

May 8, 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
Sarah Church
Summer Eudy
Jimmy Hiers
Delores Schweitzer

Staff present: Joe Henderson
Randy Robinson

Chair Tezza called the meeting to order and stated all Freedom of Information Act requirements had been met. She welcomed the newest member to the Board, Sarah Church.

Motion was made by Summer Eudy, seconded by Jimmy Hiers, to approve the Minutes of the April 10, 2014 meeting as amended; carried unanimously.

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

1462 Thompson Avenue. Eric and Hannah Dodson, applicants, request a variance from Zoning Ordinance Section 21-23(E), setback reduction from the RC-2 District to accommodate a pool construction. At the April meeting, the Board heard a similar request from the applicant for a larger setback variance for this property. At that meeting, the Board's motion allowed the applicants to withdraw their request and work with the Zoning Administrator and staff to determine if they could build without variances based on new dimensions not in their current application.

The applicants are now requesting a variance to encroach 11 feet within the 30 foot RC-2 setback, as well as 114 square feet of pervious decking material. Mr. Henderson continued that the BZA Minutes and Final Order from 1989 indicated that a variance was given for the existing house to encroach within the required 30 foot setback by 11 feet. The applicants want to continue the 11 foot variance line issued in 1989 that allowed for the steps and corner of the house, in order to allow the pool structure. The proposed pervious pavers go beyond this 11 foot encroachment to within 5 feet of the rear property line.

Chair Tezza asked the applicant to present. Hannah Dodson stated that it appears the previous variance carries from one corner to at least the middle of the lot; and they are asking that the 11 foot line be carried through to apply to the remaining back of the property. She continued that they want to mitigate any additional lot coverage by removing the concrete drive and replacing it with the pervious pavers. The concrete drive portion to be removed is 760 square feet, and they are proposing to add 350 square feet in pervious

pavers in the pool area. When Jimmy Hiers inquired if the pool could be placed on the side of the house, Mrs. Dodson stated they are up to the side yard setback on the west; and the driveway/parking area is to the east. At this time she also commented regarding the utilization of the property. She stated that a section in the ordinance provides for utilizing the property in ways other than the primary residence. It is the intent of the ordinance to use the property in ways that are listed in the ordinance such as pools, sheds, courts, etc. The scope of the ordinance anticipates and allows for a broad array of accessory uses in the definition of utilization and the variance application itself does not have any restrictive language concerning what the utilization of the property is.

Summer Eudy agreed with the applicant regarding the utilization of the property. She cited the case law of *Bennett vs. Sullivan's Island*. Although it deals with the first test of hardship for a variance, it refers that any ambiguity in a statute should be resolved in favor of just, equitable, and beneficial operation of the law. The third test of a variance hardship – “unreasonably restrict the utilization” – is ambiguous because each Board member has his interpretation of what unreasonably restricts the utilization. It was her opinion that granting the variance was fair, just, and equitable under the circumstances.

Sarah Church agreed and stated she interpreted that the 11 foot variance had already been established and it was reasonable to continue it.

Jimmy Hiers stated while he would not argue against the 11 foot variance, he might not support it. He noted the pool RC-2 setback request by Michael and Eleanor Daly. The Board denied their request and the owners built the pool on the side. He continued while there are extraordinary and exceptional conditions on the Dodson property; extraordinary and exceptional conditions apply to other properties as well.

Elizabeth Tezza stated that even though the owners have done a good job with the changes to their previous request, it was still the largest pool variance requested; and last year the Board denied several pools. She concluded that a decision based on the previously granted variance in 1989 would be the only way to consider granting the variance.

Mr. Henderson stated that the pavers could not be used to increase the pool deck size after the 11 foot variance, as there is already a pathway/access to the dock.

Motion was made by Summer Eudy, seconded by Delores Schweitzer, to grant the variance for the pool which is an 11 foot variance relief from Section 21-23 (D) (1) (a) which would allow the applicant to build within 19 feet of the RC-2 line. This allows the 11 foot relief from the 30 foot setback. The variance is granted for the pool to be built as submitted; specifically the Board is not granting the variance for the pavers requested beyond that 11-foot line. There are extraordinary and exceptional conditions pertaining to this particular piece of property including that it is very small as compared to the neighboring properties; it is only .2 acres; and it is an odd shape including an irregular rear lot line. These conditions do not generally apply to other properties in the vicinity, including the fact that this property was granted the same variance for the 11 foot relief in January of 1989. Because of these conditions, the application of the Zoning Ordinance for this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. The authorization of the variance will not be of substantial detriment to the adjacent properties or to the

public good, and the granting of the variance will not harm the character of the district. Also, it is noted that after two meetings on this issue, there have been no public objections to this variance request. The motion carried by a vote of 4-1, with Jimmy Hiers casting the nay vote.

Motion was made by Jimmy Hiers, seconded by Summer Eudy, to adjourn at 6:50 pm, carried unanimously.

Respectfully submitted,



Ellen Miller