



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, January 28, 2016 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. Gregory Baisch
Mr. Kevin Mack

Mr. William Mitchell
Mr. Chester Williams
Mr. Jim Vineburgh

MEMBERS ABSENT

None

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mr. Anthony Criscitiello, Planning Director
Mrs. Tamekia Judge, Zoning Analyst III

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 with the Pledge of Allegiance.

REVIEW OF AGENDA:

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

REVIEW OF MINUTES:

MOTION: Mr. Mack made a motion to adopt the August 27, 2015 minutes as submitted. Mr. Mitchell seconded the motion. The motion passed (FOR: Basich, Gasparini, Mack, Mitchell and C. Williams; ABSTAIN: Vineburgh and E. Williams).

MOTION: Mr. E. Williams made a motion to adopt the October 22, 2015 minutes as submitted. Mr. C. Williams seconded the motion. The motion passed (FOR: Baisch, Gasparini, Mitchell, Vineburgh, C. Williams and E. Williams; ABSTAIN: Mack).

MOTION: Mr. Vineburgh made a motion to adopt the December 17, 2015 minutes as submitted. Mr. Baisch seconded the motion. The motion passed (FOR: Basich, Mack, Vineburgh, C. Williams and E. Williams; ABSTAIN: Gasparini and Mitchell).

SCOTT O. SAVAGE (DOCK VARIANCE)

Mr. Scott O. Savage, owner of the property, stated that when he came before the board on last month, they said that their hands were tied and that he was told to go before the County Council to get it changed, so his wife called Councilman Paul Sommerville to discuss the letter he received in September 2015 from Beaufort County rescinding the permit he was issued in 2014. Mr. Savage stated that Mr. Sommerville contacted the County's Attorney and asked if she was at the meeting and she stated that she was. Mr. Savage stated that Mr. Sommerville asked the County's Attorney what happened. Mr. Savage also stated that Mr. Sommerville said she stated that their hands were tied so they couldn't make a decision. Mr. Savage stated that the County's Attorney discussed the permit; and Mr. Savage stated that Mr. Sommerville said to the County's Attorney that the man didn't lie because he was looking at his permit. Mr. Savage stated that Mr. Sommerville asked the County's Attorney if they are not taking the State's word about the creek being closed and she said no; they were going to measure it to make sure.

Mr. Gasparini stated to Mr. Savage that he was there to apply for a variance and that he needed to explain the criteria of the application.

Mr. Savage stated that when he purchased the property in 1994 it was permitted for a dock.

Mr. C. Williams asked Mr. Savage, "Do you have a copy of the permit?"

Mr. Savage replied, "No".

Mr. C. Williams asked Mr. Savage, "Was there a permit for your lot for a dock issued on that property?"

Mr. Savage replied, "There was at one time".

Mr. C. Williams asked Mr. Savage, "Are you talking about the December 17, 1991 letter from Gary Meyer?"

Mr. Savage replied, "No sir, the owner before me had a permit for a crabbing dock and I never renewed it, so it expired."

Mr. C. Williams asked Mr. Savage, "When did it expire?"

Mr. Savage replied, "It was probably right before I bought it."

Mr. C. Williams asked Mr. Savage, "So, when you bought it; it didn't have an active permit?"

Mr. Savage replied, "I don't know. Let's say I bought a dockable piece of land. Would you agree that it was a dockable piece of land according to the Conceptual Dock master plan?"

Mr. C. Williams asked Mr. Savage, "Are you talking about the 1991 letter from Mr. Gary Meyer?"

Mr. Savage stated that, "No sir, I am talking about the Conceptual Dock plan that Mr. Meyer agreed with OCRM that shows my lot having a crab dock."

Mr. C. Williams stated, "Yes, 105 feet."

Mr. Savage stated, "It should be 200 feet." Mr. Savage stated the he has paid more taxes on the land because of the value, and he has access to the water, but now that the creek has dried up he has nothing. "Is the State of South Carolina not a higher authority than Beaufort County?"

Mr. C. Williams asked Mr. Savage, "Do you mean in the permitting process?"

Mr. Savage replied, "I am talking about in general."

Mr. C. Williams stated that the state of South Carolina has a different permitting process than Beaufort County but that doesn't mean that if the state issues a permit that the County is bound by it.

Mr. Savage stated that in this particular case this man had no right or authority to pull the permit.

Mr. C. Williams asked Mr. Savage, "What do you have from the State that says that?"

Mr. Savage stated, that "The guy from the State was going to be here but the County would not let him come, after numerous calls from OCRM's attorney, he was not allowed to come, because they would not return his call."

Mr. Gasparini stated that this is a public meeting and the Staff does not exclude any one from coming to the meeting.

Mr. Savage stated that Mr. Madlinger was going to come and talk today but after numerous attempts by the OCRM attorney, the County would not return his calls so the attorney told Mr. Madlinger that he wasn't able to come.

Ms. Alysoun Eversole of Eversole Law Firm, Mr. Savage's attorney, stated that she spoke with Mr. Nathan Hayber, the attorney for the state, OCRM and DHEC and they requested that Mr. Madlinger would be here for the hearing and he tried to call Ms. Austin on several occasions because he wanted to talk to her about why Mr. Madlinger would need to be there but because he didn't get a return call back from Ms. Austin, he would not let Mr. Madlinger come to the meeting.

Mr. Gasparini stated that if your client wanted Mr. Madlinger to be here it wasn't the County's obligation, it would have been up to your client to speak with Mr. Madlinger about attending the meeting.

Ms. Eversole stated that "The recommendations provided to Mr. Savage, in reading through them, were very conclusory about basically disregarding that the facts on the ground and that the creek is filling in is not real; that's the way I am interpreting this. The statements are, for example, in the first paragraph is that the applicant's lot fronts on a Small Tidal creek and is therefore able to build a small dock to the creek; well, he is not able to build a small dock because the creek is filled in. He cannot get a permit to the creek from DHEC because the creek is filling in and is smaller than DHEC allows for a permit. The only permit he can get is out to the larger water. They are not addressing the facts, the purpose of a variance is when the facts are different and support the variance and ought to be granted. I think you have to look at the facts on the ground and the survey that shows the narrowing of the creek that was supplied to you in the previous petition. It does create a hardship that is undue and unique and that's what the standards require."

Mr. C. Williams asked Mr. Eversole, "Doesn't the adjoining property owners have the same issue, so it's not unique?"

Mr. Eversole replied, "It is unique to the extent that they all would have to apply for a variance." In paragraph #2 the response was there were no extraordinary and exceptional conditions pertaining to the land; I don't know how this is not extraordinary or exceptional; the response was that the applicant did not prove a legitimate hardship. Well, the legitimate hardship isn't the standards; it is undue and unique. Legitimacy has nothing to do with the standards and that word is not in the standards. The 4th paragraph down states that the granting of the variance permit would confer special privileges on this land owner and that the applicant has not proven a hardship. Well what special privileges would be conferred on above anyone else? He wants to build a dock and that's not a special privilege. Paragraph #5 the land owner is allowed reasonable use of the land and a Single Family home is a reasonable use of the land. Well, this is not about the land, it's about the dock. Ms. Eversole also stated that Mr. Criscitiello indicated that the purpose and intent was to conserve and protect the County's natural resources, wetlands, beaches and dunes, etc. And yes it is important that the County protect those things but how does this dock being built affect that? They don't describe it at all? How is this request of the variance diminishing anything about the wetlands or anything in paragraph # 5 of the general purpose and intent? I would say in paragraph #8 one of the general purposes is to maintain long term

comprehensive, consistent, effective, efficient and equitable standards and one of the things to look at is to respect the rights of the landowner. I don't believe the rights of the land owner have been considered and I hope Mr. Savage can get a variance."

Mr. David Gasque, surveyor of Gasque & Associates, stated that "There was a dock plan, created back then. Was it legitimate, I don't know because it wasn't recorded. Mr. Savage asked me to get him a dock permit, so I went out there and the creek is so narrow it was hard to get into. Mr. Madlinger went out with me and took the measurements as he is a member of the State, and he stated that the creek does not qualify for a dock and that we would have to go to the next bigger water. I said we might have a problem because this is a Shallow Ordinance Creek, that's what I call it; and the only way to get there is to get a State permit first which we did. Mr. Madlinger informed me that the creek is closing in because the oyster shells are there, and I informed him that we would have to cross the bridge on the Shallow Water Creek and as I've done a hundred times I've turned in a dock permit to the county, and nowhere on the dock permit does it ask in your opinion is this on a Shallow Water Creek. It's up to them to look, so I did apply and we got a permit which did not surprise me. Numerous times in the past well over 300 feet in a Shallow Water Creek, when we proved that the map was wrong, at Staff level they approved the dock. So, they got common sense and saw that it was no longer a protected water way because it was no longer a creek and when he got his permit and neighbors found out about it, the county pulled the permit. No one mislead or tried to pull a snookery, that's the only process we had. So the creek is closing in and you do realize the County took a map from 1999, cut and paste it 15 years later and said here this is the map; and we are here because we think it is a hardship that this creek is closing."

Mr. Vineburgh asked Mr. Gasque, "If we grant this variance would it impede other people from being able to navigate the area?"

Mr. Gasque replied, "In my opinion it wouldn't, because you can always float a kayak under it."

Mr. C. Williams asked to Mr. Gasque, "The plans that were submitted for the dock permit which were prepared by your office do not show the bump up; the section doesn't show the Small Tidal Creek, does it?"

Mr. Gasque replied, "It doesn't, because we did that with the state".

Mr. Baisch asked Mr. Gasque, "How high do you typically go above mean high water?"

Mr. Gasque replied, "A normal dock is in walking surface of a dock is between 7-8 feet of sea level and you would probably go up 9-10 feet."

Mr. Gasparini asked, "You're familiar with the County Zoning map that designates this as a Small Tidal Creek, there is also a specific procedure for amending the map, isn't there?"

Mr. Gasque replied, "Yes, but it's long and drawn out."

Mr. C. Williams stated that, "As I read Section 4.2.190 (D), that's a set of criteria that applies if you are seeking to have a dock in a Small Tidal Creek, it is my understanding that you don't want a dock in a Small Tidal Creek, you want to go across the Small Tidal Creek, is that correct?"

Ms. Eversole replied, "That's correct."

Mr. C. Williams stated that he is not sure why we are here dealing with a variance application for a dock on a Small Tidal Creek when you are not looking for a dock on a Small Tidal Creek.

Ms. Eversole stated, "Well we are looking for a dock on a creek, the one on the other side is on a Small Tidal Creek".

Mr. C. Williams stated that this goes back to what we last said, "It's not a judgment thing, go look at the map. You are not asking for a dock on the Small Tidal Creek and this set of standards only apply where you are seeking a dock on a Small Tidal Creek. Can you explain to me why we're dealing with a variance application for a dock on a Small Tidal Creek when you are not seeking a dock on a Small Tidal Creek?"

Ms. Eversole stated that, "We are seeking a dock on a Small Tidal Creek".

Mr. C. Williams stated that they are seeking a dock that traverses and goes across a Small Tidal Creek and would be a dock on the big water.

Ms. Eversole stated to Mr. C. Williams, "He can't get a dock permit from the State and he can't get one from the County; what other mechanism do we use other than going for a variance?"

Mr. C. Williams replied, "Revisit the Small Tidal Creek map."

Mr. Criscitiello stated that, "The issue comes down to navigability; that even today at low tide the Tidal Creek is navigable and that is a piece of information that can be weighed in terms of its validity. I live on Huspah Creek and my neighbors protested a dock on a Small Tidal Creek because it blocked the navigability, and in that instance the board did not issue the permit for a dock on Huspah Creek. The point of all of this is because the value and the goals of the Ordinance is to allow for people to use the Small Tidal Creek for their individual uses associated with canoeing and any other manner of water craft that is allowed to be on the creek. The hardship is to be demonstrated as to why they can't utilize the creek in the manner of which it was suggested. If the State were to say that a crabbing dock would be allowed on this creek then the County would issue a permit for a crabbing dock on this creek. If there is a decision to be made in regards to the language of the Ordinance then the applicant has the right to request a text

amendment to clarify navigability where there is alleged for creeks that are filling in. So I would suggest that there are two avenues that if the State were to say that in this instance the crabbing dock would work, the County would be willing to support a crabbing dock on the creek, but Staff is not in support of the notation of spanning a Small Tidal Creek cutting navigation, and going to the larger body water of Chowan Creek because it's not a good idea."

Mr. C. Williams asked Mr. Criscitiello, "Why are we talking about a variance for a dock on a Small Tidal Creek, when we are not talking about a dock on a Small Tidal Creek?"

Mr. Criscitiello replied, "Because this is the right of the citizen to ask a question, if they want to come and request a variance we don't deny them the opportunity to come before the board to present their case."

Mr. Gasparini asked Mr. Criscitiello, "I thought I heard the applicant say that DHEC wouldn't give them a permit for a crabbing dock because they don't think it's a creek at all. Is the applicant now in the catch 22 where you are telling us that if he could get a permit from DHEC for that creek it would be okay, but that wouldn't happen because they wouldn't do that."

Mr. Criscitiello stated that "By the evidence submitted by the applicant he's saying that the creek is only 9.58 feet wide and not 10, it could be that the channels are construed to be 10 feet wide which would allow them to get the permit from the state."

Mr. Gasparini asked Mr. Criscitiello "You didn't really answer my question."

Mr. Criscitiello stated that, "It's a matter of measurement".

Mr. Baisch asked Mr. Criscitiello, "Is the only definition for Small Tidal Creeks that the County ordinance has is the map?"

Mr. Criscitiello replied, "Yes."

Mr. Vineburgh asked Mr. Criscitiello, "What's the difference between a dock and a crab dock?"

Mr. Criscitiello replied, "It's for the purpose of the boats to be at the end of the docks and so you could have multiple boat lifts, and the applicant's diagram showed that's what he intended."

Mr. Vineburgh asked Mr. Criscitiello, "If the dock is sufficiently high that someone can take a canoe and go underneath, is that impinging upon the right of the other people?"

Mr. Criscitiello stated that, "You can create conditions in your decision where the Staff doesn't have that prerogative to do. If you wanted to have a provision in a decision that you make that the dock is to be elevated, that may be something that the board may

consider doing. The purpose of the board is to inject judgment beyond what the staff can do.”

Mr. E. Williams asked Mr. Criscitiello, “The applicant indicated that he had an approval at some point, is that correct?”

Mr. Criscitiello replied, “Yes, that is correct.”

Mr. Gasparini asked Mr. Criscitiello, “Was the map readopted when the code changed?”

Mr. Criscitiello replied, “Yes.”

Mr. Gasparini asked Mr. Criscitiello, “Did anything on the map change when it got readopted?”

Mr. Criscitiello replied, “No.”

Mr. C. Williams asked, “When was the Small Tidal Creek map first adopted and put into the codes?”

Ms. Austin replied, “May 2000.”

SCOTT O. SAVAGE DOCK VARIANCE (PUBLIC COMMENT)

Mr. D.C. Gillies stated that he has lived at 52 Sheffield Avenue since 2001. Mr. Gillies stated that the property touches a Small Tidal Creek that only a kayak can go through. Mr. Gillies stated that if a dock was to be constructed going out to the larger body of water, it would be a destruction of the ability to use the waterway and he is against the application.

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 and limited the comments to 3 minutes.

Mr. C. Williams asked Mr. Gasque, “Is there anything from DHEC that says he can’t have a dock on the Small Tidal Creek?”

Mr. Gasque replied, “No.”

Mr. E. Williams made a motion to sustain Beaufort County’s recommendation to disapprove the dock variance.

Mr. C. Williams seconded the motion.

Mr. Mitchell stated that he doesn’t want to vote to disapprove the project mainly because DHEC would not let him have a crabbing dock because the creek is too small.

Mr. C. Williams stated that the problem is that, there is nothing in the record that shows that; all we have is hearsay testimony that says that.

Mr. Mitchell stated that DHEC has approved a dock to go to larger water, and if we put in a requirement to allow them enough access for traffic underneath the dock, then I would be in favor of approving the project.

Mr. C. Williams asked Mr. Criscitiello, "How often in the past have you considered this sort of situation where the property owner wants to span a body of water that's shown on the map as a Small Tidal Creek out to a deeper body of water?"

Mr. Criscitiello replied, "Maybe one."

Ms. Austin stated that, "There has been a lawsuit, in which DNR states that a Small Tidal Creek is less than 300 feet. Most times the surveyor will go out and measure the creek marsh grass to marsh grass, and if it measures more than 300 feet the County considers it open water - - anything less than that is considered a Small Tidal Creek."

Mr. Basich asked Ms. Austin, "Regardless of the map?"

Ms. Austin replied, "Yes." Ms. Austin also stated that "If it's greater than 100 yards it is not a Small Tidal Creek and because of that when the surveyor goes out and measure it from marsh grass to marsh grass then we would say it is exempt and that's what happened in this case. It was not recognized that it was a Small Tidal Creek because he showed 360 feet, marsh grass to marsh grass; so it was viewed as open water and that is our procedure to deciding if it is or not. We go by what the surveyor has, along with the maps."

Mr. Baisch asked Ms. Austin, "So, there are instances where there is green on your map but it's measured at greater than 300 feet and you don't classify that as a Small Tidal Creek because of the lawsuit and that has some precedence. So the other side is you can ignore the map and now that we are dealing with the other side of the threshold and we can't ignore the map?"

Ms. Austin replied, "Yes, that's correct, that's why we mentioned the text amendment."

Mr. Gasparini stated that "I am concerned about giving a variance which in fact amends the map; that's a political process. And I am sure that's not our belief at this Zoning Board; there is a relatively straight forward process to make a zoning map amendment because it would permit not only the applicant, but his neighbors, a dock permit. I am also personally reluctant to that and I'm uncomfortable that it is the first like that; there is a political legislative solution and I am sympathetic to Mr. Savage's problem."

Mr. Baisch stated that the issue he has with the map is that it's being dynamic, which we sort of stated, because it could change tomorrow and if it changed we would have to

change it in text. We have an ordinance that refers us to a map that we don't know if it's going to be the same.

Mr. Gasparini asked Mr. Savage, "Would you be satisfied with a crab dock on a Small Tidal Creek if you could get one?"

Mr. Savage replied, "Yes, but the state said you can't have a dock.

Mr. Gasparini asked Mr. Savage, "If the Board votes and you lose, you won't be able to come back before the Board unless you have substantial information; but, if we put this application over so you can talk to DHEC and see if you can get a crab dock, then you will be able to come back before the Board."

Ms. Eversole asked the Board to table the application until the Mr. Savage speaks with DHEC.

Mr. Vineburgh made a motion to table the application for a month at the applicant's request.

Mr. C. Williams seconded the motion.

MOTION: Mr. Vineburgh made a motion to table the application at the applicant's request until the next scheduled meeting. Mr. C. Williams seconded the motion. The motion passed (FOR: Baisch, Gasparini, Mack, Mitchell, Vineburgh, C. Williams; OPPOSED: E. Williams).

ADJOURNMENT

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

The meeting adjourned at approximately 6:36 p.m.