



Town of Surfside Beach Construction Board of Appeals
Council Chambers, 115 US Highway 17 North
Surfside Beach, SC 29575
843.913.6111 – www.surfsidebeach.org

Re-Hearing #CBA2015-01
November 17, 2016 @ 6:30 p.m.

AGENDA

- 1. Call to Order, Chairman Arteaga**
- 2. Oath of Office Construction Board of Appeals Members, Town Clerk Herrmann**
- 3. Minutes Approval, April 30, 2016**
- 4. Recital of Appeal #CBA2015-01, Fire Chief Otte (Former CBO)**
- 5. Appellant Recitals**
- 6. Rebuttals and/or Exhibits**
 - i. Appellant**
 - ii. Town of Surfside Beach**
- 7. Question to Appellant and/or Chief Otte**
- 8. Deliberation and Decision of the Construction Board of Appeals**
- 9. Board Comments**
- 10. Adjournment**



Town of Surfside Beach Construction Board of Appeals
Council Chambers, 115 US Highway 17 North
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**Construction Board of Appeals Minutes
Saturday, April 30, 2016**

1. Call to Order. Chairman Arteaga called the meeting to order at 10:00 a.m. Chairman Arteaga and Members Stewart and Pellicci were present. Members Morrison was absent. One seat is vacant. A quorum was present. Also present: Town Clerk Herrmann.

2. Business. Chairman Arteaga said the only order of business was to approve the hearing minutes of the January 9, 2015 hearing that was continued to January 12, 2015 when a decision was rendered. As only three members were present, the minutes were approved by acclamation and without objection.

3. Adjournment. Chairman Arteaga declared the meeting adjourned the hearing at 10:03 a.m.

Prepared by submitted by,

Approved: _____

Debra E. Herrmann, CMC, Town Clerk

Orlando Arteaga, Chairman

David Morrison, Board Member

Gene Pellicci, Board Member

Shane Stewart, Board Member

Vacant

Clerk's Note: This document summary minutes 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, meeting notice and the agenda were distributed to local media and subscribers on the town's email subscription 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.

MAYOR
Douglas F. Samples
TOWN ADMINISTRATOR
Micki Fellner
CLERK
Debra Herrmann



TOWN COUNCIL
Bob Childs
Mark Johnson
Mary Beth Mabry
Ralph Magliette
David Pellegrino
Randle Stevens

TOWN OF SURFSIDE BEACH

List of information for Appeals Hearing 01/08/2015
1014 Dogwood Drive North

1. Non-Conversion Agreement. (01/18/2013)
2. Copy of Framing Inspection Sheet. (01/24/2013)
3. Photos of vents and ground level areas. (05/09/13)
4. Certificate of Occupancy issued (05/21/2013)
5. Photos taken by Ms. Sabrina Morris showing finished drywall on framed walls on ground level of structure. (04/09/2014)
6. Letter addressing violations at 1014 Dogwood Drive North
7. Copy of Assessor's Sales Listing, showing property at 1014 Dogwood Drive North being sold to Ms. Cheryl Defalco on (08/25/2014)
8. Letter of hearing notice sent to Mr. Rempfer (08/26/2014)
9. Response letter from Mr. Robert Gwin III, Attorney for Mr. Rempfer, (08/27/2014)
10. Letter sent to Attorney Gwin from Mr. Mike Battle, Attorney for the Town of Surfside Beach, setting the date for the Presentation Hearing. (08/29/2014)
11. Copy of information supplied by Mr. Rompers' Attorney and Expert Witness, containing FEMA's Technical Bulletin 2 and Table 2 showing the type of drywall they say was used.
12. Copy of the invoice from Winco for the drywall supplied and labor for the job. They also supplied manufactures information on the type of drywall used.
13. The Formal Opinion issued after the presentation of information. (10/01/2014)
14. Letter of notice of appeal from Mr. Robert Gwin. (10/10/2014)
15. Copy of the Notice of Appeal.

**NONCONVERSION AGREEMENT
FOR CERTAIN STRUCTURES IN THE FLOODPLAIN
WITHIN THE TOWN OF SURFSIDE BEACH**

WHEREAS, the undersigned is (are) the recorded owner(s) of Tax Map Number 193-16-23-031, which is commonly known as 1014 Dogwood Dr. North Surfside Beach, SC; and

WHEREAS, the PROPERTY OWNER desires to build a Single family residence within a Special Flood Hazard Area having a Base Flood Elevation of AE-15' Map Panel Number 45051C0752 effective date 8/23/99; and

WHEREAS, the Planning, Building & Zoning Department requires that the PROPERTY OWNER execute a Non-Conversion Agreement for certain Structures in the Floodplain; and

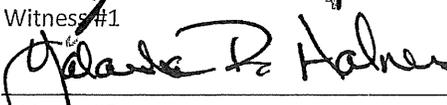
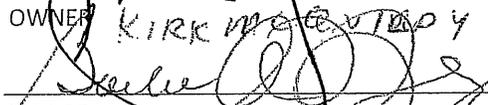
NOW, THEREFORE, it is agreed by and between the TOWN and PROPERTY OWNER as follows:

1. That the enclosed area below the base flood elevation shall be used solely for parking of vehicles, limited storage, or access to the building and will never be used for human habitation without first becoming fully compliant with the Flood damage prevention ordinance in effect at the time of conversion.
2. That all interior walls, ceilings, and floors below the Base Flood Elevation shall be unfinished or constructed of flood resistant materials.
3. That mechanical, electrical, or plumbing devices shall not be installed below the Base Flood Elevation.
4. The walls of the enclosed areas below the Base Flood Elevation shall be equipped with at least two vents which permit the automatic entry and exit of floodwater with total openings of at least one square inch for every square foot of enclosed area below flood level. The vents shall be on at least two different walls and the bottoms of the vents shall be no more than one foot above grade.
5. That any variation in construction beyond what is permitted shall constitute a violation of this agreeme A duly appointed representative of the Town of Surfside Beach is authorized to enter the property for t purpose of inspecting the exterior and interior of ANY enclosed area to verify compliance with this agreement. Such inspections will be conducted upon due notice to the Owner and no more frequently than once each year. More frequent inspections may be conducted of any annual inspection discovers a violation of the Permit.
6. That this Non-Conversion Agreement becomes part of the Permit.
7. This Agreement shall be binding upon and inure to the benefit of the heirs, grantees, successors and assigns of the parties hereto and shall constitute a covenant running with the Single family residence being constructed under said permit.
8. The Town of Surfside Beach, issuing the Permit and enforcing the Flood Damage Prevention Ordinance, may take any appropriate legal action to correct ANY violation. Any alterations or changes from these conditions also may render the structure UNINSURABLE or increase the cost for Flood Insurance.

Instrument#: 201300008576, DEED BK: 3633 PG: 2135 DOCTYPE: 108 01/23/2013 at 01:26:45 PM, 1 OF 2 BALLERY V. SKIPPER, HORRY COUNTY, SC REGISTRAR OF DEEDS

IN WITNESS WHEREOF I (or we) have hereunto set my/our hand(s) and seal(s) this day of 18th January in the year of 2013.

Signed, sealed and delivered in the presence of (OWNER):

	<u>11/15/13</u>		<u>1-18-13</u>
Witness #1	Date	OWNER	Date
	<u>11/15/13</u>		<u>1-18-13</u>
Witness #2	Date	OWNER	Date

BARBARA MCCOIDDY

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF Horry

Personally appeared before me John C. DeBoer and made oath that he/she was present and saw the within named owner(s) R. Kirkland McQuiddy & Barbara Ann McQuiddy sign, seal and as their act and deed deliver the within the NON-CONVERSION AGREEMENT FOR CERTAIN STRUCTURES IN THE FLOODPLAIN; and that John C DeBoer with Ydonda Holmes. witnessed the execution thereof.

Sworn to before me this 15th day of January, 2013.

Jamesa K. DeBoer

[Signature]
Witness Signature

Notary Public
My commission expires: March 14, 2016



2

SURFSIDE BEACH - CODE ENFORCEMENT INSPECTION TICKET

(843) 913-6341

DATE Jan 3 2018

CONTRACTOR Bob Chan Builders

JOB ADDRESS 1017 Dogwood Drive North

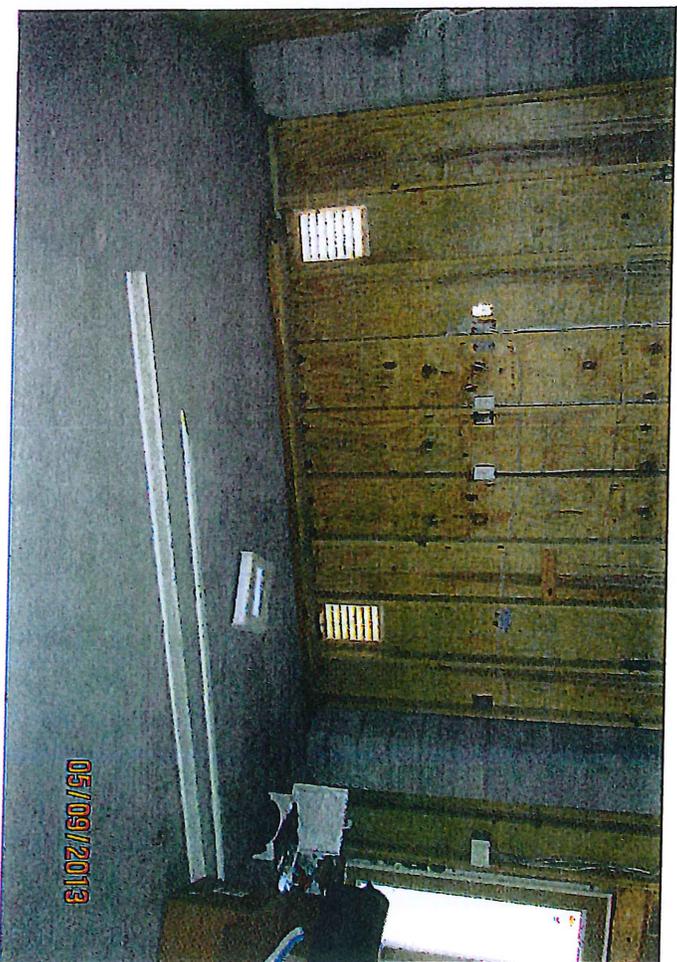
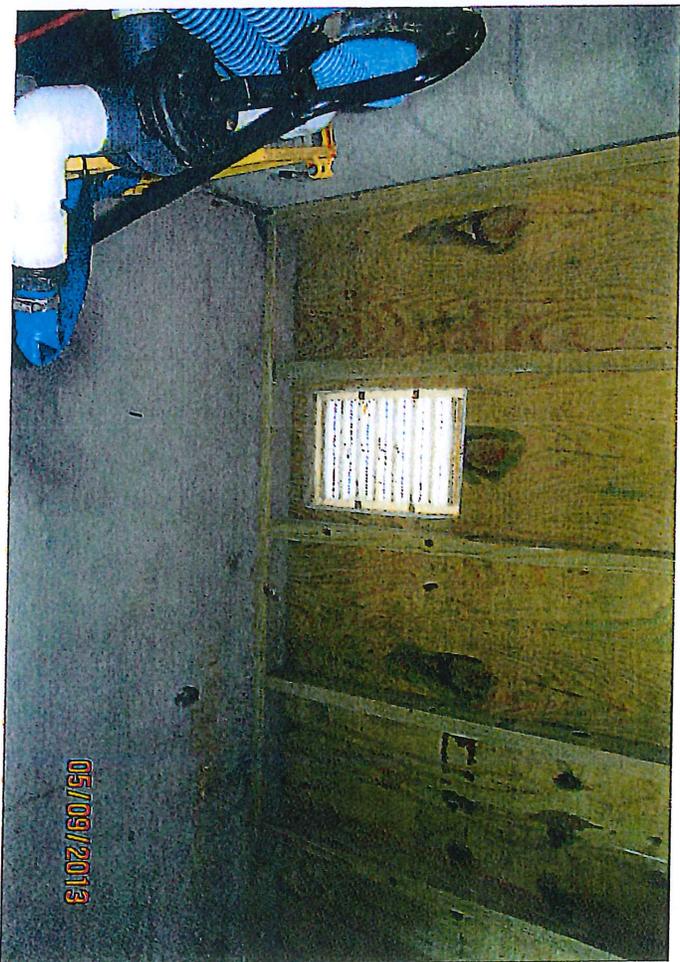
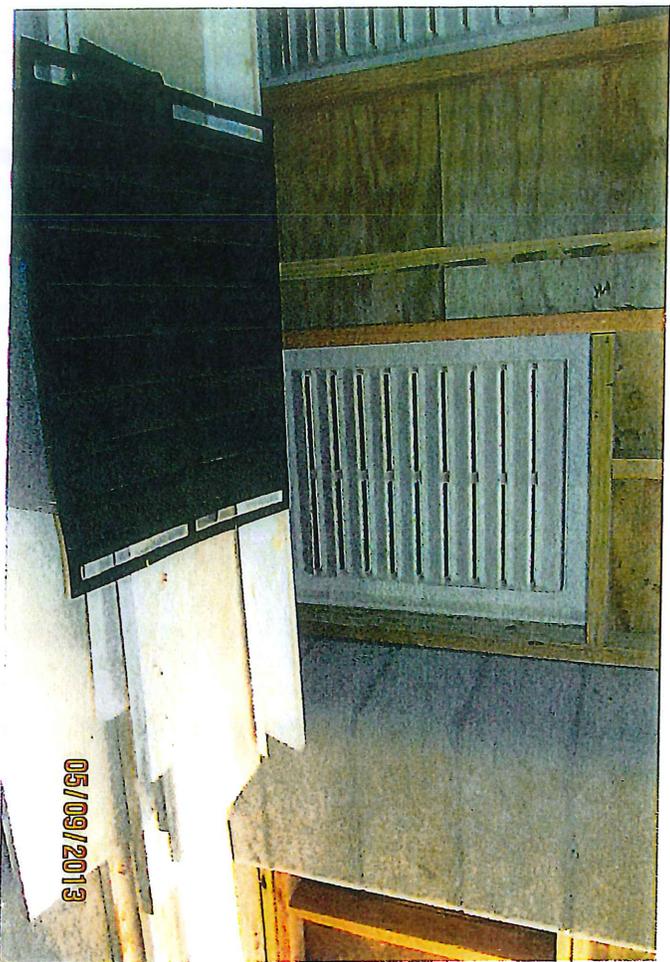
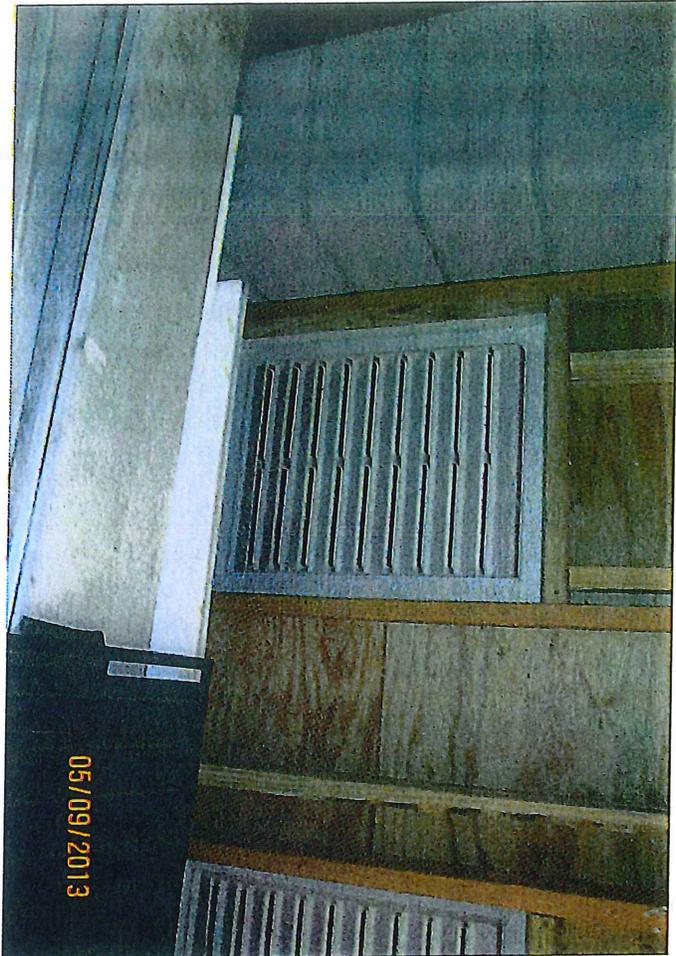
SETBACKS: FR _____ REAR _____ IS _____ EXS _____

FLOOD ZONE _____

<u>TYPE INSPECTION</u>	<u>OK</u>	<u>DENIED</u>		<u>OK</u>	<u>DENIED</u>
TEMP. SERVICE	___	___	INSULATION	___	___
U.S.P.	___	___	METER SERVICE	___	___
FOUNDATION	___	___	FINAL	___	___
SLAB/POLYWIRE	___	___	LANDSCP/# TREES	___	___
ANCHORS	___	___	DRIVEWAY	___	___
NAILING	___	___	SWMP	___	___
EXTERIOR STRAPPING	___	___	CO	___	___
ROUGH FIRE	___	___	METER C/O/S	___	___
ROUGH FRAMING	<input checked="" type="checkbox"/>	___	TREE INSPECTION	___	___
ROUGH ELECTRICAL	___	___	SAFETY INSPECTION	___	___
ROUGH PLUMBING	___	___	POOL BONDING	___	___
ROUGH MECHANICAL	___	___	POOL DECK	___	___
MOISTURE BARRIER	___	___	POOL GROUND	___	___
FLASHING /WINDOW	___	___	POOL FINAL	___	___
FLASHING/BRICK	___	___		___	___

REMARKS: Inspection for rough framing
Wood nailed & strapped as
required. Walls removed in
lower level
It is to be submittal.

INSPECTOR: [Signature]



TOWN OF SURFSIDE BEACH
RESIDENTIAL CERTIFICATE OF OCCUPANCY

TOWN OF SURFSIDE BEACH
RESIDENTIAL CERTIFICATE OF OCCUPANCY

Date Issued: 5/21/2013

Permit No.: 302310

Owner: MCQUIDDY, R.K. & BARBARA

Classification: RESIDENTIAL

Property Location: 1014 DOGWOOD DRIVE NORTH

Occupancy Group: SINGLE FAMILY

Lot #: 4B Tax Map #: 191-16-23-031

Fire District: SURFSIDE

Maximum Occupancy: _____

Construction Type: NEW (RESIDENTIAL)

By:

Ken L. Otte

Kevin L. Otte

Building Official

POST IN A CONSPICUOUS PLACE





... ..

... ..

Mayor
Douglas F. Samples
Town Administrator
Micki Fellner
Town Clerk
Debra E. Herrmann, CMC



Town of Surfside Beach
Planning, Building & Zoning

Hand Delivered by
Brian Clark, Police Dept
8/1/14 @ 12:19 pm

Mayor Pro Tem
David L. Pellegrino
Town Council
Robert F. Childs
Mark L. Johnson
Mary Beth Mabry
Ralph Magliette
Randle M. Stevens

July 29, 2014

COPY

HAND-DELIVERED

William Rempfer
1014 Dogwood Drive North
Surfside Beach, SC 29575

Re: Violation of the Town of Surfside Beach Flood Damage Prevention Ordinance
1014 Dogwood Drive North, Surfside Beach, SC 29575

Mr. Rempfer:

Please be advised, on April 9, 2014 a violation was discovered at the above referenced address. The home is located within an AE 15' flood zone. This area is known as a Special Flood Hazard Area (SFHA). When your home was constructed, the town required a finished flood elevation of 16' (one foot above the required elevation) per Section 14-18 of the Flood Damage Prevention Ordinance. A "Non-conversion Agreement" was also required to be recorded on the Register of Deeds prior to start of construction. The agreement was to ensure enclosures and equipment below the Base Flood Elevation (BFE) would not be converted and constitute a violation of the Flood Damage Prevention Ordinance.

The town participates in the National Flood Insurance Program (NFIP). The NFIP offers flood insurance to homeowners, renters, and business owners if their community participates in the NFIP. Participating communities agree to adopt and enforce ordinances that meet or exceed FEMA requirements to reduce the risk of flooding. Your home has been found to be in violation of the Town's Flood Damage Prevention Ordinance. Specifically **Section 14-18(5)(c) Enclosures Below Lowest Floor** which states:

Enclosures Below Lowest Floor:

1. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
2. The interior portion of such enclosed area shall not be finished or partitioned or finished into separate rooms, must be void of utilities except for essential lighting as required for safety, and cannot be temperature controlled.

Dedicated people providing quality and responsive service to our community.

115 US Highway 17 North, Surfside Beach, SC 29575-6034 ♦ www.surfsidebeach.org
Telephone 843.913.6111 ♦ Facsimile 843.238.5432 ♦ Email town@surfsidebeach.org

3. One (1) wet location switch and/or outlet connected to a ground fault circuit interrupt breaker may be installed below the required lowest floor elevation specified in subsections 14-18(1), (2) and (3).
4. All construction materials below the required lowest floor elevation specified in subsections 14-18(1), (2), and (3) shall be of flood-resistant materials.

Please consider this official notification of violation of the Flood Damage Prevention Ordinance by having finished or partitioned, or finished into separate rooms enclosed below the required base flood elevation. All drywall and any and all electrical (with the exception of one (1) switch and/or outlet connected to a ground fault circuit interrupt breaker) must be removed immediately. Violation of the provisions of this chapter or failure to comply with any of its requirements shall constitute a misdemeanor. Any person or corporation who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than five hundred dollars (\$500.00), or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing contained herein shall prevent the Town of Surfside Beach from taking such other lawful action as is necessary to prevent or remedy a violation.

Sincerely,

Sabrina Morris, CFM
Director of Planning, Building & Zoning

Enclosure: Nonconversion Agreement for 1014 Dogwood Drive North

Second attempt to deliver – First attempt April 14, 2014 was unclaimed (see file)

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ASSESSOR'S SALES LISTING
for: 2014/08/01 TO 2014/08/31

PIN	Purchaser Name	Seller Name	Deed Bk/Pg	Local TS	Nbhood
AIN	Purchaser Address	Legal Description	Plat Bk-Pg	State TS : Rsn	Mkt Area
Sale Amount	Purchaser City, St Zip	Sale Date	Acres	PPC	SubArea
		Recording Date	Lots	Dist	
46102030122	WINCHESTER CHARLES D	RIGGINS WILLIAM B & SARAH B	Bk:3757 Pg:1695	Y	1104060
191-16-31-001	43 WHITE SAIL CIR	FLORAL BEACH; LT 31 BL E		Y : 0	I-SOSTR
\$180,000	BERLIN MD, 218110000	8/21/2014	0.00	100	SSLB
46103010062	NEUGEBAUER HANS A ETAL	QUINN BONNIE	Bk:3753 Pg:599	Y	1104120
191-16-26-010	3839 FARMBROOK DR	LAKESWOOD HEIGHTS; LOT 7 BL 1		Y : 0	I-SOSTR
\$280,000	SYLVANIA OH, 435600000	8/1/2014	0.00	101	SSLB
46103010099	DEFALCO CHERYL ETAL	REMPFER WILLIAM ETAL	Bk:3759 Pg:2046	N	1104101
191-16-23-031	1014 N DOGWOOD DR	LAKESWOOD HTS; LOT 4B BL 3		N : 9	I-SOSTR
\$5	SURFSIDE BEACH SC, 295750000	8/25/2014	0.00	101	SSLB
46103020126	M3 BEACH LLC	MILLER MICHAEL M & JUDITH B	Bk:3754 Pg:1416	N	1104123
191-16-19-026	10 TELFAIR CT	LAKESWOOD SEC; LOT 4-B BL 23B		N : 1	I-SOSTR
\$0	COLUMBIA SC, 292120000	8/7/2014	0.00	101	SSLB
46103020152	PASCOE TODD C ETAL	FOX CHASE BUILDERS LLC	Bk:3752 Pg:2476	Y	1104101
191-16-23-001	1630 ROSTRAVER RD	DOGWOOD LAKE; LT 1-C BL 1 :		N : 1	I-SOSTR
\$321,075	BELLE VERNON PA, 150120000	8/1/2014	0.00	100	SSLB
46103040057	REBHOLZ ANDREW J ETAL	ESKRA CYNTHIAL	Bk:3759 Pg:2441	Y	1104000
191-16-07-005	18054 SPYGLASS HILL DR	LAKESWOOD SEC; LOT 3-B BL 17A		Y : 0	I-SOSTR
\$974,000	STRONGSVILLE OH, 441360000	8/28/2014	0.00	101	SSLB
46103040097	VAUGHN ROBBIN A	SCHURR KENNETH F & ROBERTA F	Bk:3759 Pg:2071	Y	3106680
191-16-05-037	7317 WALTERBORO RD	SEA SHADOW HPR; APT 102		Y : 0	I-SOSTR
\$260,000	CHARLOTTE NC, 282270000	8/25/2014	0.00	107	SSLB
46103040159	WILLIAMS JAIDA E	EQUITY TRUST COMPANY ETAL	Bk:3754 Pg:1060	N	3104410
191-16-14-020	612 N OCEAN BLVD #302	COLONY IV @ SURFSIDE; PENTHOUSE		N : 9	I-SOSTR
\$263,000	SURFSIDE BEACH SC, 295750000	8/6/2014	0.00	107	SSLB
46103040199	ROCHE JOHN F III ETAL	RUTKOWSKI ROBERT T ETAL TRUSTEES	Bk:3757 Pg:2338	Y	3104400
191-16-12-024	2050 CLOVER AVE	FLORAL VILLAS; APT 20 BLDG E		Y : 0	I-SOSTR
\$183,000	BENSALEM PA, 190200000	8/19/2014	0.00	107	SSLB
46107020044	MCCRACKIN SIDNEY M ETAL	THRALKILL MARY MISHOE	Bk:3756 Pg:3221	N	1104002
195-04-11-007	3530 LA MANCHA WAY	FLORAL BEACH; LT 7 BL F		N : 9	I-SOSTR
\$0	PENSACOLA FL, 325030000	8/15/2014	0.00	100	SSLB
46107030041	RUTH PETER A ETAL	POOLE WILLIAM JEFFREY & REBECCAL	Bk:3755 Pg:3072	Y	1104004
195-04-08-070	7648 FAYETTEVILLE RD	FLORAL BCH BL I; LOT 14-B		Y : 0	I-SOSTR
\$385,000	NORTH CHARLESTON SC, 294180000	8/15/2014	0.00	101	SSLB

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Mayor
Douglas F. Samples
Town Administrator
Micki Fellner
Town Clerk
Debra E. Herrmann, CMC



Town of Surfside Beach
Planning, Building & Zoning

Mayor Pro Tem
David L. Pellegrino

Town Council
Robert F. Childs
Mark L. Johnson
Mary Beth Mabry
Ralph Magliette
Randle M. Stevens

August 26, 2014

HAND-DELIVERED

William Rempfer
1014 Dogwood Drive North
Surfside Beach, SC 29575

Re: Violation of the Town of Surfside Beach Flood Damage Prevention Code
1014 Dogwood Drive North, Surfside Beach, SC 29575

Mr. Rempfer:

You were notified by personal delivery on August 1, 2014 that a violation of the Flood Damage Prevention Code was found at the above referenced address. Since that time the violation has not been remedied. Therefore, a hearing will be held before the Building and Zoning Officials at Surfside Beach Town Hall Conference Room at 115 Hwy. 17 N. Surfside Beach, S.C. 29576 on September 4, 2014 at 3:00PM. You are entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the violation. Following the hearing, the Building and Zoning Officials, after having the opportunity to review the arguments and evidence presented will issue an order regarding the matter.

Sincerely,

Kevin Otte
Certified Building Official

cc: File

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MAYOR
Douglas F. Samples
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CLERK
Debra Herrmann



TOWN COUNCIL
David Pellegrino
Mark Johnson
Bob Childs
Mary Beth Mabry
Ralph Magliette
Randle Stevens

TOWN OF SURFSIDE BEACH

ACKNOWLEDGEMENT OF RECEIPT OF NOTIFICATION NOTICE OF HEARING

NAME AND ADDRESS OF RECIPIENT

William Rempfer

1014 Dogwood Drive North

Surfside Beach, SC 29575

Hand delivered letter received on _____ / _____ / 2014

Printed Name of Recipient

Signature of Recipient

Delivered by:

GILBERT D. WILLIAMS

Printed Name

Signature

8/26/2014

Date

GWIN LAW OFFICE, LLC
ATTORNEY AT LAW

Robert H. Gwin, III

5001 North Kings Highway
Rainbow Harbor, Suite 210
Myrtle Beach, SC 29577

August 27, 2014

843-839-2239

Fax 843-839-2244

Kevin Otte
Certified Building Official
Town of Surfside Beach
115 Hwy. 17 N
Surfside Beach, SC 29575

Via Certified Mail-Return Receipt Requested
Certified No. 7009 1410 0001 0689 7986

**Re: Violation of the Town of Surfside Beach Flood Damage Prevention Code, 1014
Dogwood Drive North, Surfside Beach, SC 29575**

Dear Mr. Otte:

Please be advised that this law firm represents William Rempfer, Sr. and Cheryl DeFalco in connection with their ownership of the above-referenced home. Please accept this letter as our objection to the hearing scheduled to be held on September 4, 2014 at 3:00 p.m. in that the official notification of violation lacks the specific violations which the Town of Surfside Beach alleges that Mr. Rempfer and Mrs. DeFalco have committed. The allegation that a violation has occurred by having finished or partitioned separate rooms below the required base flood elevation fails to recognize that partitions and/or separate rooms existed below the required base flood elevation at the time of the final inspection under the building permit (and prior to the issuance of the Certificate of Occupancy) and fails to specify which partitions the Town deems are in violation. The directive that "all drywall and any and all electrical (with the exception of one switch and/or outlet connected to a ground fault interrupt breaker) must be removed immediately" ignores that all construction material below the required lowest floor elevation specified in Subsections 14-18(1)(2) and (3) are flood resistant materials and the electrical outlets primarily are located above the required base flood elevation. It also ignores that certain enclosures were approved at the time of the final inspection prior to the Certificate of Occupancy. Therefore, the notification of violations and directives in the July 29, 2014 letter are vague, ambiguous, and lack necessary specificity.

More important are the circumstances of the inspection held on April 9, 2014. Neither Mr. Rempfer nor Mrs. DeFalco were provided "due notice" as required by the non-conversion agreement. There was no active building permit pending on April 9, 2014. Therefore, any inspection conducted by building officials for the Town of Surfside Beach on April 9, 2014 was not authorized, constitutes a trespass and was an invasion of the privacy of the owners.

Lastly, Mr. Rempfer has engaged a building expert for purposes of addressing the Town's allegations. This expert has not completed its investigation. In addition to the objection of lack of adequate notice and specificity on the charges, we ask for a continuance of the hearing until such time as the expert has had an opportunity to research and complete its investigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert H. Gwin, III". The signature is fluid and cursive, with a long horizontal stroke at the end.

Robert H. Gwin, III

RHG/3j

cc: Mickie Fellner, Town Administrator (via U.S. Mail only)
William Rempfer (via email only)

10

BATTLE LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW
1200 MAIN STREET
POST OFFICE BOX 530
CONWAY, SOUTH CAROLINA 29528
TELEPHONE (843) 248-4321
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E-Mail Address: jbattle@battlelaw.com

M. KIRK BATTLE
E-Mail Address: kbattle@battlelaw.com

August 29, 2014

Robert H. Gwin, III
5001 North Kings Highway
Rainbow Harbor, Suite 210
Myrtle Beach, SC 29577

RE: Violation of Town of Surfside Beach Flood Drainage Prevention Code, 1014 Dogwood Drive
North, Surfside Beach, S.C. 29575

Dear Bob:

Your letter dated August 27, 2014, to Kevin Otte in connection with the above referenced matter has been forwarded to me for a response. Since you have requested a continuance of the time scheduled to present arguments and evidence pertaining to the matter, Mr. Otte has agreed to give your client until September 12, 2014, to make his presentation. You or your client may make his presentation to Mr. Otte at 10:00 am on September 12, 2014, at the office of Planning & Zoning for the Town of Surfside Beach, S.C. at 115 US Highway 17, North, Surfside Beach, S.C. 29575. If your client desires to make a presentation at an earlier time, he may schedule an earlier presentation.

Since your client's conduct may have an impact on all property owners in the Town of Surfside Beach and it may jeopardize their rights to participate in the National Flood Insurance Program, the Town of Surfside Beach must pursue enforcement of its Flood Damage Prevention ordinance with due diligence. For that reason, I ask that your future communications with the Town of Surfside Beach be made through my office.

Thank you for your cooperation.

Sincerely,



Michael W. Battle

C Kevin Otte



Flood Damage-Resistant Materials Requirements

for Buildings Located in Special Flood Hazard Areas in
accordance with the National Flood Insurance Program

Technical Bulletin 2 / August 2008



FEMA

Table 2. Types, Uses, and Classifications of Materials

Types of Building Materials	Uses of Building Materials		Classes of Building Materials				
	Floors	Walls/ Ceilings	Acceptable		Unacceptable		
			5	4	3	2	1
Structural Materials (floor slabs, beams, subfloors, framing, and interior/exterior sheathing)							
Asbestos-cement board		■	■				
Brick							
Face or glazed		■	■				
Common (clay)		■		■			
Cast stone (in waterproof mortar)		■	■				
Cement board/fiber-cement board		■	■				
Cement/latex, formed-in-place	■			■			
Clay tile, structural glazed		■	■				
Concrete, precast or cast-in-place	■	■	■				
Concrete block ¹		■	■				
Gypsum products							
Paper-faced gypsum board		■			■		
Non-paper-faced gypsum board		■		■			
Greenboard		■				■	
Keene's cement or plaster		■			■		
Plaster, otherwise, including acoustical		■				■	
Sheathing panels, exterior grade		■			■		
Water-resistant, fiber-reinforced gypsum exterior sheathing		■		■			
Hardboard (high-density fiberboard)							
Tempered, enamel or plastic coated		■				■	
All other types		■					■
Mineral fiberboard		■					■
Oriented-strand board (OSB)							
Exterior grade	■	■				■	
Edge swell-resistant OSB	■	■				■	
All other types	■	■					■
Particle board	■						■
Plywood							
Marine grade	■	■	■				
Preservative-treated, alkaline copper quaternary (ACQ) or copper azole (C-A)	■	■		■			

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Winco Drywall Of The Carolina's, LLC

Invoice

Drywall Professionals
401 Vereen Rd
Murrells Inlet, SC 29576

Date	Invoice #
4/21/2014	10222

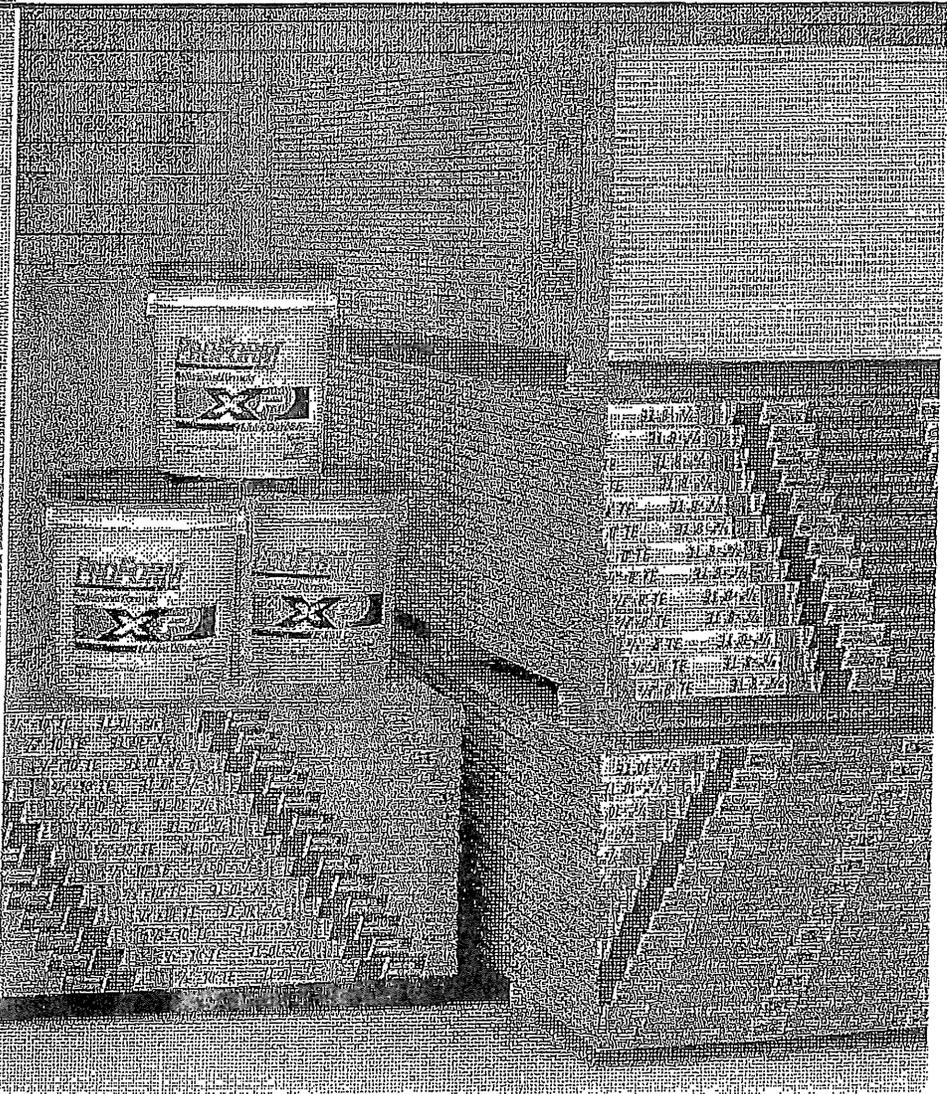
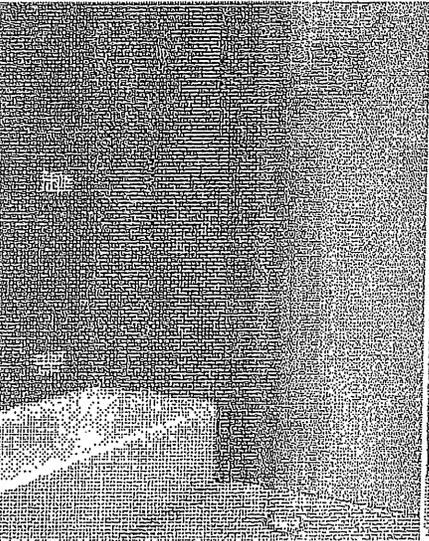
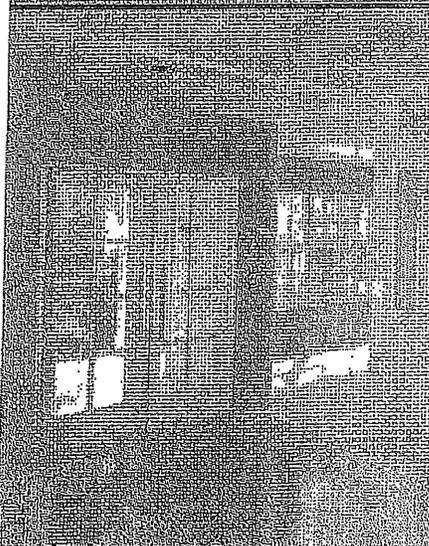
Phone #	Cell #	Fax #	E-Mail
843-215-5052	843-458-0027	843-357-3066	wincodrywall@sccoast.net

Bill To
Defalco Residence

Description	Amount
1014 N. Dogwood	
Tuck exposed water lines from exterior and put them in the wall for finished product	
Frame all block columns with treated lumber	
Completed framing that was started by someone else	
Insulate wall 4' down with R-11	
Insulate wall 4' up with styrofoam	
Hang and finish wall with XP boards	
Install trim including all crown mold and painted	
Prime 1 coat and painted 2 coats with Sherwin Williams Promar 200	
TOTAL AMOUNT DUE:	10,600.00
Payment due upon receipt.	
Thank you for your business!	
Total	\$10,600.00

09 29 00/NGC

Gold Bond[®] BRAND XP[®] Family of Interior Products



**Gold
Bond**
BRAND
Gypsum Board

National
Gypsum.

Improving indoor air quality to protect the health and safety of building occupants and meeting the criteria for LEED certification requires a higher standard of quality and performance. National Gypsum is focused on providing innovative solutions for sustainable design and green building practices.



GREENGUARD Children & Schools Certification

Research indicates American adults spend up to 90 percent of their time indoors, and that indoor air is two to five times more polluted than outdoor air. That's why National Gypsum has achieved GREENGUARD and GREENGUARD Children & Schools Certification on several products in its XP® family.

Gold Bond® BRAND:

- XP Gypsum Board
- HI Abuse XP Gypsum Board
- HI Impact XP Gypsum Board
- SoundBreak XP Gypsum Board

ProForm® BRAND:

- XP Ready Mix Joint Compound

The XP product family, easily identified by its signature purple color, provides the building and design communities everything needed for innovative, sustainable design in gypsum systems. In addition to offering performance in the form of abuse, impact and sound resistance, XP products provide industry-leading mold resistance and now have the added benefit of achieving the highest indoor air quality standards.

The Gold Bond Brand XP family of interior products has achieved GREENGUARD Children & Schools™ Certification. The GREENGUARD Certification Program is an industry independent, third party program for certifying low-emitting products and materials and for building construction best practices set by the GREENGUARD Environmental Institute (GEI) – a globally recognized leader in indoor air quality. To achieve GREENGUARD Children & Schools Certification, the XP product family met the most stringent emissions limits that account for the added sensitivity of children and adults with compromised immune systems.

XP Products

National Gypsum is the first building products company to offer Sporgard™, a combination of mold inhibitors offering the most advanced technology. Sporgard comes from Syngenta, a world leader in mold control.

Sporgard technology offers the best possible defense against mold. The multiple mold inhibitors in Sporgard are each individually approved to meet the Environmental Protection Agency's most stringent standards for use in post harvest food applications.

XP with Sporgard has received the highest possible ratings on the most rigorous tests for mold control, including both ASTM G 21 and ASTM D 3273. In addition, XP with Sporgard installs and finishes just like standard gypsum board and is backed by the industry's most trusted customer service program and is manufactured at plants across the country. For more information, visit xpgypsumboard.info.



*Sporgard is a trademark of a Syngenta Group Company.

Gold Bond® BRAND XP® Gypsum Board

Description

Gold Bond® BRAND XP® Gypsum Board was developed as an improved moisture resistant board offering the same advantages of a traditional moisture resistant board with added mold resistance in the core and paper. XP Gypsum Board panels consist of a specially treated, fire resistant, gypsum core encased in a heavy, mold/mildew/moisture resistant, 100% recycled, purple paper on the face side and a heavy, mold/mildew/moisture resistant, 100% recycled, gray paper on the back side.

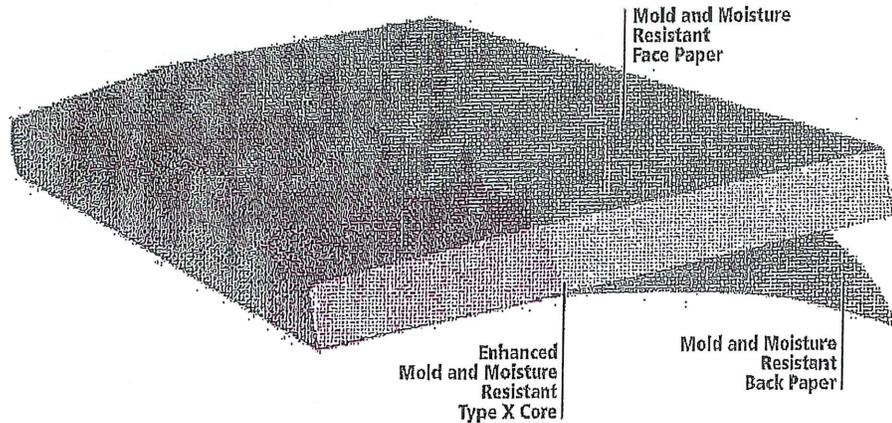
XP Gypsum Board was designed to provide extra protection against mold and mildew compared to standard wallboard products. The face paper is folded around the long edges to reinforce and protect the core, and the ends are square-cut and finished smooth. Long edges of the panels are tapered.

Tapered edges allow joints to be reinforced with ProForm® BRAND Joint Tape and concealed with ProForm® BRAND Ready Mix, Easy Finish® Ready Mix or ProForm® BRAND Quick-Set™ Joint Compounds.

For optimum mold and mildew performance, National Gypsum recommends ProForm® BRAND XP Ready Mix.

Gold Bond® BRAND XP Fire-Shield® Gypsum Board features a Type X core to provide additional fire resistance ratings when used in tested systems.

Gold Bond® BRAND XP Fire-Shield® C Gypsum Board Panels have a specially formulated Type X core to achieve superior performance when used in specific fire-rated assemblies where the weight and number of wallboard layers are a concern.



Features/Benefits

- Resists the growth of mold per ASTM G 21 with a score of 0, the best possible score.
- Resists the growth of mold per ASTM D 3273 with a score of 10, the best possible score.
- XP Gypsum Board is moisture resistant and can be used as a tile backerboard in dry areas or areas with limited water exposure such as toilet/sink areas and areas above tile in tubs and showers.
- Panels are for use in interior areas.
- UL Classified for fire resistance, surface burning characteristics and noncombustibility.
- Scores and snaps easily, no special handling requirements.
- Less than 5% water absorption per ASTM C 473.

Fire Resistance Ratings

Fire resistance ratings represent the results of tests on assemblies made up of specific materials in a specific configuration. When selecting construction designs to meet certain fire resistance requirements, caution must be used to ensure that each component of the assembly is the one specified in the test. Further precautions should be taken that assembly procedures are in accordance with those of the tested assembly. For copies of specific tests, call 1-800-NATIONAL. For fire safety information, see nationalgypsum.com.

Technical Data

PHYSICAL PROPERTIES		
Thickness, nominal	1/2" (12.7 mm)	5/8" (15.9 mm)
Width, nominal	48" (1220 mm)	48" (1220 mm)
Length, standard	8' through 12' (2438 mm – 3657 mm)	
Weight, lbs./sq. ft., nominal	1.75	2.4
Edges	Tapered	Tapered
Surface Burning Characteristics (per ASTM E 84)	Flame spread: 15 Smoke developed: 0	
Packaging	2 pcs./bundle	

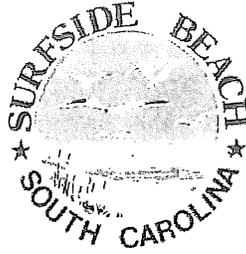
MAXIMUM FRAMING SPACING — For Single Layer XP Gypsum Board			
	Gypsum Board Thickness	Gypsum Board Orientation to Framing	Maximum Framing Spacing
Ceilings:	1/2" (12.7 mm)	Parallel	16" (406 mm) o.c.
	1/2" (12.7 mm)	Perpendicular	24" (610 mm) o.c.
	5/8" (15.9 mm)	Parallel	16" (406 mm) o.c.
Walls:	5/8" (15.9 mm)	Perpendicular	24" (610 mm) o.c.
	1/2" (12.7 mm)	Perpendicular or Parallel	24" (610 mm) o.c.
	5/8" (15.9 mm)	Perpendicular or Parallel	24" (610 mm) o.c.

NOTE: On ceilings to receive hand or spray applied, water based texture material, XP gypsum board products shall be applied perpendicular to framing.

APPLICABLE STANDARDS AND REFERENCES
ASTM C 1396/ASTM C 473
ASTM C 840
ASTM D 3273
ASTM G 21
Gypsum Association GA-216
Gypsum Association GA-214
National Gypsum Company's <i>Gypsum Construction Guide</i>



MAYOR
Douglas F. Samples
TOWN ADMINISTRATOR
Micki Fellner
CLERK
Debra Herrmann



TOWN COUNCIL
Bob Childs
Mark Johnson
Mary Beth Mabry
Ralph Magliette
David Pellegrino
Randle Stevens

TOWN OF SURFSIDE BEACH

October 1, 2014

To: Mr. William Rempfer, Sr. and Mr. Robert H. Gwin III

RE: Formal Opinion.

This matter came before me in my capacity as the Building Official for the Town of Surfside Beach on September 12, 2014 as a presentation in opposition to the Town of Surfside Beach's decision in connection with alleged violations of the Town of Surfside Beach's Flood Damage Prevention Ordinance. The presentation was recorded by a Court Reporter from Prestige Court reporters. After duly considering the matters presented by Bob Gwin as the representative and attorney for William Rempfer, I make the following findings and conclusions.

1. The fact that council knew the correct Section number of the Flood Ordinance meant that they are aware of the section the letter addressed.
2. The following sections of the Town of Surfside Beach's Flood Prevention Ordinance were violated.

A. 14.4 Sec. 14-4. Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of Surfside Beach as identified by the Federal Emergency Management Agency in its flood insurance study, date September 17, 2003, as published by the Federal Emergency Management Act, with accompanying flood insurance rate maps and other supporting data which are hereby adopted by reference and declared to be a part of this chapter. Upon annexation any special flood hazard areas identified by the Federal Emergency Management Agency in its flood insurance study for the unincorporated areas of Horry County, with accompanying map and other data are adopted by reference and declared part of this chapter.

(1) Residential structures must be constructed so that the lowest floor, including basement, is located no lower than the base flood elevation. No environmentally conditioned space shall be allowed below the lowest floor.

B. Sec. 14-5. Establishment of development permit.

A development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities.

No permit could be found in our system for the work completed on the date on the invoice from Winco Drywall.

C. Sec. 14-6. Compliance.

No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this chapter and other applicable regulations.

D. Sec. 14-14. Development permit and certification requirements.

Application for a development permit shall be made to the local administrator on forms furnished by the town prior to any development activities. The development permit may include, but not be limited to, plans in duplicate drawn to scale showing: the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; and the location of fill materials, storage areas, and drainage facilities. Specifically the following information is required:

(a)

A certified plot plan or survey that shows the 100-year floodplain contour or a statement that the entire lot is within the floodplain must be provided by the development permit applicant when the lot is within or appears to be within the floodplain as mapped by the Federal Emergency Management Agency or the floodplain identified pursuant to either subsection 14-15(10) or section 14-20. The certified plot plan or survey must be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

(b)

The plot plan required by subsection 14-14(1) must show the floodway, if any, as identified by the Federal Emergency Management Agency or the floodway identified pursuant to either subsection 14-15(10) or section 14-20

(c)

Where base flood elevation data is provided as set forth in section 14-4 or subsection 14-15(10), the application for a development permit within the flood hazard area shall show:

(1)

The elevation (in relation to mean sea level) of the lowest floor of all new and substantially improved structures;

E. Sec. 14-17. Flood hazard reduction standards.

Development may not occur in the floodplain where alternative locations exist due to inherent hazards and risks involved. Before a permit is issued, the applicant shall demonstrate that new structures cannot be located out of the floodplain and that encroachments onto the floodplain are minimized. In all areas of special flood hazard, the following provisions are required:

(a)

All new construction and substantial improvements shall conform to the requirements contained in the latest adopted building code, and anchored to prevent flotation, collapse, or lateral movement of the structure;

(b)

All new construction and substantial improvements shall be constructed with flood-resistant materials and utility equipment resistant to flood damage;

(c)

All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages;

(d)

Electrical, ventilation, plumbing, heating and air conditioning equipment (including ductwork), and other service facilities shall be designed and/or located at least one (1) foot above base flood elevation so as to prevent water from entering or accumulating within or on the components during conditions of flooding. This requirement does not preclude the installation of outdoor faucets for shower heads, hoses, etc., as long as cutoff devices and backflow devices are installed to prevent contamination of the service components and thereby minimize any flood damages to a structure and contents;

(k)

Any alteration, repair, reconstruction, or improvement to a structure which is in compliance with the provisions of this chapter, shall meet the requirements of "new construction" as contained in this chapter. This includes post-FIRM development and structures.

F. Sec. 14-18. Specific standards.

In all areas of special flood hazard (i.e., AE zones) where base flood elevation data has been provided, as set forth in section 14-4 and subsection 14-15(10), the following provisions are required:

(a)

Residential construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor elevated not lower than one (1) foot above the base flood elevation. No basements are permitted. Should solid foundation perimeter walls be used to elevate a structure, flood openings sufficient to automatically equalize hydrostatic flood forces, shall be provided in accordance with the elevated buildings requirements in subsection 14-18(5).

e)

Elevated buildings. New construction and substantial improvements of elevated buildings that include fully enclosed areas that are usable solely for the parking of vehicles, building access, or limited storage in an area other than a basement, and which are subject to flooding shall be designed to preclude finished space and designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(3)

Enclosures below lowest floor.

a.

Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

The information that was supplied to me about the drywall that was hung and finished in the ground level room does not match the same material that is on Table 2 in the FEMA Technical Bulletin 2. The arrow pointing to the material shows Water-resistant, fiber-reinforced gypsum exterior sheathing, and the specification sheet supplied to me about the XP Board says it is moisture resistant and can be used in areas with limited water exposure. The information sheet also says it is for interior areas. It is my belief that this material is not the same as that which is pointed out on Table 2. Types, Uses, and Classifications of Materials.

It is my opinion that Mr. Rempfer is indeed in violation of the Flood Damage Prevention Ordinance and that the construction that was done after the CO was issued should be removed.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Kevin L. Otte". The signature is written in black ink and is positioned below the typed name.

Kevin L. Otte

Building Official, Town of Surfside Beach

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GWIN LAW OFFICE, LLC
ATTORNEY AT LAW

Robert H. Gwin, III

5001 North Kings Highway
Rainbow Harbor, Suite 210
Myrtle Beach, SC 29577

843-839-2239

Fax 843-839-2244

October 10, 2014

Kevin Otte
Certified Building Official
Town of Surfside Beach
115 Hwy. 17 N
Surfside Beach, SC 29575

**Re: Violation of the Town of Surfside Beach Flood Damage Prevention Ordinance
1014 Dogwood Drive North, Surfside Beach, SC 29575**

Dear Mr. Otte:

In accordance with §14-16(h), enclosed herewith please find the Notice of Appeal of William Rempfer, Sr. as to your Order dated October 1, 2014. By copy of this notice, I also am forwarding a copy to Debra E. Herrmann, as the Town Clerk for the Town of Surfside Beach as proscribed by §14-16.

Also by copy of this letter, I serve upon Michael W. Battle, Esquire, as attorney for the Town of Surfside Beach, a copy of this Notice of Appeal.

In the event you have any questions, please do not hesitate to contact me.

Sincerely,



Robert H. Gwin, III

RHG/llj

Enclosures

cc: Michael W. Battle, Esquire (w/encl.)
Debra E. Herrmann, Town Clerk (w/encl.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

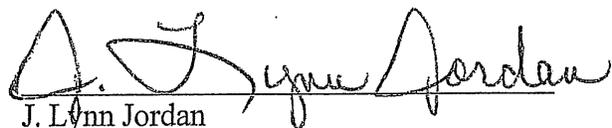
CERTIFICATE OF MAILING

I, the undersigned Legal Assistant to Robert H. Gwin, III, Esquire, attorney for William Rempfer, Sr., do hereby certify that I have served the Town of Surfside Beach with a Notice of Appeal and Certificate of Mailing this 10th day of October, 2014, by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

✓ Kevin Otte
Certified Building Official
Town of Surfside Beach
115 Hwy. 17 N
Surfside Beach, SC 29575

Debra E. Herrmann, Clerk
Town of Surfside Beach
115 Hwy. 17 N
Surfside Beach, SC 29575

Michael W. Battle, Esquire
Battle Law Firm, LLC
P.O. Box 530
Conway, SC 29528


J. Lynn Jordan
Legal Assistant to Robert H. Gwin, III

October 10, 2014
Myrtle Beach, SC 29577

15

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

NOTICE OF APPEAL

William Rempfer, Sr. hereby appeals the Order of Kevin L. Otte, Building Official, Town of Surfside Beach (herein "Local Administrator"), dated October 1, 2014 on the following grounds:

1. There was improper notice of a violation of the Town of Surfside Beach Flood Damage Prevention Ordinance because all of the owners of the property located at 1014 Dogwood Drive, Surfside Beach, SC 29575 were not named and/or notified of the violation. Cheryl DeFalco, as the co-owner of the property, was required to be notified and the notification of the alleged violation was directed only to William Rempfer, Sr., in violation of §14-16(e) of the Town of Surfside Beach Flood Damage Prevention Ordinance.

2. The enforcement of the Order is arbitrary and capricious in targeting William Rempfer, Sr. because not all of the owners of the property located at 1014 Dogwood Drive, Surfside Beach, SC 29575 were placed on notice of the violation.

3. The notice was defective in that it recites a violation of §14-8(5)(c) Town of Surfside Beach Flood Damage Prevention Ordinance and no such designated section exists and the Local Administrator erred in finding that counsel's knowledge of the section served as sufficient notice of the violation.

4. The Flood Damage Prevention Ordinance was improperly enacted because no public hearing was held in violation of §6-29-530 of

the South Carolina Code of Laws which requires a public hearing under the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 before adoption of an element of the Town of Surfside Beach Comprehensive Plan.

5. The Local Administrator erred in finding that no permit existed on the date of the invoice from Wynco Drywall.

6. Any violation set forth in the Order of the Local Administrator dated October 1, 2014 is in error because any interior walls below the Base Flood Elevation were constructed of flood resistant materials as such term is defined in the Town of Surfside Beach Flood Damage Prevention Ordinance and such building materials are accepted under FEMA Technical Bulletin No. 2.

7. The Non-Conversion Agreement which was required by the Town of Surfside Beach and recorded January 23, 2013 in Deed Book 3633 at Page 2135 permits the construction of interior walls below the Base Flood Elevation provided that they are unfinished or constructed of flood resistant materials.

8. The Local Administrator erred in finding that the drywall that was hung and finished in the ground level room was not flood resistant as such term is defined in the Town of Surfside Beach Flood Damage Prevention Ordinance.

9. William Rempfer, Sr. hereby reserves the right to assert additional grounds for his appeal of the Order of the Local Administrator dated October 1, 2014 during the appeal hearing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'R. H. Gwin, III', written over a horizontal line.

Robert H. Gwin, III
Gwin Law Office, LLC
5001 N. Kings Hwy.
Rainbow Harbor, Suite 210
Myrtle Beach, SC 29577
(843) 839-2239

October 10, 2014

Myrtle Beach, SC 29577