

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, December 10, 2009, in Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. Phillip LeRoy
Mr. Timothy Rentz

Mr. Claude Dinkins
Mr. Kevin Mack

MEMBERS ABSENT

Mr. Chester Williams
Mr. Edgar Williams, Vice Chairman

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
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, and a moment of silence in honor of our country's military service members.

ADOPTION OF AGENDA:

MOTION: Mr. Rentz made a motion to adopt the agenda as submitted. Mr. Mack seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, and Rentz).

ADOPTION OF MINUTES:

Minutes of July 23, 2009: Minutes shall be adopted at the next scheduled meeting, due to the lack of a quorum.

Minutes of August 27, 2009:

MOTION: Mr. Dinkins made a motion to adopt the minutes as submitted. Mr. LeRoy seconded the motion. The motion passed (FOR: Dinkins, Gasparini, LeRoy, and Mack; ABSTAINED: Rentz).

Minutes of November 12, 2009: Minutes shall be adopted at the next scheduled meeting.

BFT CTY – DAUFUSKIE ISLAND CONVENIENCE STORE (SPECIAL USE)

Mr. David Coleman with the Beaufort County Engineering Department, explained to the board, that Beaufort County is requesting a special use permit for a convenience center.

Mr. Gasparini asked Mr. Coleman, “Is the convenience center, a trash and recycling facility?”

Mr. Coleman answered, “Yes”.

Mr. Gasparini asked Mr. Coleman, “Who comes and drop off their trash?”

Mr. Coleman answered, “All of the residents outside of the gated communities, and also residents inside the gated communities if they so choose”. Mr. Coleman stated, that currently on site is open containers, and they are trying to improve the site; by fencing the site and putting in compacters, it will be a great improvement, much safer, much cleaner and presentable.

Mr. Gasparini asked, “Why do you need approval under a special use permit?”

Mr. Bobby Lee with Thomas & Hutton answered, “The use of the convenience center is a non-conforming use”.

Mr. Gasparini asked Ms. Austin, “Was this use in operation prior to the change in the zoning ordinance?”

Ms. Austin answered, “Yes”. Ms. Austin stated, that the use is not permitted in the Daufuskie Island Community Preservation District, but because it was already being used as a trash and recycling facility, the use became grandfathered. Ms. Austin stated, that the Development Review Team has reviewed this project, and recommends approval with conditions.

Mr. Gasparini asked Mr. Coleman, “Have you read the staff report?”

Mr. Coleman answered, “Yes”.

Mr. Gasparini asked Mr. Coleman, “Do you have any problems with the conditions that the county has set forth in their staff report?” Mr. Gasparini read the conditions, which are, “(1) Installation of the required storm-water/BMP, (2) The placement of the required buffers, (3) Plant back or mitigation of all specimen trees proposed for removal”.

Mr. Coleman answered, “No”.

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.

Mrs. Gene Newton stated to the board, that she came across a quote out of the Supreme Court where a commercial area was rezoned to residential, and the courts agreed with the plaintiff. Mrs. Newton stated, that she's not an attorney, but her analysis is based on information that's available to the public, so there might be some pieces missing. Mrs. Newton stated, that her recommendation is to reject or table the request until the board has a chance to review the information that she's about to present. Mrs. Newton stated, that the basis for her recommendation falls under three (3) strong points; (1) the plans which were presented may not be legally permissible, to review a special use permit, (2) the expansion of the Daufuskie Drop-Off Center is non-expressly supported by a Beaufort County Comprehensive Plan, and (3) there are some site related issues that may impact the County's ability to use the site as proposed. Mrs. Newton elaborated on all three points.

Mr. James Hudson, Sr., stated to the board, that he's a joint owner with Abraham Wilks, and the subject property abuts their property. Mr. Hudson stated, that in the future they were planning to do something with the property, and having a Drop-Off Center will not be compatible with what they are planning to do with their property.

Mr. Gasparini asked Mr. Hudson, "Is the property that's owned by the County recreation property?"

Mr. Hudson answered, "It was purchased for recreational purposes".

Mr. Gasparini asked Mrs. Newton & Mr. Hudson, "Do you all live on Daufuskie Island".

Mr. Hudson answered, "We have property on Daufuskie Island".

Mr. Don Newton stated, that he suggest that the board assumes that Beaufort County doesn't own any property on Daufuskie Island, and do an alternative analysis, and wherever the results lead, that's where the Convenience Center should be placed.

Mrs. Newton explained to the board, that Beaufort County split the property a few years after they purchased it. Mrs. Newton stated, that the property was bought to be used for recreational purposes, and the funds were taken out of the Recreation Trust Fund. Mrs. Newton stated, that she believes that the County can keep the site self service, and initiate a recycling service; she has researched this in certain cities, where it was self-service waste collection and recycling stations.

Mr. Gasparini stated, that it's his understanding that this use predates the zoning ordinance, which makes the use a legal non-conforming use. Mr. Gasparini stated, that he believes that their proposal is to do what Mrs. Newton is suggesting, but making it more attractive and less intrusive of the neighborhood. Assuming that's the case, he doesn't understand what the objection is.

Mrs. Newton explained to the board, that looking at the development plan for Daufuskie Island, currently 63 percent of the mass is Private Unit Developments; based on the new Daufuskie Plan, 85 percent of Daufuskie Land Mass will be private-gated communities. She read in the Daufuskie Island Plan that the county has gone to the

Private Unit Developers continuously, and asked them to work together with the county, and the county would take care of their trash. The private developers denied the counties offer, because they had the capability to handle their own trash.

Mr. Gasparini asked Mrs. Newton, "What's the objection with upgrading the existing facility?"

Mrs. Newton stated, that the applicant is proposing to expand the use, which would be a much larger footprint; she sees the beginning of the County creating this big trash bill, to secure the trash from the Private Unit Developers.

Mr. Gasparini asked, "How much space is currently being used for the site?"

Mr. Coleman answered, "The same footprint is being used at this point". Mr. Coleman stated, that the county is not intending to expand the site.

MOTION: Mr. Rentz made a motion to approve the special use permit with the following conditions, (1) Installation of the required storm-water/BMP, (2) The placement of the required buffers, and (3) Plant back or mitigation of all specimen trees proposed for removal. Mr. Dinkins seconded the motion. Mr. Gasparini stated, that he believes that the special use application met the criteria set forth in Section 106-552 of the Beaufort County Zoning & Development Standards Ordinance. **The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, and Rentz).**

DON HOUGH (VARIANCE)

Mr. Earl DuPriest with Carolina Engineering Consultants explained to the board, that he is seeking a variance from Section 106-1876 of the Zoning & Development Standards Ordinance, to place an access road through the river buffer. Mr. DuPriest stated, that the access road is for a piece of property located in the City of Beaufort; the preliminary plans for that development is not definite. Mr. DuPriest stated, that there is also an existing SCE&G easement on the property going out into the marsh. Mr. DuPriest explained the events that took place, which pursued the need to place an easement through this particular piece of property. Mr. DuPriest stated, that Mr. Houch's original intention was to use parcel 30, in order to provide a road and develop the property itself, but due to the excessive impact to critical areas, and having to cross the high water lines to reach the southern parcel, it was deemed unsuitable for a roadway; it would be difficult, if not impossible to obtain a permit through OCRM. Mr. DuPriest stated, that Mr. Houch pursued the possibility to annex the property in question, but the request was denied by the City of Beaufort.

Mr. Dinkins stated, that he would like to see documentation from OCRM rejecting the request to cross the critical areas. Mr. Dinkins stated, that he believes that the applicant should have covered all of his basis with OCRM, prior to coming to the Zoning Board of Appeals. Mr. Dinkins asked Mr. DuPriest, "Do you have any documentation from OCRM rejecting the request to cross the critical areas?"

Mr. DuPriest answered, "I have to refer to my colleague Mr. Jeff Ackerman".

Mr. Jeff Ackerman with Carolina Engineering Consultants stated, to permit the roadway on lot 70 could have been done through OCRM, the issue with lot 70 was the river buffer, because the river-buffer setback is 100 feet in Beaufort County; the entire roadway would have been inside of that river-buffer. They were faced with the challenge of trying to annex the property into the City of Beaufort for the permitting to be complete, but was denied, because the City of Beaufort felt like they were "zoning shopping". Mr. Ackerman stated, that once the annexation was denied, they had to figure out how to obtain access to the property. Mr. Ackerman stated, that lot 36 has a SCE&G power line easement that runs through the property, and it's also a gas line in that area; it has already been significant disturbance along that property line.

Mr. Dinkins asked, "What kind of road will be constructed?"

Mr. Ackerman answered, "A regular 22-foot asphalt road".

Mr. Gasparini asked, "Can this board give approval to cross the marsh without Dhec's approval?"

Ms. Austin answered, "No. OCRM has to give permission to cross the marsh".

Mr. Gasparini asked Mr. DuPriest, "If this board was to grant the variance tonight, do you think that OCRM would issue a permit granting permission to cross the wetland?"

Mr. DuPriest stated, that representatives from OCRM visited the site, and they are in the opinion that they would issue a permit to cross the wetlands. Mr. DuPriest stated, that they are negotiating how the crossings will take place.

Mr. LeRoy asked Ms. Austin, "Would the County preference be to access the property through lot 20?"

Ms. Austin stated, that the County preference would be to find property, which was annexed into the City of Beaufort; the property would also have a setback into the buffer, which would need addressing, but it would have two crossings over the marsh, instead of one crossing.

Mr. Gasparini asked, "Regarding the area of marsh on the property, was that created by ditches?"

Mr. DuPriest stated, that he believe it was, but he's not sure of the history of the property. Mr. DuPriest stated, that in 1968 the ditches were cut in for Palmetto Estates Subdivision, and he believes it may have been a wetland; once the ditches were cut, the wetland became tidal influence. Mr. DuPriest stated that, in his opinion, based on the typography, the wetland would have been a typical freshwater wetland.

Mr. Gasparini asked Mr. DuPriest, "Were the ditches cut for storm water?"

Mr. DuPriest answered, "Yes. It was to drain the properties to the north of the southern parcel, and on lot 18, there's a ditch on Adams Street, and it connects towards the ditch that's blocked, and is currently running into drainage problems.

Ms. Austin stated, that if the owner doesn't purchase the entire property; once the right-of-way gets created, it will split the property in half, and would create a problem with the County in the future.

Mr. Ackerman stated, that the applicant will be purchasing the entire lot.

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. Ramos explained to the board, that the applicant was "zone shopping" last year. Mr. Ramos stated, that years ago, he was going to purchase the property, but was told that nothing could be built in the wetland area, because it would destroy the marsh. Mr. Ramos stated, that if the road goes through the property, it would destroy the view and the marsh; it would destroy all of the land and everything that's in the marsh. Mr. Ramos stated, that if the applicant puts all of the houses in the marsh area, it would destroy the water. Mr. Ramos stated, that the covenants and restrictions say, that only two (2) houses can be placed on each lot.

Mr. Franger explained to the board, that he lives on Adams Circle, and he's concerned about the flooding in that area. Mr. Franger stated, that he's opposed to this variance request.

Ms. Karen explained to the board, that her property always floods, and the granting of this variance would be a disaster for her.

Ms. Austin stated, that she would like to see a copy of the Covenants & Restrictions, because the County is not suppose to do anything that's contrary to Covenants & Restrictions.

Mr. Gasparini asked the applicant, "Are you aware what the Covenants & Restrictions say?"

Mr. Ackerman stated, that they are aware of the Covenants & Restrictions, but they have not reviewed them.

Mr. Gasparini suggested, that this application be continued until the next scheduled meeting, in order to give the applicant a chance to review the Covenants & Restrictions.

Mr. Dinkins asked Mr. Ackerman, "Does the lot which is located in the City of Beaufort, have Covenants & Restrictions?"

Mr. Ackerman answered, "I would imagine so".

Mr. Dinkins informed Mr. Ackerman, that the City of Beaufort may also have to review those Covenants & Restrictions.

MOTION: Mr. Dinkins made a motion to table this application until the next scheduled meeting. Mr. Rentz seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, and Rentz).

ADOPTION OF THE YEARLY 2010 SCHEDULE

MOTION: Mr. LeRoy made a motion to adopt the 2010 Yearly Schedule. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, and Rentz).

ADJOURNMENT

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

The meeting adjourned at approximately 6:48 p.m.