

February 12, 2004

The Board of Zoning Appeals for the Town of Sullivan's Island met on the above date at Town Hall, all requirements of the Freedom of Information Act having been satisfied.

Present were: Thomas Hiers, Chairman
Jimmy Hiers
Susan Middaugh

Motion was made by Susan Middaugh, seconded by Jimmy Hiers, to approve the minutes of January 8, 2004, carried unanimously.

Chairman Hiers stated to the applicants that there are five members on the Board of Zoning Appeals, and only three members were present. It takes three votes to be granted a variance, which means applicants would need to get all three members' votes tonight. The rules are that if only three members are present, the applicant can defer once. Historically the Board has also allowed the applicant to defer while the Board is reviewing the case, if the applicant prefers.

Jane P. McCutchen and McCutchen-Perry, LLC, 2525 Atlantic Avenue. Mr. McCutchen requested to cut wax myrtles to 3-1/2 feet as was approved in past years. He stated his one-story front-beach house is one of two houses that is built at ground level, and that his attic is 14 feet high, where the first floors of most front beach houses start. His wife cannot go to the beach due to health and mobility reasons. When they bought the house thirty one years ago, there was a full view of the beach. He knows Council passed the ordinance amendment to change the cutting height from seven feet to five feet, but still wishes for a variance to cut to 3-1/2 feet as in the past. Mr. McCutchen stated that in the deed of the accreted land, the Town Council is given the unrestricted authority to trim and control the growth of vegetation for multiple things, and providing views of the ocean and beaches to its citizens. Zoning Administrator Kent Prause stated that Town Council altered the ordinance even though the Planning Commission recommended no change. They did it in an effort to balance the competing interests. Other property owners are seeking the same relief even though they are not one-story houses. Since Town Council has changed the ordinance in an effort to balance the competing interests, Mr. Prause stated that it would be unfair to grant a variance to this house and the other one-story house, after denying the variances of the other property owners. The standards to grant the variance have not been met. Chairman Thom Hiers gave a brief history of the property, as the two other board members are new to the Board. He stated that this property and one other property are the only ones the Board has granted a variance on in the past to cut the myrtles to 3-1/2 feet. He stated that the reduction from seven to five feet was for a number of purposes including view. This change only applies to the myrtles and not to the protected trees, which cannot be cut. Some peoples' views are being blocked by the protected trees. The Council only addressed the myrtles; not the protected trees even though they knew both of them blocked views. From his reading the Council minutes, there was no discussion of the past variances that allowed the two property owners to cut to 3-1/2 feet, so it is not clear that the Council was establishing the five feet with any more inviolate than the seven feet. Thom Hiers stated that the rationale for which they granted the variances in the past still stands, although everything that Mr. Prause

stated was true. Susan Middaugh agreed. Susan Middaugh stated that this would certainly meet the condition of being a truly unique situation out of all the houses along the front beach. Motion was made by Susan Middaugh, seconded by Jimmy Hiers, that the variance be granted on the grounds that there are extraordinary and exceptional conditions pertaining to this property, these conditions do not generally apply to property in the vicinity; because of these conditions the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization, and the authorization of a variance would not be a substantial detriment to the adjacent property or the public good and the character of the district will not be harmed by granting the variance. The extraordinary and exceptional condition is that this property, and only one other piece of property, has houses sitting on the ground. The exceptions and justifications are spelled out in the application, carried unanimously.

Ann Scott, 2215 Atlantic Avenue. This has been withdrawn.

Aimee Turisk, 1856 Middle Street. Mr. Turisk stated that his wife owns the Sullivan's Island Day Care and they are requesting a variance because the existing building is somewhat functionally obsolete; they are experiencing some crowding due to storage space; they will have more safety by spreading the children out; and the parking changes of twenty additional spaces would help with safety concerns because cars would no longer park on the perimeter of the daycare. The variance requested is a 20x20 addition. Mr. Prause stated that the actual variance application is from a required 20' setback from any lot line as part of the special exception approval, Section 21-27 B3. You can have a private kindergarten or pre-school nursery provided that such uses meet the minimum standards set forth for such facilities by the State Department of Social Services, County Health Department, Fire Department regulations, 2) such uses located on a lot not less than ½ acre; 3) no structure on the lot is closer than 20 feet to an abutting property line or street right-of-way. The proposed addition is closer than 20 feet so in addition to getting a special exception approval to expand the use in the residential zoning district, they also need a variance to build part of the building in the setback. Chairman Hiers stated that when the daycare was established, there was an agreement that that would be the size of the daycare. Also, The BZA heard a request about this property in 1999 for expansion and it was turned down. Mr. Turisk stated that the previous request was related to generating more revenue; this request is different in that it is more of a functional situation; and to make the daycare safer for the children. Jimmy Hiers asked the applicant about the issue raised by the Chairman concerning the original zoning in terms of the agreement not to expand the existing square footage. Chairman Hiers stated that was with the previous owners, the Deploys. Mr. Turisk stated his wife runs a viable service and needs more closet space and entry/exit for safety. Mr. Prause stated that it also has to meet the requirements under Section 21-61 to make sure that it meets requirements 1-4 regarding special exceptions in general. That would apply to all the special exceptions allowed in the zoning district classification of residential. 1) adequate provision is made for such items as setbacks, fences, and buffered or planting strips to protect adjacent properties from possible adverse influence of the proposed use, such as noise, vibration, dust, glare, odor, traffic congestion, and similar factors. 2) Vehicular traffic and pedestrian movement on adjacent roads shall not be hindered or endangered. 3) Off-street parking and loading areas and the entrance and exits of these areas shall be adequate in terms of location, amount, design, and construction to serve the proposed use. 4) The proposed use should be compatible with existing uses to the extent that such use will not adversely affect the level of property

values, general character, or general welfare of the nearby area. 5) In approving a special exception, the Board of Zoning Appeals may attach to it such reasonable terms and conditions as it may consider necessary to accomplish the intent of this section and this entire zoning chapter. Mr. Prause stated the building was built before setbacks in place. The proposed addition is in the area of the existing deck now. It was asked if the addition could be placed somewhere without needing a variance. Mr. Turisk stated they could place the addition on the inside corner of the lot. Mr. Prause stated a variance would not be needed then, but a special exception approval by the Board of Zoning Appeals would be needed to expand the existing use. Mr. Turisk said they have had the business since 1996. They have 70 children on paper; 63 are allowed in building. They are licensed by DSS and DHEC, and are inspected annually. Thom Hiers said were the Board to consider their request, the Board could grant with the stipulation that the number of children not increase, and give an annual report to the Town. Town Council had approved the conditional use. When the Comprehensive Planning Act was adopted in 1994, it took that authority away from Town Council and gave it to BZA under a special exception. Thom Hiers stated he would not support the variance, the Board needed to take a vote or the Turisks could defer. The Turisks withdrew their request until the next meeting.

Eric and Hannah Dodson, 1651 Poe Avenue. Architect Carl Smith stated that Mr. Dodson wanted to elevate the home to meet FEMA requirements and to make parking underneath the house. The house was built in 1964 and is brick veneer. They want to remove the brick and replace with wood siding, elevate it, and add a back porch. The setback right now to the front is 25.7 feet that just meets the setback now; when it is elevated it will put six steps into the front setback. It is at 14.8 feet to Lot 15, which is 4 inches shy of the 15' setback. When the brick is removed which is about 4-1/2 inches, it should bring it into compliance. The real issue is the setback off of Station 16-1/2 at 10.2 feet. It doesn't meet today's setbacks. They also want to remove concrete and return to grass, increasing pervious space. The Dodson's are asking for a setback variance for Station 16-1/2 and possibly a minor variance when the house is elevated. Mr. Prause stated both setback encroachments are minor. Financial hardship is not a sole reason to grant a variance but it certainly can be considered. In this type of context, that is something that merits consideration because they're not saying we want a variance from the setbacks because it cost too much to make it meet the requirement. They are furthering a public goal in elevating the house to get it out of the flood plain, and it's causing a setback violation and to actually effect complete compliance would require that the house be turned and shifted on the lot, which in that sort of instance would be an inordinate expense. Mr. Prause stated it would be in compliance in overall height but when setback and lot coverage ordinance provisions were amended, they were amended in such a fashion that the vertical portions of sides of houses have to be set in an additional five feet above twenty-five ft height level. Because this house is basically a brick ranch on a crawl space, it doesn't invade that 25 foot height limitation requiring the extra five foot setback. But when it is elevated to that extent, it will. Motion was made by Susan Middaugh, seconded by Jimmy Hiers, to allow this variance on the grounds that there are extraordinary and exceptional conditions pertaining to this property in that the house was originally with a 10 ft setback and Mr. Dodson simply wants to elevate the house to meet FEMA requirements, and there is no reasonable method to meet both FEMA and setback requirements; the other houses in the area have 10' setbacks, and because of these conditions making them stick to the strict application of the ordinance would be outside of what was originally intended by the ordinance and would unreasonably restrict utilization of the

property as intended, and it will not be detrimental to adjacent property because the footprint of the house will not be changed on the lot, per attachment one of the Dodson's application to the Board of Zoning Appeals, carried unanimously.

Peter Manigault, 2429 Atlantic Avenue, requested variance to trim wax myrtles to 3-1/2 feet as in the past. Motion was made by Thom Hiers, seconded by Jimmy Hiers, to grant the variance based on the same rationale of the first wax myrtle case tonight, and according to Form 3 of Mr. Manigault's variance application, carried unanimously.

There being no further business to come before the Board, the meeting was adjourned.

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____

