



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](http://www.surfsidebeach.org)

**#CBA2015-01 Hearing Minutes  
January 9, 2015**

- 1. Call to Order.** CBO Otte called the hearing to order at 6:30 p.m. He explained that this was the inaugural meeting, therefore a chairman would be elected by the membership to conduct the hearing. Board members present: Chairman Arteaga, and members Stewart and Pellicci. Members Morrison and Trail were absent. A quorum was present. Representing the Appellant: Attorney Robert Gwin, and Contractor Jackie Donevant. Representing the Town: Certified Building Official (CBO) Otte. Also present: Town Clerk Herrmann.
- 2. Pledge of Allegiance.** CBO Otte led the Pledge.
- 3. Agenda Approval.** The agenda was approved by acclamation.
- 4. Election of Officers.** Mr. Arteaga was elected chairman by acclamation.
- 5. Business. Appeal No. CBA2015 by Robert Gwin, attorney, representing William Rempfer, Sr. appealing the Order of the Town of Surfside Beach Building Official regarding violations to the Town of Surfside Beach Flood Damage Prevention Code in accordance with Section 14-16(h) of the Town of Surfside Beach Flood Damage Prevention Code.**

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**Appellant Presentation**

Mr. Gwin: "Please forgive me for a moment, while I get organized. As I stated, I am here on behalf of William Rempfer and we've appealed the decision of Mr. Otte dated October the 1<sup>st</sup>, 2014. I know that Mr. Otte informs me that he has provided you a packet of materials. I, likewise, have provided a packet of exhibits that may be referenced during the presentation. But, just by way of background, Mr. Otte issued a decision October 1 of 2014. This action begins based upon a letter from the Planning, Building and Zoning dated July 29<sup>th</sup>, 2014, which was directed to William Rempfer. It was a citation for a violation of 14-18-5(c) of the Flood, Flood Damage (\*\*) Prevention Ordinance, excuse me, and in it, it contained a directive that all drywall and electrical in the garage area must be removed. I know it's difficult to envision what we're talking about. I don't know if you're familiar with the property at 1014 Dogwood Drive. We're talking about the garage area. And, just so you realize that this is not a black and white issue, the base flood elevation for this garage is about three feet above the garage floor. Therefore, the lowest (\*\*) permitted floor elevation is about four feet from the garage floor. I say that, that as I interpret it, Mr. Rempfer and his wife would be able to finish or put sheetrock, regular sheetrock down four feet from the ceiling. That is four feet from the ceiling to the mid-wall. I recognize that lacks appeal; that lacks functionality, but that's just where the base flood elevation falls. We would like for the Board to consider that in making their determination as to whether or not that the work that's been (\*\*) will be permitted. I don't mean to usurp Mr. Otte's position, but I'll briefly summarize his decision. Based upon the arguments that we argued at the hearing on September 19<sup>th</sup>, he determined that proper notice of the violation was given. He found that no development permit was found. He found that the drywall that was installed was not flood resistant, and he determined that the construction performed after the issuance of

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the certificate of occupancy should be removed, and we therefore, filed this appeal. And, forgive me, I recognize this is a new board. It's my pleasure to be the inaugural appeal before this board."

Ms. Donevant: "I was just gonna say to make it easier for you to understand, [Mr. Stewart] probably does; he's in construction. I'm just trying to help you, because I know, if you take a look at the chair rail along there (indicating the wall), from the drywall up is allowed, but below that, think of that, that's the wall that he's talking about to show you the four feet, if that helps. It's a good build from say the chair rail (\*\*.)"

Mr. Gwin: "I'm not in construction either, but I don't like (\*\*) lawyer talk. But, if Mr. Rempfer is not satisfied with the decision of this board, I have a duty to appeal to the court. I have to weigh certain procedural, what I, objections that we have to the process. I gonna be boring you going through these, but I just need to state it. One thing we raised as, there was improper notice of the violation. Section 14-16(e) of the Flood Damage Prevention Ordinance requires written notice. The letter dated July 29, 2014 was directed to only William Rempfer. The property is, in fact, owned by he and his wife, Cheryl DeFalco. In the packet of materials I've provided to you, I've given you copies of the deed; two deeds. One where it was originally conveyed to Cheryl Rempfer and William Rempfer, and the second where there was a corrective deed where she advised that her correct legal name is Cheryl DeFalco. So, the second deed, Exhibit A-1, shows that Cheryl DeFalco and William Rempfer jointly own the house. We, therefore, argue that there was improper notice of the violation, because both the owners were not on the letter. We would also raise the questions of whether notice imposed in the July 29, 2014 letter that references a violation of 14-15-5(c). If you review the ordinance, there, no such ordinance exists. And as I candidly told Mr. Otte in our hearing, I know that they were referring to 14-15(e)(3), and in his decision he said because; I'll paraphrase, because the lawyer was able to find it that would be proper notice. I would think this is not the issue. The issue is whether a citizen of Surfside Beach upon receiving a written notice can go to the ordinances and find a particular ordinance that was filed, that is cited in the written notice and determine what they've done wrong. I think the fact that a lawyer can find it is not (\*\*) issue. We'd also raise the fact that there was improper enactment of the Flood Damage Prevention ordinance, because there was no public hearing. The Town of Surfside Beach, (\*\*) that this was part of the Town of Surfside Beach Comprehensive Plan and State Law requires a public hearing. Thank you for your patience. I do recognize that's boring and I have to state it for the record. (\*\*) Now, the substantive part. There was a; Mr. Rempfer and Mrs. DeFalco bought this property from Kirk and Barbara McQuiddy. They had entered into a non-conversion agreement, which is Exhibit C in the documents provided. That non-conversion agreement permits interior walls below the base flood elevation to be unfinished or constructed of flood resistant materials. As I understand our purpose here today is to question whether or not the drywall, the sheeting that was used was flood resistant. If you look at Exhibit B in the records in the packet that is invoice for the work that was done, and I will just go forth in saying it was the intent of both the contractor and Mr. Rempfer to comply with the ordinance, and I say that, if you'll look on the invoice, Exhibit B, when they talk about the insulation, they're insulating the wall four feet of it with R-11 bat insulation and four

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feet of it with Styrofoam. I would submit to you that the only reason that we have that dichotomy of insulation was their desire to comply with the Flood Damage Prevention ordinance, and it was done (\*\*)

go forth and say hang and finish the wall with XP boards. We have provided Mr. Otte what manufacturer's specs we had, could find on the XP boards. The manufacturer's specs, again, of being technical in nature, I'll just take a few brief glimpses, talk about improved moisture resistant board, added mold resistance, extra protection against mold and mildew, and in exhib [sic], this is Exhibit E in that packet, Exhibit E-2 encased in a heavy mold mildew moisture resistant, and I'll be candid with this Board, I have not been able to find in those manufacturer's specs where it states flood resistant. I can only say that it was the belief of Mr. Rempfer and I believe it was the belief of the contractor that they were putting flood resistant drywall, sheetrock, however you want to (\*\*)

it, in that garage encasing. We would ask this Board to allow us to keep the partition in its current, current place. In the event that this Board determines that because the sheetrock is not flood resistant, if you determine that then we would ask that we be permitted to remove existing sheetrock and replace it with flood resistant sheetrock so as to render it in compliance with the Flood Damage Prevention. I would ask this Board to consider this like a variance application (\*\*)

asking for forgiveness as opposed to permission. I, I recognize that. Under Section 14-26 [sic] the factors outline for you to consider when considering a variance. One of those factors, and I would think the most important, is the danger materials may be swept onto lands of others. In that that packet of materials you've got, you can look at Exhibit F that is a survey of the property in question. You will see that Mr. Rempfer has a swimming pool directly behind the house. Dogwood Lake is to the northeast of his property. Northwest of his property is the backyard of Kirk and Barbara McQuiddy. I would say looking at that plat, heaven forbid that we reach a flood waters that would come that high, any debris that would result from his garage would either be swept into the rear pool, swept in Dogwood Lake, or catch the corner tip of the McQuiddy back yard. I would argue that there was, you know, little chance there's gonna be property damage to the property owned by others. Another factor to be considered is damage to life and property. For the same reasons, I would say there's little chance of danger to life and property, again because of the configuration of his lot and the (\*\*)

location of the house on the property. I'm not citing all of these, but I'm, I'm trying to hit the bullet points. The susceptibility of the area to flood damage and expected heights and velocity of any water. As I indicated, (\*\*)

paraphrase, the garage floor level is 13 feet above sea level. The base of flood elevation 16 feet is three feet above that. What I'm arguing is that it's because of the location of the house and its distance from the beach, it's gonna be a remote chance it's gonna be affected by the flood level, or it's the, a, the more catastrophic the storm would have to get before it would be in danger. As I've indicated, in closing I would say, it's the intent to, it was the intent of Mr. Rempfer and the contractor to construct and conform to the Flood Damage Prevention ordinance. Again, looking at the invoice where they used the two different types of insulation, depending upon where it was, evidences that intent. We would ask this Board to consider that; consider the location of the house; its proximity to Dogwood Lake; the swimming pool, and the rear corner of the McQuiddy yard they don't [sic] fall under the variables of the factors you consider when granting a variance and allow the sheetrock, the improvements to stay in place as they currently are. In the event that this Board determines that that's not acceptable then we would ask for the

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opportunity to replace the sheetrock with what is determined to be flood resistant sheeting or sheetrock that is in compliance with the Flood Damage Prevention Ordinance and with the Board's indulgence, if I may confer with Ms. Donevant for a second and I'll be back (\*\*.) Thank you. That's unnecessary questions; I have nothing, nothing else."

Mr. Stewart asked for a flood elevation certificate. CBO Otte provided a copy to the Board. Time was taken by Board members to review the certificate.

Mr. Stewart asked what the height was of the receptacles. CBO Otte referred to pictures on page 3 and said about 4 feet. Mr. Stewart asked if the receptacles remained in that location. CBO Otte said he had not been in the house since the CO (certificate of occupancy) was issued.

Mr. Stewart asked if a partition wall had been built in the garage. Mr. Gwin responded yes from the floor. Mr. Stewart asked if there were bedrooms or entertainment rooms; was it heated area. Mr. Gwin understood it was storage, and proceeded to explain the configuration (\*\*).

Chairman Arteaga said so the Board could visualize the condition of the room, the discussion was about a ground level garage floor, the walls that had sheetrock coverings were the perimeter walls. He asked if there were any interior partitions in the garage. Mr. Gwin said there was a partition at the rear wall. CBO Otte said the number 3 pictures were all exterior walls; those pictures were taken to show the vents on the exterior walls. Chairman Arteaga asked if those walls had sheetrock applied. CBO Otte said they were not covered with sheetrock when he issued the CO. He reiterated that he had not been in the property since the CO was issued. The pictures on number 5 were taken by staff in April 2014. The photos were not too clear, but they did show partition walls with drywall compound. Chairman Arteaga said the original garage, with areas originally intended to be storage purposes had now been partitioned. CBO Otte reiterated he had not been in the property.

(\*\*A discussion with several people speaking at once ensued.) CBO Otte said Ms. Donevant explained which walls were partition walls and pointed those out to the Board on the photograph.

Ms. Donevant explained that Mr. Rempfer had a very expensive car that he wished to protect from his yard men and landscapers moving equipment in and out of the garage, which was why the partition wall was added. Ms. Donevant said, "He actually thought, I've spoken to him, he actually thought and we all thought that that was flood resistant material we were using, and then of course [CBO Otte] put the (\*\*) on him. But that was, that was his purpose."

Chairman Arteaga asked if there was a crawl space by the garage; a photo was labeled crawl space. CBO Otte said it was all full height. Chairman Arteaga said the area in question was the garage which was enclosed for the car. Ms. Donevant (\*\*). CBO Otte said when the CO inspection was done, all the exterior walls were in place, which is shown in the pictures. The pictures were taken to show the flood vents were in place on the exterior walls.

### **Town of Surfside Beach Presentation**

CBO Otte: "What I would like to do is to, Mr. Gwin has kind of gone into some of the, some of the appeals and what we basically would like to do here as a Town is just kind of answer those appeals explaining what the reasons that we did what we did and what we found so that you all will understand where we were approaching this from. The letters that went out to Mr. Rempfer in August, we, we did a search on the Horry County website for property owners and his was the only name that came up on the property. So, at that time, that's why that letter was addressed to him, because he was the only one showing on the county website. After we were informed by Mr. Gwin that they found; we got a letter back from Mr. Gwin. We also found on the Assessor's Office of Sales that the property had been sold and

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Cheryl DeFalco was now listed as an owner. So, staff sent a letter with the information, a second letter went out with the information we had that Mr. Rempfer was the owner, but any future correspondence now would be sent out to Ms. DeFalco since she has now been put upon the deed, and we did some research up at the courthouse, and basically that data isn't available yet to copy. So, the new one that was done at the end of August it's been recorded there, but it wasn't available for us to get it on the microfiche and make a copy of it. The, the flood ordinance; there was a typo in the letter, and my, the fact that, you know, Mr. Gwin was able to find the number that's and he was looking on line, I guess, Mr. Gwin, you found that on line?" Mr. Gwin responded from the floor (\*\*). CBO Otte: "Okay, okay, and basically, what you were reviewing, the numbers were a little different or something had happened that one of them was wrong. But, the actual section of the ordinance is 14-18-5(c) which is what the violations come from. The, a, the matter of the public hearing in Section #4 of his appeal, we do have a copy of the Myrtle [sic,] the Surfside Beach Town Council, the meeting that was held November the 12<sup>th</sup>, 2013 which shows the public hearing was held on the Comprehensive Plan. So, we do have a copy of that from those records. So, that's a, that particular one that the ordinance wasn't properly enacted was actually enacted, because it was voted on at that council meeting in November of 2013. I have looked for permits for the work that was done for the drywall. It was done with partition walls that were put up. I've got nothing in my computer system that any permits were issued for that work, which that is permit required work. We have nothing around that time frame that Winco Drywall had on the date of their invoice; nothing shows up in our system anywhere. If you all would like, I did make copies of the permits that I could find from the time frame around there. I've got copies of different permits that were issued, if you all need to see those. Also, in here flood proofing is not, is not a residential, basically, you cannot flood proof a non-resi [sic], or you can flood proof a non-residential property. You cannot flood proof a residential property. So, the Flood Damage, Flood ordinance that was enacted, there, you know, it states that only non-residential structures can be flood proofed. The information that we received from Mr. Gwin, Mr. Rempfer's attorney, basically he gave us a couple of pieces of information and in your packet number 11 shows that the technical bulletin, flood damage resistant materials, and in his, in his information to me they drew an arrow to, on Table 2, which is the second page of this, that shows a water resistant fiber reinforced gypsum exterior sheeting is what was used when the work was done on the, the basement down here, or the, a, ground level on the, on the house. Attached to the back of Winco's invoice is the information, is the information that was provided to me on the drywall that was used; the XP board, and I have, have highlighted the section in here that it's a moisture resistant, and it can be used as a tile backer; it's limited water exposure, but also highlighted there it says panels are for use interior, on interior areas. Now, the table that they were referring to says it's an exterior sheeting. This, what they supplied me, shows it as an interior material. So, I, I question whether the material they put up is actually considered flood resistant, because it wouldn't meet Table 2's requirements of fiber reinforced for exterior use. The, a, of course, (\*\*) the non-conversion agreement that was signed on the property would have nullified any permit being issued, because you cannot finish with drywall the basement areas in flood, flood areas of the structure, unless of course, it was flood resistant materials. And, again, the material that they supplied this information on was not considered flood resistant. What I would like to, to also

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make note of here, in the section of violation under the a 14-18-5(c) in the sections underneath of it, in Section 2, it does state that interior portion of such enclosed areas shall not be finished or partitioned or finished into separate rooms and must be void of utilities, except for essential lighting, and cannot be temperature controlled. So, without any inspections of that property, I don't know whether any of this was done; if the room is temperature controlled; if it's broken up into partitions; we can only guess from the pictures that we have gotten that were a little fuzzy that the walls were finished down there. There was [sic] some partition walls put in, which basically would nullify the, the vents that were put in the structure to allow the water to free flow through. It's now stopped by the partitions, which of course, the water is gonna build up against and cause those to be pushed out eventually and will do some damage to the, possibly to the structure of the building. So, again, we, we've not done any inspections inside. And, we've [sic] basically asking that the house, the area that's in question, that they remove the partition walls and go through the proper channels to, to be allowed to put up what they can put up, but not to partition the building off, and use material that's not flood resistant."

Chairman Arteaga asked CBO Otte to verify the floor and property elevations. CBO Otte said that information was stated on the elevation certificate and explained the levels were for the final construction:

- o The property is situated in an AE15 Zone.
- o The top of the bottom floor, which includes any basement crawl space or enclosure floor, which would be the level that is used for the garage and/or storage area, is 11.95 feet.
- o Next to the building, the highest adjacent grade is 12 feet, which puts it at roughly 3 feet with 3 feet over, the flood plain is 3 feet over that highest adjacent grade. Add the other foot at that time the town required 1 foot of freeboard.
- o The lowest adjacent grade next to was 11.15 feet.
- o The top of the next highest floor, which would be the first floor of habitation, is 17.75 feet.

Mr. Stewart asked if the louvered panels were still in place. CBO Otte said they were in May 2013 when the CO was issued. That was the last time he was in the property. Ms. Donevant said that the flood vents were still in place and they were open.

Chairman Arteaga asked if there were other comments prior to adjourning to a time certain so the Board could deliberate. Mr. Gwin was asked to confirm that he was asking for (a) to approve as is, or (b) to allow a variance. Chairman Arteaga asked if there were any other options requested.

Mr. Gwin said the first request was that the Board approve the property as it is; if the Board cannot do so, he pleaded for a variance so his client could work with the Town to improve the property using flood resistant materials.

Chairman Arteaga said the Board also has the option to deny the request in its entirety. CBO Otte said improvements would have to be submitted for approval, permitted and comply with the Town's Flood Prevention Damage ordinance. Mr. Stewart said the electrical would also have to be removed. CBO Otte said if it was located below the base flood elevation (BFE.) Mr. Gwin said one outlet was allowed below the BFE.

Chairman Arteaga asked CBO Otte for his opinion as to whether the alleged improvements would prevent proper water flow. CBO Otte said yes; the Town Code of Ordinances and FEMA do not allow any barriers so as to ensure the free flow of water. Chairman Arteaga said the vents became ineffective, because the partitions blocked the water flow.

Mr. Pellicci said in his experience, there was no such thing as waterproof drywall. Anything that hindered the water flow would have to be removed. Styrofoam was not an option, because it was a solid.

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The garage area was not a living space. Utilizing stilts for construction was common in this area, because of the flooding problems. The repairs need to insure that electrical outlets and switches were about 4-feet from the floor.

Mr. Stewart was familiar with a product called "Secure Rock," which was water resistant for exterior use to which brick or other coverings could be applied. If the Board reaches a decision, perhaps that product would be an option. Ms. Donevant said if they were allowed to use the flood resistant material, there would be no problem installing a hydrostatic vent in the wall.

CBO Otte said that partitions would not be allowed. Mr. Pellicci reiterated that nothing could hinder the water flow.

Chairman Arteaga said, he believed the Board agreed, there was no question that

1. There had been a failure to comply with the code.
2. Materials used were inadequate.
3. Staff did due diligence researching and relying on information obtained from the public records regarding owners of the property.
4. The typographical error was simply a typo and the intent of notification was proper.
5. The homeowner should replace materials with water resistant gypsum and ensure flood water passage.
6. The homeowner should provide drawings and request a permit from the Town to ensure code compliance.

Chairman Arteaga said the homeowner and the Town should work together to arrive at a solution that would allow the homeowner to accomplish his goal using the right materials, to obtain appropriate permitting and keep the property compliant with Town Codes. CBO Otte said the Town would be glad to accept an application for work, but the partitions would not be allowed in that area pursuant to code. Chairman Arteaga said a variance might be necessary. CBO Otte said a variance could be requested, but that would have to be heard by the Board of Zoning Appeals.

Mr. Stewart thought this Board should not set a precedent on flood plain issues. He agreed that the right materials should be used; the partition walls would probably have to be removed, because the code specifically prohibited them. He was unprepared to make a decision at this time.

Chairman Arteaga and Mr. Pellicci agreed that deliberations were necessary. The Board agreed to defer a decision until Time Certain of January 12<sup>th</sup> at 6:30 p.m.

Chairman Arteaga asked if the appellant could provide an as built rendering and/or photos of the property. Mr. Stewart agreed, and asked for a floor plan of the garage with the exact location of the partition wall or walls, and the flood vent locations. Mr. Gwin replied from the floor that he would try to obtain the information.

Mr. Stewart asked if homeowners were allowed to have a closet under the building in the Flood Prevention Ordinance. CBO Otte said the area underneath the house can be used for storage, parking or access to the house. One enclosure is allowed. In this case, the garage is considered the enclosure. The non-conversion agreement addresses unfinished walls, but the ordinance specifically states no partition walls were allowed inside the enclosure.

**6. Adjournment to Time Certain.** Chairman Arteaga adjourned the hearing at 7:32 p.m. to a Time Certain of Monday, January 12<sup>th</sup>, 2015 at 6:30 p.m. at which time the Board will meet to announce its decision.

### **Hearing #CBA2015-01 Adjourned to Time Certain of January 12, 2015 at 6:30 p.m.**

**1. Call to Reconvene Hearing #CBA 2015-01.** Chairman Arteaga called the hearing to order at 6:30 p.m. on January 12, 2015. Board members present: Chairman Arteaga, and members Stewart and

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Pellicci. Members Morrison and Trail were absent. A quorum was present. Representing the Appellant: Attorney Robert Gwin, and Contractor Jackie Donevant. Representing the Town: Certified Building Official (CBO) Otte. Also present: Town Clerk Herrmann.

**2. Recital of Appeal.** CBO Otte explained that the hearing portion of this appeal was heard on Thursday, January 8<sup>th</sup>. The appeal was based on a letter sent regarding construction completed in the flood plain without any permits. The appeal cited that

- Both properties owners were not included in the written notice; the Horry County Register of Mesne Conveyances only had one name available to the public at the time of the property search; any future correspondence will include both property owners' names.
- The Flood Damage Ordinance was inappropriately enacted. Evidence was given that the ordinance was properly enacted by holding a public hearing for comments from the public and two readings of the ordinance by Town Council.
- No permit for the improvements was found in the Town's records; the appellant has not provided any evidence that one was issued.
- The materials list provided by the appellant did not accurately depict the Table 2 Technical Bulletin acceptable materials.
- The Town desires to reach common ground to have the work removed and, if approved, to be reinstalled according to code.

### 3. Additional Comments and/or Exhibits

**i. Appellant.** Mr. Gwin said he stood by the comments made during the hearing, and added that

- CBO Otte referred to a violation of failure to get a permit. He asked the Board to consider that the original letter of July 29<sup>th</sup>, 2014 did not include notice of failure to get a permit as a violation. He argued, therefore, that because that was not noted as a violation in the original letter, it was outside the scope of this hearing.
- During the hearing, there was discussion as to whether or not flood resistant sheathing existed. Mr. Gwin offered printouts to the Board showing the product named Secure Rock that was mentioned by Mr. Stewart during the hearing. This product is a glass mat sheathing. The FEMA Technical Bulletin states that "a water resistant fiber reinforced gypsum exterior sheathing is categorized as a Class 4 building material. There are five classes of building materials according to FEMA. Classes 1 through 3 are not acceptable. Classes 4 and 5 are acceptable for construction below the base flood elevation. This product manufactured by United States Gypsum would comply. There is also a product by American Gypsum, which would comply.
- The first request is that this Board approve the construction as it currently exists.
- Mr. Gwin was willing to reiterate his client's willingness to replace the sheetrock, if the Board finds it nonconforming, with exterior sheathing that is compliant with the FEMA Technical Bulletin.
- Mr. Gwin asked the Board to be mindful of the factors in 14-26, which this Board considers in granting a variance.
- Mr. Gwin again pointed to the plat showing how the house was situated in such a way as to cause flood waters to go first into the rear swimming pool, and then into Dogwood Lake and possibly the neighbors' back yard. He submitted that this configuration minimizes possibility of damages or the danger that materials may be swept onto the lands of others.
- Mr. Gwin said another factor is that the Flood Elevation Certificate evidences there should be minimal chance that flood waters would reach that point. If flood waters did reach that level, because of the way the house was situated on the property and there are no improvements directly behind the house, he believed the improvements qualified for a variance under Section 14-26.

Ms. Donevant said Mr. Rempfer was out of town this evening, but she had no other comments.

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ii. **Town of Surfside Beach.** Mr. Stewart asked if a solution could be worked out between the Town and the Appellant. Chairman Arteaga said the Board requested an as-built plan so it would have a better understanding and visualization of the property. Mr. Gwin said he was unable to get in touch with Mr. Rempfer, except by telephone, over the weekend. He did not have any additional information for the Board.

Mr. Pellicci said the appellant should be ordered to remove the improvements and rebuild pursuant to Town Code.

Chairman Arteaga asked for the record whether Mr. Gwin would acknowledge that the work was performed without a permit. Mr. Gwin replied, "We would assert that this was work performed under the original building permit, and our work was performed after the CO was issued. But, we would argue that it was permitted under the original building permit."

Chairman Arteaga asked CBO Otte what the Town's position was. CBO Otte explained that once a CO was issued on property, the permit was closed out. Any work performed after the CO was issued was actually outside of that permit. He pointed out that paragraph 5 of the non-conversion agreement states "That any variation in construction beyond what is permitted shall constitute a violation of this agreement."

Chairman Arteaga asked Mr. Gwin when the work was performed. Mr. Gwin said he did not know; all he had was the invoice dated April 21, 2014. He presumed that the work was done sometime during that general time frame.

Chairman Arteaga asked when the CO was issued. CBO Otte said the CO was issued May 21, 2013. Chairman Arteaga said it was his understanding that when the CO was issued no other work was allowed. This work was done approximately one year later. Therefore, another permit should have been requested for any additional work.

Chairman Arteaga referred to an inspection ticket and asked CBO Otte to explain the comment "walls removed from lower level." CBO Otte said when the director was in the area to perform other inspections, she noticed that there were walls built inside the outside walls of the house, which were not allowed. At that time, she advised them that those interior walls would have to be removed. When he went to do the framing inspection, he made a note that those walls had been removed. Chairman Arteaga asked CBO Otte if he personally inspected the work and there were no interior walls at that time. CBO Otte said that there were no interior walls on January 24, 2013. Chairman Arteaga said the Board could conclude that the work took place after May 21, 2013, which appeared to include interior walls with sheetrock. He believed the appellant had acknowledged that there were interior walls built.

Mr. Gwin asked if CBO Otte could say when the building inspection was done by Director Morris. CBO Otte did not have an exact date; but, there was no actual inspection on the subject property. Director Morris was in the area performing other inspections and a contractor asked her to stop to look at something relating to the flood ordinance. His best estimate was around January or February 2013.

Ms. Donevant asked if an inspection report was written. CBO Otte reiterated that she was not there to perform an inspection. The contractor asked her to stop by there.

Chairman Arteaga said the pictures submitted by the Town appeared to have been taken from the outside of the house, so the Town does not really know what happened inside. CBO Otte said that was correct.

Mr. Gwin said he had not received copies of the Town's documentation. CBO Otte handed a copy of the packet to Mr. Gwin.

**4. Decision by the Construction Board of Appeals.** Chairman Arteaga said the evidence before the Board was

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- The rough framing inspection was performed in January 2013.
- The walls in the inside of the house were reported to have been removed in January 2013.
- The Certificate of Occupancy (CO) was issued May 21, 2013.
- The work performed that is the subject of this hearing was performed on or around April 21, 2014 based on the invoice from the contractor that was provided by the appellant, which was almost a year later after the CO was issued.

Based on the evidence, Chairman Arteaga moved to declare that the homeowner was in violation of the Town Codes as construction was performed without a permit, and no construction was allowed in the flood zone; the homeowner should be required to remove the offending structures. Board Members Pellicci and Stewart agreed. **APPEAL DENIED.**

Chairman Arteaga explained that the appellant could choose to appeal; to seek a variance, or apply for a permit using flood resistant materials and following the proper permitting process.

**5. Board Comments.** There were no other board comments.

**6. Adjournment.** Chairman Arteaga adjourned the hearing at 6:48 p.m.

Prepared by submitted by,

Approved: \_\_\_\_\_

\_\_\_\_\_  
Debra E. Herrmann, CMC, Town Clerk

\_\_\_\_\_  
Orlando Arteaga, Chairman

\_\_\_\_\_  
David Morrison, Board Member

\_\_\_\_\_  
Gene Pellicci, Board Member

\_\_\_\_\_  
Shane Stewart, Board Member

\_\_\_\_\_  
Vacant

**Clerk's Note:** This document constitutes verbatim minutes of the hearing and summary minutes of the discussion of the meeting that was digitally recorded. (\*\*) indicates audio unclear. Contact the town clerk for appointments to hear recordings; to obtain a copy, provide a flash drive. In accordance with FOIA §30-4-80, meeting notice and the agenda were distributed to local media and subscribers on the town's Email Updates list. The agenda was posted on the town website, the entry door at Town Council Chambers, and in the Town Hall reception area. Meeting notice was also posted on the Town marquee.