MINUTES
CITY OF BEAUFORT
ZONING BOARD OF APPEALS
November 24, 2014, 5:30 P.M.
City Hall Council Chambers, 2nd floor – 1911 Boundary Street
Beaufort, South Carolina

STATEMENT OF MEDIA NOTIFICATION: "In accordance with South Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, all local media were duly notified of the time, date, place, and agenda of this meeting."

Members Present
Brad Hill, Chairman
Don Starkey
Joe Noll
Eric Powell
Tim Wood

Staff Present
Libby Anderson, Planning Director

FREEDOM OF INFORMATION ACT COMPLIANCE
Public Notification of the Zoning Board of Appeals meeting has been published in compliance with the *Freedom of Information Act* requirements.

Chairman Hill called the meeting to order at 5:30 p.m. and led the Pledge of Allegiance.

Mr. Powell made a motion, second by Mr. Starkey, to approve the minutes of the October 27, 2014 meeting. The motion passed unanimously.

REVIEW OF PROJECTS
2703 Oaklawn Avenue, Identified as District R120, Tax Map 3, Parcel 318
Special Exception
Applicant: George and Lori Sontag (ZB14-22)
The applicants are requesting a special exception in order to operate a short-term rental.

No public comment was received on this application, Ms. Anderson said. She reviewed staff's feelings on special exception criteria:
1. **Proposed use is compatible with existing uses in the surrounding area:** Staff believes it is. The home is off of North Street and is a residential collector street. Downtown and the Waterfront Park are within walking or biking distance, so it is attractive as a short-term rental.
2. **Proposed changes are harmonious with the character of area:** The site plan

proposes no changes as a short-term rental.
3. **Impact on public infrastructure:** It is not likely to have a greater impact as a short-term rental than as a long-term rental, and guests will be limited to having two vehicles in the driveway.
4. **Compatible with Comprehensive Plan and the Civic Master Plan:** Staff believes it is.
5. **Impact on public health and safety:** Staff feels there will be little to no impact as long as there is an adequate management plan, and a monitored fire alarm is installed.
6. **Potential creation of nuisances:** Staff sees little potential for this with local contacts to help manage the unit and a monitored fire alarm.

Ms. Anderson said the owners live out of state and were to have a person involved with local management represent them. Chairman Hill asked if having a representative or the applicant present was mandatory, and Ms. Anderson said no, but they want people to come to answer questions that she can't answer. Mr. Wood asked if they could table it until after hearing those who had come to the meeting to speak on the matter.

Mr. Starkey asked if they had a local representative for management of this unit.. Ms. Anderson said they have provided it, but it's not necessarily "for public consumption." They have a cleaning service and lawn service. Mr. Starkey said they were required to have someone local to contact, and they should supply that. Ms. Anderson said that they have already asked for that information from the professional services people and will follow up.

Mr. Wood said this is the nineteenth short-term rental that's come before the ZBOA. He asked if staff had discussed "a saturation point" with this matter. If it comes up, Ms. Anderson said, they would go to council with it and perhaps invoke a spacing requirement such as one per block. She agreed that the city is "getting quite a few." Mr. Noll said this one's pricing is competitive with hotels at $100 a night; some short-term rentals are much more.

Chairman Hill said ordinarily, they would ask the applicants to make their presentation, then go to public comment, but they will skip to public comment with the knowledge that they will table this matter and hear the applicant's presentation at a later point.

David Taub lives in the Historic District and said he has for 35 years. He said he "represents a number of folks in the neighborhood who strongly object" to this special exception. He said this is "a lovely little single-family dwelling neighborhood" and is "integrated." He said the owners "don't have roots here"; they live in Ohio, and "this will only benefit them." He owns a house 3 to the left of this one that has applied to be a short-term rental. The neighborhood has "upgraded over the last few years," Dr. Taub said. Not all of the houses are owner-occupied, but those that aren't are long-term rentals, and there is no commercial enterprise. He feels this "will have a major negative impact on the neighborhood." His residence is at North and New Streets. He gave an example from The Point, where he lives, of someone who has a short-term rental in an

area that is zoned commercial. “The people who stay there are loud and boisterous,” Dr. Taub claimed, “when they celebrate their child’s graduation” from Parris Island. This is not an “appropriate neighborhood for this kind of activity.” He offered North Street, a block over and parallel to Oaklawn, as an example of “the negative effects” that could occur. This is a commercial enterprise, he said, and they don’t want the neighborhood to turn commercial. The applicants are “just greedy Yankees,” Dr. Taub concluded.

Jessica Biedermann said that the owners “had flat-out lied” to her about who was staying there. She said that “they have already listed it” (as a vacation rental by owner), but the owners claimed the people staying there were family. “They had a huge party for graduation,” Ms. Biedermann recalled, and they kept her 8-year-old awake. She was unable to get a response to solve the problem of the people who had partied there. She was unable to speak with either the housekeeper or the lawn guy. She thinks the homeowners should have told her they were doing a short-term rental. She doesn’t want to have parking and noise issues next door to her.

Darby James has lived on Oaklawn since 2006 and has worked with the neighbors to upgrade her home, “to keep an active watch,” and to attend the neighborhood meetings. The neighbors on Oaklawn “are trying to work together as homeowners,” Ms. James said. The applicants, **George and Lori Sontag**, when Ms. James first met them, had bought the home from a friend of hers, and “they lead me to believe that they were retiring” to Beaufort “in a couple years.” They had said they would be here a couple weeks a year and were fixing the home up; Ms. James was “concerned that their intentions were different” than what they appeared to be. There has been loud music and parties. The Sontags’ cleaning person is dropped off, then someone picks her up, “so people are concerned.”

Dr. Taub asked the Chairman why it was necessary to table this matter. Chairman Hill said because the owner was not present. Dr. Taub expressed why he thinks that they should vote anyway. As a judge, he felt they should take a vote and deny the petition. Chairman Hill said it’s not known why the applicants’ representative isn’t present, and he would like to take a friendly, small-town approach; if the applicants want to have a representative there, they should be able to. Three people showing up to oppose this project “is good,” Chairman Hill felt, and “it’s been noted.” If the Board tables the application, he encouraged the public to come back as a group. Dr. Taub asked what the applicant’s recourse was if the Board denied their petition. There was a brief discussion of the appeals process.

Mr. Starkey asked Ms. Anderson, if the applicants do come back, that they not be allowed to have pets because “dogs barking is the worst thing in a neighborhood,” and it’s difficult for the neighbors to get it stopped. Mr. Wood said this reminds him of the short-term rental considered in the last Zoning Board of Appeals meeting and the matter in the Old Commons neighborhood. He asked Ms. Anderson to “refresh” the board on the matter of non-commercialism and zoning. Ms. Anderson said short-term

rentals need to have a business license, and if they are operating a short-term rental without one, the city will look into it. Arguably, it's a commercial enterprise since you need a business license, but renting out multiple long-term rentals also requires a business license.

Mr. Powell said this is a perfect example of why these short-term rentals are viewed on a case-by-case basis. He thinks that the lack of representation by the applicant "may speak volumes." Ms. Biedermann said the home is already listed online for short-term rental, and a woman with two children is staying there now. Chairman Hill said if there are problems, Ms. Biedermann should call the police. Ms. Anderson said Ms. Biedermann doesn't need to call the city about the issue because she is working on it, but staff will look into it, and Ms. Biedermann can always call the city for help during the week and the police on the weekends. Mr. Wood told Ms. Biedermann, Dr. Taub, and Ms. James that the Board doesn't "appreciate it when people do things" like renting the house out before it's been authorized.

Mr. Starkey made a motion to table this matter for a month. Ms. Anderson said the applicants would be emailed and sent a letter, so they know they have to respond. Ms. Anderson said if it's tabled, December 22 is the next meeting. She noted that staff also takes written comments in letters or emails. Ms. Anderson said the homeowners can't do a short-term rental without a business license, etc., so they can be told to stop if they don't have that and a monitored fire alarm, etc.

Mr. Powell said volunteers staff the board, and the property owners/neighbors have given their time to come to the meeting to protest the application. The homeowner/applicant has paid a fee and surely knows when the meeting was. The owner acknowledged the reminder, Ms. Anderson said, and thanked her, but she doesn't know what happened to the local representative for the owners.

Dr. Taub said December is a bad time to reschedule, if they want to table it; he said again that the Board should take "an active position" because the applicants "had every opportunity to respond" and didn't, and a neighbor has said that they have people there right now. Ms. Anderson said there would be a December meeting anyway; two of the items are short-term rentals.

The conversation continued about the upcoming Christmas holiday and the possible difficulty of getting to the December meeting. Ms. Anderson said she wouldn't be here in January for the regularly scheduled Zoning Board of Appeals meeting and had been hoping to not have a meeting in January. Mr. Starkey asked, if they disapprove it, if the applicants can come back with a representative at a later date. Ms. Anderson said the board could schedule a special meeting in January to hear this matter if it chose to.

Mr. Noll seconded Mr. Starkey's motion to table the matter until the December 22 meeting. **The vote was 1-4 (Mr. Noll in favor), so the motion failed.** Dr. Taub "implored

the chair" to "take a positive position" because "the plaintiffs did not avail themselves of the option to be present."

Mr. Wood made a motion to vote on proceeding with the decision on the application without the applicants or a representative present. The motion died for lack of a second. Chairman Hill clarified that he feels the board needs to vote one way or the other. Chairman Hill said they could continue the discussion and didn't need a motion to do that. Mr. Noll said he didn't see a difference between denying it and tabling it. It was explained to him that if it were denied, the applicants would go on to the appeal process and not come to the board. Mr. Starkey asked about the notice and if it said that the applicant *had* to be present at the meeting. Ms. Anderson said she was looking at the rules of procedure and didn't see anything saying that the applicant had to be present.

The Board can grant a re-hearing of an application within 15 days if there is new evidence or evidence of clerical error or another mix-up with the applicant's representative. Ms. Anderson said. Mr. Starkey said it says on the ZBOA agenda that they will not review an application without a representative present. Ms. Anderson said that's policy. Ms. Anderson said it's on the agenda, but the applicant's presence is not a rule/the law/a part of the ordinance. It just makes sense to have both parties present at a hearing. There's only been one other situation where the applicant wasn't in attendance.

Mr. Starkey said because three people spoke against it and one for it, he thinks they should vote. Citing the rules, Ms. Anderson said the applicant may appear in person, by agent or attorney; in the absence of an applicant's appearance, the Board can make a decision, she said. Mr. Starkey clarified that they were able to make a decision. Ms. Anderson said yes. Chairman Hill said they should change the word "not" on the agenda, in regard to applicant attendance. Mr. Wood noted that the Board had held the hearing as a courtesy to the people who had come to contest the application. **Mr. Powell made a motion to deny the special exception for the short-term rental application. Mr. Starkey seconded. The motion passed 4-1, Mr. Noll opposed**.

<u>2505 Fripp Street, Identified as District R120, Tax Map 5, Parcel 52</u>
Variance from limit on number of garages
Applicant: Frederick + Frederick Architects for Mr. & Mrs. Stephen Schein (ZB14-23)
The applicant is requesting a variance in order to replace an existing open shed/carport with a garage.

This is in the Hermitage Road neighborhood, Ms. Anderson said. A single-family dwelling is located on the property. It's R-1, low-residency single-family residential district. A detached carport is on the west side of the existing dwelling. She showed the Board photos. There's also a carport-like structure in the rear of the property.

The ordinance limits the number of garages/ carports to one. The applicants propose to replace the open carport with an enclosed garage if granted a variance for an additional two-car garage. It will replace this carport and is in approximately the same location. It will meet the setbacks for a garage of this size. The existing carport is 396 square feet and doesn't meet setback requirements. The proposed carport is 20 x 25 or 500 square feet. The site plan has not been developed; the applicant was waiting to come to the Zoning Board of Appeals first. Ms. Anderson said staff would like the applicant to discuss if they were the constructors of the current carport.

Ms. Anderson reviewed the staff's opinion on the six criteria for the Board to consider for a variance:

1. **Extraordinary and exceptional conditions:** Ms. Anderson said staff feels that this finding could be made: it's larger than the minimum lot area required by ordinance; there is an existing carport and a shed, and the shed is non-conforming.
2. **Conditions as applied to other properties in the vicinity:** Conditions don't apply, Ms. Anderson said.
3. **Conditions are not the result of the applicant's own actions:** The applicant didn't plat the large lot, but staff would be interested in knowing if the applicant had the carports constructed.
4. **Granting the variance would not conflict with comprehensive plan:** It won't conflict with the comp plan or any ordinances, Ms. Anderson said.
5. **Unreasonable restriction on utilization of the property:** Staff feels the finding could be made since there are structures on the property already housing vehicles. The garage will replace the existing open shed and be within the setbacks. They are not adding any more than is there now. The property will not have more accessory structures than are permitted by ordinance.
6. **Not a detriment to adjacent property and the public good:** There is no foreseen detriment to the adjacent property and the public good, Ms. Anderson said. The garage is being designed by an architect and will be attractive and made of quality materials. It will be enclosed to replace the open carport structure that's there now. And it will eliminate a building that's nonconforming to the rear setback.

Staff recommends approval.

Mr. Noll asked, if it were not for the flimsy carport, if this would have come to the Zoning Board of Appeals. Ms. Anderson said it would not have. Mr. Starkey asked about the 15' setback on the side and rear; 500 square feet or less. Ms. Anderson said, it meets the setback.

Jane Frederick, representing the Scheins, showed a photo of the existing shed that will be replaced: "a building that looks like it's about to fall down." The owner put the structures up in 1972 when he bought the house, prior to zoning ordinances that might

have prohibited it. In this neighborhood, there's a lot of non-conformance because it is so well established.

Mr. Starkey made a motion to approve the variance to replace the carport with a garage with the provision that the applicant come back to staff for review of the building when it's finalized in regard to the architecture, material, site plan, etc. Mr. Powell seconded. The motion passed unanimously.

Mr. Starkey asked Ms. Anderson to take off the Form-Based Code agenda item until the committee is "reconstituted." When Mr. Wood asked what needed to happen before the committee reformed, Mr. Starkey said the goal had been stated as making the group a size that fit around the conference room table.

Mr. Wood said he doesn't like the concept that some of the public has about it being "an inconvenience to get a business license." He would also like it to be clear that a neighborhood will not become "commercial" if it has short-term rentals in it. He thinks council might want to discuss short-term rentals since there are so many now. Ms. Anderson said it might be a good idea to revisit the ordinance and put the requirement that a professional management company must be in place. There are at least 3 such companies in town now. Mr. Wood said the lack of a contact/management of the property was a common complaint of those who had spoken.

Mr. Starkey said when council had approved allowing short-term rentals by special exception, the original idea was to allow the rental of guest cottages and carriage houses where the owner is present on the property. He said the people have to have someone they can call if there is a guest in a short-term rental who is loud. The neighbors don't know if the person staying there is a relative of the person who owns the house. Mr. Powell said the short-term rental that the Board had approved at its last meeting was a very different case; the applicant appeared before the Board and had shown concern that the property would be well maintained. **Mike Sutton** had mentioned at that meeting that there are positives to short-term rentals, "but this one didn't seem right," Mr. Powell felt.

Mr. Wood shared an anecdote about a petition and affidavits in Mossy Oaks on another matter. Mr. Starkey said he recommended that short-term rentals be reviewed, so the Zoning Board of Appeals would have "something better to go on." Ms. Anderson said she would bring forward that a local representative had to be available to respond to concerns in order for an application to obtain approval. Mr. Wood suggested that it could also be made a requirement that a representative be present at a Zoning Board of Appeals hearing.

There being no further business to come before the board, Chairman Hill adjourned the meeting at 6:45 p.m.