

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 404-521-9900

TEN 10TH STREET NW, SUITE 1050
ATLANTA, GA 30309-3848

Facsimile 404-521-9909

December 7, 2016

Via U.S. Mail and Email

Mr. Eric Landon, Director
Camden County Planning & Development Department
County Annex
107 N Gross Road
Kingsland, GA 31548

Re: Lumar, LLC, Hardship Variance Application (ZV2016-8)

Dear Mr. Landon, Chairman Casey, and Members of the Planning Commission:

The Southern Environmental Law Center (SELC) submits this letter to address Lumar, LLC's (Lumar's) request for a variance to create a ten-lot split subdivision on an 87-acre parcel Lumar owns on Cumberland Island (tax parcel 181-006). Lumar is seeking the variance because the parcel, zoned Conservation Preservation (CP), borders an unpaved road and Article 5, Section 501(b)(3)(a) of the Camden County Unified Development Code (Development Code) only allows such subdivisions on paved roads.

SELC is a regional legal and policy organization with a commitment to coastal protection and preservation, including decades of work to protect the natural resources of the Georgia coast. Our investigation of this variance application has revealed that a substantial number of Georgians, whether they have visited Cumberland Island or not, are concerned about this request because they believe that it may be a harbinger of future development on the iconic island, a place recognized internationally for its natural beauty and wild character. Based on these public concerns, the facts in this case, and the standards set forth in the Development Code, we have concluded that the Planning Commission has no basis for granting the variance.

Background

Cumberland Island is a national treasure. It is Georgia's largest and perhaps most celebrated barrier island. In addition to its vibrant history, it is home to pristine maritime forests, undeveloped beaches, and extensive salt marshes. While portions of the island are protected by its National Seashore and Wilderness Area designations, other parts of the island are privately owned. According to the National Park Service and Camden County tax maps, there are close to 1,000 acres of property held in fee simple on the island.

Although we are concerned about the prospect of future development on the island, we are also aware that the many private property owners were instrumental in allowing Cumberland Island to evolve into the special place that it has become. Were it not for their historic willingness to work with the National Park Service, Cumberland Island National Seashore may not have come into being.

Property Owners and Property

Lumar is comprised of several members of the Candler family, which has retained rights in the 34-acre High Point estate located in the northern part of the island. Lumar purchased the property at issue here in 1998. It is our understanding that this purchase was made in anticipation of the Candler family losing the High Point estate when the family's retained rights on that estate expire.

For Cumberland Island visitors seeking to enjoy the wild northern reaches of the island, the property at issue is the first area they would pass through on their way north from Sea Camp. As the single-lane, unpaved main road passes through the property, there are no visible structures of any kind. The property sets the stage for what visitors can expect as they venture further north.

Burden for Hardship Variance is on the Applicant

The Lumar members are seeking the hardship variance so they can subdivide the property into ten separate lots. Without the variance, the subdivision would not be possible because the Development Code forbids the subdividing of any property that borders an unpaved road.¹ In order to establish that the hardship variance is warranted, Lumar must prove that its request meets the variance standards, that is, the burden of proof is on Lumar, not the Planning Commission. See Matheson v. DeKalb Cty., 257 Ga. 48, 50 (1987); Int'l Funeral Servs., Inc. v. DeKalb Cty., 244 Ga. 707, 709–10 (1979) overruled on other grounds by Jackson v. Spalding Cty., 265 Ga. 792 (1995). Where an applicant such as Lumar does not make a sufficient showing, the zoning board--or in this case the Planning Commission--may not grant the hardship variance sought. See Cook v. Howard, 134 Ga. App. 721, 722 (1975); B. L. Ivey, Inc. v. Allen, 105 Ga. App. 728, 731–32 (1962); Matheson, 257 Ga. at 50.

Under the Development Code, personal inconvenience does not rise to the level of unnecessary hardship. For example, in a case decided by the Georgia Court of Appeals, the applicant had sought a hardship variance to build a second residence on a lot restricted to a single residence. The applicant alleged that the second residence was needed for health care purposes. Cook, 134 Ga. App. 721, 721-22 (1975). The standards for a hardship variance applicable in that

¹ Camden County UDC, Art. 5, Sec. 501(b)(3)(a).

case were very similar to those in Camden County's Development Code. Applying those standards, the court held that the personal hardship of the applicant did not rise to the level of "unnecessary hardship" and "extraordinary and exceptional conditions" required by the regulations. Id. There, much as here, the variance was sought not because of hardship circumstances relating to the site (such as shape or topography of the land), but because of the property owner's particular needs or desires. Accordingly, the court affirmed the zoning board's denial of the variance. See also Matheson, 257 Ga. at 50 (holding that the "practical difficulties" and "hardship" complained of by the applicant were not inherent in the property and did not rise to the level required by the zoning code). The same outcome is required here.

Lumar's Application Does Not Meet the Standards for Granting a Hardship Variance

Under the Development Code, the Planning Commission may only grant a hardship variance if the applicant for such a variance proves that the applicant is suffering an "unnecessary hardship."² To be awarded a hardship variance, the applicant must demonstrate to the Planning Commission that five conditions exist. Here, Lumar has not demonstrated that any of these conditions have been met.

First, Lumar must prove that "exceptional or extraordinary circumstances apply to the property which do not apply to other properties in the same zone or vicinity, and result from lot size or shape, topography or other circumstances over which the owners of the property have no control..."³ That is not the case here. The main road on Cumberland Island is lined by other parcels of land that have the same CP zoning. No exceptional or extraordinary circumstances exist on the property at issue.

Second, the applicant must prove that "the variance is necessary to provide the applicant the same basic property rights that other property owners in the same zone or vicinity possess..."⁴ All told, there are close to 1,000 acres of land on the island that are owned in fee simple. Eighty-seven of those acres are owned by Lumar. All 1,000 acres are zoned CP. Thus, the Lumar members already have the same property rights as the other private land holders on the island.

Third, the applicant must prove that "the variance would not be materially detrimental to the purposes of this Development Code, or to property in the same zone or vicinity in which the property is located, or otherwise conflict with the objectives of any county plan or policy..."⁵ The southern edge of the property borders the Sea Camp campground. The construction of any

² Camden County UDC, Art. 13, Sec. 1304(c).

³ Camden County UDC, Art. 13, Sec. 1304(c)(1).

⁴ Camden County UDC, Art. 13, Sec. 1304(c)(2).

⁵ Camden County UDC, Art. 13, Sec. 1304(c)(3).

houses on the property east of the main road would be materially detrimental to the campground experience.

Fourth, Lumar must prove that “the variance requested is the minimum variance which would alleviate the hardship”⁶ As demonstrated above, the property owners cannot prove that they are suffering an unnecessary hardship. Lumar purchased the property in 1998 with full knowledge that the property is located on an island that has been designated by Congress as both a National Seashore and a Wilderness Area. No other property owner on the island has attempted to subdivide its property since the National Seashore was formed. Even if Lumar were facing an unnecessary hardship, which it is not, it has not demonstrated that this ten-lot subdivision is the *minimum* variance that would alleviate that hardship.

And fifth, the applicant must prove that “relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of this Development Code.”⁷ If this subdivision were allowed, structures could be built within full view of the marsh, the beach, the main road, and the parallel trail. As described above, this is the first parcel of land north of Sea Camp. It serves as the welcome mat to visitors from around the world intent on experiencing the wilds of Cumberland Island. This variance therefore would lead to a substantial detriment to the public good.

Need for Addressing Private Properties on Cumberland Island

As stated above, there are close to 1,000 acres of private land on Cumberland Island that are held in fee simple. Because of the island’s extremely unique character, the CP zoning classification does not appear to be suitable for Cumberland Island; it allows uses that are not designed to protect the natural and historical aspects of the island. Representatives from the island, the County, and other interested parties must work together to address this difficult situation.

In order to further this goal of addressing the tension between the island’s private property owners, the wilderness character of the island, and the County’s zoning provisions, we ask that Lumar withdraw its variance request. Should it refuse, the Planning Commission must deny this hardship variance because the request does not meet the standards set out in the Development Code.

We welcome the opportunity to work with all interested parties to seek a long-term solution to this difficult problem. The goal would be to protect the historic and natural character

⁶ Camden County UDC, Art. 13, Sec. 1304(c)(4).

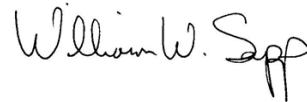
⁷ Camden County UDC, Art. 13, Sec. 1304(c)(5).

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of Cumberland Island, while also accommodating the reasonable needs of the private landowners. Throughout this effort the protection of Cumberland Island's natural and historic character should remain paramount.

Thank you for your consideration of these comments. If you have any questions, please contact us at (404) 521-9900, or by email at bsapp@selcga.org or hbarnes@selcga.org.

Sincerely,

A handwritten signature in black ink that reads "William W. Sapp". The signature is written in a cursive style with a large, stylized "S" at the end.

William W. Sapp
Senior Attorney

A handwritten signature in black ink that reads "Helen Barnes". The signature is written in a cursive style.

Helen Barnes
Associate Attorney