

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



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MINUTES BOARD OF ZONING APPEALS 6:00 PM, MONDAY, NOVEMBER 27, 2017 COUNTY COUNCIL CHAMBERS OCONEE COUNTY ADMINISTRATIVE COMPLEX

The Oconee County Board of Zoning Appeals held a meeting on November 27, 2017, at 6:00 PM in Council Chambers at the Oconee County Administrative Building, 415 S. Pine St., Walhalla, SC 29691.

Members Present: Mrs. Fowler
Mr. Gilster
Mr. Medford
Mr. Morgan

Staff Present: Bill Huggins, Planner

Media present: None

ITEM 1- Call to Order

Mr. Gilster, Acting Chairman, called the meeting to order at 6:00 p.m. Mr. Gilster requested that Item #6 be heard before Item #5, Mr. Medford made a motion to allow the change, Mr. Morgan seconded the request it was approved unanimously.

ITEM 2- Approval of Minutes from October 23, 2017

Mr. Medford made a motion to approve the minutes. Mr. Morgan seconded the motion. The motion was passed 3-0

ITEM 3- Consideration of 2018 Board of Zoning Appeals Meeting Schedule

Mr. Gilster asked for a motion to approve the calendar for the year 2018. Mr. Medford made a motion to approve the calendar for 2018. Mr. Morgan seconded the motion. The motion carried unanimously.

ITEM 4- Public Comment (Non-Agenda)
No one from the public signed up to address the Board or make comments.

ITEM 5- Staff Update

Notification Process

Mr. Huggins stated that he emailed the correspondence regarding the notification process for special exception cases and completed the other notification requirements of the Zoning Ordinance. Some concerns were expressed by a number of the board members about whether we should have an extended notification period. Mr. Huggins stated that Mr. Codner suggested that the notification needs to be 30 days notification instead of the 15 day notification that we enforce now and also that the notification requirement for nearby property owners should be addressed.

Mr. Huggins stated that the County actually exceeds the notification requirement imposed by the S. C. Comprehensive Planning Enabling Act of 1994. County Attorney David Root had concurred with that determination. There is not anything in the state statute or the code that addresses a time frame for notifying adjoining or nearby owners or for notifying them at all unless they have specifically requested notification of upcoming cases. It was also suggested by some present that the applicants for cell towers should meet with staff about optional sites. In addition, there was some discussion about a study that was done some years ago by a consultant to identify ideal acceptable sites in the County. Mr. Huggins stated that he has been unable to locate the study, but that the County Attorney had suggested such a study might become problematic for the County, since it could prejudice a case that might come before the Board.

Mr. Huggins asked if the board wanted to produce such a document to identify sites acceptable to the County and to telecommunication companies. Mr. Huggins suggested that this would need to be discussed with County Council or passed along to them to decide whether or not to research the issue and send it to the Planning Commission for review. Mr. Gilster asked if the board feels that some the notification process should be strengthened. Mr. Huggins stated that the only requirement presently is that a notice be placed in a local newspaper at least 15 days prior to the hearing. He also noted that the current Ordinance, in keeping with state statutory requirements, only requires the posting of at least one sign along each road frontage of the subject property. There are not specific requirements about how many signs are required. Mr. Gilster suggested that the question of how much notification should be brought before the Council for their input.

Mr. Codner added that in the past the public had raised questions about timely notification. Mr. Codner also stated that in the past it was brought before the Planning Commission and they wanted everyone within a quarter

mile notified. He opined that the board is obligated to inform the public about any cases that would affect them and surrounding property. Mr. Codner also stated that County Council should work with the Planning Commission about coming up with some guidelines to be adopted into the code. Mr. Huggins asked for clarification about whether the intention would be to apply new standards for Variance requests as well as for Special Exceptions.

Mr. Gilster stated that there are two actions that are being requested: (1) Do we want to change the notification process. Mr. Medford stated he would like the Planning Commission's input. Mr. Morgan stated that the board needs public input but it's not this board that should make that decision. He felt that the Board needs to act within the parameters set forth by County code and State law. He added that this board needs additional input from other members of Council and Planning Commission. Mrs. Fowler stated we need guidelines and that if sending out letters is not in the guidelines it doesn't need to be done. Mr. Gilster asked how this should be handled. Mr. Huggins stated that a motion to appeal to the Council to explore this subject might be in order. Mr. Medford made a motion to appeal to the Council and Planning Commission to explore the subject. Mr. Morgan seconded the motion. The motion carried unanimously.

Updates

Mr. Huggins updated that Board on the continuing progress to update the Comprehensive Plan.

ITEM 6- Setback Variance Request for Application VA17-000010 (348 N. Port Bass Drive, Fairplay, SC), Tax Parcel ID# 334-02-02-009

Staff Presentation

Mr. Huggins presented the request to the Board. The request is for a variance of 2.5 feet from the side property line. The property is zoned CFD and the subdivision doesn't have an HOA. There is also a 16 inch overhang on the structure. The request was brought to the Planning staff by a complaint from Mr. Shippen whose property is at 342 N Port Bass Drive. The applicant had not obtained a building permit, and a stop work order was issued. That was when it was discovered that the structure didn't meet the side yard setback of 5 feet. A letter of opposition was submitted by Mr. Daab, who's property is at 352 N Port Bass Drive. A letter of approval was sent in by Mr. & Mrs. Eddie Maddox whose property is located at 332 N Port Bass Drive. Mr. Shippen sent an email stating he wanted to withdraw is complaint.

Applicant Presentation

The applicant, Mr. Grebenyuk, stated that when he started construction, he referenced a gate post with an orange ribbon, believing that was the property line. When the inspector came out that line was determined to be incorrect.

The corner of the structure was too close to the actual property line. Mr. Grebenyuk stated that his structure would not interfere with the neighbors (Mr. Shippen) at all. Mr. Grebenyuk went to the register of deeds and researched the property and could not find anything about setbacks. The applicant said a stop work order was not posted. Mr. Gilster asked if a stop work order would have prevented this request. The applicant stated that he would have been able to fix the problem.

Mr. Huggins stated that the applicant has been very cooperative with trying to get the issue resolved. Mrs. Fowler asked if a new survey is required when a permit is obtained. Mr. Huggins stated that a new survey is not required when a permit is obtained unless a new lot is being created. A site plan is required, and while dimensions should be accurate, that is not always the case. Mr. Gilster asked that when the subdivision was planned in the 60's would this have been an issue. Mr. Huggins stated that when it was developed that the restrictions that we enforce now were not in place. Mr. Morgan asked the applicant why he put the structure at that particular location. The applicant stated that he placed it there for parking issues. Mr. Huggins added that the 16" overhang actually resulted in the 2.5 foot variance situation. The applicant agreed with the comments that staff presented.

Mr. Gilster recommended that the Board consider the criteria for approval of a variance under one motion and action by the Board. Mr. Gilster read the criteria. The criteria under Section 38-7.1 of the County Zoning Ordinance:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property;
- (2) These conditions do not generally apply to other property in the vicinity;
- (3) Because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- (4) The authorization of a variance will not be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
 - a. The board of zoning appeals may not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted. The fact that the property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance.
 - b. The board of zoning appeals may grant a variance to extend physically an existing nonconforming use provided that the expansion does not adversely affect the character of the

community and is designed so as to minimize any negative secondary impacts.

- c. In granting a variance, the board of zoning appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure, or use as the board of zoning appeals may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare.

Mr. Gilster asked for a motion on items in the variance criteria. Mr. Morgan made a motion to approve the request for item (1) because of where the applicant placed the structure made it qualify for the request. Mr. Medford seconded the request. The motion carried unanimously. Mr. Gilster asked for a motion on item (2) of the criteria, Mr. Morgan made a motion to approve the request for item (2) because due to the placement of the structure and condition of the lot as previously mentioned. Vote passed unanimously. Mr. Gilster asked for a motion on item (3) of the criteria. Mr. Morgan made a motion to approve the request for item (3) based on the lot restrictions, size and his ability to build. Mr. Medford seconded the request. The motion carried unanimously. Mr. Gilster asked for a motion on item (4) of the criteria. Mr. Morgan made a motion to approve the request for item (4) on a finding that the request will not be of substantial detriment to adjacent uses or the public good, and the character of the district will not be harmed by the granting of the variance. Mr. Medford seconded the request. The motion carried unanimously. Mr. Gilster asked for a motion to approve the request as presented. Mr. Morgan made a motion to approve the request based on meeting all four of the criteria required for a variance. Mr. Medford seconded the motion. The motion carried unanimously. Mr. Huggins asked that the board take a moment to sign the order for approval of the request.

ITEM 7- Old Business

None

ITEM 8- New Business

Mr. Gilster has concerns about not requiring a survey when a new construction permit is issued. Mrs. Fowler stated that a new survey showing the structure and correct setbacks should be required and that the County should come up with regulations requiring a survey with new construction permits.

ITEM 9- Adjourn

A motion was made by Mr. Medford to adjourn and seconded by Mr. Morgan. The motion was approved unanimously. The Board adjourned at approximately 7: 25 p.m.

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