

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

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman	Mr. Kevin Mack
Mr. Edgar Williams, Vice Chairman	Mr. Timothy Rentz
Mr. Claude Dinkins	Mr. Chester Williams
Mr. Phillip LeRoy	

MEMBERS ABSENT

None

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mr. Tony Criscitiello, Planning Director
Mrs. Lisa Glover, Zoning Analyst III

CALL TO ORDER: Mr. Edgar Williams called the meeting to order at 5:06 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.

Mr. Gasparini arrived at approximately 5:07 p.m.

ADOPTION OF AGENDA:

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

ADOPTION OF MINUTES:

MOTION: Mr. Edgar Williams made a motion to adopt the June 24, 2010 minutes as submitted. Mr. Chester Williams seconded the motion. The motion passed (FOR: Dinkins, Gasparini, Rentz, C. Williams, and E. Williams; ABSTAINED: LeRoy, and Mack).

GRAY'S HILL BAPTIST CHURCH (VARIANCE/REVISIT)

Mr. Fred Kuhn Jr., Attorney for Gray's Hill Baptist Church explained to the board, that the church was requesting a variance to erect a Fellowship Hall, which would serve as an adjunct to the existing church building. Mr. Kuhn also stated, that this application has met the criteria for a variance. Mr. Kuhn stated, that the Fellowship Hall was proposed in the initial application in 1996 as Phase 2. Mr. Kuhn stated, that the extraordinary and exceptional conditions flow from

the fact, that everything was put into place for the Fellowship Hall, such as paving, landscaping and parking. Mr. Kuhn stated, that when they first applied to build the Fellowship Hall, they were disapproved, because the ordinance only allowed an expansion of 15% without increasing the occupancy load, in which the occupancy load for the Fellowship Hall would not be increased.

Mr. C. Williams asked Mr. Kuhn, "Is the occupancy load a function of the building code and not the Zoning & Development Standards Ordinance?"

Mr. Kuhn stated, that he think that is true, but they are looking at the occupancy load that the property can hold, because they don't want too many people there, if this is a danger zone.

Mr. C. Williams stated, that the occupancy load determines how many exits a building would need, and he feels it has to do with the building code and not the Zoning & Development Standards Ordinance.

Mr. Kuhn stated, that the permit was denied because, it appeared that the occupancy load of the property would increase, due to another building being added to the property.

Mr. Gasparini stated, that one of the issues that were discussed, was whether the 15% applied to the disturbed area or the floor area. Mr. Gasparini also stated, that in Appendix A1 of the Zoning & Development Standards Ordinance, which was adopted in 2008 it states, that non-conforming places of Assembly & Worship may be expanded by up to 15% of the existing floor area, so we are talking about floor area, not disturbed area.

Mr. Kuhn stated, that the variance is needed, because when they initially applied for the permit, it was before the ordinance was amended in 2008, and the old standards should have been applied.

Mr. Gasparini asked Mr. Kuhn, "So the variance you are looking for today, is relief from the 15%?"

Mr. Kuhn replied, "Yes, and apply the standards that were in effect when we initially applied for the project, which was applied for in 2007".

Mr. C. Williams stated, that with respect to the variance, the board needs to deal with this application, which was submitted several months ago; the board needs to deal with the law the way it is right now, at the time the application was filed, and that's to apply the code that was amended in 2008.

Mr. Kuhn stated, that the unique and extraordinary circumstance is, that they initially applied under the old ordinance, and the variance should have been granted at that time.

Mr. Gasparini stated, that the board is constrained by what the status of the Zoning & Development Standards Ordinance is today; the board cannot apply the standards that does not exist today, on an application that was filed after the amendment.

Mr. C. Williams asked Mr. Kuhn, "Are you trying to expand the occupancy load?"

Mr. Kuhn replied, "No, if the church has a function in the sanctuary, the chairs are removed and replaced when the function is over. If the church has a Fellowship Hall, the church doesn't have

to worry about seating being setup; it will be the same number of people in the Fellowship Hall as it was in the sanctuary, because there will not be something going on in the Fellowship Hall and the sanctuary at the same time”.

Mr. C. Williams asked Mr. Kuhn, “Will the space be available for other people to be there?”

Mr. Kuhn replied, “Yes, because it will be another building, other than that; there will not be anymore people available to get on the land as it is today”.

Mr. Gasparini stated, that adding almost the same amount of square footage, increases the occupancy load; no matter what the intent.

Mr. Kuhn stated, that the church is limited as to how many cars that can be there; if they only have 98 parking spaces. Mr. Kuhn stated, that the church will only be using one building at a time, not both. Mr. Kuhn also stated, because the church is being denied a variance due to the fact that the laws changed, it creates a hardship for the church.

Mr. Gasparini stated, that it has to be an extraordinary and exceptional condition, in which the extraordinary conditions, is where the Air station overlay district comes into being. Mr. Gasparini stated, that he is trying to understand how that effects the land; the land hasn't changed, the character of the Zoning changed, and he would like to know how that effects the first criteria to grant the variance.

Mr. Kuhn stated, that you have to look at what is on the land, and what is taking place. Mr. Kuhn also stated, that the history is a key circumstance on why a variance should be granted.

Mr. Gasparini stated, that the history has nothing to do with granting the variance, it's whether this application meets the five criteria's of granting a variance.

Mr. Kuhn stated, that the history is one of the circumstances that create a hardship that justifies granting the variance. Mr. Kuhn also stated, that they have satisfied all five criterias. Mr. Kuhn stated, that the church reduced the size of the Fellowship Hall, which also need to be considered, along with the property being in the least Accident Potential Zone of APZ-2.

Mr. C. Williams asked Mr. Kuhn, “Is Assembly and Worship not a permitted use, because it is located within the Accident Potential Noise Zone 75?”

Mr. Kuhn replied, “Yes, I believe so; but we are grandfathered”.

Mr. C. Williams asked Mr. Kuhn, “Is part of your argument, is that you have a vested right to proceed under the Master Plan?”

Mr. Kuhn replied, “Yes, but that's not the argument today; the church is requesting a variance today”.

Mr. Dave Warner attorney, representative of the Marine Corps Air Station, stated that he submitted a written brief, which states that this application does not meet the five criterias for a variance, and they request that the variance be denied and sent back to the court.

Mr. Rentz asked Mr. Wonder, “Wouldn't Air rights affect the vertical rights of the property?”

Mr. Warner replied, "Yes, but that's not how the Beaufort County Ordinance is interpreted".

Mr. C. Williams asked Mrs. Lohr, "Is the board not prohibited in granting a variance based on Section 106-522 (1)(C)?"

Mrs. Lohr replied, "Yes, I believe so, because of the 15% physical use of the property, not the building".

Mr. C. Williams stated, that his concern is, if this is an expansion of a physically non-conforming use of land by more than 15%, how can the board grant the variance?

Mrs. Lohr stated, that the applicant is close to doubling 75% of the use of the physical building, and the five criteria's cannot be met.

Mr. LeRoy asked Mr. Criscitiello, "If a variance was granted on the basis that only one of the two buildings, the sanctuary or the Fellowship Hall would be used at one time, is that enforceable in any way; and if the property was sold to a non church entity, could you actually then continue the enforcement, so it could never increase the occupancy load?"

Mr. Criscitiello stated, that when the DRT originally met, it was stated to the applicant that they were allowed a 15% expansion under the codes, and that the 15% expansion is to be used for storage and bathrooms, as set forth in the ordinance. Mr. Criscitiello also stated, that in order to use the 15% expansion for assembly, it would be contrary to the ordinance, so the 15% expansion would be allowed for only the storage or bathroom expansion.

Mr. C. Williams asked Mr. Criscitiello, "So, the church property became non-conforming with the amendment of the Airport Overlay district that included the AICUZ?"

Mr. Criscitiello replied, "That's right, in 1999".

Mr. C. Williams asked Mr. Criscitiello, "Is that an uncommon occurrence, that when the law changes, things become non-conforming?"

Mr. Criscitiello stated, that this happens all the time, and the whole purpose of Zoning is to drive things to conformity, that is why there are certain number of provisions.

Mr. C. Williams asked Mr. Criscitiello, "Is it reasonable to say that it's not unusual or extraordinary for circumstances, with respect to a particular piece of property to change when the code changes?"

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

There being no further comments from the applicant or the county, and no further questions from the board, Mr. Gasparini called for public comment; comments were limited to 3 minutes each.

Pastor James Baker stated that as Senior Pastor, he would like to say that the church is located in Gray's Hill and it consist of 2/3 majority retired military, prior service military, active military; Beaufort County has also requested that the property be used as an emergency preparedness site. Pastor Baker also stated, that on the Air Installation Compatibility Zone map it shows on the back, that the clear zone extends 3,000 feet immediately beyond the runway, and has the

highest potential for accidents. Pastor Baker stated, that the church is located in the APZ-2 zone, where it states that it extends 7,000 feet beyond the APZ-1 zone with a width of 3,000 feet; an accident is more likely to occur in APZ-1 than in APZ-2, and more likely to occur in the clear zone than in either APZ-1 or APZ-2 Zone. Pastor Baker stated, that if the building is approved, it would diminish the amount of time spent setting up and tearing down the sanctuary for the Fellowship Hall. Pastor Baker stated, that there seems to be a misunderstanding about the use of the proposed building, they are only trying to meet the needs of their community.

Mr. Rentz asked Pastor Baker, "Is the space for the new Fellowship Hall larger than your current sanctuary?"

Pastor Baker replied, "The current usable sanctuary space is about 4,000 sq. ft., once they tear down the chairs and setup the tables".

Mr. Rentz asked Pastor Baker, "How large is the new Fellowship area that will be used for the meeting and the eating area?"

Pastor Baker replied, "It's about 10,000 sq. ft".

Mr. E. Williams asked Pastor Baker, "What category did the church fall under for the Accident Potential Zone?"

Pastor Baker replied, "APZ-2".

Mr. E. Williams asked Pastor Baker, "In 1997, was your request made to have the additional part of the building approved also, but the Planning did not approve that request, they only approved the main building?"

Pastor Baker replied, "That's correct, it was approved in the Master Plan."

Ms. Marilyn Turnham stated, that she is a member of Gray's Hill Baptist church, and she agrees with Pastor Baker. Ms. Turnham stated, that the preparation has been ongoing, with the plans showing both buildings, and that the whole picture needs to be looked at, not just one part of it.

Mr. Gerald Swank stated, that he has been a member of Gray's Hill Baptist church for the past nine years, and he hopes the board considers the hard facts of the Zoning variance requirements.

Ms. Diana Wasielewski stated, that the Marine Corps facility thinks the church will enable their ability to do business, but it will not. Ms. Wasielewski also stated, that the church is just asking for a place to put on their property, which would not impede the Air station's ability to perform their duties.

Ms. Sharon Stever stated, that she has attended many functions at Gray's Hill Baptist church, and she feels that this is an issue of the government versus the people. Ms. Stever also stated, that the variance should be granted.

Mr. Mack asked Ms. Stever, "Would you view this other Fellowship Hall as a relief for the overflow of some of those functions?"

Ms. Stever replied, "The new Fellowship Hall would help".

Mr. Blankenship stated, that he is a member of the Gray's Hill Baptist church, and he has been a part of the process from the beginning. Mr. Blankenship stated, that they were told the project would be grandfathered, since the development plans were already approved showing both plans. When they came to the Development Review Team to ask for a permit following the same guidelines as the 15% expansion of disturbed area, the comments stated that the intent of the ordinance allowed for bathrooms, kitchens and storage areas, which would not increase the occupancy load. Mr. Blankenship stated, that the variance should be granted.

Mr. C. Williams asked Mr. Kuhn, "How do you see Section 106-522 (1)(C) playing into this variance application?"

Mr. Kuhn replied, "I don't believe it applies at all, if we satisfy the five criterias, then we've satisfied the criteria approval for a variance".

Mr. E. Williams asked Mr. Warner, "Are you familiar with the noise zone, and the potential accidents that could happen; are you familiar with APZ-2?"

Mr. Warner stated, that APZ-1 and APZ-2 crash zone is lesser in that area.

Mr. C. Williams asked Mr. Criscitiello, "Is this variance application consistent with the Comprehensive Plan?"

Mr. Criscitiello replied, "Yes, the AICUZ is consistent with the Comprehensive Plan; the granting of a variance would be inconsistent with the Comprehensive Plan".

Mr. C. Williams made a motion to deny the application request, because the application does not meet Section 106-522 (1)(A) of the Beaufort County Zoning & Development Standards Ordinance.

Mr. Rentz stated, that he will not be able to support the motion, because he has spent a good amount of time researching the five criteria's; and as far as whether it would affect any other properties, he doesn't see how having the air space defines what you can and cannot do with your property. Mr. Rentz stated, that he doesn't see how the board can approve anything greater than what the County has already offered.

Mr. C. Williams stated, that the board would be foreclosed in granting the variance, based on Section 106-522 (C), because of the 15% expansion.

Mr. E. Williams stated, that he couldn't support denying the Air Station due to the evidence they presented.

Mr. LeRoy stated, that the church has a just complaint, because they had an approved Master Plan that proceeds to do everything they were supposed to do, it's already in court being appealed, and he doesn't think it is for this board to decide.

Mr. Gasparini stated, that there is a lawsuit pending, and that doesn't mean they are entitled to a variance, because they are asking for more than 15% expansion; he is reluctant to go on with the motion because, if the church had vested rights, it should have been grandfathered in. But under the specific rules and regulations, the board cannot approve the variance in any given circumstance, because he doesn't believe they have the legal option to do so.

MOTION: Mr. Chester Williams made a motion to deny this application request, the application does not meet the criteria set forth in Section 106-522 of the Beaufort County Zoning & Development Standards Ordinance, and it is not consistent with the Comprehensive Plan. Mr. LeRoy seconded the motion. The motion passed (FOR: Dinkins, LeRoy, C. Williams, E. Williams, OPPOSED: Gasparini and Mack, ABSTAINED: Rentz).

ADJOURNMENT

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

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