



**BOARD OF ZONING APPEALS
MEETING MINUTES
TOWN COUNCIL CHAMBERS
JANUARY 30, 2014 ♦ 6:30 p.m.**

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7 **1. CALL TO ORDER.** Chairman Ott called the meeting to order at 6:30 p.m.
8 Members present: Chairman Ott, Vice-Chairman Willm, and members Lanham,
9 Magliette, and Watson. Members Davis and Lauer were absent. A quorum was
10 present. Others present: Planning Director Morris, Building Official Otte, and Town
11 Clerk Herrmann.

12
13 **2. PLEDGE OF ALLEGIANCE.** Chairman Ott led the Pledge of Allegiance.

14
15 **3. OFFICER ELECTION.**

16
17 Mr. Willm moved to elect Mr. Ott to serve as chairman for another year. Ms.
18 Watson seconded. All voted in favor. **MOTION CARRIED.**

19
20 Mr. Lanham moved to elect Mr. Willm to serve as vice chairman for another year.
21 Mr. Magliette seconded. All voted in favor. **MOTION CARRIED.**

22
23 **4. AGENDA APPROVAL.** Mr. Magliette moved to approve the agenda. Mr.
24 Lanham seconded. All voted in favor. **MOTION CARRIED.**

25
26 **5. BUSINESS**

27
28 **a. Appeal No. 2014-01 by Kevin Steelman for a variance from Section 17-**
29 **330(3) of the Zoning Ordinance to allow property at 119 Dogwood Drive North**
30 **(TMS#195-04-11-026) to allow the encroachment of the HVAC units within the 5**
31 **foot required side setback 4.5 feet.**

32
33 Chairman Ott opened the public hearing at 6:32 p.m. Director Morris was sworn
34 in and offered the following recitals:

35
36 Director Morris: "Mr. Steelman, who I think is here today, wishes to relocate his
37 HVAC unit from the rear elevated deck to the side of his home. The home was built in
38 2006 and at that time the HVAC units were placed on the back deck. Here's a picture.
39 Mr. Steelman is worried about the deck deteriorating, because the condensation and
40 the water that's coming from the HVAC unit is going, and I did take a picture of the
41 underneath the decking. The water gets really deep and it goes through the decks and
42 it actually makes a very slippery situation underneath where the cars are parked, and of
43 course, the entrance to the pool is right there. What he'd like to do is place it on the
44 side of the home within that five foot setback. Now, I do have to make a correction. On
45 your background page, it says that the property directly beside Mr. Steelman has their
46 HVAC unit in the side yard setback. We were incorrect on that. We went and pulled the

47 file, and it is not. That setback is 10 feet. The actual structure is 10 feet from the side
48 property line and the HVAC unit is within that ten, that five feet. So you still have five
49 feet. That is incorrect. So nothing around there that we found actually encroaches into
50 that five foot setback. I did invite the building official tonight, because he is talking
51 about, the deterioration may be structural issues. So, I thought maybe he could answer
52 any questions you might have on that end, because I am not that good at building...I
53 can do planning. He is the expert there.”

54
55 Chairman Ott: “That’s what we need. At this time, I’ll ask the applicant if they
56 would like to make an address to the board of zoning appeals in reference to this.
57 Please state your name for the record and raise your right hand.”

58
59 Mr. Steelman: “It’s Kevin Steelman.”

60
61 Chairman Ott: “Okay, do you swear to tell the truth, the whole truth and nothing
62 but the truth, so help you God?”

63
64 Mr. Steelman: “I do. I am Kevin Steelman. I am the property owner at; it’s
65 actually 119 North Pinewood Drive. It may be the same address on Dogwood. I don’t
66 know, but on the agenda it says Dogwood, but I think the address I’ve always been
67 given was Pinewood. But, at any rate, we, we’ve had the home since March of 2007.
68 We bought it new, and so it’s six years old, going on seven years old, and like Sabrina
69 mentioned, we, we’re just real concerned about the damage, water damage to the, the
70 deck. You know, when people are standing on the deck, and then also, the, the slippery
71 conditions it creates on the concrete underneath, and all summer there’re families that
72 rent the property there, and aren’t familiar with it, and we’re not there as property
73 owners on a regular enough basis to be able to keep that clean, and I’m just concerned
74 about safety.”

75
76 Chairman Ott: “Does anybody on the board have a question for Mr. Steelman?”

77
78 Ms. Watson: “I do. Why is your air conditioning leaking to that point where
79 there’s a such a flow of water? I mean, I, I have HVAC units, and mine are up off the
80 ground, and I don’t have that problem.”

81
82 Mr. Steelman: “But, they’re not leaking. It’s condensation off of the a, off of the
83 coils. They just run continuously, because you know, it’s a 100 degrees (**). So, I, I
84 can’t speak to that.”

85
86 Chairman Ott: “I have a question. Don’t you have any kind of PVC pipe or a
87 hose or anything that would move this water to a ...”

88
89 Mr. Steelman: “Yeah, I mean we’re, we’re not able to identify the, the source.
90 It’s not like there is a PVC pipe that’s, that removes the condensation from the air
91 handlers that are in the attic, and that drips out, outside, but this is condensation coming
92 off (**two speaking at once.) So, it’s not originating inside the house. If it was, we

93 would obviously just extend the pipe, but you know, the other thing is beyond the safety
94 element of it is the functionality of the, of the deck is greatly diminished when you take
95 up 32 square feet as a deck for storing the a/c unit.”

96
97 Chairman Ott: “So there’s no, there’s no pan or anything under this unit that
98 could collect that water?”
99

100 Mr. Steelman: “They sit directly on the deck right now. It was the way they were
101 installed by the builder. I don’t, you know, I don’t know if they make pans that could be
102 put on there.”
103

104 Mr. Lanham: “I had sort of the same question about the condensate. Have you
105 checked with a [sic] air conditioning people? I’m sort of like she is. I, we have the same
106 type of thing and we don’t have condensate coming out of it. I mean, I’m just
107 wondering, if you could put a pan or something. My, to be honest with you, my problem
108 with this is all the houses built there have those air conditionings on the deck. The
109 same, look like the same builder, and it’s, if you put it at the side, it’s gonna take up 4.5
110 feet of a 5 feet, a 5 foot...what’s my word?”
111

112 Director Morris: “Setback.”
113

114 Mr. Lanham: “Setback. That’s almost, and if, and nothing personal against you,
115 but if this is approved, then you might as well call the other land owners and tell ‘em
116 come on up and get the approval to do yours, because they’ve got the same problem,
117 apparently. I mean, if you look, I don’t know if the rest of you have gone by there or not,
118 but, all of ‘em built by the same builder. I assume the same builder, cause it’s the same
119 style, and I, I understand, sort of, your problem, because it looks to me like those things
120 are right in front of a bedroom window or something.”
121

122 Mr. Steelman: “Well, now that’s, that’s the dining room, so it wouldn’t affect like
123 the noise isn’t an issue for sleeping and from the noise standpoint, impact on the
124 neighbors it would be very, very marginally closer to them, and you know, I live in
125 Columbia. So I drove here from there this afternoon, so we don’t have to elevate our
126 houses in Columbia, and traditionally a/c units are located in the setback. It’s not
127 atypical for the a/c unit, cause it’s not a part of the structure. The only reason that this
128 would be a variance, because you’ve gotta locate the units out of the flood plain.
129 Therefore, they gotta be elevated off the ground, and so I guess you consider the stand
130 they’re on a structure. I haven’t read your zoning code to know whether that’s true or
131 not, but that was the assumption that I made. But, like I say, I don’t, I don’t think it’s
132 unusual in, in other areas where the units don’t have to be elevated for them to be
133 located within each setback.”
134

135 Mr. Willm: “Did you buy the house built, or did you have it built?”
136

137 Mr. Steelman: “It was already built.”
138

139 Mr. Willm: "I mean one of the concerns; I mean that's the reason the setbacks
140 are very, very narrow as it is in that particular area. Five foot's not much, that's 10 feet
141 between houses, and God forbid there's a fire. The reason the setbacks are there is so
142 there's access back and forth between there. So, and it's, and you're encroaching five
143 feet of it."

144
145 Mr. Steelman: "Well, there are fences there now."

146
147 Mr. Willm: "That's probably why it's up there, because it wasn't being allowed to
148 be built off to the side to begin with."

149
150 Mr. Steelman: "I'm sure that's, you know, with the building code. I mean, the
151 building official's here. He could answer that. That's probably, that's probably the case,
152 but I don't know why it's there. I just would prefer that it wasn't."

153
154 Mr. Lanham: "Having lived here for a long time, I was on the planning and
155 zoning commission for quite a while. Now, I'm on this, and frankly, builders come in,
156 and they try to get as much on a piece of property as they can, which I don't blame 'em.
157 But, then things like this show up a few years later, and in some cases before they even
158 get the house built, and that's, I guess if, if you're going to have, if the ordinance says
159 you've gotta have a setback, I just have a problem with saying, well you can take up the
160 whole setback. If it was a half foot or a foot, or something like that, but nothing personal
161 against you, but it just, it's hard to accept from my standpoint. I don't know how the
162 other folks feel about it."

163
164 Mr. Steelman: "Yeah, I think one thing I would point out there, it's not like we're
165 consuming the whole setback for the 110 depth of the lot. It's a structure that's four feet
166 wide by 8 feet long, so there's a 8 foot by 4 foot encroachment, so the vast majority of
167 the setback is still there."

168
169 Ms. Watson: "Could you tell me what's directly down below. Is it a concrete pad
170 directly (**two speaking at once.)"

171
172 Mr. Steelman: "(**)" just a concrete pad that's directly underneath it. It's, I mean
173 it's, I guess 8 or 9 feet elevated, but it's just straight down to the concrete parking pad."

174
175 Ms. Watson: "So where is your grass; is there any?"

176
177 Mr. Steelman: "Grass is in the yard outside of the, outside of the foundation and
178 around the pool. I mean there's also grass, obviously, out between our landscaping
179 there's a five foot bed, landscaped bed at the edge of the foundation that goes almost to
180 the edge of the property line and then there's, you know, a foot of turf grass...maybe it's
181 four feet of bed and a foot of turf grass to the property line from the, from the edge of
182 the foundation."

183

184 Director Morris: "I just wanted to kind of clarify what Ms. Watson's question is.
185 The land, I mean from the corner of the structure to the property line is all grass. So,
186 the only concrete is directly underneath the home."
187

188 Chairman Ott: "I have another question. On the second question in the, you
189 know, our mandatory criteria that you stated that it, that there has been encroachments
190 into the setbacks for similar structures. Where are these at?"
191

192 Mr. Steelman: "I mean, up and down, homes that were built before the building
193 code started requiring that..."
194

195 Chairman Ott: "Before the building code was changed."
196

197 Mr. Steelman: "(**two speaking at once) putting 'em on a deck. I mean I could go
198 take pictures of 'em. I didn't. But, if you ride up and down Dogwood and look at some
199 of the older homes, the a/c units are within the setback. I'm certain of it."
200

201 Chairman Ott: "I have a question for Mr. Otte, and I need to swear you in. Mr.
202 Otte, do you swear to tell the truth, the whole truth and nothing but the truth so help you
203 God?"
204

205 Mr. Otte: "I do."
206

207 Chairman Ott: "If Mr. Steelman had his moved to the side yard and another one,
208 the one adjacent to him had one, would that be, would there be a fire hazard problem
209 where the fire trucks and firemen couldn't get through there because of the two units
210 being next to each other?"
211

212 Mr. Otte: "The access would be limited, because of the fact that both of 'em
213 would have structures built out along side each other, so you, you're setting into that,
214 you know, that area of setback and you're actually shortening that up to where you may
215 have a foot or two to get through and, of course, fire fighter with an air pack and trying
216 to drag a hose or whatever would, would have a hard time getting through that small
217 area (** two speaking at once.)"
218

219 Chairman Ott: "Ladders or whatnot. Okay, thank you very much for that."
220

221 Mr. Magliette: "It would seem to the, the, the easiest solution would be a drip
222 pan, because you wouldn't have to relocate your units; you wouldn't have to build an
223 additional structure, and that might be the simplest fix. If you talk to your air
224 conditioning guy, whoever you have with your contract, because just to put a drip pan
225 underneath that would collect all the condensate, and you would just have a, a pipe or
226 something which would drain it off and then you wouldn't have the problem with the
227 mold and the slippery, slippery contact from the wood and the rot. I think that's a real,
228 from my point of view, a real simple fix for you without the additional cost of moving your
229 units and having to build something."

230 Mr. Steelman: "It, it, it will definitely help mitigate the, you know, moisture issue.
231 It doesn't solve the secondary motivation, which is freeing up 32 square feet of deck
232 space, so."
233

234 Ms. Watson: "I would suggest then that you could move the units directly
235 underneath the deck, build a structure, a stand. Most people in my neighborhood have
236 their air conditioners up on stands, wooden stands. They're treated wood, and that way
237 you could have your deck free. You have your air conditioning units directly up
238 underneath your deck. You would still have some condensation on your concrete pad,
239 but as you're building your stand for your units to sit on you could have your air
240 conditioning man pipe it to the grass."
241

242 Mr. Steelman: "Well, I think the only problem with that, I, I don't know what the
243 flood elevation here is, but I think the a/c units have to be above..."
244

245 Ms. Morris: "They do. They actually have to be a foot above the requirement.
246 We checked, this is pretty much where it has to be to meet the flood elevation."
247

248 Mr. Willm: "(**) Statement said that you would be attending and may have other
249 methods or options to consider regarding the location of the leaking."
250

251 Mr. Otte: "Well, the pan was one of the options that was gonna be available,
252 because of the fact that they can put a pan under it and they can direct the water
253 accordingly, you know, from that, you know, from the bottom of that. The condensate
254 could be put out into the grassy area to alleviate the problem with the concrete getting
255 slippery. The other, you know, another option for you might be to check and see, you
256 know, if you could extend the deck out, you know, maybe just extend it out enough to,
257 you know, to get your 32, you know, 32 more square feet, and also free up that deck
258 space for that."
259

260 Mr. Lanham: "Could I ask a question of the town's people? That, is it true that
261 that air conditioner has to be as high up as that deck?"
262

263 Ms. Morris: "By our flood elevations, and of course, FEMA regulations, the
264 ordinance says that your HVAC unit has to be a foot above the requirement for the base
265 flood elevation, and when we looked at Mr. Steelman's, the only option, it may have
266 went down a foot, but not what Ms. Holly Watson had recommended, which certainly
267 would have been a good idea, if he could've met the flood. But, a, no."
268

269 Mr. Lanham: "Thanks for that. For R-3, this is in the R-3 zone, isn't it?"
270

271 Ms. Morris: "It's actually just in that particular flood zone, which is AE14 or 15, so
272 yeah."
273

274 Mr. Willm: "There's no way to bring it out, (**). No way to bring it out, you
275 know?"

276 Ms. Morris: "He, he could come out towards the back. It would impede in the
277 pool decking."

278
279 Mr. Willm: "That would put it right on the pool deck (**)."

280
281 Mr. Steelman: "Yeah, there's not much room between the, the foundation and
282 the edge of the pool."

283
284 Ms. Morris: "Yeah, uh uh."

285
286 Chairman Ott: "If there's no more questions for a, Mr. Steelman, I'll release him
287 from the hot seat there."

288
289 Mr. Steelman: "Thank you very much."

290
291 Chairman Ott: "Is there anybody else present in the public that would like to
292 speak on this matter?"

293
294 Chairman Ott declared the public hearing closed at 6:40 p.m. and called for a
295 motion on the variance request.

296
297 Ms. Watson moved to deny the variance request based on criteria number one,
298 there are extraordinary and exceptional conditions pertaining to this particular piece of
299 property. The applicant has options to fix his dilemma. Mr. Lanham seconded.

300
301 Mr. Willm said for the record, "I don't think the extra ordinary and exceptional
302 conditions pertain to this property as follows, there's nothing about the property that's,
303 that is a problem here. The prob [sic,] I mean, the particular piece of property is not the
304 issue. It's where the deck is and where it's located. It's not the property design or
305 anything. The property is not, is not hindering him in any way, and then conditionally,
306 the conditions do not generally apply to other properties in the vicinity. It's been shown
307 that we've already seen everybody built by this same builder has the exact same issue,
308 and it doesn't effectively prohibit or unreasonably restrict the utilization of the property.
309 It does minimize some of the use of the deck, but the deck is still usable, and subject B
310 is not a prob [sic], itemized fee is not an issue here. I don't think it hurt; it's not a
311 detriment to the adjacent property, other than the fact that the idea behind that setback
312 is to have room between the two buildings and putting five feet in, even though it's a
313 small area, can still hinder any kind of rescue or fire department work in that area. So, I
314 agree with the motion."

315
316 All voted in favor of motion to deny. **MOTION CARRIED.**

317
318 **b. Appeal No. 2014-02 by Tyler Servant for a variance from Section 17-**
319 **330(1) of the Zoning Ordinance to allow front stairway on property at 212 South**
320 **Dogwood Drive (TMS#195-04-07-019) to encroach into the required 20 foot front**
321 **yard setback by 8 feet.**

322 Chairman Ott declared the public hearing open at 6:54 p.m.
323

324 Ms. Morris: "Okay, Mr. Tyler Servant is constructing a new residence in the R-3
325 zoning district. While applying for the building permit, it was noted the property has
326 three very healthy Live Oaks on the northern side of the parcel. Mr. Servant would like
327 to save the trees, as would staff. The code does allow for the Board of Zoning Appeals
328 to grant a variance to save protected trees. Mr. Servant actually came. He was very
329 cooperative. Let me just kind of give you; you have the plat in front of you. But he was
330 actually going to put the stairway on the side of the structure. He moved the structure
331 as far over as he could, which it meets the five foot setback, and then there's the, the
332 steps were gonna be located on the other side, which this picture certainly does not give
333 it justice. There's three Live Oaks there. Live Oaks are protected trees in the town, and
334 he actually asked if he could apply for the variance to save the trees. Typically, we're
335 asking them to apply for a variance to save the trees. But, in saying that, he would
336 need eight feet on the front property out of the 20 foot setback. So he would be 12 feet
337 from the property line as opposed to the 20. Someone is here for the applicant, so if
338 you have any questions for them, or if you have any questions for me, I'll be glad to
339 answer them."

340
341 Mr. Lanham: "Mr. Chairman, I have a question for her. When you talk about the
342 back side and front side, you're talking about Pinewood being the front?"

343
344 Ms. Morris: "Dogwood is (**), yeah, Dogwood is (**two speaking at once.)"

345
346 Mr. Lanham: "The address is on Pinewood is the reason I ask. Same situation
347 we had with the other house."

348
349 Ms. Morris: "Yeah, the actual address is 212 Dogwood."

350
351 Mr. Lanham: "It is?"

352
353 Ms. Morris: "Yeah, on the issue paper."

354
355 Chairman Ott: "That's the mailing address, right?"

356
357 Ms. Morris: "Yes, on the issue paper at the top subject, allow property at 212
358 South Dogwood Drive to encroach. A little bit of background; we did as with the other,
359 we did notify everyone within 150 of the property asking if they had any concerns or
360 comments regarding the request. We did hear from; we heard from no one on the last
361 [case]; we've heard from at least seven on this case all recommending the variance to
362 save the trees."

363
364 Chairman Ott: "And there was nothing in writing. You just surveyed the
365 neighbors, or?"
366

367 Ms. Morris: "They actually called and one actually faxed something in today, so I
368 could send it around if you'd like."

369
370 Chairman Ott: "Yes, please. Oh, okay. I think we're done with Ms. Morris for
371 now. I'm gonna ask the applicant, Mr. Servant, would you raise your right hand,
372 please?"

373
374 Mr. Servant: "Yes, sir."

375
376 Chairman Ott: "Do you swear to tell the truth, the whole truth, so help you God?"

377
378 Mr. Servant: "I do."

379
380 Chairman Ott: "Would you state your name and spell your last name for the
381 record, please."

382
383 Mr. Servant: "My name is E. J. Servant, III. S-e-r-v-a-n-t. My nickname is Mil,
384 M-i-l, so I go by that, and I'm actually here today representing my son, Jonathon Tyler
385 Servant, and I have a limited power of attorney to represent him in this proceeding, if
386 you'd like a copy of that."

387
388 Chairman Ott: "And if you would like to give us a recital on the request for a
389 variance."

390
391 Mr. Servant: "Yes, I'll, I'll be glad to, and let me thank all of you for serving, and
392 for allowing me to come before you tonight. The particular property is on, located
393 between Pinewood and Dogwood on the south end of Surfside. The pictures that
394 Sabrina has up here pretty well tell the, the story. I, I do have handouts. I'll let you look
395 at those. Those'll [sic] give you a little better look at what we're dealing with. The
396 house actually is narrower than the lot itself, and as we laid the house out, we knew the
397 trees were there, and we felt like that we would be able to make the stairs work as it
398 was originally laid out. The stairs do go down the north side of the house. As you're
399 looking at the picture where you see the dumpster, the, the stairs were actually were
400 coming out there and then going down the side of the house. After working with, with
401 the, the trees and talking to Sabrina, she suggested that we get an arborist involved.
402 So, we did call an arborist in, and you'll notice in the first two sets of pictures, the first
403 picture shows the trees after the arborist was called and worked on the trees. The
404 second set is after the arborist, before the arborist actually worked on the trees. But,
405 once he worked on the trees, he suggested to us that the steps not be put in at all. The
406 steps would fit, but if we dig the trenches for the steps as well as put the foundation and
407 support the steps, he was afraid it would damage the trees, and the trunks of those
408 trees where they go into the ground, they're intertwined, if you will, and he was afraid if
409 we damaged one, we could, in fact, damage all three trees, causing them all to come
410 down, and/or rot out over time. So, we came up with plan B, and that was, was to come
411 with the steps coming down the front side of the house. You'll notice in there in the
412 hand out there's a plat that actually shows the steps coming into the setback. They're a

413 little over seven and a half feet coming in, into the setback itself. Additionally, you
414 should know to make it work, before, before we even got the arborist in we moved the
415 house nine feet to the south side of the lot. So, the north side of the lot is, the house is
416 sitting almost 14 feet off that north side of the lot. We moved it nine feet at the south
417 side so that we've got a five foot setback on the south side; almost 14 feet on the north
418 side, but again, he was concerned that if we had disturbed those trees in any way it
419 might kill them. Our neighbor to the north side was very emphatic that she wanted to
420 save the trees also, as have all the other neighbors in the neighborhood. So, with that
421 said, we redrew the plan for the steps to come out the front side of the house. They do
422 go seven and a half feet into the setback itself. We did, of course, get the engineer
423 involved, and we realized that we had this setback problem. We did go back to the
424 town staff and I will tell you that they've been very supportive with us in this endeavor. If
425 approved, what we feel we would have would be a minimal impact on the setback itself,
426 again being seven and half feet. The trees obviously would be saved. Additionally,
427 we'll have to work with the town on the stormwater plan for the north side, because
428 again the arborist wants us to be very careful that we don't disturb the trees again in any
429 way, so that's another thing that will have to be resolved. The neighbors, again, have
430 voiced their support to try and save the trees. The front steps would, again, provide
431 easy emergency egress and ingress. The house is a six bedroom house. It is in the
432 summer rentals zone. We feel it would provide the safest ingress and egress for people
433 to get in and out of the house. It really enhances the neighborhood in that the trees
434 would be saved. Finally, I would say that as far as your variance test is concerned, I
435 have studied that. Number one – the size, shape, and topography of the property-it is
436 unique with the trees there. It does require some additional planning on our part, of
437 course, to make the house work. We have moved it to the south side of the lot. The
438 encroachment would allow us, again, to save those trees. Unnecessary hardship – I
439 think it would be an unnecessary hardship on us to take the trees down, as well as the
440 neighbors in the, in the area, as well as the town, for that matter. It is a peculiar piece of
441 property in that the trees are located where they are, and finally, public detriment – I
442 think we all know the town of Surfside's gone out of its way to try and save these Live
443 Oaks, in, in the majority of the town and the efforts are made to do that, and we
444 certainly support that effort and that's what we've tried to do in this particular situation.”
445

446 Chairman Ott: “Thank you, very much. It was very complete. Does anybody on
447 the board have a question for Mr. Servant?”
448

449 Ms. Watson: “Mr. Servant, I, I have a question. It appears that the porch was
450 moved from the original plan entirely flipped to the other side. Why didn't you address
451 this whole situation with the steps when you had that redesign done, instead of having
452 to worry about where the steps are gonna go after the house is now built? I mean...”
453

454 Mr. Servant: “We a, that, that's an excellent question. When we were dealing
455 with the steps and we decided to move it the nine feet to the south side, it changed
456 where the pool would be on the back side, and aesthetically, the pool would not fit as
457 well. So to try and save the trees, we flip flopped the plan. That was all part of moving
458 the house nine feet to the south side of the property. The pool would have butted up

459 against the neighbor's pool, and the pool deck, quite frankly, wouldn't have fit. We
460 would only have had five feet in the R-3 zone, you can build the pool to the setback line.
461 You can build the pool deck into the setback line. We would have had a five foot pool
462 deck on that south side of the lot. By flip flopping the plan, now we can build the pool to
463 the setback line, and have almost 14 feet to work with as far as pool deck, grass and
464 aesthetically making it much more appealing."
465

466 Chairman Ott: "Now, the 20 inch tree that, that's right on the property line, isn't
467 it? It belongs to both owners?"
468

469 Mr. Servant: "One is right on the property line, and the other two, but they really,
470 they're all joined together at the base, and if you interrupt one, by the arborist's opinion,
471 you probably could run a chance of (** two speaking at once.)"
472

473 Chairman Ott: "And the arborist said that the, all trees were healthy?"
474

475 Mr. Servant: "All trees are healthy. Now, he has come back with a
476 renourishment plan that, that we've got to adhere to also, because we have trimmed
477 them back."
478

479 Chairman Ott: "A question for Ms. Morris, if this variance was approved, of
480 course, to cut down these trees, there'd have to be another, another variance, right?
481 They wouldn't just be able to cut these trees down. They will be written into the
482 variance."
483

484 Ms. Morris: "That they have to leave the trees."
485

486 Chairman Ott: "They couldn't just cut 'em down."
487

488 Ms. Morris: "That's correct."
489

490 Mr. Servant: "Let me say one more thing that, and I know that this is not part of a
491 variance request, and really holds no water in your deliberations, but there are
492 numerous houses, including the adjacent house that actually the steps encroach in the
493 setback. In the two blocks, there are three homes that encroach into the setback, so
494 from a neighborhood appeal, this encroachment we've got will not stick out. It won't be
495 obvious. It will really blend in with the neighborhood, and again, allow those trees to be
496 saved. It's not something that's gonna be openly obvious to anyone driving down the
497 street that there's (**two speaking at once.)
498

499 Mr. Willm: "(** are these grandfathered in? The other ones you're speaking of?"
500

501 Mr. Servant: "That's correct, they were grandfathered in."
502

503 Mr. Willm: "(** on the paperwork side on the Section 17-26 for the guidelines.
504 Do we have, it says shall be removed, shall not be removed unless a licensed or ISA

505 certified arborists, South Carolina registered forester, landscaper certifies that one of
506 these four; do we have the certification? I'm not sure what you consider certification,
507 but we have?"

508
509 Ms. Morris: "We have a certified arborist saying that it's healthy, yes."

510
511 Mr. Willm: "We have that cert; you've got that in writing, I guess?"

512
513 Ms. Morris: "Yes, yes we do."

514
515 Mr. Willm: "Does that super, does that part of this ordinance supersede where
516 we need, we still need the four criteria for a variance?"

517
518 Ms. Morris: "Yes, it does."

519
520 Mr. Willm: "It supersedes so we don't even have to worry about the four
521 questions." (**two speaking at once)

522
523 Ms. Morris: "No, all you need to do, (**) if they meet the requirement, exactly."

524
525 Mr. Willm: "(**)" basically it's just kind of a rubber stamp. If they've done it, you
526 just need to bring it here and we say yes. We agree basically, because it's an
527 ordinance, we have to do this, but it has to presented and on paper here."

528
529 Ms. Morris: "That is correct, and by, if, if the board grants the variance, you're
530 telling Mr. Servant that yes, you can encroach in the setbacks, but you cannot cut those
531 trees, and he does have to maintain, which he certainly agreed to, because they do
532 want to save the trees."

533
534 Mr. Willm: "Actually, I think he did a very good job on the four criteria, but I just
535 wanted to make sure in case there was any question that we were not debating the four
536 criteria as that is superseded by the ordinance. The ordinance states for some reason
537 that it has to come here, and it seems like it would allow y'all to go ahead and do it. But,
538 since the ordinance does, you brought it here, we're all good."

539
540 Mr. Magliette: "You had said when you talked to the arborist that there was a
541 stormwater management or something that has to be done before the house is
542 completed to mitigate it. Is that you don't want the rainwater rushing into that area? Is it
543 gonna need gutters or some type of underground piping or what exactly were the
544 recommendations as far as stormwater?"

545
546 Mr. Servant: "No, in that area, because of the size of the, there's a stormwater
547 plan that has to be approved by town staff and it goes into the setbacks. There's plenty
548 of room to do it on the property, he's just, just saying be careful around the trees, and
549 it's just something that town staff, it will be designed by our engineer and approved by
550 staff."

551 Ms. Morris: "Right, and I was just gonna add, Mr. Magliette, that a lot of the
552 stormwater plans that we get submitted to us and approved have swales, which means
553 they would have to dig out the root, and obviously, we don't want that to happen,
554 because that would damage the tree. So, we'll work with him and his engineer to get a
555 new stormwater plan that meets the requirements.

556
557 Mr. Magliette: "Okay, thank you."

558
559 Mr. Servant: "It'll have to be mitigated to save those trees."

560
561 Mr. Lanham: "I want to make sure I understand this. You, you're, the north side
562 of your house is actually 14 feet from the line. Is that what you're saying?"

563
564 Mr. Servant: "It's 13.5, whatever. It's about that, I believe."

565
566 Ms. Morris: "Fourteen point five eight."

567
568 Mr. Servant: "It actually has a five foot setback. We moved it nine feet further
569 south to put the steps in, and the steps could go in there, but again, Sabrina said let's
570 call in an arborist and make sure that we're not gonna kill the trees. And, when the
571 arborist came in, he said, you know, cut down the trees or not, I think if we put those
572 steps in, you're gonna damage those trees, and odds are that they'll die."

573
574 Mr. Lanham: "The other question is, was there any thought of instead of bringing
575 steps straight out, bringing them down and to the sides?"

576
577 Mr. Servant: "Yes, and, and, and we can look at that, and, and we don't mind
578 looking at that. The problem is with the driveways where they are, you may get 'em
579 down and maybe have two steps or two risers, if you will, coming up from each side,
580 which may take it back two feet or so, but, you couldn't, couldn't keep it within the
581 setback. We'd have to have some encroachment into the setback, because if you just
582 brought it down to the setback and then brought it down north and south, it would go
583 into the driveway and you wouldn't be able to pull the cars in and out."

584
585 Mr. Lanham: "But you could get the cars in the other side."

586
587 Mr. Servant: "No, sir. That's swimming pool across the back."

588
589 Chairman Ott: "Make it into a diving platform." (*Laughter.*)

590
591 Mr. Lanham: "Just as a side here, that's really just one tree, isn't it? I mean, it
592 has nothing...I know there's three trees coming up, but I'll bet you if you get to the
593 bottom of it, it's one. But, that's nothing to do with this."

594
595 Mr. Servant: "Well, I'll tell you this, as far as the arborist is concerned, that's one
596 tree. You're correct."

597 Mr. Lanham: "But it has nothing to do with this situation."
598

599 Mr. Servant: "It looks like three trees to me, but I'm not an arborist. But, I think
600 you're correct. As far as he's concerned, that's one tree, and if you mess with the roots,
601 you're liable to kill the entire tree."
602

603 Mr. Lanham: "Yes."
604

605 Chairman Ott: "The board have any other questions? Mr. Servant?"
606

607 Ms. Watson: "I have a question for staff, but not for Mr. Servant."
608

609 Chairman Ott: "Okay, thank you very much. Is there anybody else here in the
610 public that would like to speak on this matter? While we're still in the public hearing
611 phase, I'd like to make a statement that the board needs to remember that the initial
612 variance is to move the, move the staircase, not actually, it's, the reason is the trees,
613 and in the last eight years I've been on this board we have moved whole house
614 structures on two different occasions to save trees, which was in my opinion
615 appropriate. So, at this time I will close the public hearing, and open the business
616 section. (*The public hearing was closed at 7:13 p.m.*) I'll ask the board for a motion on
617 this request."
618

619 Mr. Willm moved to approve the variance request based on Section 17-726,
620 Guidelines for removal of protected and/or specimen trees, paragraph (4) that states (4)
621 The tree presents a situation which prevents the development of a lot or the physical
622 use thereof for proposed development. The board of zoning appeals may grant a
623 variance to minimum yard setbacks to save specimen trees when feasible.
624

625 Ms. Watson seconded.
626

627 All voted in favor. **MOTION CARRIED.**
628

629 **7. BOARD COMMENTS.**

630 Ms. Watson asked how a house could be built without knowing how you would
631 get into it. What happened with this plan when the porch was moved, the tree situation
632 came up, the access into the house came up. Before the house was structurally
633 modified, why wasn't access into and out of the house addressed? Ms. Morris said staff
634 did address the issue before a permit was issued, because at the beginning of the
635 process a plat was submitted showing the steps near the tree. If the variance had been
636 denied, then he would have had to build the steps exactly as they were originally
637 planned. Staff recommended that the owner request a variance, which was why the
638 permit was issued. If the board had denied the variance, the owner would have to build
639 the stairs on the side with the Live Oaks, and cut down the trees.
640

641 Chairman Ott said the owner was within his right to cut down the trees. Ms.
642 Morris said absolutely.

643 Ms. Watson believed the town had a tree protection ordinance. Ms. Morris said it
644 does and it stated that if it affects the buildable area, which in this case it does, then the
645 owner has every right to cut the tree down. The owner was within his rights when the
646 steps were placed on the side. Staff asked him to reconsider to save the trees, to which
647 he agreed. The permit was issued with no stairs, and the owner knew the stair location
648 would depend on the variance approval.
649

650 Ms. Watson said there was no ingress if the steps were on the side. Mr. Servant
651 said that is the kitchen and an entry door could easily be added. Ms. Morris said that
652 could be done and there would be no stairs on the front. Ms. Watson wondered why
653 most steps were straight and not turned half way up, which made it easier for the
654 occupants. She asked if staff ever suggested that to builders. Ms. Morris said staff
655 does when there is a larger or wider structure. In this case, the house has six
656 bedrooms. Code requires one parking space per bedroom, so he is required to have six
657 parking spaces on the lot. If a stairway turns, it would be impossible to have space for
658 the six parking spaces. Ms. Watson asked if the steps on the right would have run into
659 the tree, if they were turned. Ms. Morris said no, they would have a stoop and go down.
660 It would have affected the two larger trees and then also the one at the bottom. Staff
661 did ask that Mr. Servant have patience and apply for the variance, to which he agreed.
662

663 Mr. Lanham said so the town actually told him the best thing to do was to apply
664 for a variance. Ms. Morris said staff requested that, and does so often, especially when
665 there are Live Oaks on the lot. Staff asks every developer or property owner to apply
666 for the variance. They do not always agree, and are not required to apply, but in this
667 case it worked out.
668

669 Mr. Magliette was very happy that the process worked and they were able to
670 save the Live Oaks, and he was also very pleased that he solicited feedback from the
671 neighbors and that the neighbors had said they wanted the trees saved. That means
672 that the process works, and we were able to save the Live Oaks and everybody came
673 out being very happy on this one. Mr. Magliette said a good job to the developer, and to
674 our staff, and to the board for being able to save the oak trees and to be able to make
675 everyone happy. It was a win for everyone.
676

677 Chairman Ott thanked Mr. Servant for going through the trouble to do this and
678 save the trees. He knew this was not free; there was cost involved to accomplish this.
679 The town of Surfside appreciates his efforts.
680

681 Mr. Servant said staff had been very good to work with on this issue, and have
682 afforded them all the knowledge needed. He said quite frankly, if they had not
683 requested that an arborist be contacted, they probably would not have gotten to where
684 they are today. That was an excellent suggestion on staff's part.
685

686 Mr. Lanham thought he heard that Mr. Servant could have legally cut the trees to
687 build the house, and he agreed with and supported the variance. He asked if anyone
688 was ever told they needed to build a smaller house or bring the house in. He was

689 questioning whether these plans were evaluated in advance. Ms. Morris said they were
690 evaluated in advance, and staff would be very happy to tell some of the builders they
691 needed to make the house smaller. But, the town code is very clear as to the specific
692 requirements for building. As long as the open space, pervious versus impervious, and
693 other requirements were met, staff was required to issue a permit. Staff encourages
694 everyone to save trees, because the town has beautiful Live Oaks and a list of
695 protected trees. Very seldom does anyone agree to seek the variance, because they
696 are in a hurry to build the home. Ms. Morris said a few weeks ago another contractor
697 was asked to seek a variance to save a larger Live Oak, and he refused. The tree was
698 removed because it was in the buildable area. Mr. Lanham reiterated that in this case,
699 he thought the board did the right thing, but he was not sure whether this was the way it
700 should be done, particularly when trees are not in the buildable area.

701
702 Mr. Willm said that was up to Town Council to decide as the council adopts the
703 codes. The setback used to be 20 feet and it was reduced to 5 feet to allow more
704 development in the district. He thanked Ms. Morris and Mr. Servant for taking the extra
705 steps to save the trees.

706
707 **8. ADJOURNMENT.**

708
709 Mr. Willm moved to adjourn at 7:23 p.m. Ms. Watson seconded. All voted in
710 favor. **MOTION CARRIED.**

711
712 Prepared and submitted by,

713
714 _____
715 Debra E. Herrmann, CMC, Town Clerk

716
717 Approved: _____

718
719 _____
720 Ron Ott, Chairman

721
722 _____
723 Darrell Willm, Vice Chairman

724
725 _____
726 Blake Davis, Board Member

727
728 _____
729 Terri Lauer, Board Member

730
731 _____
732 Guy Lanham, Board Member

733
734 _____
735 Ralph Magliette, Board Member

736
737 _____
738 Holly Watson, Board Member

739
740 Note: Be advised that these minutes represent a summary of items with a verbatim transcript of the hearing section insofar as can
741 be determined by the recording thereof of the board of zoning appeals and are not intended to represent a full transcript of the
742 meeting. The recording of the meetings is available upon request, to be heard in the office of the secretary to the board. An agenda
743 of this meeting was made available to persons, organizations and local news media. The agenda gives the date, time and place of
744 the meeting as well as the order of business. This disclosure is in compliance with the SC Code of Laws 1976, §30-4-80(e).