



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, July 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. John Chemsak
Mr. Kevin Mack
Mr. Chester Williams

MEMBERS ABSENT

Mr. William Mitchell

STAFF PRESENT

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

VACANCY

Southern Beaufort County

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:02 p.m.

PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE: Mr. Gasparini led those assembled with the Pledge of Allegiance.

REVIEW OF AGENDA:

Mr. Gasparini stated, "At the request of Mr. Nester, item #7 and item #8 will be heard after item #5."

MOTION: Mr. E. Williams made a motion to adopt the agenda with the changes. Mr. C. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, C. Williams and E. Williams; ABSENT: Mitchell).

REVIEW OF MINUTES:

MOTION: Mr. E. Williams made a motion to adopt the June 23, 2016 minutes as written. Mr. C. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, C. Williams and E. Williams; ABSENT: Mitchell)

RICHARD & DIANA CLARKE'S VARIANCE (RIVER BUFFER SETBACK)

Mr. Walter Nester, an attorney with McNair Law Firm stated, "I represent Mr. & Mrs. Clarke in their application for a Variance from the River buffer setback as provided in the Community Development Code. I do appreciate the Staff's recommendation that they agree with our request for a Variance on the residential building lot in Colleton River, and we ask that the Board also approve the Variance request. One item that I would care to note; I spoke with Mr. Criscitiello about this and I think there was a misunderstanding. The Staff report indicates that a waiver would have been appropriate for this request and, while I very much appreciate that, the waiver requirement is that the size of the residence being proposed is smaller than the average size of the residence on both sides. The size of the residence the applicant is requesting is larger than the average and we believe we didn't qualify for a waiver, hence the application for a Variance. There was one residence that skewed the numbers and we didn't qualify for a waiver because the applicant's residence is slightly larger."

Mr. Gasparini asked Mr. Nester, "That's the five left and five right analyses?"

Mr. Nester replied, "Yes sir."

Mr. Gasparini asked Mr. Nester, "There is quite a substantial move inside of the River buffer, is that a function of the size of the lot?"

Mr. Nester replied, "It's a function for the size of the lot. Since November 2014 the new river front or the critical line setback that's been imposed is now 60'; in addition to the front setback which is 30' off of the street that is required by the Colleton River ARB. In fact the first proposal put the garage over the front setback and they kicked it back stating they wouldn't approve it.

Mr. Gasparini asked Mr. Nester, "If I do my math correctly, you want to move back to the 50' and 28' more, is that correct?"

Mr. Nester replied, "We are only requesting for 22 feet."

Mr. Gasparini asked Mr. Nester, "What was the buffer when the lots were platted?"

Mr. Nester replied, "25 feet."

Mr. Gasparini asked Mr. Nester, "Are the houses next door immediately adjacent or are there empty lots in between? What I am trying to get at is how close are they to the critical line?"

Mr. Nester approached the bench to point out the adjacent lots on his map layout.

Mr. Gasparini stated, "So, 23 and 21 are the adjacent lots. Are there any homes on them?"

Mr. Nester replied, "No, there is only a home on Lots 25, 27 and 16A."

Mr. Gasparini stated, "So there is nothing immediately to the left or right of your client?"

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

Mr. Gasparini stated, "What I am concerned with is creating a situation where there is a 22 - foot buffer and when the people next door want to build they are going to want the same thing. Typically I am worried about people moving in front of their neighbors, which you are not doing because you do not have any neighbors."

Mr. Nester replied, "That's correct. But as indicated in the Staff report, it's a very unusually shaped lot; it's a small lot. It's because of the shape and the building setbacks imposed by the Architectural Review Board for Colleton River."

Mr. Gasparini asked Mr. Nester, "So they rather have you close to the marsh rather than close to the road?"

Mr. Nester replied, "They want you to be in the box that they designed. They are envisioning a street front and they don't want homes varied, they want homes more or less lined up along the street right of way."

Mr. Criscitiello, Beaufort County Planning Director stated, "When I reviewed the project, I came to the conclusion that The Architectural Review Board made a good point, in part because of the amenity package, which is part in parcel of what you are buying when you go there. A smaller home without those amenities would be unfair and is not characteristic of the neighborhood. Given the fact that the Architectural Review Board endorses this and, my review of the file and of the one letter in dissent which I could not in my own review of this find any reason for that person to object, because I don't believe it would affect their view corridor, I find that this is a worthy Variance."

Mr. Gasparini asked Mr. Criscitiello, "When all the neighbors, including Mr. Pringle who is objecting, come to see us about wanting a 22 feet setback from the critical line, are you okay with that?"

Mr. Criscitiello replied, "It depends on individual cases, and in this instance if we are talking about not allowing somebody to have an amenity package commensurate with what everybody else has, then I would say in this instance I would say it is fine. If there is a situation where it becomes so clearly a detriment to the neighborhood and the environment they will be clear to send the water where it needs to go and not affect the water quality, which is the main issue for this project."

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 was a letter from Mr. Pringle opposing the Variance.

Mr. C. Williams stated, "I agree with the County's assessment. Given the constraints imposed by the setbacks in Colleton River, without the Variance the lot is considered unbuildable. I find that the application meets the requirements of Section 7.1.140.D and find that the application is in conformance with the standards. A condition will be that the Staff Review Team approves a drainage plan that the drainage flows toward the street and not the marsh."

Mr. E. Williams seconded the motion.

MOTION: Mr. C. Williams made a motion to approve the Variance application with the following conditions: 1) The Staff will approve a drainage plan so that all of the drainage drains to the front of the lot to the street; not to the marsh. Mr. E. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, C. Williams and E. Williams; ABSENT: Mitchell).

BJWSA – (SPECIAL USE PERMIT)

Mr. John Chemsak stated that his son is Brian Chemsak, the point of contact for BJWSA and he is recusing himself from the project.

Mr. Ed Saxon, General Manager representing Beaufort Jasper Water & Sewer Authority stated, "I thought it was appropriate to give the Board some history of the site. The original project consisted of these structures since 1960. The structure lasted through the 1980's and 1990's. The clear well was part of the 1963 well. The shelters that are shown are used for storage. We store dry chemicals in the structure. In 1990 we expanded and added more wells and a water tank which held 27 million gallons. In 1997 we built the first admin building. We built the second structure in 2007, adding another 12,000 square feet facility. We have a lot of pipes, conduits and storm drains in the ground. We have reserved an area on the property for future treatment processing. We have to have space left on the site for processing."

Mr. C. Williams asked Mr. Saxon, "What is on the other side of the road?"

Mr. Saxon replied, "We have a seven - acre pond."

Mr. Gasparini asked Mr. Saxon, "What's down on the lower right corner of the property?"

Mr. Saxon replied, "It's a retention pond."

Mr. Brian Chemsak representing Beaufort Jasper Water & Sewer Authority stated, "Ed Saxon talked a little bit about the building. As you heard him say there are about 25 employees in a 1500 square foot building. The new building will be used to start their day, loading the equipment they will need; most of the day they won't have too many people in there, maybe three supervisors. There won't be any increase in traffic. The current site now is used for equipment storage and all of that will be consolidated on the gravel part."

Mr. E. Williams asked Mr. Chemsak, "You indicated that there are about 25 employees in the building now which is about 1500 square feet; if you expand the building, are you adding additional employees?"

Mr. Chemsak replied, "The building currently has three large common areas and the employees are kind of packed in there."

Mr. Saxon stated, that they will relocate miscellaneous storage parts to that building, providing office space and storage space. They will separate the work space from the storage space.

Mr. C. Williams asked Mr. Saxon, "What will you do with the old space?"

Mr. Saxon replied, "It will be a warehouse."

Mr. Criscitiello, Beaufort County Planning Director stated, "As you know we met with you on June 23rd and you expressed some reservation in regard to the issues of the Special Use permit, so it was sent back to the Staff Review Team on June 29th, and representatives from the Beaufort Jasper Water & Sewer Authority were present, in the discussion before the Staff Review Team at that point. One of the things that came loud and clear to staff was because the highly sensitive nature of the operation of Beaufort Jasper Water & Sewer Authority. Some of the information that they have is confidential -- meaning it has a lot to do with security of the water and sewer authority itself, and that was not in the packet at the request of the applicant because they felt that the information was to be kept confidential. This is why you essentially are rehearsing the same thing. One thing is concern that there was a lot of space out here and a lot of opportunity to put the facility somewhere else and not create an impact the surrounding community that is likely to be perceived."

Mr. C. Williams stated to Mr. Criscitiello, "Explain to me how we get to the Special Use application."

Mr. Criscitiello replied, "Because of the site and the application of the site being in a way which would be non-conforming to the standards."

Mr. C. Williams stated, "As I read the code, you can use a Special Use application if you have a non-conforming use, which this is not; or a non-conforming structure where you

want to expand that structure by more than 15% but we are not expanding the structure. We are building a new structure, so I don't see how we get to the Special use process to get it done."

Mr. Criscitiello replied, "As I interpret what our discussion was in previous times before you there was a concern that maybe the site or maybe this use could be someplace else and not create the need for the Special Use, i.e. the buffers that are affected by the application and the desired use of the facility. I believe the conversation was, maybe there are no underground pipes or things in this site that would create a problem and they would just move the building. Based on the review before the SRT and the conversation that we had at the SRT, we come before you today with the understanding and based on the information provided to us as staff that there are things that are underground and in the way and it creates a reason and a why and a wherefore for the request to deal with the location of the building and plus the fact that they are using the site right now. There is undeclared parking that is part of the issue with the site now. They will have parking spaces in a much more defined way, which makes it more presentable and usable. If I may suggest to the Board maybe a way to sway your concerns is to lay down some requirements on Beaufort Jasper Water and Sewer Authority which would mitigate the buffer effect. Perhaps that would be something you want to consider, and how that might relate the side property line in terms of providing adequate screening and buffering to lessen the impacts of this development. I think that as Planning Director and as a member of the SRT, this probably is the best place for the building."

Mr. C. Williams stated, "That may very well be. I have a problem with the procedure. I don't see that this is a proper subject of a Special Use application. You want to build a building there that is a by - right permitted use."

Ms. Hillary Austin, Zoning Administrator stated, "It's not a permitted use; offices are not allowed in T2 Rural."

Mr. C. Williams stated, "It's a major utility, it's a conditional use."

Ms. Austin stated, "No, it's considered an office use. When we first did the Special Use permit, when they did the admin building, we had to do a special use because Admin offices were not allowed in T2 Rural."

Mr. C. Williams stated, "This is an office for the utility."

Ms. Austin stated, "It was bigger than what was 15% so they had to apply for a Special Use."

Mr. C. Williams stated, "The 15% is for the expansion of a structure, we are not expanding a structure here." Mr. C. Williams asked Ms. Austin, "Why is this not being presented in the context of a Variance application? Because the conditional use for a major utility is the 100 feet additional buffer; it's shown on the site plan obviously

everyone thinks it's applicable, but the entire new development, almost the entire new development is going in the buffer."

Ms. Austin stated, "When we started with Beaufort – Jasper, the ordinance at that time did not allow the use, so it came in as a special use because it was existing, they built the admin building so the site plan was approved as a special use, now they want to add to the site plan so it continues as a special use."

Mr. C. Williams stated, "Now I have an even bigger problem for amending a Special Use permit that was approved almost 10 years old, and that was done under a different code with different requirements for development of the site."

Ms. Austin stated, "We are trying to amend the application; the site plan was approved as a special use and we have to continue looking at it as a special use because that was what approved the Beaufort – Jasper admin building in the beginning."

Mr. C. Williams stated, "But the major utility, which this is, is now a conditional use in the T2 zone and the condition is that you have the 100 - foot buffer. And it seems to me is what you are asking us to do is sort of hold our nose and look the other way, and say okay the buffer doesn't matter here, County Council is saying that it does matter and you have to follow that."

Ms. Austin stated, "The site was non-conforming and didn't meet the requirements of the ordinance when we first came in, so the special use plan that you guys approved mitigated all those things. So that means that we are continuing on with the site plan that you approved with the mitigation to add this new building, that's why it came in as a special use, because it was a non-conforming site in the beginning."

Mr. C. Williams asked Ms. Austin, "Is it a non-conforming site now, under this new ordinance?"

Ms. Austin replied, "I am sure it is, it's probably setbacks and buffers that they can't meet; I would have to look at it. I didn't because we were looking at this as an amendment to an approved plan."

Mr. C. Williams asked Ms. Austin, "Are the procedures of the Special Use of this context, to bring a non-conforming use into conformance or a non-conforming structure into conformity?"

Ms. Austin replied, "Yes, as best as we can by mitigating what is non-conforming."

Mr. C. Williams stated, "You are grossly increasing the non-conformity by placing a new building and parking in what is now designated as buffer area."

Ms. Austin stated, "Well, this building is already sitting in the buffer area and you are not going any closer than what you already are. How can you mitigate that?"

Mr. C. Williams stated "We are not talking about that; we are talking about the new stuff that's going in."

Ms. Austin stated, "Normally the ordinance states that you cannot expand any closer to the property line than the existing structures. So if we are looking at buffers and setbacks, none of the buildings are meeting the buffers and setbacks and not going any closer than the existing structures."

Mr. C. Williams stated, "I think that County Council had something in mind when they set a 100 - foot buffer for major utility."

Mr. Gasparini asked if the Board was going about this the right way in approving the application as a Special Use.

Mr. C. Williams read Section 8.3.50 of the Community Development Code and asked, "Why not file a Variance application because of the buffer issue?"

Mr. Criscitiello stated, "The ultimate position is for the Applicant to prove a hardship."

Mr. Gasparini stated, "The Special Use permit as issued in 2007 and amended in 2008, why is it still valid?"

Ms. Austin replied, "The state said all permits are valid until 2016, so any permits issued in 2008 is still good."

Mr. Criscitiello, "If the purpose of the buffer is to provide screening and separation, maybe it's within your parameters that with buffers provide screening or enhanced buffers, I would suggest that it would be well within the prerogative of the Zoning Board."

Mr. Gasparini stated, "I am not sure that an amendment to the Special Use, approved almost ten years ago, that has been through many amendments is the best way to go about approving this application."

Mr. C. Williams read Section 8.3.50 into the record; there is no expansion of a structure, there is a development of a brand new structure and once it is started will be non-conforming because it is in the buffer, I am not sure that this is the right procedure to go about permitting this application. Why not file a variance application there is a buffer issue that we have here.

Mr. Gasparini stated, If Beaufort – Jasper were to apply for a Variance they would then come to you and you all would then figure that out.

Mr. Criscitiello asked the Board, "If the ultimate responsibility to prove a variance hardship is on the Applicant; the fact that they are growing and need more space, does that constitute sufficient grounds for a hardship?"

Mr. Gasparini stated, "If they can't prove a hardship in order to get a Variance to move inside the buffers, what are we doing letting them move inside the buffer with a Special Use?"

Ms. Austin stated, "They are already in the buffer, that's the non-conforming site."

Mr. C. Williams stated, "The code doesn't refer to a non-conforming site, it refers to a non-conforming use or a structure."

Ms. Austin stated, "It talks about non-conforming lot."

Mr. C. Williams stated, "Not the section that I am looking at, 8.3.50, it only deals with uses and structures."

Mr. Gasparini asked Mr. Criscitiello, "Under the old code and the new code, my understanding is that Special use permits are required where the zoning requires you to get a special use permit; you cannot give someone a use that isn't allowed with a special use permit, is that correct?"

Mr. Criscitiello stated, "Public utility is a permitted use in Rural."

Mr. C. Williams stated, "It is a conditional use. The condition is the additional 100 - foot buffer and there are only two ways to deal with this, a variance application or change the text to the code."

Mr. Gasparini stated, "I think the appropriate thing to do is submit an application for a variance and if there are issues you prefer not to be publicly aired in terms of site planning, you can tell it to Mr. Criscitiello, then we will rely on him in good faith. He can then present to us the building size and location, that might indeed be a hardship. Mr. Gasparini also stated, "It would be best to withdraw the application and wait on the Variance submittal."

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.

Ms. Jane Shownuff stated that her mother has property near Beaufort – Jasper and she know with the Special Use; if you put the building on the one corner, there are ditches and the roads that get clogged with the trees being there. My mother spoke to Beaufort Jasper Water & Sewer Authority about the drains getting clogged and cleaned out. Can

you not reconstruct the existing building, instead of putting a new building there? My concern is the drainage if they put the building in the one corner.

Mr. Gasparini stated, "Beaufort – Jasper has decided to withdraw the application for a Special Use."

WOODLAND PARK PROFESSIONAL CENTER – SIGN VARIANCE

Ms. Marie Tate representing Woodland Park is requesting a sign Variance for the height of the sign.

Mr. Gasparini stated, "The issue is that the sign is below the street and cannot be seen, so the County suggests that other options be used. You can say put the application off and discuss it with the County for other options or we can hear the case."

Ms. Tate conferred with her clients. Ms. Tate stated, "We will work with Staff for other options."

Mr. C. Williams made a motion to carry the meeting over until next month if nothing has been worked out with the County Staff.

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 was no public comment.

MOTION: Mr. C. Williams made a motion to carry the meeting over until the next month if nothing is worked out with the County Staff. Mr. E. Williams seconded the motion. The motion passed (FOR: Chemask, Gasparini, Mack, C. Williams and E. Williams; ABSENT: Mitchell).

ADJOURNMENT

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

The meeting adjourned at approximately 6:10 p.m.