

October 13, 2011

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: Jimmy Hiers, Chairman
Ward Lasso
Susan Middaugh
Bachman Smith
Elizabeth Tezza
Carlin Timmons

Randy Robinson, Building Official
Ellen Miller, Town Clerk
Trenholm Walker, Attorney

Chairman Hiers called the meeting to order.

Motion was made by Susan Middaugh, seconded by Elizabeth Tezza, to amend the agenda to consider the approval of the minutes after the two applications, carried unanimously.

Motion was made by Bachman Smith, seconded by Susan Middaugh, to defer action on the Final Order until after approval of the minutes, carried unanimously.

Chairman Hiers administered the oath to participants in the meeting.

Paul and Elizabeth Kitchin, 2420 Jasper Boulevard. Re-hearing of applicant for 2420 Jasper Blvd., request for special exception for a historic structure used as accessory dwelling.

Chairman Hiers asked Bill Barr, attorney for the applicant, to present concerning the re-hearing request.

Mr. Barr stated he filed the application for a re-hearing after reviewing the Board of Zoning Appeal's June and July 2011 minutes. He stated that the applicant had received final approval from the Design Review Board on June 15, 2011. He continued that the Design Review Board decision was not appealed by anyone to the Circuit Court, which is the next step to overrule the administrative board. So, the Design Review Board decision became final roughly around July 15, 2011.

Mr. Barr continued that the Design Review Board is tasked with not only approving the design of the home, but they also rule on things such as neighborhood

compatibility. He stated that the Board of Zoning Appeals needs to realize that if the owner attached the historic structure to the new structure, no action would be required by this Board. Therefore, there would be the same streetscape and compatibility issues as with the buildings separated. Based on his review of the July minutes, there was a statement made by the Board that the main issue appeared to be compatibility, and Mr. Barr submitted that compatibility was ruled by the Design Review Board and the Board of Zoning Appeals does not have the authority to overrule the Design Review Board.

Chairman Hiers stated before the Board can hear Mr. Barr's view, the Board needs to grant the applicant permission to have the re-hearing. Under the Sullivan's Island Board of Zoning Appeals Rules of Procedure, Article IV, Section 9, the Board may grant a re-hearing of an application which has been dismissed or denied upon written request filed with the secretary within fifteen days after delivery of the order accompanied by new evidence which could not reasonably have been presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome. The written request was filed within the specified period. Mr. Barr stated there was a clerical error in that the BZA minutes for June and July failed to properly address all of the matters that were presented to this Board and considered. In particular, one thing mentioned in the June minutes was that Randy Robinson stated that the applicant met all the criteria for a special exception and there was no indication in the minutes as to why Mr. Robinson's recommendations that they met all the conditions was not either approved or disapproved. Mr. Barr based this information on discussion with Anita King, the architect, as Mr. Barr was not at the June meeting. He said there was a unilateral mistake of fact that the Board failed to take into consideration Ms. King's position involving the case, and failed to absolutely address that. Mr. Barr added that there was no new evidence to present.

Mr. Robinson stated that according to Section 21-20(C) of the zoning ordinance, the Kitchens have met the requirements of the ordinance as far as the ordinance goes. That is what he meant in the last meeting, and now the Kitchens have to come to the Board of Zoning Appeals to get permission or denial for special exception.

Ms. Middaugh continued discussion of special exception under 21-20 (C) (1) (a) A use permitted in a zoning district that possesses characteristics that require certain controls in order to ensure compatibility with other uses in the district within which they are proposed for location and therefore shall be approved by the Board of Zoning Appeals. And also (C) (1) (g) and (h) concerning the roles of the Design Review Board and the Board of Zoning Appeals. She stated that the Board of Zoning Appeals had authority on this issue, and it is clearly stated that the applicant needs to have the approval of both boards. Chairman Hiers continued that Section 21-178 (C) (4) concerning special exceptions, that the proposed use shall be compatible with existing uses to the extent that such use will not adversely affect the level of property values, general character, or general welfare of the nearby area. Mr. Barr stated that he had reviewed that ordinance, but stated essentially when a person makes the same argument to two different boards such as Mr. Fava did

concerning the neighborhood compatibility issues, he needed to appeal it to circuit court, not to the Board of Zoning Appeals.

Chairman Hiers said Section 21-178 states the findings for the Board of Zoning Appeals to approve a special exception, which includes criteria #4 that the proposed use shall be compatible with existing uses to the extent that such use will not adversely affect the level of property values, general character, or general welfare of the nearby area, and the Board believed the special exception would adversely affect the general character of the nearby houses.

Mr. Barr stated his point was that since the Kitchins can build the same house and attach it to the front house without a special exception and it will look the same, the Board is not achieving anything by denying the special exception. He inquired to Ms. Middaugh if she stated at the June meeting that she had to make sure they (the DRB) do it right? Ms. Middaugh replied that she doesn't consider it her mandate to make sure the Design Review Board does it right. She said the context it was presented at the beginning of the June meeting was because the Design Review Board had approved things, that the Board of Zoning Appeals needed to approve it also. Ms. Middaugh said whatever she said was an effort to clarify that there are two different Boards, and this Board did not have to agree with what the Design Review Board had done. Susan inquired if the June minutes were on tape, and Ms. Miller replied affirmatively.

Elizabeth Tezza stated the Board did not make any decision at the June meeting because it asked for the applicant to bring more drawings. The Board was simply having detailed conversation and asking questions.

Chairman Hiers asked for public comment regarding the granting of the re-hearing of the application. Mr. Eddie Fava responded that he did not think the conditions were met for a re-hearing. Mr. Hiers closed the public comment at this time.

Motion was made by Susan Middaugh that the Board deny the re-hearing on the grounds that it does not meet the requirements for a re-hearing based on Article IV, Section 9 of the Board of Zoning Appeals Rules of Procedure. There was no second to the motion; therefore, the motion failed.

Chairman Hiers stated there would be a re-hearing of the application.

Ms. Middaugh stated there were six items on Mr. Barr's request for a re-hearing and the Board should consider those six items before there is a decision whether to rehear the application.

Chairman Hiers stated that could come under discussion of her motion; however, there was no second.

Motion was made by Susan Middaugh to have a re-hearing.

Point of order was called by Mr. Barr that if the motion has been made and there is no second, the motion fails.

Motion was made by Susan Middaugh to have a re-hearing.

Mr. Barr objected to the motion because originally she moved not to have the hearing and it failed, then essentially there is a re-hearing.

Ms. Tezza stated the Board still needed to make a motion.

Motion was made by Susan Middaugh, seconded by Carlin Timmons, to grant the re-hearing, carried by a vote of 5-1, with Jimmy Hiers opposed.

Chairman Hiers proceeded with the re-hearing, and asked Building Official Randy Robinson to present.

Mr. Robinson stated this is the property of Paul and Linda Kitchin at 2420 Jasper Blvd. They are applying for a special exception to use the historic structure as an accessory structure. They have met the requirements of the ordinance except to get permission from this Board for a special exception. As a special exception, the Board of Zoning Appeals shall find the items in Section 21-178 of the Code are met.

Chairman Hiers asked the applicant to present. Mr. Barr, representing the Kitchins, submitted the January 19, 2011 and April 19, 2011 Design Review Board minutes to be a part of record. Also to be included are the June 15, 2011 Design Review Board minutes which he has not received yet, but wanted as part of record.

Mr. Barr stated that this matter has been before the Design Review Board, and was approved by that Board in June 2011, and if anyone who objected to the Design Review Board's proceedings had not appealed within the appropriate time. He continued that the issues of neighborhood compatibility, etc. have been decided by the Design Review Board, and that Board disagreed with the neighbors who did not want the design to be approved. He also pointed out that the Kitchins have a certificate from the Historical Preservation Society of S.C., and they will receive a tax benefit as a result of restoring this historical structure if it can be separated and restored as a single structure. The Board of Zoning Appeals would not need to hear this application if the Kitchins were willing to attach the old house to the new house with a breezeway. His position was since the Design Review Board made the decision concerning neighborhood compatibility over the objections of the neighborhood, the Board of Zoning Appeals should give due deference to that decision. He then asked architect Anita King to explain the design.

Ms. King stated the original house will be restored to 1200 square feet, and the new structure would look essentially the same from the street front. From Jasper, there are no changes except to change some of the historically incorrect items such as vinyl siding and some shutters. The rear of the house where later additions were made is being removed. Ms. King presented plans to the Board. There would be no major changes to the street as to the side elevations. The new house would be a one and one-half story separate structure with dormers. She presented the drawing requested at the first Board of Zoning Appeals meeting which showed the two structures in conjunction with each other. She stated the two structures could be connected and there would be no difference except for a roofline, and they would actually be granted a larger footprint. With the zoning

ordinance, they have the ability to make the structure larger and return to the Design Review Board for more square footage at a later date. If the structures are detached, they are limited to the current design size, and it cannot be any larger.

Susan Middaugh questioned whether the garage would remain.

Ms. King responded that would be reviewed separately; that it is not considered part of the complication but they will work with the Building Official on whatever the requirements are. She later stated they would attach the garage where it currently is, and it would no longer be an accessory structure. One driveway and curb cut would be abandoned, and the new driveway would work around a tree.

Mr. Kitchin commented he received a call from a woman stating that her father built the house and she was concerned about what he was doing to the house. Mr. Kitchin does not know how she got his cell phone number.

Chairman Hiers opened the meeting for public comment.

Eddie Fava, 2424 Myrtle Avenue. Mr. Fava stated that he did not understand why the re-hearing was granted. He said that when the plans that were approved were being discussed earlier, and it was said that this might be done here, this might be done there, it makes the plan less clear. Most important under the zoning ordinance (21-30) is the orientation of the principal building. It states the principal building's primary façade on a double frontage lot shall be oriented toward the ocean unless the principal building is replacing one oriented otherwise, which is not the case. Also, he wanted to make clear that he did not contact the original builder/family and give them Mr. Kitchin's phone number to contact. Mr. Fava then read a letter from himself to the Board that was also read at the July 14th meeting, along with a letter from Yvonne Fortenberry. He also read a new letter from himself to the Board. These items are part of the record.

Chairman Hiers asked for further public comments.

Mr. Barr stated that there should be one guideline on the island, not different guidelines for Board of Zoning Appeals and Design Review Board. Also, the Kitchins do not need to show a hardship because this is a special exception, not a variance. He stated although he appreciated Mr. Fava's tradition of being a resident of Myrtle Avenue, his opinion is that Mr. Fava's arguments are fiction. The house is going to be built whether it is attached or not. Then essentially, the Board tonight is faced with granting the special exception to allow the house to be freestanding. The purpose of the historical preservation ordinance and the 1,200 square foot ordinance was to encourage saving historic structures. This one is going to be saved.

Chairman Hiers asked for anyone else who wanted to speak during public comment. Mr. Fava stated he wanted to respond to Mr. Barr's comment. Chairman Hiers responded that it's Mr. Barr's opinion only; it is not a statement of fact.

Chairman Hiers closed the public comment. Mr. Hiers stated to the Kitchins that he hoped they could have clear sailing if and when they do build the house(s), and everything goes well. Now the Board will have discussion.

Susan Middaugh stated that the Board was not here simply to decide if it is two houses or one. She continued that if everytime someone comes before the Board with a house they could say the Board has to approve it because they can just attach the two houses if they don't. The Board needs to review each application and the impact on the neighborhood. Ms. Middaugh presented figures she observed of the number of properties between Station 22-1/2 and Station 27-1/2 along Myrtle Avenue and Jasper Boulevard that could possibly have a second house on the lot. The general character of the neighborhood needs to be considered because as many as twelve properties could be involved according to her figures.

Elizabeth Tezza noted that in the Design Review Board transcript of the July 2011 meeting, Mr. Craver moved for final approval conditioned on the Board of Zoning Appeals approving a special exception for a second house on the lot; so that confirms that this Board does have independent action from the Design Review Board. She continued that she inquired at the June and July meetings if consideration had been given to orienting the front of the house to the side because that is also historic on this island, and the answer was absolutely not.

Ward Lasso stated this decision was on them just adding a breezeway or turning it down to the neighbors. He continued it appeared by adding a breezeway the neighbors will be left with exactly what concerns them.

Motion was made by Susan Middaugh, seconded by Carlin Timmons, that the request for a special exception for use of a historic home as an accessory dwelling as presented in the plans submitted today be denied because these plans do not meet all four tests required under Section 21-178, specifically with respect to 21-178 (C) (4) the submitted plan is detrimental to the general character of Myrtle Avenue. The primary dwelling faces Myrtle Avenue instead of addressing Jasper Boulevard as required in the zoning ordinance. This house front is also placed close to Myrtle Avenue with the minimum required setback. This gives the appearance of a subdivided lot that is out of character for a neighborhood where homes all face the ocean, and Myrtle Avenue homes face the backyards of their Jasper Boulevard neighbors.

Bachman Smith stated that because he was not at the July meeting, but this application has been heard in full tonight pursuant to the earlier ruling of the chairman, he took the position that he was entitled to vote. Chairman Hiers agreed and there were no objections from the Board.

Motion was carried by a vote of 5-1, with Bachman Smith casting the opposing vote.

Gary Rautenstrauch and Deborah Halliday, 2730 Atlantic Avenue. Variance for driveway work already completed; Code Sections 21-15 and 5-12(P).

Chairman Hiers asked Randy Robinson to present. Mr. Robinson stated he observed a concrete truck at 2730 Atlantic Avenue pouring concrete, and they did not have a permit. The worker said the driveway was being replaced, but Mr. Robinson believed it was not the same size, and asked that the worker at least pull one section back to the property line before it was poured. The contractor did later get a permit, but he did not move the section back to the property line as instructed. Mr. Robinson wrote the owner in September 2010 and April 2011 asking for this to be corrected. In a recent meeting, Mr. Robinson informed Mr. Rautenstrauch he could apply to the Board of Zoning Appeals for a variance.

Chairman Hiers asked the applicant to present. Mr. Rautenstrauch apologized for taking the Board's time with this after-the-fact variance request. He stated they are refurbishing the house and the variance request is to allow the paved driveway all the way to the street from the garage, going over the property line; as well as to have the width of the driveway 24 feet rather than 12 feet. The hardship is the house is off-center in the lot and the garage doors are 11 feet, 3 inches from the property line. It is difficult to get two vehicles in the garage, and a turn-around could not be built. He did not believe there would be much displacement of off-street parking which is a consideration because they are near the beach path. He stated that if the driveway was removed just from the property line to the road that someone might park a car in front of his driveway, although it would be unlikely.

Susan Middaugh stated the Board has allowed variances like this and is follows much the same criteria. **Motion was made by Susan Middaugh, seconded by Elizabeth Tezza, to approve the application for a variance for the double driveway going into the house on the condition that the encroachment into the right of way by the golf cart path be removed, and there are extraordinary and exceptional conditions in that this is an old house and is situated close to the proerpty line and that impedes access to the double garage under the house; these conditions only apply to selected older homes that are placed on the property before the zoning ordinance; because of these conditions this would effectively and unreasonably restrict access to the garage under the house; the variance will not be of detriment to adjacent property. This is largely a replacement of a double driveway in that location and a third driveway that was paved on the back side of the house has been removed, carried unanimously.**

Chairman Hiers stated there was a motion early in the meeting to amend the agenda to add a Final Order for 2063 Middle Street concerning Atlanticville Restaurant.

Motion was made by Elizabeth Tezza, seconded by Ward Lasso, to go into Executive Session to receive legal advice on Final Order concerning Atlanticville Restaurant, carried unanimously.

Motion was made by Elizabeth Tezza, seconded by Ward Lasso, to come out of Executive Session, carried unanimously. Chairman Hiers stated that during Executive Session no action nor votes were taken.

Motion was made by Elizabeth Tezza, seconded by Ward Lasso, to approve the minutes from the August 11, 2011 meeting, carried unanimously.

Motion was made by Bachman Smith, seconded by Elizabeth Tezza, to approve the Final Order for the Atlanticville Restaurant at 2063 Middle Street, carried unanimously.

Chairman Hiers asked to defer the Rules of Procedure review until the next meeting. The 2012 meeting schedule was reviewed with no changes.

Motion was made by Bachman Smith, seconded by Carlin Timmons to adjourn at 9:10 pm, carried unanimously.

Respectfully,

Ellen Miller

Approved:

Date:
