



**BOARD OF ZONING APPEALS MEETING MINUTES
TOWN OF SURFSIDE BEACH
TOWN COUNCIL CHAMBERS
JULY 28, 2015 ♦ 6:30 p.m.**

1. CALL TO ORDER.

Vice Chairman Willm called the meeting to order at 6:30 p.m. Members present: Vice-Chairman Willm, and members Lauer, Lanham, McKeen, Murdock and Watson. One seat is vacant. A quorum was present. Others present: Town Clerk Herrmann and Building, Planning & Zoning Director Morris.

2. PLEDGE OF ALLEGIANCE.

Vice Chairman Willm led the Pledge of Allegiance.

3. AGENDA APPROVAL.

Ms. Watson moved to approve the agenda. Ms. Lauer second. All voted in favor. **MOTION CARRIED.**

4. MINUTES APPROVAL.

Mr. Lanham moved to approve the minutes of the April 28, 2016 meeting as submitted. Ms. Watson second. All voted in favor. **MOTION CARRIED.**

5. ELECTION OF OFFICERS.

Chairman: Ms. Watson moved to elect Mr. Willm chairman. Ms. Lauer second.

Mr. Murdock moved to close nominations. Ms. Watson second. All voted in favor. **MOTION CARRIED.**

All voted in favor to elect Mr. Willm chairman. **MOTION CARRIED.**

Vice Chairman: Mr. Lanham moved to elect Ms. Watson vice-chairman. Mr. Murdock second. All voted in favor. **MOTION CARRIED.**

RECUSAL: Ms. Lauer recused from the business portion of the meeting; the original recusal statement is attached to these minutes.

6. HEARING APPEAL. (This portion verbatim.)

Appeal No. ZA2016-06 Matthew & Judie Brown at 145 Harbor Lights Drive request a variance from Section 17-310 of the Zoning Ordinance regarding rear setback requirements in the R1 Zoning District. The Browns request a variance to encroach 6 feet into the rear 20 foot setback requirement.

Chairman Willm opened the public hearing at 6:03 p.m. Any speakers must be sworn in. Chairman Willm: Do you swear to the truth, and nothing but the truth?

Ms. Brown: I swear to tell the truth, the whole truth. I am Judie Brown and I'm asking for a variance to have a solarium added to my; I'm just doing six feet added on to my screened-in porch. My porch is of no use to me without it. I can't talk on the phone. I have roly polies by the bags full, and 17 is right behind me. So, there's nobody who sees it, except me. I request that you grant that. Do you have any questions for me?

57
58 Chairman Will: We do that now, right? Or, do we do that later. We'll do it after, okay. We have
59 to go ahead and open it up for public comments. When we're at the business section, we'll bring you
60 back up and ask you questions.

61
62 Ms. Brown: Oh, okay.

63
64 Chairman Willm: It's not that easy, is it? State your name. Mr. Trapp: My name is Bill Trapp.
65 Chairman Willm: Do you swear to the truth, and nothing but the truth?

66
67 Mr. Trapp: I swear to tell the truth, the whole truth. I live across from Mrs. Brown on 148 Harbor
68 Lights Drive and I have; I want to state for the record that I have no objection to what she wants to do.
69 Thank you.

70
71 Chairman Willm: Wonderful. Thank you sir. Yes, sir. Please state your name for the record. Do
72 you swear to the truth, and nothing but the truth?

73
74 Mr. Causey: Charlie Causey, I swear to tell the truth, so help me, God. I also live across the
75 street from Mr. and Mrs. Brown at 136, and I would encourage the board to approve the variance. I have
76 no objection.

77
78 Chairman Willm: Thank you, sir.

79
80 Ms. Magliette: Patti Magliette, 104 Harbor Lights Drive. I swear to tell the truth, the whole truth,
81 nothing but the truth. I'm a neighbor of Judie's and I am fully in favor of this. It would be nice if you would
82 be able to sit back there and talk on your phone, and cut back some of the 17 noise, and I think it will look
83 pretty when it's done. Thank you very much.

84
85 Chairman Willm: Thank you. Any other public comments to be having tonight? Yes, ma'am.

86
87 Ms. Spannuth: Wanda Spannuth. I swear to tell the truth, the whole truth and nothing but the
88 truth. I hadn't planned on doing this, but I also am a neighbor, and I don't see that it's going to interfere
89 with anything in the development as it backs up onto Highway 17. Thank you.

90
91 Chairman Willm: Thank you, ma'am. We still have room for anybody else that would like to
92 speak. Yes, ma'am.

93
94 Ms. Patchette: I swear to tell the truth, the whole truth. Tina Patchette, 129 Harbor Lights. I'm a
95 neighbor and I can tell you I could not live in that back part of her house, because the noise is
96 unbelievable. I mean she really needs this. So, hopefully, you will agree.

97
98 Chairman Willm: Anybody else? Going once, going twice? I make a motion to close the public
99 comments. Ms. Herrmann: Not necessary for a motion. Just declare it closed. Chairman Willm: Not
100 necessary; we'll move on. I close the public comment section (6:08 p.m.) and open the business section.

101
102 **7. BUSINESS.**

103
104 **Appeal No. ZA2016-06 Matthew & Judie Brown at 145 Harbor Lights Drive request a**
105 **variance from Section 17-310 of the Zoning Ordinance regarding rear setback requirements in the**
106 **R1 Zoning District. The Browns request a variance to encroach 6 feet into the rear 20 foot setback**
107 **requirement.**

108
109 Ms. Morris after being duly sworn presented the town's information, a copy of which is on file.
110 She explained that the property owner requested a six foot encroachment to the rear setback to build a
111 solarium. The property backs up to a berm that fronts on Highway 17. The property is zoned R1 with a
112 rear setback of 20 feet. Brick pavers are currently at the rear of the property that encroach about six feet,

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113 but the pavers are pervious, which allow rain to pass through to the ground. The request is basically to
114 enclose the brick pavers with a solarium. If a solarium is built, the area would not be pervious. The plat
115 shows that the 20 foot setback is also a drainage easement. Harbor Lights development is large and has
116 a many drainage easements. The public works director objects to the variance because no
117 encroachments are allowed to be built in drainage easement areas. Granting the variance would allow
118 encroachment into the stormwater drainage easement. These actions could be taken, if the variance is
119 approved: 1. Require the homeowner's association to redesign this section stormwater plan; or 2. Have
120 the property owner submit a stormwater plan. Generally, owners in this subdivision are not required to
121 have individual plans, unless the property is on the water.

122
123 Chairman Willm asked if the berm was part of the setback. Ms. Morris said it is.

124
125 Mr. Lanham asked for clarification about the property location and situation. Ms. Morris
126 approached the on map display and gave the explanation. Mr. Lanham said if this was permitted, then
127 the other homes could also request a variance. Ms. Morris said yes, because the property directly beside
128 this house also backs onto Highway 17.

129
130 Ms. Watson asked if a topography map was available. Ms. Morris said not of the subject
131 property; there may be one of the development. Ms. Watson asked how much of the 20 foot setback the
132 berm filled; how many feet was it from the edge of the brick pavers to the edge of the berm. Ms. Morris
133 said the house sits on the 20 foot setback line, which is allowed. Most of the rear yard is the berm. Ms.
134 Watson asked how much drainage swale was normally in a subdivision. Ms. Morris said the minimum is
135 15 feet according to the stormwater ordinance. Larger subdivisions, like Harbor Lights, require 20 feet.
136 Ms. Watson said most of the 20 feet is taken up with the berm; the house sits on the 20 foot line, and the
137 pavers encroach into the 20 feet required. Ms. Morris said yes.

138
139 Chairman Willm asked Ms. Morris to discuss the two options mentioned. Ms. Morris said if this is
140 approved, staff would either have the homeowner's association look at redesigning the stormwater
141 requirements for this section of this subdivision, which would take the easement and move it back; or give
142 the public works director options on that easement. Or, the homeowner's association may require that
143 the homeowner have a stormwater plan created to redirect the water flow from behind their home. The
144 town has to ensure that if the variance is approved, that stormwater will not be backed up. One or the
145 other stormwater plan would be required before a building permit was issued. That is done for every
146 other property in town, except for Harbor Lights, because Harbor Lights has a master stormwater plan.

147
148 Ms. Watson asked when the rerouting of the water plan was done whether it would be carried all
149 the way through, because it appeared to her that the flow went around the bend and down towards the
150 lake. That involves quite a bit of engineering; some grade shots and things like that will need to be done.
151 The water should not be ponding at the edge of the pavers, because that will draw bugs and mosquitoes,
152 and be swampy. The property would have to be regraded around the pavers to reroute the water. Ms.
153 Morris reiterated that the existing pavers are pervious, and that Ms. Watson was right. Runoff plans have
154 to be designed to have either buried piping or swales on both sides. In this case, we have to wait and
155 see what is planned. Approval would affect much more than this one property.

156
157 Mr. Murdock referred to the survey and said that at the top it states #1 proposed pond post
158 development, and asked what that is. Does the US Highway 17 right-of-way go to the back of the
159 property line or is there open space between the right-of-way for 17 and the property line. Ms. Morris said
160 just the state right-of-way, which is 17 to the ditch. Mr. Murdock asked if the open space was not actually
161 (**). Ms. Morris said not on that property; she believed the pond was put in, but it was not on Ms. Brown's
162 property. It is part of the development's stormwater plan. Mr. Murdock asked if it was part of the
163 homeowner's association property. Ms. Morris said it is. Mr. Murdock asked if the homeowner's
164 association had restrictive covenants. Ms. Morris said it does. Mr. Murdock asked Ms. Brown if the
165 homeowner's association had approved the change in the setbacks for the development.

166
167 Ms. Brown replied from the audience that the homeowner's association has approved the
168 change.

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Mr. Lanham asked if this variance was approved, who would be responsible for paying for the new stormwater plan. Ms. Morris said the property owner. Mr. Lanham asked if this was in a flood zone. Ms. Morris said no.

Ms. Brown said she was here during the big storm last October. The water set on the other side of the lot. There is a pipe, but she did not know where the drainage goes. There was no water sitting around her house; it all drained out. Ms. Morris said it was built to drain so it won't settle. It runs to the drainage pipes. Once a building is put there, that may change. Ms. Brown said it would not go any lower than where the pavers are, and we don't have gutters, so the water isn't (**). If it's glass, it will just run off.

Chairman Willm asked if all four of the properties had the berm behind them. Ms. Morris said yes. Chairman Willm said a neighboring house looked further into the setback area; was that correct? Ms. Morris said yes, it was a smaller home and closer to Harbor Lights Drive.

Ms. Brown said she did not know how her house was placed so close to the line. Ms. Morris said the house was right on the setback line, but it does meet the setback.

Chairman Willm said he was trying to determine the uniqueness of the property. The board has to address and validate the four questions that Ms. Brown answered. The hardest question is "because of these conditions the application of the ordinance to this particular piece of property effectively prohibits or unreasonably restricts the utilization of the property as follows." He said Ms. Brown's answer was "extra square footage and entertainment." He asked Ms. Brown to elaborate.

Ms. Brown said I can't use the back porch. You can't hear. I have bugs from the berm. I'm telling you, and they stink. I swept up a bag full of roly polies and started to bring them with me. They stink. Do you know what roly polies are?

Chairman Willm said we have them and know what they are.

Ms. Brown continued saying she had ruined a sweeper cleaning them up back there. They even come into her house, because she is so close to the berm. That's a problem. You can't hear. It's really loud during the bike weeks. There were several comments about fireworks sounds rebounding from the berm; enjoying the lights and hurricane evacuation. (*Laughter.*) A down payment was already paid for the solarium; it will look good, and be good. She did not think there would be a problem with the drainage, because there isn't now.

Ms. Morris said no one knows that there would be. An engineer has to inspect the system, because it was designed to the current structure. Ms. Brown thought that was already done when the second permit request was submitted. Ms. Morris said as long as the solarium was built to meet the setbacks, you would not need it. Since the structure will encroach into the drainage easement if a variance is approved, a stormwater plan is required.

Chairman Willm asked how far the structure would encroach. Ms. Morris said six feet.

Ms. Brown explained when the property was first purchased, the contractor had to grade the berm, because it was up to the edge of her house. Chairman Willm said the berm is designed to cut noise from the highway.

Mr. Lanham asked if the solarium would fit exactly with the bricks. Ms. Brown said yes, it would replace the screen and go out as far as the pavers. Mr. Lanham asked how Ms. Brown knew that would stop the roly polies from going into the house. Ms. Brown said it would be sealed. Mr. Lanham said he also gets them at his house. He knew exactly what she was talking about.

224 Ms. Watson asked why Ms. Brown didn't just glass the screen porch. What would be the
225 difference? Ms. Brown said because she is special and she wanted something special. It was what she
226 wanted, but it was strictly up to the board.

227
228 Ms. Watson moved to deny the variance request because there is no evidence that denying the
229 request will unreasonably restrict the utilization of the property; there are no extraordinary conditions, and
230 there is no answer for 'D' as to how this would affect the adjoining properties. Mr. Murdock second.

231
232 Ms. Watson explained that the board did not have a topography map to show where the water
233 drained; there are no engineering drawings or other engineer's data showing where the water will run
234 after the structure is built, and this is a huge housing development. It's not like the house was standing
235 alone. The development was engineered professionally and any inches of grade that are disturbed, no
236 matter how minor, can affect the adjoining property. All we have is a homeowner's statement that the
237 construction won't affect drainage. She also had a problem because the home can be used; not granting
238 the variance will not disturb her use of the home. This is a fairly new subdivision. The owner purchased
239 the house as built.

240
241 Mr. Murdock concurred with Ms. Watson and said even though he thought all of the board
242 members would love to approve the variance request, it does not meet the statutory requirements that the
243 board is bound to follow. It seems to him there might be some redress with the homeowner's association.
244 Maybe Ms. Brown could work with them to change the lines, because she was talking about six feet.
245 There may be some room on the other side that could be used to mitigate. But, that would not help
246 during this appeal.

247
248 All voted in favor. **MOTION TO DENY CARRIED.**

249
250 **8. PUBLIC COMMENTS**

251
252 Mr. Ron Ott, 7th Avenue North. Sitting in the audience gave me a good view of what was going
253 on. You need to have the agenda where the presentation is done first, because I don't have a packet. I
254 have no idea what it's for. There's a couple of people in here that haven't had a packet, so we couldn't
255 make a statement in your first public comment, because we had no idea what was gonna come down. If
256 you can, you can make sure that you use the presentation of the town and the applicant so we can hear
257 that before public comments are allowed. Thank you.

258
259 Ms. Patricia Magliette, Harbor Lights. As I was looking at that neighborhood drawing there, I
260 would say that the house to that empty lot beside of her; that doesn't necessarily gonna have the back of
261 its house sitting on that berm like Judie's is [sic.] As a matter of fact, it was mentioned that well, it's a
262 development and they all have that problem. Well actually, no, they don't all have that problem. I would,
263 from my best recollection, I would say that this is the only house that has that problem. If you look at that
264 picture, the one to that side, that house is gonna be centered differently, and they're not gonna be up to
265 the line, and if you look at the property on that side, that don't [sic] look like they're gonna have the
266 problem either. It just looks like this house, and to me, that seems like it is a hardship. That's what I
267 think. Thank you.

268
269 Ms. Judie Brown, Harbor Lights. I applied for a variance and I waited two months. I don't think
270 that that's proper business. They said it was a lack of communication. Sabrina, can you enlighten me on
271 that Sabrina.

272
273 Ms. Morris: I don't mind. We have, we had a permit tech that took this in from Ms. Brown.
274 During the process, she left the organization, and she did not submit the application to me. We had no
275 idea she had even applied until she called the town administrator, and then we started the process.

276
277 Ms. Brown: And I called you several times, Sabrina. Did you not get any of those messages?
278

279 Ms. Morris: No, ma'am. I did call you after you called the administrator. Ms. Brown: I know.
280 That was yesterday. Ms. Morris: No, I'm talking about to tell you that we had gotten. No, actually you
281 had talked to Mike Farria, the building official. Ms. Brown: No, you didn't. Ms. Morris: No, you talked to
282 our building official. Ms. Brown: He told, he told me that if I wanted to be on the agenda. Ms. Morris:
283 Yes. Ms. Brown: That I wanted to be on the agenda. But, that's not exactly, I think you both need to be
284 a little more prompt, and I don't care if somebody quit. She's in your office, right? Are you ever in your
285 office? Ms. Morris: Not, not normally.

286
287 Chairman Willm: Ma'am, this is public comments.

288
289 Ms. Brown: Well, that's, that's my question. I went for 30 days and went to her office and there
290 was nobody there. I had [sic] the little Spanish girl that quit, and I tried; you don't know the proper
291 procedure, if there's nobody to ask. Okay, that's my statement, and I didn't have anybody to ask. So,
292 okay, thank you.

293
294 **9. BOARD COMMENTS.**

295
296 Ms. Watson: Mr. Chairman and public citizens, we sit up here and we have four criteria. We
297 don't answer your four criteria. You have to answer it so that we can take the letter of the law from South
298 Carolina and apply it towards your answer. If we don't answer these four criteria correctly, we cannot; if
299 you don't answer, I'm sorry, we can't allow a variance, because the variances that you're asking us to do
300 are in conflict with our town ordinances, which are made by Town Council according to the planning and
301 zoning commission and the Town Council makes the rules and the regulations. All we do, and all we're
302 allowed to do by law is have a hearing for you to present your case to us answering in your own words
303 how your variance is different from all your surrounding properties and to present all the proof that you
304 have that whatever you want to do is not going to affect adjacent properties. We can't present any
305 evidence for you. We can't subject ourselves to our own imagination as to what you want to do. All we
306 can do is take what you give us, any kind of plats, any kind of drawings, any kind of engineering
307 drawings, any statements from any engineers, any kind of proof that you have that this variance will not
308 be detrimental to your area, your neighbors, or our town, and that's all we're allowed to do is review what
309 evidence you give us, and try and make a determination according to state law that these four items have
310 been answered correctly so that we can give you a variance. If we don't have any answers that to our
311 satisfaction prove that you are due a variance, then we have to vote no. These four questions are
312 statewide. Every board of zoning appeals has the same four criteria that they have to base their
313 judgment on. We're your neighbors. We're not your enemies. We're your neighbors; we live right here in
314 town. We would love to give you the dreams that you have, and we have no problem with what this looks
315 like. It's just that we have these four criteria that we have to go by. I'm very sorry that it didn't turn to be
316 what you expected it to be or what you want it to be. But, we're held accountable. The next step beyond
317 us is court, and we're charged with doing this. It's not a fun job. It's something we do, because
318 somebody's got to do it, and we volunteer. So, I'm sorry it didn't; we weren't able to grant this variance
319 for you. We really are sorry. But, in our opinion, it didn't meet the proof that we needed.

320
321 Mr. Murdock: I want to congratulate Mr. Ott on his election to Town Council. I was out of the
322 country when he was sworn in, so was not able to be here for that. But, I certainly enjoyed your tenure on
323 this board and enjoyed working with you, and look forward to watching you on Town Council, since I'm
324 sure that there'll be lots recorded in the paper. As far as it goes, having worked on probably 200 to 300
325 neighborhoods in the Charlotte area when I was working up there as an attorney, I do know and have
326 seen issues like this come up many times. Cul-de-sac lots, because of the setbacks change, ends up
327 being a different lot and then a lot that like you pointed out right beside it, you've got a lot more of a
328 footprint to work off of. In fact, when you do these setbacks a rectangle is the perfect lot. That's gonna
329 be the one that gives you the best buildable pad. The cul-de-sac lots are gonna be your hardest lots to
330 build on, and that's the reason why your particular house; they squeezed a lot square footage onto a pie
331 shape is basically what it works out to. But, unfortunately, that goes to valuation of the lot versus some
332 people like cul-de-sac lots; some people like rectangular lots; some people like round lots, I guess. But,
333 everybody's just, you know, it goes to valuation, and unfortunately, valuation doesn't factor into our four
334 point criteria in any way. So, I am truly sorry, because if I had my choice, I would grant probably

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335 everyone who came in here, because I'm a big softie. When it comes to something like this, it's just not
336 within our purview. I'm sorry.

337
338 Mr. McKeen: I'm really sympathetic on this. It was a beautiful plan. Being new to the board here
339 I'm kind of learning as we're going. I'm generally inclined to agree with property owners with what they do
340 with their property. But as I said, I'm learning what the state laws are here and maybe there's still a way
341 to get it done. I don't know. I hope you find a way to make the property more useful for you. As Holly
342 suggested, maybe you just enclose your porch; your screened in porch. That might be a compromise
343 that would work for you in the short term.

344
345 Chairman Willm: I echo all the board members. I appreciate this volunteer board appointed by
346 the Town Council. This is a very compassionate, thoughtful group and I'm always impressed with how
347 much thought and time they put into these things. It's always a pleasure to serve with you and I
348 appreciate your trust in me being chairman of the board now.

349
350 **8. ADJOURNMENT.**

351
352 Ms. Watson moved to adjourn at 7:10 p.m. Mr. Murdock second. All voted in favor. **MOTION**
353 **CARRIED.**

354
355 Prepared and submitted by,

356
357 _____
358 Debra E. Herrmann, CMC, Town Clerk

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360 Approved: _____

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362 _____
363 Darrell Willm, Chairman

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365 _____
366 Holly Watson, Vice Chairman

367 _____
368 Terri Lauer, Board Member

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370 _____
371 Guy Lanham, Board Member

372 _____
373 Larry McKeen, Board Member

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375 _____
376 Phil Murdock, Board Member

377 _____
378 Vacant Seat

379 Note: Be advised that these minutes represent a summary of items with a verbatim transcript of the
380 hearing section insofar as can be determined by the recording thereof and are not intended to represent a
381 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.