

TOWN OF SEABROOK ISLAND

Board of Zoning Appeals Meeting

July 17, 2019 – 2:30 PM

Town Hall, Council Chambers
2001 Seabrook Island Road



MINUTES

Present: Walter Sewell (Chair), Ava Kleinman, Bob Leggett, John Fox, Joe Cronin (Zoning Administrator)

Absent: Dick Finkelstein

Guests: Catherine Johnson (3606 Beachcomber Run), Malcolm Brennan (M. Brennan Architects), Katrina Burrell (SIPOA), Bob Nitkewicz (3049 Seabrook Village Drive), Lawrence and Rebecca LaRoche (3061 Seabrook Village Drive)

Chairman Sewell called the meeting of the Board of Zoning Appeals to order at 2:37 PM. Zoning Administrator Cronin confirmed that the requirements of the Freedom of Information Act were fulfilled, and the meeting was properly posted. Chairman Sewell introduced himself and members of the Board to those in the audience and confirmed that a quorum was present.

APPROVAL OF MINUTES

1. **Board of Zoning Appeals Meeting: July 2, 2019:** Mr. Leggett made a motion to approve the minutes from the July 2, 2019 meeting, as submitted. Mr. Fox seconded the motion. The motion was approved by a vote of 4-0.

PUBLIC HEARING ITEMS

1. **Variance #162: 3606 Beachcomber Run (Tax Map # 147-14-00-067):** Chairman Sewell introduced the pending variance request, which was submitted by Catherine Johnson, the owner of 3606 Beachcomber Run, as well as her architect, Malcolm Brennan of M. Brennan Architects. Chairman Sewell disclosed for the record that the Board had conducted a site visit to 3606 Beachcomber Run on July 2, 2019, 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. He asked if any Board members had subsequently visited the property, to which none responded in the affirmative.

Chairman Sewell then called on Zoning Administrator Cronin to provide a brief overview of Variance Application #162. Chairman Sewell administered an oath to Zoning Administrator Cronin.

Zoning Administrator Cronin stated that the applicants were seeking approval to undertake a major renovation to an existing residence located at 3606 Beachcomber Run. Pursuant to §3.30.40 of the town’s Development Standards Ordinance (DSO): “If a nonconforming structure is modified to... (b) increase its current appraised value of the existing structure by more than fifty percent (50%) as determined by the Town, the entire structure shall become subject to this ordinance and shall be brought up to the standards and shall comply with the requirements contained therein.” Zoning Administrator Cronin noted that the value of the proposed work would exceed the 50% threshold and, therefore, the code requires that the existing encroachments into the side and rear setback areas – nearly one third of the home’s existing square footage – be removed. He stated that the applicants are not seeking to expand or modify the footprint of the structure in any way, other than removing an existing HVAC stand and constructing a new stand in a conforming location. Aside from the existing encroachments into the side and rear setback area, he stated that the residence meets all other requirements of the town’s DSO.

In order to allow the existing non-conforming residence to be renovated with a total renovation value in excess of 50% of the existing structure’s fair market value, the applicants sought approval from the Board of Zoning Appeals to grant relief from the following requirement, as provided by the town’s DSO:

Type	DSO Reference / Requirement	Variance Requested
<p>Modification to Non-Conforming Structure</p>	<p>§3.30.40: If a nonconforming structure is modified to... (b) increase its current appraised value of the existing structure by more than fifty percent (50%) as determined by the Town, the entire structure shall become subject to this ordinance and shall be brought up to the standards and shall comply with the requirements contained therein.</p>	<p>To waive the requirement of §3.30.40</p>

As part of their variance request, the applicants stated that strict application of §3.30.40 would result in an unnecessary hardship. The applicants further argued:

- (a) The existing home pre-dates the town’s incorporation and was constructed to the previous zoning standards of Charleston County;
- (b) The existing areas of encroachment are adjacent to permanent open space (golf course);
- (c) Compliance with the ordinance would require demolition and removal of significant portions of the existing home to comply with current setback requirements;
- (d) The proposed improvements will actually decrease the degree of non-conformity, as a non-conforming HVAC stand and equipment will be moved to a conforming location; and

- (e) The modifications will not be of substantial detriment to neighboring properties, the public good or the character of the district, because adjacent properties have similar orientation and are also adjacent to open space.

Prior to opening the public hearing, members of the Board asked questions of Zoning Administrator Cronin.

Mr. Fox asked whether the only issue at hand is whether the town's current setback requirements should be applied to this property as a result of the renovation exceeding 50% of the fair market value. Zoning Administrator Cronin responded in the affirmative.

Hearing no further questions, 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 receiving his or her testimony.

- Malcolm Brennan: Mr. Malcolm Brennan of M. Brennan Architects spoke on behalf of the property owner. Mr. Brennan outlined several goals of the renovation project, including: converting a 1970's weekend home into a primary residence; bringing all of the existing systems (electrical, mechanical, plumbing, etc.) up to current code; and improving the value, resiliency and appearance of the home. He stated that these improvements will benefit not only the homeowner, but also the neighborhood and community at large. He stated that compliance with §3.30.40 of the DSO would result in a substantial hardship. He noted that the existing encroachment was primarily along the shared property line with the golf course and that, other than relocating the existing HVAC stand to a conforming location, they were not seeking to change or expand the building's existing footprint. He stated the existing home pre-dates the DSO, and that requiring full compliance with the current provisions of the DSO would render this home unsuitable as a primary residence since demolition or relocation of the structure would not be feasible. He added that if the structure was relocated on the lot, it would also be out of character with neighboring homes. Regarding the 50% threshold, he stated that the cost of replacing the existing windows with impact resistant windows alone would be nearly 50% of the existing home's value. He encouraged the Board to approve the variance and allow the owner to improve the safety, quality, value and aesthetic of the home.
- Catherine Johnson: Ms. Catherine Johnson stated that this process was a great way for her to be introduced to her new neighbors. She stated that she sent a letter to all of the neighboring property owners with information about her variance request and heard back from four of them, all of whom were in support of the request. She noted that the Seabrook Island Club also supported her request. She added that she currently lives in Minnesota, but that the residence at 3606 Beachcomber Run will soon become her permanent home.

Chairman Sewell asked if members of the Board had any other questions for the applicants. There were no additional questions.

Chairman Sewell opened the public hearing to individuals who wished to speak in favor of the variance request. No one spoke in favor of the request.

Chairman Sewell then opened the public hearing to individuals who wished to speak in opposition to the variance request. No one spoke in opposition to the request.

Zoning Administrator Cronin noted that one written comment was received in advance of the meeting from the Seabrook Island Club, which owns the golf course property behind 3606 Beachcomber Run. He stated that the letter was in support of the variance request.

There being no further comments, Chairman Sewell closed the public hearing.

Chairman Sewell asked the applicants if they wished to make any additional comments. The applicants did not have any additional comments.

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

Zoning Administrator Cronin 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.

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 attaching two conditions, should the Board vote to approve the variance request.

Chairman Sewell asked if members of the Board had any additional questions or comments prior to voting.

Ms. Kleinman stated that she appreciated the applicants addressing the four criteria necessary for a variance. She noted that while neighboring property owners may have expressed support for the request, the Board could only consider correspondence and testimony which was entered into evidence; although she also noted that no comments were received in opposition to the request. She recommended that if the variance is approved, the Board should include specific findings as to why a variance would be appropriate in this instance but may not be appropriate in all situations.

Mr. Fox noted that this request was unique in that the applicants were not proposing to expand the footprint and, in fact, would be making the existing home more conforming by relocating the non-conforming HVAC stand.

There being no further discussion, Chairman Sewell called for a motion.

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

- 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;**
- 3) **The Board finds that relief is warranted in this limited situation as a result of the following factors:**
 - a. **The proposed renovation will not result in the expansion or re-establishment of any existing non-conformity;**
 - b. **The existing non-conformity does not abut a sensitive environmental area, such as a marsh or oceanfront critical line; and**
 - c. **There was no opposition from neighboring property owners or the public at-large; therefore**
- 4) **The requested variance is hereby approved, as follows: The requirements of §3.30.40 of the DSO are hereby waived for the proposed renovation to 3606 Beachcomber Run.**

To protect established property values in the surrounding area, and to promote the public health, safety, and general welfare, the following conditions were attached to motion

granting 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 the applicants and reviewed by the Board on July 17, 2019. 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 further review and approval by the Board of Zoning Appeals prior to permitting.**
- 2) **Consistent with the state’s Vested Rights Act, the variance shall expire on July 17, 2021 (two years from the date of approval) if no zoning permit has been issued by the town on or before that date.**

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

IN FAVOR (YES)

Chairman Sewell
Ms. Kleinman
Mr. Leggett
Mr. Fox

OPPOSED (NO)

The motion to approve the variance with the conditions was **APPROVED** by a vote of 4-0.

ITEMS FOR INFORMATION / DISCUSSION

There were no Items for Information / Discussion

SITE VISITS

Zoning Administrator Cronin provided a brief overview of the following appeal and distributed maps related to the subject properties to members of the Board. He also read a copy of a draft letter which will be sent to property owners within the Village at Seabrook:

- **Appeal #39**: Appeal of the Zoning Administrator’s determination of the setback requirements for Lots A-06, B-01, B-23 and B-26 in the Village at Seabrook Subdivision.

Prior to departing for the site visits, Zoning Administrator Cronin stated that public notice of the site visits had been provided, pursuant to the Freedom of Information Act. He stated that the agenda for today’s meeting contained the following provision: *“These site visits will take place behind the Seabrook Island Property Owners Association security gate. Any individual wishing to observe the site visit who does not have access behind the security gate should contact (843) 768-5321 for assistance prior to the meeting.”* He added that no individuals had contacted the town to request access behind the security gate in advance of the meeting. Zoning Administrator

Cronin noted that the purpose of the site visit was for observational purposes only, and no testimony would be heard pertaining to the variance application.

The meeting was recessed at approximately 3:36 PM. Board members then traveled individually to Lots A-06, B-01, B-23 and B-26 in the Village at Seabrook. Staff members at Town Hall were notified that the Board was traveling to the sites, and anyone coming to Town Hall to observe the site visits should be directed to those locations.

1. **Village at Seabrook Lot A-06 (Tax Map # 147-00-00-042)**: The Board reconvened at approximately 3:46 PM at Lot A-06. Board members and the Zoning Administrator observed the site, as well as neighboring properties in the vicinity of the site. Board members asked general questions; however, no testimony was received. No other individuals were present to observe the site visit. The meeting was recessed at 3:53 PM as Board members traveled to Lot B-01.
2. **Village at Seabrook Lot B-01 (Tax Map # 147-00-00-059)**: The Board reconvened at approximately 3:55 PM at Lot B-01. Board members and the Zoning Administrator observed the site, as well as neighboring properties in the vicinity of the site. Board members asked general questions; however, no testimony was received. No other individuals were present to observe the site visit. The meeting was recessed at 4:00 PM as Board members traveled to Lot B-23.
3. **Village at Seabrook Lot B-23 (Tax Map # 147-00-00-093)**: The Board reconvened at approximately 4:01 PM at Lot B-23. Board members and the Zoning Administrator observed the site, as well as neighboring properties in the vicinity of the site. Board members asked general questions; however, no testimony was received. Bob Nitkewicz of NV Realty was present on behalf of the property owner. The meeting was recessed at 4:07 PM as Board members traveled to Lot B-26.
4. **Village at Seabrook Lot B-26 (Tax Map # 147-00-00-096)**: The Board reconvened at approximately 4:08 PM at Lot B-26. Board members and the Zoning Administrator observed the site, as well as neighboring properties in the vicinity of the site. Board members asked general questions; however, no testimony was received. Property owners Lawrence and Rebecca LaRoche were present to observe the site visit.

There being no further business, the meeting was adjourned at 4:13 PM.

Minutes Approved: August 15, 2019


Joseph M. Cronin
Zoning Administrator