



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, February 24, 2011, in the Council Chambers, 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. Philip LeRoy
Mr. Timothy Rentz
Mr. Chester Williams

MEMBERS ABSENT

Mr. Kevin Mack

STAFF PRESENT

Mr. Anthony Criscitiello, Planning Director
Mrs. Tamekia Judge, Zoning Analyst I
Mrs. Katherine Smith, Zoning Analyst II

CALL TO ORDER: Mr. Thomas 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.

Mr. Gasparini thanked Mr. Dinkins for his services on the Zoning Board of Appeals for the past 10 years. Mr. Gasparini stated, that he appreciated serving with Mr. Dinkins, because he not only got a chance to serve; but he also gained a friend.

Mr. E. Williams thanked Mr. Dinkins for his services to the Zoning Board over the past 10 years.

Mr. C. Williams arrived at the meeting at 5:12 p.m.

REVIEW OF AGENDA:

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

REVIEW OF MINUTES (JANUARY 27, 2011):

MOTION: Mr. Dinkins made a motion to adopt the January 27, 2011 minutes as submitted. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Rentz, C. Williams and E. Williams)

GERARD & ANDREA CARBONARA'S VARIANCE - SECT. 106-1845 (4)(A)

Mr. Carbonara, explained to the board members, that he is requesting a variance, to modulate the setback from the 50 foot OCRM setback line, to place a 8' x 16' foot spa/swimming pool on his property. Mr. Carbonara explained, that by installing the spa/swimming pool, it should not have an impact on the surrounding neighbors. The property is unique, because it sits on a bluff with an embankment going down to the marsh, and consequently the property is on a hard surface, about 8 feet above the marsh grass. Mr. Carbonara stated, that this is the only location that he could place the spa/swimming pool on the property. Mr. Carbonara also stated, that the 50 foot OCRM setback line runs through their bedroom, and they do not have any other choice of where to place the spa/swimming pool. Mr. Carbonara stated, that the location to place the spa/swimming pool was recently chosen, because they did not want to encroach into any trees. Mr. Carbonara stated, that they submitted a plan to the Moss Creek ARB, which was approved subject to the Zoning Board of Appeals approval.

Mr. LeRoy asked Mr. Carbonara, "What is the additional 3 foot variance, referred to in the Moss Creek ARB letter?"

Mr. Carbonara answered, that Moss Creek has an either/or situation, where it's either the Moss Creek setback line or the OCRM setback line, whichever is closer, but he is well within the setbacks that are shown on the plats as the Moss Creek setback line; but according to Moss Creek, he is now encroaching into the setback line for Moss Creek.

Mr. LeRoy asked Mr. Carbonara, "Before the overlay district was established, was your house in conformance with the Moss Creek setback line?"

Mr. Carbonara stated, that he assumes it was at the time.

Mr. Gasparini asked Mr. Carbonara, "Do either of the lots on either side of you have pools?"

Mr. Carbonara replied, "Yes".

Mr. Gasparini asked Mr. Carbonara, "Is it the same distance from the marsh as your swimming pool?"

Mr. Carbonara stated, that it would roughly be the same distance.

Mr. Criscitiello read the Beaufort County staff recommendation report into the record. Mr. Criscitiello stated, that the property is 40 feet away from the OCRM critical line, and an encroachment will intensify the non-conformity of the OCRM 50 feet. Mr. Criscitiello stated, that the Beaufort County staff recommends disapproval.

Mr. E. Williams asked Mr. Criscitiello, "What impact would this have on the community if the swimming pool is built as submitted?"

Mr. Criscitiello stated, that it would have an impact because of the water quality control, and because the continued intrusion into the River buffer is consistently expressed to the County by the Storm water utility department; it's the County's purpose to preserve and protect the water quality of the rivers and streams.

Mr. E. Williams asked Mr. Criscitiello, "Was the river buffer setback changed to 50 feet in 1999?"

Mr. Criscitiello stated, that the river buffer district was created as part of the ZDSO in 1990.

Mr. E. Williams asked Mr. Criscitiello, "Was the river buffer the same as it was in 1997 for this lot, and were the lots prior to 1997 grandfathered?"

Mr. Criscitiello stated, that there wasn't a river buffer setback on the lot at that time, those lots were grandfathered; when the installation of the river buffer was imposed, any additional development to the lot required approval from the Zoning department, where the 50 foot setback is enforced.

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 3 minutes each. There were no public comments.

Mr. LeRoy made a motion to approve the variance request as submitted.

Mr. C. Williams stated, that this case is a classic example of a subsequently enacted ordinance on the part of the County, causing previously developed properties to become non-conforming. It's one thing to require a 50' OCRM setback under the river overlay for new lots that are being developed, subsequent to those rules going in place, but in this case, you have a previously subdivided and platted lot in Moss Creek, which was created in accordance with those standards, and the County came in and created a more stringent standard that caused a hardship due to the new restrictions. Mr. C. Williams stated, that one of the hardships the board looks at, is whether the lot or the use is unreasonably restricted, and prohibiting a swimming pool in this type of situation is an unreasonable restriction on what the reasonably contemplated use of the property is; this hardship is not a result of the actions of the property owner, but a result of imposition of the requirements that are on the property and the area the property is located in, so the applicant is entitled to the variance based on the circumstances.

Mr. Gasparini stated, that he agrees with Mr. C. Williams. In section 106-522 (C) it states, that the board cannot expand a non-conforming use more than 15%, and that this case is not an expansion of more than 15%; part of the building envelope is taken away due to the restrictions placed on the property.

Mr. Criscitiello read section 106-7 (2)(B) of the Beaufort County Zoning & Development Standards ordinance and stated, that if the Moss Creek PUD was silent at the time in regards to those matters of the setback, and didn't have standards that fell into the categories, then the current standards adopted by the County government would apply, such as they apply today.

MOTION: Mr. LeRoy made a motion to approve the Variance request as submitted, in accordance with Section 106-1845(4)(A); the setback is approved at 27' feet from the OCRM critical line. This application meets the criteria for a Variance, as set forth in Section 106-522 of the Beaufort County Zoning & Development Standards Ordinance. Mr. Rentz seconded the motion. The motion passed (FOR: Dinkins, Gasparini, LeRoy, Rentz, C. Williams, AGAINST: E. Williams).

CHARLES HANAVICH'S VARIANCE – SECT. 106-1845 (4)(A)

Mr. Joel Newman with Thomas and Denzinger Architect stated to the board, that Mr. Hanavich built his house approximately four years ago as a bachelor pad, and that he is now requesting an addition which requires a variance. The house was well in the setback lines for Bray's Island, and the 50 OCRM setback line. Mr. Newman stated, that there are a number of live oak trees that surrounds the peninsula that they want to save, so the location for the addition was chosen as such. The addition that Mr. Hanavich wants is not something that can be attached to this very unique house. Mr. Newman stated that the intention would be to meet the water quality objective by taking the runoff from the roof and releasing it, which can be controlled well back inside the 50 foot setback. There is roughly 79 foot of addition that encroaches into the 50 foot setback; at the furthest point they are 5 feet across the 50' OCRM setback.

Mr. Dinkins asked Mr. Newman, "What kind of impact would there be on the dike?"

Mr. Newman stated, that it was not an impact on the dike.

Mr. Dinkins stated, that he was concerned with the addition going closer to the dike.

Mr. LeRoy asked Mr. Newman, "Is there a Bray's Island setback from the property line?"

Mr. Newman stated, that there is no setback from the circle, and it could be built up to the line.

Mr. C. Williams explained to Mr. Newman, that this case is not the same as Mr. Cabonara's variance, because Mr. Cabonara's lot was fully developed before the 50' foot overlay buffer setback came into play; and with this lot, the lot was developed as is with the buffer in place, and everyone knew about the 50' OCRM setback.

Mr. Newman stated, that when Mr. Hanavich developed his lot, he knew the location he was building his residence in regards to the setbacks. Mr. Newman stated, that they can meet the objective of the ordinance and protect the water quality.

Mr. Rentz stated to Mr. Newman, "If you were to take the addition and move it to the south, I don't think you are getting any of the house out of the critical line, because the critical line cuts back in, and as you go further south, you are just impacting another part of the wetland, unless you rotate the addition 90 degrees, getting it out of the wetland completely."

Mr. Gasparini asked Mr. Newman, "Does the addition have to be 990 square feet? If you took off the 79 square feet that encroaches, it doesn't seem like it would impact it dramatically."

Mr. Newman stated, that he couldn't really answer that.

Mr. Criscitiello read the Beaufort County staff recommendation report into the record. Mr. Criscitiello stated that he agrees with Mr. Gasparini in regards to the variance. When the DRT meets and decides on a waiver, there is guidance on how you issue a waiver. Section 106-1845 (b) states, that DRT should strive to work the problem to the point where even if you reduce the size of a structure to address the issues of conformity, then the DRT should do that under new construction. I know this is not technically new construction, nevertheless reducing the size of a 990 square foot master bedroom to something that is more in line with staying within the boundaries of the 50' setback, would have been what the DRT would have done. If looking at it at the overall construction of the house to include a 990 square foot master

bedroom, this is not what was confronted, and the applicant has a right to come before you, but nevertheless the county recommends disapproval.

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 3 minutes each. There were no public comments.

Mr. E. Williams made a motion to deny the variance request.

Mr. C. Williams stated, that as opposed to the Carbonara variance, this situation is where the existing improvements on the lots were designed and laid out with full knowledge of what the existing conditions were, and because of this, I don't see where this application meets the criteria for the granting of a variance.

Mr. LeRoy stated, that if the front part of the addition was just moved back a foot or two, it would take off a lot of the square footage of that 79' feet that is beyond the buffer line, and just the corners would stick out a little bit, and this would be able to reduce the intrusion by 50% or more. Mr. LeRoy stated that, he was wondering if the applicant would like to withdraw the application and talk with staff about modulating the setback.

Mr. Newman stated, he would be curious to know about that possibility, and what the probability would be, because it sounds like we are heading towards a denial, and he doesn't want to withdraw the submittal and come back and the results are still denied. Mr. Newman stated, that he would like to leave here with an assurance, that if the corners extended over a little bit, then the variance would be granted.

Mr. C. Williams stated, that it is not up to the board to tell Mr. Newman how to handle his application, so he may want to ask the board to defer any action on the variance.

Mr. Gasparini stated, that he does know that the DRT can modulate the setback and whether this is or isn't an appropriate way to do this; but in this particular instance, if this application is denied, Mr. Newman can come back with a different design for review.

Mr. Criscitiello stated, that if it was the pleasure of the board to delegate to the Planning department to work with Mr. Newman to modulate the setback to the point where we get it as close to conformance as we can without destroying the functionality of the addition, he would have no problem in doing that, without having to bring him back to the Zoning Board of Appeals.

Mr. Gasparini asked Mr. Criscitiello, "Can Planning do a modulation without having to come before the board?"

Mr. Criscitiello stated, that they don't have the right to do that, but it is about to be written in the new ordinance.

Mr. Gasparini stated, that Mr. Newman could come back to the board with a new recommendation to be reviewed and get it approved. The chair has no problem putting this application over for a month, until Mr. Newman can come up with a design that meets the setbacks from the OCRM critical line.

Mr. Newman asked the board, if he withdraws or table the case, and go to the planning department to discuss new plans, and bring the findings back before the board, what is the probability of the variance being approved?

Mr. Gasparini stated, that it would be a greater possibility that the variance would be approved, if the addition met the setbacks or was able to be modulated.

Mr. Newman asked the board, that if it doesn't matter if the variance was tabled, and if they turned it down and go through the procedure that was just described, and he bring it back next month or whenever, is it considered as a new project?"

Mr. C. Williams stated, that Mr. Newman would miss the deadline if he submitted a new application.

Mr. Newman stated, that if there was something to keep him on the agenda for the next meeting, he would rather do that.

Mr. Rentz made a motion to postpone the vote for one month until the next meeting.

MOTION: Mr. Rentz made a motion to postpone the vote on the motion made, until the next meeting. Mr. Newman will submit new plans to be reviewed by Mr. Criscitiello and the board. Mr. C. Williams seconded the motion. The motion passed unanimously (FOR: Dinkins, Gasparini, LeRoy, Rentz, C. Williams, and E. Williams).

Mr. C. Williams thanked Mr. Dinkins for his service on the Zoning Board of Appeals.

ADJOURNMENT

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

The meeting adjourned at approximately 6:20 p.m.