

**TOWN OF WEDDINGTON  
SPECIAL BOARD OF ADJUSTMENT MEETING  
QUASI JUDICIAL  
THURSDAY, FEBRUARY 25, 2016  
MINUTES**

The Board of Adjustment of the Town of Weddington, North Carolina, met in a Special Session in the Town Hall Council Chambers, 1924 Weddington Road, Weddington, NC 28104 on Thursday, February 25, 2016, with Chairman Rob Dow presiding.

Present: Chairman Rob Dow, Vice-Chairman Dorine Sharp, Barbara Harrison, Jim Vivian, Gerry Hartman, Brad Prillaman, Town Planner Julian Burton, Town Clerk Peggy Piontek and Board Attorney Bill Brown.

Absent: Bruce Klink

Visitors: Alan Kerley, Michael Mullikin and Brandon Pridemore

**Item No. 1. Open the Meeting.** Chairman Rob Dow opened the February 25, 2016 Special Board of Adjustment Meeting at 7:00 p.m. Chairman Dow announced that Bruce Klink is absent and Alternate Brad Prillaman is attending in his place.

**Item No. 2. Determination of Quorum.** There was a quorum.

**Item No. 3. Approval of the January 25, 2016 Special Board of Adjustment Meeting Minutes.** Vice-Chairman Dorine Sharp moved to approve the January 25, 2016 Special Board of Adjustment Meeting minutes. Gerry Hartman seconded the motion, with votes recorded as follows:

AYES: Prillaman, Sharp, Harrison, Vivian, Dow, and Hartman  
NAYS: None

Alternate Ms. Barbara Harrison left to sit in the audience.

**Item No. 4. Zoning Variance for property located at Lot 23 in the Subdivision Lake Forest Preserve (Tax Parcel 06099406)**

Chairman Dow opened the public hearing to consider a variance request for a setback located on lot 23 in the subdivision Lake Forest Preserve, Weddington, NC. Town Attorney Bill Brown swore in the following individuals: Alan Kerley, Michael Mullikin, Brandon Pridemore and Julian Burton.

Town Planner Julian Burton – The applicant is requesting a variance from the front setback for a lot in a RCD Conservation Subdivision. The ordinance requires a house to adhere to a 20 foot minimum front setback. That section is 58-58.4.e.4.i which is also in the application packet. Let's go through the packet. There's the actual physical application from the applicant which describes the request; it includes their findings of fact. That is what the Board of Adjustment shall follow. Before granting a variance they will use those for the findings of fact on substantial content and material evidence. As you continue to go through the application packet there are two maps that show the location of the lot which is in Lake Forest Preserve which is a RCD subdivision. There is a document that shows the adjoining property owners and their addresses, and they were all notified of the hearing tonight. There is a sealed survey showing the location of the house on lot 23 and the house has been constructed. There is section 58.58 at the back of your application packet which is what they are requesting a variance from. I point that out if you go to

the letter “e” which is dimensional standards on the first page and then number “4” for yard regulations and then “i” the front yard setback of 20 feet. I would also like to submit several other documents as exhibits for the Board of Adjustment to consider. I can provide them to the applicant as well as we go through them:

Exhibit 1 – Town Agenda Packet

Exhibit 2 – Section 58-208 of the Weddington Zoning Ordinance

Exhibit 3 - Section 58-209 Certificate of compliance of the Weddington Zoning Ordinance

Exhibit 4 - Zoning Permit for Lake Forest Preserve Lot 23

Exhibit 5 – Section 58-234 of the Weddington Zoning Ordinance

Town Planner Burton reviewed Exhibit 2.

Town Planner Burton - This section 58-208 of the ordinance discusses the procedure for review and approval of a zoning permit. I want to specifically point out #8 titled Foundation Survey:

- a. *Upon construction of a building foundation (subsequent to the issuance of a zoning permit for that building or structure) the applicant shall be required to submit a copy of the foundation survey of that building or structure to the zoning administrator in order to ensure that the foundation is in accordance with all applicable setback and bulk requirements. The foundation survey, in scaled form and which has been certified as being accurate by a surveyor or engineer registered with the state, shall show the location of the foundation on the lot and all applicable front, side, and rear yard setbacks. Failure to submit this foundation survey may result in the denial of a certificate of compliance.*

Town Planner Burton - The applicant did submit a final survey which shows the house as it’s been erected but never submitted a foundation survey as defined in this subsection. This would be a survey submitted upon completion of the foundation. As I read this subsection it states that a failure to submit this foundation can result in denial of a certificate of compliance.

Town Planner Burton reviewed Exhibit 3.

Town Planner Burton- I just want to point out one sentence of Exhibit 3 under #1 to try and differentiate between a survey for a certificate of compliance and a foundation survey:

*The application shall include a scaled, dimensional plat drawn by and certified as accurate by a surveyor or engineer registered with the state which affirmatively shows that the building or structure was erected in compliance with this chapter and the zoning permit previously issued*

Town Planner Burton - The survey that was brought to the attention of the Zoning Administrator and is in your application packet was the final survey based on the erected structure, not solely the foundation. It was different from the initial zoning permit that was approved by the Zoning Administrator in August of 2015.

Town Planner Burton reviewed Exhibit 4.

Town Planner Burton - I'd like to draw your attention to the third page of that exhibit. It's a sealed survey of the proposed house location on the lot. You can see that it is in a different location than the final survey and the front setback is 30 feet which meets the 20 foot setback requirement.

Chairman Dow - So this is what the building permit was issued on?

Town Planner Burton – Correct. This is the proposed location of the house that was approved.

Town Planner Burton reviewed Exhibit 5.

Town Planner Burton – I would like to draw the Board's attention to #7:

*(7) The board of adjustment shall have no authority to issue a variance for a waiver of a setback or bulk requirement for a building or structure if the applicant had not first submitted a foundation survey, in accordance with subsection 58-208(8), subsequent to the construction of the foundation and prior to the application for a certificate of compliance.*

Section 58-208.(8) is Exhibit #2. That's everything that I wanted to bring to the Board's attention, I will be happy to answer any questions.

Chairman Dow – Are there any questions for Julian?

Vice Chairman Sharp – I have one. One of these documents says “subsequent to the construction of a foundation and prior to the application for a certificate of compliance.” Has the applicant filed an application for a certificate of compliance?

Planner Burton – No, they have not.

Vice Chairman Sharp – So we are in between those two?

Town Planner Burton – Correct.

Chairman Dow – Along those same lines, when did you receive the survey that showed the infraction?

Town Planner Burton – I don't have an exact date on that. There was no formal submittal.

Chairman Dow – Was that part of anything?

Planner Burton – No. It was brought to my attention that the house had been built with an encroachment over the front setback which triggered the procedure to apply for a variance.

Chairman Dow – I understand. So that wasn't part of the certificate of compliance application?

Planner Burton – Correct.

Mr. Prillaman – Who built the house? Did Orleans Homebuilders and did they make the initial application or did Taylor Morrison build the house?

Planner Burton – It might be good to get some clarity from the applicant on that.

Mr. Jim Vivian – The footprints don't match. It's not the same house; it's not the same footprint.

Mr. Kerley – Yes, sir, that is something we are prepared to address.

Mr. Prillaman – To reaffirm, Julian, a foundation survey was never provided, correct?

Town Planner Burton – Correct.

Chairman Dow – I guess we're going to beat down that track pretty quickly here and apparently that's becoming the question.

Town Attorney Brown – Julian, on Exhibit 4, which is the zoning permit application in 2015? Is that your signature on that? Did you sign off on that as Zoning Administrator?

Town Planner Burton – I did.

Town Attorney Brown - At the time that you did that did you have any discussion with them about the provision in the third paragraph on that permit? It says "*I hereby state I am aware I must apply for a foundation permit prior to the construction upon that foundation. I am aware that no variance may be granted by the Board of Adjustment and no certificate of zoning compliance may be issued until the structure is complete in compliance.*" Did you discuss that at that time?

Town Planner Burton – We did not discuss that to my knowledge.

Town Attorney Brown – Subsequent to the issuance of this zoning permit have you remained in the position of Zoning Administrator until now?

Town Planner Burton – Yes.

Town Attorney Brown – Have you ever either received a foundation survey or issued a foundation permit for this house?

Town Planner Burton – No.

Vice Chairman Sharp – The applicant signature Shanida Benton, do you know what her role was at Orleans Builders? I assume she was someone from Orleans.

Town Planner Burton – I could not say with certainty of what her role was. She signed off on a lot of permits so she definitely had a role with permits but that's all I can say.

Chairman Dow – But this document as we see it is what was signed off on and is what she saw.

Town Planner Burton – Yes.

Town Attorney Brown - In reviewing, obviously you have reviewed this zoning permit from August 2015 and you have reviewed the variance application. Is that correct?

Town Planner Burton – Yes.

Town Attorney Brown – Looking at those two documents the address for the zoning permit applicant Orleans Homebuilders is shown as 1410 West Morehead St., Suite 100 on the zoning permit in August 2015. Is that correct?

Town Planner Burton – Yes.

Town Attorney Brown – And the list of lot owners that is made part of Town Exhibit 1, which is the agenda packet. I'm sure you reviewed that as well. It shows Taylor Morrison of Carolinas, Inc. and that address is also 1410 West Morehead St., Suite 100. Is that correct?

Town Planner Burton – Yes.

Town Attorney Brown – Did you ask the applicant about the similarity or identical address at all?

Town Planner Burton – I did not.

Chairman Dow – That is on the application also.

Mr. Prillaman – As a rule of thumb how many house foundation surveys has Taylor Morrison submitted so far in that neighborhood?

Town Planner Burton – Since I've been working as Zoning Administrator, I do not recall any foundation surveys being submitted.

Mr. Prillaman – They have provided no foundation survey for any property?

Town Planner Burton – Correct. By practice it's not required to get a certificate of compliance. Most builders do not submit foundation surveys. A foundation survey by our ordinance is required in order to be granted a variance. It could be cause for denial for a certificate of compliance but it is not a requirement to obtain a certificate of compliance.

Mr. Prillaman – So if I understand it correctly, they applied for a foundation permit and if they put it in the wrong spot that's on them? The third paragraph says "*I am aware I must apply for a foundation permit prior to the construction upon that foundation.*" So help me understand. I guess what I'm asking is that a normal course of business or is it not?

Town Planner Burton - It is not a normal course of business. I think if you read the ordinance it does not have a requirement for the certificate of compliance. So most developers do not do that ever with the risk being if they end up building the house outside of the setbacks they built a house in the wrong place.

Chairman Dow – That brings up an interesting point. Why is there in our ordinance a requirement for a foundation survey that may relieve you of the right to ask for a variance. Yet at the same time why do we do it that way? What does it allow them?

Town Planner Burton - I think it would allow the Board of Adjustment to see if there was an error made after the foundation was already installed, as opposed to the entire house, including the foundation to be outside.

Chairman Dow - If a large developer is building a sizeable tract out, foundation surveys can be expensive for \$425.00. Would you say they are willing to assume the risk of their compliance rather than spend the money? Or does it allow them that choice? In other words if they build a house correctly are they allowed to do that?

Town Planner Burton - They are allowed to forego the step, yes, at their own risk.

Town Attorney Brown – So the provision in Section 58-208 of the zoning permit, section 8, Exhibit 2, which you focused on the foundation requirement. It starts on the end of page 2. Over on page 3 it goes on to say in the very last sentence of subsection a, “*Failure to submit this foundation survey may result in the denial of a certificate of compliance.*” Has that ever occurred?

Town Planner Burton – Not by me.

Town Attorney Brown – How do you construe the word “may”?

Town Planner Burton - I construe it to mean that I have the option of using that as grounds for denying a certificate of compliance but I’m not held to that.

Town Attorney Brown – Just to draw your attention to one other document; the zoning permit from August 2015, Town Exhibit 4. We focused in on that last third paragraph of the actual permit where it says “*I hereby state I am...*” and then the very last sentence it says “*no variance and no certificate of zoning compliance may be issued until the structure is in complete compliance*”. How do you construe what that means? It seems to suggest that you cannot issue a certificate of compliance.

Town Planner Burton – I think that is assuming that to be in complete compliance you must have submitted a foundation survey. Where I would take that to mean to be in complete compliance the final survey shows the house to be in compliance with all setbacks. I don’t necessarily think that that ties the foundation survey to complete compliance.

Town Attorney Brown – To reiterate some of your earlier testimony, I believe you testified that they have not applied for or received a certificate of compliance on this house yet, is that correct?

Town Planner Burton – Correct.

Town Attorney Brown – If they apply for one, given your view of the word “may”, would you consider it a requirement that they have a foundation survey or consider that option?

Town Planner Burton – I would consider that option but I think I would deny it regardless because it is not in complete compliance because it doesn’t meet the setback requirements.

Mr. Prillaman - Do they submit plans for each house?

Town Planner Burton – Yes.

Mr. Prillaman - Does the house that was proposed and the house that was built match?

Town Planner Burton – They do not.

Mr. Prillaman – Do you have plans for the new house?

Town Planner Burton – That’s the final survey.

Mr. Prillaman – That’s not what I’m asking you.

Town Planner Burton – Okay.

Mr. Prillaman – Before they built it they had to have plans for the house.

Town Planner Burton – Yes.

Mr. Prillaman – Was that house approved?

Town Planner Burton – Yes. That's Exhibit 4.

Mr. Prillaman – But the house that was originally requested because the foundation surveys don't match up, which house was approved - the one that was submitted on 8/17 or the one they are asking for now? It's two separate houses here.

Town Planner Burton – Right. The one issued 8/11/15, which is Exhibit 4, was approved.

Mr. Prillaman – But not the one that was built?

Town Planner Burton – Correct.

Mr. Prillaman – Regardless of where it was located at that house was not approved?

Town Planner Burton – Correct.

Mr. Prillaman – Okay.

Vice Chairman Sharp – Does that imply that the house was built without a zoning permit? It's not just that the house itself is in a different location, it's that the house is not the same house.

Town Attorney Brown – I don't think in the eyes of the law it would be without a zoning permit. It would be contrary to a Zoning Permit. The Zoning Permit showed a certain house. What they built was contrary to that so it was not in compliance with the zoning permit. So it's an unlawful house in that sense.

Chairman Dow – That's why I was asking regardless of the setback.

Mr. Prillaman – Help me to understand. So they applied for zoning and they were approved for zoning. So it meets zoning but it's an unlawful house because that's not what they asked. They built something different.

Town Attorney Brown – Its design aligns with the zoning permit. It may meet the zoning requirements overall except for the setback issue that's before you for the variance tonight. But it wasn't built in compliance with the description in the survey submitted with the zoning permit in August of 2015. Therefore it's not in compliance with that. It's not a valid or legal house because it is not the house that they were permitted for.

Mr. Prillaman – That is what I was asking.

Town Attorney Brown – They should have submitted, as they moved into construction, a request for an amended permit with an amended site plan. Maybe as things got going or moving along or whatever, regardless of the foundation issue, they should have corrected the proposed design of the house as it was being built since then. Has there been any, in your reviews of the file, has there been any amended site plan or zoning permit requested issued after August 2015?

Town Planner Burton – No.

Vice Chairman Sharp – Assuming there had not been an issue with the setback on this house, when they would come to you for a certificate of compliance would you see that the plan of the house footprint was different? Do you compare those two?

Town Planner Burton – Not always. I focus my review on whether the compliance is compliant with our ordinance.

Vice Chairman Sharp – But not necessarily matches what is on the building permit?

Town Planner Burton – Correct. If there was an issue I would certainly refer to the initial zoning permit.

Chairman Dow – All right, we can revisit with Julian if we have questions. Gentlemen, if you will state your name and what your position is.

Alan Kerley – Vice President with Taylor Morrison Homes. Can I ask a couple of questions based off of Julian’s testimony? My first question is about a foundation survey. There was a lot of talk up here about a foundation survey. How is the foundation survey defined? Because on our final survey in the title block it says final survey but it is a foundation survey on the final plat. When I look at the zoning application it says: *I’m aware that I must apply for a foundation permit prior to construction upon that foundation* – which you were given a permit application with the plot plan that we submitted. So I’m wondering what the definition of a foundation survey is that’s different from the final survey that we submitted that shows the foundation.

Attorney Brown – I’m assuming you are directing that to staff to testify what his understanding is of a foundation survey?

Mr. Kerley – Yeah, I’m just asking if that’s defined.

Town Planner Burton – The foundation survey in Section 58-208 does not clearly define a foundation survey. It says: *“the applicant shall be required to submit a copy of the foundation survey of that building or structure to the zoning administrator in order to ensure that the foundation is in accordance with all applicable setback and bulk requirements.”* One thing that I wanted to bring up, and that is part of the reason I submitted Section 58-209 which is Exhibit 3. is that when it talks about the application for a certificate of compliance it talks about what I believe to be the final survey - *“which affirmatively shows that the building or structure was erected in compliance with this chapter and the zoning permit previously issued.”* There’s a difference between the survey for compliance in that the house has been erected and the foundation survey in which it has not.

Mr. Kerley – I’m still struggling to see the definition there to see the difference between a foundation survey and a final survey. When our final survey shows the foundation and was submitted prior to the compliance request. In the ordinance it doesn’t state a time frame from the time you start the home to when you have to supply a survey to subscribe to getting your zoning compliance. As Julian said we built probably 180 homes in the neighborhood and we have always followed this process. We build a home, supply the final survey with the request for the zoning compliance; that’s our standard operating procedure in this neighborhood for the last nine years. To go back and speak to the application and where we are, as it says in the application we were Orleans Homes. We bought the community and land and developed it as Orleans Homes. We built the first 180+ homes in there as Orleans Homes and were purchased in July by Taylor Morison. The initial plot plan on the zoning application was drawn up on

July 15, which was prior to Taylor Morrison taking over. So even though we had not received the zoning permit at that time the process had started.

Vice Chairman Sharp – When did the property transfer to Taylor Morrison?

Mr. Kerley – I believe it to be the 22<sup>nd</sup> of July, some time in that time frame.

Vice Chairman Sharp – The application for the zoning permit was by Orleans Homebuilders however Taylor Morrison owned the property almost two months prior to the zoning permit application?

Mr. Kerley – The zoning permit was in August; that’s when we received the zoning permit.

Vice Chairman Sharp – All right, so a month. You owned the property in July. The application was made by Orleans Homebuilders though in August.

Mr. Kerley – I don’t know if that’s true, I’m not sure that’s when the application was made. That’s when we received it. Okay I can see it here 8-17. Okay.

Vice Chairman Sharp – So who owned the property and who was the owner of that parcel as of the date of the zoning permit application?

Mr. Kerley – The date of the zoning permit application Taylor Morrison was the owner of the bond.

Vice Chairman Sharp – So did Orleans Homebuilders, Julian, have the right to apply for the zoning permit? As not being the owners? Or do we have any record of the owner?

Town Planner Burton – It sounds like there was a transitional period. Are you asking...

Ms. Sharp – The home builder name says Orleans Homebuilders but I’m getting the impression from the applicant that it was actually Taylor Morrison who was building the homes. That’s what I’m trying to see if there is a discrepancy here.

Chairman Dow – I think we have to go deeper to find the answer to that. Is Orleans Homes still a viable entity?

Mr. Kerley – No, it’s not.

Chairman Dow – They were purchased by Taylor?

Mr. Kerley – They were purchased by Taylor Morrison.

Chairman Dow – So they, in effect, did take over.

Brandon Pridemore, Consulting Engineer for the project – Just a couple points of record I’d like to make and this is in my discussions with the Division President Alan Ross trying to find out what the timing of all this was. Yes, Taylor Morrison did purchase Orleans Homes but not Orleans Homes entity itself. Orleans Homes is still in business today. It’s just that they pulled out of the Charlotte market. Taylor Morrison bought this market, the assets from this market. There are still two separate entities out there and available. What I would like to clarify is that the house actually started in July. We are the surveyor of record for the project as well. I checked through our records and I believe on July 17<sup>th</sup> we went out there and started to stake the lot. We were out there somewhere around the 22<sup>nd</sup> or so getting ready to

stake the rough box for the house. So the house was started as Orleans Homes. There was a transition period as well. They closed towards the end of July/-first of August. That part I don't know, as I wasn't part of that transaction. There was a two month transition period where, because of the broad scope of acquisition, Taylor Morrison had to still get their hands around what is, how we implement our procedures and policies, what employees are going to be kept. So they were still working under Orleans Homes so they had that contractual obligation to allow that use and use of home plans and all that other stuff. So I just wanted to clarify for the record, it wasn't just absolute that Taylor Morrison took ownership of the Charlotte market. They were still operating under Orleans Homes I believe until September of 2015 if I recall that correctly.

Town Attorney Brown - Do you know this based on personal knowledge or based on a conversation you had with someone else?

Mr. Pridemore – This is based on a conversation with Kevin McNally who is the Division President of Taylor Morrison.

Town Attorney Brown – Is he here to testify tonight?

Mr. Pridemore - He is not, sir; he was unable to make it tonight.

Town Attorney Brown – Do you know what hearsay is?

Mr. Pridemore – Yes, sir

Town Attorney Brown – Do you think what you just said is hearsay?

Mr. Pridemore – I think I'm just passing along information that I'm aware of but yes, sir I do.

Chairman Dow – Would you like to continue with a more formal presentation that you have for your application. I can give you a second to finish up and then we can shoot you questions.

Mr. Kerley – As far as the formal presentation goes, a lot of our question is just the definition of foundation survey. We felt like we were following within the spirit of the ordinance by supplying the final survey which was inclusive of a foundation survey prior to the certificate of compliance. As I said we built over 180 homes in this neighborhood and in this particular case we were not aware of the encroachment. I'm Vice President of Land so I don't build the homes let me make that clear. I'm up here because I've got the most experience with the Lake Forest community and with the company. I've been with the company over nine years so that's why I'm up here. The Construction Manager at the time that was building this home is no longer with the company. He was not retained when Taylor Morrison bought Orleans Homes so we really don't have the back story as to why is the zoning permit is one thing and the final survey another. We really don't know that answer. From a housing standpoint somehow Union County was given the correct set of plans. I think from a housing standpoint, I want to make sure everyone understands it. It's not a health and safety issue; there were still framing inspections, electrical inspections and plumbing inspections. Apparently there was at some point there was a change where they switched the house. I don't know if the potential buyer changed their mind or something between the transition that did not make it back to the Town. But I want to make sure everyone understands that the house is a sound house inspected by Union County and there is nothing wrong with the house. Actually we have all the specs that passed. The only thing the reason this came to our attention was when we came to apply for the certificate of compliance we realized that the foundation was just over six inches over and most of that is due to the brick on the garage. So that's when we realized that we had an issue. We

thought that we had to clear this up through a variance hearing before we could go make the official certificate of compliance request.

Mr. Prillaman – Based on the math I think you're right. The encroachment is about six inches because of the brick. My question is how'd you get from 30 feet to 20 feet which is actually a 10' 6" difference?

Mr. Kerley – The best we can tell what happened is when the buyer added the third car bay. I think Brandon has a picture which shows the three car garages. When they added the additional bay the house moved. I don't want to do hearsay but I'm assuming that when they added the third car bay the foundation got deeper and they did not submit it to Julian.

Mr. Prillaman – Okay, so if the foundation got deeper then that's going to change everything in the house that's going to be a complete new house, right? Because that footprint is completely different and I'm not disagreeing that it is or it's not. I'm just saying we went from a 10 feet safety area to 6 inches over. So it's not necessarily a 6 inch mistake; to the Town it's a 10'6" mistake that's pretty huge.

Mr. Kerley – Well I would say that instead of a safety factor you have the front setback you can build up to the front setback. So from a true sense of the word safety, there's no safety factor. From the sense of the word safety and the structure of the home, the home that is out there now is the home that was inspected by Union County.

Mr. Prillaman – Well let me rephrase it. Safety as opposed to making sure within code and zoning requirement is what I'm referring to. Not the actual safety structure of the house. I think that's fine. I guess what I'm saying is we've got a fluff area of a house here of approximately 10 feet and now we're 6 inches over. So from a survey standpoint on a 150' lot being off 10'6" is a huge error.

Mr. Kerley – And if the house stayed the same it would have been a huge error. The difference is they added a third car bay and did not submit that through Weddington.

Mr. Prillaman – That's what I'm asking because now from my perspective I'm looking at a drawing that doesn't match up with what's been approved and we're still 6 inches over which again when I look at a survey I'm 10'6" off.

Mr. Kerley – Had the process be followed properly, admittedly, and when a plan change submitted back through the Town it really wouldn't look any different than it does now. Instead of just being 6 inches over the line it would be at the line.

Mr. Vivian - This what we see here is on the initial that was done July 2015 looks like a 2 plus 1 and it looks like there's no fireplace on the back. Just from reading the blueprint. On this one it appears it's a 3 car side load. You got a 2 plus one and here you got a 3 car side load and looks there's a fireplace in the back and if this was done properly in the first place here then where's the turn radius to get into the single bay? So this representation of this survey here I don't see where, I mean there are so many inaccuracies in what was submitted. I just don't get it. You can't get into this bay coming this way. The driveway should have been here because they clearly took what was the single bay and put it on the front. I understand that. I get that but I don't see how. When you went that day to stake the lot were you staking this house or this house?

Mr. Pridemore - We have no record of staking that house as it sits today. We don't have it. All of our files show the original one. All I do know for a fact is that a decision was made through Alan Kerley through his Division and myself as a corporate officer we were not made privy to the changes made. If I could I would like to, Alan was trying to describe what's built as to what's out there now and if we had

the opportunity to rebuild we would, but I have two different photos I'd like to present as Exhibits for the record. Just to show you what the house looks like today. Applicants Exhibits 1 and 2.

Chairman Dow – That's fine.

Mr. Pridemore – I apologize, you will have to share so I can make sure the attorney and Julian get one.

Attorney Brown – If anyone did do a site view you need to disclose that for the record.

Chairman Dow - Who did do a site view?

Mr. Vivian – I did.

Mr. Prillaman – I did.

Ms. Sharp – I am the only one who did not do a site view.

Mr. Pridemore – Those are two photos looking at it from each point and show what's built there today, just for information.

Mr. Vivian – I would think if it was that you moved the single bay to the front then this drawing here the double garage would be here and the single would be in the front.

Mr. Pridemore –I'm not the builder, sir.

Mr. Kerley – I really can't answer that. Either the other construction guys may be able to but I really don't know enough about our plan changes to talk about that. I guess to wrap up our presentation, we acknowledge that steps were missed. There should have been a zoning permit resubmitted during the transition with the purchase, with construction manager who started the house not being the construction manager who finished the house. There was no one that even knew there was an issue until we came to apply for the compliance. As Julian mentioned we didn't try to hide anything or sweep it under the rug. We reached out to Julian and said "Hey, we've got an issue." We didn't know about it. Nobody knew about it. We kind of inherited it. So that is when we started going down this process for the variance. From a hardship standpoint the question is what do you do if you don't get the variance? The lot's plenty deep so you can tell by looking at the survey we weren't trying to cut a corner here. We can fit the house on there if we move it back. This wasn't willful; this was clearly a mistake. So how do we fix it, we tear the front of the garage off? We will make a mess and a lot of noise if we move it back six inches. That's how we fix it if we don't get the variance. Why do we not want to do it? It's a completed house ready to be lived in. It had all the inspections and we have neighbors on both sides and neighbors across the street. We would love to not make them go through that after the house has been completed. Of course there is a definite cost to us as well. So those are the hardships. Then from a safety standpoint and quality standpoint the home is in compliance with the other homes on the street. It is a little over six inches in the front setback. It's not a safety concern there's no visibility obstructed because of it. All the cars still fit in the driveway they are not blocking the site triangle challenges. So from a safety standpoint and a harmony standpoint we feel that's all within harmony. Our hope and thought was that this variance process is for an honest mistake. That's what it was. There was a lot of transition going on not everybody knew. Some people were retained and some were not. Not all the information got passed along so unfortunately we didn't find out about the error until December. Unfortunately we had to give the money back to the people who bought the house because we couldn't get a CO for them. They ended up buying another home. That's why we're here before you now just asking for basically mercy for a mistake.

Mr. Pridemore – If I could go back to what was discussed earlier. There is some ambiguity in the wording of the ordinance; the application and ultimately enforcement. I can state with absolute confidence and fact because I did the original houses in this community. We used to do a foundation survey but as an administration changed it was found out that you didn't have to. I think, I'll state for the record, I think it's confusing where if you have to provide a foundation survey to prove that you're okay why would you need that to go through a variance? Variances are made for honest mistakes and I feel like we are presenting an honest mistake tonight. I would like to add to Alan's point that while we are in conflicts with the Town of Weddington Zoning Ordinance when it comes to front setback, there is no public endangerment in the fire code. We provide visibility there's nothing that's harmful or willful to the public in its application.

Mr. Hartman – Have you performed an estimate of cost to bring it into compliance?

Mr. Kerley - It always costs more than you think but our initial cost is somewhere in the probably \$25,000.00 range. You're removing brick, tearing down block, taking off a roof, building block back, putting the brick back on, reroofing, re-shingling, re-doing the yard because you're going to tear it up and, most likely damage the driveway. So our rough estimate is probably \$25,000.00.

Mr. Prillaman – What time line would that take?

Mr. Kerley – We would have to go back to the county. I'm assuming that requires a demolition permit possibly. I don't know if it's a remodel or demolition. So depending on how they classify the permit it could take anywhere from 30-45 days probably.

Mr. Prillaman -35-45 from when you start, not from a permitting standpoint but from when you start construction, when you start taking brick off to when you're driving the last nail. Roughly is that three weeks?

Mr. Kerley - Best case scenario three weeks. That's no rain.

Vice Chairman Sharp - I have a couple of questions about the house plans changing. Do you know the date when you said Union County received a survey of what was actually built?

Mr. Kerley – I don't. We place our plans in the permit box and the inspectors come out and pull the plans out of the box so that's how they inspect the plan they supply in the field. So I don't know when the initial zoning permit, those plans were never in the permit box.

Vice Chairman Sharp – Do you know when construction actually began on that house? When they started digging the foundation?

Mr. Kerley – According to what we believe based off of the surveyor's records the actual lot preparation and everything that goes into starting it started in July.

Vice Chairman Sharp – But do you know when they actually started taking the dirt out of the ground? Because at some point between July and when they started construction apparently the house plans changed. So that's why I am asking that.

Mr. Kerley - I do not know that.

Mr. Pridemore – I can give you a rough estimate. We actually sent a crew chief out there I believe it was the second week of August, give or take around the 12<sup>th</sup> or the 14<sup>th</sup> to go out there and pin the footers. But we weren't made aware of this until we asked him about it and we found this issue but he said at that point he was asked away. The Superintendent on the job said we have some things we want you to check for us. They actually pulled some field measurements at the request of the Superintendent at that time. It didn't match our stake out apparently. I'm guessing they had begun at that point a crew chief stated a fact to me that the foundation was already poured he was just asked to provide pins to true up the corners. So I'm guessing that they had probably excavated probably the end of July or the first part of August.

Chairman Dow – I understand what you're saying, the difference between a foundation survey and a final survey. I hear what you're saying and I want to point out that you do say that building in construction without a foundation survey is your standard operating procedure. You have not done a foundation survey on any of the lots in Lake Forest, is that correct? Submitted to the Town a foundation survey?

Mr. Kerley - Correct.

Chairman Dow – Is this true, when you recognized the problem is when you submitted the survey for the certificate of compliance?

Mr. Kerley – Yes sir.

Chairman Dow - If that survey, had everything been correct, you would have anticipated that being part of the final survey for the certificate of compliance application. Is that correct?

Mr. Kerley – That's correct.

Town Attorney Brown – Based on your testimony, is it your testimony that after the foundation was poured and before the house was started there was no foundation survey done?

Mr. Kerley- That is correct.

Town Attorney Brown – The first time you took what you are contending is a foundation survey was the final survey that was submitted for the certificate of compliance?

Mr. Kerley – Correct.

Town Attorney Brown - Have you actually applied for the certificate of compliance?

Mr. Kerley – To my knowledge, no. I thought that this is the step that had to be taken once we realized that there was an issue on the encroachment.

Town Attorney Brown – How did you find out there was an issue? When the survey showed it?

Mr. Kerley – Yes.

Town Attorney Brown - What did you do when you found out?

Mr. Kerley - We emailed Julian and said we just found out we had an encroachment - what do we do?

Town Attorney Brown – Do you know as the land person with respect to the transaction, where I believe your testimony is that it was an asset purchase not corporate merger. What kind of surveys, title policies and other information with respect to the product on the land occurred when those assets were conveyed?

Mr. Kerley – I can't speak to that. If you're asking if Taylor Morrison has a title policy, I could check with the corporate office. I'm sure there is a title policy; I don't have access to that.

Town Attorney Brown – You have not reviewed those files you don't know whether it exists?

Mr. Kerley - I don't know.

Town Attorney Brown – If it had a policy would it not require a certification and a survey?

Mr. Kerley – I do not know.

Town Attorney Brown - Just so we understand the issue that's before the Board tonight, you testified that you felt like the foundation survey is kind of ambiguous.

Mr. Pridemore - Yes sir.

Town Attorney Brown – With respect to the variance procedure which is section 58-234 which is Town exhibit 5 and section 7 of that says “*The board of adjustment shall have no authority to issue a variance for a waiver of a setback*” which is what you are asking correct?

Mr. Kerley – Yes.

Town Attorney Brown – “*or bulk requirement for a building or structure if the applicant had not first submitted a foundation survey, in accordance with subsection 58-208(8),*” - which is another exhibit- “*subsequent to the construction and prior to the application for a certificate of compliance.*” Is there anything ambiguous about the need to submit a foundation survey in advance of seeking the variance?

Mr. Kerley – We submitted a plan and we submitted the surveys. The survey was submitted even though knowingly and admittedly wrong.

Chairman Dow – A foundation survey?

Mr. Kerley – We submitted a survey that shows the foundation. The survey foundation, it doesn't say foundation in the title block but we never submit anything that says foundation survey. Everything says final or physical. But it has the survey stamped foundation on the plan.

Town Attorney Brown – So we understand what you're saying then, your contention is that the document submitted with your application for the variance you are contending is a foundation survey?

Mr. Kerley – Yes that it suffices for a foundation survey; yes.

Town Attorney Brown – Just one housekeeping matter - they submitted a couple of exhibits. The first one they submitted was marked Exhibit 1 left side view of the home. Maybe that should be Applicant's Exhibit 1. The second one they submitted is Exhibit 2 the right side view of the home. Maybe that should be Applicant's Exhibit 2.

Chairman Dow – Peggy, please get those on the record, I am marking them for you.

Mr. Prillaman – What do you stake the houses by when you build a house? How do you stake the house?

Mr. Pridemore – The normal process would be to get a request from the homebuilding division. We would take that house plan, draw it up by the exterior corners of the house and present that corner of the plot plan and that becomes our staking file for the rest of the job.

Mr. Prillaman - So the staking file would actually be the parameters for the foundation correct?

Mr. Pridemore – Yes sir

Mr. Prillaman – So would you suggest that might be a foundation survey or not?

Mr. Pridemore – Technically speaking from our standpoint, when we do a final survey we are verifying the foundation as well so it does include the foundation. Now from a general term standpoint that is not a normal foundation survey the way I would view it.

Mr. Prillaman – From my perspective, if I'm the homebuyer and I come out to look at a house that was built for me in the past and I come out and look at a foundation that's all I have to go on. I see that document that's drawn up like this that's a preliminary plan that's got a foundation on it and that is a foundation survey. But you're saying that's not a foundation survey?

Mr. Pridemore – I believe it is, sir. It represents what the foundation is intended to be.

Mr. Prillaman – Okay. So if I understood your testimony your gentlemen went out to stake the foundation and the Superintendent said we may have a question here we have some different stuff going on.

Mr. Pridemore – Yes, sir, that's what I was told.

Mr. Prillaman – So the Superintendent on site would have dictated where the foundation went? Or did the surveyor decide where it goes? Because I'm looking at this and I say okay the only way a surveyor works is if I have a control pin somewhere in the street and I have to know where my corners are and then I pull off of that. Is that right or not?

Mr. Pridemore – What I was told that, again the house itself is the same house, the base house. The rear walls were actually set in stone or set in concrete I should say. It was poured from what was handed to me by my employee. He was asked to square it up according to these dimensions which he did in the field.

Mr. Prillaman – And then you did.

Mr. Pridemore – Yes sir.

Mr. Hartman – Does your engineering firm or Taylor Morrison have any internal policies where if you have intended construction or foundation that is close to or at setback lines that you pay more particular attention to it? Or request additional surveys?

Mr. Kerley – Yes, sir. This is an anomaly we do not make changes in the field. Our construction managers are not allowed to make changes in the field. It always goes, to this gentleman's point, it goes back to the surveyor to reset the foundation pins. In this particular case we cannot answer why because

the construction manager who started this home is no longer here. We can't answer why that happened. That is an anomaly that does not happen. When we change a house plan, company policy is resubmit the plot plan, repermit and have the surveyor stake the correct house.

Mr. Pridemore – It has been our policy from the very first house that we built in this community to be mindful of the setbacks and we purposely set them away from 20 foot to give us room for any adjustments that may come at a later date. As Mr. Kerley said almost 180 homes have been built. This is the first zoning issue we have run into. We just can't explain why it happened.

Vice Chairman Sharp – The construction manager that you mentioned was he an employee of Orleans or was he an employee of.

Mr. Kerley – He was an employee of Orleans and I do not know when the, if it was part of the acquisition when he lost his job or if it was prior to. I don't know the timing of that. I just found out.

Vice Chairman Sharp – But he was an Orleans employee?

Mr. Kerley – He started out as that, yes Ma'am.

Mr. Prillaman – Bill, if you will help me, on Exhibit 5 item 7 I am going to read it again just for clarity. *“The board of adjustment shall have no authority to issue a variance for a waiver of a setback or bulk requirement for a building or structure if the applicant had not first submitted a foundation survey.”*

If the applicant has admitted that he has not submitted a foundation survey what options do we have? It doesn't sound like I have any options.

Town Attorney Brown – If in fact that has been admitted, that is up to you to decide what the testimony is you just heard. You obviously heard their contention that what they submitted with the variance application is a foundation survey. But if you determine that it's not then you don't have any authority to grant the variance. Now if you want them to, the testimony has been that the certificate of compliance has not been applied for or issued yet either. So if you read that language literally like I was previously they can get another bite at the apple. They can go do a foundation survey because the certificate of compliance hasn't occurred yet and come back and ask for a variance.

Mr. Kerley – That goes back to my first question of what is the Town's definition of a foundation survey. Could we qualify our survey as a foundation survey?

Mr. Prillaman – I think he's asking what order of transaction, I think. What I think what he's suggesting is if you went and got a survey like we have now that you provided and obviously shows it's not in compliance. And if you applied for the.... That's where we are at now so we're asking for the variance now is that correct? That's where we are at now.

Mr. Kerley –As the applicant we are asking for the variance now. We contend that the survey we supplied to Julian showing that we had the encroachment saying hey we messed up, we're sorry, and what do we do? Here is our survey that shows exactly where the foundation is. We even blew it up to show the encroachment. If you look at the survey on the lines you really can't tell. We blew it up and said here's the encroachment we're not trying to pull anything over on you here. Because quite honestly the first time I looked at it I was like what's wrong with this? It's just the brick and it's right on the line and actually Brandon and his chief surveyor said well if you blow it up and look at it we are six inches over. That's when we came to Julian and said we're not going to trying to pull anything over on you we are

going to blow it up and show the encroachment. That was our foundation survey that was dead on. We were .55 inches or 1/10<sup>th</sup> of a foot over the line. This is our foundation survey.

Town Attorney Brown - It can be up to the board to determine and interpret what a foundation survey is. Brandon, your testimony just a few minutes ago was that the final survey doesn't comprise what in your understanding is what a foundation survey is. Isn't it correct that a foundation survey is supposed to be done immediately after the foundation is poured? You go out and confirm that the house is in the right place and it meets the previously drawn plans so that the house that goes on top of it will be built in the correct place so you don't have the very problem that we are dealing with tonight. Isn't that what a foundation survey is in your understanding?

Mr. Pridemore – In other jurisdictions, yes. Of the ones that require it but there are very few jurisdictions that we work in that require a foundation survey.

Town Attorney Brown – But if it says you have one here in our ordinance, regardless of what our practices are, isn't that what should have been done a long, long time ago?

Mr. Pridemore – Then again I would go back to, when I said ambiguity, it's where the foundation sits it's the application and enforcement of your code that should be done. Or if it should be done.

Mr. Dow – Can I step in and ask a question that is sort of dove-tailing with you?

Town Attorney Brown – Sure, I am through. We are trying to address what a foundation survey is.

Chairman Dow - As to ambiguity and this was kind of the same question I asked Julian. If you have all the confidence in your building and albeit in this situation with the corporate turnover and the employee turnover and the period of time that it took it may have been less than standard procedures. But would it not be valuable for you as surveyors, well maybe not surveyors but as developers and builders, if you had confidence in what you were doing to not pay for an extra survey? Yes or no.

Mr. Kerley – Can I expand on that a little bit?

Chairman Dow – Well you stated a minute ago that it was standard operating.

Mr. Kerley – It is standard operating but we have it staked out. This gentleman's point the surveyor stakes it out initially. Our foundation guy doesn't go out and pull strings off the back of curb; we have a surveyor set the corners for us that's our standard practice. So I would contend that we do have the initial foundation survey. It's done by a plot plan the surveyor stakes it out.

Chairman Dow – Prior to being poured?

Mr. Kerley – Prior to being poured.

Chairman Dow - And our request is that it's done after it's poured. Is that correct?

Mr. Kerley – Which part?

Chairman Dow – Our ordinance states that a foundation survey is done after it's poured, correct?

Mr. Kerley - Correct.

Chairman Dow – So the reason I’m asking you if instead of ambiguity it’s giving the developer flexibility. Could that be? How many of these foundation surveys do you do and how often do you run into encroachment?

Mr. Kerley – This is the first encroachment that I’ve been involved with.

Chairman Dow – Right and you stated a second ago that you’ve not done any foundation surveys according to what you now find what we require.

Mr. Kerley – Correct.

Chairman Dow - Would it not add flexibility to you to not have to do foundation surveys if you felt like you could pour a foundation where your surveyors pinned it? Would it not save you a good bit of \$500.00 per lot?

Mr. Kerley - It wouldn’t be that much.

Chairman Dow – Well whatever, time, effort? My point is - is that ambiguity or is that offering your developer flexibility? We say we require it. If it’s not done we cannot issue a variance is that ambiguous or is that...?

Mr. Kerley – This is me talking again, admittedly the land guy, the guy that is not involved with the homebuilding part, but from our standpoint we have the surveyor lay the house out originally. Off the plot plan 99.9% of the time that plot plan and the final survey is the exact same foundation. It’s not; we’re not leaving it ambiguous so that we can come back for a variance application. We have confidence in our system that the surveyor sets the foundation right, we pour to that. I want to point out another thing; this is a four side brick home. It takes a long time to brick it. We don’t do the foundation survey until all the brick is up because that counts as part of the encroachment. So you can’t really do the foundation survey.

Chairman Dow - Are you saying the brick goes up past the foundation?

Mr. Kerley – Yes, the footing. So many times the brick goes out past where the front of the house is where the block is.

Chairman Dow – Past the foundation footing?

Mr. Kerley – Past the block, not the footing, the block. So that’s why I’m saying it. Yes to answer your question.

Chairman Dow – Okay. Are there any more questions at this point? We can come back if you guys are free. I have a couple more questions for Julian. A couple of questions regarding time. In the exhibits you gave us Exhibit 3 and you highlighted an area in this that is necessary for the certificate of compliance. *“If the application for certificate of compliance is for any building, the application shall include a scaled, dimensional plat drawn by and certified as accurate by a surveyor or engineer registered with the state which affirmatively shows that the building or structure was erected in compliance with this chapter and the zoning permit previously issued; provided,”*. Your purpose there is to show us that the application for certificate of compliance does require a final survey.

Town Planner Burton – My point of bringing that up was to try and bring some clarity to the difference between the survey submitted with compliance and the survey submitted for a foundation survey and

point out that with the final survey it is affirmatively showing that the building or structure was erected in compliance. So that's stating that the house has been erected.

Chairman Dow - So they are referring in this survey to a building and structure?

Town Planner Burton- Yes

Chairman Dow – In Exhibit 2 Section 58-208 “*Upon construction of a building foundation (subsequent to the issuance of a zoning permit for that building or structure) the applicant shall be required to submit a copy of the foundation survey of that building*”. I’m asking you for clarity, that sounds different and is that why you gave us this then, the final survey? The final survey talks about a building and structure this one is talking about a survey done on the foundation itself.

Town Planner Burton – Yes.

Chairman Dow – There’s been mention of changes in administration and how these regulations whether or not they have been enforced. If somebody comes in tomorrow is it your interpretation of our zoning ordinance that they have got to give us a foundation survey?

Town Planner Burton – No.

Chairman Dow – Has that changed since you have been here?

Town Planner Burton – No.

Chairman Dow – So we will issue a certificate of compliance without a foundation survey.

Town Planner Burton – Yes.

Chairman Dow – By design, that is planned. So there has been no change as to whether this was required or was not required for a certificate of compliance.

Town Planner Burton – Correct.

Chairman Dow – Are you aware of going through older permits prior to your work here, seeing other subdivisions and going through or having to re-go through especially when you first came maybe someone applies and had researched of any foundation surveys that we had taken in?

Town Planner Burton – I’ve seen foundation surveys before. I couldn’t tell you what year they were but they were certainly older.

Chairman Dow - Were they all over the place with every development? Have you found them with every development that’s been done?

Town Planner Burton - I couldn’t say with certainty how often I’ve come across foundation surveys. I’ve certainly come across them before on older subdivisions.

Mr. Dow – But to your understanding of our zoning ordinance the fact that we require one to be able to request a variance versus issuing a certificate of compliance without one is not ambiguous.

Town Planner Burton – True.

Mr. Hartman - Given the depth of the brick is it possible that the foundation might have actually been compliant but with the brick it's pushed it over?

Mr. Kerley – You never know exactly how far the brick cavity is but we think that the actual block itself, that's what I was referring to a while ago, was that the foundation goes to the block not the actual poured foundation we measure that. Because you can have a very wide footer but that's not what it's measured to the block. Without ripping the brick off we think we're probably still right on the line within an inch or so of possibly being over. So it's not that we can just rip the brick off and put Hardy Plank on it, we don't know without going in and checking that but we could potentially have an inch or so. Is that fair to say?

Mr. Pridemore – Yes.

Mr. Kerley – Because the brick can vary a little bit on the thickness of the brick.

Mr. Vivian – Just to understand your practice I think you stated that typically you held that property back to 30 feet so you went, you typically hold the property back 30 feet. It's a 20 foot setback but you were, so if that's the case when you changed from this Windsor with the 2 plus 1 to this three car garage why wouldn't it have been held back in that case because you still have room in the rear.

Mr. Kerley – I'm having to go off of the comment from Brandon earlier that the back of the home had already been dug and that's why the front protruded up instead of shifting the whole house back.

Town Attorney Brown – Your Exhibit 2, the right side picture. So as the house is being built you say your practice on the street is to do 30 feet. So you look at this picture of the street and the other homes; isn't it obvious in that picture that someone was building, that you could see that this portion of the house was jutting out much more than any other homes up and down the street as shown on your Exhibit 2? Isn't it obvious to the eye? To the average eye that you might have had a problem there?

Mr. Pridemore – Who is that question directed to, sir?

Town Attorney Brown – Either one of you.

Mr. Pridemore – We don't set foot back out in that community until they ask for a survey so I couldn't give you that answer.

Town Attorney Brown – I would assume your company goes out and looks at the house.

Mr. Kerley - My company goes out there for sure.

Town Attorney Brown - So what did they see when that was happening and what did they red flag if anything?

Mr. Kerley - They probably saw that the other homes were artificially pushed back further than required and thought that it was still within the setback. That's what I would assume. If I knew that the houses beside it were pushed back, that the requirement was 20 feet.

Mr. Mullikan – I live on lot 24, right next door to the house in question. In regards to the obvious issue, I saw it as the foundation was being dug it was quite a bit further out. I spoke to the previous Superintendent and said “Hey what's going on here - it's different right?” and he said “Yup, I just build

them the way I'm given the plans" but he referenced that you were going to look into the issue because although the setback is 20 feet that the community standard was the houses would align which is at about 30 feet. So he said I've been instructed to keep going but checking into it. So they were aware at the time the foundation was done that they had a difference at least in the community. I would also like to point out as far as the previous Superintendent there is a question about when he left the company - it was right around September 14<sup>th</sup>. I have an email from him, from Orleans Homes because he was still working on Lake Forest from September 14, 2015. The other point I want to make as far as the house changing and the potential buyer changing it. It's my understanding that this was a spec home all along.

Chairman Dow – That's pretty much hearsay too.

Mr. Mullikan – Oh I'm sorry. It was put up for sale after the construction started by Orleans Homes.

Town Attorney Brown – Was there anything else suspicious out there while you were watching?

Mr. Mullikan – I guess you mentioned "in harmony", I would disagree that it is in harmony. It is obvious when you drive up this house sticks out and you see all the other houses sitting back so it's pretty obvious that it is...

Town Attorney Brown – Like that.

Mr. Mullikan – Yes exactly like that. You can't even see our house until you get just up past that one. I understand the law is 20 feet by itself but the rest of the community is at 30 feet. At least that street is.

Mr. Vivian – You did a plat map for the proposed property? Was there a plat map done when you realized this different property?

Mr. Kerley – That's the issue; there was never a revision to that plat.

Mr. Vivian – There was never a plat for that home?

Mr. Kerley – Exactly. That's the issue is that was changed in the field without anybody really knowing to submit through the Town.

Chairman Dow - Or for yourselves. You didn't have a plat map to go through?

Mr. Kerley – Once the foundation was started there was never a revision.

Mr. Vivian – To site the house?

Mr. Kerley – The rear was already set based off of the initial footings on that plan.

Mr. Vivian – For this house?

Mr. Kerley – Yes.

Mr. Vivian – The footings were set. But then if you changed the house and you're building this wouldn't there almost be a required need to at least look at the fact that maybe the rear has to, maybe we have to make an adjustment. Because we're adjusting on the front so maybe we have to adjust at the back.

Mr. Kerley – And I think that was what Brandon was speaking to earlier.

Mr. Pridemore – Normally yes but we're simply stating as a matter of record that we don't know what was the decision that was made and why. This is very contrary to the way we've operated in that community.

Mr. Mullikan – A point about that third stall. There is another house with the exact same plan in the community where they put the third stall to the side of the house. It didn't go out towards the street it went more to the side. So the two cars would be side load and then the third stall would be front load. So there was that opportunity if there was a change to do that rather than go out towards the street.

Mr. Pridemore – That was the original plan.

Mr. Prillaman - If the original plan was set up on a preliminary plat and it was changed, not only would the Superintendent have to know but wouldn't the purchasing agent have to know as well because all the flu structures. Everything really changes from a structural capacity that goes through.

Mr. Kerley – Yes he would definitely have to know that but the director of purchasing would not know if it made it through a new plat land submittal.

Mr. Prillaman - I understand that but from a corporate standpoint, the Superintendent can't make a decision on his own. He goes through how many levels of approval? Did he go to get that approved?

Mr. Kerley – Three would be fair and I wouldn't call them levels of approval. People just react.

Mr. Prillaman – You've got the sales people, the construction people and the purchasing people.

Mr. Kerley – That's right; those are the ones that would.

Mr. Prillaman – I'm assuming the Division President would make a change, correct?

Mr. Kerley – No, he wouldn't be involved in that.

Mr. Prillaman – He wouldn't be involved in that. Okay, so three levels of people made a decision to proceed and nobody raised a flag and said hey this is completely different than what we proposed?

Mr. Kerley – I wasn't involved in the process, I would agree with you that 99.9% of the time that is odd. That is not typical. I can blame some of it on the transitional period but that is odd and that's why we have no answer for it.

Mr. Prillaman – Right, I understand. Okay.

Chairman Dow – In reviewing your application and you came through and answered the findings of fact, under 5 you state that the applicant had no knowledge or indication, and I believe you've given that in your testimony, I just want to reaffirm, the applicant had no knowledge or indication that the home was built over the front setback until the final survey was completed in December 2015.

Mr. Kerley – That's correct.

Chairman Dow – So you are calling that a final survey for the application.

Mr. Kerley – We call it one and the same. It's a final survey with the finished foundation after the block's in, the brick's in, the driveway's in and all encroachments are in.

Chairman Dow - Anyone else?

Mr. Kerley – If I could one last time, I understand, Mr. Brown asking Brandon, Brandon's a surveyor, I'm not.

Mr. Pridemore – I'm not a surveyor, for the record I work for a surveyor.

Mr. Kerley – I will address this question to Julian. So it is not the typical practice of any builders to submit an isolated foundation survey?

Town Planner Burton – Correct.

Mr. Kerley - And that most surveys that you get from the builders are the, what we are calling, the final survey which shows the foundation of the home, the driveway of the home and all final encroachments of the home? That's what they submit for their certificate of compliance?

Chairman Dow - Is the brick included on the final?

Mr. Kerley - The brick is included on that final.

Chairman Dow - Is that part of the foundation?

Mr. Kerley – Yes.

Mr. Pridemore – From surveying regulations yes, our surveyor looked at that and we are obligated to show anything extending from the ground up.

Chairman Dow – For a foundation survey.

Mr. Pridemore – Yes sir.

Mr. Kerley – Take Taylor Morrison out of it, but in industry standard in the Town of Weddington because they submit, industry standard, you said you've seen some old ones but industry standard today. When a builder comes for a certificate of compliance you do not get an individual foundation survey? You get a final survey inclusive of the foundation?

Town Planner Burton – Yes.

Mr. Prillaman – How often does it happen when a builder provides a preliminary plat, gets the zoning, that the plans change and you are not notified?

Town Planner Burton – I have no idea.

Mr. Hartman – If you were to get a foundation survey and it was at the lot line would you have an issue with that because you assumed that it possibly could encroach when it was finally built?

Town Planner Burton – No, not necessarily, I mean it meets the setback so I may, if I'm worried about it I might put an extra note in there "Must meet this setback". But they're within the setback so I don't really have any recourse.

Mr. Hartman – So if that foundation survey was at the line it's compliant?

Town Planner Burton – Yes.

Chairman Dow – How many encroachments have we received since you've been here?

Town Planner Burton – For a primary structure this is the first one I've seen.

Mr. Prillaman - How long have you been here?

Town Planner Burton – Almost 2 years.

Mr. Prillaman - About how many homes have been built in the last two years since you've been hired, approximately?

Town Planner Burton – Several hundred.

Chairman Dow – Are you aware of why the required foundation survey for Orleans is in there? Is that a fair question?

Town Attorney Brown – Sure.

Town Planner Burton – I think it would be hearsay. I was not there when that ordinance was put in so I can't speak to those that were creating that.

Town Attorney Brown – I just have one last topic I think I want to explore. To get away from the foundation survey, we have had good fun with that. It is an important issue because it's preliminary and you have to get over that hump to get where you want to go. This is more on the merits of the actual variance request. Two things I want to clarify. I want to make sure I understand your previous testimony correctly. The hardship that I heard you testify to was pretty much disruption, cost and time delay. Are there any other hardships other than those that you would like us to consider?

Mr. Kerley – That's really it. The cost associated; the destruction to the existing neighbors. Just the cost all inclusive, right? It's a sale we can't have the cost to actually move it back. That's the hardship

Town Attorney Brown – Okay. You talked a lot about this former superintendent and you previously testified described sort of the nature of the transaction and what was happening during the transition period. Is that right? You talked about that, you did. So I believe your earlier testimony was that the actual transaction of getting the land asset occurred somewhere in late July, is that right? July 22, something like that, I believe you testified, is that right?

Mr. Kerley – That's correct.

Town Attorney Brown - So this superintendent apparently continued out at the site based on this testimony. Do you agree that he continued out there?

Mr. Kerley – I agree and submit that I do not know his last day and have no reason not to believe what you just said.

Town Attorney Brown - So during this transition period, this person and the person that signed the zoning application in August signed it as Orleans. I think you testified that there was a time period where the Orleans people kept doing things for you during the transition period. Right?

Mr. Kerley – Correct.

Town Attorney Brown - Even though the land assets were probably turned over before the end of July, is that right?

Mr. Kerley – Correct.

Town Attorney Brown - So the Superintendent I believe you testified was also an Orleans employee?

Mr. Kerley – Correct.

Town Attorney Brown – At some point, you don't know when he was discharged from his duties from Orleans?

Mr. Kerley – Correct.

Town Attorney Brown - So when that Superintendent was out in the field, based on Brandon's testimony, Brandon that your folks in the field were instructed to hold off, make some additional measurements and then change the position. It was that Superintendent, right?

Mr. Pridemore – That's my belief.

Town Attorney Brown – Okay that Superintendent was working for Orleans, right?

Mr. Kerley – Correct.

Town Attorney Brown – But it was in the transition period after your company already owned the land during the transition period. So was that Superintendent, while he was out in the field giving these instructions, even though he was an Orleans employee wasn't he doing that on the behalf of the new owner of the house and the land? Wasn't he acting on your behalf?

Mr. Kerley - He would be acting on our behalf at that time, correct.

Town Attorney Brown – So in essence if he was a rogue Superintendent or just a bad Superintendent or just made changes that somebody wanted, he was really doing those on your behalf, wasn't he?

Mr. Kerley – That's correct. Can I add something to that? I also want to make clear that to this day we still pull permits under Parker Orleans general contractor's license. Taylor Morrison is not licensed yet in the State of North Carolina. So we have an agreement with Parker Orleans. They are still the general contractor. We pull permits under that corporation. So that's one thing.

Town Attorney Brown - But they are acting on your behalf.

Mr. Kerley – I understand and yes. The other thing is we don't have in-house surveyors, we don't have in-house foundation guys, and we don't have in house concrete guys. We're at the mercy of their professionalism as well. We pay them to provide us a service. We pay them to hopefully set the house right. We pay the foundation guy to hopefully follow the guidelines of the surveyor. We pay the concrete guy to hopefully stay within the limits of the foundation that was given to him. We trust these guys. They are working on our behalf. We don't actually do that. Taylor Morrison didn't actually set the pins. We didn't actually dig the footing. We didn't pour the concrete. We paid folks to do it and trusted their professionalism. We usually have zero issues with that but for some reason this particular house had issues. But I want to point out Taylor Morrison didn't dig. We pay people to do that. We pay the professionals just as if you had work done at your house. You said here are your blue prints, I want an addition and if your contractor put it in your side setback you may not know that because you gave him a set of plans and trusted him and his professionalism he was going to do it accurately. So that's how we do that as well so I feel as if that question is kind of loaded towards you guys did it. But I would argue that we didn't do it. We have people that work for us that made the mistakes and we did not go back and check it until it was time for physical survey.

Town Attorney Brown – That's the very point I'm trying to make that was explicit in your testimony. There's no testimony I heard from either of you that says it was a surveying error. There's no testimony that it was a building error. The only testimony we have heard is that there was a Superintendent in the field that made changes in the field and you just testified was acting on your behalf. Either directly or indirectly you guys paid that guy. You paid him to do your work and manage it and supervise it and make sure it's done correctly in the field. Isn't that correct?

Mr. Kerley – That is correct.

Town Attorney Brown – He was doing that for you even though it was Orleans. You were now the owners of this subdivision. Right?

Mr. Kerley – Correct.

Town Attorney Brown - So it is you?

Mr. Kerley – Correct.

Town Attorney Brown – I have nothing else.

Mr. Kerley – Can I just add to that he is also, working as a Taylor Morrison employee, he is also assuming that the professionals that we hired to do that job is doing it correctly.

Mr. Dow – When you hired those professionals to do that job you are still responsible that it's done right. You're paying them. That's the point I think Mr. Brown is trying to make.

Town Attorney Brown – Is there any testimony, or Brandon do you have any testimony, that what they were instructed in the field which mysteriously we don't have a revised plat plan, no one seems to be able to find one. Was it any way different from whatever they were instructed to do by your Superintendent?

Mr. Pridemore – No sir we have no record of what was done that day other than the testimony of my employee.

Town Attorney Brown – So the only uncontroverted item in the testimony so far is that even though he was denominated an Orleans employee he gave some instruction in the field and he was doing this as your

Supervisor in the field. Is there any other testimony that would contradict that it was somehow an error mistake on anyone else's part? In fact you've admitted several times it was a mistake. An error; 99.9% of the time this doesn't happen, this is out of standard procedure. But one of your people acted out of your standard procedures on your behalf.

Mr. Kerley – We are acknowledging that an error was made and we can't pinpoint who made it.

Vice Chairman Sharp – You state in your Findings of Fact that the hardship, the decision of actions resulting in hardship were not made by applicant Taylor Morrison and was inherited with purchase of homes already under construction. It is my understanding from the dates I've been given that this home actually was not under construction when you inherited, it says *was inherited with purchase of homes already under construction*. Technically I'm understanding that Taylor Morrison at the time purchased the lot but construction was started after that point and time.

Town Attorney Brown – You're looking at me but you can ask if that is correct. What is your understanding of that?

Vice Chairman Sharp – I'm questioning the statement in your Findings of Fact. It's #1 c right in the middle.

Mr. Pridemore – I think what was referenced in that, Ms. Sharp, is that when this home got started, whether it's vertical or starting in general, it was under Orleans contract and it was started. As to the timing of when it went vertical a lot of this is, as far as time of when Taylor Morrison was purchased and this and that its news to me as far as the action dates. But the home was started under an Orleans contract. That's all we're simply stating as a matter of record.

Town Attorney Brown – Can I ask this follow up? Don't you have to get, Julian, a zoning permit to get a building permit?

Town Planner Burton – Yes.

Town Attorney Brown - We know that the zoning permit was dated August 11<sup>th</sup> by Julian and dated a week later than that by the person who signed on behalf of Orleans. They could not have gotten the building permit until that zoning permit was issued to go vertical and do any kind of construction, so didn't it have to happen after August 11<sup>th</sup> at least and the transaction for the land as testified to happened in July? Isn't that correct?

Mr. Pridemore – As far as going vertical I would have to agree with you, sir; yes. I don't have anything contrary to that.

Town Attorney Brown - The testimony was that the measurements were made off of the rear wall. Which is obviously vertical or rear something and then they moved to the front so they were obviously constructing under a building permit which could not have been issued until after the zoning permit which was dated August 11<sup>th</sup>. Right?

Mr. Pridemore – Yes.

Mr. Prillaman – You are operating under Orleans general contractor's license now because Taylor Morrison is not licensed in the State of North Carolina. Is that correct?

Mr. Kerley – That's correct.

Mr. Prillaman – So you're pulling permits under Parker Orleans Homes now, right?

Mr. Kerley – That's correct.

Mr. Prillaman – But yet you stated earlier that you, my terminology, not responsible for that one. Orleans Homes bought it because you didn't own it at that time and that same permit's been pulled under Parker Orleans Homes in August. So why is that different?

Mr. Kerley – The difference is the ownership of the property and the general contracting license so there's a difference between who...

Mr. Prillaman – I understand that but you're pulling permits in the State of North Carolina under Orleans Homes.

Mr. Kerley – We can do that.

Mr. Prillaman – I don't have an issue with that. But I'm saying what is the difference between that being and this now?

Mr. Kerley - I'm confused.

Mr. Prillaman – You've got a permit that was pulled in August 11<sup>th</sup> under Orleans Homes and you're saying that wasn't really our deal because we can do that but yet you're still pulling permits under their name now.

Mr. Kerley – As the applicant of the land owner it was Orleans Homes then. Parker Orleans was the land owner and the general contractor at that point. Right now it's just the general contractor but they don't own the land.

Mr. Prillaman – I understand that we're dealing with the house not necessarily the land so much.

Mr. Kerley – I'm really confused.

Vice Chairman Sharp – You just confused me because you just said that Parker Orleans was the land owner but you've already testified that you took over the property in July.

Mr. Kerley - I'm going back to what Brandon was talking about - the initial plot plan when the initial process started in July the land was owned by Parker Orleans. I think what you're asking is what's the difference you started the permit as Orleans you still have the permit as Orleans and all I'm saying is you're looking at two different sides. From a contractor standpoint, from a GC standpoint, we're still operating under Parker Orleans GC license. But we don't own it under the Parker Orleans name.

Mr. Prillaman – Okay I understand that I guess I'm asking, you are asking me to forgive the indifference of the, because we had this rogue Superintendent, he didn't, he worked for Orleans Homes and yet we're still dealing with Orleans Homes now.

Mr. Kerley – I want to clarify we are not here to demean our Superintendent.

Mr. Prillaman – I'm not asking that at all; I'm just trying to figure out the difference.

Mr. Kerley – Somebody made a decision. Now as I said did the surveyor mess up? Did the footing guy mess up? Did the concrete guy mess up? I'm not sure, so we're not here to demean him all we're saying is that he's not here to answer the questions. Which goes back to my other point of that the separation of who created the issue. I'm hearing the assertion up here that you're the GC or you're the property owner therefore you created the issue.

Mr. Prillaman – I understand. My interpretation is we hire professionals and I'm responsible for everything they do. I have insurance for that. My guys go to work they screw something up, I'm responsible. I was across town in a meeting and they screwed something up across town I'm still responsible. It's not an issue whether I did it or didn't. It's my company, it's my checkbook, I'm responsible.

Chairman Dow – If when that footing foundation was poured in its current configuration because it wasn't changed. They may have poured the back line. When it was poured if you had a survey done and called it a foundation survey, regardless of how ambiguous you may think that is, if you had a survey of the foundation done and brought it into Julian before the concrete was even dry would you be in this problem you are in now?

Mr. Kerley – We would not.

Chairman Dow – Thank you.

Mr. Kerley – Isn't that really what a variance is? It's a mistake that we are asking, it wasn't willful.

Mr. Dow – I understand, can I make a comment having written this and been on the Board when it was put in I can testify about the reasons it was done?

Town Attorney Brown - Unless you want to recuse yourself and put in an alternate to testify.

Chairman Dow – Okay, there are reasons. But I understand what you are saying and that is available for those that want to have a foundation survey.

Mr. Kerley – That would be my question. Julian has stated that we did submit a survey prior to requesting a certificate of compliance which has our foundation.

Chairman Dow – Right, I understand.

Mr. Prillaman – Are you referring to this, Alan?

Town Planner Burton – No.

Mr. Kerley – I'm referring to the survey that we submitted that shows the encroachment prior to our requesting the certificate of compliance.

Town Attorney Brown – To answer your legal question, actually variances are not to correct mistakes as a general point of law. The law of variances: 1) they are to be given very infrequently. 2) it's to be based on hardship that arises from the unique characteristics of the land or the location of the house. Unique situations with respect to the size, shape, configuration of land that caused you not to be able to do what you want to do because of those unique conditions. It's not generally, oops we made a mistake. Somebody made a mistake and we want to do a redo. The other aspect of the law which is why there's been a lot of questions about it is it cannot be something that was caused by yourself. That's why there's

been a lot of testimony and questions about that. If you create it and it wouldn't have been here if you had done something right or somebody in your organization had done it right or checked on those that were doing it in the field then you are not going to get the benefit of a variance because that's the way the law is. So the general principals of a variance are very different from your understanding of it to be an "oops I made a mistake or somebody made a mistake let's correct it". That's not what variances are.

Mr. Kerley – That's fair.

Chairman Dow – Does everyone feel like they have the information they need to deliberate this matter? Once I close this hearing we can't go back.

Mr. Mullikan - Is the whole idea that the house wasn't built to what it was permitted to build is an option to actually correct it to put it as a 2 + 1 the way it was permitted to be built? Is that even an option for discussion?

Town Attorney Brown – The issue before this Board is the six inches over the setback. The issue of building something that didn't match your permit and there being nothing that to correct it is a completely different zoning and enforcement issue. From what we're talking about tonight.

Mr. Mullikan – Is that likely to come up?

Town Attorney Brown – I have no idea, not as far as this.

Mr. Mullikan – I guess all of this is because of the hardship? I don't want; if the solution is take six inches off, I don't want more construction. I agree with them. It's a pain having your, I put that out there, it sounds like yeah I want this fixed. Its six inches, right? If the solution was put the garage where it's supposed to be so that house doesn't stick out so far I'm in favor of that. But just as a neighbor pushing it back six inches isn't going to make a meaningful difference.

Mr. Kerley – To be honest with you that's exactly what plan B is. Is to move the front wall back six inches. We're going to resubmit and that's the plan.

Chairman Dow – This isn't testimony, I appreciate it. These are opinions.

Chairman Dow closed the hearing.

The Board of Adjustment took a five minute recess.

Chairman Dow reconvened the meeting.

Chairman Dow – At this point we really cannot take any more testimony or discuss it with those people having given testimony. We need to go over the facts that were brought out in the hearing during testimony and relate those to the applicable ordinances and our rights and duties as members of the Board of Adjustment.

I am still in a quandry and I'm looking for guidance here. I see two questions. I think we need to decide whether a foundation survey was submitted or not and based on that decide whether we in-deed can act. Under our deliberations if we don't consider a foundation survey having been supplied then by our ordinances we cannot issue a variance. Bill, would you agree that is the first order of business?

Town Attorney Brown – I think that’s the first issue. It’s kind of like a jurisdictional authority issue and whether you can really proceed at all. The language is very clear. It says you can’t really proceed at all if that hasn’t happened. So you really have to decide based on the testimony and the contentions of the applicant as to what is the legal effect with respect to that language of the survey that they submitted with their variance application. You have to consider the testimony of staff as to what the practice is of the town. Acting on behalf of the town and how that relates to that language. Consider all that evidence in deciding this issue. But I agree that is the initial issue you must decide and if you get past that and decide if it was done here or wasn’t required because of how we do things or whatever your conclusion is then you would get on with the merits and the finding of fact on the actual variance request.

Chairman Dow – In that consideration do you feel like if we find that there is ambiguity in our ordinance that we cannot decide whether there was a survey done or not.

Town Attorney Brown - I think you are charged under the law to take the ordinance as they are presented to you and to take the testimony as it’s presented to you.

Chairman Dow – Interpret those ordinances.

Town Attorney Brown – If there are interpretations that have to be made or deductions it’s your job just like a jury in a trial to take what they are given and form an understanding of what the law is and form an understanding of what the facts and all the things implied by the facts really are.

Chairman Dow - Is everyone clear then on that first step? I’ll entertain any discussion/thoughts on whether a foundation survey was submitted. First of all we have no definition under our definitions category of a foundation survey. So based on that it is our interpretation of what our ordinances say as to whether we have a clear understanding of what a foundation survey is. Which brings us back to the areas where it is noted which we’ve beaten to death tonight. I don’t know whether you want me to pull those exhibits up. That would be Exhibit 5, Item 7.

Mr. Prillaman - If the fact we’ve addressed from testimony from Julian that it is not a standard operating procedure to submit a foundation survey, is it a moot point anyway as a practicality?

Chairman Dow - What are you asking? No, I don’t agree with that. My view is that we have to determine, it is allowed that foundation surveys do not have to be submitted and I think Julian’s testified to that. However, it is required if they want the chance of a variance.

Vice Chairman Sharp – A consequence of not submitting a survey is you lose your option to apply for a variance.

Mr. Prillaman – I wanted to confirm that.

Mr. Vivian – It doesn’t necessarily directly pertain to what you are talking about. When I look at this document here, the zoning permit dated August 11<sup>th</sup> based upon this and all the data here in front is proposed 30’ behind the required 20’. So based off of this but then arbitrarily somehow this is not applicable because they built something different.

Chairman Dow – That’s another question down the road. My question is whether we can even hear this or not. We have to decide whether there was a foundation survey submitted. If we determine that there was not a foundation survey submitted as according to our ordinances then we’re done. We don’t do Findings of Fact. We don’t go any further.

Town Attorney Brown – Mr. Chair, if I can, let's just focus in on the language in Section 58-234 which is Exhibit 5. It says you don't have any authority to issue a variance or waiver of a setback unless the applicant has first submitted a foundation survey. The real issue to me is, although you may need to take into some consideration what the standard operating procedure is, because if there is a perception that they don't need to submit one can we make them submit one? More importantly as far as this is concerned the survey that they contend in their testimony that constitutes a foundation survey was submitted with the variance application. They have done it with the application so they've submitted it before along contemporaneously let's say with the application. Now they are asking you to count that survey prior to your consideration of issuance of the variance. It seems to me regardless of how you feel about practice in the field if you look at the law and how you interpret the section what you really have to decide is if that document provided with this application, prior to the issuance of the variance, sufficient to be the foundation survey that you have to have in order to unlock the door to get a variance. That's really what you need. So it's really going to focus on that exhibit which is part of Exhibit 1 which is attached as part of the application packet. That is the survey that we have all learned through all this abundance of testimony that the one that somehow miraculously ended up being different and that's what it is a survey of. I will tell you this, just as legal advice, judges who sit in chairs and wear black robes look at things very practically. They are going to ask me or some other lawyer should you say, no that's not, they are going to say is this a signed, sealed survey? Yes it's got surveyors seal on it. Does it show the lines of where the foundation is? Yes, it does show that. Why is that not a foundation survey? It is a survey with a foundation on it.

Chairman Dow – Along those same lines, while it states that the survey should be done after the foundation is poured but before a certificate of compliance is applied for. While intent, they are within that time period.

Town Attorney Brown – In order to get the certificate of compliance they have to get a variance because they know there's a problem. In order to get the variance they have to have a foundation survey even though they could wait and submit that later when they apply for the certificate of compliance.

Chairman Dow – Right. So here we are. What facts do we have either in the testimony or exhibits that will say that the survey submitted is not a foundation survey?

Vice Chairman Sharp – Brandon spoke about his definition of foundation survey. I don't know if that would be construed as being a common known, which definition would appeal upon builders.

Chairman Dow - How can we tell that what's been submitted doesn't meet Brandon's definition of a foundation survey?

Vice Chairman Sharp – I thought Brandon said that a foundation survey is done prior to the vertical going up and we know that this was done after the vertical was built.

Town Attorney Brown - The other testimony you have was from your Zoning Administrator trying to point out the language in the ordinance section of the Exhibit that talks about final surveys and how that's, kind of how, enumerated as to what it's supposed to show. He's trying to draw the distinction between what is a final and what is a foundation survey. Of course the testimony was, I think, the document itself sort of says that was attached to the variance application is in fact a final survey. You're asking what's out there that might dangle the idea of support for the idea that it's not one then you also have to look at the testimony that's out there and the ordinance provisions you have that you might say it is one.

Chairman Dow – So if we stack up those items we have their application that calls that survey a final. It doesn't call it a foundation survey. Does everyone know what I'm talking about?

Mr. Hartman – But we don't necessarily know they are exclusive. That's the problem.

Chairman Dow – Well that may be but we have a term for a foundation survey to be completed between the time the foundation is poured and the application of the certificate of compliance. Which they testified when I asked, they had not made the application. So if it's in the time frame they call it something else, it looks like a dog it smells like a dog. In other words the physical difference between this and a foundation survey is nothing that I can see.

Town Attorney Brown – You have to stack on top of that, Mr. Chairman, the testimony of your own Administrator that says it is a dog. We count that as a dog; that is the dog - we don't do the other thing; that's just not what we do.

Chairman Dow – I don't have a lot of weight in that is because I think that's by purpose. I'm suggesting that foundation surveys.

Town Attorney Brown - That may not be the right way to do it or what's intended by the ordinance or what's even stated by the ordinance. But the testimony is that is what is done and has been the practice here for at least two years.

Chairman Dow - We mean for it to be that practice.

Town Attorney Brown – So it's hard to contradict that in fact what was submitted should be considered in that same line. Because there's a Doctrine called a estoppel, it's a great legal term, pretty much says if your guys are calling it a dog it's going to be pretty hard to say it's not a dog.

Chairman Dow – I agree.

Mr. Prillaman – For me it's a foundation survey. Think of the final as super stud. It's got more things but it proves that.

Mr. Hartman – (unintelligible)

Vice Chairman Sharp – It contains the foundation survey. Now whether it meets the ordinance...

Chairman Dow – Is it within the time frame?

Vice Chairman Sharp – It's within the time frame.

Chairman Dow – Jim, we're getting around to a vote here on this. I'm looking as far as this step.

Mr. Vivian – Got you.

Chairman Dow - ..whether I consider this as a foundation survey.

Town Attorney Brown – This is an interesting procedural question; I guess I'll float it out there. Obviously 4 out of 5 have to vote to grant a variance and make findings of fact. I think probably on this preliminary procedural jurisdictional issue it will probably be a simple majority vote. Right? Three out

of five. I'm guessing at that, I never had one of these or like this one. But I think that since its procedural and preliminary it's probably just a straight up majority vote.

Chairman Dow – That really doesn't apply. The way I read it.

Mr. Hartman – (unintelligible)

Vice Chairman Sharp – Peggy can't hear you.

Mr. Hartman – I'm talking to myself.

Vice Chairman Sharp – But you can't.

Town Attorney Brown – That Exhibit 4 I believe is what you're looking at and the language in it that we focused on and some of the testimony it actually says you actually have to have a foundation permit doesn't really mention anything about right.

Chairman Dow – That's what I'm saying.

Town Attorney Brown – The testimony tonight has been we don't do foundation permits either. We don't issue or have foundation permits. There is stuff in that form that seems maybe a little different from the ordinance. Maybe a little different from what's done.

Ms. Sharp – However we do have in our list of charges, what we charge people for. It says foundation permit and the cost is zero. It is actually listed under the charges that the town charges developers.

Town Attorney Brown – It should be zero because we don't do it.

Vice Chairman Sharp – I can tell you why but again.

Town Attorney Brown – The focus has to be on that document they submitted. Is it or isn't it a foundation survey?

Chairman Dow - We have got to decide whether we can accept that as a foundation survey to proceed. So I'm looking for a motion one way or the other so that we can vote on that. If everybody has all the information they need to make that decision.

Vice Chairman Sharp made a motion that we accept the survey dated 12/21/15 and revised on 1/19/16 as a foundation survey. Mr. Brad Prillaman seconded the motion, with votes recorded as follows:

AYES:	Chairman Dow, Vice Chairman Sharp, Hartman, Prillaman, and Vivian
NAYS:	None

Chairman Dow – So now we have a variance case; that's what we've established. Now we need to go through and discuss the Findings of Fact and get down to whether or not the Findings of Fact warrant a variance. You haven't given us a blank Findings of Fact; we can use the application. You will find in the application, Findings of Fact on the second page. I would like to remind you that there are 4 items here, Item #1 has 3 sub items. Generally we will discuss each one of those three, vote on each one of them and then come up with a vote for #1, #2 and #3. Those votes for the variance must carry by 4/5. For each of those in order for #4 the variance to be granted. Is that correct?

Town Attorney Brown – That is correct but the standard practice of what you have done over the years and what is usually recommended is even if one of the earlier findings fails...

Chairman Dow – They are continued.

Town Attorney Brown - ..we will go ahead and make all the others to make it easier on the court to review it all.

Chairman Dow – Correct. All right. I think the way I'm most comfortable doing this is and hopefully you are is reading each one. Talking about it and talking about the facts that are pertinent to them. Hitting the facts on sides, having the vote and then noting the facts that substantiate the vote. Okay does that sound reasonable?

- 1) Unnecessary hardship would result from the strict application of the ordinance. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This shall be construed to mean:
  - a. The hardship results from the application of this chapter: The resulting hardship is in conflict with Section 58-58.4.e.4 (front yard setback required)

Chairman Dow – What it's saying here is that the hardship is caused by the application of our front yard setback, is that true? Has that been shown? Is there any other information to the contrary? Are you prepared to vote on 1a?

Chairman Dow - All those in favor of yes, the hardship results from the application of this chapter. The votes were recorded as follows:

AYES: Chairman Dow, Vice Chairman Sharp, Hartman, Prillaman, and Vivian  
NAYS: None

- b. The hardship results from the conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;

Vice Chairman Sharp – I don't see that there was anything that was peculiar to the property. They have given no real reason why they had to put the garage encroaching into the front setback.

Chairman Dow - The reasons that they gave were not related to the property. They were management decisions and so forth that were made at the time. There are no features of topography or anything that was brought out. As a matter of fact it was shown on the original that the house could be built. I think in testimony Mr. Kerley stated that the only reason they didn't catch it or couldn't have moved it if they caught it early was because of the back wall. There was plenty of room in the backyard.

Mr. Prillaman – Testimony was made that related to personal circumstances. They had personnel issues. It did not have anything to do with the property in and of itself.

Chairman Dow – So, do I understand that you would, actually somebody should be making a motion, that for a no the hardship results from the conditions that are peculiar.

Vice Chairman Sharp made a motion that we vote no on Item 1b. Mr. Brad Prillaman seconded the motion.

Chairman Dow - That would mean that the hardship results do not result from the conditions that are peculiar to the property. Is that correct?

Mr. Prillaman – That is correct.

Chairman Dow - All those in favor of Dorine’s motion for no on item 1b. The votes recorded as follows:

AYES: Chairman Dow, Vice Chairman Sharp, Hartman, Prillaman, and Vivian  
NAYS: None

- c. The hardship is not the result of actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Vice Chairman Sharp – I would say that they are actions of the property owner because they owned the property at the time that the change was made to the house plans. They were in charge; they should have... it’s almost things they didn’t do. The action was inaction in my mind.

Chairman Dow - The results were actions taken by the applicant. Is that true?

Vice Chairman Sharp – Yes, I believe so.

Mr. Prillaman – I think it goes further than that. The actions were the result of the applicant and their employees and their contractor staff.

Vice Chairman Sharp - You would say the applicant’s actions and their employees because the applicant is responsible for what the employees do.

Mr. Prillaman – And their contractors.

Mr. Vivian made a motion that item c is no. Mr. Hartman seconded the motion.

Chairman Dow - All those in favor for a no motion to item c. The votes recorded as follows:

AYES: Chairman Dow, Vice Chairman Sharp, Hartman, Prillaman, and Vivian  
NAYS: None

Chairman Dow - Now onto 2. That we have done 3 of the subs of #1 we have to go on and vote...

Vice Chairman Sharp – Should we go back and do this?

Chairman Dow – Oh yes, we should. Thank you; I got carried away. So now we have done 3 of the subs of #1, based on those results we need to go on and vote yes or no for #1. Can I have a motion for that?

Vice Chairman Sharp - I move that we vote no on #1. Mr. Hartman seconded the motion. The votes recorded as follows:

AYES: Chairman Dow, Vice Chairman Sharp, Hartman, Prillaman, and Vivian  
NAYS: None

2. The variance is in harmony with the general purpose and intent of this chapter and preserves its spirit.

Chairman Dow – I think it’s a very small variance. I don’t think it’ll hurt anything. Neighbors have even testified that they would rather not have it moved back six inches.

Mr. Prillaman – I’d be more in deference to the neighbor who is beside who has testified he would rather have the variance.

Mr. Hartman – I’m conflicted with the fact that yeah it does create a hardship for the neighborhood. At the same time it’s not really in keeping with the intent. It’s not intended to fix the mistakes.

Chairman Dow – I think the only reason I’m saying yes you’re right from that point of view. But the only reason I’m suggesting that it’s in the spirit is that 5 inches in 20 feet is not enough for the spirit to be maintained but I agree with you too.

Vice Chairman Sharp – Visually the average person is not going to see a difference. If it were actually on the property line versus six inches. That’s my opinion.

Chairman Dow – Right. Can I get a motion?

Vice Chairman Sharp made a motion that we vote yes on Item 2 that the variance is in harmony with the general purpose. Mr. Brad Prillaman seconded the motion, with votes recorded as follows:

AYES: Chairman Dow, Vice Chairman Sharp, Prillaman, and Vivian  
NAYS: Hartman

Chairman Dow – Item 3. That in the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.

Chairman Dow – I think they testified several times sight triangles, things like that, that the safety has not been altered by the encroachment.

Mr. Vivian made a motion that we vote yes that it is not in contrary to public safety or welfare. They have been assured and substantial justice has been done. Mr. Hartman seconded the motion, with votes recorded as follows:

AYES: Chairman Dow, Vice Chairman Sharp, Hartman, Prillaman, and Vivian  
NAYS: None

Chairman Dow – The last Item #4. That the reasons set forth in the application and the hearing justify the granting of a variance, and that the variance is a minimum of one that will make possible reasonable use of land or structures.

Chairman Dow - To my understanding because we have voted no on three of the previous items, actually 1 and 2 sub - that it follows that I would entertain a no vote on number 4.

Vice Chairman Sharp made a motion that we vote no on Item 4 because we have already determined that items 1b and 1c are no votes. That's enough reason to deny the variance. Mr. Brad Prillaman seconded the motion, with votes recorded as follows:

AYES: Chairman Dow, Vice Chairman Sharp, Hartman, Prillaman, and Vivian

NAYS: None

Chairman Dow - Our procedure is that we will give you a written decision.

Town Attorney Brown – I think based on the findings you need to get a motion and to take a vote to deny the variance. Because you made the findings but you now need to take the action. Because finding #1 could not meet the 4/5 standard including its two subsets, you have no choice but to make the motion to deny the variance.

Vice Chairman Sharp made a motion to deny the variance requested by Application V12916, submitted by Taylor Morrison of the Carolinas, Inc. Mr. Hartman seconded the motion, with votes recorded as follows:

AYES: Chairman Dow, Vice Chairman Sharp, Hartman, Prillaman, and Vivian

NAYS: None

**Item No. 7. Adjournment.** Mr. Hartman moved to close the February 25, 2016 Special Board of Adjustment Meeting. Mr. Prillaman seconded the motion, with votes recorded as follows:

AYES: Prillaman, Sharp, Harrison, Vivian, Dow, Hartman and Klink

NAYS: None

The meeting adjourned at 9:47 p.m.

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Robert Dow, Chairman

Attest:

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Peggy S. Piontek, Town Clerk