

December 8, 2005

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: Jimmy Hiers
Thom Hiers, Chairman
Susan Middaugh
Alice Paylor

Motion was made by Susan Middaugh, seconded by Jimmy Hiers, to approve the minutes, as amended, of the November 10, 2005 meeting, carried unanimously.

Vince Graham, 1401 Middle Street, request for variance extension. Mr. Graham stated he was granted two variances on June 9, 2005 for a replacement addition of his house. He submitted his plans on July 14, 2005, and it took several months to get back comments. The one outstanding issue has been a concern by the Water & Sewer Department that the foundation was too close to the sewer line. He has been working with Greg Gress and the Town concerning the issue. The issue went before Council and it will be discussed at Council again this month, and hopefully it will be resolved. Mr. Graham stated he is requesting an extension of the variance for six months. Mr. Graham stated part of the reason he received the variance is because of the sewer line. Kent Prause clarified that there is no provision in the Town Code to extend the variance. The State has now amended the Comprehensive Planning Act with Article 11 and made a provision for what is known as "Vested Rights". This amendment allows people, once they are vested under certain conditions, to retain that right for two years and they can have five extensions of those two year vesting periods provided they apply at the end of the vesting period. Mr. Graham has received a variance. These provisions are in effect, so because he has received a plan pursuant to the request of a variance, unless he modifies that plan to an extent that is contrary to what he was approved, he is vested for two years. He does not need a variance, provided he relies in good faith on the significant affirmative government act and incurs significant obligations and expenses in diligent pursuit of this specific project in reliance to the significant affirmative government act.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, that the Board affirms the Zoning Administrator's statement, and find that Mr. Graham has relied in good faith on a significant affirmative government act and incurred significant obligations and expenses in diligent pursuit of this specific project in reliance on that significant affirmative government act, so he has a vested right under this new State statute, and the Board affirms this view, carried unanimously.

Ilderton Contractors, 2002 Gull Avenue, variance for maximum wall length for accessory structure. Mr. Ilderton stated the accessory structure was moved two years ago before it was to be demolished. This historic structure and another historic house were moved to 2002 Gull before the current zoning ordinance passed. This historic accessory structure is 30 ft by 15 ft, which is 5 feet longer than the ordinance now allows. Randy Robinson stated that the moving of the structure was an emergency situation, as it needed to be immediately moved or it would be torn down. Kent Prause stated the Council enacted an ordinance that states that the maximum length of a wall can be 25 feet; they did not limit the size to only square footage. Also, Mr. Prause stated that a structure is moved onto a lot that did not meet the requirements, a precedent for anyone who wants to move a structure onto a lot that did not

meet the requirements. Mr. Ilderton stated the requirements did not exist when he moved the structure. He moved it to try to save the building.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to grant the variance and allow this accessory structure to have a wall that is 30 ft in length rather than 25 ft; there are extraordinary and exceptional conditions pertaining to the structure itself; those conditions do not generally apply to other property in the vicinity; it is a historical structure with a wall that is 30 ft long already; he is not building a new structure; 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; the authorization of the variance would 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; and part of the hardship is that this building was moved before the new ordinance was adopted, carried unanimously.

Jonathan L. Yates, 2824 Atlantic Avenue, variance to install pool in front yard. Mr. Yates represented the property owner, the Phillips. They were unable to attend, but their son, Chris Phillips, was present. The Phillips recently purchased this property, which fronts on both Atlantic Avenue and I'on Avenue. Mr. Yates stated under the new zoning ordinance, Section 21-30 states that the orientation of a principal building for double frontage lots is oriented toward the ocean. Mr. Yates stated most of the house fronts are oriented toward the ocean; however, the hardship, he stated, is that this house is reversed, as the builder reversed the house. The front actually faces to the marsh side of the island (I'on Ave.); the back faces to the ocean side (Atlantic Ave.) There are two large pecan trees on the I'on Avenue side that dominate a portion of the property; the Phillips would like to preserve these trees and not place a pool there. They are requesting a variance to place the pool on the Atlantic Avenue side, which is the front yard according to the ordinance. He stated they propose a heavy vegetative buffer to hide the pool. Mr. Prause stated that the significant pecan trees are not on any of the plans submitted, and the pool would fit where it is supposed to go. Mr. Yates stated they looked into that, and the pool would kill the root system of the trees. There really is not a way to redesign it. Alice Paylor inquired how the front and back of an existing house is determined. Mr. Prause stated it is in the definition of the zoning ordinance, which states that Façade – primary front: the largest front facing surface of a principal building that is parallel or nearly parallel to the front yard street frontage and is considered to be the front of the structure. The definition is trying to present a consistent pattern of development along the streetscape. Mr. Yates stated he requests Mr. Prause to make a formal determination as to what is the front yard, and will appeal to the Board again if his decision disagrees with their view.

Stephen and Carissa Hellberg, 1851 I'on Avenue, appeal of Zoning Administrator's decision and request for setback variance. Mr. Bill Barr represented the Hellbergs. Mr. Barr stated the site plan was approved by the Zoning Administrator and showed the pool and impervious coverage. When they recently met with Mr. Prause regarding building the pool, Mr. Prause told them they would need to meet the new setback requirements of the new zoning code on the pool. The setback should be 25 ft instead of 20 ft under the old code. Mr. Barr stated Section 21-7 of the new code states that nothing in this ordinance shall require any change in the plans, construction, size, or designated use of any building, structure, or part thereof for which a building permit has been granted prior to the ratification of this zoning

ordinance. The Hellbergs are requesting the Board to overrule the Zoning Administrator's decision on the basis that this plan was approved by the Zoning Administrator. Mr. Barr stated they relied on significant governmental authority in planning this, and they have a right to go ahead and complete the pool as designed on the original plan.

Mr. Prause stated that the pool did meet the setback requirements at the time the plan was reviewed. Mr. Prause stated the note on the plans provided to the Town indicated the pool needed a separate permit; that it was not included in the house permit because it is in a "V" Zone and it needs special plans and specifications prepared by an engineer.

Mr. Prause explained the aspects of vested rights. He stated there have been evolving aspects in the case law regarding vested rights. The most recent case law was that a contemplated use was insufficient to vest a right; that you actually had to obtain a permit and in good faith make a substantial change in position in relation to the land and make substantial expenditures or incur substantial obligations on a validly issued permit. However, as case law has evolved, the State has codified certain changes in statutory law: Article 11 "Vested Rights." The provision that applies to the Town is that if Mr. Hellberg is the beneficiary of significant affirmative governmental act that remains in effect allowing the development of a specific project, then he has the vested right for a period of two years. One of the items that describes the significant affirmative governmental act is the local governing body or its designated agent has approved a preliminary site plan. It is also significant to point out that specifically enumerated in the legislation is that the vested right occurs prior to the issuance of a building permit. The General Assembly wanted to establish a point in time where someone could get a plan approved that was something less than what would be required to get an actual building permit that would vest a property. Mr. Prause stated it appears the Hellbergs are vested in this project. The Hellbergs withdrew their variance request.

Motion was made by Alice Paylor, seconded by Jimmy Hiers, to adjourn, carried unanimously.

Respectfully submitted,

Ellen McQueeney

Approved:

Date: _____