**MINUTES**
CITY OF BEAUFORT
**ZONING BOARD OF APPEALS**
June 30, 2014, 5:30 P.M.
**City Hall Planning Room, First 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
Tim Wood
Don Starkey
Joe Noll

**Members Absent**
Eric Powell

**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. Starkey made a motion, second by Mr. Wood, to approve the minutes of the April 28, 2014 meeting. The motion passed 3-0.**

**Mr. Starkey made a motion, second by Mr. Wood, to approve the minutes of May 28, 2014 meeting. The motion passed 3-0.**

**REVIEW OF PROJECTS**
**908 Charles Street, Identified as District R121, Tax Map 4, Parcel 291,** Variance
Applicant: Donald Johnson (ZB14-13)
*The applicant is requesting a variance in order to build an accessory dwelling unit.*

Ms. Anderson said the property is on the east side of Charles Street between Washington and Greene Street and backs up to Washington Street Park. The lot is vacant, and Ms. Anderson showed photos provided by the applicant. In regard to accessory structures, by ordinance they

can't be built in advance of the primary structure or use. They can be built together, but not the accessory dwelling unit first except for docks. The applicant will build a new residential dwelling or live-work unit along with the detached accessory dwelling unit.

Ms. Anderson showed the site plan. The access for both structures will be an alley. The applicant has presented the site plan and preliminary design plans to the Historic District Review Board (HDRB) earlier this month, and they gave their preliminary approval to both plans. The applicant is requesting a variance to allow him to build the accessory dwelling unit before the primary structure. The HDRB didn't address this aspect of the project, Ms. Anderson said. Staff wants to know when construction of the primary structure is anticipated.

Public notice has been made and no comments have been received.

6 findings the Board must make to approve a variance:

1. **Extraordinary and exceptional conditions:** There appear to be no extraordinary conditions, staff feels, with this property, so #2 and #3 don't apply.
2. **Conditions as applied to other properties in the vicinity**
3. **Conditions are not the result of the applicant's own actions**
4. **Granting the variance would not conflict with Comprehensive Plan:** This finding could be made, Ms. Anderson said.
5. **Unreasonable restriction on utilization of the property:** Ms. Anderson asked the Board to consider if it is unreasonable to require that both structures be built at the same time.
6. **Not a detriment to adjacent property and the public good:** It would be no detriment, Ms. Anderson said. The HDRB approval of the accessory dwelling unit should ensure that the same high quality materials are used for both units. But if the primary structure is not built, it will result in a small building in the back corner of a vacant lot, which might not be desirable or appropriate in a Neighborhood Commercial zone. If assurance could be made of when it would be built, that could be an exception.

If the Board makes the findings for a variance, Ms. Anderson suggested that it be a condition, before the CO for the accessory dwelling unit is issued, to have a full set of design review plans be presented to and final approval obtained from the HDRB. All approvals are good for 2 years and can be extended up to 5 more years, one year at a time, which allows 7 years of a window for the primary dwelling. Minor charges could be done through the staff level or major changes at the design board level.

Mr. Wood asked about the rear access via the alleyway. He said he's familiar with the property but said he didn't know of access. Ms. Anderson said there's an easement. He asked if it's not well defined. Ms. Anderson explained that there is a platted right-of-way and it goes through to Greene Street. He asked if adjacent property owners knew about this. Ms. Anderson said she didn't know that but knows for a fact that it's there. The applicant knows it's a dead end alley and can get in and out with a turn-around. Mr. Wood asked what happens if the art gallery is in

the easement; Ms. Anderson said that would be a legal issue, and the applicant might be able to shed light on that, assuming they investigated before they purchased the property.

**Keith Johnson** said it's established, and the building doesn't intrude into the easement. The neighbor put railroad ties there, so there's a clear boundary.

Mr. Wood asked, if they make a motion to make this a requirement to build the main structure, how that would be presented in a motion: That the granting of the variance is contingent on approval of construction plans by the HDRB? Ms. Anderson said yes, they would withhold the CO on the accessory dwelling unit they are proposing to build, which puts them one step closer to the primary unit being built.

Mr. Johnson said he intends to retire here, and that's why they bought the property. He has to work 2.5 – 5 more years. They wanted to put something there that they can use now, whenever possible, which is why they want to build the accessory dwelling unit. His retirement is tied to a 501K, which is why he doesn't know exactly when he could move here full-time. He would like to build something small and then build the primary structure with a rental unit on the bottom and his small apartment on the top. The minimum time before he can live here full-time is 2.5 years, and the maximum is 5, Mr. Johnson said.

Mr. Johnson said the property next to him is a real estate office, and there were 2 more houses in the line at one time where the park is now; the alley served them. When the HDRB looked at that plan, they recommended that the accessory dwelling unit be as near to the fence as they could get it. Mr. Wood said the plat layout seems great; when he went to see it, it was overgrown, so he couldn't see it. He thinks it's "a great use of the lot."

Chairman Hill said this would be Mr. Johnson's home away from home until he retires. Mr. Johnson said they would use it on the weekends and in the summer. It would be nice for people to spend the weekend or a couple for a week. They could finish the bottom and rent it out and thereby take pressure off finishing the top. Mr. Wood said he looks at it as building a guesthouse to use until the primary structure is built. Mr. Starkey said if there is a short-term rental there, he would have to meet the requirements of that. Mr. Johnson said he meant he and his kids would stay there, not rent it to guests.

**Chuck Symes** spoke on behalf of the Historic Beaufort Foundation (HBF). He said HBF is "extremely happy that Mr. Johnson has bought the property" and is planning to build, but they also agree with Ms. Anderson that he needs to present a detailed site plan "to make sure it fits in," and "that the main building and the accessory dwelling unit will match." HBF wants the Zoning Board of Appeals (ZBOA) to either deny this application or to make approval contingent on a design for the primary structure, Mr. Simms said.

**Paul Cole**, architect, said aside from a few details, the HDRB had liked the accessory dwelling unit. Mr. Starkey said he understands why this is in the ordinance; he's seen people living in

partially built houses in other communities. He said he “goes along with the idea of the full set of plans with a total house and accessory dwelling unit and lot approved by the HDRB.” He feels that increases the likelihood that it will be built.

Mr. Noll said he doubts it will be built, but getting the plans is an incentive. He thinks they “should make them jump through some hoops.” Mr. Wood said he doesn't see development of the plans as a major hardship. They have a concept for the cottage, and the primary structure shouldn't be hard to commit to a set of plans to be approved by the HDRB.

Chairman Hill said he has property that he got approved but nothing happened after “the economy hit the fan.” He asked if they should have a bond in case something happens to Mr. Johnson, and they have a lot with no primary structure on it. They have to be willing to accept that the main house may never get built, even with a set of plans. Mr. Johnson could sell the lot with the set of plans. Mr. Wood said he doesn’t know what they legally can ask of Mr. Johnson.

Mr. Starkey asked what they can do if the primary structure is not done in 5 years. Ms. Anderson said they considered a performance bond, but they felt like they didn’t want to have to call it in. The best compromise seemed like a full set of plans, she said. A new buyer could take those plans and even tweak them. If all the design work is done, all they have to do is get financing when they have the time and resources. Ms. Anderson said if it’s not built in a timely fashion, the accessory dwelling unit is built in the right place. Beaufort has a lot of diversity of house styles and sizes, she said. It wouldn't be a calamity if the accessory dwelling unit is there by itself for some time.

Mr. Starkey said there are small cottages in Beaufort, and he asked Ms. Anderson how big they were. Ms. Anderson said some of them are 800’-900’ primary structures. Accessory dwelling units can be as small as 400’. Mr. Wood said the plat plan footprint seems to be great for that neighborhood. He wouldn't mind seeing that on that section of Charles Street, and he’d like to see them figure out how to approve it. Chairman Hill said if Mr. Johnson’s plans change, it would be attractive to a buyer to have the accessory dwelling unit already built.

Chairman Hill asked if they should require the alley to be constructed before the accessory dwelling unit is built so that everyone doesn't come in off Washington and drive on the grass. Mr. Wood said that’s the first thing he would do, but he doesn't know what they can do legally. Chairman Hill said they could put it in the motion.

Ms. Anderson said the property is zoned Neighborhood Commercial, so Mr. Johnson would have to get a conditional use permit from staff if he wanted to do a short-term rental.

**Ashton Kerrigan** said he’s purchased property on Washington Street with the intent to move to Beaufort in the near future. “If intent is addressed,” he said, “this has been part of a family plan.”

Mr. Starkey said it's good that he wants to come here and build, and a total package would be good for anyone coming down here to build with a maximum of 5 years on it. Mr. Wood said Ms. Anderson had said the plans would be valid for 7 years. Mr. Starkey said he has a problem with that because the package isn't approved. Mr. Wood said he agrees with the idea of the package, but the applicants get 7 years. Mr. Starkey said they could say 5 years, though, to start construction. Chairman Hill asked what if they couldn't get financing. Mr. Starkey said then there's nothing else that can be done.

Ms. Anderson said you get 2 years automatically, and then you can get 5 1-year extensions, so the HDRB approval can be extended up to 7 years. Ms. Anderson said in regard to making it a condition that they must build in 5 years, the applicant has stated at a public meeting that his intention is to do it within 5 years, but she doesn't know that there's any recourse if he doesn't.

Mr. Johnson asked the Board to make its decision in good faith. His intent is to build in 5 years at a maximum, and he will present plans. He asked if they have to have their plans for the primary structure before they can start construction of the accessory dwelling unit or could they have a year to get the plans for the primary structure approved. Mr. Johnson also asked if the ZBOA would address the moving the accessory dwelling unit back 10' right to the easement as the HDRB recommended. As it sits now, it's in compliance, he said, "but that Board recommended that it be moved further back." Chairman Hill said, "That's not part of this application." Mr. Simms said **Joel Newman** had made the recommendation about moving the unit and "said to see what was possible in regard to moving it back as much as possible." Mr. Johnson said they're not opposed to it.

Ms. Anderson said HDRB has given preliminary approval, tweaking needs to be done, and they will address the siting issue; it's a legal easement, so that is a matter to be decided with the attorney and the HDRB, so the ZBOA has no say-so. Ms. Anderson said the staff recommendation was to allow the accessory dwelling unit construction to proceed but no CO can be granted until the plans are presented and approved by the HDRB.

Mr. Starkey asked if it were possible to say this is for the family only and can't be rented. Chairman Hill said it's a staff review for a short-term rental. Mr. Starkey said he doesn't want to see it become a rented property; "we want someone to move into the area." Ms. Anderson said any conditions have to be related to the variance itself, so she's not sure about that.

Mr. Wood suggested he could make a motion to grant the variance based on the approval of the plans for the primary structure before a CO would be issued for the accessory dwelling unit. Chairman Hill asked if they should include something about the alley. Mr. Wood said he couldn't believe they wouldn't do that anyway. "The establishment of the easement is required; lot entrance shall be from the rear alleyway," Mr. Starkey offered. Mr. Wood said he doesn't think that's a hardship to put it in the motion because it has to happen, anyway.

**Mr. Noll made a motion to recommend that construction of the accessory dwelling unit be approved contingent on the Historic District Review Board's approval of a full set of plans for the primary structure, and the CO would be held until the full set of plans is reviewed and approved. There also must be an alley easement established. Mr. Starkey seconded the motion. The motion passed unanimously.**

Ms. Anderson said there would be a July meeting of the Zoning Board of Appeals. She doesn't anticipate anything on the form-based code until the fall.

**There being not further business to come before the Board, Chairman Hill adjourned the meeting at 6:25 p.m.**