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A meeting of the Zoning Board of Appeals was held on **December 21, 2015 at 5:30 p.m.** in the City Hall council chambers, 1911 Boundary Street. In attendance were Board members Jody Caron, Josh Gibson, Nigel Stroud, Tim Wood, and Joe Noll, and Libby Anderson, planning Director.

In accordance with the 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.

#### **ELECTION OF TEMPORARY CHAIRPERSON**

**Mr. Noll nominated Mr. Wood to serve as chairperson until a permanent chair can be elected. Mr. Caron seconded the motion. The motion passed unanimously.**

#### **CALL TO ORDER**

Chairman Wood called the meeting to order at 5:30 p.m. and led the Pledge of Allegiance. He read the notice of compliance with the Freedom of Information Act requirements. The board members introduced themselves. Chairman Wood reviewed the Zoning Board of Appeals' process for approving applications for variance, including the findings the Board must make to determine if it will grant a variance.

**Mr. Noll made a motion, second by Mr. Gibson, to approve the minutes of the November 23, 2015 meeting as presented. The motion passed unanimously.**

#### **REVIEW OF PROJECTS**

**108 South Hermitage Road, Identified as District R120, Map 5, Parcel 319 and 41**  
Variance

Applicant: Montgomery Architecture + Planning (ZB15-33)

*The applicant is requesting a variance in order to construct a building addition.*

Ms. Anderson showed where the property is on an overhead map. It is irregularly shaped: a trapezoid, rather than a rectangle. The front property line (at Hermitage Road) is 110' wide, and it is 86' wide at the rear property line. The north side (Fripp Street) is 262' long, and it is 279' long at the south side property line. There's a single-family dwelling on the property. It is parallel to Fripp Street. The applicant's information shows that the width of the dwelling occupies the width of the buildable area. The one-story building is about 1400 square feet.

Ms. Anderson said the applicant desires to construct an addition on the north (Fripp Street) side of the property. It will be 10' (W) x 24' (L). The R-1 district requires a 30' front setback; per the section of the ordinance pertaining to corner lots, the setback on Fripp Street is required to be 15'. The existing building is almost at that setback line. The applicant is requesting a variance to allow him to build the addition 10.75' into the Fripp Street setback at its furthest point, resulting in the addition being 4.25' from the Fripp Street property line.

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The lot has large front and back yards, Ms. Anderson said. There is plenty of room, it appears, to construct an addition in the rear or front of the building, so staff would like an explanation of why this isn't being done. She said other questions for the applicant should include: What is the elevation on the front? Would the side of the addition that faces the street have windows? What siding and roofing materials will be used? What colors are proposed? The appearance of the addition is important, as is the fact that it's a front-facing addition.

Ms. Anderson said she had asked **Lauren Kelly** for additional guidance to minimize the encroachment, and she showed the sketch Ms. Kelly had done, with a front addition and a small encroachment of 1.5', which could be approved by staff (which can approve waivers up to 10%). This portion of the Hermitage Road area is characterized by large, usually one-story houses on lots that are set back from the street. Having a dwelling set back less than 5' from a side street property line would be very unusual, Ms. Anderson said.

All public notice was made and representatives of the Hermitage Road Neighborhood Association were informed of the application via email, Ms. Anderson said. No public comments were received on this application.

Ms. Anderson enumerated the findings the Board needs to make to approve this application for a variance. The Board must find all six to grant a variance.

1. **Extraordinary and exceptional conditions:** Ms. Anderson said this is a conforming lot, but there is an unusual situation with the lot configuration. Additionally, the dwelling currently occupies the full width of the buildable area;
2. **Conditions as applied to other properties in the vicinity:** Staff feels this finding could be made; the conditions do not apply to most of the interior lots in the area, which have regular shapes;
3. **Conditions are not the result of the applicant's own actions:** Staff feels this finding could be made because the applicant didn't plat the lot or build the house that is on it;
4. **Granting the variance would not conflict with the Comprehensive Plan:** Ms. Anderson said there was "no feeling on this either way," from staff;
5. **Unreasonable restriction on utilization of the property:** Ms. Anderson asked the board to consider if it is unreasonable to require the additional habitable space to be built on the front or rear of the dwelling when there is plenty of buildable area there; and
6. **Not a detriment to adjacent property and the public good:** Staff is concerned about this, Ms. Anderson said; the proposed addition would be less than 5' from the Fripp Street property line. This setback does not seem to be in keeping with the character of the neighborhood. The smallest lot in a residential district (R-4) requires a 12' front setback and would permit a 6' setback on the secondary street. This addition would be almost 2' closer to the street than is permitted in

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the highest density single-family district, and it's located in the largest lot district (R-1) on the current zoning map.

Staff recommends denial because all of the findings cannot be met at this time, but if the Board approves the variance, staff strongly recommends that the addition be fully staked out on the lot, so the Board can fully understand the addition's impact on the streetscape, Ms. Anderson said. Some vegetation has been removed on the lot in anticipation of the work being done, so the orientation of the structure and the impact it would have on the street are clearer.

In regard to Mr. Stroud's question about this possibly setting precedent, Ms. Anderson said each application has to be considered on its own merit, which is where the findings come into play. It's better to make the findings of fact in each case than to be concerned about precedent.

Mr. Caron asked if they know if there are any utilities in that setback area. Ms. Anderson said the applicant might know that; the survey didn't show them. There was a general discussion of this by the Board, based on the drawing on the overhead.

**Rob Montgomery**, the project's architect, said the building is oriented from setback to setback. An area that was originally designed as a garage was not used that way; it has always been used as a screened porch, but "it's not a very functional porch," and "can't be converted to much of a useable area." Given that, and that the Brunsons like "the clean elevation that fronts Hermitage," he and the homeowners feel enlarging the space and making a master bedroom out of it would be "the highest and best use" for that space, Mr. Montgomery said.

In regard to encroaching on the side yard setback, Mr. Montgomery said, there's an additional 15' to the edge of the pavement, and since the addition is triangular, although it does encroach up to within 4'3" of the setback, the bulk of it is "behind, maybe halfway, encroachment into that 15' setback." They do not feel that it would be a detriment to the character of the neighborhood. All the buildings along Hermitage front Hermitage, Mr. Montgomery said, as this one does. This house and the neighbor's house on the other side of Fripp address Hermitage Road. The side elevation is an extension of the existing profile, with a very low-profile hip roof. He pointed out on the elevation "the portion of the building that would go out into that encroachment." The plan is to whitewash the brick for "a mottled look." On the elevation that would front Hermitage, Mr. Montgomery said he would "simply add another double," and that wouldn't have a harsh impact on the neighborhood visually. The porch addition on the west side and the kitchen addition on the east side would create a simple T-shaped building that would complement the neighborhood.

Mr. Montgomery said they were also cognizant of two large live oaks, one each on the building's east and west sides. **Greg Brunson**, the applicant and homeowner, said they

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were drawn to the property by the grand live oaks, but the trees prohibit them from adding on to the house in a way that would put them too far into the trees' dripline. They tried to maximize into the rear dripline, he said. They "didn't want to change the overall perception of the property" and "wanted to work around those live oaks as much as possible," according to Mr. Brunson. He feels an addition out of the front would block the view of the oak in the front yard. They are bound by setbacks on each side and by live oaks on the front and back, Mr. Brunson said, which are unusual circumstances.

Mr. Stroud asked if they "were going out in the front of the house also." Mr. Brunson replied yes, with an open porch. Mr. Stroud said that would also put them near the live oaks. Mr. Stroud asked if they had considered going vertical. Mr. Brunson said they are moving from a two-story house, and one of the appeals of this house was that they wanted a single story.

Mr. Gibson asked their rationale for not going into the backyard with the addition. Mr. Brunson said the value of the property is in the two trees. The house was built in 1952 and hasn't been lived in for 10 years. The neighbors are ecstatic, he said, that they are doing something to the house. The Brunsons wanted to "work around" and "feature the live oaks," so they didn't want to come too far out with an addition, which is why they have planned only for 6'-8' of front porch. A wing addition in the front would take away from the character of the house, Mr. Brunson feels.

In regard to the findings, Mr. Brunson said, "The house was built as it was," and "the two live oaks are exceptional and affect that piece of property." He doesn't feel this addition adversely affects the neighborhood, and none of the neighbors he has spoken to have a problem with it.

Chairman Wood asked for clarification that the wing of the house, regardless of where it goes, is going to be a master suite. Mr. Brunson said that could change if they are denied. Mr. Montgomery said the idea was for a master bedroom to occupy the space that is currently a "useless garage." Chairman Wood said, if they added on to the back, they would get the square footage they are looking for. Mr. Montgomery said it would "pinch" it; they lose square footage as they go back. Mr. Brunson said they are trying "to work with the existing roofline," rather than having to take the entire roof off "and start from scratch." Mr. Montgomery said this house is the only thing on the Fripp Street streetscape, and "this elevation seemed to be very innocuous." It already exists and would just be brought out more – closer to the street, but "on a portion . . . that doesn't have any frontage that it would be compared to along that streetscape."

Mr. Gibson asked about another house in the area, and Mr. Montgomery said that house "sits far back, away from this building," and the large live oak separates it visually. Mr. Gibson said across the street and to the east, a house faces into the Brunsons' back yard. Mr. Brunson described where it is and said it "basically looks at the back corner of the property."

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Mr. Stroud asked about steps that he saw on the drawing. Mr. Montgomery said that areas faces south, so they had thought that would be a good yard area, which is why they didn't put the master bedroom there; they didn't want the addition to take up the whole southern portion. Mr. Brunson said if the bedroom addition was on that side, they would "lose all that natural light into the house."

Mr. Caron asked about the sketch Ms. Kelly had made. Mr. Brunson said they didn't consider the option she'd presented because of the view from Fripp and Hermitage Street. Looking from there, if the addition is in the front, he indicated the live oak, and to him the view would "cut into that natural yard that features the live oak." That's why they minimized the addition there to just the small porch.

Mr. Brunson said the encroachment isn't the entire wing encroaching 10'; only one-third of the addition would encroach, not 10' on both sides. Mr. Gibson asked if a long hedge of camellias would have to go away. Mr. Brunson said only at the corner; they could keep all of them but a portion at the corner. They are so tall that the front of the house couldn't be seen. **Liza Hill** has offered him names of people who could transplant them, and they could be moved out and transplanted in order to keep the same buffer.

Mr. Montgomery said the service entrance for the power is on the corner, but they would relocate it. Mr. Brunson added that they have had trees removed, and according to where the utilities are marked, they wouldn't be interfering with any utilities.

**Phil Hodges**, the Brunsons' neighbor, said he is concerned about the camellias, which "form a very natural, beautiful screen," which many of the houses in the neighborhood use. He said he's not sure the live oak would be threatened by an extension going into the front yard. "This is certainly a matter of personal taste," Mr. Hodges said. An "L" shape – created by moving the bedroom to the front – "would not distract" from the house's current form. He doesn't see how – with the building that close to the street – there could be room to do any screening. He said he hasn't spoken to the other neighbors around them, and they're not present at the meeting, so there "must not be great concern," but he would like the Brunsons to consider "a less extreme alternative."

Mr. Stroud said he is surprised at where this addition is proposed to go. It seems to him that there are other options that would allow it to fit within the guidelines. Mr. Montgomery is a good architect, Mr. Stroud said, and there are options to reduce the amount of variance that is requested. He has problems with findings #5 and #6. Mr. Gibson said he's having a hard time with #5, too, for a lot of that size. It seems like there should be another solution to the problem.

Chairman Wood said he agrees with Mr. Gibson, though he understands where Mr. Montgomery and Mr. Brunson are coming from. He agreed with staff's suggestion that if the Board were "leaning toward granting the variance," he "would love to see (the property) staked out before we made a final decision," to "really get a physical grasp on

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how” it would affect the streetscape. The 15’ might not make a difference in granting the variance. The question for him is that the side is facing the street, Chairman Wood said. There is a little extra bit of buffer before the pavement, and the hipped roof helps. However, he wouldn't want to consider granting the variance without seeing the corners staked out.

Chairman Wood said if the master suite were in the rear of the house, “they cannot go out.” If they go out up front, with the proposed width, they would still have to come before the Zoning Board of Appeals (ZBOA) “for a 3’ corner,” which they would still have, but it is “*a lot* less impact on the footprint” than this is. Chairman Wood said his problem is that the applicant can’t meet all six of the variance criteria.

Mr. Noll said in regard to #6, “it’s still pretty far from the street. . . . but #5 – protecting the setback – isn’t an unreasonable restriction . . . (when) the whole thing mostly comes out of the setback.” Unlike other variance applications, “this basically starts at the setback and moves into it.”

Mr. Caron said he agrees that the problematic finding is #5; he questioned what that would “do to the right-of-way down the line.” He likes the idea of a design that has “less impact on the side yard,” but he agreed that the application doesn't meet all the criteria for a variance.

Chairman Wood asked Ms. Anderson, if the applicant agrees “to pursue pushing out into the front” with the master bedroom, if the Board could approve the variance for 3’ now, or if the applicant would have to come back. Ms. Anderson said they would need a site and floor plan “to really understand that.” Mr. Stroud suggested tabling the application. He said the Board can’t approve the 3’ if they don’t know where it’s going. Chairman Wood agreed that if they table it, the applicant could “regroup.”

Ms. Anderson said a certified arborist’s report about the impact of the construction on the trees and assessing their health would help, and staff recommends that. Mr. Stroud said the certified arborist could give Mr. Montgomery and Mr. Brunson “a line that shouldn't be crossed.”

Chairman Wood said the Board appreciates the effort at tree preservation, and he agrees with the recommendation of a certified arborist’s report. Mr. Brunson said they would “like an opportunity to adjust,” since the way the Board would vote on what he had asked for in his application was unclear.

**Mr. Gibson made a motion to table the application pending a certified arborist’s report to show the impact of an addition on the live oaks, and staking out the proposed solution to see the impact on the Fripp Street side of the house.** Mr. Stroud told Mr. Brunson that until they have a certified arborist’s report, they can’t determine

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if the original plan is viable in regard to the tree. **Mr. Caron seconded the motion. The motion passed unanimously.**

**521 Ribaut Road, Identified as District R120, Map 3, Parcel 547**

Variance

Applicant: Michael and Julie Felver (ZB15-34)

*The applicants are requesting a rear yard setback variance in order to construct a shed.*

Ms. Anderson said this property is in the Dixon Village neighborhood. It's zoned R-3 medium- to high-density. The minimum lot area is 6000 square feet in R-3, so this lot conforming at 6,629 square feet. A single-family dwelling is located on the property, which is served by a septic tank, rather than being connected to the city sewer service.

The applicant, **Michael Felver**, had submitted a survey, Ms. Anderson said, that shows the location of the house and septic tank. He would like to construct a small shed in the rear yard. The 6' x 12' enclosure is proposed to have a 4' porch and a 10' overhang, so the total area under roof is 156 square feet. This is under the size that the building official would need to review, but application to the Zoning Board of Appeals (ZBOA) is still required.

Ms. Anderson said the applicant would like to build the shed as close as possible to the rear property line in order to keep it in the backyard but avoid the septic tank. The drawing locates it 2.5' from the rear property line. The ordinance requires small accessory structures (less than 500 square feet) to be located 5' from the rear and side property lines; the applicant is requesting a variance from that requirement.

The requisite public notice was made, Ms. Anderson said, including sending notice to the Dixon Village email list. There was no public comment, but the property owner at the rear of this property – on whom this project would have the greatest impact – has written a letter of support.

Ms. Anderson enumerated the findings the Board needs to make to approve this application for a variance. The Board must find all six to grant a variance.

1. **Extraordinary and exceptional conditions:** Ms. Anderson said this finding could be made because it is served by a separate tank;
2. **Conditions as applied to other properties in the vicinity:** Ms. Anderson said the vast majority are on sewer;
3. **Conditions are not the result of the applicant's own actions:** The applicants did not build this dwelling, Ms. Anderson said;
4. **Granting the variance would not conflict with the Comprehensive Plan:** Staff feels this finding could be made; the variance is small, and the structure is not visible from the street;
5. **Unreasonable restriction on utilization of the property:** The applicant has no garage or outside storage buildings on the property, Ms. Anderson said. The

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possible locations where this shed could be are limited on the property for several reasons;

6. **Not a detriment to adjacent property and the public good:** Ms. Anderson said staff feels this finding could be made: the shed is very small and not visible from the street or adjacent properties. The neighbor on whom the setback would have the most impact has supported the variance request.

Staff recommends approval, Ms. Anderson said. Mr. Stroud asked if the shed is taller than the fence. Ms. Anderson said he should ask that question of the applicant.

Mr. Felver showed the effort that had been made to use the east portion of the property while leaving space to paint, etc. The placement puts it directly behind their neighbor's garage, so the neighbor doesn't have to see it, he said. There are areas on the side of their property, but they have created a double gate there that is hidden. If they have people over, he said, they can open it and move their vehicles into the side yard. The shed will be built to match the architecture of the house, including the shingles. Mr. Felver said it will be tall enough for them to walk in and have head room. They are in the 2' range above the fence (i.e., in the 8' range with the peak of the gable). Mr. Stroud said it appears the shed is low, which he appreciates.

Chairman Wood asked if they would eventually hook up to sewer. Mr. Felver said the person who built the home couldn't get access to sewer through the neighboring yards, so he was forced to put in a septic system. Mr. Caron asked about "the little box on the side" of the drawing; Mr. Felver said that was a scale reference to show that a vehicle could pull into that area.

Mr. Stroud said he has no objection, and it meets all of the ZBOA's criteria. Mr. Gibson said he has no problems with the application and feels it's nice to have a storage solution for equipment. Chairman Wood said it's a tight building on a tight lot, and the shed will hardly be seen. Mr. Noll said this is "very clean," and thanked Mr. Felver for that. Mr. Caron said he thinks the neighbor's approval is important. His only question is about height, and he asked if there is a restriction. Mr. Felver said the fence is a hair over 6', and the yard elevation is uneven. "We're mimicking the construction of the neighbor's fence," he said.

**Mr. Stroud made a motion to grant the request for the variance, in accordance with the plan that was submitted and based on the Board's agreement with the findings of the staff report. Mr. Caron seconded. The motion passed unanimously.**

Ms. Anderson said there are no new applications for January, but the Hermitage Road one may come back.

Mr. Noll is the representative on the form-based code committee, Ms. Anderson said. Mr. Noll said the locals in that committee make it "quite an experience." He has learned

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that property can be clear cut. Ms. Anderson said its 5' "if you're doing forestry." Ms. Anderson said there's a provision in the code; if you clear cut for forestry, a site plan for it will not be approved for two years.

Mr. Gibson asked what the city's next step is in regard to short-term rentals. Ms. Anderson said there was no formal motion, so they will wait on council's direction. In the Beaufort Code, there's a proposal that in the Old Commons or The Bluff, the only way properties would be approved as short-term rentals would be if they were renovated under the Bailey Bill. Ms. Anderson said the code is on the website, and the public may comment on each section.

Chairman Wood said that the new board members had not read an extensive manual that former board member **Don Starkey** had been given and presented to the Board about short-term rentals, and while they don't need to read the whole thing, he proposed that they look at it, as it contained a lot of good information on the subject. Ms. Anderson described the contents of the report. Chairman Wood said it covers other states and cities, and he was amazed about how variable each community is. This report finds that there are so many variances on what can be done: restrictions on days that can be rented, for example. Chairman Wood and Ms. Anderson agreed it can be skimmed, and Ms. Anderson said she would send it out for the new members to read.

There being no further business to come before the Board, the meeting was adjourned at 6:54 p.m.

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