



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, May 26, 2022, at the Beaufort County Administration Bldg., Council Chambers, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Kevin Mack, Chairman
Mrs. Jane Frederick, Vice Chairwoman
Mr. John Chemsak
Ms. Lynne Hoos
Mr. Evan Bromley

MEMBERS ABSENT

Mr. Cecil Mitchell
Mr. Dennis Nielsen

VACANCY

None

STAFF PRESENT

Mr. Robert Merchant, Planning/Zoning Director
Ms. Hillary Austin, Zoning Administrator

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, Ms. Austin verified that they were.

ADOPTION OF AGENDA:

MOTION: Mrs. Frederick made a motion to adopt the agenda. Mr. Chemsak seconded the motion. The motion passed unanimously.

ADOPTION OF MINUTES: April 28, 2022

MOTION: Mr. Chemsak made a motion to adopt the minutes. Ms. Hoos seconded the motion. The motion passed unanimously.

GRATTON'S SIDE YARD SETBACK VARIANCE (Continued from Last Meeting)

Mr. Gratton stated he is requesting a variance to place a garage three (3) feet from the side property line. He stated he submitted an updated site plan and documentations showing the location of the tree, and how close the proposed garage would be to the tree and how far behind the house the garage would be located.

He also presented a letter from the Walling Grove Homeowners Association stating that the Board was okay with the location of the proposed garage. He continued to state that he does not want to place the garage behind or in front of the house, because he would have to remove vegetation.

Mr. Bromley asked the applicant if work was being done on the site.

Mr. Gratton stated he brought in dirt for the foundation of the garage.

Mr. Chemsak asked if the covenants states 25% variance, can the HOA approve more than that requirement.

Mr. Bromley stated that the HOA can approve a variance up to 25% which would be 2.5 feet. He also stated that the HOA should have documentation in the record that they granted more than the allowable that the covenants states.

Mr. Bromley also stated that that documentation should be filed with the Register of Deeds. Then Staff would be able to approve the setback since that variance would be less than the Staff would be able to grant.

Mr. Mack stated that Mr. Gratton would need to go back to the HOA and have the covenants changed and recorded before the Board would be able to move on the request. He asked Mr. Gratton if he wanted to continue the request until the next meeting so he can meet with the HOA.

Mr. Gratton stated he would like to continue the request.

Mr. Mack call for **PUBLIC COMMENT**. No Public Comment.

MOTION: Mrs. Fredrick made a motion to continue the variance request until the next meeting so that the applicant can go back to the HOA. Mr. Chemsak seconded the motion. The Motion passed unanimously.

DAVID ROWE REAR YARD SETBACK VARIANCE (Continued from Last Meeting)

Mr. Rowe handed additional paperwork to the board members. Mr. Rowe stated that it is a hardship if he can't build the garage. He stated that he would have to move from the property. He also stated that if he moved the garage, the septic drain field would be in the way.

Mr. Mack asked, you are saying if the variance is not granted you will not be able to build the garage.

Mr. Rowe answered yes, because of the drain field.

Mr. Mack stated he did not see where the drain field is located.

Mrs. Fredrick stated that the applicant stated that the garage is smaller, but the board does not know how much smaller it really is.

Mr. Rowe stated that the requirements require that the garage be smaller than the house, so the carport section has been deleted, so it is smaller than the original size. He also stated that the neighbors submitted letters that they are okay with the location as shown.

Mr. Mack asked the applicant if he had anything that stated where the drain field is located.

Mr. Rowe stated no he did not.

Mr. Chemsak asked the staff if a permit was issued for the house next door, and why they did not have to meet the 50-foot rear setback.

Ms. Austin stated yes, a permit was issued. That lot was created years ago, and therefore, subject to the old setbacks. Also, the lot is not deep enough to accommodate the new setbacks. Ms. Austin also stated that the applicant stated he reduced the size of the structure, and has she had no idea of the location of the septic system, so she was not able to use that information in making her decision if there was indeed a hardship.

Mrs. Frederick asked Ms. Austin if what the applicant is stating is true could that be used as a hardship?

Ms. Austin stated yes.

Mr. Mack stated to Mr. Rowe that more information is needed. He should have a surveyor come out and show on the plat the location of the drain field and septic tank.

Mrs. Fredrick stated to Mr. Rowe that he could possibly rotate the structure and move it to the side.

Mr. Rowe stated that he would not be able to rotate the structure because of a live oak tree.

Mrs. Fredrick stated that the tree needs to be shown on the site plan.

Mr. Mack stated that the information spoken about will be needed so that the decision can be made. He also stated that the Board could hear the request next month which would give him time to get the additional information needed.

Mr. Rowe stated he would like to continue the request until the next month's meeting.

Mr. Mack called for **PUBLIC COMMENT**. No public comments.

MOTION: Ms. Hoos made a motion to continue the variance request until the next meeting which will give the applicant time to get the additional information needed. Mrs. Fredrick seconded the motion. The motion passed unanimously.

RALPH MCCARTER'S SPECIAL USE – SHORT-TERM RENTAL

Mr. McCarter stated that he is requesting approval for a Short-Term Rental unit. He also stated he petition the County Council to add Short-Term Rental to the Ladys Island Community Preservation District, and they approved the text change.

Mr. Chemsak wanted to know if there was a pond on the property and how is he prepared to protect a small child from such a hazard, and will the pond be fenced.

Mr. McCarter stated that the pond is a small fishpond and only about 18-inches deep.

Mr. Mack called for **PUBLIC COMMENT**. No public comments.

MOTION: Mrs. Fredrick made a motion to approve the Special Use Permit for the Short-Term Rental. Mr. Chemsak seconded the motion. The motion passed unanimously.

WAYNE WILLENBERG'S SPECIAL USE – SHORT-TERM RENTAL

Mr. Willenberg stated that he is requesting approval for a Short-Term Rental unit. He stated he has a two (2) story garage separate from the main house and he would like to use that structure for the short-term rental unit.

Mr. Mack asked the applicant if there was anything in the Covenants and Restrictions that would prevent the short-term rental.

Mr. Willenberg stated that there are covenants, and he asked the President of the POA for approval, which he granted.

Mr. Chemsak asked if the covenants restrict short-term rentals.

Mr. Willenberg stated that the covenants does restrict short-term rentals.

Mr. Mack called for **PUBLIC COMMENT**.

Mr. Gordon Fritz stated that he is developer for the Marsh Hawk Subdivision, and he wrote the covenants that stated no commercial business of any type will be allowed. He stated that the Board should deny the Special Use Permit because it would cause a problem in the subdivision.

Mr. Evans stated that the Board would need to see a copy of the covenants to see if the President of the Board could make such a decision or if the decision would need the vote of the full POA board.

Ms. Austin stated that the SRT did not know there were covenants because Mr. Willenberg signed the application stating that there were no covenants. Staff would need to read the covenants and more than likely would change the recommendation to disapproval.

Mr. Willenberg asked the board to continue the request until the next meeting so that the covenants may be reviewed.

MOTION: Ms. Fredrick made a motion to continue the special use request until the next meeting so that the staff and the board will have an opportunity to review the covenants and restrictions. Mr. Chemsak seconded the motion. The motion passed unanimously.

MIKE OVERTON'S RIVER BUFFER VARIANCE

Mr. Taylor stated he is the agent for the applicant Mr. Mike Overton. He stated Mr. Overton has done a minimal development that not only serves the people of this county but also the state and nationwide as an incredible opportunity. He also stated that Mr. Overton did not realize that Beaufort County required permits to operate a business in such a remote area. When Mr. Overton purchased the island, there was a septic system permit issued for a home to be built on the island. Mr. Overton did not want to place a septic system on the island.

Mr. Taylor continued to state that Mr. Overton constructed small structures to accommodate the people who visited the island for such purposes as field trips, fundraisers, and team building exercises that are conducted on the island. He continued to state that the standards that would be applied to the island today would render the island unbuildable for any commercial uses.

Mrs. Fredrick asked if Mr. Overton received a building permit for the structures he constructed.

Mr. Taylor answered no he did not.

Mrs. Fredrick wanted to know why not.

Mr. Taylor answered, Mr. Overton did not know he needed a building permit.

Mr. Chemsak asked if Mr. Overton received a permit to construct a residence on the island.

Mr. Taylor answered, the past owner received the permit.

Ms. Kathleen Duncan stated there are five (5) buildings located on the bottom island. These buildings have a setback ranging from 2-feet to 15-feet from the OCRM Critical Line. She also stated that the structures created a rather small imprint on the island. The 100-foot setback required by the code would render the island unbuildable.

Mr. Chemsak wanted to know if there was a water tank on the other islands.

Ms. Duncan stated that there were no structures on the other islands.

Mr. Taylor stated that Mr. Overton has constructed a facility that is used by the Coastal Conservation League and almost every other environmental group in the state to do major fundraising, and to set an example of what Ecotourism should be in the South Carolina Lowcountry. He continued to state that if the variance was not granted, all of the structures would have to be removed and that would be more devastating to the island.

Mr. Taylor continued to state that this request is the minimum necessary to allow a reasonable use of the land. He also stated that there are electric powerlines to the island, but Mr. Overton has not tied into that power source. The island is self-sufficient, and all rainwater is captured and reused.

He also stated that he believes the variance is in harmony with the general spirit and intent of the Community Development Code. The boardwalks have been properly permitted and constructed per OCRM.

Mr. Overton stated he has been in business for about 43 years. His nature tours in kayaks were the first on the East Coast, and he trained his guides to be interpretive naturalist. He visited Page Islands and learned that there were 3 residences with 3 septic systems planned for the island, and he decided that we would not use those permits. He purchased the islands and constructed the structures, which are mostly open with roofs except for the latrine. If a storm is expected, the tanks can easily be removed from the island.

Mr. Bromley asked if weddings are hosted on the island.

Mr. Overton stated that there has never been a wedding on the island.

Mr. Bromley stated that the island is advertised as a wedding venue. He also asked if there were overnight stays allowed.

Mr. Overton stated that after Hurricane Matthew a couple of people camped overnight to help with the cleanup of the island.

Mrs. Fredrick asked why a building permit was not applied for in 2000, the Zoning Ordinance required all non-residential buildings to be setback 100 feet from the critical line. She also stated that she did not understand how a businessman with an Attorney that was on County Council at that time, along with consultants did not follow the rules. She continued to state that everything that was done on the island was outside of the law, and the applicant is here to seek forgiveness.

Mr. Merchant stated that the staff had a problem with the section of the variance request that deals with the minimum necessary to allow reasonable use of the land or structure. The placement of these structures would be worked through with staff to find a suitable location, and if a variance was needed, staff would have been able to recommend approval. Staff would have maybe favored the center of the island so that the structures would be further away from the critical line than they are now. Because of the placement of the structures without the staff being able to weigh in, the approval of the variance would be conferring special privilege on the property owner.

Mr. Merchant continued to state that the staff is professionally obligated for our recommendation to be no, because the structures are simply not meeting the requirements that were required. The Planning is also involved in improving the County's Passive Parks, and we have worked in several areas that are on the critical line where we are moving picnic pavilions and placing them 100-feet away from the critical line, or we have come before the Board seeking variances to construct concrete walkways to serve the public before building them. From the staff's point of view, we are looking at these structures, that were built without permits as a violation of our code.

Mr. Greenway stated to the Board that they are obligated to place conditions on any approval they may give.

Mr. Mack called for **PUBLIC COMMENT**.

Mrs. Sally Ann Robinson stated she is for the project.

Mr. J. C. McCune stated he is for the variance.

Mr. James Price stated he is for the variance.

Mr. Dean Moss stated he is for the variance.

Mr. John Batson stated he is for the variance.

Mr. Jack Daly stated he is against the variance.

Mrs. Jane Fruh stated she is for the variance.

Ms. Melissa Krauss stated she is for the variance.

Mr. Larry Toomer stated he is for the variance.

Mr. John Treadaway stated he is for the variance.

Mr. M. Dustin Wilder stated he is for the variance.

Mr. Peter Cram stated he is for the variance.

Mr. Dick Stewart stated he is for the variance.

Ms. Patte Ranney stated she is for the variance.

Mr. Mack closed the Public Comment.

Mr. Mack stated based on the testimony that we heard, there is no doubt that there are some good that's coming from this island. He may not have gone about it the right way as far as the construction of the buildings, but he has admitted to it.

Mr. Greenway stated to the Board to remember that they have the right to impose conditions to further protect the environment. For example, if the Board is worried about houses being built, there can be provisions of the approval that no additional structures can be permitted and no septic tank permits can be issued for the property, and that the structures are approved as long as they are used in their current state and that no additional improvements can be made, and they cannot be enclosed. The Board has the right to place those types of conditions in order to protect the environment, and the sensitivity of the islands to a degree necessary.

Mrs. Fredrick stated she would add to the conditions that they capture all rainwater from all of the roofs, instead of just the one that they are currently doing.

Ms. Hoos stated that the conditions would limit setting a precedent that would allow someone else to come in and put up a bunch of houses on a different property and get the same result.

Mr. Mack asked Mr. Overton if there were any plans to construct additional structures on any of the islands.

Mr. Overton stated there are no plans at this time.

MOTION: Mrs. Fredrick made a motion to grant the variance with the following conditions: 1) The existing buildings on the island can be repaired obviously. 2) They cannot be altered or added on to. 3) The buildings cannot be enclosed. 4) The rainwater shall be captured from all buildings. 5) No additional buildings can be built on the island. Ms. Hoos seconded the motion. Mr. Chemsak added

**to the motion 6) No septic tanks. Mrs. Fredrick amended her motion to add number 6-No septic tanks. Mr. Mack added 7) No building on either of those islands.
The motion passed unanimously.**

OLD BUSINESS: None

NEW BUSINESS: None

ADJOURNMENT:

MOTION: Mrs. Fredrick made a motion to adjourn. Mr. Chemsak seconded the motion. The motion passed unanimously.

The meeting adjourned at 7:45 p.m.