

July 12, 2007

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, Chairman
Brian Hellman
Jimmy Hiers
Susan Middaugh
Alice Paylor
Betsy Richardson
Bachman Smith

Motion was made by Bachman Smith, seconded by Betsy Richardson, to approve the June 14, 2007 minutes, carried unanimously. All applicants and participants took the oath of office.

Mark Tanenbaum, 406 Station 12. Variance for dock to extend to lot; place roof over existing dock. Trenholm Walker, attorney for the Board, stated that the applicant seeks an appeal from the Zoning Administrator's decision as well as a request for a variance. Mr. Walker has discussed the application with Mr. Tanenbaum's attorney, Bill Barr, and the matter involves Town property and an easement of the Town that needs to be acted on by Town Council. Mr. Walker also stated that there is on-going discussion which could mean there would be no need for acting on the application. He recommended the Board to continue this for another month to allow discussion to occur with Town Council, hopefully resulting in a solution that will obviate the need to hear this appeal and variance request. Zoning Administrator Prause noted he does not have a problem with this recommendation as long as the case is heard within a reasonable amount of time. Motion was made by Alice Paylor, seconded by Jimmy Hiers, to continue this case on the Board's motion, carried unanimously.

Joseph P. Riley, Jr., Lots 242 and 243 on Jasper Boulevard. Variance to subdivide the property into a one buildable lot and one substandard lot. Mr. Riley was represented by attorney Bill Barr. Zoning Administrator Kent Prause reported the history of the case: It came before the Board of Zoning Appeals in April 2007, but after testimony and discussion, the motion was to be a denial, therefore the application was withdrawn by the attorney. Mr. Prause reminded the Board that the Board rules state an applicant must wait six months to appear before the Board again. Mr. Prause stated that Mr. Barr has asserted that this is a separate application because at that time the request was for two non-conforming lots, neither of which met minimum requirement one-half acre size lots. But because the plat has been revised to create at least one legal size one-half acre lot, and one substandard lot, Mr. Barr's position was that it was a new application not subject to the six month waiting period. Chairman Keenan stated he would ask Mr. Barr to proceed with his presentation for the Board to see where the application stands. First, he asked Mr. Prause to present his opinion. Mr. Prause stated his position is essentially the same as the last meeting. Basically, he did not see

a hardship. The property is a legal size lot at six-tenths of an acre, and the permitted uses for the property are single family residence and a private recreational dock. They have a private recreational dock, and nothing has been presented that would appear to prohibit the construction of a residence on the lot. So, in that regard it is like any other lot on Sullivan's

Island that can have a dock or a house. The approval of this application would allow them to create a lot with the existing dock that is separate from the other lot; and they could sell the lot that would essentially have a house and a dock also. There are other property owners on the island who would probably like to do this also. Mr. Prause stated he does not see there is a hardship that exists according to the lawful standards. Mr. Prause noted that information has been presented concerning the personal circumstances of the property owners, but the standards in the State Code and the local Zoning Ordinance relate to the conditions of the property and not the circumstances of property owners, and he quoted the definition of “unnecessary hardship” from the Black’s Law Dictionary: as considered, sufficient to establish basis for granting zoning variance, is shown by establishing that physical characteristics of property are such that it could not be used for any permitted purpose: property could be so used only at prohibitive expense; or that characteristics of area are such that property has no value or any distress value for any permitted purpose. Mr. Prause stated that these do not apply to this particular situation. In addition, further case law from the case notes of the 2002 Cumulative Supplement Code of Laws of South Carolina with respect to standards, the Board has to follow statutory standards. In exercising its discretion, the Board of Zoning Appeals is not left free to make any determination whatever appeals to its sense of justice. It must abide by and comply with the standard prescribed by the local ordinance and zoning statutes. Mr. Prause stated that the submitted argument does not fit that aspect. Mr. Prause noted that this has been before the Planning Commission for subdivision, and it was turned down. The Planning Commission did not have the authority to approve it because they did not meet the minimum requirements that apply to subdivide the property.

Bachman Smith inquired if in their last presentation, if Mr. Prause was satisfied that the property owner chose to abandon the lot line, or did the assessor’s office simply abandon the lot line for tax purposes because there was the same owner for both lots. Mr. Prause responded that each subsequent plat recording is clear that the lot lines were ultimately abandoned. It went from three lots to two lots to one lot, with a piece of a lot added on to it. The plats were prepared by the owner and filed of record by the owner.

Alice Paylor inquired if they are trying to have one half-acre lot and then a so-called dock lot. Mr. Prause responded that according to the submitted plat, Lot A is exactly one-half acre at 21,764 sq ft of high land to the critical line; Lot B which is known as the dock lot, is 1,058 sq ft, or .024 acre of highland.

Chairman Keenan asked attorney Bill Barr to present. Mr. Barr introduced attorney Frances Cantwell, also representing Mr. Riley; Mr. Riley’s sister Suzanne, and her husband, Keith. Mr. Barr stated there is much history regarding this lot that is pertinent to the application. This property is now carried on the tax book as a single lot with a single tax map number; however, it is referred to as Lot 242 and Lot 243. Mr. Riley, Sr. acquired title to the land in the 1950’s. In 1971 the Town caused these lots to be designated with numbered lots, which were consistent with lot numbers coming up from the west on Jasper Boulevard. The purpose of this plat was more to establish the property lines between the adjacent properties. In 1976, Mr. Riley caused the lot to be treated as a single parcel for tax purposes. It has been

in the family since 1957 as a dock lot; and the family has consistently used that property as a dock, and never intended to build on it. The family wants to continue that tradition of the dock, and with the land becoming extremely valuable, it does not warrant being able to continue using it as a dock. Essentially, first this case went before the Planning Commission, to ask to be restored to the configuration of Lot 242 and 243. The Planning Commission treated it as a subdivision, and they did not have the authority to grant a variance, as stated earlier.

When the application was presented in April, Mr. Barr presented a survey that showed a .045 acre lot and about a 10-15 foot strip leading to the dock. Since that time, the surveyor tried to determine if a corridor to the lot with the dock could be created, and still have a lot to meet the Town of Sullivan's Island minimum lot requirements. With the proposed configuration and the exceptional conditions pertaining to this particular piece of property, Mr. Barr challenged the Board to find a property on the island that fits within the criteria of that because this particular application, where you could create a corridor to a dock and still end up with one-half acre lot, meets all the Sullivan's Island criteria. Again, they do not generally apply to properties in the vicinity. The closest one is Bert Wurthmann's property; Lots 241 and 240. Lot 241 is just marsh; Lot 240 is a tiny strip of land with a dock. Mr. Barr stated it could not really be called a precedent, but there are other dock lots on the island. He submitted that the circumstances of this property would basically prohibit them from utilizing the property as it historically has been used, and that is solely for a dock. He stated the authorization of the variance will not cause a substantial detriment to the adjacent property or the public good. He submitted that the size of the property accommodates the creation of a dock lot, a buildable lot which is effectively equal to and meets all other criteria of the Sullivan's Island ordinance. No substantial detriment will result to either property owners in the area; and no density issues will be created. There will not be any impact on the Water and Sewer system because this will always be one house sitting on the lot. This is not an application to subdivide this property into two buildable lots, thereby increasing density. This is only a situation where the Riley family wants to continue the tradition of their father's property and continue it as a dock. The one-half acre lot is basically what the ordinance is intended to accommodate.

Chairman Keenan requested any questions from the Board members. Susan Middaugh inquired what is the latest and official survey. Mr. Barr responded that it is the survey when Mr. Riley acquired a 50-foot strip from Buzzy Newton. Ms. Middaugh added that is the 1984 version. Ms. Middaugh then distributed an Ordinance that has passed First Reading by Town Council. It is a formal definition of a lot or lot of record. The ordinance defines a lot based on the most recent legally recorded plat filed and/or approved by the Town of Sullivan's Island or as described on the most recent legally recorded deed executed and delivered by the Town of Sullivan's Island, both or either as filed in the Office of Mesne Conveyance. Mr. Barr did not disagree that the 1984 version was the most recent plat of record. Bachman Smith stated the issue before the Board is whether or not a hardship within the criteria of the ordinance is met to justify the proposed new plat. Mr. Smith inquired if the plats, including the most recent one, were required to be approved by the Town of Sullivan's Island. Mr. Barr stated he believed that they were. Mr. Barr stated for the record that the only way that they could have acquired that 50 feet would have been to have it added to the existing parcel, because they would not have allowed the 50 foot strip as a separate platted lot

because it did not meet the one-half acre lot size. There is a true abandonment of property

line on the 1984 plat because its says “property line to be abandoned,” unlike the 1976 plat, which says “old lot line.” Mr. Barr stated that when the case was presented to the Planning Commission, they asked that Lot 242 be configured in the fashion shown on the 1971 survey and Lot 243 be configured as it appears on the 1971 survey plus the 50 foot strip. He added they told the Planning Commission that they would place a restrictive covenant on Lot 242 to never build on it. Mr. Barr stated the subdivision regulations on the Island are to prevent minimum buildable lot size, and that it is trying to prevent one-half acre lots being subdivided into one-fourth acre lots, with two houses being built. This is not the case with their application. This is merely a situation to give this family a path to the dock so they can continue utilizing the dock as they have in the past. The Town will have no decrease in tax base, a one-half acre lot, a house on the lot, and all the value that would have been associated with this had this request not been granted. Mr. Barr stated that if the variance was granted and the one-half acre lot was sold, the owner could place a dock on it, but there could not be two docks out there right now. The dock lot is approximately a five-foot wide pathway to get from Jasper Boulevard to the dock. As far as the dock on the one-half acre lot, Mr. Barr stated the location would be a matter of contract negotiation with whoever buys the lot, OCRM regulations, and the Town’s permitting process. After discussion of parking issues, Alice Paylor inquired as discussed at the April meeting, if the Riley’s could sell the entire property and keep an easement going across it, and keep ownership of the dock. Bachman Smith stated the drawback to that option is that it prohibits the owner of the new house lot from being able to build a dock. Mr. Barr added that given the size of the Riley family, there are ramifications with joint dock ownership they would like to avoid if possible.

Bachman Smith inquired from attorney Trenholm Walker if the issue before the Board is simply the determination of whether or not the criteria for hardship have been met. Mr. Walker stated the determination of the Board is whether the four point standards for a variance have been met. And if so, it is in the Board’s legal right to grant a variance. Mr. Smith stated that while the history of this property is not grounds for a hardship, the fact that a property owner at one time owned three or four small lots and combined them over the years is grounds for hardship.

Bachman Smith stated the Riley’s have met a hardship test that he could live with, and made a **motion for approval of the variance, seconded by Alice Paylor.**

Susan Middaugh stated she was sympathetic with the situation, but did not see a hardship based on the standards noted by Kent Prause. The owners have full use of their lot; they chose to combine lots for financial reasons and have benefited from that decision for years. Now, essentially for financial reasons, they want to subdivide the lot to sell one lot and keep use of the dock lot. In the Zoning Ordinance, page 78, Item D says the fact that property may be utilized more profitably if a variance were granted shall not be grounds for granting a variance. Dr. Middaugh distributed information provided to Board members a few years ago regarding hardships. It states that property value/financial hardship does not warrant relaxation; a self-created hardship does not warrant relaxation. She submitted that especially with the new definition of lot by Town Council, that the history of the lot and historic use can not by itself constitute hardship because the family can continue to use the dock. There is

nothing from keeping them continuing their historic use on it. She continued that there is nothing particularly extraordinary or exceptional about the property. There are lots of half-acre or slightly over half-acre lots on the island; several along the deep water sections that currently have houses and docks. It would be a substantial detriment. Dr. Middaugh was concerned about the creation of a new zoning entity called a dock lot. The granting of this variance would set a precedent that any residentially zoned lot, if it is larger than one-half acre, could be subdivided into a half-acre lot that could be sold for a house, while retaining the smaller portion for an ancillary use.

Chairman Keenan stated that he and his family have spent much time on the property. He stated it is an unusual case not only because of the history of it, but the configuration of it and what has happened in the past on the lot. Mr. Keenan stated it comes close to all four reasons to grant a variance. However, this would be creating an unbuildable lot with this “dock lot” which does not have a definition in the Code. Mr. Barr agreed, but stated that is what sets the property apart from others.

Jimmy Hiers stated that he was also sympathetic to the applicant, and would like to support it, but does not believe the hardship test has been met. The fact that it is carried on the tax records as two lots could be a mitigating factor; however, there are many other lots such as the large lots between Middle and Jasper Streets, that could have been carried as two lots. He asked for clarification from Mr. Prause. Mr. Prause agreed that there are other lots on the island that are multiple lots of record that have one tax map number. Examples given were Hal Currey’s house and Nat Ball’s house.

Brian Hellman stated that in looking at the historic fabric of the lots, there were multiple small lots that were combined into one lot through the years, but the historic fabric of that part of the island is a significant number of smaller lots. He stated it is important to keep that historic fabric, and do what is possible to maintain it.

Betsy Richardson stated the granting of the variance would be like opening Pandora’s box. There are multiple lots in the same situation. While she also was sympathetic to the situation, the fact that Town Council has passed first reading regarding the definition of a lot, and that there is no official designation of a dock lot by Town Council, are factors that she would not be able to approve the variance.

Brian Hellman inquired if the Ordinance regarding lot definition was given First Reading on June 19, and the BZA application was submitted on June 5, would the pending ordinance be in effect. Attorney Trenholm Walker responded that not unless Town Council had invoked the pending ordinance doctrine in ordinance or resolution; and it does not have much to do with the application. Susan Middaugh added that she earlier distributed the ordinance to the Board to show the intent that this has been recognized as a problem by the Planning Commission, and is supported by Town Council.

Bachman Smith stated that he wanted to make clear he did not use the term “dock lot.” He stated there are two lots – one is buildable and one is not buildable.

Call for the question:

Chairman Keenan asked Bachman Smith to restate his motion, including findings.

Restatement of motion by Bachman Smith: I move for approval of the application on the basis that I believe that the facts show that there are extraordinary and exceptional conditions pertaining to the particular piece of property, that those conditions do not generally apply to other properties in the vicinity, because of these conditions the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property, and the authorization of a variance will not be of substantial detriment to the adjacent property or to the public good, and the character of the district will not be harmed by the granting of this variance in question. The findings that I think meet the test relate to the fact that the property was acquired as multiple lots and over the years there has been some adjustment of the property lines but it is known as Lots 242 and 243. I don't think you have similar lots in the neighborhood that would be adverse to this, and as a matter of fact, a couple of lots down from this going toward the late Bert Wurthmann property, there is a small lot that doesn't meet the standards that was sold separately a couple of years ago. I think that the language in the third criteria that we need to look at – not effectively prohibit, but the “or” side of it – unreasonably restrict the utilization of the property. You've got a property that's over six-tenths of an acre and there have been numerous examples on this island where larger lots, particularly I can think of around the bunkers in the Marshall Reservation, where substandard lots have been created or at least divided so that there were easements across the back of the lots to provide ingress and egress from the existing bunker use as a home, and that I finally don't see how this will be detrimental to the adjacent property or to the public good.

Motion was carried by a hand-vote of 4-3, with the Chairman breaking the tie vote. (favor: Brian Hellman, Jay Keenan, Alice Paylor, Bachman Smith; opposed: Jimmy Hiers, Susan Middaugh, Betsy Richardson).

Beau Clowney, 1856 Central Avenue. Special exception request for historic structure used as an accessory dwelling unit. Zoning Administrator Prause stated this property received conceptual approval from the Design Review Board. He noted that previously some members of the Board of Zoning Appeals had been reluctant to grant a special exception based only on a conceptual approval from DRB. This application has outlined how the four requirements for a special exception have been met. Justin Ferrick with Beau Clowney Design represented Mr. Clowney. He gave an overview of the application. The historic cottage is 932 square feet, and sits alone, flanked by oak trees. The remainder of the lot is barren – it does not have any urban interaction with the street, and the Design Review Board enthusiastically approved the very detailed, although free-hand, set of elevation plans. Essentially, the house design is a very modest house, meeting all the requirements to work in tandem with the existing historic house.

Mr. Prause stated the application quotes Zoning Code 21-140 and the Board needs to determine if the application meets standard 21-178. Susan Middaugh stated that the Board needs an elevation plan showing both houses on the lot together with driveway placement, parking placement, and planting possibilities although she noted those are usually not in place

at the conceptual level. Chairman Keenan addressed Councilman O'Neil in the audience, informing him that the ordinance is not clear as to which Board the applicant should present the application first. Mr. Prause stated the specific criteria the Design Review Board considers are in 21-140; to decide if the house meets the flood elevation requirement, if the house can be added on to; or if another building can be built on the site. Once they make that determination, they also decide if certain other aspects are met, such as the height, scale, mass and placement of the second structure appropriate to and compatible with the lot. However, the Board of Zoning Appeals considers Section 21-178; mainly under C, 1-4. Attorney Trenholm Walker stated that because this situation is unusual, Town Council built in a double approval. The problem is that the double approval is not sequenced in a way to make sense for the designer or owner. The Board could approve it with conditions.

Alice Paylor inquired about the four criteria: Have adequate provisions for items such as setbacks, fences, and buffer of planting strips to protect the adjacent properties from possible adverse influence on the proposed use been made; does the plan hinder or endanger vehicular or pedestrian traffic? Have adequate provisions for off-street and loading areas and for entrances and exits been made? Is the proposed use compatible with existing use to the extent that such use will not adversely affect the level of property values, general character or general welfare of the nearby area? Mr. Ferrick responded that the property is a large lot, and the setbacks are clearly marked on the plan. There is plenty of room for fences and plantings; and the house is at a substantial distance from the neighbor and the existing cottage. The property is bound by two streets, and there is enough room to maneuver vehicles in several different ways to make it work. It does not endanger or hinder vehicular or pedestrian traffic. It will not adversely affect the level of property values, general character or general welfare of the area. It will actually promote it; the neighbors were enthusiastic that it would no longer be an undefined field and that it would be a great addition to the neighborhood.

Motion was made by Alice Paylor, seconded by Brian Hellman, for approval of the special exception based on Section 21-178, that the Board finds all items under Item C have been met, carried unanimously.

Jeff Harris, 1801 I'on Avenue. Special exception request for historic structure used as an accessory dwelling unit. Mr. Justin Ferrick from Beau Clowney Design represented Mr. Harris. Mr. Prause stated currently they have a non-conforming use because they have two buildings on one lot. They received approval from the Design Review Board to tear one building down, but do not want to remove the structure until the special exception is granted. The historic building is the larger of the two buildings including porches, so it is designated as conforming use, and the other building is non-conforming use. Under the current situation with the other building being the non-conforming use, if they tear it down they can not build it back. If the smaller building on the lot were not historic, they would not even have this opportunity to build another house on the lot. They have received conceptual approval from the Design Review Board for the new house. Mr. Ferrick stated there essentially are two houses that never functioned together in any true sense on the property. The historic cottage is the conforming property, and is 1,074 square feet after a modest renovation. The renovation of the cottage restored the cottage under the 50% rule, with the intent that this would be part of a master plan to design a larger house upon obtaining zoning approval, and make the two structures work together to enhance the neighborhood and

the property itself. As far as traffic patterns and setbacks, this is again a large lot; it is naturally positioned for another structure to be on the property. All the setbacks have been met, there is plenty of room for landscaping and plantings. The parking will not be an issue as far as how the property is accessed on I'on Avenue. Mr. Prause noted a concern that the available public parking on the street not be disrupted. Mr. Ferrick stated there is discussion about getting a curb-cut on Station 18. Because this is a hot-spot for beach parking, the off-street parking is still being discussed and planned with the property access.

Jimmy Hiers noted that on this approval, and the previous special exception granted tonight, that there is no property line dispute.

Motion was made by Alice Paylor, seconded by Bachman Smith, to approve the special exception request because it meets all the requirements of Section 21-178 (C) 1-4. Motion carried unanimously.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to adjourn, carried unanimously.

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____