

September 11, 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  
Bachman Smith, IV

Staff present: Joe Henderson  
Ellen Miller  
Randy Robinson

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

**Motion was made by Jimmy Hiers, seconded by Bachman Smith, to approve the Minutes of the June 12, 2014 meeting; carried unanimously.**

Chair Tezza administered the oath to the applicants and participants. Chair Tezza stated she had received two recusals from Board members. Delores Schweitzer and Sarah Church were recused from Item D (1) 1607 Poe Avenue. She then asked Zoning Administrator Joe Henderson to present the application.

**1607 Poe Avenue.** Cynthia Holmes, applicant, requests a rehearing of an application in accordance with Article IV, Section 9 of the Board of Zoning Appeals bylaws. (TMS# 523-12-00-058).

Mr. Henderson stated that according to Article IV, Section 9 of the Board's By-laws, an applicant can request a rehearing and 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 15 days after the 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. Mr. Henderson turned the floor to Chair Tezza.

Chair Tezza stated the first thing for the Board to determine was whether to allow a rehearing. Chair Tezza stated the documentation submitted for the rehearing was also submitted with the original application. She then asked Cynthia Holmes if she had additional information or documentation that was not presented at the original hearing.

Mr. Kevin Holmes, attorney and owner of one-half of the property adjacent to 1607 Poe Avenue, stated a survey was done; he also stated there is additional evidence from the plans and additional information that indicates that the driveway in question exceeds coverage of that lot.

Chair Tezza stated the Board is determining whether to rehear the application so they need to see the new information and documentation; she added that the new information should have actually been submitted along with their application for rehearing. Cynthia Holmes gave the information to the Chair. Chair Tezza questioned if the photograph just submitted was a photograph of new evidence taken after the original hearing. Cynthia Holmes stated that the photo was taken after the original hearing; as well the recent survey adds new information about the state of aggravation of the driveway.

Chair Tezza asked for Mr. Henderson to state one more time for the record the finding of the engineering report that was done for the Town certifying that even though the driveway is concrete it meets the pervious guidelines of the Town Code. Mr. Henderson responded that Mr. Thomas Durante, professional engineer with Empire Engineering LLC issued a statement on his letterhead on January 9, 2014 establishing that the driveway as designed for that permit met the requirements of 21-26 (A) (3) Pervious Surfaces – a section of our Ordinance which describes and defines what is allowed as a pervious surface. In the engineer's statement, he states "in regards to the above referenced project, it is our opinion that the proposed driveway on a bed of 10" of

washed 57 stone will be adequate to be considered pervious. The 10 inch stone layer will have approximately 350 cubic feet of water storage within the voids, which exceeds the 200 cubic feet of storm water generated by a 2 inch rainfall on this surface. We recommend that the pavement be sloped to a few small drainage inlets strategically placed within the area to transmit the water from the surface to the 10" stone layer underneath. Extending from these inlets should be 4" perforated ADS pipe within the gravel to evenly distribute the water." Upon receipt of the letter, Town staff issued the permit. Chair Tezza stated that the engineer's letter stated it meets our Code, and, in fact, it actually exceeds our code.

Chair Tezza stated the applicant has presented several documents; however, none of them – the narrative or photographs - are dated. She stated their narrative referenced the Design Review Board and asked Mr. Henderson if the Design Review Board had anything to do with this particular property.

Mr. Henderson responded that it has been on the DRB agenda several times. They requested impervious coverage increases as well as principal building square footage of 5.7 percent, and they were granted.

Chair Tezza stated that any actions by the DRB are not in this Board's purview; this Board is trying to determine if the rehearing should be allowed. The rules of procedure state that the Chair is allowed to make the determination; however, Chair Tezza wanted to hear the opinions of the Board members. Mr. Hiers stated that based on what he has heard there may be evidence that could not have reasonably been presented at the first hearing. He is not against having the rehearing although it may not have a different outcome than the first hearing. Board members Bachman Smith and Summer Eudy agreed to have the rehearing. Chair Tezza granted the rehearing at 6:20 p.m.

Chair Tezza stated the process for the rehearing: Zoning Administrator would present; Board would ask questions of him; Applicant would present; Board would ask questions; Public comment will be taken; and the Board will then discuss with no interjections from the applicant or audience. Chair Tezza then asked Mr. Henderson to present information regarding the application.

Mr. Henderson stated that applicant lives adjacent to 1607 Poe Avenue and contends that staff should not have issued a building permit to improve the existing

driveway space. The applicant requests a rehearing in accordance with Article IV, Section 9 of the Board of Zoning Appeals bylaws. Mr. Henderson reviewed a timeline of events:

- January 6, 2014. The Building Department staff received a permit application to construct a pervious driveway. Following a review of Zoning Ordinance Section 21-26 (impervious coverage area regulations), staff mandated that a professional engineer certify that the submitted driveway design specification met the conditions of Section 21-26.
- January 9, 2014. Thomas M. Durante, PE of Empire Engineering, LLC, submitted a letter confirming that the driveway specification met the impervious requirements (i.e. a minimum infiltration rate of 2.0 inches per hour). Upon receipt of the letter, staff issued the building permit for the construction of the driveway with the condition an inspection be conducted of proposed drainage inlets, perforated pipe, geotextile fabric, and stone before pouring concrete. An inspection was conducted and deemed as built according to plans.
- April 10, 2014. The Board of Zoning Appeals denied applicant's appeal as submitted for lack of evidence presented to refute professional engineer's analysis.
- May 28, 2014. Cynthia Holmes submits request for rehearing.

There were meetings with the Design Review Board (DRB) regarding the property, and in the November 2008 DRB meeting there was a lot of discussion about whether the driveway could be presented and deemed as a pervious surface. The Board at that time determined that as long as the driveway was deemed as pervious, presented with an engineer's report and demonstrated through a cross-section of materials, that it would be left to the interpretation of the staff during the permitting stage. This meeting in 2008 basically led to the issuance of the permit in January 2014. The Town also received two other engineer reports to certify the elevation and to certify the construction of the house. It is much more information than is usually required for a single family home. Mr. Henderson read the ordinance Section 21-26 (A) (3) Pervious surface: any material through which water can be easily absorbed or passed, at a minimum infiltration rate of 2.0 inches per hour, such as, but not limited to, grass and uncompacted gravel, shell and crushed stone.

Chair Tezza asked the applicant to present at this time. Mr. Kevin Holmes stated that Mr. William Rogen, a licensed professional engineer with Cypress Engineering, would present information regarding pervious material.

Mr. Rogen stated the pervious interpretation in the Town's ordinance is any material through which water can be easily absorbed or passed. He then presented a visual guide of examples of pervious concrete such as was used at the Isle of Palms Public Safety building. It is a standard concrete but with a little different material so that it has a 30-40% void space so water can go through. Mr. Rogen continued that the drawings presented to the DRB in November 2008 show a pool area, a building, and a drive area as a concrete drive; and the driveway was denied. In December the owner came back with different drawings, and the big difference was the pool deck area increased, the impervious table shows 3,424 sq feet that only includes the building, the pool deck area and the walkway. The entire driveway had changed because at the November meeting they were told it had to be a permeable surface. By increasing the areas, the allowed percentage and calculation was a total of 3,439 with 3,424 being for the pool and house area, with the intent of the driveway being a permeable surface.

He added that Section 21-26 (C) (1) states that the Design Review Board may increase by no more than 25% the maximum permitted impervious coverage if the increased impervious coverage consists solely of materials such as grass pavers are employed that allow vegetative materials such as grass to permeate the surface giving the appearance of grassed areas. The Design Review Board is the only Board that can approve this – it cannot be approved at a staff level. So, from November to December the plans for the pool and building were approved with very few square feet left of permeable area.

Mr. Hiers asked Mr. Rogen to restate what he said regarding the driveway in relation to the calculations from the December 2008 drawing. Mr. Rogen stated the permeable drive would then therefore meet the definition of the ordinance, but if it is above the allowed percentage it would have to be a grass paver approved by the Design Review Board.

Mr. Rogen continued that Section 21-26 (C) (2) states that in cases of interpretation of impervious coverage, the Design Review Board shall determine what portion of the impervious coverage shall be included or excluded in the calculations.

Mr. Hiers questioned what was relevant about that statement because impervious coverage is not being discussed. The driveway is certified as pervious and submitted by an engineer. Mr. Rogen answered that the engineer's letter did state from a hydrology standpoint that it did meet pervious surface – it met the rate requirement. However, this would allow someone to say they could pave their entire lot. Building Official Randy Robinson commented that the Town's ordinance only allows for total of 50% coverage.

Mr. Rogen stated that with his interpretation that this concrete is impervious, the lot coverage extension that could have been granted should only be 25%, but it is actually 32% above the allowable coverage. Summer Eudy agreed, if it was impervious, they could have gotten a 25% variance, but they did not get the 25%, so either way this is irrelevant. Mr. Rogen stated that he believes it is relevant because the issue was before the DRB in 2008, but the permit was issued in 2014 and there is no DRB documentation at the time the permit was issued stating that the DRB deemed this system was pervious. Summer Eudy said the ordinance does not state that the DRB has to do that. Chair Tezza stated they were not required to do that, and that this particular system may not have been designed in 2008.

Chair Tezza stated the Board understands Mr. Rogen's point that the percentage exceeds the allowed amount by the DRB; however, that is only if it is impervious and Mr. Rogen's argument hinges on the driveway being impervious. Chair Tezza said it has been proven to the Board by way of the engineering reports, that the driveway is pervious. Summer Eudy stated, even if we take Mr. Rogen's point as true, and the Board understands the point Mr. Rogen is making, if it is impervious, it is over what could have been granted as an extension of the coverage – it exceeds that if it is impervious. So the issue is whether it is impervious or pervious.

Mr. Rogen stated they request to have documentation that the Design Review Board has officially reviewed this material and has approved it as a pervious surface; as well as confirmation that the construction was in accordance with approved CSE as-built drawings.

Mr. Rogen identified an issue where he believes the drainage system may not have been constructed in accordance with the plans which may be allowing run-off to the adjacent lot. Summer Eudy said that would be an issue between the property owners, but

not with regard to the subject permit. Joe Henderson said that if such issues are presented to staff, that is an issue they will handle at the staff level. Staff would also handle any lot coverage issues. Joe Henderson further stated that the appeal is related to whether this is a pervious or impervious driveway. Summer Eudy stated that the issue as to whether the drainage system was built to plans and specs existed whether the driveway was built or not. Summer Eudy said Mr. Rogen may have revealed the cause of the problem, or a cause of the problem, but it does not relate to the issue that is in front of the Board right now. Chair Tezza stated the only thing the Board can consider is the actual appeal of the building permit for the driveway.

Summer Eudy asked Mr. Rogen whether he was giving an opinion on whether this is a pervious or impervious structure. Mr. Rogen stated he does not think this is a pervious application – from a hydrology standpoint – it does act in a similar manner as something like this, a pervious concrete (referring to a pervious concrete sample he had in his hands) – from a hydrology standpoint, yes. There are specific drainage requirements in every ordinance that say you can only have certain percentage of impervious surface on site, for items such as, buildings, driveways etc., unless it is a grass paver or other type of application. I think the application used here is a smart way to treat the run off; we have done it before – under drains and pipe system and gravel bed. I have used it before in different designs. It has been around for awhile. But that still does not alleviate the fact that concrete is not a pervious surface. Regardless of what you put under it, regardless of the pipes under it, the concrete itself is not pervious.

Ms. Eudy asked Mr. Rogen if he could give an opinion as to whether this structure meets the definition of 21-26 (A) (3), which is our definition of pervious surface. There was discussion regarding impervious versus pervious material. Ms. Eudy stated that we are not talking about pervious or impervious material – we are talking about a pervious or impervious surface. Mr. Rogen agreed. Ms. Eudy further stated, we are not just looking at the concrete itself, but we are looking at the system. Mr. Rogen said right, we are talking about a pervious or impervious surface. Ms. Eudy said the driveway is the surface and Mr. Rogen stated correct.

Mr. Hiers asked the applicants what they would like to see happen with this property. Mr. Kevin Holmes stated there has always been a drainage problem in the area; however, it is worse now with water under the house. He inquired what reference did the engineer give when water comes off the roof to the ground, and did he even consider

that? He continued that they say the huge driveway and parking lot next to them is permeable and they have to vacuum it out to keep it that way. Perhaps with remediation, staff could help to figure out a plan to resolve this; but the huge concrete slab they were told could not be there, is there. Perhaps it needs to be removed.

Cynthia Holmes stated there is an aggravation of unnecessary hardship. The photograph speaks to that. The situation is worse than before; the lot coverage percentage does not comply; she is not aware the DRB has approved that concrete is pervious; and the engineer letter is insufficient. She requests that the staff approval for the driveway be reversed.

Mr. Hiers asked if the applicants and the next door property owner were on speaking terms, and suggested they should talk.

Chair Tezza stated that the DRB does not have to approve the driveway. The November DRB minutes stated as long as the driveway met the pervious guideline of the ordinance, staff was allowed to approve it. The DRB does not approve building permits. Almost all lots on the island have drainage issues. Town staff relied on the expert opinion of a professional engineer that the driveway met the standard.

Chair Tezza asked for public comment.

Mr. Walsh, owner of the property, stated he sympathized with the Holmes'. At the initial DRB presentation the Holmes' never called him and wrote cryptic notes to him that he couldn't understand; therefore, Mr. Walsh hired engineers, devised a solution and went beyond what he needed to do. The entire property line along Dr. Holmes' property had French drains installed. He does not have water on his lot because his water drains. Mr. Walsh explained French drains and answered Dr. Holmes' question regarding maintenance of French drains.

Dr. Holmes stated that back in November 2008 she believed that he worked together with staff that resulted in them withdrawing their request for a concrete driveway, and he worked with staff to come up with something in zoning code to allow the driveway. She stated she just wanted to make that point.



Chair Tezza responded that she made her point. However, Chair Tezza continued that at the April BZA meeting, Mr. Walsh stated that in 2008 they did not know what their driveway was going to be.

Summer Eudy asked Dr. Holmes' if she had ever considered putting drains in their yard; and she responded no.

There being no further public comment, public comment was closed.

**Motion was made by Bachman Smith to deny the appeal; and seconded by Jimmy Hiers. Discussion: Mr. Hiers stated he sympathized with Dr. Holmes' water issue; however, the engineer report states the driveway is designed to drain, and the homeowner of the driveway based on the application and documentation has met the letter of the law and tried not to create any problems. Summer Eudy stated that she too sympathized with the situation; however, the evidence presented tonight is not enough to refute the evidence on which the permit was based and on which it was granted, and we do not have the jurisdiction to get into the as-built issues.**

**Chair Tezza called for the vote. Motion carried unanimously with four votes (two members had been recused).**

Board members Sarah Church and Delores Schweitzer returned to the meeting table at this time. Board member Bachman Smith left the meeting at this time.

Mr. Henderson then gave a brief presentation to the Board concerning the potential special exception applications the Board could receive for the recently approved "coffee shop ordinance".

**Motion was made by Jimmy Hiers, seconded by Sarah Church to adjourn at 8:20 pm, carried unanimously.**

Respectfully submitted,



Ellen Miller