

April 10, 2014

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: Elizabeth Tezza, Chair  
Bachman Smith  
Summer Eudy  
Jimmy Hiers  
Delores Schweitzer  
Carlin Timmons

Staff present: Joe Henderson  
Randy Robinson  
Ellen Miller

Chair Tezza called the meeting to order and stated all Freedom of Information Act requirements had been met.

**Motion was made by Bachman Smith, seconded by Carlin Timmons, to approve the Minutes of the October 10, 2013 meeting, carried by a vote of four, with Summer Eudy and Jimmy Hiers abstaining.**

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

Mr. Henderson stated that Van DeVenter Family LLC withdrew its variance request application for 3001 Marshall Boulevard.

The second application request was from Eric and Hannah Dodson for 1462 Thompson Avenue. **Variance request from Zoning Ordinance Section 21-22(E) rear yard setback, Section 21-23 (D) (1) (a) setback reduction from the RC-2 District, and Section 21-26 impervious coverage area.**

Chair Tezza asked Zoning Administrator Joe Henderson to present. Mr. Henderson stated the applicants were requesting a rear yard setback variance of 12'9" (150 square feet) for a pool structure, as well as a setback reduction from the RC-2 District of 17'2" (90 square feet) for the pool structure; and 17'1" for pavers. It was determined prior to the meeting that no variance was needed for impervious coverage area.

Chair Tezza asked the applicant to present. Mrs. Dodson stated their house at 1462 Thompson Avenue is on the marsh, and the lot is 8,532 square feet. The lot is irregularly shaped as the rear lot line cuts in at about a 30 degree angle due to the marsh. It is a shallow lot – depth at the eastern edge is 84 feet; the western edge is 121 feet. The hardship is the small acreage along with the shallow depth, marsh, and small buildable area. These conditions do not apply to other properties in the vicinity. The lots get deeper and larger to the west. The rear edges to those houses sit further and further back. The pool would not extend as far as the rear edge of the houses. The variance will not destroy neighborhood compatibility. The pool would be back as far from the critical line as possible, while at least the next two houses are well into the critical line.

Mr. Henderson then determined that the RC-2 line is actually the property line. There is not a rear property line because a house on the marsh or the ocean does not have a front or rear. It is strictly a RC-2 variance.

Mrs. Dodson stated she was now not certain of the exact amount of variance she was requesting. She continued that in an effort to minimize the impact of the variance, they propose to remove the concrete pad of 762 square feet to the east. She stated the scope of the ordinance anticipates and allows for a broad array of accessory uses within the definition of utilization. The actual application form uses the words "utilization of property" and does not restrict utilization to the primary structure. This variance will not be of substantial detriment. The pool cannot be seen from the front of the house; it will not go back further than the back edge of the most adjacent house. It serves the public good because the removal of the concrete pad between the road and marsh will help prevent stormwater runoff into the marsh.

Mr. Dodson pointed out that there was already an encroachment from pre-Hugo construction. The actual areas of additional encroachment are very small. The stairs could be moved but then they, along with the fence for the pool, would impact the view corridor from the street. He continued that the houses on each side both encroach within five feet of the RC-2 line.

Mr. Robinson stated that a variance was granted in 1989 on the house for encroachment of 11 feet into the 30-foot setback.

Chair Tezza stated the Board has denied pool variances for much less square footage than they requested. A pool is a difficult thing to deal with as a hardship and unreasonable restriction of utilization of property. Bachman Smith stated the structure already exists in the setback, and suggested to perhaps consider that as a footprint to look at.

**Motion was made by Jimmy Hiers, seconded by Carlin Timmons, that if so requested, the Board would allow the applicants to negotiate with the Zoning Administrator and staff to try to build the pool without any variances based on the new dimensions presented to the Board tonight, carried unanimously. The applicants then withdrew their application.**

Chair Tezza asked Mr. Henderson to present the final application. **Cynthia Holmes and James Holmes. 1607 Poe Avenue. Appeal Building Department staff's decision regarding authorization of improvements to a driveway located at 1607 Poe Avenue.** Mr. Henderson stated the applicants appealed the Building Department's decision regarding the issuance of a building permit to improve a driveway located at 1607 Poe Avenue, adjacent to the applicants' property. At this time Delores Schweitzer recused herself from the application because she lives across the street. Mr. Henderson continued that the applicant contends that staff should not have issued a building permit to improve the existing driveway. Staff required that a professional engineer certify that the submitted driveway design specifications met the conditions of the Town Ordinance. On January 9, 2014 Thomas M. Durante, PE (Empire Engineering, LLC) submitted a letter confirming that the driveway specifications met the previous requirements. Upon receipt of the letter, staff issued the building permit. The staff conducted an inspection of proposed drainage inlets, perforated pipe, geotextile fabric and stone before pouring concrete. An inspection was conducted and deemed as built according to plans. Upon receipt of the appeal, the engineer provided additional specifications that the design actually exceeded the requirements of the Town.

Chair Tezza asked Dr. Holmes to present. Dr. Holmes requested that the application be continued because the co-owner had to leave the meeting early due to a conflict. She stated that several years ago when

the concrete driveway was requested at the Design Review Board (DRB), the request was denied. They are asking this Board to uphold the decision of the previous denial.

Mr. James Walsh, the owner of the property at 1607 Poe Avenue, asked to speak at this time. He stated Dr. Holmes has had a drainage problem that predates the construction of his home. He did not intend to build a concrete driveway during construction, and did not recall it being discussed with the Design Review Board, because they planned to have a mulch driveway. After four years they discovered the mulch driveway did not work well, and wanted to change it. Because of Dr. Holmes' concerns during construction about the pool decking and drainage issues, Mr. Walsh installed 900 cubic feet of drainage along her property line to make sure that nothing drained from his lot to her lot. He also stated that he believed she submitted her appeal after the time deadline. It was determined by Mr. Henderson that her appeal was submitted in a timely manner. It had to be appealed within 30 days of the issuance or denial of the permit. **After discussion, motion was made by Bachman Smith, seconded by Summer Eudy, to deny the request for continuance, carried unanimously.**

Chair Tezza asked Dr. Holmes to present her information. Dr. Holmes presented information stating: the Board should uphold the previous ruling at the DRB November 2008 meeting on grass pavers or pervious; the permit was not in the owner's name and is thus invalid; the engineer's letter does not state what the Zoning Ordinance states; and she heard they cannot have a swimming pool and a driveway.

Dr. Holmes noted the discussion of the driveway between the DRB and architect Eddie Fava at their November 18, 2008 meeting. Dr. Holmes stated that the driveway surface permitted is concrete and is impervious. Mr. Henderson supplied discussion further in that meeting from DRB Board member Fred Reinhard. Mr. Reinhard stated that "this matter could be approved with the condition that they meet the pervious/impervious guidelines. In other words, we could move for approval under the condition that it meets those guidelines in its final submission to staff. It's not a big design detail. It is a calculation that could easily be scrutinized by staff during the building permit stage."

Bachman Smith added the statute speaks to whether it is pervious or impervious, not specific materials. Concrete is impervious, but if engineered and laid down properly with draining, then it becomes a pervious surface. It then meets the statute regardless of the materials used, and that is what had occurred here. It does not appear it is pervious but it was engineered to be pervious and meets the letter of the law.

Dr. Holmes said that Section 21-26 states that impervious does include concrete. The permit is invalid because it was approved based on the engineer opinion letter which was not in compliance with the ordinance. The concrete should be removed and have it consistent with what is approved by the ordinance. Mr. Henderson noted that she was speaking to a certain design but the ordinance allows staff to receive certification from engineering professionals to allow innovative materials.

Dr. Holmes then introduced Google maps from 2007 showing the elevation of 1607 Poe Avenue at 9 feet and then in 2013 at an elevation of 12 feet. She stated the ordinance allows only 1 foot of fill; she did not see a permit for the fill; and the driveway permit was invalid as it was not issued in the owner's name, and based on the opinion letter it does not specify compliance.

Chair Tezza asked if there was any further public comment. There being none, public comment was closed.

Summer Eudy stated there was no evidence presented to refute the expert analysis presented. Carlin Timmons stated many properties on the island have standing water in their yards. The driveway in question is a pervious driveway and there is no ground for appeal.

Motion was made by Bachman Smith, seconded by Summer Eudy, to deny the appeal as submitted, carried unanimously with a vote of five (Delores Schweitzer recused).

Motion was made by Jimmy Hiers, seconded by Carlin Timmons, to adjourn at 7:50 pm, carried unanimously.

Respectfully submitted,



Ellen Miller