



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, September 22, 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. Kevin Mack

Mr. William Mitchell, III
Mr. Chester Williams

MEMBERS ABSENT

Mr. Timothy Rentz

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mrs. Lisa Glover, Zoning Analyst III
Mrs. Katherine Smith, Zoning Analyst II

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:03 p.m.

PLEDGE OF ALLEGIANCE: Mr. Gasparini led those assembled in the Pledge of Allegiance.

Mr. Gasparini stated, that he would like to publicly apologize to his colleagues, staff, and the applicant for not attending last months meeting. Mr. Gasparini also stated, that he would like to publicly thank Mr. Phillip LeRoy for his service on the Zoning Board of Appeals; he served with the board for several years, and was a diligent and faithful servant to the county. Mr. LeRoy resigned from the board, because he works for the county part time flying one of the Mosquito Control planes, and by the Municipal code, he cannot serve on the board, and work for the county.

REVIEW OF AGENDA:

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

REVIEW OF MINUTES (JULY 28, 2011):

MOTION: Mr. Chester Williams made a motion to adopt the July 28, 2011 minutes as submitted. Mr. Edgar Williams seconded the motion. The motion passed (FOR: Mack, Mitchell, C. Williams and E. Williams; ABSTAINED: Gasparini).

REVIEW OF MINUTES (AUGUST 25, 2011):

MOTION: Mr. Chester Williams made a motion to adopt the August 25, 2011 minutes as submitted. Mr. Edgar Williams seconded the motion. The motion

passed (FOR: Mitchell, C. Williams and E. Williams, ABSTAINED: Gasparini and Mack).

MICHAEL LOUDER (VARIANCE)

Mr. George O'Kelly, attorney for Mr. Louder explained to the board, that this property is out in the Laurel Bay area, on Bay Pines Road, in the Light Industrial area. Mr. O'Kelly stated, that his client is in the towing business; he tows wrecks and other things for the Hwy patrol. He purchased the property on March 24, 2011. Mr. O'Kelly stated, that the neighbor next door was having his property timbered, and Mr. Louder went to the forester, Whitewood, out of Walterboro South Carolina, and made arrangements to have the trees on his land cut; Mr. Louder was advised that the trees were only pines and gum trees of various sizes, and the rest was underbrush. Mr. O'Kelly stated, that his youngest son works for the Whitewood Company and Randy White operate it, and they are certified foresters. Mr. O'Kelly stated, that the property is bound on the North by Bay Pines Road, and the West on Lauren Drive, which may be a private road, and is being serviced only by one church; the area is typically rural. Mr. O'Kelly stated, that his client was cited by the county, for developing the land. Mr. O'Kelly stated, that Mr. Louder is not developing the land, his business is out of his tow truck, and his business license is out of his home, and he has another property that he also use; the intent of this property is to store vehicles until the owner comes and get it. Mr. O'Kelly stated, that either the insurance company says the vehicles are totaled, and take it to the salvage facility, or the insurance company decides to repair the car and take it to a garage for repair, or the owner of the car doesn't want it repaired and instructs them to take it to the house. Mr. O'Kelly stated, that these are all licensed vehicles in the state, and they are put on this property for a short time until someone claims them, or tells Mr. Louder what to do with the vehicles; so as far as running the business, a portion of his business will be there, but only for storage. Mr. O'Kelly also stated, that in the staff report, it stated that the curb cut did not meet county standards; Mr. Louder went to the Hwy Department, and they put in the drainage pipe and the curb cut. Mr. O'Kelly handed out photos of the curb cut to the board members, and explained what they were looking at.

Mr. C. Williams asked Mr. O'Kelly, "How did the SCDOT come to put the curb cut in there?"

Mr. O'Kelly answered, "Mr. Louder went to the Highway Department, and they approved it, because the highway department owns the roads".

Mr. C. Williams stated, that the Highway Department is also subject to the Beaufort County Zoning & Development Standards Ordinance.

Mr. O'Kelly stated, that his client did not put the curb cut on the property, the Highway Department did.

Mr. C. Williams stated, that the Highway Department put the curb cut in, at the applicant's request.

Mr. O'Kelly stated, that he doesn't know if the Highway Department checked with the Zoning office, prior to putting in the curb cut.

Mr. C. Williams asked Mr. O'Kelly, "Did your client check with Beaufort County before asking the Highway Department if the curb cut could be placed on the property?"

Mr. Louder explained to the board, that he went to the Zoning office first to talk to Ms. Austin, and she told him he had to put the curb cut on Lowen Drive, but that's the lot privately owned by the church; he was told that he would be sued if he put the curb cut there. Mr. Louder also stated, that he talked to someone at SCDOT, and he was told to go to scdot.org and fill out an encroachment permit application, because that's their road; and SCDOT came out two weeks later and put in the curb cut.

Mr. C. Williams asked Mr. Louder, "Was this after Ms. Austin told you that you couldn't put the curb cut on Bay Pines Road, you had to put it on Lowen Drive?"

Mr. Louder answered, "Yes".

Mr. O'Kelly stated, that Ms. Austin wanted him to put the curb cut on Lowen Drive, but Lowen Drive is a private road. Mr. O'Kelly stated, that SCDOT told them that they can put in the curb cut on Bay Pines Road, and there are still plenty of buffers out there with Pine trees, and it's on the other side of the curb cut. Mr. O'Kelly also stated, that the applicant has no objection, and will comply with the last part of the staff report, which is listed on page 3.

Mr. E. Williams asked Mr. O'Kelly, "As a general assumption, your client has no objection to putting those trees and shrubs in?"

Mr. O'Kelly stated, that his client has no objections at all about putting the pine trees and shrubs in, but he just need some guidance from Ms. Austin to discuss the required & modulated buffers; the applicant has already put palmetto trees out front, but it's about to be fall and winter, so he's not sure if he should wait to plant the shrubs right now.

Mr. E. Williams stated, that Ms. Austin does a very professional job, and he's sure that she can guide him with what he needs to do.

Mr. O'Kelly stated, that he agrees, and Mr. Louder would be happy to meet with her or anyone in her office, and do the landscaping as required. Mr. O'Kelly stated, that his client does not plan to build on this lot anytime in the future.

Mr. Louder stated, that eventually he would like to put up a steel building, but right now he cannot afford to do so.

Mr. Gasparini stated, that he's confused on what the applicant want; he understands that there's a restriction of clearcutting the property without a permit, is that right?

Ms. Austin explained, that if you clear cut, you cannot build or utilize the property within a year; Mr. Louder needs a variance, because he wants to use the property for storage.

Mr. O'Kelly explained to the board, that the county ordinance states, that you cannot develop the property for at least one year if you clearcut the property under the county rules; his client had the Whitewood Company cut the trees, but he is not going to develop the property by roads, buildings, or sheds for his business. Mr. O'Kelly stated, that his client didn't believe he needed a permit, because he was just storing vehicles on the property.

Ms. Austin stated, that there's a use in the county ordinance for Business Storage; the applicant is running the business from his home, but he need to store the vehicles somewhere. Ms. Austin stated, that the applicant needs a permit for Business Storage; the applicant timbered the

property, and the ordinance states that in "good faith", if you timber the property, you have to wait at least one year before you develop the property.

Mr. Gasparini asked Mr. Louder, "When did the property get timbered?"

Mr. Louder answered, "April 2011".

Mr. O'Kelly stated, that if the board feels his client needs a permit for storing the vehicles, then he is asking for an exemption or a waiver.

Mr. Gasparini verified that there is two things going on with this application; one, the applicant is trying to figure out whether storing cars on the property falls under the definition of a development, and two, if the answer is yes, then is he entitled to a variance from the one year requirement?

Mr. O'Kelly stated, that he doesn't feel that storing the vehicles falls under the definition of a development, because the definition of development under the Webster's definition is, to bring to fruition to involve or promote growth.

Mr. C. Williams stated, that the code has a definition of development, which states, "All construction, modification, or use of any lot, parcel, building, or structure, on land or on water, shall comply with this chapter". Is the storage of the vehicles a use?

Mr. O'Kelly answered, "If that's the definition, then yes, it's a use".

Mr. Gasparini asked Mr. C. Williams, "What section of the zoning ordinance is that definition?"

Mr. C. Williams answered, "Section 106-6 (1) of the zoning ordinance".

Mr. O'Kelly explained to the board, that the closest thing he could find in the zoning ordinance was business storage, and he is not creating a new or different category; he doesn't feel it would be a hardship to anyone. Mr. O'Kelly stated, that the board could do three things; 1) you could say no, "we agree with Hillary, and deny our appeal", 2) you can say, "yes it is a development, but we're going to grant your appeal", or 3) you can say, "we don't think it is a development, so we don't agree with this". Mr. O'Kelly stated, that his client is willing to comply with the county, as far as buffers and such; it's a light industrial area, and his client is not trying to build anything in the immediate future. There's no homes there right now, so the adverse affects is not a hardship on anybody, the landowners in the area all got notices, and no one objected.

Mr. Gasparini explained, that on page 106:49 of the zoning ordinance, development is defined, as, "any action covered by Sections 106-5 through 106-8", and that's in the definition section of the zoning ordinance, and Section 106-6 (1) falls inside of sections 106-5 through 106-8. Mr. Gasparini stated, that the requirements for a variance are very specific in section 106-521 of the zoning ordinance, which is defined in the staff report.

Mr. C. Williams stated, that the staff report states, "Mr. Louder had previously visited the Zoning office, and was told a Development Permit would be required in order to run a business from said property". Mr. C. Williams asked Mr. Louder, "When did you talk to Ms. Austin about that?"

Mr. Louder stated, that he talked to Ms. Austin when he was purchasing the property.

Mr. O'Kelly stated, that the closing was April 24, 2011, according to his records.

Mr. C. Williams asked Mr. Louder, "Did Ms. Austin tell you that in order to store cars, you needed a Development Permit?"

Mr. Louder stated, that they did not discuss the storing of cars, he was just worried about clearing the property. Mr. Louder stated, that Ms. Austin said that he couldn't build for a year if he cleared the property, so when he thought of building, he thought of an actual building, like floors, walls, and a roof, he did not think storing of cars would fall under a building. Mr. Louder stated, that he doesn't care if he can't build his building right now, but it would affect his business if he cannot store cars there.

Mr. Mack asked Mr. Louder, "When did you speak with Ms. Austin?"

Mr. Louder answered, "Around April".

Mr. C. Williams stated, that he would like to know how this variance application meets the criteria of Section 106-522 of the zoning ordinance. Mr. C. Williams asked Mr. O'Kelly, "Are there extraordinary and exceptional conditions pertaining to the property?"

Mr. O'Kelly stated, that his client relies on the storing of the vehicles to run his business.

Mr. C. Williams stated, that this application probably doesn't meet criteria number 1. Mr. C. Williams asked Mr. O'Kelly, "Does these conditions generally apply to other properties in the vicinity?"

Mr. Louder stated, that there's a church on one side, and it's near Beaufort Commerce Park.

Mr. C. Williams stated, that it's hard to meet criteria number 2, if criteria number 1 cannot be met. Mr. C. Williams asked Mr. O'Kelly, "Because of these conditions, would this particular piece of property effectively prohibit or unreasonably restrict utilization of the property?"

Mr. O'Kelly stated, that if the property cannot be used because of the restrictions, it would really hurt Mr. Louder's business.

Mr. C. Williams asked Mr. O'Kelly, "The fifth criteria, is the hardship of which the applicant complains, must relate to the applicant's land and not the applicant's personal circumstances; does the applicant meet that criteria?"

Mr. O'Kelly answered, "I didn't see that in my memorandum."

Mr. C. Williams stated, that the board can only grant a variance, if the board finds that all of the criteria's are met".

Mr. O'Kelly stated, that his client is not trying to circumvent the law, but the criteria's does not relate to his land; but as far as his personal circumstances goes, if he cannot use his land, he might be out of business.

Mr. Louder stated, that the church previously used the property for a sign business, under the industrial zoning district.

Mr. C. Williams asked Mr. O'Kelly, "Did Ms. Austin tell you that you would need to get a development permit, in order to be able to use the property for business storage, around the time you bought the property?"

Mr. Louder answered, "Ms. Austin did not say anything about a storage permit, and that's what she is wanting now; as far as when I cut the trees on the property, I asked Ms. Austin did I need a permit to cut the trees, and Ms. Austin said no, and that I could not build for a year."

Mr. C. Williams asked Mr. Louder, "Did you ever discuss with Ms. Austin that you have a towing business, and you wanted to store cars on the property?"

Mr. Louder answered, "Yes, Ms. Austin told me, that the land was deemed for it, but we never discussed getting a development permit."

Mr. C. Williams asked Mr. Louder, "In the staff recommendation report, it states that Mr. Louder had previously visited the Zoning Office, and was told that a development permit would be required, in order to run a business from said property, and in order to receive a permit one requirement would be a tree survey of the property; do you recall discussing a tree survey with Ms. Austin?"

Mr. Louder answered, "Yes, I have a tree survey that I gave to Ms. Austin."

Mr. C. Williams asked Mr. Louder, "Was that before the clear cutting or after?"

Mr. Louder answered, "That was before the clearcutting, because it was already surveyed by the previous owner, and he gave me all of the paperwork."

Mr. Gasparini asked Mr. Louder, "Per the staff report, it states that you built a fence, is that correct?"

Mr. Louder stated, that he was told from Southern Fence Company that he didn't need a permit to build a fence.

Ms. Austin stated, that the timber company never came to her and, the state law states that property can be timbered without coming to Zoning. Ms. Austin stated, that the conversation was, that the applicant needed a permit to do the business, whether it was to build the building, or to store the cars. Ms. Austin stated, that they talked about the driveway, and they even talked about talking to Colin Kinton about putting in the curb cut; there were also buffer issues, and the next thing she knew was that the property was timbered.

Mr. Mack asked Ms. Austin, "When would his one year begin?"

Ms. Austin stated, that his time began when the property was timbered.

Mr. Gasparini stated that Section 106-1158 states, "If an owner clear cut any or all portion of his property under the claim of good faith, then seeks a development permit for any portion of the property, within a year of the clear cut, a rebuttable presumption arise that the clear cut was done in anticipation of future development permit denied."

Mr. O'Kelly stated, that the Whitewood documents, is dated April 29, 2011.

Mr. Gasparini asked Mr. O'Kelly, "Did the clearing occur before April 29, 2011."

Mr. O'Kelly answered, "Yes Sir."

Mr. Gasparini stated, that a reasonable date would be May 1, 2011, for the one-year to be up, and for the applicant to obtain a permit.

Ms. Austin stated, that the property is too small for the applicant to meet the required buffers, so the buffers will have to be modulated.

Mr. O'Kelly stated, that he has no problem doing that.

Mr. Mitchell asked, "If he does the replanting of the buffer before the one year is up, do he really need a variance?"

Mr. Gasparini answered, "Yes, he would still need a variance to occupy the property before the one year is up."

Mr. E. Williams stated, that he would like to make a motion, based on the guidelines that Ms. Austin outlined in the staff recommendation report, which states that, "the applicant shall be required to replant the buffers along the perimeter of the property, and that the buffers required would affect the property more than 25 percent, therefore the modulation of the buffer may be approved by the Development Review Team"; the applicant shall also abide by the other recommendations listed on the staff recommendation report.

Mr. Mitchell asked Mr. E. Williams, "Is that a motion to approve the variance, based on the conditions listed on the staff report?"

Mr. E. Williams answered, "Yes, that's correct."

Mr. Mitchell seconded the motion.

Mr. C. Williams stated, that he doesn't see that the application meets the requirements for a variance, as set forth in Section 106-522 of the zoning ordinance.

Mr. Mack stated, that he agrees with Mr. Chester Williams, and he also does not see that the application meets the requirements for a variance, based on Section 106-522 of the zoning ordinance.

Mr. Mitchell stated, that he is sympathetic to the fact that the applicant is willing to go through all of the modulated buffers and all the other requirements, and based on the facts, the board should grant the variance for this application.

Mr. Gasparini stated, that he is sympathetic with the circumstances, and he doesn't like to see businesses interrupted; but he cannot vote for the application without the requirements being met.

MOTION: Mr. Edgar Williams made a motion to approve the project, based on the requirements outlined in the staff recommendation report, that the applicant shall replant the buffers along the perimeter of the property, along with the modulation

of the buffers, which may be approved by the Development Review Team; the applicant shall also abide by the other recommendations listed in the staff recommendation report. Mr. Mitchell seconded the motion. The motion failed (FOR: Mitchell and E. Williams, OPPOSED: Gasparini, Mack and C. Williams).

ADJOURNMENT

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

The meeting adjourned at approximately 5:58 p.m.