



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 26, 2017, 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 Cecil Mitchell, III

STAFF PRESENT

Mr. Thomas Keaveny, Beaufort County Attorney
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 5:05 p.m.

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

REVIEW OF AGENDA:

Mr. Gasparini stated that Items # 11 and #12 will be removed from the agenda.

MOTION: Mr. E. Williams made a motion to adopt the agenda with the changes. Mr. Mack 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 amended September 22, 2016 minutes as written. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack and E. Williams; ABSTAIN: C. Williams; ABSENT: Mitchell).

MOTION: Mr. C. Williams made a motion to adopt the December 15, 2016 minutes as submitted. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack; ABSTAIN: E. Williams; ABSENT: Mitchell).

FRIPP ISLAND – LOT 114, OCEAN CREEK (TURBEVILLE POOL VARIANCE)

Mr. Tom Holloway with Harvey & Battey Law Firm, a representative for the Turbeville stated, "This was continued from last month for an opportunity to make an addition to the plat to show the Board the site lines and the setbacks for the neighboring properties. The Board was considering granting a River Buffer Variance for a small pool and a porch for an already approved residence on Fripp Island. The plat provided last month did not show how far the neighboring properties were encroaching into the buffer. Mr. Gasque has prepared a plat which shows the Turbeville's proposed residence which is on the center of the lot and to the left of the Turbeville's residence. On Lot 113 Mr. Gasque showed the encroachment to the property as 32 feet from the river buffer. The lot to the north shows about 11 feet inside of the river

buffer. He has connected on this plat a view line and placed the pool for the Turbeville's residence. As noted on the plat to encroach 22.85 feet into the river buffer setback."

Mr. C. Williams asked Mr. Holloway, "Is there a pool on Lot 113?"

Mr. Holloway replied, "It is not; the encroachment on Lot 113 is a deck."

Mr. C. Williams asked Mr. Holloway, "What's the deck made out of?"

Mr. Holloway replied, "It's wood".

Mr. C. Williams asked Mr. Holloway, "It's pervious? The water comes down and hits it and goes to the ground."

Mr. Holloway replied, "It's an elevated deck."

Mr. C. Williams stated, "Yes, but it's not impervious like concrete like the pool or anything."

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

Ms. Austin, Beaufort County Zoning Administrator stated, "The County looked at the plan that was submitted and if you really look at the plan you will see that for Lot 1 the deck of the pool sits 42 feet from the critical line. On Lot 113 the steps and the deck comes down but if you measure from the roof line it sits 41 feet from the critical line and the pool is going to be 26 feet from the critical line. The Staff recommends disapproval because we felt they didn't meet the hardship for a Variance for a pool within the river buffer."

Mr. Gasparini asked Ms. Austin, "Are we just talking about the pool?"

Ms. Austin replied, "The home received a waiver at 50 feet. Now they are requesting to go further into the river buffer."

Mr. Gasparini asked Ms. Austin, "So, the Staff recommendation is to disapprove the pool?"

Ms. Austin replied, "No, it would be for the deck to be disapproved also, because it is also encroaching into the river buffer."

Mr. C. Williams asked, "The house has not been built yet, correct?"

Mr. Holloway replied, "That is correct".

Mr. C. Williams asked Mr. Holloway, "Why were the pool and the deck not a part of the original application submitted to Staff?"

Mr. Holloway replied, "It was omitted by error, so this application was made subsequent to include this, so the house has not been able to be constructed because the infrastructure that is proposed for this house has to be prepared before the house can be constructed. Once they realized that it was omitted from the plan, they went ahead and redid the plan and resubmitted it to this Board. I would note that when this lot was platted it was 20 feet. Lot 1 has a pool and the Lot to the south is inside of the river buffer setback, as well as many of the other houses on that street and in that neighborhood. The house cannot be moved further towards the street because of the ARB guidelines. The house has been reduced in size to accommodate the request, and the ARB of Fripp Island has approved this project, and I ask that you'll consider approving it too."

Mr. Mack asked Mr. Holloway, "Have you all explored any other styles of pools to diminish the amount of encroachment or positioning the pool in a different area on the property?"

Mr. Holloway replied, "This is a different pool that was originally designed, trying to make it as small as possible. There is no other place on the property to put the pool. We tried to put it in a straight line between the two properties on either side so it would not encroach any further into the view corridor. The pool will not create any negative impact. The pool is designed with aprons that are angled towards the pool and any rain or runoff that would come would run back into the pool."

Mr. C Williams asked Mr. Holloway, "Are the aprons shown on this plan?"

Mr. Holloway replied, "No, they are not. We would ask that it be put in any Variance resolution that may be adopted."

Mr. C. Williams asked Mr. Holloway, "How can you ask us to approve something that we don't know what we are approving, what does the apron look like?"

Mr. Holloway replied, "There would be no extension into the river buffer".

Mr. E. Williams asked Ms. Austin, "You have a set of conditions here, will that condition adhere to the Applicant?"

Ms. Austin replied, "If the Board approves it, that condition would be applied".

Mr. Holloway replied, "We are in agreement with that condition".

There being no further comments from the applicant or the County and no further questions from the Board, Mr. Gasparini called for public comment. There were no public comments.

Mr. C. Williams stated, "I'm a little troubled about the talk about the apron, because I take that to mean that the plan before us doesn't show all of the impervious coverage that's proposed as a projection into the buffer area. If that's the case, I don't see how I can make a decision as to whether or not this is a reasonable proposal or not."

Mr. Holloway stated, "I was speaking out of turn with the aprons, I thought it was a standard provision of what an individual would do in such a situation."

Mr. Gasparini asked Mr. Holloway, "So, there is or there isn't an apron?"

Mr. Holloway replied, "On this plan, there is not."

Mr. C. Williams asked Mr. Holloway, "What's in between the area of the proposed deck and the proposed pool?"

Mr. Holloway replied, "It's the proposed deck and vegetation".

Mr. C. Williams asked Mr. Holloway, "What's the construction of the proposed deck; is it wood?"

Mr. Holloway replied, "Yes".

Mr. C. Williams asked Mr. Holloway, "Are you saying that the only impervious projection into the buffer is the footprint of the pool?"

Mr. Holloway replied, "That is correct."

Mr. C. Williams asked Ms. Austin, "I see a 31.8 foot designation on Lot 113, what were the figures you said about encroachment on Lot 1?"

Ms. Austin replied, "The 31.8 is showing the deck and the steps. I used the hatched area, that's the roof line; and I measured from the roofline to the critical line and that's 41 feet."

Mr. C. Williams asked Ms. Austin, "So, that's the distance from the impervious coverage to the critical line on Lot 113?"

Ms. Austin replied, "Yes."

Mr. C. Williams asked Ms. Austin, "So, what's the distance from the impervious coverage to the critical line on Lot 1?"

Ms. Austin replied, "Lot 1 is 42 feet. I measured from the edge of the existing concrete."

Mr. C. Williams asked Ms. Austin, "What's the distance from the impervious area for Lot 114 to the critical line?"

Ms. Austin replied, "26.19 feet."

Mr. C. Williams stated, "So, that is substantially further into the buffer area."

Mr. E. Williams stated, that if the Applicant can meet the conditions, he would like to make a motion to approve the project with the conditions set forth in the Staff recommendation.

Mr. Mack seconded the motion.

Mr. C. Williams asked Mr. Holloway, "Why is it that you can't move the pool closer to Lot 1 and away from the critical line?"

Mrs. Turbeville replied, "We have no problem doing that".

Mr. C. Williams stated that Ms. Austin's measurements shows that you are really encroaching into the buffer.

Mr. Holloway stated that he disagrees.

Mr. C. Williams stated, "I'm not sure what is the proposal and I'm not sure if what's before us is the minimum encroachment into the buffer than where they can be."

Mr. Gasparini stated, "I am troubled with this application and it has been our practice that we don't approve applications that are not favorable with the neighborhood and if the pool is approved would sit right out in front 26 feet from the critical line. I don't have a problem with the pool or the deck, it's just the location."

Mr. E. Williams withdrew his motion.

Mr. Mack withdrew his second to the motion.

Mr. C. Williams stated to Mr. Holloway, "The more expeditious thing to do is to ask the Board to hold it over and submit a new site plan that shows us everything you are doing."

Mr. Holloway asked the Board if they can put this over until he submits revised plans.

Mr. C. Williams made a motion to carry the project over to the next scheduled meeting.

Mr. E. Williams seconded the motion.

MOTION: Mr. C. Williams made a motion to carry the project over until the next scheduled meeting. Mr. E. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, C. Williams and E. Williams; ABSENT: Mitchell).

FRIPP ISLAND – LOT 26, FIDDLERS COVE – PLEVIN (RPOD VARIANCE)

Mr. Christopher Cook representing Mr. Plevin stated, "Fripp Island agreed to allow us to build this house on this lot and in order to do this we must get your approval.

Ms. Austin stated, "This is a true hardship."

Mr. Cook stated that this is Lot 26 on Fiddlers Reach.

Mr. Gasparini asked Mr. Cook, "You need a Variance for what reason?"

Mr. Cook replied, "Without a Variance the lot is unbuildable."

Mr. C. Williams asked Mr. Cook, "You are not coming back to ask for a pool later are you?"

Mr. Cook stated that Fripp Island gave a Variance to go closer to the front setback line.

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.

Mr. C. Williams stated, based on the application and the Staff recommendation, this is completely an unbuildable lot and there are extraordinary and exceptional conditions that restrict that land and I make a motion to grant the Variance.

Mr. Gasparini stated that there are some conditions listed in the Staff recommendation that shall be adhered to.

Mr. C. Williams amended his motion to include the conditions set forth in the Staff recommendation.

Mr. E. Williams seconded the motion.

MOTION: Mr. C. Williams made a motion to grant the Variance with the conditions as set forth in the Staff recommendation. Mr. E. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, C. Williams and E. Williams; ABSENT: Mitchell).

JERRY RISHER – SPECIAL USE PERMIT

Mr. Mack recused himself from the meeting.

Mr. Don Peel representing Mr. Jerry Risher stated that he is constructing an access to his property which is a low profile wooden driveway.

Mr. Gasparini asked Mr. Peel, "Is it fair to call it a bridge?"

Mr. C. Williams stated that it was not impossible to be both. "Was this a previously platted lot?"

Mr. Peel replied, "Yes".

Mr. Gasparini asked Mr. Peel, "How long is it if the elevation is 7 feet?"

Mr. Peel replied, "The lowest elevation is 4.2 feet, so it may be 60-62 feet."

Ms. Austin stated, "It's 80 feet to the land".

Mr. Gasparini asked Mr. Peel, "There's no way to get to the land without this"?

Mr. Peel replied, "No. We will construct the bridge with minimal impact."

Ms. Austin stated, "It's a Special Use permit and the only way to get to the lot is with the essential access".

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. Paige Miller, a resident of Fripp Island stated, "I've walked the property and there have been some high tides. If it's high now it will cover the bridge.

Mr. Gary Jones stated, "This project affects me because it's affecting two paths to get to their land and the land is not big enough to build on."

Mr. Gasparini stated, "Working with Ms. Austin and Mr. Criscitiello, they would not approve something that would cut off the bike paths."

Ms. Kate Schaffer with the Conservation League asked the Board to consider the application.

Mr. C. Williams stated, "When you look at the plat, it's evident that the property is unbuildable without the access. I would like to make a motion to approve the Special Use permit, Section 7.2.130 with conditions that the Applicant revises the plans to show the ½" sewer lines."

Mr. E. Williams seconded the motion.

MOTION: Mr. C. Williams made a motion to grant the Variance with the conditions as set forth in the Staff recommendation. Mr. E. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, C. Williams and E. Williams; ABSTAIN: Mack; ABSENT: Mitchell).

ENMARK STATIONS – SIGN VARIANCE

Mr. Tom Davis and Mr. Doug Carrol, representatives of Enmarket, said, "In this particular Variance request it relates to four of Enmark's nine locations, the other five are in other municipalities; with four being in the County."

Mr. C. Williams stated to Mr. Davis, "I am a little troubled by the application, I don't know if we have jurisdiction to consider this because Section 7.2.140.A of the Community Development Code, says "The purpose of a Variance permit is to allow certain deviations from the dimensional standards of this Development Code (such as height, yard setback, lot coverage, or similar numerical standards). I don't see that colors of a sign are a dimensional standard. I don't see how we have the authority to grant a Variance in this situation."

Mr. Davis replied, "7.5.30.B.2.b relates to sign permits and references section 7.2.40 and that particular section not only speaks to dimensions but also references the color."

Mr. C. Williams stated, "If you were here seeking a Variance for the size of the sign or where you could put it on the property because of the setbacks I would agree that we have jurisdiction to consider that Variance; but I don't see that a color is a dimensional standard."

Mr. Davis stated, "There are past precedences of this particular body in two instances where Variances in regards to colors were given. One in regard to Sun City with its red sign out on Hwy 278 where they got a ZBOA Variance and regarding the Gap. I got minutes with the assistance of Josh Gruber with the County where the ZBOA back in April of 2000 gave a Variance to the Gap in regards to the color blue that is used. The point I would make, I do think that the authority given to you in the CDC does encompass all of the standards that pertain to sign permits inclusive of the colors. The dimensional things you referenced is prefaced by "such as", and I would argue that such as is not a limit but providing examples. I would submit that you do have jurisdiction and I note your particular point. Assuming we get over the jurisdictional threshold, I would go ahead and make the substantive case. First I will acknowledge that this is an entirely subjective area and I would also say that Staff (Hillary and Tamekia) in good faith has worked with my client Doug Carrol and we took the situation as far as we could with Staff. Enmark is in the process of rebranding their stores to Enmarket and the signs they desire look like this (shows exhibit). In contrast you can see the difference of what have been approved and what is being requested. The green portions have been agreed upon and what's still outstanding are the Red and the Blue. Enmark desires one PMS step away. I recognize the CDC section talks about a ban on primary colors and Staff promulgating a sign color guide outlining approval of colors. What we would argue is that the requested colors from Enmark are so small a difference in what the County would approve, it would not have an impact on the County. It would have an outsized impact on Enmark's branding efforts because everything is centered on Enmark's color scheme."

Mr. Doug Carroll, a representative of Enmark, stated, "I had no idea on the importance of colors. Our marketing team does have heartburn to the fact that we have to change this. The colors that we have established are chosen with specific reasons in mind and we feel that as Tom Davis mentioned that the detriment to the County is much smaller than it is to us. I can't speak to why they didn't think to argue the point. It is very important for Enmark to get the colors that they want."

Mr. Davis stated, "If you look at Section 5.6.20 of the Community Development Code, it set forth prohibited signs and in the Variance section it states that Variance cannot be sought in regards to any signs which are prohibited and in that you do have references to the colors. The CDC does have dimensional components to it but it also has color requirements to it and the Variance language speaks to the entire section and also past precedences the ZBOA has granted two requests."

Mr. C. Williams stated, "Let's assume for the purpose of argument that we do have jurisdiction. I struggle with how this application meets the standards for a Variance, tell me what the extraordinary and exceptional conditions pertaining to the particular land or structure for which the Variance permit is sought."

Mr. Davis replied, "The best I can do is point to the Variance sections of 7.2.140."

Mr. C. Williams stated, "There's no balancing in this, how does the difference in color effectively prohibit or unreasonable restrict the utilization of the land?"

Mr. Davis replied, "It's the value of the marketing effort and the economic benefit".

Mr. C. Williams stated, "That is a criteria that we are prohibited from granting."

Mr. Davis stated, "We have precedence because two Variances were granted".

Mr. C. Williams stated to Mr. Davis, "Yes, that was probably under an older code that was no longer used".

Ms. Austin stated, "The recommendation was disapproval because Staff felt they did not meet the requirements for a hardship. The colors were compromised for the green and the Ordinance stated corporate colors are viewed case by case. The one that we have a problem with is the blue. Then I saw the sign that you have on I-95 and that sign is light, so I was wondering how you wanted bright colors in the County when the sign on I-95 was light. I need to correct Mr. Davis, the 2000 sign approval was sent to the Construction Board, not the Zoning Board of Appeals. To be honest, Sun City didn't even need a Variance because they adopted a Development agreement and they don't have to meet any new ordinances."

Mr. E. Williams asked Ms. Austin, "Looking at this sign, you reached everything except the blue that reads craft beer?"

Ms. Austin replied, "Well I thought we worked out the two greens and I thought we worked out the red and when I first suggested the blue, he said it was too close to Parkers so I went and reviewed Parkers blue, and they actually met the County ordinance."

Mr. Davis stated, "The difference in the red is slightly different but the blue is substantial; if we get the red, can we work out the blue? I've talked to my clients and in terms of the marketing value, the most important thing is getting the red right. If we agree to what Staff recommends then we wouldn't have to go through the design process again. If we get the red, we can work out the blue."

There being no further comments from the applicant or the County and no further questions from the Board, Mr. Gasparini called for public comment. There was no comment.

Mr. Carroll stated that PMS 368 and PMS 369 are the greens, the Red is PMS 186 and PMS 285 is the blue and we would agree to the PMS 287C that the County is recommending and it's agreeable if the Red is approved."

Mr. C. Williams stated that he would like to make a motion to carry the project over to next scheduled meeting.

Mr. E. Williams seconded the motion.

MOTION: Mr. C. Williams made a motion to carry the project over until the next scheduled meeting. Mr. E. Williams seconded the motion. The motion passed (FOR: Chemsak, 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 6:27 p.m.