

January 13, 2005

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

Elli Daly of 2408 Raven Drive has withdrawn her request for a rear setback, as requested in October 2004.

Motion was made by Alice Paylor, seconded by Jimmy Hiers to amend the agenda to add the election of officers, carried unanimously.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to approve the minutes of December 9, 2004, carried unanimously.

Michael and Ann Mithoefer, 405 and 407 O'Neil Street, variance to abandon lot line between lots 10 and 11. Mr. Mithoefer stated that Robert A. Smith currently owns Lot 10 (407 O'Neil). The Mithoefers are half-owners of Lot 11 (405 O'Neil) with Robert A. Smith. They have a contract to buy Lot 10 and Robert Smith's interest in Lot 11. The Mithoefers are asking for a variance to combine the lots to build one house. The hardship is that Lot 11 is situated parallel to the critical line; is narrow, being 50' wide at one end and tapering to 27' wide at the other end; and is small, with only 4866 square feet. This is an unusual combination of lot characteristics that will make it exceptionally difficult to build a functional house even if multiple variances were to be granted. Kent Prause stated that Section 21-10 states that the minimum lot size shall be ½ acre, which has been on the books for some time. He interprets it to mean that you cannot alter interior lot lines except to make them compliant lots; and even with the abandonment of this lot line it would not be a compliant lot. Mr. Prause has received previous requests from other property owners that want to reconfigure interior lot lines on two or more non-conforming lots. It is an issue that has not been sufficiently covered in our current zoning ordinance, but will be with the revision to the Zoning Code that is currently underway. The Mithoefers want to reconfigure but not necessarily join the two lots. They are not changing the external periphery boundaries of the lot, they just want to reconfigure the interior lots lines. And although all Mr. Mithoefer wants to do is to abandon one and make it bigger, there is nothing in our zoning code that differentiates in others that want to reconfigure lots lines. This case is similar to other cases the Board has dealt with, particularly Mr. Ploch and Mr. Tanenbaum, where the lot is parallel to the RC-2 district boundary line rather than perpendicular to it, so what you have is the length of the lot along the RC-2 district, the greatest setback is applied to the 30' setback. If you apply the 30' setback to Lot 11, you can see that at one corner it is only 27.35 feet wide, so it would actually go beyond that. If Mr. Mithoefer is not allowed to do this, he will have to come to the Board for variances to build two houses, or a house on Lot 11 at any rate. Given that, Mr. Prause stated that reason provides the hardship for which Mr. Mithoefer is seeking relief. It would be a legitimate hardship to grant a variance and it is a better solution

to make one larger lot with one house rather than two smaller lots with variances for two houses.

Motion was made by Alice Paylor, seconded by Jay Keenan, that the variance be granted to allow to him to abandon the lot lines because there are extraordinary and exceptional conditions pertaining to the particular piece of property in that there are two very small lots, neither of which meet the minimum lot requirement. Even when they are combined, they still do not meet the minimum lot requirements, so this would be a benefit to make it a larger lot. These conditions do not generally apply to other property in the vicinity; because of the conditions, the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property, and that is because of its small size; the authorization of a variance will not be a substantial detriment to adjacent property or to the public good; the character of the district will not be harmed by the granting of the variance. This has nothing to do with changing interior lines for subdividing; it is simply creating one larger lot; carried unanimously.

David and Sonja Bloom 1655 Atlantic Avenue, variance to remove/trim trees. Mr. Bloom presented pictures of the area from September 2003. Mr. Bloom stated as per their application, their home at the upper level is approximately 37-1/2 feet above the mean sea level. The distance from there to the ground varies from 9 to 12-1/2 feet and the site was built up. Mr. Bloom stated he was requesting an opportunity for a view and asking them to be permitted to remove trees or trim them back to 25 feet. He said the legislative intent was the view of the ocean, view of the ocean beach, and to produce breezes therefrom. He has been waiting for a study group to addresses those issues. He stated a variance is appropriate where strict application is causing them a hardship where there is a singular disadvantage, and he believes they are at such a disadvantage at their elevation. As one alternative to the problem, they are requesting permission to remove trees (there are seven in question), and they have offered to replant trees that are conducive to the maritime forest. They are also willing, since it is his understanding that the study is short of funds, that as a condition of his variance, he would be willing to fund a complete vegetation tree survey of all the area in front of his home to help start a model study of the area. Freeman Milligan, landscape architect, stated that he walked the site in December 2004 to observe the vegetation. He found a variety of vegetation that has grown over the last 10-15 years which foresters would call a very early successional stage of vegetation. Mr. Milligan stated that Mr. Bloom wants to selectively remove some of these trees that are starting to block his view, particularly the exotic (non-native) ones; but also the early successional stage species, and replace those with vegetation associated with more of a maritime forest climax state that would develop over the next 75-100 years. He stated that the pecans, the hackberries, and the red maples were the big trees that are a problem. Mr. Bloom stated they either wanted to take down trees or trim back to 25 feet the tallest trees, which would be a pecan tree, two hackberry trees and red maples. Mr. Bloom said they wanted to remove seven trees and they would replant at 150%, or they would like permission to simply trim the trees down to 25 feet. Jay Keenan inquired what trees are protected under the ordinance. Randy Robinson stated that all trees with the exception of wax myrtles and popcorn trees are protected. Alice Paylor stated that there is a precedence because we allow some people who do not have a view from the first floor to trim in front of their homes, but the other people basically can not do anything. Susan Middaugh stated her concern was precedence and that Mr. Bloom is basically saying that his situation is unique largely because his house is taller than than any of his neighbors so he could cut down to 25 feet and have a view, but the neighbors would have to cut down to 15-20 feet to have a view.

If the Board allows him to do that, she doesn't see what would keep his neighbors and other people from coming to ask for a variance to cut so they could have a view also. Mr. Bloom stated that what the neighbors would need to prove is uniqueness of hardship, Mr. Bloom stated he is the only person who could cut to only 25 feet and get a view. He stated that is the uniqueness of his situation. Alice Paylor inquired if there was any harm to the trees in trimming them. Mr. Milligan stated that it depends on how high they are; it depends on the method of cutting back. He stated you never want to trim back more than one-third. If they started trimming now, it should be ok; however, if they waited too much longer it will be much worse. Jay Keenan asked Randy Robinson where the land management study stands. Randy Robinson said that Councilwoman Wiedeke is discussing with a College of Charleston professor the possibility of a getting a mapping study done, which would be the first phase of the study. Pat O'Neil, 1738 Thompson and a member of Town Council, stated that a couple of people and staff had written a grant to fund that study; unfortunately, it was not funded. Chairman Hiers asked if there is a possibility that one eventuality of such a study would be the loosening of the rules. Pat O'Neil stated that it is possible that one eventuality might be that the land would become managed in a more diverse manner, and different areas might be managed in different ways. Mr. O'Neil stated that Chris Marsh, PhD, Executive Director of the Sea Island Institute, had talked about ways of managing publicly owned land, such that in some areas you might have parts of it that would be cut down much more severely, and other areas you might let grow more wildly, and others you might favor some species over others. It depends upon what your managing goals are in terms of how you do that.

Jimmy Hiers stated he is sympathetic to wanting to allow someone to optimize their view up to a certain degree, but this area is the maritime forest. The fact that the applicant wants to plant back indigenous trees is something to be considered. However, he disagrees with Alice Paylor on the applicability of the precedent for the people that we do allow to cut, because those cases involve only wax myrtles that we have allowed to be trimmed to a lower level. Jimmy Hiers is also concerned that if a variance is allowed, the door is open to the whole area. He stated this is more a legislative issue than a variance issue. Jay Keenan stated that the Board has tried to push it back to Council for years. Jimmy Hiers stated he is not comfortable with completely overturning the Council's intent on trees in this area. Susan Middaugh stated that her concern is that there are a lot of trees in there and they are all going to be growing. There may be 3-4 trees now that could be cut down to 25 feet to maintain their view for a few years; but then there will be many other trees similarly needing such cutting. Alice Paylor stated that is the entire point; that there should be some management plan which the Town won't go forward with, and there is a hardship for those people who live there. Jay Keenan stated that the presentation tonight was impressive and the suggestion to replant less intrusive trees is a wonderful idea, but if the Board allowed the variance, then across the board we are opening up everyone taking out trees and planting whatever they want. He agrees with Jimmy Hiers that this is primarily an ordinance issue which is the responsibility of Town Council. As much as he sympathizes with Mr. Bloom on the situation, he thinks the Board would be doing a disservice to the rest of the folks on the Island if they didn't approach this across the board rather than on a piece-meal basis. He asked Mr. Bloom to please go back to the Council again and ask them to give the Board or the residents some relief on this. Chairman Hiers stated he has some difficulty with the issue of whether Mr. Bloom has a particular hardship or not, in comparison to his neighbors. For him it seems backwards – the

fact that Mr. Bloom has a three story house and can see the ocean while his neighbors cannot, does not appear to be a hardship. Chairman Hiers also stated that he agrees that this is a legislative problem. The Board would be defining the policy of the Island if it allows these trees to be cut.

Jay Keenan stated Mr. Bloom may want to withdraw his request before the vote is taken because he would not be able to come before the Board again for four years with this request if the variance is denied. Mr. Bloom stated he wanted the vote to be taken so he can take further action if desired.

Motion was made Alice Paylor, seconded by Susan Middaugh, to grant the variance. Motion failed by a vote of 4-1. Susan Middaugh stated that the conditions are not extraordinary and exceptional in that there are numerous other properties that currently do not have a view because the trees have grown in the area, so the conditions do generally apply to other property in the vicinity, and the fact that this house is a little taller than others does not make it exceptional. Because of these conditions, the loss of view does not effectively prohibit or restrict the utilization of the property, the granting of the variance would harm the public purpose by setting a precedent for the other people to press their variance cases. Motion to deny the variance request, based on the grounds as just stated by Susan Middaugh, was made by Jay Keenan, seconded by Jimmy Hiers, carried by a vote of 4-1.

Motion was made by Jay Keenan, seconded by Jimmy Hiers, that Chairman Hiers be authorized to send a letter to Town Council to bring this critical matter to their attention, carried unanimously.

Mark Weiss, 2608 Bayonne, variance for time extension on permit. Mr. Weiss was represented by Bill Barr. Mr. Barr stated Dr. Weiss demolished the house in 2003 due to termite infestation. Mr. Prause ruled at that time that he could not rebuild because it was not a natural disaster, but it was overruled by the Board. Under 21-68 they had six months to pull a building permit. Dr. Weiss came back in May 2004 before the six month period lapsed, because the plans were not complete and wanted to extend the six month time. At that meeting, rather than grant an extension to 21-68, Dr. Middaugh stated she did not have a problem if the circumstances have not changed, treating this as a new appeal, and granting the relief that way rather than granting it as an extension of 21-68. The written decision was mailed in July 2004, so the six month time period is going to run out sometime this month. Also, an additional issue has now come up. Mr. Barr stated that when Ray Huff, the architect, called Mr. Prause, he was told that the under 21-41F, you are required to rebuild the house that has been destroyed by natural disaster within two years after its demolition. The two years will run out in November 2005. If they pull a permit in March, they would have eight months to construct this house. The estimated construction time is one year. The relief Dr. Weiss is asking for tonight is to either extend 21-68 at least so he can pull the permit in March, or in the alternative, grant us the same relief that was granted back in June 2004; that is just considered as a new application appealing the Zoning Administrator's ruling. That would give him actually six months to pull a permit. Mr. Barr stated we simultaneously ask, before it happens, to be able to extend 21-41F beyond that two year period. We would like until March or April of 2006 to be the completion date; which would be a five month extension of 21-41F. For precedential standpoint, extensions of time under these types of

circumstances, in particular Hurricane Hugo, were granted by the Board for probably five or six years after Hugo, and allowed people to build within footprints.

Motion was made by Alice Paylor, seconded by Susan Middaugh, to overrule the Zoning Administrator’s decision and find that this house was not destroyed by intent or by neglect, and that a variance be granted to build back in accordance with Section 21-41F relative to the percentage of lot coverage, carried unanimously.

Motion was made by Alice Paylor, seconded by Susan Middaugh, to extend the time for them to complete the house that is under design right now until June 2006. There are extraordinary and exceptional conditions in that rebuilding of the property was delayed substantially because of legal issues due to insurance; this is not the homeowners’ decision to wait this long, that there was about a year’s delay before Dr. Weiss would be in a position to finish the plans; the conditions do not generally apply to other property because there is not any other property that has been destroyed by termites and under the particular conditions of this destruction, the application of this ordinance for this particular piece of property would effectively prohibit or unreasonably restrict the owner’s utilization of this property; the authorization of this variance will not be a substantial detriment to adjacent property or to the public good; and the character of the district will not be harmed by the granting of the variance; there is ample precedence for natural disasters for exceptions providing longer than two years for replacement, for example after Hurricane Hugo. Motion carried unanimously.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to nominate Thomas Hiers as chairman and Jay Keenan as vice chairman. Motion was made by Alice Paylor that the nominations be approved by acclamation, carried unanimously.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____

