

47 **Comments from the Public:** None.

48

49 **Old Business:** None.

50

51 **New Business**

52

53 ***Item #1 Consultation with Attorneys regarding April White Variance***

54

55 (Note to readers from clerk regarding this item: The reporting style used here is a
56 combination of transcript style and paraphrasing. The notation "[?]" denotes uncertainty in
57 the audible recording from which this document was prepared.)

58

59 Chairman Roger Lambertson asked that Mr. Parks be sworn in so that he may provide
60 testimonial review of past and present relevant data. Clerk to the Board, Amy Barnett, swore
61 him in, then he provided the review below:

62

63 *Dave Parks:* "Ms. April White had applied for a variance that was granted by the Board of
64 Adjustments on March 12, 2007. The variance was for a roof pitch of a dwelling and
65 she purchased a pre-fabricated structure from Currituck County without knowing
66 about the roof pitch requirements of 6 / 12 pitch. The pre-fabricated structure was a 5
67 / 12 pitch. She also didn't apply for a building permit at the time. So she applied for
68 the variance on the roof pitch and that was granted by the Board of Adjustments on
69 Monday March 12, 2007, with conditions. Condition one was the applicant must
70 strictly abide by all other requirements of the Unified Development Ordinance of
71 Camden County, North Carolina, and must also strictly comply with all other local,
72 state, and federal ordinances, laws, rules, and regulations as one or more ordinances,
73 laws, rules and regulations may apply to this development. Condition two was the
74 applicant was to obtain a valid building permit within 15 working days of approval of
75 the Variance. Condition three was the applicant was to remove the singlewide mobile
76 home within 30 days of issuance of the Certificate of Occupancy by the Building
77 Inspector. Condition four was the applicant was to have signed before a notary
78 public, the Variance agreeing to the conditions by April 13, 2007, or the Variance
79 shall become null and void. Applicant came in and signed the variance, which was
80 then recorded at the register of deeds. Applicant failed to meet the condition of
81 obtaining the valid building permit. Staff had worked with the applicant in trying to
82 get the building permit obtained, trying to find a valid building contractor and sub
83 contractors [and etcetera], and I basically gave her a couple of months extension on it
84 and she failed [to obtain the building permit]. And in September 2007, I sent her a
85 letter, stating that the variance had become null and void for violation of the
86 conditions. Applicant has since come in and re-applied for the same variance of roof
87 pitch which was brought back to you at the last meeting, and the legal [question] was
88 'can the board hear the same variance?'. And that's why we're here tonight in
89 consultation with the attorney."

90 Chairman Lambertson asked if there was anything in the re-application that had changed in
91 the application since the first time Ms. White applied for the variance. Mr. Parks replied that
92 nothing has changed. Chairman Lambertson then asked if she had come in since the last
93 meeting to apply for the building permit. Mr. Parks replied that she had not come in to apply
94 for the building permit. Chairman Lambertson then reiterated that our reason for tabling this
95 issue last meeting was so that the Board of Adjustments could consult with the County
96 Attorney in person as to what the Boards position is legally as far as hearing this case again.

97
98 Chairman Lambertson stated that normally when the Board of Adjustments is called upon it
99 is because of an adverse decision or a decision not in the favor of the person(s) bringing
100 matters before the Board. In this case, this is not so. He continued, saying that this is
101 probably why the law [of res judicata] applies. [This way, a case should be reheard only if
102 new evidence or changes in the facts of the case have taken place.]

103
104 Ms. Janice Hassell asked County Attorney Courtney Hull if she had the opportunity to
105 compare the two variance applications (past and present). Ms. Hull said she had not yet had
106 the chance but that she would do so. Chairman Lambertson asked Ms. Hull to be sworn in
107 prior to presenting any further testimony. Mr. Dave Parks swore her in.

108
109 *Courtney Hull:* "It appears that in the application which I have just skimmed through that
110 there were time limits on that for a building permit, and those time limits of course
111 have expired. Now depending on how the applicant wants to pursue this matter,
112 going back to the email, if she wants a rehearing, if she requests a rehearing to go
113 back to the case that the Board of Adjustment already heard, granting the variance
114 based on the conditions then that would be done through what is called a motion in
115 the cause. She would file a motion in the cause with the Board of Adjustment and ask
116 the Board of Adjustment pursuant to the decision that has already been made for an
117 extension for which to comply with the conditions. In the event she were to do that, it
118 would be in the Board of Adjustments discretion as to whether or not to grant her
119 request.

120
121 Now, I have looked at some case law on this, and I've got a case here. This says a
122 case has permitted an agency to reconsider its decision. Courts have emphasized that
123 an agencies power to reconsider or rehear a case is not an arbitrary one and such
124 power should be exercised only when there is justification and good cause, i.e. there
125 is newly discovered evidence, fraud, surprise, mistake, inadvertence, or change in
126 conditions. Having not reviewed the two applications, I can not comment on whether
127 or not there is change in those, but as far as your decision, if she were to file this
128 motion and have you rehear this case where she had already been approved, I do
129 know its discretionary. It says the power is going to be exercised in one of these 5
130 instances and without having reviewed both of those fully, I can't say whether there is
131 any kind of change in there, but that would be the only time when you would re-hear
132 the case. And then, in the event you decided to use your discretion and say "we're
133 going to deny your motion, we're not going to hear your case", then her remedy
134 would be to appeal to superior court and have a judge decide that. But, that's half of
135 it. That's if she brings a motion to open up her old case."

136 *Courtney Hull:* “Now, she has reapplied, she has made a whole new application, there is
137 nothing that I can see that would prevent her from starting again. Her disadvantages
138 are going to be: first - she's going to have to pay the fee again, and I understand that
139 the fee has since increased; she's going to be subject to any new standards, she's not
140 going to be able to go back to the time at which she first applied, she'll be subject to
141 any changes that you've made to your ordinances at this time. And she will be subject
142 to any new members [on the board]. So these would be her disadvantages in wanting
143 to reapply.”

144
145 *Courtney Hull:* “There are issues as to a legal term that is called 'res judicata', and I brought
146 some information on that. That would be the only question, which is what is really
147 creating this novel issue here. Res Judicata is a term that means claim preclusion.
148 Under this doctrine, a party can't bring the exact same action if 3 conditions are met:
149 first, the cause of action is the same one as previously asserted, it would be the same
150 cause of action because it is an application for a variance; 2) the same parties - the
151 parties involved with the current action are the same as the parties involved with the
152 prior action. Of course we have the same parties here so that would be. And finally,
153 the final judgment - the prior cause of action resulted in a final judgment on the
154 merits, so again, there was a final determination. So it would seem to apply,
155 however, res judicata is typically applied when there is an adverse decision in place.”

156
157 *Courtney Hull:* “I followed up with Richard Ducker of the Institute of Government on this,
158 on the issue of res judicata. NC doesn't have any case law right on point, and it
159 would be a novel issue if this were addressed to the court in North Carolina.
160 However, he did look at some other surrounding states, and when you're looking at
161 law, (majority opinion states and minority opinion states), in other states on an issue
162 such as this, the implementation of the doctrine of res judicata actually requires the
163 board to make the same decision because you are reviewing the same case and the
164 whole premise of res judicata is to avoid and prevent inconsistent decisions. The
165 majority of these states that have had issues such as this, they require you to do the
166 same extension on a minority, found that you just start over. There's no case law on
167 point in North Carolina that's in here. I do feel that the revocation was proper based
168 on the applicant's failure to meet the conditions that were in the order, however, I do
169 believe she must start over again if she re-applies. She has to do all the same things
170 as if it were a new case. You are not required to make the same decision. You would
171 follow all your regular standards as if it were a new case. Or she would have the
172 option of trying to preserve the permissions you have already granted in the prior
173 case, file a motion in the cause and ask you to extend her deadlines. And without
174 reviewing those two applications, I can't say as to whether or not you should do that.
175 It doesn't seem, if they are the same, that you would want to pass that motion, then
176 her remedy would be to appeal to superior court. So depending on which way she
177 plans on dealing with this, then I think the answer is different. But I think she can
178 reapply subject to those 3 penalties that I set out. So, if you have any questions, that's
179 the conclusion [?] I have come to at this time.”

180 *Dave Parks:* “If they were to reconsider the variance, does the basis of the revocation of the
181 previous variance, would that smudge [?] the outcome of the new variance? As far as
182 the failure to meet the conditions of the first variance. If she re-applied, can the board
183 take into account or not the previous variance which was revoked or do they have to
184 look at just the current facts?”

185

186 *Courtney Hull:* “The board has a list of 7 aspects they have to consider when looking at a
187 variance. Boards of Adjustment have to follow mandatory guidelines.”

188

189 Chairman Lambertson informed the board that he had a copy of the previous variance at
190 home and had compared them and saw no difference between the two. One of his concerns
191 is that if they hear the same case with the same questions and same answers and came up
192 with a different decision, that it could potentially open up the board for a law suit.

193

194 Courtney Hull reiterated that this is a novel issue and that Boards of Adjustment have
195 mandatory guidelines that they have to follow in order to ensure that decisions are made
196 fairly, accurately, and in a manner consistent with previously heard cases when re-hearing a
197 case.

198

199 Janice Hassell asked for clarification regarding res judicata... she asked Ms. Hull if res
200 judicata does or does not apply here, and that the other two options are all that Ms. White has
201 open to her, so the board can't refuse to hear the case under that basis?

202

203 Ms. Hull responded that she thinks there may be an argument that they could refuse, but she
204 couldn't find any case law to support a clear answer, not even after speaking to John
205 Morrison, the other Camden County attorney and the gentleman from the Institute of
206 Government.

207

208 Janice Hassell further asked "So, your opinion then is that we only have the other 2 courses
209 of action, her filing the motion or re-applying?". To which, Ms. Hull responded, "That's
210 correct".

211

212 John Sawyer asked if it would be legal for the board to give her 15 more days to get the
213 building permit and if she failed to do so again, then the board is done with her? Like an
214 extension, since everything is identical, go back to last years decision and re-activate it and
215 give her an additional 15 days to get the building permit as a condition on that application.

216

217 Dave Parks said that would be one of the other options Ms. Hull mentioned, that she come in
218 and ask the board to reconsider the original application and grant an extension.

219

220 Chairman Lambertson observed that this had already been done during the Fall of 2007,
221 when an administrative decision was made with the boards recommendation to grant her an
222 extension, so could we do that again without her having to be present?

223

224 Courtney Hull responded that if the board did, that it would set a precedent and the board
225 doesn't want to be subject to any kind of selective enforcement. She indicated a need to treat
226 everybody the same way.

227 John Sawyer clarified that he was referring to her re-application, to making a condition of the
228 re-application be that she has 15 days to obtain her building permit or the variance is null and
229 void. Courtney Hull said that the board could put that as a condition at their discretion.

230

231 Chairman Lambertson said that they couldn't do that tonight anyway, since Ms. April White
232 was not present, her mother was here in here absence. Chairman Lambertson asked Ms.
233 White's mother if Ms. White had gone back to Florida. She responded that she had, and she
234 was supposed to be back in NC the following Monday. Chairman Lambertson went on to
235 say that we have heard in the past requests for variances where the applicant wasn't here, but
236 the applicant had an agent, can the applicant have a legal agent to represent her at these
237 hearings since she's in Florida?

238

239 Courtney Hull (attorney) said she would have to research it. Dave Parks said that in the past,
240 a signed letter from the applicant stating whom their agent would be, has been accepted as
241 documentation giving the agent the ability to represent an absent applicant. Courtney Hull
242 went on to say that an "agent in the law" is the same as the person themselves if they have the
243 authority to act as their agent. Her opinion was affirmative, but she wanted to do further
244 research to have a concrete fully informed answer on that question.

245

246 Dan Porter pointed out that the board did not open a public hearing on this matter at last
247 month's meeting when they decided to table it. Chairman Lambertson added that the board
248 would need to have all the proper people (witnesses, applicant, etc.) here to give testimony
249 for when the public hearing is opened. He further stated that this matter may need to be
250 tabled again since the applicant was not present. He went on to say that Ms. White may face
251 a hardship if she had to make multiple monthly trips between NC and Florida every month
252 for these hearings.

253

254 Courtney Hull asked the board if the use of a letter giving a person or company permission to
255 act on behalf of another person or company for purposes of coming before county boards was
256 a permissible practice. Dave Parks responded that this method had been used in the past for
257 use with developers going before the Planning Board. Courtney Hull said that if that was the
258 practice advised by the county attorney, John Morrison, then she concurred with that
259 practice.

260

261 Chairman Lambertson asked if anyone of the voting members had any further questions.
262 One of the members asked what the price of the building permit would be. Dave Parks
263 responded that it would be around \$800.00. John Sawyer observed that she had paid \$250.00
264 twice and all she needs is a building permit.

265

266 Chairman Lambertson asked Dave Parks if she needs the building permit before the board
267 hears the case / decides to hear the case. Dave Parks responded that it would be in her best
268 interest to obtain the permit, since she has a code enforcement action against her for failing to
269 apply for the building permit, moving a structure into the county illegally without obtaining
270 the building permit.

271 Chairman Lambertson had a concern regarding the permit issue, if she obtains the permit and
272 the variance is denied, then she is out that \$800.00. Dave Parks addressed this concern by
273 saying that she would still have to get the permit, she would just have to adjust the roof to a
274 6/12 roof pitch instead of the 5/12 which the structure was built with.

275

276 *Dave Parks:* “When she applied for the first variance, she had moved the structure into the
277 county, we gave her leniency on the building permit at that time until the decision on
278 the variance was made on the roof pitch. The variance was granted. There was a
279 time limit she had to obtain that building permit, and we're talking, going on a year
280 now...She still has not applied for a building permit. There's a separate issue here,
281 the building permit violation. She's in violation of state code there. The issue here is
282 the variance, we just wanted to make sure once the variance is granted that she does
283 apply for that building permit. So if we tied the building permit into the variance
284 with a time limit to obtain it, that way, she may say 'I guess I better get this building
285 permit within the 2 weeks that I'm required or my variance is null and void as far as
286 the roof pitch'.”

287

288 *Chairman Lambertson:* “I guess my point is this, the building permit, or the lack there of or
289 whether she did it, that's an issue for code enforcement, and other parts of the county
290 to look into. It has nothing to do, in my opinion with what we decide to do, if we
291 decide to hear it, as to whether we should issue or not issue the variance as
292 requested.”

293

294 *Dave Parks:* “That's your decision, but as far as the granting of a variance, the board may
295 attach reasonable conditions for complying with that variance. Attaching 'Applying
296 for a Building Permit', staff thought at that time was a reasonable condition, am I
297 correct?”

298

299 *Chairman Lambertson:* “And I agree with that, but you've already said that variance was
300 declared to be null and void, so she doesn't have to live up to those conditions if she
301 doesn't have a variance any longer.”

302

303 *Dave Parks:* “That's correct.”

304

305 *Chairman Lambertson:* “If we hear this case, in my opinion, what has transpired, as far as
306 getting a building permit, I don't understand why she didn't get a building permit
307 having gotten the variance she wanted. But the fact is she didn't, but I don't think that
308 should be held against her when we go ahead and hear this case at some future time.”

309

310 *Dave Parks:* “I have a question for the attorney. If we looked at it that way, what would
311 [stop a person from repeatedly] re-applying for a variance for something that may or
312 may not happen? You start to get repetitious as far as you are granted one variance,
313 you fail to meet the conditions, it gets revoked, you apply for the same variance, if
314 you get granted, and if they do tie in conditions and you don't meet them you still can
315 apply for another one. {to Chairman Lambertson} Do you see what I'm getting at?”

316

317 *Chairman Lambertson:* “I see where you're coming from.”

318 *Janice Hassell:* “That's my concern on this is that we are going to re-hear this for the next 3-
319 5 years and it could just never end. It seems from the attorneys opinion that we don't
320 have an option not to hear this if she re-applies, so it gets back to res judicata and is it
321 applicable here and do we set some precedents in this state for that?”
322

323 *Courtney Hull:* “There's definitely arguments in favor of res judicata, we would meet the
324 elements [of res judicata]. In the case US Vs. Utah, the court found that it is proper
325 for a court to give res judicata effect to administrative proceedings when
326 administrative agency is acting in judicial capacity, and resolves disputed issues of
327 fact properly before it, which the parties have had an adequate opportunity to litigate.
328 Another factor taken into consideration in determining whether to give preclusive
329 effect to administrative determination is the competence of the agency in the matter.
330 A court is more likely to preclude a claim when the prior administrative decision was
331 within the particular agencies area of expertise. Conversely, if the agency decision
332 involves an issue outside of the jurisdiction, or which it lacked authority to decide,
333 which is not the case here, courts will hesitate to apply res judicata, so its a toss up -
334 there's great arguments that it does apply here.”
335

336 *Courtney Hull:* “Like I said, I will tell you this too. This is one thing I left out. I do not
337 have this case because Richard Ducker could not supply me the information. He
338 looked for it and could not find it. There's another case we looked at, that is an
339 unpublished case in the court of appeals, so it would not be a binding precedent, but it
340 involved the town of Lake Lore and that case held that if a zoning permit became
341 invalid due to inadequate progress, which is the situation that we have here, the
342 parties still had a right to reapply for permits. I would like to see that case,
343 unfortunately he [Richard Ducker] could not locate that case in this amount of time,
344 but he is going to look for that case. This is an issue which is a new issue that has just
345 never been decided here and I think that there are arguments for and against and I
346 wouldn't imagine that anyone would like to come and subject themselves to these
347 penalties of having to constantly pay the \$650, of having to go through this process
348 again , and being subject to an adverse decision again. I would think that those things
349 would be deterrent to just going through the application process over and over. I
350 mean that is not the way it is set up. The fact that she is foregoing a beneficial
351 decision based on her failure to act and her sitting on her rights pursuant to a valid
352 order that she had a variance, I would think that it would be very deterrent for her to
353 keep going through this process again - I don't think that that is normal. But
354 apparently, from what I have seen without any further subject matter on the point, that
355 is permissible. I think that there are strong arguments in favor of res judicata
356 applying, but absent that, there is nothing else in the law that would prevent her from
357 re-applying. There are strong arguments in favor of both.”
358

359 *Chairman Lambertson:* “If we were to hear the case again and if it was granted, would it be
360 a legal condition put on there, not only a condition that you must apply for a building
361 permit within so many days but that, and this is where it gets fuzzy, but that, you can
362 not ever apply for another variance on this issue unless you do have a building permit
363 bought and paid for in advance, that would keep it from being over and over and over
364 again?”

365 *Courtney Hull:* “That could be a possibility, my concern would be maybe deprivation of
366 some kind of constitutional right.”

367

368 *Chairman Lambertson:* “Unreasonable condition or something?”

369

370 *Courtney Hull:* “If that was in there, it would provide her notice of she's losing her appeal
371 rights, again, I apologize, I would have to see, I would have to do a case law search
372 and see if that would qualify as a constitutional deprivation of a right. I wish that I
373 was more competent to answer these questions, but unfortunately, it is just a unique
374 issue. But I can assess that as a further possibility because that occurred to me as well
375 to address the concern you have about the repetition of this process.”

376

377 *Dan Porter:* “May I ask if you could just restate the conditions and use of res judicata?”

378

379 *Courtney Hull:* “Sure. Under the doctrine of claim preclusion, res judicata, a party may not
380 assert the same claim if 3 conditions are met: (1) it is the same claim - the cause of
381 action is the same one as previously asserted; (2) same parties - the parties involved
382 with the current cause of action are the same as the parties involved with the prior
383 cause of action or are in privity [?] with them; and (3) final judgment - the prior
384 cause of action resulted in a final judgment on the merits. I feel like those three
385 elements are met.”

386

387 *Janice Hassell:* “If we did choose to hear this again, and if the decision rendered is not
388 favorable, it's in opposition to the previous ruling, then what recourse do they have?
389 Appeal the decision, or can they come and apply again?”

390

391 *Courtney Hull:* “They would have the ability to appeal that decision, motion in the cause,
392 and apply again.”

393

394 *Dan Porter:* “That's if it was an adverse decision?”

395

396 *Courtney Hull:* “Well, if it was an adverse decision, I guess it would be more... I guess we
397 could use the res judicata maybe there. I have just been informed that as far as res
398 judicata, it applies when there is an adverse decision. I don't have my case law to
399 back that up, but that is what Richard Ducker and John Morrison told me.”

400

401 *Dave Parks:* “This was not an adverse condition, this was a favorable condition, so would
402 res judicata apply?”

403

404 *Courtney Hull:* “In that situation, I guess, that would apply, yes.”

405

406 *Janice Hassell:* “Well it was favorable with conditions, so it wasn't... [cut off by Chairman
407 Lambertson]”

408

409 *Chairman Lambertson:* “Well, there are always conditions, so even the most favorable one
410 has this kind of condition on it - 'get a building permit within so many days' and all
411 that kind of stuff.”

412 *Courtney Hull:* “Well, the conditions don't have anything to do with the decision, the
413 decision is either favorable or adverse, I think that it would be more clear cut if it
414 were an adverse decision, but at the same time, the whole point of res judicata is to
415 prevent these inconsistent decisions and with re-application that possibility is out
416 there.”

417

418 *Chairman Lambertson:* “The question I have is if we decide not to hear the case, what are
419 her options, can she take it to superior court?”

420

421 *Courtney Hull:* “She would have to follow the motion in the cause route because her appeal
422 period is over. She would have to file a motion in the cause, though discretionary,
423 based on that case that I read to you, I would think that you would deny the motion,
424 and yes, she would have to appeal that to superior court, and then they would review
425 your actions.”

426

427 *Janice Hassell:* “They would review the actions of the decision of not to hear the case but
428 not necessarily the case itself?”

429

430 *Courtney Hull:* “I think that they review your motion, no actually, I guess if they appeal to
431 superior court it would be what's called a DeNovo trial. [looks it up in her books to
432 make sure]”

433

434 *Don Keaton:* “If we reheard it, could you attach penalties for not getting the building permit
435 within a certain number of days?”

436

437 *Dave Parks:* “That would be a separate issue, would be code enforcement and there are
438 penalties for that, you're dealing with the variance itself, not the building permit.”

439

440 *Chairman Lambertson:* “We can make recommendations, though can't we?”

441

442 *Dave Parks:* “I'll have the building inspector proceed with his code enforcement action for
443 her failure to obtain the building permit.”

444

445 *John Sawyer:* “She got the variance if she agreed to do certain things.”

446

447 *Dave Parks:* “The variance itself was specifically for the roof pitch, like the chairman said,
448 the condition on the previous one was, staff thought, was reasonable condition to
449 attach it to it because it did apply to it. She had to get a building permit for the
450 structure. But the variance was granted for the roof pitch, not to obtain the building
451 permit.”

452 *Courtney Hull:* “I have an answer for Ms. Hassell's question. It says here 'Every decision of
453 the Board of Adjustment shall be subject to the review by the Superior Court by
454 proceedings in the nature of certiorari [?]. So that means yes, they will review the
455 entire record, not just the order and your conclusions, they will review everything.
456 She would go and present arguments against your motion and why she should have
457 this extension, and they will review every part of the record and either issue an order
458 requiring you to go back and give her the extension or not.”
459

460 *Chairman Lambertson:* “If the decision is not to hear the case, will that decision stand up at
461 the next level of appeal? Do you think we have legal grounds to not hear the case and
462 have it stand up if she appeals it up to the courts?”
463

464 *Courtney Hull:* “Like I've said, reading a little bit about res judicata, I've never worked with
465 this doctrine before, it's not something that's very common in the law, but reading the
466 elements of it, it seems that legally, the elements would be met. And again, there's
467 just no standard to compare it to, but whenever you don't have a standard to compare
468 it to, then if you have good arguments, people change the law all the time, people
469 make new precedents all the time. I think there would be a good basis to argue that in
470 a court of law without knowing more about it than just the little bit of research I've
471 done on this subject. But definitely, I think there's arguments both ways.”
472

473 *Chairman Lambertson:* “I'm going to poll the voting members, but it seems to me we have
474 several options: (1) we can decide not to hear it - end of our involvement right now
475 until it comes back later if the courts don't uphold that, or (2) we can vote to hear it
476 and set a date, or (3) we can table it again and ask for additional opinions as to what
477 our legal grounds are. The one thing I would like not to see is this: 1. not to drag on
478 forever but 2. not to get involved in taking to the next level of the courts. I guess
479 they're about the options we have. The one [variance] we heard a year ago is
480 essentially a dead issue, we can't just say 'oh ok, we've got that one - keep that one
481 alive and give her another 15 days', at least that is what I'm understanding we don't
482 have the option to do that. So the other thing is to have a re-hearing here at some
483 future date, now I'm going to go around and I'm going to...[cut off by Courtney Hull]”
484

485 *Courtney Hull:* “I would like to make one more comment before you do that if I may, Mr.
486 Chairman. If that is the boards decision to table it and get further research, I for sure
487 can do further research on res judicata, and like I said, Professor Ducker is looking
488 into it more because it is a novel issue. It's hard when you have a novel issue. I
489 would recommend her starting again and your sticking by your revocation because I
490 do believe that's proper and I have been advised as such.”
491

492 *Dan Porter:* “And she has done that.”
493

494 *Courtney Hull:* “What I'm saying is I don't see anything right now that definitely precludes
495 her from re-applying.”
496

497 *Chairman Lambertson:* “Now, I'm going to ask the voting members, this isn't a vote, this is
498 just your opinion... [cut off by Janice Hassell]”

499 *Janice Hassell:* “I have another question.”
500
501 *Chairman Lambertson:* “Sure, go ahead.”
502
503 *Janice Hassell:* “Do you feel that with additional time and research, you could come up with
504 a better / different recommendation?”
505
506 *Courtney Hull:* “Very possibly, as it stands, I came up with a little bit more of an elaboration
507 on the original email that I had... When ever you have issues such as this that are
508 different, it takes some time to put together the best possible plan of action, because
509 you don't have a clear cut set of instructions to follow. So, but, again, the other
510 possibility is that my opinion might not change, I just can't predict that, but it's very
511 possible that it could.”
512
513 *Chairman Lambertson:* “Opinion - what to do... Again, this is unofficial - we'll have to take
514 a vote later on something - a motion, but right now, I going to put everybody on the
515 spot.”
516
517 *Janice Hassell:* “My opinion is that we do not want to set precedents. I feel that just given
518 the question that I've just asked the attorney, if she does more thorough research, I
519 would feel more comfortable, if she comes back, with a decision, but right now based
520 on what she's told us tonight, I'm leaning toward not hearing the case if this is all the
521 information that we have to work with.”
522
523 *William McPherson:* “I prefer to wait for more information also. Right now I'm not sure
524 what way I would go with this, but I definitely rather get more information based on
525 what I'm hearing tonight so that we make the right decision, so that we won't have to
526 have this go before legal action later on.”
527
528 *Don Keaton:* “I hate for it to keep on going on for another month, but I also would like to
529 hear more information too, I don't want to make the wrong decision here, and see it
530 have to go to a higher court or whatever, or like I said set a precedent or something,
531 one more month isn't going to hurt.”
532
533 *John Sawyer:* “I agree with the other members.”
534
535 *Chairman Lambertson:* “And I guess that's where I'm coming from as well, is that if we can
536 get just a tad more information, maybe we'll make a better decision, but I also want to
537 add to the county that we've tabled it once, that's 30 days, we'll table it again, and if
538 she's going to be brought to a code enforcement with a fine I really don't believe these
539 last 2 months, this last 30 days plus the next 30 days should be considered against her,
540 since we're the ones who are procrastinating. She came here last month and if we
541 made a decision then...”
542
543 *Dave Parks:* “Staff will proceed with the code enforcement with the building permit as a
544 separate issue...”

545 *Chairman Lambertson:* “What I mean is this 60 day period should be a grace period at this
546 time in my opinion, now, we have no clout in how you handle it, but I just don't think
547 that would be fair since we are the ones delaying it now. Yes, Mr. Porter.”
548

549 *Dan Porter:* “Mr. Chairman, I certainly see what your concern is, and the only problem that
550 we have is that we implement and enforce the county code and the building inspectors
551 implement state code and I think that is what you're getting at. The only thing that I
552 would suggest is that you might send a suggestion to the building inspectors with that
553 in mind. But I don't think that there's anything that this board can do. I don't think
554 there's an issue on staying their action, because it would be staying the action of a
555 state agency, rather than staying the action of our own agency. The attorney may
556 have some discussion on that, but I wouldn't think that we could stay their actions.
557 They might be nice.”
558

559 *Chairman Lambertson:* “I think the gist of it is that we want to table it, but we need a motion
560 from someone to do that and then we need to try to give some very specific
561 instructions or requests as to what we need.”
562

563 *Janice Hassell:* “Mr. Chairman, do we need to table it, we are already in a motion to table,
564 from last [meeting].”
565

566 *Chairman Lambertson:* “Well we tabled it until tonight, I don't think we can continue it a
567 month from now without actually formally tabling it can we?”
568

569 *Courtney Hull:* “I think that you probably need to table it again based on the meeting
570 tonight.”
571

572 *Dan Porter:* “You at least have to point to a date.”
573

574 *Chairman Lambertson:* “Well we need a motion to table it, that's what I am asking for.”
575

576 *John Sawyer:* “I make a motion we table it until the July meeting.”
577

578 *Chairman Lambertson:* “Mr. Sawyer moves that we table this to the July 8th meeting, do I
579 have a 2nd?”
580

581 *Janice Hassell:* “Second.”
582

583 *Chairman Lambertson:* “Ms. Hassell Seconds. I think it is very important that those of us
584 who are the voting members make every effort to be here in July, having gone
585 through 2 of these now. Any further discussion, if not, all those in favor of tabling
586 this to the July meeting say Aye.”
587

588 *Voting Members:* [All said Aye]

589 *Chairman Lambertson:* “Opposed? Motion Passed. We'll table this until [July 8, 2008], and
590 I guess the request is, and as I said, I'm going to put you on the spot, what I would
591 like to hear, is legally whether we should or shouldn't hear this and the grounds to
592 back that decision up.”

593
594 *Courtney Hull:* “I believe that my point of research is going to be specifically as to this res
595 judicata, because it seems clear the process for her filing the motion is clear, the
596 motion in the cause if she were to go that route, but she hasn't gone that route, she's
597 re-applied. So I need to specifically research the strength of the res judicata argument
598 to support a decision not to rehear. So I will follow up on that, I will follow up with
599 Professor Ducker on his research, and if you still want me to I can review those two
600 applications and compare.”

601
602 *Chairman Lambertson:* “If you would, please. And also, that issue you brought up earlier,
603 about the majority of states say you must have the same result, because essentially
604 this is a different board, the more I think about it, [3 new members].”

605
606 *Courtney Hull:* “I will surely follow up on that issue, I know that if this were to go to court
607 based on your decision not to rehear it, I do know that would not be considered
608 mandatory authority, they do not have to take that into consideration. Whenever you
609 have law from other states, especially when you have a case what is called a issue of
610 first impression which this would be in this state, then that is considered persuasive
611 authority that a court could look at. They can look at but they are not required to use
612 any of that in rendering their determination. But typically a court looks at what
613 surrounding states do and states that have similar factual patterns, rules, regulations,
614 they'll compare all those factors and taking that into consideration, but it is not
615 mandatory that they do what all the majority of all other states do. Just so you
616 understand that, but I will, I'll follow up on that further because that was a finding
617 from Professor Ducker at the institute. He just gave me that information today and
618 I'll have him send that to me so I can review it more closely.”

619
620 *Dan Porter:* “Mr. Chairman, should we proceed with the application we have on hand as if it
621 is a new application and do all the procedures that are necessary to accommodate the
622 potential that you would rehear the case at the July meeting and possibly render a
623 decision, which that would mean re-advertising the meeting and telling her she would
624 need to be here present or have a representative here. That would not make it another
625 30 days after that I guess, at least it would give you the option of holding the public
626 hearing and making a decision should you decide to rehear the case.”

627
628 *Chairman Lambertson:* “I thought that was what we were going to do tonight, to be very
629 honest. Until I came in to see you guys last week, I thought that the applicant would
630 be here, and after we heard the legal opinions, we would make a decision to hear it or
631 not hear it, and if we could hear it we would hear it. You told me the other day, we
632 weren't going to do it that way, but, I think that's an excellent way to do it, is hear
633 from the attorney, make a decision to hear it or not hear it, if its not to hear it - end of
634 it, and if its to hear it - then we go right on in to the hearing. That's what I would like
635 to do if that's the way we can do it that way.”

636 *Dan Porter:* “That’s the way we will proceed.”

637

638 *Chairman Lambertson:* “Anybody on the board have a different view on that, it will save us
639 an August meeting.”

640

641 *Courtney Hull:* “I just want to say, I apologize for not being able to answer your questions
642 fully at this time, because its a unique issue, but I will do my best to research, and
643 help you come to a decision at the next meeting.”

644

645 *Chairman Lambertson:* “Thank you, that’s the way we will do it then, and if you will notify
646 the applicant and inform her that she can have a legal representative or representative
647 here, somebody just can’t walk in and say “I’m representing April White”. We need
648 some kind of documentation. Ok, end of business item #1, and we have 2 items...”

649

650 *John Sawyer:* “I have one more question, between now and then, if she would buy a building
651 permit, would it be over? I’m saying it because she has a representative here
652 tonight.”

653

654 *Dan Porter:* “She would still have to decide whether or not, there would still have to be an
655 application does she want to keep a 5/12 roof pitch instead of a 6/12. If she chose to
656 just build a house or to change the pitch on the roof, she wouldn’t need a variance,
657 then everything would be taken care of.”

658

659 *John Sawyer:* “Ok, but if she doesn’t want to change the pitch, she has to have the variance.”

660

661 *Dave Parks:* “In my opinion, it would be in her best interest to get that building permit there.
662 In talking with the building inspectors, with their legal remedy to resolve the code
663 enforcement.”

664

665 *Dan Porter:* “Just so you know, this doesn’t sound like it is all what like if it happened [?],
666 we’ve gone through one hurricane season, but this has been sitting up on a bunch of
667 cinder blocks and a good wind will knock it over and throw it around Camden. And
668 that is one thing that government officials are concerned about.”

669

670 To recap, by a vote of 5-0, of the voting members, those members being Chairman Roger
671 Lambertson, Vice Chairman John Sawyer, Regular Members Don Keaton, William
672 McPherson, and Alternate Member Janice Hassell, the decision to hear the case regarding
673 Ms. April White’s 2nd roof pitch variance has been tabled again until the July 8, 2008
674 meeting.

675

676 **Information from Board and Staff**

677

678 1. Rules and Procedures

679 2. Alternate Members Participation Rules

680 **Consider Date of Next Meeting – July 8, 2008**

681

682

683 **Adjournment**

684

685 At 8:10 PM, Chairman Roger Lambertson made a motion to adjourn the meeting. Janice
686 Hassell seconded the motion. The motion was approved with Chairman Roger Lambertson,
687 Vice Chairman John Sawyer, Regular Members William McPherson, Don Lee Keaton, and
688 Alternate Member Janice Hassell voting aye; none voting no; none absent; none not voting.

689

690

691 Date: _____

692

693

694 Approved: _____

695 Chairman Roger Lambertson

696

697

698 Attested: _____

699 Amy Barnett, Clerk to the Board