



TOWN OF SURFSIDE BEACH ♦ TOWN COUNCIL CHAMBERS  
September 23, 2010 6:30 p.m.

BOARD OF ZONING APPEALS  
MEETING MINUTES

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8 **1. CALL TO ORDER**

9 Chairman Ott called the meeting to order at 6:30 p.m. Chairman Ott and commission  
10 members Willm, Lanham, Chamberlain and Watson were present. Commission Member  
11 Blair was absent. A quorum was present. Staff present: Clerk Pinnell.  
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13 **2. PLEDGE OF ALLEGIANCE**

14 Chairman Ott led the Pledge of Allegiance.  
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16 **3. AGENDA APPROVAL**

17 Mr. Willm made a motion to approve the agenda. Mr. Lanham seconded the motion. **All**  
18 **members present voted in favor. MOTION CARRIED.**  
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20 Mr. Ott stated that per the bylaws the nomination of Chair and Vice Chair are done at the  
21 first meeting of the year and suggested the board follow this procedure and asked if there  
22 was an objection. There were no objections from the Board.  
23

24 **4. DISCUSSION**

25 • Review 2010 Edition of By Laws and Procedures

26 The Board was handed the 2010 Edition of By Laws and Procedures for the Board of  
27 Zoning Appeals. Ms. Watson asked who does the secretary need to notify that and  
28 appeal has been filed. Mr. Ott stated that the secretary needs to notify the Zoning  
29 Administrator. The forms are not held by the Zoning Administrator but by the  
30 secretary of the Board of Zoning Appeals. The secretary will notify the official that is  
31 being appealed. There was some discussion regarding rewording Article III Section  
32 2. Mr. Ott stated that the Building Official has handled appeals in the past and they  
33 should all be handled by the secretary. Ms. Watson asked how the Zoning Board gets  
34 notified. Mr. Ott stated that the secretary notifies the Zoning Appeals Board. Mr. Ott  
35 stated that the Zoning Administrator should forward all paperwork relevant to an  
36 appeal to the Zoning Board and State Law requires that it should be done  
37 immediately. There was additional discussion. Mr. Chamberlain stated that while  
38 the section may not read clearly to the Board it is legally correct. Mr. Ott stated that  
39 the Board could ask Mr. Tom Britton from the Waccamaw Regional Council of  
40 Governments for clarification and possibly a workshop. Mr. Ott stated that the  
41 Zoning Administrator was the one who contacts the Chairman to set the meeting and  
42 it should have been the secretary who called to set a date for the upcoming appeal.  
43 This would have been ok for a variance but not for an appeal. Mr. Ott stated that the  
44 paperwork for the appeal should be in the hands of the secretary and not the Building  
45 Official. Clerk Pinnell stated that Sue Shmaruk in the Building Department has the  
46 appeal on file. Mr. Ott stated that Ms. Shmaruk should have contacted him regarding  
47 the appeal and not Ms. Donevant. Ms. Watson asked if Ms. Shmaruk was the  
48 secretary for the Board. Clerk Pinnell stated that the responsibility of the secretary to  
49 the Board needs to be discussed. Clerk Pinnell stated that normally a secretary is  
50 designated to take minutes, prepare the agenda and assist as necessary and Ms.  
51 Pinnell stated that she had made it clear that she would take the minutes and did not

52 have time to be the secretary for the Building and Zoning. Mr. Ott stated that the  
53 Board normally appoints the secretary but they do not want to appoint someone that  
54 should not do it, or cannot do it, or does not have the time. Mr. Ott stated that  
55 someone somewhere has to have the time. Clerk Pinnell agreed.  
56

57 Mr. Ott asked why the time limit was placed on an appeal; why do people need to be  
58 rushed and why not allow 30 days instead of 15 days. Mr. Ott stated that this is not a  
59 recommending Board and questioned why the citizens need to be rushed. Mr. Ott  
60 stated that it is his recommendation to look at changing the time from 15 days to 30  
61 days. Mr. Willm asked how long an individual would need to wait for a permit. Mr.  
62 Ott stated that after 6 months a permit is no longer active. An individual could start  
63 the next day or wait until the statute of limitations expires adding that this is why the  
64 permits will now be on-line; all citizens can view them. This does not mean that you  
65 have to wait 30 days but as it currently reads an individual only has 15 days to appeal.  
66 Mr. Willm stated that on the other side a contractor could almost be completed with  
67 their project and now it could get delayed if it is changed to 30 days. The 15 days  
68 might be fairer to the homeowners or contractors. Ms. Watson suggested individual  
69 wait 30 days to start work. Mr. Willm stated that he would not know that he would  
70 want to wait 30 days to see if anyone has issues with work before he started  
71 something. Mr. Ott stated that viewing the permits on line would give someone the  
72 opportunity to see proposed projects. Mr. Ott stated that most people would appeal  
73 something by 15 days. Mr. Ott stated that Mr. Britton has the same stance. 15  
74 business days as opposed to 15 days was suggested as a compromise. Mr. Willm  
75 stated that he would hate to be 30 days into a project and then be challenged. Mr.  
76 Chamberlain stated that he feels it should be 15 days from when a permit is posted on  
77 the property. The forms are not difficult to fill out. Giving 30 days may give too  
78 much time; it could give individuals time to put together a really serious case against  
79 an improvement or against the Building Department; this would tie the hands of the  
80 contractor, the owner and the project. Mr. Lanham stated that the best way is once a  
81 permit is issued an individual should not be able to start for 15 days which would give  
82 a 2 week grace period for an appeal. It was discussed that most people get permits  
83 and want to begin work right away; they are usually in a hurry. Mr. Chamberlain  
84 stated that most permits issued are for work which is set to begin within a day or two.  
85 Mr. Chamberlain brought up permits to remove trees; most people would want to  
86 remove them as soon as possible; 30 days is too much time to wait for an appeal. Mr.  
87 Chamberlain stated that he feels that 15 days is adequate. There was some additional  
88 discussion. Ms. Watson recommended placing the appeals forms on the website. Mr.  
89 Willm stated that he feels it is the duty of the citizens to keep abreast of what is going  
90 on in town. There was some discussion regarding whether work would need to be  
91 stopped during an appeal. State code and town codes were discussed.  
92

93 Actions to take during an appeal were discussed. Ms. Watson stated that the Board  
94 needs to determine what action will be taken if a building permit were to be denied  
95 after the fact. Mr. Ott stated that the first action is to determine if there was error and  
96 then if this is determined the whole permit could be changed, a permit could be issued  
97 where one was not issued or the wording of the permit could be changed. This Board  
98 takes on the same powers as the Zoning Administrator at this point. Mr. Ott stated  
99 that the Board of Zoning Appeals advertises their meetings for the year; they are  
100 scheduled for the 4<sup>th</sup> Thursday of each month. Mr. Ott stated that in November and

101 December holidays fall on those times and he would like to recommend changing the  
102 meetings to possibly the 3<sup>rd</sup> Thursday of the month so that there is a preset date for  
103 November and December; one falls on Thanksgiving and the other falls close to  
104 Christmas. Mr. Ott stated that the agenda should be posted 5 days prior to the  
105 meeting adding that this last agenda was his fault as he was still reviewing and  
106 investigating the appeals process. There was discussion adding certain information  
107 listed in ordinances and South Carolina laws into the bylaws. Mr. Ott stated that he  
108 would like to have a form created so that suggestions could be submitted to the  
109 Planning Commission for their consideration or opinion; adding that the form may  
110 never be used but he would like to have one available that would allow better  
111 communication. Mr. Willm stated that they could have a motion made to forward  
112 recommendations. Mr. Ott stated that in the past they have made recommendations  
113 but never received answers. The Board agreed to discuss changing the meeting dates  
114 of November and December at a future meeting.

115  
116 • Review General Procedures of Appeal Process/Possible Change of the Surfside  
117 Beach Statute of Limitations for Filing an Appeal to Align with the Timeline given in  
118 the State of South Carolina Code

119 Mr. Ott stated that during the future appeal that the Board will be reviewing it will not  
120 use the 4 criteria. Mr. Ott stated that he does not know what the appeal is; was there a  
121 permit written in error or was there an error in not writing a permit. Mr. Ott reviewed  
122 the term estoppel. 'Once an authorized official makes an interpretation the local  
123 governing body may be stopped from changing that interpretation administratively  
124 and from enforcing the ordinance in a manner different from the past enforcement'.  
125 Mr. Ott explained this to mean that if the town had an ordinance used in a certain way  
126 and the Zoning Administrator has made previous decisions on this then that is the  
127 way it is set. It cannot be made to mean something else. The Board will have to look  
128 to see if there is a zoning ordinance in question and review examples of how the  
129 ordinance has been defined in the past; a precedent is set and needs to be followed.  
130 Mr. Ott stated that the Zoning Official must follow this. The Municipal Association  
131 had distributed recommended procedures for the Board of Zoning which was  
132 discussed. Mr. Ott stated that when the Board hears the appeal they need to take  
133 everything into consideration; the Board has to be well schooled. Mr. Ott stated that  
134 the Board would need to have all of the information in hand that is needed and if the  
135 Board requires additional information they do not contact the Zoning Administrator,  
136 they would contact the secretary adding that this would be Ms. Shmaruk. Mr. Ott  
137 asked if there would be a conflict of interest with Ms. Shmaruk being the secretary  
138 since she works for the Zoning Administrator adding that by making Ms. Shmaruk  
139 the secretary it would be similar to making the Zoning Administrator the secretary.  
140 Mr. Lanham stated that Ms. Shmaruk would not be making any decisions. Ms.  
141 Pinnell stated that she would investigate and see how other communities do it. There  
142 was some additional discussion regarding this possibly being a conflict. Mr. Ott  
143 stated that he would put this down as one of the questions to Mr. Britton. Mr. Willm  
144 stated that if there was ever an issue with an ordinance regarding an appeal the town  
145 council could address changing it so that it was better understood.

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148 Mr. Ott stated that the Zoning Administrator is the one who gives a description of a  
149 variance. In Section 5 of Article IV the statement of matter to be heard is done by the  
150 Chairman or the secretary and is not done by the Zoning Administrator. Mr. Ott  
151 stated that if this is correct than it has been done incorrectly in the past. Mr. Ott  
152 stated that of course the Zoning Administrator cannot do it in an appeal process if  
153 they are the person being questioned. Mr. Lanham stated that it is stated that these  
154 procedures are subject to the modification by the Chairman and the Chairman could  
155 allow the official to do it. Mr. Ott stated that during their appeal they will have the  
156 secretary read it. Conduct of the hearing was discussed. It was discussed whether the  
157 applicant was the person who applied for the appeal or the permit. If a permit is  
158 granted there is an extra person involved and the board questioned who section 5  
159 referred to. Mr. Ott stated that the applicant is the person who filed the appeal in  
160 either direction. The opponent is the person who wants to stop it. There is an  
161 applicant for a variance and there is a person who files an appeal. It was discussed  
162 that a person who opposes the appeal is the opponent. The person is the one who  
163 filed the appeal. The unsworn public comments under section 5(f) were discussed.  
164 There was a discussion regarding limiting the time of the unsworn public comments.  
165 Mr. Chamberlain stated that these comments could drag on. It was discussed  
166 allowing 5 minutes for the unsworn public comments since the rebuttal of the  
167 applicant is also 5 minutes. Mr. Ott stated that individuals cannot be cross examined.  
168 Mr. Ott stated that at the final disposition the Board will have to make a decision in  
169 public and that is why the Board really needs to know what they are doing. Ms.  
170 Watson stated that it is written that the Board can forego one time on an appeal. Mr.  
171 Ott stated that the Board can remand and ask to send it back; the Board has this  
172 ability adding that hopefully they do not have to do it and that a decision can be  
173 made. Mr. Ott stated that the Board has to remember that this is a legal proceeding  
174 and this is a judicial board; once the packet of information is received the Board  
175 cannot discuss this with anyone. It was reiterated that it could only be tabled one time  
176 and Mr. Ott stated that the Board does not want to be placed in that position and this  
177 is why it will be very important to examine the information received and to request  
178 additional information if required. Mr. Willm stated that the Board would need  
179 information at least 10 days prior to the appeal date; this would give time to subpoena  
180 someone. Mr. Ott stated that the Board can ask questions or request additional  
181 information amongst themselves but only in generalization. If an e-mail from a  
182 Board member is sent then the entire Board should be included in the e-mail. Mr.  
183 Ott stated that there would be a motion made if the Zoning Administrator was in error  
184 either issuing the permit or denying the permit. Mr. Ott stated that he does not know  
185 which way it is but it could be two different ways and that is why 4 is in there under  
186 presentations. Mr. Ott stated that there could be more than one opponent; there could  
187 be a group of opponents that want to be sworn in. There would be one appeal. Mr.  
188 Willm asked for confirmation that at the end the Board makes a vote to either accept  
189 the appeal or deny the appeal. Mr. Ott stated that the Board would make a ruling if  
190 there was an error by the Zoning Administrator. There was a question regarding how  
191 the motion would be presented. Mr. Ott answered "I make a motion to rule that the  
192 Zoning Administrator was in error issuing the permit or denying the permit". Mr. Ott  
193 stated that he has had conversations with Mr. Tom Britton regarding this. Ms.  
194 Watson stated that the Board needs to be specific as to why it is being denied so that  
195 they could appeal to the next level. Mr. Ott stated that the board is not denying the  
196 permit; they are stating that the Zoning Administrator was in error or not in error and

197 the Board would need to state the first motion. It was confirmed that the Board does  
198 not rule on the appeal; the ruling would be on the decision. Mr. Ott stated that if there  
199 was a permit the Board looks at the permit and states whether they are denying the  
200 permit, issuing a permit where there was not permit issued or changing the wording in  
201 the permit and then the permit would be issued at that time. Mr. Ott stated that at this  
202 point the Board acts as the Zoning Administrator. There was additional discussion  
203 regarding this. Mr. Chamberlain and Mr. Willm stated that the Board orders the  
204 Zoning Administrator to issue the permit; they do not issue the permit themselves.  
205 Mr. Willm stated that if the Zoning Administrator disagrees then it can go to Circuit  
206 Court. Mr. Ott disagreed and stated that if you look under the powers of the Board of  
207 Zoning Appeals at this point the Board becomes the Zoning Administrator and at that  
208 point the Board issues the permit or denies the permit. Mr. Willm questioned if the  
209 Board, themselves, would then sign the permit. Mr. Ott stated that this was true  
210 adding that the Board assumes all powers of the Zoning Administrator. Mr. Willm  
211 disagreed that the Board would sign and actually issue the permit. Mr. Chamberlain  
212 read a section that read that the Board has all of the power of the officers from whom  
213 it's taken and may issue or direct the issuance of a permit. Mr. Ott stated that he  
214 would ask Mr. Britton what the normal procedure is. Ms. Watson referred to one of  
215 the forms that is available that would apply to the decision on the appeal; the  
216 individual could operate off of the signed form once a decision is made. Mr. Ott  
217 quoted that 'all of the final decisions and orders of the Board must be in writing and  
218 permanently filed'. The Board can "reverse, affirm or totally or in part or may  
219 modify the order, requirements, decisions and determinations and to that end we have  
220 all the powers of the Officer from which the appeal is taken and may issue or direct  
221 the issuance of a permit."

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223 It was confirmed that once the decision is made it cannot be overturned by the town.  
224 The bottom of the form states that there are 30 days to appeal the decision. This  
225 could go all the way to the Supreme Court. In one of the papers it states that the  
226 circuit court does not normally change what the Board of Zoning Appeals passed.  
227 Mr. Ott stated that this is why the Board needs to know what they are doing; the  
228 Board affects peoples' lives. Ms. Watson asked what ramifications the Board is going  
229 to place on an individual who has an appeal and is halfway through the job and the  
230 Board decides to deny his building permit. Mr. Ott stated that this is why it is a tough  
231 decision. Ms. Watson stated that she feels that the only time someone will file an  
232 appeal is if it affects them. There was some additional discussion regarding 15 days  
233 and 30 days and not allowing work to begin until the appeal process is over.  
234 Holding off possible income for contractors was discussed. Mr. Ott stated that he is  
235 hoping to hold a workshop at a future meeting with Tom Britton. Mr. Ott stated that  
236 at this meeting the Board is just debating and understanding the process. Ms. Watson  
237 asked if once an appeal is filed does the work have to stop at that time; are the proper  
238 people notified and who notifies the contractor? Mr. Ott stated that the secretary is  
239 "all powerful" and they would be the one to notify; the secretary must conduct the  
240 business of the Board. Ms. Watson asked when the contractor would be notified. Mr.  
241 Ott questioned who the Zoning Administrator pleads this out to and stated that there  
242 needs to be a description for this. Mr. Ott stated that the Board will need to do their  
243 homework before the appeal comes before them. Mr. Ott stated that there is currently  
244 a limitation on how long members can sit on Boards but he feels that this Board has a  
245 lot to learn and needs time. The end of the hearing the Board will make a final

246 statement which will be the final decision letter that gets mailed out. The Chairman  
247 will do this. Mr. Ott stressed that the Board needs to have their procedures down and  
248 they need to know what they are doing. Tweaking some of the bylaws and forms was  
249 discussed.

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251 Ms. Watson asked if the Board has a choice in choosing their secretary. Ms. Pinnell  
252 stated that there are not that many appeals submitted but she is not a zoning official to  
253 handle most of the secretarial duties. Mr. Ott stated that perhaps this is what the  
254 Board needs, a non-zoning official. Ms. Pinnell stated that she is not familiar with the  
255 appeal process and most of this is handled in the Building Department. Mr. Ott stated  
256 that the secretary does not have to work for the town; the Board could appoint  
257 someone outside of the town. Mr. Ott stated that most of the appeals and variances  
258 have to be recorded verbatim. Mr. Willm stated that the bylaws read that the Board  
259 shall appoint a secretary. Mr. Ott stated that the Board has made some rulings and  
260 decisions in bulk and he does not ever want to do that again. The Board had seen the  
261 changes and approved all changes; each individual change could be voted on. Ms.  
262 Watson asked if the secretary had to be an employee of the town. Ms. Pinnell stated  
263 that in most municipalities the secretary of the Board of Zoning Appeals is usually  
264 someone from the Building Department. Mr. Ott stated that perhaps we should ask  
265 Ms. Pinnell to be with us at the appeal. Ms. Pinnell stated that she would be at the  
266 next meeting. Transcribing minutes was discussed. Mr. Ott stated that motions made  
267 in the future will be verbatim and this should be written in the bylaws. Discussions  
268 would be summarized but motions would be verbatim. It was confirmed the appeals  
269 meeting would be held October 28<sup>th</sup>. Mr. Ott recommended that the Board write  
270 down their concerns and they could be given them to Mr. Britton and a workshop will  
271 be set up.

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273 **5. REQUEST TO FILL OPEN SEAT ON BOARD OF ZONING APPEALS**  
274 Mr. Ott requested that the Town Clerk put in a request for the council to choose another  
275 member for the Board of Zoning Appeals.

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277 **6. PUBLIC COMMENTS**  
278 *Ann Dodge, 1415 Poplar Dr. N.:* “I just want to tell you each one of you on this board  
279 has reaffirmed my faith that volunteers can do anything. You have all grown; I have seen  
280 it, in knowledge you seek more and you try very hard to do the right thing. I am so proud  
281 of you, I can’t tell you.”

282  
283 *Joe Zoltak, Pine Drive:* “I want to rubber stamp what Ann said. Pretty good discussion  
284 it got to the point of the hardship if somebody had been moved forward and then asked  
285 take something down. I’d just like to bring to your attention some of the recent articles in  
286 the paper where our own town did the same thing. They built something under the pier  
287 and OCRM made them take it down; they started construction of a bandstand there I  
288 think on July 3<sup>rd</sup> it was stopped, so, something to keep in mind when you’re making those  
289 decisions. One of the concerns I kind of had, maybe I didn’t understand it correctly, just  
290 correct me, but sounds like the procedure when you present something there’s a time  
291 limit on that and then the rebuttal there’s a time limit. The concern I have with that is this  
292 is a judicial board and the next step is to court and the court process does not restrict time  
293 and I have a concern that by restricting time limits of people is denial of due process so

294 you may want to think about that. Denial of due process and I think we're all entitle to  
295 that. Thank you."

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297 **7. BOARD COMMENTS**

298 **Holly Watson:** "I want to thank everybody who put these together for us so that we'll  
299 have something to read and look at. Thank you very much."

300

301 **Mr. Ott:** "That's our secretary down there at the moment. I have to compliment her too  
302 because I call at the strangest times during the day and say 'oh we got to look at this, got  
303 to look at that', she knows I'm worried that we do this correctly and I'd like to make a  
304 comment, Mrs. Dodge, please take this to the town council because I know one of the  
305 town council persons said that this board was too, what was the word he used, stupid, to  
306 handle certain . . ."

307

308 **Ms. Pinnell:** "I don't think that's what he . . ."

309

310 **Mr. Ott:** "I think that's what he said because he did a public apology to me. He said that  
311 we weren't educated enough to handle special exceptions and that's why special  
312 exceptions were removed from this Board and sadly enough given to one individual that  
313 can now make special exceptions to every ordinance behind their closed doors. Where  
314 special exceptions to ordinances needs to be held by a decision making body, either the  
315 Town Council or the Board of Zoning Appeals that debates and discusses the special  
316 exception in public and not anybody else and vote, the town council, I would feel free to  
317 have the town council handle special exceptions if we aren't educated enough to do it but  
318 I would like to have special exceptions back where it belongs, here, where it's held in  
319 every other little town and borough in the country."

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321 **Mr. Willm:** (microphone was not working properly. Some inaudible) "I want to thank the  
322 citizens for coming out tonight. It's a sparse crowd but it's the quality (\*\*\*) . We do  
323 thank you all for coming out and thank you Sharon for everything she's done for us and  
324 (\*\*\*) on the board and the chairman for digging out and (\*\*\*) that baby at his side. (\*\*\*)  
325 time away from family and stuff but it does, I think, I know I've learned an awful lot in  
326 the last couple years that I've been on here (\*\*\*) worked with everybody on here and I  
327 think that we all need to do our homework a little bit (\*\*\*) before us and going forward I  
328 think we'll do a good job and thank you everybody for coming."

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330 **Mr. Ott:** "You guys made me feel a lot better, we're going to handle this good and the  
331 Town of Surfside Beach is going to look good."

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**8. ADJOURNMENT**

Mr. Willm made a motion to adjourn. Ms. Watson seconded the motion. **The meeting adjourned at 8:20 p.m.**

Approved: \_\_\_\_\_  
Sharon Pinnell, Town Clerk

\_\_\_\_\_  
Ron Ott, Chairman

\_\_\_\_\_  
Guy Lanham, Commission Member

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Robert Blair, Commission Member

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Arthur Chamberlain, Commission Member

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Darrell Willm, Vice-Chairman

\_\_\_\_\_  
Holly Watson, Commission Member

\_\_\_\_\_  
Vacant, 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.**