

June 12, 2008

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: Alice Paylor, Vice Chairman
Brian Hellman
Jimmy Hiers
Bachman Smith

Motion was made by Bachman Smith seconded by Brian Hellman, to approve the April 10, 2008 minutes, carried unanimously.

Vice Chairman Paylor administered the oath to all applicants and participants.

Charles Rittenberg, 1002 Middle Street. Appeal of Building Official's denial to construct driveway. Vice Chairman Paylor asked Zoning Administrator Kent Prause to present. Mr. Prause stated this application was heard last month also. Basically, the Building Official made a determination that the proposed shell for their driveway does not constitute a long-term pervious surface, because it becomes compacted, and then it does not allow water to readily pass through it as is required to classify it as a pervious or permeable material. The applicant is appealing that decision. There was a great deal of discussion at the last meeting, and there was no clear resolution. However, the matter was deferred on the Board's on motion for Building Official Robinson to meet with the applicant to determine if they could come up with a suitable design that would be appropriate. That has not occurred; therefore, the applicant is back.

Dr. Rittenberg stated he did meet with Mr. Robinson once, and Dr. Rittenberg talked to a vendor regarding a product installed at Kiawah, but the vendor never told him the address to look at it. Landscape architect Kelly Messier stated that she talked to Mr. Robinson several times, and thought he was looking for engineering testing, but it could not be done in a suitable time frame, and a letter from an engineer was not adequate. Mr. Robinson also had recommended a sub-drainage system similar to a septic system, but the cost was very prohibitive. It appeared to her that Mr. Robinson's main concern was that the run-off remain on site and the driveway be designed to keep the run-off on-site. Dr. Rittenberg stated that the ordinance states "any material through which water can easily be absorbed such as, but not limited to, grass, uncompacted gravel, shell, and crushed stone" is pervious. He believes that the ordinance states that crushed shell is adequate as an acceptable material; data has been presented to substantiate that fact. It is the Town's obligation to show that it is impervious, as the applicant is proposing something that is specifically listed as being an acceptable material.

Mr. Prause stated at the initial installation it would be uncompacted shell, but over time it will become compacted. The issue that brought this to the forefront is the Town and all jurisdictions now have to implement standards to comply with the EPA's Phase II NPDES. The Town has contracted with Charleston County to manage this compliance.

Alice Paylor stated that Town Council would need to change the ordinance if the standards changed. Mr. Prause added that Council has passed a resolution to ask the Planning Commission to look at this to seek a better solution than the current one. Jimmy Hiers asked if this driveway would exceed the lot coverage for impervious area as interpreted by Mr. Robinson. Mr. Prause responded if it is deemed to be impervious, then it would exceed the coverage. Brian Hellman stated that pervious surface, although defined, is never used in coverage areas; which is why this ordinance does not make sense. The only term that is used

is impervious surface, and impervious surface is defined as any material or structure through which water can not be absorbed or passed; therefore, if water can be absorbed or passed at any rate, it is not an impervious surface. The ratios in Section 21-26 (B) which define how much impervious coverage a lot can or cannot have, does not have a provision that limits or provides a basis for what or where something becomes impervious, or not pervious enough. Testimony has been presented from staff that states there is an infiltration rate for oyster shells; that means it is not impervious and the rest of the ordinance does not apply; and the Board is limited in that regard.

Motion was made by Brian Hellman, seconded by Bachman Smith, to overrule the Zoning Administrator for the reasons set forth in my discussion: that pervious surface, although defined, is never used in coverage areas; which is why this ordinance does not make sense. The only term that is used is impervious surface, and impervious surface is defined as any material or structure through which water can not be absorbed or passed; therefore, if water can be absorbed or passed at any rate, it is not an impervious surface. The ratios in Section 21-26 (B) which define how much impervious coverage a lot can or cannot have, does not have a provision that limits or provides a basis for what or where something becomes impervious, or not pervious enough. Testimony has been presented from staff that states there is an infiltration rate for oyster shells; that means it is not impervious and the rest of the ordinance does not apply; and the Board is limited in that regard.

Discussion: Mr. Smith stated there was an issue that was not before the Board; however, it was previously brought up concerning parking on the yard. Mr. Prause stated it could be a problem. The representation at the last meeting was that the area was previously existing, and that item had not be adequately resolved. A driveway is defined as anything except grass, so that area is a driveway. However, that issue is not before the Board tonight. **Motion passed by a vote of 3-1, with Jimmy Hiers casting the nay vote.**

Propes, Troy/Van Deventer Family, LLC. 3001 Marshall Blvd. Variance for front yard setback and RC-1 line setback. Vice Chairman Paylor asked Mr. Prause to present. This request was before this Board in 2004. A variance was granted previously for the property in order to put a house on it because of the erosion on the property. Attorney Bill Barr represented the applicant. Mr. Barr stated Paul Boehm was involved with this property. Mr. Prause stated that Mr. Boehm did get a permit for the house, and had two pilings driven on the property. There has been sufficient time in which that building permit has now lapsed. There has been some fill placed on the lot – two or three times – that reestablished the lot that has been eroded. The applicant has drawings that show the current condition of the lot. They are seeking relief in order to build a house on this lot; but if the setbacks are strictly applied, it would be extremely difficult.

Mr. Barr stated that in 2004 the Board allowed on the front a 5 foot variance from the front property line and allowed it to come within 10 feet of the toe of the existing dune. If the same variances were allowed now, the house could be built on the lot as it appears right now. Designer Carl McCants stated if the setbacks were strictly applied, the building area would be about 13 feet wide at the narrowest portion of the house.

Mr. Barr stated that it will meet all other requirements of heated square footage. The hardship is the lot is pinched between two lines to almost an unbuildable area. The vested rights statute would be appropriate because the variance would still be in force even though the ordinance says it is void after one year.

Mr. Prause stated that the variance was granted in 2004, and the vested rights statute did not become effective until 2005. The advice he received from two attorneys regarding the vested rights statute having a retroactive provision is that it should not be applied retroactively.

The Board reviewed the plans in relation to RC-1 line. Mr. Hellman inquired if there were limitations as to what variance the Board could grant from OCRM line. Mr. Prause responded that the current Beachfront Management Act does not recognize an OCRM line; although previously it was called the critical line. When the Act was adopted the concept of the critical line was deleted; however, the Town still has it in its ordinance. OCRM has a 40 year erosion line and a setback line, and basically they want a structure to be built as far landward as possible, and they limit the size of the house on those lots to no more than 5000 sq ft.

Mr. Barr stated the applicant has already been to OCRM and they have approval to build the house they have presented. They are 45 feet at the closest point of approach from the crest of the primary dune.

Vice Chairman Paylor asked Mr. Barr to restate exactly what relief the applicant is asking for. Mr. Barr stated they need 5 feet off the roadside property line, and no relief is needed off of the RC-1 line. Mr. Hiers inquired if the variance would affect the water and sewer lines. Mr. Prause responded that the public infrastructure is in the street right-of-way; however, there will need to be a lateral line to serve the property.

Motion was made by Jimmy Hiers, seconded by Bachman Smith, to grant the variance to reduce the setback from Marshall Boulevard to five feet, for which a permit has been denied by the Zoning Official; the application of the ordinance as such would result in an unnecessary hardships, and standards for the state law and ordinance are met by the following facts: there are extraordinary and exceptional conditions pertaining to this particular piece of property and that is that it is a small lot, setbacks in the critical line, setbacks from the road make it impossible to build a functional residence, these conditions do not generally apply to other properties in the vicinity; the application of the ordinance to this particular piece of property would effectively prohibit or reasonably restrict the utilization of this property to build a home; the authorization of the variance will not be of substantial detriment to adjacent property or the public good.

Mr. Prause added that in all the previous variances that have been granted including this one, there was a provision included for a deed restriction to be placed on the property — that in the event the erosion becomes so bad that this becomes a hazard, it has to be removed by the owner. **Motion to amend the motion was made by Jimmy Hiers, seconded by Bachman Smith, to add: that a deed restriction be placed on the property that in the event of erosion, it is the property owner's responsibility to remove the structure if it is condemned. Motion as amended carried unanimously.**

Harrell, Tim and Beth. 1741 Middle Street. Appeal Zoning Administrator's interpretation of Section 21-22 B(5)(a); variance for front or rear yard setback. Vice Chairman Paylor asked Mr. Prause to present. The applicants had a plan approved by the Design Review Board. However, when the plans were submitted for a permit, it was discovered that a couple of items were not addressed: one involves the relief that can be granted by the Design Review Board; the other concerns the front yard setback and the height above 25 feet.

Beth Harrell stated they are asking for relief to build approximately 4-5 steps. Mr. Prause stated their hardship is this is a unique situation because the lot actually jogs in – it does not follow the street. The actual property line goes in an additional 12 feet on the frontage on their property on Middle Street; and on the back side on Poe Avenue, it is a slope line that angles down which does not provide a rectangular corner there either. Their setback then is measured from the closest point of the angled property line of Poe, and because it goes in, that causes some problems. Mr. Prause added the Design Review Board was pleased that the applicant is building a structure considerably less in size than what the ordinance allows, and with the design.

Motion was made by Bachman Smith, seconded by Jimmy Hiers, to grant the requested variance of allowing a 15-foot setback on the front, based on a showing of a hardship as set forth in the application, carried unanimously.

Motion was made by Brian Hellman to adjourn, but it was not seconded. Bachman Smith brought up discussion of the variance previously granted for 2662 Goldbug, for which letters were received in June from Susan Middaugh and Tuffy Atkins regarding the variance.

Motion was made by Brian Hellman, seconded by Jimmy Hiers, to adjourn, carried unanimously.

Respectfully submitted,

Ellen McQueeney

Approved:

Date:
