

TOWN OF SEABROOK ISLAND

Board of Zoning Appeals Meeting

May 4, 2018 – 2:30 PM

Town Hall, Council Chambers
2001 Seabrook Island Road



MINUTES

Present: Walter Sewell (Chairman), Jerry Farber (Vice Chairman), Robert Quagliato, Bob Leggett, Ava Kleinman, Joe Cronin (Zoning Administrator/Secretary)

Absent: None

Guests: Eric Ison, Melanie Bootes, Stuart Rumph, Tyler Smyth, Larry Margolis, Marilyn Margolis, Linda Yeomans, Larry Mayland, Bill Bane, Katrina Burrell

Chairman Sewell called the meeting to order at 2:30 p.m. and introduced members of the Board to those in attendance. Chairman Sewell confirmed that the requirements of the Freedom of Information Act were fulfilled and the meeting was properly posted.

APPROVAL OF MINUTES

- 1. November 30, 2016:** Mr. Farber made a motion to approve the minutes from the November 30, 2016 meeting. Mr. Quagliato seconded the motion. The motion was **APPROVED** by a vote of 4-0, with Mr. Leggett abstaining.

PUBLIC HEARING ITEMS

- 1. Variance Application #155: 2666 Persimmon Pond Court (Tax Map # 147-01-00-069 – Lot 38, Block 5):** Chairman Sewell called on Zoning Administrator Cronin to provide a brief overview of Variance Application #155, pertaining to 2666 Persimmon Pond Court.

Zoning Administrator Cronin stated that the town received a completed variance application from Tyler A. Smyth and Stuart Rumph, submitted on behalf of the property owners, Eric Ison and Melanie Bootes, on March 20, 2018. In order to permit construction of a single-family residence on the property, the applicants sought approval of a variance to grant relief from the following setback requirements, as provided in the town's DSO:

Type	DSO Reference	DSO Requirement	Variance Requested
Front Yard (Principal Structure)	§ 7.60.20.10	30 feet	18 feet
Front Yard (Uncovered Steps)	§ 7.60.80.20	20 feet	15 feet
Side Yard (Lots < 17,500 sq. ft.)	§ 7.60.20.41	10 feet	7 feet

Marsh (Principal Structure)	§ 7.60.50	25 feet	13 feet
Marsh (Open Deck)	§ 7.60.50	15 feet	2 feet (Including pervious deck and guest parking)
Max. Encroachment for Eaves & Overhangs (Lots < 17,500 sq. ft.)	§ 7.60.80.10	18 inches	0 inches (No encroachment beyond reduced setbacks)

In their variance application, the applicants stated that strict application of the zoning provisions would result in an unnecessary hardship. The applicants further argued:

1. There are extraordinary and exceptional conditions pertaining to the property due to its nonconforming lot size, irregular shape, and the presence of non-buildable marsh area, as delineated by SCDHEC-OCRM on the Property survey dated January 29, 2015;
2. These conditions do not generally apply to other property in the vicinity, as the property is generally smaller and more irregularly shaped than typical lots in the area;
3. Because of these conditions, the application of the ordinance to the property would effectively prohibit or unreasonably restrict the utilization of the property due to a buildable area of only 2,373 square feet (19.3% of total lot area), of which only 1,004 square feet (8.2% of total lot area) would have a dimensional width of 20 feet or more; and
4. The authorization of a 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 proposed residence will maintain a size and scale that is generally similar to other residences within the vicinity, and the natural setting of the lot will be preserved to the maximum extent feasible.

Zoning Administrator Cronin noted that the Board had previously granted a variance for the property in February of 1993. In issuing its order, the Board noted:

“This is a non-conforming lot and it is virtually impossible to build while conforming to all setback ordinances. Without variances the lot is of virtually no value. Thus a serious hardship exists. After much discussion and after examining other possible approaches to the problem, it was concluded that the buyers request was as reasonable as any other.”

Zoning Administrator Cronin stated that when he received word of the applicant’s intent to build a new home on the property, he consulted with the town attorney and other zoning professionals around the state to determine if a 25-year old variance was still valid. He concluded that the 1993 variance was no longer valid because no individual had applied for

or obtained a building permit over the last 25 years. He added that the 1993 site plan, upon which the variance was based, would not be buildable today due to changes in the marsh critical lines. He also noted that the applicants disagreed with this conclusion, and in submitting their new variance request, had retained all legal rights to challenge this interpretation.

Zoning Administrator Cronin stated that while the overall site plan, site constraints (particularly the critical line at the rear of the property), and zoning requirements have all changed since 1993, the applicants' current variance request is substantially the same as what was approved by the Board in 1993.

Before opening the floor for comments, Chairman Sewell disclosed for the record that the Board had conducted a site visit to 2666 Persimmon Pond Court on April 25, 2018, at which time the Board viewed the subject property, as well as neighboring properties. He added that no testimony was received during the site visit.

Chairman Sewell then called on the applicants to provide additional information related to their variance request. Chairman Sewell administered an oath to each individual prior to their testimony.

- Ms. Melanie Bootes of 11914 Creel Lodge Drive, Louisville, KY, spoke in favor of the variance request. She stated that prior to purchasing the property in 2016, she and her husband had undertaken due diligence on the property, and had received assurance from the town's former Zoning Administrator that the 1993 variance was still valid. She and her husband depended on this information prior to acquiring the property, as had previous owners of the property. They disagreed with the current Zoning Administrator's conclusion that the 1993 variance was no longer valid, and reserved all legal rights. It was their hope and desire to build a new home on Seabrook Island, and they believed the property still meets the requirements for a variance, as the Board had previously determined in 1993.
- Mr. Eric Ison of 11914 Creel Lodge Drive, Louisville, KY 40223, spoke in favor of the variance request. He reiterated his wife's comments, and stated that he and his wife believe that they were still entitled to the rights under the 1993 variance, as those rights run with the land. He stated that he and his wife elected to go through this process in hopes that the Board would approve a new variance, but added that the applicants reserved all legal rights depending on the outcome of today's meeting.
- Mr. Stuart Rumph of Seabrook Island Real Estate, located at 1002 Landfall Way, Seabrook Island, SC, spoke in favor of the variance request. He stated that he had worked with the buyers during the sale of the property. As part of the due diligence process, the applicants had received assurance from the previous Zoning Administrator that the variance was still valid, and had relied on this information prior to purchasing the property. He stated that the seller, Mr. Finno, had received similar assurances when he acquired the property 10 years earlier. Based on the 1993 variance, Mr. Finno had gone through the SIPOA's architectural review process

in 2007, but never obtained a building permit from the town. He added that the strict application of the building setbacks would create a significant hardship, as only 2,373 square feet (19.3% of total lot area) would be buildable, and of which only 1,004 square feet (8.2% of total lot area) would have a dimensional width of 20 feet or more. He noted that the architect, Tyler A. Smyth, had designed a home that was suitable to the buyer's needs, but would also minimize the environmental impact. He added that the proposed site plan was below the lot coverage and maximum height requirements, and sought to preserve marsh views for adjacent property owners, which was not required by the ordinance.

- Mr. Tyler Smyth of Tyler A. Smyth Architects, located at 990-B Morrison Drive, Charleston, SC, spoke in favor of the variance request. Mr. Smyth described the process and parameters used to design the home. He presented a display showing the site plan for the property. He stated that the plan would preserve 8 of the 9 oak trees on the property, and would also allow water to move across the property the same way it does today. As part of the site planning process, Mr. Smyth stated that he had met with the previous Zoning Administrator, and received confirmation that the 1993 variance was still valid. He added that the previous Zoning Administrator had reviewed the draft site plan prior to the sale, and found it to conform to the 1993 variance. He added that the house would be 32' from the road pavement, and more than 40 feet from the neighboring house on the right side of the property.

Ms. Kleinman asked Mr. Smyth if he had memorialized his conversation with the former Zoning Administrator. Mr. Smyth responded that he did not have written confirmation from the previous Zoning Administrator about their conversations, but that he did have a copy of an email in which he had outlined the details of their conversation.

Chairman Sewell asked if there was anyone else who wished to speak on behalf of the applicant. Hearing none, Chairman Sewell then opened the public hearing to other individuals who wished to speak for or against the variance request. Chairman Sewell administered an oath to each individual prior to their testimony.

- Mr. Larry Margolis of 3133 Laughing Gull Court, Seabrook Island, SC, spoke in opposition to the variance request. Mr. Margolis stated that his property backed up to 2666 Persimmon Pond Court. He was concerned that the buildable area had shrunk since 1993, and that the proposed house was too big for the lot. His biggest concern was that additional runoff from the property would impact neighboring property owners, such as himself. He also referenced rising sea levels and existing flooding on this lot during king tides.
- Ms. Marilyn Margolis of 3133 Laughing Gull Court, Seabrook Island, SC, spoke in opposition to the variance request. She spoke about the island's natural beauty and wildlife, and expressed concern about homes which are too large for their lots. She also expressed concern about runoff and flooding impacts to neighboring property owners.

- Ms. Linda Yeomans, who owns the neighboring undeveloped lot (Lot 37), spoke in opposition to the request. She stated that she had considered buying the neighboring lot in the 1970's, but elected not to do so because she felt it was unbuildable. She noted that there is now standing water regularly on her property. She stated that this request was bad for the environment and the island.
- Mr. Larry Mayland of 2636 Persimmon Pond Court, Seabrook Island, SC, spoke in opposition to the request. Mr. Mayland stated that he had purchased a neighboring lot and subsequently combined it with his existing lot. He stated that he was trying to keep his property as natural as possible. He stated that houses were originally intended to be smaller, but have gotten bigger and bigger over time. He stated that the setback requirements had been adopted for a reason, and that variances such as the one being considered today will adversely impact the environment, as well as the aesthetic of the surrounding area.
- Mr. Rumph returned to the podium and stated that he could provide copies of the emails which had been previously discussed by Mr. Smyth. Responding to concerns about the impact of the new home on the marsh area, Mr. Rumph noted that the marsh is a dynamic environment; while the marsh has eroded in some areas, it has accreted in others.

Zoning Administrator Cronin pulled up a display which illustrated the changes in the critical line on the property between 1993 and 2015. He then highlighted areas of the property which had eroded and accreted over the last 25 years, adding that these changes were the primary reason why the site plan approved in 1993 would not be feasible today. He also discussed changes to the zoning ordinance which have been adopted over the last 25 years, including reductions in side yard setbacks for non-conforming lots (from 15 feet to 10/12.5 feet), as well as an allowance for eaves and overhang to encroach up to 18 inches into the required setbacks on non-conforming lots.

Mr. Leggett asked about the ARC's approval of a site-specific development plan in 2007. Zoning Administrator Cronin responded that he did not have a copy of an approved plan, but referred the question to the SIPOA's ARC Administrator, Katrina Burrell, who was in attendance. Ms. Burrell stated that the ARC requires an applicant to obtain a building permit within one year of approval. Mr. Rumph provided a copy of the plan that had been approved by the ARC in 2007.

Chairman Sewell asked if there was anyone else in attendance who wished to speak.

- Ms. Margolis approached the podium again and asked for clarification on the building height. Mr. Smyth responded that the height will be measured from the base flood elevation plus 2 feet, which is what required by the town and Charleston County. He added that the proposed residence would be significantly lower than the 36 feet allowed by the ordinance. Ms. Margolis stated that this was misleading, since the base flood elevation was significantly higher than grade. Ms. Margolis also

expressed concern about the impact to the marshes and flooding on neighboring properties. Mr. Smyth responded that the way the house was designed would not have any discernible impact on the volume or flow of water, as the dunes would not be impacted, the house would include flood vents, and there would be minimal landscaping on the remainder of the lot.

- Mr. Bill Bane of 2647 Seabrook Island Road, Seabrook Island, SC, spoke in favor of the request. Mr. Bane stated that he is the chairman of the ARC, but was speaking on his own behalf, and not on behalf of the ARC. Mr. Bane stated that this was a very difficult lot, and he commended the applicants' ability to design a home around the site constraints. He stated that he doesn't live anywhere close to the marsh, but still sees flooding on his property, adding that this is to be expected on a barrier island. He stated that it would be an injustice to penalize someone by not allowing them to build a home on their lot. He stated that the architect did an excellent job with the design, and that it was a good balance of the size of the lot and the value of the lot, adding that it wouldn't make economic sense to build a \$150,000 house on a \$350,000 lot.

Chairman Sewell again asked if there was anyone else in attendance who wished to speak. Hearing none, the public hearing was closed.

Chairman Sewell noted that, in granting a variance, the Board has the authority to attach such conditions as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare. Referencing the staff write up contained within the agenda packet, Chairman Sewell stated that the Zoning Administrator had recommended the following conditions, should the Board vote to approve the variance request:

1. The approved variance shall apply to the building layout as shown on the site-specific plan prepared by Tyler A. Smyth Architects, dated March 15, 2018. Any modification to this site-specific plan prior to the issuance of a zoning permit, with the exception of minor corrections and/or modifications which conform to the requirements of the town's DSO, shall require subsequent review and approval by the Board of Zoning Appeals.
2. The survey for the property includes a critical line delineation which was certified by SCDHEC-OCRM on January 29, 2015. The signature line on the survey states, in part: "The critical line shown on this plat is valid for five years from the date of this signature." Therefore, this variance shall expire on January 29, 2020 (5 years from the date of OCRM certification) if no building permit has been issued by that date.
3. Prior to issuance of a zoning permit, the applicant shall submit detailed plans to control stormwater run-off, consistent with Town of Seabrook Island and Charleston County stormwater requirements, to the Zoning Administrator for review and approval.

Chairman Sewell then called on Mr. Quagliato to review the four criteria under state law which must be used by the Board when hearing and deciding variance requests.

Mr. Quagliato stated that the Board has the power to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board makes and explains 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 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 character of the district will not be harmed by the granting of the variance.

Prior to the vote, Mr. Farber disclosed that he was a member of the Seabrook Island Real Estate Board, which handled the sale of the property. Mr. Rumpf, who represented the property owners, is an agent with Seabrook Island Real Estate. Mr. Farber stated that he would be recusing himself from voting on this matter. **[See attached recusal statement]**

Following a thorough review of the application, including all supporting materials received in advance of the meeting, and all testimony received during the public hearing, Chairman Sewell called for a vote on the request.

Mr. Leggett made a motion, seconded by Mr. Quagliato, to vote on the request.

Zoning Administrator Cronin requested a clarification as to whether the motion is to approve the request, as submitted.

Ms. Kleinman made the following alternate motion, which was seconded by Mr. Leggett:

- 1) The Board finds that strict application of the Town's DSO would result in an unnecessary hardship;
- 2) For the reasons referenced in the applicants' request for variance, the Board finds that the property meets the criteria for approval of a variance, as outlined in § 6-29-800(A)(2) of the SC Code of Laws; and

3) Therefore, the Board hereby approves the following zoning variance for the property:

Type	DSO Requirement	Variance APPROVED
Front Yard (Principal Structure)	30 feet	18 feet
Front Yard (Uncovered Steps)	20 feet	15 feet
Side Yard (Lots < 17,500 sq. ft.)	10 feet	7 feet
Marsh (Principal Structure)	25 feet	13 feet
Marsh (Open Deck)	15 feet	2 feet (Including pervious deck and guest parking)
Max. Encroachment for Eaves & Overhangs (Lots < 17,500 sq. ft.)	18 inches	0 inches (No encroachment beyond reduced setbacks)

There being no further discussion, Chairman Sewell called for a vote. Chairman Sewell reminded members that a “yes” vote was in favor of granting the variance, while a “no” vote was opposed to granting the variance.

IN FAVOR

Chairman Sewell
Mr. Leggett
Ms. Kleinman
Mr. Quagliato

OPPOSED

RECUSED

Mr. Farber

The motion to grant the variance was **APPROVED** by a vote of 4-0, with Mr. Farber recusing himself due to a conflict of interest.

To protect established property values in the surrounding area, and to promote the public health, safety, and general welfare, Ms. Kleinman made a subsequent motion, seconded by Mr. Quagliato, to attach the following conditions to the variance, as allowed by § 6-29-800(A)(2)(d)(i) of the South Carolina Code of Laws:

1. The approved variance shall apply to the building layout as shown on the site-specific plan prepared by Tyler A. Smyth Architects, dated March 15, 2018. Any modification to this site-specific plan prior to the issuance of a zoning permit, with the exception of minor corrections and/or modifications which conform to the requirements of the town’s DSO, shall require subsequent review and approval by the Board of Zoning Appeals.
2. The survey for the property includes a critical line delineation which was certified by SCDHEC-OCRM on January 29, 2015. The signature line on the survey states, in part: “The critical line shown on this plat is valid for five years from the date of this signature.” Therefore, this variance shall expire on January 29, 2020 (5 years from the date of OCRM certification) if no building permit has been issued by that date.

3. Prior to issuance of a zoning permit, the applicant shall submit detailed plans to control stormwater run-off, consistent with Town of Seabrook Island and Charleston County stormwater requirements, to the Zoning Administrator for review and approval.

There being no further discussion, Chairman Sewell called for a vote on the motion to add the three conditions.

IN FAVOR

Chairman Sewell
Mr. Leggett
Ms. Kleinman
Mr. Quagliato

OPPOSED

RECUSED

Mr. Farber

The motion to attach the three conditions to the variance was **APPROVED** by a vote of 4-0, with Mr. Farber recusing himself due to a conflict of interest.

There being no further business, Chairman Sewell called for a motion to adjourn. Ms. Kleinman made a motion, seconded by Mr. Leggett, to adjourn the meeting. The motion was **APPROVED** by a vote of 5-0, and the meeting was adjourned at 3:46 p.m.

Minutes Approved: June 12, 2018



Joseph M. Cronin
Zoning Administrator/
Secretary



TOWN OF SEABROOK ISLAND

2001 Seabrook Island Road
Seabrook Island, SC 29455

RECUSAL STATEMENT

Member Name: Jenny Farber

Public Body: Town Council Planning Commission Board of Zoning Appeals
 ATAX Advisory Comm. Utilities Commission Ways & Means Comm.
 Other: _____

Meeting Date: 5/4/18

Agenda Item: 2666 Persimmon Pond Court

Agenda Topic: _____

The Ethics Act, SC Code §8-13-700, provides that no public official may knowingly use his office to obtain an economic interest for himself, a family member of his immediate family, an individual with whom he is associated, or a business with which he is associated. No public official may make, participate in making, or influence a governmental decision in which he or any such person or business has an economic interest. Failure to recuse oneself from an issue in which there is or may be conflict of interest is the sole responsibility of the elected or appointed official (1991 Op. Atty. Gen. No. 91-37.) A written statement describing the matter requiring action and the nature of the potential conflict of interest is required.

Justification to Recuse:

- Professionally employed by or under contract with principal
- Owns or has vested interest in principal or property
- Other: Serve on Seabrook Island Real Estate
One agent is representing the Applicant

Date: 5/4/18 Jenny Farber
Member Signature

Received by Presiding Officer: _____
Presiding Officer Signature