



**BOARD OF ZONING APPEALS MEETING MINUTES
TOWN OF SURFSIDE BEACH
TOWN COUNCIL CHAMBERS
APRIL 28, 2016 ♦ 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. Members present:
8 Chairman Ott, Vice-Chairman Willm, and members Courtney, Lanham, and Watson. Members Lauer and
9 Murdock were absent. A quorum was present. Others present: Administrator Fellner; Town Clerk
10 Herrmann; Building, Planning & Zoning Director Morris; Building Official Farria, and Executive Assistant
11 Ann Messall.

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

14
15 **3. AGENDA APPROVAL.** Mr. Willm moved to approve the agenda. Mr. Courtney second. All
16 voted in favor. **MOTION CARRIED.**

17
18 **4. MINUTES APPROVAL.** Ms. Watson moved to approve the March 29, 2016 minutes as
19 approved. Mr. Courtney second. All voted in favor. **MOTION CARRIED.**

20
21 **5. BUSINESS.** (*This portion verbatim.*)

22
23 **A. Appeal No. ZA2016-02(a) Troy Berry request a variance from Section 17-321 Maximum**
24 **Building Height in the R-2 Zoning District for property located at 319 15th Avenue South.**

25
26 **i. Hearing.** Chairman Ott: At this time, I'll open up the hearing for Appeal Number ZA2016-02,
27 Mr. Troy Berry request a variance from Section 17-321 maximum building height in the R2 district for a
28 property located at 319 15th Avenue South. And, I'll ask the applicant, Mr. Berry, would you please, or a
29 representative, please approach the microphone. I'm gonna ask you to put your hand on the Bible, and
30 raise your right hand. Okay, do you swear to tell the truth, the whole truth, and nothing but the truth, so
31 help you, God? Mr. Berry: Yes, sir. I do. Chairman Ott: Thank you, and please state your name and
32 address for the record. Mr. Berry: I am Troy Berry, and I have a family home and I'm down here quite
33 often in Surfside at 16th Avenue South. It's 6-1-2 16th Avenue South is my home here in Surfside.
34 Chairman Ott: And, at this time you can explain to the Board of Zoning Appeals why you need this
35 variance.

36
37 **a. Appellant Recitals.** Mr. Berry: This variance, you'll see two items on the variance form.
38 What you see in blue, for your records, I guess, was what was added on April the 1st, regarding the bath,
39 the utility room bath on the lower level of the home. The original variance form was submitted back in
40 February, which has everything typed in, which is for the second item we'll be discussing tonight. But
41 what this is, is regarding a, two homes. A Unit A and a Unit B on the lot at 319, excuse me, yeah, 319
42 15th Avenue South is the site location, and this would be a 2,100 square foot raised beach home. This is
43 already contracted with the clients. The contract's been signed to build. I am the owner of the lot, and I
44 am the builder. I am a local custom home builder. I build in Columbia, South Carolina, and I build here in
45 Surfside, and would love to, desire to build a lot more in Surfside. I built 48 custom homes over the past
46 14 years, and I am a former engineer. I have 14 years in the engineering profession as a civil engineer.
47 So, this home is gonna be 2,100 square feet. A main level floor, and a second floor level, 4-bedroom
48 home. On the lower level, there is a utility room area, patio, utility room area time you come in from the
49 carport area, a 2-car carport up under the raised home, and then there's a storage area at the back of the
50 house. I think, yeah, [Ms. Morris] is showing you the floor plan of the house now. I'll just, if I may step
51 over here, (approaching projector screen) I'd like to show you something. So, this is the lower level of the
52 house. This is the main living area, the second floor level, and this is the area we're talking about on the
53 lower level. This area will be elevated up 12-inches. I do all my homes anywhere around this area in the
54 City of Myrtle Beach, Horry County. Always raise it up 12-inches from the existing grade. This lower floor
55 level plan you see here will be elevated up 12-inches. This here is the utility room area, the patio area,
56 and this is the storage area in the back. This here is an enclosed garage area for yard tools and a golf

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57 cart. This is the clients' home. We spent about five weeks with the clients. These are clients from
58 Charlotte. They recently sold their home on 15th Avenue South, 309, I forget their address, but it's five
59 homes down. They've been residents here for eight years in Surfside, and they're from Charlotte and
60 they come down here probably four months out the entire year, and this is gonna be their retirement
61 home in about ten years. This is what the clients have designed, which is gonna be Unit A, and I'm
62 gonna be building Unit B, hopefully, the same plan, the exact same plan. But, what's in question is the
63 utility room area bath. Can all y'all hear me okay over there? So the utility room area, which I circled on
64 the lower level is what's in question and that's what's noted on the application is the item we're discussing
65 right now. What this does, if, the clients must have this utility room bath. We've discussed it for four or
66 five weeks, and that's why I'm before you now. The clients requested back in March and said we're just
67 not gonna build a home, if we cannot have that lower level utility room bath for many reasons. One, when
68 they come back from the beach, they desire to jump in a shower for five or ten minutes and clean up and
69 the second reason is, is his dad, this is Brian and Ann Patterson. They used to live here in Surfside.
70 They sold their home two months ago on the same street, 15th Avenue South, and they're moving to this
71 lot here, about five lots away from their existing home they have. So, Brian and Ann Patterson is [sic] the
72 clients. Like I said, I'm the owner of the lot and I'm the builder for them also. But, they have said they
73 must have this lower level utility bath or they just won't build the home, and they won't be residents of
74 Surfside anymore. So this creates effectively with this new 3-foot high elevation, it prohibits this bath from
75 being in there. As the kind of general, vague Section, whatever it is, 14, I'm trying to find that zoning
76 ordinance to spell it out for you. Section 14-19, which went into effect about four or five months ago, I
77 believe. Is that correct, [Ms. Morris?]

78
79 Ms. Morris: No, 2014.

80
81 Mr. Berry: But it was just started being forced [sic?]

82
83 Ms. Morris: 2014.

84
85 Mr. Berry: Okay. This was regarding 3-foot high. So, effectively, we cannot build a home, if we
86 don't have this lower bath. The second reason I was gonna mention is that Brian Patterson's dad, he
87 comes down probably six to eight times out the year with them and stays for a good week at a time. Not
88 to get into too many details, but he frequently has to use the restroom. He doesn't want to have to climb
89 up steps. He's 78 years old; it's his dad. He doesn't want to have to climb up the steps to the main level
90 to use the restroom all the time, so that's why must have this utility restroom on the lower level. So,
91 effectively, it prevents me from building this home for the clients, and with this existing ordinance the way
92 it is vaguely written. I will state that the ordinance does not say anything in there about not having a utility
93 room bath. It talks about mechanical equipment, heating and air, hot water heaters. Things like that must
94 be elevated up 3-foot. The final point I'll make regarding this lower level area is this is gonna all be
95 unfinished, unfinished area. It's not part of the building permit. It's never been part of the building permit
96 application. Everybody in that office knows and it's documented on the permit and through emails
97 officially, also, that this is an unheated area; unfinished area. There's no heating and cooling. The main
98 home is 2,000 square feet: 1,000 square feet on the first level, 1,000 square feet on the second floor
99 level. This area down here is like a propo [sic;] what they desire is to have like a 100 square feet area for
100 a 2,100 square foot total with this utility room bath. So this is not a living area. It's not a habitable living
101 area. It's the utility room patio area and then the storage area at the back. So, that's what we're up
102 against here now, is the 3-foot high requirement for this utility room bath. I will pause and address any
103 questions you simply have regarding that from my, so I can clarify anything you have regarding this issue.
104 What I am requesting is approval from this committee tonight that this lower level utility room bath be
105 approved.

106
107 Chairman Ott: Mr. Berry, thank you. Do you have any more?

108
109 Mr. Berry: Unless there's additional discussion from [Ms. Morris.]

110
111 Chairman Ott: I'll go ahead and give the town time to present their case. Thank you.
112

113 Mr. Berry: Do you want me to sit down?
114

115 Chairman Ott: Oh, I'm gonna let you have a rebuttal. Grab a seat; you're coming back.
116

117 Mr. Courtney: You can have a seat.
118

119 Chairman Ott: Ms. Morris, would you please raise your hand? Do you swear to tell the truth, the
120 whole truth, and nothing but the truth so help you, God? Ms. Morris: I do. Please state your name and
121 your job.
122

123 **b. Staff Recitals.**
124

125 Ms. Morris: Sabrina Morris, planning, building, and zoning director for the town. Actually, this,
126 this is the plan that was presented to the town. In the beginning where you see the word storage and it's
127 circled, the plan say den. We notified the, Mr. Berry that he could only have storage underneath,
128 because of the 3-foot requirement. He did change that, and marked it out and put storage. So, that will
129 remain storage. Our only problem is the bathroom. Any, if, parking and storage below is not considered
130 a floor. Anything that you can occupy, and he said the, you know, they may want to shower, well, if you
131 put an outside shower or even underneath the carport, just a shower, those are exempt from FEMA
132 requirements. When you start putting a toilet and a bath and then we're getting into you have to elevate
133 them in 3 feet. That ordinance has been in effect. Council approved it November of 2104. I'm sure some
134 of you, most of you, if not all, have seen all around town that's exactly what they're building now; 3 feet
135 about highest adjacent grade. Our only problem is the bathroom, and before the ordinance came into
136 effect, he did have a 34 feet 5-inch home, which would have met, which would have met the height
137 requirement. But, when you elevate it 3 feet, he's going to have to either lose the bathroom and he would
138 still remain the 34.5, which would meet the requirements or he keeps the bathroom and you're gonna
139 have to grant a variance of 3 feet. If you have any questions, I'll be glad to answer them.
140

141 Chairman Ott: Thank you. Mr. Berry, you have a rebuttal?
142

143 Mr. Berry: (***speaking as he approached microphone.*) One thing [Ms. Morris] noted is the
144 architect, I've been working with these clients about five months, since December of last year. But the
145 architect is from Columbia who does a lot of my custom home plans. Where he had den that was just his
146 architectural notation. I never did think anything of it, but it has been changed. It's no longer officially a
147 den area. It's a storage area, and that's what the clients is [sic] clearly doing. So what's in question
148 again is the front area utility room bath, time you come through the carport area, the open carport area.
149 As I stated before, the clients must have this here or they're not gonna build the home period. That's
150 been made very clear to me in about the past three weeks and that's why I'm here now. That's why on
151 behalf of the clients five weeks ago I said I will handle this and work with Surfside to get this variance
152 approved for the utility room bath. The number two item that [Ms. Morris] mentioned is regarding FEMA.
153 That's kind of where I'm a little concerned here about where the town is with this new ordinance Section
154 14-19, is this a FEMA requirement or is this a town of Surfside new ordinance that they put in effect
155 requirement? Is this a Surfside ordinance requirement or is this something that FEMA is mandating?
156 This area is completely out of the special flood hazard area. It's well out of the area. The old flood zone
157 area from 2003, the new special flood zone area from FEMA maps, it's well out of there. This area is
158 elevated up 14 feet high. (****) ...see that and that's the case here too on the survey, if you want to. On
159 the official site survey it's between 13.5 and 14 feet is the existing elevation, 14 feet above sea level is
160 where this home is, and I'm gonna elevate up one foot above that from the existing grade. So I'm gonna
161 be at a 15-foot high elevation. My concern is with this ordinance is, like I said, this is, total area,
162 everything downstairs, utility room area and all this is unfinished living. Unfinished area. It's unheated,
163 not cooled, so it's not a habitable living area. Many homes have utility area baths or whatever. So, it's
164 not like this is a main living area at home that someone is gonna be occupying 24-hours a day. But,
165 getting back to that point, is this a Surfside ordinance that was put into effect a year or two ago or is this a
166 FEMA requirement? The owners have stated clearly with me and I'm stating, as I swore on the Bible, I'm
167 stating the facts from them. They've said if we have an issue regarding insurance or something, we can
168 purchase flood insurance. We just had a 1,000 year flood in Columbia where I live at and in Surfside

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169 also, there was no water nowhere near this site location from the flood back in October five or six months
170 ago, October of 2015. So, we had a 1,000 year record flood. This ordinance is stating a 100 year flood
171 and a 500 year flood, so we just had a 1,000 year flood zone [sic.] There were no issues nowhere around
172 this site [sic.] So we do have precedence there, and this is coming from Governor Nicki Haley, [who] said
173 we just went through a 1,000 year flood as documented by FEMA. So, it's no water issue. The clients
174 have stated if they want to have flood insurance, they can purchase that. But, what this town is imposing
175 upon them is a town ordinance, okay, we've got to elevate this whole house up, the whole lower level, this
176 whole patio room area, because you can't elevate just one section of the lower level house. You have to
177 elevate this bath up 3-foot. You have to elevate the whole house up. And, that's gonna add an additional
178 \$8 to \$9 thousand in building cost due to all the footing, the foundation block, all the fill work, et cetera, et
179 cetera. So, this is not a FEMA mandated requirement of 3-foot high. This is something of the ordinance
180 of the town of Surfside, Section 14-19. The final point, I'll just reiterate the existing site survey as it round,
181 it's around 14-foot high in elevation above sea level. So, I don't understand what the issue is with the
182 utility room bath and why we would have to elevate the whole lower level up 3-foot high to have this lower
183 level bath for the clients and then effectively violate another ordinance, which states you can only have
184 35-foot in height. That's the only points I have right now. Any questions you may have for me, I'm willing
185 (**.)

186
187 Chairman Ott: We will open the floor for questions in a moment. Thank you, Mr. Berry. At this
188 time, I'll open the floor to any other person in the audience that would like to speak for or against this
189 variance. Please approach the microphone. Would you please, right, yes. Do you swear to tell the truth,
190 whole truth, nothing but the truth so help you, God? Ms. Burgess: Yes. Chairman Ott: State your name
191 [and] address for the record. Ms. Burgess: Wanda Burgess, 311 15th Avenue South.

192
193 Ms. Burgess: I'm here, I'm curious about a couple things about this. One is the height of this
194 property that he's proposing, and I've also heard that he's planning on putting two on this particular lot. Is
195 that correct?

196
197 Chairman Ott: [Ms. Burgess], you can't speak to; just speak to us. Thank you.

198
199 Ms. Burgess: But, he's being allowed to put two residences on this one lot?

200
201 Chairman Ott: I believe there is a, I do have a picture with two.

202
203 Mr. Courtney: I'm sorry, Ms. Morris, could you clarify that please.

204
205 Ms. Morris: Yes, I could. It's zoned R2. It allows for one residence only. He has applied for a
206 change of, into the R2 zoning district that would allow the R, the two properties on one lot. That meeting
207 is going to be Tuesday night at six o'clock here at the planning commission.

208
209 Ms. Burgess: I can't make that meeting. But, this is a residential area with single family homes
210 mostly. We've got enough of the cracker box stuff from Lakeside to the beach and all along the beach
211 and I think it's sufficient that we don't need to start making the residential area look like a commercial
212 area. I don't think the height requirements need to be changed for one individual nor do I think we need
213 to have two houses on one lot. Now, that's just my personal opinion.

214
215 Chairman Ott: Thank you, [Ms. Burgess.] Is there anybody else at this time that would like to
216 speak? That all? Thank you, sir. Mr. Goddard: My name is Bill Goddard. Chairman Ott: I need, yeah, I
217 need to swear you in. Do you swear to tell the truth, whole truth, nothing but the truth so help you, God?
218 Mr. Goddard: Amen. Chairman Ott: Please state your name, your name and address.

219
220 Mr. Goddard: Bill Goddard, 320 15th Avenue South. We live across the street from this lot, and I
221 don't know the gentleman. I've never met him. But, I will say this. He came in and cleared everything off
222 that lot. There's not a blade of grass on there. He came in, we've seen him two different nights after
223 dark, look, looked to us like he might have been fooling with his boundary stakes. Now, I'm not making
224 accusations, but it just looked that way. The other thing is they posted a sign on the lot saying there was

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225 a hearing tonight about it. The sign disappeared. Now, why would somebody take the sign off the lot,
226 unless they wanted nobody to show up? I don't know. Again, I'm not making accusations. I'm just
227 making observations. If I was you guys, I would watch him like a hawk, and if I was me on the board right
228 there, I would not grant this variance. Thank you.

229
230 Chairman Ott: Thank you, Mr. Goddard. Is there anybody else that would like to speak? Yes,
231 sir. Your, raise your right hand, please, and do you swear to tell the truth, the whole truth and nothing but
232 the truth, so help you, God? Mr. O'Hagan: I will.

233
234 Mr. O'Hagan: My name is John O'Hagan. I live next door to the property that is in question. I
235 have the same concerns as Mr. Goddard. There seems to be some kind of discrepancies with the
236 boundary lines of the property lines. There's, there was a surveyor's stakes there, but then there's also
237 white stakes there that are outside of the survey stakes, which are at least a foot on our, my side, and my
238 neighbor Jim, and also on my neighbor Debbie, which I think there's another stake another three inches
239 on that side. We just don't know why that is like that. Plus, I know that is whatever the zoning law is for
240 setbacks for, you know, adjoining properties, I just hope that that law will be enforced when it comes time
241 for this. Thank you.

242
243 Chairman Ott: Thank you very much. Anyone else? Okay, Mr. Berry, would you like a, and if
244 you would please, would you address that you did, you're still under oath, did you, was, were these
245 boundary stakes moved at all? Mr. Berry: No, sir. Chairman Ott: Thank you.

246
247 Mr. Berry: I will be glad to clearly answer (**). First item from, I guess, all three people that
248 spoke here. We're talking specifically about this utility room bath. I don't know if they were so opposed to
249 the utility room bath or some other issues outside of this zoning board here tonight, because a lot of this
250 stuff that's been discussed is, you know, not items of the zoning board. (*Facing audience*) There is a
251 planning commission meeting next Tuesday night at six o'clock and I would encourage y'all to come.
252 Next Tuesday night.

253
254 Chairman Ott: Mr. Berry, you have to speak to the board of zoning appeals, please. Thank you.

255
256 Mr. Berry: But, the issue regarding the sign. I was down there officially on business Wednesday,
257 Thursday, and Friday of last week and the sign was never present on the lot then. My mother, like I say,
258 we have a family house at 612 16th Avenue South. We've had it 13 years down here, and I built that
259 home myself 13 years ago. My mother was riding around on the golf cart on Monday and said she
260 noticed the sign they put on the lot on Monday. So, the sign just appeared on the lot on Monday. I was
261 down here Wednesday, Thursday and Friday of last week and there was no sign on the lot. I don't know
262 where the sign went. Was there ever a sign there before? I can swear under oath.

263
264 Chairman Ott: You are, you are under oath.

265
266 Mr. Berry: (**) I did not remove any sign, whatsoever. I don't know anything about a sign. The
267 second point is regarding some white pipes. I did, and I met one of my neighbors here last Thursday
268 evening when I was staking out the proposed home, I put white pipes on the home [sic] where the lot is.
269 There was another white pipe I stuck in the ground; it's not a survey thing, it's just a white PVC pipe that
270 would be more addressed in the second item we're gonna talk about here tonight, not regarding this utility
271 room bath. But, that pipe is just a reference pipe to pull a string off of from there to the back line, but we'll
272 address that issue later. That is not a survey pin. It's not anything documented on any survey. That's
273 just a white pipe that I put in the ground last Thursday evening at seven o'clock. It is not a survey iron,
274 and it's not part of any survey, and we'll be talking about the survey here for the next item on the agenda.
275 But, getting back to the utility room bath, another final point I'll make here is, is that I've been a builder for
276 14 years, a custom homebuilder. I'm not a production homebuilder. I'm not a tract home builder. I only
277 build quality homes. As my sign says that's been on the lot for six years that I've owned the lot, Carolina
278 Quality Homes. It's my personal reputation and my personal pride that goes in every home I build. The
279 point regarding this 3-foot high elevation just for a utility room bath, which is not stated nowhere in
280 Section 14-19 that a lower level bath, it don't say anything about a bath or anything like that, so it's not

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281 violating any ordinance right now, because the ordinance doesn't specify any of that. If you desire not to
282 have a utility room lower level bath, I would encourage you to amend your ordinance and add that to the
283 ordinance to make that clear. You stated many other items, but you haven't stated anything about a utility
284 room lower bath. So, you do have that option to amend your existing ordinance or whoever created this
285 ordinance, whether it was your committee or planning commission, committee. I don't know who created
286 this ordinance. But, the point I want to make is if you go up 3-foot high, you've gotta have a minimum of
287 five steps. You've got to have five steps to get up into 36-inches high off the ground. Like I said, this
288 man is in a wheelchair. Brian Patterson, his dad that comes down six to eight times out the year and
289 stays for a week with them when they are down here. If I had to have a ramp going up into, just for him to
290 get into the utility room bath, I would have to have a ramp 21 feet long. That's part of the IRC,
291 International Residential Building Code. For 3-foot high, if you do the calculations, I have to have a ramp
292 that's 21-foot long to get up there to meet ADA requirements, disability requirements. So, we've got
293 many issues regarding this 3-foot high elevation just for the convenience of a lower level utility room bath
294 for the clients. I do encourage this committee to take a position here. If you were standing here on this
295 side and this was your home you was wanting to build, or you had a handicapped parent, what would
296 your viewpoint be? Would this be a major concern to you and would you be appealing this issue? I
297 would just leave it as that. Put yourself in my position. Put yourself in the clients' position. They have
298 clearly said they will not build this home period, and they will no longer be residents of the town of
299 Surfside. They've resided here for eight years. Like I've stated, final point, is this section states nothing
300 about a utility room bath being in violation of the ordinance. I think I made my case clear and I do request
301 approval for the utility room bath without the 3-foot high elevation. Thank you.
302

303 Chairman Ott: Before I close the hearing, I'm gonna make a statement as to why we swear
304 everybody in, a little explanation. This is a quasi-judicial board, and the results that happen here will, the
305 next step is the South Carolina Appeals Court. They don't go to Town Council or anywhere else. We are
306 tied in by the South Carolina Constitution to give a variance only when those four questions are answered
307 and that was those four questions that you a, in the variance form. They come from the South Carolina
308 Constitution. They are not made up by anybody in the neighborhood or anything. And in fact, those
309 same questions are answered exactly the same in many other states in the Union. Stating that, I'm
310 gonna close the hearing. Would you like one more? Yes, please Mr. Berry.
311

312 Mr. Berry: Just one point on that since you brought it up regarding the four questions.
313

314 Chairman Ott: They're very important to us.
315

316 Mr. Berry: I think I addressed two of 'em very clearly. But, if I need to go through all four for the
317 record and make sure I'm clear.
318

319 Chairman Ott: You're right, sir.
320

321 Mr. Berry: Section, Section 1, since you addressed the item, there is some extraordinary
322 situation that prevents this utility room bath, that's Section A. I'm just paraphrasing, but you, you know
323 the facts, so. This is an extraordinary situation. I would like to have the question answered, was this a
324 FEMA mandated requirement that everything in the town of Surfside be elevated up 3-foot high for any
325 additions, remodeling, or new homes? Was it a FEMA requirement to require this here? Can someone
326 answer that question?
327

328 Chairman Ott: And I can answer, I'll do that at this time in the hearing section or I could do it,
329 we're gonna do a Q&A in a minute. I'm gonna open the board, and the board will speaking to you. We
330 give you your rights to speak and we don't say anything. Except, something like this, I can say a couple
331 of words. Ms. Morris, would you like to answer that question at this time about the FEMA or an exact
332 ordinance.
333

334 Ms. Morris: Yes, I certainly would. Section 14-19, areas outside the flood zone, that is not a
335 FEMA mandated requirement, although FEMA did recommend that we put a height elevation so we
336 would not have slab on grades, because we're not just looking at ocean waters coming in, we're also

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337 looking at stormwater coming in from Horry County, and I will also say we, we did not have the 1,000 year
338 flood. Other areas of the state did. We had, and we asked FEMA two weeks ago, they said this could
339 have been a 100 year flood in areas, some of it was 500 year flood. The 1,000 year flood was on the
340 Black River and the Pee Dee Rivers, which they're still suffering. But, to go a little further, FEMA has
341 used our ordinance, because, for sustainability, we're, we're just here and we wrote the ordinance and
342 council approved it to protect property, properties in the town, and I'm sure you all can understand at the
343 last flood, even though it was not the 1,000 year flood, we were the only municipality in the area that did
344 not get flooded in the homes.

345
346 Chairman Ott: Okay, thank you very much. You may have rebuttal, again. I'll give you as much
347 time as necessary.

348
349 Mr. Berry: I was going through the four points of the variance, which I want to make sure I get
350 clear for the record on that to satisfy everybody's needs on this board; adjust and reiterate what [Ms.
351 Morris] stated and she can clarify if I misstate anything. This was a town ordinance to protect property.
352 Like these clients have said, if we want to protect our property, we can. We can get flood insurance or we
353 can personally elevate it up 1-foot high, 2-foot, 3-foot, 8-foot high. It's a personal choice of a individual,
354 but this is a town ordinance. This was not a FEMA required ordinance that we're talking about here
355 tonight. Like I said, stated, this is one of the highest areas of Surfside, 14 feet above sea level is where
356 this site is located at. There was many flooding in the Conway area, Socastee area, yes, this was a
357 1,000 year flood for the entire state as documented by Governor Nicki Haley. But, like I stated, there was
358 no water nowhere on this lot. I was down here three days after at our home on 16th Avenue South, and I
359 personally took pictures. It was completely dry. No water nowhere near the lot. So, just to state that this
360 is not a FEMA mandated requirement. It's just a town ordinance. On some of these town ordinances,
361 particularly this one here, this is where we get back into committees create these ordinances, particularly
362 this one here we're talking about, but then you're creating a burden on the residents and businesses.
363 Just like many businesses, I've heard from three businesses personally. They will not build in the town of
364 Surfside anymore, because they have to elevate their business up 3-foot high. A point I will make there
365 is, this covers all of the town of Surfside outside of the original 2003 flood zone area, which this area is
366 well out of the way on it, and I could show you the flood maps, and just for the record, I probably need to
367 do that, since we're talking about all these FEMA issues. I'm sure you're all aware of this and I'm sure it's
368 on the town website.

369
370 Chairman Ott: Yes, I am.

371
372 Mr. Berry: Ms. Herrmann can state that. What you see here in blue, this blue line, I'm just
373 showing to you and I'm turning around and showing to people behind me, was the original 2003 FEMA
374 flood zone area. This is the new, the red line is the FEMA, which moved closer to the ocean. So now
375 we're getting further away for the special flood hazard area, and y'all are pretty familiar with that. So, the
376 special flood hazard area is the red line, which is much closer to the ocean. This here is the site location
377 here where you see 15th Avenue South where this x is. Is there any question to that? Y'all can have a
378 copy of this to look at.

379
380 Chairman Ott: Yeah, we have it. We all have this.

381
382 Ms. Morris: Correction.

383
384 Chairman Ott: Okay.

385
386 Ms. Morris: The red line is not the new flood map line.

387
388 Mr. Berry: Proposed.

389
390 Ms. Morris: It is not the proposed.

391
392 Chairman Ott: Okay.

393
394 Ms. Morris: The white line, the dark line here that's the darkest one is the current flood zone in
395 the town.

396
397 Chairman Ott: Right.

398
399 Ms. Morris: The lighter grey area that goes all the way up here and comes down, that is the new
400 flood line. The red line is the LMWA line, which is the limit in moderate wave action line. Want to clear
401 that up. It is not the red line.

402
403 Chairman Ott: We're gonna clear this, and at this time I'm gonna, my board is ready for some
404 questions, and they're gonna be to Mr. Berry. At this time I'm gonna...

405
406 Mr. Berry: She made a point about the FEMA and I just want to clarify that.

407
408 Chairman Ott: Yes, and I, I...

409
410 Mr. Berry: It's just a town ordinance. This applies totally outside of the special flood hazard area.
411 So, this home is nowhere near the special flood hazard area. To close out my points that I was making to
412 get through the four items of the variance to make sure I cover the official record on them, just because I
413 don't potentially get the nod because I didn't cover all points here, this is an extraordinary issue. This is
414 just a recently new town ordinance. Not required by FEMA. So that covers Section A. This is an
415 extraordinary situation and this is just regarding a utility room bath that in a nonliving area of the home.
416 Item B, these conditions do not generally apply to other properties. Well, this doesn't apply to Horry
417 County and the town, City of Myrtle Beach. This is a local, town of Surfside recently new ordinance that
418 went into effect. So, this is conditions that don't apply to other areas surrounding the 2-mile section of
419 Surfside Beach. Item number C, because of these conditions the applicant of these ordinance and a
420 particular piece effectively to this property and talking about this particular piece of property would
421 effectively not allow the utilization of the property. As I have stated, if the clients don't have the utility
422 room bath, they're not going to pay an extra \$9,000 to elevate their home up 3-foot high, and then violate
423 a second ordinance regarding the 35-foot maximum height, which it would. So they must have the bath,
424 so this addresses item C. It effectively prohibits the building of this home for the clients, and the home for
425 me, Unit B, which is going to my home, my personal home, my family home. Right now I have a family
426 home. And item number D as you all know, does this affect any adjacent property owners anywhere
427 around the property owners. It's a utility room bath, if it's 12-inches off the ground or whether it's 3-foot
428 high, does this affect neighbors? I don't think a utility room bath affects neighbors. Does it impact the
429 town of Surfside? That's addressing item C, does it impact any adjacent neighbors or property owners or
430 does it impact the town in any way. This utility room bath does not impact the town of Surfside. So, I've
431 covered all four points. I request approval for the utility room bath at the standard 12-inch high raised
432 elevation for the lower level utility room area and the storage area.

433
434 Chairman Ott: Mr. Berry, thank you very much. At this time, I'm gonna close the hearing section
435 and open the business section, and I will take whoever would like to ask a question, if anybody would like
436 to ask a question.

437
438 **c. Q&A with Sworn Individuals.**

439
440 Mr. Willm said the variance criteria does not dictate that we follow FEMA's rules. This is a town
441 ordinance that Mr. Berry was requesting a variance form, and he wanted to make it clear that flood zone
442 had no relevance in regard to the bathroom. Mr. Berry said his point was that Ms. Morris stated this was
443 a FEMA mandated requirement only in the special flood zone area; it is a recommendation outside of the
444 special flood hazard area. Mr. Willm said the town utilized that to create this ordinance, so we are not
445 here to debate what the town does as far as the ordinance. This board is to address the variance. The
446 discussion about whether you like the ordinance or not should go to the planning commission and Town
447 Council. The board is here to consider the bathroom and the four points. Mr. Berry said correct, and
448 asked if the bathroom violated the existing ordinance as it was written in Section 14-19. Mr. Willm said

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449 the section states all mechanical and electrical equipment. Mr. Berry argued that a bathroom is not a
450 mechanical system; it is a plumbing system and is not, in his opinion, in violation of the ordinance.
451 Mr. Willm said he had a different interpretation.
452

453 Mr. Lanham agreed with Mr. Willm that this board was not to debate the ordinance. He asked
454 what would be in the utility room, a toilet or what. Mr. Berry said a standard full bath, a shower, a toilet,
455 and a 36-inch vanity in an 8-foot by 6-foot area. Mr. Lanham asked if this gentleman had to have a
456 downstairs bath, how would he use the rest of the house. Mr. Berry said he can go upstairs using other
457 means; they will have to put a lift going up. Mr. Patterson's father has ADA related health issues and he
458 believed it was unreasonable to require him to go up and down stairs several times a day to use the
459 bathroom.
460

461 Chairman Ott said there was no lift in the plan. Mr. Berry said correct, there is no lift. He was
462 talking about a rail lift on the staircase. Chairman Ott asked what would happen if it was not approved.
463 That could be another variance matter. Mr. Courtney agreed that a stair lift could create another
464 variance. Mr. Berry said that did not affect this committee, because they should base their facts on
465 what's here for the variance. Chairman Ott explained this board considers why the house could not just
466 be built and why a variance was needed; why there is a hardship is the main question. Mr. Berry replied
467 that the hardship was ADA, and because it was not in violation of the code. Chairman Ott said the board
468 is trying to help him prove the hardship. Mr. Berry replied the hardship was the addition \$9,000 cost to
469 the clients to elevate up 3-foot. Chairman Ott said the Constitution states that money cannot enter into
470 the equation. Mr. Berry agreed with that. But, Mr. Patterson is disabled.
471

472 Mr. Courtney said the lot had been cleared; was a floor plan submitted before clearing? Ms.
473 Morris said a permit was never issued to clear the lot, and they were not informed that it was going to be
474 cleared. Mr. Courtney asked Mr. Berry to inform the board about this. Mr. Berry said he had been
475 working with the town of Surfside and Ms. Morris's office since the third week of January. This has been
476 going on since around January the 21st. The building permit was officially issued for this one unit, Unit A,
477 was officially issued on March the 10th in the building permit package. The lot goes under the building
478 permit issue. The lot was cleared due to a building permit. If you have a building permit on the record,
479 then the lot can be cleared. That is a totally separate issue. It's not part of a variance issue and not part
480 of what this committee was to consider.
481

482 Ms. Morris said Mr. Berry applied for a permit March 10th. We are still holding the permit. There
483 is no permit that has been issued. The ordinance for landscaping very clearly states you have to have a
484 building permit before any land clearing. So, we will certainly be addressing that before a permit is
485 issued. Chairman Ott said that was a separate issue. Mr. Berry said it is a separate issue, but the
486 required number of trees were left on the lot. But, the commission was straying from the facts of what
487 was to be considered.
488

489 Mr. Lanham said the board was getting away from the issue, which is the toilet.
490

491 Chairman Ott said the survey was of concern, because of the statements made that stakes were
492 moved the board would address that.
493

494 Mr. Lanham said the board hears many variance requests. The request must pass all four
495 criteria. Sometimes it is subjective as to whether the criteria are met. Number 1 is extraordinary and
496 exceptional conditions, then it states "is impossible for the applicant's land to yield a reasonable return
497 without a variance." He did not see where this was an extraordinary case and said Mr. Berry may not be
498 able to build this house exactly like he wants, but there were many other home styles that could be built
499 on this property.
500

501 Mr. Berry did not understand Mr. Lanham's point, so Chairman Ott explained that Mr. Lanham
502 was seeking an answer to the question what are the extraordinary conditions that would not allow
503 anything to be done on that land. What hardship do you have that will not allow you to build a house
504 there? The problems appear to be self-inflicted. You are asking for something of your own.

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Mr. Berry said early the commission said that costs were not considered in extraordinary circumstances. If you don't have the utility room bath, then it affects the return on investment.

Mr. Lanham asked Mr. Berry if this house was not built, could another house be built with basically for same costs without having the ground floor toilet.

Mr. Courtney asked if an elevator could be added to this house. Mr. Berry said an elevator would not be allowed for the same reason as the utility room bath. Ms. Morris said that was not correct. Elevators were exempt from the 3-foot rule.

Ms. Watson said the home is 35 feet restricted height. There are three floors, and asked how tall each floor was. There was 11.33 feet per floor. She asked if that could be reduced to 9 or 8 feet. Mr. Berry said no, ma'am. There are two homes being built right now that well exceed 35 feet in height on Melody Lane at the corner of Lakeside, being built by Tyler Servant. They are four story homes. He asked if a variance was granted by this board. Chairman Ott said no. Ms. Watson said those homes were in a different zone, the R3 zone. Ms. Morris said those homes were in a different zoning district that allows heights of 55 feet. Mr. Berry noted those homes were only about 500 feet away from his property. Mr. Berry said the original plan has the home at 34.5 feet and proceeded to discuss in detail the various floor heights, roof pitch and his reasons why the bathroom could not be added without a variance, saying the ordinance cites mechanical and electrical must be 3 feet off the ground, and reiterated this was a plumbing issue.

Mr. Willm asked if the bathroom would have electricity. Mr. Berry said there would be a GFI outlet that would be 4 feet high. Mr. Willm said he interpreted the code as saying mechanical, electrical, air compressors, air conditioners, or pretty much anything of substance is to be raised off the ground. In his opinion, a bathroom was more obtrusive than any kind of mechanical or electrical related equipment. Mr. Will said that extraordinary and exceptional conditions pertaining to the property would be. The exception for height would apply to every other property in the R2 district if there was a request to build this house as Mr. Berry submitted it, nor was there anything extraordinary about the property.

Chairman Ott said without the toilet on the ground floor, Mr. Berry could build that house tomorrow. Mr. Lanham said that was right. Mr. Berry said if there was a meeting of the minds, and everything in life was about negotiations, discussions, and meeting of the minds, could a half bath be built. Mr. Courtney said this board does not negotiate.

Chairman Ott said the board keeps going over the four criteria because it is tied in by the Constitution of the State to answer those four questions to give him a variance. If a variance was granted, and somebody took you to the next court level, they could stop construction if the board denied another request based on the same criteria. Every applicant is treated the same at this level.

Mr. Willm said Mr. Berry's answer to the question that the conditions do not generally apply to other properties in the vicinity, he said the conditions did not apply in Horry County and City of Myrtle Beach. The reference is to properties in the town that neighbor the subject property. The statement that the ordinance did not have to be followed because the clients could buy insurance did not play into the board's decision. He did not believe the bathroom would impact the town. But item C that sates because of these conditions the application of the ordinance to the particular piece of property would effectively prohibit or restrict utilization of the property. Mr. Willm said in his opinion, any kind of house could be built; this house could be built without the bathroom. The code unreasonably restricts *what Mr. Berry wants to build*, but in his opinion, application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict utilization of the property does not apply. Mr. Willm said if Mr. Berry did not like how the town wrote its ordinances, he could appeal through the voting process to elect town councilmembers. If Mr. Berry is dissatisfied with the board's decision, he may appeal to Circuit Court, where the judge will review the board's verbatim minutes and make a ruling. The volunteers on the board try to do the best job they can for the town and its citizens to follow the code. The members

560 were not to debate whether an ordinance was proper. Board members consider the four questions, and
561 are trained extensively yearly on proper interpretation of the rules.
562

563 Ms. Watson asked the height of the bottom floor. Mr. Berry said 8 feet. Ms. Watson discussed
564 constructions options, including changing floor heights, installing an elevator or using a different style
565 roof. Mr. Berry said the roof could not be changed due to the 7:12 pitch required by code. He said Ms.
566 Watson was correct, the floor heights could be adjusted, but all the new homes have 9-foot ceiling in their
567 main living area. Making that change would create a hardship on him, and his clients. Mr. Berry said he
568 was talking about building two units, Unit A, and Unit B.
569

570 Mr. Willm took exception saying the board was not creating the hardship. The board was here to
571 hear his appeal and decide on the variance request.
572

573 Mr. Berry began reciting his variance requests again. Chairman Ott said ample time had been
574 allowed for Mr. Berry to address the board, and called for a motion.
575

576 Mr. Lanham moved to deny the variance. Mr. Courtney second. Chairman Ott said the reason
577 for the denial should be stated for the record. Mr. Lanham said the extraordinary and exceptional
578 conditions were not found. Chairman Ott said the board found no extraordinary and exceptional
579 conditions. Mr. Courtney agreed. All voted in favor to deny the variance. **MOTION TO DENY CARRIED.**
580

581 Chairman Ott said this appeal was closed.
582

583 **B. Appeal Number #ZA2016-02(b) Troy Berry request a variance from Section 17-320 Yard**
584 **Setbacks, specifically the side yard setback of 10' required in the R-2 Zoning District for property**
585 **at 319 15th Avenue South.**
586

587 **i. Hearing.** Chairman Ott cited the appeal request for a variance from Section 17-320 Yard
588 Setbacks, specifically the side yard setback of 10' required in the R-2 Zoning District for property at 319
589 15th Avenue South.
590

591 **a. Appellant Recitals.** Mr. Berry: I respectfully accept your decision that we just had regarding
592 the utility room bath. But, now, we've gotta get back to the original ordinance which is stated in blue
593 regarding a 38-foot high variance. We've gotta go back to the original appeal variance form regarding the
594 item we just addressed and now since you're requiring me to elevate it up 3-foot high to include the utility
595 room bath, which the clients must have, I am requesting a variance of 38-foot high in the height
596 requirement for the R2 zone. So, R2 zone requires 35 right now, I need to go up to 38-foot.
597

598
599 Ms. Morris: They, they just denied that.
600

601 Chairman Ott: Maybe I'm confused. I'm reading a different ordinance. I'm reading the side
602 setback change.
603

604 Ms. Morris: He, excuse me, if I could, he's asking you about the first variance, which you just
605 denied. No height variance of 38 feet.
606

607 Chairman Ott: While that, you'd have to schedule a different hearing for that one.
608

609 Ms. Morris: No, no. The very first one you just denied.
610

611 Chairman Ott: Right.
612

613 Mr. Berry: I got on here need a height variance of 38 feet.
614

615 Ms. Morris: I don't think he understands that you just denied it.

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Mr. Berry: You denied a utility room bath on the lower level without it being raised up 3-foot, is that correct?

Chairman Ott: And we don't make any other decision on that; you're not, no, you're not. The variance requested denied at that point now.

Mr. Berry: For the record, clarification, is it the utility room bath that's being denied and are you requiring me to elevate it up 3-foot high, if I want the utility room bath?

Chairman Ott: We didn't off, that was not a, the variance was denied.

Mr. Willm: Three foot.

Chairman Ott: And, I can read the variance.

Mr. Willm: You gave us the reason you needed the variance was for the 3-foot for the bathroom and we did not feel that that was a reasonable reason to give a variance. The variance that we [heard] as the Chairman read at the beginning of the thing, he requested a variance of 3-foot to allow the single family residence to be built on a height of 38 feet opposed to 35. That's what we just heard, and that's what we just voted on. The bathroom was the discussion.

Mr. Berry: I'm still a little confused and I guess we've gotta clear up the record for everyone here tonight and for further action, if it's needed, and for Ms. Herrmann. So, you denied the first variance. So, if I desire to put the utility room bath in, I must go up 3-foot high, is that correct?

Chairman Ott: That's correct.

Mr. Berry: So that gets back to my application here on the variance form its states (***two speaking at once*)...Section 2-8 I need a height variance.

Chairman Ott: That would bring you over the, that would bring you to 38-foot, sir, and that's what we've denied. We did not find an extraordinary condition that would allow us to grant you a variance of 3 feet to allow you to build that house at 38 feet. That was what the board members decided on that.

Mr. Berry: So I don't get an extra 2-foot in R-2 zone. So R2 zoning is at 35-foot high requirement. Now that you have a recently new ordinance in of about five to six months... (***two speaking at once*)

Chairman Ott: Again, I'll state, excuse me, sir. Again, I'll state that there was no extraordinary conditions found that would allow us according to those four questions to grant you a variance of the extra 3 feet. We cannot do that, because we have not been proven any hardship that you have according to those four questions.

Mr. Berry: (***two speaking at once*) It's a hardship (****) five steps and ramp of 21 feet long, and \$9,000 in construction cost.

Chairman Ott: (***two speaking at once*) And, let me again say that I closed that meeting. I'm sorry. You' can (***two speaking at once*) speak with the zoning director and she'll explain to you later on the decision, and we're gonna follow through and we're gonna go into the next variance. This is a side setback.

Mr. Berry: What you just mentioned about me going today (***two speaking at once.*)

Chairman Ott: Unless you want to a... (***two speaking at once.*)

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672 Mr. Berry: ... there's a communication issue there and I get no communication from her, the
673 director.

674 Chairman Ott: Well, you're getting; it was plain English. It was more than plain English.
675

676 Mr. Berry: If we can go back to my ... (***two speaking at once*) ... in blue, it says I need a height
677 variance of 38 feet.
678

679 Mr. Courtney: Mr. Chairman, (***two speaking at once*) can we close this discussion and move
680 on?
681

682 Chairman Ott: Excuse me?
683

684 Mr. Berry: Can we address the height variance of 38 feet? It's gonna be denied or not?
685

686 Mr. Lanham: Mr. Chairman, I make a motion that we close this hearing.
687

688 Chairman Ott: Would you like to make a motion?
689

690 Mr. Lanham: I make a motion that we close this part of this hearing and go to the next hearing.
691

692 Mr. Courtney: I'll second that motion.
693

694 Chairman Ott: Any discussion on this?
695

696 Mr. Berry: I'd like to make a point. Are we gonna address item two on here?
697

698 Chairman Ott: All in favor. *All voted in favor.* **MOTION CARRIED.** Gavel, that's it.
699

700 Mr. Willm: Now he wanted to go to the second item.
701

702 Chairman Ott: We, we did, I did close that and we did close the first one.
703

704 Mr. Berry: So, let's discuss item two now.
705

706 Chairman Ott: And, I opened the second one, and that was the side setback, and the applicant
707 asked for further explanation of (***two speaking at once*)
708

709 Mr. Berry: I asked for clarification of what you just ruled.
710

711 Chairman Ott: ... denied the exact variance that he requested.
712

713 Mr. Courtney: He's got two variances here. One for the setbacks. One for the height.
714

715 Mr. Berry: So we denied, I'm not gonna be allowed to have 2.5 extra feet in height for R2.
716

717 Chairman Ott: Yes, we did not approve the 38-foot, the additional 3-foot that you needed to build
718 the house.
719

720 Mr. Berry: Okay, thank you.
721

722 Chairman Ott: I thought it was clear what we were, that's what we were talking about from the
723 start of this an hour ago. That's what we have been speaking about.
724

725 Ms. Morris: And if the bath is built below, it still has to be elevated to the 3 feet. That was not
726 part of the variance. It was just explaining why he needed it.
727

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Chairman Ott: When I read this it says that is what he was requesting to build and that was the only way that house would have been built with that bathroom where it was. Now, if I can we'll, I'll ask the applicant to do a recital on the side setbacks now. I don't know if this is needed, because right now, the only way you're gonna build that house, right, is without that additional restroom at the bottom, right.

Mr. Berry: That is correct, yes. So, I'll have to unpleasantly inform clients tonight time I walk out of here that they cannot have a utility room bath.

Mr. Courtney: Mr. Berry, we're not trying to be, you know, wrong about this, or ugly about this. We're just, we have to go by the ordinances that are set by council. That's all there is to it. You did not meet the criteria for it and we're trying to help you as much as we can.

Mr. Berry: I was answering his question. Yes, we need to move forward, because I will continue to build the home without the bath. I guess we'll (***two speaking at once*).

Mr. Courtney: Thank you.

Mr. Berry: ... schedule a meeting for next month regarding a half bath.

Chairman Ott: So, we're moving on.

Mr. Berry: ... a powder room bath. Just a toilet and a sink without a shower. So, we'll take that up next month.

Chairman Ott: Okay. Thank you, Mr. Berry.

Mr. Berry: So, getting back to item number 2 on the agenda here, we're talking about the side setbacks.

Chairman Ott: Yes, sir.

Mr. Berry: Okay.

Chairman Ott: Is everybody on board with us now? (Several "yes" responses.) Thank you.

Mr. Berry: We're switching subjects. We're not going back and forth.

Mr. Courtney: Mr. Chairman, would you just repeat the appeal number, please?

(***several speaking at once*)

Ms. Watson: Appeal number, the appeal number.

Mr. Willm: The second.

Chairman Ott: Oh, I did that. I've gotta find my, okay, we are on Appeal Number ZA2016-02(b) and that is Mr. Troy Berry request a variance from Section 17-320 Yard Setbacks, specifically the side yard setback of 10-foot requir4ed in R2 zoning district for property at 319 15th Avenue South. I might have done that too fast for everybody (****) and this time, Mr. Berry is still under oath and recite for the Board of Zoning Appeals his reasoning for the side setback.

Mr. Berry: Would you like for me to move forward now?

Chairman Ott: The floor is yours, yes sir.

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784 Mr. Berry: What was requested in the building permit and then was to have a Unit A and a Unit
785 B. That's a separate item that will be taken up on Tuesday night for the final meeting at the planning
786 commission for Unit A and Unit B. This is regarding R2. In R2 you can have two single family homes,
787 Unit A, Unit B as is all around in R2 right now existing as the old style duplex of 35-years ago when the
788 ordinance was put in. We've gotta backtrack here to so we can move forward on the item here. So it is
789 gonna be, the permit was for a Unit A and a Unit B. So, you can have a duplex or you can have a semi-
790 detached.

791
792 Chairman Ott: Mr. Berry, I'm sorry. May I, for everybody's idea, this, this lot has been separated
793 and approved?

794
795 Ms. Morris: No, it has not.

796
797 Chairman Ott: Okay.

798
799 Mr. Berry: Under R2 zoning you are not allowed to separate the lot. The lot was sold six months
800 ago and there's a recorded deed in the Horry County Courthouse and was recorded in their courthouse
801 as Brian Patterson and Ann Patterson own one-half Unit A side of the lot, and I own the remaining Unit B.
802 I used to own the entire lot. So, I'm the applicant. I'm the owner of the lot and there is a deeded, deeded
803 Unit A one-half ownership, and one-half full rights recorded in the Horry County Courthouse in Conway,
804 for the record.

805
806 Chairman Ott: Okay.

807
808 Mr. Berry: But no, in R2 your existing ordinances do not let you officially survey and split the lots
809 as Unit A and Unit B. You can, you can from Lakeside; you can from Lakeside to the ocean. But, you
810 can't in R2. I think the zoning officer can speak to that, if you're confused on that item. So, this is a Unit
811 A and a Unit B is what the building permit is for. Two of these homes exactly alike. There's many options
812 that's gonna be discussed Tuesday night for the planning commission. We are the two owners of the lot.
813 Brian Patterson and Ann Patterson, which [sic] used to be residents of Surfside, and desire to continue to
814 be with this new home, have Unit A. It's under contract for me to build as of January, mid-January of this
815 year, and the lot is deeded and recorded. So, they own Unit A. I own Unit B, so I want to build Unit B.
816 Our desire is as me as a resident, a current resident of Surfside, and them, is to have this as a semi-
817 detached townhome; Unit A, Unit B townhome. There's many Unit A's and Unit B's all in R2. Just for the
818 record, R2 is anything from Lakeside, I believe, all the up to kind of Poplar Street [sic] coming back
819 towards Business 17 here. That's the R2 zoning district. This is in R2, which clearly states under the
820 ordinance you must have a 10-foot side setback in R2. So, with the two homes, I cannot get the home no
821 small than 19 and ½ feet, 19.5 feet in width. So, this is getting into the meat of this discussion here
822 tonight. So the homes must be 19.5 feet. There is no effective way, most of all the raised beach homes
823 around here, they're 20 feet or greater in width. I can, 19.5 is the smallest I can shrink it down to and the
824 hardship comes into because you can't get a hallway upstairs of the 42-inch wide width required if the
825 house is not 19.5 feet, so it does create a hardship in the second floor living area in the hallway for the
826 three bedrooms up front, if I was required to shrink the house down. So, we have two units at 19.5, and if
827 we do the math real quick, here's where we are if you just want to jot this down for the record. It's
828 probably gonna be easier to follow along if y'all jot these numbers down. If you take the right hand side
829 setback required by R2 is 10-foot, so you put 10-foot, and then you put the house, Unit A at 19.5, and
830 then in the center you put the 10-foot in the center, and then you put Unit, the proposed Unit B house at
831 19.5 feet, and then you put the left hand lot required setback at 10-foot, that comes up to a total of 69
832 feet. That's the hardship. I cannot shrink this down anymore; no more than 69 feet. So that kind of
833 addresses item A this is a hardship and a unique situation here. Now, to move forward with the
834 discussion, survey, I purchased the lot in 2011. It was based on the survey of 2005. So the last survey
835 on this lot was in 2005. This is for the record is what [Ms. Morris] has on the screen and this is the
836 original from Michael Culler, which is here in Surfside, Culler Land Surveying. He went out on January
837 the 28th of 2016 as noted in the bottom left hand corner; well, he went out on the 28th. This is dated on
838 the 29th when it went back to the office and brought all the records and put on paper. He surveyed the

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839 lot. The front of the lot at the roadside, do we need to wait on this gentleman, so we can have a full
840 quorum?

841
842 Chairman Ott: Yeah, I, I would appreciate it if you would. I'm sorry. I need you to do that, and
843 thank you for your consideration. Yes. Maybe I could, should give everybody a [recess.]
844

845 ***Recess at 7:43, Reconvene at 7:49 p.m.***
846

847 Chairman Ott: Thank you, everybody for their time, and we're back on the clock, right now.
848

849 Mr. Berry: I will try to pick back up where I left off since one of the committee members got up
850 and left during the discussion.
851

852 Chairman Ott: Yes, sir. You're in the middle of your recital. I'm sorry.
853

854 Mr. Berry: So, I think I was getting to the point of 2A here, which is talk about the hardship and
855 the extraordinary circumstance. That a survey was done in 2005, that was the recorded survey that I
856 bought the lot from in 2009; 2011 is when I bought the lot, excuse me, correction. The survey at that time
857 showed the lot at approximately 70 feet on the front. Michael Culler, Culler Land Surveying here in
858 Surfside, Surfside, South Carolina, for the legal record, surveyed this property on January the 28th of
859 2016. He showed a front survey at that time of 69.97 feet, which is on the screen and I have an original
860 copy here, which you can just look at if you need to verify, and I have 'em circled. So, we're talking about
861 the front of the property is 69.97 feet. If we're standing at the back of the lot looking at the front of the lot,
862 if we're standing near the back of that property line looking at the front of the road, the right property iron
863 as stated on the survey here is 5/8 inch iron found, excuse me, the left, left is 5/8 inch found. The right
864 side of my lot, which is 319 15th Avenue South, shows that a 1 inch iron was found. So there's no
865 discrepancies there. The two irons were found when Michael Culler, January the 28th, 2016 surveyed out
866 the lot and showed it as 69.67 feet. The back of the lot is, back property line is 67.9 feet. So on this
867 survey, there is a taper to the lot. So, the back of the lot is at 67.9 feet with the irons found. All the
868 original irons found and documented on his survey. So here's the question, if you do the math, and you
869 draw a taper here, a picture, we have 67.9 feet at the back and we have 69.97 feet at the front. So we've
870 got about a two foot taper from the back of the lot to the front, and I'm just kind of illustrating on my
871 hands; exaggerating my illustration just to show you. So, those irons were found. Does everybody follow
872 that? I think she's...
873

874 Ms. Watson: No.
875

876 Mr. Berry: My I return to show her the survey?
877

878 Ms. Watson: My survey says 67.95 in the front. Where do you get 60...
879

880 Mr. Berry: Correct, and that's what we're gonna get to. That's the second.
881

882 Ms. Watson: Okay.
883

884 Mr. Berry: So, I'm talking about, what I'm talking about and label this here. I'm talking about
885 Exhibit A, the original survey, and then we'll get to, I guess, an Exhibit B, because you have two surveys
886 here, which should have been part of the record.
887

888 Chairman Ott: Well, I have this (**two speaking at once.)
889

890 Mr. Berry: Well, the director's office had all this here.
891

892 Chairman Ott: Why are the, excuse me, why are there two surveys now? What is, which one is,
893 is in Conway?
894

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895 Ms. Watson: Which one is at the courthouse?
896

897 Chairman Ott: I'm sorry, I have to stop this now, since there are two different surveys. There's
898 something; something's not correct here. Somebody, I want the one that is correct.
899

900 Mr. Berry: Okay. Both of these are correct, if you want to muddy up this water here, and that's
901 what we're all here to hash out today and have a reasoning to. Both are correct. The one from January
902 the 28th, which I just noted with the two front, talking about the front and the back of the lot that creates a
903 taper, which gets into my variance request for a side setback of 5 inches. I'm requesting 5 inches,
904 approximately this much of variance in side.
905

906 Chairman Ott: I would like to know, excuse me, I'd like to know why the board doesn't have this
907 other survey that's also correct.
908

909 Mr. Berry: This is part of the building ...
910

911 Mr. Courtney: Mr. Chairman, when were the last dates of the surveys.
912

913 Ms. Morris: Yeah, you should have it. Let me, someone asked which one was the latest. We
914 were given this, this, and this. But you should have all this in your file. But not one of these are recorded.
915

916 Mr. Berry: All these are called site surveys, which y'all require for a building permit, you require a
917 site survey.
918

919 Chairman Ott: Which is the recorded one? The one we have?
920

921 Ms. Morris: We didn't get any recorded plat. We got no recorded plat.
922

923 Mr. Berry: Yeah, and to state for the record there is...
924

925 Ms. Morris: We didn't get any.
926

927 Mr. Berry: The original survey is still recorded in the courthouse in 2005.
928

929 Chairman Ott: Okay.
930

931 Mr. Berry: So that's the original lot survey recorded in 2005.
932

933 Ms. Morris: We don't have that.
934

935 Chairman Ott: You don't have this original?
936

937 Ms. Morris: We don't have the recording, no.
938

939 Mr. Berry: That's not the issue. It's in the courthouse.
940

941 Mr. Courtney: It is an issue.
942

943 Mr. Berry: It's public record for everyone. So it is recorded. The survey that I had when I bought
944 the lot in 2011. Just clarify, as part of the building permit package, y'all require a site survey. You cannot
945 record a site survey in Horry County. So, none of these surveys are recorded. Michael Culler with Culler
946 Land Surveying will state to that. You cannot record any site surveys as this town requires. You must
947 have a site survey submitted with your building permit package up front. Am I correct there, [Ms. Morris?]
948

949 Ms. Morris: That's correct.
950

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951 Mr. Berry: But, you cannot record a site survey. When the home is completed, you will have a
952 recorded as built survey.

953
954 Ms. Watson: What does it say on the deed?

955
956 Chairman Ott: Somewhere there's a deed.

957
958 Ms. Morris: We haven't seen the deed and we haven't seen the recorded plat that he says is in
959 the courthouse. We haven't been given that information.

960
961 Chairman Ott: (**) Somewhere there's a deed, and the deed (**)

962
963 Mr. Berry: Correct.

964
965 Ms. Watson: The deed will tell you how many feet from so and so.

966
967 Mr. Berry: Okay, let's address the deed issue. I had the original deed and a, everything goes
968 back to, for the record if Ms. Herrmann wants to note this here ...

969
970 Chairman Ott: I think I might have (***two speaking at once.*)

971
972 Mr. Berry: ... is Deed Book 35, 3547 is the Deed Book page 3547, and page is 69. So, under
973 official survey things and Deed Books in the Horry County Courthouse, it's DB 3547, which is the Deed
974 Book and page 69. That's where everything is officially recorded. All this goes back to, let me pause for
975 one second here so I can get the record straight. All this is back in 1963, so there's a difference in what
976 y'all are discussing. A plat was done when all the town of Surfside was divided up back in the mid-50's
977 and early 60's. The plat is what's recorded in the courthouse, and that's what I just referenced the Deed
978 Book and the page. That was on May the 28th, 1963. Surveys are done every time a lot is sold or when a
979 building is being built and you have a quote, as built survey done at the end. An as built survey when this
980 home is built, if anything is every built, if at the very end you have an as built survey which shows the,
981 documents the footprint of the home, all the side setbacks, any variances (**) as noted on the as built
982 survey that is recorded on the backend before a CO can be issued for the home, and that's recorded in
983 the courthouse at that time, the as built survey, not a site survey. What you're looking at is [sic] surveys,
984 which just a, this town requires up front with your building permit package. But, that's where the issue
985 come [sic] in at. So, I initially submitted this here to [Ms. Morris] just in verbal for the first two or three
986 weeks, I would say back in late January, first of February. We were talking about various things for this
987 lot. So Exhibit A, which is the original survey which we mentioned about ten minutes ago, with the front
988 side, front line at 69.97 feet and the back at 67.9 feet creates a hardship because it's a tapered lot. I
989 have a tapered lot, which is an extraordinary circumstance and how this has happened is over the years,
990 I'm the only lot that's undeveloped in here. So, as the surveyor explained to me, back in 1955 and 1963
991 when everything was surveyed out, people used chains. They would just pull chains along; chains would
992 get all kinked up and linked up, and he said if you could get something plus or minus 6 inches you're
993 doing very good. From 1963 chain method to today's GPS technology methods. When they were doing
994 the office work about two or three days later, they discovered an encroachment on the very back of the
995 lot. So, Michael Culler went back out three days later towards the very end of January of this year, 2016,
996 just to verify what was initially noted on his survey. What was noted on the 2005 survey and what was
997 noted on the survey we just discussed. He re, went out there and that's when he said okay, the back is
998 confirmed at 67.9 feet. He said you effectively, somewhat have lost about a foot off the back of your lot.
999 If we just round up, we're talking about approximately 68 feet. It's technically on the survey at 67.9 feet,
1000 but if you want to round up one-tenth of inch, we're talking about somewhere around 68 feet plus or
1001 minus on the back. When he went to re-verify the front, he cross referenced back two lots on both sides,
1002 which you are required to do by surveying law. I used to be a surveyor, also. I worked for the Department
1003 of Transportation headquarters back from 1989 to the year 1994 and I surveyed out the I-77 Beltway in
1004 Columbia during that time period. That's five years. So, I do understand surveying, and I'm a former
1005 engineer also. So, he went back and cross referenced everything and he said you have an
1006 encroachment with the existing fence, which is to the right of my property. So if you're on the road front,

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1007 looking straight at my property, at the very back right there's slight encroachment of the fence as it is now.
1008 Well, he didn't want to have an encroachment on his survey, so he went back there and started verifying
1009 all kinds of things, and he said, well I'm just gonna make the front of the lot the same as the back of lot.
1010 So he went back out there and three days later, they reset a new pin on the very front of the lot, and this
1011 is Exhibit B, a new survey which [Ms. Morris] and her office has on file with the building permit package,
1012 which shows now 67.95 feet on the front. This is the survey here, so we have the survey done on
1013 January the 28th, 2016, and this one done three days later. Once they did some office work and they
1014 found out that things were just not stacking up, and I've got effectively, I've become the squeeze lot,
1015 because I'm the only undeveloped lot and things have fluctuated a couple of inches over the years in all
1016 the 40 or 50 years of building in Surfside. So, he went ahead and just made so there was not a variance,
1017 so there was not a variance issue with the fence encroaching upon my lot, he went ahead and set a new
1018 pin without my knowledge. I didn't find out about this until a week later. He set the front pin then, and
1019 he's got stated on here as ½ inch iron set. So he set a new ½ inch iron and pulled up the original 5/8 inch
1020 iron on the front of the lot.

1021
1022 Chairman Ott: Could I stop you a second?

1023
1024 Mr. Berry: Yes, sir.

1025
1026 Chairman Ott: I don't normally this, okay. What I have in front of me is, and all the, the whole
1027 board knows is something with a certification authorization from South Carolina and this is done by Culler
1028 Land, and it was done recently, January 29th. This is the one that we're gonna go by, okay?

1029
1030 Mr. Berry: Okay, correct, and that's why, that's why my variance is here tonight. ... (***two*
1031 *speaking at once.*)

1032
1033 Chairman Ott: (***two speaking at once*) ... is available, we're gonna say is hearsay not approved
1034 and I want the board to know that. Do you agree that this, this is the one. Would you take a look at this,
1035 and say this is what we're gonna look at today?

1036
1037 Mr. Berry: Yes, sir. I agree with that.

1038
1039 Chairman Ott: That clears up a lot, because I see all kinds of papers being shown. We'll just
1040 stick (***two speaking at once.*)

1041
1042 Mr. Berry: That's why the variance is here and that's why we have the issue and the hardship
1043 that I'm addressing to night.

1044
1045 Chairman Ott: Is these other surveys; are they, is that what your issue is here?

1046
1047 Mr. Berry: It's a survey issue, which has created a hardship.

1048
1049 Chairman Ott: That is not (***two speaking at once.*)

1050
1051 Mr. Berry: Which has created a side setback variance of 5 inches that I've requested. So, I'm
1052 asking a variance of 5 inches from a side survey due to a tapered lot that I've been squeezed in to, and
1053 new survey iron being set from the original 2005 survey. It creates a, setback for me is an issue for these
1054 side setbacks required of 10 foot.

1055
1056 Chairman Ott: There's a lot more to this than normally, and that's why I'm asking these questions
1057 inside your recital, and I appreciate being able to do that. I know I'm getting a little confused and probably
1058 everybody else is. But, we're gonna use this and this alone.

1059
1060 Mr. Berry: Okay. That's what I'm here for and I'll agree. So, we're gonna talk specifically as
1061 Chairman Ott has just mentioned, what I'm classifying as the Exhibit B survey and that's why I'm having
1062 to have a variance here tonight.

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1063
1064 Chairman Ott: Exhibit B survey?
1065
1066 Mr. Berry: Which is the 67.9 feet on the front and we're getting away from the old Exhibit A which
1067 I just talked about 15 minutes ago.
1068
1069 Chairman Ott: This one?
1070
1071 Mr. Berry: Correct.
1072
1073 Chairman Ott: This is Exhibit B, is this what you're calling Exhibit B?
1074
1075 Mr. Berry: We had two surveys that we were talking about.
1076
1077 Mr. Courtney: (**) I only have one.
1078
1079 Chairman Ott: Yes.
1080
1081 Mr. Berry: Okay, that's the survey. Everybody's on the same page now. I was just trying to give
1082 you the history of how this happened. It happened without my knowledge. A week later they set a new
1083 survey pin.
1084
1085 Chairman Ott: I know. Thank you. (**)
1086
1087 Mr. Courtney: Yes, I'd like to move on with this.
1088
1089 Ms. Watson: Yeah, I have a question.
1090
1091 Chairman Ott: There's so many different things being thrown out here, I'm gonna, I'm gonna, and
1092 we normally don't do this, and I'm gonna let the board ask you a question so we can clarify, which piece
1093 of paper we're using and why we're using it.
1094
1095 Mr. Berry: So, I'm gonna put this one in my folder so we don't look at it anymore.
1096
1097 Chairman Ott: Yeah.
1098
1099 Mr. Berry: Which was the original recorded survey, 2005.
1100
1101 Chairman Ott: Can you hold off then, and let Mr. Berry do his whole recital of this?
1102
1103 Ms. Watson: Sure.
1104
1105 Chairman Ott: Thank you.
1106
1107 Mr. Berry: So we're all on the same survey which shows (**two speaking at once.)
1108
1109 Chairman Ott: And I did this so we, we could go through everything and there was confusion.
1110
1111 Mr. Berry: ... which was recorded and stamped by Michael Culler. Yep. So he did all this
1112 January the 29th, 2016 the very next day. That was just the date that was preprinted, but it is signed by
1113 Michael Culler, a local surveyor here, Surfside Beach, South Carolina. So he reset a new iron on the
1114 front left hand part of the property. If you're standing at the back, that's the way the surveyor is done. If
1115 you're at the back of the property looking to the front at the road, he set a new ½ inch iron.
1116
1117 Chairman Ott: Is that the same one?
1118

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1119 Mr. Berry: Yes, this is it. That same survey. This is all what we're looking at now. (**several
1120 speaking at once.) ... new one shows on your paper, which you can see clearly. You (**) he set a new 1/2
1121 inch iron, which that made the road front 67.95 feet and the back stayed the originally same 67.9 feet.
1122

1123 Chairman Ott: Right.
1124

1125 Mr. Berry: So, the issue I have here is, is originally I had like a 2 foot taper from the recorded
1126 2005 survey, which we're not gonna talk about anymore. With this new survey, this is what's submitted
1127 with my building permit package. Unfortunately, this was done without my knowledge with Michael Culler
1128 coming out and setting a new iron just to alleviate the fence that he would have to show on here as a
1129 encroachment fence on my property line at the back. So he set the, he just said okay I'm just gonna kind
1130 of square the lot up, make it kind of square and rectangular; make the front and the back kind of equal in
1131 widths, approximately, let's just round up, approximately 68 feet. We're talking about 67.95, so let's just
1132 for the record, let's kind of talk around approximately 68 feet width of the lot. That is what's set and once
1133 he sets an iron, he cannot change it, unless someone else requests a new survey from a surrounding
1134 property owner, and they can come in and they can go back and set the pin. We don't want to get into
1135 surveying issues, but this is what we have to deal with now. So now this is part of the record and the
1136 recorded site survey, which [Ms. Morris's] office has, I am requesting, the bottom line here is I am
1137 requesting a 5 inch variance now on the side setbacks. Because as we talked about earlier, if you do all
1138 the math, I need 69 feet. I must have 69 feet and that's my hardship to build Unit A and Unit B with
1139 everything we've talked about. So, with 69 feet, I'm short approximately 12 inches. I can take one inch
1140 off of each house, and I've agreed to do that and the clients, so we can take the house down by one inch
1141 just in width, both units, which only gives me a 5 inch. So, I'm asking for 5 inches of variance on this side
1142 setbacks, which your ordinance states in R2 of 10 foot. So, instead of having 10 foot, I need to take 5
1143 inches off of one side due to this new survey and that's my hardship is because this new survey now. So
1144 that kind of sums it all up. We can keep going deeper in the weeds, if we need to, but I think we ought to
1145 use common sense; 5 inches doesn't impact this town on a side setback and this is a hardship, because
1146 this is a survey issue and a new survey iron was set on the front just to kind of square the lot up to make
1147 it the record with the back [sic.] So, with this new survey these units will not fit on the lot that's been
1148 designed since, well, it's been designed for two and a half years and it was revised slightly by these new
1149 clients. Unit A and Unit B cannot be built without the 5 inch variance on these sideline setbacks. That's
1150 the point I want to make, so make sure I cover all four of these points here. Let's just run through 2A.
1151

1152 Chairman Ott: Yes, sir.
1153

1154 Mr. Berry: There's an extraordinary situation on this particular piece of property. This particular
1155 piece of property being 319 15th Avenue South in Surfside Beach, South Carolina. Yes, there is a
1156 particular hardship and extraordinary circumstance, because we have a new survey where a local
1157 surveyor set a new iron pin on the front from the original recorded survey which shortens up the lot to
1158 approximately plus or minus 68 feet, and I have a hardship because now all the plans that's been in the
1159 office of [Ms. Morris] and all officially since March the 10th and all, everything I have submitted and I
1160 cannot shrink anything no more, and fit it on the lot, the hardship is I cannot get the houses built, Unit A
1161 and Unit B built on the lot, the semi-detached Unit A and Unit B townhomes. So that's Item A. Item B
1162 these conditions do not generally apply to other properties in the vicinity as shown. Okay, Item B as we
1163 talked about back in 1955 when this town was established and chains were pulled and in 1963 is what the
1164 plats, everything's recorded on the plats and everybody used chains. It was all surveyor said and Michael
1165 Culler stated to me about three months ago, back in February and we were discussing this issue in detail
1166 for two or three days and how to resolve it where you go from chains to GPS technology now. So
1167 unfortunately, he said two points. You just got kind of like a squeeze Domino effect, because you're the
1168 last lot developed and you got squeezed in by a couple of inches over the years, and he just squared the
1169 lot up with the back to match the front to alleviate a fence variance that's encroaching on my lot right now.
1170 I have no problem with the encroached fence, so if it's [sic] any residents here that are concerned about
1171 an encroached fence, you're not gonna have to remove your fence. I will state that legally for the record
1172 and submit them a document that their fence can stay regarding what survey we go buy. I'm not
1173 requesting them to remove any fence. So, Item B, yes, these conditions do not generally apply to any
1174 other residence or whatever, but for a unique survey tapered lot situation. Getting back to the point, I'm

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1175 requesting 5 inches of side setback from the required 10 foot due to the survey hardship. Item C, 2C,
1176 because of these conditions the applicant of this particular property would effectively prohibit or restrict
1177 the utilization for me to build and permit Unit A and Unit B semi-detached townhomes. So, I've covered
1178 Item C. Yes, this would prohibit me without the 5 inch side variance setback, and I cannot shrink the,
1179 shrink the property up anymore. I can't narrow anything down. I've worked on it as much as I could. I've
1180 done math all kind of ways over the past three months. Let me pause on this here, because I know
1181 there's probably gonna be a question to you, and if it's not a question, I'm just gonna muddy the water
1182 and throw the question out. You're probably gonna come back and say, with Item C, yes, you could, you
1183 could just build one home. Yes, you could just build one unit, Unit A. I'm sure you would probably ask
1184 that question, but I wanted to throw the question out up front, and go ahead and address it up front here.
1185 It is my intentions, as Unit B proposed owner, to live in Surfside and clients', Ann Patterson, and Rober[t];
1186 Ann Patterson and Brian Patterson, which I have under contract to build their home and owners of Unit A
1187 side of the lot. It's been recorded in the courthouse for, since January. Yes, we could have just a Unit A.
1188 But, I'm in an extraordinary situation here due to a survey. The only reason I'm here, for this specific
1189 variance issue is because of the survey issue. If it was not this survey variance, if we went by the original
1190 2005 survey, and I didn't have to submit a site survey plan to the town, this would never have been
1191 discovered and we'd never had any issue, and nobody would've probably got out there and measured
1192 and is he 3 inches, is he 5 inches. So, that's why we're here. But, yes, Unit A could've been built. We'd
1193 just have one skinny little home in the center of the lot then. That's not the issue. The issue is we all
1194 desire to build Unit A, Unit B semi-detached townhome, and without this 5 inch variance, I cannot built it,
1195 because I cannot shrink the house down anymore, no more than 1 inch, which I'm willing to give. The
1196 final item, 2D. Item D just in summary cliff notes states does this create a hardship for any surround
1197 residents of 5 inches or does it create a hardship for the town of Surfside of a 5 inch side setback
1198 variance due to a hardship of a tapered lot due to a survey issue. The bottom line is we've got a survey
1199 issue, which I must have a 5 inch side line setback variance to be able to continue the building permit
1200 process or nothing gets built. No more than quote, which I'm throwing out there now, no more than just a
1201 Unit A, in the center of the lot, which nobody wants and it's a waste of the lot. There's many Unit A's, Unit
1202 B's all within the town of Surfside existing in R2 area under the old ordinance of duplex A and B. I think
1203 I've stated my case. I think I went through all four points, at this point, I will turn it over to staff. I'll be
1204 back for question and answer.

1205
1206 Chairman Ott: You'll be able, you'll be able to be rebuttal everything as you'll have plenty of time.

1207
1208 Mr. Berry: Thank you, sir.

1209
1210 Chairman Ott: At this time I'll ask the director of our building and zoning to state the (**) and
1211 you're still under oath.

1212
1213 Ms. Morris: Yes, thank you. Okay. As you can see on the survey that's been provided to the
1214 town, the property owner is requesting or recommending there are two separate homes on one lot. The
1215 lot is a little over 7,000 square feet, and if you subdivide it, you're looking at a little over 3,000 square feet
1216 per lot or even if you leave it like that, you're looking at a little over 3,000 square feet per lot. The code as
1217 it's written right now in R2, which is what you have to go by, you cannot issue a use variance if a use is
1218 not permitted, you can't grant the variance. What is allowed in this district is a duplex, and a duplex has
1219 to be connected with one wall or one floor. Mr. Berry is going to the planning commission to try to get that
1220 changed. But, that is, as of right now, it is the law. It's, two, two homes are not allowed in R2 on one
1221 property right now. The property owner's requesting a variance contingent to the planning commission
1222 and Town Council approving the allowance of two homes on a property without being connected as a
1223 duplex. If you made the two units a du, a true duplex and had the shared wall, this variance would not be
1224 required, and he could have two units. They would just be connected by a solid wall or a floor, and he'd
1225 have the 10 feet that he has separating the homes so he'd have 5 additional feet on each side. In, in my
1226 issue paper, I did caution, it's really not recommended to make a, for the board to make a variance, grant
1227 a variance conditional of something else getting approved. If you have any questions, I'll be glad to
1228 answer them, but I think, yes?
1229

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1230 Chairman Ott: I'm gonna open the floor to our board, because we can't grant a variance on a
1231 contingency that something else happens. Just can't do that. I would like to have the board, this is an
1232 extraordinary conditions here on your request.
1233

1234 Ms. Watson: Looking at the two houses there, you have 10 feet in between them. If you
1235 separate them into two lots, to which building do you give your setback of 10 feet?
1236

1237 Ms. Morris: Well, you can't separate it into two lots in R2, because you have to have a 6,000
1238 square feet lot in R2 and this entire lot is just a little over 7,000 square feet, so he could not split it and
1239 build two houses. That's why we told him you are allowed one house or a duplex that's connected, and
1240 with the one house or the duplex that's connected he could meet the setback requirements. He doesn't
1241 want the two homes to be connected. He wants them to be separate.
1242

1243 Mr. Courtney: Mr. Chairman.

1244 Chairman Ott: We should defer this.

1245 Mr. Courtney: Mr. Chairman, I have a problem with this because it hasn't gone to planning and
1246 zoning. I don't think we should be hearing this case at this time.
1247

1248 Ms. Watson: We don't have anywhere to send him.
1249

1250 Mr. Willm: We have two options. One is either deny the request outright or postpone the meeting.
1251

1252 Chairman Ott: I'm gonna ask the board to defer this until the planning and zoning.
1253

1254 Mr. Berry: May I make a point there before you make a decision.
1255

1256 Chairman Ott: Yes, yes, give me one minute, because we're looking at this under a contingency
1257 that something else happens, and this board cannot, so the variance cannot be done at all. And I don't
1258 like it that it got into that at all. But, I would like to defer this until the planning and zoning department [sic]
1259 looks at this and comes back to us, and then we would look at it if necessary. But, if they approve the
1260 change of the ordinance, you're gonna get what you want, and we're not gonna be able to do anything for
1261 you.
1262

1263 Mr. Courtney: By law, I don't think we can hear this case at this time until planning and zoning
1264 has given their opinion.
1265

1266 Mr. Berry: Let me state a couple of points on that.
1267

1268 Chairman Ott: Yes.
1269

1270 Mr. Berry: This has been going on with the town of Surfside building, planning and zoning office
1271 since our verbal discussions since the fourth week of January of this year. So, I've been going over
1272 nearly four months trying to get a building permit. That's a whole side issue. We had about two or three
1273 weeks of discussions of what we could do, and I kept compromising, and said, okay, if I can't have this, I'll
1274 do this. I was told no, you can't do that. I wanted to do this. So, I went through tree different options. I'm
1275 down to the final option here as to what I can build and get a permit on, and that's a sidebar, so yes, this
1276 has been going on since approximately the last week of January of this year. For the record, let me get
1277 the record, my papers, if, if you (***two speaking at once*) look at my original zoning variance ...
1278
1279

1280 Chairman Ott: (***two speaking at once*) ... giving him his right to state his case.
1281

1282 Mr. Berry: ... when I discovered in about three weeks of discussions with [Ms. Morris] back in
1283 late January, the first of February that we were gonna have an issue here, which is totally outside of your
1284 jurisdiction, but what we're talking about for 5 inches is under your jurisdiction to rule upon tonight, and
1285

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1286 that's what I'm requesting tonight. My application was submitted, for the record, it was submitted on
1287 February the 1st, time I knew I had an issue. So on February the 1st I submitted this, the official town of
1288 Surfside Board of Zoning Appeals Variance for this 5 inch setback that I'm requesting tonight. So, this
1289 has been going on for sufficient time. We've gone through the month of February. We've gone through
1290 the month of March. We've gone through the month of April. Now, we're gonna defer it, potentially defer
1291 it and we're gonna keep going on. So I submitted my application, if you look at the date, it's February the
1292 1st, 2016. Approximately two or three days before this committee meeting was supposed to be scheduled
1293 by the town clerk, [Ms.] Herrmann, I got a call from [Ms.] Morris not know what the call was about, she
1294 said well I just need to talk to you. You need to come into the office. Well, I drove all the way from
1295 Columbia down here to come into her office for her to tell me on March the 2nd, 2016 that she was not
1296 gonna allow this to move forward, my request here tonight for variance, she was not gonna allow it to
1297 come before your committee. I was notified on that on March the 2nd, 2016. How you can note that is, is
1298 that very top pen, top right hand corner of my application, is she's got on there check returned to Mr.
1299 Berry. She returned my check of \$200 and said I am not submitting this to your committee. If I submit an
1300 application to her, I believe by law she's required to go ahead and forward it to your committee and you
1301 can make a decision of what you want to.

1302
1303 Chairman Ott: This is basically, to us, this is hearsay, and has nothing to do with what we have in
1304 front of us, and what we look at is according to the ordinance as it is today, we cannot issue you a
1305 variance, because what you want cannot happen according to that.

1306
1307 Mr. Berry: The point I was going to make is that this went before the planning commission,
1308 because I went to the planning commission also. I went before the planning commission on the 1st
1309 Thursday, March of 2016. Is that correct, Thursday, the planning commission meets on Thursday?
1310

1311 Ms. Morris: First Tuesday of every month.
1312

1313 Mr. Berry: So I went before the planning commission think it was a business item agenda. We're
1314 getting to the full circle here, because it affects your committee. So, yes, this did go before the planning
1315 commission, which I thought was a business item agenda, approximately around the first week of March.
1316 On a Tuesday night, I was here in this same room of Town Council Chambers of 2016. I thought it was a
1317 business item agenda. We was [sic] gonna discuss all the facts. They had all the facts, and then I come
1318 to find out no, that was just a discussion meeting for public comments and you were not a business item
1319 agenda at the planning commission. So, we just had general discussion regarding the issue, there was
1320 no viewpoints of any way, because we were just laying out all the facts. This was at the planning
1321 commission, which affects this semi-detached townhome Unit A and Unit B for this particular site. So it
1322 got put on the item as a business item agenda for the next month, the month of April at the planning
1323 commission and it was scheduled for the first Tuesday, which unfortunately was Election Day, on April of
1324 2016, for the planning commission to rule. Why you can't make a decision is because the planning
1325 commission hasn't fully heard everything yet. If you desire not to make a decision and keep deferring, we
1326 keep delaying this whole process for six months, a year, or wherever it might go. So, it was cancelled two
1327 days before. I got notice, and the only way I got notice is I was down here on business and other
1328 business in Myrtle Beach, the City of Myrtle Beach and I was down here on other business. I stopped by
1329 the office to follow up on my application process. I was noted by [Ms.] Morris at that time that, oh, well the
1330 planning commission meeting is not gonna meet on ...
1331

1332 Chairman Ott: You can't speak ...
1333

1334 Mr. Berry: I'm stating the facts, because I'm getting to the point as to why you can't rule on
1335 something potentially tonight and you're gonna defer it, because the planning commission meeting was
1336 cancelled.
1337

1338 Mr. Willm: Please note that it's the chairman's right to allow you to speak. So, I mean, if you, he
1339 can cut it off right now. So, we're just asking for you to be a little polite about addressing us and staff.
1340

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1341 Mr. Berry: But the meeting, the planning commission meeting was cancelled two business days
1342 before without my knowledge, and if I wouldn't've asked the question on something else, I would've never
1343 found out two days before, two business days before that the planning commission meeting was
1344 cancelled for the month of April. So then, it was deferred until May, so it's coming up this Tuesday night,
1345 May the 5th.

1346
1347 Chairman Ott: And, I'll be there.

1348
1349 Mr. Berry: So, correct. So, your committee, if you want to defer it, because we're two business
1350 days away, we got Friday and we got Monday and then the planning commission's gonna hear all this
1351 here. With all respect, from us going full circle, y'all have to come back here for the following month of
1352 whatever it will be, June, because I can't do nothing in the month of May. I'd have to do something the
1353 month of June then. We're delaying this whole building process. With all respect, for two business days,
1354 regardless of which way the planning commission rules, whether they rule yes or no regarding an old
1355 duplex law or a semi-detached townhome, Unit A and Unit B. Can we just make a decision for the record
1356 tonight and vote on my variance application for the 5 inch setback?

1357
1358 Chairman Ott: I can't do that.

1359
1360 Mr. Berry: And, it doesn't apply, if the... (***two speaking at once.*)

1361
1362 Chairman Ott: That I can't do. I can ask the question (***two speaking at once*) to defer and bring
1363 it back after the planning and zoning acts. (***two speaking at once*)

1364
1365 Mr. Berry: ... planning commission doesn't allow it, then the building never goes into effect.

1366
1367 Chairman Ott: After the planning and zoning makes a decision and if they change that ordinance,
1368 we'll run right back here, but we'll see if they are going to do that. And, I'll go Tuesday night.

1369
1370 Mr. Berry: So at that point saying ...

1371
1372 Chairman Ott: Excuse me.

1373
1374 Mr. Berry: I'm sorry.

1375
1376 Ms. Morris: Yeah, if I may. I'd prefer, I'd actually love to address some of the things that Mr.
1377 Berry said, but I'm not. We have two planning commission members here and you're welcome to ask
1378 them what, what happened. But, I will go further to say if the planning commission approves it Tuesday
1379 night or makes a recommendation to council, council has to approve two readings of that before it ever
1380 becomes a law, and then it would come back in front of the board.

1381
1382 Chairman Ott: Right ...

1383
1384 Mr. Berry: Which I'm aware of that, too ... (***two speaking at once.*) I've been stated by the
1385 director's office.

1386
1387 Chairman Ott: (***two speaking at once.*) ... what we're doing is we're, I am actually wasting
1388 everybody's time. I'm sorry, Mr. Berry ... (***two speaking at once.*)

1389
1390 Mr. Berry: So you call this here meeting tonight wasting of everybody's time?

1391
1392 Chairman Ott: (***two speaking at once.*) No, no, no.

1393
1394 Mr. Berry: (***two speaking at once.*) We have business items on the agenda that I have a
1395 variance that I need a ruling on.

1396

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1397 (***Several speaking at once.*)
1398
1399 Mr. Courtney: Mr. Berry, you've gotta understand ... you've gotta understand the process.
1400
1401 Chairman Ott: It's the way the ordinance reads, (***several speaking at once*) ... you a variance.
1402 It's impossible. Okay.
1403
1404 Mr. Courtney: We'd love to give you a variance today. We'd love to help you.
1405 (***two speaking at once.*)
1406
1407 Chairman Ott: I'm going to ask the board to make a motion to defer this until after that planning
1408 ... (***two speaking at once.*)
1409
1410 Mr. Berry: I'm not asking for any (***two speaking at once*) ...
1411
1412 Mr. Lanham: Could I make one statement?
1413
1414 Chairman Ott: Yes.
1415
1416 Mr. Lanham: I think this has been stated before. We can't make a variance on something that
1417 would have to be a variance before we can make the variance. We just can't do that.
1418
1419 (***Several speaking at once.*)
1420
1421 Chairman Ott: ... you gotta bring it back.
1422
1423 Mr. Courtney: It would have to go under planning and zoning and in front of the council.
1424
1425 Ms. Herrmann: Order please, order please. Several people are speaking at once.
1426
1427 Chairman Ott: Yes.
1428
1429 Mr. Berry: If the planning commission meeting .. (***two speaking at once.*)
1430
1431 Chairman Ott: I'll ask for a motion now to defer this till after the planning and zoning. If they don't
1432 approve it, that will be it.
1433
1434 Mr. Courtney: I'd like to make a motion to defer this to planning and zoning.
1435
1436 Chairman Ott: Do I have a second?
1437
1438 Mr. Willm: Second.
1439
1440 Chairman Ott: That's it.
1441
1442 Mr. Berry: So, let me ask for the record, he said he makes a motion to defer it to the planning
1443 commission. If this your decision to defer to the planning commission?
1444
1445 Mr. Courtney: I made a motion to defer this at this time on the contingency that you go to the
1446 planning and zoning and then it would have to go to council.
1447
1448 Mr. Berry: For the record, then ... (***two speaking at once.*)
1449
1450 Mr. Courtney: Mr. Berry, I'm trying to be polite about this. We cannot hear this unless this goes
1451 in front of planning and zoning. I'm being honest with you.
1452

1453 Mr. Berry: I understand now. I understand the process, and everything in the town of Surfside is
1454 a delayed process for the record. But, getting back to the point, if I have two business days from now on
1455 Tuesday night of next week, can this committee come back as a special session and rule upon this hear
1456 without it having a delay of 45 to 60 days?

1457
1458 (***two speaking at once.*)

1459 Ms. Morris: Not until after council approves it. (**)

1461 Chairman Ott: After council approves it, there's, there is a process, and I'm sorry.

1462
1463 Mr. Berry: So, if I can make a statement here ... (***two speaking at once.*)

1464
1465 Chairman Ott: And I don't have control of that process.

1466
1467 Mr. Berry: ... because we're getting into much legal stuff here, unfortunately. I have been told by
1468 [Ms.] Morris, director for planning, building, and zoning that if the planning commission approves
1469 something, then she could go ahead that was verbally stated to me about two months, she could go
1470 ahead and issue a building permit. (***two speaking at once.*)

1471
1472 Ms. Morris: No, I have not. I did not say that. For the record, I did not say that.

1473
1474 Chairman Ott: I'm gonna stop and I'm gonna go to the next thing. We're gonna, and boy I'd like
1475 to stop. Public comments are here.

1476
1477 Mr. Berry: Thank you, we'll see one other again soon.

1478
1479 Chairman Ott: Okay, thank you. Thank you, Mr. Berry. Your request has been deferred until
1480 (**.)

1481
1482 **6. Public Comments – General Comments.**

1483
1484 Mr. John O'Hagan, 312B 15th Avenue South. I have two concerns. One is multiple surveys. I'd
1485 kind of like to know what's the actual survey. Pipes have been moved. It kind of gives me concern. Two
1486 is setbacks. There by law it's supposed to be in, you know, I have firsthand knowledge about setbacks,
1487 because I was a fireman for years. As a fireman, you can't have too many buildings close, because
1488 when you have fire, it goes from one to the other to the other. I have experience with Hurricane Sandy on
1489 Breezy Point burnt down and lost hundreds of homes. But, my main concern is service and pipe being
1490 moved two inches here, and squeeze. That's my concern. I just have a really big concern about that, and
1491 I'm gonna discuss it with my neighbor, Jim, who's at 321A, who's fence was mentioned. Thank you.

1492
1493 Mr. Bill Goddard, 320 15th Avenue South. Iron pins don't mean anything, because we had iron
1494 pins when we moved into our house, and the surveyors came and they resurveyed and then moved the
1495 things. So, don't tell me pins are there and they stay there, because I know they moved our pins.

1496
1497 Mr. Troy Berry, this is just a public comment. For the gentleman that was up here, yes, I agree
1498 with what he's stating. Survey pins are moved by surveyors. Not by me. I haven't moved any survey
1499 pins. Survey pins are moved over the years as they correct the records using GPS technology. So as
1500 that gentleman was just stating, when he bought his home a survey pin was moved. So, that gets back to
1501 my fact here tonight that I have a hardship issue, because a survey pin was moved just to square it up
1502 with the back property line, and that's why I requested a 5 inch variance. That's just a general public
1503 comment to answer the gentleman's questions about survey pins being moved.

1504
1505
1506
1507
1508

1509 **7. Board Comments.**
1510

1511 Ms. Watson. I have a, just a little bit of advice for a builder, who's a builder that would buy a
1512 piece of property that you get a survey done before you put your money out to buy a piece of property
1513 that hasn't been surveyed in a while, or demand that the owner get a survey, a proper survey before you
1514 purchase the lot. And, I also would suggest that the board get our recital together before we start any
1515 other board meetings to let the public know exactly what we are able to do within South Carolina Law and
1516 what we're not able to do, because we are so limited in our scope of what we can do. We can't make
1517 laws. We can't enforce laws. We can just interpret these four criteria to the best of our knowledge.
1518 That's all I have to say. I think it would be good every time we come before the public and before an
1519 applicant to make sure that they understand that we're not here to create a problem for anybody. We're
1520 just here to try and enforce our town's ordinances as they have been put forth by Town Council and the
1521 planning and zoning commission. We have no control over any of it. It's our town's laws. All we do here
1522 is just answer four questions that have been stipulated by the State of South Carolina. So, we are limited
1523 in what we can do. Very, very, very limited, and you really have to have a hardship in order to be able to
1524 qualify. You have to qualify for all four of these criteria. Not just one, but four, and it is difficult. But it, at
1525 sometimes it can be done, but that's all I have to say.
1526

1527 Mr. Willm: I second all that. I think, I mean the hardship gets kind of misinterpreted. I think the
1528 hardship as far as what we've heard tonight is one that the hardship that it was the intent of the law was if
1529 you have a size lot where you have certain setbacks, plus the house has to be a certain size and there's
1530 no way to do, to comply with all three to build to utilize the property, that's a hardship that the zoning
1531 inadvertently caused for that homeowner. It's not for hardships if you can't, you know, we understand
1532 and we have compassion. That's the hardest part about this job is to tell 'em about the issue with the
1533 man going up the stairs. We've had all kind of these issues. A person in a wheelchair, permanent
1534 wheelchair that we had to deny a permit. Understanding as we read it, it seems like that's definitely a
1535 hardship. But that was not the intent of the law as it was stated. It was not our intent is to make
1536 variances for everybody's issues. We've caught a lot of grief in the paper recently about a height
1537 restriction that we didn't issue a variance for. The purpose of the height restriction is under council's
1538 purview to decide what they want it to be. Ours is to decide if there's an issue with it. It was stated in the
1539 paper that we colluded and we did all this kind of stuff and [Chairman Ott] made all these decisions as
1540 chairman, which he doesn't even vote. So, that's not the case. This is a very hardworking group and
1541 actually two of 'em are going on to council now. But we all work very independently. We don't talk to
1542 each other before the meetings. We don't collude with anything. I haven't spoken to any of the members
1543 about any of these variances prior to stepping up here tonight, and I purposely don't do that, and none of
1544 them reach out to me. So, this board tries to do what we can, what we've been appointed to by the Town
1545 Council who was voted on by the town. So, we're just trying to do the best job we can. We try to help
1546 uphold the ordinances. Like I said, we're not here to interpret the ordinances. We're not here to say this
1547 that ordinance is dumb. It's not the same as Georgetown or Horry County or any of those reasons. The
1548 Town Council decides which ordinances are gonna be on the books and that's our job to make sure that
1549 nothing inadvertently happens that somebody can't utilize their piece of property. When it says utilize a
1550 piece of property it doesn't mean utilize how you exactly want to, but that you can actually build a house
1551 on it within those guidelines. Public comment has every right to make any kind of comment you want, just
1552 as the board does. But, we have no purview over staff's actions or staff's job or what they do. That's
1553 handled by the Town of Surfside Beach. You can come tell us, but there is no action we can take. It
1554 doesn't mean that we don't have sympathy for that you've gone through. The town gets a lot of
1555 complaints about how long it takes about how long it takes to do business. You can have legitimate
1556 concerns, but that's not our purview to be looking at those things and we have no ability to make any
1557 changes on how long it takes you to go through the process. But, I believe everybody on the board
1558 appreciates it. If there's anybody in the town that wants to be on the board, I think we have a few
1559 openings coming up. Congratulations to [Chairman Ott] and [Mr. Courtney] for election to the council. It's
1560 a tough job. We try to do the best we can and appreciate y'all staying so long tonight.
1561

1562 Chairman Ott said the meeting went on for a while, because he liked to give the citizens of the
1563 United States that come in here, they have rights, and they need to be able to say everything they think
1564 and maybe sometimes it does drag on. There is a limit, but I believe they need that time to plead their

1565 case, because it ends here, and I want everybody, and I'm leaving after ten years, I want everybody to
1566 always be treated the same. Everybody in this town is the same. That way it's fair to everybody. Nobody
1567 has ever come in here and gotten preferential treatment. But, everybody has had preferential treatment,
1568 because we're all treated the same. We're all treated fairly and trustly [sic.] That's what I would like this
1569 board to continue to do. Thank everybody for coming here tonight.

1570
1571 **8. ADJOURNMENT.**

1572
1573 Mr. Courtney moved to adjourn at 8:37 p.m. Mr. Willm second. All voted in favor. **MOTION**
1574 **CARRIED.**

1575
1576 *(Note: Mr. Berry approached the podium after the motion to adjourn and continued speaking*
1577 *after adjournment saying the floor was still open for public comments. Those comments were not part of*
1578 *the meeting.)*

1579
1580 Prepared and submitted by,

1581
1582 _____
1583 Debra E. Herrmann, CMC, Town Clerk

1584
1585 Approved: _____

1586
1587 _____
1588 Ron Ott, Chairman

1589
1590 _____
1591 Darrell Willm, Vice Chairman

1592 _____
1593 Timothy Courtney, Board Member

1594
1595 _____
1596 Terri Lauer, Board Member

1597 _____
1598 Guy Lanham, Board Member

1599
1600 _____
1601 Phil Murdock, Board Member

1602 _____
1603 Holly Watson, Board Member

1604
1605 Note: Be advised that these minutes represent a summary of items with a verbatim transcript of the
1606 hearing section insofar as can be determined by the recording thereof and are not intended to represent a
full transcript of the meeting. The audio recording of the meeting is available upon request; please
provide a flash drive on which to copy the audio file. An agenda of this meeting was published pursuant
to FOIA §30-4-80(a) including publishing on the town website; sent to the town's email subscription
service, and the agenda was posted outside Council Chambers. Meeting notice was also posted on the
town marquee.