

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, June 25, 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. Chester Williams

Mr. Claude Dinkins  
Mr. Kevin Mack

**MEMBERS ABSENT**

Mr. Phillip LeRoy

**STAFF PRESENT**

Ms. Hillary Austin, Zoning Administrator  
Mr. Tony Criscitiello, Planning Director  
Mrs. Lisa Glover, Zoning Analyst III

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

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

**REVIEW OF AGENDA:**

Mr. Gasparini stated, that he has two written requests for a continuance, which are items 7 and 9 on the agenda; those items are Duane & Daisy Stuck's River-Buffer variance, and David Berry's Setback variance. Mr. Gasparini stated, that if there's no objection from the board members, he would like to continue those two cases until next month.

**MOTION:** Mr. Chester Williams made a motion to adopt the agenda as amended. Mr. Edgar Williams seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, Mack, C. Williams, and E. Williams).

**REVIEW OF MINUTES:**

**MOTION:** Mr. Dinkins made a motion to adopt the April 23, 2009 minutes as submitted. Mr. Edgar Williams seconded the motion. The motion passed (FOR: Dinkins, Gasparini, Mack, and E. Williams; ABSTAINED: C. Williams).

Mr. C. Williams stated that on page 2; change the spelling of "perview" to "purview".

**MOTION: Mr. Chester Williams made a motion to adopt the May 28, 2009 minutes with the noted correction. Mr. Dinkins seconded the motion. The motion passed (FOR: Dinkins, Gasparini, and C. Williams; ABSTAINED: Mack and E. Williams).**

## **ADOPTION OF REVISED RULES & PROCEDURES**

**MOTION: Mr. Dinkins made a motion to adopt the Rules & Procedures as submitted. Mr. Mack seconded the motion. Mr. C. Williams stated, that there are certain things in the Rules & Procedures that he doesn't particularly care for, and because of that reason, he's going to vote against the Rules & Procedures. Mr. E. Williams stated, that he also has some concerns about the contents in the Rules & Procedures. The motion passed (FOR: Dinkins, Gasparini, Mack, and E. Williams; AGAINST: C. Williams).**

## **HABERSHAM LAND CO – CHEROKEE FARMS (APPEAL/REVISIT)**

Mr. Gasparini explained, that this is an appeal that was carried over from last month's meeting. Mr. Gasparini explained to Mr. E. Williams and Mr. Mack, that since they were not present at last month's meeting, and it is up to them whether or not they participate in this appeal application. Mr. Gasparini stated, that he received some additional information by e-mail from Mr. Kelly on behalf of Habersham Land Company; his understanding is that the State Enabling Statue, along with the Zoning & Development Standards Ordinance requires the board to determine appeals, based on the information that was presented to the Zoning & Development Administrator, when that administrative decision was made. Mr. Gasparini stated, that it is not appropriate to consider more information after the decision was made, and he did not read the information submitted to him by e-mail.

Mr. C. Williams stated, that he would like to know if the new information was presented to Ms. Austin at the time she rendered her decision.

Ms. Austin stated, that she just received the new information; that information was not presented to her at the time she made her decision.

**MOTION: Mr. Chester Williams made a motion to strike the new information from the record, because clearly the county code states, that the board has to base their decision on the information that was available to the decision maker, from whom the appeal is being taken. Mr. Edgar Williams seconded the motion. The motion passed (FOR: Gasparini, Mack, and C. Williams; AGAINST: Dinkins; ABSTAINED: E. Williams).**

Mr. Criscitiello explained to the board, that this application is a revisit on an item that was previously on the agenda, and he trusts that the board has had an opportunity to review the packet. Mr. Criscitiello stated, that this is a request for an administrative interpretation appeal, which was issued by the Zoning Administrator, with the input of the Planning Director and the Staff Attorney. Mr. Criscitiello stated, that once that interpretation was rendered, the applicant decided to appeal that decision to the Zoning

Board of Appeals. Mr. Criscitiello stated, that Cherokee Farms' property is zoned Suburban, and Habersham Land Company's property is zoned Planned Unit Development; the intention of the developer is to create a interlocking mutually complementary community, using the design style and the appearance, and the approach of the Habersham's model in that Planned Unit Development. Mr. Criscitiello stated, that the applicant chose to do so, under the Large Community option in the Suburban zoning district, which allows the applicant to enhance the density, because the density goes from 2 units per acre to 3 units per acre; the site area has to be a minimum of 200 acres. Mr. Criscitiello stated, that the Planning Department made a determination, that combining Cherokee Farms into Habersham Planned Unit Development was a good idea, but the problem was that they had to take into consideration the density in Habersham Phases 1 & 2, and apply that density across the board for the entire 427 acres, which is a combination of Habersham Phase 1 (275 acres), and Habersham Phase 2 (47 acres), which is a total of 322 acres; Cherokee Farms is 105 acres, which totals 427 acres, which is well above the minimum threshold of 200 acres. Mr. Criscitiello stated, that Habersham Phase 1 is allowed 1,000 dwelling units at a density of 3.6 dwelling units per acre, Habersham Phase 2 is allowed 170 dwelling units, at a density of 3.6 dwelling units per acre; which is a total of 3.6 dwelling units per acre, for a total of 1,170 dwelling units for over 322 acres. Mr. Criscitiello stated, that Cherokee Farms was requesting 315 dwelling units; staff is not struggling with the design, but is struggling with the density. Mr. Criscitiello stated, that the total dwelling units that's being requested is 1,485 dwelling units; based on the density allowed in the Suburban zoning district, it puts them over approximately 204 dwelling units. However, they would still have the capacity for a number of dwelling units in Cherokee Farms of approximately 111. Mr. Criscitiello stated, that staff is willing to work with that number, and use that number as the absolute number that would be allowed on the site, regardless of the Site Capacity Analysis in the zoning ordinance; the Site Capacity Analysis could limit the dwelling unit yield, if you were just doing it in the typical fashion, in terms of a review of just Cherokee Farms.

Mr. Patrick Kelly with Habersham Land Company explained to the board, that they explained everything at the last meeting. Mr. Kelly stated, that they have a problem with not being able to develop a mixed-use traditional neighborhood; they originally started this project with the intention of developing a Planned Unit Development. Mr. Kelly stated, that the Planned Unit Development process was delayed by school impact fees, which were imposed when they got to County Council; he also had a problem with the development agreement, which they questioned legally. Mr. Kelly stated, that they would not accept the agreement, because the calculation for the school impact fees were not done accurately to represent the entire county. Mr. Kelly stated, that they met with the Planning Staff to create a large/mixed-use traditional neighborhood use in a suburban district; the only hindrance to that process, was the 200 acre units.

Mr. C. Williams stated, that he believes that the applicant said last month, that the reason why a Planned Unit Development was not done for Cherokee Farms, was because it was financially infeasible.

Mr. Kelly stated, that the school impact fees made the project financially infeasible. Mr. Kelly stated, that they are suggesting three things, (1) administrative interpretation

appealed, (2) recommendation to County Council to reconsider the negotiation of the school impact fees, and (3) make a recommendation to the Zoning & Planning Staff to request a text change for the minimum acreage under the Large Community in the Suburban zoning district.

Mr. C. Williams stated, that the only issue that's before the board, is the administrative interpretation appeal; the board has to make a decision, in whether or not Ms. Austin was correct when she made the administrative interpretation.

Mr. Kelly asked Mr. C. Williams, "As the board, couldn't you'll make a recommendation for somebody to look at the ordinance, and the problem we have?"

Mr. C. Williams answered, "That's not one of the powers of duties that we have under the zoning ordinance, and the State Enabling Act". Mr. C. Williams stated, that the board hears appeals, variances, and special use requests. Mr. C. Williams stated, that he doesn't believe that Ms. Austin made an error in her interpretation.

Mr. Dinkins asked Mr. Kelly, "Would you like to withdraw your application?"

Mr. Gasparini stated, that if the applicant withdraws his application, he would not have an option to appeal the board's decision to Circuit Court.

Mr. Kelly stated, that he wants the board to make a decision on the appeal.

Mr. C. Williams stated, that he would like to renew his motion that he made at last month's meeting.

**MOTION: Mr. Chester Williams made a motion to deny this appeal application, and uphold the Zoning Administrator's interpretation, based on the record and testimony that came before the board. Mr. Dinkins seconded the motion.** Mr. C. Williams stated, that he would like to note for the record, that the board is not saying anything about the merits of the design. Mr. Gasparini stated, that also the board also is not commenting on the calculations of the impact fees for the schools; regardless if it's right or wrong. **The motion passed (FOR: Dinkins, Gasparini, and C. Williams; ABSTAINED: Mack and E. Williams).**

#### **DONALD YOUNG (SETBACK VARIANCE)**

Mr. Criscitiello explained to the board, that the applicant is requesting a side-yard setback variance from Section 106-7 (1)(A) of the zoning ordinance, to place a shed 2.3 feet from the property line. Mr. Criscitiello stated, that staff recommends disapproval of this variance request; the shed should be moved back to the 10-foot setback line, because it was constructed without a zoning permit.

Mr. C. Williams stated, that in regards to the survey plat, which was submitted with the application; the plat indicated a 15-foot SCDOT drainage easement along the eastern boundary of Mr. Young's property. Mr. C. Williams stated, that a letter was submitted by

Harold Boney, which stated, that there is also a 10-foot SCDOT drainage easement on Mr. Young's property, which totals 25 feet. According to Mr. Boney's letter, the shed is located within the SCDOT drainage easement. Mr. C. Williams asked Mr. Criscitiello, "Are you familiar with the width of the easement?"

Mr. Criscitiello stated, that since the letter was submitted yesterday, he hasn't had a chance to review the letter. Mr. Criscitiello stated, that according to the plat, the 15-foot SCDOT easement is on the adjacent property.

Mr. C. Williams stated, that Mr. Boney is saying that the SCDOT drainage easement is actually 25-feet instead of 15 feet, because there's a 10-foot SCDOT drainage easement on Mr. Young's property.

Mr. Criscitiello stated, that the language of the zoning ordinance talks about the nature of the easement itself, not the existence of a shed. Mr. Criscitiello stated, that they have an understanding, that if a structure is placed in an easement, the easement would be made difficult to utilize for the purpose of what it was created for.

Mr. Donald Young explained to the board, that on March 12, 2009 he called the Building Codes Department and was told that he did not need a building permit, because the shed was not 200 square feet; at that time, he was not told that he needed a permit from the Zoning Department or any other department. Mr. Young stated, that the only other information he had to rely on, was the Covenants & Restrictions for the subdivision, which was submitted with the application. Mr. Young stated, that according to the Covenants & Restrictions, accessory building setbacks are waived. Mr. Young stated, that he realize that the zoning has nothing to do with Covenants and Restrictions, but it was a complete lack of knowledge regarding a zoning permit for the shed. Mr. Young stated, that the Beaufort County zoning code website makes no mention of needing a zoning permit. Mr. Young stated, that he believe that he had a vested right when he purchased the property 22 years ago; his home and the rest of the improvements on the site was constructed prior to any zoning ordinances, and all of the improvements were issued building permits. Mr. Young stated, that the location and size of the shed is consistent with what's currently in the neighborhood. Mr. Young stated, that because of the location of the house and other improvements on the lot, there was no other place on the property to place the shed; the location of the existing shed isn't close to the house, and it doesn't unreasonably interfere with the distance. Mr. Young stated, that the second story of his house is completely screened in, and if he moves the shed closer to the house, it would block the view to the river on that side; it would also be less than two feet from the walkway to the back stairs, and the underground utilities would have to be relocated. Mr. Young stated, that it's completely impractical and completely unreasonable to try to squeeze the shed in that area.

Mr. C. Williams informed the applicant, that his plat is dated May 19, 2009, which is approximately one month after the Codes Enforcement Officer, Audra Antonacci issued a letter informing him that he was in violation.

Mr. Young stated, that he spoke to Tamekia in the zoning office, and she informed him that since the shed was already placed on the property, he needed an as built survey,

because she was concerned about the setback from the river buffer; once she reviewed the plat, she informed him that he had to apply for an appeal to the Zoning Board of Appeals, because the structure did not meet the 10-foot setback from the side of the property. Mr. Young stated, that this violation was brought to his attention, because Officer Antonacci came to his home April 13, 2009, and informed him that she had received an unanimous complaint, that he had built a shed without a permit. Mr. Young stated, that there are approximately 44 single-family homes in the Magnolia Bluff Subdivision; out of the 44 single-family homes, 39 of the them has at least one-story sheds, or some form of accessory buildings. Out of the 39 accessory buildings, 18 of them are in violation of the zoning ordinance, based on the current setbacks. Mr. Young stated, that if the variance were granted, the shed would have no impact on the adjoining properties in the neighborhood. Mr. Young asked the board, to take into consideration that when he constructed the shed, he did not know he needed a zoning permit or that he did not meet the setback requirement. Mr. Young submitted for the record, photographs of other houses in the neighborhood.

Mr. E. Williams asked Mr. Young, "Did you have a survey plat prior to 1999?"

Mr. Young answered, "There was a plat when I purchased the property".

Mr. E. Williams asked Mr. Young, "When you contacted the county, were you made aware that a permit was needed at that time?"

Mr. Young stated, that he was told that he did not need a permit.

Mr. E. Williams asked Mr. Young, "Who provided you with that information?"

Mr. Young stated, that a lady in the Building Inspections office provided him with that information.

Mr. E. Williams asked Mr. Young, "Did you personally come to the Building Inspections office?"

Mr. Young answered, "No, I called on the phone".

Mr. E. Williams asked Mr. Young, "When you made the call to the Building Inspections office, was the shed already built?"

Mr. Young answered, "No".

Mr. E. Williams asked Mr. Young, "When did you call the Building Inspections office?"

Mr. Young answered, "March 2009".

Mr. E. Williams asked Mr. Young, "What type of hardship would it cause you to move the shed, and could it be moved in another area that would not be in violation?"

Mr. Young stated, that it's impractical to move the shed for two reasons; the first reason is because it has been constructed on a permanent foundation, and the second reason is that there is no other reasonable place to relocate the shed.

Mr. Dinkins asked Mr. Young, "Do you still have a real estate license?"

Mr. Young answered, "Yes". Mr. Young stated, that he went to a real estate meeting today, and approximately 119 real estate agents in that room did not know that they had to go to zoning to get a permit like this one. Mr. Young stated, that the real estate agents only knew about the residential and commercial structures, but not accessory buildings.

Mr. Dinkins asked Mr. Young, "Did you know anything about the critical lines?"

Mr. Young answered, "No, he did not know it was a setback requirement from the critical lines for accessory buildings".

Mr. C. Williams stated, that as he reads Section 106-5 and Section 106-6 of the zoning ordinance, it appears to be very clear when it states, that all structures has to comply with the county code.

Mr. Young stated, that if you are an average person, it is difficult to understand the zoning ordinance, and a person would have to read the entire zoning ordinance to know what the ordinance is saying.

Mr. Gasparini stated, that it looks like the shed is built on a slab.

Mr. Young stated, that the shed is not built on a slab; the back piers are approximately 3 feet in the ground, and the front piers are approximately 2 feet in the ground.

Mr. Gasparini stated, that it seems that the shed could be moved, because it is not on a concrete slab.

Mr. Young stated, that he doesn't have the equipment to get back to the shed to move the shed, and there is no place on the property that would be reasonable to place the shed.

Mr. E. Williams asked Mr. Criscitiello, "When a person makes a request or comes into the county offices to construct a structure, are they informed at that time of the requirements, or does the real estate agent and the surveyor made aware of the requirements to build a building?"

Mr. Criscitiello stated, that he was told by the Building Codes Director, that everyone that comes to his office is told that a zoning permit and a building permit is needed when a structure is built.

*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. L.D. Fletcher stated to the board, that he is a neighbor directly on the left of Donald Young's property. Mr. Fletcher stated, that Mr. Young failed to tell the board that there are 19 illegal buildings/sheds in the neighborhood, not 18, because Mr. Young has another shed on the property that he never received a permit for. Mr. Fletcher stated, that the right hand side of the easement is owned by the state; the easement is for the drainage of Magnolia Bluff Circle. There are trees in the easement, and if the state would need to utilize the easement for an emergency to fix the pipe, his shed would be in the way.

Mrs. Laurie Roberts stated to the board, that the structure does not have an impact on her property, and she doesn't object to the granting of the variance.

Mr. Glen Roberts stated to the board, that he doesn't object to the granting of the variance.

Ms. Pat Pavey stated to the board, that she has had property in the neighborhood since 1972, and has had a home on the property since 1979. Ms. Pavey stated, that the Young's have a beautiful home, and the structure would not deface their property or anyone else's property; it's no risk to anyone. Mr. Pavey stated, that she believes that when the structure is completed, it would not be an eyesore at all; there are a lot of eyesores in the neighborhood.

Mrs. Louise Blanchard stated to the board, that she drives by the Young's property approximately 2 to 3 times a day, and did not realize that the shed was built until it was brought to her attention. As far as she's concerned, the shed is not a problem, and Mr. Young was correct when he stated, that there are a lot of violations in their neighborhood; some of them are quite obvious, but no one has complained about those violations.

Mr. Charles Spears stated to the board, that he has no objection to the variance request, and the Young's have done a wonderful job building a home on the lot, and is an asset to the neighborhood. Mr. Spears stated, that at one time before he retired he was a licensed subcontractor, and carried a state, county, and city license. Mr. Spears told the board, that previously a young man asked him to build him a shed; the young man got the permit, and the city officials came out and said that he could not build that close to the property line with a permanent foundation. Mr. Spears stated, that it wasn't a permanent foundation, and in 15 minutes the shed would be prepared to be moved; once they saw the shed could be moved, they were okay with the location. Mr. Spears stated, that in his opinion the county should consider this shed to be moveable, and should not be subject to the setback requirement. Mr. Spears stated, that he has been to the City and County Building Department, and the employees were very helpful, but they never mentioned to him that he had to go to the zoning department for a permit; so this is not a well-known fact to everyone.



Mr. Donald Blanchard stated to the board, that he hasn't seen the structure because it's in a wooded area, and he doesn't see where there will be a serious problem with the location.

Mr. David Elkins stated to the board, that he lives approximately 4 to 5 blocks down on the water from Mr. Young's property, and the existing location of the shed is the only reasonable place to construct the shed. Mr. Elkins stated, that he doesn't believe that it's no obstruction to the property values in the neighborhood, and he has no objections to where Mr. Young currently has the shed.

Mr. Young read a letter from Jerry & Joseph Hayes, which stated, "We do not object in anyway to the building of a shed for Don Young at 901 Magnolia Bluff Circle".

Mr. Young read a letter from Linda Priest, "As a property owner in Magnolia Bluff subdivision, I wish to voice my opinion in writing that the new construction of a storage shed certainly does not distract from the neighborhood in anyway. I am appalled that a complaint has been filed, because certainly there are eyesores everywhere in the neighborhood that could rally the neighbors, if the complainant would take the time".

Mr. Reggie Lohr stated to the board, that he lives on the adjacent property. He is also a building contractor, and every time within the last five years the Building Department sent him to zoning prior to issuing a permit. Mr. Lohr stated, that the 24" pipe runs along the property line, and Mr. Young knows about that. Mr. Lohr stated, that he received a letter from Harold Boney, and he is in complete agreement with Mr. Boney's letter, and he would like to object to the variance request.

Mrs. Norma Beach-Young, Mr. Young's wife stated to the board, that they had worked so hard in building the shed, and she did not know anything about needing a zoning permit. Mrs. Beach stated, that she asked her husband about the permits, and he told her that he checked with the county and was told that he did not need a permit for the shed. Mrs. Beach stated, that there are eyesores in the neighborhood, but they don't complain, because they don't want to offend anyone. Mrs. Beach presented some photographs to the board.

Ms. Pat Pavey stated, that the complaint came from Mr. Boney, and she has had a personal conflict with Mr. Boney; Mr. Boney had gotten the Department of Transportation, to come to her house five years ago, and dig up her entire ditch.

Mr. Gasparini stated, that for the record, Mr. Boney and Ms. Linda Battle both submitted letters to the board, objecting to this variance application.

Mr. C. Williams stated, that he has reconsidered his earlier comment regarding the easement, because of Section 106-522 (A)(4), which lists the standards of granting of a variance. Mr. C. Williams stated, that there is an open question presented to the board, as to whether or not the shed is constructed in an easement held by the South Carolina Department of Transportation; if the board was to grant a variance to allow a structure in an easement held by the Department of Transportation, it would probably adversely affect the public good. Mr. C. Williams stated, that he would like to suggest holding this

application until next month, so they can get some evidence regarding the 25-foot easement.

**MOTION: Mr. Chester Williams made a motion to table this application unto next month, to allow Mr. Criscitiello and Ms. Austin to coordinate with Mr. Young in an effort to get some sort of evidence, as to the extent of that easement. Mr. Edgar Williams seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, Mack, C. Williams, and E. Williams).**

*Mr. Gasparini informed the board, that he will not be at next months meeting.*

## **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: Dinkins, Gasparini, Mack, C. Williams, and E. Williams).**

*The meeting adjourned at approximately 7:26 p.m.*