



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, July 28, 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

Mr. Evan Bromley

Ms. Lynn Hoos

Dr. Dennis Nielsen

MEMBERS ABSENT

Mr. Cecil Mitchell

VACANCY

None

STAFF PRESENT

Mr. Eric Greenway, County Administrator

Mr. Robert Merchant, Planning/Zoning Director

Ms. Hillary Austin, Zoning Administrator

ATTORNEY PRESENT

Mr. Brad Mitchell, Attorney for the ZBOA

Mr. Danny Crowe, Attorney for Staff

Mr. Thomas Taylor, Attorney for Appellant

CALL TO ORDER: Mr. Mack called the meeting to order at 5:05 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: May 26, 2022

MOTION: Mr. Chemsak made a motion to adopt the minutes. Mrs. Frederick seconded the motion. The motion passed unanimously by the members who were present at the May 26, 2022 meeting.

ADOPTION OF MINUTES: June 23, 2022

MOTION: Dr. Neilsen made a motion to adopt the minutes. Mr. Chemsak seconded the motion. The motion passed unanimously by the members who were present at the June 23, 2022 meeting.

WAYNE WILLENBERG'S SPECIAL USE – SHORT-TERM RENTAL

Mr. Willenberg was not present at the meeting and did not submit any updated supporting documents.

The Board members agreed to move forward with the request for the Special Use Permit.

Staff stated the wrong covenants and restrictions was submitted to the Board.

Mr. Mack called for PUBLIC COMMENT. No Public Comment.

MOTION: Mrs. Frederick made a motion to disapprove the special use Request because of the covenants and restrictions for the property. Ms. Hoos seconded the motion. The motion passed unanimously.

JAMES & ALICIA WARE/AMANDA DUBOSE'S – ADMINISTRATIVE APPEAL

Mr. Tom Taylor stated that he represents 36 homeowners in the Buckingham Plantation community. Mr. Taylor stated that five (5) years ago the homeowners welcomed the old Sea Trawler site to be used for the Daufuskie Island Ferry embarkation location as an emergency contingency to the last hurricane that damaged the old site.

He continued to state that what was supposed to be a temporary situation, now seems to be the norm and this small neighborhood is overwhelmed with tourists and a few Daufuskie Island residents. The ferry is by far the Haig Point main source of income with the tourists they bring over to the island. The main focus will be Mr. Merchant's letter to show that the ferry service is not a derogation of the Community Development Code. He stated that he alleges that the operation of a commercial ferry service in the Buckingham Landing CP is not in keeping with the community preservation district, and it is as wrong as can be.

He continued to state that in order for the County to buy more time, an interpretation that states that based on a Wilbur Roller variance that was granted by the board in 2008 to tie up boats for the restaurant can somehow be used for a commercial operation at any time. He also stated that the restaurant use of the property has been closed since 2014 and there has been no other use of the property since then, which allowed the grandfathering of the property to go away.

Mr. Taylor stated that he wants to call Mr. Merchant as a witness, and it would only take 2 minutes.

Mr. Danny Crowe, Attorney for Mr. Merchant stated that calling of a witness is not a part of the appeal process, the appeal is on the information the staff had when the determination was made.

Mr. Taylor stated that the calling of witness is in the Board's Rules of Procedures.

Mr. Mack stated that he will not allow the calling of witness.

Mr. Taylor stated he intended to ask Mr. Merchant to explain what he meant in the September 20th letter when he indicated that the County would need 60 days to contact all of the appropriate parties and gather all evidence and make careful review of all of the facts. He continued to state to the Board that Mr. Merchant did not give the Board all of the information he used to make his decision.

He continued to state that the County is taking the position that the use of the dock is not a commercial use of the property. But when the Board granted the variance for the dock it stated that the use of the property was the restaurant, and the dock was not a land use by itself and is clearly associated with the restaurant use and is clearly an amenity to the commercial use. When the Board granted the variance, the Board stated that the variance is not a use variance, the dock is an incidental amenity of the use of the property. Mr. Taylor stated that he wanted the Board to look at the photographs and if Mr. Crowe wants them to be authenticated, he will be happy to do so.

Mr. Crowe stated that authenticating the photographs is not the problem, the introduction of new evidence to the Board is not proper procedure on an Administrative Appeal, and the submitting of new materials does not comply with the Boards Rules and Procedures. He also stated that these are new materials which were not submitted before the meeting, so he objects to this introduction.

Mr. Mack stated that he did not think there would be any harm in the Board viewing the photos.

Mr. Crowe stated he was hired by the County to defend a lawsuit brought against it by the Wares and 32 other residents for money damages as well as injunctive relief for an alleged unconstitutional taking and nuisance related to the County's providing of a public ferry service to Daufuskie Island from Buckingham Landing beginning in 2018. I was then asked to defend Mr. Merchant's administrative decision and this appeal to the Board.

Mr. Crowe again stated his objection to the materials submitted by Mr. Taylor that were not available to the Administrator in rendering his initial decision. The Community Development Code Section 7.7.3.70 states that this appeal is limited to consideration of such materials as were available to the administrator and therefore any supplement material would not be appropriate for consideration by the Board. Mr. Crowe showed a picture of the area and stated that it is just for orientation and not evidence. He stated that the County has owned the property since 2018 and that the determination made by Mr. Merchant as Director of the Planning and Zoning Department is concise, clear and correct. It contains no errors and should be affirmed by the Board. The Determination states this property which has subsequently been acquired by the County as a County Zoning Permit for a Commercial Dock. The zoning permit is consistent with the OCRM Permit and has no conditions listed except that it is in compliance with the ruling of the Board. If you remove the mirrors and disregard the language of the litigation, what you are left with is a valid County Zoning Permit for a Commercial Dock. By trying to tie the permit to a restaurant use which was not a condition of the permit or the conditions of the Boards approval in 2008 is not the issue, the issue is, is the zoning permit for the commercial dock still valid. The ferry service was brought to this location after the main location was damaged, so this is not the County taking advantage of the neighbors, action was required to maintain the ferry service to Daufuskie Island.

Dr. Nielsen stated to Mr. Taylor that he did not see where there was much evidence that the neighbors were being bothered by the ferry riders. He asked if during the time the restaurant was operating, were there any complaints from the neighbors.

Mr. Taylor stated that the parking is not just what was shown by the County, there is parking down by the gas station, the buses bring hundreds of people, and it is very congested. He stated there is a lot of speeding down the road. The ferry users create a nuisance by letting their dogs roam without leashes, by walking on private properties, etc.

Ms. Hoos wanted to know who gets the money for the parking, and other uses.

Mr. Taylor stated that the County has entered into a money-making arrangement with Haig Point to run tourist with this ferry. If the ferry was just for the Daufuskie Island residents, there would be no problem, but this is a matter of where Haig Point collects the funds and gives the county a portion of the funds collected.

Mr. Chemsak stated that there would not be any objection if it was just the Daufuskie Island residents using the ferry, it appears that the problem is the type of people running around the neighborhood.

Mr. Taylor stated that the commercial operation should not be going on in the neighborhood.

Mr. Crowe stated that the County pays for this public ferry service to operate, the county does not make a profit for that service. He also stated that it is wrong to differentiate between residents and tourists when operating a public service that uses a public road.

Mrs. Frederick asked if the County is relying on a dock permit that was issued by OCRM that says the dock is a commercial dock, but the document in front of us says that it is not a use variance, and the dock is incidental to restaurant. She also stated that the board should rely on our own Zoning Board of Appeals action instead of what was written on the OCRM permit which is probably not in line with the Zoning Board of Appeals ruling.

Mr. Mack called for Executive Session to meet with the Boards Attorney.

MOTION: Mr. Bromley made a motion for the Board to go into Executive Session with the Board's Attorney. Mrs. Frederick seconded the motion. The motion passed unanimously.

Meeting Recessed at 5:55 p.m.

Mr. Mack called the meeting back to order at 6:27 p.m.

Mr. Bromley asked Mr. Merchant, in issuing the 2022 determination, what steps were taken to investigate whether the use had been discontinued under Division 8.2.4.40. Did the steps focus on the restaurant?

Mr. Merchant stated that while investigating, it was hard to come up with the exact date the restaurant closed. We reviewed different articles

Mr. Bromley asked if Mr. Merchant found any evidence of the property being used as a restaurant.

Mr. Merchant stated that staff had a hard time finding the exact date the property ceased being used as a restaurant. The investigation looked at the dock and its use.

Mrs. Frederick asked if the investigation looked at the dock not being in use since the restaurant had been closed, and since the dock was incidental to the restaurant?

Mr. Merchant stated that the determination was made based on the fact that this dock was granted a variance, because the Code restricts commercial docks and the length of docks on small tidal creeks. This issue was not treated in the same manner as a use that had a certain period of abandonment that causes a nonconforming use to cease operation. The commercial dock was approved with a variance, that variance runs with the property and that approval does not go away unless there were conditions placed on the approval, regardless of if the restaurant ceases operation.

Mr. Mack called for a motion.

MOTION: Mr. Bromley made a motion to reverse the decision of the County. That the county's decision making failed to follow the seven (7) steps set forth in Division 7.2.4. Mrs. Frederick seconded the motion. The motion failed. FOR – Bromley, Frederick, Hoos. AGAINST: Mack, Chemsak, Neilsen. The determination of the Planning Director Stands.

MIKE VACARRO'S RIVER BUFFER VARIANCE

Mr. Vacarro stated that he represents Craig and Kelly Turner, they are requesting a variance from OCRM Critical Line Buffer/Setback to place a pool within the buffer. He stated that the hammock has 4 lots, and there are two (2) existing adjacent to this lot. He stated that it is his belief that the placement of the house and pool would mitigate any runoff into the marsh. He admits that he is requesting a large variance, but there would not be any adverse impact to the adjacent properties.

Mrs. Frederick asked how big is the swimming pool?

Mr. Vacarro stated that the pool is 12-feet by 50-feet, and a portion of the pool is under the house, and 32-feet of the pool is within the river buffer.

Mr. Chemsak asked for the dimension of the deck by the stairs?

Mr. Vacarro stated that that portion of the deck is 80-feet wide

Mr. Chemsak asked if that portion of the deck be narrowed, and the pool pulled closer to the steps.

Mr. Vacarro stated that anything is possible. But by pulling the pool closer to the stairs, there would be shadowing all day over the pool.

Mrs. Frederick stated that it is her belief that the pool can be redesigned so that it does not encroach into the river buffer as much and that she is inclined to have the pool redesigned and come back to the board.

Ms. Austin stated that the applicant is placing this large pool at 23-feet from the critical line and has not proven a hardship. The applicant is able to build a house and meet the 50-foot buffer but is needing a variance for a pool which is an amenity to the house. She stated that staff recommends disapproval for this variance. There is no hardship.

Mr. Mack asked the applicant if he would like for the Board to continue this request so that he can work with staff to redesign the pool.

Mr. Vacarro stated yes, he would like a continuance.

Mr. Mack call for PUBLIC COMMENT. There was no public comment.

MOTION: Mrs. Frederick made a motion to continue the request until the next meeting. Mr. Chemsak seconded the motion. The motion passed unanimously.

STEVE MANNON'S LODGING SHORT-TERM RENTAL UNIT – SPECIAL USE

Mr. Mannon attended the meeting via ZOOM.

Mr. Mannon stated he is applying for a special use permit for a short-term rental unit at 113 Sea Pine Drive on St. Helena Island. He stated that staff found out there were covenants and restrictions for the Coffin Point area that he was not aware of. He stated he was not aware of any HOA in the area, he did not pay any HOA fees, so he was totally unaware. He stated that per the covenants he meets the requirement for residential. He also stated that the covenants do not use the word commercial, and he believes that is where the confusion comes in.

Ms. Austin stated that the use Short Term Rental does not fall under the residential use category of the Code, it falls under the use category of Offices and Services, which makes it a commercial use. It is considered a transient use just like a hotel, or a bed and breakfast. This use is required to receive a Business License, they are required to pay an Accommodation Tax, therefore it is taken out of the residential use category and placed in the commercial. It is just like a hotel, even though the structure is still a residence.

She also stated that staff recommended disapproval because of the covenants and restrictions.

Mr. Bromley stated that there is a difference in interpretation, case law considers this to be a residential use, and also determines what is the best use for the property. If there is not a specific prohibition in the covenants, then the leasing of a single-family home is not prohibited. If the covenants do not prohibit leasing, then this use would be allowed.

Mr. Greenway stated that staff will be seeking legal advice on the issue of whether short term rental is a residential use or a commercial use.

Mr. Chemsak asked the applicant who would be managing the short-term rental?

Mr. Mannon stated that Natural Retreats which is a local company and is located on St. Helena Island.

Mr. Mack called for PUBLIC COMMENTS.

Brandy Raines spoke against the Special Use Permit.

A Lanza spoke against the Special Use Permit.

Laura Patterson spoke against the Special Use Permit.

Kathy McTeer spoke against the Special Use Permit.

Chad Rentz spoke against the Special Use Permit.

Mr. Mack ended PUBLIC COMMENTS.

Dr. Neilson spoke to add the letters that was received by the Board to the record of neighbors against the Special Use Permit.

Mr. Chemsak stated for the record that aside from the Covenants stating for residential use only, number 2 of the covenants states that there can be no offensive behavior or activities. He believes that the people who spoke has clearly stated that there are such activities being carried out.

MOTION: Mrs. Frederick made a motion to deny the Special Use Permit for the Short-Term Rental because it is not in keeping with the residential quality of the neighborhood and it has shown that there is detriment to the neighborhood. Ms. Hoos added to the motion that it goes against the covenants. Mrs. Frederick accepted the addition to her motion. Mr. Chemsak seconded the motion. The motion passed unanimously.

RYAN HESTER'S LODGING SHORT-TERM RENTAL SPECIAL USE

Mr. Hester stated that he is also seeking approval for a short-term rental unit. He stated that he is not in the Coffin Point area nor is he in the Oaks area for St. Helena Island. He also stated that he met all of the requirements set forth by the Code.

Ms. Austin stated that staff recommends approval.

Mr. Mack called for PUBLIC COMMENT. No Public Comment.

MOTION: Mr. Chemsak made a motion to approve the Special Use Permit Ms. Hoos seconded the motion. The motion passed unanimously.

GREG GIARDINA'S LODGING SHORT-TERM RENTAL SPECIAL USE

Mrs. Giardina stated that she is also located in the Coffin Point area. She also stated that she did not see how the covenants and restrictions can apply to what she is proposing. She stated that she was told during the processing period that if they had been renting since 2018, they would be grandfathered, so that shows that there are no restrictions. She stated that the house is four (4) bedrooms, but it is only rented for eight (8) people. They do not allow large amounts of people to stay. She also stated that it is her intent to donate to the local community.

Mr. Mack called for PUBLIC COMMENT.

Mark Heles spoke against the Special Use Permit.

Jon Pomeroy spoke against the Special Use Permit.

Robert Loughran spoke against the Special Use Permit.

Jerry Wayne spoke against the Special Use Permit.

Vivian Wayne spoke against the Special Use Permit.

Elain Smith spoke against the Special Use Permit.

Mr. Mack closed PUBLIC COMMENT.

MOTION: Mrs. Frederick made a motion to deny the Special Use Permit based on the Covenants and Restrictions. Mr. Bromley seconded the motion. The motion passed unanimously.

BRUCE BEASLEY'S LODGING SHORT-TERM RENTAL SPECIAL USE

Mr. Smith stated he represents the applicant and stated that he is applying for a Special Use Permit for a Short-Term rental unit. He stated that he has satisfied all of the requirements, and there are no covenants and restrictions.

Ms. Austin stated staff recommends approval.

Mr. Mack called for PUBLIC COMMENT. No Public Comment.

MOTION: Mrs. Frederick made a motion to approve the Special Use Permit. Mr. Chemsak seconded the motion. The motion passed unanimously.

JAMES & SALLY ROCK'S LODGING SHORT-TERM RENTAL SPECIAL USE

Mrs. Rock stated that they are seeking approval for a Special Use Permit for a short-term rental unit. She stated that there are no covenants and restrictions.

Mr. Chemsak stated that this is a four (4) bedroom house, and the occupancy will be 10 people.

Mrs. Rock stated that there is a loft in the house that has additional beds. She also stated that the loft is not conditioned. She stated that there are two (2) queen sized bedrooms, it is like a fish camp and there are 8 beds inside, but they are limiting the occupancy to 10 people.

Mr. Mack called for PUBLIC COMMENT.

Sara Reynolds spoke against the Special Use Permit.

Wes Covington spoke against the Special Use Permit.

Mr. Mack closed the PUBLIC COMMENT.

Ms. Austin stated that in light of the information, the tax record list the structure as 480 square feet, and the thought of 10 people in a 480 square feet building does not fit. She stated that she would like to change her recommendation from approved to disapproved. The applicant is required to go to the Building Codes Department and bring evidence to the Board that there was an approval for an addition, and the information is passed on to the Tax Assessor to increase the building size, the recommendation may be changed to approved.

MOTION: Mrs. Frederick made a motion to disapprove the Special Use Permit based on the environmental impacts on the property. Mr. Chemsak seconded the motion. The motion passed unanimously.

JONATHAN BEST VARIANCE

Mr. Best stated that he is requesting a variance from the requirements of the Code to place an Automobile Paint and Body Shop in this location. The Code requires that this use be placed 250-feet from a residential neighborhood. It is his assumption that this 250-foot requirement is due to potential noise and odor. He stated he has submitted documentation to show that the type of equipment that will be used at this facility will be conditioned in a manner that will reduce noise and odor pollutions. He will be using the industry's top equipment to ensure that the business meets the requirements of the code and not be a nuisance to the community.

He stated that he understands that there has been a complaint about the use of a driveway behind the property and stated that this business will not be using that driveway. He stated that any adverse effect of the use will be abated. He also stated that he will work with the County's Design Review Board to address any concerns about the exterior of the building and the landscaping. There will be a fence that will be placed to screen any cars being worked on and that all work will be conducted inside of the building.

Mr. Chemsak stated that the applicant has addressed taking all of the necessary steps to address the potential noise and odor issues that could arise from this use.

Ms. Austin stated that the county recommends approval for this variance with conditions that all noise and odor pollution are abated, which the applicant has stated that they will be.

Mr. Greenway stated that as a part of the Board's motion, there be conditions to address any noise and odor abatement.

MOTION: Mr. Chemsak made a motion to approve the variance with the condition that the applicant has property noise attenuation which would include putting the compressor in an enclosed room with sound deadening walls. Mrs. Frederick seconded the motion. The motion passed unanimously.

No New Business.

No Old Business.

ADJOURMENT

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

The meeting adjourned at 8:36 p.m.