



**CITY OF SOUTHPORT
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
113 W. MOORE STREET
January 28, 2025
4:30 PM**

Minutes

Members Present: Pete Haislip, Harley Lemons, Jason Robbins, Tuck Masker, Steve Doshier
Rodney Ross, John Allen, Chris Eckert

Staff Present: Maureen Meehan, Planning Services Director
Tori Deviney, Deputy Clerk
Wendell Biddle, City Planner

A. Chair Haislip called the meeting to order at 4:31 PM

B. Chair Haislip led everyone in the Pledge of Allegiance

C. Swearing-In of New Members

John Allen, Steve Doshier, Chris Eckert and Rodney Ross were sworn in by Deputy Clerk Deviney.

D. Selection of Chair

The meeting proceeded with the chair being turned over to Mr. Robbins for the purpose of nominating a new chair. **Mr. Lemons made a motion, which was seconded by Mr. Allen, and a unanimous vote in favor, and the motion passed with all ayes.**

Mr. Robbins then opened the floor for nominations for chair. Mr. Lemons nominated Mr. Haislip for the position. With no other nominations presented, the motion was seconded by Mr. Allen. **A unanimous vote in favor, and the motion passed with all ayes**, confirming Mr. Pete Haislip as the chair.

E. Selection of Vice Chair

A motion was made by Mr. Allen to turn the chair back over to Mr. Haislip. The motion was seconded by Mr. Masker and passed unanimously with all ayes.

Mr. Lemons then made a motion to nominate Mr. Robbins as vice chair, which was seconded by Mr. Masker. With no other nominations presented, the motion passed unanimously with all ayes.

F. Explanation of Quasi-Judicial Process

1. Quasi-Judicial Process

Chair Haislip provided an overview of the quasi-judicial process for the public.

When asked if there were any conflicts of interest, Mr. Lemons disclosed that he is friends with the applicant for 406 West Brunswick Street, Mr. Howard. He mentioned that they regularly have coffee together each morning at the round table at Local's. However, Mr. Lemons clarified that he has nothing to gain from the case.

No other members had any questions or concerns.

G. Approval of Minutes

1. Approval of Board of Adjustments January 7th, 2025 Meeting

One correction has been made on the January 7, 2025 minutes per Mr. Lemons

1.) Motion #4- Should be a nay vote for Mr. Lemons

H. New Business

1. 406 Brunswick St Floodplain Appeal [Mo Meehan]

Ms. Meehan:

Good evening, chair members of the board of adjustment. This evening, our first case is an appeal of administrative decision. Representatives for the property owner submitted a notice of the appeal of the order to take corrective action, which was issued by the flood plain administrator for a violation to the city's flood plain ordinance.

The property is located at four of six Brunswick Street. It is within the Yacht Basin area of the city for vicinity location. The property is zoned R 10, and it is approximately a half an acre in size. This property is also on the National Register Historic District, and it is contributing structure, and it was built in 1877. This shows that also the property is located located in a special flood hazard area, which requires some different standards for construction and elevation for single family homes that the property itself is in three separate flood areas, in x zone, the 8011 and the coastal A zone. The Coastal A zone is the most restrictive, and requires elevations built to the V zone standards, which requires no obstruction from water or movement under the home, so you cannot have any elevated or any structures lowered enclosures under the house. So that shows, and the square on that graphic is showing approximately where the home is. So you can see that a portion of the home is within that coastal A zone.

So the applicants came to staff in January of 2023 for a building permit to put an addition onto this home, the existing home, they were going to be demolishing a portion of and a second or another addition that was it was still considered historic, but it was an addition to the main structure, and they were demolishing that, including this new structure.

On this survey, you will see, and there's also in your packet, the darker shaded area is the footprint the new addition that is being requested. And then you can see the elevations on the building plans that were submitted. Of the higher structure is the new addition that is being proposed.

Staff reviewed this project found that it potentially could be what is considered a substantial improvement, that that is defined as increasing the value of the structure.

The construction costs of the structure is greater than 50% of the appraised value of the structure.

So there were concerns, and staff wanted to make sure that they were going to be meeting those standards. So again, I want to give you a definition of substantial improvement.

Sorry, I thought I was having on my screen, but excuse me, it means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure taking place during any one year period for which the cost equals or exceeds 50% of the market value of the structure before the start of the construction of the improvement. This term includes the structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include any correction of existing violation of state or community health sanitary or safety code specifications which have been identified by the community code enforcement officials and which are the minimum necessary to assure safe living conditions or any alteration of a historic structure, provided that the alteration will not preclude the structures continued designation as a historic structure, and the alteration is approved by variance issued pursuant to section 5.18 of the city's floodplain order.

So going back, the property owners did not want to try to change their structure, so they asked for a variance from the flood plain ordinance, and that variance was requested in July contention, the July 2023, board of adjustment meeting for a hearing.

They were stating that they wanted to get a relief from section 5.25 the standards for coastal A zones, since the addition is not located in the coastal A zone, only one corner of the home is located in that and that it was a historic structure that could be, could be, be excluded for the variance.

The variance was heard. There was no decision made at this hearing. There were some concerns about the CRS program, which is the program that allows the communities to have a lower flood insurance if the community meets certain standards, and in that end, so the city is part of that. And a word that that would decrease the discount of the insurance that would be required.

Mr. Haislip:

Can either you or Wendell maybe give a more of a description or definition of what the CRS is, because Wendell opened my eyes a little bit at a prior meeting

Ms. Meehan

Absolutely. So the CRS is the community rating system. So there are different steps that communities that are within the national flood plain assurance program can elect to choose to be part of the CRS program. And there are different thresholds to these and the the discount can be from 5% up to 45% and you have to meet certain thresholds of each one. So at this current time, the city of Southport receives a 15% discount on insurance, and that is citywide. So even if you not in a flood zone and you want to carry flood insurance, you receive a 15% discount on your flood insurance, but you have the city has to meet certain standards, and if there's any violations of the of the floodplain ordinance, that can, make reductions in that, in this, in the total scoring, which could reduce The discount again...

Mr. Haislip:

That's good for me. Okay?

Mr. Ross:

What's the current status of the non compliant pieces of property? How many are there?

Ms. Meehan:

There are there's one that we are aware of, yes, so this is the one that's in violation right now that we are hearing.

Mr. Ross:

And that would affect the CRS system

Ms. Meehan

It May. the applicant would have to prove that the structure is still a contributing historic structure after this addition, otherwise, or they would have to elevate their home or remove portion of the structure itself from the main

Mr. Ross:

So we don't really know if there's a loss

Ms. Meehan:

That's correct, so though, so the hearing was put on hold and or continue so staff could do some more research on the CRS portion of this, as well as getting us more information from the from the applicant themselves during this period, there were a lot of questions. There were different exceptions within the floodplain ordinance and NFIP that allow certain exceptions for historic structures, if certain things are met. So the floodplain administrator at the time, Travis Henley, spoke with Eryn Futral, who is the North Carolina NFIP planner who worked with him to help guide him through our ordinance to make sure that those exceptions were not being met because of the mass, the size of the structure, how the the addition is being connected to the existing home, and it would still be considered contributing at the end. So it was determined that it would not, it could, may not be a contributing structure, and it still would be a substantial improvement, and would meet that threshold as a substantial improvement.

So the applicants put the hearing on hold, rather than withdrawing completely, but also went back to the drawing boards and decided to rework their project as it was, and reduce the cost so that it would be lower than the 50% threshold. The 50% threshold they went and got an appraisal and the market value of the home. And this is very important to remember, it's just the structure. This is not the property and the structure together. It's just the structure. It's what this substantial improvement amount is considered. So the value of the home, they said, was \$638,000 which, for 50% of that, was \$319,000 so the addition of this, for this home had to stay under that 319,000 square feet. The applicants submitted a estimate, cost estimate in February, and they were showing that that cost estimate was, I apologize, 228,000 approximately, what they were doing so they were working with the code officials, ensuring that, as they were going through the construction that the project was staying on budget and making sure they didn't cross this, this \$319,000 threshold, when the project was coming to completion, the applicant had to submit a final cost breakdown of all of the materials and labor and all of the different types of costs that are incorporated. And it came out that the addition came to a final cost of \$331,137.11

This time, the city kind of collected things, trying to see if there was anything that was added that could have been removed, trying to work with the applicant, because it was very close. But still it was over. So at that time, there was a courtesy notice of violation that was sent in June 28 of 2024 to the property owners, explaining that they had gone over the substantial improvement threshold and told them the avenues that they had taken to bring them into compliance. There was no action to remedy these violations. So a notice of hearing was sent to the applicants on August 27 of 2024 and the hearing was held on September 9 of 2024 allowing the applicants ability to submit evidence and arguments pertain to the violation. Upon the hearings found that it's still, there was no remedy still, and the structure was still considered a substantial improvement. So that is where we are now. They have appealed this decision of the floodplain administrator, and I would like to go through their, the applicants grounds for the appeal with you, the applicant states that the project is not a substantial improvement within the meeting of article five of the UDO. staff review notes, and this is on page 12 of your packet, if you would like to follow along, the cost of construction exceeds 50% of the market value of the structure before the start of construction Of the improvement and the start of construction is defined at the time of the issuance of the building permit. The approved 50% appraised value of the structure is \$319,000 again, February, the applicant states that they on an email to the building official, we are sensitive to the fact that we have a 319,000 improvement limit on the current permitting for the new construction. We previously committed that we will not exceed our maximum provided under the current permitting. The attached construction cost of the project were attached to the email totaling the \$228,015.16 at the Complete Completion of the projects, as we say, stated earlier as well, the applicant said their final construction cost in an email dated June 3, 2024 stating that the project had gone over budget due to inflation. The final construction cost, again, is \$331,137.11 the statement from the applicant to the building inspector in the email updated June 3, states

“just this year alone, according to the US Bureau of Labor Statistics, the purchasing value of \$319,000 has increased to \$326,073.73. Our approval is 319,000 authorized when the permit was issued. Our actual cost today is 331,137.11, or a 3.8% increase, in fact, since the time we first applied for a permit. The cost increased much more than we had ever anticipated one way, because. There in our overage is that prices at the minimum have increased 2.2% this year. So in reality, we miss our target by 1.6% obviously regret that, so reality, we didn't want to spend the additional money either, but by the time we realized the situation, it was far too late, too late to react.”

So at the request that the applicant staff reached out to Eryn Futral the NFIP planner for North Carolina and shared the email. And there is an email dated September 19 that this substantial damage and improvement regulations do not make any exceptions for this rule, the project's total cost is is considered for the 50% calculation at the time of construction. Therefore there are no references that if any inflation in any of the NFIP documentations from FEMA, all guidance, again, refers to the actual cost. So staff then determined that the project is a substantial improvement for that, as it states in the UDO, the second to ground for an appeal was that the project is a historical property that is exempt under section 5.20 E, 5b of the substantial improvement requirements set forth in article five of the UDO as I stated earlier, the structure is listed as a contributing structure in the city of Southport National Register of Historic Places. The new and existing structure must remain contributing to the national register to qualify for a variance from the elevation and flood proofing of historic structures. The project includes the demolition of an existing historic addition and construction of a new two story addition. The size and mass of the addition could prevent the structure from being considered a contributing

historic structure. Permit application for improvements, including additions or repairs of historic structures should be accompanied by two pieces of evidence. And this guidance is found in the NFIP guidance for substantial improvements and substantial damages desk reference, and it's FEMA publication 758, those pieces of evidence or documentation that confirms the structure is designated historic structure, a documentation that confirms that the proposed work would not preclude the structures continued designation as contributing there was no accompanying documentation to confirm either of these items at the time of application. So staff determined that, yes, this is a historic structure, but is not exempt from the substantial improvement requirements of the UDO.

That is the end of my report.

Mr. Masker:

So this variance dates back a ways.

Ms. Meehan:

I want to reiterate this is not a variance, this is an appeal.

Mr. Masker

But originally there was

Ms. Meehan

Yes there was

Mr. Masker:

And then it became an administrative matter versus variance request. Those approval was Administrative Approval Required for the issuance of a building permit

Ms. Meehan

They were going to meet the substantial that they were going to be below the threshold of the 50% substantial improvement. So, yes, that would be an Administrative Approval of their estimated costs for construction.

Mr. Masker:

So the permanent position, based on their representation that they would stay under that threshold.

Ms. Meehan

That's correct, yes, okay,

Mr. Robbins

Going through the numbers on this, so in February 28 2024. The projected cost for the projects \$228,000

Ms. Meehan

Correct

Mr. Robbins

And June of the same year. So four months later, it came in at 331?

Ms. Meehan

Correct

Mr. Robbins

So it was over 45% over. We're blaming that on inflation.

Ms. Meehan:

That's what the applicant has stated.

Mr. Robbins:

I think I'll have more questions for you later, Ms. Meehan, but not right now.

Mr. Masker:

There's specific language in there that is required to appear under the engineering and architectural certifications, and I haven't seen that on any of the drawings that I've looked at.

I know that. I know the drawings are stamped right, and perhaps some of the drawings have the stamp with the signed professionals signature over it, but I didn't see that certification.

[The Applicants attorney asks if VE zone applies here, which Ms. Meehan states is the same as a coastal A]

Mr. Masker:

What I understand is the signature certification has to appear on the drawings.

Ms. Meehan:

So for this, the portion of the home, that is that the addition is not within the coastal A section, so it meets the elevation of that as it's built, it would be the new home that is connected that had to be elevated to meet this V Zone verification.

At the pleasure of the board, the City of Southport Attorney, Brady Herman, is sworn in.

Mr. Herman:

Take me through the what's called the substantial improvement ordinance that the property owners are in violation of that's in Article 5 of the UDO, correct? Correct. And can you point to a section of the UDO that this is brought up and what it means for a substantial improvement? In other words, if I'm under this 50% threshold, what happens? And if I'm over the 50% threshold, what is my structure supposed to do, considering that it's in the Coastal A

Ms. Meehan:

It talks about additions or improvements to the pre-fire structure that the addition improvements in combination with any interior modifications the existing structure. The additions, it gives, what is an addition that would be considered an improvement, what is exempted and when, what needs to happen when it's done. So, if you do, if you go over and you meet the substantial improvement definition, which is over your 50% then all your whole structure must come up to this the standards of the most restriction, restricted zone that your home is located, which in this case is the coastal A zone.

Mr. Herman:

And we talked about how the building permit and all that was in January of 2023 correct, and at some point the applicant was aware of the substantial improvement section. Was that right? I mean, shortly after the building permit

Ms. Meehan:

Yes, that was considered with the applicant prior to coming forward for the variance, so they knew that they may go over that threshold just because of the size of the structure, and they also have to provide the cost of construction at the time of the building permit

Mr. Herman:

Okay, got it Yes. And so the purpose of you having those email exchanges which are in the agenda packet was really to show sort of the back and forth between the applicants questions at the time, it was Travis who was the flood plain administrator, as well as the state, which state Department was that?

Ms. Meehan:

Thank you. I'm sorry. I apologize.

Mr. Herman:

But anyway, it's Eryn Futral, are you guys past one playing ordinance? Because, let's be honest, this ordinance isn't extremely easy to go and sort of understand and comprehend, at least if we're not planners, that's kind of why I want to slow down here a little bit. so we have it from January to April, all these email exchanges, and just what's the summary of those emails? What ended up being sort of the path for the applicant was it to go down the exception route with the variance, that's option one or option two, proceeding with the addition, but being under the 50% market value of the structure being the substantial improvement would not apply.

Ms. Meehan:

The back and forth went forward that it may be a variance option would be some one that would be viable. That is why, then the application did go forward. But again, there were some discrepancies in the application, and then some information that wasn't quite coming together that the board wanted to get some more clarification on.

Mr. Herman:

And that's you're talking about, the variance application,

Ms. Meehan:

Correct

Mr. Herman:

And so, you know what, when they submit in the variance application is in the agenda packet. Is that right?

Mr. Meehan:

Correct

Mr. Herman:

And so what were they seeking a variance from? Is, is, is it this subsection B on substantial improvement, is that what they were seeking a variance from? I mean, I know

Ms. Meehan:

They were seeking a variance from the coastal A requirements.

Mr. Herman:

Gotcha, okay. And what's your understanding of why that was heard or probably open and it got put on hold, where the applicant, I guess, chose not for this former board because there's new board members, but the board of adjustment at the time is not going to render a decision. What was your understanding? Was the reasoning behind that?

Ms. Meehan:

That reasoning was behind the substantial improvement of a historic structure that we would may not be considered attributing and then, as mentioned with CRS score may go down, which is the community ratings system.

Mr. Herman:

Okay? So they were worried about the historic structure argument at the variance,

Ms. Meehan:

Correct

Mr. Herman:

And that's one of the arguments that that that the applicant has cited in their appeal statement. Is that? Right?

Ms. Meehan:

Yes,

Mr. Herman:

Okay, we'll, digest that here in a little bit on the historic structure argument. Okay, so take me through. You know, the variance was open. They decided not to go through with that. So what was the path forward, then, for them to go through the construction of the addition, but adhering to not going over this substantial improvement. Is that right?

Ms. Meehan:

Yes, they had to supply the city with a market rate appraisal of the structure itself, which they did provide in August of 2023 then they had to just ensure that all the construction costs were then modified to show that they would be below that 319,000 square foot okay, just back up.

Mr. Herman:

Were they aware that what would happen if they went over the 50% market value, if it was considered substantial improvement?

Ms. Meehan:

Yes.

Mr. Herman:

Were they aware and what would happen?

Ms. Meehan:

They would have to elevate the entire structure or bring the entire structure up to

compliance with the Coastal A standard, and that's what three feet above base flood elevation. Now that doesn't mean that the whole house would have had to go up that height. Just had to make sure that the elevation at the...

Mr. Herman:
Or they could go to tear it down, right?

Ms. Meehan:
Yes.

Mr. Herman:
Okay, yes. So take me through sort of the process here of identifying how they stay under that 50% market value. So the property owners went and got an appraisal. Is that right?

Ms. Meehan:
That's correct.

Mr. Herman:
And the appraisal is in our agenda package,

Ms. Meehan:
That's correct, yes.

Mr. Herman:
And the real estate appraiser, whoever did that, they valued infrastructure at 600 and something and change, yes, right?

Ms. Meehan:
Yes.

Mr. Herman:
50% of that gets to the 319 number,

Ms. Meehan:
Yes, right, that's correct.

Mr. Herman:
And the property owners were confident to adhere to that. Is that right?

Ms. Meehan:
That's correct.

Mr. Herman:
So when did they go and actually start the whole construction process that shortly after the variance, and then sort of getting the appraisal and all that.

Ms. Meehan:
Once they got the appraisal, it was in early 2024 that they came through and had all the materials and all of the construction costs added up and started their destruction.

Mr. Herman:

Okay, so they started construction, and they, I mean, is it? Is it common for them to have to go and check in the city and say, hey, here are my construction costs as I go?

Ms. Meehan:

Yes. So that was the February costs.

Mr. Herman:

Okay, if you wouldn't mind going to your argument section for the substantial

Ms. Meehan:

Yes, I'll go back.

Mr. Herman:

Okay, so we have there an email dated February 28, 2024 is that in the agenda packet?

Ms. Meehan:

Yes, okay.

Mr. Herman:

And this is the applicant, Robert Howard, emailing staff, giving them an update of where they are in the cost. Is that right?

Ms. Meehan:

That's correct.

Mr. Herman:

And I think you had on the other slide, but just for the Board's reference, there's an email and also associated costs with that email, dated February 28 2024 and the final value, or the amount of cost up to that point, was \$228,000 some change is that, was that correct now submitted by the applicant?

Ms. Meehan:

Yes.

Mr. Herman:

And did the applicant also say we previously committed that we would not exceed our maximum provided for under the current permitting?

Ms. Meehan:

Yes,

Mr. Herman:

So they said that. So they're saying we're going to go and stay under this 319,000 I mean, they're still at that 100,000 away, so

Ms. Meehan:

Yes.

Mr. Herman:

Okay, so you guys got the update, and then what happened after that?

Ms. Meehan:

The project came to conclusion in June, and the time they came in for their final inspections, prior to the CO they were they submitted their newest budget that shows them over the 319,000

Mr. Herman:

Okay, and that was, it's an email, and also an attachment. And I guess the email in early June, June 3, is that right?

Ms. Meehan:

That's Correct.

Mr. Herman:

And that email is also in the agenda packet as well

Ms. Meehan:

Yes

Mr. Herman:

And they attached, the total cost, is that right?

Ms. Meehan:

That's correct. And that was in the amount of 309 or \$331,137.11

Mr. Herman:

Okay. And then the property owner speaks to inflation, correct? as a reason why that cost went up. Is that right?

Ms. Meehan:

Yes.

Mr. Herman:

So after they submitted the cost, what happened at that point? Did the city go ahead and go through the notice of violation process under Article 5?

Ms. Meehan:

The city, there were, there were questions from the applicant, asking about inflation, what can be done? So the city wanted to work and see if there were any options available for some sort of inflation clause in the NFIP And spoke with Eryn Futral Again, asking her to look into any information that may be available, and she was she stated that and that it's really just the total costs, they're absolute numbers that are at the beginning of your construction.

Mr. Herman:

Yes. So did the applicant ask staff to go and ask Eryn Futral about this question about inflation and whether that is taking a consideration with the value or not.

Ms. Meehan:

They asked if there was, if there was a course of action, yes.

Mr. Herman:

Okay, so the property owner asked you to ask Eryn,

Ms. Meehan:

Yeah, as the floodplain administrator at the time

Mr. Herman:

and that was in September of 2024

Ms. Meehan:

Yes.

Mr. Herman:

And Eryn, Eryn Futral responded in an email, is that correct?

Ms. Meehan:

Yes,

Mr. Herman:

I'm just handing you. I've already given opposing counsel this email.

Mr. Coggins:

No objection.

Mr. Herman:

It's an email from Eryn, with some correspondence between, between, between you all. But I want to go ahead at this time and enter that email into the record, and I have as many copies as I could go and try to have for the board. But are you familiar with that document Mo?

Ms. Meehan:

Yes

Chair Haislip:

Did we have that in our package?

Mr. Herman:

No, that's why I'm handing it to you all now, entering it into the records.

Ms. Meehan:

May I make a point of clarification

Chair Haislip:

Please

Ms. Meehan:

Okay, The question that he asked about immediately after the calculation, we did speak with the applicant. Then the letter was sent, then in June, and that's when the applicant came back and asked us for this third

Mr. Herman:

Yeah, we'll get to that process. Fair enough. Let's stick on this one. So the applicant did

request you to go and ask Eryn about this investigation. What if, what was as the floodplain damaged person from the state? What was her? What did she say?

Ms. Meehan:

She said that regarding the information for substantial damage and improvement determinations, the question is more relevant to the permit application and permit issuance process. When an applicant completes the development permit application, providing the scope of development and work along with the associated cost estimate and that scope of development and or associated costs change, the applicant is responsible for informing the community of that change or becomes work outside the scope of the permit. Further the essential damage, essential improvement regulations don't make any exceptions in the rule. Rather, the total cost of the project is the basis for determining the 50% for that reason, you will not find allowance for inflation in the substantial improvement substantial disaster guidance. I suggest working with your town attorney and the primary process and requirements, the town staff has three documented the cautions of the project becoming a substantial improvement.

Mr. Herman:

Okay? So, according to Eryn, last sentence or two, is basically overriding the applicant's argument about inflation, right? Inflation should have gone. Is that correct?

Ms. Meehan:

Correct

Mr. Herman:

And that's why staff didn't go to overturn its decision when it issued its notice of violation, right?

Ms. Meehan:

Yes.

Mr. Herman:

And when was the notice of violation issued?

Ms. Meehan:

The notice of violation was sent, the original notice was in June of 2004, of the Yes, June 28 of 2024,

Mr. Herman:

And that started the notice of violation process, which, which has a lot of procedural requirements, is that? Right?

Ms. Meehan:

Yes

Mr. Herman:

More so than just like a typical you to go violation, where you get a notice of violation, you have a right to appeal. So can you just tell the board what the general process was and how the city followed that process up until now?

Ms. Meehan:

Yes. So there's the courtesy notice of violation and determination that is sent to the applicants with property owners that are in violation, and they are given a time frame that they have to bring the property into out the violation up to remedy the actions. If that is not taken, then it is up to the staff then to have a hearing, and then that's when the notice of hearing was sent to the property owners to allow them to come and speak with the floodplain administrative attorney to submit evidence arguments for their case.

Mr. Herman:

Okay, so the notice of violation date 2024, that's in the agenda package that right

Ms. Meehan:

Correct

Mr. Herman:

In fact, and this is kind of summarizing some of the stuff that you already went over. But it also attached some provisions on the appeal process. But it also attached, you know, the appraised value of the structure before the project, and it also attached the total cost that was submitted by the applicant in early June. Is that right?

Ms. Meehan:

Yes.

Mr. Herman:

And then subsequently, and according to the flood damage ordinance, there required a notice of hearing. That notice of hearing is like an administrative hearing. Is that right?

Ms. Meehan:

That's correct

Mr. Herman:

And they have an option. And they have an opportunity to go and present evidence at the hearing, just like they would right here.

Ms. Meehan:

Yes

Mr. Herman:

It's like a semi quasi-judicial if you will, correct.

Ms. Meehan:

Yes

Mr. Herman:

Okay. And so that notice of hearing letter was sent on August 27 2024

Ms. Meehan:

Yes

Mr. Herman:

Okay. And when did the hearing take place?

Ms. Meehan:
September 9, 2024

Mr. Herman:
And were the applicants, or, excuse me, the property owners at that hearing?

Ms. Meehan:
Yes.

Mr. Herman:
And whether the council, to the gentleman sitting next to me, were they at the, at that administrative hearing

Ms. Meehan:
They had council at the meeting

Mr. Herman:
Okay

Mr. Coggins:
I was not present.

Ms. Meehan:
Okay. I'm sorry, I thought...

Mr. Herman:
That wasn't supposed to be a trick question. To my knowledge, you were there.

Ms. Meehan:
You were there

Mr. Herman:
I was there via zoom, but I don't remember them in there, and they're allowed to have council, then they don't have to. Okay? And so what's the next step? So you have that hearing, and then what happens?

Ms. Meehan:
Then, once you have the hearing, you collect all of the evidence, then the corrective action is put together. That has also been what is presented to the applicants all along on how to remedy violation, and that is presented as a corrective action order that is signed by the floodplain administrator and submitted to the property owner.

Mr. Herman:
Okay, before we get into the order, let's go back to the hearing. Did the property owners have really any evidence or justification for why they were appealing, or having this administrative hearing, or at least tried to go and get it overturned to you at that point? Then, if you overturned, and you wouldn't have to,

Ms. Meehan:
That's correct, they did. They submitted evidence and have continued the conclusions that they were act, they have again presented to us.

Mr. Herman:
It was the inflation art

Ms. Meehan:
That's correct

Mr. Herman:
For the substantial improvement they ever bring up the historic structure argument

Ms. Meehan:
Not that I'm aware of my head.

Mr. Herman:
Okay, all right, so based on the information from that hearing, you rendered a decision. You supplied an order, right? And that order was in the agenda packet, and it was submitted to them. Well, it was dated October 18. Is that right?

Ms. Meehan:
That's correct.

Mr. Herman:
And so obviously they have a right to appeal that that works. That's why we're here. But what do the property owners have to do to come into compliance and to determine if they were still in violation.

Ms. Meehan:
They must elevate the entire structure to meet the coastal A requirements and the for the property itself and or remove or detach the addition from the existing structure.

Mr. Herman:
And then subsequently after that, did they appeal that decision?

Ms. Meehan:
Yes, they did.

Mr. Herman:
Could you go to the support structure, because that was never brought up with the administrative hearing, but it was in the appeal statement

Ms. Meehan:
Yes

Mr. Herman:
By the applicants who are the property owners. Attorney, can you go to your argument section that's set forth for a bid from your staff report on the historic structure?

Ms. Meehan:
Yes.

Mr. Herman:

Okay, so take us through of why this project does not meet the exemption in 520 E 5 E

Ms. Meehan

So it does not meet the exemption because the project as a whole proves that has to prove that it will remain an existing historic structure, so that the removal of a historic addition, as well as proposing and including this addition the size and mass of it, potentially could prevent it to be considered a contributing structure.

Mr. Herman:

Okay.

Mr. Lemons:

That consideration is that based on their review of the project, or is it, or is it, also considering what your ruling is? I say that because your alternative is to raise a this thing 14 feet.

Ms. Meehan:

Correct

Mr. Lemons:

And this seems like that might get a little bit out of character for that area and historical value

Ms. Meehan:

Agreed.

Mr. Lemons:

So what? What conditions were they looking at when they made that ruling that it would not affect their historical

Ms. Meehan:

There was no, there was no background that would state that they were going to keep the historical district or the contributing to the nature of the property itself. So that was never considered, that was not brought up at the time of various the original variance, or at the time of the building permit itself. So they have the burden then to show that they will still remain contributing structure.

Mr. Robbins:

What entity makes that?

Ms. Meehan:

I'm sorry

Mr. Robbins:

What entity makes the determination of whether it continues?

Ms. Meehan:

That's the division of cultural resources. Cultural Resources, North Carolina.

Unknown:

State coast

Ms. Meehan:
Yes, state level.

Mr. Robbins:
And what's the process for that?

Ms. Meehan:
They would bring information to us that were or they would go directly to that agency and provide the documentation of what they were trying to they would like to the addition they're trying to build, and get their determination.

Mr. Robbins:
Is that typically done in advance of building?

Ms. Meehan:
If someone wants to use this clause and become exempt from having to meet the standards without having to raise all of the structure itself, then yes, that would happen prior to that.

Mr. Robbins:
Want to circle back to the raising the structure. It would have to meet the 14 foot line. That doesn't mean there's going to be 14 feet between the ground and the house.

Ms. Meehan:
That's correct.

Mr. Robbins:
That's how much would there need to be. You know,

Ms. Meehan:
I do not know, are we talking two to three feet? Six to ten feet?

Ms. Meehan:
I hate to speculate, really,

Mr. Eckert:
There is an elevation certificate. There is an EC. It states it's ten feet

Mr. Robbins:
So it's at 10 feet now?

Ms. Meehan:
Yeah, so that would be under five feet.

Chair Haislip:
More questions for Mo

Mr. Herman:
Yes, sir, I'm sorry. Some Section D that you have up there about what you have to go and show this sort of evidence of the keeping the contributing historic structure.

Ms. Meehan:

Yes,

Mr. Herman:

That's coming from some of this SI/SD Desk Reference.

Ms. Meehan:

It's substantial improvement and substantial damage handbook that is provided by FEMA to all floodplain administrators for us when there are storms or these types of projects come through, so we know exactly what to what costs are eligible or not eligible for the calculations gives a timeline of how things should happen, exceptions for the historic structures, where when those exceptions are triggered or not triggered, and when you should apply the substantial improvement to those structures. So that is where that Section D is coming directly from.

Mr. Herman:

I'd like to go ahead and enter in the record chapter 6, which deals with that subsection D, on when you need to go and have that piece of evidence, and what type of evidence to go and show we didn't make enough copies, but officially enter one in the record, and then you guys can pass that around. This comes from 6-24, right?

Ms. Meehan:

Yes. Page 6-24

Mr. Herman:

Was it any time the property owner or the applicant, for that matter, submit any evidence at any time regarding the historic structure to to be able to go and conform this section?

Ms. Meehan:

No

Mr. Herman:

And they didn't do it at the voting purpose stage, right?

Ms. Meehan:

Correct

Mr. Herman:

I may have a few more questions on redirect, but that's all the questions I have right now.

Chair Haislip:

Point of clarification for the new members, and I think Mr. Herman said it at the beginning that he does, he's a city attorney. He does represent the city. I don't want to clarify, does not represent this board, Ray is our attorney, so that, just so they understand.

Mr. Herman:

Appreciate that

Mr. Allen:

Just to make this clear, the \$228,000, that was an estimate, reconstruction estimate, there was some verbiage thrown around so much they had spent to that point, right?

Ms. Meehan:
Right. So let me clarify

Mr. Ross:
Did they not submit that with their building permit?

Ms. Meehan:
They did, but that believe that 228 was when that when they were getting some more of their materials in so that was kind of a midway,

Mr. Allen:
But that was that was submitted to the building, but was it submitted as cost to date or projected final cost,

Ms. Meehan:
Cost to date

Ms. Allen:
Okay. Was there ever a projected final cost, other than it'll be less than..

Mr. Ross:
No you're talking two different times.

Chair Haislip:
No, hold on. Let him go.

Ms. Meehan:
Well, I have not seen that

Mr. Allen:
Okay, because I was under the impression we first started talking, 228 was the initial estimate. But that's not the case. That's what had been expended since February.

Chair Haislip:
I want to recognize Rodney.

Mr. Ross:
I thought the 228 was the original estimate?

Ms. Meehan:
Yes, and they used that information at the time to get the building permit.

Mr. Allen:
Well, what I'm hearing now is that 228 is actually a interim, Here's how much we've spent today.

Mr. Ross:
They did not submit an ongoing cost update, and they started at 228 minus,

Ms. Meehan:

So if I may clarify in the email that was sent, this was the project cost as they were moving forward that

Mr. Allen:

so there is there was no specific pre construction estimate,

Ms. Meehan:

Not that I'm aware of. Spre-constructiono this is when they were working on their windows, and during construction,

Chair Haislip:

They may have it, but it's not in our information.

Mr. Allen:

I just want to make sure, because I've misunderstood what that 228 was

Mr. Masker:

There's an exhibit on it starts on just use the page numbering as a reference, tt's on page 123 of 239, it calls it 406 West Brunswick St New Addition BJ Gorman permitting limit 319, I didn't know what that document I didn't know that one and a half page document was an attachment to the building for an application.

Ms. Meehan:

This attachment is showing they are able to spend up to 319,000 to meet the 50% threshold. This was the document that was provided in February, outlining all of the cost they had taken improving that by the applicant. That's correct

Mr. Lemons:

With no dates. How are we supposed to be given this with no date on it

Mr. Masker:

They've got dates on the far left hand column, but yeah,

Ms. Meehan:

So the last date is 2-23 and it was attached to the February 28 email to the Building Inspector.

Mr. Robbins:

If I can ask this question, I think it would clarify. You agree with me that if you look at this document and you look at the next two pages, the line items correspond up to the February, 23 line, LYL& B, construction, \$14,279? So this does look like...

Ms. Meehan:

Correct. That's date. Yes

Mr. Robbins:

Who generated this?

Ms. Meehan:

The Applicant

Mr. Robbins:
Thank you.

Mr. Herman:
Yeah, for clarification, it's set up differently in the agenda packet, but there's the cost, and then there was emails that corresponded to those as attachments, so they're both in the packet, but they came via email or attachments of the cost, one in February and one in early June.

Mr. Lemons:
One more silly question. During this period of time, which pretty long, we've had a lot of staff turnover.

Ms. Meehan:
Yes Sir

Mr. Lemons:
It must have been very, very difficult to put your arms around and bring everything together and not miss facts and figures and things that were presented in feeling or even by powers to be above Southport. How do you think you did?

Ms. Meehan:
I think I did okay. I mean, with what I had to work with. I mean, we had all of the emails and information. Yes, I did get pulled in this is the late end of the game, and I was the third floodplain administrator to to be part of this. So yes

Mr. Herman:
So Mo, you're also the acting, I use the word planning director, but Director of Services, you're, you're the interim, then I am actually the and then now you are, but up until that period of time, I mean you, you're involved, it was just the assistant city manager who signed off on the first notice of violation letter, but you were have been involved in that whole process, and particularly when the assistant city manager left.

Ms. Meehan:
That's correct

Mr. Eckert
So we're looking at the cost of project. Beginning is where it's determined, but then at the end is what it's determined, the beginning of fair market value. Did the applicant have opportunity to provide a fair market value for the structure at the end of the project, relative to the cost?

Ms. Meehan:
It's it very specifically defines it that it's at the beginning of construction, which is at the time of the building permit.

Chair Haislip:
Anymore for Mo now, because we'll get the applicants to come up if there's no more

Mr. Ross:

When did the building permit get issued

Ms. Meehan:

I don't have that date.

Mr. Ross

All right,

Chair Haislip:

The applicant, your representative. I guess I'll swear you in too.

Mr. Coggins:

Thank you, Mr. Chairman. My name is Steve Coggins, being sworn in. And if you wish, I have these three folks here that we did pass it all get sworn at the same time. Obviously the applicants, BJ, Gorman, Robert Howard, Jo Pat Hatem, and Ms. Spencer, all sworn same time, sir.

Chair Haislip:

Okay, that works. Does that work? Let's one by one. I'm sorry. I'm sorry, sir.

[Mr. Coggins is sworn in].

Mr. Coggins:

We are the appellants. We have the burden of proof. We're glad to finally have a chance to speak. We have to pass out to you if you do it, because we received the packet by email yesterday, for each of you, a if you would folder that contains our exhibits one through 23 it has some also added ventilations of your UDO floodplain ordinance, and also some cases that I'm going to talk about for your consideration here today. This is Jamie Fisher office with Rountree Losee, and again, I'm Stephen Coggins with Rountree Losee of Wilmington, and it's my honor to represent BJ Gorman, the owner of this property, to bring forth some new matters that they just simply were not in a position to be able to share earlier. We were able to do some further research and bring some further evidence, new matters that was not before the city staff, and good reasons were the appeal. As you know, Ms. Meehan makes an initial determination as to whether or not, for instance, this is a substantial improvement. And for the purposes of appeal, you in effect, stand in the shoes of Ms. Meehan, you can consider all the evidence as well for here today, as well as evidence that is already in your record. You can confirm in the park, reverse it and hold, remand out, but you're also positioned to act like you are in the office when the applicant comes in and to make your decision as to whether or not this is a project that complies with your UDO. Within the packet is our memorandum of laws. First thing that you will see that outlines what our positions are here, not necessarily in order which I'm going to bring to your attention. The first thing is what I want to do, and I will bring up a witness and talk about in a minute, this is, in fact, if this was a trial, that's what I call opening statement, okay. If we assume for a moment that substantial improvement rule applies, that this project had to come in under \$319,000.00, there is not one word in the ordinance or theme of regulations or guidelines that say whether or not you can or cannot make adjustments. That means there is an ambiguity in the case law stands for proposition that in order this board of adjustment to avoid injustice and undue hardship, especially as the evidence will show as a result of government mandates, that this board has every power make the adjustments. And we will show you the line item that when you

adjust certain things, not talking about inflation, certain line items that shouldn't be considered it greens, that it reduces its actual cost below that \$319,000 threshold. Secondly, we don't concede that we have to comply with the 50% rule, because if you take into consideration, it will be up, there's abundant evidence before you that this is, in fact, a federally designated historic structure, as well as one that's recognized as such by the Southport Historical Society. In other words, we meet every cynical criteria that makes this an historical structure, and if you combine that also with the evidence that was already in the record and the variance application, put those things together that the exemptions that we're talking about here do apply if there's not one word about how you go about establishing this particular language in here says that the confirms for closed work will not preclude the structures continue designation. Nothing says that you have to go to FEMA and they get a ruling on whether or not the structure will affect the continued designation. That is a judgment of the local community that submitted the application to the national register in the first place. And we have before you today abundant evidence, both on the historical designation and that this structure as it has now been completed, will do nothing, and in fact, that will show it enhances the likelihood because of the continued historical designation, because the front part of the house that faces the street was the latter part of the 1800s 1893. The back part the older part, 1877, while older, was fairly, what should we say, nondescript. This project, with that rear portion that was replaced, was so conscientiously designed and built so that elements of the beautiful historical features of the house faces there on West Brunswick are incorporated into the rear portion that's been added. In other words, it looks far more historical and it's far more in keeping with the entire neighborhood than the original structure was. And that is a determination that can be made in consultation with the members of this community, and with that evidence before you we would hold that we're exempt from the SIR rule in the first place and that the project should be approved. You're called affordable adjustment for a good reason. You're here to make adjustments in order to prevent absurd and unjust consequences, and we, as the people who are here appealing today, are asking for you now that we've had a chance to do our research in this admittedly complicated matter and various regulations so that you can in fact stand in the shoes of Ms. Meehan, armed with more facts, that was available to Ms. Meehan and issued the appropriate result. And so with that, what I'd like to do...

Mr. Allen:

so you talked about the historic that it precludes historic designation. Is this documentation? Is there any documentation?

Mr. Coggins:

There's going to be formal documentation presented to you in form of sworn testimony. In addition to the there's the official findings, placing this particular home in the national literature that establishes this historical designation

Mr. Allen:

Right, I'm aware of that. But the issue is after the work.

Mr. Coggins:

That's right. And so I'm here today to provide evidence of that documentation. Okay? So I would like to, I can at this time to call is BJ Gorman.

[BJ Gorman is sworn in]

Ms. Gorman, I take it you are the owner of and lived at 406 West Brunswick

Ms. Gorman:
Yes Sir

Mr. Coggins:
And you've lived there since about 1989

Ms. Gorman:
Yes, sir, I have

Mr. Coggins:
Would you please describe for the board very quickly what this residence was

Ms. Gorman:
We purchased it in 1988 for our permanent residence. My husband and I, We did some work on part of the house, because people that had lived there had basically not maintained the house. We spent most of our time working on the front house, which I call it, which is the 1893 house. That's where we spent our time and effort in redoing and trying to restore it. We lived in the back house during that period of time, and basically just lived in it. We put paint on the wall, but it was not in the same condition as the front house, and we knew that eventually we would get to that. But we never did. We moved in and like to scores. So it was actually a home, and we just tried to refurbish it to live into it

Mr. Coggins:
so visually and historically, how would you compare the back part to the front part?

Ms. Gorman:
The front part of the house appeared like the historic home. The rear portion, which was older, was a much more utilitarian pipe building. They had never, I think when they had done any work, they probably took the plaster off the walls, but it was like the old timey paneling in the house, there was virtually no insulation. If you've seen a lot of these old houses in town, you could realize that that happened a lot. The front house would be in good condition, but the back portion would not be and this was not

Mr. Coggins:
Nonetheless, it's all treated as one structure, and it has all been designated as a historic structure on our national historic registry. Is that correct?

Ms. Gorman:
Yes Sir, that is correct

Mr. Coggins:
And that was submitted that application originally by the Southport Historical Society. Is that correct?

Ms. Gorman:
Yes Sir

Mr. Coggins:
Who performed all research and satisfied the federal government that it meets that

appropriate criteria. Now, going forward, you have, when you were doing these improvements, okay, when you're planning on these improvements, it's now the subject of this hearing here today, you consulted with members of the Southport Historical Society. Have not correct, including Mary Poole, and who I understand is the clerk, the Secretary, I'm sorry.

Ms. Gorman:
Yes

Mr. Coggins:
And you have also consulted with the chair of the Southport Historical Commission, have you not?

Ms. Gorman:
The Preservation Commission

Mr. Coggins:
All, on the issue as to whether or not your proposed work, which could have any risk of precluding the structures continued designation, isn't that correct?

Ms. Gorman:
Yes Sir

Mr. Coggins:
And they told you what?

Ms. Gorman:
They told me that it would not affect it.

Mr. Coggins:
In fact, they told you that in some places it actually improved.

Ms. Gorman:
Both of them said, yes, it would actually because they had actually seen the construction that we've done and how we tried to match the back house with the front house, that had definitely improved it.

Mr. Coggins:
Now this particular the reason why we're here today.

Mr. Allen:
Mo, so does the Southport Historical Commission have anything to do with setting national register historic

Ms. Meehan:
They do not

Mr. Coggins:
But this is a person that has been enacted, though the chair of that commission has also been active in the Southport Historical Society, which was the applicant for the Federal historical designation, the first place Correct?

Ms. Gorman:
Right.

Mr. Coggins:
Now we are all here today because a certain part, as you face the house, on West Brunswick, as you look at it on the left, the most of the front porch and a small part of the inside of the of the den, which is the 1893 house, not the 1877 house that's in the rear where any of the works taken place, but because there's roughly 3% 2.5% of the entire structure is in that Coastal A zone, all, all of the Construction where the construction was to take place, including must comply with the Coastal A zones, right?

Ms. Gorman:
That's what we've been told

Mr. Coggins:
That's why we're here now.

Mr. Coggins:
You brought in a variance application first to deviate then from that requirement that if any part of the structure is in the coastal A zone, therefore coastal a requirements, have to apply for the entire work

Ms. Gorman:
Correct.

Mr. Coggins:
And there was concerns expressed in the hearing about whether or not that would affect the community rating

Ms. Gorman:
Yes

Mr. Coggins:
And that was then, in effect, put on hold and not revisit.

Ms. Gorman:
That's why, one of the reasons we decided to pull it, because of the comment that was made about that it would affect

Mr. Coggins:
Mrs. Gorman, did anyone look, [turn to our exhibit one,] which is the federal regulation regarding variances and exceptions in the very first two or three lines, did anyone bring your attention this language out of the federal regulation insurance premium rates are determined by statute according to actuary risk and will not be modified by the granting of a variance.

Ms. Gorman:
No Sir

Mr. Coggins:

Will not be modified by the granting of a variance. That was never brought by your attention

Ms. Gorman:
No Sir

Mr. Coggins:
Now let's talk then about the actual cost of the product project. As it turns out, there you were given a list items from the regulations and comments federal registry, various things that FEMA publishes about what items to be considered are items of cost and what are not correct. Now, as it turns out, there were some items of cost that you had to incur that was mandated by law. Is that correct?

Ms. Gorman:
The building inspector requested that we make a couple of changes.

Mr. Coggins:
The building inspector brought to your attention that you had to make some changes or upgrade the foundation to the addition beyond what was shown on the original plans in order to comply with code. Is that correct?

Ms. Gorman:
That's correct.

Mr. Coggins:
Specifically, additional rebar had to be put in. That Right?

Ms. Gorman:
Correct

Mr. Coggins:
Which required digging additional trenches and pouring more concrete. Is that right?

Ms. Gorman:
Right

Mr. Coggins:
Okay? And in addition, during the middle of the project, you had a contractor, I believe the electrician, walked off the job. Is that correct?

Ms. Gorman:
That is correct. He went to the building inspector and told him he was pulling his permit.

Mr. Coggins:
So he went and he pulled and he pulled his permit, and you had to get another electrician, if you would, to come do this work

Ms. Gorman:
Yes sir.

Mr. Coggins:

And you incurred an additional expense in order to assure that work that had been done was upgraded so that it complied with code as well as the future work that had to be done. Is that correct?

Ms. Gorman:
That is correct.

Mr. Coggins:
And then it comes to find out in your list of costs was disposal, that is garbage and landfill cost. And turns out that's a cost that should not have been factored in.

Ms. Gorman:
That's correct

Mr. Coggins:
But if you totaled up and you've received a letter from both your electrician and your general contractor on this rebar work that verifies what the circumstances were to live that increased cost mandated by law. Is that correct?

Ms. Gorman:
That's correct

Mr. Coggins:
Okay. And that also is in the record which you have submitted here today, all right? And if you total those up, it brings the total amount of the cost of this project is under \$319,000 does it not?

Ms. Gorman:
Yes sir it is. 318 something.

Mr. DiGuiseppe
Do you have documentation of that

Mr. Coggins:
We do as needed. In fact, I refer to you in our packet that's been handed out, I will refer you to exhibits 19,20,21 and 22. And I'm sorry, 23

Chair Haislip:
Can I ask a question? Was this the additional expenses you're alluding to is it was that after the 228 figure was arrived at, and this is after the fact

Mr. Coggins:
arrived at, can you address that?

Ms. Gorman:
I don't remember the dates, but was that prior? I mean, was the additional work not included in that 228, is that what you're saying?

Ms. Gorman:
It was included, I don't know if it was in that cut off. I'm not sure, I don't have, not sure if it was, if it was already

Mr. Allen:

Staff's package has the spreadsheet with the dates

Ms. Gorman:

The foundation would have been early but the electrical would have been toward the end, because we were through rough in and I believe right after rough in, we had to get the new electrician. So that would have been the killing portion. I'm not sure that it was that day,

Mr. Masker:

Ma'am, was this project competitively solicited? In other words, there's the general contractor who ended up doing the work, did he, Was he selected based on a competitive solicitation, or was the job basically negotiated with that GC.

Ms. Gorman:

We got, we got several bids, and most everything we did, we had it, Robert did extensive research to make sure that we got what we were paying for, but we got qualified people to do it.

Mr. Masker:

Okay. Second question, what was provided for the basis of bid? In other words, was there a complete set of architectural, structural, mechanical, safety, water, all that put together and said, Okay, I want you six people to bid this complete sealed set of drawings. I'm just curious. I that's important for me to understand how we arrive at these costs, because it's not just what you've incurred at the end, it's how you got in the beginning. Because that may have flushed, that may have flushed how much it's going to cost before you went started.

Ms. Gorman:

Well, if I might ask, would we have Robert because he's the one that really took care of the majority of that portion of it.

Mr. Coggins:

I'm happy the board is willing. I'm happy to bring you up also, Robert Howard, up to explain before she completes her testimony.

[Robert Howard is sworn in]

Mr. Masker:

And just trying to understand the basis of bid for the project in the first place. In other words, a lot of people have different approaches to the project. Sometimes they'll just bid the trades, but they'll go with the they'll negotiate the overall job of the GC, but don't competitively solicit maybe the electrical guy or the plumber, again, something like that

Mr. Howard:

Under the statutes, and under the codes BJ was the general contractor for this job as the property owner of that so we bid out individual components, like the plumbing, the electrical, the foundation plan, the siding, the construction of it. So we had multiple contractors throughout the job, and most of them we are in the property management business, and most of them are people that we use consistently.

Mr. Masker:
So you're acting as GC?

Mr. Howard:
Yes, sir

Mr. Masker:
So you've got a North Carolina contractors license?

Ms. Gorman:
No, i'm the property owner

Mr. Howard:
Well, I mean, the permit was issued to her.

Mr. Coggins:
Mr. Howard, while you're up here, as it turns out, that the additional cost that you incur in order that was not projected at all at the front end of this project, and you bid it out for the electricians and put it in the original estimate, because that contractor, the electrician, walked off the job, and you had to get a new permit. And then the new contractor came in and had to alter what was what was there in order to bring up the code and depleted that added your electrical cost, \$8,281 is that correct?

Mr. Howard:
That is correct.

Mr. Coggins:
And then, similarly, with respect to the work on the foundation that was imposed, the increase in cost by the city regarding the rebar that added \$3,500 worth of cost, is that correct?

Mr. Howard:
That is correct.

Mr. Coggins:
And actually, all of these was going over when we had the hearing before Maureen in the fire department, the attorney was there by my phone, and I had my talking points, and they and I left a copy of the talking points for them, but we went completely over the reason, the three reasons that that we had exceeded the budget

Mr. Coggins:
And then, in addition that, then, under the FEMA guidelines, there was a final accounting of where there was garbage, landfill, cost of \$481 it should not have been included.

Mr. Howard:
Correct. That is correct.

Mr. Coggins:
So if you then adjust those and withdraw those added costs that we talking about. That comes to a grand total of \$318,874.95 which is less than \$319,000. Is that correct?

Mr. Howard:

That is correct. And the foundation, if I could say that the when, when the plans were submitted to the city and and they gave us the permit for the the construction part of it, and approved those initiative permit. Then when they when Donnie Price started digging the foundation, Kylie Barefoot visited the site and contacted me, actually, and said that he would like to have some great beams put in, and he would like to have threaded rod from the floor to the ceiling, which I did not object to, but that's what added \$3,500 the cost and this was after the permit had been issued. And after the, you know, 319,000

Mr. Coggins:

And the electrical increase cost happened after the permit was issued

Mr. Howard:

We had a contract for 16,135.00 and we spent an additional it came out to an excess of \$8,000 as a result of having to change contractors.

Mr. Coggins:

And similarly, the garbage landfill cost of \$481 was after the permit was issued. Right?

Mr. Howard:

That's right.

Mr. Allen:

Did you have an estimate, a full estimate, a pre-construction estimate. Did you add up all the trades, and how much was that?

Mr. Howard:

We did. John, I wish I could tell you, but it was like \$309,000 that we had. The 224 that keeps getting mentioned that was (Unable to distinguish)

Mr. Allen:

Did you have a contingency fund in the 309?

Mr. Howard:

Well, we knew we were going to be tight because it was 319,000 and we were following it, you know, as closely as we could on a day to day basis. So the contingency was the difference between the like the 309,000 and the 319,000

Chair Haislip:

Questions of Mr. Howard?

Mr. Herman:

Assuming everything that your attorney saying is true in terms of those costs don't count. Why is this now just being brought up today? In other words, the point of this board is to step in the shoes of the floodplain administrator, which that decision was made back in June of 2024, so why are we waiting all the way until July or January of 2025, for that information to come out, even assuming if that's if that's true?

Mr. Howard:

Can I respond now?

Mr. Herman:

Yeah, that's a question. Yes, sir. Okay. Thank you. That, these three, these were brought up when we appeared for the hearing, for to try to get some some assistance in that in, yeah, during that September here at the fire department. Okay, I believe you were on Zoom.

Mr. Herman:

Yes, I was. Okay, and I guess Help me, help the board understand why those are not applicable, why those costs all of a sudden lower it from, you know, 330

Mr. Howard:

Because that's what we were explaining. We lost our electrician and that added the additional cost to get an additional contract, electrical contractor, the addition for the building inspector was at that meeting, as you know, at the rescue squad building right and and he did not object to this, that after the permit was issued, he required us to change the foundation plan, which added to \$3,500 to it that was discussed at that hearing as well. We've tried to explain this to the town.

Mr. Herman:

Sure, sure. Honestly, these are just clarify, clarifying questions. So I guess your initial contractors are up to the work. They didn't do a good enough job again to go back and get it redone again.

Mr. Howard:

No, sir, that's not what that's not what we said. What happened was, and there's emails to document this.

Mr. Herman:

Where are those emails?

Mr. Howard:

I think they're in your package. But the electrician did, without telling us, went to Mr. Barefoot, who was the code enforcement officer, and said, I'm going to pull my permit for this job, and I can't complete it. Then he pulled off. So Kylie emailed me and told me that that he had withdrawn his permit, and we had to get another licensed electrician on the job before we could proceed. We did that immediately, and the new electrical contractor had to go get a permit from the City of Southport which he did the only way he could do that in the time frame, because all construction was going, all the subs were there, is on an hourly basis. And we paid him on an hourly basis, three upon hourly rate. And that the difference, we have a 16,135 contract, which was gotten us into the 319 range. Under 319. We had paid him \$10,000 of that amount of money. Then if we paid the difference between that, if what we paid the new electrical contractor, and it was we had spent \$8,000 more than overage, which cost was 24,000 instead of 16,000 to get that job done. And that was all explained during that meeting.

Mr. Herman:

No, still cost that was associated the addition

Ms. Gorman:

Oh, it was, but it was cost that was not anticipated.

Mr. Coggins:

I But mandated by law, but mandated by law. Directing your attention to the definition of historic structure here in Southport, it provides three ways to get that designation. Does it not? First to be designated by the Secretary of Interior, which, as appears in the packet before now board in the bar exhibits that would be exhibits for exhibit 14, but it's also been identified as contributing to historical significance of the historic district designated by the community with a certified local government program that is the historic South Historical Society.

Mr. Howard:

Correct Southport Historical Society

Ms. Meehan:

No it's not

Mr. Coggins:

And they were the actual applicant and submitted their research as part of the Federal Application. Is that correct?

Mr. Howard:

That's my understanding.

Mr. Coggins:

Is it individually listed on a local inventory to start landmarks and communities with the certified local government program?

Mr. Howard:

It is

Ms. Meehan:

The certified, we are not a certified local government. There are very specific applications and resources you have to go through. So that is not certified as contributing designated by a certified local government program.

Mr. Coggins:

But there's no dispute that it is, However, been designated by the Secretary of Interior.

Ms. Meehan:

I don't disagree with that.

Mr. Robbins:

I have a question at that point, is this house itself designated as a historic property, or is it on the list of contributing properties to the historic district or both?

Mr. Coggins:

Yes and yes, it's mentioned at least three separate times on the list

Mr. Robbins:

That doesn't, I didn't get an answer to my question. Is on the list

Mr. Coggins:
Yes

Mr. Robbins:
The building itself is not listed as a historic whatever by the Secretary of Interior?

Mr. Coggins:
Well, it's mentioned at least three separate times.

Mr. Robbins:
I hear you on that. I'm trying to get an answer to the question. We're talking about the building itself being historic? Are we talking about it contributing to the historic district?

Ms. Gorman:
The house itself is

Mr. Robbins:
From the Historical Society. Is there one from the federal government?

Unknown person:
No

Mr. Robbins:
Okay, thank you.

Ms. Gorman:
But it's registered with the Government, from my understanding

Mr. Robbins:
There's a important difference there that may have a factor in this statute. I'm certainly not wanting to say whether it does, but it's a question that it's going to keep coming up?

Mr. Coggins:
Well, it is at least identified the quote regulation as by the secretary of interior of this document as contributing to the historic significance of a richer Historic District. Is it not.

Mr. Allen:
And do we have anything from the Secretary of the Interior, as far as documentation confirms the work will not preclude structures continue [unknown],

Mr. Coggins:
No. And the fact that matter is, is not one regulation of guidance about how that has been done. That factor I submit to you during the everyday world of building permits and historic districts that obtaining from the federal government a confirmation that it will not preclude the structures continued designation. There is no provision for such and that that is that is something which the administrator is capable of making determination even by consulting with this local author.

Mr. Allen:
I don't think that's correct

Mr. Coggins:

But if one could point to me a particular specific on that

Mr. Allen:

Mo, How many individual structures in Southport are on the National Register for historic

Ms. Meehan:

There are a couple hundred, I don't know the exact number.

Mr. Allen:

No, the structures themselves

Ms. Meehan:

Yes, yes, there are several 100 structures not contributing, but in the inventory for the National Register

Mr. Coggins:

My understanding that this one is

Mr. Allen:

There are like two or three half dozen buildings that are on the National Register

Ms. Meehan:

As landmarks, yes, so This, that is a completely different contributing so everything else is part of the National Register district. Not all of them are contributing. Okay, they can be part of the registered district and not be contributing.

Mr. Robbins:

Well, I'll go ahead and state my underlying question. And really is, Trying to drill down on this is, does change to a structure affect the status of whether or not it contributes, and who makes that determination?

Ms. Meehan:

Yes, it does. And the state, we have, the city has to prepare an inventory and show the distinctions of each of these properties, and show what may or may not be considered contributing any further. And then we send that to the state historic resources. And they, I mean, we're in the process of that. That's for the national register that goes to the federal government, but they did review that. The state did review that, and they have that on file as our register.

Mr. Robbins:

So when changes happen to a building that gets factored in

Ms. Meehan

It when there is a new inventory. So right now we are in the city is in the process of doing a new inventory and local designation report for the local historic district, which is completely separate from the National Register district. So some of these things may change once we have to go through all of the lists.

Mr. Robbins:

What has bearing on section 520 E 5 B

Mr. Meehan:

So the project historical is the contributing structure of the rational register of the Historic Places. Yes, that it must remain existing and contributing to the national registers the 7b or the 5b I apologize

Mr. Robbins:

So if this House continues to be contributing, as determined by whom

Ms. Meehan:

By the state they would have, we'd have to have information I would put together for register [mixes into Mr. Robbins]
cultural resources We'll have to make that determination. And has that come up anywhere with anybody?

Ms. Meehan:

No

Mr. Robbins:

Anything else, as far as the impact of amending the structure, changing the structure that we have bearing in this way that you can think of?

Ms. Meehan:

The historical property, one of the other exemptions would be, if you change the face of the wall that you're attaching the addition to, if you restructure the wall itself, then that will preclude it from being considered historical. If they had just used a simple doorway that had been existing and added to it, then it would be, it could, could have been considered exempt.

Mr. Robbins:

What is the case here?

Ms. Meehan:

They changed the whole structure of the rear wall.

Mr. Robbins:

I'm hearing something different, seeing a negative from the applicant...

Mr. Howard:

The only thing we did was take the siding off and put sheet rock. The wall is exactly the same.

Ms. Gorman:

There was a doorway, like a doorway with two side panels on the back of the front house that went into the kitchen. And that still remains

Mr. Ross:

You would have had to tie into the structure. You tied in the structure of the second building?

Mr. Howard:

We attached right to it, yes, sir

Ms. Gorman:

Almost to the outline of where the old building was,

Mr. Lemons:

So kind of goes back to my other so your requirements is for them to raise the house,

Ms. Meehan:

Correct

Mr. Lemons:

Wouldn't that greatly change the front and so all that we're hearing about it being on the list or whatever? Wouldn't that be destroyed?

Ms. Meehan:

May or may not. It depends on how much it has to be raised.

Mr. Lemons:

We determined five feet

Mr. Howard:

Elevation says we are at 11 feet. We meet the federal standard. We meet the federal standard. It's the three free board we don't meet. So as far as we were just applying for federal if we would be okay. It's just the city's extra three foot.

Mr. Ross:

Is that the CRS.

Ms. Meehan:

That's correct. That's right.

Mr. Howard:

And we take exception to that. We don't think it does.

Mr. Ross:

CRS would be effected, correct?

Ms. Meehan:

If the free board is not yes, because that is part of our ordinance, yes,

Chair Haislip:

You went above and beyond.

Ms. Meehan:

That's correct

Chair Haislip:

But, that's what gives you the extra points. Correct?

Ms. Meehan:

Correct

Chair Haislip:

We're approaching the time. We probably want to need a break. Can we take 10 minutes?

[Break]

Mr. Chairman, as a matter of housekeeping. As a matter of housekeeping, I failed to move to admit our exhibits one through 23 discussing, testify to you. I moved to admit our exhibits one through 23 Okay.

Chair Haislip:

Before we proceed with anything else, based on some questions that have come up and points of law that we need to potentially discuss. Believe we need to go into an executive session with board attorney. We move to go into Executive Session for legal reasons for about five minutes.

Motion made Mr. Robbins, Seconded by Mr. Allen - All in favor. Signify by saying, aye. All Ayes

[Closed Session]

Chair Haislip:

What we discussed in executive session is the fact of we've got a lot of information that we've ever had, received tonight, and I think we've been representing, referencing these things throughout his presentation, and I think it's gotten to the point where our attorneys and I think we agree that we need time to look at the points that you brought up from a legal perspective to see how they would impact us moving forward in this decision. I think what we're saying is from ballot points were raised by people's testimony and that we need the time to go back and look at the legal stuff to make sure so, we were not going to take a vote tonight.

Mr. Lemons:

Yes, we have not said that, we have not voted that.

Chair Haislip:

Okay. What we would like, though, is, if y'all have any more information as you to add to this, your rest of your you have a rest of a presentation that you feel like would benefit us, something different that hadn't been said. We definitely want to provide that opportunity now to get that out, since everybody's here.

Mr. Coggins:

I did have some very short, narrow evidence to make sure that I'm in record. And I'm not sure I don't have a problem with any more time to digest, but I'm assuming that in any proceedings that the attorneys would have the ability, once you got a chance to digest it, that we would be given the opportunity to argue our points before decisions. You know what? You would come back? I suppose.

Chair Haislip:

Yes, we will come back.

Mr. Coggins:
No, no, we could do a closing statement.

Chair Haislip:
It's going to be a continuation, right? This will be a continuation. I mean, again, we just got this tonight. Yes, we should have had this two weeks is our thing

Mr. Coggins:
Well we didn't get our packet until yesterday?

Chair Haislip:
I understand, but it's a lot of stuff to take into consideration.

Mr. Herman:
So, I mean, I agree it's up to you all if you want to continue it. I guess the path is, do we go and still present some of the more stuff that I want to go and present as well as you, or we stop it now and then go.

Mr. DiGuiseppe:
I mean, that's, I think, I think the thing to do would be to finish out evidentiary proceed. Evidentiary being presented, any evidence you want to add that hasn't been presented already, you can put that into the record and then, I mean, you could have a short formation, but at the next meeting, and actually going to be decided upon to do it,

Mr. Herman:
Sure, so we can have, like, a clip on all I'm saying is, too is I have a couple more points I want to go in.

Chair Haislip:
By all means. I know that's what we want to provide opportunity for both sides to present.

Mr. Coggins:
But, and I did want to ask Ms. Meehan a couple questions. Okay? Because, you know, but there are two people that one's in the hospital, who was our consultant, planner, okay, that I would want him to address the issues of what we're talking about, these required changes in the middle of the project, and whether or not this would, in fact, have an effect on our rating, that would be roughly two minutes of testimony. There's also the chair of the Southport Historical Commission who is available by phone and can testify by phone under oath, but if you continue to date that, then that testimony would be 60 seconds and so, but we at least could have a physical presence here and shorten that short now, a CRS.

Chair Haislip:
The CRS is a sticking point with us, but it's been we would probably welcome someone to share their at least their interpretation, if you could then allow us then to bring those two witnesses, I can't help you, to the hospital. They went in the hospital yesterday. And the chair of our state, I'm sorry, the Southport Historical Commission, okay, which is specifically referenced in the online citation. I believe a memorandum could be physical available there, but it is available now by phone under the under oath.

Mr. Robbins:

If I may. I don't think there's any intent to limit presentations next time you do want to hear anything that you feel is important to get on the out, aired out right now.

Mr. Coggins:

I neglected the most important thing. Thank you for your diligence in your care and thoroughness. Thank you very much. Say that sincerely on behalf of BJ and Robert, and with that, then I'd like then to I can just to complete a short item of testimony by Ms Gorman and then just a few questions for Ms. Meehan. Ms. Gorman in the packet before the board, here are some photographs taken, particularly exhibit 16, taken from the front porch. That's the part that's closest to the marine, basin waters, correct? And as I understand, your experience, even during the high point of hurricane Florence agreed, how hard was the hurricane Isaias, that the waters never crossed the road at that point. So yes, that's in the coastal A zone. You're not aware of any flood waters ever having reached the actual 1893 section of this structure. Is that correct?

Ms. Gorman:

That's correct.

Mr. Coggins:

Now, as fate would have it, though, if the big blow came and destroyed the 1893 house, so that only thing that was left was the 1890s house, I'm sorry, I'm sorry, 1873 new addition, that which you have constructed incorporates the historical elements more than the original home there in the rear, so that what was there would be more in keeping with the neighborhood

Ms. Gorman:

That is correct

Mr. Herman:

I guess I'll reserve the rest of my questions Ms. Gorman and Mr. Howard for the next meeting.

[Jo Pat Hatem is sworn in]

Mr. Coggins:

Dr. Hatem, you formerly served as the Mayor of the City of Southport. Is that correct?

Dr. Hatem:

Correct

Mr. Coggins:

And during that time period, the efforts got underway, but you were well aware then of the efforts of the Southport Historical Society to obtain the historical designation that's part of the evidence now, before this board, that is, exhibit 14

Dr. Hatem:

Correct, yes,

Mr. Coggins:

And you are familiar with the structures of which Ms. Gorman and Robert Howard live. Is that correct?

Dr. Hatem:
I am

Mr. Coggins:
And afterwards, you were involved in the process of the ordinance changes to establish the Southport Historical Commission. Is that correct?

Dr. Hatem:
Correct

Mr. Coggins:
All right, now, are you aware of anything of this work that in your dealings, and of course, terms of your mayor, you dealt with folks at FEMA? Correct?

Dr. Hatem:
Correct

Mr. Coggins:
The National Flood Insurance Program.

Dr. Hatem:
Yes

Mr. Coggins:
Are you aware of anything about this? About this structure? Is this that would preclude the structures continued designation as an historic structure?

Dr. Hatem:
No, in fact, I think it enhanced the historic structure and it enhanced the historic aspect of the neighborhood.

Mr. Coggins:
Thank you. I have just a handful of questions that I can for Ms. Meehan. Just continue to sit right there, as I understand it. If you look at, I think this is in the packet package you've got just about the entire I think UDO flood ordinance with it

Ms. Meehan:
Yes, sir

Mr. Coggins:
And I'll direct your attention if I can to 5.15, D, C, and I believe 5.15 D, C it talks about you making the determination as the administrator as to whether or not the project would be a substantial improvement.
Is that correct?

[Discussion over the correct page]

Mr. Coggins:
We got the D. D, I'm sorry, D is in Delta, C, as in Charlie. Okay, so determinations for existing structure, right? Then you go to C, right, and that is on page 519, correct. That's

correct. Okay, the bottom of that, okay. And it says that your, your your responsibility as the administrator.

Mr. Lemons:

Let us get with you. Where are you?

Ms. Meehan:

Yes, sir, is page five, okay, on your in your packet. Would you like that number? Is page 161, of your packet. And it's D letter C,

Mr. Coggins:

And would you simply read that into your record?

Ms. Meehan:

Yes, determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.

Mr. Coggins:

Okay, and so you can determine, then at the administrative level, when the applicant comes in, is to make a determination as to whether or not it is a substantial improvement. Correct?

Ms. Meehan:

That's correct.

Mr. Coggins:

And I believe you have the definition of substantial improvement blown up there again on the PowerPoint overhead. Is possible for us to be able to bring that up?

Ms. Meehan:

Yes.

Mr. Coggins:

And so when the applicant comes in, you, you're the person who makes the determination right from the get go, is the weather or not the cost would equal exceed 50% correct?

Ms. Meehan:

Yes, sir.

Mr. Coggins:

And you make a determination as to whether or not any alteration of the historic structure, provided that the alteration will not preclude structures continued designation as a historic structure. Isn't that correct? Did you, but you didn't make a determination about whether or not the alteration would preclude structures continued designation. Is that correct?

Ms. Meehan:

That's correct.

Mr. Masker:

So, it's either A or B. It's either, right

Mr. Coggins:

Provided and that the alteration is approved by variance issued pursuant to section 5.18, correct.

Ms. Meehan:

That's correct. So it has to meet, prove that has to be proved that it will continue as a contributing structure and be approved by variance.

Mr. Coggins:

So you have to make that determination right from the get go as the as the administrator and a building permit was issued on to build this project

Ms. Meehan:

After the applicant agreed that they would not meet the threshold for substantial improvement.

Mr. Coggins:

I'm saying though there was an initial determination, though, where a building permit wasn't an issue

Ms. Meehan:

No, sir, only one permit was issued

Mr. Coggins:

Well, to that point, we go to the order for corrective actions I believe, that would be our exhibit 11

Chair Haislip:

Which one are you looking at, sir,

Mr. Coggins

Exhibit 11. Okay. If you go to the second page, I believe, is under findings of fact, okay, and if you go to sub paragraph four there, yes, and it says the owner submitted a building permit for a single family home on subject property on April 4, 2024, I was hoping you might be able to help me on this me hand, I've not been able to find in the packet or in any of our documents, a building permit was dated April 4, 2024.

Ms. Meehan:

That, that was an incorrect date

Mr. Coggins:

Can you tell me? Then what would be?

Ms. Meehan:

That would be the January, the original January date that they applied one moment, January 9. So this should say January 9 of 2023

Mr. Coggins:

January Yes, 2023 okay, and that was a building permit. Was that based on there being a substantial improvement?

Ms. Meehan:

No, that was the initial building permit that they they applied for before any determinations were made.

Mr. Coggins:

Okay, did you at any time make a determination as to whether or not what they were trying to do was a substantial improvement?

Ms. Meehan:

It was determined that it may and that they had to provide a detailed list of construction costs.

Mr. Coggins:

Did at any time, did you advise the applicant as to what is the procedure to go to determine whether or not their alteration was going to not preclude the structures continued designation as a historic structure?

Ms. Meehan:

I was not included in any of those conversations.

Mr. Coggins:

Are you aware of anybody telling Ms. Gorman or Mr. Howard has to be done? Are you aware of any specific provision anywhere, whether it's the FEMA regulations or in their published guidelines that says, This is how you go about establishing that an alteration will preclude a structures continue designation, anywhere?

Ms. Meehan:

It becomes the burden in the in the packet that we gave from the SI/SD,

Mr. Coggins:

I'm saying I looked through that and I didn't say anything that said words to the effect of, this is what you do. You identify the local the applicable FEMA office, you send to them to this application, you ask for us whether or not this will preclude the continued status or do you ask the local historic Commission, or do you ask the local historic society, or whatever you know of anything that says this is how you do it? ABC, one foot in front of the other.

Ms. Meehan:

No.

Mr. Coggins:

Now, in our respect, are you aware of anything that says that you can't consider changes mandated by law once the project gets underway, as to whether or not that should be included into the cost of project or not.

Ms. Meehan:

It just states that total construction cost,

Mr. Coggins:

Total construction costs. And there is no definition of the word total construction cost.

Ms. Meehan:

No, but there is a list of what is and what can and should be excluded in those calculations.

Mr. Coggins:

Now let's suppose for a moment that the project is 95% done, and a fire happens and the whole thing burns down. And suppose further there's no fire insurance or anything like that, and the applicant goes through and cleans it up, rebuilds it again. Is there any word that you know of any regulations that say that gives that says this board right here does not have the power to take into consideration that circumstance?

Ms. Meehan:

No Sir.

Mr. Coggins:

Nothing that says that they can but nothing that says that they can't.

Ms. Meehan:

Correct.

Ms. Coggins:

Now, are you familiar with that there's are you, as far as I will represent you that I'm not able to find a single case in the land that applies this particular ordinance that we're talking about here. Okay, so I'm not surprised that you've not heard it. I've tried to find such case. If those cases said yay or nay, Lord knows, I would provide it. But I'm assuming you haven't seen such cases.

Ms. Meehan:

No sir

Mr. Coggins:

In that vein, are you familiar, though, in some cases, that proposition that when it comes to the community rating system, that a variance alone cannot result in that community rating system change, that rather, it must be a pattern of ignoring the standards that are set forth in the NFIP regulations. Are you familiar with that

Ms. Meehan:

No

Mr. Coggins:

So and I'll represent an opportunity to consideration during their delay, I submitted to you at least three cases in other jurisdictions that talk about in these instances, there has to be an established pattern, and in fact, that's quoting language from the regulations before you can put the community rating somewhat at risk. Now let me ask you about the community rating system. As I understand, what you explained earlier is that from time to time, the rating system was revisited the applicable officials from the state, I guess the federal government will come down and check and see how Southport is doing.

Ms. Meehan:

Yes

Mr. Coggins:

When is there supposed to do about how often there are two different cycles?

Ms. Meehan:

There's a every five year, and then there is an annual checkup on everything.

Mr. Coggins:

How is the annual differ from the five year, it is not as thorough.

Mr. Coggins:

When was the last annual?

Ms. Meehan:

The last annual one was in 22

Mr. Coggins:

so, they're running a little behind

Ms. Meehan:

Yeah, I guess.

Mr. Coggins:

And when is the five? Next five year was supposed to take place?

Ms. Meehan:

28 I believe.

Mr. Coggins:

And 28, three more years? Okay, so somebody's going to, they are late to show up for the annual. And what kind of things we look into during the annual?

Ms. Meehan:

They look at every different section of the CRS to ensure that we are meeting one a threshold that takes us into their different levels of the discounts that you do have to meet certain thresholds, and they determine that one, we are still meeting those thresholds. And two, there are different sections throughout all of the different sections that we can prove different points for each activity that the city takes

Mr. Coggins:

In this annual review that you tell me about, where these thresholds are met and whatnot, for this point system, are variances a part of that faculty to look at on these annual reviews?

Ms. Meehan:

To be honest, not on the annual one. They they don't ask about the variances on the annual, but they will at the five year,

Mr. Coggins:

At the five year, and that's the one that's coming up in 28

Ms. Meehan:

Yes, I believe

Mr. Coggins:

How many variances do you know of exist in the City of Southport from the UDO flood limits,

Ms. Meehan:

Zero

Mr. Coggins:

So if you continue with this president, let's assume, hypothetically, for some reason, this appeal is deemed to be a variance or whatnot. Are you familiar of any instance ever where it varies for one property resulting in a negative, adverse rating of a community system

Ms. Meehan:

Not that I'm aware of

Mr. Coggins:

Now, as I understand it, right now, you're the grade for, if you would, under the point system for the city, is seven. Is that right?

Ms. Meehan:

Yes

Mr. Coggins:

And tell me if it gets worse. Is it six or is it eight? Which one's better?

Ms. Meehan:

Six is better.

Mr. Coggins:

Six is better. Okay, so, as I understand it, the number of CRS points to get you to grade seven is 1500 to 1999 is that right?

Ms. Meehan:

I don't have those numbers off the top of my head.

Mr. Coggins:

Okay. So do you know how many... How many points we were awarded? Five, I guess that determine was made every five years. Was that back in 23 last year, when we get in the grade,

Ms. Meehan:

We got the grade in 23 it started in 22

Mr. Coggins:

Okay. What was our point? How many points did you get?

Ms. Meehan:

Again, I don't remember the point level that we've received, but we were within the threshold. Just remain seven

Mr. Coggins:
Somewhere between 1500 and 1999

Ms. Meehan:
Yes, That's correct?

Mr. Coggins:
Okay, and are you familiar, let's suppose when the time comes for the review in 28 in 2028, let's say you have one this order on record, or one variance and whatnot. You have any idea how many points that would be?

Ms. Meehan:
No, I would have to consult with my FEMA representative.

Mr. Coggins:
Okay, so truth is that we talk about a potential risk, but really, you really don't know how to quantify that risk. Is that right? In other words, you really don't know whether or not if this board granted a relief to miss Gorman, you have no clue really whether or not that would affect the reigning duty.

Ms. Meehan:
I do not

Mr. Coggins:
Do you dispute that the James Pierce residents is recognized in the federal and the Federal National Register as being of historical significance, contributing to historic significance of the city of Southport.

Ms. Meehan:
I agree with that.

Mr. Coggins:
You agree that that does

Ms. Meehan:
Yes, it does

Mr. Coggins:
You noted certain things on the improvements of the addition that incorporate features of the part of the house at fronts West Brunswick, did you note those

Ms. Meehan:
I did not.

Mr. Coggins:
Okay, may I ask Ms. Gorman, so Miss Gorman, would you rise just for a moment, and from there, would you please tell them? And I'd like to ask you this, the things that you did, you talked about how you discussed the changes we made to this edition, and that you consulted with members of the Southport Historical Society on that point, and based on that please tell precisely this board the changes that you incorporated to design that addition so that it would continue its characters in the Start structure and continue to

contribute to the City of Southports Historic District designation.

Ms. Gorman:

Well, we basically followed the design of the front house. The front house has a number of features that are obviously street such as brackets under the eaves. There's a wrap around banding around the top edge. The windows have Southport bows, and we included all of those in the back. The detail on the front porch, on railing the banisters, we duplicated that the back porch for the upstairs and downstairs. So any of those details that made it stand out and look historic, we did to make the back house look the same

Mr. Coggins:

And those are all features, Those were not there originally

Ms. Gorman:

Correct

Mr. Coggins:

The various factors that you talked about in terms that could affect adversely, a structures designation, I think you may have mentioned size and what were some of the others,

Ms. Meehan:

Mass

Mr. Coggins:

Mass. Is that right?

Ms. Meehan:

Yes.

Mr. Coggins:

I'm not sure that. What that means, I'm sorry.

Ms. Meehan:

It's just how it fits. It's not necessarily the size, but how it fits in with the neighborhood, the size of this neighborhood proportional, correct.

Mr. Coggins:

But these are, these are factors that may affect the continued designation. There's nothing that says, if you have this that happens, you automatically lose the designation. There's no regulation that says anything like that.

Ms. Meehan:

No

Mr. Coggins:

So you've got a number of factors that may or may not result in the loss of a continued designation and but you're not familiar either with anything about this particular project that would cause it, in fact, to lose that designation already,

Ms. Meehan:

No. And in fact, you don't rule out what Dr Hatem has said and what Ms. Gorman has

said, that it's actually improved the feature of continued contribution to the designation that might actually be right? You don't speak that, do you?

Ms. Meehan:

I can't speak to that No, it's not my place to say that. It's further contributing.

Mr. Coggins:

No, but she is qualified, in fact, directed by the UDO, to make a determination as to whether or not the word substantial improvement, whether or not this project meets the substantial improvement criteria, and I just want to make sure I understand what it is that you did in the course of making that determination, as I understand though, you did not make that determination, but you also do not dispute that under UDO, that this board is empowered and can stand in your shoes and make that determination. You don't dispute that do you

Ms. Meehan:

They have yes, they can hear the evidence and make their own decisions.

Chair Haislip:

But you getting close sir?

Mr. Coggins:

Yes. In fact, thank you for reminding me. It's good time Shut up. I'm through with the examination. If in terms of putting your witnesses understanding that we're going to be able to bring those two very short things, I was talking about.

Mr. Herman:

I apologize he brought up a lot there. Clarify. I'll try to be a brief.

Chair Haislip:

This is important. I mean, this is a very, very important. We need to give it to consideration that it deserves beyond and we need to be educate ourselves on, you know, what's been presented to one thing.

Ms. Gorman:

I just wanted to remind Stephen at one point that we discussed and have great conversation about is the fact that if, in fact, for some reason, God forbid that we have to raise the front house, I have a Live oak tree that's in the corner of my lot between Sandy and I, and in order to raise the house, we're going to have to severely prune that tree, which in that essence, probably will kill that tree. And I don't think Stephen has not mentioned that, but we want to get everything on the table.

Mr. Coggins:

I did fail to mention that, but in the but to show, to illustrate the point that she just making, if you go to our exhibit 17, there are collective photos of that tree that would have to be removed in the event that this particular corrective action is taken. And please note that also we have submitted the materials before you, the copy of the city of Southport UDO ordinance, tree ordinance, that explicitly underlines the valuable nature, the priceless nature

Chair Haislip:

We understand. Thank you very much.

Mr. Herman:

Mo, where in article five of the media does it say that the floodplain administrator has to make determination on the historical structure argument that opposing counsel is saying that you should have made

Ms. Meehan:

Nowhere.

Mr. Herman:

And is there a process, just generally speaking, in the UDO, let's say I wanted to go and get a determination or interpretation of the provision in the UDO or particular use. Is there a process for that? And how do you go about doing that?

Ms. Meehan:

Yes. You would ask for an interpretation of determination

Mr. Herman:

You would ask for a rendering or determination

Ms. Meehan:

Yes

Mr. Herman:

If I disagree with that determination, where do I go

Ms. Meehan:

The Board of Adjustment

Mr. Herman:

And how many days do I have to go and do that?

Ms. Meehan:

10? 30.

Mr. Herman:

30. Under state law it's 30. Did the property owners or the applicant, for that matter, ever go and ask for a determination

Ms. Meehan:

Not that I'm aware of

Mr. Herman:

So they never asked you or any other staff,

Ms. Meehan:

Not that I'm aware

Mr. Herman:

And there's no requirement under Article Five that states that you have to go and make a

determination to that effect, is that correct? And in fact, if, according to that SI/SD desk reference, and I apologize to the board. If you go to section, it's at the bottom of 6-23 and 6-24. Okay, so bear with me here. It goes through the historic structure exemption, and one of the exemptions is verbatim of what it says in one of the first half of the sentence of subsection B there, "any alteration historic structure, provided that the alteration but not precluded structures continued designation as historic structure." Then we continue on and it goes to the variance procedure, okay? So it goes through those two types of procedures, and then it says "communities may like to use one of the two approaches, either granting variances or exempting historic structures and SI SD requirements. Whichever approach is selected must be used in all cases when improvements or repairs are proposed for historic structures." Assuming that is true, that you can go through one or the other, since the city's UDO has a variance procedure, if this board were to go and address the historic structure issue, that would have to be through the variance procedure, and not confirm this purview tonight, because historic structure issue, arguably, is not pertaining to this board here, under this capacity of appealing notice of violation issue would be under their capacity as a variance. Is that right?

Ms. Meehan:
Yes

Mr. Herman:
There was a discussion that came up before we went into closed session about section 520, e as an elephant, subsection two regarding additions to prefrontal post frame structures that are substantial improvement with no modifications to the existing structure other than a standard one shall provide them in addition to providing the standard instruction. So there's discussion with that section one support. Are there any emails in your packet that have already been entered into the record that address that question asked to Eryn Futral?

Ms. Meehan:
Yes, there is.

Mr. Herman:
And what date was that?

Ms. Meehan:
That was April 12, 2023

Mr Herman:
And what page of the agenda pack you put so the board can 192 hopefully follow along. And I promise this might be the last one I want to go and make. Was that question asked by staff?

Ms. Meehan:
It was asked by staff.

Mr. Herman:
And who was it

Mr. Meehan:
Travis Henley

Mr. Herman:

Okay, and that was at 9:22, on April 12, 2023

Ms. Meehan:

Yes.

Mr. Herman:

So follow with me here Eryn's response was, what? And I might have proceeded it, but it was at 9:35

Ms. Meehan:

Yeah, She said, "Very good question. I appreciate you ruin your ordinance to figure out all available solutions. In this case there is a substantial change to the existing structure and the demolition of a portion of the structure. This would preclude the use of this section, and I still feel appropriate avenue is seeking a variance from the ordinance due to the structures contributing historic status in the National Register"

Mr. Herman:

Again, going through the variance procedure with historic Correct?

Ms. Meehan:

Yes,

Mr. Herman:

We have previsions for that in the UDO. In fact, they already they submitted a variance and already went in front of this board once

Ms. Meehan:

Yes, that is correct.

Mr. Herman:

I'm done. I reserve the right to direct Mo at the continued hearing or call any other witnesses.

Mr. Coggins:

It's the only clarification I asked you have before your definitional sections there in Section 5.5,

Ms. Meehan:

Yes

Mr. Coggins:

I believe there's a definition of variance.

Ms. Meehan:

The variance of floodplain development is a grant of relief and the requirements of this article.

Mr. Coggins:

And interestingly, there's no reference in there talking about board of adjustment or the

flood administrator or anything, doesn't it just says it's granting relief

Ms. Meehan:

The definition of a variance, yes.

Chair Haislip

Thank you. Thank you for our patience. All right, any questions, comments,

Mr. Herman:

I just have a question too. Sorry if you're going to go so you have to republish it. You say at the date and time. Is this going to go to you all's next meeting, or is it going to be at a meeting that you guys choose..

[Discussion with Mr. DiGuiseppe]

Chair Haislip

The next meeting.

Ms. Meehan:

February 25 Yeah.

Mr. Lemons:

Is there a reason we are putting it off for a month?

Chair Haislip:

I think there's a reason, because we think that the attorney needs enough time to review this information and address some of the issues that were brought up that we had probably questions about. So yeah

Mr. DiGuiseppe:

I was assuming it would just be easiest to slate on the same calendar instead of having to set up a different meeting. I don't need a month for myself.

Chair Haislip:

I don't think we need another meeting. I think we just keep the schedule we got.

Mr. Coggins:

We have no conflict.

Mr. Robbins:

I make a motion that we continue this hearing for the next regularly scheduled meeting the board adjustment

Mr. Masker:

Second

Chair Haislip:

All in favor. Signify by saying, aye,

Ayes by Mr. Masker, Mr. Allen, Mr. Eckert, Mr. Ross, Mr. Robbins

Any opposed?

Nay by Mr. Lemons

Mr. Coggins:

Mr. Chairman, we would be happy to reduce it to PDF format or exhibit some things we should put it in and submit it, I suppose, through your attorney and the court for distribution that would work

Chair Haislip:

All right, that was a vote. Continue this to the next meeting. We'll get we'll get to five minutes and then we got one more. Thank everybody for your patience

[5 minute break]

2. 101 E Moore St Variance [Mo Meehan]

Ms. Meehan, having been sworn in, presented the variance request. She explained that the applicant sought relief from Section 3.14, Table 3.4, regarding required off-street parking spaces. Ms. Meehan clarified that a previous variance for the same property was granted but was unrelated to the current request. The previous variance allowed vehicles to backout of the parking lot onto Howe St. The prior variance remains valid but is contingent on the approval of a major site plan, which has yet to be approved. Mr. Robbins expressed confusion regarding the relation between the two variances, questioning whether the previous variance still stood. Ms. Meehan confirmed that it did, explaining that it was conditioned upon the major site plan's approval. Without the site plan approval, the prior variance remains inoperative.

Ms. Meehan elaborated on the current variance application, highlighting the existing use of the property as Bullfrog Corner retail and Margaret Rudd Realty offices. The property is in the Central Business District (CBD), which has no setback requirements or minimum lot sizes. Historically, parking was not mandated, but current regulations require one parking space per dwelling unit in mixed-use developments.

The applicant plans to maintain the retail and office spaces on the ground floor and add two stories with four residential units above, necessitating four parking spaces. The planning board raised concerns about safety regarding vehicles reversing onto Howe Street and sought alternative solutions to address public safety.

Ms. Meehan presented a proposal influenced by NCDOT's recommendation to close the driveway, eliminate on-site parking, and install NCDOT-approved on-street parking spaces on Howe St. The new site plan includes the closure of the existing driveway and the addition of at least four public parking spaces on Howe Street.

Discussion ensued regarding the specifics of the parking proposal. Mr. Lemons questioned the origin of the recommendation, which Ms. Meehan confirmed came from an NCDOT engineer. Concerns were raised about the use of public parking for residential units, with Ms. Meehan clarifying that the spaces would remain public and not be reserved for the mixed-use residential units.

Mr. Robbins inquired about curbing and site modifications, with Ms. Meehan confirming the installation of curbing and adherence to NCDOT standards. Mr. Ross and Mr. Lemons questioned property ownership and access, learning that the applicant owns adjacent parcels but intends to restrict vehicle access while maintaining pedestrian pathways.

A detailed discussion emerged regarding the implications of overlapping variances and the potential for perpetual variances without corresponding site plan approvals. Legal counsel explained that previous variances become inoperative without an approved site plan incorporating them, clarifying concerns about lingering variances.

Ms. Schaefer, representing the applicant, emphasized the distinct nature of the current variance and its intention to address planning board safety concerns. She acknowledged the complications of the prior variance and presented the new proposal as a compromise, focusing on public safety and improved site functionality.

Further discussion centered around public safety, parking adequacy, and the legal implications of approving multiple variances. Board members expressed concerns about setting precedents and the long-term impact on CBD parking requirements.

Mr. Robbins voiced apprehension about eliminating residential parking requirements, citing potential strain on public parking. Mr. Allen referenced past city planning philosophies that upheld parking requirements in the CBD to prevent such issues, emphasizing the importance of maintaining parking standards.

Following the review of the findings, the board prepared to vote on the variance application.

Motion 1: Unnecessary hardship **would not** result from a 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. **Motion by Mr. Robbins, Seconded by Mr. Eckert. Motion passes. all ayes**

Findings of Fact: Did not recognize a new use, especially when involving new construction, rose from level of creating a hardship that existed independent of the decisions of the property owner.

Motion 2: The hardship **does not** result from conditions that are peculiar to this 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 variance. **Motion by Mr. Allen, seconded by Mr. Lemons. Motion passes, all ayes**

Findings of Fact: All other buildings in CBD that don't have parking

Motion 3: The hardship **did not** result from actions taken by the applicant or property owner, The act of purchasing property with knowledge that circumstances exist that might justify a variance shall not be considered as a self-created hardship. **Motion by Mr. Robbins, seconded by Mr. Lemons. Motion passes, all ayes**

Findings of Fact: The Planning Board

Motion 4: The requested variance **is not** consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured, and substantial justice achieved. **Motion by Mr. Allen, seconded by Mr. Robbins. Motion passes 5 ayes, 1 nay [5-1]**

Findings of Fact: Parking requirement is in the UDO for a reason

Motion 5: Based on the findings of fact and the evidence presented, the Board of

Adjustment recommends **denial** of the variance application based on the fact three of the four required motions failed to pass, leading the Board of Adjustment to recommend denial of the variance application based on the failure to meet the necessary criteria. ***Motion made by Mr. Allen, seconded by Mr. Robbins. Motion passes, all ayes.***

I. Other Business

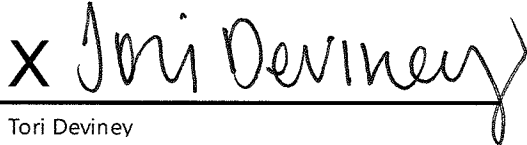
None

J. Adjourn

A motion was made to adjourn by Mr. Allen, seconded by Mr. Masker. ***Unanimous vote, Motion passes***

Adjourned at 8:30 pm

X 
Pete Haislip
Chair

X 
Tori Deviney
Deputy Clerk

