

The scheduled meeting of the Beaufort County Zoning Board of Appeals was held on Wednesday, September 26, 2007, in Council Chambers, Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. Claude Dinkins
Mr. Phillip LeRoy

Mr. Bill Bootle
Mr. Kevin Mack

MEMBERS ABSENT

Mr. Chester Williams
Mr. Edgar Williams, Vice Chairman

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mrs. Lisa Glover, Zoning Analyst III
Mr. Tony Criscitiello, Deputy Administrator & Planning Director
Mr. Arthur Cummings, Building Codes Director

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:09 p.m.

INVOCATION: Mr. Gasparini led those assembled in a moment of silence.

REVIEW OF AGENDA:

MOTION: Mr. Bootle made a motion to adopt the agenda as submitted. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, LeRoy, Mack).

REVIEW OF MINUTES:

MOTION: Mr. Dinkins made a motion to adopt the August minutes as submitted. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, LeRoy, Mack).

Mr. Gasparini briefly reviewed the ZBOA rules to the public. Mr. Gasparini limited public comment to three minutes each.

GARY & DIANA SHERTENLIEB (RIVER-BUFFER VARIANCE)

Mr. Allen Patterson, contractor for the applicant, explained to the board, that he's requesting a variance for a river buffer setback, located on Ocean Creek Boulevard. Mr. Patterson stated, that the proposed house isn't larger than any other existing homes on the street; the application letter indicates that the proposed house size is 5,133 square feet, but after talking to the homeowner, he wants to request the same square footage of the houses adjacent to his property.

Mr. Dinkins asked Mr. Patterson, "What would be the new setback if the house size was increased?"

Mr. Patterson answered, "The setback would be the same."

Mr. LeRoy asked Mr. Patterson, "Does the rear part of the house line up with the adjacent houses?"

Mr. Patterson answered, "Yes".

Mr. LeRoy asked Mr. Patterson, "Would there be any obstruction to the neighbor's view?"

Mr. Patterson answered, "No."

Mr. Dinkins asked Mr. Patterson, "How would you add the additional square footage to the house?"

Mr. Patterson answered, "I would come towards the street".

Mr. LeRoy asked Mr. Patterson, "What is the front setback?"

Mr. Patterson answered, "The front setback is 25 feet. I spoke with Sandra Fleming, and she said she would also grant a variance on the front.

Mr. Gasparini stated, that he have a problem with changing the application without notice. Mr. Gasparini explained to the applicant, that the county has recommended approval with the condition, that the applicant place the house at 30' from the OCRM critical line, and that the gutters be placed on the house and have the runoff from the roof discharged 50' from the OCRM critical line. Mr. Gasparini stated, that if the applicant wants the house to be larger than what was originally requested, a new application would have to be submitted to the ZBOA.

Mr. LeRoy asked, "Is the board approving 28.6 feet, or 30 feet from the OCRM critical line?"

Mr. Gasparini stated, that the county recommended 30' from the OCRM critical line, so the applicant must move it back 1-1/2 feet.

Mr. Patterson stated, that he will redesign the house, and get the square footage to 5,133 square feet. Mr. Patterson stated, that he will meet with the homeowner, and if he is displeased with the recommendation, he will resubmit to the board.

Ms. Austin stated, that the Development Review Team has already went through this before with the house sizes, and if the surveyor says that the houses are larger than what they're being taxed for, the assessor's office must be informed, to the correct square footage.

Mr. Gasparini asked Mr. Patterson, "Are you willing to live with the county's recommendation, in term of the 30 foot OCRM critical line setback, the gutters being placed on the house, and have the runoff from the roof discharged 50' from the OCRM critical line?"

Mr. Patterson answered, "Yes".

Mr. Gasparini called for public comment; there were no public comment for this project.

MOTION: Mr. Dinkins made a motion to approve the river-buffer variance with the following conditions, the house size shall be limited to 5,133 square feet, the applicant shall place the house at 30' from the OCRM critical line, and the applicant shall place the gutters on the house and have the runoff from the roof discharged 50' from the OCRM critical line. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, LeRoy, Mack).

Mr. Gasparini asked the representative for David Seifert & Phyllis Glowatsky's base-line variance, "Has the appropriate notices been given for this case, and submitted to the Zoning Office?"

Mr. Gilbert stated, that he's provided a "Certificated of Service", and had it hand delivered to the Zoning Office the date the notices was handed out. Mr. Gilbert stated, that he has an extra copy to submit for the record.

Mr. Gasparini asked Mrs. Glover, "Does the notices look okay?"

Mrs. Glover answered, "It appears to be okay, but I'm not finished checking them".

Mr. Gasparini stated, that with the board's permission, the board will hear the next case, and Mrs. Glover will ensure that the notices were appropriately given. *There were no objections to move to the next case.*

TERRY & LEE CHESTER (DOCK VARIANCE)

Mr. Terry Chester explained to the board, that he is requesting a variance from the 300-foot limitation on the docks. Mr. Chester stated, that he is requesting a 465-foot dock, instead of a 300-foot dock.

Mr. Gasparini asked Mr. Chester, "How long have you owned the property?"

Mr. Chester answered, "Four years".

Mr. Bootle asked Mr. Chester, "Is this dock for your home?"

Mr. Chester stated, that they are contractors, and they are selling the house. It has been constructed for approximately two years, and most of the offers are contingent on receiving a dock permit. Mr. Chester stated, that the dock variance is primarily to sell the house, but if the house is not sold soon, they will be moving into the house.

Mr. Mack asked Mr. Chester, "Did you try to make this dock a community dock?"

Mr. Chester stated, that they tried to contact the neighbors on both sides of the lots, and one neighbor did not want a community dock, and the other property owner was non-responsive. Mr. Chester stated, that they tried to annex into the Town of Port Royal, but they were disapproved.

Ms. Austin stated, that the county recommends disapproval for this dock variance. The applicant has no hardship, and has not shown any reason why the property is causing a hardship. Ms. Austin stated, that the applicant indicated that the dock is for personal gain, and the ordinance states that variances should not be granted for personal gain. Section 106-552 requires, that the hardship relate to the applicant's land, not to their personal circumstances; it must be unique, and not common to the surrounding properties. All of the properties along this tidal creek have the same issues; therefore, the applicant's circumstance is not unique. The ordinance also states, that a hardship should be one that is suffered by the applicant, and not the adjoining landowners. The adjoining landowners would have the same problem with getting their dock to the water. The applicant stated in their application, that there are other docks in the area larger than 300 feet; but those docks were built prior to May 8th, 2000, and they are grandfathered, and should not be used to grant a variance for this dock. Ms. Austin stated, that if this variance is not granted, it would not render the lot unbuildable; the dock is an accessory use, therefore, it should meet the requirements of the ordinance.

Mr. Gasparini called for public comment; and limited the comments to three minutes each.

Mr. Reed Armstrong, Coastal Conservation League stated to the board, that the county's dock ordinance limiting the length of docks to 300 feet, applies only for small tidal creeks of shallows, not for all of the waters of the county, as stated in the application. The dock ordinance allows a community dock up to 500 feet, dependent on the amount of marsh frontage the property owner has. In the applicant's case, if both adjacent property owners join them in a community dock, then the frontage would allow a maximum length of approximately 305 feet. As far as a hardship, they have not presented any special circumstances of why they should be given a variance. The applicant purchased the property and applied

for a dock permit from OCRM in 2004; four years after the dock ordinance was adopted. Mr. Armstrong stated, that only two lots, out of the 19 waterfront lots on Dowlingwood Drive have existing docks; one of which is longer than 300 feet. Mr. Armstrong stated, that the dock ordinance was enacted in order to maintain the quality of our tidal waters. Small tidal creeks are generally headwaters, and the Beaufort County Management Plan of 2002, recognized that special protections are needed for those waters. There are ample evidence that supports concerns for more stringent controls of small tidal creeks and their marshes. Mr. Armstrong stated, that if the board grants this variance, it would set a dangerous precedence, and undermine the intent of county council on the enactment of the dock ordinance.

Mrs. Linda Arnold stated to the board, that Section 106-1912 (b)(2)(b), limits the dock to 300 feet, and that is what they have in their neighborhood. Ms. Arnold stated, that if this variance were passed, it would open up a floodgate of other docks.

Mr. Craig Arnold stated to the board, that he would like to agree with Mr. Armstrong and Mrs. Arnold, that there is no need for a longer dock.

Ms. Paula Loftus asked the board not to grant this dock. It does set a dangerous precedence. Ms. Loftus read some information from the U.S. Department of Commerce Ocean and Coastal Resource Management Study. It stated that many coastal managers and citizens are concerned about the docks, and the potential impacts that numerous private docks may have on the environment, navigation, and the ability of the public to access the water. Docks impact the vegetation during construction on marshes and sea grasses. Ms. Loftus stated, that she would like to see a more critical county wide review on the docks, limiting the number of docks, and a moratorium on the building of docks, like other States and Counties have already implemented in view of the dock pollution and problems associated with water quality, navigation, denial of public access to the shore, and water and scenic destruction. When an individual purchases property, with the specific ordinances and laws in place, it is expected that these regulations and laws be adhered to, and the individual not seek, after the purchase, an exception or special treatment.

Ms. Sally Murphy stated, that she is a licensed real estate agent. An agent is responsible for notifying the potential buyer if there's anything significant about the property; setbacks, river buffers and restrictions on dock length should be disclosed to the purchaser. If the house plan or amenities doesn't fit into a particular location, then the purchaser should choose another location. Ms. Murphy asked the board to disapprove this request.

Mr. Gasparini stated, that the public comment portion of this hearing is closed.

Mr. Chester stated to the board, that the State of South Carolina constitution, does grant property owners certain rights, which is the reasonable access to the waterways; so it is a guaranteed right. Mr. Chester stated, that he does not think that this is an unreasonable request; if there is ever a reason for granting a variance for a dock, this is not an ideal situation. Mr. Chester stated, that he doesn't think it would be flood gate opened up, this is a very old subdivision; the people that have houses that was built for at least 30 years, would have already built their dock, if they wanted a dock. Mr. Chester stated, that this is one of the last houses that would go onto Dowlingwood Drive, that is on the waterways. Docks less than 500 feet is allowed as a community dock, and a dock enhances everyone's property.

Mr. Bootle asked Mr. Chester, "When you purchased the property, was it "Buyer Beware"; did you understand the Beaufort County Dock Ordinance?"

Mr. Chester stated, that when he purchased the property, he thought it was in the Town of Port Royal.

MOTION: Mr. Bootle made a motion to deny the dock variance. Mr. Mack seconded the motion. The motion passed (FOR: Bootle, Gasparini, LeRoy, Mack; OPPOSED: Dinkins).

Mr. Gasparini asked Mrs. Glover, "Were the notices appropriately given for David Seifert & Phyllis Glowatsky's baseline variance request?"

Mrs. Glover answered, "Yes".

DAVID SEIFERT & PHYLLIS GLOWATSKY (BASE-LINE VARIANCE)

Mr. Derrick Gilbert, representative for the applicant, explained to the board that he is requesting a baseline variance from Section 106-1844 (B)(2) of the Beaufort County Zoning & Development Standards Ordinance. Mr. Gilbert stated, that the baseline is very close to the front of the lot, and once you place the setbacks on the lot, there is no space on the lot to build a house.

Mr. Gasparini asked Mr. Gilbert, "What is the required setbacks for Fripp Island?"

Mr. Gilbert answered, "Fripp Island's setback is 25 feet from the street, 10 feet from the sides, and Beaufort County's setback is 50 feet from the OCRM critical line.

Mr. Gasparini asked Mr. Gilbert, "What is the width of the lot?"

Mr. Gilbert answered, "Approximately 82 feet".

Mr. Bootle asked Mr. Gilbert, "Did you go to the Fripp Island Architectural Review Board for approval?"

Mr. Gilbert stated, that the Fripp Island Architectural Review Board reviewed the house footprint last Thursday. Mr. Gilbert stated, that the ARB granted conceptual approval, with the condition, to confirm that there was adequate space for parking on the street side.

Mr. Bootle asked Mr. Gilbert, "Where is the septic system located?"

Mr. Gilbert answered, "This lot is on sewer".

Ms. Austin stated to the board, that this lot would be unbuildable without a variance, and OCRM approved the variance, and limited the house to 5,000 square feet. Ms. Austin stated, that there is a new state law that prohibits the county from approving anything that would be contrary to the recorded covenants and restrictions of a subdivision, so the county needs the ARB to approve this variance also. Ms. Austin stated, that until the ARB writes a letter approving the variance, the board should not act on this case; because if the board approves the variance, and the ARB disapproves the variance, then the county would be in violation of the state law. Ms. Austin stated, that if the ARB writes a letter, approving the variance, then the county recommends approval, with the condition that the deck should never be enclosed, and that condition should be placed in the deeds, if this house was ever sold.

Mr. Gaspaini stated, that he respects the requirement to comply with state law, but if this board granted a variance, could it be subject to the ARB approving the plans, so the variance would not go into affect, until the Fripp Island ARB approves the variance?

Ms. Austin answered, "Yes, if we receive a signed letter from the ARB".

Mr. Gasparini called for public comment; there were no public comment for this project.

Mr. Gasparini asked Mr. Gilbert to review the conditions with his clients, to ensure they are okay with the staff conditions.

Mr. Gilbert stated, that his clients are okay with the conditions.

Mr. Gasparini stated for the record, that there were some public comments that were presented to them via e-mail by some property owners, who were opposed to granting this variance.

MOTION: Mr. LeRoy made a motion to approve the baseline variance with the following conditions, that the applicant provide a letter from the Fripp Island ARB approving the

plans as submitted to the board, and with the restriction on enclosing or roofing over the proposed deck; the front yard setback shall be 10.06 feet for the porch, 11.50 feet for the house, and the side yard setback shall be 6.43 feet to the west. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, LeRoy, Mack).

PINCKNEY POINT, LLC (RIVER-BUFFER VARIANCE)

Mr. Walter Nester, representative for the applicant, stated to the board, that he hired a court reporter, and he requests that anyone who gets up and speaks publicly, state their name for the file. Mr. Nester stated, that his applicant is requesting a variance from Section 106-1845 (4) of the Beaufort County Zoning & Development Standards Ordinance. This section sets forth a 50' buffer, and a 100-foot setback from the OCRM critical line. The applicant is making this application, under the direction of the Beaufort County Development Review Team, in response to the applicant's submittal for conceptual review of the development plans for his property. As described in the application, the unique shape of the property requires the entrance road to impact both the buffer and the setbacks. The sole connection with the adjacent properties is approximately 155 feet wide. In order to subdivide the property, the applicant is required to construct a 50 foot wide R-O-W on his property; the application of Section 106-1845 (4) states, that those buffers and setbacks prohibits the "buy right" subdivision, and development of his property. The county has maintained a road on this property for more than 60 years; the width varies, but it's approximately 22 feet wide. This road currently runs through the buffer and the setbacks. The length of this road on the applicant's property is approximately 1,800 linear feet. The conceptual master plan, as well as, the county engineering records shows the road penetrating the buffer and setback for nearly the entire 1,800-foot length. The applicant's conceptual plan as proposed to the DRT, is to move the existing road out of the buffer and out of the setback as soon as feasible, given the road and the land configuration. Mr. Nester stated, that the existing road is in the buffer and the setback area, and the impact is approximately 18,580 linear feet. The proposed road buffer impact is approximately 3,260 linear feet, the result of an 82% reduction; an 82% reduction of the impact to the setback and the buffer, as the road is currently configured. Mr. Nester stated, that the design, which has been submitted with the conceptual plan for storm water, retains up to a 100-year flood event on the property, which means there will be no discharge from the proposed "By Right" development of this property. The applicant has proposed to restore the buffer that is currently impacted by the road in the buffer and the setback area; it will be done in accordance with a revegetative plan that follows the South Carolina DHEC guidelines, "Backyard Buffer Pamphlet". Mr. Nester stated, that he believes that the criteria for the board's approval, meets or exceeds that criteria, and this application should be approved. The first criteria is, that extraordinary and exceptional conditions pertaining to the property, which makes reasonable use of the property difficult. Mr. Nester stated, that given the unique shape of the property, and the connection to the adjacent land, the location of the road must be within the buffer and within the setback; and under reasonable use of the property, county council has zoned the property for Rural development, and that's exactly what the applicant is proposing to the Development Review Team. Mr. Nester stated, that the second criteria is, that those conditions does not apply to the other properties in the vicinity; based on the review of the aerials and some of the photographs in diagrams in the application, the unique shape of this property is not similar to other properties in the vicinity. The application of the buffer and setback prohibits the reasonable use of the property, because the distance between the OCRM setback lines on both sides where the property meets the adjacent property is 155 feet. Mr. Nester stated, that the third criteria is, that the application prohibits or unreasonably restricts utilization of the property. The buffer and setbacks would prohibit the reasonable use of the property, per County Council; there's no adverse affect to adjacent properties or the public good. This application would improve the existing impacts to the buffer. There would be no negative impact to the buffer in that area, and the balance of the road as currently exists would be restored, and would benefit the public. Mr. Nester stated, that the fifth criteria is that the hardship would exists with the application of the buffer and the setback; this property cannot be used for the purpose of what it is zoned. It concerns the applicant's land only, it's unique to this piece of property, it's not due to any action of the applicant, and it is suffered only by the applicant. Mr. Nester stated, that the sixth criteria is, that by granting the variance, the board should find that it's the minimum necessary to relieve the hardship. The proposal for the DRT moves the road out of the impacted area, as soon as feasible; it's not injuring the surrounding properties or the public good, it affects this property only, it needs to be homonous with the ZDSO. The state of intent for the needs for variances in the

ZDSO is to relieve unique, undo, unnecessary hardships; and he propose that all exists in this situation. The seventh hardship is that by granting the variance it does not permit or expand the use that's not otherwise permitted under the existing zoning. Mr. Nester stated, that the eighth criteria is, that the impact of the natural resources is heavily in favor of the granting of the variance. Those conditions are in place, with the approval of this variance. Mr. Nester stated, that this application meets all of the criteria's, and it is respectfully requested that the ZBOA grants the application. Mr. Nester stated, that given the facts on the evidence presented, a decision of the ZBOA would be unconstitutional, and it would destroy the applicant's property rights without first being fair, adequate and just compensational for those rights in violation of the constitution of the State of South Carolina, in due process clause of the 14th amendment of the constitution of the United States. It would be unconstitutional, illegal, null & void, and it constitutes the taking of the applicant's property in violation of the just compensation clause amendment to the constitution of the Unites States, constitution of the State of South Carolina, and the equal protection and the due process clauses forwarded to the 14th amendment of the constitution of the United States. It would also be arbitrary & capricious act without any rational basis, because given the facts presented, the applicant has met the conditions set forth, by not only state law, but by the ZDSO. Mr. Nester stated, that he would like to clarify, that the applicant is not asking for the ZBOA to approve the realignment of the road, but he is asking for relief from the buffer and setbacks set forth in the ZDSO.

Mr. Bootle asked Mr. Nester, "Did the river buffer setbacks & buffers change since March 29th, 2006?"

Mr. Nester answered, "No, but the property is accessed by a public road, that road runs through the river buffer and river setback, and it has run through that area for approximately 65 years; the county has maintained the road for approximately 65 years".

Mr. Gasparini asked Mr. Nester, "Could your client subdivide the property with the existing road, if the variance was not granted?"

Mr. Nester stated, "They could not subdivide it with the density that's authorized under the ordinance".

Mr. Gasparini asked Mr. Nester, "If the variance is granted, what happens to the road?"

Mr. Nester stated, that it is up to the Beaufort County's Engineering Department, Development Review Team, and some other body of council. Mr. Nester stated, that road realignments occurs quite often in Beaufort County, and doesn't require approval from county council or the public services committee. What those bodies do, or how they answer the question on road realignment at some later date, is not a question for the ZBOA. Mr. Nester stated, that he is asking the board for a variance from the river buffer and the setbacks. The approval for that variance is not an approval to get started on subdividing the property; the case has to go back before the Development Review Team for approval. Mr. Nester stated, that the conceptual plans show the removal of the road and the vegetation of the road. Mr. Nester stated, that if the applicant's conceptual plan is approved by the Development Review Team, the road has to be removed, because there will be lots there.

Mr. Gasparini stated, that if the road is not removed, it would have a direct impact on 13 of the proposed lots.

Mr. Nester stated, that they would have to file with Circuit Court to abandon the public road, in order for the road to be abandoned. Currently, the discussion with the Development Review Team is for the realignment of the road.

Mr. Tony Criscitiello stated to the board, that based on the testimony presented, staff cannot add too much to the case, except to add that the applicant can subdivide the property off of the existing road. The Development Review Team has not acted on the conceptual approval, and that approval is based on moving the county road from it's current location, to another location, thereby, creating a subdivision that has not been approved. Only county council can change the alignment of the road. Mr. Criscitiello stated, that the Development Review Team cannot proceed with conceptual approval, until the road issue is determined; and the road issue is determined by a variance to be granted by the ZBOA on it's own

merits, for the granting of the variance, and the decision in terms of the future fate of the road. The applicant could move forward with the subdivision of the property under the rural zoning, using their current alignment of the road, and derive from approval of the Development Review Team for a subdivision probably significantly different from the application that is currently under consideration.

Mr. LeRoy asked Mr. Criscitiello, "Does the county have a recommendation?"

Mr. Criscitiello stated, that it would be better if the river buffer was properly installed, and the minor standards in regards to subdivision designs were achieved. This is a "By Right" development, and the county should honor and respect that provision of the law. Mr. Criscitiello stated, that from a Planning standpoint, he would prefer the moving of the road, and the proper installation of the river buffer that's been submitted to the Development Review Team; but that's not what's in front of the board today.

Mr. Mack asked Mr. Criscitiello, "Does the realignment have to go back to county council?"

Mr. Criscitiello answered, "Yes. The Development Review Team does not have the authority to move a county road".

Mr. Gasparini stated, that the Development Review Team cannot do anything about the road, neither does the board have the power to move the road; other than say if someone gets permission to build the road, they could request a variance.

Mr. Gasparini called for public comment; and limited the comments to three minutes each.

Ms. Loftus stated to the board, that the river buffer is an ordinance that was put in place, because of environment standards, erosion, water quality, etc., and she requests that the buffer be respected.

Ms. Mary Connor stated to the board, that she lives in Pinckney Colony, and she reviewed the application and did not see where county council had any involvement in this application. Ms. Connor stated, that the roadway is a restrictive easement, and she believes that it is imperative that county council be involved in this request, because by agreeing to this change, they'll be abandoning the roadway, and the issue with the new roadway by the developer would be whether or not the road would be rededicated to the public. Ms. Connor asked the board to deny this application request.

Mr. Robert Vaux, representative for the adjacent property owners and the POA, stated to the board, that the conditions of the property have not changed since March 2006, when the applicant purchased the property. Mr. Vaux stated, that the applicant has the option to use the property for rural purposes; the property could be subdivided off of the existing road, it is not necessary for the applicant to have this variance in order to develop their property in accordance with the county zoning. Mr. Vaux stated, that if a variance is granted, it could be argued that the subdivision is vested in some way. This application needs to be tabled again, to find out if county council thinks that the road should be realigned. The road is not a realignment, it is a relocation. Mr. Vaux stated, that the applicant is increasing the amount of intrusion and the density of the use, because the road would go from a 22 feet road to a 26-foot road, which makes it a 50-foot road. Mr. Vaux stated, that there has been no change since March 2006; it has a negative impact on this community, and they ask that the board protect their rights by denying the variance.

Mr. Gasparini stated, that he wanted to clarify, that the applicant was asking for a 50' R-O-W, not a 50' road.

Dr. Coleman stated, that he wants to donate his three minutes to Mr. Vaux.

Mr. Chris Gerards stated to the board, that he requests that the board disapproves the variance. Mr. Gerards stated, that this development would have a negative impact on the community. Mr. Gerards stated, that the existing impact is not negatively impacted, but the property has changed, because the applicant has cut down part of the vegetation to a certain height on the river; the road runs parallel to the

river. The applicant is requesting a variance to build more lots, and they will cut the vegetation lower, and more trespassing would go into the natural area.

Ms. Laura Floyd stated to the board, that she is not in support of this variance. Ms. Floyd asked the board to table this request, and never approve it.

Mr. Jerry Reeves stated to the board, that he lives in Camp St. Mary, and his primary concern, is what this development would do to the river; he is opposed to this development.

Mr. Gasparini stated, that the public comment portion of this hearing is closed.

Mr. Nester stated, that the applicant has already been before the Public Services committee, but they chosen not to hear the application. The Development Review Team would proceed, based on the ruling of the Zoning Board of Appeals. Mr. Nester stated, that the Zoning Board of Appeals is required to act on their application, and not rely on what county council does, or some other elected body. Mr. Nester stated, that the granting of a variance is not under the vested rights act.

Mr. LeRoy asked Mr. Nester, "Did you go before the Public Services committee to seek an abandonment of the R-O-W?"

Mr. Nester answered, "No, in order to seek an abandonment of a R-O-W, the applicant would be required to file an action in the superior court". Mr. Nester stated, that at the last meeting, the question of the road realignment came up, and the board was concerned that county council was not at the meeting to speak on the issue of the road; Mr. Achurch, the county attorney spoke at the meeting, and the County Engineer was present and spoke at the meeting. The Zoning Board of Appeals wanted to hear what the county had to say. Mr. Nester stated, that they went to the engineering department for the procedures to realign or relocate a road, and the engineering department sent them to the public services committee; the public services committee would not hear the case.

Mr. LeRoy asked Mr. Nester, "Since your client owns all of the property, why could he just seek an abandonment of the road?"

Mr. Nester stated, that the Development Review Team couldn't approve the proposed conceptual plan, because the width of the property is only 155 feet, and there are impacts that have to occur within that area.

Mr. Gasparini asked Mr. Nester, "Does your plans contemplate this being a public road?"

Mr. Nester answered, "He's not saying that, because he hasn't had that discussion specifically with his client". Mr. Nester stated, that this request is not before the board, nor are they bringing an action to the Circuit Court, nor did they make an application to the DRT regarding the abandoning of a road. Mr. Nester stated, that the plan shows a road, that ends nowhere, that runs through the buffer and the setback.

Mr. Gasparini asked, "Will the road be public or private?"

Mr. Nester stated, that he doesn't know the answer to that question. Mr. Nester stated, that the road could be considered public; the applicant is asking for a variance from Section 106-1845, as it relates to buffers and setbacks.

Mr. LeRoy asked Ms. Austin, "Regarding developments in the rural property, could the lots be subdivided into five-acre lots, and have easements on the property?"

Ms. Austin stated, that the applicant could do a minor subdivision, which creates up to four lots, or a rural subdivision, which creates five lots, with the larger lot being a residual lot, which could be created at a later date, with the condition that there's appropriate water, sewer, infrastructure, and the 40% open

space. Ms. Austin stated, that the five-acre exemption that Mr. LeRoy is referring to is a state exemption, with the condition that there are no new streets involved. Ms. Austin stated, that there would be a condition on the permit that states that the lots would not be buildable, if it does not meet the minimum requirement of the zoning ordinance.

Mr. Gasparini asked Mr. Nester, "Is your client seeking to move this road through the county process, or are you looking for a variance, and then you will figure out what to do after that?"

Mr. Nester stated, that the applicant feels like his "due process" rights have been violated. Mr. Nester stated, that they did what the board told them to do at the last meeting. The PCS decided not to act on this project, the next month they did not have a meeting, then the next month they put them on the agenda, and then the County Administrator removed them off of the agenda, stating that the PCS cannot tell the ZBOA what to do. Mr. Nester stated, that they are back before the board with the sole purpose of whether or not they can violate the buffer and setback as set forth in the ordinance.

Mr. Bootle stated, that he's trying to figure out a hardship.

Mr. LeRoy stated, that he doesn't think that there is a hardship.

Mr. Bootle asked Mr. Nester, "What's your hardship?"

Mr. Nester stated, that the hardship is, that county council has created a zoning ordinance. The zoning ordinance provides for certain uses of the property, and commercial uses are not one of the uses for this property.

Mr. Bootle asked Mr. Nester, "When the applicant purchased the property in 2006, did they understand the restraint of the property?"

Mr. Nester stated, that they understood that the property was zoned Rural, which is one residential unit per three acres. County Council has zoned the property for a particular density, and prohibits the applicant from the "By Right" use of it's property, as it relates to the river buffer & setback.

MOTION: Mr. Dinkins made a motion to grant the applicant an encroachment into the 50' OCRM buffer, and the 100-foot OCRM setback. *There was no second to the motion. The motion died.*

MOTION: Mr. LeRoy made a motion to deny the variance. Mr. Bootle seconded the motion. The motion passed (FOR: Bootle, LeRoy, Mack; OPPOSED: Dinkins, Gasparini).

OLD BUSINESS

RULES & PROCEDURES

Mr. Gasparini stated, that since it is so late in the evening, the discussion regarding the "Rules of Procedures" for the Zoning Board of Appeals will be discussed at the next scheduled meeting. Mr. Gasparini asked the members of the board, to e-mail or fax to him any suggestions, corrections, or deletions to the procedures, prior to the next scheduled meeting.

BRIAN PERRY, JR (AMENDMENT TO PLAT)

Mrs. Glover asked the board to review the variance plat, which was approved by the Zoning Board of Appeals on May 23rd, 2007. Mrs. Glover explained to the board, that the applicant reduced the size of the house, and is not going any closer to the OCRM critical line.

The members of the Zoning Board of Appeals reviewed the amended plat, and were okay with the change.

Mr. Gasparini asked Mrs. Glover to draft a letter to officially amend the plat, and he will sign the letter, as the chairman of the board.

MOTION: Mr. Bootle made a motion to adjourn. Mr. Mack seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, LeRoy, Mack).

The meeting adjourned at approximately 7:34 p.m.