



COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development
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The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, October 23, 2008, in the 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. Claude Dinkins

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

MEMBERS ABSENT

Mr. Kevin Mack

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mr. Arthur Cumming, Director, Building Codes
Mrs. Tamekia Judge, Zoning Analyst I
Mr. Harold Crosby, Building Inspector

ATTORNEY FOR COUNTY

Mr. Robert Achurch

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, and a moment of silence in honor of our country's military service members.

ADOPTION OF AGENDA:

Mr. Gasparini questioned if all of the projects were properly noticed.

Ms. Austin replied that the Caudle's project was not properly noticed.

Mr. Gasparini stated that the Caudle's project - # 5 and 6 will be removed from the agenda.

MOTION: Mr. LeRoy made a motion to adopt the agenda with the correction stated above by Mr. Gasparini. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, LeRoy, Gasparini, C. Williams, and E. Williams).

REVIEW OF MINUTES:

Mr. Gasparini stated that he did not receive minutes for the last meeting, since the meeting was carried over until today.

Mr. Chester Williams stated that he had received the minutes late yesterday afternoon, and has not had a chance to review said minutes.

Mr. Gasparini stated that the board has not had a chance to review the minutes; therefore, the board will not be able to adopt them today.

"Professionally we serve; Personally we care!"

MOTION: Mr. Chester Williams made a motion to defer the adoption of the minutes until the next scheduled meeting. Mr. Dinkins stated that the special meeting will be added to the September 25, 2008 minutes. Mr. Dinkins seconded the motion. The motion passed unanimously. (FOR: Bootle, Dinkins, LeRoy, C. Williams, and E. Williams; Gasparini).

Mr. Gasparini explained the rules to the applicants and members of the public present, that the applicant has ten minutes to present his/her case to the board; the time limit for public comment is 3 minutes each, and is limited to variances and special use permits.

Charles Ferguson's Administrative Appeal – The Budget Inn/Waterama Hotel

Attorney Allyson Eversole, representative for Charles Ferguson, and Attorney Robert Achurch, representative for the County.

Attorney Eversole requested that the board not hear the case; and stated they would like to meet with the Development Review Team to present additional information for their review.

Attorney Achurch stated that the county had no objection to the request.

The board agreed that the case be remanded back to the Development Review Team.

JOHN WILKINS – SIDE YARD VARIANCE

Mr. Gasparini asked, if notices were in order. Staff answered, yes.

Mr. Wilkins stated that he is representing the applicant, Partnership Harborside Bank. He also cited Section 106-522 on granting variances, and stated that the property is in foreclosure.

Mr. Wilkins explained that the applicant inherited the hardship and is not seeking the variance for one foot, so the constructed house can remain at 17.1 feet vice 18'.

Board member Chester Williams stated that he knows the representative, but he will not recuse himself from the case. He then went on to ask the applicant about a foundation survey.

Mr. Wilkins stated that he had not seen a foundation survey.

Mr. Dinkins questioned the Building Codes Director, Arthur Cummings about the inspection record for the house.

Mr. Harold Crosby, Building Inspector, stated that an inspector checked the project numerous times, and told the house-builder to obtain a foundation survey, which was never received by the Building Codes Department until a month ago.

Mr. Bootle questioned, "Who authorized the house-builder to proceed with the construction?"

Mr. Crosby stated that numerous inspections were conducted and the house-builder was never told to cease and desist.

Ms. Austin stated that this lot was created under the 1999 ordinance; therefore, this violation is creating a non-conforming situation, and should be made to meet the standards approved by the subdivision approval.

Mr. Chester Williams stated that the applicant should explore working with the adjacent property owner to try to find a remedy for the violation. Mr. C. Williams also asked, if the adjacent property owner is willing to work with the applicant, would the decision be feasible to the county?

Ms. Austin answered, "Yes, as long as the remedy does not reduce the acreage of lot 2 to under one acre."

Mr. Gasparini stated for the record, that the board has received a letter from a neighbor Michelle J. Smith objecting to the variance being granted and other issues that the board has no jurisdiction.

Mr. Gasparini stated, the board is willing to put this case over for one month, to give the applicant time to meet with the adjacent property owner. If the issue cannot be worked, the applicant can return to the Board at the next meeting. There was no objection from the other board members.

BEAUFORT YACHT AND SAILING CLUB – BUFFER/SETBACK VARIANCE

Mr. Matt Cook stated he was the representative for the yacht club's board members, and is requesting a variance on the property to place a deck within the OCRM critical line buffer and setback. He also stated that the proposed deck will protect the trees in this location.

Mr. Chester Williams stated the application is incomplete because it does not explain how the request for the variance meets the criteria for a variance. He also stated that he has a difficult time when an applicant is unable to present the case, and explain how the request meets Section 106-522 of the ordinance. He state that the write-up is incomplete, and a detail narrative is needed.

Mr. Edgar Williams agreed with Chester Williams' statement.

Mr. Gasparini explained to the applicant that the application is handed out to each applicant to the ZBOA stating what is required to submit for a variance.

Mr. Cook stated he is will resubmit a detailed narrative for the next meeting.

Mr. Gasparini stated, the board is willing to put this case over for one month, to give the applicant time to meet with the adjacent property owner. If the issue cannot be resolved, the applicant may return to the Board at the next meeting. There was no objection from the other board members.

Mr. Chester Williams wants the record to reflect that whenever an applicant comes before the board, if the application shows that no effort has been made to reflect how the request meets any of the criteria they are addressing, that the board will take action to defer or just deny the request.

Mr. Edgar Williams stated he agrees with Mr. Williams comments and he will also vote to defer or deny the application.

NICHOLAS DUFOUR – SIDE-YARD VARIANCE

Mr. Christopher Cook stated he represents the applicant, and is requesting a variance from the 10' side yard setback. He stated his plans reflect the adjacent houses, and that they do not meet the 10' side yard setback. He stated, when the builder requested the Zoning Permit, he was told by staff, that the ARB is unable to grant a variance that is contrary to the ordinance.

Mr. Cook continued to state that there has been a change of policy, and the intrusion into the setback is less than one percent of the house and is no different from the projection of the houses to the left and right. So, he is now requesting the variance because of the 50' river buffer, and the shape of the lot, and the location of the 26-inch Live Oaks (which they will be saving); the applicant is faced with a hardship, and the approval of the variance would allow the house to be built.

Mr. Williams stated that the survey plat done September 19 of this year, shows that lot 18 is 8.3 feet from the property line, and lot 20 has a structure that is 4.7 feet from the property line; and this lot also has a 50-foot buffer.

Mr. Gasparini stated for the record that staff is recommending approval for this request, with a condition pertaining to the tree.

Mr. Chester Williams went on to state, that for any further submittal, that all of the variance criteria are addressed. He went on to ask about the ARB's approval of the variance.

Mr. Cook explained that the Fripp Island ARB has always approved variances.

Mr. Chester Williams questioned, if the Fripp Island ARB has approved this variance.

Mr. Cook answered, "Yes".

Mr. Gasparini stated that the board has read Ms. Austin's recommendation, and that she has recommended approval with the condition, that an arborist recommends how the 26 inch Live Oak tree will be protected during construction.

Mr. Darryl Sample stated that he lives on the side, to which the variance is being requested, and the proposed house is too large for the lot, and will be three stories, and will encroach on his privacy, and will create damage to his property and he opposes the granting of the variance. Mr. Sample also stated that the other neighbor, Janis S. Mathis, Trustee has written a letter also opposing the granting of the variance, he read the letter for the record.

Mr. Chester Williams asked Mr. Sample, if he has seen the survey and does it correctly depict the location of his house to the property line?

Mr. Sample stated that, he imagined that it is accurate, and the way the house is skewed on the property brings it closer to his house.

Mr. Williams stated that, the proposed house is closer to the street than Mr. Sample's house is located.

Ms. Austin explained that, these lots were created back in the 70's and were created as patio lots where one side yard setback is 7-feet, and the other is 3 feet, which will create 10-feet between each lot.

Mr. C. Williams wanted to know which section of the code imposes the 10' setback requirement.

Ms. Austin stated Section 106-7 (1) (a). She went on to explain that if the subdivision has no covenants listing the setbacks, then the lots must meet the setback in the above section.

Mr. Sample questioned, if the size of the proposed house is too large for the lot, and also wanted to know if the 50' setback to the rear was a requirement, and can the house be pulled back to the rear.

Mr. Chester Williams answered that, the board is much more prone to give a variance for the side yard setback than to the river buffer. He continued to state that he saw the attempt to move the house away from the critical line to be the major reason for granting the variance, because an encroachment into the side yard setback is far less damaging to the natural environment than an encroachment into the critical line setback.

Mr. Gasparini wanted to know, if the review took into consideration the five-houses to the left and right rule for the size of the house.

Ms. Austin answered, "No, as long as the applicant meets the 50-foot buffer requirement, they are allowed to build the size house that they desire."

Mr. Chester Williams commended the applicant for meeting the critical line buffer requirement and preserving the trees on the site.

There being no further comments from the applicant, the County, or the public and no further questions from the Board.

MOTION: Mr. Chester Williams made a motion to approve the variance request, He cited that the request meets the criteria for granting a variance from Section 106-522 of the Beaufort County Zoning & Development Standards Ordinance, and that there are extraordinary or exceptional conditions that pertains to the property; and without the variance the use of the property would be unreasonably restricted and that the variance that is granted is the minimum that is necessary in order to accomplish the end result the applicant seeks; and, also, to impose the condition on the approval that the applicant submits an Arborist recommendation to protect the 26-inch Live Oak on the lot.

Mr. Gasparini asked, "Will this be a condition for receiving the development permit."

Mr. Chester Williams clarified, that the arborist letter is a condition on the variance, if the condition is violated, then the variance goes away.

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

Mr. Gasparini explained for the record to Mr. Williams, that in the earlier adjourned meeting from September 25, 2008 data entry of a set of rules for the board. These rules will be presented to the board by Ms. Austin for final review at an upcoming meeting. He also explained that the rules did not include a "gag order".

OLD BUSINESS:

Mr. Chester Williams brought forward the order for the Roller Dock Order.

Mr. Gasparini stated that Attorney David Tedder (For Wilbur Roller) and Attorney Robert Achurch (For County) has agreed to work out an appropriate order for signature and will contact Mr. Williams.

Mr. Williams stated for the record that, Thursday of last week, he received an email from Ms. Austin with a revised proposed order attached. Yesterday he received a phone call from Mr. Tedder and stated that he had heard that there was a revised order, he had not seen the order, so he forwarded Ms. Austin's email to Mr. Tedder and he also forwarded the email to the County's Attorney.

Ms. Austin stated that the order has been changed since that last email, and copies of the changed order is in the folder, but that will not be the order since there will be changes.

ADJOURNMENT:

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

The meeting adjourned at approximately 6:40 p.m.