

October 8, 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: Alice Paylor, Chair
Jimmy Hiers
Susan Middaugh
Susan Romaine
Bachman Smith

Motion was made by Susan Middaugh, seconded by Jimmy Hiers, to approve the minutes from the September 10, 2009 meeting, carried unanimously.

Chairman Paylor administered the applicant and participant oath.

Robert and Gina Schirmer, 1857 Flag Street. Variance to increase principal building square footage greater than allowed by the Design Review Board limit of 25%. Chairman Paylor asked Building Official Randy Robinson to present. Mr. Robinson stated that the Design Review Board gave the applicant all the square footage they are allowed to give, which is 25% increase above the normal square footage. The applicant is asking for a 390 square foot increase. The Design Review Board did make a recommendation that the Board of Zoning Appeals grant the extra square footage due to the fact that the footage does not increase the footprint of the house. It is on the existing porches. Mr. Robinson stated the applicant did need to meet the impervious coverage requirements.

Chairman Paylor asked Attorney Bill Barr, representing the Schirmer's, to present. Mr. Barr stated that the square footage of the existing structures is 4,760 square feet. The plan calls for an additional 661 feet: 170 in the kitchen; 449 on the porch; and 42 in the new foyer. The applicant wanted to change the look of the façade on Station 19, and the Design Review Board approved this design. The applicant is asking for a variance of 390 square feet from this Board. Mr. Barr stated as far as a hardship, the applicant purchased the house in 1989 and has been caught up in the changes of the zoning ordinance. The Schirmer's have owned this property since the 1920's. With the variance, the total square footage would be 5,421 square feet, which is under the maximum allowed of 5,600 square feet. The extraordinary and exceptional conditions on this property are that there are two buildings on the lot – while there are properties on the island with two structures, there are not many. Mr. Barr added that neither structure is historical.

Motion was made by Susan Middaugh, seconded by Susan Romaine, that the variance be denied on the grounds that there is no hardship; there is an alternative way of doing what they want without a variance being needed; it would set a large precedent if this Board granted the variance on top of the Design Review Board's 25% relief; this variance would increase the mass and scale well above the intent of the ordinance; and it does not meet the four part criteria, carried unanimously.

Hal and Karen Coste, 322 Station 19. Variance for driveway and accessory structures setback. Chairman Paylor stated letters were received in support of the application from Heather Holbrook, Ernie and Judy Nelson, Michelle Sinor, Chuck and Jane Galis, Stephen J. Zoukis, and Rev. Lawrence B. McNerny. Chairman Paylor asked Building Official Randy Robinson to present. Mr. Robinson stated the Board might want to take sections of the application separately.

Setback variance on sheds – Mr. Robinson stated that under the accessory structure ordinance, the structures are required to be ten feet from the property line. The Design Review Board can give a four foot decrease in that requirement. These sheds are about two feet from the property line. A brief history: On August 5, 2009, Mr. Robinson sent a letter to the Coste's stating that they had several violations on their property: the shed, the driveway, and FEMA violations. On August 10, 2009 he had a meeting with the Coste's at their property. They looked at what they could possibly do, and they are now requesting a variance from the sideyard setback and rear setback for the two sheds. There are no lot coverage issues at this time. The sheds were constructed prior to the new zoning law. In 1990, the ordinance stated an accessory structure had to be 20 feet from the rear and 10 feet from the side. In 2005 the ordinance was changed to require that accessory structures could be five feet from the property line; but later revised it back to ten feet, along with giving the Design Review Board permission to decrease it by 40%. There are two houses on this lot. This particular house is not historic; however, it is in the historic district. The house on the Central Avenue side is a landmark structure on the historical list. Mr. Robinson stated the first time he was informed about these sheds was sometime in 2008. Chairman Paylor asked for the Coste's to present.

Attorney Stirling Halversen represented Hal and Karen Coste. She stated the driveways were built 19 years ago; the sheds were built 10 years ago. These improvements were made to the property without the proper permitting. She stated this variance is coming to the Board after so many years due to a dispute with the neighboring unit on the horizontal property regime. She stated the shed is approximately two feet from the sideyard property line, and the greenhouse is two feet from the rear property line and the side property line. There are unusual characteristics about this particular piece of property. It has been designated in the historic district. This property has been in the Coste family since 1928, and both residential structures have been there since the 1920's, and are in their original location. Another unique characteristic of this property is it is unusual to have two main residences on one lot, sharing a one-half acre lot. Because the owners could not subdivide the property according to the zoning ordinance, they decided to put the property into a horizontal property regime. By doing that, they decided to have limited common areas that would be utilized for each of the two units. In addition to the horizontal property regime limiting the common area, this is a very narrow lot, and restricts how much room each house has in order to use a common area. Because of this, there is not a lot of room to put accessory structures. These are exceptional conditions that do not apply to other property in the vicinity. The potting shed and greenhouse do not have a detrimental effect on any neighboring properties in the neighborhood. The reason being is they are located in similar setback distances as other accessory structures within the direct vicinity. Ms. Halversen presented photographs to the Board of accessory structures located nearby in the historic district. In addition, the potting shed and greenhouse are adequately screened in the back by a fence and landscaping; and some of the materials used were salvaged from other historic homes.

Chairman Paylor asked for public comment. Mr. Clyde Debrois, 1903 Back Street, commented that he is probably impacted the most, as his side yard backs up to the sheds. He added that the sheds are not very visible, and the Coste's have spent much time cleaning up the area near the marsh.

Attorney Donald Budman, representing Lance and Colleen Svendsen, who are the other owners of the horizontal regime property, stated that the Svendsen's object to the variances.

Mr. Budman questioned whether the shed and greenhouse structures were constructed before or after the swimming pool. He wanted the record to show that the pool was constructed in 2001. Mr. Budman presented surveys of both properties dated September 11, 1998. According to the surveys, there is no driveway on either side of the Station 19 house, neither was there a pool nor the accessory structures. The driveways might have existed as dirt then; the 2007 plat shows two concrete driveways. He continued that if this were not an historic district, then there might be room for a variance, but because it is a historic district, it should be dealt with in a more strict sense. He stated that Mrs. Svendsen was not asked if the greenhouse or potting shed could be built; however, she was asked about the pool and agreed to it. The pool was permitted and built. But, they were not asked about the other buildings, and knowing that because of the setbacks the buildings may not be approved, they went ahead and built them anyway. He also inquired if there is water and electricity going to these sheds since they are below the flood line. These are serious FEMA issues in the event they are found to be non-conforming. And, the applicant has not been able to show any hardship. They are aesthetically pleasing, but the fact is they were built within the setback line and they are asking for a variance after-the-fact. That does not create a hardship. They claim they are cramped for space because of the concrete swimming pool and concrete around it, but there is actually room for the structures to be brought in ten feet. Lastly, there are rules with respect to the amount of impervious structure that can be on the lot. Looking at the plat, the majority of impervious structure is in this unit. It detracts from the Svendsen's ability to have impervious structures on their property.

Jimmy Hiers inquired what is the detrimental effect of the sheds on Mr. Budman's clients? Mr. Budman stated it takes away the amount of impervious structures they can build; it affects the resale value of their property, there are also insurance issues with the fact that these structures may not comply with FEMA regulations. Randy Robinson stated that electricity and water are permitted in accessory structures provided that the sink or shower must not go to the sanitary sewer system; and electricity below flood elevation is allowed, provided, it is on a GFCI circuit. Stirling Halversen stated that FEMA has not cited Hal and Karen Coste for any violation. Also, they are in compliance with impervious surface for this lot. Stirling Halversen stated that this does not have a detrimental effect on the neighbors. It does not increase traffic, it is not unsightly, the driveways are very minimal; the least amount needed to get the car under the house, with a parking space on either side. These driveways provide off-street parking for both of their cars. By applying the ordinance strictly, they would only be able to have one car under their house; the other car they would have to park on the street, so that is why they are requesting the driveway variance.

Mr. Butman stated that only one driveway is permitted per lot, and he understands that one of the driveways perhaps was built over a sewer tap; and they were built after the pool was built. Randy Robinson stated that it is very possible that the driveway was built

over the sewer tap. Mr. Robinson stated that the sheds are existing in a historic district so no matter what this Board decides tonight, the matter will have to go before the Design Review Board.

Motion was made by Jimmy Hiers, seconded by Susan Middaugh, that the Board deny their request for a variance for the driveway because they have not meet the conditions there; the other party may want to put in a driveway one day, it would be hard to argue for a third driveway since you already have two; but because of the extraordinary conditions the variance for the setback on the sheds should be granted. The sheds have been there for ten years and it is a little late for the Town to come in at this point and also, the Board is dealing with an issue that is not of great interest to the Town; it is a condominium owners' dispute; there are extraordinary and exceptional conditions pertaining to this piece of property. One of those conditions is that the other condominium owner has a shed that is violating the setback also. Outside of this property, other properties in this vicinity do not have this issue; because of these conditions the application of the ordinance to this particular piece of property would effectively prohibit and unreasonably restrict the utilization of the property and that the removal would outweigh the good that would be required, and the authorization of the variance will not be of substantial detriment to adjacent property. The Board heard from the adjacent property owner who said he is not affected by it, and he is the closest person to those sheds.

Discussion: Randy Robinson said that the survey shows the impervious coverage to be at 23.8% so there is around 6% impervious surface left on this lot. Also, if they wanted to add onto the historic structure, you can exempt 50% of the heated square footage of the structure and principal building square footage, and you can exempt 50% of the impervious surface square footage. Although the survey shows 23.8% impervious, it can be increased more than 30% because of the historical exemptions.

Call for the question: All in favor to grant the motion by Mr. Hiers as to the shed and the greenhouse: motion carried unanimously.

[Point of clarification by Mr. Hiers: This appears to be primarily a condominium owners' dispute and not a typical setback issue, and question whether this issue belongs before the Board of Zoning Appeals; which is why I stated this is of no great interest to the Town.]

Motion was made by Jimmy Hiers, seconded by Susan Middaugh, to deny the appeal of the Zoning Administrator's decision for the driveway. Motion failed by a vote of 2 (Jimmy Hiers, Susan Middaugh) to 3 (Alice Paylor, Bachman Smith, Susan Romaine).

Motion was made by Bachman Smith, seconded by Susan Romaine, to grant the appeal from the Zoning Administrator's decision, based solely on the fact that the applicant can go to the DRB and get permission to leave it like it is; and he has square footage in his permeable surface.

Discussion: Randy Robinson inquired if they were also considering the concrete around the pool. The Board stated the pool concrete was not in the application; this only involved the driveways.

Motion carried by a vote of 3 (Bachman Smith, Alice Paylor, Susan Romaine) to 2 (Jimmy Hiers, Susan Middaugh).

[Point of clarification by Mr. Bachman: based solely on the fact that should the Board

deny the appeal and the driveway is removed, the owner can go to the Zoning Administrator to replace it, and he has sufficient square footage in his permeable surface].

There being no further business to come before the Board, the meeting was adjourned.

Respectfully submitted,

Ellen McQueeney

Approved:

Bachman S. Smith III
Acting Chairman

Date:

2/16/10