

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, July 24, 2008, in the Executive Conference Room, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Edgar Williams, Vice Chairman
Mr. Claude Dinkins
Mr. Chester Williams

Mr. Bill Bootle
Mr. Phillip LeRoy

MEMBERS ABSENT

Mr. Thomas Gasparini, Chairman
Mr. Kevin Mack

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. E. Williams called the meeting to order at 5:15 p.m.

PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE: Mr. E. Williams led those assembled in the Pledge of Allegiance, and a moment of silence in honor of our country's military service members.

REVIEW OF AGENDA:

MOTION: Mr. C. Williams moved to adopt the agenda as submitted. Mr. LeRoy seconded the motion. Mr. Dinkins stated that the Board should note three items have been removed from the agenda, which are items # 7 & 8 (John & Julia Musselman's setback variance), items 9 & 10 (Harold & Carlin Bell's river-buffer variance), and items # 15 & 16 (MEI, LLC – Tide Watch Commercial Center – Phase 3 special use request). **The motion passed unanimously (FOR: Bootle, Dinkins, LeRoy, C. Williams, and E. Williams).**

REVIEW OF MINUTES:

MOTION: Mr. C. Williams moved to defer review of the minutes from the Board's June regular meeting to the next scheduled meeting. Mr. Bootle seconded the motion. The motion passed 4 to 0, with one abstention (FOR: Bootle, LeRoy, C. Williams, and E. Williams; ABSTAINED: Dinkins).

Mr. E. Williams explained to the applicants and member of the public present at the meeting that public comment is limited to variances and special use permits, and the time limit for such comments are 3 minutes each. Mr. E. Williams stated that the applicant has ten minutes to present his/her case.

TERRY CHESTER (BASELINE VARIANCE) – REVISIT

Mr. Chester stated that this variance request is a continuation from the last month's meeting; he was asked to submit a survey of the property showing the structure that previously burned down. Mr. Chester stated that he had been unable to find such a survey, but had obtained aerial photographs of the old house before it burned down. Using the aerial photographs, David Gasque, from Gasque & Associates, prepared a survey scaled from the aerial photographs showing the approximate location of the destroyed structure.

Ms. Austin stated that she thought the prior house was located behind the other houses; and what is indicated on Mr. Gasque's survey to be a deck appears to her to be a walkway, because if the house was elevated there couldn't be a deck.

Mr. David Gasque, Gasque & Associates Surveying Company, explained to the Board, that he used the 2006 aerial photos of Beaufort County to produce his survey showing the approximate location of the former house on the property. Mr. Gasque stated that he went to the site, and physically located the approximate location of the building by scaling the distances from the information on the 2006 aerial photos.

Mr. Bootle asked Ms. Austin if Mr. Chester's proposed house, approved by Beaufort County. Ms. Austin stated that the County approved the house, but the applicant added 10 more feet in depth to the house that was not approved by the County.

Mr. Chester disagreed with Ms. Austin, and stated that the proposed house is the exact same size as the house that burned down, and that the house shown on the site plan is the same house that was approved by the County. In response to questions from Mr. C. Williams, Mr. Chester said that measurements showing distances on the survey were taken from the seaward property line, not the baseline.

Mr. Bootle asked Ms. Austin if the County was satisfied with the size of the building being constructed by Mr. Chester. Ms. Austin stated that the proposed house is much larger than the house that was originally on site, and that the original house size was 2,400 square feet, and the proposed building is approximately 4,000 square feet.

In response to Ms. Austin's comments about the size of the proposed home on the property, Mr. Chester stated that the original house was a single story, and the proposed building is two-story.

There being no further comments from the applicant or the County and no further questions from the Board, Mr. E. Williams called for public comment; there was no public comment for this variance request.

Mr. C. Williams asked Ms. Austin if the County would have approved the reconstruction of the new building in the original footprint if Mr. Chester had come to the zoning office with a permit application to take down the old house and replace it with a new house. Ms. Austin stated that if Mr. Chester had voluntarily demolished the previous house, then he would have to build it back according to the current standards of the ordinance.

Mr. C. Williams asked Ms. Austin how far the new house is from the OCRM Baseline, and Ms. Austin answered that the home under construction is located approximately 24 feet from the OCRM Baseline.

MOTION: Mr. Dinkins moved to approve the variance as submitted; Mr. LeRoy seconded the motion. Mr. C. Williams stated that he doesn't see what the hardship is. Mr. Dinkins stated that it's in keeping with the characteristic of the neighborhood. Mr. LeRoy stated that the Board has approved variances up to the general defacto setback of a subdivision area, where the houses are lined up along side of the proposed house. **The motion passed 5 to 1 (FOR: Bootle, Dinkins, LeRoy, and E. Williams; OPPOSED: C. Williams).**

STEPHEN & BEVERLY NOLLER (SIDE-YARD & BASELINE VARIANCE)

Mr. John Albaugh, Admiral Construction presented the applicant's case and explained to the Board, that he is requesting a variance from the side and rear setback line to build a deck around the exterior portion of the existing house. The setback requirement is 10 feet, and he wants to build two feet from the side and rear setback lines.

Ms. Austin stated that the applicant is actually requesting two variances; one variance is to place the deck on both sides of the house in the required buffers, two feet from the property line, and the other one is to place the deck 18.5 feet from the OCRM Baseline, which is another encroachment into a different buffer. One side of the property has a pedestrian easement for the people within the Driftwood community to walk to the beach. Ms. Austin stated that one of her concerns is safety, in that if the easement is blocked, the fire marshal would not be able to get to the beach if something should happen. Ms. Austin stated that staff recommends disapproval, because they're encroaching almost 36 feet into the 50' buffer from the OCRM Baseline. The applicant's stated reason for the deck is to be able to put shutters up, and that is considered a personal reason for a variance; variances are not to be granted for personal reasons.

In response to a question from Mr. LeRoy, Mr. Albaugh stated that the proposed deck is not at grade level, but rather is elevated approximately 10' above the ground.

In response to questions from Mr. C. Williams, Mr. Albaugh agreed that the existing residence is located about 30' from the OCRM Baseline, and the proposed deck would

extend and additional 12' into the buffer from the OCRM Baseline, ending up about 18.5 feet from the OCRM Baseline; that the extraordinary and exceptional conditions pertaining to this particular property that warrant a variance are that the existing house was developed in 1988, and the applicants wanted to build an elevator to access the house, because of their health issues, but couldn't do that on the exterior side without a deck being built on part of it.

Mr. C. Williams noted that the conditions cited by Mr. Albaugh have nothing to do with the property itself, and asked Mr. Albaugh if those conditions apply to other properties in the vicinity, and Mr. Albaugh stated that he did not understand the question. Mr. C. Williams then explained Section 106-522 of the Zoning & Development Standards Ordinance, which lists the criteria for the Board to grant variances.

Mr. LeRoy asked Mr. Albaugh if there any comments on the variance application from the adjacent property owners, and Mr. Albaugh said no.

There being no further comments from the applicant or the County and no further questions from the Board, Mr. E. Williams called for public comment; there was no public comment for this variance request.

MOTION: Mr. C. Williams moved that the Board find that the application does not meet the standards for the granting of a variance under Section 106-522 of the Zoning & Development Standards Ordinance, and that the variance application be denied. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, LeRoy, C. Williams, and E. Williams).

JEFFREY & MARILYNN GLACKEN (RIVER-BUFFER VARIANCE)

Mr. Lorick Fanning, Land Consultant Group made a presentation on behalf of the applicants and explained to the Board that the Glacken's received a variance from the County for their residence on June 27, 2008, to place their house 32 feet from the OCRM Critical Line in order to save a cluster of trees. Mr. Fanning stated that the Development Review Team was unable to approve the applicants' request for the pool and the deck. The property is geographically unique and has an OCRM Critical Line on two sides, and it restricts the site more than what would originally be restricted. Mr. Fanning further stated that the applicant is requesting a variance of 22 feet from the OCRM Critical Line to accommodate the requested swimming pool and deck, and that an effective design would be put in place to drain all surface water into a drain system that does not allow storm water runoff to flow into the marsh area. Mr. Fanning also stated that the applicant wanted to save trees on the property, and that pushed the house further into the critical areas.

In response to a question from Mr. C. Williams, Mr. Fanning said the subdivision was originally platted sometime in the 1980's. However, Mrs. Glover advised the Board that

the subdivision was approved on December 14, 1992, and the subdivision plat was recorded on April 6, 1993.

In response to another question from Mr. C. Williams, Mr. Fanning said the proposed pool will be located approximately 22 feet from the OCRM Critical Line.

Ms. Austin stated that staff recommends disapproval, because pools are not allowed in the river buffer.

Mr. Fanning stated, that Mrs. Glacken has been diagnosed with a medical condition, and swimming is a remedy to relieve her of some of the symptoms; it is necessary for her health and well being.

There being no further comments from the applicant or the County and no further questions from the Board, Mr. E. Williams called for public comment; there was no public comment for this variance request.

MOTION: Mr. Bootle moved to approve the variance as requested. Mr. Dinkins seconded the motion. Mr. C. Williams stated that given the effects on this property of having an OCRM Critical Line on two sides of the property, this is extraordinary and exceptional conditions that is not applicable to other properties in the vicinity, and that he believes this application meets all of the criteria of granting a variance. **The motion passed unanimously (FOR: Bootle, Dinkins, LeRoy, C. Williams, and E. Williams).**

WILBERT ROLLER (VARIANCE)

Mr. David Tedder, attorney for the applicant, presented his case and explained to the Board that this hearing is a continuation of a hearing that was held in April 24th, 2008, when the applicant's variance request was withdrawn without prejudice so that the applicant could see if he could obtain a permit for a dock that did not exceed 300 feet in length. However, the applicant was unsuccessful in obtaining that permit because the County, based on the commercial nature of the applicant's use of his property, rejected the 300-foot dock. Mr. Tedder stated that he's presenting this case as a variance instead of an appeal because this Board has the power to grant a relief.

Mr. Tedder explained in detail the long history of the applicant's dealings with the County regarding the development of his property, including the development and building permits issued in the 1980's, which were subsequently extended by the County at the applicant's request, and then revoked by the County in the mid 1990's. Subsequent litigation by the applicant against the County resulted in a ruling by retired Chief Justice Earnest Finney, sitting as a special Circuit Court Judge, that the applicant had a vested right to proceed with the development of his property under the permits issued by the County in the 1980's, and that County's revocation of those permits in 1993 was unlawful.

In response to a question from Mr. C. Williams regarding the proposed dock, Mr. Tedder stated that there was no dock permit issued by the County as part of the original permitting process for the development of the applicant's land because at the time of the permitting process, Beaufort County did not have a dock ordinance in place. Mr. Tedder stated that a dock permit application was submitted to OCRM in 1993, but OCRM did not issue the requested dock permit because, based on the County's wrongful revocation of the applicant's development and building permits for his property, there was no commercial use appurtenant to the property. Mr. Tedder said that Justice Finney's ruling, after ten years of litigation, was that the applicant's development permit was determined to have been unlawfully withdrawn by Beaufort County, and the applicant's development permit was reinstated. Shortly after the reinstatement of the applicant's development permit, the applicant reapplied to OCRM for a dock with the same previously supplied submittal. In June 2004, Beaufort County objected to the issuance of a dock permit by OCRM because the plat showed a potential encroachment of the Beaufort County Public Landing into the applicant's property. It took approximately nine months for OCRM to resolve the issue raised by the County and to determine that the County's concerns had no effect on the requested dock, and OCRM granted the applicant the requested dock permit. Mr. Tedder stated that the applicant was not able to submit a dock application to OCRM in 2000, before the County's dock ordinance went into effect because his litigation with the County was not resolved at that time, and he therefore did not have a permitted commercial use for his property. Mr. Tedder argued that if it weren't for the actions of Beaufort County by unlawfully revoking the applicant's permits in 1993, the applicant would have obtained a dock permit from OCRM and would have had the dock there for 15 years.

In response to a question from Mr. E. Williams, Mr. Tedder confirmed that the County's dock ordinance enacted while the applicant's permits were in litigation.

Mrs. Mary Lohr, attorney for Beaufort County, argued against the granting of the variance. She generally agreed with the time frames given by Mr. Tedder regarding the original issuance of and extensions of the applicant's permits by the County. Mr. Arthur Cummings was the County official who made a decision not to grant anymore extensions for the applicant's project in 1993. In response to a question from Mr. C. Williams, Mrs. Lohr said both the development permit and the building permit were revoked. Mrs. Lohr stated that the County went through the standard administrative process in revoking the applicant's permits and issued its ruling, nothing at all happened again until 2000 when the applicant's vested rights question was raised and the applicant's litigation against the County was initiated. Mrs. Lohr noted that the applicant's litigation regarding its permits wasn't initiated until after the County's dock ordinance was in place.

In response to a question from Mr. C. Williams, who asked when it was determined that the County's decision in 1994 was incorrect, Mrs. Lohr said she thought it was in 2003.

Mr. E. Williams asked Mrs. Lohr if the County, in 2000, had indicated to the appellant that he lost his rights because he didn't make the appeal sooner, and Mrs. Lohr answered that she did not know, and did not have any idea if that issue was raised.

Ms. Austin stated that on May 23, 2000, the applicant came to the County's Development Review Team and requested that Permit #1649 be reinstated, which was the development permit that was granted in 1988 to build the restaurant. Mr. C. Williams asked Ms. Austin if the applicant came to the Zoning Board of Appeals in 2000, and Ms. Austin responded that he did not; rather, he came to the Development Review Team in 2000. Mr. C. Williams asked Ms. Austin if the Development Review Team refused to reinstate the applicant's permit, and she said yes, and that the Development Review Team suggested that the applicant go through the County's vested rights determination process.

Mrs. Lohr stated that Judge Finney did not hear the vested rights determination in his capacity as a Supreme Court judge. Mrs. Lohr argued that the Board can issue a variance to go outside the ordinance to some extent, but that the applicant is asking for the Board to allow a commercial dock on a small tidal creek, when the ordinance specifically says that a commercial dock on a small tidal creek has to be for a noncommercial use unless it's in an area zoned Commercial Fishing Village. Mrs. Lohr stated that she doesn't believe that the Board has the authority to grant a variance for a commercial dock on a small tidal creek.

Mr. C. Williams stated that to him, the issue is that the applicant applied for a commercial dock permit during the period his development permit was valid, and he would have gotten the commercial dock permit from OCRM if the County had not revoked his permits.

Mr. E. Williams called for a brief recess at 7:04 p.m. The meeting was called back to order at 7:12 p.m.

Ms. Elizabeth Dieck, Chief Counsel for OCRM, asked the Board to direct all questions about DHEC's policies to Mr. George Madlinger.

There being no further comments from the applicant or the County and no further questions from the Board, Mr. E. Williams called for public comment, and limited the comments to three minutes each.

Mrs. Angela Fulkert, Myrtle Street at Buckingham Landing, explained to the Board that she is a person who has been stuck in the mud where the applicant's dock is to be located. She believes that one thing that's being overlooked is that this particular channel coming into the public landing is a very tricky channel that is difficult to navigate, and at low tide, all of the water is practically gone. Mrs. Fulkert is concerned about the patrons of the restaurant using the dock who are not familiar with the area could cause a problem and create more traffic in the area. Mrs. Fulkert stated that she's lived in the Buckingham community since 1983, and is familiar with the

development activity on the applicant's property, which was overgrown and sat for many years until they heard that somebody wanted to reinstate the permit. Mrs. Fulkert stated that she feels that the County was doing their job in trying to protect the people in the community and the voters, and that she thinks if the applicant puts a commercial dock on the small tidal creek, and if there are patrons coming up to the dock and creating a blockage, then the applicant is infringing on the rights of the public.

There being no further public comments, Mr. E. Williams closed the public comment portion of the hearing.

Mr. C. Williams asked Mr. Madlinger if OCRM would have issued the applicant's dock permit in the 1990's when he applied for it if the County had not revoked the applicant's permits, and Mr. Madlinger responded that yes, OCRM would have issued the dock permit.

In response to a question from Mr. Bootle, Mr. Madlinger stated that under OCRM's guidelines and criteria, the applicant's dock is a commercial dock.

MOTION: Mr. LeRoy moved to approve the dock variance as requested, on the basis that if the original building permit had not been withdrawn or hindered, the dock would either have been constructed prior to the County's ordinance, or it would have been in place now, as planned. Mr. Dinkins seconded the motion. Mr. C. Williams stated, that he was struck by what appears to be the equities of the situation; it seems that Justice Finney's order ruled that the County was wrong to revoke the extension of the applicant's building permit and development permit in 1993, and that it would seem that when Justice Finney ruled that way, it all related back to that point. Mr. C. Williams also noted that according to Mr. Madlinger's testimony, it's likely that if the applicant's permit application to OCRM for the dock had gone forward in the 1990's, OCRM would have approved it, and there would have been a dock there for the past 15 – 17 years or so. **The motion passed 3 to 2 (FOR: Dinkins, LeRoy, C. Williams; OPPOSED: Bootle, E. Williams).**

BULL POINT, LLC – LOTS 77 & 78 (APPEAL)

Ms. Frances Cantwell, attorney for Stancel Kirkland and Bull Point, LLC, presented her case to the Board, and introduced into the record the appeal application form, as well as Judge Kemmerlin's ruling, which is the basis of the appeal. Ms. Cantwell stated that this request is an appeal, not a variance, regarding the determination of the Zoning Administrator to issue a stop work order to stop the construction of a joint-use dock at Lots 77 & 78 in the Bull Point Subdivision. Ms. Cantwell argued that the Zoning Administrator made a mistake in judgment, and the Zoning Administrator erred in applying the law of this case, as interpreted by Judge Kemmerlin, as it applies to docks in the Bull Point Subdivision. Ms. Cantwell stated that in the late 1990's as part of the application through OCRM, a dock master plan for Bull Point was approved by OCRM, showing the docks that were to be constructed. Even though there was no requirement

that a dock plan be submitted as part of the County's subdivision approval process for Bull Point, County requested that Mr. Kirkland still file the dock plan with the County, and Mr. Kirkland complied with that request. When the County enacted its dock ordinance in May, 2000, it was determined that any dock permit application that had been filed with OCRM prior to the effective date of the dock ordinance would be processed solely in accordance with OCRM criteria. Mr. Kirkland requested an administrative interpretation from Mr. Walter Fielding, the County Zoning Administrator, as to how the County's dock ordinance would be applied to his docks in Bull Point, and Mr. Fielding, after consultation with the County attorney and County staff, issued an order saying applications on file with OCRM as of the effective date of the dock ordinance are exempt from County review. Ms. Cantwell stated that the County later tried to change Mr. Fielding's interpretation, and that is when the case went before Judge Kemmerlin. Judge Kemmerlin ruled that Mr. Fielding's administrative interpretation was properly rendered, and was consistent with agreement between the County and OCRM regarding the applicability of the County's dock ordinance; and that dock permit applications on file with OCRM as of the date the dock ordinance went into effect were exempt from the County's dock ordinance. Judge Kemmerlin enjoined the County from applying the dock ordinance regulations to Bull Point.

Ms. Cantwell stated that in 2004, Bull Point made a corporate decision to try to encourage joint-use docks at Bull Point that would result in fewer docks along the creek, and would result in less square footage of docks. Mr. Kirkland applied to OCRM to amend the existing dock permits for Lots 77 & 78. The permit for Lot 77 was issued prior to May 2000, and therefore, under Judge Kemmerlin's order, Mr. Fielding's ruling, and the agreement between OCRM and the County staff, that the permit was not subject to the County's review. Ms. Cantwell stated that her position is that the Zoning Administrator made a mistake in how she interpreted Judge Kemmerlin's order, and how that order applied to the docks in Bull Point. Ms. Cantwell argued that Judge Kemmerlin enjoined the County from applying the provisions of the dock ordinance to all of Bull Point Subdivision, because in reliance on Mr. Fielding's ruling Bull Point proceeded with the expense of its development and the sale of lots based upon Mr. Fielding's administrative interpretation; and that the order states that Bull Point and the lot owners in Bull Point were exempt from the requirements of the County dock regulations because of Mr. Fielding's administrative interpretation, and because the dock permits or applications predated the enactment of the County's dock ordinance. Ms. Cantwell respectfully requested that the Board reverse the decision of the Zoning Administrator, and lift the stop work order.

In response to a question from Mr. Dinkins about the length of the docks as originally permitted for Lots 77 & 78, Ms. Cantwell stated that the dock for Lot 77 was less than 300 feet, but the dock for Lot 78 was longer than 300 feet. Ms. Austin stated that the length of the dock permitted for Lot 77 was 225 feet, plus or minus the pier head; and the length of the dock permitted for Lot 78 was 535 feet.

In response to questions from Mr. C. Williams, Ms. Cantwell confirmed that Lot 77 had a valid permit issued by OCRM at the time of the County's enactment of the dock

ordinance, and Lot 78 had a pending application for a permit with OCRM at the time of the County's enactment of the dock ordinance.

Mrs. Mary Lohr, attorney for Beaufort County, argued the appeal for the County, and explained to the Board that she doesn't agree with Ms. Cantwell view that every lot in Bull Point was covered in Judge Kemmerlin's order; instead, she believes that Judge Kemmerlin was addressing specific lots in Bull Point. Mrs. Lohr agreed that because of the pending permit application with OCRM for a dock on Lot 78, it did not have to comply with the County's dock ordinance; and that because the permit from OCRM for a dock on Lot 77 was in existence prior to the enactment of the County's dock ordinance, it did not have to comply with the County's dock ordinance.

Mrs. Lohr argued that the County's dock ordinance and the agreement between the County staff and OCRM as to applicability of the dock ordinance do not address amendments of dock permits issued by OCRM, but rather address only the permit. Mrs. Lohr agreed that an applicant may construct a dock in compliance with a permit from OCRM that was either issued prior to or applied for prior to the enactment of the County's dock ordinance, as long as the permit remains valid. Mrs. Lohr stated, that a neighbor complained to the County that the amendment by OCRM of the dock permit for LOT 77 created a hazard, because it extends out approximately 197 feet in the creek. Mrs. Lohr stated that the County's position is that the amendment by OCRM of the dock permit for Lot 77, which allowed for a dock approximately four times longer than what was originally approved by OCRM, and the conversion of that permit from a single use dock of only Lot 77 to a joint-use dock for Lots 77 and 78, was of such as nature that the County's dock ordinance should apply.

Mr. E. Williams asked Mrs. Lohr when OCRM amended the original permit, and Mrs. Lohr said it was in 2004. However, Mrs. Lohr argued that Ms. Austin had no knowledge of the OCRM's amendment of the dock permit until it came to her attention by a neighbor who reported it. Mrs. Lohr stated that OCRM amended the dock permit for Lot 77, and the dock permit for Lot 78 was cancelled, and that when the Lot 78 dock permit was cancelled, the Lot 77 dock became a joint-use dock for Lots 77 and 78.

In response to a question from Mr. Dinkins as to a County have a dock master plan, Mrs. Lohr deferred to Ms. Austin, who stated that she did not find a dock master plan for this phase in Bull Point. Mr. Dinkins asked Ms. Cantwell if Bull Point – Phase 2 as a dock master plan, and Ms. Cantwell said yes.

Mr. C. Williams noted that Mr. Kirkland's affidavit which is in the record has attached to it a November 10, 2003 letter from Ms. Austin to Mr. Kirkland that states that it certifies that the lots listed on the attachment are exempt from the standards of the Beaufort County dock ordinance, and it includes Lots 77 and 78.

Mr. LeRoy stated that if the lots were not subject to the County's requirement, it would only be subjected to the OCRM limitation.

Mrs. Lohr stated that the County's position is, that there had been an amendment by OCRM of the dock permit for Lot 77 so substantial, that it changed the nature of the permit, and required it to be permitted under the County's ordinance.

Ms. Austin stated that she never saw a public notice from OCRM, and she did not know that there was an amendment to the permit for a dock on Lot 77, until it was being constructed.

Mr. C. Williams noted that Mrs. Lohr and Ms. Cantwell have both agreed that Lot 77 had a valid dock permit from OCRM in place at the time the County enacted the dock ordinance, and asked Mr. George Madlinger of OCRM if OCRM also agreed. Mr. Madlinger stated that OCRM agrees that Lot 77 had a valid permit at the time the County's dock ordinance was enacted.

Mr. C. Williams asked Mr. Madlinger if OCRM had a standard procedure for the amendment of a dock permit, and if that procedure was followed for the amendment of the permit for Lot 77. Mr. Madlinger confirmed that OCRM does follow a standard procedure for such amendments, which includes a public notice and the opportunity for the public to comment on the amendment; and that OCRM's standard procedure, including the public notice of the amendment, was followed for the 2004 amendment of the dock permit for Lot 77.

Ms. Austin stated that Judge Kemmerlin's ruling did not say that Lot 77 was exempt from the dock ordinance; instead, Lot 77 was exempt because it had a dock permit from OCRM in January, 2000.

Mr. E. Williams asked Ms. Austin if only Lot 78 is exempt from the County's dock ordinance, and Ms. Austin answered yes.

In response to a question from Mr. C. Williams, Ms. Austin confirmed that the County acknowledges that Lot 77 was exempt anyway from the County's dock ordinance. Ms. Austin stated that the County has issued all permits for the lots in Bull Point that OCRM issued a dock permit for prior to May 2000, that Mr. Kirkland accepted the permits, and that Mr. Kirkland was told that once the docks were built, as a condition, he must contact the County to ensure they have met the standards.

Mr. C. Williams stated that it seems that Mrs. Lohr and Ms. Cantwell both agree that the main issue in this appeal is the nature of the amendment of the OCRM dock permit; and that it appears that everyone agrees that it's still the original permit, which has been amended, and that Mr. Madlinger testified that there is a standard procedure that OCRM follows for amendments, that it went out on public notice and once that public notice goes out, everybody is presumed to know about it. Mr. Williams stated that it also seemed that amendments to OCRM dock permits were never discussed with respect to the permits that were exempt from the County's dock ordinance, or are covered by Judge Kemmerlin's order; however, that should not be an issue, because

OCRM has a standard procedure for amendment of permits, and you need to assume that any permit issued by OCRM is subject to amendment under the OCRM regulations.

MOTION: Mr. C. Williams moved that, based on his comments regarding the amendment of OCRM permits, the Board overturn the decision of the Zoning Administrator in this case, and hold that the construction of the dock, pursuant to the permit that's existing for Lot 77 can proceed, as it is exempt from regulation by the County's dock ordinance. Mr. Dinkins seconded the motion. The motion passed 3 to 2 (FOR: Dinkins, LeRoy, C. Williams; OPPOSED: Bootle, E. Williams).

RULES & PROCEDURES

Mr. E. Williams stated that the Board will review the Rules & Procedures at a later date.

ADJOURNMENT

MOTION: There being no further business to come before the Board, Mr. E. Williams moved to adjourn. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, LeRoy, C. Williams, and E. Williams).

The meeting adjourned at approximately 8:24 p.m.