



COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development

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The scheduled meeting of the Beaufort County Zoning Board of Appeals (hereafter known as the ZBOA), was held on Wednesday, December 14, 2005, in Council Chambers of the Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Chester Williams, Acting Vice Chairman Mr. Bill Bootle
Mr. Phillip Leroy Mr. Claude Dinkins

MEMBERS ABSENT

Mr. Thomas Gasparini, Chairman Mr. Kevin Mack
Mr. Edgar Williams, Vice Chairman

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mrs. Lisa Glover, Zoning Analyst III

CALL TO ORDER: Mr. Chester Williams called the meeting to order at 5:05 p.m.

NOMINATION OF TEMPORARY CHAIRMAN:

Mr. Chester Williams asked the board to make a motion to nominate a temporary Chairman.

MOTION: Mr. Dinkins made a motion to nominate Chester Williams as temporary Chairman. Mr. Leroy seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Leroy, C. Williams). Mr. Chester Williams stated to the board that without objection, he agreed to serve as temporary Chairman.

INVOCATION: Mr. Chester Williams led those assembled in prayer.

REVIEW OF AGENDA

MOTION: Mr. Dinkins made a motion to adopt the agenda as submitted. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Leroy, C. Williams).

Mr. Chester Williams stated to the board that he has to recuse himself from consideration of the Bull Point Appeal because of prior dealings with clients who are in an adversarial relationship in years past with Bull Point, so there will not be a quorum to hear the Bull Point Appeal. Ms. Austin will schedule a date for a special meeting prior to the January 25th ZBOA Meeting.

Ms. Cantwell, the attorney representing Bull Point, stated that her client had no objection, but agreed she be notified of the special meeting.

WAYNE MEDLIN (VARIANCE)

Mr. Medlin stated to the board that the lot is very small, and the marsh completely ate up the setbacks. Mr. Medlin stated that the septic system is on the left, so this is the only place he could put the house.

Ms. Austin asked Mr. Medlin, "Will the porch be covered?"

"Professionally we serve; Personally we care!"

Mr. Medlin answered, "Yes".

Ms. Austin asked the board to allow Mr. Medlin to trap the water, and plant some vegetation.

Mr. Gasparini asked Ms. Austin, "Did the Development Review Team look at this request?"

Ms. Austin said, "No"; this house is extending close to the critical line.

MOTION: Mr. Leroy made a motion to approve the variance as submitted with two conditions, trapping the water for drainage, and provide a landscape plan for the vegetation buffer. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Leroy, C. Williams).

TRENA & SANDY COOLER (VARIANCE)

Mr. Sandy Cooler explained to the board that he has a shed in his backyard, and it is within the 50-foot OCRM setback line.

Mr. C. Williams asked Mr. Cooler, "What exactly are you asking the board to do?"

Mr. Cooler stated that he want to leave the shed at the current location.

Mr. Dinkins asked Mr. Cooler, "How long has the shed been there?"

Mr. Cooler said, "Approximately 2-3 years".

Ms. Austin explained to the board that this shed was placed on the property without a permit. Ms. Austin stated that sheds does not belong in critical lines, and sheds are not supposed to be left closer than 50 feet from the OCRM critical line. Ms. Austin stated that the next-door neighbor called and said that Mr. Cooler put a shed on his property, and it was blocking his view. Codes Enforcement went out to the site to look at the shed, and at that time they found that the shed did not meet the 50-foot setback.

Mr. C. Williams asked Ms. Austin, "Did the Zoning Office receive any comments regarding this case?"

Ms. Austin said, "No".

Mr. Leroy asked Ms. Austin, "When was the shed put on the property?"

Ms. Austin stated, "I really doesn't know".

Mr. C. Williams asked Mr. Cooler, "Is the adjacent property owner here, and was a notice sent out to him?"

Mr. Cooler stated that he sent the notice to the next-door neighbor that was renting the house, not the property owner. Mr. Cooler stated that none of the neighbors objected to the placement of his shed.

Mr. C. Williams asked Mr. Cooler, "Did you want to ask for a continuance of this case until you mailed out the notice to the applicant?"

Mr. Cooler said, "Yes", he wanted to ask the board for a continuance until he can send out the notice to the adjacent property owner.

MOTION: Mr. Leroy made a motion to continue this case until all notices are sent out. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Leroy, C. Williams).

JAMES & ARTHUR SR. (VARIANCE)

Mr. Jim Brown, son of the applicant, stated to the board that he is requesting an appeal to place his house at the proposed location from the OCRM critical line. Mr. Brown stated that the Development Review Team denied the variance, so he is asking for an appeal.

Ms. Austin stated that this property has come to the Development Review Team three (3) times, and the 3rd time it was to change the location of the house, and the DRT voted to leave the house as it was originally approved because of environmental reasons. Ms. Austin stated that she believed the applicant was asking for a variance, not an appeal.

Mr. Bootle asked Mr. Brown, "How long has the applicant owned the property?"

Mr. Brown stated, "My father purchased the property in May 2004".

Mr. C. Williams asked Mr. Brown, "Why does he want to change the location of the house?"

Mr. Brown stated that the adjacent house is up against the 10-foot setback line, and the homes are both Charleston style houses, so it puts the houses close together. There was a live oak tree that he believe pushed the house over, and the tree was deemed to be dying, and has been cut down with a permit from Beaufort County.

Ms. Austin stated that the tree was cut down to place the septic tank on the lot.

Mr. C. Williams asked Mr. Brown, "Is there any changes in the location of the garage with the 2004 approval?"

Mr. Brown said, "No". Mr. Brown stated that from the 1998 variance, the house has since been moved with permission from the County up to five feet.

Mr. C. Williams asked Mr. Brown, "Are you now moving the house over 15 feet?"

Mr. Brown said, "Yes". It will be an increase in the critical line encroachment from what's currently allowed, but it is still below half of what was approved in 1998.

Ms. Austin stated that the 1998 variance is null and void because the applicant received another variance in 2004 to push the house forward 39 feet from the OCRM critical line. The 2004 variance now is in effect, not the 1998 variance. Ms. Austin made a recommendation to the board to disapprove the variance, or trap the water. Ms. Austin stated that the applicant is also turning the septic tank closer to the critical line than the 100-foot setback that is in effect under the current ordinance.

Mr. C. Williams stated that Section 106-1845 (4), setbacks from the river protection overlay district, states that the following setbacks from the OCRM critical line shall apply to all new development except tidal fields or septic tanks.

Mr. Leroy stated that the applicant could turn the septic tank back to its original position and it should still work for the lot.

Ms. Austin stated that they grant variances according to the septic tank, and the DRT usually sends applicants back to DHEC to make sure that the septic tank cannot go anywhere else on the lot. If the applicant is going closer to the critical line, just have him turn it the other way so the septic tank would not go any closer to the critical line than what was already approved.

Mr. C. Williams asked Ms. Austin, "Did the Development Review Team have any landscape concerns?"

Ms. Austin said, "No", the Development Review Team disapproved the variance for environment reasons.

MOTION: Mr. Leroy made a motion to grant the variance with the condition that the septic tank and drain field be no closer than was originally approved in the 2004 variance, and trap the water as normally required by regulation, and submit a landscaping plan approved by the Zoning Department. Mr. Bootle seconded the motion. The motion passed unanimous (FOR: Bootle, Dinkins, Leroy, C. Williams).

CLEARSHOT CELL TOWER (SPECIAL USE PERMIT)

Mr. David Tedder, attorney for the applicant, stated to the board that this special use permit is a cell tower request in the Bluffton area off Hwy 278. Mr. Tedder stated that this cell tower is located approximately 800 feet off HWY 278, back in the woods. Mr. Tedder stated that there was a recommendation from the Development Review Team that the request be sent to the Zoning Board of Appeals for approval provided that they add an additional buffer beyond the 50-foot buffer required by the statute to the north and west of the property; the acreage is 85.8 acres, the north boundary being the one closer to Hwy 278 which is the actual site area. Mr. Tedder stated that when he initially went to the Development Review Team, he had objected to the ordinance requirement of the additional buffer requirement in Section 106-1357, and he had to defer that meeting because his surveyor made an error on the survey. When he went to the Development Review Team meeting prior to coming to the Zoning Board of Appeals, the Development Review Team required two things, to get approval from the owner of the larger parcel to put an additional buffer from the edge of his 50-foot buffer to the edge of the property, and they wanted to know what the Buckwalter PUD requirements were. Mr. Tedder stated that he reminded the Development Review Team that they had a 50-foot minimal buffer around the Buckwalter PUD. Mr. Tedder stated that they are 927 feet to the centerline of Hwy 278, and the property is heavily forested. The issue that is brought before the board is to give effect to Section 106-1357, that says that there shall be a 50-foot vegetative buffer; and not require them to go beyond that, and put a 130 foot buffer around the site. Mr. Tedder stated that they are not in control of the Buckwalter PUD, which is within the Town of Bluffton's authority, and that HWY 278 corridor has a 50-foot vegetative buffer coming off of it. Mr. Tedder stated that he does not believe that there is a requirement beyond Section 106-1357 that requires a 50-foot vegetative buffer around the site. Mr. Tedder stated that his request is that the board find that the application meets the requirement of the special use, and that they provide a 50-foot buffer. Mr. Tedder stated that he looked at the standards for the Zoning Board of Appeals to use in reviewing a special use permit, and the board is able to require additional things in the buffer, if its not naturally vegetated; the tree survey provided to the board shows that this site is naturally vegetated.

Ms. Austin stated that in Table 106-1617, it states that in the rural district, other permitted uses have a 50-foot buffer all the way across unless you are next to the military or river quality overlays, so the buffer is property line to property line; that is where the extra 50 feet came from. The applicant has a 50-foot buffer around the site, but this section talks about various buffer yard requirements found within this chapter. The Development Review Team requested the additional 50-feet because it is adjacent to another zoning district. In the past, the Development Review Team requested that the property owners signed a waiver stating that they would never timber the property and affect the 50-foot buffer along the property. When Mr. Tedder said that the next door property was a Planned Unit Development, and it had a 50-foot perimeter buffer, the Development Review Team agreed that they would consider the buffer if he would bring the Planned Unit Development document; Mr. Tedder brought in the document, and the Development Review Team accepted it; but if that buffer goes away, then the applicant has to plant something back in the buffer. Ms. Austin stated that the Development Review Team feels that if you put a 50-foot buffer at the base of the tower, it would not protect anything.

Mr. Tedder stated that the ultimate question is that he is a lawyer and he goes by procedures, ordinance, and requirements, and the ordinance says in the standards, a 50-foot forested buffer shall be provided around the site. Mr. Tedder stated that Section 106-1357 (D)(2), says to put a 50-foot buffer around the site; it does not say put the buffer around the perimeter. Mr. Tedder stated that he does not want to set a precedence; if he goes out to one of the Dupont's property on HWY 17 to get a cell tower, he has to figure out what to do on a 1,000 acre track of land to get a cell tower on Hwy 17.

Ms. Austin stated that Section 106-1126 (a), describes standards governing limited and special uses; these standards are in addition to other standards required elsewhere in this chapter. So the County

doesn't just get rid of the regular buffer standards because of the other statements in the ordinance; these are in addition to the standards. If you are in the rural zoning district, and you're next to another zoning district, you must have a 50-foot buffer adjoining the next district. Ms. Austin stated that the County does not control the Town of Bluffton. The Town of Bluffton can do whatever they want to do, they can change the PUD without notifying the County; but the County still agreed to use their existing buffer for the Buckwalter site.

Mr. Tedder stated that this might not matter in this case, but in the next case it would matter if this board believes you have to buffer the entire track on which you put cell towers, or just the cell tower site. Mr. Tedder stated that it was his understanding at the Development Review Team meeting that the decision was up to the Zoning Board of Appeals for recommendation. He could argue anything in the world that he wanted to, and it would not withhold his ability to come to the board until they provide a letter from the owner. The Development Review Team makes a recommendation for approval or disapproval, but this body makes the decision on whether the conditions for the special use permit have been met. Mr. Tedder stated that he is asking the board, "Does the special use condition say 50- foot around the site, or do we expand the version so that everyone who wants to build a utility site must have a 50-foot perimeter buffer around the entire tract of land?" Mr. Tedder asked the board to give the approval without the additional buffer requirement requested by the Development Review Team.

MOTION: Mr. Dinkins made a motion to grant the approval as submitted without the special condition requested by the Development Review Team regarding the additional buffer. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Leroy, C. Williams).

LADY'S ISLAND FEED & SEED (APPEAL)

Mr. Scott Maryfield, attorney for the applicant, stated that this request is an appeal from a decision from the Zoning Official regarding signs. Mr. Maryfield stated that they have a second tenant on site, that is a kennel grooming service, which made the site a multi-tenant complex. Mr. Maryfield stated that the building was originally constructed in 2003, and at that time, an application for a sign was submitted and approved. In 2004, Lady's Island Feed and Seed leased out the building to a company called DOGS, and the applicant applied for numerous sign permits that advertised them and their tenant; the temporary signs were disapproved. The applicant was advised to apply for the installation of an additional sign. The applicant met with the officials and completed the necessary paperwork, and the approval for a second sign was granted. The issue that arose was that the people in the Zoning Office thought the applicant was replacing the original sign.

Mr. Dinkins asked, "What are the dimensions of the property frontage"?

Ms. Austin stated, "Approximately 217 feet".

Mr. Bootle asked, "Are both of the signs up"?

Mr. Maryfield said, "Yes".

Ms. Austin stated that she interprets the ordinance to say that if the property fronts on two roads, the applicant can get a sign on both roads. If the highway frontage is 500 feet or more, you get a third sign.

Mr. Maryfield stated to the board that it is certainly an interpretation from the Zoning Ordinance by the Zoning Office, but he does not think that was the intent of County Council when they adopted this ordinance.

Mr. Dinkins asked Mr. Maryfield if he had his copy of the sign permit that was approved by the Zoning Office, and did it say "replacing sign"?

Mr. Maryfield said he did have a copy of the sign permit, and it does say 'replacing sign'.

MOTION: Mr. Leroy made a motion to uphold the Zoning Administrator's decision because she correctly interpreted the ordinance. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Leroy, C. Williams).

REVIEW OF MEETING MINUTES:

MOTION: Mr. Chester Williams made a motion to adopt the November 14th, 2005 minutes as submitted. Mr. Dinkins seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Leroy, C. Williams).

REVIEW OF 2006 YEARLY SCHEDULE:

MOTION: Mr. Dinkins made a motion to adopt the yearly 2006 schedule as submitted. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Leroy, C. Williams).

ADJOURNMENT:

MOTION: Mr. Chester Williams made a motion to adjourn. Mr. Bootle seconded the motion. The motion passed unanimously (FOR: Bootle, Dinkins, Leroy, C. Williams).

The meeting adjourned at approximately 7:08 p.m.