

TOWN OF EDISTO BEACH
ZONING BOARD OF APPEALS

Monday, December 15, 2014
5:00 P.M.
Regularly Scheduled Meeting

THESE MINUTES ARE NOT VERBATIM, BUT DO ACCURATELY REFLECT THE PROCEEDINGS.

Members attending: Chairman John McAlhany, Vice Chair Cathy Price, Members Charlie Boozer, Bill Davies, Joe Dreher, Polly McIntosh and Ida Tipton.

Staff attending: Nancy Fitzgerald, Code Enforcement Officer

Staff absent: Patrick Brown, Building Code Administrator, Pam Wike, Secretary

Chairman McAlhany called the meeting to order at 5:00 p.m.

Approval of Minutes:

Chairman McAlhany asked the Board if there was any discussion pertaining to the minutes of October 20, 2014. Having no additions or corrections to the minutes, Member Tipton made a motion to approve the October 20, 2014 minutes as presented, with a second given by Member Dreher. A vote was taken which was **unanimous to accept the minutes as presented.**

Old Business:

There was no old business to discuss.

New Business:

Variance Application – Jason Toole, 1408 Jungle Road

Chairman McAlhany advised the new business on the agenda is the application from Jason Toole, of 1408 Jungle Road, to construct an attached breezeway, screened porch and storage area. Before hearing from the applicant, Chairman McAlhany wanted to remind everyone the Zoning Board is not a rule making body, they are there to act on any variance which may have a relationship on the item being requested. Chairman McAlhany further encouraged the Zoning Board members to review Ordinance 86-91, which states the powers and duties of the Zoning Board, and states the conditions unto which a variance could be granted. A variance may be granted in cases of unnecessary hardship, with four items which come into play regarding the unnecessary hardship; item a, there are extraordinary and exceptional conditions pertaining to the particular piece of property; item b, these conditions do not generally apply to other property in the vicinity; item c, because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and item d, the authorization of a variance would not be of substantial detriment to the adjacent

property or to the public good. Chairman McAlhany stated it is only when there is a hardship or extraordinary conditions that the Zoning Board can circumvent the rules and ordinances already approved by Council. It is the duty of the Zoning Board to either act upon a possible error made by the Building Code Administrator or a potential hardship. Moving forward, Chairman McAlhany advised the item in question is an application from Mr. Jason Toole. On Form 3 of the Zoning Board of Appeals application, the standards for a variance are stated, and the applicant should indicate which condition is applicable for the request. Pertaining to Mr. Toole's application, Chairman McAlhany advised each condition to which a variance could be granted was marked N/A, or non-applicable, so he is unsure from which ordinance Mr. Toole is requesting a variance, but as Mr. Toole is in attendance, he hopefully can further explain, or Code Enforcement Officer Fitzgerald can. At this time, Chairman McAlhany advised those who wish to speak are required to be sworn in. Jason Toole and Code Enforcement Officer Nancy Fitzgerald were given the oath to present testimony to the Board. Chairman McAlhany advised to have the record state that no one stood to receive the oath without saying "I do". Chairman McAlhany asked those who wish to speak to rise and speak to the microphone to ensure an accurate record. Mr. Toole began by stating he and his wife purchased the house at 1408 Jungle Road because of its accessibility; his wife is partially disabled, and having the house not be on pilings was a deciding factor for them. Mr. Toole advised he initially applied for a building permit to add an uncovered deck/breezeway with an attached screened porch/storage building structure, and was denied the permit. After discussion with his engineer and Building Code Administrator Patrick Brown, the plans were revised, adding a roof to the open deck area attaching the deck and the proposed screened porch/storage area. After reviewing the revised plans, Building Code Administrator advised Mr. Toole he would need to apply for a variance for the proposed addition. Mr. Toole continued that he was unsure why the second permit was denied and exactly what he is asking for a variance from; he did the best he could to complete the application. Chairman McAlhany asked Code Enforcement Officer Fitzgerald if she could shed a little more light on the reasoning behind the requirement for a variance. Code Enforcement Officer Fitzgerald advised the structure in question does have extraordinary and exceptional conditions as it does not sit above the ground on pilings as the majority of the surrounding houses do, therefore Mr. Toole cannot take advantage of the storage provided under the house. As the plans submitted by Mr. Toole show, the screened porch and storage area is connected by a breezeway. According to Town Ordinance 86-3 –

***Building** means a structure which is completely enclosed by a roof and by solid exterior walls along whose outside faces can be traced an unbroken line for the complete circumference of the structure, which is permanently affixed to a lot or lots, and used or intended for the shelter, support or enclosure of persons, animals or property of any kind, and includes the word "structure." The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.*

In addition, per Town Ordinance 86-135 (b)(1) *One-family dwelling. Only one dwelling is permitted per lot* could also apply in this situation, as the screened porch could be seen as a potential dwelling unit. Member Davies questioned if a screened porch is indeed considered a dwelling unit, as he would not have wanted to spend the previous night in 42 degree weather in his screened porch. Code Enforcement Officer Fitzgerald advised the request for the variance is from either the definition of a building, or from one dwelling unit permitted per lot. Chairman McAlhany inquired about setback limits on the property; Code Enforcement Officer Fitzgerald advised the setback limits do not come into play with the applicant's proposed structure. Member Tipton also inquired as to the flood requirements for this property, since the plans show the addition is not elevated. Chairman McAlhany advised the Zoning Board is here regarding the zoning variance, any building issues are not of their concern. Vice Chair Price asked if the structure

was solely a storage building, without the screened porch enclosure, would that be allowed? Code Enforcement Officer Fitzgerald advised any completely enclosed storage building used as an accessory use are required to be able to be relocated, but in Mr. Toole's situation, his storage area is not enclosed, it is open with lattice covering; the screened porch is open as well. Regarding the non-elevated addition, Code Enforcement Officer Fitzgerald advised it is allowed since the current house is not elevated; Member Davies added it is essentially grandfathered in.

At this time, Chairman McAlhany advised if there is no further discussion, would any member offer a motion on the variance. Member Boozer made the motion to grant the variance, based on the addition of the screened porch and deck would not make 2 dwellings on one lot. Chairman McAlhany then asked for a vote, and began with Member Tipton, who advised she did not feel she understood what was being asked, so she did not want to vote. Chairman McAlhany advised she is here and present, so she would need to vote, and he would continue on and come back to her. Member McIntosh felt as Member Tipton did, and abstained from voting at that time. Chairman McAlhany continued with the remaining Zoning Board members, who all voted in favor of granting the variance. Chairman McAlhany then went back to Members Tipton and McIntosh for their vote. Member Tipton again said she did not understand what Mr. Toole is asking for a variance from. Code Enforcement Officer Fitzgerald again explained Mr. Toole is asking for a variance from either the definition of *building* or *dwelling* as defined in the Town's Code, and based on the motion made by Member Boozer, the variance would be from the definition of *dwelling*. Chairman McAlhany then asked Member Tipton again for her vote; Member Tipton voted in favor of granting the variance. Member McIntosh at that time voted in favor of the variance. Chairman McAlhany advised Code Enforcement Officer Fitzgerald his vote would have been in favor as well; the Toole's variance **passed unanimously**.

There being no further business to discuss Member Davies moved to adjourn followed by a second from Member Tipton. A vote was taken to adjourn the meeting at 5:27 p.m. and the **vote was unanimous to adjourn.**

Freedom of Information Act, § 30-4-80(3) was complied with.

APPROVED BY THE ZONING BOARD OF APPEALS

Submitted by Nancy Fitzgerald
Code Enforcement Officer, Town of Edisto Beach

A digital recording of this meeting is on file at Town Hall