

TOWN OF SEABROOK ISLAND

Board of Zoning Appeals Meeting

August 26, 2020 – 2:30 PM

Virtual Meeting Hosted via Zoom

[Live Streamed on YouTube](#)



MINUTES

Present: Walter Sewell (Chair), Ava Kleinman, John Fox, Janet Gorski, Bob Leggett, Joe Cronin (Zoning Administrator)

Absent: None

Guests: Robert Newman (2750 Gnarled Pine), Eric & Elizabeth Bryan (2913 Deer Point Drive), Malcolm Brennan (M. Brennan Architects), Leanne & William Spaide (3557 Seaview Drive), Evan Brandon (Outdoor Spatial Design)

Chairman Sewell called the meeting of the Board of Zoning Appeals to order at 2:32 PM. Zoning Administrator Cronin confirmed that the requirements of the Freedom of Information Act were fulfilled, and the meeting was properly posted. Chairman Sewell introduced himself and members of the Board to those watching the meeting remotely and confirmed that a quorum was present.

APPROVAL OF MINUTES

1. **Board of Zoning Appeals Meeting: August 4, 2020:** Mr. Leggett made a motion to approve the minutes from the August 4, 2020 meeting, as submitted. Ms. Kleinman seconded the motion. The motion was **APPROVED** by a vote of 5-0.

PUBLIC HEARING ITEMS

1. **Variance #166: 2750 Gnarled Pine (Tax Map # 147-08-00-082):** Chairman Sewell introduced the pending variance request, which was submitted by Robert and Katherine Newman, the owners of 2750 Gnarled Pine. Chairman Sewell disclosed that members of the Board were encouraged to visit the subject property prior to the hearing for the purpose of viewing existing conditions at the site, as well as neighboring properties. Members of the Board confirmed that they had visited the site prior to the meeting. Chairman Sewell added that no testimony was received during the individual site visits.

Chairman Sewell then called on Zoning Administrator Cronin to provide a brief overview of Variance Application #166. Chairman Sewell administered an oath to Zoning Administrator Cronin and asked him to confirm that the public hearing on the pending variance request was properly advertised, as required by state and local law. Zoning Administrator Cronin responded in the affirmative.

Zoning Administrator Cronin stated that the applicants were seeking approval to construct a wooden deck and steps at the rear of their existing single-family residence. According to Charleston County tax records, the existing home was completed in 1979. Because the town was not incorporated until 1987, the property would have been developed under Charleston County’s zoning requirements. Mr. and Mrs. Newman purchased the property in September of 2019. He added that Section 7.60.60 of the DSO requires a minimum rear yard setback of 15 feet for open decks when abutting open space, such as a golf course. At its closest point, the proposed deck would be located approximately 4 feet from the rear property line.

To allow for construction of the proposed deck, the applicants sought approval from the Board of Zoning Appeals to grant relief from the following requirement, as provided by the town’s DSO:

Type	DSO Reference / Requirement	Variance Requested
Rear Yard Setback (Open Decks)	15 feet (§ 7.60.60)	Reduce the rear yard setback from 15 feet to approximately 4 feet (11-foot encroachment)

As part of their variance request, the applicants stated that strict application of Sec. 7.60.60 would result in an unnecessary hardship. The applicants further argued:

- 1) The existing home was constructed prior to the town’s incorporation, and was built under different (Charleston County) zoning requirements in place at the time;
- 2) The conditions do not apply to other properties in the vicinity due to neighboring homes being constructed at a later date and, therefore, in compliance with the town’s current setback requirements;
- 3) Strict application of the rear yard setback requirement would prohibit the applicants from improving the property and enjoying their backyard; and
- 4) The adjacent property to the rear of the applicants’ property is owned by the Seabrook Island Club, which has submitted a letter in support of the applicants’ variance request, and the deck will still be more than 25 feet away from the currently maintained area of the golf course.

Prior to calling on the applicants, Chairman Sewell asked if there were any questions for Zoning Administrator Cronin. There were no questions.

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 his or her testimony.

- Robert Newman: Mr. Newman, the owner of 2750 Gnarled Pine, spoke regarding the variance request. Mr. Newman stated that the existing home pre-dates the town’s

incorporation and was built under a different set of rules than exist today. He stated that the purpose of the request is to allow him and his wife to replace an existing deck which is rotting, unsightly and unsafe. While the proposed deck would be only four feet from the property line, the deck would be approximately 32 feet from the maintained area of the golf course. He added that he was seeking to use the property in a similar manner to neighboring residences.

Ms. Kleinman asked what the plans were for improving drainage on the property and how the proposed upgrades would improve the property overall. Mr. Newman stated that he was working with a contractor to remove built up sand from the property and would also install a cistern with French drains to control the flow of water. He added that he has had ongoing communication with the Seabrook Island Club, which supported his request, and which also plans to remove additional debris and take down one pine tree behind his property.

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

Chairman Sewell then opened the public hearing for comments. Due to the public hearing being held “virtually” as a result of the ongoing COVID-19 pandemic, Zoning Administrator Cronin noted that interested parties were invited to submit written comments regarding the variance request prior to the meeting via the town’s website, email, mail or in person. He stated that the town received written comments from the following individuals:

- Sean Hardwick: Mr. Hardwick submitted a comment in support of the variance request on behalf of the Seabrook Island Club.
- Jeff Noel: Mr. Noel of 2740 Gnarled Pine submitted a written comment in support of the variance request.
- Lori Porwoll: Ms. Porwoll of 2700 Seabrook Island Road submitted a written comment in opposition to the variance request.

Katrina Burrell participated in the virtual meeting on behalf of SIPOA. Ms. Burrell stated that she did not submit a letter in advance of the meeting because she had not yet received a formal application; however, she did not have concerns with the design, materials or location of the proposed deck. She asked the applicants to clarify what would happen to the tree that was located inside the existing deck. Mr. Newman responded that the new deck would be built around the tree.

Mr. Fox asked Zoning Administrator Cronin if he could show on the screen where the commenters’ property was located. Zoning Administrator Cronin pulled up the aerial image and identified the location of each commenters’ property.

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

Chairman Sewell asked the applicants if they wished to make any additional comments. The applicants did not have any additional comments.

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

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 attaching three conditions, should the Board vote to approve the variance request.

Chairman Sewell asked if members of the Board had any additional questions or comments prior to voting.

Ms. Kleinman stated that she felt the variance request met each of the four criteria. She stated that there were extraordinary conditions due to the house being built prior to the town's incorporation. The setback requirement would prohibit the owner's use and enjoyment of the property by limiting his ability to replace and expand the deck in a way similar to other homes in the vicinity. Lastly, she added that the letters of support from the club and a neighboring property indicated that the request would not harm the character of the neighborhood.

Mr. Fox, Mr. Leggett and Ms. Gorski expressed agreement with Ms. Kleinman's analysis. Mr. Leggett added that, as a golfer, the deck would not be visible from the golf course and that he was looking forward to that area being cleared up and improved.

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, Mr. Fox made the following motion, which was seconded by Ms. Gorski:

- 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;
- 3) The Board finds that relief is warranted in this situation as a result of the following factors:
 - a. The existing home was constructed on the property prior to the Town's incorporation in 1987 and requiring the applicants to meet the current setback requirements would create an unnecessary hardship;
 - b. The conditions applicable to the property do not apply to other properties in the vicinity due to those homes being built after the Town's incorporation and generally consistent with current setback requirements;
 - c. Strict application of the rear yard setback requirement would prohibit the applicants from improving the property and enjoying their rear yard in the same manner as neighboring properties; and
 - d. The granting of the variance will not be detrimental to adjacent properties or the public good because the proposed addition at the rear of the home will not have any adverse impact on the streetscape and the neighboring property owners who would be most impacted by the variance have submitted letters in support of the request; therefore
- 4) The requested variance is hereby approved, as follows: **The 15-foot rear yard setback for open decks, as required by §7.60.60 of the DSO, is hereby reduced to approximately 4 feet to allow for construction of an uncovered wooden deck extension and steps at the rear of the property.**

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 approving the variance, while a "no" vote was opposed to approving the variance.

IN FAVOR (YES)

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

OPPOSED (NO)

The motion to approve the variance was **APPROVED** by a vote of 5-0.

To protect established property values in the surrounding area, and to promote the public health, safety, and general welfare, Ms. Kleinman made a motion, seconded by Ms. Gorski, to attach the following conditions to the approved variance, as allowed by §6-29-800(A)(2)(d)(i) of the South Carolina Code of Laws:

- 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 August 26, 2020. 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.
- The applicants shall prepare and submit to the Zoning Administrator an as-built survey prior to the issuance of a Certificate of Occupancy (or within 30 days of passing the final inspection if no Certificate of Occupancy is required). The as-built survey shall be prepared and stamped by a professional land surveyor who is qualified to perform such services in the State of South Carolina.
- The variance shall expire on August 26, 2022 (two years from the date of approval) if the applicants fail to obtain a building permit on or before that date.

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 attaching the conditions, while a "no" vote was opposed to attaching the conditions.

IN FAVOR (YES)

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

OPPOSED (NO)

The motion to attach the conditions to the variance was **APPROVED** by a vote of 5-0.

Chairman Sewell recessed the meeting at 3:07 PM.

The meeting was reconvened at 3:12 PM.

- Variance #167: 2913 Deer Point Drive (Tax Map # 149-14-00-029):** Chairman Sewell introduced the pending variance request, which was submitted by Eric and Elizabeth Bryan, the owners of 2913 Deer Point Drive. Chairman Sewell disclosed that members of the Board were encouraged to visit the subject property prior to the hearing for the purpose of viewing existing conditions at the site, as well as neighboring properties. Members of the Board confirmed that they had visited the site prior to the meeting. Chairman Sewell added that no testimony was received during the individual site visits.

Chairman Sewell then called on Zoning Administrator Cronin to provide a brief overview of Variance Application #167. Chairman Sewell reminded Zoning Administrator Cronin that he was still under oath and asked him to confirm that the public hearing on the pending variance request was properly advertised, as required by state and local law. Zoning Administrator Cronin responded in the affirmative.

Zoning Administrator Cronin stated that the applicants were seeking approval to construct a new swimming pool at the rear of their residence. He stated that the DSO requires a minimum setback of 25 feet from the OCRM critical line for all structures, excluding open decks which may be 15 feet from the critical line. The proposed swimming pool would be set within a permeable surface. Both the permeable surface and wooden decking would meet the 15-foot setback requirement for open decks. However, the pool itself, which is classified under the DSO as a “structure,” would encroach approximately 6.5 feet into the required 25-foot setback for all other structures. He noted that the existing home encroaches into both the 30-foot front yard setback and the 25-foot marsh setback. When the home was permitted in 2002, the property owners at the time sought and received a variance from the Board to allow these encroachments. Therefore, while the home is non-conforming, it is *legally* non-conforming. He also noted that the proposed pool would be located 18’7” from the OCRM critical line, which is no closer to the marsh than the existing dwelling (18’4”).

To allow for construction of the proposed swimming pool, the applicants sought approval from the Board of Zoning Appeals to grant relief from the following requirement, as provided by the town’s DSO:

Type	DSO Reference / Requirement	Variance Requested
Marsh Setback (Structures, Excluding Open Decks)	25 feet (§ 7.60.50)	Reduce the marsh setback from 25 feet to approximately 18.5 feet (6.5-foot encroachment)

As part of their variance request, the applicants stated that strict application of Sec. 7.60.50 would result in an unnecessary hardship. The applicants further argued:

- 1) The existing home was built by a previous owner and in a manner that would not allow a swimming pool to be added in another location on the lot;

- 2) The home's unique shape and narrowness of the lot, the proximity of the marsh, the home's placement on the lot, and the configuration of the existing home creates a specific hardship that is not found on neighboring properties;
- 3) Strict application of the ordinance would restrict the homeowners' ability to utilize their property for the recreational and therapeutic purposes that other properties are able to utilize; and
- 4) Granting a variance will permit the homeowners to enjoy the same amenities which other property owners enjoy. The portion of the swimming pool encroaching on the 25' setback will be less than 36" above grade, which is as allowed by SIPOA to be 15 feet from the marsh. The swimming pool will be surrounded by permeable decking and will be visually screened from adjacent homes.

Prior to calling on the applicants, Chairman Sewell asked if there were any questions for Zoning Administrator Cronin.

Ms. Kleinman asked if the decking would be less than 3 feet above grade. Zoning Administrator Cronin responded that this was what was shown on the plan.

Chairman Sewell asked when the critical line was last surveyed. Zoning Administrator Cronin stated that the line was surveyed in 2002 when a building permit was issued. He noted that the survey submitted with the plans was certified by OCRM in August 2020. Mr. Bryan noted that he and his wife also had a survey completed when they purchased the property in 2017.

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 his or her testimony.

- Malcolm Brennan: Mr. Brennan of M. Brennan Architects, spoke on behalf of the applicants. Mr. Brennan stated that the relief requested for the swimming pool was less than what was requested when the house was originally built in 2002. He noted that the design was completed based on SIPOA's guidelines, which allows pools 3 feet above grade or less to be 15 feet from the critical line; however, he noted that SIPOA had recommended increasing the elevation of the pool to mitigate flooding risk. He stated that the home was originally built in a location that does not offer any practical option for constructing a pool without a variance. He stated that the unique shape of the lot, the proximity of the marsh and the shape of the home were all unique. He also referenced the criteria used by the Board in granting a variance in 2002. He stated that strict application of the setback requirement would restrict the owners' ability to use the property in a way that neighboring properties are used. He added that the pool would not be visible from the street, would be screened by vegetation, and that the request was supported by neighboring property owners. Lastly, he stated that the variance request was similar to that for 2566 Seabrook Island Road (Variance #159), which was approved by the Board in March 2019.

- Eric Bryan: Mr. Bryan, who owns the property along with his wife, Elizabeth Bryan, also spoke regarding the variance request. He stated that he and his wife have owned property on Seabrook Island since 2004. They had originally planned to build a new home on the island but were fortunate to have the opportunity to purchase this home when it became available. They viewed this home as their “retirement home” and were drawn by the views. He stated that the home wasn’t perfect but was close enough. He stated that his family enjoys spending time outside and was used to having a yard; the proposed swimming pool was intended to provide an opportunity for them to use and enjoy the outdoor space.

Ms. Kleinman asked how stormwater and overflow from the pool would be displaced. Mr. Brennan responded that the pool would be surrounded by permeable decking, which is intended to allow water to pass through the surface to the ground below. He added that there would be drains added to displace water, and that any water would be discharged more than 25 feet from the OCRM critical line.

Ms. Kleinman asked if any existing trees were proposed to be removed. Mr. Brennan responded that no trees would be removed.

Ms. Kleinman asked if the pool could be picked up and moved, or if it would be permanently constructed into the deck. Mr. Brennan responded that the pool would be a permanent structure and could not be moved.

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

Chairman Sewell then opened the public hearing for comments. Due to the public hearing being held “virtually” as a result of the ongoing COVID-19 pandemic, Zoning Administrator Cronin noted that interested parties were invited to submit written comments regarding the variance request prior to the meeting via the town’s website, email, mail or in person. He stated that the town received written comments from the following individuals:

- David & Susan Whitehouse: Mr. and Ms. Whitehouse of 2919 Deer Point Drive submitted a written comment in support of the variance request.
- Katrina Burrell (SIPOA): Ms. Burrell submitted a letter on behalf of SIPOA stating that that the proposed improvements were consistent with the general requirements of the ARC, but a final decision will not be made until the Board renders a decision on the pending variance request.
- Errol Stuart & Jennifer Passantino: Mr. and Ms. Passantino of 2967 Deer Point Drive submitted a written comment in support of the variance request.

- Steve Berry: Mr. Berry of 3108 Marshgate Drive submitted a written comment in support of the variance request.
- Tad Dickson: Mr. Dickson of 2916 Deer Point Drive submitted questions regarding the variance request. Responses to these questions from Zoning Administrator Cronin were included in the record.
- Pamela & David Parrot: Mr. and Ms. Parrot of 1017 Settlers Ridge Lane, Raleigh, NC (owners of 2915 Deer Point Drive) submitted a written comment in support of the variance request.
- Leo Marien: Mr. Marien of 2927 Deer Point Drive submitted a written comment in support of the variance request.
- Tim & Kathy Morawski: Mr. and Ms. Morawski of 2707 Old Forest Drive submitted a written comment in support of the variance request.
- Paul & Beth Geiss: Mr. and Ms. Geiss of 2947 Deer Point Drive submitted a written comment in support of the variance request.

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

Chairman Sewell asked the applicants if they wished to make any additional comments. The applicants did not have any additional comments.

Chairman Sewell asked members of the Board if they had any additional questions for the applicants.

Ms. Kleinman asked Ms. Burrell to explain why SIPOA's rules were less restrictive than the town's. Ms. Burrell explained that this was a mistake in SIPOA's policies and procedures. The height of a pool is used to determine whether it is considered part of the structure or part of the hardscape for lot coverage purposes and was not intended to conflict with the town's setback requirements. Ms. Burrell added that SIPOA recommended that the height of the pool be increased due to the risk of flooding in the area. Ms. Bryan stated that she had asked the neighbors if they had ever experienced water intrusion and none had. Mr. Bryan stated that flooding hasn't been a problem to date, but they had no objection to raising the deck as it would provide additional flood protection while also enhancing the views of the marsh.

Ms. Kleinman asked Zoning Administrator Cronin why the town has a marsh setback. Zoning Administrator Cronin responded that the marsh setback is intended to minimize the impact of new development on critical areas, while also protecting life and property from the marshes, which are dynamic and can change over time.

Mr. Leggett stated that he has had personal experience with mud inside a pool due to flooding and said that it is better to raise the pool higher, but this was not an issue of life or death.

Hearing no further 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 attaching three conditions, should the Board vote to approve the variance request.

Chairman Sewell asked if members of the Board had any additional questions or comments prior to voting.

Mr. Leggett stated that the reasons cited by the Board in 2002 when granting the previous variance were still valid today.

Mr. Fox stated that this was a difficult lot due to its narrow depth. He also noted that the neighbors were supportive of the variance request.

Ms. Kleinman stated that the variance cited earlier in the meeting was not similar to the pending request since that variance was related to a removable "swim spa" and not a permanent structure. She said that the Board needs to be cautious in considering whether a prior variance creates a precedent. If that was the case, then every pool could be located 15 feet from the marsh. While she understood that pools are important in the south, the

property owners also had an obligation to understand what they were buying. She added that she was also bothered by the fact that the encroachment was on the marsh side.

Ms. Gorski stated that she agreed with many of Ms. Kleinman's comments; however, the Board must focus on the shape of the lot and whether it creates an actual hardship. She added that she thought the applicants' design was thoughtful and would minimize potential impacts to the marsh area.

Chairman Sewell stated that he was trying to find out why the critical line was where it was, adding that there didn't appear to be any relationship between the line and changes in vegetation.

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, Mr. Leggett made the following motion, which was seconded by Ms. Gorski:

- 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 (excluding the above-noted clarification regarding SIPOA setback requirements for pools), 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;
- 3) The Board finds that relief is warranted in this situation as a result of the following factors:
 - a. The reasons cited by the Board of Zoning Appeals in granting a variance for this property in 2002 are still valid today, specifically the Board's findings relative to the property's unique size and lack of depth from the street frontage to the marsh at the rear of the lot;
 - b. The conditions applicable to the property do not apply to other properties in the vicinity;
 - c. Strict application of the marsh setback requirement would prohibit the applicants from improving the property and enjoying their rear yard in the same manner as neighboring properties; and
 - d. The granting of the variance will not be detrimental to adjacent properties or the public good because the proposed swimming pool was designed thoughtfully to minimize its impact to neighboring properties and the marsh, and the neighboring property owners who would be most impacted by the variance have submitted letters in support of the request; therefore

- 4) The requested variance is hereby approved, as follows: **The 25-foot marsh setback, as required by §7.60.50 of the DSO, is hereby reduced to approximately 18.5 feet to allow for construction of a proposed swimming pool within a deck to be constructed at the rear of the property.**

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 approving the variance, while a “no” vote was opposed to approving the variance.

IN FAVOR (YES)

Chairman Sewell
Mr. Fox
Ms. Gorski
Mr. Leggett

OPPOSED (NO)

Ms. Kleinman

The motion to approve the variance was **APPROVED** by a vote of 4-1.

To protect established property values in the surrounding area, and to promote the public health, safety, and general welfare, Mr. Fox made a motion, seconded by Ms. Gorski, to attach the following conditions to the approved variance, as allowed by §6-29-800(A)(2)(d)(i) of the South Carolina Code of Laws:

- 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 August 26, 2020. 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.
- The applicants shall prepare and submit to the Zoning Administrator an as-built survey prior to the issuance of a Certificate of Occupancy (or within 30 days of passing the final building inspection if no Certificate of Occupancy is required). The as-built survey shall be prepared and stamped by a professional land surveyor who is qualified to perform such services in the State of South Carolina.
- The variance shall expire on August 26, 2022 (two years from the date of approval) if the applicants fail to obtain a building permit on or before that date.

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 attaching the conditions, while a “no” vote was opposed to attaching the conditions.

IN FAVOR (YES)

Chairman Sewell
Mr. Fox

OPPOSED (NO)

Ms. Kleinman

Ms. Gorski
Mr. Leggett

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

Chairman Sewell recessed the meeting at 4:25 PM.

The meeting was reconvened at 4:30 PM.

- Variance #168: 3557 Seaview Drive (Tax Map # 147-11-00-049):** Chairman Sewell introduced the pending variance request, which was submitted by Leanne and William Spaide, the owners of 3557 Seaview Drive. Chairman Sewell disclosed that members of the Board were encouraged to visit the subject property prior to the hearing for the purpose of viewing existing conditions at the site, as well as neighboring properties. Members of the Board confirmed that they had visited the site prior to the meeting. Chairman Sewell added that no testimony was received during the individual site visits.

Chairman Sewell then called on Zoning Administrator Cronin to provide a brief overview of Variance Application #168. Chairman Sewell reminded Zoning Administrator Cronin that he was still under oath and asked him to confirm that the public hearing on the pending variance requests was properly advertised, as required by state and local law. Zoning Administrator Cronin responded in the affirmative.

Zoning Administrator Cronin stated that the applicants were requesting two variances. The first was a reduction in the 30-foot front yard setback requirement to allow for construction of a retaining wall in an area with steep topography and a grand oak tree. The applicants were also seeking a reduction in the 15-foot rear yard setback requirement to allow for construction of new terraced steps and additional decking in a location that also has topographical challenges. He stated that, according to Charleston County tax records, the existing home was completed in 1984, which was prior to the town's incorporation. He noted that the DSO requires a minimum front yard setback of 30 feet for retaining walls and most other structures. Open decks and similar pervious structures may encroach into a rear yard provided that they are at least 15 feet from the rear property line. At its closest point, the proposed retaining wall would essentially be situated on the front property line. The terraced steps and decking at the rear of the residence would be located approximately 8 feet from the rear property line at their closest point.

In order to allow for construction of the proposed retaining wall, replacement steps and decking, the applicants sought approval from the Board of Zoning Appeals to grant relief from the following requirement, as provided by the town's DSO:

Type	DSO Reference / Requirement	Variance Requested
Minimum Setback (Front)	30 feet (§ 7.60.20.10)	Reduce the front yard setback from 30 feet to approximately 0 feet (30-foot encroachment)

Rear Setback (Open Space Lots)	15 feet for Open Decks (§ 7.60.60)	Reduce the rear yard setback for open decks and permeable surfaces from 15 feet to approximately 8 feet (7-foot encroachment)
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As part of their variance request, the applicants stated that strict application of Sec. 7.60.20.10 and Sec. 7.60.60 would result in an unnecessary hardship. The applicants further argued:

- 1) The existing home was constructed prior to the town's incorporation, and was built under different (Charleston County) zoning requirements in place at the time;
- 2) There is a 26" oak tree on top of a sand dune in the front yard. Lack of maintenance by previous owners and ongoing erosion of the dune has resulted in significant instability of the hill. Without a retaining wall, this grand tree will likely need to be removed due to safety and liability concerns. In the rear yard, there is a significant slope that is continuing to erode, rendering the backyard unsafe and unusable;
- 3) A retaining wall at the front of the property will allow for stabilization of the grand oak tree and dune and will reduce further erosion and possible loss of the tree. At the rear, the proposed steps and decking will replace those which are already encroaching into the rear yard setback; and
- 4) The authorization of these variances will not be of substantial detriment to adjacent property or to the public good because the proposed retaining wall at the front of the property will ensure the continued health and safety of the grant tree and neighboring property owners, and the proposed steps and decking at the rear will be screened by thick vegetation that obscures views from neighboring properties.

Prior to calling on the applicants, Chairman Sewell asked if there were any questions for Zoning Administrator Cronin. There were no questions for Zoning Administrator Cronin.

Chairman Sewell then called on the applicants to provide additional information related to their variance requests. Chairman Sewell administered an oath to each individual prior to receiving his or her testimony.

- William Spaide: Mr. Spaide, who owns the property along with his wife, Leanne Spaide, spoke regarding the variance requests. He began by thanking the Board for the opportunity to participate. He stated that he and his wife arrived in July 2018, right before Hurricane Florence, and they are happy to be full-time residents of Seabrook Island. He stated that the home is unique and offers a unique location. The home was built in 1984 on a lot which contains a large sand dune. Over time, the dune has deteriorated and both he and his wife were now concerned with the health and stability of a large oak tree at the front of the lot, adding that this was both a safety and liability concern. He stated that their primary goals were to repair the existing damage while maintaining the uniqueness of the lot. The proposed retaining wall would shore up the area around the tree, address the ongoing erosion issue, and

eliminate the tree root exposure. At the rear of the lot, there exists a steep slope and a dense thicket, both of which render the rear yard unusable. He stated that they were seeking to replace the existing steps with terraced steps and plantings to improve both the usability and aesthetic of the rear yard.

- Evan Brandon: Mr. Brandon of Outdoor Spatial Designs, also spoke on behalf of the applicants. Mr. Brandon showed several photos of the existing conditions at the front and rear of the property, as well as renderings of the proposed improvements. Mr. Brandon stated that the proposed retaining wall would be a “sloppy v” vertical timber retaining wall, which would follow the natural topography and be less invasive than other types of walls. He added that the proposed wall would be no greater than 3 feet in height and would be landscaped with native ornamental grasses. He noted that similar walls were used at Freshfields, and both the Ocean Course and the Sanctuary in Kiawah Island. The proposed terrace and steps at the rear of the property were designed to look like railroad ties but would be made of concrete. All of the landings would be pervious. The slope at the rear would also be planted with native ornamental grasses. He stated that the proposed steps would have the smallest footprint possible and would respect the landscape while at the same time addressing the safety and usability issues in the rear yard.

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

Chairman Sewell then opened the public hearing for comments. Due to the public hearing being held “virtually” as a result of the ongoing COVID-19 pandemic, Zoning Administrator Cronin noted that interested parties were invited to submit written comments regarding the variance requests prior to the meeting via the town’s website, email, mail or in person. He stated that the town received written comments from the following individuals:

- Lynn & Jack Williams: Mr. and Ms. Williams of 3558 Seaview Drive submitted a written comment in support of the variance requests.
- Sarah Jane & John Foltz: Mr. and Ms. Foltz of 3555 Seaview Drive submitted a written comment in support of the variance requests.
- Donna & Paul Reinbolt: Mr. and Ms. Reinbolt of 3559 Seaview Drive submitted a written comment in support of the variance requests.

Katrina Burrell participated in the virtual meeting on behalf of SIPOA. Ms. Burrell stated that SIPOA had no problems with the proposed improvements as long as the variance requests were approved by the Board.

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

Chairman Sewell asked the applicants if they wished to make any additional comments. The applicants did not have any additional comments.

Chairman Sewell asked members of the Board if they had any additional questions for the applicants.

Hearing no further 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 attaching three conditions, should the Board vote to approve the variance requests.

Chairman Sewell asked if members of the Board had any additional questions or comments prior to voting.

Ms. Kleinman stated that these variance requests fell squarely within the four criteria. The home was constructed prior to the town's incorporation under a different set of rules. The conditions affecting the property were unique to this specific lot. She understood the desire to preserve the beautiful oak tree, and the current conditions at the rear of the property were an eyesore. She noted that the tree posed a safety threat if it was not stabilized and would likely either need to be removed or could potentially fall in the future. The proposed improvements at the rear of the property would allow the owners to shore up safety

concerns. Lastly, she stated that these improvements would enhance not only the applicants' the property, but also the safety and aesthetic of the entire street.

Mr. Leggett and Mr. Fox stated that they concurred with Ms. Kleinman's conclusions.

Mr. Fox noted that the proposed steps would be replacing the existing steps at the rear of the property. He added that this was a unique lot within the town.

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. Gorski made the following motion, which was seconded by Mr. Fox:

- 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;
- 3) The Board finds that relief is warranted in this situation as a result of the following factors:
 - a. The existing home was constructed on the property prior to the Town's incorporation in 1987 and requiring the applicants to meet the current setback requirements would create an unnecessary hardship;
 - b. The conditions applicable to the property do not apply to other properties in the vicinity due to the unique topographical features on the lot;
 - c. Strict application of the front and rear yard setback requirement would prohibit the applicants from preserving the existing grand tree at the front of the property and from enjoying their rear yard in the same manner as neighboring properties; and
 - d. The granting of the variance will not be detrimental to adjacent properties or the public good because the proposed improvements will reduce the likelihood of the grand tree falling onto neighboring properties or the street right-of-way and will enhance the aesthetic value of surrounding properties; therefore
- 4) The requested variances are hereby approved, as follows:
 - a. **The 30-foot front yard setback, as required by §7.60.20.10 of the DSO, is hereby reduced to 0 feet to allow for construction of a retaining wall around the grand tree at the front of the property; and**

- b. The 15-foot rear yard setback for open decks and permeable surfaces, as required by §7.60.60 of the DSO, is hereby reduced to approximately 8 feet to allow for construction of terraced steps and additional wood decking at the rear of the property.**

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 approving the variance requests, while a “no” vote was opposed to approving the variance requests.

IN FAVOR (YES)

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

OPPOSED (NO)

The motion to approve the variance requests was **APPROVED** by a vote of 5-0.

To protect established property values in the surrounding area, and to promote the public health, safety, and general welfare, Ms. Gorski made a motion, seconded by Mr. Leggett, to attach the following conditions to the approved variances, as allowed by §6-29-800(A)(2)(d)(i) of the South Carolina Code of Laws:

- The approved variances shall apply to the building layout as shown on the site-specific plan prepared by the applicants and reviewed by the Board on August 26, 2020. 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.
- The applicants shall prepare and submit to the Zoning Administrator an as-built survey prior to the issuance of a Certificate of Occupancy (or within 30 days of passing the final building inspection if no Certificate of Occupancy is required). The as-built survey shall be prepared and stamped by a professional land surveyor who is qualified to perform such services in the State of South Carolina.
- The variances shall expire on August 26, 2022 (two years from the date of approval) if the applicants fail to obtain a building permit on or before that date.

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 attaching the conditions, while a “no” vote was opposed to attaching the conditions.

IN FAVOR (YES)

Chairman Sewell

OPPOSED (NO)

Ms. Kleinman
Mr. Fox
Ms. Gorski
Mr. Leggett


The motion to attach the conditions to the variances was **APPROVED** by a vote of 5-0.

4. ITEMS FOR INFORMATION / DISCUSSION

There were no Items for Information / Discussion

There being no further business, Ms. Gorski made a motion to adjourn the meeting. Mr. Fox seconded the motion. The motion was **APPROVED** by a vote of 5-0 and the meeting was adjourned at 5:01 PM.

Minutes Approved: October 20, 2020



Joseph M. Cronin
Zoning Administrator