



## COUNTY COUNCIL OF BEAUFORT COUNTY

### Beaufort County Planning & Zoning

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The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, February 24, 2022 at the Beaufort County Administration Bldg., Council Chambers, Beaufort, South Carolina.

#### **MEMBERS PRESENT**

Mr. Kevin Mack, Chairman  
Mr. Chester Williams, Vice Chairman  
Mr. John Chemsak  
Mrs. Jane Frederick  
Ms. Lynne Hoos  
Mr. Cecil Mitchell

#### **MEMBERS ABSENT**

#### **VACANCY**

1 Member

#### **STAFF PRESENT**

Mr. Eric Greenway, County Administrator  
Mr. Robert Merchant, Planning/Zoning Director

#### **ATTORNEY PRESENT**

None

**CALL TO ORDER:** Mr. Mack called the meeting to order at 5:00 p.m.

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

**FOIA – PUBLICATION NOTICE:** Mr. Mack asked if all public notices were sent out, Mr. Merchant verified that they were.

#### **ADOPTION OF AGENDA:**

**MOTION: Ms. Hoos made a motion to adopt the agenda. Mr. Williams seconded the motion. The motion passed unanimously.**

**ADOPTION OF MINUTES: None**

#### **GRAHAM TRASK – DRIVE THRU RESTAURANT SPECIAL USE (REVISIT)**

Mr. Trask stated that he has been to the Staff Review Team (SRT) five (5) times and to the Zoning Board of Appeals (ZBOA) five (5) times also. He stated that he has followed the law each time. A coffee shop with drive-thru is allowed in the zoning district as a Special Use.

Mr. Williams stated that a Special Use is a use that requires heightened scrutiny.

Mr. Trask asked that he not be interrupted and continued to state that the only condition of the use is that it be reviewed by the ZBOA. The question is not if the use is allowed, but how. He stated that his plan shows a stacking load of 17 vehicles which is greater than the County's requirements. He continued to state that

Special Uses must be approved meeting the following requirements. 1) Meets the zoning requirements – Yes. 2) Is consistent with the County’s Comprehensive Plan and Development Code – Yes. (3) The Comprehensive Plan defers to the Ladys Island Plan – Yes. (4) The Ladys Island Plan specifically dictates that projects such as his belongs in the Ladys Island Crossroads district which is where this project is located. Additionally as encouraged by the Ladys Island Plan, this plan improves the bikes and pedestrian languages. 4) The plan is compatible with the immediate vicinity – Yes. There will be no adverse effects on adjacent lands. All adjacent landowners are in support of the project. Adverse impacts are mitigated by incorporating the Traffic Impact Analysis (TIA) requirements.

Mr. Trask continued to state that there are no adverse effects on the environment. No increase for government services. He continued to state that he has met all standards for the special use, therefore, the Board has no lawful reason to deny the Special Use Permit.

Mrs. Frederick stated she looked at the County’s site and it appears that the sidewalk that goes to the Professional Village is private property. She asked if an agreement has been worked out with the property owner.

Mr. Williams stated that the point he was trying to make before is, Mr. Trask has stated that the use is permitted, but the Code states it may be permitted, that’s the distinction he was trying to make earlier.

Mr. Merchant stated that at the last meeting, the two (2) big concerns were based on the site plan that had two (2) exiting lanes and one (1) lane entering the site. Staff had recommended that those conditions be met at final review, but the Board wanted to see the revised plan. He also stated that he agrees with Mr. Trask’s statement that the County has been working with him to meet a set of conditions, but the language of the Special Use states “Uses designated as requiring a Special Use Permit may be appropriate in the zone but because of the nature or external effects, required special considerations of its location, design and methods of operation before it can be deemed appropriate with the surroundings”.

Mr. Merchant continued to state that another issue that he needs to bring to the Board is the Planning Department has taken to the Planning Commission’s December 6, 2021 meeting a series of amendments that would address some of the confusion that came up in the October 2021 meeting in respect to the way the building addresses the street and the way it is configured on the site. At the meeting, the Planning Commission members specifically requested that staff add additional restrictions that the use provides access from a secondary street. The changes were sent on to the Natural Resources Committee of County Council and they were adamant that all drive-thru restaurants have a secondary means of egress from the site. That amendment is going to County Council at the February 28<sup>th</sup> meeting. Because of that amendment, Staff cannot support granting a special use approval at this time because it is the will of the Planning Commission.

Mr. Williams asked that although the application meets all of the pertinent review standards for the Special Use, you would like to hold up Mr. Trask and change the rules in the middle of the game?

Mr. Merchant answered that it is the County Council who wants to change the rules.

Mr. Williams asked if it is County Council’s decision to send a clear message that violates Mr. Trask rights?

Mr. Merchant answered that it is not staff’s decision, it is up to the ZBOA to make the decision by applying all of the criteria in Article 7 in order to render a decision.

Mr. Williams asked if the staff is disavowing the recommendation of February 10<sup>th</sup>, 2022?

Mr. Merchant answered yes, he met with other staff members including the County Administrator and that is the decision.

Mr. Williams stated that he needed a detail explanation of how these recommendations have changed.

Mr. Merchant stated he has a revised Staff Report, which he handed out to the Board members.

Mr. Chemsak stated that he has spent a long time reviewing the existing report, and for the staff to present a different report at the meeting which changes the recommendation, it is sending a wrong signal.

Mr. Greenway asked if the staff's recommendations recommended approval?

Members of the Board stated yes.

Mr. Greenway stated that every day he drives pass the two drive-thru restaurants around 12:00 p.m. the traffic is backed up on to Boundary Street. One of those restaurants is Dunkin Donuts, the other is Chick-Fil-A. These restaurants block me from getting to my home at lunch time. Drive-thru restaurants are creating a problem all across this County and other jurisdiction. Staff has to evaluate how drive-thru's are operating and how they are likely to operate in the foreseeable future. Mr. Trask's proposed Dunkin Donuts is located on a route that will undergo transportation improvements in a few years, until that time occurs there could be severe transportation conflicts and severe transportation problems. The Natural Resources Committee asked Staff to look at some additional things down to the severity of saying that a drive-thru restaurant could not have a curb cut on any major road in the County, that all of their access should come from a secondary drive. Mr. Greenway continued to state that with that recommendation, that he as a Planner, and the County Administrator was uncomfortable making that recommendation.

Mr. Merchant did not change his recommendation arbitrarily, he changed them based on the request of the Natural Resource Committee.

## **PUBLIC COMMENTS**

Mr. Kevin Zahner spoke against the project.

Mr. John Schueler spoke against the project.

Ms. Jessie White spoke against the project.

Ms. Judy Smith spoke against the project.

Ms. Charity Summers spoke against the project.

Ms. Vicki McGahee spoke against the project, she also stated that there are 943 signatures on a petition that is against the project.

Ms. Annette Baker spoke against the project.

Mr. Chuck Newton spoke against the project.

Ms. Kathleen Laucreti spoke against the project.

Mr. Peter Somerville spoke against the project.

Ms. Bonnie Kristolic spoke against the project.

Mr. Carter Hoyt spoke against the project.

Ms. Nancy Hayes spoke against the project.

Ms. Pam Goldschmidt spoke against the project.

Mr. Dick Stewart spoke against the project.

Ms. Ashley Twombly spoke for the project.

Mr. Blaise Castellano spoke for the project.

Ms. Jamie Rankin spoke for the project.

Mr. Mack closed the Public Comment.

Mr. Trask stated that he has followed the law and the rules. His project is in the Crossroads District of the Ladys Island plan and meets all of the zoning requirements and therefore is consistent with the Comprehensive Plan. It will not have any adverse impacts on the environment and the neighbors, and he has done everything possible to mitigate the traffic problems.

Mr. Williams stated he wanted to ask Mr. Merchant a few questions. 1) Is this proposed use consistent with the Comprehensive Plan, goals, purposes, objectives, policies and applicable standards for building and structural intensities and densities?

Mr. Merchant answered in terms of it meeting the zoning ordinance which allows for provisions for drive-thru, there are other factors that we are concerned about with a single entrance and exit into the site, we do not feel the project is meeting the traffic safety goals of the plan.

Mr. Williams asked, didn't the County's Traffic Engineer approve the TIA?

Mr. Merchant stated yes, the TIA recognized that there is a failing intersection and it did not offer any off site mitigation.

Mrs. Frederick stated that the Boards responsibility as outlined in the community Development Code is for the Board to take all of the information including the public's comments into consideration when making a decision on a Special Use. She continued to state that this project is not in keeping with the Comprehensive Plan for the following reasons. 1) Ladys Island Village Center is a focused planning area. 2) Allowing the local communities to determine their vision and define their growth. We have heard from the local community with 940 plus signing a petition opposing the drive thru restaurant, I have received 177 emails opposing the drive-thru restaurant. There was one in favor out of the number of people that spoke out tonight. We need to listen to the citizens of Ladys Island and the people that use this area.

The Ladys Island plan sets out common goals that are developed into seven (7) things and one (1) of them is very important, and that is to create a walkable Ladys Island Center.

**MOTION: Mrs. Frederick made a motion to deny the Special Use because it does not meet the requirements of the County Development Code. It is not consistent with the Comprehensive Plan for the following reasons.**

- (1) The Ladys Island Village Center is a focus planning area on Page 115 of the Comprehensive Plan. Five (5) principles are laid out for the focus planning area, we believe in allowing local communities to determine their vision. The goal of the Ladys Island Plan is to create a walkable Village Center.**
- (2) The ZBOA's responsibility is to take into account all of the information presented, including the public comments. We have heard from the local community with 941 signing a petition opposing the drive-thru restaurant, 177 emails opposing the drive-thru restaurant, one (1) in favor and a large number**

**of people who have shown up at this and previous meetings opposing the drive-thru restaurant. There are a few supporting it, but the majority is definitely opposed to it. Therefore, I move to deny the special Use Permit. Mrs. Hoos seconded the motion.**

**Mr. Williams called for a discussion on the motion.**

**Mrs. Frederick modified her motion to deny and added that the project did not meet Item 1 and Item 4 of the Special use requirements. The motion passed: FOR: Frederick, Hoos, Mack, Mitchell. AGAINST: Williams, Chemsak.**

#### **PAUL HARTLEY'S RIVER BUFFER VARIANCE**

Mr. Hartley stated they are requesting a variance to construct a pool in the river buffer. The pool will be located eight (8) feet from the edge of the driveway, and because of safety issues are requesting the variance.

Mr. Chemsak made a suggestion to install a wall at the end of the driveway.

Mr. Williams suggested that the applicant rotate the pool which would get most of it out of the river buffer. One of the criteria for a variance is that the least impact be considered.

Mr. Merchant stated that the Staff position is that this does not meet the criteria for a variance. There are specific criteria for a waiver for a house, those criteria do not apply to accessory uses. Staff considers the pool to be impervious and the request does not meet any extraordinary and exception condition for a variance.

Mr. Mack called for Public Comment.

No Public Comment.

Mr. Mack suggested to the applicant to ask for a continuation so that they can rotate the pool and move out of the River Buffer.

Mr. Hartley requested a continuation.

**MOTION: Mr. Chemsak made a motion to continue the request to the next meeting. Ms. Hoos seconded the motion. The motion passed unanimously.**

#### **MARTIN SNODDY SIDE YARD SETBACK VARIANCE (ACCESSORY USE)**

Mr. Snoddy states that he is applying for a variance to place a metal carport on the side of his house to keep his work truck and work equipment out of the rain. He is asking for a variance of 2-feet from the side property line. The Code required a 5-feet setback for accessory structures. He continue to state that he is unable to place the carport anywhere else on the property because of the septic system and the irrigation area. He also stated that the neighbor who would be most affected is okay with the variance.

Mr. Merchant stated that staff recommended disapproval because this variance would be adding to the nonconformity of the site. Presently, there is one carport that sits on the property line, now we are looking at another carport that will sit at 2-feet from the property line. According to Ms. Austin who prepared the report, this situation would be restricting access to the rear of the property, in case there is some type of emergency.

Mr. Chemsak asked if the applicant could make the carport 10-feet instead of 12-feet?

Mr. Snoddy stated that he thinks he could make it 10-feet but he would have to explore more options.

Mr. Mack called for Public Comment.

No Public Comment.

Mrs. Frederick stated that Mr. Snoddy should look at a 10-foot carport since that would be the least needed for the variance. She also asked if Mr. Snoddy would like a continuance to pursue that option.

Mr. Snoddy requested a continuance until the next meeting.

**MOTION: Mr. Williams made a motion to grant a continuance for this request. Mr. Chemsak seconded the motion. The motion passed unanimously.**

### **KENNETH GLASSON APPEAL**

Mr. Glasson stated that he is appealing the Zoning Administrator's decision to not grant him a permit to conduct Short-Term Rental in the Habersham PUD. He stated that the covenants for Habersham does not restrict short-term rental.

Mr. Merchant stated that from Staff's standpoint the laws that govern this use are the regulating plan for Habersham. It is a Planned Unit Development and it has its own standards that govern that community. In our code we define short-term rentals as an accommodation/lodging. In the regulating plan that governs Habersham, lodging is restricted to areas on the plan that are defined as Neighborhood Center and Neighborhood Center Island Commercial, and those are primarily along Market Street in Habersham.

Mr. Williams asked if the plan that they have in front of them that has a stamp stating the plan was amended, was that amendment done by staff or council?

Mr. Merchant stated he would have to research that amendment. We have PUD amendments that are minor amendments that can be approved at the staff level and they we have major amendments that we bring to the Planning Commission and County Council. He also stated that he is not aware of any major amendments to the masterplan.

**MOTION: Mr. Williams made a motion stating we can't treat similar situated landowners differently and based on the prior decision we made in a similar circumstance that we reverse the decision of the Director and approve the short-term rental. Mr. Chemsak seconded the motion. The motion passed unanimously.**

Mr. Greenway stated for the record that there will be permits issued and accommodation taxes for this use.

### **ADJOURNMENT:**

**MOTION: Mrs. Frederick made a motion to adjourn. Ms. Hoos seconded the motion. The motion passed unanimously.**

The meeting adjourned at 7:51 p.m.