

TOWN OF SEABROOK ISLAND

Board of Zoning Appeals Meeting
February 28, 2019 – 2:30 PM



Town Hall, Council Chambers
2001 Seabrook Island Road

AGENDA

CALL TO ORDER

APPROVAL OF MINUTES

1. Board of Zoning Appeals Meeting: January 29, 2019

[Pages 2–16]

ITEMS FOR INFORMATION / DISCUSSION

1. Update to Applications Forms
2. Status of Previous Variances
3. Discussion of New Construction Permit Requirements

SITE VISITS

1. Variance # 159 *

APPLICANT: James & Deborah Ott
ADDRESS: 2566 Seabrook Island Road
TAX MAP NUMBER: 147-01-00-033 (LT 49, BLK 5)
ZONING DISTRICT: SR Single-Family Residential
PURPOSE: Applicant is requesting a variance from the 25-foot marsh setback requirement (§ 7.60.50) to construct a swimming pool and a brick paver patio/fire pit in the rear yard

2. Variance # 160 *

APPLICANT: Clarkson & Judith McLean
ADDRESS: 3009 Rascal Run
TAX MAP NUMBER: 149-05-00-059 (LT 5, BLK 48)
ZONING DISTRICT: SR Single-Family Residential
PURPOSE: Applicant is requesting a variance from the 25-foot rear/marsh setback requirement (§ 7.60.20.30/7.60.50) to convert an existing enclosed sunroom into conditioned living space

ADJOURN

* These site visits will take place behind the Seabrook Island Property Owners Association security gate. Any individual wishing to observe one or both site visits who does not have access behind the security gate should contact (843) 768-5321 for assistance prior to the meeting.

TOWN OF SEABROOK ISLAND

Board of Zoning Appeals Meeting

January 29, 2019 – 2:30 PM

Town Hall, Council Chambers
2001 Seabrook Island Road



MINUTES

Present: Walter Sewell (Chairman), Ava Kleinman (Vice Chair), Bob Leggett, John Fox, Richard Finkelstein, Joe Cronin (Zoning Administrator), Lynda Stearns (License & Permit Specialist)

Absent: None

Guests: Jean Jones, Tommy Berl, Clint Galloway, Bennett Galloway, Raymond Hamilton, Stephanie Hamilton, Katrina Burrell (SIPOA), Stephen Atkinson, Bill Bane

Chairman Sewell called the meeting of the Board of Zoning Appeals to order at 2:30 PM and introduced himself and Board members Kleinman, Fox and Leggett to those in attendance. Zoning Administrator Cronin confirmed that the requirements of the Freedom of Information Act were fulfilled, and the meeting was properly posted.

APPROVAL OF MINUTES

1. **Board of Zoning Appeals Meeting: April 25, 2018:** Ms. Kleinman made a motion to approve the minutes from the January 18, 2019, meeting as submitted. Mr. Fox seconded the motion. The motion was **APPROVED** by a vote of 4-0.

Mr. Finkelstein arrived at 2:35 pm.

PUBLIC HEARING ITEMS

1. **2633 Jenkins Point Road (Tax Map # 149-00-00-046 – Lot 34, Block 52):** Chairman Sewell introduced the first variance request, which was submitted by John C. Butera and Jean W. Jones, the owners of 2633 Jenkins Point Road, as well as their contractor, Tommy Berl of Surfside Construction. Chairman Sewell disclosed for the record that the Board had conducted a site visit to 2633 Jenkins Point Road on January 18, 2019, at which time the Board viewed the subject property, as well as neighboring properties. He added that no testimony was received during the site visit. He asked whether any Board members had subsequently visited the property, to which none responded in the affirmative.

Chairman Sewell then administered an oath to Zoning Administrator Cronin and asked him to provide a brief overview of Variance Application #157.

Zoning Administrator Cronin stated that the town had received a completed variance application from John C. Butera and Jean W. Jones, the owners of 2633 Jenkins Point Road, as well as their contractor, Tommy Berl of Surfside Construction. The applicants were requesting a reduction in the 25-foot marsh setback requirement to allow construction of a pervious pergola system over an existing deck at the rear of a single-family residence located at 2633 Jenkins Point Road (Lot 34, Block 52).

Zoning Administrator Cronin stated that there is a circular roof covering a portion of the existing deck at the rear of the home. The existing roof, which covers an outdoor kitchen area, encroaches approximately 6.5 feet into the 25-foot marsh setback. He noted that the existing roof was conforming at the time of its construction in 2007-08. The roof was only made non-conforming by subsequent changes to the marsh critical line over the last 10 years.

Zoning Administrator Cronin stated that the applicants were proposing to remove the existing circular roof and to replace it with a pervious pergola system that will cover the entire deck, including portions which are currently uncovered. He stated that he had previously denied a zoning permit in October 2018 due to the fact that the pergola would constitute a “roof or covering of any kind,” thereby converting the existing “pervious deck” (which requires a 15-foot marsh setback) into a “covered porch” (which requires a 25-foot marsh setback). The Zoning Administrator also determined that while the existing non-conforming roof may be repaired and maintained, its removal and replacement with another non-conforming structure would require a variance from the Board of Zoning Appeals. The applicants filed an appeal of the Zoning Administrator’s decision on October 9, 2018. The Board considered the appeal on November 8, 2018, at which time the Board voted to uphold the Zoning Administrator’s decision. At that time, the applicants were advised that they may resubmit the request for consideration as a variance.

Zoning Administrator Cronin explained that while a majority of the new pergola structure will meet the 25-foot marsh setback requirement, portions of the structure will encroach, at most, 7 feet into the required setback. The proposed pergola will not increase the extent of non-conformity in the area where the existing roof is present; however, one small corner of the deck, if allowed to be covered, would encroach approximately 2-3 feet into the 25-foot marsh setback. With the exception of the aforementioned non-conforming roof, the existing home meets all other requirements of the town’s DSO:

In order to allow removal of the existing roof and replacement with a pervious pergola system, the applicants sought approval of a variance to grant relief from the following setback requirements, as provided in the town’s DSO:

Type	DSO Reference	DSO Requirement	Variance Requested
Marsh (Principal Structure)	§ 7.60.50	25 feet	Allow encroachment of up to 7 feet where the existing roof is located and up to 3 feet where the non-conforming roof will be expanded

In their application, the applicants stated their intent in seeking a variance was to be able to use and enjoy their outdoor deck. The applicants argued that replacing the existing solid roof with a pervious pergola system would allow water to flow through the deck to the ground below, which is more in line with the intent of the marsh setback requirement.

Chairman Sewell then called on the applicants to provide additional information related to their variance request. Chairman Sewell administered an oath to each individual prior to their testimony.

- Tommy Berl: Mr. Berl of Surfside Construction spoke on behalf of the applicants. He stated that the primary purpose of the pergola system was to provide shade over the existing deck and make it more usable to the occupants, especially Mr. Butera, who suffers from a serious medical condition and is unable to spend long periods of time exposed to the sun and heat. He added that the existing roof also destroys the view of the marsh from inside the home. He explained that the existing roof conformed to the marsh setback at the time it was built and was only made non-conforming by subsequent changes to the location of the critical line. He stated that the proposed pergola was an open, permeable system that would allow water to return to the surface, thereby making it more compliant with the zoning ordinance than the existing non-conforming roof, which was proposed to be removed. Lastly, he said that strict application of the ordinance to this property would effectively prohibit or unreasonably restrict the owners' use and enjoyment of their deck.

Chairman Sewell asked if members of the Board had any questions for Mr. Berl.

Ms. Kleinman asked for clarification as to what portion of the pergola was the subject of the variance request. Mr. Berl noted that most of the pergola was to be located outside the 25-foot setback line, and that only the portion of the deck which was already covered, as well as one small corner, were the subject of the request. Ms. Kleinman asked if the pergola was intended to replace the existing gazebo, in which case it was not necessarily a "new" encroachment. Mr. Berl responded in the affirmative. Ms. Kleinman asked what was "extraordinary" about the corner section that would be newly covered by the pergola. Mr. Berl responded that it wasn't necessarily extraordinary, but that it would be impractical to mount the roof supports anywhere other than at the corners of the deck. By extending the pergola out to the corner, the applicants would have a logical place to install a support beam and would not lose any usable space on their existing deck. He added that the supports would be mounted on the existing deck rather than on the ground, and that the overall footprint of the deck would not be expanded. Ms. Kleinman asked if this situation applied to any other property in the vicinity. Mr. Berl responded that other homes in the vicinity were pulled further back from the marsh. He added that he was not aware of any other homes which faced a similar situation. Ms. Kleinman stated that while the new encroachment at the corner of the deck would not "effectively prohibit" the use of the property, it did appear that it would impact the owners' ability to use and enjoy their outdoor kitchen area by impacting the location of the support posts. Lastly, Ms. Kleinman asked if the granting of a variance would be a detriment to neighboring property owners. Mr. Berl responded that the pergola would not be visible from the road or from neighboring properties, and that no houses would ever

be built in the marsh behind the property. He added that the pergola system would be made of aircraft quality aluminum and painted to match the existing trim color of the house. It was the homeowners' intent that the pergola would "disappear" when viewed from a distance.

Chairman Sewell asked if any other Board members had questions for the applicant. There were no additional questions.

Zoning Administrator Cronin noted that there was one additional public comment received in advance of the meeting. He requested consent for the letter from Mrs. Maritza Doak in support of the variance request to be entered into the public record. There was no objection.

Chairman Sewell opened the public hearing to individuals who wished to speak in favor of the variance request. Chairman Sewell administered an oath to each individual prior to receiving their testimony.

- Terrell Bowers: Mr. Bowers stated that he was about to close on the purchase of 1307 Jenkins Lagoon S, which is two houses down from the subject property. Mr. Bowers stated that he was in favor of the request because the pergola would be located over an existing deck and would result in the replacement of an impervious roof with a pervious structure. He stated that the covering would not be visible from the road or from his property. Therefore, he had no objection to the granting of the variance.

Chairman Sewell then opened the public hearing to individuals who wished to speak in opposition to the variance request. No one spoke in opposition to the request.

There being no further comments, Chairman Sewell closed the public hearing.

Chairman Sewell asked if the applicants or their representatives had any additional comments. No additional comments were offered.

Chairman Sewell asked members of the Board whether they had any additional questions. There were no additional questions.

Chairman Sewell then called on Zoning Administrator Cronin to review the four criteria under state law which must be used by the Board when hearing and deciding variance requests.

Zoning Administrator Cronin stated that the Board has the power to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following findings:

- 1) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- 2) These conditions do not generally apply to other property in the vicinity;

- 3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- 4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Chairman Sewell noted that, in granting a variance, the Board has the authority to attach such conditions as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare. Referencing the staff write up contained within the agenda packet, Chairman Sewell stated that the Zoning Administrator had recommended the following conditions, should the Board vote to approve the variance request:

- 1) The approved variance shall apply to the building layout as shown on the site-specific plan prepared by the applicants and reviewed by the Board on January 29, 2019. Any modification to this site-specific plan prior to the issuance of a zoning permit, with the exception of minor corrections and/or modifications which conform to the requirements of the town’s DSO, shall require further review and approval by the Board of Zoning Appeals prior to permitting.
- 2) The approved variance shall expire on November 2, 2019 (five years from the date of the current OCRM Critical Line Survey) if no zoning permit has been issued by the town on or before that date.

There being no further discussion, Chairman Sewell called for a motion.

Following a thorough review of the application, including all supporting materials received in advance of the meeting, and all testimony received during the public hearing, Ms. Kleinman made the following motion, which was seconded by Mr. Finkelstein:

- 1) The Board finds that strict application of the Town’s DSO **WOULD** result in an unnecessary hardship;
- 2) For the reasons referenced in the Applicants’ request for variance, the Board finds that the Property **MEETS** the criteria for approval of a variance, as outlined in § 6-29-800(A)(2) of the SC Code of Laws; and
- 3) The requested variance is **APPROVED**, and the marsh setback requirement for the Property is hereby amended, as follows:

Type	DSO Requirement	Variance APPROVED
Marsh Setback (Covered Porch)	25 feet	Reduce the 25-foot marsh setback by up to 7 feet to allow for removal of an existing non-

	conforming roof (impervious) and replacement with a pervious pergola system
--	---

Mr. Leggett recommended that the motion be amended to include the two conditions recommended by the Zoning Administrator. Ms. Kleinman amended her motion to include the two conditions recommended by the Zoning Administrator, as follows:

To protect established property values in the surrounding area, and to promote the public health, safety, and general welfare, the motion to approve the variance contained the following conditions, as allowed by § 6-29-800(A)(2)(d)(i) of the South Carolina Code of Laws:

- 1) The approved variance shall apply to the building layout as shown on the site-specific plan prepared by the applicants and reviewed by the Board on January 29, 2019. Any modification to this site-specific plan prior to the issuance of a zoning permit, with the exception of minor corrections and/or modifications which conform to the requirements of the town’s DSO, shall require further review and approval by the Board of Zoning Appeals prior to permitting.
- 2) The approved variance shall expire on November 2, 2019 (five years from the date of the current OCRM Critical Line Survey) if no zoning permit has been issued by the town on or before that date.

Mr. Finkelstein accepted the amendment. There being no further discussion on the motion, Chairman Sewell called for a vote. Chairman Sewell reminded members that a “yes” vote was in favor of granting the variance, while a “no” vote was opposed to granting the variance.

<u>IN FAVOR (YES)</u> Ms. Kleinman Mr. Leggett Mr. Fox Mr. Finkelstein	<u>OPPOSED (NO)</u> Chairman Sewell
---	---

The motion to grant the variance, with conditions, was **APPROVED** by a vote of 4-1.

The meeting was recessed at 3:09 PM.

The meeting was reconvened at 3:15 PM.

2. **2959 Seabrook Island Road (Tax Map # 149-10-00-036 – Lot 12-B, Block 42)**: Chairman Sewell introduced the second variance request, which was submitted by Stephanie and Raymond Hamilton, the owners of 2959 Seabrook Island Road, as well as their homebuilder, Bennett Galloway and Clint Galloway of Galloway Family Homes. Chairman Sewell disclosed for the record that the Board had conducted a site visit to 2959 Seabrook Island Road on January 18, 2019, at which time the Board viewed the subject property, as well as neighboring properties.

He added that no testimony was received during the site visit. He asked if any Board members had subsequently visited the property, to which none responded in the affirmative.

Chairman Sewell then called on Zoning Administrator Cronin and asked him to provide a brief overview of Variance Application #158. He reminded Zoning Administrator Cronin that he was still under oath.

Zoning Administrator Cronin stated that the town had received a completed variance application from Stephanie and Raymond Hamilton, the owners of 2959 Seabrook Island Road, as well as their homebuilder, Bennett Galloway and Clint Galloway of Galloway Family Homes. The applicants were requesting a variance to exceed the 36-foot maximum height requirement for a new single-family home which was currently under construction at 2959 Seabrook Island Road (Lot 12-B, Block 42).

Zoning Administrator Cronin stated that the property owners had contracted with Galloway Family Homes for construction of a new single-family residence on their property. Galloway applied for and obtained a zoning permit (Permit #14595) from the Town of Seabrook Island on March 16, 2018. A building permit was subsequently obtained from Charleston County, and construction of the new residence began in the spring of 2018.

Zoning Administrator Cronin stated that at the time a zoning permit was issued by the town, the applicant received a list of the town's construction requirements. Among those was a requirement to provide a variety of surveys – including a preliminary elevation certificate, foundation survey and certification of height – during the construction process. The applicant signed an acknowledgement page indicating that they had received this information and were aware of these obligations.

Zoning Administrator Cronin stated that the town's License and Permit Specialist, Ms. Lynda Stearns, had sent a letter to Galloway on October 30, 2018 notifying them that the town had not received a preliminary elevation certification or foundation survey, despite the fact that framing had begun on the house. After more than 30 days of non-response, a stop work order was placed on the property.

On or around December 22, 2018, Galloway submitted to the town's Zoning Administrator a certification of height form, which was prepared by Lauren Maurice Wilder, a Professional Land Surveyor in the State of South Carolina, and dated December 6, 2018. Upon review, it was determined by the Zoning Administrator that the height of the residence, which was still under construction, exceeded the maximum height requirement as established by § 7.90.20 of the town's Development Standards Ordinance. The maximum height allowed by the DSO is 36 feet above the base flood elevation (hereafter, the "BFE") plus 2-foot freeboard requirement, or similarly, 38 feet above the BFE. The Certification of Height identified the total height of the structure as 39.2 feet above the BFE, or 1.2 feet higher than the maximum height allowed by the DSO. Zoning Administrator Cronin stated that he advised Galloway that they would need to modify the structure to meet the maximum height requirement or seek a height variance from the Board.

In their variance application, the applicants sought approval from the Board to grant relief from the following zoning requirement:

Type	DSO Reference	DSO Requirement	Variance Requested
Maximum Height	§ 7.90.20	36' above BFE + 2' FB (38' above BFE)	Increase the maximum height requirement by up to 1.2 feet (39.2' above BFE)

As part of their variance request, the applicants stated that strict application of the maximum height requirement would result in an unnecessary hardship. The applicants further argued:

- 1) The Architectural Review Committee (ARC) of the Seabrook Island Property Owners' Association requested that the finished grade of the lot be increased to aid in stormwater runoff, and that this request contributed to the structure's non-conforming height;
- 2) Further, a building error in the field by a previous foreman was not discovered and made known to the applicants until the house was fully framed and the roof was installed;
- 3) Modifying the pitch of the roof to conform with the maximum height requirement would result in a structure which looks out of character with other homes in the vicinity; and
- 4) The actual front yard setback of the residence (approximately 57 feet) significantly exceeds the 30-foot front yard setback required by the town's DSO.

Zoning Administrator Cronin noted that there were no other non-conformities, except for the building height. He added that if the Board votes to approve the variance request, then staff would recommend in favor of attaching the following conditions:

- 1) The approved variance shall apply to the building elevation as presented by the applicant and reviewed by the Board on January 29, 2019. Any modification to this building elevation prior to the issuance of an amended zoning permit and/or certificate of occupancy, with the exception of minor corrections and/or modifications which conform to the requirements of the town's DSO, shall require further review and approval by the Board of Zoning Appeals.
- 2) If the existing building permit for 2959 Seabrook Island Road expires prior to the issuance of a Certificate of Occupancy, or prior to the granting of an extension pursuant to § 7.90.20 of the DSO, a variance authorizing the structure to exceed the maximum height shall terminate upon expiration of the existing building permit.

Chairman Sewell noted that one height certificate provided by the applicant indicated that the building height was 1.2 feet higher than what was allowed, whereas a subsequent survey

identified the structure as 0.96 foot above the maximum height. He asked whether the variance request was for 1.2 feet or 0.96 feet. Zoning Administrator Cronin noted that it was not uncommon to have minor variation among surveyors, but that both surveys did in fact exceed the maximum height requirement. He recommended that the Board consider the request to exceed the maximum height by “up to 1.2 feet” to account for the variation between the two surveys.

Chairman Sewell called upon License and Permit Specialist Stearns to provide testimony to the Board. Chairman Sewell then administered an oath to Ms. Stearns.

Chairman Sewell asked Ms. Stearns when the elevation documentation is typically provided by a builder. Ms. Stearns responded that the preliminary elevation and foundation surveys are required to be provided before the builder begins framing the house. Chairman Sewell asked Ms. Stearns, based on her experience, when she would have reasonably expected to receive these documents. Ms. Stearns responded that assuming the county issued a building permit in May, the paperwork would typically have been submitted around July.

Mr. Finkelstein asked if the builder acknowledged that the structure exceeded the maximum height when the surveys were submitted. Ms. Stearns responded that all of the surveys were received at the same time. Mr. Finkelstein asked if it was typical for a builder to submit all surveys at the same time. Ms. Stearns responded that this was unusual, as the preliminary elevation and foundation surveys are required prior to framing, whereas the certification of height is not completed until the building is fully framed and the roof is topped out.

Mr. Fox asked whether the purpose of the foundation survey is to determine whether the location of the building meets all of the town’s setback requirements. Ms. Stearns responded in the affirmative. He then asked whether the preliminary elevation is measured based on the ground floor elevation or the first floor. Ms. Stearns responded that the purpose of this survey is to determine the elevation of the first floor. Mr. Fox asked whether the purpose of the preliminary elevation is to determine whether the first floor is too low or too high, and to make any corrections at that time prior to framing the house. Ms. Stearns responded in the affirmative. Mr. Fox also asked whether the roof is supposed to be installed prior to measuring the height of the ridge. Ms. Stearns responded that the contractor is required to provide a certification of height prior to installing the roof sheathing. She added that she had previously created a “cheat sheet” to inform builders of what surveys are required to be provided at what time during the construction process. This sheet is provided to all builders when they pick up their permit. Each contractor also signs an acknowledgement that they have received and understand these requirements. Mr. Fox asked whether this issue could have been avoided if the contractor had followed the town’s procedure. Ms. Stearns responded in the affirmative.

There being no further questions for Ms. Stearns, Chairman Sewell then called on the applicants to provide additional information related to their variance request. Chairman Sewell administered an oath to each individual prior to receiving their testimony.

- Raymond Hamilton: Mr. Hamilton introduced himself as the owner of 2959 Seabrook Island Road, along with his wife Stephanie, who was also in attendance. He also introduced his homebuilders, Bennett and Clint Galloway of Galloway Family Homs. Mr. Hamilton thanked the Board for the opportunity to present their request. He stated that he understands the importance of the town's ordinances, adding that the beauty and quality of development on the island was what attracted them to Seabrook. He added that this structure will become their permanent residence once it is completed. He stated that the final height of the building was the result of a mistake in the field, which resulted in the building being somewhere between 11 and 14 inches too tall. He offered an apology to the Board and stated that he was not aware of the issue until it was brought to his attention in December. He explained that two changes requested by the SIPOA ARC contributed to the problem: increasing the height of the building pad to aid water runoff toward the lagoon rather than Seabrook Island Road and increasing the pitch of the roof. He stated that the owners accommodated all of the ARC's requests, which raised the total height of structure. He stated that he and his wife want to be good neighbors and fit in with the community but added that they would like to complete construction and move in as soon as possible. He stated that no construction has taken place in last month and a half and questioned what could be done at this point. He explained that removing and adjusting the roof to lower its pitch would be a hardship due to the cost and time involved. He asked the Board to grant the variance so that construction may be completed in a timely manner.
- Clint Galloway: Mr. Clint Galloway stated that he thought the height survey was not required until prior to the issuance of a certificate of occupancy. Zoning Administrator Cronin clarified that the town's ordinance requires a certification of height be provided prior to the installation of the roof sheathing. Mr. Galloway stated that as soon as they found out that the building exceeded the maximum height requirement, they began looking at options to address the issue. It was determined that a variance request was the best option. Mr. Galloway stated that his company has built over 750 homes and has never been in a situation where they had to ask for a variance, so this was a new process to him. He stated that the builder had some personnel issues during construction of the foundation which contributed to the error. He acknowledged that there was an issue and that they were accountable for addressing it. He stated that the building was only 11 inches too tall, and they were hopeful that they could obtain relief from the Board. He explained that the front gable (which is the one visible from the street) was actually under the maximum height; whereas the gable in the rear exceeded the maximum height. He added that construction stopped in December and the house has been sitting pending the outcome of today's hearing.

Mr. Leggett asked how the building pad ended up being one foot too high. Mr. Galloway responded that there was some confusion as to the height required to achieve adequate flow to the lagoon. He also stated that there was a change in personnel during the foundation stage, adding that that the builder was not aware that the foundation was too tall until after the survey was completed later in the construction process. Mr. Galloway

stated that there were multiple factors that contributed to the building being about a foot too tall.

Mr. Fox noted that the original plan showed the building, even with the raised pad, would still be a couple inches below the maximum height. He asked how the builder knew they were going to make it. He also asked if the builder had surveyed the finished elevation prior to constructing the foundation. Mr. Galloway responded that there was a marked point in the field that was used to determine the height of the pad. Mr. Galloway added that the foundation blocks were also higher than what was shown on the plan. Mr. Fox stated that if the builder had checked the elevation at each step, they would have known that they were falling out of line with the plans.

- Bennett Galloway: Mr. Bennet Galloway, also of Galloway Family Homes, then spoke on behalf of the applicants. Mr. Galloway stated that the plans were not followed by the superintendent on the job site. He added that this wasn't known until later on in the construction process, which is 100% the builder's fault. He said that it was never their intent to create a \$100,000 problem and then ask for forgiveness. He stated that the foundation was not completed until the end of September, rather than the July date which was referenced earlier. He stated that the foundation work and framing were completed quickly. The roof was completed, and the shingles were subsequently installed three days later. He added that the surveys were all completed right around the same time. He said it was also the builder's fault for not having the information on what was required to be provided to the town during the construction process.

Ms. Kleinman asked Mr. Bennett Galloway whether the builder was aware that the ordinance required a foundation survey to be filed prior to framing the house. Mr. Galloway stated that they were not aware until they received the stop work order from the town. She asked if the builder was aware that a certification of height was required prior to installing the sheathing on the roof. Mr. Galloway responded that he was not aware that they could not install the roofing materials on top of the trusses at that point. Ms. Kleinman asked what construction took place between the time the letter was sent from the town on October 30th and the date the stop work order was issued. Mr. Galloway responded that once the builder found out there was an issue, they had stopped construction on the property.

Mr. Fox asked who signed the acknowledgement sheet on behalf of the builder at the time the permit was issued. Mr. Fox stated for the record that the builder was in fact made aware of the town's surveying requirements and procedures and signed an acknowledgement stating as such. Mr. Galloway stated that they were in fact made aware of the requirements for building here in Seabrook.

Chairman Sewell asked if any other Board members had additional questions for the applicant. There were no additional questions.

Chairman Sewell then asked Katrina Burrell, ARC Administrator for the SIPOA, to come forward to the podium. Chairman Sewell administered an oath to Ms. Burrell. Chairman Sewell stated that he requested Ms. Burrell to attend the meeting because the applicants

claimed that the ARC's requirements contributed to the building exceeding the maximum height. Ms. Burrell stated that the ARC did request an increase to the building pad to improve storm drainage, as well as an increase to the roof pitch. However, she added that these modifications were discussed prior to submission of the final building plans. She added that these changes were incorporated into the final plans and were subsequently approved by both the ARC and the town. Chairman Sewell asked if the ARC had any further role in the process once the plans were approved. Ms. Burrell responded that the ARC did not have any further role after the plans were approved. Chairman Sewell asked if any other members had questions for Ms. Burrell. There were no additional questions.

Chairman Sewell opened the public hearing to individuals who wished to speak in favor of the variance request. No one spoke in favor of the request.

Chairman Sewell opened the public hearing to individuals who wished to speak in opposition to the variance request. No one spoke in opposition to the request.

Chairman Sewell then asked if there were any additional public comments regarding the variance request. Chairman Sewell administered an oath to each individual prior to receiving their testimony.

- Stephen Atkinson: Mr. Atkinson stated that he had recently purchased property at 3712 Seabrook Island Road. He stated that approval of this request could affect him in the future. He asked whether anyone has ever come before the board seeking a height variance. Zoning Administrator Cronin responded that as far back as the town's electronic records go, he has not found any such instances; however, there may have been similar requests in the past. Mr. Atkinson stated that the responsibility for correcting the error should rest with the builder. He stated that while he didn't really care whether the variance was approved or not, he worried about the precedent that this decision could establish for future cases. He added that if a similar variance were ever approved near his property, it would likely block his views of the ocean. He reiterated that his primary concern is the precedent that this decision could set.

There being no further comments, Chairman Sewell closed the public hearing.

Chairman Sewell asked if the applicants or their representatives had any additional comments. Mr. Hamilton stated that he and his wife came from Atlanta and have never gone through the ARC process. He stated that they were advised early on that if the ARC recommended something, they needed to include it in their plans. He stated that several of the plan changes were incorporated at the ARC's request, adding that these changes were not viewed as suggestions, but as requirements. He also stated that these changes were made at a significant cost of time and money. He again asked for lenience from the Board.

Mr. Clint Galloway asked if there was an option whereby the applicant could pay a fine and continue with construction. Zoning Administrator Cronin responded that the penalty for non-compliance would be the withholding of a certificate of occupancy, as well as fines of up to \$500 *per day* for each day the violation continues to occur.

Mr. Bill Bane asked if he could speak regarding the request. Chairman Sewell administered an oath to Mr. Bane prior to receiving his testimony.

- Bill Bane: Mr. Bane stated that he is currently the chairman of the ARC. He responded to Mr. Hamilton's comment by stating that any suggestions made by the ARC are intended to improve the final build of a home. He stated that all such discussions are undertaken prior to final plan approval. In this case, the house was not built according to the plans which were reviewed and approved by the ARC or the town. He added that if the house was built according to the approved plans, then it would have met the maximum height requirement.

Chairman Sewell asked whether members of the Board had any additional questions. There were no additional questions.

Chairman Sewell then called on Zoning Administrator Cronin to review the four criteria under state law which must be used by the Board when hearing and deciding variance requests.

Zoning Administrator Cronin stated that the Board has the power to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following findings:

- 1) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- 2) These conditions do not generally apply to other property in the vicinity;
- 3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- 4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

There being no further discussion, Chairman Sewell called for a motion.

Following a thorough review of the application, including all supporting materials received in advance of the meeting, and all testimony received during the public hearing, Ms. Kleinman made a motion to vote on whether to approve or deny the variance request. The motion was seconded by Mr. Fox.

There being no further discussion on the motion, Chairman Sewell called for a vote. Chairman Sewell reminded members that a “yes” vote was in favor of granting the variance, while a “no” vote was opposed to granting the variance.

IN FAVOR (YES)

OPPOSED (NO)

Chairman Sewell
Ms. Kleinman
Mr. Leggett
Mr. Fox
Mr. Finkelstein

The motion to grant the variance was **DENIED** by a vote of 0-5.

In denying the variance, the Board made the following findings:

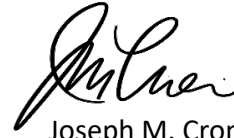
- 1) There are **NOT** extraordinary and exceptional conditions pertaining to this particular piece of property due to the fact that the basis for the variance request was a contractor error during construction of the foundation, an error of which the applicants should have been aware, and which should have been corrected in the field prior to framing the house;
- 2) Any conditions applicable to this particular piece of property **WOULD** apply to all other property in the vicinity, as the maximum height requirement applies to all single-family zoned properties in the town limits;
- 3) The application of the maximum height requirement to this particular piece of property would **NOT** effectively prohibit or unreasonably restrict the utilization of the property, as the applicants testified that the roof elevation shown on the approved plans was intended to be lower than what was constructed and, had the designated agent built the structure according to those plans, then a variance would not be required. Further, the design of the existing structure may be modified to conform to the Town’s maximum height requirement without the necessity of a variance; and
- 4) The authorization of a variance **WILL** be of substantial detriment to adjacent property and to the public good, as the granting of a variance due to a building error may be considered as precedent for similar cases in the future. This would be especially inappropriate in this case because the contractor failed to comply with on-going construction approval requirements which would have led to early identification and correction of the error.

ITEMS FOR INFORMATION / DISCUSSION

There were no Items for Information / Discussion.

There being no further business, Chairman Sewell called for a motion to adjourn. Mr. Fox made a motion, seconded by Ms. Kleinman, to adjourn the meeting. The motion was **APPROVED** by a vote of 5-0, and the meeting was adjourned at 4:17 PM.

Minutes Approved:



Joseph M. Cronin
Zoning Administrator