N Howe St, 2nd floor of the fire station.

A motion was made by Mr. Robbins and seconded by Mr. Allen to recess the February 24, 2026, Board of Adjustment Regular Meeting to reconvene at the Southport Fire Department Emergency Operation Center located on 1011 N Howe St, 2nd floor of the fire station.

The motion carries unanimously

Chair Haislip asked for a motion to reconvene the meeting at 4:44 p.m. at the Southport Fire Department Emergency Operation Center located on 1011 N Howe St, 2nd floor of the fire station.

A motion was made by Mr. Robbins and seconded by Mr. Allen to reconvene the February 24, 2026, Board of Adjustment Regular Meeting at the Southport Fire Department Emergency Operation Center located on 1011 N Howe St, 2nd floor of the fire station.

The motion carries unanimously

B. Pledge of Allegiance

Chair Haislip led members in the recitation of the Pledge.

Chair Haslip reported that following the previous meeting, held on January 27, 2026, involved complex legal matters, and noted that he and Staff met with the Board Attorney DiGuissepe to review procedures; and shared that as a result of those discussions, specifically regarding late filing, that future late submissions may result in the matter being continued to a subsequent meeting; and continuances will be determined based on the complexity of the issue; and that the Board reserves the right to exercise this discretion as needed.

C. Approval of Agenda

A motion was made by Mr. Robbins and seconded by Mr. Lemons to approve the agenda.

The motion carries unanimously

D. Approval of Minutes

1. January 27, 2026, Board of Adjustment Meeting Minutes

A motion was made by Mr. Allen and seconded by Mr. Ross to approve with revisions the January 27, 2026, Board of Adjustment Meeting Minutes.

Mr. Allen noted the need for a revision regarding the final motion to adjourn the meeting.

Yay: 5

Nay: 0

Abstains: Mr. Lemons

The motion carries

E. Explanation of Quasi-Judicial Process

Chair Haislip opened the meeting by outlining the hearings scheduled for the evening, which included two special use permits and one administrative decision; and explained that the hearings would be quasi-judicial evidentiary hearings, similar to court proceedings, and that state law establishes specific procedures and rules for

the Board's decision-making process; and emphasized that the Board's discretion is limited by ordinance standards and the facts presented, and that decisions must be based on competent, relevant, and substantial evidence rather than personal opinion; and noted that witnesses should focus on facts and ordinance standards rather than personal preferences; and noted that while the meeting is open to the public, participation is limited to the applicant, local government representatives, and individuals who can demonstrate standing and potential special damages, such as impacts on parking, stormwater, crime, or property values; and stated that proximity alone does not confer standing; and that individuals without standing may serve as witnesses if called by the Board; and noted that witness testimony must be fact-based, and expert witnesses must be qualified and provide the factual basis for their opinions; and clarified that claims, such as potential property value reduction, must be supported by proof from a qualified expert rather than personal speculation; and outlined the procedural order for the hearings, starting with a presentation by Staff, followed by the applicant and its witnesses, then testimony from opponents to the request, and concluding with an optional rebuttal by the applicant; and explained that parties may cross-examine witnesses after their testimony and that written evidence, such as reports, maps, or exhibits, must be introduced by a witness familiar with the evidence during or at the end of their testimony; and concluded by asking the Board if any members had conflicts of interest or Ex Parte communications relevant to the hearings.

Mr. Robbins noted that he would need to recuse himself from deliberations concerning SUP-26-03 – Accessory Dwelling Unit 508 Brunswick Street.

F. Explanation of Proceedings

Chair Haislip provided an explanation of the proceedings to follow.

G. New Business

1. SUP-26-01 – Accessory Dwelling Unit 306 W. Moore Street

Chair Haislip swore in City Planner Biddle

City Planner Biddle introduced the item and spoke to the existing Accessory Dwelling Unit (ADU) located at 306 W. Moore Street; and introduced Mr. Scott Fitzgerald, who is seeking to create an ADU on his property; and stated that the current structure does not meet the minimum five-foot side setbacks; however, it is considered legal nonconforming; and explained that North Carolina General Statutes and the City's Unified Development Ordinance (UDO) prohibit the expansion of a nonconforming structure, which precludes converting the existing structure into an ADU in its current form; and stated that the applicant proposes to demolish the existing structure and reconstruct it further into the lot so that it will comply with current floodway standards, building codes, and the minimum five-foot side setbacks; and noted that

constructing a compliant accessory structure without an ADU would be a by-right use; and emphasized that the Board's decision concerns the approval of an ADU within the proposed structure, not the existence of the structure itself; and further noted that, regardless of the Board's decision, the applicant could demolish and rebuild the structure in compliance with current standards; and shared the ADU standards as stipulated in the Ordinance;

Section 3.6.C of the UDO:

1. An accessory dwelling may be within, attached, or separate from the principal residential structure.

The proposed dwelling unit will be detached from the principal residential structure.

2. The principal use of the lot shall be a detached, single-family dwelling built to the North Carolina State Building Code standards.

The principal use of the lot is for a single-family dwelling unit. The primary structure is an existing single-family residence on Stuart Avenue.

3. No more than one (1) accessory dwelling unit shall be permitted on a single deeded lot in conjunction with the principal residential structure.

There are no other accessory dwelling units on the property.

4. The accessory dwelling unit shall be owned by the same person as the principal residential structure.

The accessory dwelling will be owned by the same person as the primary structure.

5. The accessory dwelling shall not be served by a driveway separate from that serving the principal residential structure.

The structure will be served by the same driveway that serves the single-family residence.

6. There shall be a separate parking space for the accessory dwelling unit, subject to the off-street parking requirements of section 3.14.

There is parking space available on the driveway.

7. The accessory dwelling shall not exceed 800 SF.

The proposed accessory dwelling is 530 SF.

8. Detached garages with a second-floor accessory residential dwelling may not exceed a ground-level building footprint area of 530 SF and shall be constructed behind the front building line, except as allowed for riverfront lots, provided they are located no closer than five (5) feet to any adjoining property line.

The accessory dwelling unit meets this standard.

Mr. Masker noted an error on the slide and asked for clarification.

2. The principal use of the lot shall be a detached, single-family dwelling built to the North Carolina State Building Code standards.

The principal use of the lot is for a single-family dwelling unit. The primary structure is an existing single-family residence on Stuart Avenue.

City Planner Biddle noted the error and stated the street is W. Moore and not Stuart Avenue; and continued to discuss the UDO standards relative to the ADU.

Mr. Robbins sought clarification regarding the proposed ADU; and stated that because the existing structure does not meet the conforming standards, an ADU cannot be created within it; and noted that the property owner retains the right to rebuild the structure if it is relocated within the required setbacks and complies with all applicable codes; and observed that there appeared to be a nuanced distinction between approving an ADU outright versus approving a proposal to use part of an existing, by-right structure as an ADU.

City Planner Biddle clarified the point noting that the Board is being asked to decide to allow the proposed structure to be an ADU; and that if the Board chose to make a condition of approval that it would be based off conditionally approved pending building codes.

Mr. Robbins thanked Mr. Biddle for clarifying the point.

Chair Haislip asked the applicant to speak.

Chair Haislip swore in Lindsay Urso, 866 Pantego Bld., Bolivia NC

Ms. Urso explained that the proposed ADU is intended solely for personal use and will not operate as an Airbnb or any other short-term rental; and stated that the owner plans to construct the ADU consistent with the main house, ensuring compliance with all applicable codes and maintaining matching features such as windows and doors; and noted that the only minor differences involve the square footage provided, which does not include the steps and landing, and concluded her comments.

Chair Haislip asked if there were any questions from the Board.

Mr. Masker noted that the drawings presented by Mr. Biddle depict the garage as being located 180 degrees, opposite, from its current orientation; and requested clarification regarding the proposed location and orientation of the garage.

City Planner Biddle spoke about the garage and shared that he did not realize that part of the design was a garage that could be accessed from W. Brunswick Street; and noted another possible door on the ADU that faces W. Moore Street that could serve as a garage door as well.

Mr. Robbins asked how the orientation of the garage factored into the proposal, noting that if the garage is facing more toward W. Brunswick Street, it could potentially establish a separate driveway.

City Planner Biddle replied that the plans show a continuous driveway running between W. Brunswick Street and W. Moore Street.

Mr. Robbins stated that if W. Brunswick Street runs down the left-hand side of the screen (as shown on the slide), the garage door would be facing W. Brunswick Street; and noted that the driveway previously referenced appears to originate from W. Moore Street, raising a question about how the garage would be accessed based on the orientation shown in the plans.

City Planner Biddle referred to the plans and noted the stone driveway serving the main house that accesses the property from W. Moore Street.

Chair Haislip asked for clarification regarding the drawing; and inquired whether there was a garage door located on the side being mentioned, specifically at the location indicated on the proposed plans.

City Planner Biddle responded that there was not a garage door located on that side of the structure.

Mr. Robbins referenced prior Board discussions about two-way driveway access and asked whether a garage door existed on the W. Brunswick Street side of the structure.

Chair Haislip also asked for clarification as to whether a garage door faced W. Brunswick Street.

City Planner Biddle referred to the plans and indicated the location of what appeared to be the garage door and the ladder well.

Chair Haislip noted that if the garage door faced W. Brunswick Street, the question would be whether that configuration created another driveway.

City Planner Biddle stated that he did not believe it created an additional driveway.

Mr. Robbins questioned how it would not constitute another driveway; and inquired about the material used for the driveway.

City Planner Biddle provided confirmation that the driveway consisted of stone.

Mr. Allen stated that the area in question was already a driveway, noting that the plans showed an existing driveway apron at the rear of the property.

Mr. Robbins pointed out that the City's code prohibits separate driveways serving ADUs.

City Planner Biddle stated that Staff would review the issue further.

Chair Haislip commented that the matter could have an impact on the Board's decision.

Mr. Robbins noted that it raised the question of whether the current request was the appropriate format for consideration.

Chair Haislip recognized Ms. Urso and asked whether the intent was to use the back side of the property as a driveway.

Ms. Urso responded that she had been informed the existing driveway would be used and that no additional driveway would be added.

Chair Haislip asked whether there was an existing driveway that led to the proposed building.

Ms. Urso shared that she would need to find out.

City Planner Biddle confirmed that an existing driveway was currently present.

Chair Haislip asked how that situation affected the request in relation to the UDO.

City Planner Biddle shared that the request remained the same, which was for approval of the ADU; and stated that he wanted to review the ordinance language again.

Chair Haislip asked Mr. Biddle whether he had an image showing the back driveway on W. Brunswick Street.

City Planner Biddle shared that he did not; and read the relevant provision stating that an ADU shall not be served by a driveway separate from the one serving the principal residential structure.

Mr. Masker commented that the building appeared to create a separate entrance.

City Planner Biddle acknowledged that it did.

Mr. Masker further noted that the elevation drawings appeared to show a flipped configuration of the garage compared to the existing condition, which could change how the property functions.

Mr. Ross observed that the driveway itself already exists.

City Planner Biddle noted that the driveway is existing; and reiterated that the ordinance standard specifies that the ADU must not be served by a separate driveway and clarified that the standard applies to the ADU rather than the garage itself.

Mr. Lemons asked whether the living quarters above the garage would be separated from the garage area.

Mr. Eckert stated that the entrance to the living quarters will be served by the ladder well.

City Planner Biddle confirmed that the living quarters would be located upstairs and that access would be provided by the stairwell located on the front side near the existing driveway.

Mr. Robbins stated that the Board needed additional clarification regarding how the driveway approaching the garage beneath the ADU would not be considered as serving the ADU; and indicated that the ordinance language appeared to present a potential issue that had not been fully addressed earlier.

City Planner Biddle shared that he continues to revert to number five:

5. The accessory dwelling shall not be served by a driveway separate from that serving the principal residential structure.

The structure will be served by the same driveway that serves the single-family residence.

And noted that it is an issue that was not caught in the review phase.

A motion was made by Mr. Robbins, and seconded by Mr. Masker, to continue the request for SUP-26-01 – Accessory Dwelling Unit 306 W Moore Street and refer it back to Staff for further review with the applicant.

Yay: 7

Nay: 1

The motion carries

2. SUP-26-03 – Accessory Dwelling Unit 508 Brunswick Street

Mr. Robbins recused himself and left the meeting.

City Planner Biddle presented SUP-26-03 – Accessory Dwelling Unit at 508 W. Brunswick Street, explaining that the request was submitted by the property owner, with Mr. Bandera serving as the applicant; and shared that the request seeks approval to convert the upper level of an existing accessory structure into an ADU; and noted two points of distinction regarding the property, first, the property had previously been granted a special use permit for an ADU several years earlier; however, noted that the permit was not exercised within the 12-month timeframe required by the UDO and therefore became void; and shared that as a result, the property owner was required to submit a new request for approval; and second, although the property is zoned R-10, the lot size is approximately 8,400 square feet, under UDO Section 3.9.B.1, the parcel qualifies for setback exceptions, allowing setbacks to be reduced by 15 percent; and presented an aerial image showing the property and surrounding zoning designations, noting that the lot is bordered primarily by R-10 single-family residential properties; and shared photographs of the existing accessory structure, including an image depicting the front entrance and staircase located on the west side of the building; and noted that the site plan was then reviewed, showing the existing single-family residence and the accessory structure where the proposed ADU would be located; and explained that the proposed ADU would be located on the second floor of the structure and would be lower in height than the principal residence; and stated that the structure would have an approximate height of 24 feet from grade, with the second-floor living area totaling approximately 789 SF; and shared renderings of the proposed front and rear elevations presented to illustrate the scale and design of the structure; and stated that the proposed ADU meets the applicable standards of the UDO and clarified that the structure is not considered a detached garage under the ordinance standards; and stated that the special use permit request seeks approval for a 789 SF accessory dwelling unit located on the upper level of the existing garage structure; Section 3.6.C of the UDO:

1. An accessory dwelling may be within, attached, or separate from the principal residential structure.

The proposed dwelling unit is detached from the principal residential structure.

2. The principal use of the lot shall be a detached, single-family dwelling built to the North Carolina State Building Code standards.

The principal use of the lot is for a single-family dwelling unit. The primary structure is an existing single-family residence on Brunswick Street.

3. No more than one (1) accessory dwelling unit shall be permitted on a single deeded lot in conjunction with the principal residential structure.

There are no other accessory dwelling units on the property.

4. The accessory dwelling unit shall be owned by the same person as the principal residential structure.

The accessory dwelling unit will be owned by the same person as the primary structure.

5. The accessory dwelling shall not be served by a driveway separate from that serving the principal residential structure.

The structure will be served by the same driveway that serves the single-family residence.

6. There shall be a separate parking space for the accessory dwelling unit, subject to the off-street parking requirements of section 3.14.

Parking space will be available on the driveway.

7. The accessory dwelling shall not exceed 800 SF.

The proposed accessory dwelling is 789 SF.

8. Detached garages with a second-floor accessory residential dwelling may not exceed a ground-level building footprint area of 530 SF and shall be constructed behind the front building line, except as allowed for riverfront lots, provided they are located no closer than five (5) feet to any adjoining property line.

The accessory dwelling unit meets this standard.

Mr. Biddle noted that Staff had determined the application to be complete and that the proposal meets the residential accessory dwelling unit standards established in the UDO; and concluded his presentation and offered to answer any questions from the Board.

Chair Haislip swore in Mr. Rich Bandera

Mr. Bandera thanked the Board for the opportunity to speak and stated that the property had previously received approval for an ADU; and explained that he had been involved in the project beginning in February 2021 and that the Board had granted approval for the ADU at that time; however, noted that the permit expired because the project was not completed within the required timeframe; and that the conditions of the previous approval were largely the same as those being proposed in the current application, with the exception that the allowable height for ADUs had since changed from 40 feet to 30 feet; and stated that the application would not be before the Board if the proposal did not meet the applicable standards; and stated that the property owner completed certain improvements in 2021 that addressed issues identified in a structural report associated with the earlier application, including repairs to the deck and stairway; and noted that because the previous permit expired, the applicant was returning to the Board to seek approval again.

Chair Haislip swore in Jane Lowe Davis, 504 Brunswick Street

Ms. Davis addressed the Board and stated that, for the record, her role as a sitting Southport Alderman for Ward 2 was not relevant or pertinent to the hearing; and explained that she was appearing solely as a private citizen and in her personal capacity as a neighboring property owner; and emphasized that nothing in her comments should be interpreted by the Board, City staff, or residents as having any official bearing on the case, and she asked that her statements be considered in the same manner as those of any other party appearing before the Board; and stated that the proposed use and rebuilding at the rear of 508 W. Brunswick Street directly impacts her property and property interests because the accessory structure overlooks her home, including her back deck and the west side of her lot and house; and explained that the structure is highly visible from inside her home, as well as from her back deck, porch, and west side yard; and added that activity around the existing accessory building—including people, lights, and equipment—is visible and audible from her property; and shared an example, noting that vehicles accessing the accessory structure via the driveway pass within approximately seven feet of her bedroom and bathroom windows; and stated that the accessory building is located within an AE flood zone and that water draining from the building and the paved apron surrounding it flows into and through her yard; and expressed concern that any intended uses of the structure could exacerbate those issues; and noted that the property has an approved permit for a 15-foot by 15-foot swimming pool (225 square feet), which she stated was not shown on the site plan submitted to the Board; and referenced an attachment provided to the Board showing the building permit for the pool, which she stated had been issued on December 4; and requested that the Board consider these factors while deliberating on Special Use Permit application SUP-26-03; and asked whether there were any concerns or questions from the Board regarding her standing to speak before continuing with her remarks (and noted Attachment A).

Chair Haislip stated that he had a question regarding the reference to the swimming pool; and commented that he did not fully understand the concern being raised about the pool; and noted that swimming pools are commonly constructed on residential properties.

Ms. Davis responded that the concern regarding the swimming pool related to uncertainty about where the pool would be located on the property and how it might affect access and use of the site; and stated that, aside from its size and the fact that it represents an additional element on the property, she did not have further details about its placement or potential impacts; and continued her remarks regarding issues of health, safety, and general welfare; and stated that in December 2021 the Board of Adjustment had considered a similar

application for the property and that, during that hearing, concerns were raised about the structural integrity and viability of the accessory structure, including cautions from an engineering firm; and stated that while she trusts the City's Planning and Permitting Staff to ensure that appropriate repairs and inspections have taken place, she believes it is important to verify that the necessary structural work has been completed properly; and requested that Planning Staff provide documentation from qualified experts confirming that the required structural repairs and changes had been completed (and noted Attachment B).

Chair Haislip responded that the matter she was raising was not an issue before the Board.

Ms. Davis replied that she believed it related to her reasons for objecting and stated that she wanted proof that the structure no longer posed a danger.

Chair Haislip asked whether she had documentation to provide to the Board.

Ms. Davis responded affirmatively and referred the Board to Attachment B.

Chair Haislip asked City Planner Biddle to offer his comments.

City Planner Biddle responded that verification of the structure's integrity would be addressed during the City's plan review process; and stated that any structural issues identified would be required to be corrected prior to issuance of a Certificate of Occupancy; and noted that even if certain items have not yet been addressed, they would have to be resolved before final approval could be granted.

Chair Haislip asked Mr. Bandera to address the concerns.

Chair Haislip recognized Mr. Bandera.

Mr. Bandera stated that the subject property is located in an AE-11 flood zone; and shared that a flood Elevation Certificate has been submitted to Staff; and advised that the proposed finished floor elevation is compliant with floodplain requirements; and spoke to the questions regarding the pool sharing that they are separate and not directly relevant to the current matter.

Chair Haislip affirmed that the inclusion of the swimming pool is not relevant to the ADU request.

Mr. Bandera further addressed questions raised in the Staff summary concerning the lower level and the classification of a private garage; and

stated that, under the UDO a detached garage is defined as a use rather than a structure; and explained that a garage is designated for motorized vehicles and is distinct from storage, which is separately defined under the UDO; and indicated that he had provided a handout from the UDO for the Board's reference; and provided clarification regarding the structure's dimensions and setbacks, stating that the proposal met applicable standards.

Ms. Davis asked if she could finish her presentation.

Chair Haislip stated that Mr. Bandera has the floor.

Mr. Bandera stated that the swimming pool referenced earlier was not relevant to the request and noted that the property complies with applicable flood zone requirements; and explained that the permit referenced earlier related to repair work that resulted from the initial structural review, and that documentation of that work is on record; and indicated that the property owner might also choose to speak, but he wanted to address certain points raised during the discussion; and specifically addressed the question regarding the garage and stated that the structure in question should not be considered a garage; and addressed whether the structure occupies more than 50 percent of the rear yard; and explained that the rear yard is defined by the ordinance as the distance from the rear property line to the required setback line; and stated that the existing structure does not encroach into those dimensions and therefore does not extend into the required rear yard setbacks; and noted that he wanted to clarify that point for the Board as part of the discussion.

Chair Haislip recognized Ms. Davis

Ms. Davis referenced UDO Article 3, Section A.2, regarding standards for accessory structures; and stated that the total area of accessory structures, excluding swimming pools, shall not exceed 50% of the rear yard area of the lot and must comply with applicable side yard setbacks; and stated that, based on the survey drawings included in the application materials, the rear yard area is approximately 2,977 SF, with 50% equating 1,488 SF; and noted that the proposed structure consists of approximately 778 SF per floor, totaling 1,556 SF, which she calculated to be approximately 108 SF, or 7.5%, above the allowable limit; and asked whether this apparent discrepancy could be explained and whether it would be reasonable to permit such a variance; and further stated that the existing accessory structure includes two large garage doors opening into the ground floor; and noted that while these doors are not shown in the photographs included in the application packet, they are depicted on the building diagrams; and cited the UDO definition of a private garage as *a building or space used as an accessory to a main building that*

provides storage space for motor vehicles and in which no business activity is conducted; and stated her position that the structure functions as a garage, noting that a golf cart is stored there.

Chair Haislip asked the Board and Staff how they would like to respond.

City Planner Biddle stated that he would wait for Ms. Davis to complete her presentation before addressing concerns.

Ms. Davis addressed the Board regarding provisions in the UDO related to detached garages and ADUs; and stated that UDO Article 3, Section C.8 provides that detached garages with a second-floor accessory residential dwelling may not exceed a ground-level building footprint of 530 SF; and noted that, based on the information presented, the footprint of the structure in question is approximately 778 SF, which she stated exceeds the limit by approximately 248 SF; and asked how this discrepancy is reconciled by either the applicant or Staff; and shared that the lower level of the structure appears to function either as a garage or as part of the residential area, although it has been labeled as a storage area; and questioned whether the structure could be considered a garage with an ADU above it if the footprint exceeds the 530 SF limit, and alternatively questioned how an upper-level dwelling could be permitted if the structure is not considered a garage; and referenced UDO Article 3, Section C, noting that an accessory dwelling may be located within, attached to, or separate from the principal residential structure, and that the ordinance states that an accessory dwelling unit shall not exceed 800 SF; and suggested that confusion may arise from these provisions; and stated that, in her interpretation, the UDO does not appear to contemplate an ADU located within another building unless that building is either the principal residence or a garage; and stated that if the structure is considered a garage, the footprint appears to exceed the 530 SF limitation, and if it is considered a standalone accessory structure, the total square footage of approximately 1,556 SF—combining the upper and lower levels—would be nearly twice the size allowed under the ordinance; and asked whether the applicant or Staff could explain how the proposal complies with the applicable ordinance provisions.

Board Attorney DiGiuseppe stated that several items raised by Ms. Davis involve technical and engineering matters that would require appropriate expertise for the Board to determine whether discrepancies exist; and noted that Mr. Bandera should be called to address these concerns.

Ms. Davis objected to Board Attorney DiGiuseppe's participation in the hearing and asked whether he suggested that she should present expert witnesses; and stated that she is not an expert but was relying on the

definitions contained in the UDO and her personal observations as a neighboring property owner.

Board Attorney DiGiuseppe clarified that he was not acting as an advocate but advising that conclusions requiring specialized expertise must be supported by competent evidence.

Ms. Davis reiterated that she believes she demonstrated her position by comparing the square footage in the application with the allowable square footage under the UDO, and questioned what additional expert testimony would be necessary, asserting that the discrepancy is evident based on the ordinance and the application materials.

Chair Haislip recognized Mr. Bandera.

Mr. Bandera responded that he would reiterate his prior comments and would not attempt to address each additional question in detail; and stated that the definition of a garage is distinct under the UDO and that the lower-level space of the structure is intended and classified as storage; and indicated that the property owner, Ms. Stenner, was present and could confirm that the proposed use of the lower level is for storage; and further stated that the applicable section of the UDO is not being applied as a variance; and also addressed the calculation of rear yard area, stating that the rear yard is measured from the rear setback line to the rear property line; and stated that the structure does not encroach into the required rear yard setback and does not reduce the required yard area; and asserted that the rear yard limitation referenced does not apply to this application.

Chair Haislip asked Mr. Biddle if he had anything further to add.

Ms. Davis shared that she had more to present.

Chair Haislip addressed Ms. Davis, stating that the Board would allow her to continue; however, she had presented substantial additional information at the meeting that the Board had not previously reviewed; and noted that the Board must rely on Staff and counsel to assist in interpreting the information presented and requested the opportunity to do so.

Ms. Davis responded that she provided the materials so the Board would have them available for consideration.

Chair Haislip stated that it would have been helpful to receive the information in advance of the meeting to allow adequate time for review.

City Planner Biddle stated that Staff does not consider the structure to be a garage; and stated that due to the limited clearance, operating the space as a garage for a vehicle would be impractical and potentially unsafe; and acknowledged that a golf cart may have been stored there previously but stated he would not characterize the space as a garage; and added that, if necessary, the applicant could discontinue storing a golf cart in the area; and further stated that Staff evaluates the structure based on square footage rather than cubic volume; and acknowledged that the ADU does exceed 530 SF; however, shared that the 530 SF limitation applies specifically to detached garages with second-floor accessory dwellings, and Staff does not consider this structure to fall within that category.

Chair Haislip recognized Ms. Davis.

Ms. Davis questioned whether the proposed ADU is to be used to house a motor vehicle possessing a license plate and how that could circumvent the standards for a dwelling unit under the UDO.

Mr. Ross asked if the motor vehicle was a recreational vehicle.

Ms. Davis stated that the UDO is clear and stipulates that motor vehicles would be prohibited from being stored in ADUs.

City Planner Biddle posed a question as to whether storing a John Deere tractor in the lower level would constitute the space being classified as a garage.

Mr. Allen asked if there was a definition of a garage that could be presented for consideration.

City Planner Biddle noted that Ms. Meehan was reviewing UDO definitions for clarification.

Chair Haislip recognized Mr. Bandera

Mr. Bandera stated that the applicant, Ms. Stenner, was present and does not intend to use the lower level for the storage of a motor vehicle; and indicated that this is reflected in the proposal; and shared that the applicant has submitted correspondence to Staff confirming that intent; and noted that Ms. Stenner was present and available to testify if needed; and stated that inspections related to prior structural concerns have been ongoing and that Chief Building Inspector, Kylie Barefoot, has conducted inspections of the property in connection with earlier structural reports.

Chair Haislip recognized Ms. Davis.

Ms. Davis cited Article 5, Section H.1, of the UDO, stating that when accessory structures, including sheds and detached garages, are located to be placed in a Special Flood Hazard Area, specific criteria must be met; and noted that the UDO provides that accessory structures in such areas shall not be used for human habitation, including working, sleeping, living, cooking, or restroom areas; and further stated that Article 5, Section H.1 also defines a Special Flood Hazard Area as land within the floodplain subject to a one percent (1%) or greater chance of flooding in any given year; and shared that the subject property is located in an AE flood zone (Elevation 10), which she characterized as a Special Flood Hazard Area, referencing the USGS 2025 FIRM map included as Attachment C in her submitted materials.

Chair Haislip asked Staff to respond for clarification of relevance to the required findings.

City Planner Biddle responded stating that Ms. Davis's citation of Section H.1 of the UDO was taken out of context; and clarified that while accessory structures cannot generally be used as dwelling spaces in a flood hazard area, the property has been granted a special use permit allowing an ADU at this location; and explained that it is the property owner's responsibility to bring the structure into compliance with current floodplain standards; and confirmed that Staff has reviewed the submitted Elevation Certificate and verified that the first floor elevation is 11 feet, and the second-story dwelling area is at 19 feet; and added that as part of plan review, Staff will evaluate the structure for compliance with floodplain standards, including safe egress and prevention of water intrusion or static discharge.

Chair Haslip noted that the ADU does meet the standards.

City Planner Biddle clarified that, under the UDO, no one is permitted to reside in a shed; and noted that converting a shed into a habitable space, particularly within a Special Flood Hazard Area, would not be appropriate.

Ms. Davis shared that she included the Elevation Certificate (Attachment D) in her submitted materials; and stated that even if the second floor of the structure is elevated above the flood level, a significant flood event impacting the first floor could result in damage that would ultimately affect and potentially destroy the upper level of the structure.

Chair Haislip shared that it was irrelevant as it was based on opinion; and asked her to continue her presentation.

Ms. Davis addressed the potential impact of the special use on adjoining properties; and stated that, to her estimate, the existing building is located within 100 feet of 11 separate private homes; and provided specific distances, including:

- 512 Brunswick Street: 45 feet
- 516 Brunswick Street: 99 feet
- 509 West Street: 43 feet
- 57 West Street: 67 feet

And emphasized that these measurements reflect the proximity to the interior living spaces of neighboring residences, highlighting her concerns about the potential effect of the proposed ADU on adjacent properties.

Chair Haislip asked for the relevance of listing the properties.

Ms. Davis commented on the character of the neighborhood; noting that it is a very tight-knit area, even by Southport standards; and asked the Board, if it concludes that any adverse effects could result from the proposed use, to consider the potential impact on property owners and residents in close proximity, particularly regarding their safety, security, and quiet enjoyment of their properties; and addressed whether the proposed use would be in harmony with the area, stating that she requests that the Board consider her observations; and noted that, to her knowledge, no other properties within the R-10 zoning district on the block bordered by Brunswick Street, W. West Street, and Short Street currently have accessory dwelling units.

Chair Haislip asked how the information presented was relevant to the request before the Board; and asked whether the Board members felt comfortable with the statements shared by Ms. Davis and requested that City Planner Biddle provide any additional clarification or information if needed.

City Planner Biddle addressed questions regarding the square footage of the structure; and explained that the Board and Staff considered whether the structure should be classified as a garage or a storage unit and after consultation with Ms. Meehan and discussion with the property owner, Staff determined that the structure functions as a storage unit; and noted that Staff does not apply the 530 SF limitation outlined for detached garages with second-floor accessory dwellings; and suggested adding a condition reflecting this determination was added as part of the review.

Property Owner, Ms. Stenner, asked the Board to speak.

Chair Haislip swore in Jennifer Stenner, 508 W. Brunswick Street.

Ms. Stenner noted that she understands the lots are small; and stated that the project would be completed within approximately three months and that the structure would not be used as a garage.

Mr. Lemons asked about the golf cart and if it is licensed and if it was being stored in the ADU.

Ms. Stenner clarified that the golf cart would not be stored in the structure.

Ms. Davis asked whether the ADU would be used as a rental; and asked the Board to add a condition that the ADU not be used as a rental.

Ms. Stenner stated that it would not be used as a rental.

Mr. Allen shared the ordinance that prohibits rentals of ADUs.

Chair Haislip noted that the Special Use Permit has a condition that includes the caveat that the ADU would not be used as a rental; and asked if there were any additional questions from the Board; and asked for the next speaker.

Chair Haislip swore in Woodrow Wilson Jr., 502 W. Brunswick Street

Mr. Wilson shared that he had been a resident of 502 W. Brunswick Street since August 2003; and stated that the structure in question has been the subject of ongoing issues since that time, including multiple City stop-work orders and disputes with the building inspector; and described the situation as problematic from the outset; and expressed appreciation for the opportunity to speak and urged the Board to make a decision on the matter, regardless of the outcome, noting that the long history of involvement with this structure has been burdensome for the community.

Chair Haislip swore in Debbie Barnes, 425 W. West Street

Ms. Barnes reiterated that if the Board approves the special use permit, and it adheres to the UDO, she requested that it not be used as a rental.

Chair Haislip closed the public hearing and asked for additional Board comments.

Mr. Lemons stated that the structure is currently being used as a garage to store a licensed golf cart and suggested that it may be appropriate to obtain a qualification that motor vehicles cannot be stored within the proposed accessory dwelling unit.

Chair Haislip stated that he was uncertain how the vote on the matter would conclude; and noted that any discussion regarding potential conditions or stipulations could be addressed at the end of the proceedings, as part of the Board's final considerations.

Mr. Eckert asked whether bringing a motorcycle into a house would cause the house to be classified as a garage.

City Planner Biddle shared that there are definitions that separate garages from storage units.

Mr. Eckert stated that he did not believe the Board had the authority to dictate what items a property owner may place inside a structure.

Chair Haislip referenced Article 8, page 15 of the UDO regarding definitions:

- Garage, Private: A building or space used as an accessory or part of the main building, permitted in any residential district, providing storage space for motor vehicles, with no business, occupation, or service-for-profit conducted.
- Storage: The keeping or deposition of commodities or items for the purpose of future use or safety.

and noted that these definitions provide clarity for the Board and stated that depending on the outcome of the vote, the issues under discussion could be addressed within these definitions; and asked for a motion.

Mr. Allen read Motion 1:

The use **will not** materially endanger public health, safety, or general welfare if located where proposed and developed to the plan as submitted and approved.

Findings of Fact: The living area of the ADU is well above the flood plain.

A motion was made by Mr. Allen and seconded by Mr. Ross to approve the findings of fact and evidence presented for the Accessory Dwelling Unit 508 Brunswick Street

The motion carries unanimously

Mr. Masker read Motion 2:

The use **meets** all required conditions and specifications.

Findings of Fact: It complies with all UDO standards

A motion was made by Mr. Masker and seconded by Mr. Ross to approve the findings of fact and evidence presented for the Accessory Dwelling Unit 508 Brunswick Street

Mr. Lemons stated that the issue regarding the vehicle could be addressed through proper qualification; and noted that, under the UDO, the presence of a motorized vehicle classifies the space as a garage; and emphasized that the Board's role is not to change or reinterpret the UDO, but to apply it as written in its current form for the matter under consideration.

Mr. Ross asked if the definition read was from the UDO.

Chair Haislip confirmed that it was.

The motion carries unanimously

Mr. Eckert read Motion 3:

The motion for the use **will not** adversely affect the use of physical attributes of joining or abutting properties or finding of fact the additional square footage is only on the second level and entrance and is located on the side of the structure towards the existing property.

Findings of Fact: The ADU meets all interior and exterior requirements and the location of the ADU is within the proposed historic district of Southport where the houses are placed near each other.

A motion was made by Mr. Eckert and seconded by Mr. Ross to approve the findings of fact and evidence presented for the Accessory Dwelling Unit 508 Brunswick Street

Mr. Allen asked whether a Finding of Fact could include that the property is located within the proposed historic district of Southport and that its configuration is consistent with surrounding properties; and noted that, similar to other houses in the area, structures and accessory uses are located in close proximity to neighboring driveways and accessory buildings.

The motion carries unanimously

Mr. Allen read Motion 4:

The location and character of the use, if developed according to the plan as submitted and approved, **will** be in harmony with the area in which it is to be located and in general conformity with the City of Southport Comprehensive Plan.

Findings of Fact: The ADU meets all UDO standards and does not conflict with the requirements included in the 2025 Comprehensive Plan as submitted and approved and is not in conflict with the proposed historic district.

A motion was made by Mr. Allen and seconded by Mr. Ross to approve the findings of fact and evidence presented for the Accessory Dwelling Unit 508 Brunswick Street

The motion carries unanimously

Mr. Eckert read Motion 5:

Based on the findings of fact and the evidence presented, the Board of Adjustment recommends **approval** of the special use application with conditions including the dwelling cannot be rented separately from the main structure, and storage of motor vehicles is prohibited inside the ADU.

Mr. Allen confirmed that no rentals of the ADU is permitted, nor will there be any motor vehicles housed in the ADU.

A motion was made by Mr. Eckert and seconded by Mr. Ross to approve the findings of fact and evidence presented for the Accessory Dwelling Unit 508 Brunswick Street

The motion carries unanimously

*At 6:19 p.m., the Board of Adjustment recessed for five minutes.
And reconvened at 6:24 p.m.*

3. AP-25-05 – Administrative Appeal 410 E. Bay Street

Chair Haislip introduced the appeal and asked the attorneys to come forward and provide their testimony.

City Attorney Herman addressed the Board on behalf of City Staff regarding the notice of violation related to a fence encroachment within the E. Bay Street Right-of-Way (ROW); and stated that the essential facts were not in dispute, noting that the fence is located in front of the appellant's residence within the E. Bay ROW and that, both at the time of construction and currently, the fence is in violation of the City's ordinances; and distributed a legal memorandum to the Board addressing arguments raised by opposing counsel and clarified for the record that, although the memorandum was dated from the prior month, this was the first time it had been provided to the Board in this case; and he reviewed the applicable standard of review, stating that the Board must determine whether Staff's decision was supported by substantial, competent

evidence; and asserted that the evidence and testimony demonstrate the existence of violations and that the remedies imposed should be upheld; and referenced anticipated testimony from Code Enforcement and Planning Staff in support of the City's position; and shared that he would call Ms. Meehan, and then Mr. Mabe.

Appellant Attorney Kleva, an attorney from Oak Island, appeared on behalf of appellants Claire and August Adams, regarding a violation order issued on September 11, 2025, concerning a fence located on E. Bay Street; and stated that the matter involves a fence alleged to be located within the E. Bay Street ROW, which he noted is a 100-foot ROW rather than the standard 60-foot width; and explained that the ROW boundary extends close to the appellants residence; and clarified that the appellants are not asserting adverse possession or ownership of the ROW; and contended that the fence has existed in the same location for more than 40 years and that the prior property owners are present to testify to its longstanding placement; and shared that the fence has been in plain view, is not obstructed, does not impede pedestrian or vehicular traffic, and does not interfere with any City operations; and further stated that the fence was not recently constructed and predates the current UDO; and argued that requiring removal of the fence would not advance any public purpose, as there have been no prior complaints and no demonstrated harm; and shared that his presentation would focus on the facts and requested that the Board consider the matter using reasonable judgment in evaluating whether the fence should remain; and indicated he may call Mr. Adams and Mr. Sidney as witnesses and reserved time for closing remarks.

Chair Haislip swore in Planning Services Director Maureen Meehan

Planning Services Director Meehan shared that Staff presented an overview of the appeal of the administrative decision; and noted that the appellant is appealing the Final Order dated September 11, 2025, issued by Code Enforcement Officer Derek Mabe, citing violations of City Code Section 16-8 (Obstruction of Public Rights-of-Way) and UDO Section 3.17.D (Landscaping – Public Property); and shared that Staff had explained that both provisions prohibit the placement of walls, fences, or other structures within a public street or ROW above the existing grade; and noted that Staff stated that the fence in question encroaches into the E. Bay Street ROW; and spoke to a 2024 survey prepared for the property owners, along with photographic documentation from Google Street View and photographs taken by Code Enforcement in May 2024 that were presented to illustrate the location of the fence relative to the front lot line and the ROW, which extends approximately 49.5 feet from the centerline of the street; and explained that at the time the Board of Aldermen were considering amendments related to ROW

encroachments and enforcement and the case involving the appellants was put on hold and no notice was issued; and stated that on December 12, 2024, the Board of Aldermen approved amendments to Sections 16-8 and 16-10 of the City Code of Ordinances; and shared that the amendments included a directive requiring that all hardened structures within existing public ROWs be removed; and that these changes established the current rules and enforcement instructions for public ROWs and addressed existing encroachments.

Mr. Robbins asked to have “hardened structures” defined.

Planning Services Director Meehan shared that she did not have a definition on hand but provided a paraphrasing of the definition; and noted that any open cases concerning ROWs must be enforced; and provided a timeline regarding the fence violation; and stated that the first notice of violation was delivered in January 2025, followed by a reinspection in March 2025, which showed no corrective action; and shared that a hearing was initially scheduled for May 2025, but the property owners were unable to attend; and stated that a new hearing was scheduled for August 2025 to accommodate the owners, at which time no action had been taken to remove the fence; and noted that the Final Findings of Fact and Final Order were issued to the property owners on September 11, 2025; and concluded that the fence constitutes a hardened structure located within the City’s ROW and is in violation of the UDO; and requested that the Board reaffirm the September 11, 2025, Final Notice and Findings of Fact, ordering the applicants to remove the fence from the City’s ROW.

Mr. Ross asked if this was based on the 2024 modification of the UDO.

Planning Services Director Meehan shared the background of the 2024 modification of the UDO and when the Board of Aldermen decided to move forward enforcing the UDO in concern to ROW.

Mr. Ross asked if the proposed local historic district had been determined.

Planning Services Director Meehan shared that it was not related to the proposed local historic district as it has not yet been determined; and noted that, if adopted, the property will reside within the proposed local historic district.

Chair Haislip asked if there was an exception that would exclude these older structures.

Planning Services Director Meehan shared that exceptions exist and spoke about the details of those exceptions but noted that the structure does not meet the exception.

Discussion ensued concerning the curb, asphalt, and gutter on the street; whether the walkway included in the ROW as being grandfathered into the UDO; and expounded the definitions of walkway, sidewalk, and the language covered in the UDO; and commonality of 100-foot ROW in the city; and the number of ROW violations recorded.

Mr. Robbins asked about the existing walkway and if it was in the ROW, and has there been a request to have them removed.

Mr. Ross asked if it was in the ROW.

Planning Services Director Meehan shared that walkways and driveways are not considered a violation as they allow property owners to have access to their homes.

Mr. Eckert asked if it was considered a sidewalk (however he later corrected himself stating that he meant walkway).

Planning Services Director Meehan shared that it was not, as it did not fit into the definition of walkways.

Mr. Ross asked if a 100-foot ROW unusual in the City.

Planning Services Director Meehan noted that it was not unusual.

Mr. Robbins asked how long the area had been platted.

Planning Services Director Meehan shared that the lot was one of the 101st lots since 1792.

Mr. Masker referenced the Exhibit labeled “subject fence” and stated that it appeared to depict only one section of fencing; and sought clarification as to whether there were two sections of fence alleged to be in violation and asked that Staff clearly identify all portions under consideration; and stated that he wanted to ensure the Board was clear as to whether the discussion involved every portion of the fence; and requested clarification regarding which sections of fencing were being referenced, including the portion running parallel to E. Bay Street and the initial segments of fencing; and asked that the specific sections be identified for the record to ensure clarity.

Planning Services Director Meehan clarified that the violation involves two portions of the fence: one section that borders the driveway and another section located within the front yard; and noted that the enforcement action applies to all fencing within the public ROW.

Mr. Robbins inquired if the fence that ran along the side of the property was also in violation; asked if there was a process or permit to include structures such as fences into the UDO.

Planning Services Director Meehan stated that any part of the fence that encroaches into the public ROW is in violation of the UDO; and shared that there was not a process that could be used to include the fence into the UDO; and spoke about the City's history of ROW enforcement and how the City had worked with property owners to remove those obstructions; and shared that the City had 88 public ROWs violations originally, but were down to only two; and spoke about retaining walls that were deemed a detriment to the property that were allowed to remain in the public ROW, but no new encroachments would be allowed to be placed in the City's public ROWs.

Mr. Lemons asked Ms. Meehan whether she had heard of circumstances in which structures located within a public ROW could remain in place until such time as they created an issue, at which point the City could remove them.

Planning Services Director Meehan stated that, based on her experience since joining the City in 2022, she could not speak to practices that may have occurred prior to her arrival, but acknowledged having heard of such situations anecdotally but did not provide confirmation of any formal policy or precedent.

Chair Haislip shared a personal experience, stating that when he moved to the City had sought to install a driveway within the public ROW, and shared that he was directed to consult with the City's building official at the time; and stated that he was advised that such improvements could be permitted with the understanding that, if the City ever needed to utilize the public ROW, the improvement would be subject to removal at the property owner's expense.

Mr. Allen stated that given the subsequent amendments to the ordinance by the Board of Aldermen, any previous practices or past enforcement actions are irrelevant to the current matter.

Mr. Lemons noted that there were items grandfathered in.

Chair Haislip stated that things like driveways and vegetation were grandfathered in.

Mr. Masker asked why the need to clear the fence from the ROW was a priority.

Planning Services Director Meehan spoke about the City's focus on clearing public ROWs; and stated that when the new ordinance was adopted in January 2025, a six-month grace period was provided for property owners with structures identified by the City as needing removal; and noted that during this period, Staff worked with those property owners to remove the structures; and after the grace period expired, notices of violation were issued for any remaining structures, and enforcement proceeded as with any other standard code violation; and noted that currently there is one remaining hardened structure under review, which is not included in the prior enforcement actions.

Mr. Eckert asked if anyone could pour a driveway (intended to mean sidewalk).

Chair Haislip asked what the new standard was for pouring a driveway.

Planning Services Director Meehan shared that the standard was 18 feet.

Mr. Ross asked if the property had once had a rope fence.

Mr. Allen noted that home was built in 1980-1.

Mr. Lemons asked why it had never been brought up before now, concerning the fence in the public ROW.

Planning Services Director Meehan shared that at the time the City was trying to get in front of the many public ROW violations throughout the City.

Chair Haislip asked for any additional questions.

Mr. Robbins noted that the house was built in 1981; and a fence line was established at the time the house was built (1980-1).

Chair Haislip shared that the original owners had erected a fence line of rope.

Chair Haislip asked City Attorney Herman to proceed.

City Attorney Herman entered into the record the City Staff report and agenda pages and asked Ms. Meehan if she was responsible for adopting policies.

Planning Services Director Meehan stated that she was not, and the duty to adopt policies is the responsibility of the Board of Aldermen.

City Attorney Herman asserted that Ms. Meehan's role is to enforce the City's UDO; and directed members to the survey included in Ex. B; and asked whether it was a recorded survey plat, and how the City obtained the plat, and asked Ms. Meehan to confirm that in May of 2024, Mr. Mabe opened the case; and what measures were taken to police for fence encroachments located within public ROWs.

Planning Services Director Meehan spoke about the survey included in Ex. B; and shared that his assertion was accurate, the case was filed in May of 2024; and shared the City's origins regarding code enforcement within the ROWs.

City Attorney Herman asked if fences were permissible in public ROWs since the adoption of the ordinance in 1974; and noted that the adoption of the ordinance was well prior to the building of the house in 1980; and asked members of the Board to review page 77, Ex. D-2, in the agenda packet; and noted that it is also codified in the UDO; and asked Ms. Meehan to elaborate on the page.

Planning Services Director Meehan spoke about the 1974 adoption of the UDO; and shared that fences were not permissible within the City's ROW.

City Attorney Herman explained that the ordinance addresses existing encroachments within public ROWs; and stated that the ordinance essentially recodifies the provisions previously contained in Section 16, updating and clarifying the rules regarding such encroachments; and asked Ms. Meehan whether this was the only open ROW encroachment case at the time, noting that there was initially one case and later a second; and inquired why it took several months to issue the first notice of violation, asking why a notice was not issued shortly after the ordinance amendments were adopted, such as within two days of the change.

Planning Services Director Meehan confirmed that there were conversations with the Board of Aldermen at the time about encroachments and existing encroachments in the public ROWs, and how they may or may not be enforced; and noted that Staff was waiting to see the final decision the Board of Aldermen would make before acting.

City Attorney Herman asked how many public hearings, meetings, and discussions the Board of Aldermen, as the policy-making body, conducted during that period, and how long it took for them to reach a decision regarding the ordinance amendments.

Planning Services Director Meehan shared that there had been one time.

City Attorney Herman shared that in May 2024, Mr. Mabe opened the case, and spoke to Ex. I, that showed when the ordinance was adopted in 2024 by the Board of Aldermen, and asked Ms. Meehan to walk the Board through the exceptions outlined at the time it was adopted; and noted that the appellants were in violation of 16-8, and 16-10, and shared the proposed changes relevant to this case and what was to be allowed; and spoke to the UDO and what driveway, paving, and other hardened surfaces would be allowed in the UDO; and noted 16-10 vegetation encroachments noting that the City has the right to remove any vegetation when the City finds it necessary.

Planning Services Director Meehan asked for clarification to either list the changes that were made to the UDO or provide specific references.

City Attorney Herman stated that he believed it relevant to use the language to determine the exceptions as they had been loosely discussed.

Planning Services Director Meehan spoke about the ordinance adopted in December 2024, referencing Ex. I; and noted the existing encroachments and what types of paving would be allowed, and requirements for wood borders, and noted that none of the existing encroachments listed in 16-10 were included; and spoke about vegetative encroachment exemptions; and about public curb and sidewalks that may remain; and shared the language in the UDO and provided specific details relevant to the encroachment of public ROWs.

City Attorney Herman directed Ms. Meehan to review the “grandfather” provision contained within the December 2024 ordinance; and asked whether Subsection C applied to the appellants in this case.

Planning Services Director Meehan indicated that it did not.

City Attorney Herman then referenced Subsection D, which provides that any fence or wall located within the ROW, in a designated National Historic Register or local historic district, constructed prior to December 1980, may remain, upon written determination by the UDO Administrator or Historic Preservation Commission that the structure contributes to the historic character of the district.

Planning Services Director Meehan confirmed the exception did not apply in this present case.

City Attorney Herman referred to Ex. J, identified as the minutes from the Board of Aldermen meeting, at which time the ordinance was adopted; and directed attention to page 93 and asked Ms. Meehan to summarize Alderman

Mosteller's motion regarding approval of the ordinance, including any provisions addressing open enforcement cases at the time of adoption.

Planning Services Director Meehan summarized the motion language from the Board of Aldermen meeting minutes adopting the December 2024 ordinance; and stated that the motion included a six-month grace period for compliance to allow Staff to work with property owners with existing structures; however, noted that the motion also specified that any active code enforcement cases existing prior to adoption of the ordinance would remain in effect; and clarified that no grace period applied to those active enforcement cases.

City Attorney Herman asked, that according to the direction of the Board of Aldermen, there was no grace period for code enforcement cases; and asked how many were in violation of the ROW encroachment; and asked why the fence could not be classified as a non-conforming structure.

Planning Services Director Meehan shared that of the 88 violations recorded, the current one being discussed today is the last; and shared that a non-conforming structure needs to be established.

City Attorney Herman addressed an argument raised by the appellants that they did not construct the fence in question; and posed a hypothetical scenario, where whether a subsequent property owner is absolved of responsibility for a zoning or code violation simply because they did not create it; and explained that if a violation exists on a property, the responsibility to remedy that violation runs with the property; and therefore, even if the current owners did not construct the fence, they would still be responsible for correcting the violation if it continues to exist, regardless of whether a prior owner was cited.

Planning Services Director Meehan affirmed this explanation and confirmed that the appellants are in violation of the UDO.

City Attorney Herman concluded his questioning.

Chair Haislip asked Appellant Attorney Kleva to address Ms. Meehan.

Appellant Attorney Kleva noted that there were other property owners in violation and that it was irrelevant to the case; and asked if any other property owners had appealed for a violation.

Planning Services Director Meehan shared there was one, but not in the sense of those notified after the adoption of the ordinance.

Appellant Attorney Kleva asked Ms. Meehan if there was any violation recorded for the fence since 1974.

Planning Services Director Meehan shared that there had not been any violations recorded since 1974.

Appellant Attorney Kleva asked if there could be factors unique to each property owner – meaning not every case is the same; and noted that when Ms. Meehan began employment with the City of Southport, in 2022, no new encroachments were allowed; and could Ms. Meehan call this a blanket enforcement.

Planning Services Director Meehan noted that when the Board of Aldermen directed Staff to enforce the public ROW ordinance is when Staff moved to address the violations.

Appellant Attorney Kleva asked whether, following the amendment of the ordinance and the Board of Aldermen's directive requiring removal of hardened structures from public ROWs, the City began enforcing the UDO accordingly.

Planning Services Director Meehan noted that Staff had received the directive from the Aldermen and began their proactive enforcement.

Appellant Attorney Kleva asked if any effort to work with the 80 property owners to try to offer some type of alternative outcome, other than just strict removal.

Planning Services Director Meehan stated that they had tried to work with all property owners, but hardened structures were required to be removed.

Appellant Attorney Kleva asked if the survey provided in the presentation was a recorded plat survey.

Planning Services Director Meehan confirmed that it was not a survey recorded in the registry; but noted that the survey is a signed and sealed document and is a public record.

City Attorney Herman added that Ex. B, the survey, does indicate the property line, and asked Ms. Meehan to confirm that the fence is a violation.

Planning Services Director Meehan shared that it does indicate the property line and that the fence is in violation.

Appellant Attorney Kleva asked Ms. Meehan when the survey was put on record.

Planning Services Director Meehan shared that it was in 2024 for renovation.

Appellant Attorney Kleva asked whether a permit had been issued by the City for those renovations; and inquired if the City raised any objection at that time regarding the survey provided by the appellants or indicated that the fence constituted a violation.

Planning Services Director Meehan shared that the City had not raised any objection at that time.

Appellant Attorney Kleva concluded his line of questioning.

City Attorney Herman called Derek Mabe to testify.

Chair Haislip swore in Code Enforcement Officer, Derek Mabe.

City Attorney Herman asked Mr. Mabe to state his profession to the Board.

Mr. Mabe shared his job duties as a Code Enforcement Officer.

City Attorney Herman asked Mr. Mabe to share the name of his employer.

Mr. Mabe shared that he was employed by Alliance Code.

City Attorney Herman asked Mr. Mabe if there were any other employees that work alongside him, and to recall and share his process from the time he became aware of the ordinance violation.

Mr. Mabe shared that there is one other person that works with him, Logan Boaz, and provided the process for violation checks; and noted that he had first documented the case on May 1, 2024.

City Attorney Herman referenced the Staff report found on page 65 of the agenda packet and asked if Mr. Mabe had taken the photos and to name the properties in the images.

Mr. Mabe stated that he had taken the photos and confirmed the lot was 410 E. Bay Street.

City Attorney Herman asked Mr. Mabe to walk through the process for what occurred following the opening of the code enforcement case.

Mr. Mabe shared the process of documenting with Staff, providing photographs of the violations, what the violation was in reference to, and the process of issuing violations to the property owners.

City Attorney Herman asked Mr. Mabe to explain why a notice of violation was not issued subsequently after determining there was a violation in the public ROW.

Mr. Mabe confirmed that the notice of violation was not issued immediately after the violation was documented; and explained that he had been directed by Staff to hold off until a final decision was made by the Board of Aldermen; and clarified that this approach was not limited to the property at 410 E. Bay Street, but also applied to other code enforcement cases at that time.

City Attorney Herman summarized that several months passed while Staff waited to see what action the Board of Aldermen would take regarding updates to the ROW ordinances; and noted that the amendments were adopted in December 2024, as previously stated by Ms. Meehan, and that a motion was made indicating that all code enforcement cases would continue in terms of enforcement; and asked what actions occurred next following the adoption of the amendments.

Mr. Mabe shared that they had reviewed the open cases and property owners should be notified of violations.

City Attorney Herman referenced page 81, Ex. E, and addressed the courtesy letter, the first notice of violation, and asked Mr. Mabe to summarize the process that followed.

Mr. Mabe summarized the actions he took following the Board of Aldermen's determination to enforce ROW violations, as outlined in Ex. E; and stated that a courtesy letter and first notice of violation was sent on January 13, 2025; and explained that the letter identified a zoning violation related to an existing encroachment within the public ROW; and noted that the notice specifically stated that a white fence had been installed within the City's ROW; and that the letter also provided a 15-day period to correct the violation, noting that while the standard timeframe is 14 days, an additional day was provided to allow for mailing time within the City; and stated that the notice explained the corrective action required, which was removal of the white fence from the front of the property, as fences are not permitted to be installed within the City's ROW.

City Attorney Herman noted that the notice cited a provision in the City's general code and asked Mr. Mabe to confirm that.

Mr. Mabe confirmed that the notice also referred to Chapter 16-10 of the City Code.

City Attorney Herman stated that the City was therefore relying on the applicable provision in the general code that had been updated but also existed at the time; and added that under either version of the ordinance, the property would be considered in violation.

City Attorney Herman asked Mr. Mabe what actions occurred after the additional 15-day compliance period provided.

Mr. Mabe stated that after the initial 15-day compliance period, Staff typically allows some additional time as a courtesy rather than immediately pursuing enforcement action; and explained that while the notice of violation itself satisfies the formal requirement for zoning enforcement, Staff often provides additional opportunities for property owners to respond and work toward compliance; and noted that the City took an additional step by sending a follow-up notice inviting the property owner to come to City Hall to discuss the matter, explain the violation, and attempt to establish a timeline for resolving it that would be reasonable for all parties involved; and referenced page 82, Ex. F, indicating that this courtesy notice was sent on May 22, 2025 that specified a hearing date of June 5, 2025.

City Attorney Herman asked if the letter had been sent to the appellants and whether the hearing was scheduled for June, and to confirm the hearing took place.

Mr. Mabe confirmed the hearing took place on June 5, 2025; and noted that the appellants did not attend the hearing as they were out of town; and noted that the hearing was rescheduled and a notice went out on July 18, 2025, for the appellants to appear on August 21, 2025.

City Attorney Herman asked Mr. Mabe to flip to page 84, Ex. H, Finding of Fact/Final Order; and to share what occurred August 21, 2025, at the hearing.

Mr. Mabe shared that the appellants did not show up to the hearing, and only Staff was present.

City Attorney Herman asked Mr. Mabe to summarize the contents of page 84, Ex. H, which contained the Findings of Fact/Final Order, and to explain the resolution outlined in that document.

Mr. Mabe explained that, although it was not technically required, Staff issued a Findings of Fact/Final Order as a courtesy to document the process and inform the property owners of the outcome; and stated that Item 7 of the document identifies the ROW encroachment violation, noting that a white fence had been installed within the City's ROW; and spoke to Item 9 that reiterates the zoning violation for an existing encroachment within the ROW, citing Chapter 16-10 of the City Code; and noted that Item 11 outlines the timeline of the case: the matter was initially opened on May 2, 2024, the Notice of Violation was issued on January 13, 2025, and hearings were held on June 5, 2025, and August 21, 2025, at which the property owner did not appear.

City Attorney Herman shared he had no further questions for Mr. Mabe.

Appellant Attorney Kleva questioned Mr. Mabe regarding the Findings of Fact listed in the violation order, specifically Items seven (7), eight (8), and nine (9); and asked whether, based on the inspection and evidence presented, that Mr. Mabe concluded that the fence depicted in the submitted photographs constituted an imminent danger to life or property.

Mr. Mabe shared that there was not an imminent threat, and noted that the addition of the text was a typo; and that the fence was not deteriorated to indicate a threat; and spoke to minimum housing standards based on the findings of fact, and noted all those items marked out are to indicate the property was not in violation of those items; and noted that since the document contains generic parts, the process is to strikethrough or mark out those items.

Appellant Attorney Kleva referred to Item 11 on the second page of Mr. Mabe's report concerning minimum housing standards; and asked Mr. Mabe to confirm that, based on the findings of fact, the structure could be repaired, altered, or improved to comply with City requirements and all applicable North Carolina State Building Code provisions for less than 50% of its value; and noted that, under these findings, the structure was therefore declared secure or dilapidated.

Mr. Mabe clarified that the statement regarding the structure being declared secure or dilapidated was incorrect; and explained that the items in question were marked out on the report, noting that the document is intended for general use and is designed to be marked up; and stated that all strikethroughs in the report indicate findings that were determined to be unfounded.

Appellant Attorney Kleva asked Mr. Mabe whether he reviewed the report before signing and submitting it; and inquired about errors in the report and

questioned whether, during the inspection, Mr. Mabe's investigation was limited to observing that the fence was allegedly in the public ROW; and asked if Mr. Mabe also reviewed the City's mapping system, specifically the lot and City's ROW records, as part of his assessment.

Mr. Mabe confirmed that he reviewed the report before signing and submitting it; and confirmed that, as part of his inspection, he reviewed the City's ROW records to verify the location of the fence.

Appellant Attorney Kleva asked if Mr. Mabe knew when the fence was installed in City's ROW.

Mr. Mabe stated that he could not share who originally installed the fence.

Appellant Attorney Kleva completed his questioning.

Chair Haislip swore in August Adams, 410 E. Bay St. – Property Owner

Appellant Attorney Kleva asked Mr. Adams to share when the property was purchased.

Mr. Adams shared that he had purchased the property in 2021.

Appellant Attorney Kleva asked if the fence was existing when they purchased the home.

Mr. Adams shared that the fence was existing at the time of purchase.

Appellant Attorney Kleva asked whether the property owner had any knowledge about the fence, specifically whether it had been installed prior to their purchase of the property and how long it had been in place.

Mr. Adams stated that the fence had been in place since the mid-1980s and noted that satellite photos corroborate the age and presence of the fence over that time period.

Appellant Attorney Kleva asked whether, during the time the property was owned by the appellants, they had received any communication from the City regarding the fence, aside from the current enforcement action under appeal.

Mr. Adams shared that they were not contacted by the City prior to 2024 about the fence violating the City's ROW.

Appellant Attorney Kleva sought to clarify the record regarding the hearing notices; and noted that the first notice of hearing was for a June hearing, and asked Mr. Adams to confirm that they were unable to attend because they were away on vacation.

Mr. Adams stated that the notice of violation arrived after they had already left for vacation; and added that upon their return, they made efforts to reschedule the variance hearing to accommodate their availability.

Appellant Attorney Kleva asked whether, during the time the hearing was pending, the appellants received any guidance or information from the City regarding how to proceed with the hearing related to the fence violation.

Mr. Adams explained that there was a misunderstanding regarding the scheduling of hearings; and stated that the variance hearing had been scheduled around the same time as the fence violation hearing; and noted that he had visited the City office and spoke with Ms. Meehan, who offered to postpone the hearing; and clarified that he believed the postponement applied to the current hearing, and did not realize there were two separate hearings; and emphasized that he did not ignore the hearing and had every intention to attend.

Appellant Attorney Kleva asked Mr. Adams whether he was familiar with an individual named Dora Lofland.

Mr. Adams shared that Dora Lofland was the previous property owner of 410 E. Bay Street.

Appellant Attorney Kleva asked if he knew where she currently resides.

Mr. Adams stated that he believes Ms. Lofland resides in Carolina Beach NC.

Appellant Attorney Kleva asked if Ms. Lofland had ever provided Mr. Adams with any information regarding the fence.

Mr. Adams stated that Ms. Lofland had informed them that she was allowed to keep the fence; but could not say who at the City of Southport approved of that statement.

Appellant Attorney Kleva asked Mr. Adams if he could confirm which City official Ms. Lofland had communicated with him regarding the statement.

Mr. Adams stated that he could not.

Appellant Attorney Kleva asked whether, aside from receiving the violation notice and being requested to move the fence, there had been any discussion of other possible options or remedies regarding the fence.

Mr. Adams shared that he was presented with no other option but to remove the fence.

Appellant Attorney Kleva asked Mr. Adams whether the fence in question is visible from the road and whether it obstructs pedestrian or motor vehicle traffic.

Mr. Adams responded that the fence does not block traffic; and noted that the City ROW begins at his front door, and that no complaints have ever been received regarding the fence, and that since purchasing the property, he had never replaced the fence.

Appellant Attorney Kleva shared he had no further questions.

City Attorney Herman asked Mr. Adams to identify Ex. B, and asked him to identify his property line, and whether he could confirm it was in the City's ROW.

Mr. Adams identified his property in the survey that he had prepared; and noted that the fence is in front of the house but stated that it is not marked to show the ROW.

City Attorney Herman asked if he was disputing the fence as not being in the ROW.

Mr. Adams noted that he did not see where it was marked "right-of-way" on the survey.

City Attorney Herman showed Mr. Adams where the City's ROW was listed on the survey.

Mr. Adams shared that he did not see it listed there.

City Attorney Herman concluded his line of questioning.

Appellant Attorney Kleva called Sidney Fortney to testify.

Chair Haislip swore in Sidney Fortney, 413 E. Bay Street

Mr. Fortney stated that he purchased his property in 1987; and noted that the fence in question was already in place at the time of their purchase.

Appellant Attorney Kleva stated that Mr. Fortney had lived across from the property for many years; and asked if the fence had been there the entire time (at least 30 years) and to confirm that it does not obstruct his view.

Mr. Fortney confirmed that the fence had been there for the duration of time he had resided on his property; and expressed adoration for the fence; and spoke about the City's ROWs; and shared what the homeowners had done to preserve the sod, vegetation, and features of the fence within the ROW.

Appellant Attorney Kleva concluded his line of questions.

Chair Haislip asked the Board for any questions or comments.

Mr. Lemons asked Mr. Mabe to speak more concerning the error in the report regarding the fact that the fence is a threat to health and safety.

Mr. Mabe shared that it was typo on his part, and he missed it before submitting it for review.

Mr. Masker asked about the mini boulders that edged the ROW and asked if there was any concern about them.

Mr. Mabe noted they were not a violation at the time but would technically be a violation.

Mr. Robbins asked if Mr. Mabe had observed anything that was a sizable violation concerning vegetation; and asked about the retaining wall that extends into the City's ROW marked on the survey.

Mr. Mabe noted the vegetation growth on the fence; and shared the process to establish contact with the property owners; and noted that they had observed the retaining wall in the driveway but noted that it was not a violation.

Chair Haislip asked for any additional questions, there being none, Appellant Attorney Kleva provided his closing statements.

Appellant Attorney Kleva provided his closing remarks; and shared that the issue is a matter of common sense equity; and noted that it's clear that the City's ROW has a fence in it; and the order was not a blanket order, and the fence has been there for 40 years, and even though it was there the City never acted to remove it, and stated that the property owners are now saddled with

removing the fence; and stated that the fence does not pose a danger to anyone, nor an issue to the City should it need access to its ROW; and asked the Board to dismiss the violation; and noted that accommodations should be extended to the property owners and let the fence remain there until it is destroyed by an act of nature; and asked the Board to adjust the code to allow the fence.

City Attorney Herman provided his closing remarks; and spoke to a court document prior to failure to enforce the code and the City knew about the violation; and the City cannot be stopped to enforce a violation of the ordinance; and there is no statute of limitations to enforce a code; and spoke to the term 'grandfathered-in', and it cannot be allowed as the Code has been in effect since 1974; and stated that it does not absolve a property owner from resolving the violation; and noted that the equitable point made by Appellant Attorney Kleva is fair; however, the other property owners were required to remove anything in the City's ROW and were given enough time to complete the removal; and shared that Staff was directed to enforce consistency, and noted that is what Staff did; and asked the Board to affirm Staff's decision to enforce City's ROW violation and provide direction on compliance.

Chair Haislip asked the Board for any additional questions or comments, there being none, asked the Board to call to question.

A motion was made by Mr. Allen seconded by Mr. Robbins to affirm and uphold City Staff's decision to issue a notice of violation, and subject to this appeal, order the appellant to remove the fence encroachment from the City's Right-of-Way within 15 days.

The motion carries unanimously

Board Attorney DiGuiseppe asked when the 15 days should begin for clarity.

City Attorney Herman shared that the 15 days begin the day the order is signed; and shared that he would draft the order and circulate it to Board Attorney DiGuiseppe.

H. Old Business

None.

I. Other Business

None.

J. Adjourn


Chair Haislip asked for a motion to adjourn.

A motion was made by Mr. Robbins and seconded by Mr. Eckert to adjourn.

The motion carries unanimously

The Board adjourned at 8:07 p.m.

X 
Pete Haislip
Chair

X 
Scott Baillargeon
Deputy Clerk

