

Town of Sullivan's Island
BOARD OF ZONING APPEALS
Thursday, December 10, 2020

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, Chairman
Babak Bryan, Board Member
Peter Koepke, Board Member
Michael Koon, Board Member
Jody Latham, Board Member
Amy Pruitt, Board Member
Joe Henderson, Director of Planning/Zoning Administrator
Randy Robinson, Building Official
Courtney Sottile, Town Clerk
Bridget Welch, Administration

A. Freedom of Information Act Requirements

Chair 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 four (4) members of the public present and no members of the media present. This meeting was conducted via virtual meeting as a result of COVID-19 Pandemic.

B. Approval of Minutes from November 12, 2020

Motion was made by Amy Pruitt, seconded by Babak Bryan, to approve the Board of Zoning Appeals Meeting minutes of November 12, 2020. This motion passed unanimously.

C. Special Exception

2630 Middle Street- Heather Wilson, applicant, requests approval of the historic accessory dwelling unit (ADU) special exception in accordance with Zoning Ordinance section §21-20 C. (2) and §21-178. (PIN# 529-06-00-001)

Director of Planning/Zoning Administrator Joe Henderson presented this application on behalf of the Town. Mr. Henderson gave a brief background of this project. During the October 21, 2020 Design Review Board hearing, the Board approved, conceptually, the proposed historic restoration plan and size, scale, massing and position of the new construction. Included in the requests are the following project elements:

- Historic Restoration. No elevation of the historic home is proposed given the high elevation of the lot and current FEMA compliance of the structure

- Driveway access. Current driveway is nonconforming in width. Proposal includes relocation slightly to the north, and constructing a compliant driveway to serve as vehicle access for both dwellings.
- Shed demolition and new garage. The existing shed is to be removed and new detached garage constructed to serve as vehicle storage for both structures.
- New construction. New home to be constructed without discretionary increases to the Z.O. and no setback or architectural relief requested.
- Lot coverage calculations. No coverage increases or setback relief has been granted for the ADU or home.

Mr. Henderson explained 2630 Middle Street was originally constructed in the 1880s in the Hampton Park neighborhood in downtown Charleston and relocated by barge to Sullivan’s Island around 1900. The property holds an individual listing as a *Sullivan’s Island Landmark* and lies just outside of the Atlanticville Historic District. Also known as “Oleander Cottage”, 2630 Middle Street has experienced a great deal of modification in past removal of original materials and demolition of original portions of the home from 1960, 1987, and 1990 renovations.

The granting of this incentive is a three-step process:

1. The Design Review Board granted conceptual approval of restoration and new construction (approved October 21, 2020)
2. The Board of Zoning Appeals may grant approval of special exception if it meets the conditions of Sections §21-178 C. and consider §21-20 C. (2)
3. The Design Review Board must grant approval of final design

Mr. Henderson stated that Town staff recommends approval of the special exception provided that the Board ensures compliance with the standards of §21-178 C. cited in a motion for approval.

Ms. Wilson, applicant, presented. The Oleander Cottage is currently 1,573 square feet and will be reduced to 1,180 square feet after renovation by removing the non-historic additions that were added post Hurricane Hugo. The proposed new main structure will be approximately 3,575 square feet.

Deliberations took place between the Board, applicant and Town staff.

Mr. Bryan stated that the conflicts in the Zoning Ordinance with creating multiple buildings on a lot exist verses creating historic preservation initiatives. He added that this section makes specific language stating that this section shall take priority and preference over all contradictions that may be found in the Zoning Ordinance. Mr. Bryan stated that he finds

it difficult when 25% of a building is being removed to make it comply with this idea of a historic existing building is stretching the limits of the intention of that section a little too much for his comfort. He stated that he feels the intention of maintaining a historic structure needs to be put in the greater context of all of the elements of the Zoning Ordinance which are to have predominantly single-family single-home lots and small density on the island and he does not believe that two houses of a smaller size on a lot is necessarily better than one larger house on a lot.

Mr. Koon stated that he has had a problem with other special exception applications in the past but, despite the fact that the cottage will have to be reduced in size in order to get to the qualifications regarding square footage, he is much more comfortable with this application than some of the others since the Town has a historical record and the appearance of the revised historic structure will be restored to what it was in the 1920's-1940's.

Chair Tezza stated that she thinks the lot configuration with the dune and natural landscape/existing trees also helps us understand why the applicant applied for a special exception instead of adding on to the existing house.

Motion was made by Michael Koon, seconded by Peter Koepke, that the Board of Zoning Appeals approves the historic accessory dwelling unit (ADU) special exception at 2630 Middle Street as proposed in accordance with Zoning Ordinance section §21-20 C. (2) and §21-178 stating that the criteria requirements have been duly met by the application.

Motion passed by a vote of 5-1, with Babak Bryan opposing.

D. Administrative Appeal

1659 Atlantic Avenue- Mark Volkmann, property owner and applicant, appeals Town staff enforcement action related to Building Permit #P20-0757, and interpretation of Zoning Ordinance section §21-13, *Increase or decrease in natural elevation prohibited*. (PIN # 523-12-00-008)

Mr. Henderson presented this application on behalf of the Town and gave a brief background of the project. Mr. Mark Volkmann owns 1659 Atlantic Avenue, a property fronting Atlantic Avenue and Station 17 to the north and the Town's protected land to the south.

On August 12, 2020, Mr. Volkmann's contractor, MB Demolition, received building permit #P20-0552 to demolish the home and all accessory structures on site. This work was not completed until October 23, 2020, which involved enforcement action from

Town staff to force completion of work that had stopped for several weeks. Staff mandated immediate removal of hazardous debris and the backfilling of a large hole left by the demolition of the swimming pool.

Following removal of all debris and backfilling of the hole, Mr. Volkmann requested to add multiple truckloads of fill to the property under his current demolition building permit. Staff denied this request citing that adding additional fill beyond the backfilling of the pool would require a separate permit with supporting information in the form of as-built survey data (with multiple spot elevations) and a certified stormwater management plan as required by §21-17, *Stormwater Management*. Henderson explained that the purpose of the spot elevations is to ensure the Zoning Ordinance limitation of 12” of fill is met with all fill and grading requests. Without an as-built survey there would be no way for staff to determine the regulation is being met. This section is found under §21-13, *Increase or decrease in natural elevation prohibited* requires that no more than one foot of fill be added to any property whether developed or undeveloped.

Mr. Henderson outlined the sequence of permitted work under Mr. Volkmann’s building permit and staff’s interpretation of the zoning regulations for permitting fill:

- Allowed work under building permit #P20-0552: Demolish home and accessory structures and remove all debris.
- Allowed work under “Change of Design” permit #P20-0757: Backfill swimming pool only. Permit conditions clearly outline no other fill may be brought on to the property.

Mr. Henderson reiterated that Mr. Volkmann was issued a permit to backfill the swimming pool only as part of his overall demolition permit. The minimal amount of fill authorized by a “Change of Design” permit P20-0757 was intended to remedy the safety violation by covering the open hole left where the swimming pool was excavated. Staff inspected the site on October 23, 2020 and determined the hole was adequately filled.

On October 30, 2020, Mr. Volkmann informally requested, by email, to add more fill which staff conveyed would trigger a separate building permit application with as-built survey spot elevations to demonstrate compliance with the maximum fill height requirements of §21-13 (no more than 1’).

Mr. Henderson also reviewed Zoning Ordinance section §21-17, *Stormwater Management*. According to this section, if Mr. Volkmann adds fill, or recontours twenty percent (20%) or more of the existing area of the lot, a certified stormwater management plan is required for a building permit application. This plan must be drafted and certified

by a registered landscape architect or professional civil engineer currently licensed in South Carolina.

Below is the sequence of administrative actions made part of the staff report to the Board:

- August 12, 2020: Demolition permit issued to MB Demolition LLC #P20-0552
- October 1-10, 2020: Multiple complaints received from residents of the neighborhood regarding length of time taken to complete the demolition of the home, swimming pool and state of the property: wind-blown debris, stagnant water, etc.
- October 1, 2020: Zoning official sends enforcement email to demolition contractor informing of these complaints and requiring immediate removal of hazardous materials and partially removed swimming pool concrete. Citations pending.
- October 9, 2020: Zoning official sends second enforcement email to require immediate removal of construction debris and requests that Mr. Volkmann submit for “Change of Design” permit #P20-0757 to back fill the swimming pool hole only. Citations pending.
- October 15, 2020: “Change of Design” permit #P20-0757 issued to Mr. Volkmann (2029 Wambaw Creek, LLC) to backfill the pool only.
- October 23, 2020: Zoning official inspected the site and confirmed all debris was removed and the pool hole was adequately filled and level with the surrounding grade. Staff expressed that no additional fill should be brought on to the property under current building permits and that zoning/code violations were resolved.
- October 30, 2020: Mr. Volkmann requested to add additional truckloads of fill to the lot. Zoning official requires a separate building permit with post-demolition as-built survey, with spot elevations, to determine the average natural grade of the lot which is staff’s standard operating procedure for adding fill to any property.
- November 13, 2020: Board of Zoning Appeals application filed by Mr. Volkmann.

Mr. Henderson stated that Town staff’s recommendation is for the Board to determine if staff correctly or incorrectly interpreted the requirements of Zoning Ordinance §21-13, *Increase or decrease in natural elevation prohibited*, and §21-17, *Stormwater Management*, and employed a sound procedure for ensuring the fill regulations required are met. He added that any motion made by the Board cites findings of fact when rendering a decision.

Mr. Volkmann, property owner and applicant, presented.

Deliberations took place between the Board, applicant and Town staff.

Chair Tezza asked Mr. Volkmann why he did not just apply for an additional building permit which would require an as-built survey. Mr. Volkmann stated that his concern is there is no prior survey or documentation to compare the pre-demolition lot level to.

Peter Koepke asked Mr. Volkmann how many additional truckloads of fill does he think is necessary to fill the lot. Mr. Volkmann stated that there are 117 cubic yards that remain to be filled and a typical truckload of fill is between 14-16 cubic yards so that would be approximately 7 additional truckloads of fill.

Mr. Bryan asked Mr. Henderson how many properties either have documentation or a survey in hand before any work is done on a particular lot. Mr. Henderson stated that typically when a property is purchased or is going to be developed, most often either the Town or property owner has a survey with spot elevations. He added that it is not required to have an as-built survey in order to get a demolition permit. Typically, when fill is brought on to a lot, the Town has new construction plans, engineering and a proposal as part of the project to build the structure. In this case, the Town has a request to bring 7 truckloads of fill on to a lot, yet there is no proposal for construction and the Town does not have an as-built survey making this a very unusual request. Mr. Henderson stated that no matter what is done on any particular lot, if more than 20% of fill is being added to a lot, an as-built survey with spot elevations is required and that relates to any new construction project, any large addition or any addition of a swimming pool. Once the construction project has been completed, an additional as-built survey is required to demonstrate that the finished grade meets the requirements of §21-13 and no more than 12" has been added.

Mr. Henderson stated that he believes Mr. Volkmann's concerns will be resolved when he gets an as-built survey because the Town can work with Mr. Volkmann to remove any low spots or outliers on the lot, such as where the previous house and swimming pool were. In order to determine the average natural grade of a lot is, the outliers are removed before calculating.

Mr. Koon suggested that the applicant withdraw his request. He stated that the Board has been sensitive to situations in the past where property owners have had a disadvantage by mistakes that have been made by contractors and those cannot be fixed but if the applicant can provide the Board with a basis to make findings of fact that can allow the Board to support what need to have done, then the Board will work with him. Mr. Koon added that if he were the property owner, he would find a very competent professional surveyor out to come to the property and show them what the benchmarks are that he/she ought to see in order to recreate what the topography of the lot was before demolition and then work

with Town staff to come to an agreement. Mr. Koon stated that Mr. Henderson did not make a mistake based off what is in the Zoning code. The Board agreed with Mr. Koon.

Mark Volkmann requested to withdraw his application for an administrative appeal at 1659 Atlantic Avenue. Chair Tezza accepted.

E. Items for Consideration

F. Adjourn

Motion was made by Michael Koon, seconded by Peter Koepke to adjourn at 7:07 p.m. Motion passed unanimously.

Respectfully submitted,



Courtney Sottile

