



Town of Surfside Beach Construction Board of Appeals
Council Chambers, 115 US Highway 17 North
Surfside Beach, SC 29575
November 17, 2016 • 6:30 p.m.
843.913.6111 – www.surfsidebeach.org

#CBA2015-01 Re-Hearing Minutes

1. Call to Order.

Chairman Arteaga called the rehearing of Case #CBA2015-01 to order at 6:30 p.m. Chairman Arteaga and Members Stewart and Oslin were present. Two seats are vacant. A quorum was present. Representing the Appellant: Attorney Robert H. Gwin, III. Representing the Town: Town Attorney Michael Battle, and Fire Chief Kevin Otte, formerly the town's Chief Building Official (CBO). Also present: Town Clerk Herrmann.

2. Oath of Office Construction Board of Appeals Members, Town Clerk Herrmann.

Ms. Herrmann explained that upon the advice of the town attorney, members of all boards, commissions and committees whose duties are stipulated by State Code should be sworn. The oath of Office was properly administered and each member present signed the written oath.

Mr. Battle asked Mr. Gwin if there were any objections to these members presiding at this hearing. Mr. Gwin replied, "No objection."

3. Minutes Approval, April 30, 2016.

The minutes of the April 30, 2016 meeting were approved by acclamation.

4. Recital of Appeal #CBA2015-01, Fire Chief Otte (Former CBO).

Chief Otte: Good evening. We're here tonight for the appeal number CBA2015-01, an appeal by Robert Gwin, the attorney representing William Rempfer, Senior. He is appealing the Order of the Town of Surfside Beach Building Official regarding violations of the Town of Surfside Beach Flood Damage Prevention Code in accordance with Section 14-16(h) of the Town of Surfside Beach Flood Damage Prevention Code.

Mr. Battle: Mr. Gwin, you're here representing Mr. Rempfer and Mrs. Rempfer as you represented in your letters, is that correct?

Mr. Gwin: Yes, it is.

Chairman Arteaga: Thank you Chief Otte. Any questions from the board? Okay, we will proceed to the next item which is the recital of the appellant.

5. Appellant Recitals.

Mr. Gwin: Thank you, Mr. Chairman and members of the board. As Chief Otte told you, I'm Robert Gwin representing William Rempfer and Cheryl DeFalco in connection with this appeal. Even though this is a rehearing, I do want to thank you for the opportunity to be here, and I would like to go through a brief recitation of the facts as you get a history [sic.] Mr. Rempfer and Ms. DeFalco purchased a newly constructed home from Kirk McQuiddy in June of 2013. It's located at 1014 Dogwood Drive North. The Certificate of Occupancy was issued May 21, 2013, and that is shown as Exhibit A in the

packet of materials, which I provided to you. Shortly after that, an elevation certificate was done June 7th, 2013. The elevation certificate is shown as Exhibit B in that packet of materials. Just briefly, the construction of this house; it's constructed on pilings with a garage underneath. The elevation certificate shows that it's located in a special flood hazard area, AE15. As this board is aware, an AE15 requires a minimum finished floor elevation of 16 feet. According to the elevation certificate, the garage floor is 11.95 feet above mean sea level, and the next highest, next floor is located at 17.75 feet above sea level. During the construction a non-conversion agreement was entered into between Mr. McQuiddy and the Town of Surfside Beach. That non-conversation agreement appears on, as Exhibit 7, Exhibit C in the materials, which I've provided to you. Just a couple of bullet points:

- Paragraph 2 of the non-conversion agreement states that all interior walls below the base flood elevation shall be unfinished or constructed of flood resistant materials
- Paragraph 7 states that this non-conversation agreement shall be a covenant that runs with the land
- Exhibits D and E are copies of the deeds whereby Mr. Rempfer and Ms. DeFalco acquired title. Just in a matter of explanation, Exhibit D, the deed from Mr. McQuiddy refers to Ms. DeFalco as Cheryl Rempfer. After that deed was recorded, Ms. DeFalco indicated that when they were married, she retained her married [sic] name and that her proper legal name was Cheryl DeFalco. Therefore, Exhibit E was prepared so that the property would be shown as being in Cheryl DeFalco's name as well as Mr. Rempfer's name.
- In April of 2014, there were garage alterations done. There are briefly set forth in Exhibit F, which is the invoice from WinCo. The invoice indicates that there were wall enclosures in the garage with XP gypsum board. Insulation was installed, which was R11 four feet down, and Styrofoam four feet up.
- By letter dated July 29, 2014 the Town of Surfside Beach served a notice of violation upon Mr. Rempfer. That notice is shown as Exhibit G in that packet. Basically, briefly summarized the notice of violation stated that Mr. Rempfer had violated the Flood Damage Prevention Ordinance by having finished or partitioned walls below the base flood elevation. It also contained a directive to remove drywall and any electrical outlets which exceed the permitted number of one in that area.
- I will also point that there was notice as to the lack of develop permit [sic.]
- There was no notice as to failure to vent the walls with hydrostatic vents.
- I will also point out that the letter was not directed to Ms. DeFalco or Cheryl Rempfer as a co-owner in the property.
- An appeal was made to the chief building official by, as the Chief has told you, October 1, 2014.
- He rendered his findings that there was no development permit; that the XP gypsum board did not meet the flood resistant material standards, and the failure of Mr. Rempfer to vent the walls with hydrostatic vents.

That briefly summarizes how we arrived here today. We have appealed his decision. Our argument is basically that we've had improper notice that Section 14-16 of the Flood Damage Prevention Ordinance requires notice to the owner of the building of the violation. It is our position that both owners should have been notified that the July 29th, 2014 notice failed to be directed to Ms. Rempfer, Ms. DeFalco as one of the owners on the date of the notice, and again, we refer to the deed Exhibit D in evidence of that. We also find that there was improper notice, because there was no development, there was no finding that a development permit was not obtained in the original letter from the building department. That we find that this finding was improper because it was not referenced in that original letter. Likewise, we find that the finding that Mr. Rempfer failed to install hydrostatic vents likewise was improper, because it was not set forth in the original notice giving him notice of what the violations were. In addition to that as an alternative, we would ask the board to consider this a request for a variance. Section 14-26 of your Flood Damage Prevention ordinance provides for a variance to be granted. Some of the factors to be concerned [sic] are the applicable factors would be that there would be minimal danger that materials be swept upon the lands of others. By that I would refer to Exhibit J, which is a survey. As I pointed out in the previous hearing, this home is located right next to Dogwood Lake. It is directed to a back yard for property owned by Kirk McQuiddy. Any flood would, and there is also a swimming pool located in the back, so it would be directed toward Dogwood Lake in the event there were such a hazard. One of the other factors is the little susceptibility to flood damage, and as counter intuitive as this may sound, we in a better position today than we were two years ago, because we've had two major events. Of course, we had the floods of October 2015, and we've just gone through Hurricane Matthew. I am told that there was no damage to the garage as a result of these two events. I've also included Exhibits F, H, and Exhibit I. Exhibit H is the manufacturing specs for the gypsum XP board or the XP gypsum board, and Exhibit I is the FEMA Bulletin which sets forth what flood resistant materials would have to be used. We would also urge that the garage, the partitions are compatible with the existing neighborhood, and we request that this board reverse the order of Chief Otte and grant a variance that the partitions may stay in their current positions. That completes my statement.

Chairman Arteaga: Thank you, Mr. Gwin.

Mr. Battle: Mr. Chair, I have some questions.

Chairman Arteaga: Of course.

Mr. Battle: Mr. Gwin, on August the 27th, 2014 you wrote Mr. Otte and said that you represented William Rempfer and Cheryl DeFalco, and you requested a continuance of the hearing that was scheduled for September 4th that's in your list of exhibits. Is that correct.

Mr. Gwin: No, that's not set forth in my list. It may be in the Chief's exhibits, but it is not in my packet of materials.

Mr. Battle: Well, did you make such a request.

Mr. Gwin: Yes, I did.

Mr. Battle: And at that time you represented, you represented both Rempfer and Ms. DeFalco requesting this hearing. Is it your position that Ms. DeFalco was prejudiced in some way by the letter that went to Mr. Rempfer, but did not have her name on the address?

Mr. Gwin: I know of no prejudice. We are saying that she, that it was improper notice.

Mr. Battle: You're saying that you know of no, you're just saying that ...

Mr. Gwin: I know of no prejudice, but there was improper notice.

Mr. Battle: And she was represented at the hearing by you before Mr. Otte, is that correct?

Mr. Gwin: That's correct.

Mr. Battle: Thank you. With regard to the notice of the defects, the non-conversion agreement was recorded, was it not?

Mr. Gwin: That's correct.

Mr. Battle: And, it contains all of the things that you're saying you did not have proper notice of with regard to possible defects. I mean it says these are the things you have to obey, and you cannot do these things to your property.

Mr. Gwin: The non-conversion agreement is a covenant running with the land entered with the previous owner. It does not specify that these are violations which the Town of Surfside Beach has determined to be violations. It does set forth certain requirements that, which are exceeded by the Flood Damage Prevention ordinance.

Mr. Battle: Do you concede that the property that is [sic] now belongs to Mr. Rempfer and Ms. DeFalco is not in compliance with the requirements of this non-conversation agreement.

Mr. Gwin: There was, no, (**) I would not concede that.

Mr. Battle: What is your distinction between the two?

Mr. Gwin: That the XP gypsum board is flood resistant, and paragraph 2 of the non-conversion agreement would permit interior walls below base flood elevation as long as they are constructed with flood resistant materials.

Mr. Battle: Those are the only two areas where there is a real dispute between you and the town of Surfside as to whether or not this property is in compliance with the ordinances of the Town of Surfside Beach?

Mr. Gwin: Based upon the July 29th letter, yes, and other than the improper notice on the due process issues. But, that's not a ...

Mr. Battle: I thought you conceded that. Did you not concede it?

Mr. Gwin: I answered your questions. I didn't concede. I just said she was not prejudiced.

Mr. Battle: She was not prejudiced and that you did appear on her behalf.

Mr. Gwin: Yes.

Mr. Battle: That's all the questions I have.

Chairman Arteaga: Thank you, Mr. Battle. Any questions from the board members? Okay. Next is the Rebuttals and/or Exhibits by the Town of Surfside Beach.

6. Rebuttals and/or Exhibits.

i. Appellant. *(Chairman called on the Town's rebuttal presentation.)*

ii. Town of Surfside Beach.

Chief Otte: Good evening. I made a few notes here as Mr. Gwin was talking, and using the non-conversion agreement that he had in his exhibits as well as our page one in the packet that I gave you, and he does state that the interior walls below base flood should be unfinished or constructed with flood resistant materials. That seems to be where we were at odds with the information that was supplied to me by the contractor who first of all performed the work without a permit. He did not get any permits for that, and I'm sure that everybody was aware because they built a house that they needed permits for any kind of work to be done on the house. The information supplied to me was and it's shown on, I believe his expert when they came in, they provided me from WinCo; it's number 12 in your packet there. Basically, they told me it was this Greenguard XP. I asked him to send me the information on it. When I read down through it, I've highlighted the section in here where this is a moisture resistant and can be used as a tile back in dry areas or areas with limited water exposure, such as toilet and sink areas, and areas above tile in showers or tubs. They're used for interior purposes. So basically these panels that have been used are not an exterior panel. They will not resist the water. They're resist the water, but they are not considered by FEMA to be flood resistant materials. Looking at their chart that they've got in the book, which was in his display as well, the material that they are talking about is a fiber reinforced material. All they've got here is a moisture resistant board that they put in here. So, you know, we dispute the fact that they're saying that the material that has been put in was a water resistant or flood resistant material. It's not flood resistant. They also, to my knowledge, because of course, we got no call for any inspections because no work was being performed as far as we knew, if they partitioned that off there are no vents in those walls, as far as I know. I know the vents that were there when I did the CO inspection, because I took pictures of those. Those pictures are actually on page three. You can see the pictures of the vents that were in place at the certificate of occupancy was issued. And, in page five you can see the pictures that were taken of the work that was being done when our director, Sabrina Morris, was going past and they had the garage doors open on the house. So, this was not an area where she went out of the way on the private property. This was in plain view from the street. So, these pictures that she took show that they've got dry wall up, and they've got it taped off, and finished, and they're ready to finish it off. Again, I can see no vents in those pictures, but Mr. Rempfer has not allowed us in there to look at the property to see if they did put any vents in. But still, the interior partitions cannot be finished or they have to be finished with a flood resistant material. So, at this point, that is our issue that they are basically, they've got a house in violation of our flood ordinance. Without this being pursued, and without them correcting that the town stands a chance of having our flood insurance for all of our citizens suspended. If FEMA comes in here and finds out that this exists and we know about it, they can suspend flood insurance for every citizen in the Town of Surfside Beach. So, at this point, we have to pursue this until such time as the violations are removed or corrected.

Chairman Arteaga: Thank you, Mr. Otte. Questions?

Mr. Stewart: So, first the job was performed without a permit.

Chief Otte: Correct.

Mr. Stewart: Okay. So, obviously it seems like they were doing it after the CO.

Chief Otte: It was performed after that. The pictures that were taken were taken (** two speaking at once.)

Mr. Stewart: There cannot be any dwelling or place for somebody to live in that area.

Chief Otte: According to the non-conversion agreement and our flood ordinance, you cannot make habitable space. It is for parking, for storage, or access to the building are the only three uses for that area, because it is in a flood zone.

Mr. Stewart: If you do have storage, how big of a storage area can you have under it?

Chief Otte: At that time it was less than 400 feet.

Mr. Stewart: How big is the area under the house?

Chief Otte: It's larger than 400 square feet, the enclosed area underneath the house. And, again, they had flood vents in there which, you know, they had those in. The whole area was opened up when I did the CO inspection, so there were no, you know, no walls up. Now, they had walls up, and we made them take them down when I went in to do the framing inspection. We found that they had installed interior partitions and they were told that I basically would not pass inspection until those walls were removed. They did remove those walls before I would pass the framing inspection. I suspect that those may be the walls that went back up.

Mr. Oslin: So the newly sheetrock area exist inside the original enclosed area.

Chief Otte: Yes. It's inside the garage area.

Mr. Oslin: So there's partition walls (**two speaking at once.)

Chief Otte: Exactly, we have not been in there. But to put the drywall up, they would have had to partition that off to put that drywall up.

Mr. Oslin: I don't understand. They did not sheetrock the exterior that was already there? (**)

Chief Otte: From the pictures, those pictures and the example 5 that I gave you, those are interior partitions inside with inside that basement enclosure.

Chairman Arteaga: Is there any indication that they're using this area for other than what it's supposed to be? For storage, or vehicular parking?

Chief Otte: Are they using it for anything? Again, without us being; you know, we've been denied access to the building. We have no idea what, you know, what is done there.

Chairman Arteaga: It is my understanding that the two major issues that the town has is that the materials are not flood resistant, or that sheetrock is not flood resistant material, one. And secondly, that there are no vents in the walls.

Chief Otte: Correct. The only vents that I'm aware of are the vents that were put in before the CO, and they were required to have those vents before the CO was issued.

Chairman Arteaga: On the exterior?

Chief Otte: On the exterior of the building, yes.

Chairman Arteaga: From the outside is it possible to determine if there are any vents or is it solid walls at this point?

Chief Otte: Walking around the outside of the building you can see the vents. They were, because they have to allow the water to come in and go out. So, from the outside of the building you can see those vents that were there when the CO was issued.

Chairman Arteaga: So there are vents on the perimeter wall?

Chief Otte: On the perimeter walls, yes sir.

Chairman Arteaga: Are there supposed to be any vents on the interior walls?

Chief Otte: The interior walls are not supposed to be finished.

Chairman Arteaga: Not supposed to be there, period. But, there are vents in the interior walls?

Chief Otte: In the exterior walls, yes. It was vented correctly when the CO was issued, yes sir.

Chairman Arteaga: So the only issue is the use of non-flood resistant materials.

Chief Otte: Correct, again, we had no idea what they used, but what was supplied to me by the contract does not meet flood resistant materials ...

Chairman Arteaga: (***two speaking at once*) ... this type of materials (***two speaking at once.*)

Chief Otte: Right, exactly. It is not a flood resistant material based on FEMA's guidelines.

Chairman Arteaga: What about after the two major floodings [sic]? Can you tell us the effects on the neighboring property or any, obviously, there was flooding in the area, but what was the effect on the adjacent properties. I understand there's a lake on one side, but what about the other side?

Chief Otte: The other side, that that area right in there is a little raised up at this point. But, of course, because it is still on the flood map as a AE15, we have to treat it as flood zone, even though the two events that we had have not caused any issue there, we, you know, we can certainly get a storm of a lot bigger magnitude, and it would cause, it could cause issues. Basically, we have to go off of the maps that FEMA puts out. Because FEMA still has that listed as an AE15 on the map, we have to treat it as such.

Chairman Arteaga: In the last storm do you know the average height of the water, right after the last storm, the recent storm aftermath?

Chief Otte: I know that there were a few streets that were flooded. I know Ocean Boulevard; some of the areas not too far south of that area the streets were flooded for a while. That particular street, no, but I do know that Dogwood Lake being right there it was running over at that point. But, the street was really not flooded, but it was over because the outfall was not big enough to handle the amount of water that was coming into it. That would be a normal happening if we were to get a 12 or 15 inch rainfall.

Chairman Arteaga: I have no further questions.

Mr. Battle: May I ask a question.

Chairman Arteaga: Yes, sir.

Mr. Battle: One point of confusion, the interior walls that are finished. They are a violation of the FEMA ordinance, are they not?

Chief Otte: They are. Yes, sir.

Mr. Battle: So, it's not just the vents. The interior, what, would you explain to the panel what would have to be done for Mr. Rempfer to come into compliance with the FEMA ordinance and the non-conversion agreement.

Chief Otte: Well, the first thing that would have to happen is that we'd have to do an inspection to see what he's got in there. That, that's first and foremost.

Mr. Battle: What you assume is in there now?

Chief Otte: Correct, exactly. All we've got are the pictures that were taken of that.

Mr. Battle: Explain to me what they would have to do.

Chief Otte: They basically would have to follow the guidelines that are listed in the non-conversion agreement, which says no interior finished walls except that materials that are made with flood resistant materials. So, they would have to use a flood resistant material.

Mr. Battle: My question here is can you have an interior wall with flood resistant material without vents?

Chief Otte: Not if it partitions the area off, no. You cannot, you cannot close off an area so that the water can come in from one side, but not be able to get out the other.

Mr. Battle: So, if he did put in the flood resistant materials on the interior walls, he'd still have to vent those.

Chief Otte: Correct.

Mr. Battle: What else?

Chief Otte: Basically, that would solve the, you know, the issue, because then we would be in compliance as long as he has no electrical facilities down there other than the one that he's allowed to have below the base flood, and as long as the area is not conditioned.

Mr. Battle: Now how high does the electrical outlet have to be?

Chief Otte: The elevation certificate shows the area of the slab at around 12 feet. So the AE15 puts it three plus the one foot for the BFE or the freeboard, so he would have to be at roughly four feet off the ground to be eligible for that. Now, let me just throw this in there that if he goes back and reapplies that may fall under the new flood ordinance, because that has changed up. So, that would be something they would have to get with the director to make sure. I'm not positive if they have to reissue a permit, because no permit was issued on this. It may be considered a new permit here, and if it's a new permit that falls under the new one with a three foot freeboard.

Mr. Battle: What?

Chief Otte: Three feet instead of one foot, one foot. So, you know, that would take it up and it will make it six feet.

Mr. Battle: But what's before this panel is not; is that he had work done without a permit that you have materials that you say are not flood resistant. He says are flood resistant, and you dispute that. And then you have the issue of there's not adequate venting to comply with the code.

Chief Otte: Correct.

Mr. Battle: I'm sorry. I just wanted to make sure I got those questions.

Mr. Oslin: Just a quick question.

Chairman Arteaga: Yes, sir. Go ahead.

Mr. Oslin: If those partition walls were installed, vented correctly with flood resistant materials, we don't have a problem with partition walls.

Chief Otte: Not as long as they're put up with flood resistant materials, and they're vented properly that would suffice for the flood ordinance.

Mr. Oslin: But, we would have to, you know, inspect that, I guess?

Chief Otte: Correct. Again, you know, with no permit being pulled this could be considered a new permit and with the new permit there are new guidelines for the flood ordinance. So, because no permit was ever issued for the work, so at this point, if a permit is issued for the work, it will be based on the new ...

Mr. Battle: I hate to interrupt you, but that matter is not on appeal before this board.

Chief Otte: Right, correct.

Mr. Battle: All that's on appeal here is whether or not to uphold your decision.

Chief Otte: Right.

Mr. Stewart: Did they attempt to go get a permit after they were caught doing the work without a permit?

Chief Otte: No attempt has been made.

Mr. Stewart: So they're asking for a variance?

Chairman Arteaga: Is that in consideration tonight for this board to approve a variance, or to discuss or entertain that?

Mr. Battle: You can entertain it. I would; technically he's supposed to go through the correct procedures. To simply up or down the appeal that would be the response to this request for a variance. I would not. I mean, I would deal with the appeal that is before you. Mr. Gwin, have you formally requested a variance and filled out the necessary application for a variance?

Mr. Gwin: The application; no application for a variance has been filed. But, as this issue was brought up at the original hearing and discussed at that point. So I would say that the variance is pertinent and viable to this appeal, because it was addressed at the other hearing.

Mr. Battle: Chief Otte, do you have any objections to him adding a variance to his appeal with this request?

Chief Otte: If there's any variance that does not conform with the flood ordinance, again, we can potentially have our flood insurance suspended in the town.

Mr. Battle: I understand that, but I'm here to deal with technical matters. They make all the substantive decisions, but I want to make sure that everybody gets a fair hearing. Do you have objections to him asking the board to consider a variance in lieu or in addition to whether or not to affirm your appeal?

Chief Otte: I do have an opposition for a variance.

Mr. Battle: I understand you object to have him; you have an objection to his bringing this up at this time or do you want him to request it at another time, and then have that come up.

Chief Otte: He can certainly do that.

(**)

Mr. Battle: I think under your ordinances you required to make a formal request for a variance.

Chief Otte: Yes.

Mr. Battle: A written request, and you have strict guidelines as to when you can grant a variance and when you cannot. I think for the sake of process, it would be prudent to just deal with the issues that are before you.

Chairman Arteaga: Are we ready to make decisions?

Mr. Battle: Give him an opportunity to do rebuttal.

Chairman Arteaga: I stand corrected. Mr. Gwin, would you please do a rebuttal.

Mr. Gwin: The only rebuttal which I have is that I would disagree with Chief Otte regarding the variance and the impact that the variance would have upon, with FEMA and the Flood Damage Prevention Ordinance. By its very definition, a variance deals with nonconforming items. These are items that would not conform to the Flood Damage Prevention Ordinance. Therefore, that, if the variance provisions in your ordinance are to have any impact they would permit this board to deal with violations of the ordinance and determine what material impact such violations would have upon the flood insurance that FEMA regulations [sic.]

Mr. Battle: Mr. Gwin, I have, I have a question, if you don't mind. Where in the ordinance does it allow for a variance to a FEMA ordinance? Are you talking about a zoning variance?

Mr. Gwin: No, Section 14-26 of the Flood Damage Prevention Ordinance provides guidelines and factors to be considered by this board when granting a variance to that ordinance.

Mr. Battle: And what are those factors?

Chairman Arteaga: Do we have that here?

Mr. Gwin: No, I did not make a copy of the ordinance, but again, 14-26, and I may read: in passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of the article; and (a) the danger that materials may be swept onto other lands to the injury of others; the danger to life and property due to flooding or erosion damage, and the safety of access to the property in times of flood for ordinary and emergency vehicles; the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage to the individual owner; the importance of the services provided by the proposed facility to the community;

the necessity to the facility of a waterfront location, where applicable; the availability of alternate, alternative locations, not subject to flooding or erosion damage for the proposed use; the compatibility of the proposed use with existing and anticipated development, and the relationship of the proposed use to the comprehensive plan and floodplain management program for that area; the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; the costs of providing governmental services during and after the flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges; and agricultural structures must be located in wide, expansive floodplain; it goes on, but it's not applicable here.

Mr. Battle: What, what was the first part of that ordinance? I'm sorry.

Mr. Gwin: When passing upon such applications?

Mr. Battle: What is the application for?

Mr. Gwin: The application is for a variance.

Mr. Battle: But, you have not made an application for a variance.

Mr. Gwin: Not, we have not made a written application through the building department.

Mr. Battle: And, have you presented any evidence to Mr. Otte, Chief Otte or to this board that would prove any of those points that you have?

Mr. Gwin: We have provided the survey showing the location as to how susceptible this area would be. We have referenced the two major storms where there was no damage, which would indicate proof in the pudding as to what damage would be ...

Mr. Battle: I mean we've heard, we've heard your statements, but have you put any evidence or shown any photographs?

Mr. Gwin: No, nothing other than the survey.

Mr. Battle: Alright.

Chairman Arteaga: Any other comments by the board?

8. Deliberation and Decision of the Construction Board of Appeals.

Mr. Stewart: I just feel that they didn't get a permit to begin with. They all knew they should have had a permit. Everybody knows the ordinances. They know the a flood plain when you built the house, and you need to have the break-away walls and you have to have the vents for the water to flow through the house freely, which prevents the house from being pushed over by a big wave, which is the reason for those vents. Now, if you have a bunch of solid walls that can cause the house to fall down, if we do have a huge storm. These last storms; we were lucky, but if the house falls there's going to be a stuff floating around to different properties. It'll keep the strong winds from blowing things, you know, for a hurricane category ones and twos, but if we were to get a three, four or five that could potentially push the house over, even though it is elevated pretty, you know, it's elevated pretty high. Rules are rules.

Mr. Oslin: I mean, I would agree with he has to get a permit. I guess the other thing is no one really knows exactly what all is done or in there. I mean, it's hard to say. So, I kind of agree, he needed to get a permit.

Chairman Arteaga: I also am in the agreement that the homeowner should have gotten a permit. He should have followed the rules of the flood ordinances. I think based on the presentation of the Chief that these may jeopardize the flood insurance for the Town of Surfside Beach, and I don't think we want to expose the entire town because of the one individual homeowner. However, in all fairness, I think the town should also be open to the possibility of a variance and that is what a variance is, is basically to accept certain modifications of the building code and in this case the zoning ordinance or the, I'm sorry, the flooding ordinance. But, I think that is beyond the scope of this board at this point in time. I think the real issue here is to whether we decide to uphold the decision of the Town of Surfside Beach or go with the appellant. So, at this point are we ready to vote?

Mr. Stewart: Sure.

Chairman Arteaga: I vote in favor of the town.

Mr. Stewart: I vote in favor of the town, also.

Mr. Oslin: I vote in favor of the town, as well.

Mr. Battle: May I make a suggestion that you make a motion to affirm the order of Chief Otte and then ask me to write you a written order that you can circulate to and sign it to state your order how you want it done.

Mr. Arteaga: I make a motion to uphold the decision of Chief Otte on behalf of the Town of Surfside Beach. Do I get a second?

Mr. Stewart: Second.

Chairman Arteaga: Mr. Battle would you give us a written order to confirm that decision?

Mr. Battle: Sure, if you will go ahead and vote.

Ms. Herrmann: Just all say aye, if you are in favor. All voted in favor. **MOTION CARRIED.**

Mr. Battle: What I will do is I will draft a brief order setting forth what I believe you have ruled and found, which is basically you're affirming the order and the requirements of Chief Otte, and that basically you that find for the reasons that there are sufficient evidence that the interiors are not flood resistant and moisture resistant; that you find that the interior walls should be flood resistant and there should be venting, and that he should get a permit and that is past the fact, but that you find it was improper for him to build without a permit. Those are the things that I would put into the order.

Chairman Arteaga: That is correct. Also, if necessary that the town should be open for a variance if the homeowner files ...

Mr. Battle: You'll have that issue come; you don't want to prejudge that. You'll have that issue before you when Mr. Gwin, if he so decides, applies for a variance, and then whoever the building inspector is decides to accept or reject that, then it would come to you or it would come directly to you with the building inspector's recommendation that you either accept or grant or deny the variance. But,

that's a separate matter that should be, there should be evidence presented to you as to why the variance should be granted, and it should be in accordance to the thing [sic]. But, that's really not before you now. He has to make that application. It would be unfair to him, because you're saying he should have gotten a permit, and vote on his application now, you know, you haven't really had his full opportunity to make his application.

Chairman Arteaga: That's fair enough to me. Thank you.

Mr. Battle: Thank you.

9. Board Comments. There were no board comments.

10. Adjournment. Chairman Arteaga declared the meeting adjourned at 7:34 p.m.

Prepared by submitted by,

Approved: _____

Debra E. Herrmann, CMC, Town Clerk

Orlando Arteaga, Chairman

Nathan Johnson, Board Member

Jack O'Quinn, Board Member

Daniel Oslin, Board Member

Shane Stewart, Board Member

Clerk's Note: This document constitutes verbatim minutes of the hearing and summary minutes of the discussion of the meeting that was digitally recorded. (**) indicates audio unclear. Contact the town clerk for appointments to hear recordings; to obtain a copy, provide a flash drive. In accordance with FOIA §30-4-80(A) and (E), meeting notice and the agenda were distributed to local media and subscribers on the town's Email Updates list. The agenda was posted on the town website, and the entry door at Town Council Chambers. Meeting notice was also posted on the Town marquee.