

November 10, 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

Motion was made by Jimmy Hiers, seconded by Susan Middaugh, to approve the minutes of the August 11, 2005 meeting, carried unanimously.

George M. and Barbara McKie Inabinet, 2902 Jasper Blvd., remanded by Circuit Court to the Board of Zoning Appeals for rehearing of variance for dock length. Mr. Bill Barr represented the Inabinets. Mr. Barr stated that they came in front of the Board in 2004 asking for the continuance of a variance that was granted in January 2001. They did so after being informed by Mr. Prause, the Zoning Administrator, that pursuant to Town Code Section 21-68, they had had six months to apply for a permit from the time the variance was granted, and that the variance was now void. The Board ruled at the June 2004 meeting that the Inabinets had waived their right to build a dock.

Mr. Barr appealed the case to the Circuit Court. Mr. John Works was legal counsel for the Town. Judge Scarborough entered a ruling remanding this case back to the Board of Zoning Appeals to determine initially whether there was a written Order issued pursuant to the January 2001 proceedings. Mr. Prause stated that he was unaware of any Order being issued, but the question should be addressed to the Board, as it is the Board's responsibility to issue an Order. Mr. Barr stated whoever is in control of the records of the Town should be asked. He asked Town Clerk Ellen McQueeney if there was an Order pursuant to the January 2001 proceedings that would reflect that the requirement of the Code Section regarding an Order had been met. Ms. McQueeney stated she did not find one in the file. Mr. Barr stated that presuming that an Order was not issued, then essentially Judge Scarborough had found as a matter of fact that the provisions of Town Code Section 21-68 were tolled, meaning the six month period to apply for a permit does not begin until such time the order is issued as required by statute. Mr. Barr introduced into the record a copy of Judge Scarborough's Order which was filed on May 11, 2005, a copy of the tape of the proceedings of January 2001, and a transcription of the tape. Mr. Barr stated the tape quality was poor, as rattling papers were on top of the microphones during the proceedings.

Mr. Barr stated that in the 2001 proceedings, Mr. Inabinet informally presented that he was requesting a variance. The Board discussed the Felger exception, and it was finally resolved that he met the requirements of the Felger exception, and a variance was granted that evening. Mr. Barr stated that conspicuously absent in the record of appeal was any objection from the Zoning Administrator to the granting of the variance. Mr. Barr stated that the Court having found that the time limitations of Code Section 21-68 were tolled, in consistence with the Judge's ruling, the Board is faced with issuing an Order out of the proceedings of January 2001, and issue a rule of findings of fact and conclusions which would then be served on the Inabinets pursuant to the statute. The Inabinets would have under the old statute, six months to apply for a permit; or under the new statute, twelve months to apply for a permit.

Mr. Barr stated when the case was argued before Judge Scarborough, there was discussion that the Town would have the ability to file an appeal to the Board's ruling of January 2001, if the Town believes the Board acted improperly. The Town would have 30 days from the time the Board issues the written Order to appeal the decision. Mr. Barr stated that the record before the Board tonight is the record presented in January 2001, and requested for the Board to extend the variance. Chairman Hiers asked if any dock requirements adopted by Council since that time are relevant to the case. Mr. Barr stated Judge Scarborough addressed that issue, and it was stated on the record that there had been no changes to the dock ordinance that would have caused the Board to come to a different conclusion than it did in January 2001.

Chairman Hiers stated the Town has counsel, Mr. John Works, present tonight to advise the Board if it goes into executive session. Motion was made by Jay Keenan, seconded by Susan Middaugh, to go into executive session for Counsel to advise the Board on this matter, carried unanimously.

Mr. Barr stated he objected to an executive session with Mr. Works. He indicated that Mr. Works was the counsel directly involved with the litigation in this matter, and could influence the Board's decision based upon matters which are not part of the record. Chairman Hiers noted his objection for the record and there was no motion contrary to the previous motion; the Board went into executive session.

Motion was made by Jay Keenan, seconded by Jimmy Hiers, to come out of executive session, carried unanimously. Chairman Hiers stated that the Board received legal advice from counsel during executive session, and no votes were taken.

Motion was made by Susan Middaugh, seconded by Jay Keenan, to affirm the granting of the variance in 2001 based on the finding of fact that the written Order was never appropriately issued in 2001, carried unanimously.

SCE&G, 2061 Gull Drive, variance for fence and special exception use. Larry Duffy from SCE&G stated that the company needed to rebuild the existing substation and increase the size to meet the growing electrical needs of the Town. Mr. Duffy stated that he went before the Design Review Board, and the DRB referred the fencing height and material to the BZA. He stated that in order to meet current zoning requirements, the substation needs to be moved further back from the existing substation. The current facility will be demolished. The fence height and material variance is required because the Town ordinance does not allow the fence required by NESC codes. The requested fence is a six foot cyclone type fence, with a one-foot security material such as barbed wire along the top. Jay Keenan inquired if the substation could be placed in a vault. Mr. Duffy stated they had looked into different alternatives. Mr. Duffy stated they do not have the underground switch-gear and interrupting device vault substations in their service territory.

Bobby Cummings, 2014 Gull Drive, represented the neighborhood around the substation. The neighbors understand the importance of replacing the substation, and Mr. Duffy has been working closely with the neighbors. They want SCE&G and the Board to be as sensitive as possible to the neighborhood with fencing and vegetation to protect their view. He stated the neighbors would prefer a solid wood fence for visual and sound protection. Mr. Prause stated that the current zoning ordinance requires that there be at least 25% open space across the entire plane of the fence.

Motion was made by Jay Keenan, seconded by Susan Middaugh, to grant a special exception in a residential zoning designation for the new substation on this lot provided that the fence around the substation is made of wood and is no less than seven, up to eight feet tall, and that the open space requirement be waived to allow a solid wooden fence, and that the vegetation buffer be no less than 31 30-gallon wax myrtles in addition to the existing vegetation and that the buffer has to be maintained; and that as in Zoning Code 21-178, (1) that 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; and (4) The proposed use shall 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; And that there are extraordinary and exceptional conditions pertaining to this particular use of this particular property; these conditions do not generally apply to other properties in the vicinity; and because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of this property, and the authorization of this variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of this variance as long as those special stipulations are met, carried unanimously.

Sammy Rhodes, 1908 Middle Street, variance for special exception for historical structure used as accessory dwelling. Mr. Rhodes stated he wanted to put a second structure on a lot and use the current structure as an accessory dwelling. The second structure square footage is 3,800, and everything meets the new building requirements. The historical structure is 1,178 sq feet. Mr. Rhodes stated he will not take down the 22 inch oak tree, although it will be in close proximity to the house. Motion was made by Susan Middaugh, seconded by Jay Keenan, to grant the special exception for an historic structure to be used as an accessory dwelling, so a house can be built on the lot and this existing structure can be used as an accessory dwelling; and (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; and (4) The proposed use shall 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, carried unanimously.

Jack and Dorothy Burton, 920 Middle Street, variance to relocate secondary dwelling. The Burtons were represented by Mr. Bill Barr. On the application, the survey shows the main structure sits close to the road, with a swimming pool roughly in the middle of the lot, and a secondary structure that is in the back center of the lot. The structure on the rear of the property sits within 1.7 ft. of the rear property line. The basis of the application is to take the

structure on the rear of the property, and move it a little bit forward and over to the left property line, so the structure will be five feet off of the property line at one point, which would be in compliance with the setback. Because the lot is irregular in shape, it will be five ft off at one point, but only 3.6 ft at another point, which is not in compliance. The Burtons also want to elevate the structure to park underneath the structure. Mr. Burton stated the minimum turning radius to get a vehicle in and out of a garage is 25 feet, so they are just at 25 feet with their request.

Mr. Barr stated that Section 21-150 states that non-conforming use shall not be moved in whole or part to another location on the lot unless the movement or relocation eliminates or decreases the state of the extent of the non-conformity. Mr. Barr stated that Mr. Burton is taking the kitchen out of the dwelling; however, it will have a toilet. His intent is to raise it up and have the upper floor to use as a work-out room. They are reducing the non-conformity of the structure by moving it 5 feet from the property line on the backside, and reducing the non-conformity use by removing the kitchen, reducing the habitability of that particular structure. They do need a variance on part of the backside because the structure will be at 3.8 feet at the back corner.

Jimmy Hiers inquired about the height issue of the secondary structure. Mr. Burton stated the structure is already elevated at seven feet. It will need to be elevated another three feet to meet flood requirements.

Mr. Prause stated both buildings are currently principle buildings. The Board needs to determine at what point the rear structure would become an accessory structure, as different setbacks and rules apply. If removing the kitchen makes it an accessory structure, then it must meet the requirements in Section 21-138, including not to exceed 25% of the principal building's square footage. Mr. Burton stated the renovated new principal building will be approximately 2,400 sq ft, and it is currently 1,200 sq ft. The existing secondary structure is 200 sq ft.

Mr. Barr stated the previous owner of the property was granted by Circuit Court to renovate and improve the structure, however, a covenant to run with the land warranted that the rear dwelling would never be converted to a rental unit independent of the large main dwelling located on the premises.

Mr. Burton stated they are planning on elevating the house, however, they are not elevating it to park underneath it because it is so close to the street. They have proposed to build faux windows and doors on the principal building in order to create an illusion that there is living space because the house is only 10 ft off of property line. Rather than have a driveway there, he believed it would be adequate reason to request raising the rear structure to park underneath it.

Motion was made by Susan Middaugh, seconded by Jimmy Hiers, to grant the variance as requested allowing the current non-conforming structure to be moved to the left within five feet of the side property line as specified, to allow the requested setbacks from the rear as stated, and to allow the building to be elevated the three feet as required under the flood regulations which would bring the overall height to not to exceed 25 feet. The grounds are there are extraordinary and exceptional conditions pertaining to this piece of property. It is a small lot, and is a historical structure. The house and accessory structure are already located on the lot, and there are minimal alternatives to the plan; these conditions do not generally apply to other properties in the vicinity; in favor of granting the variance is that this is a non-conforming structure, and these variances will reduce the non-conformity. In that it

will reduce the intrusion of the non-conforming structure into the rear setback as part of the renovations, a non-conforming kitchen will be permanently eliminated, and it will no longer be a principal building. In addition, it will improve the streetscape, the purpose of the requested variances to allow parking under the structure in back, this will preclude the driveway in front of the house and parking under the house, and this will improve the streetscape consistent with the historic neighborhood. The property is already deed restricted so there can not be any rental use of the accessory structure. Because of the unique conditions of the existing historic structures and their locations on the lot, the strict application of the ordinance of this particular property would unreasonably restrict utilization of the property in that it would not be possible to park unless parking under the house; the authorization of a variance would not be a substantial detriment to adjacent property or the public good; this in fact will reduce the non-conformity of the existing building, and the character of the district will not be harmed by granting the variance, in fact it will help preserve the character of the district by preserving the streetscape. Motion was made by Jay Keenan, seconded by Jimmy Hiers, to amend the motion that a requirement of the condition of approval is that the kitchen be removed from this secondary dwelling unit so that it becomes an accessory structure and that in removing that kitchen, it transforms it into an accessory structure rather than a principal use dwelling on the property; and that there be no front yard driveway; and that there will be no parking under the existing historic house as represented. Amendment to motion and main motion passed unanimously.

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

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____