

December 13, 2012

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  
Ward Lasso  
Susan Romaine  
Elizabeth Tezza  
Carlin Timmons

Chair Middaugh called the meeting to order and stated all Freedom of Information Act requirements had been met. Chair Middaugh administered the oath to the applicants and participants.

**Motion was made by Susan Romaine, seconded by Carlin Timmons, to approve the minutes from the November 8, 2012 meeting, carried unanimously.**

**Motion was made by Elizabeth Tezza, seconded by Susan Romaine, to amend the agenda to add an item between Items 9 and 10 concerning changing the time of the meetings, carried unanimously.**

**Harriet McDougal, 2429 Atlantic Avenue.** Variance to cut wax myrtles to 3-1/2 feet. Chair Middaugh asked Building Official Randy Robinson to present. Mr. Robinson stated that this property, along with one other one-story house on the island, has been granted a variance for years to prune the wax myrtles to 3-1/2 feet because the house is only one story. Chair Middaugh noted that this is not grandfathered – the owner(s) are required to apply to the Board every year for a variance.

**Motion was made by Chair Middaugh, seconded by Susan Romaine, to approve the application on the findings as previous years that this property has extraordinary and exceptional conditions. There are only two houses that are essentially single story at ground level and since the ordinance was set up in 1995 the Board has made, on an annual basis, an exception for these two properties only. These conditions do not generally apply to other property in the vicinity and cannot be taken as a precedent for any other front beach property. Because of the unusual conditions of being at ground level, the application of the ordinance as it now stands will disproportionately impact the utilization of the property. Property owners with two stories are allowed to cut wax myrtles – previously 7 feet but now to 5 feet – so that 3-1/2 feet for these two properties is proportional. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good. The character of the district will not be harmed by the granting of the variance in these two cases, as the Board has determined since 1995, carried by a vote of 4-1, with Carlin Timmons opposed.**

**Christopher Lane Young, 923 Osceola Avenue.** Appeal action of Zoning Official to construct a pool toward street side of property. Chair Middaugh asked Mr. Robinson to present. Mr. Robinson stated that the applicant is asking to construct a pool on the Osceola side of the home. Section 21-30 states that the principal building's primary façade (front door) shall be oriented toward a public street, excluding principal buildings on lots adjacent to the ocean or marsh. Section 21-138 states the accessory structures shall be located a minimum of twenty (20) feet to the rear of the principal building's primary front façade; provided, however, that for lots adjacent to the RC-1 or RC-2 district zones, accessory structures may be allowed in the yard area abutting the RC District or in the yard area abutting the street. Mr. Robinson determined this house was not on the marsh because it has a street between the home and the marsh; however, it is not clear where the RC-2 line runs. He added he does not think the pool is a problem because if they are not granted a pool then there will be a deck anyway, and it is an above ground pool on the deck that is integral to the house. Chair Middaugh stated she did not see that there was a problem with placing the pool in the backyard because their backyard would back up to the backyard of the house behind them.

Chair Middaugh asked the applicant to present. Attorney Bill Barr represented Mr. Young. Mr. Barr stated the main question is where the RC-2 line runs. He stated that the RC-2 line is on Mr. Young's side of the property; therefore, Osceola is part of the RC-2 district, and the Board should overrule Mr. Robinson's determination that it is not on the marsh. Also, a pool which is built as an integral part of the house is not a separate and independent structure as an in-ground pool. Chair Middaugh stated there are two separate issues to consider: is the property adjacent to the marsh, and the design of the pool being an integral part of the house. And, if the Board's decision is based on being adjacent to the marsh, the Board should first consult the Town Attorney. After discussion, **motion was made by Elizabeth Tezza, seconded by Susan Romain, to defer the appeal of Mr. Young to a future meeting pending legal advice from the Town Attorney, carried unanimously.**

**Jane Stuart Ball, 2523 Raven Drive.** Variance to place garage on front side of principal building. Chair Middaugh asked Mr. Robinson to present. Mr. Robinson stated the applicant is asking for a variance for an accessory structure in the front yard. The staff supports this variance from Section 21-138 (A) (1) because of the typography of the lot; trying to place a garage on the Raven side would be very difficult; the area would be enhanced because the garage would be located by the lift station; and there are already garages in the front yards of other nearby property.

Chair Middaugh asked the applicant to present. Attorney Dickie Hopkins represented Mrs. Ball. Mr. Hopkins distributed a packet of plats and photographs to the Board. Because of the topography of the lot, the house will only be 3 feet above grade, as per code. Because there will be no parking under the home, the accessory structure is needed. The adjacent owners have no objections to the variance. Mr. Hopkins stated there are extraordinary and exceptional conditions because of the ridge line. If the garage were placed on the Raven side, it would require moving loads of dirt and cutting into the existing ridge, and putting a bulkhead in to keep it from eroding. Also five trees would be lost if placed on the Raven side – two trees near Goldbug because of where the house would have to be sited, and three on Raven for the garage. If placed on the Goldbug side only the two trees would be lost. There are similar properties as shown in the exhibits, and there would be no detriment to the neighborhood. **Motion was made by Elizabeth Tezza, seconded by Susan Romaine, to grant the variance as there are**

extraordinary and exceptional conditions that pertain to this particular piece of property— especially the elevation of the lot caused by the ridge line; the home’s existing front door does face next-door property; on the way they have sited the house and garage on Exhibit 2 is the best use of the property as platted, and these conditions do not generally apply to other property in the vicinity, all the adjacent homes are configured with the accessory structure on the Goldbug Avenue side; because of these conditions the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property, and the authorization of this variance will not be of substantial detriment to adjacent property or to the public good, and in fact the character of the district will not be harmed and will property be enhanced by the granting of the variance because the garage will be located next to the pump house, carried unanimously.

**Robert Faith, 3200 Jasper Blvd.**, Appeal action of Zoning Official regarding erosion control structure; variance to permit the repair, modification and replacement of existing erosion control structure. Chair Middaugh asked Mr. Robinson to present. Mr. Robinson stated the applicant wants to build an erosion control structure on the lot. There are two things that control this lot (1) the RC-2 and (2) the residential district. If the structure is placed in the RC-2 area, it is not allowed by OCRM; if placed in the residential district it is prohibited under Section 21-20(D) of the Town ordinance. Mr. Robinson gave a brief history of the intent of the ordinance regarding erosion control structures. Around 1990, when there was erosion in the RC-1 area, owners began building erosion control structures behind the setback lines in their yards down under the earth. OCRM allowed this and the Town did not have a method to prevent it. That is how some of the Marshall Boulevard erosion control structures were developed. This ordinance was created to prevent that from continuing. However, Mr. Robinson does not think this section of the ordinance was ever meant to prohibit someone from putting a short wall to define the line of yard and marsh. For example, on Osceola, there are three lots this side of the boat landing. In the marsh area a little wall was allowed because it is a critical area and then the yard, and if there is not a defining line it ends up creeping. There is a definite line of yard and marsh. OCRM has allowed this applicant a permit to put this erosion control structure on the critical line. That puts it half on the RS side and half on the R-2 side. There is riprap down the marsh on one side of the property. Mr. Robinson stated he turned down this request and said it needed to go to the Board because it would be in the RS district. In the RC-2 district, if OCRM allows it, the Town will allow it. The problem is when it is built on the critical line, half of it is going to be in the RS district. Chair Middaugh noted that Mr. Robinson had previously written a letter stating he opposed the structure. Mr. Robinson stated that after further review he changed his mind because he was unaware of the rip rap at the time he responded. He stated that while there is rip rap, he is not sure if it would now be considered a functional erosion device. Mr. Robinson continued that if it wasn’t on the critical line, he would have already approved the request. It was done on Paul Boehm’s house about 3 doors down.

Chair Middaugh asked the applicant to present. Attorney Brian Hellman represented the applicant. Mr. Hellman said what there is now is rip rap on one side and over time dirt settles and fill was brought in. The fill has crept out into the marsh. The marsh degrades as there is no line between the marsh and the yard, that is why OCRM granted the permit. Mr. Hellman stated Section 21-69 states a bulkhead can be constructed, but it needs the permission of the Town and permission of other agencies. Permission of other appropriate agencies has been received; the Town’s approval is needed.

After discussion motion was made by Elizabeth Tezza, seconded by Ward Lasso, to approve the variance application as submitted to permit the construction of an erosion control structure as approved by OCRM along the critical line and to be no more than 18" fill above existing grade. There are extraordinary and exceptional conditions pertaining to this particular piece of property as it is a triangular lot – a peninsula of high ground created by the use of fill; these conditions do not generally apply to other property in the vicinity; the other properties are generally not comprised by fill and contained by erosion control structures; because of these conditions, the application of the ordinance of that particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property, and would cause the property to be subjected to further erosion and cause the property to encroach into marsh; the authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of district will not be harmed by the granting of the variance. Motion carried by a vote of 3-2, with Susan Middaugh and Susan Romaine opposed.

**James Bakker, 2612 Jasper.** Variance for rear setback. Chair Middaugh asked Mr. Robinson to present. Mr. Robinson stated the applicant is remodeling an existing house and it has conceptual approval from the Design Review Board. The lot is not typical as it is a very narrow lot and the applicant is requesting an 11 foot rear yard setback variance. Mr. Robinson added that this is a historical structure so they have certain design parameters.

Chair Middaugh asked the applicant to present. Mr. Bakker stated they want to save the original 1920 structure, remove the recent additions, and the proposed additions will meet historic home design parameters. **Motion was made by Elizabeth Tezza, seconded by Susan Romaine, to approve the variance application to provide 11 feet of relief to the rear setback** There are extraordinary and exceptional conditions pertaining to this particular piece of property; it is a historic structure built in the 1920's, it is a non-typical shallow lot which is only 88 feet deep and the historic structure is actually going to be renovated and the recent additions will be removed. These conditions do not generally apply to other properties in the vicinity. Most of the lots nearby to the rear of this property are 200 feet deep and Myrtle is not perpendicular to Jasper at that section of the island, therefore the lots between Myrtle and Jasper are less deep than surrounding property. Because of these conditions the application of the ordinance of this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property as it would not allow the prominence of this historic structure to be renovated and would possibly force the structure to be moved off its original footprint. The authorization of this variance will not be of substantial detriment to adjacent property or the public good and the character of the district will not be harmed by the granting of the variance because the historic structure would remain on its original footprint and would maintain its standard front setback on the prominent street of Jasper, carried unanimously.

**Robert and Margaret Kenny, 2062 I'on Avenue – Unit A, 2063 Middle Street HPR (Lot 253), variance from Section 21-49 to allow subdivision of submitted plat.** Chair Middaugh asked Mr. Robinson to present. Mr. Robinson stated the Town created the overlay districts and basically all the split zone lots can now be subdivided by the owner. The owner of this particular lot, Atlanticville, wants to subdivide the lot. When the Planning Commission was discussing the overlay district for recommendation to

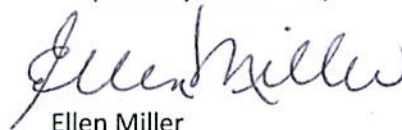
Council, it said this one lot was a situation for a variance because this was the only lot in which a structure crossed the midline.

Chair Middaugh asked the applicant to present. Attorney Sam Applegate presented for the applicants. He stated that the owner wishes to subdivide the lot, and a variance is needed because the midline dividing line goes through part of the house. **Motion was made by Elizabeth Tezza, seconded by Susan Romaine, to grant this variance from the midline on the Town's Zoning map as drawn on a plat dated July 2, 2012 by John E. Wade, Jr., RLS, to the extent that this variance affects setback lines, the existing structures will be considered existing legal non-conforming structures to the extent that the redrawn property line effects setbacks. There are extraordinary and exceptional conditions pertaining to this particular piece of property because the existing structure at 2062 I'on Avenue extends over the midline as drawn on the Town's Zoning map. These conditions do not apply to any other properties affected by the midline, and because of these conditions the application of the ordinance to this particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property because it would require that the existing rear portion of the residence located at 2062 I'on Avenue which crosses over the midline be torn down. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good and the character of the district will not be harmed by the granting of the variance because it will give recognition to the existing line of occupation as contemplated by the Zoning Ordinance amendment to Section 21-149 set forth in ordinance #2011-06 ratified on March 20, 2012, carried unanimously.**

The Board discussed changing the meeting time in 2013 to 6:00 p.m. **Motion was made by Susan Romaine, seconded by Susan Middaugh, the change the meeting time to 6:00 p.m. instead of 7:00 p.m. beginning in January 2013, carried unanimously.**

**Motion was made by Ward Lasso, seconded by Carlin Timmons to adjourn at 9:15 pm, carried unanimously.**

Respectfully submitted,



Ellen Miller