

January 10, 2013

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
Susan Romaine
Bachman Smith, IV
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 Elizabeth Tezza, to approve the Minutes from the December 13, 2012 meeting, carried unanimously.

Christopher Lane Young, 923 Osceola Avenue. Variance to construct a pool toward street side of property. Chair Middaugh asked Zoning Official Randy Robinson to present. Mr. Robinson stated this application was heard by the Board last month but it was deferred for legal opinion to determine if the property was adjacent to the RC-1 or RC-2. Town Attorney Larry Dodds legal opinion was that it was not adjacent to the RC-1 or RC-2. Therefore, the applicant is asking for a variance from Section 21-142 (B) (1) that states that all recreational uses and structures shall be located a minimum of twenty (20) feet to the rear of the Principal Building's front façade. Their plans for the house include an elevated pool proposed on the Osceola side that is not 20 feet rearward of the front façade.

Chair Middaugh asked the applicant to present. Attorney Bill Barr represented the applicant. Mr. Barr stated he had a conference call with Attorney Dodds and Mr. Robinson. Mr. Barr stated that Mr. Dodds said there was current litigation over the location of the RC-1 line in the Atlantic Avenue area, therefore his decision was for consistency. He also stated Mr. Dodds did not have a problem with the granting of a variance in this case because of the specific nature of it. Mr. Barr continued his presentation with pictures of the proposed house and elevated pool. At street level, all that will be seen is the garage; the pool is not seen unless looking down from a higher elevation. The property abuts Osceola which is open to the marsh. He continued with the example of variances granted on Bayonne Avenue that were basically granted because the properties abutt the unopened portion of Thee Street; and therefore the Board basically gave the properties RC-1 status. The most recent example was the property at 2713 Bayonne Avenue.

Mr. Barr continued there are several properties within this block that have pools in their “backyards” because those properties essentially front on Middle Street. However, looking at Osceola from a street scape aspect, this property will be consistent with every other property on the street. Essentially as stated in the application, this creates a hardship for the design of this house. He added that the owner has spoken with the neighbors and they are all in favor of the applicant not having a pool in his backyard because it allows control of the noise.

Chair Middaugh asked Mr. Barr to explain the hardship. Mr. Barr stated the property fronts on Osceola and it is adjacent to the RC-2 district line. There are other properties on the block with pools on Osceola, so essentially by depriving the applicant the ability to have his pool on Osceola, he has been essentially singled out versus the other properties on the block. Also, an accessory use is usually considered to be separate from the house. Clearly if he wanted to build a swimming pool in the ground in front of his property it is a different circumstance than an accessory use that is an integral part of the house. The client can currently build the house as it is with the deck. The only difference is there will be a pool instead of a garage. Again, in speaking with the Town attorney, he was of the opinion that this variance would not do substantial injustice to the statutes.

Susan Romaine asked Mr. Barr why that was a hardship, as there are other places to put a pool on the property that would agree with the ordinance. The owner, Chris Young, stated it would be because all three neighbors have master bedrooms that face the backyard and approve of the variance; and that other owners do have pools on the Osceola side. Chair Middaugh stated that it has to be a hardship beyond the intent of the ordinance, and the intent of the ordinance is for accessory structures to be in the backyard, precisely because recreational uses are in the backyard of the house. She continued that Section 21-20(A) states that principal buildings with street oriented front doors contribute to a sense of neighborliness on the Island; having a consistent front yard orientation reduces the possibility of accessory structures being located inconsistent with the pattern of development.

She stated there are 11 houses that are directly across the street from the marsh on Osceola, and four of the lots go through to Middle Street; therefore, Osceola would be their backyard and they can have a pool on Osceola. This is new construction and there is nothing that would restrict the applicant from having a pool, elevated or not. It could sit back 20 feet to the rear of the front façade on the side of the house if it was taken account of in the design of the house. It is difficult to make a case for hardship. The Design Review Board minutes reflect the property owner’s opinion that if the BZA did not approve the pool, they would still have a nice deck to enjoy the view.

Mr. Barr stated that the next door lot has a small strip of land that goes from the back of the lot, which gives the owner through frontage for his property. So basically he could build a pool on Osceola because he has a walking path to the back. There is another lot down the side that has a similar strip of property. It is a fiction that they are abutting Middle Street instead of Osceola.

After a review of the map, it was determined there are eleven properties between Station 9 and Station 10. Four of them are "through" lots and two have a strip of walkway that could arguably make them front on Osceola; therefore there are six that could put pools on Osceola and five that could not under the ordinance as it exists.

Motion was made by Elizabeth Tezza, seconded by Carlin Timmons, to approve this variance request. There are extraordinary and exceptional conditions pertaining to this particular piece of property as follows: this particular property fronts on Osceola adjacent to the RC-2 line and does have a marsh view. There are other properties in this block that have pools on Osceola although the lots go all the way back to Middle Street. These conditions do not generally apply to other property in the vicinity as over 50% of the properties in this particular block would have the ability to build a pool on the Osceola 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 by the property owner and 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 the granting of this variance will be of stated benefit by adjacent property owners, control noise that would otherwise exist if the pool is to the rear of the property, and further the design as approved by the Design Review Board prior to submission to the Board of Zoning Appeals, this pool is an above ground pool; it is located in the deck and is consistent with the neighborhood. Susan Middaugh stated there is not sufficient hardship to grant this variance, and it does undermine the zoning ordinance by setting a precedent for swimming pools in the front yard. Susan Romaine agreed and stated that the ordinance as applied does not restrict the use of the property. Motion carried by a vote of 3-2, with Susan Middaugh and Susan Romaine opposed.

Gary McLaurin, 957 Middle Street. Appeal action of Zoning Administrator to extend a non-conforming structure. Chair Middaugh asked Mr. Robinson to present. The property at 957 Middle was at one time owned by the same owner as the next door lot. It has been two adjacent lots with a property line between them, and one property owner. There was a house on 957 Middle Street and it was destroyed by Hugo; but the accessory structure survived. It was attached to the garage at one time, and the owner did some work to use it as a children's play area. That owner has sold the property to Mr. McLaurin. Mr. McLaurin would like to add a second story to this accessory structure and put living space above and make the accessory structure a single family residence. There are several things that need to be done to accomplish that, the main one is to get a setback variance for a residential structure. Mr. Robinson asked the Board to look at allowing a variance for a single family residential structure on the lot.

Chair Middaugh stated the basis on which Mr. Robinson denied the applicant's request is an accessory structure to residential structure, and it does not meet setbacks because it is on the property line. Mr. Robinson stated the property line does go through the structure. There are many steps the applicant would need to take: it is a historic structure in a historic district and would need to go to the Design Review Board; if the applicant wants to add on to the structure, it is non-compliant from a FEMA

perspective and would have to abide by the 50% rule. He stated he talked with the owner of the other half of the garage and that owner is willing to allow it to be appraised all as one.

Chair Middaugh asked the applicant to present. Architect Carl McCants represented the applicant. Mr. McCants presented to the Board a list of nine adjacent property owners that are in favor of this request. His client wants a small structure where he can also have a pool and use it as a weekend retreat. Within the ordinance, he cannot build a pool unless there is a primary residence. The first step is to know if the existing historic structure can be altered into the primary residence. If it cannot be altered into a primary residence there is not much else that can be done without building a new house, and that is not what his client wants. As of this time, he is not aware that the owner wants to put another house on the lot in the future; that is a question for the owner who is not at the meeting. If the owner does decide to build a larger home at another time, he would need to come back to this Board for approval.

Bachman Smith stated if this was granted, the Board creates a hardship for either the owner or the future owner. Chair Middaugh stated the ordinance is clear to not expand on a non-conforming structure. Mr. Robinson stated this is changing the use; it is not an expansion.

Motion was made by Elizabeth Tezza, seconded by Susan Romaine, to uphold the decision of the Zoning Official because the Zoning Official correctly applied the requirements of the zoning ordinance in question, carried unanimously.

Graham Eubank, 2614 Raven. Variance for critical line setback relief. Chair Middaugh asked Mr. Robinson to present. Mr. Robinson stated the ordinance states that the setback requirement is 30 feet from the critical line. This property is one of the six new lots on Raven Drive, and they will all have critical line issues. The critical line of 2614 Raven runs on the neighbors' property and that affects this property as to where the applicant can place his house. There is a 15 foot drainage easement that runs through this property, which would actually require more area on either side if a backhoe needed to get to the pipe for repair. Also, Mr. Robinson stated that the ordinance states that no house in a zoning block can be any closer to the marsh or any further from the centerline of the street than the further house in the zoning block. This house will be the first house on this block, so it will dictate where the other houses can be built in this block. Some of the other houses have critical lines that are closer to the marsh, and some are closer to the street. The more this house is restricted toward street, the more it will restrict the other lots.

Chair Middaugh asked the applicant to present. Attorney Bill Barr represented the applicant. The topography shows the effect that the critical line has on this property, and the critical line is on the adjacent property as shown. Because of the critical line to the east (Town property), it basically forces this house to the west, and when it forces the house to the west, it then impacts on the critical line to the west that arcs off of the adjacent property to west. The drainage easement is also on the eastern property line. The Board reviewed the plats of the lots. Mr. Barr stated this property becomes the benchmark of the other properties. It meets all setbacks other than the critical line.

After discussion, motion was made by Elizabeth Tezza, seconded by Bachman Smith, to approve the variance from the critical line as outlined in the application. There are extraordinary and exceptional conditions pertaining to the particular piece of property. The critical line comes down each side of the lot because of the marsh front on the adjacent properties, therefore the remaining buildable area is more narrow than is typical, especially because there is also a drainage easement which actually is within that critical line setback. These conditions do not generally apply to other property in the vicinity. The critical line is not on the subject property but the buffer from the adjacent property critical line affects the buildable area. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property and would also unreasonably restrict utilization of properties on the same block fronting the marsh. 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. The home will sit within the typical Town setbacks and the intrusion into the critical line buffer is not material, carried unanimously.

Janice Hanvey Baughman, 1901 Thee St. Variance to build seaward of the most seaward point of the adjacent dwelling. Chair Middaugh asked Mr. Robinson to present. Mr. Robinson stated there has been confusion over which lot is 1901 Thee Street. This is the Hanvey property and it has been owned by the same family, so it was not of concern. From the Town's perspective lot Y-1 is 1901 Thee St.; but Y-2 is actually 1901 and it is addressed as 1901, but it really should not be, it should be perhaps 1905. The variance request is for lot Y-2, but it affects Y-1. This variance will affect both houses in the block.

This variance involves the setback, as in the previous application, that no house can be any further forward than the other houses in the zoning block. There was a situation several years ago that came before the Board where there was a historic house on one property and other property next door, and one property was restricting the other property. The property owners agreed upon a setback line. So those involved in this application are hoping to agree on a setback line from the RC-1 tonight. The owner of the historic house could build right now out to the 30 foot setback line. However, it takes time to develop plans for an historic house versus plans for an empty lot. If the owner of the empty lot used the historic house for the line now, they could utilize only about half of the lot. And then the owner of the historic house next door could not do much with that historic house because they could not build onto the ocean side. They would have to build onto the street side, and they could not because of the setback. Therefore, they are asking the Board for a variance tonight.

Chair Middaugh asked the applicant to present. Janice Hanvey Baughman asked Attorney Bill Barr to represent them. Tommy Lovett represents Ms. Baughman, Scott Parker who is buying the historic structure is present, along with Brook Gordon who is buying the lot.

Mr. Barr stated that in 2006 Mike Cox had bought a historic house on Station 18. Next door the house of Dr. Osborne and his wife set the tone for the block because the Osborne's could not build further forward. But since the Osborne's wanted to add to their house, both owners came before the Board, and agreed they would not build any farther forward than the line they agreed upon. In this application

tonight, the line is the 30 foot setback from RC-1. Scott Parker who is contracted to buy the house, and Brook Gordon who is buying the lot, are in agreement to build to the 30-foot setback.

Motion was made by Carlin Timmons, seconded by Elizabeth Tezza, to approve the variance as requested to be allowed to build seaward of the most seaward point of the adjacent building, up to the 30 foot setback from the oceanfront property line. The application of this ordinance will result in unnecessary hardship, and the standards for a variance set by State law and the ordinance are met by the following facts: there are extraordinary and exceptional conditions pertaining to the particular piece of property as follows: the RC-1 restriction reduces the usable portion of the lot to approximately 1/3 of the lot, and designation by the Design Review Board of the house on the lot adjacent is being in the historic district limits use even further by requiring that they keep a portion of the existing house; and the topography of the lot further restricts the building lot Y-1. The conditions do not generally apply to other property in the vicinity because there is only one other lot and house on this block seaward. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property as follows: as it exists, only ½ of the lot is buildable, requiring the owner to build on space closest to the street, and negatively impacting the neighbor. 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 for the following reasons: in fact this will improve the quality of the neighborhood because of the agreement this allows the Y-2 neighbor to then build on to the historic structure up to 30 feet from the setback, carried unanimously.

Motion was made by Bachman Smith, IV, seconded by Susan Romaine, to adjourn at 7:26 pm, carried unanimously.

Respectfully submitted,



Ellen Miller