

October 14, 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  
Alice Paylor

Motion was made by Susan Middaugh, seconded by Jimmy Hiers, to approve the minutes of September 9, 2004, carried unanimously.

Eleanor Daly, 2408 Raven Drive, variance for rear-setback for pool. Mrs. Daly stated the house was built on existing pilings after Hurricane Hugo. If they placed a pool on the side yard, trees would have to be removed and the neighbors would be impacted. They are requesting a 19' and 18' variance on the rear setback. Mr. Prause stated that on the submitted plat, the property line is labeled tie line, and the critical line is labeled edge of marsh. Since the property line is landward of the critical line, the setback is measured from the property line and not the critical line, according to the ordinance. Jay Keenan stated that if the Town Council would agree to deed the accreted land to Mrs. Daly, there would be more room to work with. Mr. Prause stated that if they were to acquire title to the land, based their submitted plat, there is only 20 feet from the property line, so they need another 10 feet, but it would give them more room to work with. Also, the plat is dated 1999. A submitted plat showing the designation of the critical line should be within the last six months, so an updated plat might also show changes. Mrs. Daly withdrew her request. Motion was made by Chairman Hiers, seconded by Alice Paylor, to give Mrs. Daly three months to come back to the Board, carried unanimously.

Gordon Small, 3001 Marshall Blvd., setback variance from Marshall Blvd. reduced to five feet and setback from toe of dune reduced to 0' (OCRM line); therefore, he is requesting a variance of 15 ft. from Marshall Blvd., and 30 feet from the OCRM line. Paul Boehm, representing a client interested in the property, helped to present Mr. Small's request. There is 7009 sq ft of high ground, which equals 1400 sq ft heated footprint. Mr. Howard Brilliant, who lives in the area, inquired when a Board member should recuse himself from a case. Susan Middaugh stated that if the Board member has a financial interest in the matter, the member should recuse himself. Mr. Boehm stated that OCRM identified the toe of the dune as the primary dune. He stated that a habitable house could not be built without a variance. He stated that when the beach renourishment was done about seven years ago, a company asked to use that property as access to the beach and they put extra dirt there that has blown up into this dune. Town setback is from RC1 designated line (which is the toe of dune).

Mr. Prause stated that the house is drawn at 1500 sq ft, so it would have to be reduced 100 sq ft because only 1400 heated sq ft footprint is allowed. The numbers provided calculate to 38% lot coverage and only 35% is allowed. They are not asking for any relief on lot coverage; that will be corrected. Mr. Small has only presented a sketch. Architectural plans would have to be submitted for a permit to be pulled within six months. Not only does the variance go away in six months, the critical line designation actually expires in six months, so there is a narrow time frame to pull the permit. The Planning Commission is currently

reviewing revisions to the Zoning Ordinance which may extend the time allowed to pull a permit. Chairman Hiers asked for comments from any citizens wishing to speak. Dr. Joe Frank Garner of 3004 Marshall Blvd. stated that he appreciated the efforts of Mr. Small and Mr. Boehm, and their concern for the neighbors' view. However, Mr. Garner was concerned about the future owner's request for further variances and that there is no definitive plan. He also was concerned about safety for children, stating their vision would be limited if the house was built closer to the road.

Howard Brilliant of 3020 Marshall stated that he appealed the previous variance granted at 3019 Marshall Blvd., and believes it is similar to this variance request. He would like the Board not to rule on this case until the Court rules on the previously granted variance. He doesn't agree with giving street side setbacks; a variance should be requested from OCRM to build on the dune. Mr. Small stated a functional house may not be built without two variances. Susan Middaugh stated that hardship by S.C. law for our purposes is defined as not being able to build a residential structure on a residential lot. She stated it does meet the test for hardship, however, it then becomes a matter of what is the least intrusive variance.

Motion was made by Susan Middaugh, seconded by Alice Paylor, to allow a variance of 15 ft. on the street side to come within 5 ft of the property line, and on the ocean side a 20' variance for house, pool or any man-made structure to come no closer than 10' from the toe of the current, existing dune as indicated on the plat submitted tonight. There are extraordinary and exceptional conditions to this piece of property. It is in a limited part of the island that is undergoing a lot of erosion; it has a considerable dune that has been added to by beach filling and artificial beach building that has resulted in a lot of sand being blown up into the dune structure; these conditions do not generally apply to other property in the vicinity because the erosional area is a fairly limited part of the island. If we apply the ordinance with full setbacks as written in our ordinance, the property would essentially be unbuildable for a residence and this would constitute a hardship under the law. The variance will not be of substantial detriment to the adjacent property or public good, the main reason being this is a part of the island where there is a wide space between the street and the start of the property that is 35' from the road to the property line, so allowing a 5' setback from the property line would still keep the structure well back from the street, and this has been granted to two other properties with similar erosion problems in the area. Motion was made by Alice Paylor, seconded by Jay Keenan, to amend the motion to add 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 passed unanimously.

Daly & Sawyer, 3031 Ion, variance for curb-cut. Mr. Neil Sawyer stated there is an easement through the center of the property. Lou Edens, who owns one of the bunkers, has agreed to relocate the easement. Sullivan's Island Code states there can only be one curb-cut. With only a single curb-cut, they would have to share the road and it would be very difficult to pass each other, or use a 10-ft. curb-cut simultaneously. Mr. Prause discussed this with Attorney Larry Dodds. They are in agreement that if the easement is moved, it becomes the one driveway allowed. However, if the easement was kept, it would be fair to allow them to have another curb-cut and driveway on their portion of the lot.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, that there is a hardship because the easement runs straight across their property; there are extraordinary and exceptional conditions to this property as someone granted an easement straight across the middle of the property; these conditions do not apply anywhere else on Sullivan's Island that we are aware; because of this condition the application of the ordinance would effectively prohibit or unreasonably restrict the use of the property because the other property owner will not consent to doing anything other than moving the easement to one place, and the access to their property is much better from the street; and the property is unusual in and of itself because it is a bunker; the authorization of this variance will not be of substantial detriment to the adjacent property or the public good, 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, 9<sup>th</sup> 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