

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, February 26, 2009, 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. Philip LeRoy  
Mr. Chester Williams

Mr. Bill Bootle  
Mr. Claude Dinkins  
Mr. Kevin Mack

**MEMBERS ABSENT**

None

**STAFF PRESENT**

Ms. Hillary Austin, Zoning Administrator  
Mr. Tony Criscitiello, Planning Director  
Mrs. Tamekia Judge, Zoning Analyst I

**CALL TO ORDER:** Mr. Gasparini called the meeting to order at 5:10 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.

**REVIEW OF AGENDA:**

Ms. Austin stated, that on item #9, the section number should be changed from 106-432 (C)(3) to 106-1617 of the zoning ordinance.

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

**REVIEW OF MINUTES:**

**MOTION:** Mr. Chester Williams made a motion to adopt the January 22<sup>nd</sup>, 2009 minutes as submitted. Mr. Bootle seconded the motion. The motion passed (FOR: Bootle, Dinkins, C. Williams, and E. Williams; ABSTAINED: Gasparini, LeRoy, and Mack).

Mr. Chester Williams informed the board, that the November 13<sup>th</sup>, 2008 minutes were deferred at the last meeting, and he doesn't have a copy of the minutes. Mr. Williams asked Ms. Austin, to put a copy of the minutes in the March packet.

*Mr. Gasparini explained to the applicants and members of the public present at the meeting, that Ms. Austin will present the application without taking a position on the case, then the applicant will present his/her case to the board.*

### **WINDMILL HARBOUR MARINA ASSOCIATION (VARIANCE)**

Mr. Rick Byrd, applicant explained to the board, that he's requesting a setback variance from section 106-1845 (4)(C) of the Beaufort County Zoning & Development Standards Ordinance. Mr. Byrd stated, that on October 2006, the Bluffton Fire Marshall determined, that due to the build-out homes around the marina, and the increase in the size of fire trucks, the access to the marina promenade, docks, and boats, are no longer adequate. Mr. Byrd stated, that a study was conducted, that resulted in two different access points; it was determined that both access points would not work. One result was, that the grade was too steep for the fire trucks to get to the marina, and the other result was, that the fire trucks would not be able to make the turn to get to the marina promenade. Mr. Byrd stated, that himself, a member of the Marina Association Board of Directors, Harbormaster, Bluffton Fire Department, and a representative from Thomas & Hutton Engineering Company jointly agreed that a Marina Fast Attach Fire Fighting System would alleviate the access problem. Mr. Byrd showed the board members pictures of the system, and explained that it's a big fire cart with fire fighter equipment; it was deemed to be the best possible solution for their situation. Mr. Byrd explained to the board, that they had an existing pump house, which was 29' from the bulkhead, and they wanted to take an additional two feet, so the building setback could be 27 feet from the bulkhead.

Mr. LeRoy asked Mr. Byrd, "Is the area currently paved where the building will be located?"

Mr. Byrd answered, "No, it is not a paved area".

Mr. LeRoy asked Mr. Byrd, "What's on the back side of the retaining wall?"

Mr. Byrd answered, "It's a piece of open property, that 's owned by the Windmill Harbour Marina Association".

Mr. E. Williams asked Mr. Byrd, "Will the building affect the drainage in any way?"

Mr. Byrd answered, "The drainage will not be changed at all".

Mr. Gasparini asked Ms. Austin, "Do you want to add any additional comments to the staff recommendation?"

Ms. Austin answered, "No".

Mr. Gasparini explained to the applicant, that staff recommended approval of this variance, with the condition that all roof runoff be diverted to the existing storm drainage.

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

**MOTION: Mr. Edgar Williams made a motion, to approve the variance as submitted, with the condition that all runoff be diverted to the existing storm drainage. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, LeRoy, Mack, C. Williams, and E. Williams).**

### **BEAUFORT ACADEMY (SPECIAL USE PERMIT)**

Mr. Michael Brock, Ward Edwards Engineering explained to the board, that the school is existing, and the buildings have been on the property for a very long time. Mr. Brock stated, that the school wanted to build a 5,000 square foot classroom building for special education, within an existing site. Mr. Brock stated, that through the process of going through the Corridor Review Board, one of the requirements was to submit a master plan for the entire site. Mr. Brock stated, that by going through the process several times with discussions, they came up with an overall good master plan. The master plan provides for future additional growth, for additional educational and athletic facilities, and to preserve natural landscape buffering along the property lines, where adjacent uses are residential. Mr. Brock stated, that the money is not at their disposal to build everything on the master plan; the growth of the school is in the future, approximately 10, 20, 30, or more years from now. Mr. Brock stated, that right now, the special use provision is the process they need to go through in order to get the one building permitted. The school understands, that any additional buildings would need to go through the same process, because it's within the Corridor Overlay District, and it has to go through the Development Review Team for approval of any proposed buildings. Mr. Brock stated, that there is no increase in traffic, and no land that's going to be disturbed, because there's an existing trailer where the proposed building will be located.

Mr. Gasparini asked Ms. Austin, "Is this an amendment through the special use process for the school?"

Ms. Austin stated, that the reason for the special use is, that the school cannot build anything else on the site without going through the special use process. Ms. Austin stated, that the Development Review Team requested a master plan for the entire site, so when the school wanted to place a proposed building on the site, they wouldn't have to come back to the board. Ms. Austin stated, that they are making this use conforming through the special use process, so that the school could expand without getting tied up with an expansion process. The master plan would allow the school to build the future buildings, which are located on the master plan, 20 years from now if they wanted to.

Mr. Gasparini asked Ms. Austin, "Since the school is existing, did the county zone it around the school?"

Ms. Austin answered, "No, the school was not permitted in that particular zoning district, but it's grandfathered".

Mr. Tony Criscitiello explained to the board, that this coming Monday night, the Planning Commission will make schools legal in the Expanded Home Office District. Mr. Criscitiello stated, that the Planning Commission is taking up the issue next week, and forwarding it to County Council to make schools a permitted use in that zoning district; the process usually takes approximately four months.

Mr. C. Williams asked Mr. Criscitiello, "Will the Planning Commission make the schools a permitted use, or a special use?"

Mr. Criscitiello answered, "A special use."

Mr. C. Williams asked Mr. Criscitiello, "So, that particular use will have to still come back before this board?"

Mr. Criscitiello answered, "That's correct".

Mr. Gasparini stated, that it appears to be a whole lot of parking, approximately 330 parking spaces; and all that's required is 100 plus parking spaces.

Mr. Brock stated, that this school is also a high school, which is going to continue to grow, as well as the number of teachers, and a Performing Arts building. Mr. Brock stated, that the Performing Arts Center will not only be used for the school, but it would also be used for the community; the building may be used for plays, musicals, band concerts, etc., which would need around 300-400 parking spaces. The school has an Athletic Center, which is currently having problems with the lack of parking. The performing arts center will be built further down the road.

Ms. Austin stated, that when the buildings get permitted, the parking would be approved at that time. Ms. Austin stated, that the Zoning Board of Appeals is only reviewing the master plan layout, but all of the buildings will be reviewed and approved, prior to a permit being issued.

Mr. Gasparini asked Ms. Austin, "Why wasn't a Community Impact Statement required by the Development Review Team?"

Ms. Austin stated, that because the school is already existing, and the special use request is an expansion of an existing school, it did not require a Community Impact Statement.

Mr. Gasparini stated, that this campus is going to be substantially larger, with the Performing Arts Center; it seems that if the school was to appear six months from now, it would have a great impact on the community.

Ms. Austin stated, that prior to the approval of the buildings, the Development Review Team would look at the site, and decide what's going to be needed.

Mr. Brock stated, that since they don't know when the buildings will be built, a Community Impact Statement would not be feasible at this time, since the BMP's change approximately every ten years. Mr. Brock stated, that he would be okay, if the board wants to make it a condition of his approval, to submit a Community Impact Statement, prior to the approval of the buildings.

*There being no further comments from the applicant or the County, and no further questions from the Board, Mr. Gasparini called for public comment, and limited the comments to three (3) minutes each.*

Mr. Dennis Bywater stated to the board, that he has some concerns regarding the drainage for the entire area, the buffer area, where a lot of kids stand around his fence by the pond, the parking area, and the increase of the size and the noise level on the site.

Mr. C. Williams asked Mr. Brock, "Have you seen the Development Review Team's recommendation, which states, that the applicant shall ensure the Fire Marshall approves the proposed access point for compliance?"

Mr. Brock answered, "Yes".

Mr. C. Williams asked Mr. Brock, "Is that in reference to the two EMS access points that seem to be in the neighborhood of the football and soccer fields?"

Mr. Brock answered, "That's correct".

**MOTION: Mr. Chester Williams made a motion, to adopt the findings and the recommendation from the Development Review Team, dated February 23, 2009; and approve the special use permit with the master plan, with the conditions, that the applicant ensure the Fire Marshall approves the proposed access point for compliance, those being the access points shown on the master plan dated February 4, 2009. The ZBOA gives the Development Review Team the authority to require one or more Community Impact Statements for the future proposed development of the proposed buildings that's shown on the master plan, with respect to the traffic that will be generated by the future uses. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Gasparini, LeRoy, Mack, C. Williams, and E. Williams).**

#### **FOUR SEASONS – PHASE II (VARIANCE)**

Mr. David Karlyk explained to the board, that in 2005, his client purchased an 8.8 acre land-locked piece of property located behind the Four Seasons Residential Storage

Facility, which is in between Victory Baptist Church and the Antique Car Dealership. Mr. Karyl stated, that when his applicant purchased the property, there was an existing drainage ditch that bisected the property; the applicant made an agreement with Beaufort County to relocate the drainage ditch to the rear of the property line, and in exchange they would give the county a 30' drainage easement for the ditch along the rear of the property. Mr. Karyl stated, that in 2006, the next step was to get the property rezoned in order to stay in business; after the rezoning, the applicant hired his company to do the engineering for the site. Mr. Karyl stated, that in 2007, the applicant received a conceptual site approval from the Development Review Team, to add three more residential storage units; then they received the Corridor Review Board approval. After they received the Corridor Review Board approval, they started the process of getting the final permits through different State agencies. One of the permits requested, was the OCRM Land Disturbance and Storm Water Management Permit; while OCRM was reviewing the project, they had requested a letter from the Army Corp of Engineers stating, that there were no wetlands on the property. Mr. Karyl stated, that it was discovered that the ditch that Beaufort County had relocated was considered a fresh water wetland, and OCRM would not issue the final storm water permit for the project until the wetland issue was resolved. The applicant hired a wetland consultant to get the wetland delineation changed, which took several months; then the wetland issue was finally resolved. Mr. Karyl stated, that when they went before the Development Review Team for final approval, it was determined that the conceptual site plan approval had changed; since the approval expired, the buffer had increased from 15 feet to 50 feet, per the CRB standards. Mr. Karyl stated, that he still have a valid CRB approval, but since the conceptual approval expired, it created a non-conforming situation. The applicant went back to the Development Review Team, and it was determined that there was nothing they could do to relieve them of the CRB standards; the Development Review Team told him, that the best way to get this resolved is to go before the Zoning Board of Appeals to request a variance to modulate the buffer back to what was originally approved. Mr. Karyl stated, that if they did not have a problem with the wetlands, they would have received all of their State permits, and the project would have already been started.

Mr. Bootle asked Mr. Karyl, "Whose responsibility was it to get a permit?"

Mr. Karyl answered, "It was Carolina Engineering's responsibility".

Mr. LeRoy asked Mr. Karyl, "When was the ordinance changed to add the CRB buffers?"

Mr. Karyl answered, "Between 2007 and 2008".

Mr. Bootle asked Mr. Karyl, "Did the county ever notify you that the conceptual approval was about to expire?"

Mr. Karyl answered, "No sir".

Mr. C. Williams stated, that he's concerned with Section 106-432 of the Zoning & Development Standards Ordinance, and whether or not those provisions is under the

vested rights section of the State law. Mr. Williams stated, that he understands that under the State law, it allows approval up to two years, but the code of the ZDSO states, one year. Mr. Williams stated, that the State gave all of the County's a certain point of time after the adoption of the vested rights, to adopt that statute in their ordinance. Mr. Williams asked Mr. Criscitiello, "Why wasn't the applicants' original approval still good under the vested rights act?"

Mr. Criscitiello stated, that how the ordinance is written, it's supposed to reflect State law, and the county created a policy that permits a certain type of approval, whether it's conceptual or any other approval. Mr. Criscitiello stated, that if there's an error in the ordinance, he will correct it.

Mr. Gasparini asked Mr. Criscitiello, "If the time limit happens to be two years, would the applicant be within the two years of approval?"

Mr. Criscitiello answered, "Yes, I believe so".

Ms. Austin stated, that the applicant did not receive a development permit, he received conceptual approval. Ms. Austin stated, that the applicant's two years does not start until he receives a development permit.

Mr. C. Williams stated, that he's not sure he agrees with that statement. Mr. Williams stated, that certain approvals in Table 106-432 of the zoning ordinance are not complying with the State statues.

Mr. Criscitiello stated, that if there's a defect in the zoning ordinance, he will check and find out.

Mr. E. Williams asked, "Does the time start at conceptual, or does it start when the applicant gets final approval?"

Mr. Criscitiello stated, that based on the current zoning ordinance, the approval for conceptual review is for one year.

Mr. C. Williams asked Mr. Karyl, "Would you be willing to ask this board to continue your case until next month, to allow the county to review the State Statues?"

Mr. Karyl answered, "Yes sir".

Mr. Bootle stated, that he had two questions. Mr. Bootle asked, "How did this happen, and why didn't we have some sort of notification, letting the applicant know that the approval will expire?"

Mr. Criscitiello stated, that this situation happened, because the approval had expired, and it is the applicant's responsibility to request an extension. Mr. Criscitiello stated, that he believes that the county is not helping the situation, and he intend to initiate a ordinance amendment to require that it would be a system, so the applicant does not

have to spend time and money going before the Development Review Team for approval, just to find out their approval time has expired.

Mr. C. Williams stated, that it is admirable for the county to notify applicant's that their approval has expired, but he doesn't believe that the county staff has an obligation to check permits for expiration dates, and notify the applicant that their permit has expired.

Mr. E. Williams stated, that he doesn't believe that the applicant has a right to be notified by the county, because the county will be bombarded, and will not be able to do other responsibilities. Mr. Williams stated, that he think that the applicant should be informed in the beginning of approval, the expiration date of approval, but if they don't react to the request for an extension, he doesn't believe that the county should react to the approval expiring.

Mr. Gasparini stated, that he agrees that the county does not have an affirmative obligation to advise people, but he feels that it would be a great courtesy to the citizens, to advise them when their permit will expire. Mr. Gasparini stated, that he believes that it would be an administrative and legal nightmare to create an obligation to advise people, because someone might say that they did not get a letter.

Mr. Criscitiello stated, that he knows that it might be a burden on the Zoning Office to notify the applicant, but he would look at the capability of the county's computer, to create a program for notification.

Mr. LeRoy asked Mr. Karyl, "Did you have to resubmit the application and start the process all over again because the approval had expired?"

Mr. Karyl stated, that they had already submitted their final submittal to the Development Review Team, and was informed that the conceptual approval had expired. Mr. Karyl stated, that the county was kind enough to review the conceptual and final submittal at the same time. Mr. Karyl stated, that at the review, it was determined that the CRB requirements had changed, and they had to conform to the new changes. Mr. Karyl asked the board to defer this application until the county staff has a chance to research their development process.

Mr. Gasparini stated, that the board will defer this application until the next scheduled meeting, so that this project does not carry on forever.

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

Mr. Gasparini stated, that there was public comment for this project. Mr. Gasparini asked Mr. Skeet Von Harten, if he would like to give his public comment tonight, or would he rather give it at the next scheduled meeting?

Mr. Skeet Von Harten stated, that he would like to give it tonight.

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

Mr. Von Harten stated, that he knows the applicant, and he is interested in this project. Mr. Von Harten stated, that the applicant came to him while he was on County Council, and asked for advice regarding the ditch. Mr. Von Harten stated, that he conferred with Mr. Kubic, the County Administrator to make sure that he was not stepping outside of his authority; Mr. Kubic gave him permission, and the applicant and Mr. Bellamy, Public Works Director, got together to resolve the problem regarding the ditch. Mr. Von Harten stated, that it has come down to an error or misinterpretation of law, that they changed the buffers from 15 feet to 50 feet, by order of County Council. Mr. Von Harten stated, that he believes it would be an appropriate decision to approve this application for the 15-foot buffer, instead of the 50-foot buffer.

## **OLD BUSINESS**

Mr. Gasparini asked staff to specifically put the adoption of the Rules & Procedures on next month's agenda.

## **YEARLY ELECTION OF CHAIRMAN/VICE CHAIRMAN**

Ms. Austin stated, that Mr. Gasparini has six (6) votes, and Mr. Chester Williams has one (1) vote for Chairman. Ms. Austin stated, that there was a tie for Vice Chairman; the tie was between Mr. Edgar Williams and Mr. Chester Williams.

Mr. Chester Williams stated, that he will withdraw his name from the ballot.

**Results from ballot:** Chairman – Mr. Gasparini; Vice Chairman – Mr. Edgar Williams.

## **ADJOURNMENT**

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

*The meeting adjourned at approximately 6:30 p.m.*