



COUNTY COUNCIL OF BEAUFORT COUNTY

Beaufort County Zoning & Development

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The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, June 23, 2016 in the Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. Edgar Williams, Vice Chairman
Mr. John Chemsak
Mr. Kevin Mack
Mr. Chester Williams

MEMBERS ABSENT

Mr. William Mitchell

STAFF PRESENT

Mr. Anthony Criscitiello, Planning Director
Mrs. Tamekia Judge, Zoning Analyst III

VACANCY

Southern Beaufort County

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:07 p.m.

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

REVIEW OF AGENDA:

Mr. Gasparini stated, that the chair may exercise some flexibility of the agenda because of a conflict of interest for some issues, in order to maintain a quorum. Mr. Gasparini stated that the review and adoption of the minutes will be done after the other members arrive.

MOTION: Mr. C. Williams made a motion to adopt the agenda with some flexibility. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, and C. Williams).

NATHAN CAMERON VARIANCE (RIVER BUFFER SETBACK)

Mr. C. Williams stated that, "My wife Arlene works for a company in Bluffton that Mr. Cameron is a principal of, but she has no interest in the property and I don't think I have any conflict of interest, so I'm not going to recuse myself."

Mr. Walter Nester, an attorney with McNair Law Firm, stated, "I represent Mr. Cameron in his application for a Variance from the River buffer setback as provided in the Community Development Code. I believe you have all had an opportunity to review not only the application, but also the narrative and the exhibits that have been provided with the application along with the Staff comments. So I would like to focus on a couple things that I think are important for your consideration of this Variance application. What is the River buffer setback? What is it designed to protect? I think if we look at the Community Development Code and the Comprehensive Plan, there are a number of items there that talk about the protection of the marshes, estuary and rivers; one of the areas that are protected by the setbacks. When you read those, you see the primary concern is the stormwater. Stormwater is referred to as a nonpoint source of pollution that flows into the marshes, estuary and the rivers and affects the quality of life for nature that exists. The second thing that stormwater does is it reduces the salinity of the saltwater in the marshes, in the rivers and the estuary, which impacts the ability of shellfish and fish to survive in those waters, primarily because fecal coliform, a bacteria produced by human and animal waste. The fecal coliform thrives in the freshwater environment, but it cannot survive in a saltwater environment so reviewing what the need for this critical buffer setback area is the need to reduce the flow of the stormwater into the critical areas. This property is located in Colleton River Planned Unit Development, and this property is located in what is known as phase one; it was proposed in the late 1980's and approved by Beaufort County sometime around 1990."

Mr. E. Williams arrived to the meeting.

Mr. Nester stated, "The plat that was recorded which created this lot was recorded in 1992. The documents or the narrative for the Planned Unit Development for Phase 1 of Colleton River provided for a 20 - foot setback from the critical line. So in 1992 Beaufort County contemplated a 20' setback from the critical line. The Architecture review standards in Colleton River provides for a 30' setback on all development that has been developed along marsh front and river front properties in Colleton River does not violate that 30' setback that's imposed by the Restricted Covenants and the Architecture review guidelines. There's been significant new development since 1990 and 1992 creating additional negative pressure on marshes, river fronts and estuary and during that time Beaufort County has responded by amending the Zoning & Development Standards and, in this case, creating the Community Development Code in an effort to ameliorate the effects of stormwater discharge. You review the application and you will see the site plan that has been approved by Colleton River and that site plan shows efforts to draw the stormwater away from the critical area and so, on both sides of the lot, stormwater will drain forward. The stormwater is draining into the infrastructure that was installed by the developers of Colleton River in conformance with the Masterplan that was approved back in 1990. When you look at the development as a whole, looking at what developers and real estate are concerned with protecting critical areas, there is significant open space in Colleton River. There are forest, golf courses, and other common areas that are undeveloped that has significant pervious surface. There is also curb and gutter in Colleton River that puts it into a treatment system that is also designed to protect the marshes, rivers and estuary. Looking at this particular

application there are efforts that are promised to ameliorate the effects of any of the approval of a variance to encroach into the setback area. When you look at the standards for the approval of a variance I am not certain that there is an application or a lot that would meet the criteria better than this. When the lot was created it was created with considering there was a 20' setback from the critical area and a building setback of 30' and my client acquired the property with that in mind. We would like to build a residence similar to the residences that are built around the lot. When I say similar I mean similar in quality, size and similar in other amenities. Someone may say, as the Staff report does, that the applicant wants a pool and a porch that encroach into the setback and the buffer and you shouldn't get a variance for a pool. I disagree with that; the applicant shouldn't get a pool. Colleton River is designed as a high end residential club community, the development in there has been fairly significant and the cost is significant to live there. If the law requires that you have to build a smaller house than what is contemplated when the County first approved the lot, I don't think it's fair and you tend to render lots unbuildable. It may not be actually unbuildable; you might be able to build a smaller home or cottage, but what you are turning a full size home site into a patio home site. Colleton River already has patio size home sites and the effects are severe. I think that Beaufort County should have some type of standards for already existing lots in residential subdivisions where lots were approved prior to the advance of the setback line. Now I understand that there is a waiver provision and it's been considered there is an opportunity to request a waiver provision and I don't think that is what should happen. I think that if you have a lot in a residential subdivision, you meet certain criteria, and when there is a new setback imposed then you should have it certain conditions taking place and you can have it. While we understand the reason behind the setback and the critical area, and the efforts to ameliorate the effects of stormwater going into the marshes, these are significant on reliance on previous approvals by Beaufort County. I think it is fair to allow the approved subdivision development to be used as it was originally intended. You can't move the property forward because my client would be looking at the side of the neighbor homes and the house would have to be smaller. With that I ask that you approve the Variance."

Mr. C. Williams asked Mr. Nester, "In the narrative you state that 5 of the 10 homes in the area has an in ground pool, can you tell us in relation to the lot, which ones those are?"

Mr. Nester replied, "There is an exhibit to the application that has the taxes, without a reference to those I wouldn't be able tell you."

Mr. Nathan Cameron, owner of the lot stated, that the Lots to the left of the property has pools -- Lot 43, 42, 40 and 39."

Mr. Chemsak asked Mr. Nester, "I noticed in one of your exhibits, the board out there won't approve moving the house closer to the 30' front setback?"

Mr. Nester replied, "No."

Mr. Anthony Criscitiello, Beaufort County Planning Director stated, the request is for a River buffer variance on Lot B44. The difference between the 50' and 60' is that when construction is taking place there is an opportunity for preserving the integrity of the 50' buffer. After construction certain kinds of activity can occur in that 10' space for example patios that are permeable. The Director can grant a setback waiver without the action as a result to their request to the ZBOA; however, the authority is limited to the requirements of section 5.11.60.D and that is for the home. The Director can grant that variance; and the opportunity to vary from that specific requirement is only reserved for the ZBOA. The Staff recommended denial because of the strong legislative intent of the County Council to protect the River buffer because of the concerns for water quality. The PUDs of Beaufort County are not exempt by County Council, so it is left to the discretionary judgment of the ZBOA based on individual circumstance to decide whether it is merited or not. Walter talked about some of the things a wavier can encounter like moving the building forward or shorting the driveway, and based on the standards that would only be 9 feet and we would still be in the 50' buffer. If you made the home smaller, that would affect the prerogative of the home owner to develop his property in a way that he thinks is suitable. Another option would be to put the pool in another location on the lot. Staff recommends denial based on the fact that we believe that the ordinance does not necessarily allow for a pool under the circumstances that this ordinance can contemplate which the home is and a pool is an amenity that is not protected by this code."

Mr. E. Williams asked Mr. Criscitiello, "What safety and health would be impacted by having the pool there?"

Mr. Criscitiello replied, "It is difficult to answer that question precisely, but it would be the water quality and the effects on the River buffer from the backwash."

Mr. C. Williams asked Mr. Nester, "What's the rear setback in the Covenants?"

Mr. Nester replied, "It's 30 feet. Also, the pool will be saltwater and again the lot site design on both sides there are culverts to run the water away from the critical line."

Mr. C. Williams asked Mr. Nester, "Even when it is backwashing?"

Mr. Nester replied, "Yes, even when it is being backwashed."

Mr. Gasparini asked Mr. Criscitiello, "In the past we have dealt with issues like this several times over the past many years and if I am not mistaken it has been our practice in most cases to take a look at what's next door. We try not to penalize the person building on an older lot, and we have granted these types of variances. You don't have a problem with the house being in the setback, it's just the pool?"

Mr. Criscitiello replied, "No, if it was just the home, we would not be here."

Mr. Mack asked Mr. Nester, "Have you considered relocating the pool on property to meet the setback?"

Mr. Nester stated, "It's a challenging site, and I don't know, so Mr. Cameron could answer."

Mr. Cameron replied, "Yes, unfortunately for this lot it's on a cul-de-sac which curves, the whole corner of the quadrant is missing. The only way to get a pool would have to be on the side of the lot, which would not meet Colleton River's guidelines because you would not be able to screen it."

There being no further comments from the applicant or the County and no further questions from the Board, Mr. Gasparini called for public comment and limited the comments to 3 minutes each. There was no public comment.

Mr. C. Williams stated, "Very regularly do we get these sort of Variance request and I agree with Mr. Nester's argument in his narrative that the imposition by the County's Community Development Code of a 60' building setback line from the OCRM line on a lot like this that was previously platted with a 30' setback rises to the level of an extraordinary circumstance. I agree with Mr. Nester; I think this application meets the requirements for a Variance and I move that we find, based on the application before us and the testimony we have heard, that this application meets the requirements of the CDC Section 7.2.140.D the variance permit review standards and approve the request as submitted with the condition that the pool be a saltwater pool and that the lot design be engineered so that all the drainage drains to the front of the lot to the street so no backwash drains to the marsh but out towards the street.

Mr. E. Williams seconded the motion.

MOTION: Mr. C. Williams made a motion to approve the Variance application with the following conditions: 1) The pool must be saltwater. 2) The lot design shall be engineered so that all of the drainage drains to the front of the lot to the street; so no backwash drains to the marsh but out toward the street. Mr. E. Williams seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, C. Williams and E. Williams; ABSENT: Mitchell).

CALLAWASSIE ISLAND MEMBERS CLUB – (SPECIAL USE PERMIT)

Mr. Gasparini stated that he is recusing himself because he is a resident and a member of the Callawassie Island Club.

Mr. David Karlyk of Carolina Engineering representing Callawassie Island Members Club stated, "We are here today requesting a Special Use permit to construct a new river club out at Callawassie. Currently Callawassie has a 2,150 square feet building that looks over the Colleton River and the building is an amenity center. It contains a

library, a card group plays cards there during the week, lunch is served on the weekends and dinner one night a week, and they have a pool in conjunction with it. This building was built in 1987, it is 30 years old and they want to construct a new river club. The new one that we are proposing is 4,000 square feet due to current setbacks and buffers; this site is non-conforming. Our Special Use approval today will make the site conforming and we will be able to build our new building to the existing setbacks and buffers that the current building is built to. Currently the building is at 14.5 feet from the side property line and it is built 60' off of the critical line. The new building will allow the members club to continue the current activities they have there and allow them to increase activities and include new ones, as well as provide a small restaurant for meals all during the week. The utilities -- water, sewer and electrical are existing and will be reused for this building; the drainage we will have to make some improvements to make sure we don't drain across the critical line into the river and all of our runoff will drain away from the river and will meet state and federal requirements. The existing residence next door was built 3 years after this was; when it was built they were aware of how close it was to the side property line. The current property owner bought the lot in 2003, 16 years after this was built and was aware of the setback. There is currently a buffer of hedges that hides the building; the hedges and the oak tree will remain. We have an arborist on our team that gave recommendation of what is needed for the trees to survive.

Mr. E. Williams asked Mr. Karlyk, "You indicated about preserving the trees, how would this be done?"

Mr. Karlyk stated, "The Arborist recommended a mulch road as a bridge over the roots and the Arborist will monitor the trees during construction."

Mr. E. Williams asked Mr. Karlyk, "Did you look at the Staff recommendations?"

Mr. Karlyk replied, "Yes, when we went through the Conceptual approval for the SRT and we followed those recommendations."

Mr. Anthony Criscitiello, Beaufort County Planning Director stated, "The existing use is in the amenity area and this is replacing an amenity building in the existing area. The proposed building is no closer to the side property line of 14.5 feet than what is being proposed. It requires a Special Use because it does not meet the County's requirements for setbacks and buffers. The SRT has reviewed it and recommends approval."

Mr. E. Williams asked Mr. Criscitiello, "Those conditions that were outlined, was the Applicant aware of those items?"

Mr. Criscitiello replied, "Yes, after this meeting they come back to us for Final and we take into account any standards or conditions you impose."

Mr. C. Williams asked Mr. Criscitiello, "As I read the conditions, four and two are marked as shown, and did the Applicant satisfy those conditions?"

Mr. Criscitiello replied, "Yes."

There being no further comments from the applicant or the County and no further questions from the Board, Mr. Gasparini called for public comment and limited the comments to 3 minutes each.

Mr. Anthony Winn owner of the adjacent property just west of the River Club stated that the building is very useful. Mr. Winn opposes the Special Use permit. Mr. Winn stated that he is not asking them to tear the building down; let it remain and build the new building on the parcel that has the Callawassie dock.

Mr. C. Williams stated that he appreciates Mr. Winn's concerns of being next door, but the proposed is not being located any closer to the side property line, and the SRT would not have passed it on if it did not meet certain conditions; so, he moves that the application meets the requirements for a Special Use and that it be approved with the following conditions: 1) DHEC approval 2) Construction debris shall not be placed in the River buffer.

Mr. Chemsak seconded the motion.

MOTION: Mr. C. Williams made a motion to approve the Special Use permit application with the following conditions: 1) DHEC approval 2) Construction debris shall not be placed within the River buffer. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, C. Williams and E. Williams; ABSTAINED: Gasparini; ABSENT: Mitchell).

BJWSA – (SPECIAL USE PERMIT)

Mr. John Chemsak stated that his son is Brian Chemsak, the point of contact for BJWSA and he is recusing himself from the project.

Mr. Andy Klosterman of Andrews & Engineering Inc., representing BJWSA stated, "We are working with Beaufort-Jasper to build an 8,500 square feet operations building and approximately 40 spaces on their Chelsea plant site located on Hwy 170 and Snake Road. We are not asking for a Variance, we are actually requesting to amend the existing Special Use permit that the site has. The special use was created in 2007 when they did the expansion on the administration building, and actually in 2008, we came back to amend that special use for a similar project in that same location and that was approved. It is a good ideal location on their property to build this building. It's currently developed with no trees and grass and Beaufort - Jasper is using it for vehicles and equipment storage. A couple key notes since the site is already open-- we are not removing any trees, and we're looking at the stormwater; everything within the

project limits will be appropriately treated per the BMP Stormwater manual. There will be no new traffic; it will be used by all BJWSA employees who are currently using the area. They are actually parking their trucks where we are proposing to put the building, so that is a reason why we are trying to put the building there to formalize the parking area. Another key thing we are doing, there's not much of a landscape buffer on Snake Road or Middleton Creek Road and part of the plan is to beef up the landscape buffer with additional plantings."

Mr. E. Williams asked Mr. Klostermann, "Have you talked with Mr. Criscitiello about the SRT recommendations?"

Mr. Klostermann replied, "We received Conceptual approval and their recommendation was to improve the site with the condition to increase the landscape on the site."

Mr. E. Williams asked Mr. Klostermann, "Can you meet those conditions?"

Mr. Klostermann replied, "Yes."

Mr. C. Williams asked Mr. Klostermann, "I am not sure how we end up here with a special use application when it looks like there are all sorts of setbacks that are being violated by what is being proposed. This could be a problem, considering the utility buffer on Snake Road and Middleton Creek Road and almost everything you are proposing encroaches into that buffer. Why have buffers if you are not going to comply with it? Why can't you build it over here where you are not violating the buffers?"

Mr. Klostermann replied, "We are following Beaufort - Jasper's lead on where they want it. With the placement of that building, we are not going any closer to any of the buffers that are already there with the existing buildings; we're not moving it any closer to those buffers. We are trying to beef them up and increase the plantings that are already there."

Mr. C. Williams stated, "The plans that you submitted show a 20' thoroughfare buffer which the proposed construction seems to comply with and a 50' parking and building setback; half the building is inside that setback and it shows a 100' additional regional utility buffer and almost everything that you are proposing encroaches into that buffer. I don't see how a proposal like that is consistent with the Comprehensive Plan."

Mr. Klostermann stated, "The site is zoned Rural and the plant has been there long before the zoning came into play; every time they want to develop they have to come back to get a Special Use permit to do any sort of expansion. It is non-conforming so I understand what you are saying. Our way to try to mitigate that is to increase the buffer and the landscaping."

Mr. Gasparini asked Mr. Klostermann, "This is an amendment to an amendment to a Special Use permit, correct?"

Mr. Klostermann replied, "It's the amendment to the Special Use, the other one expired."

Mr. Gasparini asked Mr. Klostermann, "The original Special Use permit was given to build a Sheriff's office facility there for a lab, is that correct?"

Mr. Klostermann replied, "The first amendment, yes."

Mr. Gasparini asked Mr. Klostermann, "That never got built?"

Mr. Klostermann replied, "Correct?"

Mr. Gasparini stated, "So, this is a completely different use, I could understand why my colleagues gave a variance or a Special Use for the Sheriff because it wouldn't have made any sense for the Sheriff to drive their cars through the middle of the BJWSA facility to get to their lab. Sounds to me like this is bootstrapping off of the site to put the building inside all of the buffers as Mr. Williams pointed out, when there is a whole bunch of other space where it can be built and comply with Zoning. I understand your job is to talk about this plan, so I am wondering about an alternative plan as well; you don't know about an alternate plan do you?"

Mr. Klostermann replied, "No, I don't think that was the intent at all; the Sheriff's office was going to use the office temporarily and then Beaufort - Jasper was going to use it."

Mr. Criscitiello Beaufort County Planning Director stated, "The Zoning is T2R and it is a tough Zoning district to address all the conformity issues associated with that. It is true that the property was previously was slated to be used by the Sheriff's office as a DNA lab and it's true that the Sheriff's office abandoned the property to build their facility someplace else. However, practically speaking where they want to build this office facility makes a lot of sense. The location is next to the building that the office would be serving so it was an understanding on the part of the SRT, that given the proximity to the facilities that exist on the Beaufort - Jasper Water and Sewer site that this office would be in a good location for that. We did take into consideration that the Special Use had been previously granted and we were sympathetic with the idea with assisting Beaufort - Jasper to more efficiently use their facility, that's why we recommended approval of the Special Use."

Mr. C. Williams asked Mr. Criscitiello, "If we were to approve this special use permit, do they then need to come back to get Variances for the encroachment into the buffers and setbacks?"

Mr. Criscitiello replied, "No, if the Special Use is granted then we would waive through the authority of this board to enforce those requirements based on a Special Use."

Mr. C. Williams stated, "I have a big problem with that when it seems evident to me that there are other wide open spaces on the site where you can put the building and either not be in violation of the setbacks and buffers or greatly reduce it. I am sympathetic to the Water and Sewer Authority too; it must be a reason why the County Council would put that 100' additional regional utility buffer on site."

Mr. Criscitiello replied, "Long after the facility exists, that's the problem."

Mr. Gasparini asked Mr. Criscitiello, "Is the adjacent property in Beaufort County or Jasper County?"

Mr. Criscitiello replied, "Beaufort County."

Mr. Gasparini asked Mr. Criscitiello, "To put the building in the back corner by Middleton Creek Road, I don't understand how it would be closer to the building that it's going to support."

Mr. Criscitiello replied, "That's not the building I am referring to, it's the sediment building."

Mr. C. Williams stated that, "It still doesn't make sense when they have an open space on the other side of the sediment where the building could go and you won't have to encroach into the setbacks and buffers."

Mr. Klostermann replied, "I am an Engineer and I am not sure what is underground but it must be a good reason why they want the building there."

There being no further comments from the applicant or the County and no further questions from the Board, Mr. Gasparini called for public comment and limited the comments to 3 minutes each.

Mr. Aroneck stated, "I am a resident of Walnut Hill Drive which is next to Middleton Creek Road, I would like some clarification of what the office; is it a sewage treatment plant, water facility or an actual office?"

Mr. Klostermann replied, "It is an office for the operations building."

Mr. Aroneck stated that he doesn't understand why they need to violate their land. The huge facility will make matters worse.

Mr. Gasparini asked Mr. Aroneck, "I understand that you object to the plan based on your comments, is your objection to an office use only?"

Mr. Aroneck replied, "I just don't understand why they have a big piece of land and they want to use the smallest portion for that building."

Mr. C. Williams read section 4.1.210 of the Community Development Code and stated, "That it seems to me that you need a variance if you want to have something less than 100', that's a use condition. I mean I am uncomfortable granting a special use permit when we are not complying with the specific uses as the code sets out."

Mr. Gasparini asked, "Doesn't the state statute prohibit us from giving a variance to create a different use?"

Mr. C. Williams replied, "We couldn't give a variance that would allow for a use on this property that is not a permitted use. This is a condition on a permitted use."

Mr. Criscitiello stated that the fact is that we are trying to work with an existing entity on this property that has been on the property for a long time and the standards that are in place is more likely to be pertinent and relevant when dealing with a new facility and new development where those standards can be imposed. When you have something you are already dealing with, then the question is, do we penalize that entity with a standard that can't be met.

Mr. C. Williams pointed out potential locations on the aerial where the building could be placed without violating the buffers and setbacks.

Mr. Criscitiello suggested that the Zoning Board could send the applicant back to the SRT to reevaluate the potential locations to which Mr. C. Williams is referring. Mr. Criscitiello stated, that as Andy stated, we don't know what's underneath the ground.

Mr. C. Williams replied, "If somebody comes back to us stating that there is all these pipes under the ground that needs to be relocated, that would set a different light, but that's not before us right now."

Mr. Gasparini stated to Mr. Criscitiello, "That would be a useful suggestion; the other thing I would suggest is that if we send it back they could then apply for what they need -- be it a Special Use or a Variance under the current code instead of amending something under an old code. If we are going to amend a previous Special Use, it would have to be done under the ZDSO.

Mr. E. Williams stated that he agrees that the board should send it back to the SRT.

Mr. C. Williams made a motion to remand this matter back to the SRT and revisit the ZBOA.

Mr. E. Williams seconded the motion.

MOTION: Mr. C. Williams made a motion to remand the application back to the Staff Review Team, to reevaluate potential locations for the placement of the building. Mr. E. Williams seconded the motion. The motion passed (FOR: Gasparini, Mack, C. Williams and E. Williams (ABSTAINED: Chemsak; ABSENT: Mitchell).

REVIEW OF MINUTES:

MOTION: Mr. Mack made a motion to adopt the March 24, 2016 minutes as written. Mr. E. Williams seconded the motion. The motion passed (FOR: Gasparini, Mack, C. Williams and E. Williams; ABSTAIN: Chemsak; ABSENT: Mitchell).

MOTION: Mr. E. Williams made a motion to adopt the April 28, 2016 minutes as written. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack and E. Williams; ABSTAIN: C. Williams; ABSENT: Mitchell)

ADJOURNMENT

MOTION: There being no further business to come before the Board, Mr. E. Williams made a motion to adjourn. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Gasparini, Mack, C. Williams and E. Williams; ABSENT: Mitchell).

The meeting adjourned at approximately 6:36 p.m.