

August 9, 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
Jimmy Hiers
Susan Middaugh
Alice Paylor
Betsy Richardson
Bachman Smith

Motion was made by Alice Paylor, seconded by Betsy Richardson, to approve the July 12, 2007 minutes, as amended, carried unanimously. All applicants and participants took the oath.

Mark Tanenbaum, 406 Station 12. Chairman Keenan noted that Mr. Tanenbaum's application is continued, as it may be resolved without the need for a variance.

Nathan Bluestein and B&E Realty, LLC, 1402 Middle Street. Variance for side setback. Attorney Mark Tanenbaum represented Mr. Bluestein. Chairman Keenan asked Zoning Administrator Prause to present his opinion. Mr. Prause stated the application is for a 5'4" encroachment into the required 9'6" sideyard setback on lot located at 1402 Middle Street for a proposed new porch addition to the existing residence. Mr. Prause stated that Town Council changed the sideyard setbacks with the new adoption of the Chapter 21 Zoning Ordinance. It was 10 feet with a combined width of 30 feet, with relief on the Station side if it was a corner lot. It is now 15 feet with a combined width of 40 feet. However, Council also recognized the new setback would automatically render a lot of homes that had previously met the minimum 10 foot setback nonconforming. So, they included a provision in the new Chapter 21 adoption of the code revision under 21-151(B)(2) when a structure is nonconforming because it encroaches into a required side or rear yard setback, this provision shall be interpreted as allowing other portions of the structure to be expanded out to the extent of the existing encroachment, as long as there is no greater encroachment into a required setback. Mr. Prause added that that effectively did for this property is establish the existing nonconforming setback of 9'6" as shown on the site plan as the new sideyard setback for the entire lot line. The lot line as mentioned in the application is somewhat oddly configured, and Mr. Prause reviewed the configuration with the Board. Mr. Prause stated it needs to be determined if there is a hardship. He stated it obviously does not prohibit its use; it is a single family residence and according to Charleston County tax records office, it was built initially in 1955 and it has been used for 42 years in its current configuration with no porch at all. Mr. Prause stated it is not a historic property; it is basically a two-story element with a one-story addition to the side. The Board needs to determine if whether the inability to put this porch on this house would restrict the utilization of the property to such an extent that relaxation of setback would be warranted. It is only a 4'2" encroachment into that setback beyond the existing nonconforming setback which would be de minimis. However, because it is de minimis, it could easily be fixed, and a porch could be put on the house that would meet the setback that would not depreciatively compromise the utilization of the property. Mr. Prause stated it is rare to find a 90 degree angle on all four lot corners, and it is rare to find equally that houses, even on ones that are that way, are set out so that their building lines are exactly parallel. Bachman Smith noted that this lot probably had a greater deviation from a parallel

line than others in the neighborhood. Mr. Prause agreed, but added the houses are not laid out exactly parallel and they do not meet the setback; and when you extend that lot line it is going to get closer to side lot line. He noted that as mentioned earlier, Council took that under consideration by providing a special provision to address those situations where they do not meet that requirement, but anything greater than that would require a variance.

Attorney Mark Tanenbaum presented for the applicants. He stated the neighbor has been notified of this project and has no objections, and the porch would enhance the community. Mr. Tanenbaum stated in the past the house has been used as two living units, and that he is authorized to tell the Board that the separate living unit is being given up. There are other changes being made to the house, all within the setbacks, and it will go before the Design Review Board. Building Official Robinson reviewed the floor plan with the Board.

After discussion, motion was made by Alice Paylor, seconded by Jimmy Hiers, to approve the variance for a single story porch because the lot configuration is unusual, and the existing structure's placement renders putting a usable porch on that impossible to achieve; the conditions do not generally apply to other property in the vicinity; all of the other lots do not have this odd configuration; plus with the house the way it is already configured; if it had been slanted a porch could be added; the hardship is that you could not get the front porch to give you enough room to do it; and there is no impact on the neighbors; the majority of houses on Sullivan's Island have porches, and while it does not effectively prohibit the use of the property, in consideration of the ambiance of the island, to have a house without a porch is not being part of the island; the hardship is a very unusually angled corner which is a very unusual factor.

Discussion: Susan Middaugh stated that she could not agree that the porch would be unusable without the variance. They could build a very functional porch on that house without encroaching. Chairman Keenan noted that this property is going from a multi-family dwelling to a single-family dwelling.

Call for the question: Motion passed 5-1, with Susan Middaugh casting the opposing vote.

Taylor, Allison, 3316 Jasper Boulevard. Variance for black aluminum fence. Chairman Keenan asked for comments from Zoning Administrator Prause. Mr. Prause stated the application is for a black aluminum fence, and Section 21-139 (B) 1-6 specifies the fence requirements to be made of wood or a wood-like material, and the applicant is requesting to use a different material. It appears that none of the hardship requirements were met in this application.

Chairman Keenan explained to Ms. Taylor that in order for the Board to grant a variance, all four items of the hardship test have to be agreed to by the Board. Ms. Taylor stated that wood was not recommended by her contractor due to the property being surrounded by water, and it would deteriorate rapidly. She stated the wood columns have already been installed; those meet the requirements. David Taylor stated what they are trying to do can not be done with wood.

Motion was made by Betsy Richardson, seconded by Susan Middaugh, to deny this request because it does not meet the hardship test and it is the Board's responsibility to uphold the ordinances that Council has written, carried unanimously.

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

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____