

Wadmalaw Island Land Planning Committee

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July 8, 2021

Charleston County Board of Zoning Appeals
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, SC 29405
Via Email: BZA@charlestoncounty.org

RE: Letter Opposing BZA-05-21-00493: Driveway in OCRM Critical Line Buffer
TMS#: 150-00-00-171 Cherry Point Road/Wadmalaw Island
Agricultural Residential (AGR) District

Dear Members of the Board of Zoning Appeals:

The Wadmalaw Island Land Planning Committee opposes this request to create a driveway within the OCRM Critical Line Buffer Area. An approval of this request will compromise the ZLDR Wetlands, Waterways, and OCRM Critical Line Ordinance, which was designed to protect the saltwater critical area designated by the State of South Carolina, SCDHEC-OCRM. The ordinance has two sections, §9.7.1 A. the Purpose and Intent of the Ordinance and the B. the Buffer widths per zoning district; and §9.7.2, which lists specific prohibitions. We believe that 9.7.1 establishes where Buffers need to be, and once determined what constitutes a Buffer and where the Buffers are located, §9.7.2 sets up specific types of uses that are prohibited in the Buffers. Our position is that a variance from this ordinance will negatively affect the purpose and intent of the ordinance itself, and what it was adopted to protect.

The intent and purpose of the ZLDR Article 9.7 Wetlands, Waterways, and OCRM Critical Line ordinance is stated as follows:

ZLDR §9.7.1 Wetland Buffers and Setbacks

A. Intent: The buffer standards of this Article are intended to provide a natural vegetated area between the furthestmost projection of a structure, parking or driveway area, or any other building elements, and all saltwater wetlands, waterways, and OCRM (saltwater) critical lines. (emphasis added). The purpose of these required buffers is to provide a visual, spatial, and ecological transition zone between development and the County's saltwater wetlands and waterways, and to protect water quality and wildlife habitat.

ZLDR §9.7.2 Prohibited Activities

The following activities are specifically prohibited in a buffer area:

- A. Removal excavation, or disturbance of the soil, except for minimal disturbance associated with the planting of shrubs or trees for landscaping;*
- B. Grassed lawns requiring regular maintenance such as herbicides; pesticides, fertilizers and frequent mowing;*
- C. Gardens, fences, or structures, except for permitted crossings;*
- D. Paved or other impervious surfaces; and*
- E. Destruction or addition of plant life which would alter the existing pattern of vegetation.*

In addition to the above objection to the compromise of the Critical Line Buffer requirements, our Committee believes that the elements of the legal hardship test, the “Variance Approval Criteria” have not been satisfied by the applicant, and do not meet the following §3.10.6 (1-7) criteria, listed below:

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 Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;
4. The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance;
5. The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a Nonconforming Use of land, or to change the zoning district boundaries shown on the Official Zoning Map. The fact that property may be utilized more profitably if a Zoning Variance is granted shall not be considered grounds for granting a Zoning Variance.
6. The need for the variance is not the result of the applicant's own actions; and
7. Granting of the variance does not substantially conflict with the *Comprehensive Plan* or the purposes of this Ordinance.

§3.10.6 Variance Approval Criteria

§3.10.6(1) There are extraordinary and exceptional conditions pertaining to the particular piece of property:

- The owner states that the exceptional condition is that the area adjoining his proposed driveway should not be classified as an OCRM “Critical Area”; however, SCDHEC-OCRM has classified the area as “Critical Area,” as evidenced by the notations on the owner’s submitted plat. We believe that claim is not a valid example of an exceptional condition, pertaining to the particular piece of property.
- The owner can build elsewhere on his land. As explained in the staff report, this TMS parcel contains over seven acres of vacant highland areas, located in six separate places. The plat shows only a *three acre part of TMS 150-00-00-171*, and we believe that a residence could be constructed on other high land areas within this Tax Lot, or apply to bridge the part of the Critical Area that cuts through this newly proposed lot area.
- Even if the new plat were to be approved, creating a separate lot, it appears that the owner could build on the front portion of the new lot, and he would have direct access to the residence from Cherry Point Road, without going through the Critical Line Buffer.

§3.10.6(2) These conditions do not generally apply to other property in the vicinity;

- This property is not unique. There are substantial numbers of properties throughout Wadmalaw Island, and within the immediate vicinity, that front on creeks, rivers, tributaries, and saltwater wetlands. The OCRM Buffer applies to all waterfront/wetland properties similarly designated at critical areas, and we do not believe that this property should be treated differently than other properties that have OCRM Buffers next to highland properties.

§3.10.6(3) Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;

- A denial of the variance would not restrict the use of this owner's property. This tract of land appears to have alternate building sites which would have access onto Cherry Point Road without relying on a driveway that would intrude into the Critical Line Buffer.

§3.10.6(4) The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance.

- Encroachment into the Critical Line Buffer would diminish the "visual, spatial, and ecological transition zone between development and the County's saltwater wetlands and waterways", and would negate the protection of "water quality and wildlife habitat". Such an encroachment would adversely affect the protected area located within the natural vegetated area between the furthestmost projection of a structure, parking or driveway area, or any other building elements, and all saltwater wetlands, waterways, and OCRM critical lines.

§3.10.6(5) The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a Nonconforming Use of land, or to change the zoning district boundaries shown on the Official Zoning Map. The fact that property may be utilized more profitably if a Zoning Variance is granted shall not be considered grounds for granting a Zoning Variance. (emphasis added).

- The property owner wishes to establish the residence on the rear portion of the new lot, rather than to build on the front portion of the lot. This would likely increase the value of the residence, with a marsh view, rather than having the lot situated closer to the front part of the property. If that is the intent of the owner, utilizing the property for a more profitable use is contrary to this criterion.

§3.10.6(6) The need for the variance is not the result of the applicant's own actions;

- The applicant has chosen to apply to subdivide this property and to build beyond the critical line and the Critical Line Buffer, thus creating a self-imposed need to use the Critical Line Buffer as a driveway. He has three alternatives to that plan: 1) to build in the front portion of this area, 2) to build farther down, on the other end of the Tax Lot, or 3) to construct a bridge across the critical area that cuts through this portion of the newly proposed lot, allowing him to build beyond the critical area as he proposes to do.

§3.10.6(7) Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.

- Granting this variance would conflict with the adopted strategies of the Comprehensive Plan:

3.3.4 Natural Resources Element of the Comprehensive Plan:

The following strategic actions should be undertaken by Charleston County and cooperating agencies that promote and protect natural resources in the County. These implementation strategies will be reviewed a minimum of every five years and updated every ten years from the date of adoption of this Plan.

“NR 3: Promote sustainable, low impact development practices including but not limited to stormwater management, green infrastructure, maintenance of vegetative cover, Critical Line Buffers (emphasis added), and setbacks, and conservation set-asides in development plans and the ZLDR.”

- Granting of the variance would also conflict with the Purpose and Intent of 9.7.1 Critical Line Buffer Ordinance:

9.7.1 The buffer standards of this Article are intended to provide a natural vegetated area between the furthestmost projection of a structure, parking or driveway area, or any other building elements, and all saltwater wetlands, waterways, and OCRM (saltwater) critical lines. (emphasis added). The purpose of these required buffers is to provide a visual, spatial, and ecological transition zone between development and the County's saltwater wetlands and waterways, and to protect water quality and wildlife habitat.

In the event this Board approves the application, we ask that the following conditions, (1 and 2), recommended by Staff, along with additional conditions 3, 4, and 5 be attached as requirements:

- 1. The driveway shall be constructed using pervious materials and shall remain pervious in perpetuity.**
- 2. Prior to commencing construction, silt fencing shall be installed along the Critical Line. The silt fencing shall be maintained for the duration of the construction.**
- 3. Filtration material shall be installed by the owner on either side of the driveway, with the guidance of OCRM or an engineer. This would help protect water quality by minimizing the nonpoint source pollution runoff into the marsh/critical area, and would mitigate the overall disturbance of the Buffer area.**

- 4. If the plat is approved creating this lot, no further subdivision and/or extensions of the driveway shall be allowed on this property, that would have the effect of further encroaching into the Critical Line Buffer area.**
- 5. Enforcement of the use of the driveway for expansions of the driveway/usage shall be required through annual inspections or GIS monitoring.**

For the above reasons, we request that this application be denied. We believe that there is no valid hardship in his request to subdivide his land to create and use property that is surrounded by and has SCDHEC-OCRM critical area within the newly proposed lot.

If a driveway is allowed to be established within the OCRM Critical Area Buffer, a precedent will be established not only on Wadmalaw Island, but throughout Charleston County, since this Board is a quasi-judicial, precedent setting Board. Such a decision would open doors for many other wetlands, marsh, and waterfront property owners to make similar requests in violation of the Critical Line Buffer Ordinance. This situation is not unique; the Wetlands Critical Area Buffer requirements should be applied to all similar properties.

Thank you for your consideration of our comments.

Sincerely yours,

WADMALAW ISLAND LAND PLANNING
COMMITTEE

John Taylor, Jr/MLK

John Taylor
Chair

Zoning Committee:

Melinda Lucka Kelley
Kathie Seabrook Jordan
Tomas Hainich
Dennis Vane