



**Town of Sullivan's Island, South Carolina
Board of Zoning Appeals
Meeting Minutes
Thursday, February 10, 2022**

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
Jody Latham, Board Member
James Elliott, Board Member
Amy Pruitt, Board Member
Peter Koepke, Board Member
Jeremy Graves, Board Member
Joe Henderson, Director of Planning/Zoning Administrator
Bridget Welch, Administration

I. 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 three (3) members of the public present and no members of the media present.

II. Approval of Minutes-November 4, 2021

Motion was made by Jody Latham, seconded by James Elliott, to approve the Board of Zoning Appeals Meeting Minutes of November 4, 2021, passed unanimously.

III. Variance Requests

A. 3217 Middle Street: Dee Dee Harris, property owner and applicant, requests an appeal of an administrative decision to deny building permits to construct a portion of the home within the required 25' rear yard setback [§21-22 E. (1) Setbacks], and variance from §21-151 B. (Nonconforming Structures), as it relates to expansion of a nonconforming portion of the home (PIN#529-12-00-020)

Mr. Henderson presented the two requests being made on behalf of 3217 Middle Street. The first was a variance to allow an elevated covered porch addition to be built 10' from the property line, giving it a 40% variance. The second was an appeal to the staff interpretation that the pool and deck do not constitute a legal non-conforming structures, but instead are legal and conforming by way of a granted BZA variance in 2012 and 2019. He provided an

overview of the property and its surrounding properties, which are adjacent on the south side by undeveloped Town owned lots. He also provided background on the property's past requests, as well as a rendering of the current variance request.

The house's rear wall is considered non-conforming structural encroachment because it encroaches into the required 25' rear setbacks. Staff's interpretation is the current structure would be allowed to expand by 13' along the current encroachment and would not be allowed to encroach any further in accordance with Z.O. §21-151. The property owners disagree and believe the pool deck is nonconforming so the requested addition of porch space should be allowed to expand over the swimming pool.

Mr. Henderson explained to the Board he had received a legal opinion from the Town's Planning and Zoning attorney, Trenholm Walker, who advised staff that whenever the BZA grants a dimensional variance it does not subsequently become a nonconformity. The resultant construction instead becomes a legally permitted exception to a zoning provision. Henderson further elaborated Mr. Walker's position that a variance granted for the pool in 2012 and 2019 were conditioned on the pool's location, low profile and siting relationship to adjacent pools. Staff is of the opinion that by adding an elevated one-story porch addition would change these variance conditions. Had the structure existed prior to the change in ordinance, it would be considered nonconforming. The structure had also been granted an additional variance in 2019 by going over by 9 inches. The variance was also granted with explicit conditions that no further changes would be permitted to any portion of the deck.

Mr. Henderson further explained that staff does not offer recommendations for administrative appeals but advised the Board confirm the four-part legal test applied for the requested variances to determine unnecessary hardship. Mr. Henderson confirmed there is nothing unusual about the property in size, shape, or topography.

The Board and Mr. Henderson discussed other variances that have been granted on the Island that did present hardships for building on the property. This does not apply to the property in questions as it is flat, treeless, rectangular.

Attorney Alice Paylor presented on behalf of the homeowners to appeal against the staff recommendation, arguing that the current structure is considered non-conforming. Ms. Paylor stated the lot behind the property is unbuildable, essentially making the home beach front. Based on this, the setback should be larger than what is currently allowed. She also stated all homes on the row have been granted variances.

Ms. Paylor stated the Harris' would prefer to extend and enclose the area they have requested for the variance. She disagrees with the decision that the structure is non-conforming and feels the structure is non-conforming because it goes over established setback, according to the ordinance. She stated the entire house is non-conforming and the pool is the "most non-

conforming of it all” and therefore the Harris’ should be allowed to build the porch as they wish.

Chair Tezza stated that Mr. Henderson, as well as the Town’s zoning attorney, Trenholm Walker both agree the pool is not non-conforming. Ms. Paylor disagrees with both opinions and feels it is the duty of the Board to determine if this interpretation is correct.

Board member James Elliott asked Mr. Henderson for clarification on “legal non-conforming” uses. Mr. Henderson confirmed “legal non-conforming” means the structure was established prior to an ordinance being established that would otherwise prohibit its construction or use. As an example, a 2005 ordinance established restaurants can no longer be built on the Island. However, because the existing restaurants were already established long before the 2005 ordinance, they are considered “legal non-conforming.” Because the current pool and deck at 3217 Middle Street were granted a variance, it made the structure a conforming one. The variance also allowed the pool and deck to be built under specific conditions and does not allow for expansion or additions. Their current options are to extend the current non-conforming porch by half its current length.

There was further discussion about the whether the current structure is conforming or non-conforming, as well as the dimensions of the proposed addition. There was also discussion about what options for the owners would have if they wanted to cover or extend the non-conforming portion of the porch.

Motion was made by James Elliott, seconded by Amy Pruitt, to the deny the homeowner’s appeal of an administrative decision to deny building permits to construct a portion of the home within the required 25’ rear yard setback [§21-22 E. (1) Setbacks], passed unanimously.

- B. 3217 Middle Street: Dee Dee Harris, property owner and applicant requests a variance from §21-151 B. (Nonconforming Structures), as it relates to expansion of a nonconforming portion of the home (PIN#529-12-00-020)

Ms. Paylor stated a previous variance was granted by a prior Board to allow the construction of the current pool deck by the former owner of the property. The current owners are requesting another variance to allow expansion of the pool deck that would not encroach any further into the setback. She also stated that other than the homes on this block, no other home on the Island that have the same extraordinary and exceptional conditions. The homeowners would like to extend their porch to enjoy the outdoors but be protected from the sun. She further commented this expansion would fit the character of the Island by removing the deck and confirmed the neighboring homeowners do not have an issue with the proposed expansion.

Mr. Henderson again showed the property and went over the four standards for granting variances, showing that it does not meet all four of the requirements. Ms. Pruitt confirmed the details of the 2012 variance, confirming again that it was granted with the expectation no other changes would be made to the structure. She also confirmed that the new homeowners bought the home knowing this stipulation.

A public comment was made by Paul Boehm, 3209 Middle Street, stating they are not asking to change the pool deck, but the other deck that is already on the home.


Motion was made by James Elliott, seconded by Peter Koepke to deny the request for a variance to add the pool deck in as much as the request does not meet the requirements of §21-179 in that there are no extraordinary exceptional conditions pertaining to the particular piece of property, there are no conditions that generally apply to other property in the vicinity, because of the conditions the applicants of the ordinance of the particular piece of property would not be effectively prohibited or unreasonably restricted from the utilization of the property, and the authorization of the variance would be a substantial detriment to the adjacent property or to the public good or the character of the district, passed unanimously.

IV. Adjourn

Motion was made by Jody Latham, seconded by James Elliott to adjourn at 6:55 p.m., passed unanimously.

Respectfully submitted,

Bridget Welch
Board of Zoning Appeals Staff


Elizabeth Tezza

