

March 14, 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.

Present were: Susan Middaugh, Chair
Summer Eudy
Susan Romaine
Bachman Smith, IV
Elizabeth Tezza
Carlin Timmons

Chair Middaugh called the meeting to order and stated all Freedom of Information Act requirements had been met. Chair Middaugh welcomed new Board member Summer Eudy, and administered the oath to the applicants and participants. She welcomed attorney Trenholm Walker, present to meet with the Board after the application.

Motion was made by Elizabeth Tezza, seconded by Susan Romaine, to approve the Minutes from the February 14, 2013 meeting, carried unanimously.

Kelly and Ben Navarro, 801 Star of the West. Variance from RC-1 setback. Chair Middaugh asked Building Official Randy Robinson to present. The applicants' variance request last month was not approved by this Board; therefore, the applicant has returned with a new request. The old request was a 13 foot encroachment. Now they have moved the house back toward the street and away from the critical line and the property line, and they are asking for a six foot encroachment. This request involves Code Section 21-23 (D) (1) (a) setback from RC-1 District, and it states: The following setback requirements shall apply to structures constructed or placed on lots bordering the RC-1 District: Thirty foot setback from the lot line bordering the RC-1 District boundary line or the RC-1 District Boundary line established as of the date a Certificate of Zoning Compliance and a Building Permit are issued, whichever is further landward. In this particular case, the property line was further landward than the critical line, so the 30 foot setback would be from the property line. It is in the RS District, so it is a setback from the RC-1 line.

Chair Middaugh asked the applicant to present. James Meadors and Jeremy Tate, architects with Meadors, Inc., represented the applicant. Mr. Meadors stated there is a structural member in the deck so the entire house was moved and the deck was reduced three feet. The variance request is for 3'6" for the full length of the pool, and an additional 2.6" for the catch basin. Mr. Meadors reviewed that the purpose of setbacks in Section 21-23 was to create a buffer zone that allows passive treatment of stormwater run-off before entering the surrounding waters and a buffer zone from floodwater and

erosion caused by storms and other natural conditions. He stated that there is an eight foot elevation change in the lot and the masonry seawall provides eight feet of protection. The concrete wall provides a buffer zone that meets the purpose of setbacks. With the variance, the catch basin would be 24 feet to the property line, and 34 feet to the critical line. Also, the lot is an odd-shaped lot.

Bachman Smith stated that the issue is owners can engineer around a stated purpose in a number of incidences, and that is not a reason to grant a variance. Also, the size of the variance is not a determinant. The word "unreasonable" is a relative term, but it is certainly more than inconvenient or personal preference or aesthetic design. It is not unreasonable to ask that the footprint of this house be reduced to fit within the required setbacks.

Susan Romaine agreed with Mr. Smith's statements, and added that it is not an existing residence that the owners cannot use the property without a variance.

Elizabeth Tezza stated that the four conditions to be met for a variance all work together. Strictly applied, every condition cannot be met 100% or a variance would never be given. She strongly believes in personal property rights. An important fact is that if this variance were for a rectangular lot, she would not have a problem denying the variance. This lot is two triangular buildable pieces. There is a seawall and an easement that encroaches into the buildable area.

Carlin Timmons agreed with Ms. Tezza, and is leaning in favor of the variance. The applicant could make the house smaller, but she appreciated the fact of moving the house and reducing the variance request.

Chair Middaugh stated that this is a full acre lot. It is a funny shaped lot, but it is a large lot with proposed new construction. The house would not have to be completely redesigned to get out of the setback so there is no hardship, and she opposed the variance.

Summer Eudy stated she tends to agree with Ms. Tezza, and it is the totality of the circumstances.

Motion was made by Bachman Smith, seconded by Susan Romaine, to deny the variance request based on the grounds that there is no unreasonable restriction of the utilization of property. There was a tie vote 3-3 (in favor of the motion Bachman Smith, Susan Middaugh, Susan Romaine; and against the motion Summer Eudy, Elizabeth Tezza, Carlin Timmons.) Susan said in case of a tie the application is not approved, as in the Board's rules of procedures.

Because the Board's Rules of Procedures were not clear regarding the outcome of a tie vote, legal counsel Trenholm Walker stated the motion to deny means that it has not been approved, but it also has not been denied. If a motion to approve is not made, then it is not approved; it is not granted. Chair Middaugh asked how the applicant is affected if another motion was not made. Mr. Walker responded that it certainly would be more clear if a motion was made to approve it and voted on that, because if there were a tie vote on that, it would then be denied.

Chair Middaugh asked if there was another motion. There being no motion, **motion was made by Susan Middaugh, seconded by Susan Romaine, to approve the application on the grounds that it is a reduced amount of variance that they asked for previously, there is lost space due to the easement,**

and it is not encroaching on the critical line. There was no discussion. Elizabeth Tezza called for the question. The vote to call the question was unanimous. Motion to grant the variance was denied by a tie vote of 3-3 (in favor of the motion Elizabeth Tezza, Summer Eudy, Carlin Timmons; against the motion Susan Middaugh, Susan Romaine and Bachman Smith).

Mr. Meador asked for clarification, that they were not being allowed to move forward with the project and that Chair Middaugh made a motion listing the reasons in support of this application, and then voted against it. Chair Middaugh affirmed his statement.

With the application completed, the Board discussed the language concerning tie votes in the rules of the procedures. The Board agreed to discuss changes to the wording at the next meeting.

Trenholm Walker began the discussion concerning procedural issues to come before the Board. He stated every application is a significant matter to the Town and the applicant. Ultimately, there is the four part test for a variance, and all four elements have to be met. The test is a hardship test, and does the enforcement of the ordinance in question impose unreasonable restriction of the utilization of the property. It is subjective for each Board member what is "unreasonable", but each Board member brings his/her own experiences and reasons to the table. Also, there is no decision that the Board makes that is without an argument for precedence. It would be wise to say that it only applies to this particular piece of property under these circumstances. The final decision will be based on motion and has to have findings of fact and conclusions of law. There must be reasonable justification in the record that is stated at the time the motion is made. The findings of fact and conclusions of law will be stated in a Final Order to the applicant.

Motion was made by Bachman Smith, seconded by Susan Romaine, to adjourn at 7:20 pm, carried unanimously.

Respectfully submitted,

A handwritten signature in cursive script that reads "Ellen Miller". The signature is written in black ink and is positioned above the printed name.

Ellen Miller