

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, July 23, 2009, in Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

**MEMBERS PRESENT**

Mr. Edgar Williams, Vice Chairman  
Mr. Kevin Mack

Mr. Phillip LeRoy  
Mr. Chester Williams

**MEMBERS ABSENT**

Mr. Thomas Gasparini, Chairman  
Mr. Claude Dinkins

**STAFF PRESENT**

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

**CALL TO ORDER:** Mr. Edgar Williams called the meeting to order at 5:07 p.m.

**PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE:** Mr. Edgar 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. Chester Williams made a motion to adopt the agenda as submitted. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: LeRoy, Mack, C. Williams, and E. Williams).**

Mr. C. Williams stated for the record, that he submitted a letter to Ms. Austin, dated July 13, 2009, which indicated that he and the chairman Mr. Gasparini has a conflict of interest regarding Lindly Mingledorff's appeal. Mr. C. Williams stated, that he and Mr. Gasparini will be recusing themselves from this appeal.

**REVIEW OF MINUTES:**

**MOTION: Mr. Chester Williams made a motion to adopt the June 25, 2009 minutes as submitted. Mr. Mack seconded the motion. The motion passed (FOR: Mack, C. Williams, and E. Williams; ABSTAINED: LeRoy).**

*Mr. Edgar Williams explained to the applicants and members of the public present at the meeting, that the county will present the application without taking a position on the*

case, then the applicant will have 10 minutes to present his/her case to the board. Mr. Williams stated, that public comment will be limited to three (3) minutes per person.

### **LINDLY B. MINGLEDORFF'S (ADMINISTRATIVE APPEAL)**

*Mr. C. Williams recused himself from this appeal application, stepped down from the platform, and left the room.*

Mr. LeRoy stated, that he understands that there has been a second appeal filed by the applicant, with regard to this appeal, and for legal reasons, he would like to postpone this application until next month, at the request of the applicant.

**MOTION: Mr. LeRoy made a motion to postpone the appeal until the next scheduled meeting. Mr. Mack seconded the motion. The motion passed (FOR: LeRoy, Mack, and E. Williams; RECUSED: C. Williams).**

*Mr. Chester Williams returned back to the meeting.*

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

Mr. Young explained to the board, that this application is a continuation from last month's meeting. Mr. Young stated, that on March 12, 2009 he checked with the Beaufort County Building Codes office, to see if a permit was needed in order to construct a shed on his property; he was told that since the building was less than 200 square feet, he did not need a building permit. Mr. Young stated, that Building Codes did not tell him that he needed a permit from the Zoning office, or the Department of Transportation. Mr. Young stated, that on April 13, 2009, he received a call from the Beaufort County Codes Enforcement office, informing him that based on an anonymous complaint, he constructed a shed without a permit. Mr. Young stated, that first he was told that he didn't need a permit, and then he was told that he needed a zoning permit. Mr. Young stated, that the South Carolina Department of Transportation drainage easement is not on his property, it's on the adjacent property. Mr. Young stated, that South Carolina Code of Law, Chapter 7, Title 30, dated July 31, 1934 provides, that all documents relating to the conveyance of land or holding of interest to the land must be recorded; if the document is not recorded, the party cannot be charged with knowledge of it, and it does not apply to the property affected.

Mr. C. Williams asked Mr. Young, "You submitted a copy of a plat to the board, which was prepared for Donald Young, Lot 2, Magnolia Bluff Subdivision, dated July 7, 1987; is that correct?"

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

Mr. C. Williams asked Mr. Young, "Is the Donald Young on the plat, referred to you?"

Mr. Young answered, "Yes".

Mr. C. Williams asked Mr. Young, "Is this the same plat you were provided when you purchased the lot?"

Mr. Young answered, "Yes".

Mr. C. Williams stated, that according to the referenced plat, it shows a 24-inch concrete pipe that runs along the boundary lines between lots two and three, and shows a 25-foot wide SCDOT drainage easement; 10-feet on lot 2, and 15-feet on lot 3.

Mr. Young stated, that that's not the way he interprets the plat; the 10-foot dotted line, shown on the plat is labeled setback.

Mr. C. Williams asked Mr. Young, "Is this plat recorded?"

Mr. Young answered, "Yes".

Mr. C. Williams asked Mr. Young, "Were you aware of this survey at the time you purchased the property?"

Mr. Young answered, "Yes".

Mr. Tony Criscitiello stated, that the facts are expressed in the staff report; the existence of the SCDOT drainage easement is not in dispute. The issue is, that the shed was constructed without a zoning permit, and is in violation of the county's ordinance. Mr. Criscitiello stated, that the pipe has been in the ground undisturbed for many years, and the question is, whether or not the applicant can demonstrate a hardship for a variance for the shed to remain as constructed; it is the responsibility of the applicant to move the shed out of the easement.

Mr. LeRoy asked Mr. Criscitiello, "Is the 10-foot setback different from the 10-foot SCDOT easement?"

Mr. Criscitiello answered, "Yes".

Mr. LeRoy asked Mr. Criscitiello, "Is it a zoning issue if the applicant violates the SCDOT drainage easement?"

Mr. Criscitiello stated, that the county enforces all laws, as it's expressed in the zoning ordinance.

Mr. LeRoy asked Mr. Criscitiello, "What constitutes a building; does it have to be something that requires a building permit, or is it a structure with four walls and a roof?"

Mr. Criscitiello stated, that a structure constitutes a building; a shed is obviously a structure per the zoning ordinance, and has to be out of any county setbacks.

Mr. LeRoy asked Mr. Criscitiello, "Would a power pole be considered a structure?"

Mr. Criscitiello stated, that a power pole falls under the utility section of the zoning ordinance.

Mr. E. Williams asked Mr. Criscitiello, "What is the set procedure to construct a building in Beaufort County?"

Mr. Criscitiello answered, "The set procedure is, asking someone in authority the process, and that person will direct you to the right place or person, asking in a letter, and/or asking via telephone conversation".

Mr. E. Williams stated, that the applicant said that he went to the county, and the county told him that he did not need a permit.

Mr. Criscitiello stated, that the applicant went to the Building Codes Department, and was told that since the building was less than 200 feet he did not need a building permit. Mr. Criscitiello stated, that when an applicant ask the county a question, the question that is asked will determine the answer given.

Mr. LeRoy asked Mr. Criscitiello, "If there were no setback issues, would a zoning permit still be required?"

Mr. Criscitiello answered, "Yes".

Mr. C. Williams asked Mr. Criscitiello, "Is the building code requirement different from the zoning requirement?"

Mr. Criscitiello answered, "Yes, it is two sets of laws".

Mr. C. Williams asked Mr. Criscitiello, "Is it a correct statement, that per Section 106-5 and 106-6 of the zoning ordinance, that use or construction of building, structure, land or water, is subject to the regulations of the zoning ordinance?"

Mr. Criscitiello answered, "Correct".

*There being no further comments from the applicant or the county, and no further questions from the board, Mr. Edgar Williams called for public comment, and limited the comments to three (3) minutes each.*

Mr. Harold Boney explained to the board, that he lives two doors down from Mr. Young's property, and he submitted a letter last month objecting to the variance request. Mr. Boney stated, that he has two principle concerns; the first concern is the SCDOT easement issue. Even though Mr. Young would have the board to believe that he did not know anything about the easement, he did in fact know about the easement, because he and Mr. Young discussed the easement long ago when they used to talk, and the easement was also shown on the original plat, which was issued when Mr. Young purchased the property. Mr. Boney stated, that the pipe is very important to the neighborhood; there's a little segment of road that serves Mr. Fletchers house, his house and another house across the street. The road comes to an intersection right in

front of Mr. Young's house, and all of the drainage in that area goes into a pipe on the other side of the road from Mr. Young's house, and goes through the pipe to a drainage basin, and then through the pipe located on the property line between lots 2 and 3. Mr. Boney stated, that he doesn't think that the county has the authority to give Mr. Young a variance to violate SCDOT's easement rights; SCDOT has the right to go down the easement in order to maintain the pipe that's on the property line. Mr. Boney stated, that his second concern is that this is just one of the many series of zoning violations, which according to Mr. Young's plat, has a wood deck which was constructed in 2002, and is within the 50-foot river buffer setback; he also has a shed, covered deck or gazebo which was constructed in 2002, which is in violation of the side-yard setback. Mr. Boney stated, that if we are to have a zoning ordinance, it needs to be enforced, and the applicant is really asking the board to condone a pattern of violations.

Mr. Young asked Mr. E. Williams, "Could I have more time to present my case?"

Mr. E. Williams answered, "I believe that you have had more than enough time to present your case, and the board have heard enough to make a decision one way or another".

Mr. C. Williams asked Mr. Young, "Have you seen the county's recommendation?"

Mr. Young answered, "Yes".

Mr. C. Williams asked Mr. Young, "What are your extraordinary and exceptional conditions pertaining to the property?" Mr. C. Williams stated, that he only heard Mr. Young say that building codes did not tell him he needed a permit.

Mr. Young answered, "There's no other reasonable place on my property to put the shed".

Mr. C. Williams explained to Mr. Young, that the fact he cannot put what he wants to put on the property, is not an extraordinary or exceptional condition; it appears that there's too much structures on a certain amount of land.

Mr. Young stated, that he believes that considering the size of land and the equity, the board would look at the neighborhood and area as a whole.

Mr. C. Williams stated, that there's nothing in the criteria for a variance, that allows the board to balance the equities.

Mr. Young stated, that he has given the board a document that granted an easement to SCDOT, which was a setback of 10 feet; 5-feet on both sides of the property, not 15 feet.

Mr. C. Williams stated, that the 25-foot SCDOT drainage easement was shown on the plat, which was submitted to the board by Mr. Young.

Mr. Young stated, that even if that statement was true, the plat appears to be incorrect.

**MOTION: Mr. Chester Williams made a motion to deny the variance; this variance application does not meet the requirements of Section 106-522 of the Zoning & Development Standards Ordinance. Based on the evidence that's been submitted, and the additional information concerning the existence of what appears to be a 25-foot wide SCDOT drainage easement, with respect to the drainage pipe along lots 2 and 3; the inability to construct a storage building in that location, would not unreasonably restrict utilization of the property. Mr. C. Williams stated, that since there's an e-mail from SCDOT, requesting that the shed be removed out of the drainage easement; if the board was to grant this variance, they would be allowing a structure to remain in the SCDOT's drainage easement. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: LeRoy, Mack, C. Williams, and E. Williams).**

### **DUANE & DAISY STUCK (RIVER-BUFFER VARIANCE)**

Attorney Tom Davis with Harvey & Battey Law Firm explained to the board, that he is representing Duane & Daisy Stuck, who is requesting a variance for the property located at 122 Tomahawk Trail in Tansi Village. Attorney Davis informed the board, that approximately 77 notices were mailed out to property owners within a 500-foot radius of the Stuck's property. Attorney Davis stated, that because of Mrs. Stuck's health conditions, the doorways of the existing home does not accommodate a walker and a wheel chair, so they want to place a modular home on the property; the dimensions of the modular home is shown in shaded blue on the site plan. The house is roughly in the same location as the existing mobile home; the existing structure is approximately 16 or 17 feet from the critical line, and the proposed modular home will be approximately 18 feet from the critical line. Attorney Davis stated, that the variance request is to place a deck on the back of the home, which would be to place the structure approximately 6 or 7 feet from the critical line. Attorney Davis stated, that most of the property sits within the critical line setback; Mr. Davis gave the board some aerial photos of the property, and photos of other improvements and structures within the 50-foot setback in Tansi Village. Attorney Davis stated, that he spoke with the Stuck's, and they are willing to reduce the deck so that the structure would be 10-feet from the critical line.

Mr. C. Williams stated, that according to the staff recommendation, there were no extraordinary or exceptional conditions pertaining to this property, and he disagrees with that recommendation; if this lot was vacant, the applicant would still need a variance. Mr. C. Williams stated, that he has a little problem with the application, because the proposed modular home is actually going further into the critical line, than the existing home.

Attorney Davis showed the board a modified copy of a plat, which showed the home at 10-feet from the critical line.

Mr. C. Williams asked Attorney Davis, "Have you shared this site plan with county staff?"

Attorney Davis answered, "Not the modified plat showing the 10-foot setback".

Mr. Criscitiello stated, that he met with the Stuck's, and he sent his staff out to look at the property; their neighbor was already 6-feet from the critical line, and the average setback was 17 feet from the critical line. Mr. Criscitiello stated, that since the neighbor is 6 feet from the critical line, he would show some leniency to allow the applicant to go closer to the critical line.

Mr. C. Williams asked Attorney Davis, "How far is the modified deck from the critical line?"

Attorney Davis answered, "10-feet from the critical line".

Mr. Criscitiello stated, that if the applicant is going to place the structure no closer than 10-feet from the critical line, then staff would like to recommend approval of the structure.

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

**MOTION: Mr. Chester Williams made a motion to approve the variance application, with a condition that this proposed site plan submitted by Attorney Davis, be substantially complied with in connection with the construction of any new improvements on the property; this variance application meets the requirements of Section 106-522 of the Zoning & Development Standards Ordinance. Based on the testimonies presented by Mr. Criscitiello and Attorney Davis, and that the 50-foot critical line setback takes up approximately 85 to 90 percent of the entire property; without a variance the applicant would not reasonably utilize the property. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: LeRoy, Mack, C. Williams, and E. Williams).**

#### **DAVID BERRY (SETBACK VARIANCE)**

Mr. David Tedder, attorney for the applicant explained to the board, that the applicant is requesting a variance for a pergola outside their existing sliding glass door, which is exempt from the zoning ordinance. Mr. Tedder stated, that pergola's are used to enhance the outside of buildings, and are very common in Egyptian gardens. Mr. Tedder stated, that the applicant did not get a building permit because they hired a landscaper; the Building Codes Department told the applicant that they did not need a building permit to construct the pergola. Mr. Tedder stated, that the board also has a letter from the next-door neighbor, stating that she doesn't have a problem with the variance request. Mr. Tedder stated, that this structure is an exempt freestanding agricultural structure, which is also exempt from the side-yard setbacks.

Mr. Criscitiello stated, that this violation came to the county, because the next-door neighbor complained that the structure was too close to her fence; the county had to

thoroughly review the zoning ordinance as it related to this type of structure. The county determined that this structure had to comply with the zoning ordinance; since the structure was placed 5 feet from the property line, a variance was required in order to keep the existing structure at the present location. Mr. Criscitiello stated, that he has no problem with the board granting the variance for the pergola structure.

*There being no further comments from the applicant or the county, and no further questions from the board, Mr. Edgar Williams called for public comment, and limited the comments to three (3) minutes each.*

Mr. Raymond "Trey" Ambrose stated to the board, that he is an adjacent property owner, and the pergola is an attractive structure that enhances the property. Mr. Ambrose stated, that he's in favor of the variance being granted.

Mrs. Carol Berry stated to the board, that she is the property owner, and she request that the board grant this variance application.

**MOTION: Mr. LeRoy made a motion to approve the variance application, based on the fact that the structure appears to enhance the property, with keeping with the style of the community; there is a certain geometry in this lot, that makes the arbor landscaping structure close to the property line. Mr. C. Williams seconded the motion. The motion passed unanimously (FOR: LeRoy, Mack, C. Williams, and E. Williams).**

Mr. Edgar Williams stated for the record, that he would like to thank Ms. Austin and Mrs. Glover for all the work that they do; they do an exceptional job, and should be commended for a job well done.

#### **ADOPTION OF ORDER (CHEROKEE FARMS PHASE OF HABERSHAM)**

**MOTION: Mr. Chester Williams made a motion to adopt the order as submitted. Mr. Mack seconded the motion. The motion passed unanimously (FOR: LeRoy, Mack, C. Williams, and E. Williams).**

*Mr. Chester Williams informed the board, that he will not be at next month's meeting.*

#### **ADJOURNMENT**

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

*The meeting adjourned at approximately 6:35 p.m.*