

August 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: Jimmy Hiers
Thom Hiers, Chairman
Jay Keenan
Susan Middaugh

Motion was made by Susan Middaugh, seconded by Jay Keenan, to approve the minutes of July 22, 2004, carried unanimously.

William Frazier, Jr., 3019 Marshall Blvd., variance for setbacks. Mr. Charles Goldberg, representing Dr. and Mrs. Brilliant, adjacent neighbors of the property, requested that the hearing be continued until the Brilliants could return from out of town. Therefore, the attorneys from both sides could meet in person with the Brilliants. The Brilliants are opposed to the variances. Mr. Goldbug stated that the nature of the objection was the house proposed is too much for the lot. Chairman Hiers reported that the signage was posted on the property on July 19. Proper notice was given for the hearing, so the Board preferred to move forward unless both parties agreed to postpone. Mr. Taylor, the attorney for Mr. Frazier, said they wanted to proceed because the necessary notice was given. Chairman Hiers stated that they would hear both sides. Mr. Goldberg could present argument if the continuance were not granted. Mr. Goldbug said he wasn't prepared; that he just received the case yesterday. Chairman Hiers also pointed out that if the two parties did meet and come to a compromise, the Board may not agree to their compromise. The applicant has a contractual agreement which may be affected if the hearing is postponed.

Henry Taylor, attorney, represented applicant William Frazier and designated agent of owner, Dr. Richard Holgate. Other representatives were Wes Taylor, an architect from Columbia, and Paul Boehm, a local real estate agent. The variance being requested is a setback off of the RC-1 line as shown on applicant's Form 3 and a 13' setback on the street side. Mr. Taylor stated the setback requirements are currently 20 feet on the Marshall side, and 30 feet on the RC-1 Line. He stated that failure of the Board to grant the variance would result in unnecessary hardship and that the standards for granting the variance have been satisfied in our application. In particular, there are extraordinary and exceptional conditions in that erosion along seaward of RC-1 boundary line application of setback restrictions make it impossible to build a functional residence on the lot. The conditions do not generally apply to other property in the area. The erosion is limited to the vicinity of this lot. The strict application of the zoning ordinance would prohibit/restrict the utilization of this property. The strict application of the ordinance would make it impossible to build a functional residence. The authorization of the variance will not be of substantial detriment to adjacent properties or to the public good; the character of the district will not be harmed by the granting of the variance. The applicant proposes a single family residence consistent with other properties in the area, and the structure will be aesthetically and structurally equivalent.

Wes Taylor, the architect presented the survey. The hardship is based on the configuration of the area, not the size of the lot. There is a 60' right of way at Marshall Blvd.; and 22' of paved road. From the edge of the pavement to the property line is 28'. The lot is 7,137 sq feet, with a buildable area of 1,427 sq ft.

They are asking for a front setback from 20' to 7', which would place the house at about 35' from the pavement, because it is 28' from the edge of the pavement to the property line. The requested variance on the critical line is only for relief for the corners of the deck, due to the odd shape of the lot.

Mr. Prause stated in 1992 Muriel Metts was granted a variance within 5' of the front setback and 15' on the RC1 line, with a contingency. The purpose of the contingency was because there was a concern that the house would be a hazard due to erosion and if it was abandoned it would become a liability of the town.

Mr. Taylor stated that positioned where it is, that the previous variance requests granted by the Board seem to be more inclined to be less restrictive on the street setback, that is why they requested the street-side setback variance.

Mr. Goldberg questioned the buildable area. Mr. Taylor stated that the buildable area is not functional; the nature of the shape is not conducive to a traditional style house.

Paul Boehm, representing the seller, stated that Dr. Holgate wanted relief for the buyer to build a functional house.

Joseph Wezwick of 3024 Marshall and Ginger Horne of 3010 Marshall expressed their concerns opposing the variance for the setbacks, as there is an erosion problem.

Mr. Goldberg asked that the decision be deferred to give them an opportunity to determine if the technical information is correct; to counter the information if needed; and to give them an opportunity to present further evidence and testimony.

Motion was made by Susan Middaugh, seconded by Jay Keenan, to proceed to make a decision tonight, based on the grounds the variance was duly posted an adequate amount of time required, input from neighbors has been received, and there has been ample opportunity to offer objections, carried unanimously.

Motion was made by Jay Keenan, seconded by Susan Middaugh, to grant the variance to allow a 13' variance into the 20' setback provided after the building plans are drawn that no other variances are required in terms of the house and the design of the house. The reason for that variance is because the house does have a singular hardship because of its irregular shape on the oceanfront side and the narrowness of the lot.

Mr. Taylor stated that the Board should grant a variance similar to that given to Ms. Metts (i.e., within 5' of the setback) if the Board is not going to grant the ocean side variance. Mr. Frazier stated that the ocean side variance is just for the corners of the deck. Mr. Goldberg stated that the 5' is a change that wasn't advertised. Mr. Prause stated that notice

has not been given to increase the variance more in any direction, although it would be within the Board's purview to reduce the amount of the variance requested.

Chairman Hiers stated that although the owner talked about adding rocks to protect the property, the owner should not assume that adding rocks would necessarily be permitted by the Town.

Mr. Goldberg stated that Dr. Brilliant has been denied due process of this case by not allowing him to present his side of the case. Chairman Hiers again stated that the legally required notice was given in the newspaper and for the sign to be posted on the property.

Motion was amended by Susan Middaugh, seconded by Jimmy Hiers, that there are extraordinary and exceptional conditions pertaining to this property. The erosion along the oceanfront has resulted in a very narrow lot and strict application of our laws would unduly restrict the ability to build a house on the lot so there needs to be relief from the setback; the conditions do not generally apply to other property in the vicinity; it applies to a few properties in the direct vicinity, but it would not apply island-wide; there is a fairly unique erosion problem in that area and on one previous occasion for a similar lot we also granted a setback from the street. Because of these conditions, the application of the ordinance would unreasonably restrict the utilization of the property; application of all setbacks would make it very difficult to build a functional residence on the lot; the authorization of the variance will not be of substantial detriment to the adjacent property or public good or the character of the district because the house would still be 35' from the edge of the pavement and one other house in the area with a similar problem is the same distance back from the edge of the pavement; and reference applicant's Form 3, carried unanimously.

Motion was amended by Chairman Hiers, seconded by Jay Keenan, that a declaration of restrictive covenant be placed on record whereby the applicant or any of his heirs and assigns would be solely responsible for the cost of removal of the structure in the event a court of competent jurisdiction determined that the structure was a nuisance and/or health hazard, carried unanimously. Motion as amended carried unanimously.

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____