



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, October 24, 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. Bernard Rivers
Mr. Mark McGinnis
Mr. Chester Williams

MEMBERS ABSENT

Mr. John Chemsak
Mr. Cecil Mitchell, III

VACANCY

None

STAFF PRESENT

Mr. Eric Greenway, Community Development Director
Ms. Hillary Austin, Zoning Administrator
Mrs. Lisa Anderson, Zoning Analyst II

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:10 p.m.

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

REVIEW OF AGENDA:

Motion made to amend the agenda moving the old business Items #7, #8 and #11, A, B, C and D on the agenda. The items are to be reviewed during the November meeting.

James and Deborah Candee's request for a one-time extension for a river buffer setback Variance is granted until November.

Michael Deluca's request for a one-time extension for an amendment to a river buffer setback Variance is granted until November.

Lon Seidlitz's request for a one-time extension for a river buffer setback Variance for the size of the residence is granted until December, with the condition Mr. Seidlitz submits new information regarding the size of the residence, if the new information is not received, the application will be dismissed.

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

REVIEW OF MINUTES:

MOTION: Mr. Williams made a motion to adopt the August 22, 2019 minutes as written. Mr. Rivers seconded the motion. The motion passed (FOR: Gasparini, McGinnis, Rivers and Williams; ABSTAIN: Mack; ABSENT: Chemsak and Mitchell; VACANCY: None).

NEW BUSINESS

DR. H. WILLIAM AND L. JEANNE FRANCISCO RIVER BUFFER SETBACK VARIANCE (FENCE)

Mrs. Francisco stated, "I reside at 12 Butterfield Lane. When we purchased our home in August 2018, we had no indication that fencing would be problematic. In October 2018, we had a four-foot aluminum fence installed around the perimeter of our property in order to create a safe exercise area for two large dogs, and define an area for landscaping and flower gardening. We selected a fence to install that was similar to all the other fences on Cat Island, and one that would not be harmful to wild animals in the area. Although we had researched the possibility of putting in a pool prior to purchasing this property, the decision to install the fence was not related to anything other than needing to provide security for our dogs. Being newcomers to the state, we relied upon local professionals for guidance. The listing and selling Real Estate Agents did not disclose any regulations attached to our property. We were not aware that the present setback on our property was due to a previous Variance. We met with our Cat Island POA and saw them as a definitive authority or governing body of what was allowed in our PUD. We interviewed two local fence companies; both asked if we had gotten approval from the POA. We felt that we had done our due diligence, at no time was there any mention made by anyone of the need for a permit. Specifically, we have learned that the previous owners of our property requested the setback Variance of 35 feet in 1998, before the house could be built. We have learned what a river buffer zone is and have discovered that our entire yard and gardens apparently are in a river buffer zone. In addition, we have been unable to locate the Beaufort County Ordinance, which indicates that fencing is not allowed on our property or that a permit would have been required. To say that as new homeowners and dog owners, we are shocked and dismayed by the Zoning office decision. Our lot is unique, it is a peninsula shape, which can best be seen in the drone photo on the last page of the packet, which shows the shape of the property, and it has the critical lines surrounding two-thirds of the perimeter. The shape, size and unique location of our lot is a hardship to fair enjoyment of our home and the area of our lot immediately adjacent to our house. The hardship that existed in 1998 when the property owner at that time needed a Variance to fit a house on an oddly shaped and narrow lot has not changed. It seems the hardship on this residential lot was only made worse by allowing a thirty-five foot setback and then building the house to the setback line. Thus apparently eliminated all usable, unregulated yard space. The hardship is not the present homeowners making, reasonable use would surely be defined as the ability to enjoy an outdoor space where dogs and children could run freely and safely. Granting of this variance would not confer special privilege, as I have with me photos of five additional fences in Sheffield and Butterfield that have been installed in the River Buffer zone. There are many more all-around Cat Island. Lastly, we were shocked when we received the recommendations to the Board written by the Zoning staff. My husband and I both spoke in the Zoning office at separate times with Eric Greenway, I specifically asked Mr. Greenway to explain the definition of a hardship, and was told by him that our land is the hardship. Specifically, the narrow shape and the fact that it is surrounded on two-thirds of the perimeter by the critical line. My husband was told the same, and also was made aware by Mr. Greenway that the River Buffer zone takes up more than two-thirds of our property. Yet the recommendation of the Staff states that no hardship exists. Their recommendation continues to state that the fence in question, "Would adversely affect the health and safety of the general public, and be a detriment to the public welfare". The fence has been in place a year this month and we have not heard or seen where this prediction has come to pass. The Staff's recent concern that dogs are defecating in the River Buffer zone is not relevant as the question at hand, of whether the fence causes any adverse effect of the health and safety of the public. We clean up after our dogs on a daily basis. Each family should be able to uniquely decide the reasonable use of their property in which they pay taxes. In which do absolutely no harm to the environment. Not granting the Variance could adversely affect the health and safety of Dr. Francisco. This information was not in our original application because we felt it embarrassing to make personal medical information part of the public record. However, after reading the negative Staff opinion of our application we thought the Board should be made aware of Dr. Francisco's medical condition. There has been a letter provided to the Board, written by Dr. Clark Trask. Dr. Francisco has Guillain-Barre Syndrome and is handicapped. He has very poor balance and is prone to falls, especially in low light or at night. The large dogs serves as excellent therapy for his muscle coordination mobility when he walks them in the daylight. He is physically unable to provide them with exercise or elimination breaks at other times. Dr. Francisco has always been their primary caregiver and has been able to remain independent in this world because of the fenced yard, where they can be safely, legally let outside without the need of a leash at any time day or night. Without a fence, Dr. Francisco would have to walk the dogs in the dark, putting him at risk for a fall and injury. The inability to have a fenced yard would cause a medical hardship and unnecessary risk for Dr. Francisco."

Mr. Mack asked Mrs. Francisco, "Is your hardship for the fencing to have a contained area in your yard, to contain your dogs?"

Mrs. Francisco replied, "Our hardship is the shape, size, and the unique location by the critical line."

Mr. D.C. Gilley, representative for Mr. and Mrs. Francisco stated, "The Zoning ordinances give examples of fences around people's yards. It is common to understand that if you have a house, you have a right to have a yard very close to the house. This comes all the way back from the common law concept that is really considered part of the home in which you can make reasonable use of the yard. For example, children playing, or pets and it's usually enclosed by fences and it turns out here, they

really need to be enclosed by a fence otherwise, the dogs can go into the marsh, or end up being eaten by alligators, or can defecate in the marsh, etc. As I see it, when you permit a house to be built on land, that includes the right to have a reasonable yard, and otherwise here, they could not."

Mr. Williams stated to Mr. Gilley, "Nobody's disputing you can't have a yard, the question is whether or not you can fence that yard in, and comply with the County Code."

Mr. Gilley stated to the Board, "This doesn't harm the environment whatsoever. They did not disturb one plant when they put it in, it does not disturb the vegetation that leads down to the marsh at all, water can flow right threw it, no impediment whatsoever, small animals can go right threw it, deer can jump over it, in other words, there's no impediment there. When you balance the interest of the public in regulating the use of the property, safeguard the environment, they've done it in a way that doesn't harm the environment at all. It is vital to their home as anybody ought to be able to do, this is part of their property, they pay taxes on it, and it is a very reasonable use."

Mr. Gasparini asked Mr. Gilley, "Section 5.11 states that you're not supposed to build anything in the buffer zone, and your client said they are unaware of an ordinance that prohibits having a fence. I think the ordinance is clear, it says you cannot build anything in the buffer zone. A fence is clearly something built within the river buffer zone, do you agree with that?"

Mr. Gilley replied, "Right, but there's a problem with that. The ordinance goes on to state that you can have boardwalks, and bike trails up to five feet wide, and stepping stones. No mention of fences are made in that ordinance, none whatsoever."

Mr. Williams stated to Mr. Gilley, "You know the legal theory, inclusion of one, exclusion of the other".

Mr. Gilley stated to the Board, "Well when the regulations otherwise say, fences and River Buffer zones, as long as they don't disturb the vegetation they are reasonable".

Mr. Williams asked Mr. Gilley, "Where does the code say that?"

Mr. Gilley replied, "Section 5.4.30.G. Fences and walls within buffers, this is fences and walls shall be installed not to disturb or damage existing vegetation or install plant material in perimeter."

Mr. Williams stated to Mr. Gilley, "That means the street buffer, or an adjacent use buffer, the requirements for those buffers are different than the river buffer. The river buffer says no development. It says all development shall be set back from idle waters and wetlands, beginning at the OCRM critical line, and shown on table 5.11.60.A. that is different. There are other things you can do in the street buffer and the adjacent use buffers, including fences. Because a fence is a structure, and putting it up is development that constitutes as development in the river buffer which is prohibited by Section 5.11.60.B."

Mr. Gilley replied, "It's not prohibited, it's not mentioned, I really disagree with the concept."

Mr. Williams asked Mr. Gilley, "Is a fence a structure?"

Mr. Gilley replied, "No."

Mr. Williams asked Mr. Gilley, "Is it built?"

Mr. Gilley replied, "Yes."

Mr. Williams stated to Mr. Gilley, "Then it is development under the definition of development in the code. The code states the river buffer is all development, which would include the fence, shall be set back from tidal waters and wetlands, beginning at the OCRM critical line as shown in the table, shall be set back 50 feet. Fences are not allowed within the river buffer."

Mr. Gilley stated to the Board, "This is why there needs to be a Variance, because it's unduly zero harm to the public, and the other thing is a basic unfairness, you can have boardwalks, and bike trails."

Mr. Williams stated to Mr. Gilley, "That's what the code says, if you want to change the code, we can't do that, your recourse is to the County Council. Mr. Williams asked Mr. Gilley, "What is the extraordinary and exceptional condition pertaining to the land that would warrant the Variance?"

Mr. Gilley replied, "The house was permitted to be built on that land and the area right adjacent to it is 35 feet from the River Buffer zone. Unless they have a Variance here, they cannot make any use of that land whatsoever."

Mr. Williams said to Mr. Gilley, "So your argument is because the lot is the product of a previously granted variance, so then we're compelled to grant an additional variance?"

Mr. Gilley replied, "Correct."

Mr. Gasparini asked Mr. Gilley, "Your client's bought the existing house?"

Mr. Gilley replied, "Yes."

Mr. Gasparini stated to Mr. Gilley, "That house was built pursuant to a Variance closer to the OCRM critical line than otherwise would be permitted, is that correct?"

Mr. Gilley stated, "The house was built right on that 35-foot line."

Mr. Gasparini stated to Mr. Gilley, "That typically happens in a situation like this where the lots are platted before the 50-foot rule came in; Staff then says well it's not fair to apply a rule that was put in after the lot was platted, so you can build your house closer to the critical line. That was granted by the Staff, and my understanding is, as Mr. Williams suggested, because the house got to be built that way, that created the hardship."

Mr. Gilley replied, "Yes."

Mr. Gasparini asked Mr. Gilley, "If the owner didn't ask for the Variance, the house would have been set back at 50 feet, and there wouldn't be a hardship."

Mr. Gilley replied, "I think they are entitled to take the land as they find it. The only way they can make use of the yard is to have a Variance to have a fence."

Mr. Williams stated to Mr. Gilley, "I agree, the Variance to the house was justified, because without that variance, the owner of the property would have been prohibited from utilizing the property, no questions asked. This is a different situation; clearly, the prior owners utilized the house, and utilized the property without a Variance for a fence. Clearly, the Francisco's have done so also, now they are coming saying, oh we can't utilize it without a Variance."

Mr. Gilley replied, "The hardship is the land situation, and without having the yard fenced in, you can't really make any use of it."

Mr. Williams replied, "Well they can, the prior owners lived in it."

Mr. Gasparini asked Mr. Gilley, "What about the next fence? So if someone comes in to one of the other lots, and builds a fence in the river buffer and that particular fence, some of the neighbors do not like it, and maybe that is a question of taste, or a question of view, or a question of whatever, I do not know. That homeowner comes to us and says, we gave the Francisco's their fence, why I cannot have mine. Then it becomes a question of public opinion, and you know as well as I do, and the rest of us here, that is not how this is supposed to work. It's supposed to work as to whether the ordinance gets followed, and I am concerned less about this fence, and although it shouldn't have been built there, and then the next one, how do we tell the next person I'm sorry, they got theirs because their dogs wouldn't stay in, but you can't have yours. How would you suggest we deal with that?"

Mr. Gilley replied, "I think there's very workable standards which I put in my written comments. Is there harm to the environment or disturbance of the vegetation of the river buffer zone? Is there any harm to the development? Is there any harm to the public?"

It is a three-prong test, which it is easy to apply to objectively. I think that is how you would deal with each one that comes through."

Mr. Eric Greenway, Community Development Director stated to the Board, "Someone could put up a fence outside of the buffer, close to the riparian buffer; it could be installed as not to disturb vegetation in the buffer. All the work has to happen to install the fence outside the buffer; because you cannot install the fence on the buffer edge from within the buffer. Staff recommends disapproval."

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.

Mr. Gombocz supports the Variance request.

Mrs. Demko supports the Variance request.

Mr. Greaves supports the Variance request.

Mr. Inlow supports the Variance request.

Ms. Zapatka supports the Variance request.

Mr. Zapatka supports the Variance request.

Mr. Meyer supports the Variance request.

Ms. Fujiro supports the Variance request.

Mr. Peter Tallman supports the Variance request.

Public Comment Session closed.

Mr. Williams made a motion, "That we find based on the application, and the testimony we've heard this evening, that this Variance application does not meet the requirements of the Community Development Code 7.2.140.D in that absent the fence the property owner would not be prohibited or unreasonably restricted of the land and that the Variance request be denied."

Mr. Mack seconded the motion.

Mr. McGinnis stated, "I think you have a reasonable request, but we also have to consider what the laws of the County are. When you say that you are unable to use your property sufficiently, because you cannot build your fence, we have other people that come here, with other requests and they say that I cannot use my property at all, and that is not necessarily true because you can use the property. The owners before you, they were able to use the property without having a fence. Therefore, I am kind of in agreement with Mr. Williams; maybe take this to County Council and talk about what the rules are."

Mr. Rivers stated, "I want to grant this Variance because the fence guy should have known what he was doing. You have a legitimate reason; looking at the setbacks and the property lines. One problem was looking at the fence, and seeing just a portion of the fence over the property line. I said, if they would move that fence over, then I would grant the Variance."

Mr. Gasparini stated, "They apparently have gotten that piece of land deeded over to them, so it's not over the property line."

Mr. Mack stated, "I am sympathetic to you guys; I would definitely follow up with County Council."

Mr. Gasparini stated, "This is one of the difficult things that we have to do here, from my perspective, it is a little different. When you buy a piece of property here in Beaufort County, you take that piece of property as you find it. You take it subject to what has been built there, subject to what the laws are about what you build further there. There are a lot of homes in Beaufort County that

are built 35 feet, 20 feet, or however many feet it is from a river buffer, from an OCRM critical line, which creates a river buffer in your backyard. I agree with my colleagues, and I cannot grant this Variance."

MOTION: Mr. Williams made a motion to deny the Variance request. The application does not meet the requirements of Section 7.2.140.D. Mr. Mack seconded the motion. The motion passed (FOR: Gasparini, Mack, McGinnis, Rivers and Williams; ABSENT: Chemsak and Mitchell; VACANCY: None).

TURTLE TROUGH MINE – SPECIAL USE

Mr. David Karlyk stated, "I am with Carolina Engineering, and I'm here today representing my client Craig Henry. Mr. Henry is requesting a Special Use permit to dig a 4.8-acres burrow pit on his property on St. Helena Island. The dirt from the burrow pit will be used for the Harbor Island River Bridge project. Mr. Henry has approximately 600 acres on St. Helena."

Mr. Gasparini asked Mr. Karlyk, "What are they going to do with the bridge?"

Mr. Karlyk replied, "They are building a new bridge across Harbor River, from St. Helena to Harbor Island."

Mr. Gasparini asked Mr. Karlyk, "Are they going to keep the old one?"

Mr. Karlyk replied, "I believe the old one is going to be torn down."

Mr. Gasparini asked Mr. Karlyk, "Is it still going to be one lane in each direction?"

Mr. Karlyk replied, "I believe so, but it's going to be higher."

Mr. Mack asked, "Is there going to be a lot of discharge?"

Mr. Karlyk replied, "Any discharge will be pumped to the existing ten acre mine that Mr. Henry has on the property."

Mr. Gasparini asked Mr. Karlyk, "Have you seen the Staff recommendation? They are recommending approval with a list of conditions."

Mr. Karlyk replied, "Yes Sir."

Mr. Gasparini asked Mr. Karlyk, "Are you good with those?"

Mr. Karlyk replied, "Yes sir."

Mr. Gasparini asked Mr. Karlyk, "We are going to fence the burrow pit, right?"

Mr. Karlyk replied, "That's correct."

Mr. Gasparini asked Mr. Karlyk, "What about the hours of operation?"

Mr. Karlyk replied, "6:30 a.m. to 6:30 p.m., Monday through Saturday."

Mr. Gasparini asked Mr. Karlyk, "I'm a little bit of a noise guy and they will need to get into the burrow pit from some road; big trucks are going to have to go in and get the dirt, I'm just wondering if your client could live with slightly later hours in the morning, particularly on the weekend?"

Mr. Karlyk replied, "He has two existing operations out there currently. I'm not aware of any noise violations, or complaints from the neighbors."

Mr. Gasparini stated to Mr. Karlyk, "I understand that, but is he running dump trucks back and forth at 6:30 in the morning on Saturday?"

Mr. Karlyk replied, "I don't believe so."

Mr. Craig Henry stated, "I've never seen them run on Saturday."

Mr. Gasparini stated, "Here's the problem, if you give them permission to do that, they'll go do that. I am just wondering can the hours can be modulated."

Ms. Hillary Austin said, "Saturday at 7:30 a.m., is that too early?"

Mr. Gasparini replied, "I don't know, what do you all think?"

Mr. Williams stated, "I think 8:00 a.m. would be better."

Mr. Williams asked Mr. Karlyk, "Is that okay with you and your client?"

Mr. McGinnis asked Mr. Karlyk, "I see that you own a lot of the property surrounding this, and I see a lot of roads. Are any of these roads public accessible, are they publicly traveled?"

Mr. Karlyk replied, "A lot of them are dirt farm roads on Mr. Henry's property, they're not open to the public."

Mr. McGinnis asked Mr. Karlyk, "The maximum depth is 12 feet from the ground levels, are there any environmental concern getting into ground water?"

Mr. Gasparini stated, "We are going to change the hours of operation to 6:30 a.m. to 6:30 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. on Saturday."

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 was no public comment.

Mr. Williams made a motion, "That based on the application before us and the testimony we've heard today, this application meets the requirement of a Special Use Permit, and that we approve the permit with the conditions recommended by the County Staff with the exception of the one change in time."

Mr. Rivers seconded the motion.

MOTION: Mr. Williams made a motion to approve the Special Use Permit request with the conditions stated in the County Staff Recommendation and the hours of operation be changed to Monday through Friday 6:30 a.m. to 6:30 p.m. and Saturday 8:00 a.m. to 5:00 p.m. Mr. Rivers seconded the motion. The motion passed (FOR: Gasparini, Mack, McGinnis, Rivers and Williams; ABSENT: Chemsak and Mitchell; VACANCY: None).

ADJOURNMENT

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

The meeting adjourned at approximately 6:42 p.m.

Note: The video link of the October 24, 2019, Zoning Board of Appeals meeting is:
https://beaufort.granicus.com/player/clip/4553?view_id=15