



COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development

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The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, April 22, 2010, in the Executive Conference Room, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

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

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

STAFF PRESENT

Mr. Anthony Criscitiello, Planning Director
Ms. Delores Frazier, Assistant Planning Director
Mrs. Lisa Glover, Zoning Analyst III
Mr. Lad Howell, County Attorney
Mrs. Tamekia Judge, Zoning Analyst I

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:09 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.

REVIEW OF AGENDA:

Mr. C. Williams stated, that Item #6, Frank Anthony appeal will be moved to the May 27, 2010 agenda at the request of the applicant.

MOTION: Mr. Chester Williams made a motion to adopt the agenda, with a notation to move the Frank Anthony appeal to the May 27, 2010 Zoning Board of Appeals meeting. Mr. Rentz seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Mack, Rentz, C. Williams, and E. Williams).

REVIEW OF MINUTES (MARCH 25, 2010):

MOTION: Mr. Edgar Williams made a motion to approve the March 25, 2010 minutes as submitted. Mr. Chester Williams seconded the motion. The motion passed (FOR: Dinkins, Gasparini, LeRoy, Rentz, C. Williams, and E. Williams, ABSTAINED: Mack).

Mr. Gasparini explained to the applicants and members of the public present at the meeting, that the applicant has ten minutes to present his/her case to the board.

BEACHWOOD MOBILE HOME PARK APPEAL (REVISIT)

Mr. David Tedder, representative for Don Perry and the Beachwood Mobile Home Park explained, that they previously appeared before the board in February, and there was a question about the status of some records; the project was tabled, and since that time, additional information has been submitted to the county's Zoning Administrator for consideration of the project. Mr. David Tedder explained to the board, that the mobile home park was established since the 1960's; Mr. Perry operated the mobile home park, which had an onsite sewer system that was in use during the operation of the mobile home park. In accordance with the DHEC mandates, in the early 2000, Mr. Perry had to close down the oxidation pond system for the mobile home park. Mr. Tedder stated, that Mr. Perry worked with local engineers and the local water authority to design another system; in order for him to switch systems, Mr. Perry had to vacate the mobile home residences, and that process took years. Mr. Tedder stated, that Mr. Perry had a DHEC construction permit, but was not able to do anything with the permit until the mobile homes were vacated. Mr. Tedder stated, that this process took until 2008, to vacate the mobile homes, and to close the oxidation pond. Mr. Tedder also stated, that in order for the lender to approve the monies for the renovations, the applicant had to come to the county for a Certificate of Zoning Compliance, granting approval of the project; and that's when this particular issue regarding the grandfathering status came to the forefront. Because the county would not give Mr. Perry a Certificate of Zoning Compliance, he couldn't borrow the money and pay the capacity fees, nor could he allow the contractors to move forward. Mr. Tedder explained, that as the financial situation deteriorated in 2007 or 2008, Mr. Perry started looking for private investors for financing. Mr. Perry engaged the service of a local engineer, who became partners with Mr. Perry. Mr. Tedder stated, that Mr. Perry came to the County to obtain a Certificate of Zoning Compliance, but when Mr. Perry was before the Development Review Team, the board members suggested that Mr. Perry come before the Zoning Board of Appeals, to request an administrative interpretation. The Development Review Team denied the request, based on a determination that the mobile home park had been voluntarily abandoned, per the Zoning & Development Standards Ordinance. Mr. Tedder then stated, that they had tried to show that the property was not abandoned, by providing supplemental documents; since Mr. Perry had kept a mobile home on the property, with connected water and electrical power, the property was not abandoned. Mr. Tedder stated, that Mr. Perry has always had a mobile home on site, and that it was used as an office; the taxes Mr. Perry paid were assessed as a mobile home and not an office. Mr. Tedder stated, that looking back at the final interpretation letter dated March 16, 2010, the board found that the taxes were misrepresented to them; Mr. Perry had originally paid taxes for \$11,000 to the County. Mr. Tedder explained, that Mr. Perry came to him, questioning what he should do after speaking with the Assessors office; Mr. Perry was told by the Assessors office to put the property in Agricultural use, and request an adjustment. Mr. Tedder stated, that a check in the amount of \$11,000 was sent to Mr. Perry; but he has not cashed the check for the difference of Agricultural and Residential use.

Mr. Dinkins asked Mr. Tedder, "Would there be Roll Back taxes if he did not take that option of agricultural use?"

Mr. Tedder replied, "Yes."

Mr. Dinkins asked Mr. Tedder, "If he didn't get his permit for three years; would he have ended up paying the same amount of taxes?"

Mr. Tedder replied, "When the use changes again, he would have to go back and pay Roll Back taxes." Mr. Tedder stated, that he advised Mr. Perry not to cash the check if he hadn't cashed it already.

Mr. C. Williams asked Mr. Tedder, "Wasn't the form already filled out by Mr. Perry?"

Mr. Tedder stated, that Mr. Perry consulted with the Assessor's office, and because of the fact that he had lost his mobile home use, the Assessor's office advised him to file for Agricultural use.

Mr. C. Williams stated, that the form they were reviewing was the special assessment ratio application, to change the property to agricultural use.

Mr. Tedder stated, that the form was the second thing that Mr. Perry did, the first thing he did was appeal the value, of the property in October.

Mr. Gasparini asked Mr. Tedder, "If your client knowingly chooses to pay taxes on agricultural use, regardless of what advice he got to do that; is he stuck with whatever the consequences are of declaring it as Agricultural?"

Mr. Tedder replied, "Not necessarily, because if this board were to find that Mr. Perry did not voluntarily abandon the property, and he still has the ability to repopulate the property, the check will be given back to the county."

Mr. Gasparini asked Mr. Tedder, "If Mr. Perry voluntarily filled out the papers, and voluntarily got the check back, what evidence do you have to prove someone made Mr. Perry fill out the papers, and change the property to Agricultural use for tax purposes?"

Mr. Tedder replied, "Mr. Perry did what he had to do, because he was now going into his pocket to pay taxes for this project."

Mr. Gasparini stated, that he thought the use was arguably abandoned long before, and the county was taking the position, that since it had been abandoned, and if Mr. Perry wanted to appeal the decision at that time, then Mr. Perry could have appeal it.

Mr. Tedder stated, that Mr. Perry was issued an action form from the Development Review Team, telling him to request an administrative interpretation from the Zoning Administrator; if he did not agree with that decision, he could appeal the decision to the Zoning Board of Appeals, and that's what Mr. Perry did.

Mr. Gasparini stated, that he was interested in what was done with the property between 2000 and 2008.

Mr. Tedder stated, that the taxes for 2008 were paid in 2009; the amount paid was \$10,738.13, and it was paid based on the property being a mobile home park.

Mr. Gasparini asked Mr. Criscitiello, "Did the County conceive, that between 2000 and 2008, Mr. Perry was paying taxes, as if the property was a mobile home park."

Mr. Criscitiello replied, "The County does not dispute that it was a mobile home park."

Mr. Tedder stated, that during the period of claimed abandonment; Mr. Perry had no intention on abandoning the use of the property as a mobile home park. Mr. Tedder stated, that he argued the point that it was a matter of intent for the property owner to relinquish the use of the property.

Mr. Gasparini asked, "What other evidence is there, that it wasn't abandoned as a mobile home park?"

Mr. Tedder stated, that Mr. Perry tried to clear out the property during the time period from 2004 through 2008; Mr. Perry had to go to different tax sales and evictions, which has not been disputed, and it took until 2008 to get the mobile homes and the people out of the park. Mr. Tedder also stated, that Mr. Perry continued to keep his office on, the site, which was a mobile home that was connected to a septic system; Mr. Perry also paid the electrical, kept the lights on, and kept the water hooked up. Mr. Tedder stated, that Mr. Perry had a construction permit, and at the time it was due to expire; Mr. Perry wasn't able to obtain financing, so he wasn't going to go out and hire engineers. Mr. Tedder stated, that they were stuck, because they couldn't get financing without the Certificate of Zoning Compliance, and Mr. Perry wasn't able to obtain financing.

Mr. Gasparini stated, that he was trying to figure out if there were people living in the mobile home park at that time.

Mr. Tedder stated, that if you look at the Zoning and Development standards ordinance, it is clear that there are definitions of non-conforming uses, listed in the Zoning & Development Standards Ordinance.

Mr. C. Williams asked Mr. Tedder, "Is the mobile home park a non-conforming use?"

Mr. Tedder replied, "It has a non-conformity. The mobile home park is allowed in the zoning district, it doesn't have the proper setbacks required under the new standards, and it is not within a mile of the Community Preservation district."

Mr. C. Williams asked Mr. Tedder, "Is it your position that the use is a legal non-conforming use?"

Mr. Tedder replied, "Yes".

Mr. Gasparini stated, that he was interested in what was going on during this period of time; he wanted to know when the last person moved out and whether there was active building and sewer permits in place when the last person moved out.

Mr. Tedder stated, that the submitted affidavit submitted, lists in paragraphs one through fifteen, a chronological history of what went on at the mobile home park.

Mr. Gasparini stated, that he wanted to know what evidence the County have, that shows the mobile home park was abandoned?"

Mr. Gasparini asked Mr. Tedder, "Do you know when the last person moved out?"

Mr. Tedder stated, that he believes it was late 2008, but he have to let Mr. Perry answer that question, because he can not recall.

Mr. Gasparini stated, that as long as someone was living in one of the trailers at the park, he doesn't have a problem with it still being a mobile home park.

Mr. Tedder stated that, to this date there is an operative mobile home on the property.

Mr. Gasparini asked, "Is someone living in it?"

Mr. Tedder stated, that the mobile home is being used as an office.

Mr. Gasparini stated that, just because there is an office out there, doesn't necessarily mean that it is a mobile home park.

Mr. E. Williams stated, that if the property was abandoned for more than 120 days, it should have been considered abandoned, and it should only be replaced with a conforming use.

Mr. Don Perry stated, that he purchased the mobile home park in 1963. Mr. Perry stated, that when problems started arising with the park, he had left Beaufort; in his absence, the management allowed the park to become drug infested. Mr. Perry stated, that he talked to the City of Beaufort, and the County, to determine what to do with the park; in the meantime, the requirements for the oxidation pond was getting out of hand, so he went to Mr. Steve Andrews to design a system for the pond. Mr. Perry stated, that he had no idea how long it would have taken to evict the people from the park, so he went to the County and purchased the mobile homes, so that he could demolish them. Mr. Perry also stated, that in 2009, Mr. Thames was the last person to move off of the property, because he was the property manager. Mr. Perry stated, that he did not abandon the property; he kept someone on the property, as of this date, to maintain the property. Mr. Perry also stated, that he had been paying taxes on the property for many years, even after the County told him that the use of the mobile home park was not grandfathered. Mr. Perry stated, that he went to Mr. Tedder for help, and explained to him, that the Beaufort County Assessor's office suggested that he put the property in Agricultural use, until he got an interpretation from the Zoning office, and go before the Zoning Board of Appeals. Mr. Perry also stated, that the police station had a sub station setup on the property; and once they left, he continued to use the mobile home as an office.

Mr. Criscitiello read the Beaufort County's staff report into the record. Mr. Criscitiello stated, that the lapsed waste water permit, which well exceeded more than 120 days, is a pivotal concern; he contacted BJWSA, and they informed him that the permit had lapsed. Mr. Criscitiello also stated, that in regards to the Zoning and Development Standards Ordinance, Table 106-9 states, "The non-conforming use shall be considered abandoned after 120 days," it doesn't get into the consideration on the reasons why. Often times, the issue of finances are raised during discussion, and the staff doesn't consider that; what the staff is considering is, 1) it is a non-conforming use in the rural zoning district, and it does not meet the distance separation, as required under the standards for limited use. 2) Deals with the AICUZ, in regards to the use. There is a clear intent of the County government to work closely with the Marine Corps Air Station, in order to try and achieve the conformity with the designs for protection of the mission of the Air Station. The staff feels very in conformance with the idea of promoting the mission of the Air Station; the enforcement of the Zoning Ordinance in this matter was believed by the County to be a demonstration of that commitment.

Mr. E. Williams asked Mr. Criscitiello, "The letter dated March 15, 2010, stated that the appellant provided the County with a check in the amount of \$11,164.00; is that correct?"

Mr. Criscitiello stated, that when he looked at the information, he had believed that the check for \$11,164 was for taxes paid. Mr. Criscitiello also stated, that when he read the information, it was an indication that he needed to reconsider his advice to Hillary Austin, because when they checked the amount, it was only \$172.00, that was paid.

Mr. E. Williams asked Mr. Criscitiello, "Would the \$172.00 have been for Agricultural use?"

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

Mr. E. Williams asked Mr. Criscitiello, "Was the balance refunded to the appellant?"

Mr. Criscitiello stated, that the information he was provided by the Assessor's office, only mentioned that the actual monies paid in taxes was \$172.00.

Mr. C. Williams stated, that it seemed to him, that a substantial portion of Mr. Tedder's arguments was based on the fact that Table 106-9 doesn't refer to legal non-conforming uses. Mr. C. Williams asked Mr. Criscitiello, "What's the difference between a legal non-conforming use, and a non-conforming use?"

Mr. Criscitiello stated, that non-conforming uses can be illegal; for example, there are some situations where something is created on the land without permission, a person would be able to obtain a permit if the use was permitted in that Zoning district. Mr. Criscitiello also stated, that the legal non-conforming use, pre dates the existence of the Zoning Ordinance, and the use or the standards that applies to that use are not conforming, then that use will be a legal non-conforming use.

Mr. C. Williams asked Mr. Criscitiello, "From the County's standpoint, Table 106-9 of the Zoning and Development Standards Ordinance applies to all non-conforming uses, legal and non-conforming?"

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

Mr. Dinkins asked Mr. Criscitiello, "If the applicant came back today to reapply, could they reapply to get a new permit for the mobile home park?"

Mr. Criscitiello stated, that there were other hurdles associated with the project, such as the density; the density is substantially above what is allowed under the Rural Residential zoning.

Mr. Dinkins asked Mr. Criscitiello, "How many units are there now?"

Mr. Criscitiello stated, that there were 144 units, at a density of about 3.1 units per acre; the standards in the Rural district for a mobile home park, is 2 units per acre, so there is a non-conformity as far as the density is concerned in the Rural district.

Mr. Gasparini asked Mr. Criscitiello, "Is the use permitted?"

Mr. Criscitiello stated, that the use is permitted as a limited use, providing it meets the standards of the Zoning Ordinance; the limited uses states, that the mobile home park must be within a mile of the Community Preservation district along a certain kind of highway.

Mr. C. Williams asked Mr. Tedder, "Is it unreasonable to say that a legal non-conforming use is a subset of a conforming use?"

Mr. Tedder stated, that he believes the argument could be made, for the conforming use to be a subset.

Mr. C. Williams asked Mr. Tedder, "Are you saying that there were no regulations by the County for Table 106-9, of legal non-conforming uses?"

Mr. Tedder stated, that if there is a conforming use, the rules of the County must be abided.

Mr. C. Williams asked Mr. Tedder, "Is it not inconsistent to have a mobile home park that is taxed for agricultural use?" Mr. C. Williams stated, that Mr. Perry voluntarily changed the use from a mobile home park to Agricultural use.

Mr. Tedder stated, that at the suggestion of the Assessor's office, Mr. Perry only filled out the form to change the mobile home park to agricultural use.

Mr. C. Williams asked Mr. Tedder, "Why did the project go before the Development Review Team?"

Mr. Tedder stated, that the Zoning Administrator did not feel comfortable making the decision alone; Mr. Perry went before the Development Review Team for an informal discussion.

Mr. C. Williams stated, that the Development Review Team did not make a decision from the action form, the Development Review Team advised the applicant to request an Administrative Interpretation, which was requested almost a year later.

Mr. C. Williams asked Mr. Tedder, "Besides trying to get financing, what evidence is there that shows Mr. Perry did not abandon the use of the property, between December 2008 and November 2009 as a mobile home park?"

Mr. Tedder stated, that Mr. Perry continued to pay the utility bills on the office that remained on the property. Mr. Tedder also stated, that Mr. Perry couldn't do anything until he was able to obtain financing.

Mr. Gasparini stated, that based on the Development Review Team document, Mr. Perry was told that it wasn't grandfathered, and that he needed to go through the formal process of requesting an Administrative Interpretation, and then appeal the Administrative interpretation to the Zoning Board of Appeals.

Mr. Criscitiello stated, that the applicant needed to meet the provisions of the Zoning ordinance and reestablish the mobile home park.

Mr. E. Williams asked Mr. Criscitiello, "In 2008, did the Development Review Team render a decision?"

Mr. Criscitiello stated, that there was no decision rendered by the Development Review Team, because it was an informal discussion.

Mr. Dinkins made a motion, that the Zoning Board find in favor of Mr. Don Perry, owner of Beachwood Mobile Home Park, to reverse the decision made by the Zoning Administrator, on the basis of voluntarily abandonment of the mobile home park use, and the mobile home park use would be continued. Mr. LeRoy seconded the motion.

MOTION: Mr. Dinkins made a motion, that the Zoning Board find in favor of Mr. Don Perry, owner of Beachwood Mobile Home Park, to reverse the decision made by the Zoning Administrator, from Section 106-702(B) and Appendix A1, Section 5(A) of the Beaufort County Zoning & Development Standards Ordinance; on the basis of the Beachwood Mobile Home Park use, being voluntarily abandoned, and the Mobile Home Park use be continued. Mr. LeRoy seconded the motion. The motion passed (FOR: Dinkins, Gasparini, LeRoy, and Rentz, OPPOSED: Mack, C. Williams, and E. Williams).

Mr. Claude Dinkins left the meeting at 6:54 p.m.

Mr. Gasparini called for a brief recess at 6:54 p.m., the meeting was called back in session at 7:00 p.m.

JOHN HAFEMANN/WINGMEN MOTORCYCLE CLUB (APPEAL)

Captain John Hafemann, representative for the Wingmen Motorcycle club, explained to the Zoning Board members, that there are eight members in the military based motorcycle club. Mr. Hafemann stated, that the property is being used as a motorcycle clubhouse; a place used for fellowship. Mr. Hafemann also stated, that the property is zoned for limited industrial use, and is located at 3116 Trask Parkway. Mr. Hafemann then stated, that three and a half months ago, they received a verbal warning, that they needed to request an Administrative interpretation, in which they filed a request on February 8, 2010. Mr. Hafemann stated, that they received an Administrative Interpretation letter, dated February 19, 2010 from the Zoning Administrator; and the letter stated that the motorcycle club was in violation of Appendix 1, Section 5(A)(2) of the Zoning & Development Standards Ordinance. Mr. Hafemann stated, that the property was located in the Airport Overlay District., and according to Beaufort County, a motorcycle club, is too loud for that area. Mr. Hafemann stated, that the ordinance leaves the County staff to interpret the definition of what is an assembly, and what's not; same as with the definition of worship. Mr. Hafemann stated, that he doesn't think the motorcycle club is an assembly.

Ms. Delores Frazier, Assistant Planning Director stated, that there is not a land use category for a motorcycle club listed in the Zoning & Development Standards Ordinance. Ms. Frazier stated, when the member of the motorcycle club came to the Zoning department for a permit, they had already moved into the building without a zoning permit, and they received a codes violation.

Mr. Gasparini asked Ms. Frazier, "Did someone report them?"

Ms. Frazier stated, that the Codes Enforcement officer was responding to a complaint, and when they checked out the property, they realized that there was not a zoning permit issued; so the motorcycle club was instructed to obtain a Zoning permit.

Mr. Gasparini asked Ms. Frazier, "So everyone that moves into a building must have a Zoning permit?"

Ms. Frazier replied, "Yes. Anytime they move into a commercial building".

Mr. C. Williams stated, that the purpose of receiving a Zoning permit, is for the County to ensure that the use is permitted in the Zoning district, before occupying the building.

Ms. Frazier stated, that since there was not a land use category for a motorcycle club, the Zoning Administrator had to decide, based on the ordinance, which category to place it. Based on the NAICS code book, the Zoning Administrator looked at Civic and Social Organization, which was closely related; the Civic and Social Organization category falls under two broad land use categories, it falls under an office and assembly and worship. Ms. Frazier stated, that the Zoning Administrator decided, that looking at the Zoning & Development Standards ordinance, and the sections that governs the interpretation, that the use was more like an assembly rather than an office, because the members get together, and there's no limit on how many members can be there at one time.

Mr. Gasparini asked Ms. Frazier, "How did we get from Civic and Social, to Assembly and Worship?"

Ms. Frazier stated, that Civic and Social organizations, Assembly and Worship; as well as office use are all listed in the NAICS code, which is listed under code 8134.

Mr. Gasparini stated, that he did not dispute the fact that the motorcycle club is not an office.

Ms. Frazier stated, that since the property falls under the Noise Zone 3, the Zoning Administrator went with a more stringent interpretation, that the use be classified as an assembly use and not an office use.

Mr. C. Williams asked Ms. Frazier, "Is an Assembly use a permitted use in the Light Industrial district?"

Ms. Frazier replied, "No."

Mr. Gasparini asked Mr. Criscitiello, "If the Airport Overlay district is loud, can you have a use there that is too loud?"

Mr. Criscitiello stated, that it is not the use that is too loud, it's the use that is affected by it being too loud.

Mr. LeRoy asked Mr. Criscitiello, "Is the whole purpose of the Airport Overlay District, is trying to protect the base?"

Mr. Criscitiello replied, "Yes. It's protecting the mission of the base".

Mr. Gasparini stated, that under the office use, it lists 8134 as Civic and Social Organizations; so, the board is being asked to decide whether it was right to list it as an Assembly and Worship, or place it under Civic and Social Organizations, under the office use.

Mr. C. Williams asked Mr. Hafemann, "Your position, is that you should properly be classified as an office, correct?"

Mr. Hafemann replied, "That is correct".

Mr. C. Williams made a motion, that the decision of the Zoning Administrator be reversed, and that the motorcycle club use be classified as an office use. Mr. E. Williams seconded the motion.

MOTION: Mr. C. Williams made a motion, that the decision of the Zoning Administrator be reversed, and that the motorcycle club use be classified as an office use, instead of Assembly and Worship, which falls under the NAICS code 8134, Mr. C. Williams made the motion to grant the appeal for Table 106-732 (B), which falls under the NAICS code, 8134 for Civic and Social Organizations under office use. Mr. E. Williams seconded the motion. Mr. Rentz stated, that once the appeal is approved; there is no control over the amount of people they can have in the building. Mr. Rentz also stated, that this motion should include the AICUZ information. Mr. C. Williams stated, that the appeal only deals with what is the proper use classification of the Wingmen Motorcycle club. The Zoning Administrator determined that the use was classified as Assembly and Worship, and he feels comfortable letting them select which classification code they want in this situation. The motion passed (FOR: Gasparini, LeRoy, Mack, C. Williams, and E. Williams; ABSTAINED: Rentz).

ADJOURNMENT

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

The meeting adjourned at approximately 7:36 p.m.