

August 10, 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: Jay Keenan, Vice Chairman
Jimmy Hiers
Alice Paylor

Jay Keenan stated Chairman Thom Hiers and Member Susan Middaugh were absent tonight. A quorum is present, and he stated that all three present members would need to vote for the variance in order for it to be approved. An opportunity was given to all applicants to defer this meeting, as the Board Rules state that an applicant can defer one time if there are only three Board members present. All applicants, except the Nellie Dawsey application, have asked to continue their case tonight.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to approve the minutes of the July 13, 2006 meeting, carried unanimously.

Felder, Freddy. 3035 Marshall Blvd., appeal of Zoning Administrator's decision and variance to repair erosion control device. Mr. Felder, owner of the Orangeburg Pecan Company, was represented by Attorney Cotton Harness. Mr. Harness stated that instead of looking at the legal issues of the authority of the Board; look at correcting what he perceives to be an error in the interpretation of the ordinance. He stated instead of putting up a seawall, they want to put down a rock revetment and slope back toward the house, which would have less impact on the beach. Last October, OCRM wanted Mr. Felder to refurbish the wall as it was; not replace/tear down. However, in April 2006 Bill Eiser with OCRM concluded that what they had was a combined erosion control structure that was a wall with a rock revetment behind it. Bill Eiser changed his opinion and concluded that under their regulations, that they would be able to issue a permit that would allow Mr. Felder to remove the wall and refurbish the rock revetment. Mr. Harness submitted a copy of that letter. Mr. Harness stated that from a structural standpoint, to put the wall back in the cost of steel sheets and construction is 4-5 times more than rock revetment and has more impact on the beach. The dilemma was should Mr. Felder build the wall or talk with the Town? Mr. Felder filed a lawsuit alleging that the Town does not have jurisdiction to regulate it. Mr. Felder noted that is not before the Board tonight. Mr. Harness stated they are asking for permission to put in a rock revetment, which is less public harm, provides the Felders with the protection they need, and gets rid of a wall in front of the house. He looked at the Town's ordinance, in particular Section 21-69B, and the Felder family would be allowed to repair a seawall and/or revetment provided permissions were obtained from OCRM and the Town. There is a contradiction between OCRM rules and the Town ordinances; the Town has a more strict view of the ordinance than OCRM regulation. He stated the Town should consider the contradiction with OCRM.

Mr. Prause stated that Mr. Felder has applied for an appeal from the action of the Zoning Official, and the alternative if the Board upholds his decision, is a variance. Mr. Prause stated his rationale for denying Mr. Felder's request is in a letter written to Mr. Felder dated May 3, 2006. Mr. Prause based his decision on Town Zoning Ordinance Section 21-69(F) which states that the damaged erosion control structure shall not be enlarged, strengthened beyond pre-damage condition or rebuilt during permitted repairs. Repairs shall

be made with materials similar to those of the existing erosion control structure. His letter further states that the cumulative affect of these provisions allow existing erosion control structures damaged less than 50% to be repaired in place to their pre-damaged condition. The plans submitted indicate an alteration of the existing vertical steel bulkhead resulting in its conversion to a sloped rip-rap revetment. Some additional concerns are that removal of the existing bulkhead to an approximate height of two feet above the existing beach may rend it damaged beyond 50% of what is there now. The amount and suitability of the “existing rubble and rip-rap” indicated behind the existing bulkhead is unknown. The suitability of breaking up the existing concrete slab to use as additional material for the proposed revetment is also questionable. It also appears from the drawings that the material buried behind the existing bulkhead does not represent an existing functioning erosion control device that may be repaired. The plans essentially represent the removal of one type of erosion control device and its replacement with a completely new and different type of erosion control device. Mr. Prause stated he could review it in the context of repairing the vertical steel bulkhead, but he has not received any plans in that regard, but from a visual on-site inspection, and from pictures presented tonight, it does not appear that it has been damaged more than 50% in that regard.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to go into executive session for legal briefing, carried unanimously.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to go into regular session. Vice Chairman Keenan stated that no votes were taken nor motions made during executive session.

Jimmy Hiers stated that what is proposed is an improvement over what is currently there; however, the Zoning Administrator ruling is correct. It is not a repair of an existing structure; it is essentially a demolition of an existing structure and complete rebuild of a structure.

Motion was made by Jimmy Hiers, seconded by Alice Paylor, to deny the variance and uphold the ruling by the Zoning Administrator for the reasons listed in Mr. Prause’s letter, carried unanimously. Jay Keenan stated this is a Town Council issue.

Dawsey, Nellie. 2850 Jasper Blvd., appeal for special exception for historical structure use as an accessory dwelling. Applicant Jose Biascochea has deferred this meeting due to the presence of only three board members.

Boehm, Paul. 412 Station 14, appeal of Zoning Administrator’s decision regarding floating dock. Mr. Boehm was represented by attorney Bill Barr. Mr. Barr stated Mr. Boehm moved his floating dock from the side of the fixed pier to the stream side of the fixed pier. He did get OCRM approval; however, the dock builder, Mr. Gobel of Intracoastal Transport, Inc., did not apply for a building permit. As a result, Mr. Prause reviewed the movement of the float and he determined that the movement of the floating dock from the side of the pier to stream side was an impediment to navigation and therefore instructed Mr. Boehm to move it. Mr. Barr stated they are asking the Board to overrule the Zoning Administrator’s decision. Mr. Prause read his letter dated May 25, 2006 written to Mr. Boehm. It stated that after reviewing all of the relevant material regarding his permit application, he is unable to approve the permit request, as the relocated floating dock represents an extension into the Cove Creek

channel and also extends to a distance that interferes with navigation in violation of Zoning Code section 21-75 B (1). This determination is the result of a review of the plans submitted with the application, various photographs of the existing field conditions and letters and petition in opposition from surrounding residents and dock owners, and the sole correspondence and photograph in support of the relocated floating dock. Mr. Prause showed photographs taken by Building Official Randy Robinson. Mr. Barr presented photos of the dock, along with photos of neighboring docks. Mr. Barr stated that based upon the photographs, that neither of the two statements made by Mr. Prause is true. Mr. Barr stated an aerial photograph is the only photo that takes away the parallax so the photo is not a distorted view. The aerial photograph shows the Coast Guard dock and Mr. Boehm's dock as the same distance into the creek. Mr. Barr submitted a letter from Mr. Peter Goble stating the depth at 48 feet from the front of his floating dock was five feet, and the depth at 90 feet from his floating dock was three feet, which indicates that the deepest part of the creek was between 48 and 90 feet from the front of Mr. Boehm's floating dock. Additional photos were exhibited by neighbors.

Vice Chairman Keenan asked for public comment. William Wood Jr., 1408 Thompson; Edward Andrews, 1318 Cove Ave.; Bobby Cummings, 1450 Thompson Avenue; Nat Ball, 1302 Cove; Robert Smith, 1456 Thompson; and Red Wood, 1454 Thompson; spoke in opposition to the variance. Vice Chairman Keenan stated that correspondence had been received from residents. Dr. John Cagle, 1420 Thompson; Robert Cummings of 1450 Thompson Avenue; and Elizabeth Wood of 1408 Thompson Avenue are against the variance. A petition with seven signatures in opposition was also presented to the Board. Mr. Bill Danielson of 2302 Atlantic Avenue wrote in favor of the variance.

Vice Chairman Keenan called for the motion to overrule the Zoning Administrator's decision. No motion being made, the Zoning Administrator's decision stands.

Cox, Mike and Amy. 1807 Atlantic Avenue, variance from RC-1 District setback. Mr. and Mrs. Cox were represented by attorney Bill Barr. Also present was Layne Nelson from Stephen Herlong & Associates, who is designing a new home for the Cox's; and Dr. Granger Osborne. Mr. Barr stated this property is immediately adjacent to the lighthouse. There are only two houses in the block. Dr. Osborne owns the other property immediately adjacent, with their house being further forward than the Cox's structure. Mr. Barr noted that the ordinance states that properties that abut the RC-1 district can not be any farther forward than the adjacent properties or the furthest property in the block. There is an unopened street portion of Bayonne in front of the property according to a 1926 plat of the property. So, essentially the RC-1 district is probably on the other side of Bayonne, which would be a fifty foot right of way. The Cox's are requesting to allow the Osborne's and Cox's to agree on a line out in front of their properties that would be behind the 30 ft setback line, and they would agree to build to that line. Dr. Osborne is in agreement. Mr. Prause stated in order for them to move closer up amongst the two of them, they do not need the BZA or the Town if there are no houses there. Mr. Barr stated that the Osborne's house is on the historical list so it can not be demolished, and the DRB has moved to place the Cox's house on the historical list. So, the Osborne's house will be the benchmark around which the Cox's build their home. Mr. Prause stated that one of the solutions that the Cox's are pursuing is adding on to the house or

demolishing the house, or removing portions of the historical house to bring it back to the 1200 sq ft limitation according to the ordinance in order to build another house on the lot. Mr. Barr stated the entire structure was under 1200 square feet. Mr. Barr asked if the Osborne's and Cox's would be allowed to agree to a setback line? Mr. Barr stated they are asking for a variance from the requirement that would allow the Cox's and the Osborne's to set a setback that would be inside the existing setbacks and keeping with the ordinance that does not allow another structure to be built forward of the other structure.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to approve for all the reasons stated in the application; there are extraordinary and exceptional conditions pertaining to this piece of property; the way it is built now there is not enough usable space; only pertains to that one piece of property; the conditions do not generally apply to other property in the vicinity; the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property because the buildable footprint would be a very small area and would unreasonably restrict the use of the property; the authorization of the variance will not be of substantial detriment to adjacent property, as Dr. Osborne is in agreement with the request, and the character of the district will not be harmed, as all of the other houses are already further out toward the ocean, carried unanimously.

There being no further business to come before the Board, motion was made by Alice Paylor, seconded by Jimmy Hiers, to adjourn, carried unanimously.

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____