



**Town of Sullivan's Island, South Carolina
Board of Zoning Appeals
Meeting Minutes
Thursday, September 12, 2024**

A Board of Zoning Appeals Meeting was held on the above date at 6:00 p.m., all requirements of the Freedom of Information Act having been satisfied.

Present were:

Elizabeth Tezza, Chair
Michael Scruggs, Vice-Chair
Cammie Camp, Board Member
James Elliott, Board Member
Cindy Kirkland, Board Member

Charles Drayton, Director of Planning and Zoning
Bridget Welch, Staff Member

I. Freedom of Information Act Requirements

Chair Elizabeth Tezza called the meeting to order at 6:00 p.m. and stated the press and public had been notified in accordance with State Law. There were two (2) members of the public present and no members of the media present.

II. Approval of Minutes-July 11, 2024

Motion was made by Michael Scruggs, seconded by James Elliot, to approve the Board of Zoning Appeals Meeting Minutes of July 11, 2024, passed unanimously.

III. Appeal Requests

1. **1802 Back Street (Application)**: James B. Hood, Esq., applicant on behalf of the property owner, is appealing the zoning administrator's decision to deny issuance of a dock permit for the property addressed as 1802 Back Street, based on the applicant's assertion that the regulations in Section 21-75(B)(2) of the Zoning Ordinance are unconstitutional. (PIN#529-05-00-077)

Charles Drayton reviewed the original request and gave background on the property with images of the property as well as a zoning map of the area. He also gave information on the dock prohibition zone, which is the ~6,050 feet of marsh area between the extensions of Station 18 and 27. This area is zoned RC2. He also showed photos of the property as well as views of and from the property. Mr. Drayton provided background information regarding private dock regulations for the Town of Sullivan's Island, stating the first regulations were implemented in 1980. It was then amended in 1996, adding language that limits docks to 300 feet. In 2004 it was amended again to add language that preserved the viewshed from the Ben Sawyer causeway and codified marsh conservation for over a mile of back beach frontage with the restriction allowing docks to be located between the previously mentioned area. There have been no variances granted to allow either a dock within the boundaries of Stations 17 and 27 or that allowed a dock to be longer than 300 feet since 2004. There is one community dock located in the area behind Stith Park that is maintained by the Town of Sullivan's Island for the benefit of all and exists as a legal non-conforming structure within the RC-2 District because it was built prior to 2004.

The current property owners of 1802 Back Street purchased the property in 2014, tore down the existing structure, and were granted a Certificate of Occupancy on August 5, 2016, for the new home built, both dates being 10 years or more after the original amendment was amended to disallow docks.

The applicants proposed dock would be 486 feet long, which is not in accordance with Zoning Ordinance §21-75: Construction of private docks in the RC-2 Area district(A)(2). Exceptions are allowed for docks to be built up to eight hundred (800) feet to reach a creek that is two hundred (200) feet or more in width (width of creek measured from land or marsh grass to land or marsh grass); however, said dock shall not be permitted to cross a creek that is greater than eight (8) feet in width to reach the two hundred (200) foot width creek.

Mr. Drayton provided copies of the minutes from the Planning Commission and Town Council meeting minutes where the dock ordinances were discussed in 2003-2004. He then mentioned the dock approved at 1710 Blanchard Street in 2021, which is a little over 500 feet long and built to a 207-foot-wide creek from marsh edge to marsh edge.

Mr. Drayton then reviewed the four findings that must be met in order to grant a variance in an individual case of unnecessary hardship. To grant the variance, the Board must also explain in writing the following findings:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
2. These conditions do not generally apply to other property in the vicinity;
3. Because of these conditions, the application of the Zoning Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
4. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.

He also clarified that the fact that a property may be utilized more profitably is not grounds for granting a variance. He then provided staff responses to the hardship tests for granting variances as follows:

- 1) The restrictions that prohibit a dock in this location are two-fold: the location is not permitted and the distance from the private property to the navigable waters is farther than the ordinance allows. These conditions exist for properties that stretch for over a mile along the marsh front to the east of the subject property, affecting 39 properties. The distance to navigable waters cannot exceed 300 feet, per the ordinance, and there are 47 properties to which this condition is prohibitive.

- 2) If neither regulation existed all of the affected properties may be able to construct docks out to navigable waters, so this concern is not limited to the subject property or a “very few” as the application states.
- 3) Not having a dock does not prohibit or restrict the primary use of the property, which is in the RS, Single-Family Residential District, and it is developed with a single-family home.
- 4) Between Stations 18 and 27 there are only a few impediments in the pristine marsh habitat; a dock would change the views of the marsh from neighboring properties, as well as chip away at a vast uninterrupted marsh area that is critical natural habitat.

Staff recommendation is as follows: The application incorrectly claims that the Town acted beyond its powers and without due process when it enacted the amendments to the dock ordinance, Section 21-75. Those claims are not supported, and the appeal should be denied. Further the variance requests should both be denied because the applicant has not met the standards for granting variances, the unnecessary hardship test outlined in §21-179.

He then took questions from the Board, stating he does not feel it is common nor appropriate for his office to decide on the constitutionality of an ordinance.

Alex Boone with Hood Law presented on behalf of the applicants, Paul and Jennifer Vanatta. He first thanked Town Clerk, Bridget Welch for her assistance with preparation for this meeting.

Mr. Boone stated the Zoning Official nor the Board are the party or arbiter to determine whether the ordinance is unconstitutional. He stated the reasons for the appeal and variance request are because Sec. 21-75(B)(2) of zoning ordinance constitutes illegal spot zoning and is an arbitrary, capricious, and unreasonable exercise of power and the strict application of ordinance results in unnecessary hardship and the standards for a variance are met.

Mr. Boone stated the Vannattas obtained OCRM and Army Corps of Engineers approval for their dock plans but were denied approval by the Town based on the ordinance. He then reviewed the guidelines for OCRM Permits, as written in exhibit four, highlighting the conditions that include habitat and environmental requirements. He then focused on the intent of the ordinance and makes note there was no discussion about the why the geographic boundary for dock prohibition was established. He also reviewed and highlighted the findings and intents of the RC area districts, which included six “findings of fact.” He feels these findings support the use of docks to promote the health, safety, and welfare of the residents of Sullivan’s Island while also preserving the RC Areas in their natural state. He also quoted the Town’s Comprehensive Plan and stated he was not able to find any other mentions of the “view corridor” other than in this section of the plan. He used a visual to highlight to prohibited area and stated most of the properties included in the area would not be able to build docks to DHEC standards. Mr. Boone stated the area behind 1802 Back Street is not owned by the Town and does not fall under the ordinances language that includes protecting Town owned land. He also said adding this one additional dock would not affect the vista. Mr. Boone also mentioned the dock at 1710 Blanchard Street and said it was 518 feet long and feels the creek it reaches is only 107 feet across. This dock was originally denied but later approved so he presumes it was because the Town worked with the applicant to make it permissible.

He then discussed the appeal of the permit denial and outlined why it is impermissible spot zoning. He stated, “reserve spot zoning occurs when a zoning ordinance restricts the use of property when virtually all the property’s adjoining neighbors are not subject to the use restriction.” He stated there are forty or so properties in the prohibited area, only five of them are actually prohibited from building a dock. He

asked the Board to consider three factors. One, is this an adherence of ordinance to the Comprehensive Plan? Yes, the Comprehensive Plan is about preserving the marsh and the vista and building this one dock would not affect the preservation of either. Two, is the promotion of the common welfare? The RC district is for recreation and conservation and without the dock, opportunities for recreation are denied. Three, does the ordinance result in clear injustice? Yes, because while it does not restrict all use of the property, it does restrict a privilege so many others in the Town get to have.

Mr. Boone continued with constitutional arguments, citing the Fourteenth Amendment Equal Protection and Substantive Due Process. He concluded by stating they feel the variance request does meet all four requirements of a hardship. He believes because this piece of property is on the very edge of the boundaries, there are extraordinary and exceptional conditions pertaining to the particular piece of property because there are no other conditions that would otherwise prohibit the applicants constructing a dock. He again stated there are only five properties the ordinance prohibits from building a dock out of the 40 in the prohibited area, so these conditions do not generally apply to other property in the vicinity. He also believes because of the conditions, the application of the zoning ordinance to the particular piece of property would effectively prohibit the use of a dock or unreasonably restrict the utilization of the property by not being able to construct a dock. Finally, the authorization of the variance will not be of substantial detriment to adjacent property or to the public good because there are properties with docks four house down from 1802 Back Street.

He then took questions from the Board. Mr. Boone answered James Elliott's questions about overturning the ordinance by stating they would like the variance granted but they do understand the Board itself is not able to overturn the ordinance. He agreed that the owners bought the property after the ordinance was put in place but stated he cannot say with certainty that they were made aware of these ordinance regulations, specifically. He also stated that while the Town is able to make more restrictive rules that OCRM and the Army Corps of Engineers has about constructing docks, he wanted to highlight that the rules those organizations have are in line with the goals of the Town's rules of preserving the natural habitat and views of the marsh. He reiterated that while the dock at 1710 Blanchard Street was originally denied and then approved four days later, he does not know if they were granted a variance or not. It was later confirmed by Mr. Drayton that a variance was not granted for that dock because it met the requirements for the exception mentioned in the ordinance itself, allowing docks longer than 300 feet (up to 800 feet) if they reach a body of water that is at least 200 feet wide. Chair Tezza stated the Board has never granted a variance for a dock. She also stated it is not up to the Board to decide whether or not an ordinance is unconstitutional. They are there to uphold the ordinances that have been decided on and passed into law by Town Council. Because the appeal states the applicant believes the Zoning Administrator did not misinterpret the ordinance, she is confused as to why an appeal was even made.

Michael Scruggs stated the original ordinance, and comments focused a lot on preserving the public view. Mr. Boone stated while it was an important topic of conversation, there is no common law protecting view, there were no reasons given for preserving this particular view and that one more dock would not affect the view or the vista. Mr. Scruggs stated the views for neighboring properties would be impacted if a dock was constructed, which is also supported by letters sent in by other residents. He also asked if they believe they can meet the burden of negating every conceivable basis that would support this ordinance, to which Mr. Boone stated he feels they can. There was also a discussion about the validity of the spot zoning claim, however the Board felt the zoning restriction affected properties stretching for over a mile along the back beach and was thus not a potential spot zoning situation. Referring back to the question of jurisdiction, Mr. Drayton stated that the area behind the applicant's property is within the Town's boundaries and thus subject to the Town's ordinances even though it is not part of a tax map parcel.

Public Comment:

Bill Killough, 1813 Back Street – asked if this meeting is submitted to the circuit court should it get that far, Chair Tezza confirmed it does. He feels the view would impact not only property owners but by anyone stopping by the area. He also stated if one property gets a dock, it is likely there are going to be more in the area that also want one, possibly for or five in the immediate vicinity alone.

Motion was made by Michael Scruggs, seconded by James Elliot finding that the Board of Zoning Appeals does not have the jurisdiction or the power to interpret the constitutionality of ordinances enacted by the Town; however, should it be determined that the Board of Zoning Appeals has the authority to determine the constitutionality of Zoning ordinances enacted by the Town of Sullivan’s Island, the Board finds the following: Zoning Ordinance, Section 21-75 (B) 2 was validly enacted by the Town of Sullivan’s Island after extensive public comment and input and consideration of both the Planning Commission and Town Council over a 7-month period, and after following the appropriate process for adopting and/or amending Town ordinances; further, the Board finds that Zoning Ordinance 21-75 (B) 2 is neither arbitrary nor capricious, but rather the ordinance is rationally related to a number of legitimate government purposes, including, but not limited to the preservation of the marsh area, the preservation of views, lessening environmental impact, and general conservation within the Recreation and Conservation Zoning District; finally the Board finds that 21-75 (B) 2 does not constitute impermissible Spot Zoning because it does not target a single parcel or relatively small parcel of land or single land owner, rather it includes properties that abut over a mile of marsh front coastline (looks like over thirty parcels), passed unanimously.

IV. Variance Requests

- 1. 1802 Back Street (Application):** James B. Hood, Esq., applicant on behalf of the property owner is requesting a variance from Section 21-75 (B)(2) of the Zoning Ordinance, to allow for the construction of a dock between Stations 18 and 27, which would extend further than 300 feet in total length. (PIN #529-05-00-077).

Motion was made by James Elliot, seconded by Michael Scruggs, to deny variance for application in opposition to Section 21-71(B) 2 which concerns the location limitation where the house is at and length of dock, which is a 300 foot limitation and they would want to go beyond that; they have not shown that the application of the ordinance would result in unnecessary hardship because there is nothing that has been shown that would evidence that there are extraordinary exceptional conditions pertaining to this piece of property that do not apply to others; there is nothing that can be shown that the conditions don’t generally apply to properties in the vicinity; they have not shown that the property would effectively be prohibited from use or unreasonably restricted in it’s use; they have not established that if we give the variance, they have not shown there not be a substantial detriment to the adjacent property or the general public; and they have not shown that granting the variance would not harm of the character of the district where it’s located, passed unanimously.

Mr. Elliott reviewed his reasons as to why this request does meet the four requirements of what would be considered a hardship, to which all the Board agreed.

V. Adjourn

Motion was made by James Elliott, seconded by Michael Scruggs, to adjourn the Board of Zoning Appeals Meeting at 7:07 p.m., passed unanimously.

Respectfully submitted,
Bridget Welch
Board of Zoning Appeals Staff


Chair, Elizabeth Tezza