



Town of Surfside Beach Construction Board of Appeals
Council Chambers, 115 US Highway 17 North, Surfside Beach, SC 29575
843.913.6111 – www.surfsidebeach.org

January 22, 2018

1. Call to Order. Chairman Arteaga called the meeting to order at 6:30 p.m. Chairman Arteaga and Members O'Brien, Oslin, and Stewart were present. Member O'Quinn was absent. Two Seats are vacant. A quorum was present. Also present: Town Clerk Herrmann, Deputy Town Administrator Harrah, and Code Enforcement Officer Henrick.

2. Officer Election for 2018.

i. Chairman. Mr. Stewart moved to elect Mr. Arteaga to serve as chairman. Mr. O'Brien second. All voted in favor. **MOTION CARRIED.**

ii. Vice Chairman. Mr. Stewart moved to elect Mr. O'Brien to serve as vice chairman. Chairman Arteaga second. All voted in favor. **MOTION CARRIED.**

3. Minutes Approval. April 26, 2017. The minutes of the April 26, 2017 meeting were approved by acclamation.

4. Recital of Appeal #CBA2018-01. Chairman Arteaga explained the appeal was because fill dirt was moved to 1514 South Ocean Boulevard without a permit.

Ms. Beth Kohlmann said, "I did the appeal, because I feel that they [the town staff] were negligent in their application of these ordinances," and presented her appeal (a copy of which is on file) for about 45 minutes, during which several questions were asked and answered. She explained that because she was unsuccessful getting information from staff, that she did her own research. The ordinances state that a development permit is required before any kind of work is done, plus the fact that code states specific requirements for fill. The key comments were:

1. *Interpretation of Chapter:* In the interpretation and application of this chapter all provisions shall be considered as minimum requirements liberally construed in favor of the governing body, and deemed neither to limit nor repeal any other powers granted under state law. This chapter is not intended to repeal, abrogate or impair any existing easements, conveyance, or deed restrictions. However, where this chapter or another conflict or overlap, which imposes the more stringent restrictions shall prevail. The more stringent of the ordinances prevail. FEMA's model ordinance also states the more stringent code prevails.

2. *Foundation for Appeal:* The fact that fill dirt was deposited and leveled without proper permits at 1514 South Ocean Boulevard.

3. *Clarification:* Multiple meetings were held with town staff, although none of them resulted in satisfactory explanations. (12/1/17; 12/4/17; 12/6 to 1/19/2018, several emails; 12/8/2017; 12/13/2017)

3. *Development Permit:* Staff had no knowledge of "development permit;" however, Section 14-5 establishes same: A development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities.

4. *Demolition Permit:* Staff issued a demolition permit for subject property, but that only allowed destruction and removal of existing structure. No other work should have been done.

5. *Stormwater Plan:* Fill dirt was leveled without submission of stormwater plan. Section 14-49 sets forth the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by the State Statute. In addition if site characteristics indicate that complying with these minimum requirements will not provide adequate designs of protection for local property or residents, it is the designer's responsibility to exceed the minimum requirements as necessary. Town of Surfside Beach officials shall be

responsible for the coordination and enforcement for the coordination and enforcement of the provisions of this article. Section 14-60 sets out the design requirements and responsibilities of the application for a stormwater plan.

6. *Variance Forms*: Staff had no knowledge of the 'no fee' flood variance/appeal form that was adopted by Town Council.

7. *Proposed amendments to the Flood Ordinance*. A challenge was issued to the proposed changes to the flood ordinance, which in her opinion did not comply with the DNR Community Assistance Visit Report, a copy of which was submitted in her package.

8. *Coastal High Hazard Areas*. The Coastal A Zone is a flood zone that has specific restrictions with regard to fill dirt. Certification from a registered professional engineer separate from submitted plans. Section 14-22, #6, states there shall not be fill material used as structural support. Noncompliant fill may be used around the perimeter of the building for landscaping, aesthetic purposes, provided the fill will wash out from storm surge.

9. *Development Permit and Certification Requirements*. Section 14-14 states application for development permit shall be made on forms furnished by the town prior to any development activities. In particular, a certified survey is required that shows all areas to be cleared, cut or graded, and a complete stormwater plan as set forth in Chapter 14, Article III, Stormwater Management Ordinance.

10. *Standards*. Section 14-18 requires that any unauthorized construction inconsistent with plans approved by the town will be required to return the area to its original condition. This requirement includes existing properties. Section 7 of 14-18 refers to fill. Fill and raised slab construction is discouraged because storage capacities removed from floodplains; elevating buildings by other methods should be utilized.

Ms. Kohlmann believed staffs' failure to adhere to and enforce these codes was an insult not only to the members of the CRS committee, stormwater committee and the planning and zoning commission, who all worked hard for the town to get the best rating possible, but also to all town residents. She talked at length about requirements for fill dirt; provisions covering infiltration tests; license geotechnical professionals that certify soil to be used; drainage and storage, and cited the DHEC statutes for Stormwater Management and Sediment Reduction Regulations; in addition to how the situation should be remediated. Ms. Kohlmann had two audio recordings that were not accepted into evidence, because there was no way to listen to them. In closing, she reminded the board that when codes conflict, the more stringent rule applies.

6. REBUTTALS AND/OR EXHIBITS.

i. Town of Surfside Beach.

Mr. Harrah had several comments regarding the validity of the complaint: the complaint submitted is not on the form that was provided by the town in Exhibit 1 on January 8, 2018 at 11:06 a.m.; several email messages were read regarding specific requests to clarify what type appeal was correct; the attorney's opinion that the Construction Board of Adjustment and Appeals should hear Ms. Kohlmann's appeal, and finally, that any person aggrieved by the decision of this board or any taxpayer may appeal the decision to the court. The attorney directed staff as to which form should be sent to Ms. Kohlmann. Exhibit 2. The contractor obtain a permit on 10/31/2017 to demo the structure, which does not expire until 4/28 2018, and on 11/06/2017 a survey was submitted for subdivision of the lot that was approved by me on 11/13. Mr. Henrick met with the applicant and provided our interpretation of the codes. On 12/22/2017 the plans and stormwater engineering was submitted. The expiration date of the appeal decision of the local administrator is 12/23/2017 per 14-17(h) 10 days. The meeting date that was on 12/13. On 12/27/2017 the stormwater engineering was approved. Mr. Harrah continued outlining the dates of specific actions up to this hearing date, including that the driveway encroachment was approved by public works, and corrections needed to the plans and the structural plans were approved. Ms. Kohlmann's appeal was submitted 1/11/2018, which was 29 days after the meeting date of 12/13/2017. The structure was moved and the contractor excavated the foundation in the footer leaving a bowl and ponding in the area. The contractor put four loads of beach compatible sand from the lot on the same side of Ocean Boulevard, which was issued a permit on 11/28/2017. You do not have the issue of 11/28 where the permit was issued. Mr. Farria's affidavit states in paragraph 3 that the dirt can be put there in the existing foundation area would need to be remain the same. There are conflicts within this ordinance, and the understanding of the definition of fill as it pertains as the rise of the lot to raise the building above the base

flood elevation. Exhibit 3 is the Town of Surfside Beach Ordinance 14-17(6), line 144-149, states that no commercial development located in the X, VE, or AE zone shall have the average great base of adjacent lots. A foundation current survey shall be provided prior to the foundation being poured or any piers to be filled, etc. to stating, this requirement shall not apply to Coastal A Zones, V, VE zones as no fill shall be placed in in special flood hazard areas. Mr. Harrah continued his recital with various code sections that justified staffs' the actions and interpretation of the code. Citing various codes and FEMA bulletins, Mr. Harrah said there is no compelling reasons to restrict the placement of compatible nonstructural fill beneath the building, if it will prevent ponding or as long as other drainage requirements of grade or slope can be satisfied. However, fill may not be used for structural support of any building. In this case the developer put compatible fill from a neighboring lot to level the lot to prevent ponding, and in his opinion, it complied with code requirements. Based on those assertions, he asked the board to deny the appeal.

ii. Appellant.

Ms. Kohlmann reiterated that the more stringent of the restrictions applies, and a FEMA bulletin is not an ordinance. My appeal cites ordinances that were violated. I don't understand why permits were not made available to me, and the form I used was given to town council while I served.

7. Questions to Appellant and/or Town.

Chairman Arteaga asked Ms. Kohlmann what she wanted done to remedy the situation. Ms. Kohlmann said I did this to bring it to light, because he is attempting in the future to change our flood ordinance, which will affect everybody in this town. Now that we are here, all of sudden staff has all this information that was not available when I asked for it. Communication [is lacking.] This is not a game. A resident has never challenged staff on anything like this, but I really feel strongly that the board is not getting the whole picture, especially when you haven't listed to the audio.

Ms. Patti Magliette, Harbor Lights Drive, addressed the board regarding work done by the CRS committee to ensure the town had the best flood insurance rates and to make the town more flood proof than surrounding areas. I do not want your decision today to chip away at the flood ordinances that the town adopted which are more stringent than what FEMA requires.

Mr. Harrah suggested having the fill tested for compatibility by an engineer to minimize expenses to the developer and to resolve the questions, because the fill is from four block away and it is compatible. The town has no reason to chip away at ordinances, but uses the FEMA bulletins as all professionals do to have the most current information and resources upon which to make interpretations.

Ms. Janet Gambino, Hollywood Drive South, said the only solution so we will not mess with our flood insurance is to this is to have the fill dirt removed, as Mr. Johnson said he would. Let him remove it and bring in certified fill.

Ms. Lynn Livesay, 10th Avenue South, said the board is heading in the right direction. They don't want to chip away; but why are we making the man remove soil that could be approved and bring in other soil? It's costing too much money. I know it's the principle. But it's not chipping away at anything, because we're sending the message that although there have been errors, corrections are being made. We're not setting a precedence here. We're setting a standard that's in writing. I am quite sure staff won't let this happen again. Thank you to the board for tolerance and deliberating the matter instead of responding to the negativity.

Mr. Harry Kohlmann, South Ocean Boulevard, said I know you have ordinances. They weren't followed. Norm said he made a mistake and he was willing to fix it. That's fine. But, when you make mistakes, sometimes you gotta pay. The town told him it's okay and he could spread it out. The town should pay for it. It's a slippery slope to do a soil analysis, because we all know the rogue contractors that work at nights and on weekends. There are laws; staff is supposed to enforce them. In his opinion, Mr. Harrah was the cause of the situation and he should pay out of own pocket to correct it.

Mr. Tom Dodge, 8th Avenue South, said the town writes ordinances. I, a citizen of the town, is expected to follow those ordinances. I, the citizen, want the town to follow the ordinances. They're not doing it.

8. Deliberation and Decision of the Construction Board of Appeals.

Chairman Arteaga believed the board understood that the fill dirt is an issue for most people. Trying to stick to the complaint and using the letter of the law, it does state that a permit is required whether it's a developer, zoning, or building permit. That's subject to interpretation, and again, we can probably argue these all night long. The question is, who is responsible for paying to remove the fill. I don't think it's going to come out of Mr. Harrah's pocket because he acted on behalf of the town, so the town will have to pay for it. So basically, this is money that is going to come out your taxes. (*Several comments from the audience.*) After a lengthy discussion about options and various procedures and codes, the board began deliberations at 9:04 p.m.

At 9:23 p.m., Chairman Arteaga said looking at the affidavit of facts stated by the certified building official, I understand this as he wanted to have enough direct to fill the void, and any excess dirt must be removed. Based on the circumstances, Chairman Arteaga moved that the dirt be removed off-site; the equivalent of the four fills of dirt as determined by the town engineer, and then immediately right after that, bring in an approved, suitable, tested soil to fill the void and not to create any more hazardous or flood conditions. Chairman Arteaga, and Members Stewart and O'Brien voted in favor. Member Oslin voted against. **MOTION CARRIED.**

9. Board Comments. There were no comments by the board.

10. Adjournment. Chairman Arteaga adjourned the meeting at 9:25 p.m.

Prepared by submitted by,

Approved: _____

Debra E. Herrmann, CMC, Town Clerk

Orlando Arteaga, Chairman

Danny Oslin, Board Member

Shane Stewart, Board Member

Jon O'Brien, Board Member

absent

Jack O'Quinn, Board Member

Vacant

Vacant

Clerk's Note: This document constitutes action minutes of the meeting. In accordance with FOIA §30-4-80 (A) and (E) meeting notice and the agenda were distributed to local media and subscribers on the town's email subscription list. Please bring a new, unopened flash drive to receive a free copy of the audio recording from the town clerk. The meeting was posted on the town website calendar, the entry door at Town Council Chambers, also on the Town marquee.