

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, November 12, 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. Phillip LeRoy
Mr. Kevin Mack

MEMBERS ABSENT

Mr. Timothy Rentz

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 5:07 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 informed the board, that Mr. Dinkins will be leaving the meeting early, due to an important engagement. Mr. Gasparini stated, that due to the quorum requirement for one of the items on the agenda, Mr. Dinkins proposes to move both of the Lindly B. Mingledorff appeals to the top of the agenda. Mr. Gasparini asked the board members, "Are there any objections to moving both of the Mingledorff appeal to the top of the agenda?"

There were no objections to moving both of the Mingledorff appeals to the top of the agenda.

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

ADOPTION OF MINUTES: Mr. Gasparini stated, that the board just received the July & August minutes, and he has not had an opportunity to review the minutes. Mr. Gasparini stated, that he proposes to postpone the adoption of the July & August

minutes until he next scheduled meeting. Mr. Gasparini stated, that he would like everyone to get another copy of the July minutes prior to the next scheduled meeting.

Minutes of September 24, 2009: Mr. C. Williams stated, to change the statement on page 6 from, "Mr. Chester Williams amended the motion, to set a two-year time limit on the time that the mining operation commences on the property", to "Mr. Chester Williams amended the motion, to set a two-year time limit on the mining operations on the property".

MOTION: Mr. Edgar Williams made a motion to adopt the September 24, 2009 minutes with the noted changes. Mr. Chester Williams seconded the motion. The motion passed (FOR: Gasparini, LeRoy, C. Williams and E. Williams; ABSTAINED: Dinkins, and Mack).

LINDLY B. MINGLEDORFF (VENUE APPEAL)

Mr. Gasparini stated, that he and Mr. Chester Williams have previously provided to the secretary of the Zoning Board of Appeals written indication that they are completely out of considering items 7 & 8 as a result of professional representation of the appellant; that statement was provided in writing, as required by the state ethics statute. Mr. Gasparini stated, that at this time he's going to turn the gavel over to the Vice Chairman, Mr. Edgar Williams, and he and Mr. Chester Williams are going to recuse themselves and step down from the platform; once the application is heard, they will return back to the hearing.

Mr. Drew Laughlin, representative of Mr. Mingledorff explained to the board, that this appeal is to decide whether this application is to be heard by the Zoning Board of Appeals or by the Planning Commission. Mr. Laughlin stated, that the State Enabling Legislation that allows development/subdivision regulations separates the Zoning function from the subdivision of the development of land function; the Planning Commission operates in the area of the subdivision and development land, and the Zoning Board of Appeals operates in the areas of zoning; under the State Enabling Legislation, the Mingledorff appeal should be heard by the Planning Commission. Mr. Laughlin stated, that he also voiced his concerns through a letter to Mr. Criscitiello, who is the director of the Beaufort County Planning Department.

Ms. Mary Lohr, attorney for the County explained to the board, that the ZDSO in Section 106-171 clearly gives the Zoning Board of Appeals the authority to hear and decide appeals by an aggrieved party where it is alleged that there is error in an order, requirement, decision, or determination made by the ZDA or other county official in the enforcement of this chapter. Ms. Lohr stated, that it is the County's position that Mr. Mingledorff's administrative appeal comes directly to the Zoning Board of Appeals.

Mr. Laughlin stated, that the argument is not with the interpretation of the county zoning ordinance, but with the compliance of the State Enabling Legislation, which would be a matter of the subdivision or the development of land through the State Enabling Legislation.

Mr. E. Williams asked Mr. Laughlin, “Do you disagree with Ms. Lohr’s interpretation of Section 106-171 of the zoning ordinance?”

Mr. Laughlin answered, “No, I agree that the language in Section 106-171 is enough to bring us here, but it does not comply with the State Enabling Legislation”.

Mr. Dinkins asked Mr. Laughlin, “Which State Statute are you referring to?”

Mr. Laughlin answered, “The Enabling Act”.

Mr. Dinkins stated, that according to Chapter 6.29.800 of the State Statute (Power’s of Board of Zoning Appeals), the powers of the board are limited to determining appeals from administrative decisions from the Zoning Administrator, and that’s what this board is here for; it gives this board latitude to hear what the ZDA has to say in the next appeal application.

Mr. Laughlin stated, that the language that Mr. Dinkins is quoting from, is in the Enabling Legislation for Zoning, not for the Enabling Legislation for Subdivision and Land Development matters.

Mr. Dinkins stated, that he still believes that the Zoning Board of Appeals should hear the administrative appeal.

Mr. Lohr stated, that she agrees with Mr. Dinkins, and it is beyond the Zoning Board of Appeals authority to look at State Legislation and determine what the board has the authority to do or not to do. Mr. Lohr stated, that the Zoning Board of Appeals is bound within the limits of the zoning ordinance, and she doesn’t believe the board could go outside the scope of the ordinance.

Mr. Steven Kiser, owner of the appealed property, stated to the board, that he agrees with the county attorney comments about the Zoning Board of Appeals authority to hear the administrative appeal. Mr. Kiser stated, that he has some comments about the administrative appeal, and he believes that the State Enabling Act under Section 106-8, gives the Zoning Board of Appeals the right to hear the administrative appeal, and he asks that the board deny the venue appeal.

MOTION: Mr. Dinkins made a motion to deny the venue appeal, based on Section 106-171 of the Zoning & Development Standards Ordinance. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: Dinkins, LeRoy, Mack, and E. Williams; RECUSED: Gasparini, C. Williams).

LINDLY B. MINGLEDORFF (ADMINISTRATIVE APPEAL)

Mr. Laughlin explained to the board, that there were two lots; one has a dock on deep water in the Mayriver, and the other lot had no access to deep water, and would not be able to have a dock without crossing a small tidal creek. Mr. Laughlin stated, that the property owner submitted a plat reconfiguring the lots, in order to give one of the lots access to the deep water, so a dock permit could be issued. Mr. Laughlin stated, that

Ms. Lohr will indicate that this was not a subdivision, but he will contend that it was a subdivision. Mr. Laughlin stated, that the attempt was made by the property owner, to create a new lot line to change the angle of a very short section of one of the lots; that plat was stamped as exempted under section 106-8 (1)(E), which is property trades or swaps between immediate landowners not resulting in the creation of new parcel of record. Mr. Laughlin stated, that the first problem is that the exemption is not allowed under the State Enabling Act; cases show that when property lines are moved, and a new plat is done, it creates a new parcel of record. Mr. Laughlin stated, that there was no information that suggests that there's been a trade or swap, or any information that any deeds of conveyance was done to transfer title to that little section.

Mr. Dinkins asked Mr. Laughlin, "Do you have any information about the court case you referred to?"

Mr. Laughlin answered, "Yes".

Mr. Dinkins asked Mr. Laughlin, "Does that documentation include setbacks?"

Mr. Laughlin stated, that the setback is a different issue. Mr. Laughlin stated, that he had a case where the owner of three (3) lots did a new plat without changing any boundary lines and recorded the plat; because it was a new plat, the court decided that the owner was creating a new parcel of record. Mr. Laughlin stated, that in case, we have a new plat that changes the boundary between two lots.

Mr. Dinkins asked Mr. Laughlin, "Was the dock permits issued under the old plat or under the new plat?"

Mr. Laughlin answered, "Under the new plat". Mr. Laughlin stated, that the real issue, is whether or not the property owner could have changed the boundary lines with subdivision review, or without subdivision review. Mr. Laughlin stated, that the purpose for a review is to get all of the information from the applicant, and determine if the lots meet the standards of the zoning ordinance.

Mr. LeRoy asked Mr. Laughlin, "How is your client affected by this change to the property line?"

Mr. Laughlin stated, that his client owns lot 9, there's a dock on lot 10, which is adjacent to his lot; if the property owner change the property line, he can but a new dock on lot 10, which is the closest side to Mr. Mingledorff's lot.

Mr. LeRoy asked Mr. Laughlin, "Does the lot have enough room to build a dock, and conform with the county & Dhec's requirement?"

Mr. Laughlin stated, that he doesn't believe that it does, but Dhec approved the dock; Dhec's decision to approve the dock will be appealed because they believe that the decision was incorrect.

Mr. Dinkins asked Mr. Laughlin, "Does lot 9 have a dock?"

Mr. Laughlin answered, "Yes". Mr. Laughlin showed the board documentation/exhibits that showed the existing location of the existing dock on lot 9, the location that was on lot 10, and the approximate location of the proposed new dock.

Mr. LeRoy asked Mr. Laughlin, "Regarding the lawsuit you previously mentioned; was the lot that was affected given new names or designations?"

Mr. Laughlin answered, "No".

Mr. LeRoy stated, that in his experience moving the lot lines is very common in subdivisions, and it could never be considered a new subdivision; it happens all of the time. Mr. LeRoy stated, that basically Mr. Laughlin is saying that every time a lot line is moved, it should require review through the subdivision review.

Mr. Laughlin stated, unless it comes with the three (3) exceptions permitted by the State Enabling Law.

Mr. LeRoy asked Mr. Laughlin, "What are the three (3) exceptions to the State Enabling Law?"

Mr. Laughlin answered, "(1) The combination or recombination of portions of previously platted lots where the total number of lots are not increased, and the result of lots are equal of the governing authority, (2) The division of land into parcels of five acres or more where no new streets are involved and plats of these exceptions must be received as information by the Planning agency, (3) The combination or recombination of entire lots of record where no new street or change in existing streets are involved". Mr. Laughlin stated, that those are the only three exceptions permitted under the State Enabling Act, but those are not the only exemptions in the Beaufort County Zoning & Development Standards Ordinance.

Mr. LeRoy stated, that it appears that the recorded plat qualifies for exemption #3.

Mr. Laughlin stated, that the property owner erased the boundary lines all together and made one lot out of two lots.

Mr. Dinkins stated, that he interprets the State Enabling Act, differently than what Mr. Laughlin interprets it to state.

Mr. Laughlin stated, that the real issue is to whether or not it has to be reviewed.

Ms. Lohr, attorney for Beaufort County explained to the board, that the only plat that's being appealed is the plat that was recorded in the Beaufort County Register of Deeds Office. Ms. Lohr stated, that the recorded plat does not create any additional lots, and is in the State Statue; the lots comply with the standards of the zoning district. Ms. Lohr stated, that the Zoning Administrator's job is to enforce the Beaufort County Zoning Ordinance, not the State Enabling Act, and the recorded plat met the criteria of Section 106-8 (1)(E) of the zoning ordinance.

Mr. Dinkins asked Ms. Lohr, "Is the lot fronts on a Small Tidal Creek?"

Ms. Lohr answered, "No". Ms. Lohr stated, that the proposed dock would not be under the jurisdiction of the zoning ordinance, because it's not located on a Small Tidal Creek.

Mr. Kiser stated to the board, that his family owns the property that's being appealed, and he would like to ask the board to deny this administrative appeal. Mr. Kiser passed out all of the plats that were previously stamped for his lot-line reconfiguration. Mr. Kiser stated, that the county gives property owners the right to modify property lines, and he recorded his plat on July 16, 2009, which is before the board today. Mr. Kiser explained to the board that process he went through for the stamping a recordation of the approved plat. Mr. Kiser stated, that on August 2009 in accordance with the State Law, OCRM approved the dock permit, in accordance with the State Statutes, State Regulations and State Law. The two government agencies did a beautiful job working together under common goals with conditions for him to have all of the burden to do the work; Mr. Mingledorff had the right to appeal, because there were public hearings and requests by him to make accommodations and move the dock before the final dock permit was issued. Mr. Kiser stated, that this appeal was filed, because Mr. Mingledorff did not want another dock on the May River from his property. Mr. Kiser stated, that there have been misstatements of State Law tonight, and after seven months of public processing, he would respectfully ask that his property rights be respected once and for all, and that the board denies this administrative appeal request.

MOTION: Mr. Dinkins made a motion to deny the administrative appeal, and uphold the Zoning Administrator's decision to stamp the plat under the Exemption standards of Section 106-8 (1)(A) of the Zoning & Development Standards Ordinance. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: Dinkins, LeRoy, Mack, and E. Williams; RECUSED: Gasparini, and C. Williams).

Mr. Gasparini & Mr. Chester Williams returned back to the meeting; Mr. Edgar Williams gave the position of chair back to Mr. Gasparini.

Mr. Dinkins left the meeting @ approximately 6:35 p.m.

JOSEPH T. SQUIRES, III (SETBACK VARIANCE)

Mr. Joseph Squires explained to the board, that he's requesting a variance from the 20' front setback line; the house was built in 1966, and he's starting to do renovations to the house, to make it compatible with other homes in the area. Mr. Squires stated, that the house is currently 18' from the front setback line, and he wants to go down to the 13' front property line.

Mr. LeRoy asked Mr. Squires, "Is there other homes in the neighborhood that's encroaching into the front setback line?"

Mr. Squires answered, "Yes".

Mr. Gasparini asked Mr. Squires, “Are you aware that the county is recommending approval of this variance request?”

Mr. Squires answered, “Yes”.

Mr. Criscitiello stated, that staff is recommending approval, because it’s not going any closer to the street than the adjacent residence; with the addition of the porch the setback will be 12.97 feet.

Mr. Gasparini asked, “Isn’t there other variances that need to be reviewed?”

Mr. C. Williams stated, that staff already addressed the river-buffer variance; staff has the authority to approve variances under Section 106-1845 (d). Mr. C. Williams asked staff, “Do the applicant need a variance for the stairs?”

Ms. Austin answered, “No, because the stairs are not going any closer into the side property line than the existing building”.

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 request.

MOTION: Mr. Edgar Williams made a motion to approve the variance application, in accordance with the County’s recommendation. Mr. Mack seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, C. Williams and E. Williams).

SEASIDE FARMS ANNEX EXPANSION (SPECIAL USE)

Mr. Gasparini asked the applicant, “Have you seen the staff recommendation letter?”

Mr. Leath Webb answered, “Yes”. Mr. Leath Webb explained to the board, that he is requesting a special use permit to expand an existing facility.

Mr. Gasparini stated, that the County recommended approval of the special use application with five (5) conditions. Mr. Gasparini asked Mr. Webb, “Do you agree with those five (5) conditions?”

Mr. Webb answered, “Yes”.

Mr. Criscitiello stated, that the Development Review Team recommends approval, with the following conditions, (1) Installation of the required storm water and BMP, to prevent untreated runoff into the marsh, (2) Removal of the existing drainage swale/pipe from the river buffer, (3) All electrical lines be placed underground, (4) Removal of the discarded equipment from the river buffer, and (5) Applicant shall receive approval from the Corridor Review Board for architectural and landscape requirements.

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 request.

Mr. C. Williams asked Mr. Criscitiello, "Did this application require a Community Impact Statement?"

Mr. Criscitiello answered, "No".

Mr. C. Williams stated, that it appears that the special use permit is required because a portion of the existing building encroaches into the 100-foot River-Buffer setback requirement; the special use permit will allow the site to be a conforming use.

MOTION: Mr. Edgar Williams made a motion to approve the special use application, in accordance with the five (5) conditions from the Development Review Team recommendation letter. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, C. Williams and E. Williams).

ADJOURNMENT

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

The meeting adjourned at approximately 6:47 p.m.