



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, February 28, 2019, 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

MEMBERS ABSENT

Mr. Cecil Mitchell, III
Mr. Chester Williams

VACANCY

Southern Beaufort County

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mr. Eric Greenway, Community Development Director
Mrs. Tamekia Judge, Zoning Analyst III

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:04 p.m.

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

REVIEW OF AGENDA:

The agenda was amended to move Items #6 and #7 up on the agenda.

MOTION: Mr. Chemsak made a motion to adopt the amended agenda; moving Items #6 and #7 up on the agenda. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack and Rivers; ABSENT: Mitchell and Williams; VACANCY: Southern Beaufort County).

REVIEW OF MINUTES:

There was no quorum for the adoption of the October 25, 2018 minutes; adoption is postponed until the next meeting.

Mr. Mack made a motion to adopt the December 20, 2018 minutes.

Mr. Chemsak seconded the motion.

MOTION: Mr. Mack made a motion to adopt the December 20, 2018 minutes as written. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack and Rivers; ABSENT: Mitchell and Williams; VACANCY: Southern Beaufort County).

NEW BUSINESS

SCOTT & STEPHANIE SONGER – RIVER BUFFER SETBACK VARIANCE

Mr. William Court, Court Atkins Group, Architect is representing the owners for Lot 833, Moss Creek Planation, which is 6 Silver Fox Lane. Mr. Court stated, "The lot is a unique shape, sort of a pie shape. The request is to revert to the 30-foot Moss Creek

setback when the lot was originally platted. The ARB has granted approval. We cannot get much closer to the street with the garage, because of the angle of the proposed drive and the relationship of the house in relation to the street. We have to get a reasonable turning radius into the garage. It is a three-car garage, the positioning of that is almost required by the turning radius of the drive. The house is approximately 3700 square feet and another 680 square feet over the garage. There is some outdoor living, and some proposed hardscape and a pool. We have done our best to keep the hardscape and the pool in line with the outdoor living in order to avoid an additional variance. The two adjacent properties received the same variance to build to the 30-foot line. The home to the right actually encroaches with the pool and spa into the 30-foot line. We are of similar mass size as the adjacent properties.”

Mr. Mack asked Mr. Court, “Understanding the pool variance, what measures do you have to help minimize the runoff from the pool so it would not go into the critical area?”

Mr. Court replied, “We would be willing to accept the County’s guidelines to use pervious material.”

Mr. Gasparini asked Mr. Court, “Will the screened outdoor living area have a roof?”

Mr. Court replied, “Yes.”

Mr. Gasparini asked Mr. Court, “I don’t have a problem with the pool; I do have a problem with the screened area that bumps right against the critical line. It’s closer to the critical line than what I would call structures on the other two houses.”

Mr. Court replied, “On the left hand side, both the outdoor living area, as the 30-foot wraps around the heated and the covered area, it’s right to the line on the neighbors.”

Mr. Gasparini stated to Mr. Court, “I understand that. That’s on the side where you can’t see it and that’s not going to affect your client’s lot at all.”

Mr. Court asked Mr. Gasparini, “If we could bring the roof structure in line with the neighbor on the right, would that be an acceptable compromise?”

Mr. Gasparini replied, “Yes, for me.”

Mr. Court stated, “If the compromise needed to take place where the garage and the house became connected, which would probably allow us to bring the right hand corner of the screened outdoor living area in line with the neighboring roof, I can make that happen.”

Mr. Eric Greenway, Community Development Director stated, “There is a reason why we have a river buffer, there’s a reason why it changed to 50 feet, to protect water quality. Pools within that area would be a detriment to water quality and have a negative impact on the marsh and the waterways. We submit to you that this request be disapproved. However, you all have approved these in the past and if you are inclined to do so, we recommend that you would follow the conditions that we have outlined in the analysis which would be pervious decking and any other mechanisms to minimize the runoff from the house and the pool into the waterways. I would request one additional condition with the buffer, once the pool is formed and the screened area and the house is formed, that they be required to submit a foundation survey to showing where those buildings are located in relation to the buffer to ensure no further encroachment than what’s allowed.”

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. Chemsak made a motion to approve the variance with the County’s recommendations, along with the additional condition; applicant shall submit a foundation survey to ensure no further encroachment into the critical area. The applicant shall also move the screened outdoor living structure back to align with the roof of the neighbor on the right.”

Mr. Rivers seconded the motion.

MOTION: Mr. Chemsak made a motion to grant the variance with the following conditions 1) Pervious surface shall be placed around the pool; 2) Stormwater on-lot calculations required; 3) Applicant shall submit a revised plan showing the roof runoff information to include gutters when applying for the Zoning permit; 4) A foundation survey shall be submitted; 3) Outdoor screened living structure shall be moved back to align with the roof of the neighbor on the right. Mr. Rivers seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack and Rivers; ABSENT: Mitchell and Williams; VACANCY: Southern Beaufort County).

DATAW ISLAND – EUGENE V. ROBERTS – ADMINISTRATIVE INTERPRETATION (APPEAL)

Mr. Victor Roberts stated, “This project began as a cart path renovation project to restore to good condition cart paths that have existed for 25 or 30 years, a very long time. And as such it seemed to, I think, everybody that was aware of it, an utterly routine and including the Department, an utterly routine and conventional project that would be routinely permitted and it was. And while I haven’t looked at the background associated with that, I don’t have any reason to think that there was anything amiss about that. What then happened was after that project got underway, another project, which involved the installation of several parking lots and some concrete access roads and now about a quarter of an acre of electrical infrastructure has gone in at various places, a couple of them not even on the golf course. To make a long story short, that development that caused the whole thing from a purely legal standpoint to run off the rails. What was permissible in terms of the first permit the Director granted was flatly impermissible when the project changed its nature. And our appeal is, I believe, that second piece of the project that I’ve described, and that’s what we are objecting to it, and the thing would just get done, move on, and nobody would be the wiser.” (Read a letter from Brian Hollingsworth). “The statute that I just quoted to you says, “All other approvals that the Department can make, except those three I just described have to be treated like a Zoning Map Amendment. We would like the law applied, and if it is not applied and the Director’s analysis applies in future situations, even though this is a small project, the consequence is going to be for PUDs and master plans, effectively in my judgement to repeal a good part of Beaufort County’s Development Code. Our position on this business is utterly straightforward and utterly simple. We recited about eight provisions of the code that this just flatly contradicts. The most conspicuous one is Code Section 1.6.60 (5), “The Director can approve minor amendments to a master plan for three highly specific purposes: 1) A minor change in the width or right-of-way of a road; 2) A minor change in the overall population density of the project. Obviously neither one of those things apply to this; 3) He can approve a change in the build-out schedule for the overall.”

Mr. Gasparini asked Mr. Roberts, “Is it a parking lot for the golf carts?”

Mr. Roberts replied, “It’s going to be a business to teach people to play golf. It’s going to involve an electronic swing analysis; it’s got infrastructure, parking access roads, parking lots.”

Mr. Gasparini asked Mr. Roberts, “Does it have buildings?”

Mr. Roberts replied, “They’ve taken the building off.”

Mr. Gasparini stated, “The way I understood the letter, was referring to the process, and how they were going to build this. Somehow, they were just going to build it without taking equipment off the path. Isn’t that about process, not the development itself?”

Mr. Roberts replied, “Well, I think I would read it, that the entire process will take place at the footprint of the existing path. To me, cart path renovation means replacing the cart paths. I mean, that is to me a sort of a common sense definition. When you renovate something you make it like new.”

Mr. Gasparini asked Mr. Roberts, “Is it your position that the master plan for the PUD can never get changed?”

Mr. Roberts replied, “No Sir. My position is that feature of changing the plan is governed by Section 1.6.60 (5) which allows without complying with the Zoning Map Amendment provisions.”

Mr. Gasparini asked to Mr. Roberts, “So, the basic issue of your appeal is that you don’t think the Development Director has the authority under the code to approve a change to this development permit?”

Mr. Roberts replied, “He doesn’t have the authority to approve the change he made.”

Mr. Gasparini asked Mr. Roberts, "So, then the issue from your point of view is that this isn't a minor change, it's a major change?"

Mr. Roberts replied, "The code says he can approve the following minor changes. Under any analysis this would not be one of the changes permitted under 1.6.60 (5) of the code."

Comments from the other parties of the Appeal:

Ms. Van Etten stated, "I am Lynne Van Etten. I live at 358 Dataw Drive. I am one of the people that signed that. I think what Mr. Roberts was trying to say is, that when I bought here 15 years ago I was told through the master plan that nothing would be constructed across the street from my house. Now, improvements as far as golf cart paths, I accept. Parking lots, I really do not like. They are there now. I do not need to have them torn up, but I would like it stopped. Anything else that's put there is detrimental to our property."

Mr. Gasparini asked Ms. Van Etten, "Is the parking lot built for the carts?"

Ms. Van Etten replied, "Yes, it is."

Mr. Chemsak asked Ms. Van Etten, "How many golf carts can they park on these parking lots?"

Ms. Van Etten replied, "I think probably three or four on each end."

Mr. Drury stated, "I am Scott Drury, 374 Dataw Drive. I agree with everything my neighbors have said so far. The only thing I can add is that the electricity is for the fans."

Dataw Island Club comments:

Mr. Ted Bartlett stated, "I'm the General Manager and Chief Operating Officer of Dataw Island Club. In the original application submitted to the County, it clearly mentions that that parking was included. The other thing I would comment on, the letter that was referenced was the letter from my golf Course Maintenance Superintendent trying to explain to people what the project would be like."

Mr. Gasparini asked Mr. Bartlett, "On Exhibits G12 and G13, is that the project as constructed?"

Mr. Bartlett replied, "Yes, Sir. One on the north end and one on the south end. There is actually a range tee back there. There is two separate range tees. And this parking is intended to provide places for people to park to go practice on those tees without parking on top of the trees as they tend to do from time to time."

Mr. Gasparini asked Mr. Bartlett, "The purpose of developing the back of the driving range was?"

Mr. Bartlett replied, "We've always used it for hitting, extra hitting. The idea was to provide amenities. As we provide those amenities, we need to provide the infrastructure that supports them, whether it's power for fans or computer equipment or places for people to park golf carts."

Mr. Eric Greenway, Community Development Director stated, "We're dealing with cart path improvements and golf cart parking on a golf course that is shown on the master plan. The master plan has not been modified. Where the master plan shows a golf course, shows a driving range, shows fairways and holes or shows pathways, shows roads, shows a clubhouse, shows parking lots for cars for the clubhouse, it's all in the master plan. The Corporation has the ability and the right in my mind to add an infrastructure that is necessary for the improvement and the use of that particular use of a golf course. If you all want to make a determination that golf cart paths and golf cart parking is a separate use that goes along separately with a golf course, then I made an error in my interpretation of the code and issuing the permit. I would submit to you that golf cart parking and golf cart path improvements on a golf course is something that's entirely appropriate for a golf course, just like a driving range would be appropriate. Just like if somebody wanted to go to that driving range and give lessons to someone on the driving range that would be something that you would commonly expect as a part of a golf course. I have played on several golf courses where they have fans not only on the driving range but on the greens of the course themselves so they can dry them out in rain events to push water off of them to dry them out so that people can continue to play or play more quickly after the weather event. So,

even in that particular case I would submit to you, that would be something that would be appropriate. I do apologize to the people that are being negatively impacted by this situation. I have to follow the master plan, which was approved by the County. This is an old master plan. I have to make an interpretation as to what I feel is appropriate, based on that master plan. I don't think any evidence has been submitted here this evening that shows that I was in error in any way in approving this permit for golf cart parking and golf cart path improvements on a golf course that it is clearly shown on the master plan. Nothing regarding fans, for future regards to an electronic instruction board happening out there, is relevant to this discussion. The only thing that is relevant is did my Staff err, make an error in their approval of golf cart parking on the golf course along cart paths, and where new cart paths that might be constructed. Is it inappropriate for someone to construct a cart path in a neighborhood, a golf course community on the golf course? I would submit to you that that's not an error in any way by us approving the permit."

Mr. Barlett showed the Board members where the parking was located on the plans.

Mr. Gasparini stated, "Let the record reflect that the parking that Mr. Bartlett talked to us about is on pages one through seven of the original application."

Mr. Mack stated, "Based on the evidence that's presented before us and the testimony that we have heard tonight, I would move to uphold the County's decision that there has not been an error erred in granting this permit for the use of this golf course and the golf cart path and the parking."

Mr. Gasparini stated, "In addition, I think we should find that this is not a change to the master plan. A golf course and golf course operations are a part of the master plan and this does not create a deviation from the master plan. Thus, the development permit was issued appropriately. As a result, the Community Development Code was not violated, and the appeal is denied. The development permit is consistent with the master plan."

Mr. Chemsak seconded the motion.

MOTION: Mr. Mack made a motion to uphold the County's recommendation; the issuance of the development permit is consistent with the master plan. The Community Development Code was not violated, and the appeal is denied. Mr. Chemsak seconded the motion. (FOR: Chemsak, Gasparini, Mack and Rivers; ABSENT: Mitchell and Williams; VACANCY: Southern Beaufort County).

ADJOURNMENT

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

The meeting adjourned at approximately 6:29 p.m.

Note: The video link of the February 28, 2019, Zoning Board of Appeals meeting is:
http://beaufort.granicus.com/player/clip/4229?view_id=3