MINUTES
CITY OF BEAUFORT
ZONING BOARD OF APPEALS
April 22, 2013, 5:30 P.M.
City Hall Planning Room, First Floor – 1911 Boundary Street
Beaufort, South Carolina

STATEMENT OF MEDIA NOTIFICATION: "In accordance with south Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, all local media were duly notified of the time, date, place, and agenda of this meeting."

Members Present
Brad Hill, Chairman
Rod Mattingly
Eric Powell
Don Starkey
Tim Wood

Staff Present
Libby Anderson, Planning Director

FREEDOM OF INFORMATION ACT COMPLIANCE
Public Notification of the Zoning Board of Appeals meeting has been published in compliance with the *Freedom of Information Act* requirements.

Chairman Hill called the meeting to order at 5:30 p.m. He read the Freedom of Information Act and explained the criteria for a variance.

MINUTES
Mr. Powell made a motion, second by Mr. Mattingly, to accept the minutes of the March 25, 2013 meeting as submitted. The motion passed unanimously.

REVIEW OF PROJECTS
2707 Depot Road, identified as District R120, Tax Map 3, Parcel 447A
Setback Variance
Applicant: Eric S. Brown, Architect, Brown Design Studio (ZB13-05)
The applicant is requesting a variance for side, rear and front setbacks in order to construct an outbuilding/garage.

Ms. Anderson said the lot is zoned R2, which requires a minimum lot area of 9000 square feet. A single-family dwelling was built on the lot with an attached garage. An administrative adjustment when it was built allowed a 2' encroachment. The lot is triangular.

The application was heard by the ZBOA last month, Ms. Anderson said, and the applicant was allowed to revise the project. The applicant has eliminated the accessory dwelling unit from the garage. The garage has been moved closer to the dwelling. The current garage is to be converted to a study, and a circular driveway has been added for access. Removing the accessory dwelling unit has eliminated several variances needed in the initial application, Ms. Anderson said. This garage meets those standards, and the current site plan shows that the 5' setback requirement in the rear has been met. The front of the carport and a small piece of the garage are a little into the front setback.

Due to the shape of the lot, the maximum encroachment is 4.4', and then that is minimized as the property heads toward the west. The garage behind the front façade is appropriate for the urban design perspective, Ms. Anderson said. A DOT encroachment permit is needed for the additional driveway.

Ms. Anderson said the applicant should describe how the existing attached garage will be converted into a study, and if any trees will need to be removed for new driveway access.

Six findings are necessary to approve a variance. Staff responses to the findings are:
1. **Extraordinary and exceptional conditions:** Staff finds this can be made because of the shape of the lot and its non-conformance.
2. **Conditions as applied to other properties in the vicinity:** The lot already existed when the house was built in 2010.
3. **Conditions are not the result of the applicant's own actions:** Staff feels they are not.
4. **Granting the variance would not conflict with comprehensive plan:** This is not in conflict with the Comprehensive Plan, Ms. Anderson said; the UDO and Comprehensive Plan encourage investment in existing urban neighborhoods.
5. **Unreasonable restriction on utilization of the property:** It may be an unreasonable restriction on the use of the property, Ms. Anderson said. Staff feels that given the lot's unusual shape and because the encroachment is minimal, it should be allowed.
6. **Granting of the variance is not a detriment to adjacent property and the public good:** Ms. Anderson said this is not a detriment to the neighborhood, and the encroachment now is small and only for a portion of the carport and the garage itself.

Staff feels all findings can be made on the condition the garage be converted to a study with removal of overhead door.

Mr. Wood asked if there are any unforeseen problems in regard to the other end of the driveway into Depot Road. Ms. Anderson said not to staff, but it would be a DOT issue. She envisions no problems.

Eric Brown said that removing the accessory dwelling unit "cleans it up significantly." They're down to one small variance at 4.4', he said. In regard to the existing garage, they will take off the door and match the double windows above as an insert, perhaps add a bay window; it's

dependent on budget. The existing trees, he said, have been measured, and they're shown on the site plan. Most are within the right-of-way. There's a natural clearing where they have shown the drive.

Mr. Mattingly said he thinks it's a "great solution." **Windy Vest**, the applicant, said the purpose is to make it blend, and they will replace the garage door; "we don't want it to look like we've converted a garage." They will cut concrete and add landscaping.

Mr. Wood to accept the concept as presented; second by Mr. Starkey. Mr. Mattingly asked if they should add subject to the DOT's driveway encroachment. **The motion passed unanimously.**

1499 Salem Road, identified as District 122, Tax Map 29, Parcel 172
Appeal of outdoor display of merchandise
Applicant: Bryan and Dawn Randel (ZB13-01)
The applicant is requesting an appeal of the decision of the Zoning Administrator to prohibit outdoor display of merchandise.

Ms. Anderson said this application started in January with the first submittal tabled until February for the applicant to supply more information. Then it was tabled again for more information to be obtained. The property is zoned Highway Commercial district. The applicants own a lawnmower sales and service business and want to display their mowers in front of the building. The mowers are moved in the building at night for safety. This type of outdoor display is not permitted per the ordinance, and the applicants are appealing that decision.

The ordinance divides merchandise into two types, Ms. Anderson said: indoor and outdoor merchandise. Outdoor merchandise is typically used and stored outdoors. It can be displayed as long as it's not in the right-of-way and has a site plan. Examples are boats, cars, and garden sheds, and the ordinance currently includes lawn maintenance equipment. Indoor merchandise is merchandise that is not outdoor merchandise and must be displayed only right in front of the building. The applicants are appealing the decision because lawn maintenance equipment is listed as an example of outdoor merchandise.

Ms. Anderson said the intent of the ordinance is to eliminate clutter. Outdoor merchandise is allowed because the size makes it difficult to store inside. The second reason is due to the size and weight of the merchandise being bulky, making it infeasible to move it daily onto the site. She said it's perhaps more appropriate to call them "permanent displays." Staff didn't put them in this category because it's moved in each night and is therefore considered temporary display. There's a concern that any other merchandise could be displayed out at the street if this precedent is set.

The applicant has provided alternatives for display:
Alternative 1: 20 mowers in a straight line in front of the tree line - Ms. Anderson showed a

graphic of this plan and an aerial of the site.

Alternative 2: Mowers in an "L" shape with 5 mowers on Salem Road and 10 on Robert Smalls Parkway. The mowers would be 20' from the property line, and vegetation can be planted as a buffer as at car dealerships. Staff asked the applicants to discuss what type of vegetation they might plant and if it would be irrigated.

Alternative 3: 20 mowers would be stacked in a pyramid facing Robert Smalls Parkway. Staff asked about the placement of mower #1 in this configuration and the same question as in Alternative 2 about vegetation and irrigation.

Staff recommends denial because they feel the mowers should be classified as "indoor merchandise." If the ZBOA disagrees, Ms. Anderson said, staff recommends Alternative 1. It provides good visibility of the merchandise without it being adjacent to the street which is not desirable. Driver distraction and visual clutter would be most minimized; landscaping would not be needed and therefore irrigation and maintenance not needed.

Mr. Powell said there are signs shown on the drawings, and **Dawn Randel** said that was just suggested at a previous ZBOA meeting, but they have not made an application for signs. Chairman Hill said the decision would not be made on the signs tonight regardless of the ZBOA's decision on the application. Ms. Randel said she understood.

Ms. Randel said they are requesting this because they have agreed in past meetings that the equipment can't be left outside because of the possibility of it being stolen. The ordinance says that indoor merchandise must be displayed within 5' of the building which is not possible for them because of the perimeter to the building being blocked for pedestrians, customers, and parking spaces for customers shopping.

Ms. Randel offered a fourth alternative, "like what Chevy has done," with 8' wide parking spaces, vegetation, and a 10' setback from the sidewalk; they could do that in front of their building "to keep it simple." She said the board is familiar with the proposal for that dealership.

Mr. Starkey asked the distance of the tree line, and Ms. Randel said along Robert Smalls Parkway it's 150' to 172'. From the road, the first alternative is 45' to the tree line, Ms. Randel said. The tree line is 202'; she said she feels she may have overestimated the size. Mr. Starkey said he's trying to understand how far they are from the sidewalk with the first mower and also along the second row. Ms. Randel said for the straight line, the closest a mower would be to the road from the interior side of the sidewalk would be 45' away: 7' from the back tree line at the shortest point. The longest distance would be 132'. Mr. Starkey asked "how far the car parked there now" is and Ms. Randel estimated 15-20'.

Bryan Randel said Lowes and Big Lots are in violation, too, but Mr. Starkey said that they leave their merchandise outdoors at night. Mr. Randel asked if there will be issues with trailers that

will be left out at night if he carries them at his business. Ms. Anderson said they "need a site plan about what will be where." Ms. Randel said they are only concerned about mower display at this point. She said replicating the Chevy criteria might simplify matters for measurement. Mr. Randel said they are happy to put up landscaping in the form of irrigated trees.

Ms. Randel said she's proposing 8' long forms "stacked on top of each other," about 4" wide to designate where the mowers go; it was suggested to have a designated parking space for the mowers in one of the ZBOA meetings, she said. Chairman Hill said it might not be aesthetically pleasing as designed when the mowers aren't there. Mr. Starkey said he'd made the comment to provide curbing or something to delineate where the mowers are, so they could be at the ends to across the front, as the Chevy dealer has. He said he has concerns that merchandise will move forward without something like that to contain it. Ms. Randel asked if end designators are agreeable.

Mr. Wood said they still aren't looking at a plan where they can consider dimensions or design to approve. The Randels "aren't providing more than a description" of their idea to the ZBOA.

Chuck Ferguson asked "why mowers aren't considered an outdoor product," and said "if it's classified that way, it should be able to be displayed that way." Chairman Hill explained that the "grey area" is that if it's an outdoor display, it shouldn't be taken in at night. The applicants are treating it like an indoor item, but it's outdoor equipment. Ms. Randel said the ordinance states "*typically* stored outdoors," and lawn maintenance equipment is listed as outdoor equipment in the ordinance. She said they had expected that it would be considered outdoor equipment. Mr. Ferguson said he knows Mr. Randel bought this space to be able to display them outdoors, and at present, the mowers can't be walked around inside; this could be detrimental to the business.

Kate McClintic said she feels other outdoor equipment organizations would bring in equipment indoors if they could have the space for it at night. This way they can put them outdoors for people to see them and then bring them in to keep them safe from vandals.

Pat Whitehead asked if the ordinance is "being re-written because the Randels have interpreted the ordinance by what it said." Ms. Anderson said this matter is an appeal of a staff decision. The applicants displayed outdoors, and staff said they couldn't because the merchandise came in and out and only *permanent* displayed items can be displayed outdoor. She said there is an ordinance amendment going through, should the ZBOA uphold the appeal. Ms. Randel said they have 60 signatures on a petition supporting them displaying outdoors.

Mr. Mattingly said he was impressed with proposal #1 because it fulfills what they were asked to do. He envisioned ground-level railroad ties that would delineate the space the mowers would always be in. If it were tighter, they could center it on the property, give more room on the edges, fit in the tree line, and minimize distractions for drivers, which is a big concern for the ZBOA. The landscaping timbers define where they are put every day. Mr. Mattingly said

“there would be no above ground profile,” and Ms. Randel said she thought that was a good idea.

Mr. Starkey said he favors “looking at a drawing with dimensions rather than a hand-drawn sketch.” Mr. Mattingly asked if their motion could specify that. Mr. Starkey said it’s hard to understand the distances in the various views. He likes the tree line and feels the display is best bunched together in the middle. Mr. Mattingly asked if they need another proposal to do that. Mr. Starkey said they can ensure that the Randels do that with staff and make sure that they do it to scale.

Chairman Hill said he likes Mr. Mattingly’s idea of reducing each space to 8’. Mr. Starkey said they need a specific number of lawn mowers. Ms. Randel said she would like to display 20 mowers at 8’, and they would use 160’. Mr. Mattingly said they can be centered if they have a ground level marker.

Chairman Hill said he believes they can come to a verbal agreement. He said the term “tree line” has been thrown about. Ms. Randel said they mean the trunks of the trees, not the drip line. Chairman Hill said they could incorporate Mr. Mattingly’s suggestion of smaller spaces, varying the timbers so they’re not a trip hazard or visible from the street, defining the tree line, and specifying the number of units that could be displayed. He thinks Alternative 1 is reasonable. Mr. Powell agreed with the flush timbers “for a better look.”

Mr. Wood said he wanted the public to understand that the ZBOA has been trying to approve the display, but “it’s a question of how to display them.” He said the board all seems to be leaning to Alternative #1 at 160’. Mr. Wood said they’re not designers; they’re here to approve a design, but the board is designing the applicants’ display and not being presented with a design to approve. He asked if they are going to define measurements. Chairman Hill said they can put the amount off the tree line, number of units, etc. in the motion. Mr. Starkey said they are defining where they can be displayed.

Mr. Mattingly made a motion to reverse the action of the Zoning Administrator to permit the outdoor display of the lawnmowers on the condition that the lawnmowers are displayed per the Alternative #1 submittal, which is a maximum of 20 lawnmowers in a straight line, 7’ from the existing tree line and within the area of the specified permanent, and buried landscaping timbers to be placed at 8’ intervals, centered between the boundaries of the property on Robert Smalls Parkway and Salem Road. Mr. Powell seconded the motion. The motion passed unanimously.

<u>505 East Street, identified as District 120, Tax Map 4, Parcel 745</u>
Critical Line Setback Variance and Side Yard Setback Variance
Applicant: Charles Ferguson
The applicant is requesting variances in order to retain brick walls and to locate HVAC units.

Ms. Anderson said the property is in The Point, and she detailed the minimum setbacks. Ms. Anderson went on to describe the details of the renovations. She described the properties adjacent to this one. The property exceeds the minimum lot area requirement. In addition, there's an encroachment into the north side yard setback. The encroachment was approved last year. The ordinance requires a 30' setback from the critical line for all impervious surfaces. There's a foundation survey for the property, and the 30' critical line is at the back of the house. A portion of the fireplace is located in the critical line setback. From the rear façade to the pond, there's encroachment into the setback. A wall was shown on the HDRB plans approved for the project.

Staff has allowed less substantial fences in the critical area setback, i.e., picket fences, Ms. Anderson said. They would not have allowed a fence this substantial had that been discussed earlier. The backyard can be fenced off. The applicant has started construction of a brick seating wall in the rear of the property; it's all within the critical setback buffer, and staff wouldn't permit this without a variance.

The site plan didn't show where the HVAC units were to be located, Ms. Anderson said. They are not permitted in the setback area. In the ordinance, there are features allowed in the setback such as porches. HVAC units are not listed in this section of the ordinance, and they are therefore not permitted. This is the south side of the dwelling; the HVAC is all within the setback. Ms. Anderson showed the north façade where the HVAC will be located.

Ms. Anderson said the applicants would like to create a little patio enclosed by the seating wall. The brick and sand could be permitted, and the applicant should discuss the surface material to be used. There are also staff questions about the HVAC unit, and if it could be relocated to the rear of the structure.

Public notice was made, and there have been two public comments received, on Friday and Monday afternoon.

For a variance, there are six findings the board must make. Ms. Anderson offered the staff perspective:
1. **Extraordinary and exceptional conditions:** The lot is more than twice as large as required by the TBR zoning, Ms. Anderson said. The location on The Point pond may be an extraordinary condition.
2. **Conditions as applied to other properties in the vicinity:** This lot is not substantially different in size or shape to others around it in The Point, or around the water. There are other lots in The Point on the water, but only one other residential lot on The Point Pond, Ms. Anderson said.
3. **Conditions are not the result of the applicant's own actions:** The property owners were aware of the property's location and configuration when they purchased it, Ms. Anderson said. In regard to the location of the lot on the pond, it has a critical area setback requirement; landscaping walls and placement of HVAC should have been identified when the site plan for

the project was being developed.
4. **Granting the variance would not conflict with the Comprehensive Plan:** Ms. Anderson said the ZBOA must find that granting these variances are not in conflict with the Comprehensive Plan and the purposes of the UDO.
5. **Unreasonable restriction on utilization of the property:** Ms. Anderson asked the ZBOA to consider if it is unreasonable to require walls to be outside the critical setback, if it is unreasonable for them to be removed now, and if it's unreasonable to move the HVAC.
6. **Not a detriment to adjacent property and the public good:** Staff believes granting this variance could be a detriment to water quality; the side yard setback variance for the HVAC unit property on the garage could be a detriment to the adjacent property.

Staff recommends the variances be denied, specifically the buffer wall on the north side of the property, Ms. Anderson said. Staff recommends the column nearest the cedar tree and the first wall segment be removed: the removal should be saw cut and carefully excavated to prevent damage to tree roots, and when construction material is removed, an arborist should excavate soil to expose roots damaged during the wall installation. The arborist should then do a clean cut on the roots to prevent disease. Then it should be treated with michorrizae and appropriate hardwood mulch and the invoice presented to staff in regard to that work being done.

The seating wall should be removed, Ms. Anderson said, and the board needs to consider if it is necessary or appropriate to have a brick patio without the seating wall. In regard to the side yard setback HVAC variance for the garage, the close proximity of the neighboring property leads staff to recommend that the variance be denied and the HVAC relocated to the east side of the garage. In regard to the side yard setback variance for HVAC on the primary building, since no one lives on the adjoining property, the staff feels there's not a detriment to the public good, so if the board agrees, they could approve the HVAC on the north side. Staff believes the findings show that they should not approve the variances with the exception of the HVAC on the north side of the property, Ms. Anderson concluded.

Mr. Starkey asked about the procedure to build a wall: what the city's requirements are and if there is review. He asked "how this fell through the cracks" from Ms. Anderson's perspective. Ms. Anderson said this is new construction and would have been presented on a site plan. The HDRB approved a wall, but "what was built went beyond that." All the architectural elements were not submitted, she said. Permit applications are approved by staff on an existing dwelling.

Ms. Anderson showed and reviewed the HDRB approved plan. Mr. Starkey asked if the removal of the palmetto was requested. Ms. Anderson said she'd have to look into that. Mr. Wood asked why the HVAC stands aren't on the HDRB-approved document. Ms. Anderson said "they weren't submitted, and it wasn't discussed, apparently." Mr. Wood asked if the HVAC footprints are required, and Ms. Anderson said they "will now have a heightened awareness because of this case."

Mr. Mattingly asked why there weren't inspections from staff; Ms. Anderson said the "building

inspectors are focused on the building and don't get involved in a brick wall." Planning staff should have been more involved; there was a planning staff change, and the new Planner might not have been aware of this. The complaint came from a neighbor. Mr. Starkey said the fences and seating wall were not on the original HDRB-approved plan. There is no brick wall on the front of the property.

Mr. Ferguson, the contractor, said the two brick walls and the two HVAC stands are at issue. In regard to the stand on the carport, he showed the current drawings with the construction that's begun. Mr. Ferguson said "it is shown on five different places that the HVAC stands were approved on this plan." **Bill Chambers**, the architect for the project, is "the stamp on it," he said in response to a question from Mr. Starkey. Ms. Anderson said Mr. Starkey was probably looking for the name of someone in the city.

Ms. Anderson said that she doesn't disagree that this drawing may have been in the approved set, but it wasn't in the site plan, and as the zoning reviewer, she looks "at the site plan for the elements going vertical," and the site plan didn't show the HVAC units. Plans were submitted that showed the screening of the units.

Mr. Wood said it's confusing because it's a 2-story plan, and there's "substantial grey area." Mr. Ferguson said they "are following the rules." When there's a complex project like this, there can be 40 drawings; "this was there and built according to plan," he said. This is a remodel, so the second HVAC unit was "put back where it was." It was not on the site plan but *was* on the original survey with the HVAC stand on their proposed location, which also encroaches on the existing side yard setback. They have been stopped but intend to put it there, Mr. Ferguson said.

In regard to the wall on page 1 of the picture, to soften the height of the elevation stand/footprint, before the house was modified, the AC units were on grade and new regulations require that they be raised, so they raised them 3' so that the house wouldn't appear to be 7' off the ground. Extending the wall, Mr. Ferguson feels, would minimize the cumbersomeness of the HVAC location. Prior to starting this, they had permission to take the cedar tree out, and the owners had asked for permission to put in a magnolia, he said.

In regard to the landscape bench, Mr. Ferguson said he'd "neglected to place it in the location," and he didn't realize he was within the critical line. Benches are allowable, and theirs happens to be a brick bench, he said. The bench was meant to give the owners privacy because of the high exposure on three sides; they don't feel it has a negative impact on the retention pond. The retention pond is made to treat water before it goes to the saltwater, Mr. Ferguson said. They have a letter from a civil engineer and OCRM saying that there's no impact. A fence is allowed on the side yard, he said, and they feel it wouldn't be as aesthetically appealing to put in a cyclone fence, for example. Mr. Mattingly asked if they had the aforementioned letters before today, and Mr. Ferguson said, no, he had gathered them over the weekend.

Chairman Hill said there was a plan approved by the city showing the HVAC unit location. Mr. Ferguson said there were 5 different ones. Ms. Anderson reiterated that the site plan didn't show the locations of the HVAC. The drawings that showed the elevations of the garage building showed the locations of the units. Mr. Chambers said the 3-D documents also showed them.

Mr. Ferguson said they went through 5 different HDRB processes, and he doesn't believe "there were any mysteries as to what we were going to build." Mr. Chambers said the HDRB required that the unit and its location, screening, and color were all mandated. Ms. Anderson said the HDRB couldn't approve the setback variance.

Mr. Mattingly called the project "a beautiful product." He's curious about knowing setback requirements and critical line requirements in the Lowcountry, i.e., why this is coming up to the board now. He said it's a mystery why the insistence on these kinds of zonings is coming now.

Mr. Chambers said in regard to compressors, not fences or walls, that from community to community, district to district in Beaufort, most people do have compressors in setbacks. A deck can be put in a setback, and the design team may have made an error. Now that the HDRB requires screening of them in the district, "it's becoming less of an issue." Mr. Chambers said the screening is "a fence right on the line." The fence was going to go down the side yard, but the owner decided against it, he said.

Mr. Starkey asked what was done to protect the tree; he asked their process and who did it. Mr. Ferguson said the cedar tree was to be removed. They built a footing to support the fence in anticipation of the tree coming out. They met with Palmetto Landscapes to see about bringing in a new tree, and they said they would wait. Ms. Anderson said the HDRB did not review a landscaping plan for this project; staff received all of it a couple weeks ago. Mr. Starkey said there was no landscaping plan then. Ms. Anderson said the fence didn't go all the way to the tree, either.

Mr. Starkey asked what would happen to the roots of the cedar tree, or if it was to come out. Mr. Ferguson said they "build around sensitive trees regularly." When roots are gone over and under, it's best to cut it cleanly and that was done. Mr. Starkey said at the drip line, "it's usually a no-no to cut the roots," and they don't like vegetation removed from the critical zone. It's meant to be protected. Mr. Ferguson said they brought in 500 gallons of michorrizae for two other trees and this one. They did all they were to do including fertilizing the tree twice with an arborist, whose name Mr. Ferguson did not recall.

Leslie Hendricks lives across the pond from this house. The pond was mischaracterized as a retention pond, Ms. Hendricks said. A dam was put in to keep the street from flooding, and is not a retention pond. Ms. McClintic said she had been impressed with the workmanship, materials and design, and "they seem to have tried to be sensitive to the neighborhood." She thinks it's an asset to the neighborhood; the previous house, as a renovator, seemed like too

much effort and money to be renovated, so she's impressed and believes it will be an asset to the neighborhood. She admires that they are willing to put in the quality construction and money into renovating these properties on The Point which are "often empty and shabby."

Howell Beach said he had sent an email. He said if the HVAC units are built on the north side, they would need to look very good because it's the bare side of the house. They would need to add screening of some kind.

Jean Aimar said she grew up on The Point, and there was "a sidewalk no one wants to recognize." She thinks that Ms. Anderson has a picture of a sidewalk that runs in front of the house. She thinks this project has covered the whole lot, which "shocked" her. She doesn't feel like she would be allowed to build as much on one of her lots on The Point as has been built on this lot. She feels "it's covered the whole lot," and she doesn't "think that's normally allowed." She has had a similar situation occur, she said. She then asked if the sidewalk has been considered. Mr. Chambers said it hasn't. She thinks if the sidewalk from Federal to King Street would be restored, people could walk on it and around the rest of the historical area. She would like to have some historical elements come back, including the phosphate rocks that were there.

Beverly Bishop said she lives near the project and "some of this is so done that it can't be undone." But there are grasses that have been cut into the water, nesting birds are gone now, and the day before, there was "a massive fish kill all over the pond." She had photographed it and saw "some slick material" which she felt "looked like the oil at a marina." It could have been slag from concrete work; it was the only spot that looked unusual. So much has been changed, Ms. Bishop said; this was a wetland and hadn't been disturbed in the 10 years she's been there, and now most of it has been stripped away. The cedar tree holds the bank together, she said, and the oak tree has been severely limbed. "The mass of the building covering nearly the entire lot is distressing," Ms. Bishop said.

Chairman Hill suggested tackling the HVAC issue first. Mr. Powell said the HVAC units were overlooked with the HDRB and the plans examiner. It was on the design plan but not the site plan. The existing units, if they are going back in the original location, "is something to be considered" if properly screened. Mr. Wood said they "won't be going back on the ground." He said the garage's is the HVAC within the setback. Ms. Anderson said both are within the setback. Mr. Mattingly said the property owner on the adjoining property hasn't objected as far as they know, but a future owner might.

Mr. Wood said the letter from Mr. Beach is discussing the north side units. The HDRB will have to look at the screening on the units on the north side. Chairman Hill said, in regard to the unit on the south side of the garage, the plans were approved but didn't make it to the site plan. Mr. Ferguson said there's fencing to go around the unit. The fence is parallel to the building, and there is fence on the street to be painted black, which is what was approved. Mr. Wood said "but the unit is in the setback," which Chairman Hill said was approved but didn't make it to the

site plan. Mr. Mattingly asked why it was so close to the street and not put further back. Mr. Chambers said "there was no magic dimension." Mr. Mattingly said the garage area is where the HVAC is, so he asked why it wasn't further east to be further away from the street.

Chairman Hill asked, on the main house, if the units are elevated; Mr. Ferguson said they have the same footprint but they are required to be elevated. Mr. Starkey asked if the main house HVAC plan was approved. It's facing the park, and he asked if there were drawings. Mr. Ferguson said they haven't yet determined that. Mr. Starkey said it's "major," and reiterated that it's facing the park. Mr. Chambers said it's on the original plan; he showed where the original compressors were on the original site plan. It's a 7' setback, Mr. Ferguson said. Ms. Anderson said it's required to be 10', and Mr. Ferguson said they got a variance. All of the HVAC is in the setback. Mr. Chambers clarified to the board that he "is the original architect on the project."

Chairman Hill said AC issues are not a huge issue to him from the perspective of them being approved; they're back in the original location, and it's "just an administrative error" that they weren't shown on the approved site plan. Chairman Hill said they still need to submit a screening plan for them, and it will be approved at a staff level. Mr. Chambers said if it's more than the staff feels is necessary to approve, it will go to the full board.

Chairman Hill said the next issue is the brick fence. "Clearly," he said, "someone dropped the ball on this one." As a board they need to figure out how to fix the problem. Mr. Mattingly said he's very concerned about the critical line. The lake/pond and tree roots are important to the community. Coming close to the roots of an oak "is concerning in all cases." Mr. Starkey said he's very concerned about it because "even trimming trees within the critical area has to be approved." They had taken one tree down in the critical area, and he asked if they had a permit. They also said they were planning on taking out the cedar at the same time, and he thinks it's inappropriate to do so without approval. If they had offered an alternative or plantings in the critical zone to keep it a "marsh to backyard area" that would have worked, but as is, it can create run-off. He said they will have the same issues in the form-based code committee; there are questions about the 30' critical setback. Mr. Mattingly added that some people want 50' critical setbacks. Mr. Starkey said he's not assured the work was done by an arborist, and if the wall's taken out, they can damage the area more than leaving it in will. He explained his concerns about pollutants.

Ms. Bishop submitted her fish kill photos. Mr. Wood said the dotted line hitting the chimney indicates that even the chimney is in the critical setback line. Mr. Chambers showed the original footprint of the house and what they are allowed to put back. They moved the house to the street and were allowed to build to that footprint.

Mr. Wood said he's concerned about the fence and seating area. The red lines on the as-built drawing "were built knowingly in the critical setback area." Mr. Chambers said Mr. Ferguson had stated that. Mr. Wood said they can just say that they don't want anything in the critical

setback area, and that was agreed to be the case. Mr. Starkey said “it looks nice, but it is in the critical area.” Mr. Starkey said there’s a tree missing. Mr. Mattingly said it’s a 14.8” palm.

Chairman Hill said he feels there’s a compromise to be reached: as far as the cedar’s concerned, “they’re tough trees,” and cutting into the root zone “is not a best practice” but the tree will survive, he feels. Someone dropped the ball on building in the critical setback, and staff recommended pulling back a section of the wall under an arborist’s supervision. Chairman Hill said he’d like to see them add the seat wall, and it’s not had an impact on the trees; it’s parallel to the face of the building which will slow down run-off.

“The landscaping plan is lovely,” Chairman Hill said; however, it shows a brick patio in the critical setback, and that’s for filtering the water. If it were his, Chairman Hill said, he would love to have the patio there, but in the section from the bottom of the steps out, they need to see a plant-back plan for vegetation that provides filtration, such as a heavy planting of spartina to filter water. Chairman Hill summarized that they need to remove that section of wall and provide a landscaping plan to show how the water will be filtered from the house back.

Chairman Hill said he’s thinking of allowing them to keep the wall, but from the house past the critical line, to use a design that’s there for filtration. It can be landscaped but more natural-looking. Mr. Starkey said he’d like to have the removed tree replaced. Mr. Mattingly said he’s not sure if this would set precedent for future critical line issues. If it weren't already there, and they could still do a correctly-laid, pervious patio it might be different. Chairman Hill said they can’t do that in the way it’s drawn on the site plan. Mr. Starkey said brick patios “fill up,” and nothing keeps them pervious; water will run off of them, so that’s why he doesn’t want it in the critical area.

Mr. Wood made a motion to accept the HVAC stands as proposed, pending design approval of the surroundings. Mr. Powell seconded the motion. Mr. Starkey asked if they could do natural vegetation screening as well as a wooden screen on the park side. Mr. Wood said the original plan with the crepe myrtles looks good to him.

Mr. Wood amended his motion to accept the HVAC stand footprint as proposed, pending design approval of the landscape and living screen plan presented to staff to visually screen 75% of the length at the time of planting. Mr. Starkey seconded the motion. The motion passed unanimously.

Mr. Ferguson said if the city “would allow a pitch for more palmettos,” he thinks that would be great. They could even do a living screen, he said. There would be enough room if it grows on the fence. Mr. Wood said it will not screen sound, and the units’ noise will be loud in the park. Mr. Wood said they’re allowing the stands but discussing the aesthetics of it.

Mr. Starkey suggested they remove the first panel of the wall from the cedar tree per staff’s recommendation. Mr. Starkey proposed that no additional hard surfaces be allowed in the

critical area, though they can leave the seating wall, and that the critical area be landscaped to provide filtration of any run-off in that area from the house to the water in the critical line. Landscaping is to be approved by city staff.

Ms. Anderson said the board needed to address why there should be a variance for the wall when it is not allowed in the ordinance.

Mr. Powell made a motion that the applicant remove the panel of the fence as recommended and in the manner recommended by staff; remove the seating wall; and provide a landscaping plan at the rear of the house showing some kind of filtration plan that is not turf to be approved by staff. Mr. Mattingly seconded the motion. The motion passed unanimously.

There was general discussion about the pond and the recent fish kill. Ms. McClintic asked about the ZBOA being able to prescribe planting by the owners. She asked if there is "anything that permits them to have a different kind of fence," and Mr. Chambers said yes, if it's approved by the city. Chairman Hill said they are compromising because going into the critical line is not allowed. The wall is not allowed anywhere within the critical line, Mr. Mattingly said.

There was a brief discussion as to what can be done to prevent this from happening again.

DISCUSSION: UPDATE ON THE FORM-BASED CODE COMMITTEE

The form-based code process has gone through Verdier Bluff and the hospital zone that's been created, and they "hope to tackle Pigeon Point next week," Mr. Starkey said. There are some interesting things cropping up in the form-based code that are taking time. They found an exception for T3E property which is along the waterfront in which short-term rentals were allowed without getting a special exception. This was a mistake, and it will take people going through documents to prevent future issues like they are going through now, Mr. Starkey said. It's a slow process, but it's progressing.

Mr. Mattingly asked if he could be in on the discussion of Pigeon Point via phone, and Ms. Anderson concluded that he could. There was a discussion as to whether Mr. Mattingly could serve part-time on the ZBOA as a part-time resident, but it was determined that he could not.

ADJOURNMENT

There being no further business to come before the board, Chairman Hill adjourned the meeting at 8:16 p.m.