



**The Town of Hilton Head Island
Special Town Council Meeting
Thursday, April 25, 2019, 10:30 a.m.
BENJAMIN M. RACUSIN COUNCIL CHAMBERS
AGENDA**

**As a courtesy to others please turn off/silence ALL mobile devices during the Town Council Meeting.
Thank You.**

- 1. Call to Order**
- 2. FOIA Compliance** - Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
- 3. Business License Appeal Hearing**
 - a. Taiwan Scott Appeal of Denial of Business Licenses for Year 2019**
- 4. Executive Session**
- 5. Possible actions by Town Council concerning matters discussed in Executive Session**
- 6. Adjournment**

**RULES OF EVIDENCE AND PROCEDURE FOR
BUSINESS LICENSE APPEAL HEARINGS HELD BEFORE THE TOWN COUNCIL
OF THE TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA
PURSUANT TO TOWN MUNICIPAL CODE SECTION 10-1-10 *et seq.***

SECTION 1: PURPOSE AND INTENT.

It is the purpose of the Rules of Evidence and Procedure to establish an orderly, efficient and expeditious process for business license appeal hearings before the Town Council for the Town of Hilton Head Island, South Carolina (the "Town Council") pursuant to Town Municipal Code Section 10-1-10 *et seq.* The provisions of the Rules of Evidence and Procedure shall apply to such hearings held before the Town Council.

SECTION 2: GENERAL.

(a) Record. A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the Town Council.

(b) Reporting. The proceedings at the hearing may also be reported by a court reporter at the expense of the requesting party.

(c) Continuances. The Town Council may grant continuances for good cause.

(d) Oaths and Affirmations. The Town Council or any member thereof has the power to administer oaths and affirmations.

(e) Reasonable Dispatch. The Town Council and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

SECTION 3: FORM OF NOTICE OF HEARING.

The notice to parties shall be substantially in the following form, but may include other information:

"You are hereby notified that a hearing will be held before the Town Council of the Town of Hilton Head Island, South Carolina at Town Hall, One Town Center Court, Hilton Head Island, South Carolina 29928 on the _____ day of _____, 20____, at the hour _____. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant testimony and evidence and will be given full opportunity to cross-examine all witnesses testifying against you."

SECTION 4: CONDUCT OF HEARING.

(a) Rules. Hearings need not be conducted in accordance with the South Carolina Rules of Civil Procedure, South Carolina Rules of Evidence, or any other federal, state, or local rules, other than the rules prescribed herein.

(b) General Procedure. The Mayor, or in his or her absence the Mayor Pro Tem, shall preside over the hearing and the receipt of all evidence. In the event of the Mayor and Mayor Pro Tem's absences, the Town Council may designate a member or members to preside over the hearing and the receipt of evidence. The order of procedure shall be as follows, which order can be modified only by the presiding member(s) and in the presiding member(s) sole discretion:

- (i) Appellant shall present its case
- (ii) Respondent shall present its case
- (iii) Appellant shall be allowed to rebut the Respondent's case

(c) Oral Testimony or Evidence. Oral testimony or evidence shall be taken only on oath or affirmation.

(d) Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence; however, such evidence standing alone shall not be sufficient to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in South Carolina.

(e) Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in South Carolina.

(f) Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.

(g) Rights of Parties. Each party shall have these rights, among others:

- (i) To call and examine witnesses on any matter relevant to the issues of the hearing;
- (ii) To introduce documentary and physical evidence;
- (iii) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

- (iv) To impeach any witness regardless of which party first called the witness to testify;
 - (v) To rebut the evidence against the party; and
 - (vi) To self-representation or to be represented by anyone of the party's choice who is lawfully permitted to do so.
- (h) Official Notice.
- (i) What may be Noticed. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of South Carolina or of official records of the Town or its departments and ordinances of the Town.
 - (ii) Parties to be Notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.
 - (iii) Opportunity to Refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the Town Council.

SECTION 5: METHOD AND FORM OF DECISION.

- (a) Hearings. In Hearings before the Town Council where a contested case is heard before the Town Council, no member thereof who did not hear the evidence or alternatively has not read or listened to the entire record of the proceedings shall vote on or take part in the decision. The presiding member(s) shall prepare findings of fact for the Town Council.
- (b) Form of Decision. The decision shall be in writing and shall contain findings of fact and a determination of the issues presented. A copy of the decision shall be delivered to the parties personally or sent to them by certified mail, postage prepaid, return receipt requested.
- (c) Effective Date of the Decision. The effective date of the decision shall be stated therein.



Town of Hilton Head Island

One Town Center Court
Hilton Head Island, SC 29928

MEMORANDUM

April 9, 2019

FROM: Staff Attorney
TO: Town Council
Via: Town Manager
Encl: (1) Town Council Adopted Rules of Procedure for Appeals
(2) Exhibit List, Exhibits Upon Request
RE: Tai Scott Appeal of Denial of Business Licenses for Year 2019.

Recommendation: Staff recommends that Town Council deny the business license appeals and uphold the decision of the Business License Official to deny the business license applications of Mr. Taiwan Scott for businesses to operate at 15 Marshland Road, Hilton Head Island, South Carolina 29926.

Summary: Mr. Taiwan Scott submitted three business license applications to the Town for approval to conduct business at 15 Marshland Road. Each of these business licenses has been denied by the Business License Official in accordance with Municipal Code Section 10-1-140 because Mr. Scott was not in compliance with all applicable Town ordinances. Mr. Scott remains in violation of Town ordinances at 15 Marshland Road.

Background:

1. Business License Application #21882. On July 2, 2018 Mr. Taiwan Scott submitted a business license application to conduct the sale of miscellaneous products such as fruits, vegetables, soups, and natural products at 15 Marshland Road on Hilton Head Island. On March 11, 2019 this application was denied because Mr. Scott and the property located at 15 Marshland Road were not in compliance with all applicable Town ordinances. Specifically, the deficiencies identified at that time were:

- (i) encroachments in the required setbacks and buffers;
- (ii) the project was not in compliance with Design Review Board (DRB) requirements;
- (iii) the Development Plan Review (DPR) process had not been completed; and
- (iv) additional building permits and inspections were necessary.

2. Business License Application #22103. On October 1, 2018 Mr. Taiwan Scott submitted a business license application to operate a food truck at 15 Marshland Road on Hilton Head Island. The food truck was to serve fried chicken, fish, and shrimp. On March 11, 2019 this application was denied because Mr. Scott and the property located at 15 Marshland Road were not in compliance with all applicable Town ordinances. Specifically, the deficiencies identified at that time were:

- (i) encroachments in the required setbacks and buffers;

- (ii) the project was not in compliance with Design Review Board (DRB) requirements;
- (iii) the Development Plan Review (DPR) process had not been completed; and
- (iv) additional building permits and inspections were necessary.

3. Business License Application #22104. On October 1, 2018 Mr. Taiwan Scott submitted a business license application to operate a food preparation commissary at 15 Marshland Road on Hilton Head Island. The commissary was to prepare food for sale in the above listed food truck. On March 11, 2019 this application was denied because Mr. Scott and the property located at 15 Marshland Road were not in compliance with all applicable Town ordinances. Specifically, the deficiencies identified at that time were:

- (i) encroachments in the required setbacks and buffers;
- (ii) the project was not in compliance with Design Review Board (DRB) requirements;
- (iii) the Development Plan Review (DPR) process had not been completed; and
- (iv) additional building permits and inspections were necessary.

Mr. Scott is the listed owner of the property at 15 Marshland Road. The property is zoned Marsh Front (MF) which allows both residential and commercial uses. Since Mr. Scott has conducted commercial businesses on the parcel, it is now identified by the Town as a property with commercial use. The property adjacent to Mr. Scott's property which is owned by Mr. David Arnal is residential property and has a single family residence on the property. Mr. Arnal does have a home occupation business license from the Town. The property remains classified as residential, however, and Mr. Arnal must keep to appearance of the property as residential and have no exterior evidence of a business activity located on the property.

Mr. Scott asked the Town to determine that the two properties functioned together in order to eliminate the required buffer and setback between the properties; however this request has been denied by the LMO Official and upheld by the Board of Zoning Appeals and the Circuit Court. Consequently, the buffers and setbacks identified in the Land Management Ordinance (LMO) apply to Mr. Scott's property.

Despite this determination that the two properties do not operate as one commercial development, Mr. Scott continues to have a food truck and structure in the buffer and setback area of his property adjacent to the Arnal's property. Both of these items were to be used in the businesses identified in applications #22103 and 22104. When Mr. Scott applied to build the structure identified now as the commissary, he applied and was approved to build a shed as an accessory use for residential property (there is an existing single-family dwelling on this property). Since the building has been built however, it has been converted to be used as a commercial structure with restrooms and a commissary. Additionally, Mr. Scott has added electrical fixtures and plumbing to the structure, without the necessary building permits. The structure has not been inspected by our building inspectors since this unpermitted work was done. Mr. Scott has also not completed the DPR process to receive the necessary approvals for the commercial use of this site. Further, Mr. Scott is not in compliance with DRB requirements.

The Town has sent several communications to Mr. Scott regarding the violations and informed him what must be done to bring the property into compliance with Town Codes. Mr. Scott continues to challenge the legal requirement to remove the items from the buffer and setback areas, or to obtain the necessary approvals, or inspections. On March 1, 2019 the Town received a complaint that Mr. Scott was now operating a business from the food truck which is located in the buffer of the property. This was verified by Code Enforcement Officer Conant and the Staff

Attorney. The food truck located in the buffer was open and operating on this date and Mr. Scott communicated that he was going to continue to operate the business despite being informed it was not a permitted activity for this location. Additionally, Mr. Scott had a neon sign attached to the food truck which was turned on and read "OPEN".

Exhibit List Taiwan Scott Business License Appeal March 2019

1. Taiwan Scott Appeal Letter dtd March 26, 2019
2. Notice of Appeal Hearing dtd April 5, 2019
3. Affidavit of Mailing Certified and Regular U.S. Postal Service dtd April 5, 2019
4. Relevant Business License Code Sections
5. Relevant LMO Code Sections
6. Business License Denial Letter for Business Registration # 21882 dtd March 11, 2019
7. Business License Application Registration # 21882 dtd July 24, 2018 (**Beautiful Island Food Sales fruits and vegetables**)
8. Business License Denial Letter for Business Registration # 22103 dtd March 11, 2019
9. Business License Application Registration # 22103 dtd October 1, 2018 (**Beautiful Island Cooking**)
10. Business License Denial Letter for Business Registration # 22104 dtd March 11, 2019
11. Business License Application Registration # 22104 dtd October 1, 2018 (**Commissary Kitchen**)
12. Circuit Court Order dtd December 27, 2016 (**Upheld BZA and LMO Official Determination**)
13. BZA Order dtd January 25, 2016 (**Upheld LMO Official Determination**)
14. Staff Memos to BZA with timeline dtd November 5, 2015 and December 22, 2015
15. Taiwan Scott Appeal to BZA dtd Nov 2, 2015
16. LMO Official Determination Ltr dtd October 21, 2015 (**Properties do not function together**)
17. February 23, 2015 Email Heather Colin to Tai Scott (**need to comply with Town Regulations**)
18. Building Permit # 2025-2014 for Residential Accessory Structure dtd Sept. 15, 2014 and Application for Residential Accessory Structure (**for storage and deck**) dtd Sept. 15, 2014
19. Pre-Application Agenda Package dtd October 14, 2013 (**concession trailer and drive aisles**)
20. Communications to Mr. Scott regarding the violations at 15 Marshland Road and steps necessary to come into compliance.
21. Ms. Lewis Letter dtd Nov 29, 2019 communicating to Mr. Scott the requirements necessary prior to staff approval of business license applications.
22. Relevant Photos of 15 Marshland Road



Town of Hilton Head Island

One Town Center Court
Hilton Head Island, SC 29928

MEMORANDUM

April 22, 2019

FROM: Staff Attorney
TO: Town Council
Via: Town Manager
Encl: (1) Exhibit List, Exhibits upon request

RE: Tai Scott Appeal of Denial of Business License Renewal for Year 2019; Reg # 18269.

Recommendation:

Staff recommends that Town Council deny the business license appeal and uphold the decision of the Business License Official to deny the application of Mr. Taiwan Scott to renew his business license to operate at 15 Marshland Road, Hilton Head Island, South Carolina 29926.

Summary:

Mr. Taiwan Scott submitted an application to renew his business license application to the Town for approval to conduct business at 15 Marshland Road. This application has been denied by the Business License Official in accordance with Municipal Code Section 10-1-140 because Mr. Scott was not in compliance with all applicable Town ordinances. Mr. Scott remains in violation of Town ordinances at 15 Marshland Road.

Background:

Business License Application #18269. On March 26, 2019 Mr. Taiwan Scott came to Town Hall to inquire into renewing his business license to conduct commercial rentals and to lease spaces at 15 Marshland Road on Hilton Head Island. On April 02, 2019 this application to renew his license was denied because Mr. Scott and the property located at 15 Marshland Road were not in compliance with all applicable Town ordinances. Specifically, the deficiencies identified at that time were:

- (i) encroachments in the required setbacks and buffers;
- (ii) the project was not in compliance with Design Review Board (DRB) requirements;
- (iii) the Development Plan Review (DPR) process had not been completed; and
- (iv) Additional building permits and inspections were necessary.

Additionally, Mr. Scott was observed conducting business operations in the food truck in the buffer and setback areas of the property at 15 Marshland Road during March of 2019.

Mr. Scott is the listed owner of the property at 15 Marshland Road. The property is zoned Marshfront (MF) which allows both residential and commercial uses. Since Mr. Scott has conducted commercial businesses on the parcel, it is now identified by the Town as a property with commercial use. The property adjacent to Mr. Scott's property which is owned by Mr. David Arnal is residential property and has a single family residence on the property. Mr. Arnal does have a home occupation business license from the Town. The property remains classified as residential, however, and Mr. Arnal must keep to appearance of the property as residential and have no exterior evidence of a business activity located on the property.

Mr. Scott asked the Town to determine that the two properties functioned together in order to eliminate the required buffer and setback between the properties; however this request has been denied by the LMO Official and upheld by the Board of Zoning Appeals and the Circuit Court. Consequently, the buffers and setbacks identified in the Land Management Ordinance (LMO) apply to Mr. Scott's property.

Despite this determination that the two properties do not operate as one commercial development, Mr. Scott continues to have a food truck and structure in the buffer and setback area of his property adjacent to the Arnal's property. Both of these items were to be used in the businesses identified in applications #22103 and 22104. When Mr. Scott applied to build the structure identified now as the commissary, he applied and was approved to build a shed as an accessory use for residential property (there is an existing single-family dwelling on this property). Since the building has been built however, it has been converted to be used as a commercial structure with restrooms and a commissary. Additionally, Mr. Scott has added electrical fixtures and plumbing to the structure, without the necessary building permits. The structure has not been inspected by our building inspectors since this unpermitted work was done. Mr. Scott has also not completed the DPR process to receive the necessary approvals for the commercial use of this site. Further, Mr. Scott is not in compliance with DRB requirements.

The Town has sent several communications to Mr. Scott regarding the violations and informed him what must be done to bring the property into compliance with Town Codes. Mr. Scott continues to challenge the legal requirement to remove the items from the buffer and setback areas, or to obtain the necessary approvals, or inspections. On March 1, 2019 the Town received a complaint that Mr. Scott was now operating a business from the food truck which is located in the buffer of the property. This was verified by Code Enforcement Officer Conant and the Staff Attorney. The food truck located in the buffer was open and operating on this date and Mr. Scott communicated that he was going to continue to operate the business despite being informed it was not a permitted activity for this location. Additionally, Mr. Scott had a neon sign attached to the food truck which was turned on and read "OPEN".

Exhibit List Taiwan Scott Business License Appeal #4 April 2019

1. Taiwan Scott Appeal Letter dtd April 16, 2019
2. Notice of Appeal Hearing Business License #18269 dtd April 22, 2019
3. Affidavit of Mailing Certified and Regular U.S. Postal Service dtd April 22, 2019
4. Business License Denial Letter for Business Registration # 18269 dtd April 02, 2019
5. Business License Application Registration # 18269 dtd Aug 28, 2015 (**Beautiful Island LLC, Commercial Rental**)
6. Business License Renewal Form 18269 for year 2018 (redacted income numbers)
7. **Incorporate by Reference** Exhibit List and Exhibits from Business License Denial Appeals for # 22103, 22104, 21882.