

**Kershaw County Planning and Zoning Commission**  
**Minutes - Regular Session**  
**July 9, 2009, 5:30 p.m.**  
**County Council Chambers, 515 Walnut Street**  
**Camden, SC 29020**

Members Present: Lewis Shaw, Charles Cottingham, and Richard Simmons

Members Absent: David Brown, Karen Eckford, George Gibson, and Dan Matthews

Staff Present: Carolyn Hammond and John Newman

**Call to Order**

Chairman, Lewis Shaw, called the meeting to order at 5:37 p.m.

**Public Comment Period**

Marion Sadler, on behalf of the Home Builders Association of Greater Columbia, spoke about the proposed water quality buffers. The Home Builders Association feels the proposed buffer regulations are too stringent and treat all development sites with a one size fits all approach. He expressed concerns that the 100 foot and 50 foot buffers are too large. He added that regulations do not allow for site-specific conditions, variances, and exceptions. The Home Builders Association would like to see provisions added to allow for economic variances and for the County Engineer to be able to use his discretion in what is needed without requiring detailed information and studies on how to apply buffers on sites where little need for buffers is obvious. Mr. Sadler also told the group that existing undeveloped single-family lots under three acres should not be subject to any buffer requirements; that buffer averaging should be implemented; and that the recommendations in the Statewide Task Force Report should be used as the basis for any buffers that are established. Before closing, he reviewed comments from Ann Clark of DHEC and mentioned that DHEC has accepted Spartanburg County's buffer regulations which allow flexibility and narrower buffer widths.

**Public Hearing on Rezoning Request of Kershaw County**

The Chairman opened the public hearing by reading the notice stating that Kershaw County, applicant, is requesting a change in the classification of approximately 1.09 acres from MRD-1 Rural zoning to GD General Development zoning. The property is located on 434 Cleveland School Road, approximately .8 mile south of I-20 exit 101, Dr. Humphries Road. TMS# 315-00-00-069. The parcel is part of the Park for the SC Equine Center.

John Newman reviewed the Staff Report, saying the proposed site is located within an Economic Development (ED) land use area, and is the former Westfall Arena office. It is contiguous to existing GD-zoned property. He closed by stating that Staff recommends approval of the rezoning.

Nelson Lindsay, representing Kershaw County, added that the County wants to bring the one-acre parcel into conformity with the rest of the acreage of the site so they can have the flexibility of bringing different types of house-related businesses into the park.

Frank McLeod, an adjacent property owner, told the group that he had just become aware of the rezoning and had not had time to evaluate the issue. He stated that he needs more time and information in order to establish whether he agrees or disagrees with the rezoning. He added that he supports the equestrian center and wants to assure that the property will continue to be used as such. John Newman told Mr. McLeod that he could contact him for information.

John Newman stated that even if the property were not associated with the equine center, it would still qualify for rezoning to GD because it is contiguous to property already zoned GD and because it is located in an economic development zone on the future land use map in an area that would be receptive for a broad range of commercial, but not industrial, uses.

### **Zoning Map Amendment**

Because a quorum was not present, the discussion and vote on the rezoning request did not take place. It was deferred until the next meeting.

### **Approval of Minutes**

Because a quorum was not present, the approval of minutes was deferred until the next meeting.

### **Draft Zoning and Land Development Regulations**

#### Stormwater Management Standards

John Newman relayed the following responses to comments received relating to the draft stormwater management standards:

In Section 5:3.7-2.B (No Negative Impact), comments were received stating that the language needs to be more reasonable. Mr. Newman recommended that it be amended to read as follows:

**B. No Negative Impact** - In areas where there are known drainage problems, no construction shall be allowed which will have an adverse impact on the peak runoff rate, timing, and/or volume until it is ~~convincingly~~ **reasonably** established that no negative impact will result.

Comments relating to Section 5:3.7-2.D stated that developers are being penalized for drainage problems that they did not create. Mr. Newman replied that it is very reasonable to not allow a developer to compound an already bad stormwater drainage area.

Section 5:3.7-2.F. (Design Consistency) requires that variances have to be approved by the Public Works Director, the County Engineer, and the Planning Official. A comment was received stating that having three people to approve variances is problematic, and that the County Engineer should be the only one making these decisions. John Newman told the Commission that the County Engineer, who is the stormwater manager, originally thought such decisions were best made by committee, and that he still feels that way.

A comment on 5:3.7-3.C (Building/Structure Drainage) suggested that roof runoff should be directed across pervious areas. Mr. Newman recommended that it be amended to read as follows:

**C. Building/Structure Drainage** – *Where practicable*, ~~D~~drainage from rooftops of existing or proposed buildings and/or structures should be directed across pervious areas and should not be piped directly to the storm drainage system. When this is not practicable, ~~P~~piping rooftop runoff away from the building or

structure and discharging to an on-site pervious area is acceptable. All other exceptions, ***including piping to off-site pervious areas to which legal easements are obtained***, shall be reviewed on a case-by-case basis.

#### Lake Wateree Overlay District Septic Tank Regulations

As a result of comments received at the June 25<sup>th</sup> public presentation, the Planning Director recommended that Item D. (Inspections for Compliance) of Section 3:7.4-8 (Lake Wateree Overlay District On-Site Sewage Disposal System Regulations) be amended to read as follows:

1. Inspections Prior to Sale of Real Estate Interest - As of the effective date of this Ordinance, prior to the sale of any ownership interest of a lot containing an OSDS, the seller of interest shall provide the buyer with a written inspection report of the system prepared by an inspector. ***Sale of ownership interest does not include the conveyance by gift or inheritance from one family member to another.*** The inspection shall occur no earlier than sixty (60) days prior to the sale. Prior to the inspection, a pump-out of the septic tank is required to insure a proper inspection of the interior of the tank, to check for leaks from the building, and to check for saturated conditions in the drain field. A copy of the inspection report and sewage disposal manifest from the pumping contractor shall be submitted to the Building Official within ten (10) days of the inspection. The inspection report shall certify that the system is in good operating condition.

#### Manufactured Housing Regulations

Allen Hutto of the South Carolina Manufactured Home Board suggested that Planning and Zoning require a copy of the submitted DMV Form 400, Application for Certificate of Title and Receipt, as a proof of ownership. John Newman recommended that Section 4:2.3-3 (Process) be amended to read as follows:

Once site approval is issued, the applicant must file for a manufactured housing moving permit and must furnish septic tank approval from SCDHEC and proof of ownership of the manufactured housing that is acceptable to the Planning and Zoning Department such as title, ***copy of DMV form 400 Application for Certificate of Title and Receipt***, dealership sales agreement, or bill of sale.

Because Mr. Hutto commented that the habitability section of the regulations will be preempted by the State habitability regulations, it was recommended that the following text be added to Section 4:2.3-7 (Habitability):

The word *habitable* as used herein means that there is no defect, damage, or deterioration to the home which creates a dangerous or unsafe situation or condition; that the plumbing, heating, and electrical systems are in safe working order; that the walls, floor, and roof are free from any holes, breaks, loose or rotting boards, and are structurally sound; and that all exterior doors and windows are in place. Further, the word *habitable shall include the provisions the SC Manufacturing Board Regulations 79-43, Used Manufactured Housing Minimum Habitability Requirements, and shall include the following facilities:*

Allen Hutto feels that the requirement that a lot to be graded to remove low areas when demolishing a manufactured home will result in a many people not getting rid old homes. It was

suggested that Section 4:5.2 (Demolition Permit Application for Manufactured Housing) be amended as written below:

The application for a permit to demolish a manufactured home shall be made on a form provided by the Planning and Zoning Department. The applicant may be the structure owner or the demolition contractor. The property owner must sign a statement to the effect that he has read and agrees to the scope of work that includes the following:

- A. The arrangement for the disconnection of all utilities.
- B. The capping of sewer or septic lines.
- C. The complete demolition and/or removal of all structures and piles of debris including all foundations.
- D. The proper disposal of all debris at SCDHEC-permitted solid waste processing and disposal facilities.
- E. The removal of all rank vegetation and the cutting of grass and weeds.
- F. The saving of and protection from damage during demolition and removal, all significant trees (twenty [20] inch or greater DBH pine trees, eight [8] inch or greater DBH all other species) per the tree protection regulations as prescribed in this Ordinance.
- G. The grading of the lot *as necessary* to prevent low areas and to promote proper drainage.

The final comment by Mr. Hutto noted a typo in Item 2. of Section 4:5.2-1 (Permit Certification). The following correction will be made:

- 2. The second inspection shall be made to verify that all conditions of Section ~~4:4.2~~ **4:5.2** above have been met.

#### Water Quality Buffers

In an exchange between Lewis Shaw and Marion Sadler, it was established that Marion Sadler did not participate in the 2000 Statewide Task Force on Riparian Forest Buffers Report. He was, however, the lead DHEC staff person on developing the proposed amendments to regulation 61-9 that would establish a minimum requirement of a 35 foot riparian buffer. This regulation did not pass. Chairman Shaw concluded by saying that the reality is the legislature is not ready to implement statewide buffers, and the Statewide Task Force on Riparian Forest Buffers Report somewhat acknowledges that and encourages locals to do exactly what Kershaw County is trying to do.

John Newman stated that there seems to be a lot of concern about the fate of nonconforming structures that may be located within a required buffer area. He explained that since buffer requirements only apply to previously undeveloped parcels, no nonconforming structures would exist in the first place. He recommended that the Section 5:3.6-2B.6. (Nonconforming Structures) be deleted and the definition of *developed* by modified to include only development that is in current use.

The Home Builders Association feels the County Engineer should be able to grant exemptions in certain situations without submittal of the study and/or some or all the information listed in 5:3.6-1.B. Staff agrees and recommends that the County Engineer can make a determination

under certain situations, but believes that his determination should be based on the same criteria as 5:3.6-1.B. Staff recommends that the following language be added:

**2. County Engineer Determination**

*Under site conditions in which it is clear that a buffer width that is less than the required width will afford the same water quality protection as the required width, such as very flat land, porous soils, and existing dense riparian vegetation, the County Engineer may make a determination of a reduced buffer width. The determination shall include the following factors:*

- a. The slope of the site from the highest elevation on the site to the surface elevation of the stream, lake, or pond.*
- b. Annual rainfall.*
- c. Site soil type.*
- d. Type of vegetation within the buffer.*
- e. Amount of impervious surfaces on-site (including rooftops).*
- f. Other characteristics specific to the site.*

*The determination shall demonstrate that a proposed buffer width that is less than the required width will afford the same water quality protection as the required width in the following standards:*

- 1) Erosion prevention and sediment control.*
- 2) Nutrient, pesticide, and biocontaminant (fecal coliform) removal.*
- 3) Stream temperature.*

In Section 5:3.6-1 (Basic Requirements for Water Quality Buffers), the Home Builders Association commented that commercial parcels less than one acre with less than 5,000 square feet of impervious surface that are not part of a larger common plan of development should be exempted without having to apply for an exception. John Newman pointed out that the ZLDR already has provisions for reductions of buffers for any type of property, commercial or residential, if it is a smaller acreage. While not necessarily an agreement, he said an additional compromise would be to change from parcels under three acres to parcels under five acres for a 50 foot buffer and further breakdown to a 35 foot buffer if the property is under one acre. He went on to add that he felt compelled to mention that comments in favor of the proposed and even larger buffer widths have been observed. The Statewide Task Force on Riparian Forest Buffers, he said, is what the Home Builders Association is hanging their hat on. Mr. Newman initially recommended that the 100 foot buffer zone on perennial streams be submitted to the Planning Commission along with numerous documentation, including the Task Force Report to support the 100 foot buffers. The task force recommendation states that 100 foot buffers in non-forest areas afford the best protection. It also states that it would take a 300 foot buffer in non-forested lands to achieve comparable benefits of a forest riparian buffer. The 35 foot statewide standard is a minimum standard and was derived under a political compromise that was not based on science. There are many studies, including the Task Force Report, which support a 100 foot buffer. The SC Forestry Commission's best management practices for forestry guidelines call for a minimum buffer of 40 feet in the streamside management zone and up to an additional 120 feet of buffer in a secondary zone for a potential total of a 160 foot wide buffer and this, he noted, is in an already forested circumstance, not a developed area.

In reference to comments on buffer width increases due to site-specific conditions related to slopes, John Newman said that when additions to a buffer are based on slopes, a slope of 15-17 percent is already too steep to begin with. As an illustration, he pointed out that the NRCS guidelines require an assessment prior to development on a slope of over ten percent. He recommended that, if the Commission did look at slopes, they start with the 10-14 percent bracket. The Home Builders Association's recommendations for increases due to slope will require a topographic map to determine the slope for every single area that there is a buffer, and will be an added expense to the applicant, but would be feasible to administer. When referring to increases due to environmental sensitivity, Newman stated that this determination could be made a requirement of the permit application with little additional burden to the applicant and would be feasible to administer.

Lewis Shaw said that the ZLDR proposes a 100 foot buffer and the Home Builders Association recommends a 35 foot buffer, and that the basis for the Home Builders Association's recommendation is, at least in part, the Statewide Task Force on Riparian Buffers Report. He added that it appears to him that there were a wide ranging set of views among the task force members; that their charge was to come to a consensus; and in a consensus situation, you have to have compromises. He went on to say that there is a lot of scientific evidence and a lot of information in the scientific community that says large buffers are better than small buffers and that there are a lot of places where 100 feet is recommended. He then asked Mr. Sadler if the Home Builders Association was locked into 35 feet or would there be another number that would work. Mr. Sadler replied by saying that, looking at the proposal as a whole, they are not saying that 35 feet is it. They are saying it is a starting point. It, he said, depends on how the number is applied and recommended that the buffers be tailored to site conditions.

Lewis Shaw corrected Mr. Sadler's incorrect assumption that the proposed ZLDR has no provisions for site conditions by saying that while the provisions for modification are not spelled out in the details, they do exist.

Mr. Sadler stated that that was problematic because developers like to know is what they have to do up front when they evaluate a piece of property. He added that 35 feet is what the Home Builders Association had talked about, but from his point of view and from dealing with the Home Builders Association for the past six to eight months, he felt certain that, with the appropriate language on the issues they have been talking about, there is room for discussion.

The Chairman said that the Commission wants to put out a document that is in the best interest of Kershaw County and which represents the best for the citizens of the county. In their process of seeking input into buffer widths, they have been provided a lot of information, and their initial thoughts through the process were that the 100 foot buffer was the place to start.

Rebecca Best, a Home Builders Association representative, interjected that the Home Builders Association was at the meeting to try to be a team player, and if something workable can be worked out, they are not at the point where 35 feet has to be the number. They, she said, are willing to work with the Commission.

John Newman stated that 35 feet was not the recommendation of the National Home Builders Association because they supported Horry County's 100 foot buffer width as supportive of the standards of national model ordinances. Lewis Shaw asked her if the Home Builders Association of Greater Columbia had asked the National Home Builders Association for their comments on Kershaw County's proposed buffers. Ms. Best replied that they have.

Lewis Shaw concluded the discussion by stating that the realization is that there is science to determining buffers and there is policy to setting buffers, and he does not want to throw science out nor does he want to make it so burdensome that people are unable to comply.

### **Staff Report on County Council Actions Concerning the Planning and Zoning Commission**

John Newman told the group that there were no Council actions concerning the Commission.

### **Other Business**

Lewis Shaw reminded those in attendance of the July 30<sup>th</sup> meeting, and added that, because of the amount of information to cover, they needed to be prepared to stay more than two hours. This meeting will be changed from a work session to a special called meeting so that a vote can be taken on the proposed rezoning.

### **Adjournment**

The meeting adjourned at 6:35 p.m.

Respectfully submitted,

*Carolyn B. Hammond*

Carolyn B. Hammond  
Secretary