

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, February 25, 2010, in Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

**MEMBERS PRESENT**

Mr. Edgar Williams, Vice Chairman  
Mr. Claude Dinkins  
Mr. Phillip LeRoy

Mr. Kevin Mack  
Mr. Timothy Rentz  
Mr. Chester Williams

**MEMBERS ABSENT**

Mr. Thomas Gasparini, Chairman

**STAFF PRESENT**

Ms. Hillary Austin, Zoning Administrator  
Ms. Delores Frazier, Assistant Planning Director  
Mrs. Tamekia Judge, Zoning Analyst I

**CALL TO ORDER:** Mr. Edgar Williams called the meeting to order at 5:10 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.

**ADOPTION OF AGENDA:**

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

**ADOPTION OF MINUTES:**

**Minutes of December 10, 2009:**

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

**Minutes of January 28, 2010:**

**MOTION:** Mr. Chester Williams made a motion to defer the minutes until the next scheduled meeting. Mr. Dinkins seconded the motion. The motion

**passed unanimously (FOR: Dinkins, LeRoy, Mack, Rentz, C. Williams, and E. Williams).**

Mr. C. Williams stated, that he would like the minutes, and the staff report to be sent to the board at the same time, which is at least one week prior to the scheduled meeting.

#### **MARTHA DAVIS (DOCK VARIANCE/REVISIT)**

Mr. E. Williams stated, that the applicant sent a letter requesting to be heard at the March 25, 2010 meeting.

**MOTION: Mr. Rentz made a motion to defer this application until March 25, 2010. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Dinkins, LeRoy, Mack, Rentz, C. Williams, and E. Williams).**

Mr. Rentz stated, that he would like to recuse himself from the Randy Brock (Brock Automotive) application.

Mr. Reed Armstrong stated to the board, that Mrs. Aulton would like to speak under public comment for Martha Davis' dock variance.

Mr. E. Williams asked Mrs. Aulton, "Would you like to have public comment for this variance request today, or would you like to speak next month?"

Mrs. Aulton answered, "I hope it would have been taken care of today, but I guess I would wait until next month". Mrs. Aulton stated, that she brought her OCRM permit to the meeting tonight for the board members to review.

Mr. C. Williams asked Mrs. Aulton to give the documentation to Ms. Austin, so it can be reviewed with the regular packet at next month's hearing.

#### **RANDY BROCK (BROCK AUTOMOTIVE) – VARIANCE**

Mr. E. Williams stated, that Mr. Timothy Rentz recused himself from this case.

Mr. Steve Andrews with Andrews & Burgess Engineering explained to the board, that they are requesting a variance; it's an existing commercial property, which was changed from service to automotive repair. Mr. Andrews stated, that this use is permitted, but it has a condition that requires direct access to a major arterial road. Mr. Andrews stated, that a separate issue discussed by staff, was the issue with the zoning permit. Mr. Andrews asked, "Does the board still have a issue with the issuance of the zoning permit?"

Mr. E. Williams stated, that as far as he's concerned, this board is only concerned with the variance request; the county has to deal with the issue regarding the original zoning permit.

Mr. Andrews stated, that the facility was permitted and built in the mid 1990's for Bootle Air service; in 2008 Mr. Brock purchased the property and building, but allowed Mr. Bootle to lease the building, and in 2009, Mr. Brock moved his business into the building. Mr. Andrews stated, at the end of 2009, the issue regarding the arterial road came up, and Mr. Brock hired him to handle the issue.

Mr. C. Williams asked Mr. Andrews, "What are the extraordinary and exceptional conditions pertaining to this property, which would warrant the granting of a variance?"

Mr. Andrews stated, that this use was an existing use; the situation that occurred with the zoning permit got Mr. Brock into the business. Mr. Andrews stated, that it has been occupied without problems in the community. Mr. Andrews stated, that since Mr. Brock is already in the building, it's an after-the-fact situation that makes a hardship, because the alternative would be to relocate the business.

Mr. C. Williams read Section 106-522 (A)(1) into the record, which states, "Extraordinary conditions could exist due to topography, street widening, beachfront setback lines or other conditions which make it difficult or impossible to make reasonable use of the property". Mr. Williams stated, that he interprets that to say, the extraordinary and exceptional conditions has to do with the physical characteristics of the property; the fact that it's an existing business that may have to move, does not meet the extraordinary and exceptional conditions in Section 106-522 (A)(1) of the Zoning & Development standards Ordinance.

Mr. Andrews stated, that it was an existing commercial use that has access, and that condition would cause the business to be discontinued.

Mr. C. Williams asked Mr. Andrews, "Did the previous business have that same condition?"

Mr. Andrews answered, "I don't know, because we came in with this existing situation, and we preceded forward".

Mr. LeRoy stated, that this use is permitted, but it only has an arterial road issue.

Mr. C. Williams stated, that the arterial road issue makes it a non-permitted use.

Ms. Austin explained to the board, that Mr. Brock is requesting a variance to continue his automotive repair business; one of the conditions is, that the business has to be located off of an arterial or major collector road, and another requirement is that it would need a Community Impact Statement, which includes a Traffic Impact Analysis. Ms. Austin stated, that there have been complaints relating to the traffic, and cars being parked on the street; also, the business was being operated illegally, because they did not get a permit to do the business.

Mr. C. Williams asked Ms. Austin, "Was a business license permit issued?"

Ms. Austin answered, "Yes". Ms. Austin read the staffs report to the members of the Zoning Board of Appeals.

Mr. Dinkins asked Ms. Austin, "Did Mr. Brock lease or purchase the property?"

Ms. Austin stated, that Mr. Brock purchased the property in 2008.

Mr. LeRoy stated, that during the last meeting, Mr. Criscitiello believed that the applicant was not at fault in this matter, and proceeded in good faith in the process. Mr. LeRoy stated, that Mr. Criscitiello wanted to request a text change, which would remove the arterial and major collector road condition from the limitations. Mr. LeRoy asked Ms. Austin, "What's the status of the text change?"

Ms. Austin answered, "I don't know".

Ms. Delores Frazier stated to the board, that Mr. Brock could apply for a text amendment, and she doesn't believe that Mr. Criscitiello was implying that the staff would initiate the text change, but the applicant could apply for a text change.

Mr. E. Williams stated, that he believes that Mr. Criscitiello said that he would initiate the text change.

Ms. Frazier stated, that Mr. Criscitiello would have to speak on behalf of that statement, but the normal process of a text change takes approximately four (4) months.

Mr. Mack asked Ms. Austin, "If the applicant request a text change, would he still have to move out right away?"

Ms. Austin stated, that normally the applicant could remain in the building until a decision is made regarding the text change.

Mr. Dinkins asked Ms. Austin, "If the applicant gets the variance tonight, would he be able to operate his business?"

Ms. Austin answered, "Yes, he would apply for a "Change of Use" permit to operate the business".

Mr. Dinkins asked Ms. Austin, "Does that look probable?"

Ms. Austin answered, "We would grant a "Change of Use" permit for the property, in order for him to operate the business".

Mr. C. Williams asked Mr. Andrews, "I believe you stated before, that you and the applicant looked at the text change process, and decided it was not a viable option?"

Mr. Andrews stated, that they went before the Development Review Team, and was aware that they had to do a Community Impact Statement to see if there was an impact

to the community, and a Traffic Impact Analysis to determine if there was an impact to traffic. In the process they discussed how to overcome the access to an arterial road; a text change and variance was also discussed at that time. Mr. Andrews stated, that it was his understanding to proceed with the variance; but since he met with Mr. Criscitiello, Mr. Criscitiello explained to him that the text change was not the way to go, so he proceeded with the variance request.

*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 were no public comment for this request.*

Mr. LeRoy stated, that the fact that Mr. Brock received what he thought was a valid zoning permit, and started and operated his business; that's a hardship, and a variance would be justified in this case.

**MOTION: Mr. LeRoy made a motion to approve the variance as requested. Mr. Dinkins seconded the motion.** Mr. C. Williams stated, that he's very sympathetic with the fact that Mr. Brock thought he had a valid permit, but the hardship has to relate to the land, and not the applicant's personal circumstance; Mr. C. Williams stated, that he doesn't believe that this application meets the standards of Section 106-522 of the Beaufort County Zoning & Development Standards Ordinance.

Mr. LeRoy stated, that he might have been persuaded at making proper use of the land and the restriction of the land, however, since the county wanted to do a text change to allow this use, he feels like it would have been a minor technicality. Mr. LeRoy stated, that he would not like to see someone go out of business just because of a minor technicality.

Mr. C. Williams stated, that he received an affidavit regarding the zoning permit, which was e-mailed to them, but that issue is not before the board; and it was not submitted five (5) business days before the hearing. Mr. Williams stated for the record, the affidavit having to do with the zoning permit is not before the board.

**The motion passed (FOR: Dinkins, LeRoy, and E. Williams; AGAINST: Mack, and C. Williams).**

*Mr. Rentz returned back to the meeting.*

## **JOHN & LAURA BRAUN (RIVER-BUFFER VARIANCE)**

Mr. John Braun explained to the board, that he is requesting a variance from the OCRM critical line, on 31 Victoria Drive, Moss Creek. Mr. Braun stated, that the property was purchased approximately eight (8) years ago as a patio lot; he is requesting to construct a Florida room at approximately 130 square feet. Mr. Braun stated, that they will build the room within the guidelines of Moss Creek; the Property Owners Association has granted a variance for the setback from the rear-yard property lines. The last hurdle is to receive a variance from the OCRM critical line. Mr. Braun stated, that the property is

unique for the other properties by the lagoon of Moss Creek, because the property goes up to the bank and has no access, because of that factor, the building setback line is closer than most property owners. Mr. Braun stated, that the existing vegetation will not be touched; they are responsible people, and the addition will not have any effect on the neighbors at all.

Mr. Dinkins asked Mr. Braun, "Is this lake tidal influenced, or is it a man-made lagoon?"

Mr. Braun answered, "It used to be tidal influenced, but now it's a lagoon". Mr. Braun stated, that it is detention basin because of the golf course, and is classified as safe drinking water.

Mr. Dinkins asked Mr. Braun, "Does the water rise and fall at all?"

Mr. Braun answered, "It's constant".

Mr. Mack asked Mr. Braun, "Looking at the landscaping of the other houses in your area, how close would that put you to the lagoon or the critical line, in relation to the other houses in the neighborhood?"

Mr. Braun stated, that his next door neighbors bedroom is closer to the lagoon than what his addition will be by 2 or 3 feet; his house will be approximately 17 or 18 feet away from the lagoon.

Mr. LeRoy asked Mr. Braun, "How long was this detention pond in existence?"

Mr. Braun answered, "Approximately 30 years, but he's not sure when they built the dams across the lagoon".

Mr. LeRoy asked Mr. Braun, "Being it is a freshwater pond, why does it have a critical line?"

Mr. Braun stated, that he was wondering the same thing.

Mr. C. Williams asked Mr. Braun, "Did you go down to OCRM for approval?"

Mr. Braun answered, "Yes".

Mr. C. Williams asked Mr. Braun, "What was their response?"

Mr. Braun stated, that OCRM told him that he was good to go, they signed off on the plats, and showed him the lines. Mr. Braun stated, that he went to the Zoning department and was told that he needed a variance to go closer to the critical line.

Mr. C. Williams stated, that maybe the applicant should go back to OCRM and verify whether or not the lagoon is tidal influenced, because the applicant may not need a variance from this board.

Mr. Rentz stated, that he was developing a piece of property, and even though the pond was freshwater at one time, the Army Corp of Engineers had photos from the late 40's early 50's, and they saw where the tidal creek came through the lagoon at one time, and they classified it as jurisdictional wetlands.

Mr. C. Williams stated, that the Army Corp of Engineers may have jurisdiction over the lagoon, but OCRM may not have jurisdiction.

Ms. Austin stated, that OCRM signed off on the plat, saying that it is tidal influenced, and it does have a critical line.

Mr. C. Williams asked Ms. Austin, "Do you know if this lagoon is tidal influenced?"

Ms. Austin answered, "OCRM says it is".

Mr. C. Williams asked Ms. Austin, "Do you personally know if this lagoon is tidal influenced?"

Ms. Austin answered, "I don't know for sure, but OCRM signed off on the plat". Ms. Austin stated, that if OCRM didn't sign off on the plat, it wouldn't have been a 50-foot buffer. Ms. Austin stated, that Mr. Braun is requesting to extend his house 17 feet from the OCRM critical line, and his house sits at 23 feet right now. Ms. Austin stated, that staff recommends disapproval, because the applicant has not proven a hardship.

Mr. LeRoy asked Ms. Austin, "Are there other houses in the area that encroach into the river buffer?"

Ms. Austin stated, that the house next door appears to encroach, but not as close; she did not measure the distances of the neighbors' houses, but it appears that the applicant will be closer than both of the houses on either side of them.

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

Ms. Patricia Bodemer stated to the board, that she lives on lot 178, which is the house right next to Mr. & Mrs. Braun. Ms. Bodemer stated, that her master bedroom sits out approximately 7 or 8 feet further than the proposed addition. Ms. Bodemer stated, that she's in favor of this variance request.

Mr. LeRoy asked Ms. Bodemer, "Are there any other homes in the area that extends out the same as your house?"

Ms. Bodemer answered, "Yes".

Ms. Laura Braun stated, that she loves where she lives, and they would never do anything that would harm the wildlife in the area, so all runoff would be protected and taken care of. Ms. Braun stated, that they have some alligators and it's not safe for them to sit outside at night.

**MOTION: Mr. Dinkins made a motion to approve the variance as requested. Mr. LeRoy seconded the motion.** Mr. C. Williams stated, that these lots were subdivided long before this buffer requirement was put in place, and it was subdivided without any idea that the property would have a 50-foot setback from the critical line; if there is actually a critical line. Mr. C. Williams stated, that it is a bad law, and he feels like it's unfair to put people in this situation; the buffer line might even run through the middle of the Braun's house, and they might not have been able to build the existing house at it's current location. Mr. C. Williams stated, that he feels like county council should change the standards, but under Section 106-522 of the zoning ordinance, he doesn't see how they have met a hardship set forth in the zoning ordinance. Mr. C. Williams stated, that one recourse the applicant could utilize, is to go back to OCRM to see if this lagoon is tidal influenced, or go to County Council to change the standards of the zoning ordinance.

Mr. Dinkins stated, that this board is the last board the applicant goes to for a variance; a lot of laws would have to be changed within the county and OCRM, for variances not to be needed.

Mr. LeRoy stated, that he faults the county for having imposed those buffers; OCRM did not place those buffers on properties that are tidal influenced.

Mr. C. Williams stated, that he would like for someone to go back to OCRM, before this board make any action on this application. Mr. C. Williams asked Mr. Braun, "Did anyone from OCRM go to your site prior to stamping the plats?"

Mr. Braun answered, "No".

Mr. C. Williams asked Mr. & Mrs. Braun, "Would you like to ask the board to defer your project, so you can see if the lagoon is tidal influenced?"

Mr. Braun stated, that he wouldn't mind asking OCRM that question, but he would also like to get his variance request granted tonight.

Mrs. Braun stated, that she would like the board to vote on their application tonight, because she wouldn't want to be setup as the example for a critical line issue. **The motion passed (FOR: Dinkins, LeRoy, Mack, and Rentz; AGAINST: C. Williams, and E. Williams).**



## **DONALD E. PERRY – BEACHWOOD MOBILE HOME PARK (APPEAL)**

Mr. C. Williams asked the board, if they received his letter he sent to Ms. Austin regarding the two appeals, dated February 24, 2010? Mr. Williams stated, that Section 6-29-800(E) of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 states, “The officer from whom the appeal is taken immediately must transmit to the board all of the papers constituting the record upon which the action appealed from was taken”. Mr. Williams stated, that the staff report referred to some other documentation relating to these appeals, and he doesn’t think the board has gotten all documentation relating to these two appeals. Mr. Williams also stated, that he received his packet in the mail on Saturday, and he doesn’t know when it was mailed out to the board. The county code states, that the packages must be delivered at least seven days prior to the hearing, and he doesn’t believe that the board received everything they needed in order to render a decision on these two appeals.

Mr. E. Williams stated, that he would like the board to address those concerns with Mr. Criscitiello and Ms. Austin in order to appropriately address these concerns in a separate meeting. Mr. E. Williams asked Mr. David Tedder, “Would you like to defer your appeal until next month?”

Mr. David Tedder stated, that he was running late, and he didn’t get his stuff to the board until last week. Mr. Tedder stated, that he doesn’t have a problem with deferring this appeal until the next scheduled meeting.

Ms. Austin stated, that the board received everything she looked at when she rendered her decision. Ms. Austin also stated, that the additional information that Mr. Tedder provided to the board, was not submitted to her when the administrative interpretation was requested. Ms. Austin stated, that in Mr. Perry’s appeal, she was provided the electric bill, a water bill and a letter requesting the interpretation; on Mr. Anthony’s appeal, she only received a request for the interpretation.

**MOTION: Mr. Chester Williams made a motion to defer the appeal until the next scheduled meeting. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Dinkins, LeRoy, Mack, Rentz, C. Williams, and E. Williams).**

Ms. Austin stated, that if Mr. Tedder wants the county to consider the new information that he sent to the board, she would have to review it as a new administrative interpretation.

Mr. C. Williams asked Ms. Austin, “Was the written request for the administrative interpretation in writing?”

Ms. Austin answered, “Yes”.

Mr. C. Williams stated, that the documentation was not included in his packet, and he would like all documentation that the county reviewed in his packet from now on.

## **FRANK ANTHONY – COTTAGES AT STILLWELL (APPEAL)**

Mr. C. Williams asked Ms. Austin, “Does the board have everything you looked at, when you made the decision for this administrative interpretation?”

Ms. Austin stated, that she only had Mr. Anthony’s letter requesting the extension, and the Development Review Team did not take any action on his request.

Mr. C. Williams stated, that he would like the letter from Mr. Anthony requesting the extension of his development permit. Mr. C. Williams asked Ms. Austin, “Is this the 2<sup>nd</sup> extension for this development permit?”

Ms. Austin answered, “Yes”.

Mr. C. Williams asked Mr. Anthony, “Do you know what the board is doing today?”

Mr. Anthony answered, “I think so”.

Mr. C. Williams explained, that he doesn’t feel all of the documentation has been sent to the board in order to render the proper decision.

**MOTION: Mr. Edgar Williams made a motion to defer the appeal until the next scheduled meeting. Mr. Chester Williams seconded the motion. The motion passed unanimously (FOR: Dinkins, LeRoy, Mack, Rentz, C. Williams, and E. Williams).**

Mr. C. Williams stated, that he requested for the county to have an attorney at the meeting. Mr. Williams asked Ms. Austin, “Will an attorney be at the meeting next month?”

Ms. Austin answered, “You have to talk to Tony Criscitiello about that”.

Mr. C. Williams stated, that he anticipate that he has some questions that would require responses from an attorney representing the county.

Mr. E. Williams stated, that this board is supposed to have an ex-officio as an attorney, but we can certainly ask Mr. Criscitiello about that.

## **ELECTION OF CHAIRMAN & VICE CHAIRMAN**

Election of Chairman: Dinkins (0 Votes), Gasparini (6 Votes), LeRoy (0 Votes), Mack (0 Votes), Rentz (0 Votes), C. Williams (0 Votes), E. Williams (0 Votes).

Election of Vice Chairman: Dinkins (2 Votes), Gasparini (0 Votes), LeRoy (0 Votes), Mack (0 Votes), Rentz (0 Votes), C. Williams (1 Vote), E. Williams (3 Votes).

*After tallying all of the ballots, Ms. Austin stated, that Mr. Gasparini remains the Chairman, and Mr. Edgar Williams remains the Vice Chairman.*

## **ADJOURNMENT**

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

*The meeting adjourned at approximately 6:43 p.m.*