



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development

Beaufort County Robert Smalls Complex
Administration Building, 100 Ribaut Road, Room 115
Post Office Drawer 1228, Beaufort SC 29901-1228
Phone: (843) 255-2171 • FAX: (843) 255-9446

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, August 23, 2018, in the Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

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

MEMBERS ABSENT

Mr. Thomas Gasparini, Chairman

VACANCY

Northern Beaufort County

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mr. Eric Greenway, CDD Director
Mrs. Audra Antonacci, Codes Enforcement Director

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

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

REVIEW OF AGENDA:

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

REVIEW OF MINUTES:

MOTION: Mr. Passiment made a motion to adopt the July 26, 2018 meeting minutes as written. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment and C. Williams; ABSENT: Gasparini; VACANCY: Northern Beaufort County).

NEW BUSINESS

PARKER FAMILY, LP AND RONNIE L. CROSBY – SMALL TIDAL CREEK VARIANCE

Mr. David Tedder representing Parker Family L.P. stated, "I came prepared to discuss two issues, one is the Variance and the other is the map. There are two cases in South Carolina that are particularly on point regarding maps. I'll speak on the map first; Quail Hill versus the County of Richland case which I believe Mr. Williams may be familiar with, which is where someone did not properly get an official interpretation of the zoning map and thought they could do something, and found out they couldn't. They then tried to sue the County of Richland for giving them bad information and costing them a substantial sum of money. That case is probably the leading case which posed that the map was the map because it is governed by the officials and it constitutes a matter of law."

Mr. Williams stated, "It is a part of the ordinance. The Quail Hill case if you recall, the person who improperly wrote the certification didn't even look at the Zoning map, they looked at tax maps".

Mr. Tedder stated, "That was followed by the Carolina Fluoride Case in Richland County where there was a similar issue in that they went and looked at the map and the guy said, "Well in my opinion I think it should be a manufacturing zoning classification in that case", and that's what the map ought to be. Well he said you should probably try to get an amendment, and he didn't and they lost a sale. Then the County Council came in and rezoned it; but because of the lost sale it bought up a lawsuit. That particular case said that zoning map amendments actions by the Planning Commission, actions by the County Council, and Staff members, they can't change what it is. Having said that, and looking at Appendix F, and I had a discussion yesterday with Mr. Greenway as I was preparing this; I said that I can't see that it's in the area. I'm making sure that I'm looking at the latest map, and that I have the same map you have there and you can tell where our lot is. We happen to be in one of those areas that by the map don't require compliance with the small tidal creek requirements. I am familiar with the 300-foot interpretation rule from the other case where there was 320 - 325 feet, whatever was in there; again it was the mapping error and a matter of equitable relief in that case. I believe this settlement was made that the Staff has been taking the authority, if you can show that it's more than 300 feet, they give you the benefit of not having to meet the requirement. But I don't want to speak for them on that, that's just my understanding and experience on others. My position #1 is I'm here because we didn't have clear guidance that it was or it wasn't, but I'm prepared to argue the exceptional circumstances and other matters if it's the pleasure of the Board".

Mr. Mitchell stated, "I think we need to decide if we interpret it, as the Ordinance as saying the County small tidal creek map, that's what it references. So, do we think that is what we're going off of, which we've been told in the past that's what we go off of when we're looking at this, small tidal creeks?"

Mr. Mack stated, "Since that's what's before us as a small tidal creek, in my opinion, I think we should move forward with the application, if it is in fact a small tidal creek".

Mr. Williams stated, "As I read the map, it is not on a small tidal creek".

Mr. Passiment stated, "Yeah, the development code clearly states that. We're relying on the codes before us. When you read the code and the definitions in there, and the delineation map it clearly stops before these lots. So we would be, I think, out of our scope by saying, well this map is wrong, we've considered it a small tidal creek and therefore, you need to go for a Variance."

Mr. Chemsak stated, "Well I looked at the GIS mapping today, and there's certainly plenty of docks after this lot. There's quite a few on that creek."

Mr. Tedder stated, "There are 11 docks to the right and 23 docks to the left of the property."

Mr. Mack asked Mr. Tedder, "When were those docks placed out there?"

Mr. Tedder replied, "There's a subdivision out there called Marsh Point subdivision where most of those docks were put in prior to 2000 or after that because they're shorter."

Mr. Greenway stated, "If you're going to make the determination that no Variance is necessary that you don't take any public input because that's giving credence to the fact that a Variance is necessary."

Mr. Williams stated, "This has been advertised as a public hearing, not a variance application and whether or not we vote if the variance is necessary. I think we would be doing a disservice to everyone who did come here to speak. We have not yet made a determination as to whether or not this is a small tidal creek."

Mr. Greenway stated, "What's actually before you all is a Variance from the regulations regarding the small tidal creeks. That's what we've advertised the public hearing for. If you all feel that the conditions in this particular case make the Variance unnecessary, and then you all can use that as a basis for your decision to tell us that you don't think a Variance is necessary. Then I think you can go ahead with the public hearing, and say well we're going to take public input because some other people may have a reason why they believe that it is a small tidal creek."

Mr. Williams stated, "The only way to find that out is to take public comment."

Mr. Greenway stated, "I just don't want you to do that and then come back and say this should have never been before us because no Variance was necessary. That's not your decision as Mr. Williams has said before; that would be something that should be handled through Staff by doing a written determination. If there is a subsequent appeal from that, then you would come back and we would certainly take the information given here tonight, and use that as a part of making our written determination."

Mr. Chemsak asked Mr. Greenway, "Would we still need the Variance for the dock length from 300 feet to 400 feet?"

Mr. Greenway stated, "I would recommend to you all that you take the public input; and then if you decide based on the public input that a Variance is not necessary, you all can ask for a written determination to whether or not we think it applies or a member of the public can ask for a written determination as to whether or not we think it applies. But I don't think you all can decide whether or not the Zoning Ordinance applies in this particular case. Make sure that you don't use that as a basis for granting a Variance."

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

Mr. Tedder stated, "Mr. Chairman, if I might, out of abundance of caution I'm happy to present why if it was on a small tidal creek why there should be a Variance, I believe that in hearing a Variance the Board is vested with all of the powers that are attendant to the Zoning Director in making its order. In any event, I could present, and if you all care to make a decision, or go out on a limb here and make a double motion, number one, it's not a small tidal creek, so it doesn't apply and number two, if it does, we don't care about the length but for whatever reasons you all may care to elucidate, because I don't want to delay this if necessary. I want to pass it up to you.

Mr. Tedder provided exhibits for the Board members to review.

Mr. Tedder stated, "One of the reasons I asked for the deferral last month was so that I could send the surveyor back out to see if we were over the 300 feet without having to look at the map. So if you see there's no protrusions that's one of the features that causes an extraordinary circumstance. If the river had been more than 300 feet wide, it was 278 wide. We're 22 feet shy of being able to say that under their interpretation it doesn't matter. If you look at the attachment of the survey we have there, there's another 348 feet to the mean high water mark toward the lot. So at some point during the river, it's almost 700 feet wide, 650 something feet wide; it's not a small tidal creek. It's a large water mass that happens to have a narrow channel in it that you need to get the dock too. When you start talking about the things that you have to prove in order to get one of the extraordinary circumstances, exceptional circumstances, that's what we're saying here. We have a 5-acre lot; it's one of the largest lots out there. All the other lots towards the north are all small after you get past this area to the southwest. We've got a 5-acre lot; everybody out there almost has a dock, so it would be incongruent and dissimilar not to have that access to the water feature for that large of a lot when everybody else has it. The Staff report recommendation stated that this is basically a self-created hardship; they could've done something different. They bought it knowing that it was less than 250 feet wide. I would say to that, there are a couple of cases out there saying it is not a fatal variance that you bought something that had some

restrictions on it, and you may need a variance on it. When you think about it, Variances come in all the by lots. They can't get their houses on there, they ask for front setbacks, side setbacks, and back setbacks all the time. Variances are routinely granted by this Board, the City, and the Town, all across the state; so that those houses are similar to the neighborhood scheme because that's what we want. We're going to have a scheme of what's going on in the neighborhood. The dissimilar nature is one of the things out there, which to me is an unreasonable restriction given the things out there to see. You can't be allowed like everybody else, just because the river right there appears to be 22 feet too narrow, still 278 feet wide at that particular point nearly a ball field wide, bank to bank. No special privilege; this is the same privilege everybody else has out there. I don't know that, that part of the Staff report carries that much weight. Is it a reasonable use to want to have access to the water on a 5-acre lot with that large of water and everything? I think it is unreasonable not to allow them to do that. I don't think it's going to cause any environmental damage given the amount of water, the width of the creek, and the adjacent uses out there. I don't know what else I can add to this because I think you all have a very good sense of this isn't a 50-foot wide creek with a 400-foot dock that's going to take up half the creek to get it out there. This is just a peculiar circumstance where that mud flat there has a little marsh protrusion out there that causes the surveyor to have to say I've only got 278 feet bank to bank there. I would hope that you would support the applicant in this case and defining that I don't need to be here because it is not on a small tidal creek and these requirements don't apply."

Mr. Passiment asked Mr. Tedder, "The minimum lot width talks about a minimum of 250 feet of frontage, is that the case?"

Mr. Tedder replied, "There is 174 feet across the frontage."

Ms. Austin stated, "It is 147 feet."

Mr. Greenway stated, "The request is pretty detailed for you all. Basically, we based the situation on the Zoning codes and a court case from 2007. It told us how we were to deal with small tidal creeks that don't necessarily fit the definition and the map that's in the code. So basically our analysis is that Division 2.190.D.2.B states, the length of docks shall not exceed 300 feet in total length. The applicant is requesting a Variance to build a dock the total length of 409 feet to a small tidal creek. Division 2.190.D.1.A states that except for lots in existence on May 8, 2000, all lots and new subdivisions shall have a minimum of 250 feet of frontage along a small tidal creek to qualify for a private dock. I believe this width on this particular lot to the water is 147 feet and I think the distance in the creek is 158 feet wide where the dock is going to be located based on our information. The lot was created and recorded using 5-acre exemptions on February 28, 2008 and therefore is subject to the 250 feet width requirement. All four of the conditions have to be satisfied, not two of the four, or three of the four, all four have to be addressed in some way through your findings as a part of your motion, in order for the variance to be granted."

Mr. Williams made a motion, "I move that we find based on the small tidal creek map, Appendix F of the Community Development Code, that these lots do not front on small tidal creeks, and that we dismiss this Variance application as unnecessary."

Mr. Mitchell seconded the motion.

Mr. Greenway stated, "Underneath State law, you all have three define responsibilities in my opinion or based on State law. 1) To hear and decide variances, 2) hear and decide on appeals and 3) to hear and decide on special exceptions. I don't think you all can make a motion to decide that something does not apply to a given Ordinance. Now you can use information presented as a motion to grant a Variance, but what I would recommend that you do, if you want to go this route, is that you ask the Staff to render a written determination to the property owner, and then let that be appealed, so that you all can either decide whether or not Staff made an error in their interpretation of the code as written or not. We haven't done that at this particular point. I just don't think that the motion that you have on the table right now is

something that underneath those particular situations as a Variance is under your purview of responsibilities.”

Mr. Williams stated, “I suggest that we don’t have jurisdiction to hear a Variance application context where it doesn’t apply.”

Mr. Tedder stated, “I would not oppose a motion to remand this back to the administrative Staff for determination in their opinion whether or not I want to keep it on the table. If they decide that it is on a small tidal creek that we have the ability to bring it forward in September, at your September meeting, as an appeal on that.”

Mr. Greenway stated, “What may be more appropriate this evening with all the confusion, and again it’ll give me time to get up and running on this particular issue. It may be best this evening for you all to defer action on this item, then Mr. Tedder can request a written determination from us and we can render that. Then the issue may go away, or it may not and at that particular time he can decide to either come back to you all for fulfillment of the Variance or to appeal that decision.”

Mr. Williams stated, “If the County and the Applicant wish, then I’ll withdraw my motion. I move that we carry this over to a meeting as soon as Mr. Tedder can get something back to us.”

MOTION: Mr. C. Williams made a motion to carry the meeting over until Mr. Tedder meets with the County to determine if the lot is on a small tidal creek based on Appendix F. Mr. Mitchell seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment and C. Williams; ABSENT: Gasparini; VACANCY: Northern Beaufort County).

DOVE DROP MINE – SPECIAL USE

Mr. Mack recused himself from the meeting.

Mr. Passiment made a motion to nominate Mr. Williams as acting Chairman for this application.

Mr. Chemsak seconded the motion.

Mr. Eric Greenway, Beaufort County Community Development Director stated, “This is a special approval for a mine site. It’s my understanding that all items that we need to look at as a Staff to make sure that this is in compliance with the Community Development Code has been looked at, reviewed, and addressed. Staff recommends approval.”

Mr. David Karlyk, representing Henry Farms Inc. stated, “I’m with Carolina Engineering; I’m here on behalf of the Henry’s to request a Special Use permit in order to dig a 2-acre mine site on an existing 600-acre piece of property located on St. Helena Island. We’ve been through the County’s conceptual Staff Review Team process; we’ve received conceptual Staff Review Team approval, we will abide by the County’s rules and regulations that are required for mines for areas of this size. My client currently has a mining permit in place for the 1.9-acre mine. We meet the fence height limitations, hours of operation, the stormwater requirements, maximum depth, disturbed areas and a truck routing plan.”

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

Mr. Mitchell made a motion to approve the Special Use application with the conditions listed in the Staff recommendation.

Mr. Passiment seconded the motion.

MOTION: Mr. Mitchell made a motion to approve the Special Use request with the conditions as recommended in the Staff report. Mr. Passiment seconded the motion. The motion passed (FOR: Chemsak, Mitchell, Passiment and C. Williams; ABSTAIN: Mack; ABSENT: Gasparini; VACANCY: Northern Beaufort County).

OTHER BUSINESS

There was no other business to come before the Board.

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, Mack, Mitchell, Passiment and C. Williams; ABSENT: Gasparini; VACANCY: Northern Beaufort County).

The meeting adjourned at approximately 5:59 p.m.