



TOWN OF SURFSIDE BEACH ♦ TOWN COUNCIL CHAMBERS
March 26, 2009 6:00 p.m.

ZONING BOARD OF APPEALS
MEETING MINUTES

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7 **1. CALL TO ORDER**

8 Chairwoman Livesay called the meeting to order at 6:00 p.m. Commission Members Ott,
9 Willm, Blair, Lanham, and Watson were present. Ms. Dodge was absent. A quorum was
10 present. Staff present: Clerk Pinnell and Building/Zoning Director Donevant.

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12 **2. PLEDGE OF ALLEGIANCE**

13 Chairwoman Livesay led the Pledge of Allegiance.

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15 **3. AGENDA APPROVAL**

16 Mr. Lanham made a motion to approve the agenda as presented. Mr. Blair seconded the
17 motion. **All members present voted in favor. MOTION CARRIED.**

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19 **4. MINUTES APPROVAL**

20 Mr. Willm made a motion to approve the October 15, 2008 meeting minutes. Mr.
21 Lanham seconded the motion. **All members present voted in favor. MOTION**
22 **CARRIED.**

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24 **5. PUBLIC HEARING**

25 ***ZBA2009-01: John Nelson, 617 Cedar Drive North***

26 Ms. Donevant stated that Mr. John Nelson at 617 Cedar Drive North started building a
27 golf cart shed on his property and an inspector went by and told him that he needed to
28 locate it in the rear yard since it was in violation of ordinance section 17-269. At this
29 time Mr. Nelson complied and stopped construction and came in to fill out a variance
30 application to allow him to continue to build the structure. His request is to ask for a
31 variance from section 17-269 to allow him to put his golf cart shed on the side of his
32 property versus the rear of his property. Ms. Donevant stated that on his application he
33 states that he is constructing a 10 foot by 10 foot building and this building would not
34 have met the side yard setbacks and the accessory building side yard setbacks for
35 something that high would be 5 feet; he is constructing a 6 foot by 12 foot structure
36 which does comply with the 5 foot setback so he does meet this setback but does not
37 meet the accessory uses which must be located in the rear. He is meeting the setback if it
38 were allowed on the side; any accessory building must be 5 feet from any property line;
39 he is not requesting a variance for the setback just on locating the golf cart shed on the
40 side. It was determined that if it was located in the rear it would be allowed.

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42 Mr. Ott brought up the fact that Mr. Nelson receives his mail on 7th Avenue and there was
43 some discussion regarding this. Mr. Nelson stated that he purchased the home in 1977
44 and has received the mail on the side of his house since then and it was never changed.
45 The house faces Cedar Drive but the mail is delivered on the side of the house. Mr.
46 Nelson stated that he would have built the golf cart shed in the back but when he
47 purchased the house in 1997 it had a pool and there is no other place to put the shed and
48 added that there is a fence so he started to build it on the side of the house and at the time
49 he did not know he needed a permit to do this and once he was told by the inspector that
50 he needed one and he stopped construction and filled out an application and he also had
51 an architect draw up a plan. Mr. Nelson stated that it would be a sturdy building and the

52 roof line, shingles and paint or stain will match the house and that he hopes this will meet
53 everyone's approval. Mr. Willm asked if Mr. Nelson has ever requested to have the
54 address changed. It was confirmed that the lawyer was not present at this meeting. There
55 was some discussion regarding what would be involved in getting an address change.
56 Ms. Donevant stated that even if the house address changed the house would not meet the
57 rear setbacks. Mr. Nelson stated that the house is built on two lots. It was confirmed that
58 the cabana house and swimming pool were at the site when Mr. Nelson first purchased
59 the property. Ms. Watson asked for confirmation that the property encompassed two lots.
60 Mr. Nelson confirmed that his property consisted of two lots and it is not split within the
61 plat. Mr. Nelson stated that he sold another lot that he had owned. Ms. Livesay stated
62 that the board is not dealing with setbacks at this time they are here to decide whether a
63 variance would be granted for him to add a building to the side of his property as opposed
64 to the rear of his home. Mr. Nelson stated that if he had a choice he would put it in the
65 back but there are no options there. There was some additional discussion regarding the
66 property and available space.

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68 Mr. Lanham stated that he wanted to clarify something and asked that in order to grant a
69 variance there are four questions the board needs to answer. Ms. Livesay stated that there
70 are three "yes" and one "no" to grant a variance. If an applicant does not answer
71 correctly on any of these questions a variance is not supposed to be granted. Ms.
72 Donevant stated that a neighbor of Mr. Nelsons, Mr. Bill Bigham who is located in the
73 rear by the pool called Ms. Donevant stating that he did not have a problem with the
74 structure being built and added that there are other neighbors that may be in the audience
75 that may want to speak.

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77 ***Anna Johnson, 711 7th Avenue*** was sworn in: "I'd just like to say that nothing they've
78 done around their place has ever been done shoddily or whatever, everything's . . . they
79 keep their lawn great and I have no objection to it."

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81 ***Michael Martin, 615 Cedar Drive North*** was sworn in: "My home is actually right
82 adjacent to where the shed is. I am new to the neighborhood. We bought the house in
83 '06 but we rented for a couple of years; we moved in last year, actually, late in '07 and
84 my house is built on Mr. Nelson's previous lot, he owned that lot and of course sold it
85 off, I assume sold it off to a developer and the developer built my house. Now my house
86 is on somewhat of a narrow lot and the shed is . . . basically there are two sheds that butt
87 up against, or one shed and then the new one that he is building. The one shed that is 18
88 inches from my property line is to the rear of the property and to, of course, to the rear of
89 his property and that's a 36 foot long shed, now I'm assuming that that was grandfathered
90 in as a pre-existing or whatever you call it. That is 18 inches from my property line and
91 that is 36 feet long so it's a sizeable building that's right, very close to my property line.
92 The new shed is on the side of my house where I have a porch that faces, actually faces
93 where that shed is being built and then of course faces the side of his house as well as
94 also faces the 36 foot long building that's already there. That side of my house is actually
95 19 1/2 feet from where he is building the new shed so it's not very much of a distance at
96 all and of course we use the porch as, for recreation purposes, and it's a nice porch and
97 we've done some landscaping along there and so forth. I would also point out that this
98 shed, is the setback supposed to be 5 feet? Is that . . .?"

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100 *Ms. Livesay:* “From the property line. You would have five feet and he would have five
101 feet. It would be 10 feet total if you had your buildings right up against the easement.”
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103 *Mr. Martin:* “You know I have actually 19 ½ feet but I’m not sure, it appears to be a
104 little less than five feet from the property line. I measured it and it was about 4 ½ feet
105 now I don’t know exactly where the property line is. I measured to the fence so. So if
106 that’s within compliance but my point, my concern is two-fold, we’ve already got the 36
107 foot building that’s there and can’t be moved. I’ve also got, you know, my resale value
108 of my home which is, I’m assuming why these ordinances and regulations are put into
109 effect. Now, you know I do understand Mr. Nelsons need for a golf cart shed but, you
110 know, from my opinion, me being the person that is effected most by where the new shed
111 is going it is a negative and a detraction from my point of view, from my property.”
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113 *Mr. Nelson:* “On the side of the property before his house there is a, I think it’s a six foot
114 fence and the golf shed is only going to be a small (SIC).”
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116 *Ms. Livesay:* “Is there a privacy fence, how high is that privacy fence.”
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118 *Mr. Nelson:* “There’s a fence, you’ll see a picture of it there. So the only thing, I mean,
119 it’s not a whole lot of, not very much variance there. Thank you.”
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121 Ms. Livesay asked who the shrubbery in the photo belonged to.
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123 It was confirmed that the shrubbery and the brick belonged to Mr. Nelson.
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125 Mr. Ott asked if it would make a difference if the shed was attached to the house.
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127 Ms. Donevant stated that if it were attached it would need to meet more than a 5 foot
128 setback it would need to meet the property. Ms. Donevant stated that another neighbor,
129 Mrs. Daniels also wrote a letter claiming no objections. It was confirmed that she lived
130 across the street. Mr. Blair questioned the distance of 19 1/2 feet. Mr. Martin stated that
131 his house is 19 ½ feet from the side of the shed.
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133 Mr. Ott made a motion to close the public hearing. Mr. Lanham seconded the motion.
134 **All voted in favor. MOTION CARRIED.**
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136 **6. BUSINESS**

137 **ZBA2009-01: John Nelson, 617 Cedar Drive North**

138 Ms. Donevant stated that she had provided the board with information and staff
139 comments along with the two letters from the other property owners and public
140 comments. Mr. Willm asked what the town procedure was if someone is found building
141 without a permit. Ms. Donevant stated that they request the individual to stop building
142 and to apply for a permit; the fee is usually doubled and at times a fine is imposed. It was
143 confirmed that a fine was not imposed in this case. Ms. Donevant stated that it is a \$200
144 fine and the permit cost is \$10 so she did not feel it was appropriate. Mr. Ott stated that
145 the town does have so many ordinances that it is sometimes hard for people to know all
146 of them. Ms. Donevant stated that the town treats contractors who should know all of the
147 ordinances differently than a homeowner. It was confirmed that this work was being
148 done by the homeowner.

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Ms. Livesay stated that there would now be discussion or a motion taken amongst the board.

Mr. Ott stated that he would like to put out question C to the board for discussion adding that because of the conditions the application of this ordinance and this piece of property would effectively prohibit for unreasonable restriction of utilization of the property. Mr. Ott stated that he feels that it does not; the property can still be used. Mr. Lanham stated that he had the same thought.

Mr. Ott made a motion to deny the variance because this particular piece of property would not be restricted and will be fully utilized. Mr. Lanham seconded the motion. **All in favor. MOTION CARRIED. Request for ZBA 2009-01, John Nelson 617 Cedar Drive North variance was denied.**

There was no other discussion. Ms. Donevant asked Chairman Livesay to go through each one of the questions to have on record.

Mr. Blair stated that his decision is based on the fact that it has a non-impact on the use of the property. The owner still has full utilization of his property and it does not diminish the utilization of the property.

Mr. Ott stated that there are no extraordinary or exceptional conditions to this particular piece of property.

Mr. Willm stated that there are extraordinary or exceptional conditions pertaining to this piece of property considering he bought it with a pool. There is nothing exceptional or extraordinary about the property but the fact that he bought it with a pool and that there is no more room in his yard he feels there would be. Mr. Willm stated that conditions do not generally apply to other vicinities and if the board goes on this basis then it does not generally apply to other properties in the area but does agree that the application of this ordinance does not make it unreasonable; it makes it unreasonable to build a golf cart shed but not unreasonable for the use of the property. Mr. Willm stated that also the neighbor Mr. Martin stated that he feels it to be a detriment to his property if the shed is built. Mr. Willm stated that he agrees with the first two and disagrees with the second two.

Mr. Ott stated that he agrees with what Mr. Willm stated.

Mr. Lanham stated that the other board members stated it pretty well and all he was going to add was that generally speaking if it was not for the four reasons the board needs to consider, that it does not look like a bad idea to build but the board must meet all 4 requirements and number C “pretty much does it in”.

Ms. Watson stated that the only item she was wondering about when she asked about his living on a plat with two lots was that perhaps he could take it to his architect or his designer and split the lots and then perhaps he would be able to build the shed on the lot that does not have a building on it. Ms. Watson stated that as it is currently presented it does not meet the qualifications to grant a variance.

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Ms. Livesay stated that by selling the 3rd lot Mr. Nelson made his property a legal non-conforming lot with not a lot of room left on the lot where there used to be a whole lot of room. Ms. Livesay stated that based on item C on form 3 there are no unreasonable restrictions to the property so the board needs to deny the appeal.

7. OLD BUSINESS

Ms. Donevant went over a calendar for future meetings. Ms. Donevant stated that she is requesting that the board schedule a meeting every month and it can always be cancelled if there was no variance request; this would allow individuals to have their appeals heard at a more reasonable time and they would not have to wait for a meeting to be scheduled. Ms. Donevant asked if the 4th Thursday of each month would be a good day to meet. Mr. Ott asked if the board could also meet and go over procedures. Ms. Donevant stated that if anyone on the board had anything they wanted to discuss they could e-mail Ms. Donevant. The board agreed to meet the 4th Thursday at 6:30PM. Ms. Donevant stated that all of the board members have her e-mail and they could e-mail her if they had anything they wanted to bring up or discuss. Mr. Lanham asked how far in advance the board would be contacted if there was no meeting. Ms. Donevant stated that if she does not receive an appeal with enough time to advertise which would be 15 days and she could notify the board at least 15 days before the meeting. Mr. Ott asked if the board could have a workshop if there was nothing on the agenda. Ms. Donevant stated that if the board wanted some training she could set this up with Mr. Britton and arrange. Mr. Willm asked if the lawyer would be coming to future meetings. Ms. Donevant stated that he would. Mr. Will asked if the lawyer could come to the next meeting so that the board could ask him some hypothetical questions or perhaps Mr. Britton could come to explain what the intent of the four questions was. Mr. Willm stated that he feels that there are various ways to answer these questions. Ms. Donevant stated that she would try to set up a meeting for the next meeting.

Mr. Willm made a motion that the Surfside Beach Board of Zoning Appeals regularly meets on the 4th Thursday of the month at 6:30 PM. Mr. Blair seconded the motion. **All voted in favor. MOTION CARRIED.**

8. PUBLIC COMMENTS

There were no public comments.

9. BOARD COMMENTS

Mr. Ott: “I have one comment to Mr. Nelson. Mr. Nelson, these four questions are not, they are not designed by Surfside Beach, they were done by the State of South Carolina and that’s why when we all went for training; we go to training every year, they’re very explicit that these questions must be answered and that way by answering these four questions with every hearing that we have there’s nobody getting any favoritism; there’s nobody getting anything else; everybody’s done legally by these questions and we try to, on our neighbors favor, we try to push them that way, we try the best we can. Sorry that we couldn’t twist them anymore, we can’t. Thank you.”

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10. ADJOURNMENT

There was no other business to discuss. **The meeting adjourned at 6:35 p.m.**

Sharon Pinnell, Town Clerk

Approved: _____

Lynn Livesay, Chairwoman

Guy Lanham, Commission Member

Robert Blair, Commission Member

Ron Ott, Commission Member

Darrell Willm, Vice-Chairman

Holly Watson, Commission Member

Ann Dodge, Commission Member

Clerk's Note: This document constitutes minutes of the meeting, which was audio taped. In accordance with FOIA, meeting notice and the agenda were faxed and/or emailed to local media and interested parties. A complete list is on file in the clerk's office. The agenda was posted on bulletin boards outside council chambers and in the town hall reception area. Meeting notice was also posted on the town marquee.