

December 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
Betsy Richardson
Bachman Smith

Motion was made by Bachman Smith, seconded by Jimmy Hiers, to approve the November 8, 2007 minutes, carried unanimously.

Chairman Keenan administered the oath to all applicants and participants.

Chairman Keenan stated the first two requests from Pierre Manigault and Thomas McCutchen were regarding the same matter; therefore, they would be considered simultaneously. He added these are variances requested each year. Susan Middaugh stated that the grounds remain the same from year to year.

Manigault, Pierre. 2429 Atlantic Avenue and
McCutchen, Thomas. 2525 Atlantic Avenue.
Variance to cut wax myrtles to 3-1/2 feet.

Motion was made by Bachman Smith, seconded by Jimmy Hiers, to approve the application on the findings of previous years that both properties have extraordinary and exceptional conditions. 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 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 12 years, carried unanimously.

Brown, Heidi. 405 Station 22. Special exception for historic structure to be used as accessory dwelling. Chairman Keenan asked Zoning Administrator Kent Prause to present. Mr. Prause gave a history of the property. When the historic district and Design Review Board were initially begun, the applicant was told her property was not on the historic list because their lot line dimension was listed as the street address for the house instead of the actual address. However, it is actually a landmark house, and it is on the historic list and map.

interjected the lawsuit was basically dropped when the ordinance was modified to allow the 1200 square feet and accessory structure). Mr. Prause stated the applicant came before the Design Review Board in order to reduce the size of the house, and to build another house on the lot. To do so, a Certificate of Appropriateness from the Design Review Board and a Special Exception approval from the Board of Zoning Appeals were required. The applicant received permission from the Design Review Board to reduce the size of the house; however, the day before they appeared before the Design Review Board, the Council adopted an ordinance change. This pending ordinance doctrine was put into effect whereby if the size of the house is reduced, another house can not be built on the lot. But, the applicant did get a certificate of appropriateness to reduce the size of the house to 1200 square feet. In the interim, the ordinance has subsequently been amended to allow some flexibility. The Design Review Board can allow over 1200 square feet and an owner can reduce the size of the house and be a little bit over if the Design Review Board makes specific findings and other requirements are met. Those are different terms and conditions for doing that now as opposed to what they approved before the ordinance changed. The applicant came back again with two proposals to the Design Review Board – one to elevate the existing house; the other to build another house on the lot. The Design Review Board said they did not want them to elevate the house and gave them either a conceptual or preliminary approval in order to build another house on the lot. That Certificate of Appropriateness is still in effect, however, the applicant needs a special exception to be able to do that. In the interim, the Certificate of Appropriateness for the initial reduction of the size of the house expired. There is some question as to whether or not it is subject to the vested rights provisions under the new State Code. If it is, they have at least two years on that from the initial date. The way it is written in the Town Code now, they just have one year and that expired in November. Since there is no valid certificate of appropriateness for the reduction of the size of the house, Mr. Prause submitted to the Board that the applicant can not get a special exception approval.

But in discussions with Mr. Barr, Mr. Prause stated Mr. Barr's intention is to ask the Board to approve it, but with condition that they are scheduled to go back to the Design Review Board on December 19, and they fully expect to get approval again to reduce the size of the house. Should this Board proceed in that fashion, Mr. Prause and Building Official Randy Robinson have concerns. Mr. Prause called to the Board's attention the provisions for a special exception in Section 21-178 A-F, in particular item "D" which allows the Board to put reasonable terms and conditions upon an approval. The other aspect of particular concern is the intent to live in the small house, build a second house on the lot, and then do work to the small house. Mr. Prause and Mr. Robinson's position is they do not want to see that happen. In fact, on previous requests to do this under the old zoning ordinance, it took over one year for one small house to be torn down after the new one was built. There are three other owners that Mr. Prause allowed to live in the small house, build the larger house, and then demolish the smaller house since that time. They did get rid of their small houses, with the exception of Mr. Stith because the ordinance changed right in the middle of his project. Mr. Stith had given the Town a letter stating he would tear the small house down as soon as the large one was built; but the ordinance changed and his smaller home was declared historic and he could

Robinson strongly recommend that whatever needs to be done to the small house be done first, then build the larger house. Mr. Prause submitted that the applicant does not have a valid certificate of appropriateness to reduce the size of that house, therefore, she should not be asking for a special exception at this time. Susan Middaugh stated the applicant does not meet the qualifications for a second house on a lot at this time, and she did not think the Board should approve it contingent to meeting those requirements.

Attorney Bill Barr stated that he has been working with Heidi Brown for two years trying to get this project done. Ms. Brown's situation was that they heard the new ordinance was going to be passed, and was told their house was not on the historic list. However, that was because Mr. Schneider, who prepared the list, put down the dimension of the front line as the street address, 211 Station 22, instead of putting the street number down. As a result, the applicant did not tear the house down. Shortly after that, it was determined the house was on the historic map and should have been on the historic list; their demolition permit was not approved, and Heidi Brown appealed to Circuit Court. In the meantime, alternatives were considered. They determined the structure could fit the 1200 square feet criteria, and came before the Design Review Board to apply to reduce to 1200 square feet and build another house, and go to this Board for a special exception. Literally, the day before the Design Review Board met, Council started a pending ordinance – and that process lasted seven months. After seven months, they basically went back to the original character of the first ordinance, which made Heidi Brown eligible to do what was applied for seven months earlier. Ms. Brown prepared a set of plans and went before the Design Review Board in June 2007 for a Certificate of Appropriateness, and received it in October 2007, although not sure why there was a delay. The Certificate of Appropriateness to put the second house on the lot is good until October 2008. It is a huge lot at about 65/100 of an acre, right next to Mr. Stith's house on Station 22. There is an unopened 25 foot right-of-way between Station 22 and the park that will never be open. Because the approval for the partial demolition was going to expire on November 28, 2007 we had inquired to Mr. Prause and Attorney Larry Dodds if the vested rights statute applied to this case, but have not received definitive feedback. Ms. Brown applied to the Design Review Board, which meets next week, to extend the existing Certificate of Appropriateness for demolition.

Chairman Keenan stated he does not see enough information in order to grant a special exception; that the applicant needs to present to the Design Review Board first.

Jimmy Hiers stated he would consider to make a motion to grant the special exception provided that the work to the existing structure had to be done prior to a building permit being issued.

Mr. Barr added that when they went to pull the demolition permit, Mr. Robinson stated the water needed to be disconnected, the electricity turned off, and they needed to move out before the work can start, and they are living in that house. There have been many roadblocks to this project.

Susan Middaugh asked Mr. Prause if the Board had any say over sequencing. Mr. Prause replied yes, as he previously quoted Section 21-178 (D), the Board can put reasonable terms and conditions on the approval of any special exception. He added, however, the

applicant to supply documentation (site plan) to back-up the requirements for a special exception (Section 21-178 A-F) at the next meeting.

Motion was made by Jimmy Hiers, seconded by Susan Middaugh, to remand this application back to the Zoning Administrator until the applicant has a valid Certificate of Appropriateness for the alteration of the existing structure, carried unanimously.

Russell, David & Brownlee, Jamie. 1102 Middle Street. Variance from substantial improvement requirements. Chairman Keenan asked Mr. Prause to present. Mr. Prause stated the applicant is asking for relief from the requirements of the Town's flood damage prevention ordinance that requires that once it exceeds 50% of threshold of the depreciated value of the current building replacement cost, the building has to meet the compliance requirements, which in this case is to elevate the building. This building is listed as a landmark historic property on the Town's local ordinance. It is also in the newly established national register historic district and preliminary determination made by the State Preservation Office is it is contributive in the district. That allows them under the Town's flood damage prevention ordinance to apply for a variance not to elevate the building. The Design Review Board has reviewed their plans, and has given them preliminary approval. The Design Review Board does not want the building elevated. The applicants have gone to the State Historic Preservation Office with the plans, and the State has responded to the Town via letter which basically says they concur that elevating the existing house would compromise its contributory status to that national register district, and they do not want to see the house elevated. However, they also made other comments in the letter with respect to some of the other treatments (copy of letter presented to Board). The State Historic Preservation Office (SHPO) does not want to design the house for them, but they have raised some issues and some concerns. Building Official Randy Robinson has been corresponding with Andy Chandler at the SHPO office and architect Steve Herlong, and it appears that some of the suggestions can be accommodated to address some of these SHPO concerns. But basically as far as the national flood insurance program, they are very strict about giving variances from these flood elevation ordinances. Their concern is they do not want to see the buildings elevated, but they also do not want insensitive additions or renovations that would compromise the integrity of the buildings. The Design Review Board has given final approval.

Mr. Robinson stated there were some issues addressed by SHPO that would need to be addressed by the Design Review Board; however, they would not affect the variance. He added that it would be desirable for the Board of Zoning Appeals to include in its motion that in order to give the variance from FEMA requirements, that the applicants go back to the Design Review Board.

Attorney Bill Barr stated Sabrina Cochran from Herlong Associates Architects has addressed the concerns in a letter, and indicates that they are ready to address those issues and make them right.

Motion was made by Susan Middaugh, seconded by Jimmy Hiers, to grant the variance from the FEMA requirements contingent upon returning to the Design Review

Board to get approval of the changes stated in the letter. This is an exceptional property; it is a landmark property so it is a unique situation that does not apply to other properties on the island, and by allowing this variance it will retain the historic integrity and help preserve the unique character of this property and the district, carried unanimously.

Motion was made by Jimmy Hiers, seconded by Bachman Smith to adjourn, carried unanimously.

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____

