

TOWN OF SEABROOK ISLAND

Board of Zoning Appeals Meeting

August 15, 2019 – 2:30 PM

Town Hall, Council Chambers
2001 Seabrook Island Road



MINUTES

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

Absent: None

Guests: Cathy Patterson (Appellant), Carmine DeGennaro (Resident), Ron Ciancio (Mayor), John Gregg (Town Council), Skip Crane (Town Council), Heather Paton (SIPOA), Katrina Burrell (SIPOA), KC Miller (Kenneth C. Miller Architecture), Kevan Hoertdoerfer (Kevan Hoertdoerfer Architects)

Chairman Sewell called the meeting of the Board of Zoning Appeals to order at 2:30 PM. Chairman Sewell introduced himself and members of the Board to those in attendance and confirmed that a quorum was present. Acting Secretary Lynda Stearns confirmed that the requirements of the Freedom of Information Act were fulfilled and the meeting agenda was properly posted.

APPROVAL OF MINUTES

1. **Board of Zoning Appeals Meeting: July 17, 2019:** Mr. Leggett made a motion to approve the minutes from the July 17, 2019 meeting, as submitted. Ms. Kleinman seconded the motion. The motion was approved by a vote of 5-0.

PUBLIC HEARING ITEMS

1. **Appeal #39: The Village at Seabrook:** Chairman Sewell introduced the pending appeal, which was submitted by Catherine Patterson, the owner of 4064 Bridle Trail Drive within the Village at Seabrook subdivision. Chairman Sewell stated that the appeal was in response to three Letters of Determination which were issued by the Zoning Administrator regarding setback requirements for four undeveloped lots within the Village at Seabrook: 2211 Seabrook Island Road (Lot A-06), 2279 Seabrook Island Road (Lot B-01), 3049 Seabrook Village Drive (Lot B-23) and 3061 Seabrook Village Drive (Lot B-26).

Chairman Sewell asked Acting Secretary Stearns to confirm whether notice of the hearing had been properly advertised, as required by state statute and the town's DSO. Acting Secretary Stearns responded in the affirmative. Chairman Sewell disclosed for the record that the Board had conducted site visits to each of the lots on July 17, 2019, at which time the Board viewed

the subject properties, as well as neighboring properties. Chairman Sewell noted that these visits were for observational purposes only and no testimony was received.

Chairman Sewell then called on Zoning Administrator Cronin to provide a brief overview of the basis for his Determinations. Chairman Sewell administered an oath to Zoning Administrator Cronin prior to receiving his testimony.

Prior to offering his testimony, Zoning Administrator Cronin asked members of the Board to accept the following items into the public record:

- Copy of Sec. 5.40 (Planned Development District) from the town's DSO;
- Email dated August 12, 2019, from Tim Leavitt, owner of Lot B-02 within the Village at Seabrook, dated August 12, 2019, in support of Appeal #39; and
- Email dated August 15, 2019, from Bob Nitkewicz, who represents the owners of Lot B-23, regarding the owner's willingness to observe a minimum side yard setback of 7.5 feet on both sides of their pie-shaped lot.
- Illustration of setback requirements and the impact on conformity status for Lots A-05 (developed) and A-06 (undeveloped) based on whether the Zoning Administrator's determination is upheld or overturned.
- Copy of the master plan for the Village at Seabrook at the time the PUD was being considered by the Planning Commission and Town Council (submitted by the appellant).
- Summary of the Zoning Administrator's determinations which are subject to appeal during today's meeting.
- Single-page illustration of the plat of record for the Village at Seabrook subdivision.

There was no objection, and the above-referenced materials were accepted into the public record for Appeal #39.

Zoning Administrator began his testimony by offering the following statement:

"The findings contained within my three Letters of Determination - findings which will be subject to the Board's review here today - are not "new," nor are they substantive "changes" from the way the setback requirements have been applied in the Village at Seabrook by previous Zoning Administrators over the last 20 years. In my professional opinion as the Zoning Administrator, I believe that my findings are legally sound, factually accurate, and in general, will be most beneficial to the greatest number of current and future property owners within the Village at Seabrook.

However, I do understand that while these findings may benefit some property owners, they have the potential to adversely impact others. As a member of town staff, I cannot comment on the logic behind *why* the ordinances related to the Village at Seabrook may have been worded the way they were; that would be a policy question which rests solely under the purview of the town's governing body, the Mayor and Council. My role as the Zoning Administrator is not to create policy, nor is it to substitute my judgement for the judgment of current or previous town councils. Rather, my job is to implement and, where necessary, interpret the ordinances which have been adopted by town council. That is what I have done in my Letters of Determination, and those findings are what I will attempt to justify here today.

Development in the Village at Seabrook is governed by three primary documents as far as the town is concerned: the town's Development Standards Ordinance (or "DSO"), which includes all of the zoning requirements for the town; the Planned Unit Development Ordinance for the Village at Seabrook, which was adopted and subsequently amended in 2000 and outlines the general zoning requirements for the Village at Seabrook; and the recorded plat for the Village at Seabrook subdivision, which was approved by the Planning Commission and Council and subsequently recorded in the Charleston County Register of Deeds Office.

What this appeal ultimately boils down to is the fact that there is a discrepancy between these three documents. While there is a lot of information that will be presented here today, the basic question before the Board is whether a subdivision plat can supersede the requirements of a duly adopted ordinance. The basis for my findings is simple: in the case of conflict, an ordinance which is duly adopted by the governing body of the town is what governs.

Despite the fact that there is conflict among these documents, the evidence will show that both I, as well as my predecessors, have generally applied – in most instances – the requirements of the PUD and the DSO, rather than setbacks shown on the subdivision plat for the Village at Seabrook.

To date, there have been 56 homes completed and a certificate of occupancy issued within the Village. The overwhelming majority of the 56 homes built to date within the Village comply with the requirements of the PUD and the DSO; however, more than half (32 out of 56 homes) do not conform with one or more of the setback requirements as illustrated on the plat. To accept this appeal and overturn my determination would have the potential to adversely impact the owners of those 32 lots.

I will state for the record that I am not an attorney. I am not qualified to offer legal advice, and any of the statements I make here today should not be construed to constitute any form of legal advice. Any testimony I provide will be offered as the administrative official who is designated and charged by the mayor and council to administer, interpret and enforce the zoning ordinances for the Town of Seabrook Island."

Zoning Administrator Cronin then stated that he had received three separate requests in February 2019 for confirmation of setback requirements for the following lots within the Village at Seabrook subdivision: Lots A-06, B-01, B-23 and B-26. In preparing these Letters of Determination, Zoning Administrator Cronin stated that he relied on the following governing documents:

- Development Standards Ordinance for the Town of Seabrook Island (the “DSO”);
- The Planned Unit Development for the Village at Seabrook (formerly referred to as the “Lake Entry Tract”), which was approved by Seabrook Island Town Council on February 22, 2000 (Ordinance No. 2000-01) and subsequently amended by Seabrook Island Town Council on June 5, 2000 (Ordinance No. 2000-08) (the “PUD”); and
- The Subdivision Plat for the Village at Seabrook, which was recorded in the Charleston County Register of Deeds Office in Plat Book EF, Pages 245-246 (the “Plat”).

Following his review, Zoning Administrator Cronin prepared and distributed the following Letters of Determination:

- **Letter of Determination for Setback Requirements – Village at Seabrook Lot B-23**
 - To: Bob Nitkewicz, NV Realty, 1900 Seabrook Island Road, Seabrook Island, SC 29455 (Issued: June 3, 2019)
- **Letter of Determination for Setback Requirements – Village at Seabrook Lot B-26**
 - To: K.C. Miller, Kenneth Miller Architecture, 1912 Planters Drive, Charleston, SC 29414 (Issued: June 3, 2019)
- **Letter of Determination for Setback Requirements – Village at Seabrook Lots A-06 & B-01**
 - To: Kevan Hoertdoerfer, Kevan Hoertdoerfer Architects, 538 King St, Charleston, SC 29403 (Issued: June 4, 2019)

In each of the above referenced Letters of Determination, the Zoning Administrator noted a discrepancy in the setback lines illustrated on the subdivision plat when compared to the DSO and PUD, both of which were adopted by ordinance. The Zoning Administrator stated his interpretation that the setbacks illustrated on the plat did not carry the force of law and, therefore, did not supersede any ordinance which had been duly adopted by Town Council.

As a result of these findings, the Zoning Administrator determined, consistent with the requirements of the DSO and the PUD, that the following setback requirements would apply to all lots within the Village at Seabrook subdivision:

- **Front Yard Setbacks:** The minimum front yard setback requirement shall be 30 feet from the street right-of-way for all lots within the Village at Seabrook; provided, however:
 - For corner lots wherein one street frontage is a cul-de-sac street, the minimum setback shall be 30 feet from the cul-de-sac street and 20 feet from the intersecting street; and
 - Uncovered front steps may extend into the front setback but may not be less than twenty 20' from the property's front lot line;

- **Side Yard Setbacks:** There is no minimum side yard setback requirement for lots within the Village at Seabrook; provided, however:
 - In instances where a side yard is required, the total of both side yard setbacks shall be at least 15 feet, and no detached structure may be situated closer than 15 feet to another structure; and
 - For the sake of consistency among neighboring lot owners, a minimum side yard setback of 7.5 feet is recommended, though not required by the PUD or DSO.

- **Rear Yard Setbacks:** The minimum rear yard setback requirement shall be 25 feet from the rear property line; provided, however:
 - For lots abutting an open space area (lake, lagoon, golf course, etc.), an open deck may encroach no more than 10 feet into the required rear yard setback;
 - For pie-shaped lots that do not have a defined rear property line from which to apply a rear yard setback (Lots B-22, B-23, B-26 and C-24), the Zoning Administrator interpreted that the rear yard setback shall be measured from the point where the two side property lines intersect at the rear of the property. This will ensure that the rear setback line is roughly parallel to the (curvilinear) front setback line, consistent with non-pie-shaped lots; and
 - Corner lots are defined by ordinance to have two front yards and two side yards. Therefore, a rear yard setback shall not be required for any corner lot within the Village at Seabrook. The requirements for front and side yard setbacks were further outlined elsewhere in the Letters of Determination.

Zoning Administrator Cronin stated that copies of the above referenced Letters of Determination were sent to the Appellant (in her role as President of the Village at Seabrook Regime) and to representatives of the Seabrook Island Property Owners Association.

Zoning Administrator Cronin stated that on July 1, 2019, the town received an appeal of the Zoning Administrator's determinations from Ms. Patterson (as an individual and not in her role as President of the Village at Seabrook Regime). As a result, the Board was being asked to determine whether the Zoning Administrator correctly interpreted the following:

- Whether the setback requirements for the Village at Seabrook shall be as established in "Exhibit B" to Ordinance No. 2000-08, entitled "An ordinance to amend the Planned Unit Development within Area Six for the Lake Entry Tract (Developed as the Village at Seabrook)," which specifies the following minimum setback requirements for the Village at Seabrook:
 - Front Yard – 30 feet;
 - Side Yard – 15-foot separation between structures;
 - Rear Yard – 25 feet;
- Whether a corner lot shall be deemed to have two front yards, two side yards and no rear yard, as specified by Sec. § 7.60.10.10 of the Development Standards Ordinance;
- Whether the provisions of Ordinance No. 2001-03, which allows a reduction of the secondary front yard setback from 30 feet to 20 feet for corner lots wherein one intersecting street is a cul-de-sac, and which allows uncovered front steps to encroach into a front yard setback as long as they are no less than 20 feet from the front property line, applies to lots within the Village at Seabrook;
- Whether the rear yard setback for pie-shaped lots which do not have a defined rear property line shall be measured from the point of intersection between the two side property lines; and
- Whether the setback lines illustrated on the Subdivision Plat for the Village at Seabrook, which was approved by the Seabrook Island Planning Commission on December 12, 2001, and recorded in the Charleston County Register of Deeds Office on in Plat Book EF, Pages 245-246, on December 19, 2001, supersede or otherwise amend the minimum requirements contained within Ordinance No. 2000-08 or the Development Standards Ordinance.

Prior to concluding his testimony, Zoning Administrator Cronin stated that he had reviewed the as-built surveys for each home built within the Village to date. He stated that if his determination were upheld, a total of 15 lots (26.8%) would not conform to the setback requirements. If minor non-conformities (less than 10% encroachment) were excluded, that number would drop to only 6 lots (10.7%). However, if the appeal were accepted and the Zoning Administrator's determination was overturned, he stated that at least 32 properties (57.1%) would become non-conforming based on the setbacks shown on the plat. He stated that the town would not require the owners of those lots to make their homes conform; however, they may be required to do so in the event of a major renovation and/or reconstruction of non-conforming elements, such as non-conforming HVAC stands. He then

read a list of those 32 lots which would be considered non-conforming, as well as the owners of record for each lot.

After completing his testimony, Zoning Administrator Cronin stated: "In conclusion, I believe that my determination of the setback requirements in the Village at Seabrook is most consistent with 1) the ordinances which have been duly adopted by the Mayor and Council of the Town of Seabrook Island; 2) the requirements of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, as amended, a copy of which was included in the packet, and specifically the provision requiring adoption of an amendment (by ordinance) to amend the requirements of a PUD; 3) the interpretation and application of setback requirements by previous zoning administrators over the last two decades, as illustrated by the number of properties that would become non-conforming if the appeal is accepted; and 4) the current conditions as they exist in the field today. My determination, if upheld, will have the least adverse impact on existing homeowners, whereas the appellant's argument, if accepted by the Board, will result in nearly 60% of the existing homes in the Village to be considered non-conforming. While it is possible that the owners of some undeveloped lots may be adversely impacted by the application of these setbacks requirements, we must also remember that there is a process authorized by state law whereby the owners of those lots may seek and obtain administrative relief. In instances when a property owner can demonstrate an actual hardship, state law grants the Board of Zoning Appeals the power to review and approve variances. For these reasons, I would respectfully request that the Board of Zoning Appeals reject Appeal #39 and uphold my determinations as they relate to the setback requirements within the Village at Seabrook."

Mr. Fox asked whether the plat was referenced in any of the ordinances. Zoning Administrator Cronin responded that the plat was approved after the PUD ordinance was approved. He stated that Exhibit B to the PUD ordinance included a master plan, but that plan only showed general lot and street arrangements and did not illustrate setback lines.

Mr. Fox asked whether the SIPOA ARC could require a minimum setback requirement. Zoning Administrator Cronin responded that they could, and that such requirements may be more restrictive than what is required by the town, but not less restrictive.

Mr. Fox noted that the owner of an undeveloped lot could be adversely impacted if the owners of neighboring lots built on or close to the shared property lines. Zoning Administrator Cronin responded that this scenario would be possible based on how the ordinance is currently worded.

Ms. Kleinman asked whether the plat could be considered a lawful ordinance. Zoning Administrator Cronin responded that a plat is an instrument for recording the subdivision of property as well as the location of streets, easements and open spaces, but does not carry the force of law. He stated that the only way to amend an ordinance (including the DSO or the PUD) would be to adopt another ordinance, and that a subdivision plat cannot amend an ordinance. He noted that the land development requirements outlined in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, which would include the subdivision process, is not even in the same article as the zoning requirements.

Ms. Kleinman asked for clarification regarding the rear yard setback requirement for pie-shaped and corner lots. Zoning Administrator Cronin responded that a corner lot is defined to have two front yard setbacks, two side yard setbacks, and no rear yard setback requirement. By definition, a pie-shaped lot is not a corner lot because it is not at two intersecting streets; therefore, in his opinion, a rear yard setback would still be required. In the absence of a defined rear property line on a pie-shaped lot, his interpretation was to apply the rear yard setback from the point where the two side yard property lines intersect at the rear of the property.

Mr. Fox remarked that the Village has been under development for almost 20 years, so he found it interesting that this issue was coming up at this time.

Ms. Kleinman asked what the standards were for granting an appeal. Zoning Administrator Cronin responded that, pursuant to Section 19.30.10 of the DSO, the Board of Zoning Appeals shall have the power to “hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination by the Zoning Administrator in the enforcement of this Ordinance, pursuant to § 19.40.” He added that, pursuant to Section 19.40.20 of the DSO, “in exercising the previously referenced powers, the Board of Zoning Appeals may in conformity with the provision of this act, reverse or affirm, wholly or in part, or may modify the order, requirements, decisions, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. The Board, in the execution of the duties for which appointed, may subpoena witnesses and in case of contempt may certify such fact to the circuit court having jurisdiction.” Ms. Kleinman sought clarification that the Board was being asked to determine whether the Zoning Administrator erred in interpreting the ordinance. Zoning Administrator Cronin responded in the affirmative.

Mr. Finkelstein asked if the plat was a public record once it was recorded in the county courthouse, and whether the plat could be inspected by individuals prior to purchasing or building upon property. Zoning Administrator Cronin responded that it was in fact a public record and could be viewed by anyone.

Mr. Leggett stated that information was presented regarding the impact to developed lots and asked whether similar research was done regarding the impact to undeveloped lots. Zoning Administrator Cronin noted an example which was included in the agenda packet. He stated that he did not have exact data on the impact to undeveloped lots, but that the information would be fairly easy to obtain. He also spoke generally that if a home on a neighboring lot was located farther than 7.5 feet from the side property line, then the undeveloped lot would not be adversely impacted by his interpretation; however, if the neighboring home was located closer than 7.5 feet, then the owner of the undeveloped lot would be adversely impacted. He added that if the appeal was successful, however, an existing home located less than 7.5 from a side property line would become non-conforming, whereas the undeveloped lot could then be built 7.5 feet from the property line. In such instances, it would be possible for homes to be located less than 15 feet apart, which would conflict with the PUD.

Chairman Sewell stated that he needed to leave the meeting at 4:00 pm and that Vice Chairman Kleinman would assume the role of Chair for the remainder of the meeting. Chairman Sewell called for a five-minute recess. The meeting was recessed at 3:58 pm.

Chairman Sewell left the meeting at 4:00 pm.

Vice Chairman Kleinman reconvened the meeting at 4:03 pm.

Vice Chairman Kleinman called on the appellant, Ms. Patterson, to provide additional information related to her appeal. Vice Chairman Kleinman administered an oath to Ms. Patterson prior to receiving her testimony.

Ms. Patterson provided Board members with copies of additional information related to her appeal. Ms. Patterson stated that the Village at Seabrook is a Planned Unit Development and was approved by the Planning Commission and Town Council. She stated all the plats for the Village that were approved by the town and recorded in the county courthouse show a 30-foot front yard setback, a 25-foot rear yard setback and a 15-foot total side yard setback. She added that the plat does not say anything about a 7.5-foot side yard setback; rather, the lines on the plat were intended to show the placement of future homes. She then provided Board members with a brief overview of the history of the Village at Seabrook subdivision, including changes made to the master plan and total lot count over time. She stated that the plan included in Exhibit B to the PUD ordinance was never signed by the Zoning Administrator or recorded in the county courthouse. She said that the Planning Commission specifically requested that the declarations be provided for review and approval prior to adoption of the PUD, and that the covenants were included as Exhibit C to the PUD ordinance. She noted that the declarations require SIPOA to establish the setback requirements for the Village. She also stated that the definition of the "development" in the declarations made reference to the preliminary plat for the Village, which was previously approved by the Town Council and recorded at the county, and that the inclusion of this document in the covenants (which were incorporated as part of the PUD ordinance) would give that plat the force of law. She then discussed special accommodations that were made for certain lots during the construction process, as well as variance requests which were previously denied by the Board of Zoning Appeals. One of these variance requests dealt with a 25-foot rear yard setback for a corner lot, and another dealt with front yard setbacks on a corner lot. She added that 7 or 8 corner lots were constructed with two front yards, one side yard and a rear yard, so she did not understand why the town was now going to allow a second side yard in lieu of a rear yard on corner lots. She added that allowing any lot to have a zero lot line on the side doesn't make sense, as it would require owners to trespass on their neighbor's property in order to clean and maintain the side of their homes. She stated that people who bought into the Village had no inkling if their property was non-conforming, adding that if non-conformities exist, it wasn't the owner's fault, they didn't do anything wrong and they didn't make it non-conforming.

Vice Chairman Kleinman asked Ms. Patterson what her specific request to the Board was if her appeal was granted. Ms. Patterson responded that her request was to keep the Village looking like the Village, and not to change the setback requirements. Vice Chairman Kleinman

clarified whether it was Ms. Patterson's request for the plat to be considered the governing document and take precedence over the DSO and the PUD. Ms. Patterson responded that the plat should guide development but shouldn't be super strict. Vice Chairman Kleinman responded that the Board was not in a position to re-write the ordinance. Ms. Patterson reiterated that she felt the plat was part of the PUD and should not be considered outside of it. Vice Chairman Kleinman stated that the Board's role was to determine which setback requirements should guide development within the Village.

Mr. Finkelstein asked if one of the primary concerns was the zero lot line provision. Ms. Patterson responded in the affirmative and added that allowing zero lot lines could make certain lots unbuildable.

Mr. Fox asked how the recorded plat differed from what was included in Exhibit C. Ms. Patterson responded that the final plat coincided with the preliminary plat included in Exhibit C to the PUD ordinance.

Vice Chairman Kleinman asked if there was any evidence of the final plat being approved by Town Council. Ms. Patterson responded that the only thing she found was that the conditional plat had been approved by Council.

Mr. Fox asked whether the conditional plat approved by Town Council showed the buildable areas. Ms. Patterson responded that it did.

Vice Chairman Kleinman asked if members of the Board had any additional questions for the appellant. There were no additional questions.

Vice Chairman Kleinman asked if the owners (or their representatives) of the four lots whose letters were subject to the appeal were present or had any comments. Vice Chairman Kleinman administered an oath to each individual prior to receiving his testimony.

- Kenneth Miller: Mr. Miller of Kenneth C. Miller Architecture spoke on behalf of the owners of Lot B-26. Mr. Miller stated that he and the owners have approached the SIPOA ARC for the review of proposed plans for Lot B-26; however, SIPOA ARC had advised that they would not review the plans while the appeal was pending. He stated that the owners were hoping to see this issue resolved as soon as possible so that they may move forward with construction plans on their lot.
- Larry LaRoche: Mr. LaRoche, the owner of Lot B-26, stated that the focus should not be on buildings or lot lines, but on people. He stated that the question originally arose back in February when his architect sought clarification on the setback requirements for their pie-shaped lot. Mr. LaRoche noted that his neighbor on one side was 20 feet off of the property line, and there was a 7.5-foot easement on the other, so his lot would not be "squeezed" by development on neighboring lots. He stated that the appeal included a reference to maintaining the aesthetic within the Village. He noted that the Zoning Administrator's interpretation would allow them to center the home

on their lot and preserve a larger number of trees. He also encouraged the Board to rule today so that their project may move forward without delay.

- Trey Seabrook: Mr. Seabrook, the owner of Lot B-1, spoke in opposition to the appeal. Mr. Seabrook stated that the Zoning Administrator's determination would have the least impact on property owners. He added that the most problematic lots are corner lots such as his. Having to include a 25-foot rear yard setback, as shown on the plat, would greatly reduce the size of a home which could be built on his lot. This in turn would result in a home that looks out of place in the neighborhood and could reduce surrounding property values.

Vice Chairman Kleinman then opened the public hearing to individuals who wished to speak in favor of, or in opposition to, the appeal. Vice Chairman Kleinman administered an oath to each individual prior to receiving his or her testimony.

- Carmine DeGennaro: Mr. DeGennaro, the owner of Lots A-5 and B-14, spoke in favor of the appeal. Mr. DeGennaro stated that most of the houses on rectangular lots have already been built and that the remaining lots will be difficult due to their odd shapes and sizes. He stated that his primary concern was with the zero side yard setbacks and the impact that construction on neighboring lots may have on the owners of other lots. He recommended that the town allow homes to have an *average* separation of 15 feet between structures. Mr. Fox asked Mr. DeGennaro if he was aware that the appeal, if successful, would result in his home on Lot A-5 becoming non-conforming because it does not observe a setback consistent with that shown on the plat. Mr. DeGennaro responded that he thought his lot was already non-conforming. Zoning Administrator Cronin confirmed that Mr. DeGennaro's home was not considered non-conforming under his (and the previous Zoning Administrator's) interpretation, but if the appeal was successful, it would become non-conforming.

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

Vice Chairman Kleinman asked the appellant if she wished to make any additional comments.

Ms. Patterson reiterated that the lines shown on the plat were not intended to be setback lines but buildable envelopes. Mr. Fox responded that homes could only be placed outside of the setbacks.

Vice Chairman Kleinman asked Ms. Patterson if the PUD allowed for zero lot line setbacks. Ms. Patterson said that some lots on the map were allowed to have zero lot line setbacks, but that the total number of such lots was reduced when the plat was revised to reduce the total number of lots.

Vice Chairman Kleinman asked Zoning Administrator Cronin if he has any additional comments. She also asked if he could respond to the appellant's point that the plat was incorporated as part of the PUD ordinance.

Zoning Administrator Cronin stated that there was a reference in Exhibit C to a conditional plat which had been previously recorded; however, the context of that reference dealt specifically with property boundaries, descriptions and other general matters. The only instance where setbacks were specifically addressed was on the land use summary contained within Exhibit B to the PUD. Unlike the conditional plat, the master plan included in Exhibit B did *not* show any setback lines for specific lots. In his opinion, if the intent was for the setbacks shown on the conditional plat to govern future development within the Village, then the conditional plat should have been included as Exhibit B.

Vice Chairman Kleinman asked if the Town Attorney had opined on whether a plat could supersede a duly adopted ordinance. Zoning Administrator Cronin replied that he could not speak for the Town Attorney, but that his findings were consistent with the recommendations provided by counsel. Zoning Administrator Cronin added that even if the plat was approved by Town Council, the only way Council could amend the zoning and setback requirements would be by a subsequent amendment to the PUD by ordinance.

Mr. Finkelstein asked for clarification as to whether the appeal would apply only to those lots for which Letters of Determination had been issued, or if it would apply to all lots within the Village. Vice Chairman Kleinman responded that an appeal is different from a variance, as an appeal is a general question of policy, whereas a variance is lot specific. Zoning Administrator Cronin added that a property owner would still be able to request a variance if his or her property had an unnecessary hardship as a result of the setback requirement.

Mr. Leggett asked if the recommendation for owners to observe a 7.5-foot side yard setback would be enforceable. Zoning Administrator Cronin responded that this would be recommended by town staff, but under the current ordinance, it could not be required.

Zoning Administrator Cronin asked if he could respond to a couple other items which were raised during the meeting. Zoning Administrator Cronin stated that he hated to issue a stay on any pending zoning permits within the Village while the matters subject to the appeal were pending before the Board, but that this was a requirement of state law. He stated that he was hopeful the Board received enough information today upon which to render a decision. If the Board decides to delay voting the request, the stay will remain in place until a decision has been made. He noted that the Board's decision could also be appealed to circuit court.

Zoning Administrator Cronin stated that several assumptions were made that properties with a zero lot line would build on the lot line. Having a zero lot gives an owner the ability to build on the lot line, assuming they meet the 15-foot separation requirement; however, it does not mandate that an owner build all the way up to the lot line.

Regarding Variance Requests #143 and #148, which were included in the packet, Zoning Administrator Cronin acknowledged that Ms. Patterson's statements were correct about both requests having been denied. He stated that in both instances, the Board was operating under the assumption that the setbacks called out by a previous Zoning Administrator were valid and, therefore, the Board was judging each request on whether the applicant could demonstrate an unnecessary hardship. Had those requests been submitted as administrative

appeals rather than variances, the outcome may have been different. He added that under his current interpretation, neither variance would have been necessary.

Zoning Administrator Cronin noted that there were comments recommending the ordinance be applied differently in different situations. He stated that he cannot arbitrarily pick and choose how the ordinance is applied; rather, it must be applied fairly and consistently across the board. He added that only Council has the authority to amend the zoning requirements.

Lastly, Zoning Administrator Cronin noted that the Village is made up of single-family homes on single-family lots, yet for whatever reason, it carries a multi-family zoning designation. In his opinion, the source of many of the problems within the Village is a direct result of trying to apply multi-family rules on property that is not multi-family, and it just doesn't work. However, the ordinance is what it is, and for 20 years everyone has attempted to make the best of what we have to work with.

Vice Chairman Kleinman asked whether members of the Board had any additional questions or comments prior to voting.

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

Following a thorough review of the Appeal, including all supporting materials received in advance of the meeting, and all testimony received during the public hearing, Mr. Fox made a motion to approve Appeal #39, as requested by the Appellant. Mr. Finkelstein seconded the motion. The vote on the motion to approve the appeal was as follows:

<u>IN FAVOR (YES)</u>	<u>OPPOSED (NO)</u>
	Kleinman
	Fox
	Leggett
	Finkelstein

The motion to approve the appeal **FAILED** by a vote of 0-4.

Mr. Fox then made a motion to deny the appeal. Mr. Leggett seconded the motion. The vote on the motion to deny the appeal was as follows:

<u>IN FAVOR (YES)</u>	<u>OPPOSED (NO)</u>
Kleinman	
Fox	
Leggett	
Finkelstein	

The motion to deny the appeal was **APPROVED** by a vote of 4-0.

Therefore, the Zoning Administrator's determination relating to the setback requirements in the Village at Seabrook were **AFFIRMED**.

ITEMS FOR INFORMATION / DISCUSSION

There were no Items for Information / Discussion

There being no further business, Mr. Fox made a motion to adjourn the meeting. Mr. Finkelstein seconded the motion. The vote was **APPROVED** by a vote of 4-0 and the meeting was adjourned at 5:47 PM.

Minutes Approved: May 18, 2020

Lynda Stearns
Acting Secretary