



Jasper County Planning Department

358 Third Avenue - Post Office Box 1659
Ridgeland, South Carolina 29936
Phone (843) 717-3650 Fax (843) 726-7707

Jasper County Board of Zoning Appeals

February 01, 2018

MINUTES

Jasper County Board of Zoning Appeals Members Present: Mr. Jeff Richardson, Ms. Barbara Bartoldus and Ms. Carmen Malphrus.

Staff Present: Ms. Lisa Wagner, Director of the Planning and Building Department, Ms. Bonnie Lawson, also of the Planning and Building Department.

Staff Present in the Audience: Mr. Andrew Fulghum, Jasper County Administrator and Mr. David Tedder, Jasper County Attorney.

Applicant Present: Mr. Fred Hamilton, representing Jamestown Estates.

Call to Order: Chairman Jeff Richardson called the meeting to order at 10:00 A.M.

Invocation: Invocation was given by Ms. Bartoldus

Pledge of Allegiance: The Pledge of Allegiance was said in unison.

Approval of Agenda: Mr. Richardson motioned to amend the Agenda, moving the Election of Officers after New Business and to add Minutes of the August 17, 2017 Meeting for action. The motion was seconded by Ms. Bartoldus. The Board Members voted unanimously in favor of the motion.

Approval of Minutes: Ms. Bartoldus motioned to approve the Minutes of the August 17, 2017 Meeting, seconded by Ms. Malphrus. The Board Members voted unanimously in favor of the motion.

Variance Request – Jamestown Estates Subdivision – Article 7:3, Setbacks and Article 7:4, Riparian Buffers: Ms. Wager said the applicant is requesting to have the front yard setback reduced from 25' to 20'; the side yard setback reduced from 10' to 5'; and the rear yard setback reduced from 25' to 5' for Lots 1-11 and Lot 29. The applicant is also requesting to have Article 7:4, Riparian Buffer requirements reduced from 25' to 0' for Lots 2-11. The subject property is zoned Residential. Jamestown Estates Subdivision is located off of Jenkins Avenue in Hardeeville. She said the Board of Zoning Appeals held a Public Hearing on October 28, 2009 to consider two variance requests for this subdivision. One request was for a variance from the Setback requirements for Lots 12-28 and Lots 30-55. The second request was for a variance from the Riparian Buffer requirements for Lots 12, 32, 33, 36, 37, 39, and 40. At the time, Lots 1-11 were owned by a different owner and therefore, were not included in the 2009 variance application. The Board of Zoning

Appeals granted the variance with special conditions which includes: reducing the front setback from twenty-five (25') feet to twenty (20') feet; the side yard setback from ten (10') feet to five (5') feet; and the rear yard setback from twenty-five (25') feet to ten (10') feet for lots 12 through 28 and lots 30 through 55; the riparian buffer was reduced from fifty (50') feet to not less than fifteen (15') feet for lots: 12; 32; 33; 36; 37; 39; and 40; the variances were subject to the Developer taking the appropriate legal action to irrevocably dedicate not fewer than four (4) lots of his choosing as green space for the benefit of property owners in Jamestown Estates.

Ms. Wagner said on April 19, 2012, the Jasper County Board of Zoning Appeals held another public hearing to consider a request to grant the variance without the special condition of legally setting aside four lots of the Developer's choice to be used for green space and to clarify the conditions outlined above. At the April 19, 2012 Hearing, Mr. Adam Goldstein (previous applicant) proposed a modification to the conditions outlined above. The Board believed that the conditions as proposed by Mr. Goldstein served the public interest better than setting aside 4 lots for green space. The Board of Zoning Appeals decided that in lieu of dedicating not fewer than four (4) lots as green space for the benefit of the property owners of Jamestown Estates, the owner would dedicate the following properties: Parcel #26; Parcels shown as TMS #040-03-00-056 and 040-03-00-058; Parcel shown as TMS #040-13-01-00 (6.73 acre pond) with a ten (10') foot right of way for ingress and egress from that parcel to Rudy Drive. The appellant also offered to construct a dock on the lake which exists on this parcel, and to construct an adjacent playground. The variance included the following conditions: no future building permits will be issued for construction on any of the lots which are subject to the November 2009 Order, until each of the parcels listed above has been deeded lien free to the Property Owners Association for the benefit of the Jamestown Estates property owners; no certificate of occupancy shall be issued for construction on any of the lots which are subject of the November 2009 Order, until the ten (10') foot right of way from Parcel #040-13-01-001 to Rudy Drive has been conveyed to the Property Owners Association and construction of the right of way, dock and playground have been completed; no portion of the right of way shall be used to comply with any setback requirements for lots from which it is taken; and parcels #040-03-00-056 and #040-03-00-058 shall be conveyed to the Property Owners Association in their current condition and shall be restricted to use as natural buffers.

Ms. Wagner said the Developer has deeded the properties as outlined above, to the Property Owners Association. She said Jamestown Estates is a 55 lot single family residential subdivision. The applicant's intentions are to provide small affordable single-family homes. The Jasper County Planning Commission approved this subdivision as a mobile home park on November 10, 1998. The subdivision came back before the Planning Commission on February 11, 2003 and was approved as a single family residential subdivision rather than a mobile home park. During the 2003 approval, Jasper County setback requirements were 5' from each property line and 20' from the right of way of the road. Until the November 2007 Zoning Ordinance, Jasper County did not have minimum lot sizes or Riparian Buffer requirements. The current setback and the riparian buffer requirements do not allow an average size home of 1000 sq. ft. to 1300 sq. ft. to be built.

Ms. Wagner said in accordance with the Local Comprehensive Planning Enabling Act of 1994, the Board of Zoning Appeals has the power to hear and decide appeals for variances when strict application of the zoning ordinance would result in "unnecessary hardship." A variance allows the board to modify an otherwise legitimate zoning restriction when, due to unusual conditions, the restrictions may be more burdensome than was intended. The variance must not impair the public purpose. To obtain a variance on the ground of "unnecessary hardship," there must be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation. A claim of unnecessary hardship cannot be based on conditions created by the owner nor can one who purchases the property after the enactment of

a zoning regulation complain that the nonconforming use would work a hardship upon him. When deciding whether to grant or deny a variance, the board has some discretion; however, the board is not free to make whatever determination appeals to its sense of justice. Rather, the board must apply the standards prescribed by the Zoning Ordinance and the 1994 Act. Courts will not uphold a decision of the board to grant or deny a variance based on errors of law, fraud or lack of supporting evidence, or a board action that is arbitrary, unreasonable, discriminatory or an abuse of discretion.

Ms. Wagner said the board may grant a variance in an individual case of unnecessary hardship if the board makes and explains in writing all of the following findings: there are extraordinary conditions pertaining to the particular piece of property which make it difficult or impossible to make an economically feasible use of the property; these conditions do not generally apply to other property in the vicinity; because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.

Ms. Wagner said in regards to the Applicants request to have the Setbacks reduced, the Jasper County Zoning Ordinance requires structures to be setback in the Residential Zone, 25' from rear property lines, 10' from side yard property lines and 25' from a minor road. She said there are extraordinary conditions associated with the subject properties because strict application of the zoning ordinance would prohibit the applicant from building on these lots since the subdivision occurred prior to the November 2007 Zoning Ordinance when the setback standards were less restrictive and smaller lot sizes were acceptable. These conditions generally do not apply to other property outside of this subdivision. As far as utilization, strict application of the ordinance would prevent an average size home from being built on the lot of record. A variance would not be a substantial detriment to adjacent property. In fact, a variance would be consistent with the other lots in the subdivision and would allow for affordable housing to be created.

Ms. Wagner said in regards to the Applicants request to reduce the Riparian Buffer setback, the Jasper County Zoning Ordinance requires a 25' buffer to be provided along the banks of all wetlands, marsh areas, streams and rivers. The buffer setback area for tidal waters shall be measured from the Critical Line as established by OCRM. The buffer area shall remain undeveloped, except for piers, docks and pervious access paths to the water or wetlands bank. Any disturbance of the buffer area shall adhere to OCRM's Best Management Practices (BMPs). Riparian Buffers shall be in accordance with all State and Federal Regulations. She said there are extraordinary conditions because the zoning ordinance would prohibit the applicant from building on the subject lot since the subdivision occurred prior to the November 2007 Zoning Ordinance when there was not any Riparian Buffer requirements; however, at the time of approval all applicable State and Federal requirements were met. These conditions generally do not apply to other property outside of this subdivision. As far as utilization, strict application of the ordinance would result in the subject lots being un-buildable. A variance would not be a substantial detriment to adjacent property. In fact, a variance would be consistent with the other lots in the subdivision and would allow for affordable housing to be created.

Ms. Wagner said staff recommends that the front yard setback be reduced from 25' to 20' from the right of way of the road, the side yard setback reduced from 10' to 5', and the rear yard setback from 25' to 10'. She said in addition, staff recommends that the riparian buffer be reduced to not less than 15'. She said staff's recommendation is based on what has already been granted for the other 43 lots in this subdivision, which is consistent with the findings of the Board previously. She said although the lots are small, the

subdivision met all the county standards at the time of approval and the applicant has met all of the conditions outlined in the April 19, 2012 Order of Appeal.

Chairman Richardson opened the floor to the Applicant, Fred Hamilton Jr. Mr. Hamilton said this is a very unique property. He said the developer has made a commitment to construct affordable homes, which is needed regionally. He said if all goes well they would like to make this a gated community so it will be protected within itself. He said that is not heard of in affordable housing communities anywhere, but this owner is dedicated to making this community private so that people that can afford the pleasure of living here and can feel comfortable in their environment. He said the setbacks for lots 1-11 and lot 29 are not consistent with the rest of the project.

Mr. Richardson asked, based on the existing homes, what size homes are proposed. Mr. Hamilton said the largest one we have in that project is about 1,300 square feet. Chairman Richardson asked what is the smallest size home. Mr. Hamilton said probably 1,100 square feet. Mr. Richardson said so 1,200 square feet is the average size. He asked if that is considered an affordable home in today's market. Mr. Hamilton said it is in today's market but it is not always affordable. He said affordable depends on the land cost and the infrastructure which is another key component in this project. He said infrastructure is already in place for all of the lots that are being considered for a variance. Mr. Richardson asked if the lots that the variance is being requested for, are consistent with the size of the lots previously built upon. Mr. Hamilton said not all of the lots are consistent because of the size or the shape of the lots. He said the lots that have already been constructed on are larger lots. Ms. Wagner said some of the lots that were built on do not have any wetlands on them. She pointed out lots 1 – 11 on the map.

Ms. Bartoldus asked if lot 1 was previously allocated as free space or an open space. Ms. Wagner pointed out a lot where a pond is located adjacent to lot 1 and she said that lot has been deeded over to the property owners association. Ms. Bartoldus said that is not a pond but serves as drainage from the road. Ms. Bartoldus asked how far off the road is lot 1. Ms. Wagner and Chairman Richardson said lot 1 is consistent with the right-of-way. Ms. Bartoldus said literally lot 1 would be very close to the main road and have the drainage pond in its back yard. She asked Mr. Hamilton if that is correct. Mr. Hamilton said yes. Ms. Bartoldus asked how far a residence must be from a drainage pond. Mr. Hamilton said it is a retention pond but does not serve as drainage for the road. Ms. Bartoldus asked if the pond will be fenced in any way. Mr. Hamilton said yes. Ms. Bartoldus asked if the only open space of the development is on the back of the properties where the dock is. Ms. Wagner said and the lot in front where the retention pond is. She said the developer has constructed a playground and a dock in the back of the subdivision. Ms. Malphrus asked where parking for the playground and dock is. Mr. Hamilton pointed out the parking lot which is located on lot 12. Ms. Bartoldus asked if Lot 12 would have a home and the public's parking located on it. Mr. Hamilton said no home will be there. Chairman Richardson said so that is open space also. Mr. Hamilton said yes and the mailboxes for the community are also located on lot 12.

Chairman Richardson opened the floor for public comment. Mr. Eugene Williams addressed the Board. He said he is an adjacent property owner to Jamestown Estates. He said before commenting, he would like to share some history about the particular property. He said the land known as Jamestown, belonged to his family since 1881. The property was owned by his first cousin, James Jenkins, who sold it to a developer in 1993. He said it started as a manufactured home park and it was granted that the mobile home sites would be affordable homes. For some reason anytime developers want to invade wetlands they use the term "affordable homes" as a key to alter wetlands for the purpose of development. He said that particular parcel of land was a rice patty and a sugar cane field and it's going to be wet regardless of what kind of development occurs. He said anytime you have an inch of rain, every inch of that property is going to be

under water. He said every time it rains his property looks like a retaining pond, it's under water. Altering the variance on that property is going to cause a hardship to the people who own adjacent property and altering the wetlands you will alter eco-systems. He said the grass can't be cut for six months because the water does not dissipate and it is a clay bottom land. He said everyone is talking about affordable housing but they never tell you what those affordable housing is going to cost. He asked the Board if anyone tells them how much it will cost to buy or rent a house per month and to whom is housing affordable for. He told the Board they should ask these questions.

Ms. Bartoldus said the riparian buffer is not buildable and hopefully is a way of stopping the water from coming on to adjacent property. She knows the flooding is extreme in the Hardeeville area but the task before them today is to decide how much of a riparian buffer this subdivision needs to protect the people that live there and to decide the setbacks so people can live there. Mr. Williams said in 2006 researchers studied the wetlands and the eco-system and the changes that occurred due to chemical use in the wetlands and developing of those wetlands. He said they have two-headed frogs and two-headed snakes and various alterations in the eco-system due to the improper use of the land. He said he is not against progress, but we have to be sensible and we cannot put a house on every piece of land that you have that's dry today and underwater tomorrow. The Planning Commission and the people around them are supposed to protect not only the wetlands, and the people who live here, but also protect it for the future people who intend to live on these parcels. Chairman Richardson asked Mr. Williams if he has a septic tank on his property. Mr. Williams said no, he has a grinder system that goes into the (BJWSA) waste plant down in Purrysburg. Ms. Bartoldus asked if Jamestown has a pump station. Mr. Hamilton said yes. Chairman Richardson said for the record, Jamestown Subdivision has been permitted and has the proper sewage capabilities, no septic systems whatsoever.

Ms. Pamela Williams said the pond in the front shows vegetation being there but there is no vegetation around that pond. She said everything around that pond has been taken down, including the trees. Ms. Bartoldus asked if the riparian buffer has been removed from lot 1 so they can make that drainage pond. Ms. Wagner said there are no wetlands on lot 1. Ms. Bartoldus said so a riparian buffer was not put on lot 1. Chairman Richardson said a buffer is not required there since there is not a wetland. Ms. Wagner said if a house is built on lot 1, there will be a 25' setback from the retention pond. Ms. Bartoldus asked if something specific should be put in place for that lot stating that it is necessary, because years ago they took lot 1 out. Ms. Wagner said it is a requirement of the zoning ordinance and no riparian buffer variance was requested for that lot since there are no wetlands on lot 1 and the current ordinance will have to be met.

Ms. Malphrus asked for clarification of what is exactly being appealed. Ms. Wagner said the Planning Commission last approved this subdivision in 2003. During the approval, all subdivision requirements were met. In 2003 there were no minimum lot size requirements and the lots are very small, under a quarter of an acre. In November of 2007, a new Zoning Ordinance was adopted which increased the setbacks. Any new structures must meet the current setbacks unless a variance is granted. She said a variance from the setbacks has already been granted for all the lots in the subdivision except for Lots 1-11 and Lot 29 so the Board is here today to consider granting a variance for Lots 1-11 and Lot 29, which is one request. She said the second request for the Board to consider is reducing the Riparian Buffer for Lots 2-11. Prior to the 2007 Zoning Ordinance being adopted, there was not a Riparian Buffer requirement. Lots 1 and 29 are not included in the variance request because there are not wetlands present on these two lots. She said staff's recommendation is 15' from the wetlands because some of the other lots were granted a 15' variance from the wetlands in 2009. The reason that Lots 1-11 and Lot 29 were not included in the 2009 appeal is because those lots were owned by someone else who did not want to be included in the request.

Ms. Bartoldus thinks lot 1 should be taken out or something done since it is different than lots 2-11. Ms. Wagner said lot 1 is not included in the riparian buffer so they are going to have to maintain 25' from the pond. Chariman Richardson asked who is going to be responsible for overseeing that setback compliance. Ms. Wagner said before a building permit is issued, a zoning permit has to be issued. She said during the process of the zoning permit, the applicant will have to provide a site plan showing the structure in relation to the setbacks from the property lines and any wetlands, if wetlands are located on the property, so the setbacks and riparian buffer requirements will have to be met in order to get a permit. Chairman Richardson asked if each plan or plat will show the wetland. Ms. Wagner said yes, plus the overall subdivision plat that is in your package, already depicts the wetlands. She said the wetlands were delineated at the time the subdivision was developed.

Chairman Richardson asked for a recommendation based on what has been presented to the Board. **Ms. Bartoldus motioned to reduce the front yard setbacks from 25' to 20', the side yard setbacks from 10' to 5' and the rear yard setbacks from 25' to 10'. Chairman Richardson seconded the Motion. The motion passed with Chairman Richardson and Ms. Bartoldus voting in favor of the motion and Ms. Malphrus opposing the motion.**

Ms. Bartoldus motioned to deny the request to reduce the Riparian Buffer so that it remains at 25', Ms. Malphrus seconded the Motion. The motion passed with all Board Members voting in favor of the motion.

Election of Officers: Ms. Malphrus motioned to keep the same officers which were elected at the last Board of Zoning Appeals Meeting held on August 17, 2007. Mr. Richardson seconded the motion. The Board Members voted unanimously in favor of the motion. Officers are as follows: Mr. Richardson is Chairman, Ms. Carmen Malphrus is Vice-Chairwoman, and Ms. Lawson is Secretary.

Adjourn: Mr. Richardson motioned to adjourn. Ms. Bartoldus seconded the motion. The Board voted unanimously in favor. The Meeting adjourned at approximately 11:09 A.M.

Submitted by:

Bonnie W. Lawson, Secretary
Planning & Zoning Coordinator