

February 12, 2009

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

Motion was made by Alice Paylor, seconded by Betsy Richardson, to approve the minutes from the December 11, 2008 meeting, carried unanimously. Chairman Keenan administered the oath to all applicants and participants.

**Smith IV, Ellison. 1908 Flag St., variance for side setback.** Chairman Keenan stated that Mr. Ellison asked that his application be deferred until next month, as he would be out of the country. Because the Board did not have a quorum in January when Mr. Ellison originally was to present, Chairman Keenan granted the deferral.

**Applegate, III, W.E., 1710 Blanchard St., variance for addition to vacation rental property.** Chairman Keenan asked Zoning Administrator Kent Prause to present. Mr. Prause stated the applicant has asked to enlarge a vacation rental house. According to Sullivan's Island Code Section 21-118 C if they enlarge the vacation rental house, then they lose the right to rent it as a vacation rental. They have provided a justification for requesting the variance. The four-part test for the variance should relate to the property itself, and not the personal circumstances of the property owner which appears to be the case here. It seems to be a request to accommodate a desire rather than a true hardship They can enlarge the house now; they would just lose the right to rent it as a vacation rental. The application states that they would like to enlarge the house to help offset the taxes and insurance costs. Mr. Prause stated he does not believe they live in the house in the winter months, and they could rent the house long-term in order to recoup some of the tax and insurance expense. The other aspect is that they say they intend to move to the house on a permanent basis in the next several years and therefore would not rent it as a vacation rental at that time. They could just wait to make these improvements. Mr. Prause presented sketches of the proposed enlargement to the Board. Mr. Prause stated their application states they qualify for eleven people and that is based on square footage. From his calculation it appears they would have to have 600 square feet in order to have eleven people. They say the house currently accommodates six adults comfortably. They will consider limiting guests to no more than 10 people if the Board would consider that in their variance approval. And finally, they state they want to move in the next several years; however there is no specific time, so it could be one-three-five or more years. There can always be changing circumstances and they may decide they need to keep the vacation rental. If the Board grants this variance, it could set a tremendous precedent. Finally, the ordinance itself caps the amount of occupants in a vacation rental to twelve, no matter how big the house is. Section 21-122 (4) (a) and (b) dictates the amount of people allowed.

Chairman Keenan asked Attorney Bill Barr, representing the Applegate's, to present. Mr. Barr stated the main floor of the house is currently 909 square feet. The basement area is 528 square feet, totaling 1,437 square feet. The Applegates spend approximately seven months of the year on the main floor of the house. Assuming abandoning the ground floor as a living area, the total footage would be 893 square feet addition to the upstairs. Mr. Barr presented floorplan overlays to the Board. Essentially, they are asking the Board to define "enlarge." He stated he does not believe it was intended that a house that is a vacation rental could not do any additions to the house that didn't affect the level of capacity and lose their vacation rental license. Based upon the numbers Mr. Barr presented, he stated they are taking off the basement 528 square feet floor, and the upstairs addition would be a little larger than 528 square feet, but the capacity would not change. There is one hardship to consider. Occasionally, because of the cisterns on the island, the downstairs basically floods. It becomes totally unusable at times, making the rental a 900 square foot house. Mr. Barr stated they are not trying to do an injustice to the system; this would not be a detriment; it is not in violation of the statute; and some logical definition of "enlargement" other than physical enlargement needs to be made. It would not be a detriment to any of the adjacent properties or the ordinance and would be completely in compliance with the intent of the vacation rental ordinance. Essentially, they are asking to be able to trade space. Mr. Barr stated presently the applicant has two bedrooms upstairs, and one bedroom downstairs. Mr. Barr stated moving the bedroom upstairs would bring the house into compliance with the Flood Damage Prevention Act.

Mr. Hiers asked if the applicant had considered simply adding only 528 square feet to the main floor after removing 528 square feet from the basement floor, so there would be no increase in square footage. His definition of enlargement is the increase of square footage. He agreed that this type house is not why the Town passed this ordinance in the method they did. This is a very small house on what appears to be a large lot, and could easily be increased in size. Mr. Hiers believes their request is an enlargement and approval of it would set a precedent.

Mr. Barr responded that this is not only an addition that affects bedroom space, it affects functionality and livability. Looking at the numbers on the statement presented, the main bedroom stays at 270 sq ft; the second bedroom goes from 120 sq ft to 289 sq ft, and the basement bedroom is 342 sq ft and that becomes basically a main floor bedroom of 290 square feet. The kitchen gets increased in size by 140 sq ft. It is trying to create livability without losing the rental.

Ms. Richardson said based on the figures he presented earlier, it appeared to her that the total square feet over what the house is now is 456 sq ft additional being added. Mr. Barr stated that was correct.

Dr. Middaugh stated she understood the need to increase livability; however, she was concerned about the precedent that could be set with this variance; and she did not see a true hardship.

Ms. Richardson inquired how long the house is rented each year, and whether it was rented as a two bedroom or three bedroom rental. The Applegates stated that they offer to rent the house as a three bedroom rental approximately eight weeks of every year, and it is usually rented for six weeks a year. Ms. Richardson stated she was concerned about the precedent that would be set if this variance was approved. Mr. Prause stated that there are approximately 70 vacation rental homes on the island, and the vacation rental runs with the land, not with the owner.

After further review of the presented plan, the Board noted that the screened porch square footage was included in the figures, and it is not heated/cooled space. In that regard, there is 246 sq ft that should be deducted from the heated/cooled space, leaving the applicant's needed increase to 200 sq ft. Building Official Randy Robinson and Mr. Barr went over the calculations on the application presented to the Board. Mr. Barr stated that currently, including porches, the house is 1719 sq ft. The post-structure, including porches is 1791 sq ft. He stated the proposed bedrooms and the kitchen are 1209 sq ft that excludes the porches. The main floor sq footage right now is 855 sq ft, and the bedroom downstairs is 528 sq ft for a total of 1,383 heated/cooled space. The Board believed that a variance was not needed, as the proposed square footage was actually less than the current square footage. Mr. Barr asked for input regarding that aspect from the Zoning Administrator. Mr. Prause stated that one of the problems is the terminology and the numbers. The basement bedroom is not heated; and the Board stated that while it was not heated, it was not habitable. Also, there are no drawings to scale; there are no dimensions on the plans to verify the numbers; the numbers keep changing and may be erroneous; and he believes the numbers may not be reliable. Mr. Barr stated the variance could be granted on the condition of verification of the numbers. Mr. Prause added that even if the proposed square footage was exactly the same or lower, by moving the bedroom upstairs the house will be larger; it would be enlarged. The only other thing is there are cottages on the island that could present a similar argument. They could ask to increase the size of the house even if they do not change the number of bedrooms. Ms. Paylor stated that the vacation rental cottages are secondary structures, and this variance would be for a primary residence only.

**Motion was made by Alice Paylor, seconded by Bachman Smith, to approve the variance. The extraordinary and exceptional conditions are the cistern that floods and makes the bottom floor uninhabitable. The conditions do not apply to another property of which the Board is aware. Because of those conditions, the application of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property as a rental because without having that 500 square feet and moving it upstairs, then they really would not be able to rent it out. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance for the following reasons: it is really not being enlarged because it is going to be a similar habitable square footage, the number of bedrooms do not change, this is the primary residence and there is no secondary house on this property; it is the only structure on the property; the increase in the proposed square footage is de minimis; and they are going to abandon the downstairs for rental purposes, carried by a vote of six, with Jimmy Hiers casting the nay vote.**

**Motion was made by Bachman Smith, seconded by Susan Middaugh, to nominate Alice Paylor as Chairman for the calendar year, carried unanimously.**

**Motion was made by Alice Paylor, seconded by Brian Hellman, to nominate Bachman Smith as Vice Chairman for the calendar year, carried unanimously.**

**Motion was made by Alice Paylor, seconded by Betsy Richardson, to readopt the Rules of Procedure of the Board, carried unanimously.**

There being no further business to come before the Board, the meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Ellen McQueeney

Approved:

Date:

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