

# TOWN OF SEABROOK ISLAND

## Board of Zoning Appeals Meeting

July 30, 2021 – 2:30 PM



Virtual Meeting Hosted via Zoom

[Live Streamed on YouTube](#)

## MINUTES

Present: Walter Sewell (Chair), John Fox, Janet Gorski, Bob Leggett, Joe Cronin (Zoning Administrator), Katharine Watkins (Town Clerk)

Absent: Tom Pinckney

Guests: Keith Murphy (3North), Chip Olsen (Seabrook Island Real Estate), Jay Hugo (Earthsource), Katrina Burrell (SIPOA), Larry Buchman (Seabrook Island Club)

Chairman Sewell called the meeting of the Board of Zoning Appeals to order at 2:35 PM. Zoning Administrator Cronin confirmed that the requirements of the Freedom of Information Act were fulfilled, and the meeting was properly posted. Chairman Sewell introduced himself and members of the Board to those watching the meeting remotely and confirmed that a quorum was present.

### APPROVAL OF MINUTES

1. **Board of Zoning Appeals Meeting: June 29, 2021:** Mr. Fox made a motion to approve the minutes from the June 29, 2021, meeting, as submitted. Ms. Gorski seconded the motion. The motion was **APPROVED** by a vote of 4-0.

### PUBLIC HEARING ITEMS

1. **Variance #175: Tax Map # 149-01-00-092:** Chairman Sewell introduced the pending variance request, which was submitted by Reynolds-Williams at Marshwood LLC (Owner) and Keith Murphy (Applicant). Chairman Sewell disclosed that members of the Board were encouraged to visit the subject property prior to the hearing for the purpose of viewing existing conditions at the site, as well as neighboring properties. Members of the Board confirmed that they had visited the site prior to the meeting. Chairman Sewell added that no testimony was received during the individual site visits.

Chairman Sewell then called on Zoning Administrator Cronin to provide a brief overview of Variance Application #175. Chairman Sewell administered an oath to Zoning Administrator Cronin prior to receiving his testimony.

Zoning Administrator Cronin stated that the property is located off Long Bend Drive and is currently vacant. It borders the Marsh Walk Villas Horizontal Property Regime to the north

and west and the Club at Seabrook Island’s Racquet Club facilities to the south. A portion of the property to the north and east is located within an area designated by SCDHEC-OCRM as a marsh critical area. The total area of the property is 1.824 acres.

He stated that the applicants were seeking to acquire the property for the purpose of developing up to 12 multi-family homes. He added that the property is currently zoned PUD/MF Multi-Family. Under § 7.60.50 of the Development Standards Ordinance (DSO), multi-family residential units are a permitted use at this location with a maximum allowable density of up to 7 dwelling units per acre (1.824 acres x 7 DUA = Up to 12 dwelling units), provided the development meets all other requirements of the DSO.

As part of its due diligence process, Zoning Administrator Cronin stated that the applicant had prepared a site plan for preliminary review by the town prior to closing on the purchase of the property. Upon reviewing the site plan, the Zoning Administrator determined that the proposed development plans would not conform to multiple zoning requirements, including:

- A portion of the driveway and vehicular parking area would encroach up to 15 feet into the required 25-foot marsh setback;
- A portion of the proposed “Unit 8” would encroach up to 7 feet into the required 25-foot marsh setback and up to 8 feet into the required 15-foot marsh setback for open decks; and
- The required 50-foot landscaped buffer was not included between the proposed multi-family development and the neighboring Seabrook Island Racquet Club tennis courts.

As a result of these non-conformities, the applicants sought approval from the Board of Zoning Appeals to grant relief from the following requirements, as provided by the DSO:

TYPE	REQUIRED PER DSO	VARIANCE (REQUESTED)
Marsh Setback	§ 7.60.50	Reduce the marsh setback from 25 feet to 10 feet (15-foot encroachment) to allow for construction of a driveway and vehicular parking area
Marsh Setback	§ 7.60.50	Reduce the marsh setback from 25 feet to approximately 18 feet (7-foot encroachment) to allow for construction of an attached multi-family residence (“Unit 8”)
Marsh Setback	§ 7.60.50	Reduce the marsh setback for open decks from 15 feet to 7 feet (8-foot encroachment) to allow for the encroachment of an open deck (“Unit 8”)
Marsh Area Requirements	§ 9.40.10	Modify the requirements of § 9.40.10 to for portions of the development where one or more variances have been authorized so as to exempt those areas from the

		requirement to retain natural ground cover, or to plant and maintain such areas with grass or similar groundcover, when such areas are located within twenty-five (25) feet of wetlands, marsh or typical marsh vegetation as determined by SCDHEC-OCRM
Buffering of Incompatible Land Uses	§ 10.30	Eliminate the required 50-foot landscaped buffer along the shared property line with TM # 149-01-00-093 (Seabrook Island Racquet Club tennis courts)

As part of their variance request, the applicants stated that strict application of the DSO would result in an unnecessary hardship. In support of their request, the applicants argued:

- (1) When the 50-foot incompatible land use buffer (adjacent to the tennis courts) is combined with the OCRM and wetland setbacks, the buildable area of the lot is decreased by approximately 60%. The incompatible land use buffer would also restrict access to the property from Long Bend Drive.
- (2) Condominium buildings located within the adjacent Marsh Walk Villas development are within a few feet of the tennis courts and do not allow for a 50' buffer separation. Through GIS observation by the Civil Engineer, the buildings within the Marsh Walk Villas development also appeared to overstep their 25' OCRM marsh setback.
- (3) The application of the zoning requirements to this particular piece of property would effectively prohibit or unreasonable restrict utilization of the property by allowing only 4 townhomes of similar size and prohibiting access from Long Bend Drive.
- (4) The adjacent property are the existing two tennis courts which are fenced and are not equipped with lighting. The neighboring Marsh Walk Villas development is already non-compliant with the 50-foot buffer, and the new townhomes would comply with the 25-foot setback from the neighboring residential units. Proposed decks would protrude less than 15 feet into the OCRM Marsh Setback on 2 units (8 and 10). Careful care and consideration would be implemented for all landscape elements to create as much buffer as possible between the tennis courts and this development. Plant choices would be carefully picked to fit the local flora of Seabrook Island. The proposed building designs would be respectful of all SIPOA guidelines, with the ultimate goal of enhancing the overall unique character of Seabrook Island.

Zoning Administrator Cronin also noted that the proposed site plan anticipated reclamation of an area which had been designated on the existing site survey by SCDHEC-OCRM as a marsh critical area. Zoning Administrator Cronin stated that he had spoken with Josh Hoke at the OCRM Charleston office. He stated that Mr. Hoke informed him that any request to use fill in a critical area for private gain would likely be denied. A damaged dike, similar to the one on this property, may be repaired, provided it is repaired in a timely manner. Based on earlier surveys of this property, it appeared that the dike has been breached since at least 2007 and the area was allowed to “naturalize.” If the applicant were to seek approval to repair the dike and reclaim the marsh area, they would need to go through a full permitting process,

demonstrate that there is no feasible alternative and mitigate for the lost marsh area. Even then, Zoning Administrator Cronin was informed that there was a very low probability that the work would be permitted.

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

Chairman Sewell asked Zoning Administrator Cronin if he could point out the area which would be reclassified after reclamation. He also inquired about the purpose of the existing 24" pipe. Zoning Administrator Cronin guessed that the pipe was likely used as the outfall for storm drainage from the lagoon.

Mr. Leggett asked whether the lagoon area was located on the subject property or outside. Zoning Administrator Cronin responded that the lagoon area was on the subject property.

Hearing no additional questions, Chairman Sewell then called on the applicants to provide additional information related to their variance request. Chairman Sewell administered an oath to each individual prior to receiving his or her testimony.

- Keith Murphy, 3North (7303 Three Chopped Road, Richmond, VA):

Mr. Muphy gave a brief introduction of himself to the Board. He stated that he has been visiting Seabrook for many years and believes this proposed project fits the aesthetic of the area. He also introduced Mr. Hugo, who is the principal engineer on the project, who will discuss the unique aspects of the property to the Board.

- Chip Olsen, Seabrook Island Realty (2548 High Hammock Road, Seabrook Island, SC):

Mr. Olsen introduced Mr. Murphy and Mr. Hugo from 3North to the board and added this is the third time this project has been proposed due to changing market conditions. Mr. Olsen summarized the history of the property with regards to stormwater issues dating back fifteen years ago, and how the proposed project will improve the conditions in that area as they have proposed to rebuild the damaged stormwater pond and have started to communicate with OCRM on this issue.

- Jay Hugo, 3North/Earthsource (4015 Fitzview Avenue, Richmond, VA):

Mr. Hugo commented to the Board that the design team for this project includes a civil engineer and environmental engineer from Mount Pleasant who specializes in wetlands to ensure that the marshland is protected. He further added that the proposed use is permitted in the zoning ordinance. He stated that the majority of the proposed development will conform with the town's setbacks, but the applicants are seeking a variance for certain areas due to issues with the stormwater pond, which they propose to fix, as stated by Mr. Olsen.

Mr. Hugo commented noted that site constraints created pinch points near the existing stormwater pond, which is why they are seeking relief. He added that the 50' incompatible use buffer has created a significant hardship as the proposed development would not be able to access Long Bend Drive without a reduction in the buffer requirement. He further added that the requested relief is consistent with anticipated changes to the town's setback requirements as part of the DSO update.

Mr. Hugo summarized how this project will improve the quality of development in the area with the way it is designed to preserve the environment around it. He believed that the placement and aesthetic of the buildings would be desirable.

Chairman Sewell asked if there were any questions for the applicants.

Mr. Leggett noted that the driveway would be a foot or less from the neighboring property line and asked how the applicants could have any form of meaningful buffer. Mr. Murphy responded that the applicants would install screening along the driveway.

Mr. Fox stated that it would have been nice to see a representation of the landscaping plans and added that there doesn't appear to have been any effort undertaken to mitigate the reduction of the buffer area. Mr. Olsen responded that the minor changes to the driveway alignment could be made to accommodate landscaping.

Ms. Gorski asked what the minimum required width of the driveway would be. Mr. Murphy responded that the driveway would be 22 feet wide. Ms. Gorski noted that there was not sufficient width to access Long Bend Drive from the property without a reduction of the buffer. Zoning Administrator Cronin noted that the plan showed a second access point through Marsh Walk Villas, which would connect the development to Long Bend Drive.

Ms. Gorski noted that the 50-foot buffer appeared to impact the placement 7 of the 12 units, as well as the driveway.

Mr. Leggett asked if the applicant had spoken with the Seabrook Island Club about the buffer reduction or with SIPOA about a possible curb cut. Mr. Murphy responded that they have spoken with the club but not SIPOA. Mr. Larry Buchman stated on behalf of the club that the club had reviewed the plans and did not have an issue with the requested variance.

Ms. Gorski asked how the new DSO would impact the buffer requirements in this area. Zoning Administrator Cronin responded that the proposed DSO would reduce the required buffer adjacent to recreational districts from 50 feet to 25 feet. He added that the DSO is currently in draft form, however, and has not been adopted. Therefore, the proposed language is preliminary and may change prior to adoption.

Chairman Sewell asked if the applicants were aware of the stagnant water in the adjacent 45-foot drainage easement. Mr. Murphy responded that the applicants were not proposing to do anything within the drainage easement. Mr. Olsen added that standing water is all around the island and the lowcountry and is not unique to this particular piece of property.

Mr. Fox asked how the applicants would address runoff from the project. Mr. Murphy responded that their intent was to repair the dike and restore the stormwater pond, which would allow the runoff to be discharged as originally intended. Mr. Fox then asked if any consideration had been given to using pervious pavement. Mr. Murphy responded that their plans were not far enough along to have considered material selections.

There being no further questions, Chairman Sewell recessed the meeting at 3:38 PM.

The meeting was reconvened at 3:42 PM.

Chairman Sewell then opened the public hearing for comments. Due to the public hearing being held “virtually” as a result of the ongoing COVID-19 pandemic, Zoning Administrator Cronin noted that interested parties were invited to submit written comments regarding the variance request prior to the meeting via the town’s website, email, mail or in person. He stated that the town had received over 120 comments in advance of the meeting, including:

- 2 comments in support of the variance request;
- 120 comments in opposition to the variance request;
- 1 general comment; and
- 1 letter of acknowledgement from the Seabrook Island Property Owners Association

Noting a large number of individuals on the Zoom call, Chairman Sewell asked if anyone wished to make a comment in support of the request. There were no comments in support of the request.

Chairman Sewell then asked if anyone wished to make a comment in opposition to the request. There were 7 public comments made in opposition to the request. Chairman Sewell administered an oath to each individual prior to receiving his or her testimony.

- Leslie Lenhart (SC Environmental Law Project) 510 Live Oak Dr, Mount Pleasant, SC:

Ms. Lenhart stated that she is an attorney with the SC Environmental Law Project and, on behalf of the Coastal Conservation League, she discussed the letter of opposition from July 28<sup>th</sup> that was included in the agenda packet.

Ms. Lenhart summarized the criteria which must be considered by the Board when determining whether a property qualifies for a variance and stated that she felt the applicant did not meet any of these criteria. She further added the variances requested by the applicant would take away wetland protections. She added that the applicant should have been aware of the buffer and setback requirements when purchasing the property and should redesign the project to conform to these requirements.

Ms. Lenhart commented that approval of this would set a bad precedent for future developments on the island, and disagreed with the applicants' comments that the rebuilding of the stormwater pond would not harm the wetlands.

- Jason Crowley (Coastal Conservation League) 131 Spring Street, Charleston, SC:

Mr. Crowley stated that the applicants should whittle away some of the units as prescribed in the code to conform to the setback and buffer requirements. He added the applicant has created a "manmade self-imposed" hardship with regards to the primary entrance to the development.

Mr. Crowley restated Ms. Lenhart's comments on the importance of setbacks to protect the wetlands as the stormwater pond has been found by OCRM to have naturalized into marshland. He further urged the board to deny this variance.

- Laurie Droze Warren (1532 Strathmore Lane, Mount Pleasant):

Ms. Warren, a property owner of Marsh Walk Villas, commented on how the proposed road leading into the project would affect the parking spaces in front of Marsh Walk Villas. Further, the homes would be adjacent to the road which would leave no buffer between Marsh Walk Villas and the new properties. She added this would hinder the quality of life for the residents at Marsh Walk Villas.

- Susan Gaston (2024 Long Bend Drive):

Ms. Gaston, a resident of Marsh Walk Villas, commented on how this project will remove the only guest parking spaces available at Marsh Walk. She added that there would be no guest parking spaces available for others to park when visiting these new units.

- Dave Illar (2020 Long Bend Drive):

Mr. Illar, resident at Marsh Walk Villas, expressed concerns for the proposed driveway adjacent to the tennis courts. He stated that this is a blind curve on Long Bend Drive with limited site distances and will create a dangerous access point for ingress and egress to the new development.

- Clayton Shedrow (2783 Live Oak Villas):

Mr. Shedrow, a member of the Seabrook Island Greenspace Conservancy, commented on the stormwater revetment pond that has been naturalized into wetlands. He asked what the applicants would do to with the stormwater runoff from the development if they are not able to restore the stormwater pond. He also commented on how this project would have an adverse environmental effect on the island.

- Jack Faught (1801 Long Bend Drive):

Mr. Faught, a resident at Heron Point Villas, expressed concerns similar to Ms. Lenhart's testimony with regards to setback requirements. He also commented on how this will be a high-density project, that the applicants cannot guarantee these will not be rental properties, and how the general membership of the Seabrook Island Club would not be in favor of this project.

Chairman Sewell then asked if there were any other comments about the pending variance request.

- Katrina Burrell (Seabrook Island Property Owners Association (SIPOA)):

Ms. Burrell provided clarification for the Board regarding some of the previous comments about communications between the applicants and SIPOA. She stated that there had been discussions between the ARC and the applicants about ARC review procedures, but that nothing has actually been reviewed or approved.

Ms. Burrell also clarified discussions between the applicant and SIPOA for access on Long Bend Drive and the process for ingress and egress to the proposed development.

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

Chairman Sewell asked the applicants if they wished to make any additional comments.

Mr. Murphy offered clarification on a couple points. Regarding access to Long Bend Drive, he stated that all properties must have access to a road without relying on a neighboring property owner; the entrance on Long Bend is intended to serve as that access point. The guest parking spaces at Marsh Walk are actually on the subject parcel and not on the Marsh Walk property. The stormwater pond was never a natural wetland; it was a manmade feature that was naturalized only due to a lack of maintenance. Lastly, their plan was designed based on the fact that two prior plans had been approved for this property; to say the applicants "should have known" is a misguided statement.

Zoning Administrator Cronin asked if he could request clarification from the applicant on two statements. The applicant stated that all properties must be guaranteed access to a road. He asked whether this was something stated in SIPOA's governing documents. Mr. Murphy responded that he was referencing that you couldn't have a parcel of land without access to a public or private street. Zoning Administrator Cronin responded that this was certainly true for a public street, but he was not aware of such a requirement for a private street. He asked Ms. Burrell if she could confirm the applicant's statement as it relates to SIPOA's requirements. Ms. Burrell responded that she wasn't aware of anything that discusses that in any way.



Zoning Administrator Cronin then noted that the applicant stated two prior development plans had been approved for this property. He asked if the applicants could provide more information on prior plans to develop the property which had gone all the way through the approval process. Mr. Olsen stated that it had been portrayed to the buyers that development plans had been approved in the past. Zoning Administrator Cronin responded that he was aware of the original 1984 plan for Marsh Walk which showed a future second phase which was never permitted or built, as well as a second attempt to develop the property in 2007-08, which also which never received final approval or permitting from the town; however, he stated that he was not aware of any other requests which had actually been approved by the town. To say that either plan was “approved” would not be accurate.

Chairman Sewell then called on Zoning Administrator Cronin to review the four criteria under state law which must be used by the Board when hearing and deciding variance requests.

Zoning Administrator Cronin stated that the Board has the power to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains in writing the following findings:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- (2) These conditions do not generally apply to other property in the vicinity;
- (3) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Chairman Sewell noted that, in granting a variance, the Board has the authority to attach such conditions as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare. Referencing the staff write up contained within the agenda packet, Chairman Sewell stated that the Zoning Administrator had recommended attaching three conditions, should the Board vote to approve the variance request. Chairman Sewell offered two additional conditions related to drainage should the Board vote to approve the variance request.

Chairman Sewell opened the floor for discussion.

Ms. Gorski suggested that the Board take up the variance requests one at a time. She suggested beginning discussion with the request to eliminate the 50-foot buffer. She stated that a 50-foot buffer seemed like a huge distance to start off with, especially given the

irregular shape of the lot. She added that it seemed bizarre to have a 50-foot buffer around the tennis court.

Mr. Fox expressed his concern that the applicants were proposing essentially no buffer. He stated that the applicants made assurances that they would install plantings, but they have not provided any plans or details. He added that the applicants weren't asking for relief from the buffer; they wanted it to be done away with completely. He said it looked like the applicants were just trying to cram as many units on the property as they could and expressed concern with the lack of guest parking, among other items. He said he would support relief, but not elimination of the buffer. He added that whether they can get 12 units or 4 units depends on what the property is worth, and that's not the concern of the Board. He also referenced other property owners with similar site constraints going out of their way to meet the town's requirements and then asking for minimal relief only when necessary. He said he felt that this applicant has not done that in this case.

Mr. Fox made a motion to deny the variance request. There was no second to the motion and discussion continued.

Mr. Leggett stated that the applicant was trying to cram too many units onto a small parcel. He added that he didn't want to count on the applicant being able to reclaim the lagoon area and would need additional information regarding the feasibility of those plans before being comfortable supporting the request.

Mr. Fox stated that it didn't appear to him that the applicant had made any effort to work around the town's buffer requirements and instead sought a variance to reduce or eliminate these requirements. He stated that he would be open to meeting the applicants halfway if they made some sort of effort.

Ms. Gorski stated that she appreciates that the odd shape of the property creates issues, but she agreed with the concerns expressed by Mr. Fox and Mr. Leggett.

There being no further discussion, Chairman Sewell called for a motion.

Following a thorough review of the application, including all supporting materials received in advance of the meeting, and all testimony received during the public hearing, Mr. Fox made a motion to accept that the request meets the four criteria established by state law and, therefore, to approve the following variance request:

- a. **The required 25-foot marsh setback, as specified by Sec. 7.60.50 of the DSO, is hereby reduced to 10 feet (15-foot encroachment) to allow for construction of a driveway and vehicular parking area;**
- b. **The required 25-foot marsh setback, as specified by Sec. 7.60.50 of the DSO, is hereby reduced to 18 feet (7-foot encroachment) to allow for construction of an attached multi-family residence ("Unit 8");**

- c. **The required 15-foot marsh setback for open decks, as specified by Sec. 7.60.50 of the DSO, is hereby reduced to 8 feet (7-foot encroachment) to allow for the encroachment of an open deck (“Unit 8”);**
- d. **The marsh area requirements specified by Sec. 9.40.10 of the DSO, are hereby modified for portions of the development where one or more variances have been authorized so as to exempt those areas from the requirement to retain natural ground cover, or to plant and maintain such areas with grass or similar groundcover, when such areas are located within twenty-five (25) feet of wetlands, marsh or typical marsh vegetation as determined by SCDHEC-OCRM; and**
- e. **The 50-foot landscaped buffer along the shared property line with TM # 149-01-00-093 (Seabrook Island Racquet Club tennis courts), as required by Sec. 10.30 of the DSO, is hereby eliminated.**

The motion was seconded by Ms. Gorski.

There being no further discussion on the motion, Chairman Sewell called for a vote. Chairman Sewell reminded members that a “yes” vote was a determination that the request meets the four criteria and, therefore, in favor of approving the variance, while a “no” vote would be opposed to approving the variance.

**IN FAVOR (YES)**

**OPPOSED (NO)**

Chairman Sewell  
 Mr. Fox  
 Ms. Gorski  
 Mr. Leggett

The motion to grant the variance was **DENIED**.

**ITEMS FOR INFORMATION / DISCUSSION**

*There were no Items for Information / Discussion*

There being no further business, Mr. Leggett made a motion to adjourn the meeting. Mr. Fox seconded the motion. The motion was **APPROVED** by a vote of 4-0 and the meeting was adjourned at 5:48 PM.

Minutes Approved: 08/20/2021



Joseph M. Cronin  
 Zoning Administrator