

August 9, 2012

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

Chairman Hiers called the meeting to order.

Motion was made by Susan Middaugh, seconded by Elizabeth Tezza, to approve the minutes from the June 14, 2012 meeting, carried unanimously.

Chairman Hiers administered the oath to the applicants and participants.

Vivian Clark, 2530 Middle Street. Variance for finished first floor height, Section 21-31 (B) (2).

Chairman Hiers asked Mr. Robinson to present. Building Official Randy Robinson stated that the application is for a variance from Section 21-31 for foundation height. When Council adopted this ordinance, Town Council thought that some structures on the island being built were too tall underneath the structure, so this standard was adopted. The actual design standard says the bottom elevation of the principal building's lowest horizontal structural member shall be no more than the greater of seven feet above grade or two (2) feet above the FEMA base flood elevation. Also, the finished floor shall be no more than three (3) feet above the FEMA base flood elevation. The Design Review Board can allow a one foot increase in that design standard, and the applicant has been granted the one foot relief. The applicant meets Section 21-31 B (1) of the ordinance, but the applicant is asking for another foot concerning Section 21-31 B (2) because when the floor is added, it will be a little higher than what is allowed. The design will not be changed and the underneath of the house will not be any higher than eight (8) feet.

Chairman Hiers asked the applicant to present. Architect Eddie Fava represented the applicant. Mr. Fava presented drawings and pictures of the structure. The house meets all height restrictions, lot coverages, zoning ordinances except the one foot. That would allow them to park under the building and not have an out building on the property, as they are trying to avoid reducing the green space. As far as neighborhood compatibility, the property immediately adjacent is already higher at 8-1/2 feet above grade with a 10' foot finished floor elevation; another house is 9.6' above grade with a 10'6" finished floor. Both of these neighbors do not object to the variance request.

Mr. Fava presented the flood zone map that showed the 2530 Middle Street property is the only property on the block that is in a different flood zone. Mr. Robinson stated the difference in this property is that all other houses in the block would be able to be that foot higher; and basically the hardship is that the applicant would not be able to build as high as the rest of the houses in the block. All other houses around this property are one foot higher. Mr. Fava added that the house will not really look any different; it is only the line of the finished first floor that changes.

Chairman Hiers opened floor for public comments, and there were no comments.

Susan Middaugh stated the Board has granted this type of variance rarely, but it has granted it based on neighborhood compatibility so the structures will fit in with the fabric of the neighborhood.

Motion was made by Susan Middaugh, seconded by Carlin Timmons, to grant the variance in the amount of one foot on finished floor height as requested. There are extraordinary and exceptional conditions pertaining to this piece of property. It is out of place where flood zone changes, and because of that, if the Board did not grant this variance, it would be the only house on the block that could not be built to the requested height and allow parking under the house; these conditions do not apply to other properties in the vicinity, virtually all the other houses on the block are built to higher levels or could be built at a higher level. This is a hardship because if the Board did not grant the variance, the applicant would have to build a separate garage in a neighborhood where there are typically not separate garages because there is parking under the house, and a garage would be a problem for neighborhood compatibility. Because of that, allowing the variance will not be a substantial detriment to the adjacent property because virtually all of those are at the requested height or could be built to the requested height, carried unanimously.

Dean Schmelter, 3217 Middle Street. Variance for rear setback.

Chairman Hiers asked Mr. Robinson to present. Mr. Robinson stated according to the aerial photo in the application, there are four houses in this block and two houses have received variances to put their pools close to the rear setback line. The reason the house on the corner did not get a variance is probably because it was a side setback on the corner lot. The applicant would like to have a variance to do what basically his neighbors have done. The lots behind it are undeveloped, although they could one day be developed. Section 21-142 of the Code states a pool is a recreational accessory structure. Recreational accessory structures have to meet the setbacks of the house. Section 21-22 states the rear setback is 25 feet. It is not an RC-1 issue because there is a buildable lot behind it.

Chairman Hiers asked the applicant to present. Realtor Ashley Haynes stated there is no other place to put a pool.

Chairman Hiers opened floor for comment.

Paul Boehm, 3209 Middle St., stated he received a variance for a pool, and he has no objection to his neighbor asking for this variance.

The floor was closed for comment.

Susan Middaugh stated for the record, that not being able to have a pool is not a hardship. The Board has granted variances for pools as long as they did not come any closer than 10 feet of the property line, and

essentially when there has been nothing behind the property. The two adjacent neighbors do not object to this variance.

Motion was made by Elizabeth Tezza, seconded by Carlin Timmons, to grant a 9'3" variance for the construction of a pool and deck on this lot. There are extraordinary conditions pertaining to this piece of property. All the other lots that are built in this block have pools within ten feet of the setback and the lot to the rear of this particular piece of property is owned by the Town and at this time is not being developed, therefore it does not impact any property owners to the rear; the authorization of this variance will not be of substantial detriment to the adjacent property, and the character of the district will not be harmed because all the adjacent property owners do have pools in the setback, carried unanimously.

Jess Patterson, 2213 Myrtle Avenue. Variance for rear setback. Chairman Hiers asked Mr. Robinson to present. Mr. Robinson stated this is a different case because it is a very small property. The applicant is asking for a 5 foot rear setback on the property in order to place a pool.

Chairman Hiers asked the applicant to present. Attorney Sam Altman represented the applicant. Mr. Altman stated there is an existing violation now with the driveway that goes down the side of the property. There are four plats on record with the Town that there are significant violations of other setbacks because there are outbuildings or garages on property lines. Almost all of the neighbors, with the exception of one who would not speak to them, were in favor of this variance. He continued that at this point they would adjust the pool 9.6 width to 8.0 feet, and 3.6 to 2.6 feet so there would be a 7-1/2 foot setback instead of a five foot setback. This is an unusual size property and a 25 foot setback for a small property, just as for a large property, is a hardship. The variance request is appropriate for this lot.

Chairman Hiers opened the floor for public comment.

Ashley Haynes, 2720 Goldbug, stated he supported the pool, and it will be a great addition to the property. It will not be seen from the street or from any other property. The ordinance, which is the same for all size lots, is really designed for the larger lots. Almost every property in that block has one or more structures in one or more of the setbacks.

Pat Votava, 2214 Jasper, stated her property was in back of the property asking for the variance. These are small lots at only 1/4 acre, and her house is separated from 2213 Myrtle by a wooden fence. Ms. Votava continued to read her letter to the Board, and it is on file in Mr. Patterson's BZA application file. Ms. Votava stated there is no hardship, the owner was aware of the lot size when purchased, and the request is not compatible with the neighborhood.

Christina Kubinski, 418 Patriot Street, stated she and her husband, Dennis, have seen the plans for the pool and have no objection to it. Their neighbors have a pool and it has never been an issue for them.

The public comment was closed.

Mr. Altman stated as part of any variance granted, the applicant would agree to move the fence between the property and Ms. Votava's property to eliminate any encroachment. Because Ms. Votava is concerned with noise even though there is a noise ordinance, this is a small family house and not a rental unit. He stated the applicant would not mind agreeing to conditions to protect the neighbor such as consider there be no activity at the pool after 9:00 p.m.

Chairman Hiers stated correspondence was received from residents at 418 Patriot St., 2205 Myrtle Ave., 414 Patriot St., and 420 Patriot St. in favor of the variance request.

Elizabeth Tezza stated the letters in support from Patriot Street are not in the area of the property requesting the variance. She stated Mr. Altman did have a point concerning the Code, which does have the same setback lines for both large and small lots. Susan Middaugh stated there are so many nonconformities already, the problem is setting a precedent and filling up the setback lines. The setback lines are not smaller for smaller lots because space is needed between buildings in case of fire and emergency. Chairman Hiers added that personal privacy is also a paramount interest. Setback lines allow respect for neighbors.

After further discussion, Elizabeth Tezza stated she would like to see an aerial view of the block with all properties in order to make a decision, and the Board agreed.

Pat Votava commented that the property is for sale, has just been sold, or is about to be sold. Mr. Altman stated that he will bring anyone with an interest in the property to the next meeting.

Motion was made by Elizabeth Tezza, seconded by Susan Middaugh, to defer this application for one month to receive more information from the applicant, carried by a vote of 4-1, with Susan Middaugh casting the opposing vote.

The Board began a review of the Rules of Procedure. After discussion, the following changes were made to the Rules of Procedure (changes appear as bold).

Article III - Appeals Procedure

Section 1. Form of Appeal. Appeals from administrative **staff** decisions, applications for variances, and applications for special exceptions shall be filed on forms approved by the Board and provided to applicants by the secretary. The Board may require additional information deemed necessary. The failure to submit adequate information may be grounds for dismissal. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.

Section 2. Time for Appeal. An appeal from an administrative **staff** decision must be filed within thirty (30) days after the decision becomes a matter of public record by denial or issuance of a permit or the filing of a written decision in the office of the Zoning Administrator. An appeal shall be filed by delivery of the approved appeal form to the secretary of the Board who shall notify the official appealed from.

Section 4. Withdrawal of Appeal. Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. An appeal from an administrative **staff** decision which is withdrawn may not be refiled after the fifteen (15) days time for appeal has expired. Withdrawn applications for variances and special exception may be refiled after six (6) months and shall be placed on the calendar according to the dated filed.

Article IV – Hearing Procedure

Section 6. Disposition

(a) The Board may deliberate and make a final disposition of a matter by majority vote of members present at the hearing and qualified to vote, provided that not less than a quorum are present. **This means that in case of a tie vote, the motion is denied.** The vote may be taken at the same or a subsequent meeting. A

member may not vote on a matter that the member has not heard. Deliberations shall be conducted and voting shall be public.

Section 9. Rehearing. The **Chairman** may grant a rehearing **by the Board** of an application which has been dismissed or denied upon written request filed with the secretary within fifteen (15) 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.

Article VI – Amendment and Adoption

Section 2. Adoption. These rules were adopted by vote of a majority of the members of the Board at a regular public meeting on **August 9, 2012**.

Motion was made by Elizabeth Tezza, seconded by Carlin Timmons, to approve the changes to Article III, Section 1, Section 2; Section 4; Article IV, Section 6, Section 9; Article VI, Section 2, carried unanimously.

Motion was made by Elizabeth Tezza, seconded by Carlin Timmons, to adjourn at 8:30 pm, carried unanimously.

Respectfully submitted,

Ellen Miller