



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, November 21, 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. Mark McGinnis
Mr. Cecil Mitchell, III
Mr. Chester Williams

MEMBERS ABSENT

Mr. Bernard Rivers

VACANCY

None

STAFF PRESENT

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

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:03 p.m.

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

REVIEW OF AGENDA:

The applicant requested to withdraw the application from the agenda.

Mr. Williams made a motion to amend the agenda removing items #7 and #8.

Mr. Mack seconded the motion.

MOTION: Mr. Williams made a motion to adopt the agenda with the change to remove items #7 and #8. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell and Williams; ABSENT: Rivers; VACANCY: None).

REVIEW OF MINUTES:

MOTION: Mr. Williams made a motion to adopt the October 24, 2019 minutes as written. Mr. Mack seconded the motion. The motion passed (FOR: Gasparini, Mack, McGinnis, and Williams; ABSTAIN: Chemsak and Mitchell; ABSENT: Rivers; VACANCY: None).

NEW BUSINESS

NICOLE SCOTT, NEXSON PRUET – K & R DEVELOPMENT (APPEAL CONTINUANCE)

Mr. Williams and Mr. Gasparini recused themselves from the consideration of the application because they represent the neighboring property.

Mr. Mack, Vice-Chairman, chaired the meeting.

Mr. McGinnis made a motion to grant the continuance of the application, until the December 19, 2019 meeting.

Mr. Chemsak seconded the motion.

MOTION: Mr. McGinnis made a motion to grant the continuance of the application until the December 19, 2019 meeting. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, McGinnis and Mitchell; ABSTAIN: Gasparini and Williams; ABSENT: Rivers; VACANCY: None).

Mr. Gasparini, Chairman and Mr. Williams rejoined the meeting.

ROBERTS SAMPLE JR. – BALL PARK ROAD LLC (ADMINISTRATIVE INTERPRETATION – APPEAL)

Mr. Williams stated that he represented Mr. Sample in an unrelated matter, and does not have a conflict of interest for this application. Mr. Williams will not recuse himself from this matter. Mr. Williams also stated that he has a professional relationship with Mr. Taylor.

Mr. Gasparini stated that he works with Mr. Williams at his law firm and he has a professional relationship with Mr. Taylor. Mr. Gasparini stated that he does not have a conflict of interest with this application and he will not recuse himself.

Mr. Thomas Taylor stated, "This appeal is from an interpretation from Mr. Greenway as it relates to Mr. Robert Sample's application to be able to continue a previously authorized and fully recognized nonconforming use of a Mobile Home Park out on St. Helena. Mr. Sample acquired the Mobile Home Park in early 2019; that he began to do work on. It is very important and undisputed that at the time he bought it, there was one mobile home on it, which had a continuing long-standing rental. There was already electrical use utilities in service at the Mobile Home Park. I believe, that the County recognizes this year, on the tax record the continuing validity of a Mobile Home Park. That this is and was a legal nonconforming use up until the time that the County Staff took a look at it, and then went on to opine earlier this year that the rental checks and the other evidence that was there apparently did not suffice under Mr. Greenway's observation to prove that there was a continuing use there. My argument is that this was an improper shift in the burden of proof necessary. Mr. Greenway's determination, that it had been abandoned came about from his supposed review of the certain parameters that are set forth in the Code. We believe that the evaluation should not start at the point where a legal nonconformity in the CDC Section 8.1.20 is presumed to continue until such time as it is abandoned. The code is very clear that this is a nonconforming safe harbor. The code provides that it is the general policy of the County to allow such uses to continue to exist. Therefore it is presumed, in this Community under the code that a legal nonconforming use recognized by the County will continue until it is abandoned. If there comes a time when it is appropriate for Staff to take the position, that something has been abandoned, then the Code is very clear. The steps used to analyze by the Director, or to look and see if steps have been taken by the property owner to resume the nonconforming use, there is a clear delineation by County Council that there has to have been an abandonment prior. In order to have a resumption in nonconforming use there has to have been a determination that it has been abandoned. In this case, I believe the Staff will admit that there has never been a determination prior to this, that it has been abandoned. In fact, there is clearly a continuing use, there is continuing electrical utilities, and the taxes paid as a Mobile Home Park."

Mr. Williams stated, "I don't see a definition in the Code for a Mobile Home Park."

Ms. Austin stated, "It's a Manufactured Home Community."

Mr. Williams stated, "That's the term we should be using instead of a Mobile Home Park."

Mr. Gasparini asked Mr. Taylor, "What steps has Mr. Sample taken to reinstate the lot?"

Mr. Taylor replied, "Mr. Sample has taken numerous steps. He has begun to right the electrical boxes that were not right, he has repaired the septic tank systems that has been left in disrepair and he has begun to repair the pads for the replacement homes."

Mr. Gasparini asked Mr. Taylor, "Does he need permits to do any of that?"

Mr. Sample stated to the Board, "Up until I got shut down, what I had done up to that point was, I was poking around trying to find my infrastructure with a mini excavator and that's when I got the call to stop. I had an electrical contractor come out to check the viability of the stands, I had No Cuts come out to identify the lines, I had SCE & G come out and I had Beaufort Jasper come out. I do not have public water but I have a well. I had different contractors to come out to check the lines and utilities."

Mr. Mack asked Mr. Sample, "Did you make repairs to the septic tanks?"

Mr. Sample replied, "I haven't made any repairs, the septic tanks are pretty good; I was trying to identify where they were."

Mr. McGinnis asked Mr. Sample, "How many home sites do you have?"

Mr. Sample replied, "It is nine or ten."

Mr. McGinnis asked Mr. Sample, "How many of those nine or ten sites do you believe are not in suitable repair for usage?"

Mr. Sample replied, "The stands have to be repaired. When the previous owner removed the homes, they messed up the stands."

Mr. McGinnis asked Mr. Sample, "At any time during the past several years, has there been less than two home sites occupied?"

Mr. Sample replied, "To my knowledge, I think they have."

Mr. Taylor stated to the Board, "The nonconforming uses have not been removed. There was never any intention to abandon the use when the property went into foreclosure."

Mr. Gasparini asked Mr. Taylor, "The nonconforming got started under the old code did it not; not this code? What did the old code say about Mobile Home Parks?"

Ms. Austin replied, "It has always been anything more than one mobile home on a piece of property. You have to establish a Mobile Home Park because you can only have one house per parcel. I don't know when this mobile home park was established."

Mr. Gasparini asked Ms. Austin, "If you had a Mobile Home Park under the old code and you had five people and four of them moved and you still had one, there wasn't a requirement that you had to close the park because you didn't have two people?"

Ms. Austin replied, "There was never a requirement that you close it, but you don't let it go for more than a year. There was always that nonconforming issue that says if you close the nonconforming use for more than a year or you don't use it, then you lose the grandfathering."

Mr. Gasparini asked Ms. Austin, "As long as someone was renting a mobile home that's a continuing use, is it?"

Mr. Taylor stated, "There was no definition in the former code as to a Mobile Home Park."

Mr. Greenway stated, "That issue is irrelevant what the old code says, it is grandfathered under the current code. That is what establishes the nonconformity."

Mr. Gasparini asked, "It doesn't have to conform with the current code if it's grandfathered, correct?"

Mr. Greenway stated, "The current code is what establishes the standards for approving nonconformity."

Mr. Gasparini stated, "It was established some time under the former code, and my understanding of how something gets grandfathered is, as long as it continues to meet the former code it gets to be a nonconforming use. You can't change the code to put the use away."

10 minute Recess

Recess ended

Mr. Gasparini asked Mr. Williams, "In order to continue a nonconformance, you would have to meet the old rules not the new ones, is that right?"

Mr. Williams replied, "It is the change in the rules, assuming what was then the mobile home park was legally established at the time it was established, it is the change in the rule by the adoption of the new code that makes it nonconforming."

Ms. Austin read the code, "In the old code, Manufactured Home Community was allowed in the rural zoning district as a limited use. The definition for that is, a parcel of land planned and improved for the placement of three or more manufactured homes for use as residential dwellings where home sites within the development are leased to individuals."

Mr. Williams asked Ms. Austin, "Are we agreed that the Manufactured Home Community that is there now would have been a legal nonconforming use?"

Ms. Austin replied, "Yes."

Mr. Williams asked Ms. Austin, "The County is willing to agree that upon the adoption of the new Community Development Code, that it was a legal nonconforming use?"

Ms. Austin replied, "Yes."

Mr. Taylor stated, "Was there a good faith analysis made by the Director as to whether or not there was an intention to abandon this and it should be allowed to continue as a legal nonconforming use."

Mr. Gasparini asked, "At some point the bank took over, how did that work?"

Mr. Sample replied, "The property managers was hired by the bank to manage the property."

Mr. Gasparini stated, "The bank had the property since 2014, and when did you buy it?"

Mr. Sample replied, "This year."

Mr. Greenway stated, "One of the key component to establishing a Mobile Home Park is the existence of manufactured homes in that park. This park has not operated as a Mobile Home Park for some period of time, in excess of a year. There has only been one mobile home on the property that was established by the power, receipts that I looked at, and the rent roll for that period of time, and I did not feel that I could in my power grandfather the Mobile Home Park. I wrote a determination denying his grandfathered use and I explained to him in my email that he had the right to appeal that decision to you all. It has not operated as a Mobile Home Park, in my opinion, and has not for several years. This is not a grandfathered Mobile Home Park in the eyes of the Staff."

Mr. Williams asked Mr. Greenway, "The primary basis for your determination was that there was not two or more manufactured homes on the property?"

Mr. Greenway replied, "That is correct."

Mr. Williams asked, "What zoning district is the property located in?"

Ms. Austin replied, "T2R."

Mr. Williams asked, "What's the residential density in that district?"

Ms. Austin replied, "One per three."

Mr. Mitchell asked Mr. Greenway, "When you established it, there is only one mobile home in that park, you did that through pictures?"

Mr. Greenway replied, "I did it through aerials and the rent roll."

Mr. Mitchell stated, "I just saw two open electric service accounts and I am trying to figure out how we know that there wasn't two mobile homes, up until six months ago."

Mr. Gasparini asked Mr. Greenway, "Is it undisputed that this gentleman, Mike Pope, has a mobile home out there and lives in it?"

Mr. Greenway replied, "Yes, there is a mobile home on the property and someone does reside there."

Mr. Gasparini stated, "The way I read the rent roll, there are nine spots and all of them are vacant except for Mr. Pope's. If I understand your argument, as soon as less than two of them are occupied then it can't be grandfathered any more, is that the way I understand your determination?"

Mr. Greenway stated, "That is correct. The zoning district allows based on the size of the property and without a subdivision on the property, it allows one dwelling on the property. There is one dwelling on the property right now in accordance with the zoning district."

Mr. McGinnis asked Mr. Greenway, "Is that for up to one year?"

Mr. Greenway replied, "Yes, that's correct."

Mr. Gasparini asked Mr. Greenway, "How do you stay grandfathered if you have to meet the new code anywhere?"

Mr. Greenway replied, "You stay grandfathered by maintaining the grandfathered use of the property."

Mr. Gasparini asked Mr. Greenway, "Doesn't Mr. Pope's dwelling establish that?"

Mr. Williams stated, "The old code required three manufactured homes on the property."

Mr. Gasparini stated, "It required it to establish the Mobile Home Park. As Mr. Mitchell suggested, if there is a period of time when you can't rent to people, do you lose your business?"

Mr. Greenway stated, "They haven't made necessary repairs or attempted to do so for many years. Our position as Staff is that the time frame for him to do that has expired because it has been more than one year that this grandfathered situation has expired, so now it's too late."

Mr. Gasparini asked, "So the County's position is that it expired before Mr. Sample ever got the property?"

Mr. McGinnis asked, "When was the last time there were other mobile homes out there even if they were unoccupied?"

Mr. Sample replied, "I am not sure."

Mr. Gasparini stated, "So we think this got established even before the old code was adopted."

Ms. Austin replied, "Yes."

Mr. McGinnis stated that there was no intent to abandon it, since the bank had hired a managing company to operate it even if they didn't have more than one."

Mr. Williams asked Mr. Greenway, "Is the tract that we are talking about a parcel of land planned and improved for the placement of three or more manufactured homes for the use as residential dwellings?"

Mr. Greenway replied, "I can't say that, there is no evidence to that at this point."

Mr. Williams stated, "There is a recorded plat that shows seven mobile homes on it and we have agreed that it was a legal nonconformity upon the adoption of the new code. Mr. Williams asked, does the property still meet the old code definition of a Manufactured Home Community?"

Mr. Greenway stated, "I don't have any evidence proving that."

Mr. Mitchell made a motion to overturn the County's determination that the pre-existing legal nonconforming use was abandoned for more than one year.

McGinnis seconded the motion.

Mr. Chemsak asked, "How many lots would this be approved for?"

Mr. Gasparini stated, "The Board is not making a determination about how many homes are allowed there."

MOTION: Mr. Mitchell made a motion to overturn the determination made by the County, that the pre-existing legal nonconforming use was abandoned for more than one year. The property shall remain as an existing legal nonconforming use for a Mobile Home Park. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis, Mitchell and Williams; ABSENT: Rivers; VACANCY: None).

ADJOURNMENT

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

The meeting adjourned at approximately 6:14 p.m.

Note: The video link of the November 21, 2019, Zoning Board of Appeals meeting is:
https://beaufort.granicus.com/player/clip/4592?view_id=15