

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, January 28, 2010, in Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. Claude Dinkins
Mr. Kevin Mack

Mr. Edgar Williams, Vice Chairman
Mr. Phillip LeRoy
Mr. Chester Williams

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 5:10 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.

ADOPTION OF AGENDA:

Mr. Gasparini stated, that he received a letter from Mr. Houck, requesting to postpone his application, because there was an issue with restricted covenants for the community regarding a variance. Mr. Gasparini stated, that the county believes that the covenants prohibit the approval of a variance, and the applicant is requesting a continuance in order to seek legal council. Mr. Houck asked the board to render a motion, and include in the motion that the applicant has to re-notify all of the property owners, and be posted in the newspaper.

Mr. Gasparini stated, that since the Election of Chairman/Vice Chairman was not placed on the agenda, it will be conducted next month.

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

DON HOUCK (HARDING STREET S/D) – VARIANCE/REVISIT

MOTION: Mr. Chester Williams made a motion to table this application until further notice. The applicant shall re-notify all property owners within a 500-foot radius prior to being heard by the Zoning Board of Appeals. Mr. Edgar Williams seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, C. Williams and E. Williams).

ADOPTION OF MINUTES:

Minutes of July 23, 2009:

MOTION: Mr. Edgar Williams made a motion to adopt the minutes as submitted. Mr. Chester Williams seconded the motion. The motion passed (FOR: LeRoy, Mack, C. Williams, and E. Williams; ABSTAINED: Dinkins and Gasparini). Mr. C. Williams stated, that he would like to incorporate the letter, from himself and Mr. Gasparini into the minutes, recusing themselves from the Lindly Mingledorff Appeal.

Minutes of November 12, 2009:

MOTION: Mr. Edgar Williams made a motion to adopt the minutes as submitted. Mr. Chester Williams seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, C. Williams, and E. Williams). Mr. C. Williams stated, that he would like to incorporate the letter, from himself and Mr. Gasparini into the minutes, recusing themselves from the Lindly Mingledorff Appeal.

Mr. Gasparini asked Mrs. Glover to attach all letters from the board members recusing themselves from any case, to the appropriate minutes for that month.

Minutes of December 10, 2009: Minutes shall be adopted at the next scheduled meeting, due to the lack of a quorum.

MOTION: Mr. Chester Williams made a motion to table the adoption of the December 10th, 2009 minutes until the next scheduled meeting. Mr. Edgar Williams seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, C. Williams, and E. Williams).

MARTHA DAVIS (DOCK VARIANCE)

Mr. David Gasque representative for the applicant, explained to the board, that the applicant purchased the lot in 1998, and she's being taxed for waterfront property; there are ten (10) lots in the subdivision, and nine (9) lots already have existing docks or will qualify for a dock under 300 feet; the only lot that won't qualify is Ms. Davis' lot. Mr. Gasque stated, that the applicant did not want the dock to be placed in her dock corridor, and Ms. Davis has agreed to eliminate the float and ramp, and just have a pierhead, which would make the dock approximately 345 feet.

Mr. E. Williams asked Mr. Gasque, "Is the proposed dock and the existing docks the same length?"

Mr. Gasque answered, "The lots that are qualified for a dock is less than 300 feet, and the existing docks are 340 feet and 330 feet in length".

Mr. LeRoy asked Mr. Gasque, "If the existing dock on the adjacent lot did not encroach over the extension of the property line, would Ms. Davis lot be shorter and within the required 300 feet?"

Mr. Gasque answered, "Yes".

Mr. C. Williams asked Mr. Gasque, "Do you have a copy of the OCRM Dock Corridor Plan?"

Mr. Gasque answered, "No. I called the OCRM office, but they couldn't put their hands on it".

Mr. Criscitiello explained to the board, that there were no disputes over the fact that the property will located on a small tidal creek; the rule was written in May 2000 to limit the length of docks on small tidal creeks to 300 feet. Mr. Criscitiello stated, that the request for a variance should be denied because it doesn't meet the intent of the ordinance, and county council's intension was that the docks be limited to 300 feet, if it is located on a small tidal creek.

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. Reed Armstrong with the Coastal Conservation League explained to the board, that the idea of a dock is not a right, but a privilege; the dock ordinance is clear, which is 300 feet, and there's no variation from that requirement.

Mrs. Sandra Aulton explained to the board, that she lives next door to the lot, and they have been permitted for a dock on that lot, and met all county specifications; her concern is if a variance is approved, Ms. Davis' dock will cross her property line, and might prevent her from qualifying for a dock. Mrs. Aulton stated, that they have started their dock permit process with Mr. Gasque, and later found out that he was also working with Ms. Davis on getting her dock approved.

Mr. Gasparini stated, that Mr. Criscitiello informed him that there have been new information discussed at the meeting, and he would like the applicant to ask the board to table this application until all parties could discuss all pertinent information.

Mr. Gasque stated, that he would like to ask for a continuance until the next scheduled meeting, in order to get with all parties involved, and try to come up with a solution with the neighbors.

MOTION: Mr. Chester Williams made a motion to table this application until next month. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, C. Williams, and E. Williams).

Mr. Dinkins left the meeting at approximately 5:50 p.m.

RANDY BROCK (BROCK AUTOMOTIVE) – VARIANCE

Mr. Steve Andrews with Andrews & Burgess Engineering asked the board, to allow the county to present an overview of this application first, because he came into this project, and there's some history that need to be presented by the county.

Mr. Criscitiello explained to the board, that the use of general auto repair must be on a major collector or arterial road, and this use is located on a local road and would be inconsistent with the zoning ordinance. Mr. Criscitiello stated, that the property was originally used as an office building for Bootle Air, and was permitted for an expansion under a special use permit to increase the size of the building, and in 2008 the property was sold and the existing use cease to exist at that point. Mr. Criscitiello stated, that the property was sold without the understanding of the purchaser, that the use was not allowed, and a violation occurred as a result of that. The normal process for obtaining a business license, is prior to the issuance of a business license, a zoning permit must be issued first. There is a discrepancy in the county government records, in regards to the existence of a properly issued zoning permit; the county doesn't have a copy of the permit, and without the original permit, there's no way to determine if the signature is from the zoning office, because the permit is missing out of the book. After conferring with the county attorney, he was told to relate this information to the zoning board of appeals. Mr. Criscitiello stated, that if the board were to confer the staff to seek a text change, he would comply with that request.

Mr. C. Williams asked Mr. Criscitiello, "Was there a zoning permit issued?"

Mr. Criscitiello answered, "We can't put our hands on one yet".

Mr. C. Williams asked Mr. Criscitiello, "Are you saying that the applicant cannot run their business, because the county is not sure what the records say?"

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

Mr. C. Williams asked Mr. Criscitiello, "Is the zoning permits serially numbered?"

Mr. Criscitiello answered, "Yes".

Mr. C. Williams asked Mr. Criscitiello, "Does the business license copy of the zoning permit has a legible number, and does it fall within what would appear to be the proper order in respect to the permit which was issued directly before or directly after the questioned permit?"

Mr. Criscitiello answered, "That would be my understanding".

Mr. C. Williams asked Mr. Criscitiello, "Is it safe to believe that the copy of the zoning permit in the business license office is not proper?"

Mr. Criscitiello answered, "There's reason to believe that's true, because the signature on the permit is not one that matches anyone's signature in the Zoning Office".

Mr. Gasparini asked Mr. Criscitiello, "Who sends the zoning permit to the business license office".

Mr. Criscitiello answered, "The applicant takes the permit to the business license office".

Mr. C. Williams asked Mr. Criscitiello, "Where's the original zoning permit?"

Mr. Criscitiello answered, "The original permit is missing; we asked for a copy from the applicant, but they could not put their hands on it".

Mr. E. Williams asked Mr. Criscitiello, "Why couldn't the applicant present his copy to the zoning office?"

Mr. Criscitiello stated, that the applicant could not find his copy.

Mr. E. Williams asked Mr. Criscitiello, "How long has the business been in operation?"

Mr. Criscitiello answered, "Since March 18, 2009". Mr. Criscitiello stated, that the county's current position is that the county did not find fault with the applicant, but the county found fault in how this came to be, and would like to suggest a text amendment, which would set a different course of action.

Mr. Andrews stated, that Mr. Brock purchased the property in the spring of 2008, and opened up his business and operated as an automotive repair shop. When the business license issue came up in 2009, that triggered this zoning permit issue. The zoning of the property is Commercial Suburban, and the automotive repair shop is a permitted use with a condition to be on a collector or arterial road. Mr. Andrews stated, that they requested the possibility of a text amendment, and the county engineer stated, that he could be in favor of that amendment.

Mr. Mack asked Mr. Andrews, "Is your client willing to submit his copy of the zoning permit?"

Mr. Andrews answered, "Mr. Brock is an automotive person, and he is not able to find his copy of the permit".

Mr. Gasparini asked Mr. Brock, "When did you move in to the building?"

Mr. Brock answered, "I believe it was 2008. I'm not good with dates, because I had a stroke".

Mr. C. Williams stated, that he would like to talk to the real estate person who obtained the zoning permit.

Mr. Gasparini stated, that this board deal with requests, and act on those requests. He is not sure how the permit was issued, and is not sure that's a subject that the board should be taking up with, or if the board should be getting involved in these issues.

Mr. C. Williams stated, that the staff report should have had all of the information relating to this issue, and the county should not have to wait until the meeting to hear all of the additional information.

Mr. Criscitiello stated, that the discussion with the staff attorney took place after the staff report was presented to the board members.

Mr. Gasparini stated, that he is uncomfortable with making a decision based on the waiting on a text change.

Mr. C. Williams stated, that he would like to table this application until next month, because he would like to hear from the real estate agent.

Mr. Gasparini asked Mr. Andrews, would he like to ask the board to table this matter until the county has had an opportunity to do more homework, and his representative have the opportunity to notify the real estate agent, for him to come to the meeting?

Mr. Andrews stated, that they would like to request the board to table this request until next month.

Mr. Gasparini explained to Mr. Andrews, that he would like them to come back to the board with the real estate agent, for him to explain how he obtained the permit.

MOTION: Mr. Edgar Williams made a motion to table this application until next month. Mr. Mack seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, C. Williams, and E. Williams).

WARDS LANDING HOA (COMMUNITY DOCK VARIANCE)

Mrs. Heather Baldwin, president of Wards Landing Home Owners Association explained to the board, that they are requesting a variance for a community dock; there are six (6) lots in the subdivision that qualifies for a private-use dock, and it would total up to 1,150 square feet of walkway going to the small tidal creek. Mrs. Baldwin stated, that Wards Landing was developed in 1939, and nothing has changed since that time. Mrs. Baldwin stated, that they are trying to get rid of the small docks, and combine it all into one 780 foot Community Dock; there's a letter from OCRM stating that they would support a community dock on a small tidal creek. Mrs. Baldwin stated, that they are also trying to decrease the walkway space on the small creek on the side where the proposed small docks would be located.

Mr. LeRoy asked Mrs. Baldwin, "Did the other lot owners who would be able to have docks give up their rights for a private dock?"

Mrs. Baldwin answered, "Yes".

Mr. Edgar Williams left the meeting at approximately 6:30 p.m.

Mr. Criscitiello stated, that the ordinance requires the limitation of a community dock to 500 feet, and the applicant does not meet the criteria for a variance, and staff recommends disapproval.

Mr. Gasparini asked Mr. Criscitiello, "So the county would prefer six (6) private-use docks rather than one community dock?"

Mr. Criscitiello answered, "No, we would prefer a community dock not to exceed 500 feet". Mr. Criscitiello stated, that if the board grants the variance, he would like them to prohibit the ability for anyone in the subdivision to obtain a private dock.

Mr. Gasparini asked Mrs. Baldwin, "Would your property owners be willing to give up their rights for a private dock?"

Mrs. Baldwin answered, "Yes".

Mr. Thomas Pendavis stated, that if the board were to grant the variance, he would be willing to prepare Covenants & Restrictions, which would run with the land, to prohibit the ability to have private use docks in the subdivision.

Mr. Gasparini asked Mr. Criscitiello, "If the subdivision be limited to one community dock, would the county be less opposed to the granting of the variance?"

Mr. Criscitiello stated, that the county would be more supportive of the variance, if it prohibited the permitting of any other smaller docks in the subdivision.

Mr. Gasparini asked Mr. Rocky Browder, "Could OCRM approve a dock master plan for that community, which would make it difficult for someone to request an individual dock permit?"

Mr. Browder stated, that there's no way to go back and do a dock master plan on existing subdivisions.

Mr. Pardavis stated, that the Homeowner's Association has a claim to enforce Covenants & Restrictions and any future dock requests.

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. Reed Armstrong with the Coastal Conservation League explained to the board, that the proposed individual docks is not an issue before the board, the issue is whether the board can grant a dock variance approximately 60 percent of what the zoning ordinance allows. Mr. Armstrong stated, that there's no assurance that any of the private docks can get approved by OCRM, and without that stipulation of whether or not OCRM would grant an individual dock, the community dock should not be granted.

Mr. Mack asked Mr. Browder, "Would OCRM approve six (6) individual docks?"

Mr. Browder stated, that an application has not been submitted to OCRM for individual private docks because of the cost of the permit, but it appears to meet the criteria of the OCRM standards, and the Beaufort County standards.

MOTION: Mr. LeRoy made a motion to approve the variance for a 780 foot community dock, with the conditions that the Covenants & Restrictions runs with the land for each and every lot in the subdivision, be prepared, approved by the county attorney, and put into place appropriately; and that those covenants be specifically enforceable through the county. The application to OCRM for the community dock must include a reference to the covenants, and should be in place before or upon approval of the docks, so that it's clear to OCRM that this is the allowed dock for the subdivision, and there will be no other docks in that subdivision. Mr. Chester Williams seconded the motion. The motion passed unanimously (FOR: Gasparini, LeRoy, Mack, and C. Williams).

Mr. Chester Williams stated, that he would like to say for the record, in regards to Don Houck's variance, Mr. Earl Dupriest contacted him regarding the request for a continuance; Mr. Dupriest had a question about the covenants, so he referred him to Mr. David Tedder or any other local council, because he's a member of the board, and was not in the position to give him any sort of advice regarding his application.

ADJOURNMENT

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

The meeting adjourned at approximately 6:52 p.m.