



**BOARD OF ZONING APPEALS MEETING MINUTES
TOWN OF SURFSIDE BEACH
TOWN COUNCIL CHAMBERS
AUGUST 27, 2015 ♦ 6:30 p.m.**

1. CALL TO ORDER.

Chairman Ott called the meeting to order at 6:30 p.m. Members present: Chairman Ott, Vice-Chairman Willm, and members Courtney, Lauer, Lanham, Murdock and Watson. A quorum was present. Others present: Planning, Building & Zoning Director Morris, Permit Technician Garcia, and Events & Recreation Supervisor Ellis, who acted as recording clerk.

2. PLEDGE OF ALLEGIANCE.

Chairman Ott led the Pledge of Allegiance.

3. AGENDA APPROVAL.

Mr. Lanham moved to adopt the agenda as submitted. Mr. Willm seconded. All voted in favor.
MOTION CARRIED.

4. APPEAL HEARING. (This portion verbatim.)

Appeal No. ZA2015-02 by John Newsome for a variance from §17-320(2) of the zoning ordinance to allow for the encroachment of a covered deck in the rear yard setback requirement of 20-feet at property located at 311 14th Avenue South (TMP#195-07-05-026.)

Chairman Ott asked the appellant or representative to approach the microphone and to say their name very clearly into the microphone for the transcript.

Mr. Newsome: My name is John Newsome. The property that ...

Chairman Ott: Excuse me, would you please raise your right hand. I have to swear you in. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Newsome: I do.

Chairman Ott: Mr. Newsome, proceed.

Mr. Newsome: As, as I'm sure you have in front of you, we have a property on the corner of 14th Avenue South and Lakeside. The property is jointly owned by my wife, my brother, and her sister, and this is my brother-in-law. I guess somehow another, we own part of the property, too. But, we are here representing our spouses. We wish to build a covered deck in the back yard of the property coming off the back of the house, and it would be in the back yard of the property. The, the current setback of 20-feet would not allow us to build a large enough deck so it would be useable. As a matter of fact, it would look very constrained and dinky. So we are requesting a variance so that we can go at least 5-feet beyond the current setback line, and, and the thing that we would like for you folks to keep in mind is that this property is located, our back yard backs up to a canal that has a 20-foot right-of-way for the canal, and so, if you're so kind as to grant us this variance, when we build the deck we will still be 35-feet, the deck will still be 35-feet away from our backyard neighbors property line. And, and there are no issues going to either side of the property. As part of this process, we gave names and addresses of 17 of our neighbors that are within 150-feet and we actually spoke with all of them but, but one, maybe two. But we spoke with at least 15 of them, and none of them stated, or gave us any objection to what we're planning to do. As a matter of fact, they, they thought it would be a good idea, and a, and a beautification, so to speak, for the neighborhood. And, and we feel that it will be, and we think it will be an enhancement to

57 our property and we don't think it will be a detriment to any of our neighbors. Another point is that we are
58 the breakpoint between R2 and R3. The street Lakeside is the street that separates R2 and R3. So all of
59 our neighbors on the other side of the street are have much less tight restrictions and they are already
60 well within any of, much closer to their neighbors' property than what we're requesting, and all eight of the
61 neighbors within a 150-feet of us that back up to that canal, every one of them is already well within 15-
62 feet of that canal with some kind of structure, so we're not asking for a precedent to be set other than a
63 precedent of giving us the variance on the, on the new property setback. But we wouldn't be doing
64 anything different than what's already there. And, I thank you for the opportunity here to come before you
65 tonight, and assure you that if you allow us to proceed that this won't be anything that would be a
66 detriment to the, to the value and the looks of the neighborhood. Do you want me to stand here while you
67 ask questions?

68
69 Chairman Ott: No, you can sit down. I'm going to ask a representative from the Town of Surfside
70 Beach, our director of zoning and building, to make a statement on this.

71
72 Director Morris: Good evening. Sabrina Morris.

73
74 Chairman Ott: Do you swear to tell the truth, the whole truth, nothing but the truth, so help you
75 God?

76
77 Director Morris: I do. Mr. Newsome pretty, explained it pretty well. This is, and you do have this
78 in your packet. It's a portion of the plat. The red line shows the 20-foot setback, and then the green line
79 is the proposed 15-foot setback where he is requesting to build the covered deck. The rear of the
80 property does house a 20-foot drainage ditch. It runs the entire length of his property, as well as all the
81 adjacent properties on that side of Lakeside Drive. He's just asking for relief for the 20-foot setback. He
82 can meet the side setback requirements. And, you also have these elevations in your packet. The left
83 side would be what you would see from Lakeside Drive. And, here you can see an aerial of 14th and
84 Lakeside Drive. And, he is correct; Lakeside Drive is a line that divides the R2 zoning district from the R3
85 zoning district. The R3 zoning district allows for 15-foot setbacks in the rear, five on each side. We did
86 notify everyone within the 150-feet and we have had no response. I'll be glad to answer any questions
87 you have.

88
89 Chairman Ott: Is there anybody else that would like to speak about this variance at all? Do you
90 have a rebuttal, at all, Mr. Newsome to Ms. Morris's statements?

91
92 Mr. Newsome: (**) Thank you.

93
94 Chairman Ott: At this time I'm going to close the public hearing section of this hearing and I'm
95 gonna open the business section.

96
97 **6. BUSINESS**

98
99 **Appeal No. ZA2015-02 by John Newsome for a variance from §17-320(2) of the zoning**
100 **ordinance to allow for the encroachment of a covered deck in the rear yard setback requirement of**
101 **20-feet at property located at 311 14th Avenue South (TMP#195-07-05-026.)**

102
103 Mr. Lanham had viewed the neighborhood and asked if the structures currently in the setback
104 area were sheds or temporary structures. Mr. Newsome said some were temporary, but others were
105 permanent. The property next to his has a pool house in the setback area. The neighbor directly behind
106 him has two very large structures that back up to the property line. All along the drainage ditch on the
107 eight neighbors property that are within 150-feet of him, there are buildings that are part of the houses
108 sitting within the 20-foot and sometimes within 15-foot setback. Further down the canal, there are
109 buildings built within 2- or 3-feet of the 20-foot right-of-way. Ms. Morris said the code allows storage
110 buildings or accessory structures in the rear to be 5-feet from the property line. Swimming pools are
111 allowed to be 5-feet from the property line; pools are not considered a structure. After inspection, no
112 attachments could be found that encroached that had a permit before any code changes, so they were

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113 grandfathered. Ms. Morris said the accessory structures that were shown are required to be 5-feet from
114 the property line.

115
116 Mr. Willm asked what distinguished attached or detached. Ms. Morris said if the structure was
117 detached from the home and a storage building, it could be 5-feet from the property line. A detached
118 garage has to meet the setbacks. Anything attached to the structure has to meet the setbacks.

119
120 Mr. Courtney asked if the proposed structure was closed. Ms. Morris said it would be open.

121
122 Chairman Ott asked if the structure was enclosed after it was built whether another permit would
123 be required. Ms. Morris said yes. If the variance was granted, the board could place a condition on the
124 variance to state that it must remain as an open structure.

125
126 Mr. Murdock asked when the code changed. Ms. Morris said the setback code has not changed
127 since before 2000. She thought Mr. Newsome was referring to the R2 district where it changed to
128 R3. Mr. Newsome explained that the house was built in 1984 or 1985. There was a 15-foot setback at
129 that time which is shown on his original deed. Sometime within the last 10- or 15-years the setback was
130 changed from 15-feet to 20-feet.

131
132 Mr. Willm asked if Mr. Newsome had owned the property since the purchase. Mr. Newsome said
133 his father-in-law built the house and deeded it to his children. The structures he referred to have been
134 built a long time, so they could have met the 15-foot setback and would be grandfathered.

135
136 Ms. Watson asked if any trees would be removed. Mr. Newsome said nothing would have to be
137 removed to allow them to proceed with construction. Ms. Watson noted for perspective that the proposed
138 deck at about 396 square feet was about 25-percent of the house square footage.

139
140 Ms. Lauer asked if any impervious concrete would be used. Ms. Morris said a stormwater plan
141 would be required and construction would also have to meet the pervious/impervious calculations. Ms.
142 Lauer asked if the plan complied with the setback and the impervious. Ms. Morris said it does [sic.]

143
144 Mr. Willm asked if there any codes to account for 20-foot rights-of-way in the back of the yard.
145 Ms. Morris said no.

146
147 Mr. Murdock asked if the public drainage right-of-way was still in use. Ms. Morris said yes.

148
149 Chairman Ott asked if the right-of-way had been there all along, and if the property lines were
150 changed to establish the drainage canal. Mr. Newsome said the drainage ditch was placed about a foot
151 inside his property line. The ditch itself if not on his property. He has a fence on that. Chairman Ott
152 asked if the 20-foot setback applied to every house in the R2 zone. Ms. Morris said that was correct.

153
154 Mr. Willm asked if Mr. Newsome had seen the four mandatory criteria to allow a variance. Mr.
155 Newsome answered yes. Mr. Willm had concern about item 'C' that stated "because of these conditions
156 the application of the ordinance on that particular property would effectively prohibit or unreasonably
157 restrict the utilization of the property as follows." The deck being small did not necessarily restrict the use
158 of the property. Mr. Newsome said it would not restrict the use of the property, but it would restrict the
159 use of the dwelling, if they are not allowed to build the deck unless it was inside the current setback lines.
160 The deck would only be 9 feet wide. Mr. Willm said the key words were "unreasonably restrict." Mr.
161 Newsome said it would not unreasonably restrict the use, because building the deck was not something
162 that they had to do to continue to use the property.

163
164 Mr. Murdock believed that the variance should be granted because the owner could have built the
165 deck when the home was purchased, and that because the setback requirements were changed he was
166 being denied that option.

167

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168 After additional discussion and reviewing the four criteria established by the State Code, Mr.
169 Willm moved to approve the appeal based on all four criteria being met, because the option to build the
170 deck existed at the time Mr. Newsome purchased the property. Mr. Lanham seconded. Mr. Murdock
171 asked for a friendly amendment to include that the deck could not be enclosed or become heated square
172 footage without seeking a further variance. Chairman Ott said the motion would change the ordinance.
173

174 Ms. Watson commented that just because a property was purchased and later an ordinance was
175 adopted that changed setbacks, you could not grandfather certain property away from the ordinances,
176 because then you have no ordinances at all. [Considering] the way the town has grown over the past 20-
177 years, it is not possible to grandfather properties that have been here all the while. The 20-foot public
178 drainage ditch concerned her, because staff had to get heavy equipment in to clean and maintain that
179 ditch, neither did they know how high the water would rise during a storm event.
180

181 Mr. Willm restated his motion that a variance be granted based on the fact that there are
182 extraordinary, exceptional conditions pertaining to this particular piece of property as follows: the current
183 20-foot setback is against the drainage canal and a 25-foot right-of-way, so therefore a 35-foot buffer
184 would still remain between the requested deck and the rear neighbor's property line; these conditions do
185 not generally apply to other property in the vicinity as shown and as discussed by this board hearing;
186 because of the conditions, the application of the ordinance on this particular piece of property would
187 effectively prohibit and unreasonably restrict utilization of the property in that at the time it was purchased
188 zoning would have allowed this addition whereas it does not now, and the authorization for variance will
189 not be of substantial detriment to the adjacent properties or the public good and the character of the
190 district would not be harmed by granting this variance.
191

192 Chairman Ott interpreted question 'C' as making the property no longer being fit for use, or that
193 nobody could live in it, and asked Mr. Willm how that would occur if the variance was denied. Mr. Willm
194 said his interpretation of question 'C' was the same as Mr. Murdock stated. The question does not state
195 that it could not be lived in; it states "the application of the ordinance to the particular piece of property
196 would effectively prohibit or unreasonably restrict the utilization," which utilization is making the size of the
197 deck unreasonably smaller than it should be.
198

199 Chairman Ott said the board was trying to change the ordinance. Mr. Willm said the board
200 cannot change an ordinance, but the board was to approve or disapprove a variance to an ordinance.
201 Chairman Ott said if one person was allowed a variance, then everybody in Surfside Beach could do it.
202

203 Mr. Murdock took exception to that because it was already established in this meeting that the
204 Newsome family are original owners. They purchased prior to a change in the ordinance set back
205 requirements, and this is specific not only to their property, but to their particular situation, which he
206 believed was the purpose of allowing a board of variance to hear appeals. If the house had been
207 constructed after the setback was established, he would not support the request. That was his argument:
208 it is unreasonable for the Newsome family in this particular circumstance on this particular property.
209

210 Mr. Courtney agreed that granting the variance would open the door for everyone that purchased
211 property prior to the setback change to encroach into the setback lines.
212

213 Ms. Watson said the deck size could be reduced and still have a 9- by 13-foot deck, which would
214 still be a very nice deck and it would not look off-size according to the size of the house. She understood
215 the arguments from both sides, but did not think the variance should be granted.
216

217 Mr. Lanham said if this variance was granted he did not know how a similar variance could be
218 denied. He did not know that another such request would come before the board, but it was a possibility.
219

220 Mr. Murdock believed that Chapter 29 of the Code specifies that the fact that a similar variance
221 was granted was not grounds for a subsequent variance. He reiterated that special circumstances were
222 the purpose for a variance. He made the argument that there were special circumstances in this case.
223

224 Mr. Lanham said the board may not have to grant similar variance requests, but it would be a
225 good argument.
226

227 Ms. Lauer asked if the appellant would consider a smaller deck. Ms. Morris said a smaller deck
228 would not require a variance. Mr. Newsome said his wife would be happy with a smaller deck, but he did
229 not believe he nor his brother-in-law would be happy. He differed with Ms. Watson's point. The plan was
230 to build an in-door/out-door dining and cooking area. They planned to have tables and chairs and a
231 cooking area set up. That just could not be done in a 9- by 13-foot space. Mr. Newsome said they did
232 not want to cook their food in the yard; they wanted to cook on a deck. They would struggle with whether
233 they move forward to build within the setback lines, and reiterated that he thought a smaller deck would
234 look dinky.
235

236 Vice Chairman Willm and Member Murdock voted in favor. Chairman Ott, and members
237 Courtney, Lanham, Lauer, and Watson voted against. **MOTION TO APPROVE FAILED. VARIANCE**
238 **WAS DENIED.**
239

240 Ms. Morris thanked everyone for attending the recent training. Waccamaw Regional will provide
241 another session for those that missed. She introduced Carolina Garcia, the new permit technician.
242 Another request for a variance has been made. She would like to schedule a meeting on September 24th
243 at 6:30 p.m. in Chambers to hear that request.
244

245 Chairman Ott asked that a workshop be scheduled for the board as soon as possible, but before
246 September 24th. Ms. Morris asked if the workshop should be scheduled during lunch or after work.
247 Several comments were made simultaneously. Ms. Morris said the workshop would be scheduled after
248 work.
249

250 **7. BOARD COMMENTS.**
251

252 Ms. Watson said it was very interesting how our little town had grown by leaps and bounds over
253 the past 20-years. She has lived in town almost 30-years. She did not like all the new development, and
254 she fought tooth and nail against some of it. Unfortunately, we are running out of space and we are
255 running out of drainage. We are running out of everything that is green. We have to be extremely careful
256 of what we put in our lakes and our drainage ditches. We have to give water room to roam when we have
257 severe downfalls, outfalls, and rain that comes down. We've been extremely lucky with hurricanes; it is
258 not 'if;' it is 'when.' Hopefully, our infrastructure will hold up well enough to be able to spare us a lot of
259 torment and agony later. We're sitting up here and trying to make decisions for our neighbors. We live
260 here with you, and so we have to do what we feel is the best for our community and we hope that we can
261 go forward with a community that is able to handle things that happen within the community like
262 hurricanes. We are guided by like FEMA (Federal Emergency Management Agency), ordinances and
263 other things that we have to put in place in order to have a functioning community. It is not anything
264 personal, and it certainly not our intention not to grant things that actually do cause hardships. She
265 hoped that people understood the goals of those sitting on the board who are trying to do what is right for
266 the community and our neighbors.
267

268 Mr. Willm was grateful to serve on the board. He enjoyed the spirited debate and he thought that
269 was why there was not one person on the board that dictated things. It took four of the seven members
270 to decide an issue. He thought the town was lucky to have people that have the passion that the
271 members have. Things did not work out for Mr. Newsome, but that was why there was a variance board.
272 He hoped that Mr. Newsome saw that none of the members had an agenda; everyone was trying to do
273 the best thing for the town. He hoped that Mrs. Newsome won and he got to build a deck, anyway.
274

275 Chairman Ott thanked everyone that was not involved in the appeal for attending to listen. As
276 chairman, he tried to help direct the board to hold forcefully to the ordinance. He wished there were not
277 any ordinances, and people could just do what they wanted. But, we are a town of ordinances. He tried
278 to keep the board on the steadfast path of keeping the ordinance in place. The board's job was not to
279 tweak the ordinances as part of the debate brought out, but the board did issue variances. They had to

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280 be mindful that there are many other people in the area. Chairman Ott said once some doors are
281 opened, the cows would all run out of the barn. He thanked the board for debating the issue. This was
282 probably one of the toughest appeals they had heard. Thank you for bringing it in front of your neighbors.
283 We are your neighbors.

284
285 **8. ADJOURNMENT.**

286
287 Mr. Willm moved to adjourn at 7:18 p.m. Mr. Lanham seconded. All voted in favor. **MOTION**
288 **CARRIED.**

289
290 Prepared from audio recorded by Events &
291 Recreation Supervisor Ellis and submitted by,

292
293 _____
294 Debra E. Herrmann, CMC, Town Clerk

295
296 Approved: _____

297
298 _____
299 Ron Ott, Chairman

300
301 _____
302 Darrell Willm, Vice Chairman

303 _____
304 Timothy Courtney, Board Member

305
306 _____
307 Terri Lauer, Board Member

308 _____
309 Guy Lanham, Board Member

310
311 _____
312 Phil Murdock, Board Member

313 _____
314 Holly Watson, Board Member

315 Note: Be advised that these minutes represent a summary of items with a verbatim transcript of the hearing section insofar as can be determined by the recording thereof of the board of zoning appeals 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), and made available to all interested parties.