

September 13, 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
Bachman Smith

The minutes of the August meeting were deferred until the next meeting.

Chairman Keenan administered the oath to all applicants and participants.

Gerald Scheer, 425 Station 22. Variance for extension of building permit. Chairman Keenan asked Zoning Administrator Prause to present. Mr. Prause stated the applicant's building permit was issued under the old Chapter 21 ordinance, and the applicant is applying for a variance under the new Chapter 21, Section 7, which gives a two year time limitation on permits issued. The applicant will not be able to complete construction in that time period, which expires in January 2008. The construction time has taken longer due to incorrect elevations, and making adjustments in the architectural elements to meet the height requirement and receive approval from the Design Review Board. Mr. Prause offered items to the Board for their consideration: 1) Only two of the four hardship requirements are completed on the application; 2) Even though the ordinance states a permit is good for two years from the time it is issued to complete the construction, the Vested Rights Acts became effective July 1, 2005. It appears if the applicant met the definition of a site specific development plan that was subject to a significant affirmative government act, then the applicant is vested for two years, and entitled to 5 one year extensions unless an ordinance change prohibits what they wanted to do; which it has. In that case, the previous vested rights provision under case law as explained in the comprehensive planning guide provides that a vested right on property usually was found to exist only when the property owner prior to a zoning change had obtained a validly issued building permit; and in reliance on the permit had in good faith made substantial expenditures or incurred substantial obligations. The applicant has a good case that he has done these things.

Mr. Scheer was represented by attorney Bill Barr. Mr. Barr stated that Mr. Scheer's property was caught in the crunch of when they passed the historical preservation ordinance and was not able to tear down the house as he planned to do, as it was on the historical list. They applied to the Design Review Board and received a certificate of appropriateness to use the smaller house as an accessory structure. Mr. Barr stated that given all circumstances of the vested rights statute, Mr. Scheer should be entitled to complete construction in accordance with his original building permit.

Motion was made by Alice Paylor, seconded by Susan Middaugh, to grant the appeal and let him have the extension under the vested rights act.

During discussion, Mr. Prause stated the problem is that the Town ordinance is in conflict with the vested rights provision and perhaps even the older case law that was in place before the vested rights act was adopted. Bill Barr stated that he agrees that the vested right statute conflicts with the Town ordinances, but essentially when the vested right statute was passed, his understanding is that it placed the burden on the Town to create their own vested rights statutes and if they didn't create their own vested rights statutes, then they were bound by the State statute.

Call for the question: Motion passed unanimously.

Vincent Graham, 1401 Middle Street. Appeal Zoning Official's denial of application to permit addition. Chairman Keenan asked Zoning Administrator Kent Prause to present. Mr. Prause stated this building permit is also under the old zoning ordinance. The applicant received approval from the Design Review Board for some modifications, and variances from this Board such as the side yard setback and square footage of the three-story tower element exceeding the 400 square feet. Mr. Prause added that at the time the Design Review Board approved the plan, the submitted drawing showed an elevation with no dimensions on it. Mr. Prause mentioned at the time that they had to meet all of the zoning standards the DRB did not have the ability to relax, although height was probably not specifically stated. The applicant is appealing the Zoning Administrator's decision because their interpretation is the height limitation should not apply to their requested railing on top of the structure. Their rationale was that the Town had applied an interpretation that had allowed some roof decks to have picket railings around them that exceeded the 38 feet height limitation. Because the structure is a fairly significant, and the tower element is located within 10 feet of the neighbor's side lot line, the Zoning Administrator did not feel comfortable applying the same interpretation that would be the same as a wood picket railing around a roof deck. This railing would go around the entire perimeter of both portions of the building.

Attorney Bill Barr introduced Andrew Gould, architect of the building. The plans were reviewed with the Board. Mr. Barr stated this is the only castle on the island, and it is a unique piece of property. The rail system was designed to keep people from falling over the side and in keeping with the remainder of the structure. Mr. Prause stated that as it is currently designed, there is usable space on the ground floor, three additional floors above, and a very usable space on top of the building. It is a huge structure. In the past when residents had roof decks within the 38 feet height, they were allowed to put just a railing around it that was over 38 feet high. A railing that covered the whole entire top of the house has never been allowed. Mr. Barr stated that the applicant is asking, at least for purposes of the old Zoning Code, that the Board rule that the entire railing system is not included in the section 21-28 height limitation.

Motion was made by Susan Middaugh, seconded by Bachman Smith, that the Board overrule the Zoning Administrator's denial on the grounds that this is a permit issued under the old ordinance and what they are requesting does constitute a rail system; and also that this will not apply to buildings permitted under the new ordinance; and it is a one of a kind landmark structure on the island, carried unanimously.

Ellen McQueeney

Approved:

Date: _____