

March 2, 2006

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: Thom Hiers, Chairman
Jimmy Hiers
Susan Middaugh
Alice Paylor

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to approve the minutes of the January 12, 2006 meeting, carried unanimously.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to go into executive session to receive consultation from Attorney Trenholm Walker, carried unanimously.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to come out of executive session, carried unanimously. Chairman Hiers stated that advice was received by legal counsel, attorney Trenholm Walker. No motions or votes were taken.

McCutchen-Perry, LLC, 2555 Atlantic Avenue, variance to cut wax myrtles to 3-1/2 feet and variance for time extension. Motion was made by Jimmy Hiers, seconded by Alice Paylor, to hear the Manigault case concurrently with the McCutchen case, because the grounds for the variance requests are essentially the same, so the order of the agenda items will change, carried unanimously. Mr. McCutchen spoke and asked that the variance be granted based on the same grounds as in previous years.

Motion was made by Susan Middaugh, seconded by Jimmy Hiers, to grant the variances of both cases on the grounds that there are extraordinary and exceptional conditions pertaining to both of them. These are the only two homes that are essentially single story at ground level and since the ordinance was set up in 1995 the Board has made, on an annual basis, an exception for these two properties only. These conditions do not generally apply to other property in the vicinity and can not be taken as a precedent for any other front beach property. Because of the unusual conditions of being at ground level, the application of the ordinance as it now stands will disproportionately impact the utilization of the property. Property owners with two stories are allowed to cut down wax myrtles – previously to 7 feet but now to 5 feet – so that 3-1/2 feet for these two properties is proportional. The authorization of a variance will not be of 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 in these two cases, as the Board has granted for the last 11 years. Included in this, the Board will approve a one month extension of cutting the wax myrtles because the Board was not able to meet in February before the cutting deadline of March 1. The McCutchen-Perry, LLC variance granting carried by a vote of three, with Alice Paylor abstaining. The Manigault variance granting carried unanimously.

Twenty Niners LLC by Hussey, Gay, Bell & DeYoung, Inc, 2879 Marshall Blvd., (Lot 6) variance to construct hard erosion control structure. The Self family, who owns the property, was represented by attorney C.C. Harness, III and partner Jeff Griffith. Alice Paylor

stated that the Board has been advised by attorney Trenholm Walker that the Board does not have the authority to grant the relief requested because the use is specifically prohibited by ordinance. Mr. Harness stated he would address that during his presentation. Mr. Harness presented a slide presentation and submitted conditions why the variance should be granted.

Mr. Harness stated that the house is adjacent to a lot which is all but eroded away. They are requesting to build a rock revetment which would be behind the OCRM line. He stated that the short-term shoreline dynamics have created significant erosion, but eventually the shoreline will accrete over time and cover the revetment. From his perspective, this lot is between two existing erosion control structures that are being flanked, and unless they continue to expand their erosion control devices as a wing wall further back toward the road, they will continue to experience this kind of erosion.

Mr. Harness stated the problem is the ordinance states that no type of erosion control device can be built in that area, so they can not even build wing walls to protect their property. Mr. Harness argued that this area is unique and that there is no other property similarly situated. Mr. Harness contended the proposed structure will have no impact on the public beach. Mr. Harness argued that there are hard erosion control devices, including groins, revetments, and rocks, in other locations on the island. He contended rocks had been placed on the beach in front of a newly constructed house about 10 houses down the street which had been worked into a rock revetment. Mr. Harness claimed the adjacent property has a wall which was put in without permission. Mr. Harness also argued that on the creek side of Breach Inlet, there are rock revetments and walls. While they are not beach front properties, Mr. Harness argued they still fall within the same zone and said he does not understand how it would be any more harm on the front beach than on the back side.

Mr. Harness claimed the application of the ordinance would unreasonably restrict the property. If the proposed project is not built, he argued it will result in damage to lots five and seven. He contended no harm will result by putting it in place and ultimately, when it is covered by the beach sand, the revetment will not be seen. He asserted that to a certain extent the revetment would be protecting a public road. For these reasons he maintained the ordinance is unreasonably restrictive.

Mr. Harness argued the authorization will not be of substantial detriment to adjacent properties or public good, nor will it harm the character of the area.

Mr. Walker stated that as he explained to the Board, regardless of how compelling the Board may or may not feel the facts are, the Board has limited jurisdiction, as its authority is derived from the ordinances adopted by Town Council. Section 21-20 (D)2 states that erosion control structures are prohibited in the RS District. Section 21-179 (E) states that the Board of Zoning Appeals shall not grant variances for the use of land, building, or structure that are prohibited in specific districts.

Mr. Harness stated that 21-179 (C) states the Board of Zoning Appeals “may” not grant a variance...., and questioned if the word “may” allowed some latitude. Mr. Walker stated that Section 21-179 (e) states the Board of Zoning Appeals “shall” not grant variances...., and “shall” overrides “may.”

Mr. Harness questioned whether there was an opportunity at the staff level or Board level to allow for an erosion control device. Mr. Walker stated that in an RS district an erosion control device is not allowed. Mr. Harness stated that the law is difficult to deal with; it forces them to take steps to sue the Town.

Motion was made by Alice Paylor, seconded by Susan Middaugh, to send a message to Town Council to look at this issue, carried unanimously. Chairman Hiers will write a letter to Town Council.

Motion was made by Jimmy Hiers, seconded by Susan Middaugh, to deny this variance application because the Board does not have the authority to grant the relief requested because the use is specifically prohibited, carried unanimously.

Karen Ward by Neil Stevenson Architects, 1766 Pon Avenue, variances for impervious coverage and principal building square footage. Mr. Neil Stevenson, architect, presented and stated they are decreasing the property structure from 12 rental units to six condo units. The units will be upgraded, and the property improved. The square footage variance is no longer an issue; they are requesting a variance for impervious surfaces. The building currently is over the allowed 30% impervious lot coverage. They will replace 613 sq. ft. of impervious sidewalks with pervious material that has been approved by the Design Review Board. The same pervious material will be used for the surround of a new pool, which is 1,483 sq. ft. The new pool is 602 sq. ft. of impervious material. While there is an increase in hard surfaces, there is a net decrease in impervious surface using the new material. He stated that a hydrology report submitted by a civil engineer supported that the situation would not be worsened by this change.

Mr. Prause stated that they are over the 30% allowed impervious coverage area. They are removing 613 sq. ft. of sidewalk and are replacing it with pervious material; and are installing a pool of 602 sq. ft. The pool is specifically defined as impervious surface. It is a non-conforming use, and Section 21-150(C) states that a non-conforming use shall not be moved in whole or in part to another location on the lot unless the movement or relocation eliminates or decreases the extent of the nonconformity. Mr. Prause will make a technical determination of the pervious nature of the material.

Motion was made by Alice Paylor, seconded by Susan Middaugh, that the Board finds that no variance is required because there is a net decrease in the amount of impervious material with the changes, carried unanimously.

Pierre Manigault, 2429 Atlantic Avenue, variance to cut wax myrtles of 3-1/2 feet and variance for time extension. The request was heard in conjunction with Mr. McCutchen's variance request. The Manigault variance was unanimously granted.

Ralph Ogden and John Hoffman, 3013 Brownell Avenue, variance for rear setback. Mr. Ogden stated they are requesting a variance of five feet on the rear setback to install a 11'7" x 26' pool. Mr. Ogden stated if they can obtain the rear setback variance, they will replace the driveway and sidewalk with pervious material to meet the 30% lot coverage, as the property now has 38% lot coverage. He stated placing the pool in the rear will have the least impact on the neighbors. Landscape architect Kelly Messier stated the hardship is the setback was 20 feet when the house was built, and now the setback is 25 feet. There are several other homes on the block that have pools within the 25 foot setback. Pools are prohibited on the front yard. It is a small pool, and it can not be placed any closer to the house. Mr. Prause stated that Town Council amended the ordinance in two fairly significant ways with respect to accessory uses 1) pools are no longer allowed in front, and 2) increased setbacks. Mr. Ogden stated the hardship is if the pool is placed where it conforms with

setbacks, it would be on the side of the property which would be unattractive from the street. Ms. Messier studied placing the pool on the side, however, it would be placed where the driveway is, and they could not get into the garage. Ms. Messier stated in the old zoning ordinance, the setbacks referred to the pool itself, not the patio around it; the new zoning ordinance is being interpreted as the entire pool deck. Mr. Prause stated that Section 21-142 shows decks and patios as permitted accessory recreational uses, with or without a pool.

Motion was made by Susan Middaugh, seconded by Jimmy Hiers, to deny the requested variance on the findings that there are not unusual or exceptional conditions pertaining to this particular piece of property; that it is not an unusual situation on the island to not have the required room for a pool; that the conditions of the property in question would generally apply to other property in the vicinity as most of the other houses are similarly situated on that block; that it would be precedent setting and would undermine the intent and nature of the newly enacted zoning ordinance on setbacks because of those conditions, that a ruling denying the variance request would not effectively prohibit or unreasonably restrict utilization of the property since a pool could be built without a variance although perhaps not in the requested place, and that a variance, if granted, would be of substantial detriment to the character of the district, carried unanimously.

Blanchard Machinery, 1773 Atlantic Avenue and 1775 Atlantic Avenue, appeal of Zoning Official decision and variance for construction of fence. The Blanchards were represented by Mr. Bill Barr. The Blanchards are requesting a variance to install a fence around adjacent lots, of which one lot is vacant. Mr. Prause stated that fences are under accessory uses, and the fence has to be on the same lot as principal use. Mr. Barr stated Section 21-137(A) states that an accessory structure is a fence. Section 21-137(B) states that no accessory structure shall be permitted without the existence of a permitted principal building on the same lot. He stated that this is an unusual situation. Mr. Barr stated that the intent is to ultimately build a house on the vacant lot. Mr. Barr stated that there are particular circumstances surrounding this particular common ownership that would be different than any place on the island.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to grant the variance as there are extraordinary and exceptional conditions pertaining to this particular piece of property because two adjacent lots are owned by a common owner; these conditions do not generally apply to other property in the vicinity; and because of those conditions, the application of the ordinance concerning not being able to put a fence around it does effectively prohibit or unreasonably restrict the utilization of the property; the authorization of the 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 the variance. Susan Middaugh recused herself, as her house is built on a lot that is next to another vacant lot that she owns. Mr. Barr withdrew their request. No vote was taken.

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

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____