

MINUTES

CITY OF BEAUFORT

ZONING BOARD OF APPEALS

August 25, 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 July 28, 2014 meeting as submitted. The motion passed unanimously.

REVIEW OF PROJECTS

1105 Craven Street, Identified as District R120, Tax Map 4, Parcel 777 – Special Exception

Applicant: Mike and Ellen Tomy (ZB14-17)

The applicant is requesting a special exception in order to operate two short-term rentals.

Ms. Anderson said this property is on Craven and Newcastle in The Bluff. The property is zoned General Residential. A single-family dwelling with a carriage house and 2 dwelling units are currently on the property. Formal on-street parking is available on the north side. The owners want to rent the 2 units in the carriage house as a short-term rental. They provided a copy of the rental agreement and a 2-night stay is a minimum. The property will be managed, and Ms. Anderson said the applicants could confirm if the units would be rented when they are not in town. The applicant had provided a site plan of the property with 5 on-site parking spaces. The rental agreement might need a limit of guests to 1 vehicle per unit to keep the need for parking

down in a premium parking area. Public notice was made, Ms. Anderson said, and no comments have been received.

In regard to a special exception, the Board can approve if there will be no significant impact to the surrounding area. Ms. Anderson reviewed the staff's take on the 6 criteria that must be met for Board approval of the special exception.

1. **Proposed use is compatible with existing uses in the surrounding area:** Ms. Anderson said that staff believes it is. It's a mixed-use neighborhood, and there is Neighborhood Commercial zoning – Rhett House Inn is across Newcastle from this location. The Rhett House Inn annex is adjacent to the lot to the north; a vacant lot is zoned Office Commercial; the Anchorage House is being converted to a B&B, the Sea Island Inn is also nearby, plus there are residential uses in the vicinity, so this proposed short-term rental is compatible, staff feels.
2. **Proposed changes are harmonious with character of area:** No changes are proposed to the site plan, Ms. Anderson said.
3. **Impact on public infrastructure:** Staff feels the proposed use is not likely to have any greater impact than as a long-term rental.
4. **Compatible with Comprehensive Plan and the Civic Master Plan:** Staff feels it conforms to plans.
5. **Impact on public health and safety:** Ms. Anderson said this short-term rental is likely to have little impact, especially if owners are on-site to manage the property.
6. **Potential creation of nuisances:** Staff feels there is little potential to create any, especially if the monitored fire alarm is installed, and owners are on-premises when the property is being rented. If they are not, the Tomys will have to have a management company to do the management.

Staff recommends approval, Ms. Anderson said. Mr. Starkey asked if the "proposed" site plan is approved or proposed. Ms. Anderson said based on the site visit, it is "a work in progress," but it is "substantially approved."

Mr. Wood asked, when they propose a limit on the number of vehicles, how it is enforced. He has seen approved properties that are exceeding the limit. Ms. Anderson said it isn't applicable to all applications. Mr. Wood said this is a particularly bad parking area, but it's not enforceable. Ms. Anderson said the applicants could make it a condition in the rental agreement. Ms. Anderson said there is the formalized parking on Craven; there's parking on Newcastle, too, but it's not as formalized as it could or should be.

Mike Tomy said he's retiring next year. He's an architect and is doing renovations on the property, which was a B&B when they bought it. There were 8 or 9 rentable units on the property, and it's not changed. They have formalized the driveway and parking area. It has gone through the Historic District Review Board, and this plan has been approved, including the garage, but HDRB has not approved the final plans for the garage; "it will be awhile" before he

and **Ellen Tomy** get to that. Mr. Tomy said they usually stay in the cottage while they work on the property, and parking *is* an issue. In regard to limiting it to one car per guest, that is not a problem, and they will write that in the agreement. He feels that there are more people who service the properties in the area than there are people in the units, “so Newcastle is used every day from morning to night.” When there are special functions downtown, parking issues go into the later evening hours and now downtown business owners have told their employees to come up into their neighborhood and park, so that their business customers can park downtown. Mr. Tomy said he doesn't know how that can be governed. He and his neighbors who run B&BS and short-term rentals have all talked, they all get along, and they “will work it out.” If the city were to buy the vacant lot near him, and use it for parking, that would be great, he suggested.

Mr. Noll asked if “the informal area” could hold 2 cars right now. Mr. Tomy said the garage is the width of the carriage house, so that’s bigger than a car spot would be. On the other side, he will lengthen the spots to make it easier on the 2 cars to park. “The lay of the land is a little different” than on the site plan, so the #5 spot “goes at a little more of an angle than it shows.” Mr. Wood asked if he’s satisfied with the 1 spot for parking per rental. Mr. Tomy said, “Oh, yeah.” With the money they have put into the property, they will be particular about who their renters are and make sure it’s taken care of. Mr. Wood said it was “unsightly” before they took it over, and they have done a good job.

Chairman Hill clarified that they are not applying for the special exception yet for the cottage where they are staying. Mr. Tomy said they aren't, though if the Board wants to consider it, too, that would be great, but it won't be finished for 6 months. Mr. Starkey asked if they have someone in town to manage if they aren't here. Mrs. Tomy said they have her aunt and Sing Pappas. Mr. Starkey asked if that's on the application. Mrs. Tomy will be living here before they start to rent it, Mr. Tomy said, and they won't rent it unless they are here.

Chairman Hill asked how many units are rentable – Mr. Tomy said 2 – 1 upstairs and 1 downstairs in the carriage house; the cottage is where they are living now and will be a future rentable unit when they live in the main house eventually.

There was no public comment. Mr. Wood said the parking density is great; they could have had greater density, but now they will have lower impact. He has no problem approving the cottage at this time, but he doesn't know if they can. Ms. Anderson said she would feel comfortable doing that because they had advertised that more than one unit was being considered. **Mr. Wood made a motion to accept the application as written by staff, including a total of 3 parking spaces, with the addendum of allowing the cottage to be included in the special exception, pending staff approval. Mr. Noll seconded the motion. The motion passed unanimously.**

Chairman Hill recused himself from consideration of the next project, and Mr. Starkey, as the vice-chair, took the gavel.

905 Duke Street, Identified as District R120, Tax Map 4, Parcel 409A – Variance

Applicant: Beaufort Planning Group for Ray and Donna Armer (ZB14-18)

The applicant is requesting a side and rear yard setback variance in order to construct an arbor and fire pit.

Ms. Anderson said the property is between Charles and West Streets. The property is in the Old Commons neighborhood of the Historic District. It is zoned Traditional Beaufort Residential District - Old Common (TBR). TBR district requires a minimum lot area is 4000' and a minimum lot width of 40'; the required side yard setback is 6', and rear yard setback is 15'. This lot is non-conforming for lot area and lot width. The single-family dwelling is located 15' from the rear property line; the dwelling at 905 West is located very close to the rear of this building. The owner wishes to install landscape features: a gazebo in the back yard will be in the rear setback area, 2' from the rear property line at its closest point. The applicant also wishes to construct a 3' x 3' fire pit in the side yard.

Ms. Anderson showed the outline of the existing house and showed where the fire pit and the gazebo would go. The driveway is brick. The fire pit would be 4' from the property line, 3' from the wood fence, and 12' from the existing structure. They asked the fire chief to comment on the application, and he said this location is not safe for a fire pit. He wants them to be at least 15' from existing structures. In regard to public notification, it was all made; one comment was made before the cut-off date and is in the staff report, and another came today and was emailed to the Board.

Ms. Anderson ran down staff responses for the criteria for a variance request:

1. **Extraordinary and exceptional conditions:** Staff feels that this finding can be made; it is a small, non-conforming lot and probably one of the smallest in the area. The existing house is built right on the rear property line.
2. **Conditions as applied to other properties in the vicinity:** Ms. Anderson said this is "true."
3. **Conditions are not the result of the applicant's own actions:** These are relatively new owners, so they didn't plat or build on the lot.
4. **Granting the variance would not conflict with Comprehensive Plan:** Staff feels this could be met since its reinvestment.
5. **Unreasonable restriction on utilization of the property:** Staff feels it may be unreasonable to prevent the construction of the gazebo when there is an existing building back there, and landscape might soften the proximity to the existing structure
6. **Not a detriment to adjacent property and the public good:** Staff believes this finding can be made in regard to the gazebo, Ms. Anderson said. The Historic District Review Board will approve the design; on the other hand, with the fire pit, it could be a detriment to the adjacent properties and the public good. It would be close the existing dwelling and will produce smoke.

Staff feels all findings can be met for the gazebo but recommends denial for the fire pit. Mr. Noll asked, if they were to move the fire pit 2', if that would work. Ms. Anderson said zoning-wise, that would be acceptable, but it works against what the fire chief said. She doesn't know if the fire chief has any purview, though. Mr. Noll said he doesn't know if they can approve something the fire chief has not approved. Ms. Anderson doesn't know if the fire chief has any jurisdiction in this matter. He was notified, but it won't go forward if the Zoning Board of Appeals doesn't approve it. Mr. Powell asked if the fire chief had concerns about the fence, and Ms. Anderson said it was all about the house. Mr. Starkey asked if the applicant could make a presentation, and **Brad Hill** stepped to the podium, representing his clients, the **Armners**, as Beaufort Planning Group.

Mr. Hill said the terminology calling it "a gazebo" is incorrect; it's "an arbor." He showed a picture of how the arbor would buffer the space between the Armners' house and the neighbors and showed pictures of where it would go and what the view would be

To the back and the side, there are neighbors on top of them, and this would help present a visual screen. Mr. Hill agrees with Mr. Powell that what the fire chief gave was an opinion. He said it doesn't come across that there's a back to the fire pit. He showed a drawing that indicate how it will deflect heat and provide a screen in regard to the fence. He said almost every house in the neighborhood has a grill in close proximity to the house. With the construction of the fire pit, the owner has agreed to put a screen over it when it is use. When it's *not* in use, it will have a solid cover over it.

Mr. Noll said that fire pit is not how he pictured it, and "it solves a lot of problems with the screen on it." Mr. Hill said it would arrest any fire and ash. Mr. Starkey asked how close any burnable material was, like landscaping. Mr. Hill said there is only one tree in proximity, and the branches are 20' in the air. Mr. Starkey asked Ms. Anderson if a fire pit was considered open burning by the city. Ms. Anderson showed the open burning ordinance and said "contained warming fires" are an exception, as are BBQ pits.

Donna Armer, the owner, said they bought the property in April and moved here. The yard is very small and in poor condition. They anticipate investing and beautifying it and this would allow a year-round outdoor living space with the arbor and with the fire pit, they'll have oyster roasts, etc. They are very aware of safety and want to incorporate that. Mrs. Armer described houses in the area that have fire pits. They understand the concerns and want their neighbors to have their say, but they hope for approval, Mrs. Armer said. Mr. Starkey asked how deep the fire pit is; Mr. Hill said it would be 3 layers deep. He built one recently on Callawassie, and he "went down a layer" - took out the dirt to make it a little deeper and safer. The back brick is 2' taller than the existing side, about 24" more. Mr. Starkey asked if he would do the same thing as on Callawassie and make it deeper. Mr. Hill said his client wouldn't have a problem with that for safety.

Lois Jenkins said she owns 907 Duke Street, which is next door to this property. Ms. Anderson indicated it on a map. Ms. Jenkins said her property runs deeper than 905, but the fence between her house and 905 isn't very wide, and she's concerned about the fire pit because a fire at that residence burnt a little bit of her house "as a result of doing BBQ in the yard or something." She wasn't living there – it's a rental – but it touches the fence. She wants to be "sure about what will be burnt there." Mr. Wood said it would burn logs, not gas. He said it would be located on the opposite side of the yard from her property. Ms. Anderson pointed out where it would be in relation to her house. Mr. Wood said the fire pit is about as far from her property as it can be. What touches the fence on her side will be where the gazebo would be. Mr. Starkey said the screen they will have would be the same as would be in a fireplace to keep the sparks down. The owners can't leave it unattended without having a cover on it. They have some requirements they have to meet. Mr. Hill said the Armers were told the fire Ms. Jenkins mentioned was a chimney fire; that's what they were told.

Fred Washington, 804 West Street, said his is the abutting property in the rear. He said he has no problems with the gazebo/arbor but is curious about how high it will be. Mr. Hill said 12'. Mr. Washington said he went to the Arber's house and wanted to know where the pit would be. He was satisfied until he heard about the fire chief's concern. The fire pit isn't as close to his house as he thought it would be, but the tree is huge, and he's concerned about that catching fire through sparks. He said he'd asked **Ray Armer** about precautions to be taken "in case something goes wrong" so that Mr. Washington's property isn't jeopardized. Mr. Wood asked about the fire that happened before. Mr. Washington said he doesn't know how it started, but he had some things scorched and didn't report it, though there was damage that he should have reported. Ms. Jenkins said, "It was an explosion at night." Mrs. Armer said the McDougals, who sold them the house, told them that the fire took place in the chimney *inside*, and that was the section that is all renovated.

John Hawkins, 900 North Street, asked if the Board knew the International Building Codes in regard to fire-producing elements. With most codes, the minimum is distance from fire is 5'. He thinks that given what the fire chief said and what the fire codes call for, the fire pit should not be so close to the property line, because "this is about public safety," which is the basis for the fire chief's concern. There was no further public comment.

Mr. Wood said he doesn't feel comfortable approving something that 3 -4 people are concerned about, as in this case. The smoke hasn't been brought up, he said. He doesn't worry about a spreading fire too much when his own neighbors burn, but he hates the smoke, and he has a big yard, so in this neighborhood, where the properties are gathered closely together, the fire will produce smoke – until it's so hot that it burns clean, but a hotter fire can be more dangerous. Mr. Wood said the fire chief, whether it's "an opinion" or not, has said he wouldn't approve it, and Mr. Wood doesn't want to trump his opinion due to the legalities and liabilities involved. As Mr. Hawkins said, if the fire pit is not within code, they shouldn't give a variance that goes against code. Mr. Wood said he loves the design of the gazebo, but there are too many concerns about the fire pit for him to be comfortable granting that variance. If the Armers

have the fire pit, and the smoke bothers the neighbors, the neighbors could call the fire department and complain, but he doesn't know if the Armers want to get into that with their neighbors.

Mr. Starkey asked how he would feel about a gas fire pit to solve the smoke and fire problem. Mr. Wood said a propane tank has to be dealt with; "it's not the aesthetics of a natural fire," but they can still have an oyster roast, and it could be designed to be aesthetically pleasing. Mr. Starkey said with that, "you turn the valve off and it's off." Mr. Wood said the fire chief had offered his opinion, and that's "a serious red flag" to him.

Mr. Noll said he likes this project. If it's supervised and has a screen on it, little sparks won't ignite the tree, and it's no one in the neighborhood has expressed concerns about smoke. He thinks they "might be making more of a problem than is actually there." Mr. Powell said the woman who couldn't make the meeting was concerned about smoke. Mr. Powell said if the fire is monitored and precautions are taken, he is fine with it, but the smoke issue is a legitimate concern. It could be a nuisance for the neighbors.

Mr. Starkey said the screen and the cover add a lot to it, but if they went with this, the screen has to be attached "so it's not something that you could forget to do without." Mr. Starkey asked if they could move the pit 3-4' from the oak. Mr. Wood said the canopy of the oak is going to be huge. Mr. Hill said the tree isn't an issue. Mr. Starkey said a gas unit solves the problems of smoke and sparks. He asked if there are fire pit units of that type. Mr. Wood suggested that they "could throw it back to the fire department" on the matter of the gas fire pit, approve the arbor, and put the fire pit on hold until they get approval from the fire chief. Mr. Powell said he doesn't think the fire chief will approve it. Mr. Noll said the fire chief didn't make a formal approval or disapproval. Mr. Wood said, "There's a liability there." Mr. Starkey said he questions, in regard to the variance, if they moved the fire pit out of the property line, they'd have no jurisdiction over whether there's one there or not. The variance isn't for the fire pit; it's for being too close to the property line.

Mr. Hawkins asked how close the fire pit is to the other house; Mr. Hill showed on a map of where the fire pit and the other house sit. Mr. Washington said, having served on city council, he feels that the Zoning Board of Appeals and the fire chief – who has an opinion on this matter that he was asked for by staff – "are all a part of the city...and all are to protect the city's best interests." He thinks it's a good idea to have this resolved before moving forward. He thinks they shouldn't have a split decision between the Board and the fire chief. There were no further public comments.

Mr. Powell made a motion to approve the arbor as requested. Based on public comments and concerns about fire smoke and safety, he moved to deny the construction of an open wood-burning fire pit. Mr. Wood seconded the motion. Mr. Hill said if the motion passes, and the fire pit is not approved, a section of paving does through the setback, and he wants to know if they can have that. Mr. Powell said they would still have the side yard setback. Ms. Anderson agreed

that they don't need a variance for that. Mr. Hill asked, if this motion passes, if it would include a gas-burning fire pit. Mr. Powell said this is just for wood burning, but if they wanted a gas-burning fire pit, that would be acceptable. Mr. Starkey said a gas-burning fire pit would still need screening. Mr. Powell said they would need a variance to construct that fire pit. **Mr. Powell amended the motion to deny the construction of a wood-burning fire pit but to approve the variance for the construction of a gas-burning fire pit. Mr. Wood seconded the amendment. The amended motion passed unanimously.**

Mr. Hill resumed the chairman's seat.

There being no further business to come before the Board, Chairman Hill adjourned the meeting at 6:50 p.m.