



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, January 23, 2020, 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. Chester Williams

**MEMBERS ABSENT**

Mr. Bernard Rivers  
Mr. Cecil Mitchell, III

**VACANCY**

**None**

**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 5:02 p.m.

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

**REVIEW OF AGENDA:**

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

**REVIEW OF MINUTES:**

**MOTION: Mr. Mack made a motion to adopt the December 19, 2019 minutes as written. Mr. McGinnis seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis and Williams; ABSENT: Mitchell and 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 owner.

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

There was no quorum to vote on the continuance.

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

### **JOHN GRABOWSKI – SETBACK VARIANCE**

Mr. John Grabowski is requesting a setback variance from section 5.2.9, Table 1, paragraph 2 of the 1990 Development Standards Ordinance to construct a detached golf cart garage, 1-foot and 9-inches from the property line. Mr. Grabowski stated, “The garage cannot be attached to the existing garage because there is no adequate space between the existing garage and the road. The proposed golf cart garage will be constructed to the rear of the house. In order to accomplish this, I need 14 feet. This will leave 25 feet to the road.”

Mr. Chemsak asked Mr. Grabowski, “You put in your application that you want to be able to compete in current or future real estate markets for a dwelling this size, is that correct?”

Mr. Grabowski replied, “That’s correct.”

Mr. Eric Greenway, Community Development Director stated, “This is a golf course Community that was developed many years ago with smaller lots. The applicant does not meet all four standards for the granting of a variance. The result of this variance is necessitated based on the creation of the hardship by the size of the homes on the property, which does not make an allowance to meet the requirements of the Community Development Code for the golf cart structure, so Staff recommend disapproval.”

Mr. Williams stated to Mr. Grabowski, “One of the criteria that we are required to address in reviewing a variance application is, whether or not there is extraordinary and exceptional conditions that are not the result of the actions of the land owner. One of the factors that do not constitute sufficient grounds for approval of a variance permit includes, the fact that the land or structure may be utilized more profitably or be more marketable with a variance permit. It seems to me that what you are arguing is the extraordinary and exceptional conditions, which is exactly something that we are prohibited from considering as a ground for a variance.”

Mr. Grabowski replied, “I could build a golf cart garage up to the setback, however, it wouldn’t look like it is part of the original structure without a breezeway.”

Mr. Gasparini asked Mr. Grabowski, “You said that you could build a golf cart garage right up to the setback that wouldn’t need a variance, how would it be different? Would it be 1-foot and 9-inches narrower?”

Mr. Grabowski replied, “There would not be a breezeway between the house and the new structure.”

Mr. Grabowski approached the bench. The Board discussed the different sketches.

### **PUBLIC COMMENT**

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

The Architect, Mr. William Fox stated, “When we had the initial meeting we found out, that in order to do what we felt needed to be done, it had to be a variance. It is a patio lot and all patio lots in Dataw have

a 3-foot setback on one side and 7-foot setback on the other side. Mr. Grabowski's lot is on a corner, which has the 3-foot setback. On that corner lot, he is about 30 feet from the road. There is also another road with a common ground beyond that road. Knowing that we had to go through a variance, we went to the Dataw Review Board and requested a variance of 1-foot and 9-inches and they granted the variance. As the Architect I am in favor of this variance."

Mr. Gasparini asked Mr. Fox, "Is there any way to build this without going into the setback?"

Mr. Fox replied, "Facing Locust Fence there is no way that we can put a cart barn addition there because we are right up to the property line. The only way that it can be configured, is on the Malilly Run Road. Also, the breezeway separates the cart path from the existing structure."

Mr. Gasparini asked Mr. Fox, "Can the cart barn be 2 feet narrower?"

Mr. Fox replied, "Probably not."

**Public Comment Session closed**

Mr. Williams made a motion to deny the variance request. Mr. Williams stated, "There is another place to put the cart barn, which is not as desirable for the applicant as the proposed location. The other location would not require a variance. I do not see an extraordinary or exceptional condition that exist that warrant a variance."

Mr. Chemsak seconded the motion.

**MOTION: Mr. Williams made a motion to deny the variance request. There is another location to construct the cart barn, which does not require a variance. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, McGinnis and Williams; OPPOSED: Gasparini; ABSENT: Mitchell and Rivers; VACANCY: None).**

**EVERSOLE LAW FIRM C/O HORSE SHOE CRAB FACILITY / MINING – SPECIAL USE**

Alysoun Eversole, Eversole Law Firm stated, "We are applying for an Aquaculture pond for a horse shoe crab facility. One of the requirement is a Special Use permit for mining, because of the amount of dirt leaving the site."

Mr. Williams asked Mrs. Eversole, "What does Mr. Gault do with horse shoe crabs?"

Mrs. Eversole replied, "He takes them to a facility for medical purposes."

Mr. Williams asked, "How long will the actual construction of the burrow pit take?"

Mr. Joe Pizzo with Joco Construction stated, "This is a fairly shallow pond that will be dug to a zero elevation. The problem with time frame is, that we have to make part of it operational, because the season is in May. We may look at digging half of the pond now and the other half later."

Mr. Williams asked Mr. Pizzo, "Will all of the construction work for the digging of the hole and the laying of the pipes be completed within a year?"

Mr. Pizzo replied, "Yes."

Mr. Williams asked, “Does the Special Use permit go to just the excavation for the pond or for the long-term operation of the Aquaculture?”

Ms. Austin replied, “Excavation.”

Mr. Williams asked Mrs. Eversole, “If we were to put another condition, that all of the work has to be completed in a year, would that be acceptable?”

Mr. Eric Greenway, Community Development Director stated, “Staff recommends approval. We agree with the conditions. If you are going to put a limitation on the period to construct the pond, we ask that you do not restrict it. Take into account the weather allowance. If you shorten, the time-period to build it that may cause a bigger impact on the neighborhood versus spreading it out over a period of time. We ask that you extend it to a year and a half.”

Mr. Williams made a motion to approve the Special Use permit to include the seven conditions recommended by the Staff in their report. Also changing the hours of operation from Monday through Friday to start at 7:30 A.M., and establishing a life on the Special Use permit of 18 months.

Mr. Mack seconded the motion.

**MOTION: Mr. Williams made a motion to approve the Special Use permit to include the seven conditions recommended by Staff, changing the hours of operation from Monday through Friday to start at 7:30 A.M., and establishing a life on the Special Use permit of 18 months. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis and Williams; ABSENT: Mitchell and Rivers; VACANCY: None).**

#### **JOSEPH KLEIN – REAR YARD SETBACK VARIANCE**

Maureen Klein stated, “We are trying to construct a screened porch on the back of our property. A number of issues came up last month on the concept of where we want to put our screened porch. The Staff memorandum states that we can put this porch somewhere else. We cannot put this somewhere else. We have had two architects over to discuss this issue. If we want to put it over the patio, we will have to take off the entire roof and totally restructure the house to put something there, because the structure has to come off of the house to look like part of the house, which is a requirement for Moss Creek, therefore; that’s the only place we can put it. Last month we indicated that we do not have a utility easement to the rear of our property. We did go to our utility company and there was no conflict. There are no utilities to the rear of our property; they are all in the front.”

Mr. Gasparini asked Mrs. Klein, “Is there a utility easement back there with no utilities?”

Mrs. Klein replied, “Yes.” Mrs. Klein also stated, “The letter written from Susan Brown, states that there are no specific setbacks required for Royal Pointe. If you look at our plot plan for our home and the two that are on either side, Lot 901 and Lot 903, they are both actually on their lot lines.”

Mr. Gasparini asked Mr. Greenway, “Isn’t Moss Creek a PUD?”

Mr. Greenway replied, “Yes, and there are setbacks.”

Mr. Williams asked Mrs. Klein, “Why is there a different setback on their lot as opposed to your lot?”

Mrs. Klein replied, "I have no idea."

Mr. Williams stated, "It looks like the addition is slightly more than 10 feet away from the rear property line. It would line up essentially with the back of your house and the screened porch that you want to add on would go out another 8 feet past where their screened porch is."

Mrs. Klein replied, "That's correct."

Mrs. Klein stated, "Lot 903 has a pool in the back and they are up against their property line. On the far right, they are 7 feet from the lot line."

Mr. Williams asked Mrs. Klein, "Your rear property line and the rear property line of Lot 901 and Lot 903 is a straight line, correct?"

Mrs. Klein replied, "Yes."

Mr. Williams stated, "The fact that there is an easement there as shown on the subdivision plat means that someone has the right to put utility lines there if it's appropriate or necessary."

Mrs. Klein stated, "There is a ten acre Pecan Grove and we have a drainage ditch out in the back, so the chance of utility lines going in there since they are all in the front of the property is probably null."

Mr. Williams stated to Mrs. Klein, "The problem is that you are asking us to grant a permit for you to encroach into an existing easement area and I am not sure that we have the authority or the ability to do that." Mr. Williams also stated, "You want to be 2 feet off of your property line, so that means that you are over 8 feet into that easement area and I have a problem with that."

Mrs. Klein stated, "We are putting in a screened porch so we don't get bitten by bugs. What is the hardship that somebody else is going to have?"

Mr. Williams asked Mrs. Klein, "What is the hardship that you have that justifies the granting of the variance?"

Mrs. Klein replied, "The hardship is that I want to enjoy my land. I want to enjoy the natural beauty of the land we have and the environment, I can't do that with the bugs."

Mr. Williams stated, "It need to be a hardship associated with the land because of the topography or the narrowness or the shallowness and configuration of the lot, and bugs doesn't rise to that level."

Mr. Chemsak asked, "Where does the utility easement start?"

Mr. Williams stated, "The easement is shown on the subdivision plat and it is 10 feet along the rear property line."

Ms. Austin replied, "It is 5 feet."

Mr. Williams stated, "If it is 5 feet, then neither of the houses on either side have any encroachment into that easement. On Lot 903 they are 7 feet away from the property line and on Lot 901 they are almost 10 feet from the property line, and you want to be 2 feet away from the property line?"

Mrs. Klein replied, "Right, because we have no option."

Mr. Eric Greenway, Community Development Director stated, "Through my experience and past dealing with the Building Codes, I just checked with our Building Officials and I was under the impression that any structure less than 4 feet of the property line has to start getting into the fire rating walls. I confirmed with the Deputy Building Official, that any structure less than 4 feet to a property line has to have a fire rated wall. So, they wouldn't be able to build the screened porch even with relief in this particular location because it is less than the standards."

Mr. Chemsak asked Mr. Greenway, "The building code about the 4 feet and the fire wall, does that include a property like this or only properties that have houses adjacent to them?"

Mr. Greenway replied, "Any structure adjacent to the property line."

Mr. Williams asked Mrs. Klein, "As I understand it, the hardship that you have is the bugs."

Mrs. Klein replied, "The bugs and the fact that we can't put it anywhere else."

Mr. Williams stated, "One of the factors that do not constitute sufficient grounds for approval of a variance include, hardships resulting from factors other than application of the standards of this Development Code. The Code does not deal with bugs and it does not deal with rooflines. I have a difficult time considering a variance application that is going to encroach into an existing utility easement. It is not an issue, whether or not there are utility lines there, it is a question of whether or not there may at some point be utility lines there."

Mrs. Klein asked, "Why would there be?"

Mr. Williams stated, "I don't know the answer to that, there may never be, but the possibility exist. In addition, the Chairman asked for information to the adjoining sides, and the house on the left of you, the closest they come from that rear property line is 7 feet. The house on the right of you, the closest they come is 9 feet and 9 3/4 inches. You are asking for substantially more than either neighbors. There is not enough room where you want to put that porch."

Mrs. Klein stated, "Our house is set back farther on the lot than their homes."

Mr. Williams stated, "We are talking about what you want to add on, because what you want is going to be closer to the lot line than either of the other houses."

### **PUBLIC COMMENT**

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

Mr. Klein stated, "As for the fire setback, there are a lot of buildings that are built within 2 feet on the side. Moss Creek is trying to improve the Community and if you look at my plat, when my house was constructed, it was within 1-foot of the property line."

**Public comment session closed.**

Mr. Williams stated, “The major stumbling block that I have is, I don’t think we are in a position to grant a variance that would allow for the encroachment into a recorded utility easement. I would move that we find that this application does not meet the requirements for the granting of a variance set forth in the Community Development Code Section 7.2.140.D and that we deny the variance application.”

Mr. Chemsak seconded the motion.

**MOTION: Mr. Williams made a motion to deny the application request for a setback variance; application does not meet Section 7.2.140.D of the Community Development Code. There is also a recorded utility easement. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, McGinnis and Williams; ABSENT: Mitchell and Rivers; VACANCY: None).**

### **ELECTION**

The election of the Chairman and Vice-Chairman is postponed until the next meeting.

### **ADJOURNMENT**

The meeting adjourned at approximately 6:19 p.m.

Note: The video link of the January 23, 2020, Zoning Board of Appeals meeting is:  
[https://beaufort.granicus.com/player/clip/4642?view\\_id=15](https://beaufort.granicus.com/player/clip/4642?view_id=15)