

The scheduled meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, June 26, 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. Kevin Mack

Mr. Bill Bootle
Mr. Phillip LeRoy
Mr. Chester Williams

MEMBERS ABSENT

Mr. Claude Dinkins

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mrs. Lisa Glover, Zoning Analyst III
Mr. Arthur Cummings, Building Codes Director
Ms. Audra Antonacci, Codes Enforcement Supervisor

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:06 p.m.

PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE: Mr. Gasparini led those assembled in the Pledge of Allegiance, and a moment of silence.

REVIEW OF AGENDA:

Mr. Gasparini explained to the board, that Bull Point, LLC – Lots 77 & 78 is to be carried over to the next scheduled meeting, due to a conflict in witnesses from Dhec being subpoenaed.

Mr. C. Williams informed the board, that there's a new item on the agenda, which is Kevin & Susan Keogh's variance.

Mr. Gasparini explained to the board, that Kevin & Susan Keogh's variance came before the board in February 2008. Mr. Gasparini stated, that the applicant believes that there's a mistake in either the motion that was made, or the decision letter that was submitted, as to whether the deck was supposed to be pervious or impervious. The applicant applied for an impervious deck, but the board gave them a pervious deck approval.

Mr. C. Williams stated, that the contractor for the Keogh's called him earlier this week and informed him of the issue, and he suggested to him, to have Walter Nester, who was the attorney for the applicant, contact the chairman of the board, and/or Ms. Austin to explain the issue.

Mr. Gasparini stated, that he spoke with Mr. Nester and Ms. Austin and they came up with a solution to put this case under old business on the agenda. Mr. Gasparini asked the board, "Is there any objections to adding the Keogh's case to the agenda?"

MOTION: Mr. C. Williams made a motion to adopt the amended agenda, which includes the Keogh's old business item, and the Bull Point, LLC., item to be removed off of the agenda, until the next scheduled meeting. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Gasparini, LeRoy, Mack, C. Williams, E. Williams).

REVIEW OF MINUTES:

MOTION: Mr. Chester Williams made a motion to adopt the April 24th, 2008 minutes as submitted. Bootle seconded the motion. The motion passed (FOR: Bootle, Gasparini, LeRoy, C. Williams, E. Williams; ABSTAINED: Mack).

MOTION: Mr. Edgar Williams made a motion to adopt the May 22nd, 2008 minutes as submitted. Mr. Chester Williams seconded the motion. The motion passed (FOR: Bootle, Mack, C. Williams, E. Williams; ABSTAINED: LeRoy, Gasparini).

JOHN & PATRICIA NAZEY (REAR-YARD SETBACK VARIANCE)

Mr. Nazey explained to the board, that they are proposing to construct a storage shed on the property; the overhang extends into the setback line, and he is requesting a variance to have the storage shed remain on the property. Mr. Nazey stated, that he has no other place on the property to erect the shed.

Mr. LeRoy asked Mr. Nazey, "Who owns the five-foot drainage and utility easement?"

Mr. Nazey answered, "I don't know, sir".

Mr. Mack asked Mr. Nazey, "What's on the left side of the shed?"

Mr. Nazey answered, "There's nothing on the left side of the shed".

Mr. Mack asked Mr. Nazey, "Is the concrete structure the only opening to get inside of the shed?"

Mr. Nazey stated, that he also has a side opening to the shed.

Mr. C. Williams stated, that it appears to be more than enough room on the property, where the shed can go.

Mr. Nazey stated, that he would have to spend an additional two or three thousand dollars to put a shed on the property.

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

Mr. Nazey answered, "In the rear of the yard".

Mr. LeRoy asked Mr. Nazey, "What's on the property, immediately behind your lot?"

Mr. Nazey stated, that it's a house on the property.

Mr. LeRoy asked Mr. Nazey, "Has the owners of the house responded to this variance request?"

Mr. Nazey stated, that they picked up the letter, but he has not heard anything from them.

Ms. Austin stated to the board, that Mr. Nazey received a permit to build the shed, and on the permit the structure that's hanging over the setback line was not shown on the plat. Ms. Austin stated, that Mr. Nazey is actually encroaching into the five-foot drainage easement. Ms. Austin stated, that Mr. Nazey built the shed without a zoning permit, and staff recommends disapproval. Ms. Austin stated, that the county found out about this violation, because the neighbor complained.

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

Ms. Mary Ann Jarmubwicz stated to the board, that she is the adjoining property owner. Ms. Jarmubwicz stated, that she did not have a problem with the shed; she had a problem with the overhang. Ms. Jarmubwicz stated, that her fear is, if everyone gets a variance, it would affect the value of her property.

Mr. BJ Adams stated, that he has lived in Pleasant Farms for 21 years, and was president and vice president for 15 years. Mr. Adams stated, that the shed is a welcomed addition to the neighborhood. Mr. Adams stated, that there's a 10 to 12 foot fence behind Mr. Nazey's house, and he doesn't believe that the shed would bother anyone.

Mr. C. Williams asked Mr. Nazey, "Was a permit issued for the overhang?"

Mr. Nazey stated, that he was under a false understanding of the code. Mr. Nazey stated, that he was previously told that the overhang was allowed in the setback, but he guess the codes have changed.

Mr. E. Williams asked Mr. Nazey, "When did you build this shed?"

Mr. Nazey answered, "October of last year".

Mr. C. Williams asked Ms. Austin, "If Mr. Nazey would have come in with the overhang on the plats, would the zoning office have approved it?"

Ms. Austin answered, "No". Ms. Austin stated, that the applicant did not build the shed last October; he built the shed April 3rd, 2008.

Mr. C. Williams stated, that he doesn't see any extraordinary or exceptional conditions to keep the shed as it is on the property; he doesn't see how not having the shed would prohibit or unreasonably restrict Mr. Nazey from utilizing his property. Mr. Williams stated, that he believes that this condition is a result of the applicant's own actions, and it doesn't meet the criteria of a variance request.

Mr. E. Williams stated, that he agrees with Mr. Chester Williams, and the county did not issue a permit to construct the overhang, and he's voting against this request, because it's in violation of the Beaufort County Zoning & Development Standards Ordinance.

MOTION: Mr. Edgar Williams made a motion to disapprove the variance request, based on fact that the applicant did not meet the criteria of section 106-522 of the Beaufort County Zoning & Development Standards Ordinance. Mr. Chester Williams seconded the motion. The motion passed (FOR: Gasparini, LeRoy, Mack, C. Williams, E. Williams; OPPOSED: Bootle).

PHILIP & STEPHANIE WEBER (RIVER-BUFFER WAIVER)

Mr. Chris Cook, CBL Architect explained to the board, that they have designed a second-floor addition to the rear of the house, and it hangs two feet passed the line of the existing foundation; the two-foot extension is approximately 20 feet above the ground passed the existing line of two feet. Mr. Cook stated, that they are asking for permission to place the addition two feet beyond the existing structure.

Mr. C. Williams asked Mr. Cook, "Is the deck covered right now?"

Mr. Cook answered, "No".

Mr. Gasparini asked Mr. Cook, "Will the deck be screened in?"

Mr. Cook stated, that screening the deck might be an option.

Mr. C. Williams stated, that the existing structure is already in the buffer, and they're now asking to increase the encroachment into the buffer.

Mr. Gasparini asked Mr. Cook, "Is it a wood deck?"

Mr. Cook answered, "Yes".

Mr. LeRoy asked Mr. Cook, "Do the adjacent properties encroach into the buffer?"

Mr. Cook stated, that he doesn't know, because he doesn't have any surveys of their properties.

Mr. LeRoy asked Mr. Cook, "Have the Fripp Island Property Owners Association made any kind of statement?"

Mr. Cook answered, "The Fripp Island Property Owners Association approved this site plan".

Mr. C. Williams asked Mr. Cook, "What is the square footage of the existing structure?"

Ms. Austin answered, "1,880 square feet".

Mr. C. Williams asked Mr. Cook, "What is the square footage of the proposed structure?"

Mr. Cook answered, "Approximately 475 square feet".

Mr. Mack asked Mr. Cook, "What is the average square footage of the existing homes in the neighborhood?"

Mr. Weber stated, that there is one house that's being built, which is 2,600 square feet. The other house next door is approximately 2,200 square feet. Mr. Weber stated, that with the addition, his house would have a total of approximately 2,200 square feet.

Mr. Gasparini asked Ms. Austin, "How far is the house from the critical line?"

Ms. Austin stated, that the house with the deck is approximately 32 feet from the critical line.

Mr. C. Williams asked Ms. Austin, "How far is the structure from the critical line?"

Ms. Austin stated, that from the roofline, the house is approximately 44 feet from the critical line.

Mr. C. Williams asked Ms. Austin, "How far will the addition be from the critical line?"

Ms. Austin answered, "Approximately 30 feet from the critical line".

Mr. C. Williams stated, that he would like to know what kind of waivers were granted for the placement of the house.

Mr. Gasparini stated, that he would also like to know if any adjoining property owners are in the buffer setback area. Mr. Gasparini informed the applicant, that if the board doesn't feel as though they have enough information, they have the authority under the rules of the zoning ordinance, to defer the project until they get some new information. Mr. Gasparini stated, that the board would like to figure out the circumstances of how the house was built, and where the adjacent property owner's house is placed on the property, before a reasonable decision could be made. Mr. Gasparini asked Mr. Cook, "Do you want the board to put this over until the next scheduled meeting?"

Mr. Cook answered, "Yes".

MOTION: Mr. Chester Williams made a motion to defer the variance request until the next scheduled meeting. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Gasparini, LeRoy, Mack, C. Williams, E. Williams).

TERRY CHESTER (BASELINE VARIANCE)

Mr. Chester explained to the board, that he is requesting a variance to build a deck within the critical line setback. Mr. Chester stated, that there was a house on the lot that burned down a few years ago, and there was a lot of erosion on the lot. Mr. Chester stated, that he would like to extend the deck another 12 feet into the setback line. Mr. Chester stated, that this variance request does not impact any of the neighbor's property.

Mr. C. Williams asked Mr. Chester, "Is the house under construction right now?"

Mr. Chester answered, "Yes".

Mr. LeRoy asked Mr. Chester, "When was the previous house destroyed and removed?"

Mr. Chester answered, "It was removed approximately two years ago".

Ms. Austin stated, that in August 2007, the applicant asked for a permit to build the house; the applicant showed the house being 60 feet from the baseline. Ms. Austin stated, that the new survey shows the house being 15 feet longer than what was originally permitted; she recommends disapproval. The applicant has not obtained approval from OCRM to amend the permit to increase the house size and to go further into the setback line.

Mr. Gasparini asked Ms. Austin, "Given the fact that there was previously a structure on the lot, would the county have favorably approved the plans".

Ms. Austin answered, "Maybe, if there was a survey provided, showing the house that was destroyed, and OCRM was okay with the new structure".

Mr. LeRoy asked Ms. Austin, "Would the county accept an aerial photo?"

Ms. Austin answered, "No, it would have to be a surveyed plat".

Mr. C. Williams stated, that he would like to know if there's additional information regarding the location of the previous house.

Mr. Chester stated, that the house was built exactly the size that it was originally permitted for; the survey was done after the 1st floor foundation, and the critical line was taken from the property line instead of the critical line. Mr. Chester stated, that the old survey is irrelevant.

Mr. Gasparini stated, that Ms. Austin has every right to ask for additional information, other than an impression in the ground.

Mr. Chester asked Mr. Gasparini, "If I submit a copy of the plat that shows the house being street side, would that be sufficient?"

Mr. Gasparini stated, that he cannot say what the board would do; if the applicant finds some evidence and meet with the zoning administrator to see if a waiver could be granted without a variance and discovers that a variance is needed, then the applicant could come back to the board for the variance request to be heard. Mr. Gasparini asked Mr. Chester, "Would you like to ask for a continuance until next month, to produce evidence?"

Mr. Chester stated, that he would like the board to rule on this variance request tonight.

Mr. Gasparini informed Mr. Chester, that if the board rules, and the variance is denied then there's a waiting period of at least six months. Mr. Gasparini stated, that if this matter is held over until next month, there will be no public comment.

Mr. Chester stated, that he would like the board to continue this matter until next month.

MOTION: Mr. Chester Williams made a motion to defer the variance request until the next scheduled meeting. Mr. Mack seconded the motion. The motion passed unanimously (FOR: Bootle, Gasparini, LeRoy, Mack, C. Williams, E. Williams).

Mr. Gasparini stated, that there was one person who wanted to comment on this variance request for public comment. Mr. Gasparini asked Mr. Edward Dukes, did he still want to comment on this case tonight, or did he want to wait until next month.

Mr. Edward Dukes stated, that he would like to comment on the variance request at this meeting.

Mr. Gasparini asked the board members, "Is there any objections for Mr. Dukes to have public comment at this month's meeting?"

The board members were okay with the request.

Mr. Gasparini stated, that he would like the record to reflect that Mr. Dukes would be giving public comment at this meeting.

Mr. Dukes stated, that he was not concerned about the deck extension, he was concerned with what might happen to the dunes. Mr. Dukes stated, that when the dunes get touched, it's alarming to everyone on the beach. Mr. Dukes stated, that he knows that the applicant is working hard on improving the dunes, but he's not sure on how that improvement would drain on his property.

CLIFTON WAYNE BENTON (RIVER-BUFFER VARIANCE)

Mr. Gasparini stated, that Mr. Benton is a "no show", and he thought that the applicant had to appear before the board prior to a decision being made.

The board briefly looked into the rules & procedures, for any applicant that does not show up to the meeting.

Mr. E. Williams asked Mr. Gasparini, "Is there something in the letter that explains to the applicant, that failure to appear to the meeting would prohibit his case from being heard?"

Mr. Gasparini stated, that he does not know the answer to that question.

MOTION: Mr. Chester Williams made a motion to amend the agenda to move this case to the end of the meeting. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: Bootle, Gasparini, LeRoy, Mack, C. Williams, E. Williams).

JAMES MOSS (APPEAL)

Mr. Moss explained to the board, that the county has taken the position that he has abandoned his property. Mr. Moss stated, that he purchased the property in the 1990's from one of the banks, and he spent a substantial amount of money to clean it up and he removed the gas tanks. Mr. Moss stated, that he had leased the building to be used as an ice cream shop; someone else used it as a nightclub. It's been used as a convenience store, service station, auto repair, restaurant, nightclub, furniture store, produce sales, etc. Mr. Moss stated, that when the property last became vacant, he listed it with a realtor to be sold and/or leased; it wasn't until recently, when he found out that Ms. Austin had determined that they had abandoned all uses, because it wasn't occupied for a couple of years, due to a lack of finding a tenant for the building. Mr. Moss stated, that the only reason he received a written decision from the county, was because he called the county attorney. Mr. Moss stated, that he kept the water on, but he discontinued the use of the electricity, because people were stealing copper off of the air conditioners.

Mr. Moss stated, that he never intended to abandon the property; he has a tenant that wants to open the building for a pizza and sub shop, and additionally occupy a vehicle for home repairs.

Mr. C. Williams stated, that the ordinance specifically says that the definition of voluntary abandonment is, any use that's vacant or unused for 120 days; abandoned uses shall only be replaced with conforming uses. Mr. Williams asked Mr. Moss, "Was there an active ongoing use in the building within the last 120 days?"

Mr. Moss answered, "No, it has not been used within 120 days". Mr. Moss stated, that the South Carolina law's definition is that abandonment is more than someone not being in the building.

Mr. C. Williams stated, that leasing the building for sale and trying to get it leased is not a use of the building under the Zoning & Development Standards Ordinance. Mr. Williams stated, that the property could still be used for any use that's permitted in that zoning district; commercial uses are not a permitted use in that zoning district. Mr. Williams stated, that the applicant lost the right to use the property as a non-conforming use.

Mr. Gasparini informed Mr. Moss, that in the context of this particular appeal, the board is not charged with doing what is reasonable, they are charged with what they think the law says for them to do.

Mr. Moss stated, that he has the South Carolina cases available that the board can read.

Mr. Gasparini stated, that he would be happy for the applicant to submit those cases, and the board will review them. Mr. Gasparini asked Mr. Moss, "When was the last time a business used the building?"

Mr. Moss stated, that a gentleman used his property to sell chairs without a permit; that was probably last September during football season. Mr. Moss stated, that he's going to mail the board some documentation on state law, regarding voluntary abandonment.

Mr. Gasparini asked Mr. Moss, "Can you get the additional information to the board in approximately ten days?"

Mr. Moss answered, "Yes".

MOTION: Mr. Chester Williams made a motion to defer the appeal until the next scheduled meeting. Mr. Edgar Williams seconded the motion. The motion passed unanimously (FOR: Bootle, Gasparini, LeRoy, Mack, C. Williams, E. Williams).

CLIFTON WAYNE BENTON (RIVER-BUFFER VARIANCE)

Mr. E. Williams stated, that the application says that in order for the variance request to be heard, the applicant must appear at the meeting. Mr. E. Williams stated, that he would like to deny this request, based on the fact that the applicant did not appear before the board.

Mr. Gasparini noted for the record that the applicant did not appear before the board.

Mr. C. Williams stated, that section 106-404 (E) states, that if the applicant wants to withdraw, notice of withdrawal of an application must be submitted in writing by the applicant. Mr. Williams asked, "Did the applicant submit a letter withdrawing the application?"

Mrs. Glover answered, "No".

Ms. Austin stated, that Mr. Benton is requesting a variance to replace a shed within the 50' river buffer. Ms. Austin stated, that the shed exceeds 30 percent of the house size, and it's located in the front of the house. The ordinance prohibits an accessory use to exceed 30 percent, and an accessory use cannot be located in the front of the house. Ms. Austin stated, that the county recommends disapproval, because

the applicant does not have a hardship, and she would also like the board to make a ruling for the applicant to reduce the size of the shed.

Mr. LeRoy asked Ms. Austin, "Is the existing shed grandfathered?"

Ms. Austin answered, "Yes it's grandfathered, and it's not in the river buffer".

Mr. LeRoy stated, that it appears that the shed could be easily turned.

Mr. Gasparini stated, that he doesn't see any indication of a hardship.

Mr. C. Williams stated, that as he looks closely at the language of the application, it states, that in order for the board to hear the variance for an appeal request, the applicant must be present at the scheduled meeting. Mr. C. Williams stated, that he would like the county to change the form to state, "If the applicant does not show up at the meeting, the case may still be heard".

MOTION: Mr. Chester Williams made a motion to remove this variance request off of the agenda. Mr. Edgar Williams seconded the motion. The motion passed unanimously (FOR: Bootle, Gasparini, LeRoy, Mack, C. Williams, E. Williams).

OLD BUSINESS:

KEVIN & SUSAN KEOGH (VARIANCE)

Mr. Walter Nester, representative for the applicant explained to the board, that the board granted a variance, with the condition that the deck be pervious. Mr. Nester stated, that the application was for the deck to be impervious, to capture all of the rainwater and drain it away from the river buffer. Mr. Nester stated, that they are requesting a clarification to whether the deck should be pervious or impervious.

Mr. Gasparini asked Ms. Austin, "Would the county have any objection to the deck being impervious?"

Ms. Austin stated, that she would have an objection to the impervious deck. Ms. Austin asked Mr. Nester, "How would the water be captured from the impervious deck?"

Mr. Nester stated, that the impervious deck would have drains in the deck, so the water would drain and be captured in the drainpipes, and be taken away from the marsh.

Mr. Gasparini asked Ms. Austin, "Would you have any objection to the deck being pervious if the water gets moved appropriately?"

Ms. Austin answered, "Yes, because the structure is not supposed to be in the river-buffer at all".

Mr. C. Williams stated, that he didn't know why he said that the deck should be pervious, and to trap the water. Mr. Williams stated, that he agrees with Mr. Nester's statement that the wording appears to be inconsistent.

Mr. Gasparini stated, that he doesn't have a problem with the deck being pervious, as long as the water is appropriately managed.

MOTION: Mr. Chester Williams made a motion to amend the minutes from the February 28th, 2008 meeting, with respect to the river-buffer variance for Kevin & Susan Keogh to change the reference in the first paragraph of the motion, from "The structure to be located within the 20 foot setback is to be pervious", to "The structure to be located within the 20-foot setback is to be impervious, with the condition that all rainwater shall be captured and diverted away from the marsh toward the street, and any landscaping of the buffer area shall be subjected to approval by the Development Review Team". Mr. Bootle

seconded the motion. The motion passed unanimously (FOR: Bootle, Gasparini, LeRoy, Mack, C. Williams, E. Williams).

Mr. Gasparini asked Ms. Austin to inform the board, when an appeal is filed with the Clerk of Court.

RULES & PROCEDURES

The board will review the Rules & Procedures at a later date.

ADJOURNMENT

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

The meeting adjourned at approximately 7:11 p.m.