MINUTES
CITY OF BEAUFORT
ZONING BOARD OF APPEALS
February 27, 2012, 5:30 P.M.
City Hall Council Chambers – 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
Alice Howard, Chairman
Joan Sedlacek
Rod Mattingly
Eric Powell

Members Absent
Brad Hill

Staff Present
Libby Anderson, Planning Director
Gail Westerfield, Recorder

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

Mr. Mattingly suggested that on page 4 of the December 20, 2011 minutes, in the first full paragraph, the lot size might have been incorrectly recorded. Ms. Anderson said she would look into the correct lot size. **Mr. Mattingly made a motion, second by Chairman Howard, to accept the minutes of the December 20, 2011 meeting as (potentially) amended. The motion passed 3-0 with Mr. Powell abstaining because he was not present at the meeting.**

Mr. Mattingly requested that on page 2 of the January 23, 2012 minutes, the minutes should read that on the matter of North Street, there was no public comment made "at the meeting." **Mr. Mattingly made a motion, second by Mr. Powell, to accept the minutes of the January 23, 2012 meeting as amended. The motion passed unanimously.**

Chairman Howard reviewed procedure for obtaining a variance and then the procedures of ZBOA review.

REVIEW OF PROJECTS

760 Ribaut Road identified as District 120, Tax Map 3, Parcel 623, Side Yard Setback Variance.
Applicant: Brian and Nancy Whitworth (ZB12-04)
The applicant is requesting a side yard setback variance to permit the lot to be uncombined.

Mr. Powell and Ms. Sedlacek suggested that a clarification be included in these minutes regarding this variance that the property line was to be moved, not the steps as had originally been discussed.

Ms. Anderson showed a graphic of the lot, which she said is, zoned R-1. The setback requirement is 15'. The dwelling has an open porch on the north side of the property. The property is a double lot, originally two separate lots, Ms. Anderson said, and it has been this way "of some time." The applicant wants to undivided the lot. Each proposed lot would meet the minimum square footage required. The issue is the side porch, Ms. Anderson said. Originally, the building fit in the area, but if it's subdivided, the porch will encroach into the other lot. Currently the leading edge of the porch is 6'over the side property line and the steps about 1.5' over.

Ms. Anderson said potential questions for the applicant included: Did they combine the two lots, and did they build the side porch? Public notice was made, Ms. Anderson said, and one public comment was received; the board was given a copy of that.

1. **Extraordinary and exceptional conditions:** This is a double lot, Ms. Anderson said, and this finding can be made. It's exceptionally large and wider than the minimum requirement.
2. **Conditions as applied to other properties in the vicinity:** Ms. Anderson said staff agrees that the conditions don't generally apply to other properties in the vicinity.
3. **Conditions are not the result of the applicant's own actions:** Ms. Anderson said that finding can be made if the applicant answers questions.
4. **Granting the variance would not conflict with comprehensive plan:** Ms. Anderson said that this finding can be made, as it encourages infill, and it would create a new lot for development.
5. **Unreasonable restriction on utilization of the property:** Staff feels that this finding could be met, Ms. Anderson said. Both lots cannot be uncombined without the variance being granted. The proposed lots meet the minimum area and lot width standards. The trend for urban infill, she said, is large homes on small lots.
6. **Not a detriment to adjacent property and the public good:** This finding can be met, Ms. Anderson said, as it will create a buildable lot of the required size.

Staff recommended in favor of approval of the variance, but that the steps be removed or relocated because there's less than 1.5' before someone stepping off them would be on the

adjoining property which could raise issues in the future. Staff's recommendation was to move or remove the steps. The applicant had discussed it with Ms. Anderson and suggested an alternative which was forwarded to the board via e-mail. He suggested moving the steps 5' to the north so that they would be 11' from the lot line, with the steps 6' from it. This would push it into a variance for the new lot which would still be a generous width and area. Ms. Anderson said this would be an acceptable alternative.

Mr. Mattingly asked if they would move the lot line if it were approved; Ms. Anderson said yes, they would approve a lot width variance for parcel A as well as the other, and they could do it in one motion.

Brian Whitworth, the applicant, said the porch was there when they moved in, but it was lower, so it was raised, but it was in the same spot. He added the stairs because of raising the porch. The house was built in 1949, but he didn't know when the lots were combined.

Chairman Howard asked if Mr. Whitworth was in agreement with the second variance, and he said yes, he was fine with "the 95 and 105."

Mr. Powell made a motion to approve the requested variance with the side yard setback as proposed at 11.07' from the existing home and to approve a 5' lot width variance for Parcel A. Mr. Mattingly seconded the motion. The motion passed unanimously.

807 Center Drive, East, identified as District R120, Tax Map 7, Parcel 679, Height Variance.
Applicant: James R. and Melinda J. McConnell (ZB12-05)
The applicant is requesting a height variance in order to construct an 8' privacy fence.

Ms. Anderson said the property is between First Blvd and Mossy Oaks Road. The lot is zoned R-2 and a single-family dwelling is located on the lot. The applicants want to build an 8' privacy fence around the rear property line and up both side property lines. The ordinance says fences can be a maximum of 6'. The McConnells have requested a variance to have an 8' fence due to elevation changes on the property and the need to screen their property at the rear of the lot from another property which has "maintenance issues." Ms. Anderson said the fence has to be "friendly" or double-sided in design. The public notice was made and no public comments were received, she said.

1. **Extraordinary and exceptional conditions:** Staff feels the finding could be made, based on the elevation change; the applicant can speak to that, she said. The property at the rear has property maintenance issues, and the condition it's in is unfortunate, Ms. Anderson said. Code enforcement has agreed to look at it.
2. **Conditions as applied to other properties in the vicinity:** All of the conditions don't apply to other properties in the vicinity, Ms. Anderson said.

3. **Conditions are not the result of the applicant's own actions:** Staff feels this finding can be met.
4. **Granting the variance would not conflict with the comprehensive plan:** Ms. Anderson said the plan is to have "safe, attractive neighborhoods."
5. **Unreasonable restriction on utilization of the property:** Staff believes it would not be unreasonable to screen their property from an adjoining property that has these issues.
6. **Not a detriment to adjacent property and the public good:** Ms. Anderson said staff believes this finding could be made. The ZBOA could designate that the fence be 8' at the rear and 6' on the sides. The difference would not be visible to people travelling on the street.

Ms. Anderson concluded that staff recommends approval of the fence height variance for the rear fence. Ms. Sedlacek asked Ms. Anderson if staff recommended the 8' only for the rear, and Ms. Anderson said yes, adding that the elevation change is from the front to the back. Ms. Sedlacek asked, if the fence were 8', if it would appear to be a 6' fence given the elevation variance.

Chairman Howard said it looked like installation had already started. Ms. Anderson said the applicants have a permit to install a fence that met the ordinance. RS said he'd been to the property, and the posts are up in the ground but not the fencing.

James McConnell, the applicant, said the elevations are because the lot was initially low-lying and undeveloped. The property to the rear of theirs is on a high elevation as well. He showed photos of what the maintenance issues are, and what the fence would look like at 6' and 8' on the rear. He said he's willing to go with 6' on the sides but needs 8' at the rear. There's a drainage ditch on one side of his property, and the other side is heavily wooded. He will probably do 42" pickets on the front side to match what he already has, he said.

Linda McConnell said they're doing "shadow box," and there's no unfinished side. If they have two sizes, JA said he thought they could do the transition okay, and the fencing would look like it's stair-stepped. Mr. Mattingly asked if the picket fence was permanent, and Mrs. McConnell said yes.

Ms. Sedlacek asked if they intend to change the elevation again and Mr. McConnell said no, they had only done that for construction. Chairman Howard said she agrees with the staff's recommendation of 6' on the side. **Mr. Powell made a motion to grant the variance request, and Ms. Sedlacek seconded, with the rear fence at 8' and the side fences at 6'. The motion passed unanimously.**

Ms. Anderson said the code enforcement officer can go in the McConnell's back yard to see the other property's back yard, if the McConnell's would like them to.

<u>207 Robert Smalls Parkway, identified as District R122, Tax Map 29, Parcel 240,</u> Vending Cart Variance.
Applicant: Joshua Poticha of Bricks on Boundary (ZB12-06)
The applicant is requesting a variance in order to provide light lunch and beverages to customers at the Lowe's Center in Beaufort, SC.

Ms. Anderson said the lot is General Commercial district. The applicant wants to put his truck on the property located at one of the Lowe's entrances. The ordinance's conditions for vending trucks are that they can only be on a property with four or more businesses to prevent them from being on lots that are vacant. Lowe's is on its own lot, so it doesn't meet the standard; the applicant is requesting a variance on that standard. Ms. Anderson showed pictures of the truck.

Ms. Anderson said the applicant would need to answer the following questions: Has Lowes' approved having the truck there? What are the hours of operation? Will it be parked there when it's not in use? And will there be signs on Highway 170 or elsewhere? Public notice was made. Ms. Anderson said, and no comments were received.

1. **Extraordinary and exceptional conditions:** Staff believes there may be extraordinary conditions on the property because it was designed for multiple tenants, but the other parcels haven't been developed though they're platted and for sale.
2. **Conditions as applied to other properties in the vicinity:** Conditions don't apply to other property in the vicinity, Ms. Anderson said.
3. **Conditions are not the result of the applicant's own actions:** The applicant didn't plat the property and doesn't own any in the center.
4. **Granting the variance would not conflict with the comprehensive plan:** Ms. Anderson said it is not in conflict with the comprehensive plan because it would create something else going on on the property.
5. **Unreasonable restriction on utilization of the property:** Staff believes this may be true, Ms. Anderson said, if they were to prohibit operation of a truck on such a large site designed for multiple tenants.
6. **Not a detriment to adjacent property and the public good:** The truck is not incompatible with the appearance of the surrounding area Ms. Anderson said.

Staff believes that all findings can be met and recommends approval of the variance with the condition that there is no additional signage.

Joshua Potich, owner of Bricks on Boundary, said there is a lease in place with Lowe's. The hours of operation will be from 7 – 8 a.m. through lunch for contractors, construction workers, and the public until 5 p.m. There will be no signs except on the truck. The unit has an A rating from the Beaufort County Health Department. It's used as a model by DHEC for food trucks. It will be left at the station for security purposes unless it needs maintenance done to it.

Mr. Mattingly asked exactly where on the site it would be located because of vehicle safety concerns. Mr. Potich showed the unit at the Home Depot in Bluffton and where the electric infrastructure is placed. There will be four spaces separated only for this use. It would all be separated from other parking. Ms. Sedlacek asked what part of the lot it's on. Mr. Potich said it's directly in front of the exit of Lowe's. Mr. Potich said he was approached by Lowe's who were interested and might be interested in one at their Highway 278 location like Home Depot has. Mr. Potich said the food is high-end sandwich food, not gas station hot dogs. The food will be a model for future Street Eats (the Lowe's company) projects. Mr. Potich added that a letter was sent out to the adjoining property.

Ms. Sedlacek said a motion should address a more exact area, and Mr. Mattingly said it's on there already. Ms. Anderson said the ZBOA is approving that application, and they can't change things like moving the trailer. She said it would be *this* trailer in *this* location that they'd approve. **Ms. Sedlacek made a motion to approve the variance to allow the vending truck at Lowe's with the provision that there is no additional signage. Mr. Powell seconded. The motion passed unanimously.**

DISCUSSION

Ms. Anderson said there was a recent audio training conference at which it was suggested that the staff could prepare a motion or alternative motions for the boards. Chairman Howard said if it were a complex case, that might be helpful. Mr. Powell agreed and gave the example of the first case of the night, in which the numbers were confusing. Mr. Mattingly and Ms. Sedlacek agreed. Ms. Sedlacek said it was brought up that if a case is appealed and goes to court, the staff knows more than the lay people, so the court tends to go with the decision of the staff which she felt like that meant that the board isn't needed. Ms. Anderson said the court only looks at the record of what was submitted and recorded at the meeting and nothing else. Ms. Anderson said she heard that the motion is based on whether it did or didn't meet the conditions; she didn't recall anything being said about preference for the staff's opinions. Chairman Howard said she recalled site visits were mentioned too, and it's good that they don't go as a group. Ms. Anderson stressed that for the ZBOA, there can't be any ex parte communications with applicants.

Mr. Mattingly asked about a comment made about short-term rentals at the neighborhood meeting; Ms. Anderson said Mr. Duffy had called her and asked about how the vote went. Mr. Mattingly said he'd like to talk to him about it, and that's why he requested clarification of the matter in the minutes.

Ms. Anderson asked about the audio conference in regard to petitions in particular. Chairman Howard said it should have no effect. Mr. Mattingly said in regard to a fence issue a few months ago, the neighborhood petitioned and many came to the meeting. Chairman Howard said the petitions aren't verifiable, and Ms. Anderson said it's unknown what was said to the signers.

Chairman Howard said it's not a finding of fact. Mr. Mattingly said the petition was a year old, and no one showed up to present anything.

Ms. Sedlacek recalled, in regard to public comment, that when there was a rumor that the Salvation Army was building a soup kitchen, people protested, though that's not what the Salvation Army had planned. In the video conference they recommended, when people need to calm down, taking a 15 minute break. Ms. Anderson said if it's not occurring in this room, and it's unknown what was said, it has to be taken with a grain of salt.

Ms. Anderson said there would be a ZBOA meeting next month.

Mr. Mattingly asked about the rumor that the new SCB&T bank isn't being built, and Ms. Anderson said it's not a rumor. The reasons were "a combination of things," but had nothing to do with the ZBOA.

Mr. Powell asked if the DR Horton matter was still in play, and Ms. Anderson said she has contacted them. One permit has been worked out, but they don't seem to be interested in pursuing it at this time.

ADJOURNMENT

There being no further business to come before the board, Chairman Howard adjourned the meeting at 6:31 p.m.