



## 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 22, 2019, 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. Cecil Mitchell, III  
Mr. Bernard Rivers  
Mr. Mark McGinnis  
Mr. Chester Williams

### **MEMBERS ABSENT**

Mr. Kevin Mack, Vice-Chairman

### **VACANCY**

None

### **STAFF PRESENT**

Ms. Hillary Austin, Zoning Administrator  
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:**

**MOTION:** Mr. Williams made a motion to adopt the agenda as submitted. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, McGinnis, Mitchell, Rivers and Williams; ABSENT: Mack; VACANCY: None).

### **REVIEW OF MINUTES:**

**MOTION:** Mr. Williams made a motion to adopt the October 25, 2018 minutes as written. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mitchell and Williams; ABSTAIN: Gasparini, McGinnis, and Rivers; ABSENT: Mack; VACANCY: None).

**MOTION:** Mr. McGinnis made a motion to adopt the July 25, 2019 minutes as written. Mr. Rivers seconded the motion. The motion passed (FOR: Chemsak, Gasparini, McGinnis and Rivers; ABSTAIN: Mitchell and Williams; ABSENT: Mack; VACANCY: None).

### **NEW BUSINESS**

#### **MICHAEL DELUCA – RIVER BUFFER SETBACK VARIANCE (AMENDMENT)**

Mr. Steven Ruberti with Joco Construction Company stated, "I am the site superintendent for this project. Mr. Deluca wants to make some changes to his existing variance; the amendment is to correct the oversight of extending the grilling deck by 6' x 10'. The extension will not encroach into the setback."

Mr. Mitchell asked Mr. Ruberti, "If the previous variance was 3 feet, are you asking for an additional 2.9-foot variance which puts you 0.4 feet from the critical line? Is the area pervious or impervious?"

Mr. Ruberti replied, "The deck is pervious."

Mr. Chemsak asked Mr. Ruberti, "How big is the screened porch?"

Mr. Ruberti replied, "It is 8' x 10'."

Mr. Chemsak asked Mr. Ruberti, "If you took some off of the screened porch, would it make this deck possible?"

Mr. Ruberti replied, "That would make the screened porch impossible to use. That is why when Mr. Deluca wanted to cantilever the deck two more feet to make it 10' x 10', and then he wanted to add the grilling deck, I said to him no, leave the screened porch where it is 8' x 10' and then you can get the grilling deck off the back of that. We are not trying to increase the screened porch."

Ms. Hillary Austin, Zoning Administrator stated, "He actually received a 1.2 feet variance from the critical line. They added steps and the screened porch which was not included in the original variance."

Mr. Gasparini stated, "The application is not complete because it does not ask for the stairs and the entryway. A couple of things could happen, you could go forward with the application, as incomplete, however; I am not inclined to want to act on it. If you withdraw the application, you can resubmit it with the appropriate information and there will not be any negative consequence. I do not know if we are in a position to give you a variance on an application when it is not complete."

Mr. Ruberti stated, "My understanding is that the staircase and the landing to come off of the screened porch was never approved even though it was on the construction drawing that was approved?"

Mr. Gasparini replied, "That is correct, it was not a part of the approved variance. You will need to get with Ms. Austin and figure out what was approved."

Mr. Ruberti replied, "We will withdraw the application and reapply for the staircase, landing and the grilling deck."

**The applicant withdrew the application. There was no Public comment heard.**

**MOTION: The Board unanimously voted to withdraw the application so that the Applicant can meet with Staff. The motion passed (FOR: Chemsak, Gasparini, McGinnis, Mitchell, Rivers and Williams; ABSENT: Mack; VACANCY: None).**

**LON SEIDLITZ – HARBOR ISL. – LOT 19 – OCEAN MARSH LN. – VARIANCE**

Mr. Lon Seidlitz stated, "I am in the process of purchasing the property. I have been through the design process for the house. The home is 3,800 square feet, not 5,200."

Mr. Gasparini asked Mr. Seidlitz, "How many square feet do you think the house is?"

Mr. Seidlitz replied, "The heated square feet is 3,800."

Mr. Gasparini asked Mr. Seidlitz, "The variance you are asking the Board is for the square footage of the house?"

Mr. Seidlitz replied, "Yes. I believe the house to be, based on the architect, 3,841 square feet heated and air conditioned space. The rest of it is decking for a total of 5,116 square feet and that includes the 300 square feet that is under the house."

Mr. Gasparini asked Mr. Seidlitz, "Is the decking under an overhang?"

Mr. Seidlitz replied, "Part of it is, yes and part of it isn't. There is a covered porch on the second floor, but not on the first floor. There is a part that overhangs a portion of the deck, and that is included in the roof calculation. There is also a balcony on the back of the house for an emergency exit."

Mr. Chemsak asked Mr. Seidlitz, "On the new plan, was the exercise room, additional bathroom and closet added?"

Mr. Seidlitz replied, "I added the second floor."

Mr. Williams asked Mr. Seidlitz, "The plans do not match. How can you increase the interior square footage and not the exterior? There is a total of 4,470 square feet, if you have added more space that is heated; it has to be more than 4,470 square feet. If the heated square feet on the second floor has increased, what is the total square footage?"

Mr. Seidlitz replied, "I am not sure, the numbers aren't adding up. How does the County determine the average square footage?"

Ms. Hillary Austin, Zoning Administrator stated, "The tax records are used to determine the gross square footage, in order to determine the average size allowed."

Mr. Gasparini asked Ms. Austin, "The reason you calculate it that way is because that's how the Assessor does it for taxing people?"

Ms. Austin replied, "Yes."

Mr. McGinnis asked Ms. Austin, "When you did the calculations, the allowed amount was 3,041?"

Ms. Austin replied, "Yes, so the waiver was granted at 20 feet for a house of no more than 3,041 square feet."

Mr. Gasparini stated to Mr. Seidlitz, "Apparently you want a larger home than that, we need to know how much bigger you are requesting."

Mr. Seidlitz requested to postpone the hearing, until he meet with Staff to determine the appropriate method of calculating the square footage. Once the square footage is determined, Mr. Seidlitz could go back before the Board to request the increase.

The Board unanimously voted to postpone the application with two conditions: 1) Applicant shall have new information submitted to the Board within the next couple of weeks indicating the correct square footage requested before the September 26, 2019 meeting; 2) Applicant shall provide information to the neighbors regarding the house size through the POA.

**The applicant requested to postpone the application. There was no public comment.**

**MOTION: The Board unanimously voted to postpone the application until September 26, 2019 with two conditions: 1) Applicant shall have new information submitted to the Board within the next couple of weeks indicating the correct square footage requested; 2) Applicant shall provide information to the neighbors regarding the house size through the POA. The motion passed (FOR: Chemsak, Gasparini, McGinnis, Mitchell, Rivers and Williams; ABSENT: Mack; VACANCY: None).**

#### **DAVID HUTCHENS – VARIANCE**

Mr. Gasparini asked Mr. Hutchens, "The way I understand your application is that you are looking to subdivide a one-half acre lot?"

Mr. Hutchens stated, "I am looking to complete what was started in 1978. We got approval for putting this into two different types of properties; there were no regulations at the time that required that, and the subsequent zoning thing that came up said that a subdivision was defined by either buildings on the property or by dividing the land. These are the buildings that have been on there and all we want to do is put a line on the plat and record it."

Mr. Gasparini stated to Mr. Hutchens, "The current code and perhaps the code back when you purchased the property doesn't permit in the zone where your property is located a lot to be subdivided if it's smaller than two acres; now it's five or six acres. You would need a variance for that size, but that would not get you your subdivision. We cannot do a subdivision here, that is what the Staff and the Planning Commission does. All we can deal with is whether it will be okay to try and get a subdivision that is smaller than what the code allows."

Mr. Hutchens stated, "When I looked at this Code and it said Planning Commission and then County Council, when I first approached Ms. Austin, I said well I wanted to get this done and appealed as quickly as possible to get it on to the proper authority that can make a decision. Then I was told that this was not an appeal and this is a variance and that I had to go through you all and I had to go to court, so my options were cut."

Mr. Gasparini stated to Mr. Hutchens, "You can go through court, but that's still not going to get you the subdivision, you will need to go through the process."

Mr. Williams asked Mr. Hutchens, "Did you take any action to subdivide at the time the property was developed?"

Mr. Hutchens replied, "We weren't told to."

Mr. Gasparini asked Mr. Hutchens, "Your position is that because you bought your land in 1978, no law that has been passed since then with regard to your land applies to your land?"

Mr. Hutchens replied, "No sir, what I said was we have a piece of land that was legally subdivided by the regulations at the time, two different buildings; we just did not have a plat drawn with the line down it. It was already subdivided, from what I see with the 1978 ordinance, that it was considered a subdivision back then."

Mr. Gasparini asked Mr. Hutchens, "Does the current code apply to you?"

Mr. Hutchens stated, "We aren't asking for the new code, we are asking for what we started."

Mr. Gasparini asked Mr. Hutchens, "I perhaps understand your argument. Sounds like you are asking us to decide, that in fact, the fact that you have two buildings on this piece of land constituted a subdivision in 1978?"

Mr. Hutchens replied, "Well that's what it says."

Mr. Gasparini stated, "Well we can't do that."

Mr. Williams stated to Mr. Hutchens, "I don't read that as saying, if you build two buildings on a lot then it is subdivided."

Mr. Gasparini stated, "That is a legal interpretation that we aren't empowered to make. I do not know where to go with this. It is not a Variance request, it is in a nature of an appeal of a decision that Ms. Austin really did not make, and she is just trying to follow the current code. I don't believe that we can address this."

Mr. Hutchens asked Mr. Gasparini, "Who in the County can address this?"

Mr. Gasparini stated to Mr. Hutchens, "I would suggest that you go and get some legal advice."

Ms. Austin stated, "We are talking about a code that has been repealed four times. This has nothing to do with today."

Mr. Gasparini stated, "I understand that, but I also understand Mr. Hutchens' argument. What I do know is that we can't fix this".

Ms. Austin stated, "If he wanted to subdivide back then, he would have needed to go before the Joint Planning Commission."

Mr. Gasparini stated to Mr. Hutchens, "If you are asking us to let you subdivide a lot that is smaller than whatever the requirement is today, so that you can have two quarter-acre lots then we'll address that. Then you can go to the Planning Commission or the County and try to figure that out. If you don't like the answer then you can go to court."

Mr. Hutchens stated to the Board, "I am asking that we have a piece of land just over a half-acre that has two buildings on it, and there was a mistake made either by the County or whomever. Because we went by the regulations we were told to go with at that time, I am not going to take the blame for that."

Mr. Williams stated, "The Board doesn't have the authority to correct what happened 40 years ago."

Mr. Hutchens asked, "Can we get an exemption?"

Mr. Williams replied, "We don't have the authority to give an exemption. What is the extraordinary and exceptional conditions that pertain to the land?"

Mr. Hutchens stated, "Both buildings are below flood elevation. Rates are outrageous. We had to put money into the residence just to be able to rent it. I cannot sell the land the way that it is."

Mr. Williams stated, "This doesn't deal with the land; that is dealing with the improvements on the land."

Mr. Gasparini asked Mr. Hutchens, "So your hardship is being able to sell the land or get a mortgage?"

Mr. Hutchens replied, "Yes, because of these regulations; and the fact that we could not get the plats stamped as two pieces."

Mr. Gasparini stated, "But you can sell it as one piece."

Mr. Hutchens stated, "You could sell it as one piece, but when you can't get a mortgage on it that would be worthless."

Mr. Gasparini stated, "Someone could pay cash."

Mr. Hutchens replied, "That reduces the perspective customers."

Mr. Gasparini asked Mr. Hutchens, "So your hardship is economical?"

Mr. Hutchens replied, "Yes."

Mr. Williams stated, "The lot is legal non-conforming, you don't comply with the current code."

Mr. Gasparini asked Ms. Austin, "Could the lot have been subdivided in 1978?"

Ms. Austin replied, "I don't know. I am thinking about the definition he read and it could or could not have been subdivided."

Mr. Gasparini asked Ms. Austin, "How does this impact the neighbors?"

Ms. Austin replied, "County Council came up with the Rural Small Lot subdivision that allows you to be able to subdivide outside of the six acres. If you have two acres you can get two lots."

Mr. Gasparini asked Ms. Austin, "What's the minimum lot size?"

Ms. Austin replied, "You can get half-acre lots."

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

Ms. Justine Holmes Standifer stated that she lives next door. Her concern is cutting the property into two-quarter acres. She opposes this Variance request.

**Public Comment session closed.**

Mr. Williams made a motion to deny the Variance request and find that the only hardship is economical.

Mr. Chemsak seconded the motion.

**MOTION:** Mr. Williams made a motion to deny the Variance request and find that the only hardship is economical. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Gasparini, McGinnis, Mitchell, Rivers and Williams; ABSENT: Mack; VACANCY: None).

#### **ADJOURNMENT**

**MOTION:** Mr. Williams made a motion to adjourn the meeting. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, McGinnis, Mitchell, Rivers and Williams; ABSENT: Mack; VACANCY: None).

The meeting adjourned at approximately 6:50 p.m.

Note: The video link of the August 22, 2019, Zoning Board of Appeals meeting is:  
[http://beaufort.granicus.com/player/clip/4494?view\\_id=15](http://beaufort.granicus.com/player/clip/4494?view_id=15)