

September 9, 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 Jay Keenan, seconded by Susan Middaugh, to approve the minutes of August 12, 2004, as amended, carried unanimously.

Eleanor Daly, 2408 Raven Drive, deferred until next meeting.

Robie Scott and Matt Decell, 1450 Middle Street. Mr. Decell stated he received a building permit for the house he built in 1995. He wants to put in a driveway to the garage that he omitted from the plans, however the current ordinance states only one driveway per lot; unlike when the permit was issued. He is requesting a variance for a paved driveway 30' long; 10' wide. They live in the old Sullivan's Island Town Hall, next to the old movie theater. The garage is on the back of the lot, and they need access to the building to make it functional. He has obtained signatures from the neighbors that they do not oppose this variance request. Susan Middaugh inquired if it would be feasible to take up the driveway in front of the house. Mr. DeCell stated it is not feasible at this time as it is the driveway, however, they might want to change it in the future. However, that driveway is where the rescue vehicles parked when it was the rescue station, and the house is on the historical structure list. Zoning Administrator Kent Prause stated that the access to the existing house might be considered an integral part of the historical context of the building. From their application, there appears to be no problem with the lot's impervious material percentage for the driveway.

Chairman Hiers inquired what was exceptional about the property. Mr. DeCell stated they bought an old building and made it work as a house. Ms. Scott stated there may be less than one percent of lots on Sullivan's Island that are like this lot. This is an extremely unusual circumstance and an extremely unusual piece of property and structure. Zoning Administrator Kent Prause stated that the ordinance states one driveway. The ordinance was changed by Council because property owners were putting in an inordinate amount of driveways in order to discourage cars parking along their property. Mr. Prause stated that the driveway is not going to the house; it is going to the garage, and they already have paved access to the house. Mr. DeCell said they received the permit for the house when two driveways were allowed.

Motion was made by Jay Keenan, seconded by Jimmy Hiers, to grant the variance to allow a 10' concrete driveway from the garage to Thompson because the Town issued a building permit for the garage in 1995; even though the zoning ordinance has changed, it was assumed that you would have a driveway to the garage if the Town at that point issued a permit to build a garage. That fact makes it a singular unique situation since the Town allowed the garage to be built, how could it deny access to the garage.

Motion was made by Jimmy Hiers, seconded by Jay Keenan, to amend the motion to add this building is a landmark historic unique structure.

Motion was restated by Jay Keenan, to grant the variance because there are extraordinary and exceptional conditions to this property which are 1) the building is on the historic register for Sullivan's Island and that prevents any demolition or renovation without substantial study 2) the Town issued a permit to build the garage on the property in 1995 and that a driveway is an integral part of a garage; 3) these conditions do not generally apply to other properties in the vicinity; and because of these conditions the application of the ordinance would effectively prohibit and unreasonably restrict the use of property for which the Town already issued the permit to build and that the authorization of this variance would not be a substantial detriment to the adjacent property or to the public good, and it is noted that a number of neighbors have registered their approval of this proposed variance, carried unanimously.

The operational rules of the Board were discussed and proposed changes will be submitted at the next meeting.

Motion was made by Jimmy Hiers, seconded by Jay Keenan, to adjourn, carried unanimously.

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____

Sullivan's Island Board of Zoning Appeals Rules of Procedure

Article I Organization

Section 1. Rules. These rules of procedure are adopted pursuant to S.C. Code S 6-29-790 for the Town of Sullivan's Island Board of Zoning Appeals with five members appointed by Council.

Section 2. Officers. The officers of the Board shall be a chairman and vice-chairman elected for one year terms at the first meeting of the board in each calendar year. The Board shall appoint a member of the staff as secretary of the Board.

Section 3. Chairman. The chairman shall be a voting member of the Board and shall:

- a. Call meetings of the Board.
- b. Preside at meetings and hearings; and swear in witnesses;
- c. Act as spokesperson for the Board;
- d. Sign documents for the Board;
- e. Have orders of the Board served on parties; and
- f. Perform other duties approved by the Board.

Section 4. Vice Chairman. The vice-chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the absence of the chairman and vice-chairman, an acting chairman shall be elected by the members present.

Section 5. Secretary. The secretary shall:

- a. Provide and publish notice of appeals and meetings;
- b. Assist the chairman in preparation of the agenda;
- c. Properly post property involved in appeals for variances or special exceptions;
- d. Keep recordings and minutes of meetings and hearings;
- e. Maintain Board records as public records;
- f. Serve Board decisions on parties;
- g. Attend to Board correspondence; and
- h. Perform other duties normally carried out by a secretary.

Article II Meetings

Section 1. Time and Place. An annual schedule of regular meetings shall be adopted, published and posted at the designated Town office in December of each year. Special meetings may be called by the chairman upon 24 hours notice, posted and delivered to all members and local news media. Meetings shall be held at the place stated in the notices, and shall be open to the public.

Section 2. Agenda. A written agenda shall be furnished by the secretary to each member of the Board and the news media, and shall be posted at least five (5) days prior to each regular meeting, and at least twenty four (24) hours prior to a special meeting. Items may be removed from the agenda or postponed at a meeting by majority vote.

Section 3. Quorum. A majority of the members of the Board shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

Section 4. Rules of Order. Robert's Rules of Order Newly Revised, 9th Edition, shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

Article III Appeals Procedure

Section 1. Form of Appeal. Appeals from administrative decisions, applications for variances, and applications for special exceptions shall be filed on forms approved by the Board and provided to applicants by the secretary. The Board may require additional information deemed necessary. The failure to submit adequate information may be grounds for dismissal. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.

Section 2. Time for Appeal. An appeal from an administrative decision must be filed within fifteen (15) days after the decision becomes a matter of public record by denial or issuance of a permit or the filing of a written decision in the office of the Zoning Administrator. An appeal shall be filed by delivery of the approved appeal form to the secretary of the Board who shall notify the official appealed from.

Section 3. Calendar. Appeals and applications shall be marked with the date of receipt and placed on the hearing calendar in the order in which received. Appeals shall be heard in the order on the calendar unless otherwise set by the Board for good cause shown.

Section 4. Withdrawal of Appeal. Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. An appeal from an administrative decision which is withdrawn may not be refiled after the fifteen (15) days time for appeal has expired. Withdrawn applications for variances and special exceptions may be refiled after six (6) months and shall be placed on the calendar according to the date refiled.

Section 5. Continuances. **The hearing of an appeal or application may be continued by the Board upon its own Motion. Requests for continuances from applicants or parties other than Board members may only be continued upon a showing of good cause.**

- a. When only three members of the Board are present for a meeting, applicants shall be offered the opportunity to defer their hearing until the next meeting. This opportunity shall not be offered when four Board members are present. Only one deferral is permitted.**

Section 6. Notice.

- a. **Public notice of a hearing of the Board shall be published in a local newspaper at least fifteen (15) days prior to the hearing. The newspaper notice shall include the time, date and place of the hearing, a description of each matter to be heard and the identification of the property affected.**
- b. **In cases involving variances or special exceptions, a sign shall be placed on or adjacent to the property affected. The sign shall be visible from each public thoroughfare abutting the property and a telephone number where additional information may be obtained.**
- c. **Receipt of a copy of the appeal application including the time and date of the appeal shall be considered notification to the applicant and/or his representative.**

Section 7. Board Members' Communication. Given the quasi-judiciary nature of the Board of Zoning Appeals, members of the Board shall not communicate with or receive information from parties regarding matters pending before the Board or likely to be pending. Any information related to a matter before or likely to be before the Board should be presented to the Board in its public meetings.

Article IV. Hearing Procedure

Section 1. Appearances. The applicant or any party in interest may appear in person or by agent or attorney. The Board may postpone or proceed to dispose of a matter on the records before it in the absence of an appearance on behalf of an applicant.

Section 2. Witnesses. Parties in interest may present testimony under oath. Witnesses may be compelled to attend by subpoena requested at least ten (10) days prior to a hearing and signed by the chairman. The Board may call its own witnesses when deemed appropriate.

Section 3. Cross-examination. No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely extended when conducted in an orderly manner. Intimidation of witnesses will not be allowed.

Section 4. Evidence. Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony which is not cumulative or hearsay will be received. The chairman will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.

Section 5. Conduct of Hearing. The normal order of hearing, subject to modification by the chairman, shall be:

- a. Statement of matter to be heard (chairman or secretary);
- b. Presentation by applicant (10 minute limit);
- c. Presentation by official appealed (10 minute limit); or
- d. Presentation by opponents (10 minute limit);
- e. Rebuttal by applicant (5 minute limit);

- f. Unsworn public comment when appropriate;
- g. The Board may question participants at any point in the hearing;
- h. Matters in which additional time is granted by be moved to end of the agenda.

Section 6. Disposition.

- a. **The Board may deliberate and make a final disposition of a matter by majority vote of members present at the hearing and qualified to vote, provided that not less than a quorum are present. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter that the member has not heard. Deliberations shall be conducted and voting shall be public.**
- b. **In order to complete additional applications and receive the necessary permits for construction, relief granted as the result of an appeal shall be valid for a period as specified by Town Ordinances from the date of approval.**
 - 1. **Failure to receive the necessary permits within the prescribed timeframe shall render such relief void and no force or effect.**
- c. **Unless specifically modified by the Board's approval, relief granted as the result of an appeal shall be in accordance with the specific plans submitted with the application.**
 - 1. **Minor changes to the approved plans that do not affect the relief granted may be allowed to meet subsequent approval requirements, if approval of the same is granted by the zoning administrator.**

Section 7. Form of Order. An order shall be issued disposing of a matter by granting or denying relief with such conditions may be deemed necessary; or affirming, modifying, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusions of law shall be separately stated in an order.

Section 8. Service of Order. The secretary shall deliver a copy of an order to each party in interest by certified mail immediately upon execution of the order by the chairman.

Section 9. Rehearing. The Board may grant a rehearing of an application which has been dismissed or denied upon written request filed with the secretary within fifteen (15) days after delivery of the order accompanied by new evidence which could not reasonably have been presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.

Article V Records

Section 1. Minutes. The secretary shall record all meetings and hearings of the Board on tape which shall be preserved until final action is taken on all matters presented. The secretary shall prepare minutes of each meeting for approval by the Board at the next regular meeting. Minutes shall be maintained as public records.

Section 2. Orders and Documents. The secretary shall assist in the preparation and service of all orders of the Board in appropriate form. Copies of all notices, correspondence, documentary evidence, orders and forms shall be maintained as public records.

Article VI
Amendment and Adoption

Section 1. Amendment. These rules may be amended at any regular meeting of the Board by majority vote of the members of the Board at least seven (7) days after the written amendment is delivered to all members.

Section 2. Adoption. These rules were adopted by vote of a majority of the members of the Board at a regular public meeting on _____.

Attest _____
Secretary

Chairman