

TOWN OF SEABROOK ISLAND

Board of Zoning Appeals Meeting

September 9, 2021 – 2:30 PM

Virtual Meeting Hosted via Zoom

[Live Streamed on YouTube](#)



MINUTES

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

Absent: Janet Gorski

Guests: Kirk Boone (Applicant), Grady Woods (Architect), Katrina Burrell (SIPOA)

Chairman Sewell called the meeting of the Board of Zoning Appeals to order at 2:30 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 attending the meeting in-person and remotely and confirmed that a quorum was present.

APPROVAL OF MINUTES

- 1. Board of Zoning Appeals Meeting: August 20, 2021:** Zoning Administrator Cronin noted that the architect, Mr. Grady Woods accompanied the applicant on the site visit, and not the owner, Mr. Brian Connelly as stated in the draft minutes. Mr. Leggett made a motion to approve the minutes from the August 20, 2021, meeting, as corrected. Mr. Fox seconded the motion. The motion was **APPROVED** by a vote of 4-0.

PUBLIC HEARING ITEMS

- 1. Variance #176: Tax Map # 147-13-00-001:** Chairman Sewell introduced the pending variance request, which was submitted by the Brian David Connelly Trust and Sabine Julianne Preuss Trust (Owners) and Mr. Kirk Boone (Applicant). Chairman Sewell disclosed that members of the Board conducted a site visit prior to the hearing for the purpose of viewing existing conditions at the site, as well as neighboring properties. Chairman Sewell added that no testimony was received during the site visit.

Chairman Sewell then called on Zoning Administrator Cronin to provide a brief overview of Variance Application #176. Chairman Sewell administered an oath to Zoning Administrator Cronin prior to receiving his testimony.

Zoning Administrator Cronin stated that the property is located at 3764 Seabrook Island Road, adjacent to the Seabrook Island Club’s Beach Club and across the street from Atrium Villas. He stated that the applicants were requesting a reduction of the 30-foot front yard setback requirement, as well as a modification of the beachfront setback requirement to allow for construction of a new 3,100 square foot single-family residence. According to Charleston County tax records, the existing parcel was subdivided in 1974. The property was acquired, along with the neighboring lot (3760 Seabrook Island Road), by Brian D. Connelly and Sabine J. Preuss in October of 1994 at a combined cost of \$60,000. The property was subsequently transferred to Brian David Connelly Trust & Sabine Juliane Preuss Trust in January of 2015. The property is 21,069.25 square feet in area. A total of 10,377.65 (or 49.25% of the lot) is designated as “highland.” Once the setbacks are applied, the total buildable area is 1,386 square feet (13.35% of the highland area and 6.57% of the total lot area). The property is currently zoned SR Single-Family Residential, and a single-family residence is a permitted use by-right. The property is currently under contract for sale to Mr. Kirk Boone.

He stated that based on the site plan submitted with the variance application, the proposed home will comply with the 10-foot side yard setback requirement. Any driveway would need to be set back at least 3 feet from the side property line. The proposed structure will also comply with the 36-foot maximum height requirement. However, § 7.60.20.10 of the DSO requires a minimum front yard setback of 30 feet from the front property line. At its closest point, the proposed home will be located approximately 26 feet from the front property line. Because the property is an oceanfront lot, it is also subject to enhanced beachfront setbacks on the rear. For this particular property, the most restrictive (or landward) setback required by § 9.30.20 is 30 feet from the landward edge of the primary dune or the dune formed by an existing revetment. The applicants were seeking to build to the SCDHEC-OCRM beachfront setback line.

In order to allow for construction of the proposed residence, the Applicants requested the following variances from the requirements of the DSO:

TYPE	REQUIRED PER DSO	VARIANCE (REQUESTED)
Front Yard Setback	30 feet (§ 7.60.20.100)	Reduce the front yard setback requirement from 30 feet to approximately 26 feet (4-foot encroachment)
Oceanfront Setback	30 feet from the landward edge of the primary dune or the dune formed by an existing revetment (§ 9.30.23)	To allow the oceanfront portion of the proposed home to be built to the SCDHEC-OCRM Beachfront Setback Line (§ 9.30.21)

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) The size of the property is small, 21,069 SF (0.48 acres) and the highland area is only 10,378 SF (0.24 acres). Additionally, the buildable lot area tapers down from east to

west with the beachfront baseline making a trapezoid shape with a very small build-able area.

- (2) With the current setback restriction, the buildable area is a triangle of 1,386 SF, which is 6.57% of the total lot area and 13.35% of the highland area.
- (3) Other beach-front lots in the vicinity are deeper and have a much greater area of highland, and do not have an angled taper with the beachfront baseline.
- (4) If the rear setback is measured as 30' from the top of the revetment, per Seabrook Island zoning for beachfront lots, the build-able area becomes a 1,386 SF right triangle. Once the inefficient corners of the triangle are taken out, the building footprint become less than 900 SF, including decks, thus making the lot effectively unbuildable.
- (5) The encroachment into the front yard will allow the design of the entry and roof eave to be consistent with the other architecture on the Island and will complement the design. This is being requested for architecturally aesthetic reasons.
- (6) The variance would maintain the SCDHEC-OCRM beachfront setback line on the rear, and with this, the beach-facing side of the new home would not be any further seaward than the home on the adjoining lot. The adjoining lot on the other side is owned by Seabrook Island and is used for golf cart parking. And the variance would allow the building of a 3,100 SF home would be in keeping with the size and elevation massing of the other homes nearby. This variance would also architecturally enhance the design and look of the home from the street.

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

Mr. Fox pointed out that the property was purchased from a bank that had taken ownership of the property and not from the club itself.

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.

- Kirk Boone (39 Oxbow Crossing, Weaverville, NC): Mr. Boone introduced himself as the prospective buyer of the property. He stated that he has been visiting the Charleston area since the 1970's, and Seabrook Island specifically since the 1990's. He stated that his background is in civil engineering. Though he is a developer by trade, he stated that the proposed home would be for his own personal use and that he wants to be a good neighbor. He stated that the proposed home was uniquely designed to meet the unique challenges posed by the lot. And referring to several written comments received prior to the meeting, he stated that he has no intention or need to build a seawall. He then introduced his architect, Mr. Grady Woods.

- Grady Woods (893 Grays Hwy, Ridgeland, SC): Mr. Woods stated that the total developable area of this lot, once the critical areas and setbacks are deducted, is only 1,387 square feet, or 6.57% of the total lot area. He added that this was 82% smaller than a typical 100' wide lot. He noted that none of the existing properties have similar conditions to this particular lot. Absent a variance, he noted that the usable floor area was only about 900 square feet and would not allow for stairs, enclosed parking or reasonably sized rooms. He stated that a triangular structure would be inefficient and dissimilar to existing architecture in the vicinity. With the variance, he stated that the net buildable area would increase from 1,387 square feet to 2,743 square feet; however, this was still less than half of the buildable area on the neighboring lot. He stated that the buyer's intent was not to overbuild on the lot, but to build a reasonably sized home for the area. He stated that the home would be landward of the residence on the neighboring lot, and the other side of the property is undeveloped common open space. He stated that there would be no modification to the existing revetment or dune, and no seawall was proposed. He stated that this was a platted single-family lot which was always part of the original Seabrook Island development. Lastly, he stated that they were seeking to use the recognized OCRM setback line on the oceanfront side, and not some arbitrary setback line.

Chairman Sewell opened the floor for questions for the applicants.

Chairman Sewell asked for clarification of the size of the proposed house in relation to the house next door. Mr. Woods clarified that the building *footprint*, and not the total square footage of the house, was approximately 50% of the size of the house on the neighboring lot.

Chairman Sewell asked what the total width of the house would be. Mr. Woods responded that it was approximately 78 feet wide, and the applicant was not requesting any change to the allowable width. He added that the width of the house would be about the same as the house on the neighboring lot.

Mr. Pinckney asked what the applicants would say to those who submitted letters in opposition to the request. Mr. Woods responded that the lot was always meant to be built on and is properly zoned for a single-family residence. He added that's why the Board of Zoning Appeals exists... to address hardships.

Mr. Fox noted that this was a smaller lot and asked why the applicant couldn't just build a smaller house. Mr. Woods responded that this was assessment was not wrong, but that the proposed home, even with the variance, was still only half the size of the footprint of the neighboring house.

Mr. Fox noted that there was 1,300 square feet of buildable area and asked why the applicants couldn't build an irregularly shaped 2,600 square foot house. Mr. Woods questioned whether the SIPOA would approve a triangular home, and whether the neighbors would want something so architecturally out-of-character with the surrounding area.

There being no further questions, Chairman Sewell then opened the public hearing for comments. Chairman Sewell asked if anyone wished to make a comment in support of the request. There were 2 public comments made in support of the request. Chairman Sewell administered an oath to each individual prior to receiving his or her testimony.

- Adam Boyd (3728 Seabrook Island Road): Mr. Boyd spoke in favor of the variance request.
- Myles McLaughlin, Handsome Properties (147 Church Street, Charleston, SC): Mr. McLaughlin spoke in favor of the variance 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.

- Jack Faught (1801 Long Bend Drive): Mr. Faught spoke in opposition to the variance request.
- Lindy Small (3607 Beachcomber Run): Ms. Small spoke in opposition to the variance request.
- Ann Arnold (2472 Seabrook Island Road): Ms. Arnold spoke in opposition to the variance request.
- Pat Short (504 Cobby Creek Lane): Ms. Short spoke in opposition to the variance request.
- Leslie Lenhart, SC Environmental Law Project (510 Live Oak Drive, Mount Pleasant, SC): Ms. Lenhart spoke in opposition to the variance request.
- Joanne Fagan (813 Treeloft Trace): Ms. Fagan spoke in opposition to the variance request.
- Melissa Morgan (525 Cobby Creek Lane): Ms. Morgan spoke in opposition to the variance request.
- Megan Sniecinski (2465 The Haul Over): Ms. Sniecinski spoke in opposition to the variance request.

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

- Katrina Burrell (SIPOA): Ms. Burrell stated that the SIPOA ARC has not formally reviewed the design and may request aesthetic modifications; however, any such changes would not increase the extent of the variance. Regarding the view corridor,

she added that SIPOA requires a 5-foot view easement on both sides of the structure. Since the proposed residence would be setback at least 10 feet on both sides, it would satisfy this requirement.

Due to 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 180 comments in advance of the meeting, including:

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

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

Chairman Sewell recessed the meeting at 3:53 PM.

The meeting was reconvened at 4:00 PM.

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

Mr. Woods stated that he had read minutes and watched videos from previous meetings. He noted that in previous cases, Board members had considered whether a request was "reasonable." He stated, however, that a variance doesn't create a precedent and each request must be judged on its own merits. In this instance, the irregular shape of the lot creates a hardship; the 1,386 square foot triangular-shaped buildable area is not reasonable to build upon, would not meet the needs of the family or be consistent with the existing architecture in the community. He added that the applicants were seeking to build to a setback line established and deemed reasonable by the state, and one which would not affect the existing dune or revetment.

Mr. Fox stated that the quotes referenced by Mr. Woods were likely taken from him and if so, were taken out of context. He notes that the comments were likely made when reviewing a deck, not an entire house.

Speaking in response to comments about erosion and flooding, Mr. Boone noted that data taken from SCDHEC indicates the area is gaining approximately 8.85 feet per year. He added that this property is especially unique due to the fact that the top of the revetment tapers from one side of the lot to the other, resulting in a triangular-shaped buildable area. He also noted that the application was submitted by both the property owners *and* himself.

Zoning Administrator Cronin asked to respond to three comments that were received from multiple individuals prior to the meeting. He noted that several residents had submitted comments in opposition to a proposed seawall. He stated that no seawall was proposed as part of this variance request. He encouraged residents to take 5 minutes to review pending variance requests on the town's website rather than taking something they see on social

media as gospel. He noted that several residents asked why the Board was even considering this request. He stated that all property owners have the right under state law to seek a variance when they believe the town's zoning ordinance prohibits or unreasonably restricts the use of their property. While there is no guarantee that a variance will be granted, all owners must be given the ability to seek administrative remedies in cases of individual hardship. It is up to the Board to decide whether each request meets the criteria established by law, and that can only be done through the variance process. Lastly, he noted that several commenters were concerned that approval of this variance would establish a precedent. He noted that each request is taken on a case-by-case basis and will be judged on the same state-mandated criteria. Therefore, the granting of a variance for one case carries no precedential value for future cases.

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 opened the floor for discussion.

Mr. Fox stated that the lot was purchased as a remnant from the bank that foreclosed on it and that there was a disclosure on the deed that the beach setback could change. He stated that the applicants were presenting phony data in order to justify a larger house, referencing

a pool and three garage doors. He stated that the applicant could build something reasonably nice without the need for a variance of this extent. He added that he couldn't see why this request should be approved; there was no hardship on the owner, and they bought the property as-is.

Mr. Pinckney stated that the meeting was not a proper venue to consider environmental issues. He stated that he didn't feel as though there was enough of a hardship or exceptional conditions. He added that he felt the size of the lot alone was not enough of an exceptional condition to warrant a variance.

Mr. Leggett stated that the lot has likely been the same size for decades, and that a small lot should have a small house. He stated that is it important to maintain the setbacks along the oceanfront. He added that he didn't think the request met the four criteria.

Mr. Fox stated that some relief may be warranted, but this request was too much to ask.

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 find that the request meets the four criteria established by state law and, therefore, to approve the variance request, as follows:

- a. **The required 30-foot front yard setback, as specified by Sec. 7.60.20.10 of the DSO, is hereby reduced from 30 feet to 26 feet (4-foot encroachment); and**
- b. **The oceanfront setback required by Sec. 9.30 of the DSO is hereby modified from 30 feet from the landward edge of the primary dune or dune formed by an existing revetment (Sec. 9.30.23) to the SCDHEC-OCRM Beachfront Setback Line (Sec. 9.30.21).**

The motion was seconded by Mr. Pinckney.

Prior to voting, Chairman Walter Sewell reminded members that a "yes" vote was a determination that the request meets each of the four criteria established by state law and, therefore, would be in favor of approving the variance, while a "no" vote would reflect a determination that the request does not meet one or more of the criteria and, therefore, would be opposed to approving the variance.

IN FAVOR (YES)

Chairman Sewell

OPPOSED (NO)

Mr. Fox

Mr. Leggett

Mr. Pinckney

The motion to grant the variance was **DENIED** by a vote of 1-3.

In explaining the rationale for the vote, the majority offered the following justification for denying the variance request:

- (1) The size and shape of the lot were known (or should have been known) prior to acquiring the property and do not represent an exceptional condition;
- (2) The presence of beachfront conditions were known (or should have been known) prior to acquiring the lot, as evidenced by the Oceanfront Property Disclosure Statement incorporated into the deed;
- (3) The size of the proposed home was too large for the Property and would be imposing on the surrounding area; and
- (4) The design of the home could be reasonably changed to reduce or eliminate the encroachment, with specific references to the three-car garage and swimming pool.

ITEMS FOR INFORMATION / DISCUSSION

There were no Items for Information / Discussion

There being no further business, Mr. Fox made a motion to adjourn the meeting. Mr. Pinckney seconded the motion. The motion was **APPROVED** by a vote of 4-0 and the meeting was adjourned at 4:22 PM.

Minutes Approved: October 7, 2021



Joseph M. Cronin
Zoning Administrator