

In the Matter Of:

Town of Sullivan's Island v
In Re: Board of Zoning Appeals

Board of Zoning Appeals Hearing
June 09, 2016

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TOWN OF SULLIVAN'S ISLAND
BOARD OF ZONING APPEALS

Approved on August 11, 2016

COPY

HEARING BEFORE: CHAIRMAN ELIZABETH TEZZA
DATE: June 9, 2016
TIME: 6:02 PM
LOCATION: Sullivan's Island Town Hall
2050-B Middle Street
Sullivan's Island, SC
REPORTED BY: LORA L. McDANIEL,
Registered Professional Reporter

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APPEARANCES :

ELIZABETH TEZZA, CHAIRMAN
CARLIN TIMMONS, BOARD MEMBER
SALLIE PRITCHARD, BOARD MEMBER
EMILY BRASHER, BOARD MEMBER
JODY M. LATHAM, BOARD MEMBER
ELLEN MILLER, TOWN CLERK
JOE HENDERSON, ZONING ADMINISTRATOR

1 THE CHAIRMAN: It is after 6:00, so we
2 are going to go ahead and start. James and Peter can
3 join us if they get here. We do have a quorum, so I
4 would like to call this meeting to order.

5 Some announcements first. If you have a
6 cell phone, make sure it's on vibrate. And please
7 remember that comments are addressed to the Board,
8 not to each other in the public section.

9 And because we have heard this exception
10 before, I am going to refer to Article 4 of our Rules
11 of Procedure, Hearing Procedure. In Section five,
12 there are time limits. But I'm going to expand them.
13 Our time limits are presentation by official, that's
14 the Town, ten minutes; presentation by applicant, 10
15 minutes; presentation by opponents, ten minutes;
16 rebuttal by applicant, five minutes.

17 We'll keep the official at ten and
18 application and opponents are increased to 15. We
19 have heard this before. Our new Board members have
20 been caught up on the first application. So
21 everybody has been educated about it. We are not
22 staying here until 9:20 tonight.

23 MS. EUDY: I plan to be shorter. We do
24 have technically two applications. Special exception
25 variance wasn't presented last time.

1 THE CHAIRMAN: I understand that. We
2 are going to do the variance first. So your 15
3 minutes will be there. And then special exception
4 will be ten.

5 I believe that the variance is the hard
6 one, and the special exception is the easy one as far
7 as I'm concerned.

8 And I'll ask for public comment after both
9 the applicant and the opponents have spoken.

10 And then the applicant will have the final
11 rebuttal. That does not include questions from the
12 Board. That's just your presentation.

13 MS. EUDY: Just to make sure I'm clear,
14 we're going to go through the whole variance. I
15 shouldn't talk about the special exception first?
16 Then you're going to do the special exception?

17 THE CHAIRMAN: Yes, we are going to do
18 it in that order. They are tied together. So the
19 variance will be dependent upon the special
20 exception. It must be dependent upon the special
21 exception.

22 Ellen, have the Freedom of Information Act
23 requirements been met?

24 MS. MILLER: They have.

25 THE CHAIRMAN: Thank you. We'll now

1 move to approval of the minutes from the May 12th
2 meeting.

3 MS. LATHAM: I move to approve the
4 minutes.

5 THE CHAIRMAN: Thank you, Jody.

6 MS. BRASHER: Second.

7 THE CHAIRMAN: Thank you, Emily. Any
8 further discussion?

9 MS. PRITCHARD: When you have corrections,
10 do you send them --

11 THE CHAIRMAN: You send them right
12 back -- you send them to the person that e-mailed you
13 the minutes. Usually, most of the time they're not
14 material in nature. If they are --

15 MS. PRITCHARD: These were just -- they
16 were not.

17 THE CHAIRMAN: You send it directly
18 back to her. Unless if it's a material matter, you
19 might want to copy -- you might want to reply to all,
20 if it's material. If it's not material, just send it
21 back to Courtney or Ellen, whoever sent it to you.
22 They send it to the court reporter for correction.

23 MS. PRITCHARD: Thank you.

24 MR. BARR: I've got really a question of
25 clarification since I wasn't at the March meeting.

1 I've read the minutes. At the March meeting, Joe had⁶
2 determined that a variance was not necessary --

3 THE CHAIRMAN: Mr. Barr, we'll address
4 that later. We're not talking about the March
5 minutes; we're talking about May.

6 MR. BARR: June you mean?

7 THE CHAIRMAN: No, we're approving the
8 May minutes.

9 MR. BARR: I'm sorry. I was talking about
10 the case in chief.

11 THE CHAIRMAN: That will be clarified
12 when Joe presents.

13 All in favor of approving the May minutes,
14 signify by saying aye.

15 (All present Board members stated aye.)

16 THE CHAIRMAN: Like sign opposed? The
17 minutes are approved.

18 Applicant, participant oath. Everyone
19 that expects to speak before the Board of Zoning
20 Appeals, please stand.

21 APPLICANT and PARTICIPANTS
22 being first duly sworn, testified as follows:

23 THE CHAIRMAN: We have one item on our
24 agenda, a special exception request and variance for
25 2668 Goldbug Avenue. I will ask Joe Henderson to

1 present for the Town.

2 MR. HENDERSON: Thank you, members of the
3 Board. Again, this is a special exception request
4 involving the property at 2668 Goldbug Avenue.
5 Special exception is permitted within the RS district
6 by way of Zoning Ordinance Section 21-20 C.(2) and
7 Zoning Ordinance Section 21-178.

8 Also requested this evening is a variance
9 from the RC-2 district setback requirements of Zoning
10 Ordinance Section 21-23 E.(1)(b) or the build-to line
11 requirement within the RC-2 or the RS zoning district
12 regulations.

13 Just to recap, a quick time line of this.
14 This agenda item was initially presented to the
15 Design Review Board on December 16, 2015. The DRB
16 granted conceptual approval for historic restoration
17 of the small historic cottage. Currently it's not
18 designated.

19 They gave the conceptual approval that if
20 non-original elements are removed from the cottage,
21 it could be designated as historic, which is one of
22 the conditions for the special exception before you
23 today.

24 The BZA reviewed this initially on March
25 10, 2016. The BZA considered the special exception

1 and granted or discussed a motion granting the
2 special exception provided the new construction be
3 brought back from the proposed location 20 feet
4 toward Goldbug Avenue.

5 The applicant withdrew the application
6 before that motion was voted on.

7 And so the following presentation was
8 before the DRB on April 20th. The DRB again reviewed
9 several options for historic preservation strategy to
10 the historic cottage. They approved, based upon
11 historic photos, that the applicant could choose one
12 of several different options as it goes to restoring
13 the historic cottage. And that brings us to the
14 hearing this evening.

15 Just a note that staff requested deferrals
16 from the DRB application on January 20, 2016 and also
17 BZA meeting of May 11, 2016. This is because staff
18 failed to go through the proper notification
19 requirements. We apologized to the applicant and
20 also the Board and the neighborhood for failing to
21 meet those requirements. That's why it held up this
22 project so long. Just wanted to make that note on
23 the record.

24 THE CHAIRMAN: You met the requirement
25 that the variance also be noticed?

1 MR. HENDERSON: That's correct.

2 THE CHAIRMAN: Before -- just touch on
3 that. Before we believe that a special exception
4 with a condition would be appropriate and legal
5 counsel told us we needed a special exception and a
6 variance together on this property. That's why it
7 was deferred in May. That's what Mr. Barr was
8 alluding to.

9 MR. HENDERSON: That's correct. That
10 leads me to the staff recommendation, which is, step
11 number one, consider the applicant's variance request
12 to the RC-2 district build-to setback line. And this
13 is -- the subject request is that the property is
14 being brought back from the original presentation 20
15 feet. And I'll let the applicant elaborate on the
16 encroachment past the build-to line.

17 And secondly I would recommend
18 consideration of the standards for granting of the
19 special exceptions. We can go through those first,
20 the standards for granting the variance. And I will
21 yield to the board members for questions about the
22 application.

23 THE CHAIRMAN: Do y'all have any
24 questions of Joe for right now?

25 For your note taking, I will pass -- these

1 are notes, finding of fact for granting of a
2 variance. It is from the ordinance that we would use
3 in drafting a motion.

4 Summer.

5 MS. EUDY: He's going to pull up the Power
6 Point real quick.

7 I'm Summer Eudy, here for the applicant,
8 Allen Porter, regarding 2668 Goldbug Avenue. What we
9 have on the Power Point here is the historic cottage
10 as it exists now. It is modified but, as Joe
11 indicated, has been noted by the historic survey that
12 the Town commission that it could be modified and
13 restored and be put on the historic list.

14 Just for clarification sake, 2662 Goldbug
15 is the McNaughton property that I'll refer to, to the
16 left.

17 2672 is Browder property to the right that
18 I will refer to.

19 These are the lots. This is the Porter
20 lot. You can see extends into the marsh further than
21 the adjacent lots. It's actually over 300 feet long.
22 So it's a long lot but the width is about 105. So
23 it's fairly narrow.

24 And with the historic cottage, assuming
25 that this all goes well, it's slated to be put on the

1 historic list, which the DRB is in agreement with,
2 the area that we have to build on between the
3 build-to line, which is about right here and this
4 house is very small.

5 Joe has already been through the history
6 of these meetings. We did start with the first
7 submittal in November 2015, so it's been a long
8 process.

9 We do have to get the special exception
10 and the variance for this project to work. Of
11 course, the Town sees it that the special exception
12 or the variance is contingent on the special
13 exception. And we agree, but for us, the special
14 exception designation is contingent on the variance.
15 Without that, we can't make this project work, and
16 the house would have to be removed.

17 Just a note with regard to the historic
18 designation. That's in the DRB's purview. And then
19 also the design of the house, height, scale and mass,
20 that's all within the DRB's purview as well. As
21 such, that's why our application for this meeting is
22 asking you to basically approve a buildable area.
23 And then the DRB will, you know, give us the go-ahead
24 on the actual plans.

25 That's just one picture that I included of

12
1 the house in 1960. We have information going back to
2 1951 as Mr. Brown, who was the owner just a couple
3 years before Dr. Porter, he owned it from then until
4 2010 or that family did. So we got some neat
5 information from him.

6 This is a rendering of the plans for the
7 historic cottage. We've got three options. This is
8 one of them. I just put it in here for you to see,
9 and it will include likely modifying the front porch,
10 adding a screen porch, and then adding a bathroom on
11 the back.

12 When you add a screen porch, you're taking
13 away a bedroom and an entryway at the front of the
14 house.

15 THE CHAIRMAN: Also point out that the
16 deck on the back is being removed.

17 MS. EUDY: Oh, yeah. How do we go back?
18 Anyway, there's a big deck on the back. You can see
19 it on your site plan. It is being removed, correct.

20 Going to skip the special exception for
21 right now and go on to the variance. Obviously, with
22 the variance, we've got Section 21-179, which are the
23 elements that have to be met to approve the variance.
24 And we can go through those in just a minute.

25 The variance will be from Section

1 21-23(e), which is the RC-2 setback. That section
2 establishes what we refer to as the build-to line
3 where the houses are supposed to be in line. I'm
4 sure y'all are familiar with it from looking at our
5 presentation.

6 If you look at the site plan that was
7 submitted, the pink line is the build-to line. And
8 you can see that both the Browders to the right and
9 the McNaughtons to the left both received variances
10 from that line.

11 This square is the buildable area that
12 we're asking you to approve. It is 20 feet back from
13 our submittal at the March meeting. It's actually 22
14 feet back from our original submittal to the DRB at
15 the December 2015 meeting.

16 We -- our point -- you can see there's a
17 line right here. What we're going to try to do is
18 take 20 feet off the back of the house without moving
19 it forward. This is where the house would've stopped
20 if it would've been granted as submitted to you guys
21 in March.

22 We've worked on some plans to do that. I
23 don't think it's going to work. If we were to go
24 with our original plan, it would encompass this
25 entire box, including this portion right here.

14
1 The neighboring variances are 86 -- it's
2 an 86-foot encroachment on the McNaughton side they
3 were granted, and then the Browders were granted 28
4 feet.

5 Our architect/engineer, Matt Wilks, that's
6 here today, has determined that they are about at 30
7 feet as built. We're not saying they tried to get
8 two extra feet; that's just what it comes out to.

9 The one variance, the McNaughton's was
10 granted in 2008; permitted in 2016. Their house is
11 going up now. If you went out there, you saw the
12 pilings.

13 And then the Browder variance was granted
14 in 2013. That's their house right there.

15 This was the house that was originally
16 submitted. Like I said, we're still working on
17 plans. We're supposed to go in front of the DRB next
18 week. We may or may not do that depending on how the
19 plans work out.

20 THE CHAIRMAN: So this box here on the
21 drawing is the buildable area, but that's not the
22 footprint of the house?

23 MS. EUDY: Correct. You couldn't build in
24 that space. That encompasses the setbacks and all
25 that.

1 The opposition, as we understand it, has
2 been about privacy and the neighbors' back yard, the
3 Browders, and their view.

4 I want to point out to the Board that in
5 South Carolina there's no implied right to a view
6 easement. There's case law from 1936 and 1983 and
7 some varying in between there from the South Carolina
8 Supreme Court that says prescriptive rights to ocean
9 views, breezes, light, and air do not exist in South
10 Carolina.

11 That was also stated in Young versus
12 SCDHEC just as early -- in 2009. That was a Court of
13 Appeals case.

14 We don't think that our plans as is or as
15 submitted prior will affect the neighbor's view. In
16 any arguments that they have to make -- I just want
17 to point this out. The Browders' to the right, then
18 you have the Porter residence and then you have the
19 McNaughton residence. Any arguments made by the
20 Browders would apply from the Porter residence over
21 to the McNaughton residence. So it's kind of all
22 similar.

23 I submitted these pictures to you. And
24 Matt actually has it up 3-D. He's going to show it
25 to you and move it around.

1 This right here, I just want to be real
2 clear. This is our original submittal to you guys in
3 March. This is before the house is moved back 20
4 feet.

5 It's our contention that their view
6 corridor, if you arguably were entitled to one, which
7 we don't think you are, if you are, their view
8 corridor is set by this 17-inch oak that's on their
9 property. It kind of hangs over to the Porter
10 property.

11 If you look on your color-coded chart,
12 it's the little green circle. That's likely why that
13 house is kind of where it is. That's what creates
14 that view right there.

15 And, again, this is before this house goes
16 back 20 feet. This shows the line right there.
17 There's that oak. There's a line going out there.
18 You guys had these pictures.

19 This is also a view from their house. It
20 looks like maybe up from the porch. This is their
21 pool. You can see going out here there's still a
22 view. That oak would be back here.

23 I'm going to give Matt a chance in just a
24 second to show you the 3-D images. I'm just going to
25 jump through real quick before he does that.

1 Again, remind you we're looking for this
2 area. It's about 20 feet from where we were. And
3 the things that I would like for you to think about
4 when you're considering this is that we're 22 feet
5 landward of our original submittal; 20 feet from our
6 March submittal towards the street.

7 Based on this square, the cottage and the
8 primary residence will be 42-feet-and-ten inches
9 apart. A rear setback and a front setback, they're
10 both 25 feet. This is less than if you had the back
11 of one house up against the front of another. You
12 would have a whole 50 feet. And most of them would
13 have a road between them. So you would have 25, 25
14 and another 20 in between for a total of 70 between
15 properties back-to-back.

16 I think the reason why this is pertinent
17 is because this is a long, narrow lot. And what
18 we're trying not to do is put a big house right on
19 top of a little house when it's not necessary. You
20 know, we're way far away from the marsh. We are way
21 far away from the critical line. It's just not
22 necessary to do that.

23 We're trying to preserve what has always
24 sat there and kind of that street presence. We don't
25 want to put a big house on top of the little house.

1 That's why we're still working on these placement and
2 massing issues.

3 We tried to come up with a plan to fit in
4 that box and keep it from moving it forward. We
5 think from the interior it's not going to be
6 practical. We want to take what we originally had
7 and modify that some. And we're trying to come up
8 with something that works, and maybe take that center
9 portion and mass it down and put some of the massing
10 in other parts of the house so that structure is not
11 so big on top of the little structure.

12 THE CHAIRMAN: Summer, what is the
13 total distance from -- what is the total variance?

14 MS. EUDY: The total variance would be 62
15 feet. It's a 62-foot encroachment from the build-to
16 line.

17 And then another thing that I didn't talk
18 about at the March meeting that I think is real
19 important, one of the things that you guys have to
20 consider for the special exception is parking. And
21 we have to have parking for the big house and the
22 little house.

23 So what we did is we've got parking in
24 between here. So we need that space. I mean, you
25 can't make it any smaller to have some parking,

1 whether you did a circular drive or you did a pad.
2 You've got to put the parking there because the Town
3 ordinances say you can only have one driveway. And
4 you are prohibited from parking in the front or
5 strongly discouraged from parking in the front.

6 It's not like we can put a driveway on the
7 other side for the little house; they can't park in
8 the front yard. We pretty much got to put it right
9 there. Otherwise, any parking would block access to
10 parking for the primary house.

11 And the design will be approved by the
12 DRB, will be in conformance with all ordinance
13 requirements, which will be enforced by staff. And
14 then the deed restrictions will be added, which I can
15 talk about more in the special exception.

16 Just to recap with the variance, we are
17 asking for 62 feet encroachment from the build-to
18 line. The variance granted to the right was 28 feet,
19 and that's the one that I've been talking about. I
20 don't think any way, shape or form this house is
21 going to affect.

22 And then the one to the left was an
23 86-foot encroachment from the build-to line. The
24 further we go back, the further detriment that we
25 take on from that view corridor, if you want to make

1 that argument. We're not necessarily making that.
2 I'm just saying, you know, they all affect each
3 other.

4 THE CHAIRMAN: There's also a large oak
5 on the McNaughton property in the back.

6 MS. EUDY: Right, there's a huge oak. If
7 anything, that would -- I can show you it's right
8 here. It also affects the Browders' view corridor.

9 I'm going to let Matt show you the 3-D
10 image real quick.

11 MR. WILKS: Hey, I'm Matt Wilks, designer
12 working with Allen Porter. What I've done, the
13 software I used is 3-D modeling software. You're
14 able to export the 3-D data into the Google Earth so
15 you can actually see approximately what this house
16 looks like.

17 Like she said, Summer said, this is the
18 original submittal house.

19 MS. PRITCHARD: Can we turn out that light
20 over Elizabeth? That's so dark to me. Is it
21 possible?

22 MS. EUDY: I agree.

23 MR. HENDERSON: It's going to get real
24 dark.

25 MS. PRITCHARD: Much better. Thank you,

1 Joe.

2 MR. WILKS: That yellow line is kind of --
3 first, I guess the red line is the build-to, the
4 current build-to line, setoff with the house over
5 here on Goldbug for reference.

6 That yellow line is roughly off of the
7 Browders' back porch. So you can kind of see, it's
8 not a typical porch. Kind off the tip of the porch.
9 Kind of where you would be looking on their pool.
10 Kind of gives you a visual where the house is in
11 reference to the proposed house.

12 This is that 17-inch oak here. This is
13 that really large oak on the adjacent property.

14 MS. PRITCHARD: The 17-inch oak is on the
15 Browder's property?

16 MR. WILKS: That's correct, yes, ma'am.

17 THE CHAIRMAN: Larger oak on
18 McNaughton.

19 MR. WILKS: This is the larger oak here.
20 This is our property, 17 there. This kind of gives
21 you a perspective of how the house sits.

22 THE CHAIRMAN: Where it's sitting right
23 here, it's actually moved forward.

24 MS. EUDY: This is the original submittal
25 from March. It's going back 20 feet from this. This

1 will give you a good example. This is that pecan
2 tree that would've stayed if we would've kept the
3 March submittal.

4 Moving it 20 feet, it's going to have to
5 go. That gives you kind of a good -- you can see how
6 close the houses are going to be together.

7 This little portion right here will be
8 gone, and then the addition will go right here. They
9 will be 42-feet-and-some-inches apart. That's where
10 the parking will go and the drive.

11 MS. PRITCHARD: That's enough for the
12 circular drive; correct?

13 MS. EUDY: Correct. Just enough; right,
14 Matt?

15 MR. WILKS: Yeah. Is there any particular
16 views you would like to look at or anything?

17 THE CHAIRMAN: No, I think that's good
18 for me.

19 MR. BARR: That's the original 82-foot
20 encroachment?

21 MR. WILKS: Yes, sir.

22 MS. LATHAM: That's worse.

23 MR. WILKS: That would be 20 feet further
24 back.

25 MS. EUDY: That's your worse case

1 scenario.

2 THE CHAIRMAN: Just look at their pool
3 because their variance line, the line that they want
4 to go back to is parallel with that pool. You pull
5 it back, and they would -- the Browders will gain
6 everything between that yellow line and that oak.

7 MS. EUDY: Correct.

8 THE CHAIRMAN: And then the oak blocks
9 them. I will state for the record, once again,
10 diagonal site lines are not included -- they're not
11 guaranteed in our zoning ordinance. We used to have
12 diagonal site lines on Sullivan's Island but we no
13 longer have any provisions for diagonal site lines.
14 All the site corridors are perpendicular.

15 MS. EUDY: Any questions about the actual
16 variance request?

17 THE CHAIRMAN: No, I don't think we
18 have any. Thank you very much.

19 Let's wait for our questions until after.
20 Mr. Barr, will you submit for the Browders, please.

21 MR. BARR: One thing I would like to
22 initially address, there was no presentation
23 concerning the requirements of the variance at all.
24 No presentation concerning what is the hardship. No
25 presentation that this was the only property

1 basically affected in this way.

2 And basically those check blocks that
3 you've got to meet in order to grant the variance, I
4 didn't hear a word mentioned about what the hardship
5 is. That's the first thing I would like to address.

6 I presented -- I have a letter from Aussie
7 Geer. I think it was e-mailed to Joe. If it wasn't,
8 I would like to present it on Aussie's behalf.

9 MS. EUDY: Can I get a copy?

10 MR. BARR: I just have one. Pardon me.

11 THE CHAIRMAN: That will have to be
12 read into the record. We have not seen it.

13 MR. HENDERSON: It was not sent to staff.

14 MR. BARR: It was not?

15 MR. HENDERSON: No, sir.

16 MS. EUDY: There was a request for those
17 types of things beforehand.

18 MR. BARR: My first point was a point of
19 clarification in regard there's been no presentation
20 concerning hardship. To me, the key consideration in
21 this matter is hardship. What's the hardship?

22 I gave each of y'all a memorandum that I
23 would like to be part of the record, 'cause that
24 basically, to the extent that I'm not able to fully
25 able to articulate this. Looks like this, Elizabeth.

1 THE CHAIRMAN: I did not get it.

2 MS. PRITCHARD: There's an extra here.

3 THE CHAIRMAN: I don't have one.

4 There's not one at my place. I got it. It wasn't at
5 my place.

6 MR. BARR: One point that I would like to
7 make, and I'm really not sure, is that we're really
8 putting the cart before the horse here by coming to
9 the BZA before we go to the DRB.

10 The DRB has jurisdiction over -- and
11 Summer mentioned some of the things the DRB has to
12 consider such as height, scale, and mass. And what
13 she left out is the ordinance specifically provides
14 placement.

15 And, basically, once the placement is
16 considered, then it's really your purview to
17 determine, if that placement is beyond one of the
18 setbacks, whether or not a variance should be
19 appropriate for that situation. That's a key
20 consideration in this case.

21 THE CHAIRMAN: Do you know if the
22 Design Review Board has been asked to set the
23 placement of the house?

24 MR. BARR: Yes, ma'am. I did. I can.

25 THE CHAIRMAN: I don't believe they

1 have -- I believe they have declined to do so.

2 MR. BARR: No, ma'am, they never got to
3 it. The presentation at the previous meeting was
4 rather lengthy. There was like five or six people
5 behind us. As a result of that, what we did, we
6 ended up stopping and not going forward.

7 During that meeting -- during that
8 meeting -- and we've talked about this -- I gave out
9 a package with pictures like this, and it's right
10 here to your left, Elizabeth. Those are all from me.
11 If you go down to about the third one.

12 There's one document in there that's
13 called, if you go on down, it's called the Craver
14 line. When we went before the DRB, they were again
15 asking for an 82-foot setback -- excuse me,
16 encroachment into the setback for a position.

17 We objected to that. That picture is
18 basically a picture that Billy Craver drew on this
19 particular document showing from the corner of the
20 McNaughton house down to the corner of the Browder
21 house, he asked both of us: Is that a line that you
22 could agree upon?

23 And at that point in time Mr. Browder and
24 I said, yes, we could agree to it. At that point in
25 time, they moved, because of the constraints of time,

1 that we were not able to do that.

2 MS. BRASHER: Which page was that?

3 MS. LATHAM: Third page.

4 MR. BARR: Sorry for my handwriting.

5 Now, another thing that I have put
6 together is a working model, and it's the first
7 document on your package. And it's just a blank
8 document with a little picture on the side. If you
9 take that, that's the footprint of this house.

10 THE CHAIRMAN: No, I don't think that's
11 the footprint of the house. I think that's the
12 buildable area.

13 MR. BARR: No, that's the footprint as
14 referenced on the application. What I did, I took
15 what Summer had submitted. I photocopied it, and I
16 cut this out of the middle there.

17 MS. EUDY: It's not our submittal for this
18 meeting.

19 MR. BARR: So you changed it?

20 MS. EUDY: I think -- I think that's maybe
21 what we originally submitted.

22 MR. BARR: This is the one based upon the
23 May 6th presentation when you added the variance.
24 This is, instead of going -- you went to a footprint
25 versus a picture.

1 MS. EUDY: You can look and see that you
2 didn't get the second portion of the box. There's a
3 line going through. That's how I know it's not the
4 right one.

5 MR. BARR: What you can do with this
6 little moveable object --

7 MS. EUDY: Which is not the size of our
8 footprint.

9 THE CHAIRMAN: I'm going to correct
10 you, Mr. Barr. Summer has stated before us that this
11 is the buildable area, not the footprint. The house
12 is -- there's an L on the back of this house.

13 MS. EUDY: It's not the buildable area
14 either. It had two boxes on my buildable area.
15 That's not it.

16 MR. BARR: The document that I've been
17 working for is a document that I pulled off-line and
18 copied. This is it right here. And this is what I
19 referred to in the package that you have. It's
20 called the Applicant Summary. This was attached to
21 the application in May that I utilized in order to
22 determine --

23 THE CHAIRMAN: This right here that
24 she's been referring to, it's this document with the
25 lines drawn on it.

1 MR. BARR: This one is what is of record.

2 MS. EUDY: No, mine is of record. It is
3 definitely of record. You can go on-line.

4 MR. BARR: There's a certain notice
5 requirement and due process requirement that's
6 required here. If the applicant is going to change
7 their presentation and the footprint, that should've
8 been presented to Joe for submittal to other parties
9 or put into the record.

10 If you go on-line, this is what was
11 submitted to you right here.

12 MS. EUDY: If you do on-line, what is
13 right there color-coded -- it doesn't have the color
14 codes on there -- that document was submitted for the
15 May meeting and the June meeting and is on-line.

16 MR. HENDERSON: I think we're splitting
17 hairs here. What was submitted in the application
18 was a conceptual location of the buildable area in
19 order to meet the requirements of the ordinance; the
20 square footage, the building coverage requirements.
21 And that is with a leading edge adjacent to the marsh
22 20 feet back.

23 MR. BARR: I agree to that.

24 MR. HENDERSON: With a 62-foot
25 encroachment. That's what we're reviewing. That's

1 what's before the Board. I don't know what we're
2 sliding around here.

3 MR. BARR: I don't know whether this is
4 the footprint or not. I can tell it's close enough
5 to the footprint for you to take this particular
6 object and move it up and down the buildable area of
7 the lot to determine where would be a fair place to
8 place this house.

9 MS. EUDY: For the record, I'm going to
10 have to object to that because that is not the proper
11 buildable area footprint that I submitted. Moving it
12 around on the plan would not be to scale.

13 THE CHAIRMAN: Actually, I'm going to
14 take issue with the scale. What is the scale of
15 this?

16 MR. BARR: These are blown up or photo
17 reduced. The scale at the bottom of the page is not
18 going to be accurate on any of these pages.

19 MS. LATHAM: How can you say --

20 MS. EUDY: You can go ahead and make the
21 argument. I just wanted that objection noted for the
22 record.

23 THE CHAIRMAN: Thank you, Summer. For
24 the purposes of our discussion, we are using this
25 that was submitted to us.

1 MR. BARR: You'll see that if you
2 superimpose this little gizmo that I provided you,
3 basically all it does is affect the rear of the
4 property.

5 What I'm asking you to do is take this
6 thing -- and you can even move it on top of Summer's
7 because this shows you that the area or the area in
8 question is a moveable object is what I'm saying.

9 If you get back to -- there's a document
10 in there with a yellow highlighted area like this.
11 This is the actual buildable area as done by -- from
12 the setbacks. This shows where you can put the house
13 on this property. Of course, as a result of that, in
14 order to go past --

15 THE CHAIRMAN: To the current build?
16 To the build-to line? What we are considering is a
17 variance from the build-to line.

18 MR. BARR: That's correct. The reason I
19 addressed this, at the March meeting, it was argued
20 that the build-to line was not a setback and this
21 is -- and I think that's now been withdrawn.

22 THE CHAIRMAN: I think we were under
23 the impression that we would grant a special
24 exception with the contingency for how far they could
25 encroach from the build-to line.

1 MR. BARR: Right.

2 THE CHAIRMAN: They had met all other
3 setbacks. We weren't considering the build-to line
4 as a setback. We're considering it as a build-to
5 line.

6 MR. BARR: Correct.

7 THE CHAIRMAN: We have been corrected
8 by the lawyers. We are going to -- that's why we're
9 granting a variance from the build-to line or
10 setback. We're calling it the build-to line.

11 And then the special exception, both
12 contingent upon one another.

13 MR. BARR: There was another document that
14 I put in there that's called the Browder proposal. I
15 was asked by Joe to submit a proposal. Next to the
16 last page.

17 MS. BRASHER: Titles are on top.

18 MR. BARR: The Browder proposal, which was
19 a compromise to grant the application -- again, this
20 is all based upon what I pulled off-line, not what I
21 got today. The Browder proposal was to pull the
22 house 17 feet back from the 62-foot variance that
23 they requested.

24 And the way I arrived at that, if you look
25 at the math in the upper right corner of the document

1 I just presented to you, the encroachment between the
2 Browders and the build-to line is 28 feet. They're
3 asking for a 62-foot encroachment and so, therefore,
4 the difference is 34 feet.

5 If you halve that number, that's 17 feet.
6 What that would do is that would place the Porter
7 house basically in between the Browder setback and
8 the 62 setback that they were requesting.

9 Now, what I would like to address now,
10 even though it was not addressed by the applicant, is
11 the hardship. Because the only thing I can
12 surmise -- I even put that in my memorandum. I can
13 only surmise that the alleged hardship is the
14 historic house. And somehow the historic house
15 becomes the hardship.

16 I would like to point out to you that this
17 is a conditional application. Mr. Porter didn't go
18 to the DRB and ask for this house to be put on the
19 historical preservation list. He said: I will put
20 this house on the historical preservation list if you
21 allow me to build the second house where I want it.
22 And he started off at 82 feet.

23 And the reason he's at 62 feet tonight is
24 because, at your meeting in March, one of the members
25 suggested 30 feet and then reduced it to 20 feet.

1 And then at that point in time they said³⁴
2 they'll agree to ten feet and they withdrew the
3 application, and we went to the DRB.

4 But the issue of whether or not this is a
5 hardship is in the hands of Mr. Porter. There's law
6 to the effect that a self-created hardship cannot
7 form the basis of a hardship -- excuse me. A
8 self-created matter can not form the basis of a
9 hardship.

10 In this situation, Mr. Porter is saying,
11 my hardship is the historic house. But the historic
12 house is not a hardship because it has not been
13 determined yet whether or not he's going to take it
14 down or not. Or whether or not he's going to get rid
15 of it. It all really depends on whether or not he's
16 going to -- all depends on whether or not he gets the
17 position of the house that he wants.

18 And that's really up to you guys. A
19 variance is not an entitlement as you-all know.
20 You've been on this board for a long time now. It's
21 not an entitlement; it's really a privilege.

22 So the hardship -- since the hardship is
23 not there, the hardship is not there today. The
24 hardship is going to only be there if you don't give
25 him what he wants. This is a gross manipulation of

1 the historical preservation statute.

2 It says -- it's telling people who have a
3 house like this: I can threaten to tear this house
4 down in order to get what I want on a setback
5 variance. And that's deplorable because you really
6 can't be put into that position.

7 I know that you're going to be faced with
8 this same item in the near future because over on
9 Station 22 and Pettigrew, somebody wants to move a
10 house forward of Chauncey Clark over there. As a
11 result of that, you're going to have to face whether
12 or not your granting of this variance to move back
13 that build-to line, how does that impact on what
14 happens over on the Chauncey Clark side?

15 THE CHAIRMAN: We can't consider that.
16 It's not even before us. We don't even know if it
17 will come before us.

18 MR. BARR: I understand that. What I'm
19 saying is one of the criteria for the variance, there
20 are special conditions concerning this lot that don't
21 necessarily apply to others. I submit to you that is
22 not correct. A case in point is the block in which
23 Chauncey Clark's house is has that same condition.
24 The block on Station 22 and Pettigrew to the left
25 where the old hotel was, which you're very familiar

1 with.

2 THE CHAIRMAN: Yes.

3 MR. BARR: The big ugly house on the
4 corner right next to Tommy Rivers' old house.

5 THE CHAIRMAN: The Holiday Inn Express.

6 MR. BARR: Exactly. Doesn't it look like
7 that? That's true. I represented the neighbors when
8 he got ready to put that up. When he got ready to
9 put that up, I can distinctly remember Tom Heirs
10 telling me: Don't you try to move this house forward
11 of the build-to line because -- and put a pool out
12 there. We're not going to allow it.

13 What did this guy do now? He's now
14 divorced, I understand. I think that house is up for
15 grabs. What he did, he actually built his pool
16 underneath the house in order to not encroach on the
17 build-to line.

18 The issue is the build-to line. It's the
19 ordinance. It's the build-to line. It's the
20 unnecessary hardship, which is the issue.

21 The view is not an issue. The fact that
22 we don't have an easement of view in South Carolina
23 is irrelevant. We have a statute that says: You
24 will not leapfrog ahead of your neighbors in order to
25 gain an advantage of view or breeze or sunlight or

1 whatever you're trying to do to do that.

2 I'll tell you right now this is totally a
3 subterfuge. Subterfuge in order to get around the
4 ordinance. If that historic house was not there, he
5 would be building at the build-to line.

6 Now, in the previous submittal and the
7 previous argument, they argued we are sour grapes
8 because we got a 28 foot. We're not sour grapes. If
9 he wants a 28-foot setback, go for it.

10 And I would submit to you that the
11 distance -- I think they were asking for like 42 feet
12 between the new house and the old house.

13 And, again, when you're doing these plans,
14 you might not be able to build the absolute biggest
15 house on there in order to accommodate that.

16 The McNaughtons, when they built their
17 house, part of the variance was they were going to
18 limit the size of their house in order to not become
19 an obstruction to the neighbors. Unfortunately, the
20 McNaughton house is sort of a travesty that has
21 befallen this particular block.

22 I submit to you the fair construction of
23 where this house should go -- and I do not agree that
24 this Board -- you can grant a variance within some
25 sort of perimeter saying, if the DRB places the house

1 in this particular area, that we will grant you a
2 variance to do that. That's okay.

3 But I submit to you there's nothing in the
4 special exception statute that allows you to place
5 this house. Nothing. The special exception statute
6 is a use statute, not a variance statute.

7 THE CHAIRMAN: We certainly understand
8 that. That's why this will be two separate motions.

9 MR. BARR: In closing, which I'll try to
10 do --

11 THE CHAIRMAN: I'd appreciate that.

12 MR. BARR: Thank you, ma'am. I was
13 watching the clock. I don't think I've gone as long.

14 THE CHAIRMAN: You're right on your 15
15 minutes.

16 MR. BARR: This matter is not ripe at this
17 point in time for this issue because the DRB hadn't
18 acted. We were supposed to go to the DRB last month.
19 They pulled that. Matter of fact, the day of the
20 hearing, they decided to defer it.

21 What I'm thinking is there is some
22 manipulation, potential manipulation going on here.
23 Whose Board do I get to first where I might get the
24 best shake?

25 I want to challenge you to hold this

1 applicant to the letter of the law, that you got to
2 show an unnecessary hardship that doesn't affect
3 anyone else on this island and grant him -- before
4 you grant him a variance.

5 Again, I've heard nothing from the
6 applicant's presentation as to articulating the
7 unnecessary hardship, nor have I heard the applicant
8 submit any evidence concerning the particularity of
9 this lot in order for you to grant the variance.

10 Right now, based upon the presentation of
11 the applicant, you don't have any evidence of
12 unnecessary hardship nor do you have any evidence of
13 whether or not this is a special property which
14 doesn't arise anywhere on the island. Thank you,
15 ma'am.

16 THE CHAIRMAN: Thank you. I'm going to
17 allow Summer to go ahead and rebut.

18 MS. EUDY: With regard to no presentation
19 regarding the hardship, this is a complicated
20 project. I'm trying to pare this presentation down
21 so we don't have to be here three hours.

22 I don't think I've jumped around that. I
23 might not have gone through each one like I did last
24 time. The hardship is the house. The reason the
25 hardship is the house, we have an ordinance in this

1 town to encourage saving these historic structures.
2 And you cannot save this historic structure and build
3 behind the build-to line. It's just not possible.

4 The DRB did say at one of the meetings
5 that they were in favor of not moving that house.
6 And we shouldn't have to move that house. That house
7 has set in that spot since 1925. We're trying to
8 preserve that structure where it is, that
9 streetscape.

10 THE CHAIRMAN: I'm not sure you can
11 move that house forward anyway.

12 MS. EUDY: No, you couldn't. I'm just
13 saying that would be the only way if -- and you can't
14 really offset them because it's such a narrow lot.
15 You got your 15 and your 25 side setbacks.

16 We've got this big old lot that's
17 300-and-something feet long that we can't use because
18 you've got a house on the front that we're trying to
19 do the right thing and save.

20 It has nothing to do with manipulation. I
21 think I mentioned at the very first meeting that
22 Dr. Porter was not convinced about saving this house.
23 He does not have to save this house.

24 In fact, the owner that owned it for a
25 about year-and-a-half between the Browns who owned it

1 forever and Dr. Porter, they were going to tear it
2 down. I think that is a travesty.

3 I spent a lot of time trying to convince
4 him that the right thing to do was to save this
5 house. We renovated the interior of the house,
6 trying not to spend a lot of money on it in case this
7 whole thing didn't work out.

8 I showed some pictures of that before.
9 And cleaned up the outside to get to this point to
10 see if it would work out. There's nothing in the
11 ordinance that says we have to go in front of one
12 board before the other.

13 There were several misrepresentations; one
14 of which is that we were supposed to go to the DRB
15 last month and pulled it at the last minute. We were
16 supposed to go to you guys last month, and the DRB
17 last month, just like we got scheduled for this month
18 which is BZA and then DRB. It's not our fault BZA
19 falls in front of DRB. And that's the only way for
20 us to do the boards in the same month.

21 Otherwise, we're going to be a year out
22 from the first submittal in not too long.

23 The reason why the BZA meeting was
24 canceled because they wouldn't agree to waive those
25 time requirements, which you can do in my opinion.

1 Mr. Barr noted that he doesn't think he
2 could. In my opinion, from a legal standpoint in the
3 circuit court, we do that all the time. We waive
4 notice.

5 MR. PORTER: Can I say something?

6 MS. EUDY: Allen, hold on.

7 I haven't had a chance to review the
8 Aussie Geer letter. I don't know when it's dated. I
9 do know that she came into my office and talked to me
10 about this. She's been over and talked to Allen
11 about it several times. Her biggest concern she
12 relayed to us, she doesn't want everybody on the
13 island to be able to build forward of the build-to
14 line.

15 I totally get that. This block with these
16 three houses was -- the two variances, you know, were
17 not created by us. That's part of the hardship.

18 The build-to line is part of the hardship.
19 The historic cottage is part of the hardship. The
20 sizeable configuration of the lot is part of the
21 hardship. It all rolls in together to say we can't
22 preserve this historic structure without this
23 variance. We need this variance to be able to do
24 that.

25 I haven't gotten a chance to review the

1 memorandum. I got it right before this meeting as
2 well. Mr. Barr noted that Joe asked him for a
3 proposal. Joe actually asked him for anything that
4 he was going to submit because I asked Joe to ask him
5 that. Because I thought we submit our stuff a month
6 in advance. It is on-line.

7 And everything that I've put before you
8 today other than my Power Point was submitted prior.
9 In fact, the Power Point was submitted. I just
10 modified it a little bit and made it a lot shorter.
11 All the photos, all the site plans, all of that was
12 previously submitted.

13 But going back to that proposal of taking
14 one and minus another one, cutting it in half, that's
15 arbitrary. If I could take the numbers from the
16 McNaughtons and do that, too, and that put me even
17 further forward towards the marsh. That's arbitrary.

18 What we have proposed is where we can
19 build a house within reason without setting the large
20 house right on top of the small house. Otherwise
21 without a variance, we can't do it. We cannot comply
22 with this ordinance that the Town has put out to
23 encourage property owners to do exactly what
24 Dr. Porter is trying to do.

25 He's also saying that you can't approve

1 this buildable area. I disagree. BZA has done it
2 several times. It was done on Raven. It was
3 actually done on the Browder lot. They did not bring
4 in elevations of that house. They brought in a
5 footprint and then actually built something that's a
6 bit different from that. That's not exactly what was
7 built.

8 THE CHAIRMAN: I agree. We have
9 delineated a buildable area on several lots on this
10 island.

11 MS. EUDY: Forgive me for talking so fast.
12 I'm trying to fit all this in.

13 They also allege that the tree on their
14 lot was a hardship. I could argue they can take the
15 tree down. We're not taking the house down. If all
16 of this is granted, which one board's granting of all
17 this is contingent on the other boards. Then there
18 will be a deed restriction. We can't take the house
19 down at that point.

20 It's not like we're going to build this
21 house and rip the little house down and say: We got
22 you Sullivan's Island. That's not the point of
23 what's going on here.

24 I think it's very interesting that
25 Mr. Barr said, if they want a 28-foot variance like

1 we got it, go for it. The Browders don't get to
2 decide where their neighbor's house goes. They don't
3 get to decide what their neighbor's house looks like.
4 It is within the purview of both the BZA and the DRB
5 to set the placement of this house within the special
6 exception statute.

7 Joe might be able to point to exactly
8 where it is. I don't know off the top of my head.
9 We've debated that several times. Initially I
10 thought it was one of the Board's only -- we found
11 where it says it's under the purview of both to place
12 the house.

13 I think that you are placing the house by
14 saying you can build within this buildable area.
15 We're okay with that. We are giving you this
16 variance to make that happen.

17 THE CHAIRMAN: In my opinion, we denote
18 the buildable area. The Design Review Board denotes
19 the footprint for this.

20 MS. EUDY: Because of that scale, design,
21 mass and all that.

22 THE CHAIRMAN: We don't have anything
23 to do with that. This is the siting and actually,
24 Joe, correct me if I'm wrong, didn't the DRB actually
25 state at some time that the buildable area was

1 basically the purview of the BZA?

2 MR. HENDERSON: That's right.

3 THE CHAIRMAN: They declined to set it.

4 MR. HENDERSON: The DRB reviewed this
5 conceptually twice and gave guidance to the
6 applicants on both occasions as to where the siting
7 should be. The Billy Craver line for which Mr. Barr
8 referenced was simply just a concept of where they
9 thought the house should be slid back.

10 And I think the applicants have, you know,
11 moved the house back from that presentation. Yes,
12 they have reviewed it on several occasions.

13 THE CHAIRMAN: Thank you.

14 MS. EUDY: To speak to that, the first
15 time that they reviewed it, we don't want to do
16 placement of the house, let the BZA do it. We came
17 in here in March and said now it's both Board's
18 purview. Then we went back to them. It was a
19 discussion.

20 Billy Craver, he is a great attorney, but
21 he is not an architect or an engineer. He just took
22 that site plan and kind of drew diagonals and said:
23 Maybe something like this would work. I don't think
24 he actually drew a line. It certainly wasn't: I
25 think the house should go right here.

1 It was just: What can we do to get the
2 neighbors to compromise?

3 This is our compromise. And really
4 anything else forward of, towards the street is just
5 not going to work. In fact, like I said earlier, we
6 tried to make it work in that block that is back
7 further before that line so we didn't have to put the
8 houses so close together. That wouldn't work. We've
9 got to put it in there.

10 Bringing it back 20 feet is making it
11 difficult for us to do this and for it to be
12 aesthetically pleasing and the massing to be right
13 between the two structures. That is all things that
14 we have to take into consideration per the zoning
15 ordinances. So I disagree with that.

16 I think that, you know, if you guys grant
17 the variance today, you approve the special
18 exception, and then we don't get approval from the
19 DRB, we can't go forward. It's not like we can go
20 take advantage of all this. I mean, the variance is
21 being granted, if you choose to grant it, based on
22 the special exception. It all goes together.

23 Frankly, I think that even if we didn't
24 have this historic house, because of the hardship
25 created on this particular lot by the two variances,

1 we could come in here and argue for some type of
2 variance. And actually Mr. Craver pointed that out
3 himself to the DRB before I even said anything like
4 that.

5 MR. HENDERSON: Summer, if you could very
6 quickly touch on these four required conditions for
7 granting the hardship.

8 MR. BARR: I would object. This is
9 supposed to be rebuttal.

10 THE CHAIRMAN: She was rebutting the
11 points that you made.

12 MR. BARR: Basically, you have your case
13 in chief. You have your chase in chief where you
14 present your case. And then the opposition presents
15 his case in chief. And then they get to rebut it,
16 not raise new matter that they should've raised in
17 their initial application.

18 MS. EUDY: It was raised.

19 MR. BARR: You didn't say a word about
20 hardship.

21 MS. TIMMONS: We've gone over this for
22 hours. That was back in March. They all four are
23 included in the application.

24 MS. EUDY: Correct.

25 THE CHAIRMAN: Mr. Porter would like to

1 speak.

2 MR. PORTER: Mr. Barr is making a lot of
3 assumptions about what my intent is here. This is a
4 lot of smoke and mirrors. I think all the
5 manipulation in the room is sitting right in front of
6 me. My neighbors have done everything they could to
7 stop the project from day one; they chopped down
8 trees on Town property to keep a marsh view. It's
9 all about a marsh view.

10 I haven't been able to build a house on my
11 own lot for six months. It's time to put and end to
12 it.

13 THE CHAIRMAN: Thank you Dr. Porter.

14 MS. EUDY: Would the Board like me to go
15 through the elements?

16 THE CHAIRMAN: Yes, as a review. We
17 have seen it. This, again, is a very complicated
18 matter. And I'm going to state for the record this
19 is not a court of law. And we can take any
20 information we want during rebuttal.

21 MS. EUDY: Pursuant to 21-179, which are
22 the elements, essentially, or the standards for
23 granting a variance. Number one, extraordinary
24 conditions. There has to be an extraordinary and
25 exceptional conditions pertaining to this particular

1 piece of property.

2 I've addressed these as the historic
3 house -- assuming all of this is granted. And our
4 site plan and everything is contingent on that. And
5 the DRB has said that they will approve. In fact,
6 they were going to make a motion for it, and they
7 said, let's do the other part about placement, and
8 time ran out. That's essentially approved. It's in
9 the record. It's approved.

10 The size of the lot is the very large but
11 we are limited to building on less than half of the
12 lot because of the build-to line. And then you have
13 the small space between the build-to line and the
14 historic structure. That doesn't apply to most of
15 the other properties.

16 I don't know -- I think there's ten or 11
17 special exceptions that have been granted. None of
18 them are in the RC-2 district. So none of them have
19 had to deal with this issue. They've been able to
20 use their whole lot within reason. Whether it was
21 bigger or smaller or whatever the components of their
22 lot was, it wasn't the same. That's what our
23 hardship is or what our extraordinary conditions are.

24 Like I said, I've kind of addressed number
25 two, these conditions do not generally apply to other

1 property in this community. There aren't many
2 historic cottages left. It doesn't apply to
3 everybody in the RC-2 district.

4 I know of one down the street where they
5 moved the historic structure from the marsh over to
6 the side to put their primary structure on the marsh
7 side. It's a much smaller lot, and I think they
8 pretty much had to move it. And they did a lot of
9 work to make that happen, and their house is
10 beautiful.

11 I'm not criticizing. You never know
12 really that house was a historic structure. What
13 we're trying to preserve is the historic structure
14 sitting where it is so everybody knows: That little
15 cottage has been on Sullivan's Island for a long
16 time.

17 Utilization; because of these conditions,
18 the application in the ordinance to the particular
19 piece of property would effectively prohibit or
20 unreasonably restrict the utilization of the
21 property. We're talking about the build-to line, the
22 R2-C setback. Is it 21-23 C.? Something like that.

23 We can't build between the build-to line
24 and the historic structure. You just can't. You
25 can't fit a house there.

1 I do want to address one thing while I'm
2 talking about that, that Mr. Barr brought up. He
3 said something about you can't just get to build the
4 biggest house that you want to. None of our
5 submittals has been as big of a house as we can
6 build. We can build bigger than any of the
7 submittals. Actually, we're trying to make the house
8 smaller.

9 In addition, if we tear the historic
10 structure down, because this lot is so big, we can
11 build one of the biggest houses on this island that's
12 allowed to be built right now. This is one of the
13 biggest lots on the island. It's over .8 acres.
14 It's almost a whole acre.

15 Detriment -- authorization of the variance
16 will not be of substantial detriment to the adjacent
17 properties or to the public good. And the character
18 of the district will not be harmed by the granting of
19 the variance.

20 I actually think granting of the variance
21 will enhance the district. It will keep that
22 historic structure. It certainly won't harm it.
23 It's not going to harm the adjacent properties.

24 We've already talked about that in detail
25 with regard to privacy and view. If anything, the

1 detriment that the granting of the variance on the
2 McNaughton property put on the Porter property is
3 similar. And the Board thought that was proper to do
4 that at the time. I think that I addressed all
5 those. Any questions?

6 THE CHAIRMAN: Mr. Barr, I'll let you
7 speak for five minutes. Then we will have public
8 comment.

9 MR. BARR: I think one of the key factors
10 in there is these conditions the ordinance
11 effectively prohibit or unreasonably restrict the
12 utilization of the property.

13 The reason that I brought this little
14 Squibb here to do this, to show you that this
15 particular footprint can be moved. I'm asking that
16 it be moved 17 feet aft -- excuse me -- towards the
17 street, and it still would be -- it still would be
18 around 30-something feet from the older house, if you
19 move it back 17 feet.

20 THE CHAIRMAN: I just have a problem
21 with your little thing because it's not the same size
22 as the footprint. I'm going to disagree with you
23 because I looked at your drawing. And the front of
24 the house -- what you've done, you've cut 17 feet off
25 the back of the house. You haven't moved it; you've

1 cut it off.

2 Because all you have to do is look at the
3 parallel line between the front of the house and the
4 Browders' house. We're going to go over this because
5 I think it's important.

6 On our drawing that we were given with the
7 colored lines, I want y'all to look at two things. I
8 want you to look at the forward lot, the front of the
9 buildable area. I want you to see that goes over to
10 the Browders' house. I guess that's a chimney. Look
11 at where it comes in.

12 Draw a line over there. Then when you
13 look at Mr. Barr's drawing, the front of the house,
14 the front of the buildable area is in that same
15 position. And what they've done, they have cut 17
16 feet off the back.

17 MR. BARR: I would like to really
18 propose -- I understand what you did.

19 THE CHAIRMAN: I didn't do anything.
20 I'm looking at the drawing.

21 MR. BARR: Here's what I did. You see
22 this. I pulled it off the Internet site.

23 MS. EUDY: It's a different drawing.

24 THE CHAIRMAN: It's a different
25 drawing. This is the drawing that was submitted to

1 us.

2 MR. BARR: No, that's not the drawing that
3 was attached to the application that was on line for
4 the public to review.

5 MS. EUDY: Yes, it was. Both of those
6 drawings are on there. That's a different drawing.
7 Let me show it to you. See this square. This is not
8 on there. This encompasses our original house --

9 MR. BARR: I understand that part.

10 MS. EUDY: We were trying to make it fit
11 in that.

12 MR. BARR: One quick question. Was this
13 16-foot rear of the house attached to the original
14 application in May?

15 MS. EUDY: Yes.

16 MR. BARR: That was there? I'll look at
17 that. I don't recall seeing it there. My whole
18 basis --

19 MS. EUDY: Either way, it was in the June
20 application. I know that.

21 MR. BARR: The point of it all, regardless
22 of that 16 feet issue, we're asking for the house to
23 be moved back several feet. We're asking for 17
24 feet, which then would place their obstruction of
25 the -- that would put them -- right now, without

1 their house being there, we're obstructed by the
2 McNaughton house.

3 Would you-all agree about that? If we
4 look out that corner and we look in that direction --

5 MS. LATHAM: That's not germane to the
6 variance because you're talking about diagonal sight
7 lines, which are not guaranteed.

8 MR. BARR: I'm just saying -- I'm talking
9 about the as-built line. The to-build line. That's
10 what I'm talking about.

11 MS. LATHAM: You're saying obstructed,
12 which says to mean is view.

13 MR. BARR: The build-to line is basically
14 what we're asking to be enforced. If there's going
15 to be a variance granted, the minimum distance
16 forward of the build-to line is what should be
17 granted, not 62 feet, not 82 feet.

18 THE CHAIRMAN: By whose -- by whose --
19 that's subjective. That's totally subjective.

20 MR. BARR: It's subjective. It has to
21 take into consideration the objections and the impact
22 upon the neighbors.

23 THE CHAIRMAN: What is the direct -- if
24 there are no guarantees of a diagonal sight line, and
25 there are not, what is the impact on the Browders?

1 Tell me what the impact on the Browders is.

2 MR. BARR: Let me ask Mr. Porter the same
3 question. What is the impact on you to move the
4 house back? Other than he's trying to get forward of
5 the McNaughton house.

6 MS. PRITCHARD: He loses his property.

7 MS. LATHAM: He was never forward of the
8 McNaughton house in any plan, period. He was not.

9 MR. BARR: He was five feet back from the
10 McNaughton house.

11 MS. LATHAM: This lot extends -- how much
12 further does the end of the property extend on this?
13 We're getting to the point -- to me, in my -- I may
14 not have the point to speak. At this point, your
15 whole argument here is their detriment. I mean, you
16 even said it when you said obstructed, which is an
17 obstructed view.

18 Okay. That's not guaranteed. What is
19 their hardship?

20 MR. BARR: It's not my hardship I'm trying
21 to establish.

22 MS. LATHAM: What's the Browders' hardship
23 if this variance is granted? You're saying this is
24 going to provide detriment to the neighbors'
25 property. I don't see how that -- I don't see them

1 making a point there.

2 MR. BARR: It's a detriment because
3 there's no clear showing of a hardship by Porter that
4 he's entitled to move forward of the build-to line.

5 He has created the item. He has created
6 the issue. And he has created it. If he doesn't get
7 what he wants, he's going to tear that house down.

8 Now, if this house was already on the
9 historical preservation list, I wouldn't be able to
10 make this argument. Right now, he's holding you
11 hostage to give him what he wants.

12 THE CHAIRMAN: You're making an
13 assumption about Dr. Porter. He has already rebutted
14 that.

15 MR. PORTER: Strong assumption.

16 THE CHAIRMAN: I agree with you, Jody.
17 I don't see the detriment to the contiguous property,
18 especially since the applicant has moved it back.

19 What we're going to do now --

20 MS. EUDY: I just need to clarify one
21 thing.

22 THE CHAIRMAN: Clarify one thing.

23 MS. EUDY: He stated that if we move back
24 another 17 feet, which they are requesting, that the
25 houses would be 37 feet apart. They would actually

1 only be 25 feet apart, if we came back another 17
2 feet. And that's just not practical for parking or
3 for this project at all.

4 MR. BARR: They can park under the house.

5 MS. EUDY: Can't park under the little
6 cottage.

7 MR. BARR: Can I make a copy of this
8 letter from Aussie Geer, or do you want me to read it
9 into the record?

10 THE CHAIRMAN: If it's about the
11 precedent --

12 MR. BARR: No.

13 THE CHAIRMAN: That's what was conveyed
14 to the applicant. Our motion -- any motion that we
15 make will not be precedent setting because it will be
16 confined to this particular piece of property. Our
17 decisions are not precedent setting.

18 MR. BARR: I agree.

19 THE CHAIRMAN: What is the substance?

20 MR. BARR: She did state precedent, and
21 she did compare what the hardship for 2668 and the
22 neighbor 2708 Goldbug built a large house. And they
23 were very careful to design, to maintain the back
24 line.

25 MS. EUDY: That's the letter she read in

1 the March meeting. She hasn't shown up since then.

2 THE CHAIRMAN: Then we've already seen
3 that. You can put it in the record.

4 MR. BARR: Thank you, ma'am.

5 THE CHAIRMAN: This is not a
6 precedent-setting motion.

7 What we're going to do now is hear from
8 anyone in the public. Please make your comments
9 brief. And then we are closing to everyone's
10 comments. And we're going to discuss it and we will
11 have questions. Dr. Porter.

12 MR. PORTER: I just want to say this is
13 all about a view through my property to my neighbors,
14 who I was very nice to when they built their houses.
15 I stayed out and tried to do the neighborly thing.
16 They called everybody on the street they could to try
17 to get them to come out against me for this project.
18 I moved it up as far as I can possibly move it up to
19 get this done. I mean, they have tried everything
20 for six months. It's all about a view through my
21 yard.

22 They didn't buy a marsh-front lot. There
23 is a marsh-front lots for sale right now. They can
24 go buy one. This has gone on too long, totally
25 unfair and selfish.

1 THE CHAIRMAN: Thank you, Dr. Porter.

2 Would anybody else like to speak?

3 MR. CAUTHEN: If I had known I was coming
4 to the court, I would've put a suit on today.

5 THE CHAIRMAN: It is not court. State
6 your name.

7 MR. CAUTHEN: Pierce Cauthen, 2714 Jasper
8 Boulevard. Strong proponent of property rights. I'd
9 like to see somebody be able to do with the property
10 what they choose within reason.

11 Grew up in a small town South Carolina.
12 One of the reasons brought me to Sullivan's Island.
13 I grew up in an old mill town. Lot of these old
14 houses remind me of Lancaster. House Allen lives in
15 looks like it would be right on Mill Hill, right down
16 Spring Mill.

17 He talked to me about building a house on
18 that lot year, year-and-a-half ago. I said, man,
19 what you got to do, you got to keep the houses on
20 there.

21 He said: No, I think we are going to go
22 ahead and mow it all down and put one up.

23 I said, man, you really need to consider
24 keeping that house there.

25 I think the hardship is more on the rest

1 of the island than it is on Mr. Porter. I'd like to
2 preserve the island as much as we can. I think he's
3 doing the right thing. I would like to see that
4 house there. If it doesn't work out, the house is
5 going to be torn down.

6 THE CHAIRMAN: Thank you. Anyone else?

7 MR. BROWDER: I think the house is going
8 to get torn down regardless.

9 THE CHAIRMAN: Please stand and state
10 your name, please.

11 MR. BROWDER: Rick Browder. I don't think
12 the house would ever get torn down regardless if it
13 didn't get moved. That was the choice of the owner.

14 I think as far as the neighbors, I don't
15 think that all the neighbors really care as strongly
16 about preserving the house in that location as much
17 as it's more parking. It's more cars.

18 Eventually, very likely at some point in
19 the future of being another rental house. And so I'm
20 not sure that the entire neighborhood really favors
21 that just from that standpoint. And, again, it's not
22 historic yet. I guess there is more next week as far
23 as whether it will be historic.

24 I just want a fair -- there's a reason
25 there's a build-to line. I just want a fair shake

1 evaluation. There's a reason why that rule was put
2 together.

3 Also, there's houses right down the street
4 that when someone dies, someone buys that land. You
5 can say this is not a precedent. It will be a
6 precedent. You know it. I know it. Just like they
7 said it wasn't a precedent on two variances we're
8 dealing with on each side of this property. I just
9 want a fair location. I think the compromise we
10 suggested works.

11 There's ways to design a new house on that
12 site without having to have 40-some feet separation.
13 There needs to be more creativity directed towards
14 that.

15 THE CHAIRMAN: Thank you, Mr. Browder.

16 Would anyone else like to speak? Public
17 comment is hereby closed.

18 And the Board will begin discussing.

19 Carlin.

20 MS. TIMMONS: Well, I went away for a
21 vacation. I missed that May meeting.

22 I think that the -- this is the difficulty
23 in trying to protect old places as the island is
24 exploding. You're allowing for growth, allowing for
25 property rights. You want to save what makes

1 Sullivan's Island unique. That's what that special
2 exception is. That's what that was created to do was
3 to try to make it possible and to encourage people to
4 try to preserve these places that by today's
5 standards are too small.

6 I think that they presented a good case.
7 I think the cottage is the hardship and trying to
8 build -- I think they meet all four. I think we can
9 craft a motion addressing all four of these that
10 would meet what we're called to do.

11 MS. LATHAM: I think regardless of intent,
12 let's just say, this cottage is a historic cottage.
13 It can be preserved. It can be restored. I think
14 that it is clear that Sullivan's Island has made that
15 a priority.

16 I think that in granting this variance --
17 I was happy when they agreed to move it back ten
18 feet. I think in doing so, they created enough
19 separation so that the appearance from the street
20 would still be a small quaint cottage; far enough
21 back a big house.

22 That being said, I think that it's
23 impractical, based on the images that I've seen,
24 based on the size of this lot where the build-to lot
25 is and the use of property rights to say that you

1 must be forward of the property line.

2 I think that there is a hardship on this
3 lot. I don't think that granting this variance is
4 going to disturb the Browders' view in any way.

5 Let's be honest. We're talking about a
6 diagonal view to the bridges, would be fair to say.
7 Those are not ensured. Those are not guaranteed by
8 law.

9 Given that fact, I think that we're right
10 in making this a historic cottage because, even if
11 it's a ploy to get his house further back, we
12 protected old housing stock that cannot be recreated.
13 They then can't tear it down.

14 So I think -- I don't think this is
15 impractical. I don't think that this is an
16 earth-shattering variance. I don't think the
17 neighbors are going to mind once the house is built.

18 You know, I mean, I've joked I used to
19 have both ocean and marsh views. Guess what? The
20 lots around me were sold and the houses were built,
21 and I don't have any of them. I had no dog in the
22 argument or no dog in the hunt.

23 THE CHAIRMAN: I just want to speak to
24 especially one thing. Enforcement of the build-to
25 line, if we had done that, neither one of the

1 contiguous properties would've been granted a
2 variance.

3 We can't enforce the build-to line
4 without -- if we enforce the build-to line, the
5 cottage has to be torn down. Can't build a second
6 structure. So a variance I believe is in order.

7 I think what we're really talking about
8 here is the subjective part, which is how much. And
9 what I am pleased by is that the applicant moved the
10 house forward. They've now moved the buildable area
11 forward. They've now moved it a total of 22 feet. I
12 believe that they have done appropriate mitigation.

13 This has gone on for a long time. I
14 believe that they have moved it forward. They didn't
15 want to take out the pecan tree. It was the last
16 pecan tree on the property. They have to take that
17 out. I'm sure the tree commission is going to make
18 them plant something else.

19 I also agree that -- aesthetically I
20 wouldn't want it any closer than 42 feet from that
21 historic cottage. That's because a lot of the
22 cottages are -- they're usually not deep. They're
23 wide on the -- and this one is -- this is a long lot,
24 and the cottage is also vertical into the lot instead
25 of horizontal, which many of the historic structures

1 are.

2 For that reason I'm certainly inclined to
3 grant the variance and will look to the other members
4 of the board to see if everyone thinks that the 62
5 feet, which is -- the original was 84, and then it
6 was 82. Now it's 62. Y'all think that's reasonable.

7 Emily and Sally, would you like to
8 comment?

9 MS. PRITCHARD: I'm in agreement on that.
10 I think they met the four criteria in which to grant
11 the variance.

12 MS. BRASHER: I have to agree with my
13 colleagues on the board. I would just reiterate that
14 our community believes it's very important to
15 preserve historical structures. I think this could
16 really be a beautiful structure and people that ride
17 by can say: My, that is just beautiful.

18 I think there has been compromise shown by
19 the people who have submitted this. I am very much
20 torn between the balance of property rights and the
21 rights of the community and things like that.

22 I feel like I would have to vote in favor
23 of the variance. I would also say one thing. In the
24 future, it might be beneficial just to have this
25 meeting on-site because I went several times to look

1 at these properties. The views are spectacular for
2 all three so --

3 THE CHAIRMAN: I think we are actually
4 precluded from doing that.

5 MS. BRASHER: I did not know that.

6 THE CHAIRMAN: That's why.

7 MS. BRASHER: I think it's important.
8 Otherwise you can't see it. I have been in houses
9 where it looks like maybe a view is blocked. You go
10 in: Wow, this is fabulous.

11 I didn't go in the house. I'll never go
12 again.

13 MS. LATHAM: You're supposed to.

14 THE CHAIRMAN: We just can't have a --

15 MR. HENDERSON: We can't have a quorum on
16 site.

17 MS. PRITCHARD: You should go.

18 THE CHAIRMAN: You should go and look
19 at all properties.

20 MS. LATHAM: And that's a very good point
21 actually that she just made about, from the ground, a
22 view of a house may look as an obstruction. All of
23 these houses are going to be a story in the air. I
24 mean, it may seem like a little bit but it changes
25 the view dramatically.

1 I think that the applicant has worked with
2 the community in trying to make something that's
3 quite reasonable. I think they've been very
4 thorough. I think that the burden has been met.

5 MS. TIMMONS: Do you want me to -- ready
6 for me to give it a shot?

7 MR. BARR: Can I ask one question? Just
8 about assuming the variance -- I assume it's going to
9 be granted. Is that square that's on that map, on
10 the applicant's submittal, is that going to be the
11 buildable area of the property somewhere in that
12 square?

13 THE CHAIRMAN: Yes, it's the buildable
14 area. It's not the footprint of the building. If it
15 was the footprint of the building, it would be a big
16 rectangle. I don't think that's what he's building
17 on.

18 The DRB then decides the siting, the mass,
19 the scale, all of that. That is not in our purview,
20 as you know, since you used to sit in this chair.

21 Carlin.

22 MS. TIMMONS: I move that we grant the
23 applicant's appeal for a variance.

24 THE CHAIRMAN: Request for variance.

25 MS. TIMMONS: Right, request for variance

1 of Zoning Ordinance 21-23 E.(b) to allow a 62-foot
2 encroachment from the build-to line as presented in
3 this application because they meet the requirements
4 for granting the variance as in, number one, there
5 are extraordinary and exceptional conditions
6 pertaining to this particular piece of property and
7 that is the historic structure or 1920s era cottage,
8 which we will deal with in a separate motion, its
9 historic designation.

10 Number two, these conditions do not
11 generally apply to other property in the vicinity.
12 The neighbors in that area do not have historic
13 properties on them.

14 Number three, because of these conditions,
15 the application of the zoning ordinance to the
16 particular piece of property would effectively
17 prohibit or unreasonably restrict the utilization of
18 the property because the existence -- the attempt to
19 preserve the historic cottage means that the lot is
20 unbuildable without a variance.

21 THE CHAIRMAN: I would add the area
22 between the build-to line and the historic cottage is
23 not buildable. So in order to -- in order to allow a
24 second building on the property, a variance of some
25 type would need to be given.

1 MS. TIMMONS: So you've got that.

2 And lastly, number four. The
3 authorization of a variance will not be of
4 substantial detriment to adjacent property or the
5 public good. And the granting of the variance will
6 not harm the character of the district.

7 The granting of this variance will
8 actually add an element to the neighborhood of
9 preserving a cottage per Zoning by Sullivan's Island
10 as far as protecting the historic stock.

11 THE CHAIRMAN: We do need to add that
12 this variance is contingent upon granting of the
13 special exception, which is our next item of
14 business.

15 MS. TIMMONS: Right.

16 THE CHAIRMAN: And it's not precedent
17 setting.

18 MS. TIMMONS: And it's not precedent
19 setting.

20 MS. LATHAM: I second.

21 THE CHAIRMAN: Any further discussion?
22 All in favor signify by saying aye.

23 (All present Board members stated aye).

24 THE CHAIRMAN: Like sign opposed. The
25 variance is granted.

1 We will immediately move to the special
2 exception.

3 MR. BARR: Can I make one comment?
4 Shouldn't other contingencies be that the DRB declare
5 the house to be a historical structure?

6 THE CHAIRMAN: We'll do that in the
7 special exception, I think.

8 MS. EUDY: Correct.

9 THE CHAIRMAN: The special exception is
10 actually --

11 MS. EUDY: Contingent on the historic
12 designation.

13 MR. HENDERSON: You can apply additional
14 conditions.

15 THE CHAIRMAN: We can apply conditions
16 on that, the deed restrictions.

17 Joe, you want to briefly tell us exactly
18 what we're doing on this.

19 MR. HENDERSON: Sure. In order to grant
20 the special exception, four standards should be met.
21 This is under Zoning Ordinance Section 21-178. The
22 first standard is adequate provision is made for such
23 items like setbacks, fences, buffered planting
24 strips.

25 And there aren't any adverse influences as

1 a result of the development; noise, vibration, dust,
2 odor, et cetera. Vehicular traffic and pedestrian
3 movement shouldn't be impeded by the approved use.

4 Off-street parking and loading areas
5 should be considered when granting the special
6 exception. And the proposed use should be compatible
7 with existing uses to the extent it will not affect
8 the level of the general character of the
9 neighborhood, general welfare of the surrounding
10 area.

11 Again, you can grant conditions of the
12 approval of special exception.

13 THE CHAIRMAN: Summer.

14 MS. EUDY: Did you want to do 21-20 C.?

15 MR. HENDERSON: 21-20 there are conditions
16 stated in 21-20 C.(2). These are regulatory
17 standards that staff will ensure are met. These are
18 the deed restrictions. Again, this is the function
19 of staff. We will ensure that the property is
20 properly deed restricted.

21 And that, if the cottage is rented
22 long-term, the principal building has to be
23 owner-occupied. Again, that's a function of staff.
24 We will enforce those provisions of 21-20 C.

25 THE CHAIRMAN: We will approve it in

1 accordance with that section as well; in accordance
2 with 21-20 C.(2) and 21-178.

3 MS. EUDY: C.

4 MS. BRASHER: It's on page 15.

5 MS. EUDY: 21-178(C). is the BZA's portion
6 of the special exception.

7 I'm going to try for the sake of time to
8 incorporate by reference the arguments made at the
9 March 10, 2016 BZA meeting that were consistent with
10 the two applications that have been submitted here
11 today that I made as well as the comments and
12 arguments that I made in the variance application
13 here today as fully set forth here in the request for
14 special exception.

15 And I'm just going to jump to these.
16 Obviously, we are in agreement with meeting all the
17 requirements of 21-20 C. as Joe indicated will be
18 enforced by staff.

19 The special exception standards of 21-178,
20 which are a function of the BZA are, one, the
21 adequate provisions being made for such items as
22 setback, fences, buffers, plantings to fit adjacent
23 properties from possible adverse influence of the
24 proposed use such as noise, vibration, dust, glare,
25 odor, traffic congestion, and similar factors.

1 I really think this applies more
2 specifically when we're talking about special
3 exception in the commercial district because a lot of
4 those things become much more of an issue.

5 I think we are going to comply with all of
6 those things. Obviously, the deed restrictions help
7 with that.

8 We've shown you a plan for parking. We're
9 not parking in the front yard and all that.

10 Vehicular traffic and pedestrian movement
11 on adjacent road shall not be hindered or endangered.
12 Again, I don't think this is all that pertinent to
13 the RS district; more to the commercial district. I
14 don't think this is going to create a lot more
15 traffic and/or pedestrian movement.

16 While it is possible for Dr. Porter to
17 rent the cottage -- I know him very well. He is very
18 particular. I have a feeling it will not be rented.
19 If it is, it has to be rented long term.

20 He's going to live there. He's not going
21 to put somebody out there that's going to be noisy or
22 crazy or have unsightly things in the yard. It's
23 just not going to happen.

24 I think that the planning commission and
25 Town council knew that when they created the special

1 exception ordinance and historic designation
2 ordinance. That's why they put the restriction on
3 there that the primary residence, that it be
4 owner-occupied. They knew that wasn't going to
5 happen. That would, in reality, restrict it.

6 Number three, off-street parking and
7 loading areas and the entrance and exits of these
8 areas shall be adequate in terms of location, amount,
9 design, and construction to serve the proposed use.

10 Again, I think I've already addressed
11 that. We will have one driveway with parking in
12 between the two houses and then parking under the
13 primary residence for that occupant. You cannot park
14 under the cottage. It's not high enough.

15 And then the proposed you shall be
16 compatible with existing uses to the extent that such
17 use will not adversely affect the level of property's
18 values, general character or general welfare of the
19 nearby area.

20 I don't think that having a historic
21 cottage special exception is going to affect
22 anybody's property values around there. And no
23 evidence has been presented otherwise by anybody.

24 I think that we've met those four
25 elements. And happy to answer any questions that the

1 Board has.

2 THE CHAIRMAN: Would you like to speak,
3 Mr. Barr?

4 MR. BARR: Yes, ma'am, if Summer is
5 finished.

6 The only issue that I would raise is the
7 level of property value issue. Although as put forth
8 by the Board, easements or view corridors and lateral
9 might not be protected, view corridors are considered
10 when you get ready to sell a house. Case in point is
11 the McNaughton house.

12 The McNaughtons were granted that variance
13 in 2000 --

14 MS. EUDY: Eight.

15 MR. HENDERSON: Eight.

16 MR. BARR: Here it is eight years later
17 and someone was able to build that new house. And
18 soon after the McNaughtons got that variance, they
19 sold it. And now all of a sudden they didn't have a
20 house that had to be built on the build-to line.
21 They were able to sell that house because it was
22 right up there in front of everybody in the block.

23 What I'm submitting to you is that there's
24 no way that, if view corridor, lateral or straight
25 forward or what have you is effective, it's going to

1 affect the value of the house. I submit to you
2 there's no showing that the level of property values
3 would not be affected in this situation. Thank you.

4 THE CHAIRMAN: Thank you.

5 MS. EUDY: Can I have one second for
6 rebuttal? I think that in the variance request we
7 showed you how this is not going to affect the view
8 of the neighbors. Even if arguably you said that
9 obstruction of a view corridor did affect the value
10 of the property, which I don't think applies here, it
11 wouldn't apply here. We are not affecting their
12 view.

13 Personally I don't necessarily think the
14 variance on the McNaughton lot increases the value.
15 If I were going to develop that property, I don't
16 think there's a lot -- there's enough room back there
17 for a house. I don't think it was the best use of
18 the property. I would've put a house on the front,
19 and I would put my pool back there. They could have
20 done that. Now they can't even have a pool because
21 of the variance that was granted.

22 And I would've put a little cottage
23 structure maybe in the middle of those trees. It
24 would've been a really cool property. I don't think
25 that you can argue that one way or the other affects

1 the values of the properties.

2 MR. PORTER: Can I say one more thing?

3 THE CHAIRMAN: Yes, Dr. Porter.

4 MR. PORTER: I know everybody wants this
5 to be over. I do too. I'm tired. It's exhausting
6 experience.

7 THE CHAIRMAN: We want to hear you.

8 MR. PORTER: I appreciate y'all's time. I
9 want to reiterate, my neighbors did not buy -- I
10 bought a marsh lot; they did not buy a marsh lot.
11 Town owned the land behind them. They knew that
12 going into this. So I mean I just want to say it's
13 all about the view.

14 THE CHAIRMAN: Thank you.

15 MR. BARR: That's a misstatement about the
16 marsh lot. There's a buildable area out beyond this
17 property that resulted from the use by the Town of
18 two different facts when they conveyed it. Matter of
19 fact, I represented Allen's previous owner. And when
20 we got ready to close his lot, we found that he had
21 his property when he bought from fee simple --

22 MS. EUDY: I think you're getting into
23 conflict of interest issue.

24 MR. BARR: When the fee simple interest of
25 that lot was sold, they used the wrong plat

1 reference. We had to go back and get it corrected.

2 That area in front of the Browder's house
3 is an unbuildable area. It just happens to be a
4 no-man zone.

5 Quite frankly, I've made the argument, and
6 Joe knows it already, that area is still subject to a
7 lease that the Browders' predecessors in title have
8 since 1910. Thank you.

9 MS. EUDY: The way the property lines are
10 drawn, you can see it on the color-coded map. The
11 pink property line, the boundaries, the metes and
12 bounds, that's their property line, the Browders.

13 Blue is the McNaughtons. The red is
14 Dr. Porter's property line. And actually the way
15 that all comes out changes -- if we didn't have this
16 build-to line, it changes the setback.

17 Actually, even with the build-to line, it
18 changes the setback because the setback for the RC-2
19 district is 30 feet from the critical line or the
20 property line, whichever is further landward.

21 Dr. Porter's critical line setback or RC-2
22 setback is 30 feet from the critical line. Theirs is
23 30 feet from the property line. While that doesn't
24 necessarily affect the house, it affects any
25 structure that's four-and-a-half feet or lower.

1 So Dr. Porter could put his pool all the
2 way up to that dotted line, which represents 30 feet
3 from the critical line, which is the bright yellow
4 line that's highlighted. He's not going to do that,
5 but he could.

6 Where the Browders can only put their pool
7 up to 30 feet from that bright pink line. So it
8 actually does make a difference in these properties.
9 The Town owns the property behind the Browders'
10 house. Not behind Dr. Porter's.

11 THE CHAIRMAN: Any public comment on
12 the special exception? I will hereby close public
13 comment.

14 And these are the special exceptions
15 standards. We are granting a special exception for
16 the RS star district in accordance with 21-20 C.(2)
17 and 21-178(C).

18 MS. LATHAM: I'm going to start here. The
19 only argument that the Browders proposed to this
20 particular special exception was they're saying it
21 impacts property values. They didn't discuss how it
22 impacted their property values. The argument they
23 made said that the McNaughton property was granted a
24 variance, they turned around and sold it, and it
25 increased their property value.

1 There's no demonstration here of a
2 negative impact on the property value. I don't see
3 that argument -- they have been able to show in any
4 way the special exception is going to impact their
5 property value.

6 I think given that, all four of the
7 standards have been met.

8 MS. TIMMONS: This is the one the whole
9 special exception is contingent on the DRB
10 declaring --

11 THE CHAIRMAN: Have they officially
12 designated it as historic structure yet?

13 MR. HENDERSON: They have given it
14 conceptual approval based upon the changes that are
15 required to the elevations.

16 MS. TIMMONS: They have to meet.

17 THE CHAIRMAN: Those are design.

18 MS. EUDY: We have to go back for final
19 approval of the plan.

20 THE CHAIRMAN: They have received
21 conceptual approval from the DRB for designation as a
22 historic structure. They can't give final until we
23 give the special exception. It goes there for
24 conceptual, comes to us for special exception, goes
25 back to them for final designation.

1 MR. HENDERSON: We have followed the
2 procedure for considering special exceptions. In
3 fact, we've done it twice.

4 MS. TIMMONS: Shall I make a motion again?
5 Do we have to read them in?

6 THE CHAIRMAN: We have to read them in.

7 MS. TIMMONS: I move that we grant the
8 special exception based on meeting the requirements
9 of Section 21-20 C.(2) and 21-178(c) because the
10 applicant has, number one, made adequate provision
11 for such items as setbacks, fences, and buffered or
12 planting strips to protect adjacent properties from
13 possible adverse influence of the proposed use such
14 as noise, vibration, dust, glare, odor, traffic
15 congestion and similar factors.

16 Number two, vehicular traffic and
17 pedestrian movement on adjacent roads shall not be
18 hindered or endangered.

19 Number three, off-street parking and the
20 entrance and exits of these areas shall be adequate
21 in terms of location, amount, design, and
22 construction to serve the proposed use.

23 Number four, the proposed use shall be
24 compatible with existing uses to the extent such use
25 will not adversely affect the level of property

1 values, general character, or general welfare of the
2 nearby area.

3 THE CHAIRMAN: Is there a second?

4 MS. LATHAM: Second.

5 THE CHAIRMAN: Any further discussion?
6 All in favor, signify by saying aye.

7 (All present board members stated aye).

8 THE CHAIRMAN: Like sign opposed?
9 Special exception is granted.

10 MS. EUDY: Thank you for your time.

11 THE CHAIRMAN: There being no further
12 business.

13 MS. LATHAM: I move to adjourn.

14 MS. BRASHER: Second.

15 THE CHAIRMAN: That motion is not
16 debatable.

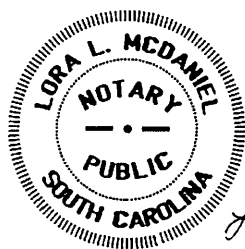
17 (The meeting was concluded at 7:44 p.m.)
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CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to, nor counsel for, any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of June, 2016 at Charleston, Charleston County, South Carolina.



Lora McDaniel

Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
September 18, 2016