



**BOARD OF ZONING APPEALS MEETING MINUTES
TOWN OF SURFSIDE BEACH
TOWN COUNCIL CHAMBERS
OCTOBER 22, 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, and Watson. Member Murdock was absent. A quorum was present. Others present: Town Clerk Herrmann and Building, Planning & Zoning Director Morris.

2. PLEDGE OF ALLEGIANCE.

Chairman Ott led the Pledge of Allegiance.

3. AGENDA APPROVAL.

Ms. Watson moved to approve the agenda. Mr. Willm seconded. All voted in favor.
MOTION CARRIED.

4. APPROVAL OF MINUTES.

Mr. Lauer moved to approve the minutes of the August 27, 2015 meeting. Mr. Lanham seconded. All voted in favor. **MOTION CARRIED.**

5. HEARING APPEAL. (*Public hearing portion verbatim.*) and 6. BUSINESS.

Chairman Ott explained that each appeal would be addressed individually with the hearing and then business immediately thereafter.

5. a. PUBLIC HEARING: Appeal No. ZA2015-04 Thomas and Cathleen Moore request a variance from Section 17-311 (Maximum Building Height) of 35 feet to the roof peak in the R1 District to allow for a height of 41-feet 1/8-inch to the peak of the roof for property located at 1208 Dogwood Drive North (TMP#191-16-23-034).

Chairman Ott: At this time I'm going to open the hearing for the appeal ZA2015-04, Mr. Thomas and Mrs. Catherine [sic] Moore request a variance on a building they are about to build in the R1 district, and the basis of this variance is to render the 35-foot restriction that the town has in their ordinance and allow a 41-foot peak on the top of their roof. If the applicant or representative, please approach the microphone. State your name. Mr. Moss is a practicing attorney, and he does not have to be sworn in.

Mr. Moss: Thank you, I am Kenneth Moss. I represent Mr. and Mrs. Moore, and am pleased to do so. We're here tonight before you on a variance application. We came armed with some photographs, which we've prepared booklets for, and we have some slides for you that might give you a flavor of the home that they intend to build. They purchased a home here in Surfside Beach and they want to build a very beautiful one; in fact, an award winning home. Their architect has won these two awards for this very floor plan. So, this is the floor plan they want. It fits on their lot very nicely, and requires some width in the lot, because it's got a sideways garage, and everything worked right up until the architect told them they had a height

52 restriction problem. But, the height of this house is very much one of the architectural features
53 in this house, and so it becomes pretty much a deal breaker on this house, if they can't obtain
54 some variance from the height requirement. So, that's why we're here, and in looking, and in
55 preparation for tonight, and in the past years I've done quite a lot of studying in Surfside Beach
56 ordinances, and indeed, there is a 35-foot height restriction set forth in the R1 zoning district.
57 But, it's, it's, that's not uncommon in zoning ordinances. But, respectfully, it's just a bad zoning
58 tool to impose an arbitrary height limitation in development. I'll give you some examples of what
59 I mean. Land use is clearly a proper zoning function and important zoning function. But, height
60 is not a use, and so we don't really have a dispute with the Moores about the use they want to
61 devote their property to; it's zoned R1, which specifically intended for low density residential
62 purposes. They want to build a single family residence in R-1. So, the use is not disputed. The
63 use is expressly permitted. And while height restrictions are commonly found in zoning
64 ordinances, you have to question whether they should be. You might, if you ride up and down
65 Ocean Boulevard in Myrtle Beach and North Myrtle Beach and in some places in the county
66 where they impose height restrictions of an arbitrary number, what they create is boxing
67 construction, because developers will build high buildings to get all the habitable floors in them
68 that they can get. When they get to the top to how every many floors they can build, they stop
69 and you generally have flat roofs with no aesthetically pleasing architectural features. So,
70 height restrictions of an absolute number really don't make a lot of sense when you restrict this
71 plan. What does make sense is some consideration of height in the context of what is going to
72 be built. Some recipe for consideration of the width of the structure versus the height. Some
73 consideration for limitation of the number of habitable floors. Because remember if you go to
74 the R1 district, your ordinance says the intent and visions of this division is to provide for quiet
75 livable low density single family neighborhoods, prohibit the establishment of incompatible land
76 uses, disallow any other use, which would substantially interfere with the development or
77 continuation of single family dwellings in the district. That's how your ordinance; nothing in
78 there about height as far as the purpose of the ordinance. So, the height restriction is
79 questionable as to whether or not it has any real relevance to the purpose of those R1 zoning
80 ordinances. But it does appear there as it appears in many municipality and county zoning
81 ordinances, and frankly, I doubt a lot of effort was put into the decision of how much it was
82 supposed to be. At 35-feet you have to question it was designed to limit a structure to two
83 habitable floors or three habitable floors. I'm not really sure what the legislative intent was, but
84 in the Moore's situation, they only intend to build two habitable floors, and therefore, their
85 intentions would be compatible with the most restrictive of the height considerations, for
86 whoever determined what 35-feet would be. So, they've gone back to their architect. Let me
87 show you this house a little bit (*displayed photos.*) A couple of photos, there's not many. This is
88 one elevation view of the home they'd like to build. This is another of the same side of the
89 home. A little bit different angle. And these are examples of where it was featured in different
90 magazines. This is a feature on the one side of the house where they intended to have some
91 outdoor entertainment. Believe it or not, this house only has about 3,000 heated and cooled
92 square footage. It's not a tremendous house in terms of living size, but it has some nice
93 features that are architecturally pleasing and has some outdoor utility. This house was featured
94 in both *Charleston Style & Design* and *Grand Strand Magazine* as an award winning house.
95 And, the Moores would very much like to put one in Surfside Beach. So, that's really all the
96 slides we have, other than we have identification of who the architect is that's designed the
97 house, and who the Moores intended contractor should they build the house. And then
98 attached to that are, there's some nine expressions of, of consent and proponents for the
99 approval of the variance that are attached. And, all these slides we've created a booklet for and
100 when the PowerPoint comes down we have a booklet for each and every one of you, should
101 you want to have that booklet for your deliberations. That's all. If nobody else wants to see any
102 of those slides, I'll hand this back over to Sabrina. Now, let me talk about the height restriction a

103 little bit, and the logic of it. In your current ordinance, if you had an 11 lot street and the Moores
104 bought all 11 lots, and they wanted to build one house in the middle of it, they would clearly
105 accomplish that low density residential purpose of the R1 district. They would clearly fall within
106 the definition of the purpose of R1. But, they still couldn't build this house. And so, in that
107 example it's very telling that the purpose of the ordinance is frustrated somewhat by this
108 arbitrary number of a height restriction, because no matter how big of a lot they build, or buy, or
109 no matter how many lots they buy, you can't build this house in that district. That has nothing to
110 do with whether or not it's low density or high density. The Moores don't intend to put multiple
111 kitchens in their house. They don't intend to put multiple dwellings in their house. It's going to
112 be a single family residence, if they are allowed to build it. The lot sizes in R1, the minimum
113 9,000 square feet. They met that. In R3 the minimum lot size is substantially smaller, I think it's
114 3,000 square feet, yet the height can be 55-feet. That, there's no rational nexus between that,
115 between having a lot that's a third the size and having 25-foot more height allowed. And that's
116 relevant, because the R3 district and the PD district having higher than 35-foot elevations is
117 immediately across the street from the Moores' property. And if you look at the zoning map for
118 Surfside Beach, and you compare it to the distance from the ocean, the R1 district extends back
119 from the ocean a greater distance on either side of the Moores' location on Dogwood Drive than
120 in does in their location on Dogwood Drive. And so, the R1 district is not a straight line, and
121 there's some rationale, perhaps, for seeking rezoning on it based upon the fact of how it fits in
122 proximity to the other R3 district. But, they don't want to do that. What they want to do is seek
123 your collective wisdom and your collective judgment and your good sense and seek a variance.
124 Now, a standard for the variance, which I'm sure y'all've [sic] heard many, many times before, it
125 comes out of Title 6 in our State Law, but it's also codified in Surfside Beach's Town
126 Ordinances, and it gives this board, you have the power to decide appeals for variance, from
127 strict application of the provisions of this chapter that would result in unnecessary hardship. It
128 doesn't say result in any hardship; it just says unnecessary hardship. Now, that word is not
129 defined anywhere in your ordinance and I submit to you in preparation for today's meeting I
130 went to the Annotated Codified State Law. I could find no annotations on that statute. What
131 that means is no appellate court has ever told us what that means, unnecessary hardship. And
132 so, having no law to guide you on the definition of what that means, this board is free to use its
133 own common sense and good reasoning to determine what that means, and unless challenged
134 or appealed, when you make that decision, that's the decision for Surfside Beach on what that
135 means. I haven't seen a case where that discretion's been challenged on what unnecessary
136 hardship is. It does say a variance may be granted in individual case, if you make findings
137 concerning four factors, and the first of those four, well, the first two of those factors as apply to
138 the Moores' property are really related. The first being extraordinary and exceptional conditions
139 pertaining to the particular piece of property, and the second being the conditions do not
140 generally apply to other property in the vicinity. In this context, the Moores' property is a bit of
141 an irregular shaped lot. It's bounded on the south side by Dogwood Lake, which of course is
142 not developable, and the lake itself kind of creates for the Moores an inordinate amount of
143 greenspace when you consider it to other residential lots within the R1 district that are bounded
144 by other residential lots. So clearly that purpose in the ordinance, low density residential is
145 protected somewhat on the south side by the lake. Nobody can build there. To the rear of the
146 Moores' property is a piece of property owned by some individuals that I understand, we didn't
147 know this until today, we understand that in expression my position that property I would
148 understand is significantly wet and the majority of which is not buildable. So we don't have a
149 situation where somebody behind the Moores would be building a structure that's gonna be
150 impeded in anyway by the Moores' residence, if they are allowed to have a variance from the
151 height restriction. Nobody, in other words, nobody's gonna build a house there that that is
152 gonna face into the rear of the Moores' residence. If anything is built to the extent it could be
153 built in the wet conditions, it's most likely gonna be a house that faces the street in one direction

154 and faces the lake in the other. It's not likely to be ordained so it would be looking into the rear
155 of the Moores' property. In the vicinity, because the ordinance does require you to contemplate
156 the vicinity, we consider those factors. Immediately across the street from the Moores' property
157 is a different zoning district, PD, and the height there is much higher than 35-feet. It's
158 permissible, and in fact, constructed much higher than 35-feet. Also, across the lake, across
159 Dogwood Lake there's a home there that appears to be constructed in excess of 35-feet, and so
160 what the Moores are seeking to do is not inconsistent with what's already been built, already
161 been built in their neighborhood. And the ordinance, when you seek a variance, a state law
162 provision in the ordinance call upon you collectively as a board to not look at this in a vacuum,
163 but to look at the surrounding areas and give it good common sense judgment that it deserves.
164 That's why y'all are appointed. And so you kind of wear a crown like kings for the purposes of
165 the variance application, and that's why we're here. To try to bring some tenor of reasoning to
166 the strict application of an ordinance. The next element of the four parts is it requires you to find
167 that because of the conditions the application of the chapter to the particular piece of property
168 would effectively prohibit or unreasonably restrict utilization of the property. Now, it is true that
169 the Moores can build some kind of house on this property, if they don't receive a variance. But,
170 it's also clear they cannot build the house that they want to build. They cannot build the house
171 that they picked out. The house has won two awards to date; if they are not granted a variance.
172 So we get back to that word reasoning. Is it reasonable that they are not allowed to build this
173 house because of what appears to be an arbitrary number? Now, the Moores have gone back
174 to their architect and asked him specifically is there a way to modify this house plan to reduce
175 the overall height of the house plan and they received two responses that are consistent. One
176 is if the architect were to redesign the house, it would be very expensive because the structural
177 components of the house I understand are integrated with the roof of the house. If you go back
178 and look at the slides in your deliberation of the booklets, you'll see on one side of the house the
179 entirety of the upstairs floor is not utilized. It's, it's, it's, let's see how to explain that? The way
180 the roof pitch comes down with 12-foot of pitch, it utilizes some portion of the upper living floor,
181 so that it won't have the full dimensions of the upper space that you might think looking at these
182 exterior walls. If they redesign the house, according to the architect, the structure and functions
183 of the house would have to be redesigned and he's given them significant cost to redesign the
184 house. But more importantly, to redesign the house the Moores are concerned and the
185 architect is concerned that you lose the aesthetic features the architect is trying to accomplish
186 with this Charleston style home, and didn't think you should do it. And, so that's what they are
187 facing. So as a practical matter, without a variance they can't build this home, and that's where
188 they are at. Now, at least nine of the neighboring property owners have expressed their
189 consent. We've given you that. We do understand that three have expressed opposition. I've
190 received those letters tonight, and I read those. One thing that came clear to me, first I don't
191 discount anybody's expression of their opinion or opposition, because everybody's entitled to
192 that. But, I do have to question sometimes the rationale. It appears to me that some don't
193 really understand that a height restriction in the R1 district is designed to protect the
194 environment in sensitive areas. In this case, you know that the height restriction is imposed in
195 the furtherance of the stated purpose of the ordinance, which is to preserve that district for
196 single family residential of a low density nature. That has nothing to do with protecting the
197 environment and sensitive areas. If it did, and the Moores were prohibited from building any
198 house at all, that might, there might be some logical nexus between protecting the environment
199 and sensitive area in opposing some variance. But in this case, the Moores can still build a
200 house with the same footprint on their property, and so it's not, it's not logically connected to link
201 the application of a variance to the protecting the environment and a sensitive area, and that's
202 one of the objections that I saw expressed. Another exception I saw expressed was a little
203 telling, because those owners we understand also applied for a variance from the height
204 restriction when they sought to build their house, and were denied. At least that's the

205 information we received from those owners. So, you know, perhaps that's, you have to wonder
206 if that's sour grapes or some, or what the purpose of that objection is. Clearly, it's, it calls it into
207 question regardless of whether you're for or against it. It's fair, it's fair to question the
208 motivation. Now the last factor is for you to consider whether the authorization of the variance
209 will be of substantial detriment to the adjacent property or to the public good, and the character
210 of the district will not be harmed by granting the variance. We're talking about building a single
211 family residence in a single family residence district. It's hard for me to believe that a house
212 with the character that the Moores will build could be fairly criticized as being detrimental to the
213 neighborhood. What we have in the neighborhood are commercial properties right across the
214 street. We have other single family residences. We're not talking about building a house with
215 magnitudes of height above the neighboring houses. We're talking about just a few feet. We're
216 talking about six feet. So that much difference; it's hard for me to imagine how it can reasonably
217 be said it would be detrimental to the character of the neighborhood. So that's what, but that's
218 what you're called upon to find, and that's what I'm trying to, I guess I'm trying to tell you how
219 old I when I was a young fellow sitting in your chair. Now, the state law and the codified version
220 of it that Surfside has does provide that the board may not grant a variance the effect of which
221 will allow the establishment of a use not otherwise permitted in the zoning district. We don't
222 have that fact right here, because single family residence is what's being sought. That's clearly
223 permitted in this zoning district, and so that prohibition on your power is not applicable in the
224 circumstance, I submit to you. When you think of land uses, you think of commercial, retail,
225 medical, office, hotel, restaurant; you think of body shops, auto body type shops. Those are
226 land uses. Height is not a land use. So, I would submit to you that it's not a relevant
227 insurmountable limitation on your power. It also provides in granting a variance the board may
228 attach to it such conditions regarding the location, character or other features of the house for
229 the proposed building as the board may consider advisable to protect the property values in the
230 surrounding area. I've seen that done in other context. It's hard for me to imagine how it would
231 be applicable in this context, but the Moores are open minded to it, if the board in their
232 deliberations feel that there's some conditions or limitations that are called for considerations.
233 The Moores are very open minded to it, and so I'll offer that to you for consideration. And with
234 that, I would ask in your deliberations to consider one other thing. If you can't build this house in
235 this district, I'm not sure where else in Surfside you could build it. And now it's true that there
236 are other places in Surfside Beach where the height restrictions are 55-feet. But the lot sizes in
237 those other places, the minimum lot sizes are smaller and what you tend to find in other districts
238 are smaller lots. Because of the side loading garage, the Moores have to have, it's in the plan
239 that I've got the booklets for you, they have to have at least an 80-foot lot in width. There's not
240 a lot of that in Surfside Beach. There just aren't many lots that are that big, and so there aren't
241 many places that this house can be built in Surfside Beach and comply with the ordinance, and
242 I'm not sure that that's the right thing to do to turn away a house of this character from Surfside
243 Beach, because of an arbitrary number. There's nothing in our ordinance to say why that
244 number was chosen, but it, I mean it was pretty arbitrary, because it's just a number without
245 explanation, and so on behalf of the Moores, I respectfully request that y'all grant them the
246 variance imposing any conditions you think might be relevant, if you do, to their use along with
247 the variance, and let them build their house. With that, we'll, the Moores and I would be happy
248 and the Moores would be happy to answer questions you might have. I do have the booklets if
249 anybody would like to have them during your deliberations. (**comments away from
250 microphone.)

251
252 Chairman Ott: I'm gonna ask the town to state the case for the Town of Surfside Beach
253 at this time. State your name, please. Ms. Morris: Sabrina Morris. Chairman Ott: Raise
254 your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help
255 you, God? Ms. Morris: I do.

256 Chairman Ott: Thank you.
257

258 Ms. Morris: My slides are not gonna be as pretty as his. I respectfully disagree with Mr.
259 Moss on the height limitations. I think it's a necessary, depending on the district, we don't want
260 to look like our surrounding municipalities or counties. There's a reason we're called the Family
261 Beach, and it's because of the low scapes of the; we don't have 90-foot buildings. We're not,
262 they're not allowed. We want that very small town feeling in the town. And, height is an
263 ordinance. It's listed in the ordinance under every one of the ordinance regulations. Each one
264 of them have a different height limitation. He is correct, and we'll look shortly at the R3 district.
265 R3 allows for 55-feet, but R3 is also a high density residential and accommodations district
266 that's more of a rental district. The R1 is the most stringent district. It's for a neighborhood feel
267 for the entire; there's no rentals, short term rentals. They're only long term rentals, hopefully
268 that someone will make a neighborhood feel. But, height is defined by the ordinance, and the
269 highest vertical district measured from the lowest finished grade at the floor lev, at the ground
270 level within one foot of the structure's footprint to the highest point in the roof. The property is
271 currently zoned R1, which again is a low density residential and it is the most stringent zoning
272 district we have, which has a maximum height limit of 35-feet to the highest point of the roof.
273 Chimneys are exempt, and the proposed home does meet all the setback requirements for the
274 R1 district. So, he is correct, they do meet the requirements, they are only lacking the height.
275 This is the house (*showing photograph*), and you have those plans. You were submitted those
276 plans in the handout. Yes, it's a gorgeous house, I will certainly say that. This is the
277 surrounding properties, and Mr. Moss was correct, there's Dogwood Drive North there, and this
278 side is the R3 zoning district, but directly across is the R1 zoning district. We pulled plans for
279 some of the homes that were recently built. This one on the other side of the lake, 34, the
280 height is 34.9 feet. They have 10.5 foot ceilings on one story, and the other is 9.5 ceilings, and
281 then they have an 8.5 foot bottom floor, which is for parking. This is the property they're looking
282 at. This is an existing home. We cannot get the information there. These two were recently
283 built, and yes, one of these did not, their first choice was not the one that they built. This roof,
284 the ceiling height on one floor is 8.5 foot ceilings; the other is 9.5 foot ceilings, with an 8.5 foot
285 bottom floor. So they have been consistent. There's consistency in the height restrictions.
286 They, and in the district here since it's in a flood zone, they do require a 3-foot freeboard.
287 These two, they were built before the 3-foot free board and they still meet the 3-foot freeboard
288 with the exception of this one. This is the property as you see it from the land. He's right. It's a
289 very large lot compared to anything in the R3 zoning district. This has an established house
290 there and then these two have been built on. We certainly have no objection for the building of
291 the house, and we obviously don't make recommendations to the board. We're just here to lay
292 out the ordinance and to tell you what the surrounding properties are. I'll be glad to answer any
293 questions.
294

295 Chairman Ott: Mrs. Moore, you can give a 5-minute rebuttal.
296

297 Mr. Moss: We really don't have any disagreement between Ms. Morris and the Moores
298 and myself, about what's being proposed and what's being asked for. I will comment that the
299 one house across the lake that she referred to, a lot of fill was put on that lot. Some of it went
300 below grade and built basically the same house, and had that not been disguised in fill, we
301 might have a house there was higher than above grade. And obviously, the Moores can impose
302 similar type processes, but they don't want anyone to do that. It's not deceiving the building
303 official, or trying to manipulate the rules to build what they want to build is not what they want to
304 do. What they want to do is a straightforward way to say this is what we want to build. It's an
305 award winning house. Please help us build it with the variance that you have the power to
306 grant, if you're so inclined to do so. Thank you.

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Chairman Ott: At this time I'll open the floor to anybody that's present here that would like to speak in reference to this variance request. Let the record show that no one...oh, I'm sorry. Please step to the microphone and say your full name, and I need to swear you in for this.

Mr. John Ellis: John Ellis. Chairman Ott: Would you please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you, God? Mr. Ellis: I do. Chairman Ott: Thank you.

Mr. Ellis: Okay, I'm a resident of the neighborhood, and so I didn't, I just, I'm here sometime, but I just found about this variance and I thank you for the opportunity to talk. I'm a landowner right adjacent, three or four block, three or four houses up, and you know, I think there's a couple of issues I'd like to raise. I'm concerned because I want the value of my property to remain, you know, at a good value, and I don't want to detract from that either. I also am concerned about the aesthetics in the community, and that we have, you know, maintain that. Height does make a difference in my mind. I think because once you allow a variance of 45-feet or whatever, you've set that limitation for everybody else, because no one else is gonna be able to come to the board and say I want a variance, because you issued a variance for one landowner. I think you set a precedent, and so then if you break that precedent, then how high does it go? So, I think height is important. I think architecturally talk, the attorney speaks about that the award winning house, I think that's a relative issue, because you have to look at architecture in the context of the community, and it is a beautiful looking house, but you know, that's in the eye of the beholder. So, the award winning doesn't necessarily fit in all, in all situations, and I haven't had the opportunity to look at the house plan. Thirdly, we're not in a flood zone, and it appears that this house is built on stilts, and that's my concern from the aesthetic point of view, because I don't see anybody else in our area with a house on stilts, and what the house on stilts does allow is, I suspect, some storage and some parking garage essentially, parking spaces under the house. So, I think that may be their motive, but I don't know their motive, but I suspect that's it. But, the stilts doesn't [sic] serve a purpose, because it's not a flood zone, and number two, is it does vary from the other homes in the, in the community. And, I think that's my points, so I appreciate your time.

Chairman Ott: Thank you very much. Is there anybody else in the audience that would like to...yes, sir? You'll have to come to the microphone please, and you have to state your name, and...this is a hearing, because the next step is the circuit court. Please state your name. Mr. James Buchanan: James Buchanan, Buchanan Construction. Chairman Ott: Would you please raise your right hand and swear do you swear to tell the truth, the whole truth and nothing but the truth, so help you, God? Mr. Buchanan: I swear to tell the truth, the whole truth, and nothing but the truth. Chairman Ott: Thank you.

Mr. Buchanan: I believe we are in the flood zone there. That's one reason why we're raising the house up on stilts. Also, with the new FEMA map coming out, no one really knows what's gonna happen with the flood elevations. Is it gonna go higher or lower? I don't think we know, yet. Higher? We don't know, yet. Ms. Morris: Lower. Mr. Buchanan: It's going lower? (**) Normally, we build two feet above the flood. So, for insurance purposes, it's better for the town and for the homeowner when they go to get insurance. That's one reason why the house is the height it is. That's all I have to say, and this house in any neighborhood would just increase the value of everyone around them. It's a benefit to the town. It's a benefit to the neighbors. All property values go up based on this type of house. H**l, (expletive) if it was my neighbor, I would love to see it next to me. Thank you.

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Chairman Ott: Thank you very much. Anybody else? Any other citizen would like to speak? At this time there is no others [sic.] Ms. Herrmann: Mr. Chairman, the gentleman back there would like to speak. Chairman Ott: Oh, okay. Please state your name for the record. Mr. Darrell Kemp: Darrell Kemp. Chairman Ott: And would you please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you, God? Mr. Kemp: I do.

Mr. Kemp: I guess the point that was made about once a variance is bypassed then the rules have changed. If someone else comes in then from that point on I think it would be open for lawsuit, if one person got a variance, and how can you tell the next person not to. The point about the residential R3 being on the other side of the street I think is a moot issue because in an R3 you can build an apartment. There's a reason for R1 and R3 to separate these type of things [sic] and so, if there's an apartment across the street, using that argument, then you should be able to build an apartment in an R1, using that logic. So, I don't think that logic is valid. The other thing is there are, this, this has been in place for a long time. A lot of people have abided by it. I know two people who have changed their house height, because of the ordinance. I had approved plans for a house that I have not built for various reasons, and my architect said you're exceeding the height, and we did change the house plans and they were approved by the city. So, I don't know if it's fair to people that live here that have abided by the rules that have been in place for a long time for a reason, is for what the neighborhood looks like and what people wanted to have built in the neighborhood, and so there are a lot of people that have changed and is it fair to them to change? I had one more point, but I can't remember. *(Laughter.)* It's, I'm sure that it's a [sic] absolutely beautiful home, but when you buy in a neighborhood you look at the rules, and you come in and you make your plans based on that, and I think you pretty much have to stick by that, so I think that's all the points that I have for right now. I can't remember what the other one was.

Chairman Ott: Thank you very much. I'll ask once again? I don't see any hands. Okay. Now at this time, I'll give a chance for a quick rebuttal to anything that was said to Mr. Moss and to Ms. Morris before we close the hearing, if you have...

Mr. Moss: Thank you, Mr. Chairman. All good comments by the public. You know, I don't know why others didn't come in and seek variances when they sought to build their plans if they wanted to build something different than they built. But, variances are taken on a case-by-case basis by this board, and that's exactly what this board's slated to do, to take the application on a case-by-case basis, and so, with all due respect, unless someone came before this board and asked for a variance and was denied, they're really not a comparable person who says.

Chairman Ott: Thank you, Ms. Morris.

Ms. Morris: Just for clarification purposes, while you a, this property is definitely in a flood zone. They are required to build 3-feet above the required flood elevation. But as far as the new maps, they did go down. Those not are not approved, and they will not be approved until next year, and that's again, that's up in the air if they ever do get approved. But, I wanted to clarify that it is in a flood zone. They do have to build 3-feet above the required elevation. Okay.

Mr. Ott: Thank you. At this time, I'm gonna close the hearing portion, and I'm gonna open the business section of this hearing. I'm gonna make a quick statement to everybody that's hear, the reason that we swear everybody in is this is a quasi-judicial board, and the next

409 step goes to the circuit court. It does not go back to our Town Council. What we decide here
410 today stays and has to be appealed to the court system.

411
412 **6. a. BUSINESS: Appeal No. ZA2015-04 Thomas and Cathleen Moore request a**
413 **variance from Section 17-311 (Maximum Building Height) of 35 feet to the roof peak in the**
414 **R1 District to allow for a height of 41-feet 1/8-inch to the peak of the roof for property**
415 **located at 1208 Dogwood Drive North (TMP#191-16-23-034).**

416
417 Chairman Ott said at this time he was going to issue some type of a directive to the
418 board members, because he had been trying to find a way in which to help the citizen and at the
419 same time to defend the ordinance. We do try to defend the ordinances; that's one of our main
420 points here. The ordinances were made up by the planning and zoning commission, and
421 approved by the town's elected officials. What he found in the South Carolina Comprehensive
422 Plan was that in this case to obtain a variance on the grounds of unnecessary hardship, and
423 that's every variance must have hardship, and there must be at least proof the particular
424 property suffers from hardship, but an owner is not entitled to relief from self-created or self-
425 inflicted hardship. The claim of unnecessary hardship cannot be based on the conditions
426 created by the owner, nor can it on the property after the enactment of the zoning regulations,
427 meaning that there is no house on this property, on this land. Normally, the variances are given
428 for properties when they are doing expansions, changing something on the house. Whatever
429 we do from this point, what the applicant does, is inflicted upon himself.

430
431 Mr. Courtney asked when this ordinance was adopted. Ms. Morris said the 35-foot
432 height limit had been in place for over ten years.

433
434 Mr. Lanham said it was a beautiful house. Mr. Moss gave a very thorough presentation,
435 and he was correct in that the height limitation was an arbitrary ordinance. However, many laws
436 are arbitrary; speeding limits, for one. He agreed with Chairman Ott that this situation was self-
437 inflicted.

438
439 Ms. Watson moved to deny the variance. She did not think the property had met the
440 qualification under item C, which is effectively prohibit or unreasonably restrict the utilization of
441 the property. There is no home there. It hasn't been built. The property owner has an option to
442 seek a different design, a modification or any other remedy that he so chooses. Ms. Watson
443 said nothing that the town has done has impacted him in any way, in her opinion.

444
445 Chairman Ott asked Ms. Watson to restate the motion. Ms. Watson moved to deny the
446 variance application based on Section C, which states because of these conditions the
447 application of the ordinance to the particular piece of the property would effectively prohibit or
448 unreasonably restrict the utilization of the property as follows, and I do find that this does not
449 unreasonably restrict the utilization of this his property. Mr. Lanham seconded.

450
451 Ms. Lauer supported the motion as it also applied to an area that has a height restriction.
452 Looking at the area when purchasing a lot and it is was not built, you have the option to find a
453 different design that would absolutely go on that lot without causing any problems.

454
455 All voted in favor. **MOTION CARRIED TO DENY THE VARIANCE.**

456
457 **5. B. PUBLIC HEARING: Appeal No. ZA2015-05 Urita K. Lanham requested a**
458 **variance from Section 17-740 (Penalties) for fines related to the removal of trees over 4"**

459 **in diameter without approval or permit for property located at 658 7th Avenue North**
460 **(TMP#191-16-59-013.)**

461
462 Chairman Ott: I'm gonna open up the hearing for Appeal No. ZA2015-05 Mr. Lanham
463 requested a variance from Section 17-740 (Penalties) for fines related to the removal of trees
464 over 4" in diameter without approval or permit. This is actually not a variance, but it's an appeal,
465 appeal of the decision of the official. Do I have a, Mr. Lanham? Mrs.? Mrs. Lanham, I'm sorry.
466 Please forgive me.

467
468 Mrs. Urita Lanham: My name is Urita Lanham. Chairman Ott: Okay, do you swear to
469 tell the truth, the whole truth, and nothing but the truth, so help you, God? Ms. Lanham: I do.
470 Chairman Ott: Thank you. Ms. Lanham: I would just like to read an appeal that I have.
471 Chairman Ott: You have to speak into the microphone. Ms. Lanham: Is that alright? Chairman
472 Ott: Urita, you have to speak into the mike so we have it on the transcript. Thank you. Ms.
473 Lanham: I'm going to read an appeal. Chairman Ott: Okay.

474
475 Ms. Lanham: Okay, just a little explanation. I have owned a vacant lot located at 658 7th
476 Avenue North in the town of Surfside since it was developed more than ten years ago. Over the
477 years, the lot has become over grown and I can no longer determine how the land slopes in
478 order to decide about building on the lot. Some of the underbrush was simply being cut in order
479 to see the lay of the land. There was never any intention to clear the lot for the house as that
480 will be the contractor's responsibility when a decision is made regarding the house. If I decide
481 to go ahead and build, the contractor selected will, of course, obtain the proper permits. In
482 clearing away some of the underbrush for this purpose, apparently there were three saplings cut
483 that were slightly more than the allowed four inches, but not more than an inch. I mean, you
484 can look at the photos. At no time were the trees that were on the lot at the time I purchased it
485 disturbed nor were any limbs cut off. I have always been a good citizen and have worked at
486 Surfside Realty on Ocean Boulevard for a number of years. I own property here, and I've lived
487 in the Surfside area for the past 12 years, and I am requesting that the penalty against me be
488 voided or reduced as the error was truly unintentional on my part.

489
490 Chairman Ott: Thank you very much. Would the town, please?

491
492 Ms. Morris: We have a tree ordinance that's been in place for well over five years now,
493 and this section of the ordinance has not changed within the last five, almost ten years. Under
494 the terms of this article, a zoning permit is required prior to any of the following activities: the
495 removal of any tree 4-inches or greater in diameter; pruning of limbs over 4-inches in diameter,
496 and the removal of any required tree to include replacement trees, which would not apply here.
497 Again, this has been in effect for over five years. The town currently makes on an average 35 to
498 40 tree inspections a month. We have people calling in. They want to clear their brush. They
499 want us to go out. They'll tag the trees or tag things that they have questions about, and we tell
500 them whether, yes, you can cut it or no, you cannot. In April of 2015, the council decided that it
501 was; we had a lot of people coming in, the fine at that time was \$200 per tree to cut or limb [sic.]
502 We had a lot of people coming in and they would ask how much the penalties were, and they
503 would write a check, and then they would go cut the tree. We wanted to eliminate that problem.
504 We called around every municipality in the state that was a Tree City, which we are, and the
505 planning commission and council came up with the fines that were listed here. So, if you
506 remove a limb over 4-inches in diameter without approval, it's \$500. Removing an unprotected
507 tree without a permit is \$500. Protected trees removal without a permit is \$500 per 4-inch
508 caliper for each tree. A landmark tree, which is anything certain, Live Oak, Laurel Oaks,
509 anything over 24-inches in diameter is \$10,000. Then a fine for failure to obtain a permit is

510 \$500. What we did not do; what our code enforcement officer did not do, which he certainly was
511 within his rights to do, is issue a summons to court, as well, which is in addition to the fines,
512 violators shall be subject to all of the provisions established in Section 1-16 that is a summons
513 to court. We have issued five violations, citations for the removal of tree limbs since this has
514 come into effect. Three have already paid; two are pending. One you're hearing tonight. We
515 don't mind going out. In fact, right near here while I was out the other day, we don't, we ask that
516 everyone call us if they're not sure of the diameter of the trees, or if they're clearing underbrush,
517 let us look at it to see what you're gonna do. Before these fines were put into place, we had a
518 public hearing before the planning commission even made recommendations to Town Council.
519 So, it was a public notice was advertised. Town Council approved the ordinance with two
520 readings, and each council meeting notice with the attachments are emailed to those requesting
521 notification by our town clerk, and they are also placed on the town website in advance of the
522 meeting. The public is invited to address council all issues being proposed. Once the
523 ordinance was approved, the ordinance was added to the town website, and the new changes
524 were included, the new changes including the changes for the fees, were included in the town
525 newsletter, which was mailed to everyone owning property within the town limits. Our code
526 enforcement officer, who is here tonight and will be glad to answer any questions you have, he
527 saw the removal of the trees and shrubs on August 25th, 2015. After conducting an onsite
528 inspection, it was noted that at least three limbs had been removed that were over 4-inches in
529 diameter. He issued a stop work order, and the property owner was notified by registered mail
530 of the violation, and the fines associated with them (**) excuse me, with the failure to obtain a
531 permit and failure to obtain approval of the limbs. This is just pictures of, and you have all of
532 this in your packet, but the top is what it looks like now, except I think the dead limbs have been
533 removed by public works. The removal of the stumps that left, 5-inches some of them were 7-
534 inches, some of them were 5.5-inches. The ordinance does not say you can trim four and just a
535 little bit. It says you shall be fined, shall meaning we don't have a, we have an obligation as the
536 code enforcement official to fine whoever violates the ordinance. And, that's all I have, so if you
537 have any questions for me, I'll be glad to answer those, or our code enforcement is here when
538 that time comes.

539
540 Chairman Ott: I'll ask Mrs. Lanham if she would like a rebuttal; want to add anything to
541 that? Okay. At this time, I'll also open the microphone to the floor, if anybody wants to speak in
542 reference to this. Mr. Willm, you want to speak? Please, take the microphone, and you need to
543 state your name for the. Mr. Koa Willm: Koa Willm. Chairman Ott: And, raise your right hand.
544 Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you, God. Mr.
545 Willm: Yes, sir. (**)

546
547 Mr. Willm: I was just gonna say that 4-inches and a little bit over is just that much over
548 (*hand motion indicating small space*), so, and Surfside tiny little town, but they're big in our
549 hearts. So, that if she does receive the fines for these tree limbs that's she has cut illegally and
550 that she shall pay that she should not be fined for it, because it was on, it was not on purpose
551 and if it was on purpose, then she should be fined. But, if it wasn't, then she shouldn't.

552
553 Chairman Ott: Thank you very much for that statement. Anyone else? I don't see
554 anybody else that wants to speak. Do you have a rebuttal to Mr. Willm's statement, at all?
555 Okay. And, at this time, I'm gonna close the hearing portion, and open the business section,
556 and I'm gonna allow the board of zoning appeals to ask questions.

557
558 **6. B. BUSINESS: Appeal No. ZA2015-05 Urita K. Lanham requested a variance**
559 **from Section 17-740 (Penalties) for fines related to the removal of trees over 4" in**

560 **diameter without approval or permit for property located at 658 7th Avenue North**
561 **(TMP#191-16-59-013.)**
562

563 Ms. Watson asked Ms. Morris to display the fines again. She saw and understood
564 where Mrs. Lanham was fined three limbs times \$500, and then one tree, failure to obtain a
565 permit. But, there were three limbs \$500, what would happen if all three limbs came off one
566 tree. Would it be a \$500 fine for the entire tree? Ms. Morris explained that the pictures showed
567 stumps that were still in the ground that's the bottom of the tree. Those stumps are still there.
568 That's not a part of the limb. That's the tree. See his boot, that's still in the ground. Ms.
569 Watson said one stump on the left looked fresh, but the other two looked old. Was that
570 possible? Ms. Morris said no.
571

572 Mr. Willm said there appeared to be multiple pictures. Ms. Morris said only three fines
573 were issued. There were more pictures, because when the code enforcement officer went out
574 after once he issued the stop work order and took pictures of additional stumps found over 4-
575 inches in diameter. The letter had already been written and sent, so Ms. Morris instructed him
576 to disregard the other cuttings. There were no additional fines.
577

578 Mr. Courtney asked if a contractor cleared the brush. Ms. Morris said no, it was not. Mr.
579 Courtney asked if the code enforcement officer had discretion when he inspected properties and
580 observed violations. Ms. Morris explained that the code enforcement officer went on; the trees
581 that were cut in addition to these three, they were cut at the exact same time as these three. He
582 went further into the property and found the others, but that was after he had already notified the
583 property owner. I felt there was a hardship at that point, and we just had to not fine them for any
584 additional trees. There is no discretion. The ordinance is very clear. It says shall, which is a
585 law. So, anything over 4-inches in diameter we have to charge for.
586

587 Mr. Willm said the purpose of the board of zoning appeals in this case is to air and
588 decide appeals where there is alleged there is error in order, requirement, decision, or
589 determination made by an administrator official in the enforcement of the zoning ordinance. Ms.
590 Morris said that was correct. Mrs. Lanham asked for a waiver of the fees, but staff did not have
591 that authority. The only authority the board would have is to determine whether the members
592 saw an error in what staff had done. Mr. Willm asked if the variance criteria applied. Ms. Morris
593 said yes.
594

595 Chairman Ott asked Mrs. Lanham if she remembered receiving a notice in the mail of
596 the ordinance change. Mrs. Lanham replied that she did not. Chairman Ott said the South
597 Carolina Constitution states that the maximum fine is \$500, but it did not say per limb or per tree.
598 He did not know if legal representation was present and reviewed the ordinance before
599 adoption. Ms. Morris said yes, and the \$500 limit referred to in the Constitution is a summons to
600 court. The fines are established by Town Council. That's is why both options were included.
601 The \$10,000 fine came from the City of Myrtle Beach, because they were having a lot of people
602 cutting trees without approval, or the fines were so limited, people chose to just pay fines. The
603 town is a Tree City; we are trying to protect our trees, so we chose to use the higher amounts.
604 In addition to the fines, a summons to court with charges of \$500, plus court fees could have
605 also been issued that totals \$1,092.50. The code enforcement officer did not issue a summons.
606

607 Mr. Lanham said the tree stumps were not round, and asked if it was possible that one
608 or more of them could have been measured in another manner that would be less than 4-
609 inches. Ms. Morris said the stump referred to by Mr. Lanham was almost 6-inches across.
610

611 Chairman Ott asked if the same type ordinance existed in Myrtle Beach. Ms. Morris said
612 in Myrtle Beach, North Myrtle Beach, Georgetown, and Horry County. Almost every Tree City,
613 USA in South Carolina has a fine in addition to a summons.

614
615 Mr. Willm asked if there were directions on proper measuring of stumps, because he too
616 thought some of the stumps might not be 4-inches if measured differently. Ms. Morris said there
617 were no directions, but honestly, she believed the code enforcement officer generally looked to
618 see if there is a way to avoid citing a violation so the owner does not have to be fined. Ms.
619 Morris said the code enforcement officer was certainly fair, and thought if the picture was taken
620 and he said the measurement was over 4-inches, then it was over 4-inches.

621
622 Ms. Lauer felt as homeowners and property owners it was easier to come to the town
623 first and find out when you're clearing land or finding out what needs to be done, whether
624 permits are needed. That saved a lot of hardship.

625
626 Mrs. Lanham said that was just it. She was not intending to clear the land. She was just
627 trying to remove some of the undergrowth, because nothing had been done to it for over ten
628 years. She couldn't see the lay of the land. This was an attempt to clear some underbrush
629 away to see how the property settled in anticipation of building a house. That was the reason.
630 She was simply trying to clear some brush away. If she goes ahead, the contractor would
631 obtain all the permits, because there was a lot more that would have to be cleared in order to
632 put a house on the lot. She was surprised that the saplings grew that much in that amount of
633 time. They grew fast.

634
635 Ms. Lauer moved to suspend rules to allow a citizen to speak. Mr. Willm seconded. All
636 voted in favor. **MOTION CARRIED.**

637
638 Ms. Diane Taylor, 7th Avenue North, said she did not know Mrs. Lanham, but she did live
639 on our street. She thought it was very possible that she did not know about the new fines. It's
640 been quite a while since the brush was cut, and she didn't pay any attention until she saw it on
641 the sheet. Obviously, as citizens, we should know to check, but I think this happened quite a
642 while ago. We've been watching this for a while. I mean, it's been laying there for a while. So,
643 I'd cut her some slack.

644
645 Ms. Watson moved to reconvene regular session. Mr. Courtney seconded. All voted in
646 favor. **MOTION CARRIED.**

647
648 Mr. Willm said based on the information given and the fact that the zoning department
649 has already given some leeway and it was the board's decision to decide whether an error was
650 made, he moved to deny the request. Mr. Courtney seconded.

651
652 All voted in favor. **MOTION CARRIED TO DENY THE APPEAL TO THE DECISION OF**
653 **THE ZONING DIRECTOR.**

654
655
656 **5. C. PUBLIC HEARING: Appeal #ZA2015-06 Robert Gutterman request a variance**
657 **from Section 17-330 (Yard setbacks) to allow for a handicap lift within the 5' required side**
658 **yard setback at 1203 Seabridge Court (TMP#191-16-18-020.)**

659

660 Chairman Ott: We're now gonna enter the hearing phase for the appeal from ZA2015-
661 06, Mr. Robert Gutterman requests a variance from Section 17-30 [sic] yard setback to allow for
662 a handicap lift within the 5-foot required setback.
663

664 Ms. Morris: There's a correction on the issue paper. He is not requesting an
665 encroachment in the 5-foot setback. He is requesting encroachment on the front 20-foot
666 setback of 5-feet. I apologize. I just want to make that clear.
667

668 Chairman Ott: Mr. Gutterman, or whoever you are, would you like to make a statement
669 or are you okay? Mr. Gutterman: Yes, I am. Chairman Ott: Do you want us to bring the
670 microphone to you? Mr. Gutterman: No, I'm fine. Chairman Ott: Okay. Would you state your
671 name for the record, please? Mr. Gutterman: Robert Gutterman, also known as Bob.
672 Chairman Ott: And, would you please raise your hand. Do you swear to tell the truth, the whole
673 truth and nothing but the truth, so help you, God? Mr. Gutterman: I do. Chairman Ott: Thank
674 you.
675

676 Mr. Gutterman: I don't any attorneys, fancy slides or anything, but I've been a resident
677 of Surfside almost 25.5 years. I've been living in that house the whole time. I own a house. I
678 live alone, and as you see, I'm disabled. So, it's come to a point, you know, it's an elevated
679 house, and it's come to a point that I can't get up and down the steps without a stroke. So, my
680 plan is to put a lift to get me up so I have access to the house. So, in order to do that I have to
681 have a concrete pad poured in front of the house and due to the nature of the location of the
682 house, this is really the only place you can place this lift. So, apparently this lift and pad is
683 within the setback. In fact, and you have to excuse my ignorance, two months ago, I didn't
684 know what a setback was. So, I don't know anything about these things. So, it's come to my
685 attention that I have to do this, and so, I'm just trying to install this lift so I can gain access to the
686 house. I don't want to move, and so, you know, it's pretty simple, and that's basically why I'm
687 asking, requesting this variance to put this concrete pad down so I can have this lift installed.
688 It's been approved, there's an HOA. It's been approved by the HOA to put the a [sic,] you know,
689 to put the lift on the property. So, it's just a question of asking for the variance so I can get in
690 my house there. I really don't want to move, and as I said, I live alone. It's, you know, that's
691 about it.
692

693 Chairman Ott: Thank you very much. I'm gonna ask the town to present the town's
694 case.
695

696 Ms. Morris: Well, he did a pretty good job. You have this in your packet. But, I wanted
697 to clarify what they were requesting. This is his home (*showed photographs*). He is adjacent to
698 the common area, which is the pool. The steps on this side is where he would like to put the lift.
699 You have the lift in your packet, as well. He is actually requesting a 5-foot variance, so he
700 would be 15-feet from the front property line. He's not; we haven't heard from any of the
701 adjacent property owners opposing the request, and he is correct, the HOA has approved it.
702 We don't have the authority to grant any variances, so we've asked him to come tonight for your
703 consideration.
704

705 Chairman Ott: Thank you very much. Anybody in the audience that would like to speak
706 on this matter? For the record, I see no one who wants to speak. You have a chance, Mr.
707 Gutterman, to, if you want a rebuttal of the town.
708

709 Mr. Gutterman: (** comments made away from the microphone) ... the lift will go right
710 in that front, so I can get up, because (**) flight, it's a long flight, like 50 steps. That's the only
711 access I have.

712
713 Chairman Ott: At this time I'm going to close the hearing section.
714

715 **6. C. BUSINESS: Appeal #ZA2015-06 Robert Gutterman request a variance from**
716 **Section 17-330 (Yard setbacks) to allow for a handicap lift within the 5' required side yard**
717 **setback at 1203 Seabridge Court (TMP#191-16-18-020.)**
718

719 Chairman Ott said opened the business section for the board of zoning appeals to ask
720 questions.
721

722 Mr. Courtney asked Ms. Morris if this would obstruct the common way. Ms. Morris said it
723 would not. It would still be on his property, and there was still access from his property to the
724 pool area. Mr. Courtney asked if adding the lift would compromise the drainage ditch that ran
725 by the property. Ms. Morris said it would not, because the lift would be placed directly beside
726 the stairs and would not impede the drainage ditch. Mr. Courtney asked how large the concrete
727 pad would be. Ms. Morris said it would be 5-feet by 5-feet.
728

729 Chairman Ott said he searched the Americans with Disabilities Act (ADA) and found
730 nothing that he could tag. Mr. Gutterman said the Department of Housing & Urban
731 Development (HUD) covers residential homes. The ADA applies to commercial properties and
732 businesses. There is legislation under HUD. Chairman Ott asked if there was any battery
733 backup in the event of a power outage. Mr. Gutterman asked the manufacturer, and was told
734 there is no battery backup. It depends on electricity to operate. He would have his cell phone
735 to call for help. Chairman Ott said the fire and rescue squad would need to be notified that he
736 lived there and he had a disability. Mr. Gutterman said there would be a panic button, and they
737 would get the message on the house alarm.
738

739 Mr. Willm asked if there was any other place to put the lift. Mr. Gutterman said there
740 was a pool on the other side of the house; and a hedge on the side of the house. The back
741 stairway backs up to the swash, so it was not suitable. This was the only place. Mr. Willm
742 asked if this was unique to his house. Ms. Morris pointed out the swash location on a
743 photograph; it would be difficult for him to get from the front to the back. There is a very small
744 area to cross. Mr. Gutterman said there is no way to place it anywhere else. The front is the
745 only place.
746

747 Ms. Morris said she spoke with Fire Chief Otte, because she knew everyone was
748 concerned about the fire apparatus accessibility. The fire department was fine with the 5-foot
749 encroachment in the setback.
750

751 Ms. Lauer asked if she heard correctly that Mr. Gutterman was a full time resident. Mr.
752 Gutterman said yes, for over 25-years, since right after Hurricane Hugo.
753

754 Chairman Ott said the board could add a restriction that if Gutterman does leave, it will
755 be mandatory that the lift will be removed at that time. Mr. Gutterman has already checked into
756 the requirements and believed that such a restriction would be an unnecessary hardship in
757 violation of the HUD legislation. He asked that the town check that before requiring that
758 stipulation. Chairman Ott said that could be a stipulation in order for the variance to be
759 approved. Ms. Morris said yes. Chairman Ott said that was why the HOA had nothing to say to

760 that point. Mr. Gutterman said in his opinion, the lift was expensive; installation. Chairman Ott
761 said it was a necessity for Mr. Gutterman. Mr. Gutterman said he hoped he would live here as
762 long as possible, but to remove it would be additional excessive expense. There may come a
763 time when he cannot handle; to him it added value to the house, because he was adding the lift.
764 Chairman Ott explained that if the board issued a variance, it would be temporary for Mr.
765 Gutterman. At the time Mr. Gutterman sells the house, the lift would have to be removed. Mr.
766 Gutterman said he would have to appeal that part of it. Chairman Ott believed the board
767 understood that the lift would have to be removed when Mr. Gutterman left the residence.
768 Unless somebody else needed it, and they came for another variance (** several speaking at
769 once.)
770

771 Mr. Lanham said if Mr. Gutterman was correct, and he had no reason to think otherwise,
772 then placing a stipulation to remove the lift when he sells the house would be an unreasonable
773 accommodation on the property. Mr. Gutterman said that ruling was from HUD. Chairman Ott
774 said HUD had no jurisdiction over this board. Mr. Gutterman said HUD was Federal
775 Government; if a complaint was made to HUD, the officials would investigate. Mr. Gutterman
776 said he was not trying to be difficult. Chairman Ott said the variance was being considered for a
777 handicapped individual living in that home. If there was no handicapped person living there,
778 there was no need to have a variance structure in the setback. It does not stay there forever.
779 Mr. Gutterman understood, but all he was saying to the board was that when he checked into
780 the regulations previously, they indicated to him that removing the lift would be ... Chairman Ott
781 interrupted saying that he would ask the board to put that into the variance, if the variance is
782 approved.
783

784 Ms. Morris said the board of zoning appeals did have the right to postpone the hearing
785 until HUD can be contacted, and then reconvene once an answer is determined. Chairman Ott
786 said the matter could be remanded to staff. Mr. Willm asked Mr. Gutterman if the matter was
787 postponed if it would create a hardship for him. Mr. Gutterman said no, he actually did not plan
788 to begin construction until after the first of the year. Chairman Ott said again that it would be an
789 unusable structure sitting in the setback, if Mr. Gutterman no longer owned the home and there
790 was no one else living there that was handicapped and needed a lift.
791

792 Mr. Courtney believes it was important to require the lift to be removed when Mr.
793 Gutterman sold the house, because the problem he saw was that abandoned lifts would
794 become an eyesore for the community.
795

796 Mr. Lanham moved to remand the matter back to the zoning director to allow time to
797 contact HUD, and then reconvene at a later date for a determination.
798

799 Ms. Watson recalled that the FEMA (Federal Emergency Management Agency)
800 discussions for the Community Rating System (CRS) prohibited elevators, and asked how this
801 applied. Ms. Morris said the town is a member of CRS, which means the town receives points
802 for meeting certain requirements above and beyond the National Flood Insurance program.
803 Staff asked Town Council to prohibit elevators in the Coastal A flood zone, where this particular
804 property is located, and the V zone. However, Town Council chose to allow elevators in all
805 areas of the flood zone. Once FEMA was contacted, staff was advised to ensure that the
806 homeowner and/or the contractors of the property were advised that because of the elevator,
807 the flood insurance premium would be increased, because the finished floor would be measured
808 from the elevator ground level, which would create a nonconforming structure. But, that would
809 not affect the town's CRS rating.
810

811 Mr. Courtney asked if a lift was classified as an elevator. Ms. Morris said yes. Mr.
812 Gutterman said an elevator has a shaft. Ms. Morris said that was true. Mr. Gutterman said the
813 vertical lift did not have a shaft. Chairman Ott said it was a classification of a type of elevator.
814 The problem that he saw was if there were other ones and people sold the houses, and then
815 they would not be maintained, and structures would be in the setbacks. The board's job was to
816 control the setbacks. Mr. Gutterman said he would be using it as a selling point and maybe
817 someone getting a handicapped person to buy his house. Chairman Ott said they could go to
818 the handicapped store and get one.

819
820 Mr. Lanham moved to remand the matter back to the zoning official for more information.
821 Ms. Watson seconded. All voted in favor. **MOTION CARRIED to remand the matter back to**
822 **the zoning official for more information.**

823
824 **7. BOARD COMMENTS.**

825
826 Mr. Willm noted that granting a variance did not set a precedent as each appeal was
827 judged by its own merit, not based on whether a similar action had been granted.

828
829 Ms. Morris said the next hearing date was proposed for November 30th, since the usual
830 meeting date was on Thanksgiving Day. Ms. Lauer moved to schedule the next hearing on
831 November 30. Mr. Willm seconded. All voted in favor. **MOTION CARRIED.**

832
833 **8. ADJOURNMENT.**

834
835 Mr. Willm moved to adjourn 8:08 p.m. Ms. Lauer seconded. All voted in favor.
836 **MOTION CARRIED.**

837 Prepared and submitted by,
838
839 _____
840 Debra E. Herrmann, CMC, Town Clerk

841
842
843 Approved: November 30, 2015

844
845
846 _____
847 Ron Ott, Chairman
848
849 _____
850 Darrell Willm, Vice Chairman Timothy Courtney, Board Member
851
852 _____
853 Terri Lauer, Board Member Guy Lanham, Board Member
854
855 _____
856 Phil Murdock, Board Member Holly Watson, Board Member

857
858 Note: Be advised that these minutes represent a summary of items with a verbatim transcript of the hearing section
859 insofar as can be determined by the recording thereof of the board of zoning appeals and are not intended to
860 represent a full transcript of the meeting. The audio recording of the meeting is available upon request; please
861 provide a flash drive on which to copy the audio file. An agenda of this meeting was published pursuant to FOIA §30-
862 4-80(a), and made available to all interested parties.