

June 13, 2013

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.

Board members present: Susan Middaugh, Chair
Summer Eudy
Ward Lasso
Susan Romaine
Bachman Smith, IV
Elizabeth Tezza
Carlin Timmons

Staff present: Joe Henderson
Ellen Miller

Chair Middaugh called the meeting to order and stated all Freedom of Information Act requirements had been met. She welcomed Joe Henderson, the new Zoning Administrator, to the meeting.

Motion was made by Susan Romaine, seconded by Carlin Timmons, to approve the Minutes, as amended, of the May 9, 2013 meeting, carried unanimously.

Motion was made by Susan Middaugh, seconded by Susan Romaine, to appoint Elizabeth Tezza as the new Chair of the Board, carried unanimously. Susan Middaugh then turned the meeting over to Elizabeth Tezza. Chair Tezza thanked Susan Middaugh for her years of service to the Board of Zoning Appeals, and congratulated her on now representing the Island on Town Council. At this time Susan Middaugh left the meeting. Chair Tezza stated since she was also the Vice Chair, she would like to nominate Bachman Smith as Vice Chair. **Motion was made by Summer Eudy, seconded by Carlin Timmons, to appoint Bachman Smith, IV as Vice Chair, carried unanimously.**

Chair Tezza administered the oath to the applicants and participants. She then asked Zoning Administrator Joe Henderson to present the first application.

Christopher MacAvoy. Lot 80-1/2 Raven Drive (2608 Raven Drive), request for RC-2 setback variance.

Mr. Henderson stated Mr. Beau Clowney and Kate Campbell of Beau Clowney Design, and Attorney Bill Barr represented Mr. MacAvoy. The applicant requested relief from Zoning Code Section 21-23 (E) (1). The intent of the ordinance requiring a 30 foot setback from the SC OCRM critical line is to create a buffer zone to allow passive treatment of stormwater and from flood water erosion of rising sea levels.

Chair Tezza asked the applicant to present. Mr. Barr stated that a survey by Bert Niemyer in the 1980's showed that all the lots on Raven Drive were 107 feet wide. At some point there was a boundary line dispute and the MacAvoy's discovered the boundary line on their lot was reduced from 107 feet wide to 101 feet wide, while the corner lot was increased to 112 feet wide. Therefore, the applicant lost some of their buildable area.

He continued that this is the fourth application to come before this Board as Graham Eubanks at 2614 Raven and the Town-owned lots at 2618 and 2624 Raven have been given variances. The basic problem in the entire block is the critical line runs through each of the lots and decreases the buildable area. He continued that the most severely affected lots were the two Town lots which were recently granted variances to come within 15-16 feet of the critical line. Mr. MacAvoy's request is essentially to come within 17 feet of the critical line. That is consistent with what was allowed on the lot to the east (Graham Eubanks) and the Town lots. The MacAvoy's lot is somewhat unusual as the critical line is very erratic. That is unlike the lot next door that has a level critical line, as well as the Eubanks' house with a level critical line that lies outside his property line. Therefore, that means that the dimensions of Graham Eubanks' lot are measured from the lot line, while the MacAvoy's lot is measured from the critical line. Not only do they have an irregular property line, as a result of the variance granted to Graham Eubanks, the applicant has the smallest lot in between two lots with a significantly better ability to move forward. If the MacAvoy's are not allowed to push a little bit forward, they are going to be looking up at big houses on the right and left. Essentially the critical line has created a hardship, and the actual positioning of the larger house to the right also creates a hardship. Because of those facts, he asked the Board to grant the same relief to the MacAvoy's that was given to the other properties.

Chair Tezza asked the square footage of the principal building. Kate Campbell responded the heated square footage is about 3,200. Mr. Barr stated the objects encroaching into the setback are the in-ground pool and a single story open porch. Chair Tezza stated there is available space on the street side, and part of the staircase could be in the setback, so she asked why the house had not been moved toward the street. Mr. Barr responded it was to take advantage of the view which was the same circumstance that faced Graham Eubanks. Chair Tezza stated that the Eubanks' was a much smaller variance, actually just a corner edge. They have since redesigned the house and submitted new plans and will not need the variance; however, that information will not be used in the Board's deliberations.

Bachman Smith stated the applicant should articulate the hardship more than the precedence, as that is what concerns the Board. Mr. Barr stated that the hardship is the erratic critical line.

Susan Romaine stated that the architect was aware, or should have been aware, that when the Board granted the variance to the Town lots, there was a 30 foot setback on one side to allow a view corridor. Chair Tezza asked the area of the footprint because this lot was not similar to either of the Town lots. The critical line was worse on the Town lots, and unless a variance was granted the lots were not even sellable. Kate Campbell responded that she did not know the buildable footprint area, but the highland was 13,087 square feet. Chair Tezza stated the largest Town lot is 8,600 highland, so there is no comparison. Ms. Campbell answered that the area of Graham Eubanks' property is 16,000, and he was granted a variance as well. Chair Tezza responded that the Graham Eubanks' property variance was very small – it was not 12'8".

Beau Clowney stated another hardship was they were trying to make this house neighborhood compatible, meaning they do not want this house to be the only house right up on the street. The MacAvoy's wanted something more natural and balanced for the site.

Kate Campbell explained that they based the variance request on the Eubanks' property. The Eubanks were granted to build 10 feet off the property line, and when their plans were scaled off, the Beau Clowney Design firm came up with 12.8. Mr. Clowney presented two elevations. The porch is nine feet deep and 30 feet wide. It is encroaching 9 feet into the setback. The pool is 14x25 feet. Susan Romaine stated if the building were pushed toward the street six feet, and move the pool and house closer together, they could ask for the two feet that the Design Review Board is allowed to grant.

Ward Lasso stated the applicant wanted the houses to somewhat line up. While they know where the front of the Eubanks' house will be, they are not aware of where the building on the left side will be. Chair Tezza added that the variances the Board granted on Raven Drive have not included an accessory structure such as a pool.

There was no public comment.

Chair Tezza asked the Board their opinions.

Carlin Timmons stated there was room to move the house six feet toward the street, and the variance request would be much smaller. It is a matter of balance. This application reminded her of the recent Hagerty Point variance request.

Summer Eudy stated the critical line creates a hardship on the property. Because a portion of the variance is for the porch, and the ordinance encourages porches, she would be in favor of a porch variance. However the pool does not necessarily meet the hardship test; she did not find that being an unreasonable restriction on the property.

Ward Lasso agreed with Carlin Timmons, as it is difficult to see a hardship when there is six feet of usable space in front of the house.

Susan Romaine stated this is not prohibiting the utilization of the property as there seems to be enough space to build a 3,200 sq ft house. There are ways to minimize the encroachment, and this variance does not meet the hardship test.

Bachman Smith stated the hardship test needs to be the focus; not the precedence arguments. The buildable area of the lot compared to the buildable area of the adjacent lots would probably be their best argument. However, there is still the six feet of buildable area that is not being used, and the pool could be a different dimension.

Elizabeth Tezza stated she agreed with a portion of everyone's comments. If this variance was solely for the porch she would be more agreeable, but almost all the pool is outside the buildable area. She stated she would like to have an answer to her question about the actual buildable area. The footprint is not comparable to the footprint of the two Town lots; and it is possible to move the house toward the street.

Mr. Henderson asked the Board if the variance request met the four-part hardship test. Bachman Smith stated that Attorney Trenholm Walker spoke to the Board at a recent meeting. He stated if the Board strictly interpreted the Supreme Court's hardship test, no variances would ever be granted. He continued that while the four part hardship test is supposed to be an objective test, each Board member's interpretation would be subjective, and that is how a fair, balanced decision is made.

Mr. Barr asked the Board if the applicant could take the Board's comments into consideration and change the plans to present next month.

Motion was made by Elizabeth Tezza, seconded by Summer Eudy, that the application be continued to the July meeting, carried unanimously.

Diana Browder. 2672 Goldbug Avenue, request for RC-2 setback variance.

Chair Tezza asked Mr. Henderson to present. Mr. Henderson stated Mr. Barr represented the applicant tonight. The applicants and owners of 2672 Goldbug Avenue requested relief from Zoning Section 21-23 E (1) (b). This section of the ordinance requires new construction adjacent to the RC-2 Zoning District to establish a build-to line with respect to the critical line, and any construction or structure on the block is to establish that build-to line. He asked the Board to again focus on utilization criteria of the State requirement, and also the detriment section of SC Code Section 629-800.

Chair Tezza asked Mr. Barr to present. Mr. Barr stated there is a 40 inch oak on the property that the applicants would like to build their house around. Mrs. Browder stated the tree is one of the best things about the lot, but also one of the worst things in terms of building a house. The arborist said a structure could not be built within 20 feet of the tree, and they were unaware of that fact. The Browders did not want a tall stacked house in the front of the lot as it would not be consistent with the neighborhood. Mr. Barr asked the Board to consider the variance granted to 2662 Goldbug several years ago, although a house was never built on that lot. He continued that in the middle of the 2662 Goldbug lot is a mound with oak trees. The owners were faced with building a large house on the road in order to take advantage of the view, or build a smaller house forward of the mound. The Board granted a variance for the house to be built in front of the mound (marsh front). The motion for that property was to allow a house to be built on the marsh side of the mound because there were extraordinary and exceptional conditions as it had a large sand dune in the middle of the property which was covered with live oaks; and it restricted the placement of the house. The application of the ordinance would unreasonably restrict the siting of the house to take advantage of marsh view, and would disproportionately impact the homeowner beyond the intent of the ordinance. Building the house behind the dune would avoid building a large house in front of the dune, and because of that it would not be of substantial detriment to the adjacent property or the public good. He added that a stipulation of the motion was it should not be considered a precedent for a new front setback line for other properties along that block.

Mr. Barr stated that the house at 2672 Goldbug has been designed to wrap around the oak tree, instead of building behind the oak tree. Both adjacent neighbors do not object to the variance request. The sketch shows the parts of the house toward the marsh are single story, then a two-story behind that.

Summer Eudy stated she is not commenting or voting on the application. Chair Tezza stated Ms. Eudy had submitted a Recusal Statement to this application before the meeting.

Mr. Henderson presented a site plan showing the location of the houses on the adjacent properties, with the build-to line drawn.

Arborist Jerry Benoit stated without a variance, large limbs would have to be removed and that would have an adverse effect on that tree. The plan showed the technical protection zone, the existing tree canopy, and the line of possible pruning.

The architect stated that with this plan, the house would be compatible with the neighborhood, and it would not be of substantial detriment to adjacent property or to the public good. The application of the ordinance in this case would disproportionately impact the applicant from the intent of the ordinance; and there could be a stipulation that this could not set a precedent.

There was no public comment.

Chair Tezza asked for the Board members opinions.

Carlin Timmons stated it was a creative way to save a landmark tree and she preferred the one-story. The tree does make this property unique; and the neighbors do not oppose it.

Ward Lasso stated a concern that with the new house placed significantly back, it could create a sawtooth affect in the streetscape. He questioned if the square porch addition was removed, whether the whole design could be moved to fit. The architect answered that it could not be moved, as the tree leans hard to the left, so the canopy would affect the roof line.

Susan Romaine stated that she agreed with Carlin Timmons. The hardship to the property owner is the oak tree and having to bring the whole house forward. Building around the tree is more compatible with the island than a big tall house at the front. She added if the Board granted a variance, the build-to line should be noted as an exception for this property only.

Bachman Smith stated if the applicant was not granted a variance, they would need to build a big house on the front of the property, and it would hurt the views of everyone on the island. This design works well with the lot, it is compatible, and is not opposed by the neighbors.

Elizabeth Tezza asked Mr. Henderson if the Board did grant this variance, would there be a need for any contingencies with regard to the tree? Mr. Henderson answered he did not think so, as long as arborist's recommendation was followed.

Motion was made by Bachman Smith, seconded by Susan Romaine, to grant the variance as there are extraordinary and exceptional conditions pertaining to the particular piece of property as there is a 44 inch grand live oak with a large canopy that unreasonably restricts the buildable area; these conditions do not generally apply to other property in the vicinity as there are no similar size oaks located the same as is found on this property; because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property because the location of the tree forces the house further to left of property or toward the street; the authorization of the variance will not be of substantial detriment to adjacent project or to the public good, and the character of the district will not be harmed by the granting of the variance as the house as proposed and designed keeps within the character of the immediate vicinity; the variance to be granted is to construct a residence approximately 28 feet forward toward the marsh at 2650 Goldbug. This motion as granted will not have any precedential affect as to the build-to line under Section 23-E (1) (b), carried unanimously.

Mr. James Hawk of 1411 Middle Street was in the audience and asked to speak to the Board regarding the motion it granted to him at the last meeting. **Motion was made by Susan Romaine, seconded by Carlin Timmons, to amend the agenda to allow Mr. Hawk to present to the Board, carried unanimously.**

Mr. Hawk stated there was a problem obtaining a performance bond as made in the Board's motion in the May 9, 2013 meeting. Mr. Hawk's attorney has written multiple contracts to insurance companies, and they state you cannot be bonded for two reasons, one is the amount which is thought to be in excess of the cost of demolition of the home, and the other is it is a performance bond which is not the appropriate type of bond. Mr. Hawk asked if the Board would consider having a different type of bond issued. They do not want to change the substance of their request, but the Town Attorney recommended, before he knew the exact details of the \$100,000 amount, a bona fide cash bond. Mr. Hawk stated they would write a check for 2-1/2 times the amount of the estimated cost of the demolition of the home, and it would be put in escrow until demolition was completed. It essentially would be the same issue that is carried out differently. Chair Tezza stated that the Board passed their motion on the Hawk application based on what the Town Attorney told them to do. She continued if the bond is not obtainable, the Board can determine to amend the motion.

Motion was made by Susan Romaine, seconded by Bachman Smith, to amend the May 9, 2013 motion to overturn the decision of the Zoning Official and will grant the occupancy of the current home while building a new home with a performance bond of \$100,00 payable to the Town to:

To overturn the decision of the Zoning Official and will grant the occupancy of the current home while building a new home with a financial guarantee as approved by the Building Inspector and the Town Attorney, carried unanimously.

Motion was made by Bachman Smith, seconded by Susan Romaine, to adjourn, carried unanimously.

Respectfully submitted,

Ellen Miller