

The scheduled meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, April 24, 2008, in Council Chambers, Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

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

Mr. Bill Bootle
Mr. Claude Dinkins
Mr. Phillip LeRoy

MEMBERS ABSENT

Mr. Kevin Mack

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mrs. Lisa Glover, Zoning Analyst III

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:13 p.m.

PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE: Mr. Gasparini led those assembled in the Pledge of Allegiance.

REVIEW OF AGENDA:

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

Mr. Edgar Williams arrived to the meeting at approximately 5:14 p.m.

REVIEW OF MINUTES:

MOTION: Mr. Dinkins made a motion to adopt the minutes as submitted. Mr. LeRoy seconded the motion. The motion passed (FOR: Bootle, Dinkins, LeRoy, C. Williams; ABSTAINED: Gasparini, E. Williams).

CHERYL CONTE (RIVER-BUFFER VARIANCE/REVISIT)

Mr. Dennis Robinson, representative for Ms. Conte explained to the board, that they are requesting a variance from the river-buffer section of the ZDSO. This home was built on Marsh Dunes Road in the Saw Grass section of Fripp Island, which are patio homes; this home was built in 1981. Mr. Robinson stated, that as shown on the "as built" survey, there is an existing 12' x 12' open deck in the rear of the property, that the Conte's wish to enclose, with a screened porch. Mr. Robinson stated, that on the remaining section of the rear of the home, they wish to build an open deck. This will be an addition for quiet enjoyment, and being on the marsh; it will be bug free. It would also allow her mom of 81 years old, to have quiet enjoyment on a nice sunny day.

Mr. Bootle asked Mr. Robinson, "What was the reason it was withdrawn the last time; do you remember?"

Mr. Robinson answered, "I think there was some confusion as to re-roofing the house; and not being clear about what the applicant wanted to do". Mr. Robinson stated, that since the request was not understood

at the last meeting, the applicant came to him to explain what she wanted to do. Mr. Robinson stated, that he has some letters from neighbors, who are environmentalist with the forestry division, and they are in favor of this request.

Mr. C. Williams stated, that the problem he has with the application as it is right now, is that it doesn't address any of the criteria set forth in Section 106-522 of the Zoning & Development Standards Ordinance. Mr. Williams stated, that the first criteria states, are there any extraordinary and exceptional conditions pertaining to the particular piece of property. Mr. Williams asked Mr. Robinson, "What are the extraordinary and exceptional conditions which are applicable to this piece of property?"

Mr. Robinson answered, "The house was built in 1981; there were no setbacks in 1981 from the critical line". Mr. Robinson stated, that the setbacks from the river buffer came into existence in 1984. Mr. Robinson stated, that it is a pre-existing home; a lot of those envelopes were established by the developer.

Mr. C. Williams stated, that the problem is, when new construction is done, that's a new development, and with the new development, you are required to comply with the current code requirements.

Mr. Robinson stated, that 95 percent of the lots on Fripp Island cannot conform to the existing 50-foot setback requirement; the subdivision was not built that way.

Mr. C. Williams stated, that the second criteria is, that those extraordinary and exceptional conditions does not generally apply to other properties in the vicinity. Mr. C. Williams asked Mr. Robinson, "Is that the case here; can you tell me how you meet that criteria in this particular application?"

Mr. Robinson answered, "Most of the good folks who were there; in fact, the people who are next door, they basically built a second house in front of the existing house that was already there". Mr. Robinson stated, that most of them had expanded their decks or did enclosures, etc. Mr. Robinson stated, that he doesn't think that this application is any different than the people who live in the same neighborhood. Mr. Robinson stated, that the applicant wants to put a roof on the existing 12' x 12' deck, and make it a screened porch.

Mr. C. Williams asked Mr. Robinson, "Do you want to ultimately add on to the deck also?"

Mr. Robinson stated, that he would like to put a 13' x 12' deck on the green section of the packet; it wouldn't be going any closer to the marsh, than the existing deck that is already there.

Mr. C. Williams stated, that the third criteria is, that because of the extraordinary and exceptional conditions; the application of the ZDSO to the particular piece of property would effectively prohibit or unreasonably restrict utilization of the property. Mr. C. Williams asked Mr. Robinson, "Is that a criteria that this particular application meets?"

Mr. Robinson answered, "Sir, I live on the marsh, and I'm very fortunate that I do have a screened porch, and I do have a deck. It's very uncomfortable if you live in that climate; we're asking for a bug-free climate for an 81-year old woman". Mr. Robinson stated, that he doesn't think that that's unreasonable; we're asking for quiet enjoyment of what's already exists.

Mr. LeRoy stated, that the applicant stated, that Fripp Island had it's own setbacks from the critical line prior to the adoption of the county setbacks, and the lot was purchased on that basis; is that correct, and if so, what is that setback?

Mr. Robinson stated, that in that particular location of Saw Grass, the developer predetermined the footprint of Section 18 of Fripp Island.

Mr. LeRoy asked Mr. Robinson, "As it relates to Dataw Island, when the overlay ordinance was enacted, people who built could build up to the setbacks established under the covenants of Dataw; is that the same with Fripp Island?"

Mr. Robinson answered, "Fripp Island was created before Dataw Island".

Mr. LeRoy asked Mr. Robinson, "Did Fripp Island have any set setbacks from the OCRM critical line?"

Mr. Robinson answered, "Not in this particular subdivision; in the newer ones that we did, we consulted with Beaufort County, and we worked with the county on an average buffer for some of them; but we tried to establish a 20-foot rule on the newer subdivisions that we did since 1989".

Mr. LeRoy asked Mr. Robinson, "Was there a plotted building area on that lot?"

Mr. Robinson answered, "Yes sir".

Mr. LeRoy asked Mr. Robinson, "So, would this new construction be within that building area?"

Mr. Robinson answered, "It is my understanding that it would".

Mr. Bootle asked Mr. Robinson, "What was the setback then?"

Mr. Robinson answered, "It wasn't any".

Mr. LeRoy asked Mr. Robinson, "But what was the building area; which would have served as a setback?"

Mr. Robinson answered, "It was basically a rectangle".

Mr. LeRoy asked Mr. Robinson, "How far back from the OCRM critical line was it?"

Mr. Robinson answered, "On that plat, it was 13 feet on that one corner, and then it would go back to 19 feet on the right rear corner, as you face it from the street".

Mr. LeRoy asked Mr. Robinson, "So was there a building envelope established prior to the building of the house?"

Mr. Robinson answered, "Yes, that's my understanding".

Ms. Austin stated to the board, that there were no setbacks or building envelopes on the old plats for Fripp Island. Ms. Austin stated, that Beaufort County had a Development Standards Ordinance, not a zoning Ordinance, and those setbacks were always 20-feet from any wetland and OCRM setback. Mr. Austin stated, that unless she sees something other than that, staff recommends disapproval; the applicant has a slated deck, and the roofline is approximately 25-feet from the critical line. Ms. Austin stated, that by moving this roof closer, then the applicant would be approximately 11-feet, plus or minus, from the critical line, and that's going way closer than where the existing structure is right now. Ms. Austin stated, that Mr. Robinson also mentioned section 106-1845; but that's for new homes being built, where county council allowed the Development Review Team to grant waivers, to lots that were so small that they could not meet the setbacks. For people with existing houses, there's a section in the ordinance, which is Table 106-9 that talks about non-conforming standards, and that's where he's getting the information that you can't go any closer to the critical line, or to any setback than where you already are. He is going closer, because once you put that roof on, that's where we measure our setbacks from the critical line, because that's where the water is coming off; not the first vertical wall. He's going to be closer than where he's already at; 13 feet with the deck, but the roof is actually 25 feet. Ms. Austin stated, that Mr. Robinson also talked about a restaurant on Harbor Island; that was approved under the 1990 ordinance. Under the 1990 ordinance, the Development Review Team was allowed to grant those

waivers, as long as the water was trapped; there were no specific guidelines as to how the Development Review Team could grant the waivers. Ms. Austin stated, that staff recommends disapproval, because the applicant has no hardship; the applicant has a deck now, and she's going to have another deck, the screened porch is encroaching too much into the buffers than the existing house is located.

Mr. E. Williams asked Ms. Austin, "Was the original deck built in 1981?"

Ms. Austin answered, "The house was built in 1981".

Mr. E. Williams asked Ms. Austin, "When the house was built, was the deck built also?"

Ms. Austin answered, "I think so".

Mr. Gasparini called for public comment; there was no public comment for this variance request.

Mr. Mack asked Mr. Robinson, "Does the neighbors have any objections?"

Mr. Robinson answered, "No".

Mr. C. Williams asked Ms. Austin, "If this was a situation where someone was building a new structure, and the foundation was built up to the setback line; could they then build their deck in the setback area?"

Ms. Austin answered, "Not under today's standards".

Mr. Gasparini stated, that it might be possible that the board would be willing to grant the variance application for screening in the porch, but I think it's less likely that the board would agree on an additional deck.

Mr. Robinson stated, that he would certainly gutter and bring the water back off of the roof.

Mr. Gasparini stated, that the water would have to be trapped behind the 50' setback line; which is half way back on the house.

Mr. Robinson stated, that half of the house is behind the 50-foot setback. Mr. Robinson stated, that he would be happy to make the deck pervious.

Mr. Gasparini stated, that several members of the board has a problem with adding the additional deck in the buffer; they might be willing to agree to a variance in order to roof the existing deck and screen it. Mr. Gasparini stated, that he's not asking the applicant to change his application; the board can vote on the application as a whole, or the applicant can modify the application if he like to.

MOTION: Mr. E. Williams made a motion that the motion be denied, based on the fact that it would expand beyond the requirement of section 106-522 of the Zoning & Development Standards Ordinance.

Mr. Gasparini asked the board, before this motion is seconded, does anyone have an opinion of whether the board can grant part of a variance?

Mr. C. Williams stated, that there's no question that the board can grant the variance, with conditions.

Mr. E. Williams stated, that he doesn't know if you can grant part of a variance, and not all of the variance; unless the board says that the applicant must comply with the procedures outlined.

Mr. Gasparini stated, that it seems that the board could grant a variance to roof and screen in the existing deck; but not to build another deck.

Mr. C. Williams stated, that in section 106-523 it states that, "In approving the application for any variance of this chapter, the ZBOA may impose additional restrictions and conditions on such approvals". Mr. C. Williams stated, that one of the criteria in granting a variance, is under section 106-522 (b)(1), which states, that the variance should be the minimum necessary to relieve the unnecessary hardship.

Mr. E. Williams stated, that he withdraws his motion.

MOTION: Mr. LeRoy made a motion to approve the variance to allow the roofing over the existing deck and the screening of that deck only; excluding the new proposed deck. The applicant is required to trap and gutter the water from the roof back 50' from the OCRM critical line. Mr. Dinkins seconded the motion. The motion passed (FOR: Bootle, Dinkins, Gasparini, LeRoy, E. Williams; OPPOSED: C. Williams).

Mr. Gasparini explained to the applicant that part of the variance is granted, but not the whole thing.

Mr. Robinson stated, that he's very happy with that.

KEI SCRIBNER (SIDE-YARD SETBACK VARIANCE)

Ms. Joyce Glover, daughter of the applicant explained to the board, that she is requesting a side-yard setback variance on the property that her mom and dad purchased over 25 years ago. Ms. Glover stated, that the property is on two acres, and they need the side-yard setback variance, because part of the deck on the corner of her home would encroach into the 12-foot side-yard setback. Ms. Glover stated, that she doesn't know any other way to subdivide, besides getting the setback variance. Ms. Glover stated, that if the home was destroyed or damaged beyond repair, they would have a deed restriction, that could only be rebuilt in a normal building envelope as of today's restriction standards.

Mr. Gasparini asked Ms. Glover, "How much does it encroach?"

Ms. Glover answered, "Approximately three feet; and that encroachment was mostly the deck".

Mr. Gasparini stated to Ms. Glover, that if she subdivided the property into two lots instead of three, she wouldn't have a setback problem.

Ms. Glover stated, that the lot on the other side of the property is very narrow, and they are trying to get each of those lots approximately 100 feet in width.

Mr. Gasparini stated, to Ms. Glover that she has one existing lot, and she proposes to subdivide it into three lots.

Ms. Glover stated, that they are proposing to subdivide the lot into two lots.

Mr. Bootle explained to Ms. Glover, that the survey shows three lots, instead of two lots.

Ms. Glover stated, that there are two existing lots, and one of the lots is 78 feet wide; it's the lot to the left of the larger lot.

Mr. Gasparini asked Ms. Glover, "Was a subdivision already done?"

Ms. Glover answered, "Yes". Ms. Glover stated, that what they're proposing to do, is to put the parcel all together, and subdivide it into three equal lots, instead of one lot that's 78 feet, and the other lot larger than 78 feet.

Mr. Gasparini asked Ms. Glover, "Which lot is subdivided off; A or C?"

Mr. LeRoy answered, "It's neither".

Mr. Gasparini asked Ms. Glover, "Which side of the house is it on?"

Ms. Scribner, property owner answered, "It's on the east side; the house is in the middle, according to the survey".

Ms. Austin stated, that she was under the impression that the property was only one parcel.

Mr. Gasparini called for a brief recess at 6:00 p.m., the meeting was called back to order @ 6:14 p.m.

Mr. Gasparini explained, that he doesn't think that there's a complete record, that the board can make a decision from. Mr. Gasparini stated, that the board is required to grant the minimum amount of a variance that would solve the applicant's problem. Mr. Gasparini stated, that without knowing the existing conditions, as it is today; how many lots there are, where the lines are, what you all are trying to do, he doesn't know how the board can make a decision today. Mr. Gasparini stated, that there are one or two things the board can do; the board can vote on the variance now, or the applicant can withdraw the application and resubmit the variance request at a later date, when there's a complete record. Mr. Gasparini informed the applicant, that the board would need to see a current survey of where the existing lot lines and dimensions are; and what the applicant is trying to do.

Ms. Glover stated, that she would like to withdraw this application.

Mr. Gasparini informed the applicant, that she would need to give notice again to the adjacent property owners when she comes back.

ROSEMARY GALLAHER (BASELINE VARIANCE)

Mr. Allen Patterson, representative for the applicant stated to the board, that he is asking for a hardship variance from section 106-844 of the Beaufort County Zoning & Development Standards Ordinance. Mr. Patterson stated, that they have a baseline running through the middle of the lot, and they are proposing to build behind the 40-year setback; but the new regulations calls for a 50-foot setback from the baseline. Mr. Patterson stated, that if he have to place the house 50 feet from the baseline, it would leave him with 29-feet to build on; half of the lot is in front of the baseline, and the other half is behind the baseline.

Mr. Gasparini stated to the applicant, that the county is recommending approval of this request, because the lot is considered unbuildable.

Mr. C. Williams asked Mr. Patterson, "Is your extraordinary and exceptional conditions, the location of the OCRM baseline on the property?"

Mr. Patterson answered, "Yes". Mr. Patterson stated, that this is a platted lot that extends 100 feet in front of the baseline.

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

Ms. Debra Burdette stated to the board, that she's one-third owner of the house closest to this lot, facing the beach. Ms. Burdette stated, that she's a native of South Carolina, and the beauty of the beaches should not be compromised. Ms. Burdette showed the board pictures of the lot from her mother's house. Ms. Burdette stated, that when someone purchases a piece of property, they should inquire about whether or not they could build on the lot. Ms. Burdette stated, that when she built her house, they almost purchased a lot down the street on the canal, and they made the purchase contingent on whether or not the lot perked, and when they were informed that the house could not support more than one bathroom, their offer was voided. Ms. Burdette stated, that she cannot see living down the street, when she was told that those lots were unbuildable down the street; she thought they would have privacy, and that the area would be quiet; and she hope that the board would consider to table this matter until another time.

Mr. C. Williams stated that he appreciates Ms. Burdette's comment, but it seems that the plat that was recorded in plat book 14, page 23, has existed since 1964, and given the fact of the OCRM critical line on the property, and the county's requirement for the setbacks; this is a classic case of a hardship, and without a variance, the applicant would not be able to build on the lot at all.

MOTION: Mr. Chester Williams made a motion to approve the baseline variance as submitted, because it meets the criteria of Section 106-522 of the Beaufort County Zoning & Development Standards Ordinance. Mr. Dinkins seconded the motion. The motion passed (FOR: Bootle, Dinkins, Gasparini, LeRoy, C. Williams; OPPOSED: E. Williams).

ISAAC HAMILTON (ACCESS-SEPERATION VARIANCE)

Mr. Hamilton stated to the board, that he is requesting a variance from the shared access requirement of the Zoning & Development Standards Ordinance. Mr. Hamilton stated, that the subdivision process is almost completed; the water meter is there, and the driveway is completed.

Mr. Gasparini asked Ms. Austin, "What is the access requirement, per the Zoning & Development Standards Ordinance?"

Ms. Austin answered, "400 feet apart".

Mr. Gasparini asked Mr. Hamilton, "The reason you can't have one driveway, is because there's a ditch that separates the lots?"

Mr. Hamilton answered, "Yes."

Mr. Gasparini stated, that the applicant is not looking for a variance from the subdivision process; he is looking for a variance from the driveway access. Mr. Gasparini asked Mr. Hamilton, "How wide and deep is the ditch?"

Mr. Hamilton answered, "The ditch is approximately four feet deep, and about six to eight feet wide".

Mr. Gasparini asked Mr. Hamilton, "Does water run through the ditch?"

Mr. Hamilton stated, that there is a ditch along the side of the highway, and there is also a ditch that runs from the highway along side of his house.

Mr. Bootle asked Mr. Hamilton, "Who maintains the ditch?"

Mr. Hamilton answered, "The State; it's on a state highway, which is Pleasant Point Drive".

Mr. LeRoy asked Mr. Hamilton, "Does the water flow from the ditch to the highway, through your ditch in the back of your house?"

Mr. Hamilton answered, "Yes".

Mr. Gasparini asked Mr. LeRoy, "Could the applicant put a culvert on the property to solve the access problem?"

Mr. LeRoy stated, that a determination would have to be made as to how much water is expected to flow down that ditch. Mr. LeRoy stated, that the applicant would have to get a new encroachment permit, and he would also have to deal with the SCDOT.

Ms. Austin stated, that the county recommends approval, because this is considered a hardship due to the size of the ditch.

Mr. Gasparini called for public comment; there was no public comment for this variance request.

Mr. Dinkins asked Ms. Austin, "Where is the other proposed driveway going to be located?"

Ms. Austin stated, that the applicant is supposed to get an encroachment permit for the new driveway cut; and that will be a condition of the permit.

MOTION: Mr. Chester Williams made a motion to approve the variance application, based on the fact that this application meets all of the criteria for the granting of a variance, set forth in Section 106-522 of the Beaufort County Zoning & Development Standards Ordinance, with the condition that the applicant obtain an encroachment permit from SCDOT. Mr. E. Williams seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, LeRoy, C. Williams, E. Williams).

WILBERT ROLLER (DOCK VARIANCE)

Mr. Tommy Goldstein, representative for the applicant explained to the board, that he believes that this request is both an appeal and a variance. Mr. Goldstein stated, that this request requires a variance, and this request might throw the request into an appeal, and vice-versus.

Mr. Gasparini stated, that the board should try to resolve the issue of whether the applicant is appealing Ms. Austin's decision, or whether or not he wants a variance. Mr. Gasparini stated, if it's an appeal; there's no public comment, but if it's a variance; there is public comment.

Mr. Goldstein stated, that he respectfully ask the board to allow all public comment, whether or not it's an appeal or a variance. Mr. Goldstein stated, that he believes it's a legal appeal, and if it's not a legal appeal, it's a variance. Mr. Goldstein stated, that this matter is in litigation with the county, and he doesn't know how to solve the procedural hardship of an applicant requesting an appeal and a variance, as a backup argument. He doesn't think it's fair to ask Mr. Roller to make that decision, and he can't waive any legal remedies that his client has.

Mr. Gasparini asked Mr. Goldstein to explain the lawsuit to the board.

Mr. Goldstein stated to the board, that in 1988 Mr. Roller started construction of a restaurant on Fording Island Road Extension, which was zoned commercial. Mr. Roller began construction of a seafood restaurant. The neighbors in Buckingham Landing took exception to that, and fought vigorously to stop that project. That led the county to pulling the building permit in 1993; they took away his building permit and stopped his project. Mr. Goldstein stated, that it went through various complicated acquisitions that went before Judge Fenning from the South Carolina Supreme Court; Judge Fenning took evidence and issued a written ruling. Judge Fenning told Beaufort County that they erred, and he ordered Beaufort County to restore Mr. Roller's permit. Beaufort County was not satisfied with that decision, and they appealed that decision. Judge Thomas Kemberlyn, issued a written order in 2002 affirming the decision of Judge Fenning.

Mr. C. Williams stated, that it appears in the order that Judge Fenning's order does not deal with the building permit, but with the development permit.

Mr. Goldstein stated, that the permit included the dock. Mr. Goldstein stated, that the county made Mr. Roller conform to newer building standards that came in at the time of his lawsuit; but in 1999 Beaufort County enacted a dock ordinance restricting construction of docks in small tidal creeks to 300 feet; that's the issue, that matter has not gone before the judge. Mr. Goldstein stated, that the lawsuit that was filed on February or March in the Beaufort County Courts of Commons Pleas. Mr. Goldstein stated, that Mr. Achurch has just removed that case to the United States District Court. In that lawsuit it is alleged that Beaufort County has violated section 42-1983 and other codes by intentionally causing a delay in the building permit; and that matter is now pending, but the dock permit has never been heard. OCRM has

granted the applicant a dock permit, but Beaufort County wouldn't issue it, because Beaufort County has the length restriction in the ordinance.

Mr. Gasparini asked Mr. Goldstein, "Did either the building permit or development permit specifically include the dock?"

Mr. Goldstein stated, that he has to confer with his client, but he believes that it did include the dock. Mr. Goldstein stated, that OCRM issued a dock permit, but after Beaufort County withdrew the building permit, OCRM refused to issue it's permit on the ground that Beaufort County had rescinded the permit.

Mr. Dinkins asked Mr. Goldstein, "What year was that?"

Mr. Goldstein answered, "In 1993".

Mr. C. Williams asked Mr. Goldstein, "Did the Beaufort County development permit 1646 include a dock?"

Mr. Goldstein answered, "To my understanding, it did".

Mr. Achurch, county attorney stated, that the development permit did not include a dock. Mr. Achurch stated to the board, that he told the applicant to exhaust all of his administrative remedies prior to proceeding with the lawsuit.

Mr. Gasparini stated, that to his understanding Ms. Austin wrote a letter stating that his client was not entitled to a dock permit. Mr. Gasparini stated, that since the paperwork said that, he would like to propose that the board deals with this case as an appeal request.

Mr. Goldstein explained to the board, that Ms. Austin's decision is in error on a number of grounds; 1) constitutional vagueness. Mr. Goldstein stated, that there's no objective criterion at all. Mr. Goldstein stated, that he got an official small tidal creek map from Beaufort County.

Mr. C. Williams stated, that the map Mr. Goldstein has, says "unofficial map".

Mr. Gasparini asked Ms. Austin, "Is there another map for small tidal creeks?"

Ms. Austin stated, that the Zoning Office has an "official small tidal creek map".

Mr. Goldstein stated, that there is no definition of a small tidal creek, and McKay Creek is a commercial waterway used every day by commercial shrimping trawlers; one is 80 feet in length. There are docks on McKay creek, one in access of 800 feet, there's also a county boat landing on the creek. The facts that there is nothing small about McKay Creek, it feeds directly into the intercostal waterway, it services commercial shrimping trawlers, it adjoins a commercially zoned parcel of property, it's approximately 600 feet away from United States Hwy 278. The definition of small tidal creeks doesn't exist, and it is in violation of the constitutional requirement that says, that ordinances are made plain so that the citizens can read and understand what is allowed and what is not allowed. Secondly, the county has adopted a strange way of measuring Mr. Roller's dock that seems to be directed at Mr. Roller himself. The plats submitted to OCRM demonstrates that there's a walkway of approximately 280 feet, but part of that walkway is on high ground; the dock makes a 60 degree turn, and the county has adopted the position that you measure the dock along the curve; so the county has adopted a specific measurement that is tailored specifically to Mr. Roller, that has not been addressed to anyone else.

Mr. Gasparini called for a brief recess @ 7:15 p.m., the meeting was called back to order @ 7:19 p.m.

Mr. Gasparini asked Mr. Goldstein to demonstrate how he would like the dock to be measured.

Mr. Goldstein answered, "Just in a straight line". Mr. Goldstein demonstrated the straight line on the paper. Mr. Goldstein stated, that when Mr. Roller began his construction in 1988, there was no ordinance

restricting the dock length to 300 feet, and had the county not interfered he would have had his dock up, and his restaurant running. Mr. Goldstein stated, that the last argument is an equal-protection argument; there are many large docks adjacent to Mr. Roller's proposed dock.

Mr. Gasparini asked Mr. Goldstein, "When was the existing docks built?"

Mr. Goldstein answered, "In 2006".

Mr. C. Williams asked Mr. Goldstein, "Is it on a small tidal creek?"

Mr. Goldstein answered, "It's on McKay Creek".

Mr. C. Williams asked Mr. Goldstein again, "Is it on a small tidal creek?" Mr. Williams stated, that a small tidal creek is a creek that's defined on the official map. Mr. Williams asked Mr. Goldstein, "Can you show me where the existing docks are located on the map?"

Mr. Goldstein answered, "I can't, but Mr. Roller and Mr. Don Guscio (Landscape Architect) can show the location of the existing docks on the map".

Mr. Guscio showed the board the location of the creek on the small tidal creek map.

Mr. Gasparini stated, that the existing docks can only be a grandfathered dock or an illegal dock.

Mr. Goldstein stated, that he have seen this board approve other docks on small tidal creeks.

Mr. C. Williams stated, that those cases have nothing to do with this one, because those were variances, not appeals.

Mr. Gasparini asked Mr. Goldstein, "Does 300 feet get your client to the deep water?"

Mr. Goldstein answered, "No, I don't think so".

Mr. Dinkins stated, that the board should get a definition from OCRM regarding the measuring of a dock. Mr. Dinkins stated, that OCRM does not count the floats, pier heads, etc. Mr. Dinkins stated, that the way the county measures the dock, is different than how OCRM measures the dock.

Mr. Gasparini asked Mr. Dinkins, "Is the issue the float, and not the dock?"

Mr. Dinkins answered, "Yes".

Mr. Gasparini asked Mr. Dinkins, "Are you saying that you can have a float as long as you want, because floats don't count in the measurement?"

Mr. Dinkins answered, "Yes, because floats don't count towards the measurement".

Mr. C. Williams read Section 106-1912 (b), which states that under the county ordinance you are to count the floats.

Mr. Gasparini asked Mr. Goldstein, "Are you asking for a 416 foot dock?"

Mr. Goldstein answered, "We are asking for a 416 foot dock, but we contend that the county is measuring the dock wrong".

Mr. C. Williams asked Mr. Goldstein, "What is wrong with Ms. Austin's determination that she cannot approve the dock, because it's longer than 300 feet?"

Mr. Goldstein stated, that there are some bad feelings between Ms. Austin and Mr. Roller. Mr. Goldstein stated, that Mr. Roller contends that he's being singled-out for discriminatory treatment, and there's some bad feelings back and forth.

Mr. E. Williams stated, that in response to Mr. Goldstein alleging that Ms. Austin is bias toward Mr. Roller; he took offense to that, because he felt the same way when Mr. Goldstein passed out the paperwork to four Caucasian members of the board, but he did not give the only African American member, who so happens to be the Vice Chairman, a copy of the paperwork. Mr. E. Williams asked Mr. Goldstein, "How do you think that made me feel?"

Mr. Goldstein stated, that Mr. E. Williams owes him an apology.

Mr. Gasparini asked Mr. Goldstein, "Do you have something specific to tell this board, about whether your clients proposed dock is in the green spot on the official map?"

Mr. Goldstein stated, that it's impossible to say with any certainty, because the map is very confusing; as far as he can tell, it appears to be in the green zone or very close to it.

Mr. Gasparini stated, the county seems to think that it's in the green zone.

Mr. Goldstein stated, that he would like to make a formal motion, that Mr. E. Williams recuse himself from this case, for reasons that are obvious.

Mr. Gasparini stated, that Mr. E. Williams would have to make that decision.

Mr. E. Williams stated, that he will not recuse himself.

Mr. Goldstein stated, that he would like Mr. Don Guscio, Landscape Architect, to review the official small tidal creek map.

Mr. Bootle asked Mr. Goldstein, "What is his qualifications?"

Mr. Guscio stated, that he's done a few dock permits in the past, he's a landscape architect, and he's recognized by OCRM to prepare dock permits. Mr. Guscio reviewed the small tidal creek map, and stated, that the lot appears to be on a small tidal creek at the top end of the property.

Mr. Gasparini asked Mr. Achurch, "1) Are we going to make a decision that's going to bump into an existing law suit; 2) Where is the proposed dock out of the green zone; and 3) How do you measure how long the dock is?"

Mr. Achurch, county attorney stated, that this case may have an impact on the lawsuit; and if Mr. Roller gets his dock than he can't complain about the validity of the dock ordinance.

Mr. Gasparini asked Mr. Achurch, "Does the lawsuit has anything to do with money?"

Mr. Achurch stated, that it has something to do with money, and the fact that Mr. Roller wants his dock. Mr. Achurch stated, that this ordinance is legally valid, and Ms. Austin is charged with enforcing the ordinance that is current, and the ZBOA is charged with interpreting the ordinance, and applying it to the ordinances that we have. Mr. Achurch stated, that the court is the place to challenge the legalism. Mr. Achurch stated, that the letter from OCRM did not say that Mr. Roller's permit was being pulled; but Mr. Roller did not ask for a five-year extension from OCRM to keep his original permit valid. Mr. Achurch stated, that the small tidal creek map well defines the definition of a small tidal creek. Mr. Achurch stated, that according to the zoning ordinance, section 106-1912 (B)(2)(H), "Docks over 300 feet shall be limited to private non-commercial uses, unless as part as a commercial fishing village". As he interprets it, you cannot put a commercial dock on a small tidal creek. Mr. Achurch stated, that if Mr. Roller requests a variance, the board might want to consider the fact that commercial docks are not allowed on small tidal

creeks. Mr. Achurch stated, that he contacted OCRM and they said that they measure the dock the same way the county measures it; if it's a State Statute regarding the measurement of docks, he would ask the county to reconsider the way they measure the docks.

Mr. Goldstein stated, that his applicant would like to modify his request to reduce the dock to 300 feet in length.

Mr. Dinkins stated, that this is an appeal, not a variance.

Mr. Gasparini asked Mr. Goldstein, "Would your client like to withdraw his appeal?"

Mr. Goldstein stated, that his applicant would like to withdraw this appeal without prejudice, and his applicant will apply to OCRM to reduce the length of the dock to 300 feet.

Mr. C. Williams asked Mr. Goldstein, "What about Mr. Achurch's comment regarding commercial docks not being allowed on small tidal creeks?"

Mr. Gasparini stated, that if Mr. Goldstein wanted to withdraw his application without prejudice, then the board doesn't have a right to deny his request for a withdrawal.

Mr. Goldstein stated, on behalf of the applicant, he would like to withdraw this appeal without prejudice, and will resubmit a new application to Beaufort County.

OLD BUSINESS (RULES & PROCEDURES)

Mr. E. Williams stated, that due to the lateness in the evening, he would like to discuss the Rules & Procedures at the next scheduled meeting.

ADJOURNMENT

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

The meeting adjourned at approximately 7:59 p.m.