



COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development

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The scheduled special meeting of the Beaufort County Zoning Board of Appeals (hereafter known as the ZBOA) was held on Thursday, January 12, 2006, in Council Chambers of the Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. Edgar Williams, Vice Chairman
Mr. Phillip Leroy
Mr. Chester Williams

Mr. Bill Bootle
Mr. Claude Dinkins
Mr. Kevin Mack

MEMBERS ABSENT

None

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mrs. Lisa Glover, Zoning Analyst III
Mr. Tony Criscitiello, Planning Director
Mr. Buz Boehm, Deputy Administrator
Ms. Kelly Golden, Staff Attorney

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:07 p.m.

INVOCATION: Mr. Edgar Williams led those assembled in prayer.

REVIEW OF AGENDA

MOTION: Mr. Chester Williams made a motion to adopt the agenda as submitted. Mr. Edgar Williams seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, Leroy, Mack, C. Williams, E. Williams).

TRENA & SANDY COOLER'S VARIANCE (REVISIT)

Mr. Cooler stated to the board that they are asking for a variance to place a shed in the river-buffer setback. Mr. Cooler stated that they had to send another letter to the adjacent property owner, and that was done.

Mr. C. Williams asked Mr. Cooler, "Is the shed existing, and is it now encroaching into the river-buffer setback line?"

Mr. Cooler said, "Yes". Mr. Cooler stated that the adjacent property owner was complaining about his view of the marsh, and the Codes Enforcement Officer came to the property, and said it was within the 50-foot setback line. Mr. Cooler stated that they recently placed a pool on the property that met the 50-foot setback; after the property was resurveyed, the pool/shed was now in the 50-foot setback line because of the critical line moving.

Mr. C. Williams asked Mr. Cooler, "How long has the shed been there?"

Mr. Cooler answered, "Since 2002".

Mr. C. Williams asked Mr. Cooler, "When was the pool placed on the property?"

Mr. Cooler said, "Either 2002 or 2003".

"Professionally we serve; Personally we care!"

Mr. Bootle asked, "Where did Mr. Cooler get the mailing address to the adjacent property owner's property?"

Ms. Austin stated, "From the Beaufort County Assessor's Office".

Mr. C. Williams asked Ms. Austin, "Is the County satisfied with all of the notice requirements?"

Ms. Austin answered, "Yes".

Mr. C. Williams asked Mr. Cooler, "Are you looking to leave the shed at its current location?"

Mr. Cooler answered, "Yes".

Mr. E. Williams asked Mr. Cooler, "Are you planning on doing anything later on?"

Mr. Cooler answered, "No".

Mr. Dinkins asked Mr. Cooler, "Are the renters going to purchase the property?"

Mr. Cooler answered, "No, the renters are moving to Florida".

Mr. Gasparini asked Mr. Cooler, "At the time the shed was built, was a building permit obtained?"

Mr. Cooler answered, "No".

Ms. Austin stated to the board that the County is okay with this request.

MOTION: Mr. Edgar Williams made a motion to approve the variance as submitted. Mr. Chester Williams seconded the motion. The motion passed unanimous (FOR: Bootle, Dinkins, Gasparini, Leroy, Mack, C. Williams, E. Williams).

Mr. Chester Williams stated to the board that he had to recuse himself from the Bull Point case. Mr. Chester Williams and Mr. Dinkins left the meeting at approximately 5:15 p.m.

BULL POINT, LLC (APPEAL)

Ms. Cantwell, Attorney for Bull Point, stated to the board that there are two applications before the board; one is an appeal of an administrative interpretation from the Zoning Administrator, and the other is a variance from the provisions of the Zoning & Development Standards Ordinance. Ms. Cantwell stated that she would like the board to hear the appeal first.

Mr. Gasparini asked Ms. Cantwell, "Does the decision of the appeal determine the request for a variance?"

Ms. Cantwell answered, "No". Ms. Cantwell stated that if the board approves the appeal, they might request a variance at a later date, depending on if someone appeals the Zoning Board of Appeals decision. Ms. Cantwell stated to the board that she has exhibits that she wants to read to the board to make sure they received them all: (1) Ms. Cantwell's letter dated, October 20, 2005 to Ms. Austin asking for an administrative interpretation, and in the letter she set forth some facts and an attachment giving her an analysis of the Zoning & Development Standards Ordinance, (2) Response to the interpretation Ms. Cantwell requested from Kelly Golden, the Beaufort County Staff Attorney, (3) E-Mail from Ms. Austin dated November 17, 2005 stating that she concurred with Ms. Golden, (4) Application to appeal the decision of the administrative interpretation with an attachment, and (5) Provisions of the Zoning & Development Standards Ordinance (Sections 106-1526, 106-1022, and 106-4). Ms. Cantwell stated that she refers to the property, Bull Point - Phase 7 as being Residential, and it is actually zoned Rural. Ms. Cantwell stated that Bull Point is a fairly large subdivision in Northern Beaufort County that has been

developing for over the last ten years. Ms. Cantwell stated that the problem Bull Point has is due to the soil conditions where the lots will not percolate, so the lots cannot have on-site septic systems. An engineer has designed a system to allow for some lots that will be accommodated on the red portion of the site plan to have an on-site septic system, where the wastewater is received and treated, but the discharge is at an off-site location next to Phase 1 on the map. Ms. Cantwell said that because they needed an off-site discharge area, they asked for an interpretation from Ms. Austin as to whether or not the Zoning & Development Standards Ordinance would allow them to do that. Prior to the enactment of the new Zoning & Development Standards Ordinance, this type of system was permitted and is being used in Bull Point. Ms. Cantwell stated that they have a response letter back from the County stating that the Table 106-1526 precludes the use of anything in the Rural district except for off-site septic systems, and they respectfully disagree with that decision rendered by Beaufort County Staff. Ms. Cantwell stated that the County Staff took their position because the table says "on-site", and the Staff believes that is the only system you can have. Ms. Cantwell stated that they disagree with that interpretation because in every zoning district, the more intense the use is, the more sophisticated waste system that is required. Ms. Cantwell stated that the County interpreted the table as setting minimal requirements for the various districts, and the language of the table supports that interpretation as well as other provisions of the Zoning & Development Standards Ordinance. Ms. Cantwell stated that the language of the table says that when community systems or sewer services are required on-site, and if a community system or public sewer system is required per the table but is not available, you can have an on-site system until the public or community system is available. That indicates that County Council did not intend for on-site septic tanks to the exclusion of everything else. It is a clear indication that County Council did not mean to preclude an allowed use if it could accommodate the wastewater. Ms. Cantwell stated that when you are interpreting a statute, you look at the whole statute to try to figure out what County Council was trying to do. Section 106-1022 allows you to cluster. The ordinance says when you cluster you have to use a central system, and what Council intended was that on-site was the base. If you do a higher system you have to do a better system, but it does not mean if you are doing a basic single-family development that you have to have an on-site. If you can do a more environmentally sound system. She would respectfully submit that Council did not intend to preclude that, and that they anticipated central systems in the rural district, because Section 106-1022 says you have to have one, if you are clustering. Also, the interpretation they are requesting is consistent with Section 106-4 of the ordinance, which council says what their intent was. It says that this ordinance is intended to respect rights to beneficial use of land to promote flexibility to protect public rights while minimizing impact on property owners to the greatest extent. Ms. Cantwell stated that this system totally conforms with that stated legislative intent, it allows a beneficial use of the land, it allows a use that is allowed, but at the same time, it is protecting public rights because it is agreeing that the system that we use is environmentally sound. Ms. Cantwell stated that when rendering an interpretation, County Council gives them specific rules to follow, which they are supposed to look at the public purpose on the regulation. They maintain that the public purpose of having the table set out and allowing on-site systems as a base requirement was to protect the ground water. This proposal does no violence to the premise, and the Zoning Administrator is supposed to weigh the impact of the interpretation. Ms. Cantwell stated that they would respectfully submit that there is a discrepancy in the ordinance, and the staff has to harmonize what Council said their legislative intent was.

Mr. Gasparini stated that he understands the applicant's argument of Section 106-1526, where it says this column specifies whether a public sewer or community sewer is required rather than an individual on-site tile field. If a public sewer is not available, on lot systems may be approved until public sewer is available. Mr. Gasparini stated to Ms. Cantwell that they are not proposing a public sewer, they are proposing a community sewer.

Ms. Cantwell stated that she is not proposing a public sewer as required by the ordinance because it says it is owned by a public entity. Ms. Cantwell stated that they have a community system in which they are sharing the drain field, and it's going to serve the Bull Point community.

Mr. Gasparini asked Ms. Cantwell, "Is this project clustered with 70% open space?"

Ms. Cantwell said, "No". Ms. Cantwell stated that county council contemplated clustering, and contemplating allowing something other than on-site systems when they did that.

Mr. Leroy asked, "Is this a system where there are individual septic systems sharing a line to get the water to an off-site drain field?"

Mr. Gary Hubbard, Bull Point's Engineer said, "That's correct".

Mr. Tony Criscitiello stated to the board that Bull Point is asking for an appeal and a variance; there were no applications submitted for a project, and if the board grants a variance from the administrative interpretation, the Development Review Team would have no choice but to approve it. Mr. Criscitiello stated that the Development Review Team has not seen the lot layout, open space, etc., so seeking a variance is premature because they have not demonstrated a hardship.

Ms. Cantwell explained to the board that the only question she asked the County was for an administrative interpretation, the ordinance does not say that an application had to be submitted prior to requesting an administrative interpretation.

Mr. Criscitiello stated to the board that the developer had failed to show an extreme hardship per item seven on the application. The applicant has not proven that he cannot develop fewer lots that will perk with on-site septic tanks.

Mr. Leroy asked Mr. Criscitiello to describe the process for the Development Review Team to review an application and make a decision.

Mr. Criscitiello stated that the Development Review Team has two processes, Conceptual and Final. In the conceptual meeting the applicant shall work out all the issues pertaining to their application; once they receive conceptual approval, the applicant would apply for final approval. Mr. Criscitiello stated that he's not sure if the applicant received approval from DHEC.

Mr. Gasparini stated that he is troubled about making a ruling without an application being pending because he does not know what he is ruling on.

Ms. Cantwell stated that she believes that they asked for an administrative interpretation in accordance with the Zoning Ordinance and what the state law allows them to do; they asked if they could use the system with the proposed use of the land being a single-family lot. Ms. Cantwell stated that they couldn't go any further with DHEC until the County makes a ruling.

Mr. Gasparini called for public comment, and limited the comments to five minutes each.

Ms. Sally Murphy, who lives in Sheldon across from the Bull Point Subdivision, stated that she has a master's degree in science, and has been employed with the Department of Natural Resources for over 30 years; but she's speaking as a private citizen. Ms. Murphy stated that the site where the 40 homes are planned does not perk, so it is essentially a forested wetland. It functions to collect water that prevents runoff in the Huspah Creek, and slowly releases it. When converted to 40 homes, driveways, and roads, it would no longer have that function.

Mr. Woodrow Collins stated that he is asking the board not to grant Bull Point Subdivision an approval. Mr. Collins stated that it is not a surprise that this property purchased nine years ago cannot perk.

Ms. Wendy Zara, who lives on Huspah Creek, stated to the board that she supports the Zoning Administrator's interpretation regarding Section 106-1525 of the Zoning & Development Standards Ordinance. Ms. Zara stated that she served on the task force that drafted the Zoning Ordinance, and she knows the intent of the Zoning Ordinance with regards to County Council.

Ms. Cantwell submitted documents to the board; one was the status of DHEC's approval, a letter to Mr. Hubbard, the Project Engineer, dated July 2005 that they reviewed the plans and found an acceptable septic system with conditions, and a telephone call was placed into Mr. Criscitiello's office in October 2004 where he described the system as a community sanitary sewer disposal system.

Mr. Gasparini stated that regards to procedure, he will hear a motion on the administrative interpretation only.

MOTION: Mr. Edgar Williams made a motion to uphold the Zoning Administrator's interpretation, denying a community system for Bull Point – Phase 7. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, Leroy, C. Williams, E. Williams).

Mr. Gasparini stated that in regards to the variance, he want to urge Ms. Cantwell to get this project right with the County before coming before this board.

Ms. Cantwell asked Mr. Gasparini for a five-minute break to discuss the project with client. Mr. Gasparini granted a break at approximately 6:30 p.m. The meeting was called back to order at 6:51 p.m.

Ms. Cantwell asked the board to allow her to withdraw the Bull Point, LLC, variance request without prejudice, and to be able to reapply for a variance in the future. *Ms. Kelly Golden, Staff Attorney, agreed with the request.*

Mr. Gasparini asked the board if they objected to the request to withdraw the variance without prejudice. No members of the Zoning board objected to the request.

ADJOURNMENT:

MOTION: Mr. Edgar Williams made a motion to adjourn. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, Leroy, Mack, C. Williams, E. Williams).

The meeting adjourned at approximately 6:52 p.m.