



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development

Beaufort County Robert Smalls Complex
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The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, May 24, 2018, in the Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. John Chemsak
Mr. William Cecil Mitchell, III
Mr. Joseph Passiment
Mr. Kevin Mack
Mr. Chester Williams

MEMBERS ABSENT

E. Williams, Vice Chairman

STAFF PRESENT

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

VACANCY

None

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:09 p.m.

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

REVIEW OF AGENDA:

Mr. Gasparini stated that the original agenda was amended to add an item under New Business.

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

REVIEW OF MINUTES:

MOTION: Mr. C. Williams made a motion to adopt the October 26, 2017 meeting minutes. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, Mitchell and C. Williams; ABSTAIN: Passiment; ABSENT: E. Williams).

MOTION: Mr. Passiment made a motion to adopt the February 22, 2018 meeting minutes. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Passiment and C. Williams; ABSTAIN: Mack and Mitchell; ABSENT: E. Williams).

MOTION: Mr. Passiment made a motion to adopt the April 26, 2018 meeting minutes. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack and Passiment; ABSTAIN: Mitchell and C. Williams; ABSENT: E. Williams).

NEW BUSINESS

LAURA BARRETT – FRONT / SIDE YARD SETBACK VARIANCE

Ms. Laura Barrett stated, "I want to introduce my sister Helen Barrett McGrady; we are co-owners for the property. We would like to build a small cottage on the property that was acquired by our parents in 1961. Subsequently we grew up next door, and then he sold the adjacent property at 49 Bay Point Road in 1964. The anticipation of my parents was that maybe at some point they would come back to St. Helena and build another cottage just like they did next door. So, here we are in 2018 and my sister and I now own the property and we would like to build a small home. A 600 square feet footprint, with a 200 square foot office loft; just a vacation home, there is no permanent residence".

Mr. Gasparini stated, "My understanding is there is a setback problem".

Ms. Barrett replied, "Yes. We have actually since turned what was our original plan that had a screened porch; we turned it and had to work with DHEC to get a septic system on the property, which did work out. We have two wells on each side of the property. We did meet the qualifications and we got a waiver for the 75-foot setback for DHEC."

Mr. C. Williams asked Mrs. Barrett, "The third sheet on the set of plans, is that the original proposed location within the setbacks?"

Mrs. Barrett replied, "No, we had to get a modulation."

Mr. C. Williams asked Mrs. Barrett, "So, you couldn't get a septic system with the house oriented that way?"

Mrs. Barrett replied, "Yes, that's correct."

Mr. C. Williams stated, "The front setback is 25 feet, this would be a reduction to 9.2 feet and the side setbacks which are 10 feet will be reduced to 6.7 feet and 6.1 feet."

Ms. Hillary Austin stated, "There is a modulation within the Code that allows the setback to be modulated by 3 feet or 20%. The front setback was 20 feet, the side was 7 feet and she still couldn't meet that."

Mr. Mack asked Mrs. Barrett, "Is this property near Bay Point Vista?"

Mrs. Barrett replied, "Yes, on the water side."

Mr. Anthony Criscitiello, Planning Director stated that "Staff has no difference of opinion to what was stated with a condition: there shall be no on-street parking, all parking shall be on the property. Staff recommends approval of the hardship Variance per the Code. The Staff Review Team approved the septic tank waiver for 75 feet."

There being no further comments from the Applicant or the County and no further questions from the Board, Mr. Gasparini called for public comment. Comments were limited to three minutes.

Mr. John Putnam stated, "I oppose it on the behalf of my family. We are a row back from the actual waterfront where this lot is actually placed with the house. A lot of the property value on the second row is based upon visual and view. This sort of adds clutter to what is already there. Opening it up and having a good view is what we really want."

Mr. C. Williams asked Mr. Putnam, "How does this application not meet the criteria for the approval of a Variance?"

Mr. Putnam replied, "I may have misspoke with that, I don't mean to say it doesn't meet the requirements, in my opinion I don't think it's a good idea".

Mr. Richard Mislick stated, "I am opposed to any development of any kind or anything to do with any properties around my house, which is 44 Bay Point Rd. My biggest mistake is that I didn't buy the lot next to me on the left side. I missed out on that. Waterfront property seems as if it is getting rarer and rarer to find and I just feel that any development of any kind will take away from the value of all the houses around there."

Mr. C. Williams asked Mr. Mislick, "Is there anything about the specific criteria you can enlighten us with?"

Mr. Mislick replied, "No."

Mr. C. Williams asked Mr. Mislick, "You said that you were opposed to any development anywhere around your house, were you opposed to the development of your house?"

Mr. Mislick replied, "No."

Mr. Monty Bates stated, "I own the lot across the street. I don't understand the setback in the front, you are talking about changing it from 20 feet to 9 feet from the road. I don't understand where the setbacks start and stop, because it is in the front of my house. I don't know if they are parking in the road way all the time. The house is 20' x 30'; they have to have a pair of steps because it's going to be in the air because it's in the flood zone. They have to park their cars underneath the house in order to get it on the lot. It comes down to square footage for me, I just don't understand the setbacks in the front. I am here to see. I am not opposed right now; I just don't know what they are talking about. How much road is going to be in the front of her house?"

Ms. Hillary Austin stated, "It is 31 feet from the pavement to the house."

Mr. Bates stated, "The house is smaller than anything on the road and I am opposed".

Mrs. Cornelia Mislick stated, "I am opposed to the Variance, for the same reasons as everyone else has stated. The other part that I wanted to add is that it sets a different precedent. The lot is too small for a house of any size, and it isn't a buildable lot".

Mr. C. Williams stated, "From what I've been told, the lot was subdivided a long time ago before the Zoning regulations were in place."

Mr. James McCormick stated, "I am at 58 Bay Point Road. I wanted to voice my opposition to getting a Variance regarding the side setbacks. Protecting the view of the water for all of the people who walk the street and live in the area, visit the area; the viewable access to the water is the primary value of the property, of all of the properties in the Community and anything on the sideway, setbacks deteriorates that view, so I am in strong opposition."

Mr. C. Williams asked Mr. McCormick, "There is a set of criteria in the Community Development Code that we are required to follow when reviewing a Variance application, can you point specifically to any of those criteria that this application does not meet?"

Mr. McCormick replied, "The information that was communicated to the public which I received was a single letter, telling me the date and the time and address, it did not provide a copy of the plans that were submitted, or the Variance request or any of the rules or requirements, so I find that difficult to answer when we weren't provided any opportunity to understand those questions in advance."

Mrs. Kathleen McCormick stated, "I am here because I am concerned about the precedent it will set. I can show you the other people who were given variances, this is just another one to add on to people who

come forward. We have to follow our guidelines of 25 feet on the front and 10 on the side. They came forward and you guys gave them a 20% reduction and they still couldn't meet it and now they are coming back for even more. Now they are down to 9 feet and 6.7 on the side. It's extreme. Today this lot would not be created; it's a weird pie shape. If you look there are no others and it wouldn't be created because it's really unbuildable. Today, special circumstances had to be given, not only once but here we are again twice. What that sets going forward does allow someone else to come forward and come and say hey, I bought my property in 1960, hey I bought mine in 1980. Those of us who are there and following the guidelines, paying our taxes, and taking care of our yards and see that there are still loopholes for people to get these variances and that's my problem."

Mr. C. Williams asked Mrs. McCormick, "Can you point to any of the criteria in the CDC Section 7.2.140.D which is the Variance permit review standards?"

Mrs. McCormick replied, "So, I sent an email and I went through each one of those points one through four. It asked is it unsightly, yes it is going to be an eyesore. It's really an unbuildable lot and they are putting a funky bit house on it."

Mr. C. Williams stated, "I have a copy of your email and actually what you went over were the criteria for a Special Use permit which is in section 7.2.130, and not a Variance."

Mrs. McCormick replied, "I apologize. It is still a decrease and you accommodated them once, and they are now coming back for more and it sets a precedent and adds more ammunition for people to come forward and say just like these other cases."

Mr. C. Williams stated, "Each case is judged on its own merits. If we're presented with a situation which the requirements for conformance with the strict provisions to the Code unreasonably restricts or prohibits someone from utilizing their property; then that opens the door to a Variance application and that's why we are here".

Mrs. McCormick replied, "To me it looks like it's an unbuildable lot. They inherited an unbuildable lot and they want to give it value. That's business. So, here we all are. It does affect our Community because it will be jutting out and there is a curb in the road, and it will block the visual. It is before Bay Point Vista and there is a lot of traffic. They can only use the back of Bay Point Vista, the front is gone. So you will be blocked, there is going to be a lot more traffic and it is going to be close to the road. It is not necessarily blocking my view, but it is my Community."

Mr. Mack asked Mrs. McCormick, "Is there a POA for Lands End"?

Mrs. McCormick replied, "No, not that I am aware of."

Public comment session closed.

Mr. Mitchell made a motion to grant the Variance with the condition of no on-street parking.

Mr. C. Williams seconded the motion. Mr. Williams stated, "Considering the shape of the lot, and that this is a classic situation where the Code provides for a Variance, because there are extraordinary and exceptional conditions that pertain to the lot that are not applicable to other lots in the area. It seems readily evident to me that absent this Variance approval, the property owners will be unreasonably restricted in the utilization of their property. I believe that all of the criteria, as set forth in the Community Development Code for the approval of a Variance, are met with this application."

Mr. Gasparini stated, "With respect to one of the public comments, just so there is understanding, the County Staff is allowed to modulate the requirement to a certain amount. If that doesn't create a situation where someone can then use their property, then they have to come to the Board for a larger modulation that is limited to 15% or 20%."

MOTION: Mr. Mitchell made a motion to grant the Variance with a condition of no on-street parking. Mr. C. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, Mitchell, Passiment and C. Williams; ABSENT: E. Williams).

OTHER BUSINESS

JASON AND AMANDA DUBOSE WAIVER REQUEST FOR VARIANCE TIME LIMIT

Mr. Gasparini stated that Mr. and Mrs. Dubose who were looking for a River Buffer Waiver and on his own motion he placed the item on the agenda to explain to you, so you know what happened here. Mr. Gasparini stated to Mr. Dubose, the Variance was denied at the last meeting, you then submitted a revised application. That was done soon enough to be published as is required and the notices sent. However, there is a provision in the Community Development Code, Division 7.4.100 that says that if a development application requiring a public hearing is denied, which a variance is a development application, no application proposing the same or similar development on all or part of the same land shall be submitted within one year after the date of denial unless the decision-making body waives this time limit in accordance with Subsection 7.4.100.A.2. In the course of doing some work on another matter that is professionally going to come before the Planning Commission, I came across that and took a quick look at your application and I don't see any reasonable argument that it's not the same or similar on all or part of the same land. The fact that your second application was placed on the agenda was a mistake. Mistakes get made and what we need to do assuming you are going to go forward, is to be sure that the County code is followed and if the steps are followed properly that you then have an appropriate Variance, if that's what happens and I don't know whether that will happen or not. Then you made an application for a waiver. However; in order to consider that, it has to be put into the public notice and that wasn't done in enough time to be publicly noticed. In order to put it on the record what has happened and so that you understand, I put it on the agenda as new business and what I think needs to happen in order to comply with the Community Development Code is for us to put the request for a waiver on the agenda for our next meeting. We'll consider the waiver and if the waiver is granted, you can then apply for the Variance again and if it's not granted then you have to wait a year from the original denial. Your question may be can you do both at the same meeting next time; I don't really know the answer to that. I think if you want to go for the waiver which I assume you do and you want to try to have us hear it at the same time, you can probably put out a public notice about both of those things. It doesn't say in the code that there has to be a lapse of time between the awarding the waiver and the consideration. But I want to tell you that for some reason you don't get the waiver, we aren't going to hear the application. So it's kind of up to you whether you will take up the waiver and the application at the same time. We need to follow the procedures in the CDC so that if you get an appropriate variance no one can challenge it."

Mr. DuBose stated, "Having the site plan drastically changed, it is not the same pool that was proposed on the first plan. I took into consideration the recommendations that were made by the Board. Vegetation and buffer were addressed, so in my mind it was different."

Mr. Gasparini stated, "I understand your frustration. If you are satisfied that the waiver and variance documents submitted are okay, you won't have to submit new information."

Mr. Eric Greenway, Community Development Assistant Director stated, "The situation will be handled appropriately following the Community Development Code."

2018 ELECTION OF CHAIRMAN / VICE-CHAIRMAN

Mr. C. Williams made a motion to nominate Mr. Gasparini to continue as Chairman.

Mr. Passiment seconded the motion.

MOTION: Mr. C. Williams made a motion to nominate Mr. Gasparini to continue as Chairman for 2018. Mr. Passiment seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment and C. Williams; ABSTAIN: Gasparini; ABSENT: E. Williams).

Mr. Gasparini made a motion to nominate Mr. Mack as Vice-Chairman.

Mr. C. Williams seconded the motion.

MOTION: Mr. Gasparini made a motion to nominate Mr. Mack as Vice-Chairman for 2018. Mr. C. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mitchell, Passiment and C. Williams; ABSTAIN: Mack; ABSENT: E. Williams).

OLD BUSINESS

There was no old business to come before the Board.

ADJOURNMENT

MOTION: Mr. C. Williams made a motion to adjourn the meeting. Mr. Passiment seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, Mitchell, Passiment and C. Williams; ABSENT: E. Williams).

The meeting adjourned at approximately 6:05 p.m.