



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, December 20, 2018, in the Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

**MEMBERS PRESENT**

Mr. Thomas Gasparini, Chairman  
Mr. Kevin Mack, Vice-Chairman  
Mr. John Chemsak  
Mr. Bernard Rivers  
Mr. Chester Williams

**MEMBERS ABSENT**

Mr. Cecil Mitchell, III

**VACANCY**

**Southern Beaufort County**

**STAFF PRESENT**

Ms. Hillary Austin, Zoning Administrator  
Mr. Eric Greenway, Community Development Director  
Mrs. Tamekia Judge, Zoning Analyst III  
Mr. Christopher Inglesse, Beaufort County Staff Attorney

**CALL TO ORDER:** Mr. Gasparini called the meeting to order at 5:05 p.m.

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

**REVIEW OF AGENDA:**

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

**REVIEW OF MINUTES:**

The adoption of the October 25, 2018 minutes is postponed until the next meeting.

**NEW BUSINESS**

**CHAD WEAVER – ADMINISTRATIVE INTERPRETATION APPEAL**

Mr. Weaver stated, "On September 21, 2018, the Director of Beaufort County Community Development made an Administrative interpretation in response to our request by David Tedder. In that interpretation Mr. Greenway concluded by way of the Beaufort County Small Tidal Creek map, that the property owned by Mr. Tedder's client was not indicated as a small tidal creek, and was therefore not intended to be regulated. It's in my opinion that Mr. Greenway did not follow the interpretation procedures set forth in Section 7.6 or 7.3.6 and made an error in his determination that the creek was not in fact a small tidal creek."

Mr. Williams asked Mr. Weaver, "Are you saying that the map doesn't show this as a small tidal creek?"

Mr. Weaver replied, "I'm saying that he did not consider all the information presented or the disclaimer that is on the map."

Mr. Williams asked Mr. Weaver, "The lines that are drawn on the map, is it on a small tidal creek as shown on the map or not?"

Mr. Weaver replied, "No, it does not indicate that; there is green. But then I would ask you, Is it your opinion that the map does not have a disclaimer on it that tells the user of that map that they must verify the data on the map?"

Mr. Williams replied, "The map shows what the map shows."

Mr. Weaver stated, "The disclaimer on that map tells the user of that map that they must verify the information."

Mr. Williams asked Mr. Weaver, "What information needs to be verified?"

Mr. Weaver replied, "That it is in fact a small tidal creek."

Mr. Williams asked Mr. Weaver, "Does the Code have a definition of a small tidal creek, other than by reference to the map?"

Mr. Weaver replied, "The definition that was used in making the map was determined by the GIS."

Mr. Williams asked Mr. Weaver, "Does the Community Development Code have a definition of a small tidal creek other than by reference to the map?"

Mr. Weaver replied, "No it does not."

Mr. Gasparini stated, "The map is adopted by the County Council, it is an Ordinance. It might be a map, and it might look like a map, but it's an ordinance. The Zoning Board of Appeals is bound to do one thing when people come and bring the map and there's an issue, and that is to look at the map. We can't do anything if the map is the map. It may not be accurate, but we can't interpret the map, all we can do is look at it. So, if there's a small tidal creek in front of a property, then it's a small tidal creek. If there isn't, then it isn't. We can't go out in a boat, or go out in the marsh, and figure out whether that map is right or wrong. We are as they might say, stuck with the map. I think what you're asking us to do is make an interpretation that's inconsistent with what the map shows; we don't have the power to do that."

Mr. Weaver replied, "No, and I understand that, I'm just asking for you to rule on my argument, or my appeal of Mr. Greenway's interpretation. On October 26, 2018 in his letter to the Beaufort County Planning Commission, he said that this map already has a disclaimer that puts the burden on applicants to verify the information on the map using other sources recognizing that conditions change. If that's the case, and the only thing that I would disagree with him on this case is that it's not particularly the applicant, it's the user."

Mr. Gasparini stated to Mr. Weaver, "If that were the case, then a user could change the ordinance anytime they wanted by going out there and saying well it's really not here, it's really not right; verify it, and it's not verified okay, that's the point of the map. If Mr. Greenway looked at the map and somehow just got it wrong, maybe that's something we could do something about. But if he's following the map, we're stuck with that. We can't fix that, even if we wanted to because it's an ordinance. You have to go see the County Council and request an amendment to the map, which is part of Beaufort County Zoning Ordinance, but we can't fix it here; and we can't do it through an interpretation."

Mr. Weaver stated, "I am appealing the process in a determination of Mr. Greenway. In saying that for eight years this process has been determined by the Staff and their determination of what is a small tidal creek."

Mr. Gasparini asked Mr. Weaver, "The map shows Mr. Tedder's client's property does not front on a small tidal creek, do you agree with that?"

Mr. Weaver replied, "Yes, the map shows that."

Mr. Gasparini stated, "If the map shows that then we can't fix it."

Mr. Weaver asked Mr. Gasparini, "How is it that my property, which is right next door to that property was ruled to be on a small tidal creek?"

Mr. Gasparini asked Mr. Weaver, "Ruled by whom?"

Mr. Weaver replied, "By the Staff and the Variance Board."

Mr. Williams asked Mr. Weaver, "When did that come before us?"

Mr. Weaver replied, "March 23, 2017."

Mr. Williams asked Mr. Weaver, "You applied for a variance?"

Mr. Weaver replied, "Yes we did."

Mr. Williams asked Mr. Weaver, "Did you get the variance?"

Mr. Weaver replied, "No."

Mr. Williams stated, "If that's the case, if the map doesn't show that you are on a small tidal creek then you don't need a variance."

Mr. Weaver stated, "I am already out of \$10,000; I built a dock based on what you guys told me I could do."

Mr. Williams stated, "Well that was an appealable decision at that point."

Mr. Weaver stated, "Could someone explain to me; we have two of the exact same situations, we have the same people involved representing from the Realtor to the Attorney to the Staff."

Mr. Gasparini asked Mr. Weaver, "The same map was used?"

Mr. Weaver replied, "Yes, the same map."

Mr. Gasparini asked Mr. Weaver, "Are you sure?"

Mr. Weaver replied, "I assume so, it hasn't changed in 8 years."

Mr. Williams stated, "The code changed radically in 2016."

Mr. Weaver replied, "It didn't change the map."

Mr. Gasparini stated, "The map is not changed, whoever made the ultimate decision looked at the map. Did they decide that you were or were not on a small tidal creek?"

Mr. Weaver replied, "They decided that we were on a small tidal creek, so we had to move the placement of our dock over to where it was 300 feet of water. We have two situations that are exactly the same, the only thing that is different is the part of the creek that is next to me is actually narrower than the creek that is in the front of my house, and yet we have two totally opposite completely different outcomes."

Mr. Gasparini stated, "I am willing to bet that the creek on the map goes either partially or totally in front of your property and doesn't go in front of Mr. Tedder's client's property."

Mr. Weaver asked, "As far as the map is concerned, I understand that the map is the map as it is part of the ordinance but to me, in my opinion, the disclaimer is a part of the ordinance as well. If County Council didn't want us to verify the information that is on that map, then they wouldn't have left the disclaimer on there. In addition to that, if we are not allowed to verify the information, this map was created in 2000 and there are pieces of property that didn't exist back then. My property is not on there, so if my property is not on there, how could you even determine if the creek in the front of my property is actually there or is not there?"

Mr. Williams asked Mr. Weaver, "Does your property share a common boundary line?"

Mr. Weaver replied, "Yes sir."

Mr. Williams asked Mr. Weaver, "And that line is on the map?"

Mr. Weaver replied, "Yes sir."

Mr. Williams asked Mr. Weaver, "So, it is not difficult to determine where your property is?"

Mr. Weaver replied, "No Sir. If you look at the other areas of that map, some of the property at that time when you looked at the overlay and the way that they created the map, the lots that they are indicating are actually in the water. There are parts of the map that indicate they are small tidal creek when they are actually open water. If we aren't allowed to verify the information, then you would not be able to issue a permit, correct?"

Mr. Williams replied, "That's an objective determination for us, where does the line fall?"

Mr. Weaver replied, "On some of these maps there are no lines because the lots didn't exist back then."

Mr. Williams stated to Mr. Weaver, "It would be silly to think that boundary lines aren't going to change over time."

Mr. Weaver replied, "I think it would, it's silly that we're not able to go out and verify the creek width with the survey."

Mr. Gasparini stated, "What you want to do with the survey is change the map, and I've told you that we can't change the map. "

Mr. Weaver asked, "How have we been determining small tidal creeks at the permit level?"

Mr. Williams replied, "Reference to the map."

Mr. Weaver stated, "We've also used a survey that's how I was denied."

Mr. Gasparini stated, "There has to be a survey for lots that didn't exist when the map was created. In your case, you said that your lot didn't exist in 2000, so clearly we have to have a survey; but if you just disagree where the map really is, then we can't fix that."

Mr. Weaver stated, "If you are doing that then you are introducing information to an unchangeable map. You've just said that the map can't be changed, that it has to be taken as it is."

Mr. Williams stated, "We can't change it, County Council can."

Mr. Weaver stated, "If you are bringing in new borders and boundaries for properties that are not on the map then you are now changing the map, which means it is interpretable and it is changeable."

Mr. Williams stated, "That doesn't change the indications of what is and is not a small tidal creek on that map, all that does is change the property lines that show what property may be adjacent to those. It doesn't change the location of what is or is not a small tidal creek."

Mr. Weaver stated, "You are imposing it on the map and you don't have the layout to know exactly where it falls. In my case 2/3 of my property was on a small tidal creek, 1/3 is on open water as ruled by this Board. Looking at that, that's how strict we are going to apply this rule, and then I don't know how you could then take boundaries and apply them to map and hope that we get it right. I don't think that you could now introduce additional information and hope to still have the same affect."

Mr. Gasparini asked Mr. Weaver, "We're not introducing new information to the small tidal creek piece. I'm assuming that Mr. Tedder's client's property boundaries on yours is on the side where it is open water, is that correct?"

Mr. Weaver replied, "No, it's on the smaller side, that's why I said, their creek is actually narrower than mine."

Mr. Greenway, Community Development Director stated, "In this particular case we have a piece of property for all intent and purposes it is located on a small tidal creek. But the Small Tidal Creek regulatory map that is a part of the Community Development Code does not show that creek as a small tidal creek. So when I as an Enforcement Official have to use that map as the only device to enforce and that small tidal creek per se isn't listed as a small tidal creek on the map that I am using to enforce, I cannot enforce the small tidal creek standards because there is no definition of a small tidal creek in the Community Development Code. I have corrected that; I've done an amendment that's received first reading by County Council which defines small tidal creeks. We're using the State definition of "Anything that is less than 300 feet wide". The map is only going to be used as a reference guide for people to seek as guidance as to whether or not their property is on there. The definition of a small tidal creek will always prevail in this particular case as a regulatory tool to regulate dock construction on small tidal creeks from this point forward. I recognized that there was a problem and we have taken steps to correct the problem. I feel that my decision to issue Mr. Tedder's client the approval to build his dock was appropriate under the Community Development Code because the property and the map that I looked at did not show the property fronting on a small tidal creek on that particular map of which is a guide and the rule that I am to follow in my enforcement of the Community Development Code. You can't amend the map, because it is a GIS document. It is virtually impossible to use a map like that as a regulatory tool, that's why we have written text to define a small tidal creek. That's what we will use to regulate small tidal creek dock construction."

Mr. Gasparini asked Mr. Greenway, "So the appeal that is in front of us tonight is for?"

Mr. Greenway replied, "You all have to decide whether or not I was correct in making the decision to issue the permit for the dock on that creek and whether or not that map was something that I erred in my interpretation of. Personally I don't see how you can do that because at least one of your members during that meeting was ready to make a motion that a variance wasn't necessary because it didn't show as fronting on a small tidal creek to necessitate a need for a variance. So I don't see how you can reverse my decision tonight after being willing to make a motion that no variance was necessary."

Mr. Gasparini asked Mr. Greenway, "Mr. Tedder's client got approval to build a dock that didn't have to comply with the small tidal creek requirements and that's what Mr. Weaver doesn't like?"

Mr. Greenway replied, "Yes, that's correct. Because he was told that he was on a small tidal creek and it shows the same thing for his property prior to my arrival here that he should be treated the same way and everybody else coming before and after him should be treated consistently. In an ideal world I don't

disagree with that. We try to be as consistent as we can in the Zoning regulatory world but sometimes you have to correct problems that existed for some time whether you had anything to do with it or not."

Mr. Gasparini asked Mr. Greenway, "We're not really talking about Mr. Weaver's property, we are talking about Mr. Tedder's client's property and it's not fronted on the map by a small tidal creek and Mr. Weaver is trying to get us to say that it is?"

Mr. Greenway replied, "Mr. Weaver wants you to say that you will overturn my decision because he's claiming that I did not take into account everything that goes along with that map in regards to the disclaimer that is on the map. That's why you don't use the GIS documents as a regulatory tool because it is always a disclaimer that says that the information on this map may not be totally accurate. That has been adopted as a part of the rules and regulation and that's the only regulatory tool that I have to enforce that provision."

Mr. Weaver stated, "The map has the disclaimer despite the fact that we did not have a definition of what a small tidal creek was. Beaufort County didn't have a definition at that time and that to me is the issue, but the map requires you to verify the information that is on that map."

Mr. Williams stated, "Yes, but without a verbal definition there is nothing to verify."

Mr. Weaver stated, "Without having that definition that is where they fell short."

Mr. Williams stated, "Based on the testimony heard today and the materials submitted, we uphold Mr. Greenway's determination denying the appeal. In doing so, I will say Mr. Weaver, there may very well be a mistake made back through your application process. I don't know that I can say that each and every time a small tidal creek dock variance has come before us, I've gone to the map and checked it myself to make sure. I happened to this time with Mr. Tedder's client, and I don't have any specific recollection of when yours was before us, but if there was a mistake made back then with yours that should have been addressed at that point. We have before us the determination that Mr. Tedder made, I do distinctly remember looking at the map and inspected that application and the map clearly shows that Mr. Tedder's client's property doesn't front on a small tidal creek."

Mr. Chemsak seconded the motion.

**MOTION: Mr. Williams made a motion to deny the appeal and uphold Mr. Greenway's determination. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, Rivers and Williams; ABSENT: Mitchell; VACANCY: Southern Beaufort County).**

#### **ALBERT DANIEL JR. TRUSTEE- RIVER BUFFER SETBACK VARIANCE**

Mr. Christopher Cook, Residential Design, representative for the Schuettes' stated, "The Schuettes' would like to buy the lot in question from Mr. Daniel and they would like to receive permission for a 10-foot setback variance from the critical line. We are asking that simply because the adjacent property, Lot 2, recently received the same variance. The Schuettes' would like to get the same variance for 479 Tarpon Blvd."

Mr. Mack asked Mr. Cook, "You said that Lot 2 received a variance?"

Mr. Cook replied, "Yes, Lot 2 received a variance. If we would not get a variance the home that would be proposed for Lot 3 would be on the other side of the street and that wouldn't work."

Mr. Gasparini stated, "I am wondering how Lots 3 and 4 got platted."

Mr. Cook replied, "I don't know, but what I can tell you about Lot 4 is it is technically unbuildable and the only thing that was ever allowed on Lot 4 is the dock that is there now."

Mr. Gasparini asked Mr. Cook, "Whose dock is it?"

Mr. Cook replied, "David Grice."

Mr. Rivers asked Mr. Cook, "The house that is under construction right now, Lot 2; they've been granted the same thing that you are seeking for right now?"

Mr. Cook replied, "Yes."

**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. Mack stated, "I make a motion that we grant the River Buffer Setback Variance of 10-foot from the critical line with the following conditions: 1) Applicant shall submit on-lot Storm Water calculations. If a rain garden is required, applicant shall show the location of said rain garden on the site plan outside of the 10-foot buffer area. 2) Applicant shall be required to place gutters on the structure to capture the roof runoff and discharge said runoff as far from the critical line as possible."

Mr. Williams seconded the motion.

**MOTION: Mr. Mack made a motion to grant the River Buffer Setback Variance of 10 feet from the critical line with the following conditions: 1) Applicant shall submit on-lot Storm Water calculations. If a rain garden is required, applicant shall show the location of said rain garden on the site plan outside of the 10-foot buffer area. 2) Applicant shall be required to place gutters on the structure to capture the roof runoff and discharge said runoff as far from the critical line as possible. Mr. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, Rivers and Williams; ABSENT: Mitchell; VACANCY: Southern Beaufort County).**

#### **ADJOURNMENT**

**MOTION: Mr. Williams made a motion to adjourn the meeting. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, Rivers and Williams ABSENT: Mitchell; VACANCY: Southern Beaufort County).**

The meeting adjourned at approximately 5:53 p.m.