



Town of Hilton Head Island  
**Board of Zoning Appeals Meeting**  
**Monday, March 28, 2022 – 2:30 p.m.**  
**AGENDA**

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This meeting will be conducted virtually and can be viewed on the [Town of Hilton Head Island Public Meetings Facebook Page](#). A Facebook account is not required to access the meeting livestream.

**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. Roll Call**

**4. Welcome and Introduction to Board Procedures**

**5. Approval of Agenda**

**6. Approval of Minutes**

a. February 28, 2022 Meeting

**7. Appearance by Citizens**

Citizens who wish to address the Board concerning items on the agenda may do so by contacting the Board Secretary at 843-341-4691 no later than 1:30 p.m. the day of the meeting. Citizens may also submit written comments via the [Town's Open Town Hall Portal](#). The portal will close at 1:30 p.m. the day of the meeting. Comments submitted through the portal will be provided to the Board and made part of the official record.

**8. Unfinished Business – None**

**9. New Business**

**a. Public Hearing**

**VAR-000462-2022** – Request from Eva Monzon for a variance from LMO Section 16-5-103.E, Adjacent Use Buffer Requirements, to allow a driveway to encroach within the adjacent use buffer. The property is located at 12 Wiley Road and has a parcel number of R510 005 000 016K 0000. *Presented by Missy Luick*

**10. Board Business**

a. Review of Amendments to the Rules of Procedure

b. Status of LMO Amendments

**11. Staff Reports**

a. Status of Appeals to Circuit Court

b. Waiver Report

**12. Adjournment**

**Please note that a quorum of Town Council may result if four (4) or more of their members attend this meeting.**



Town of Hilton Head Island

## Board of Zoning Appeals Meeting

February 28, 2022, at 2:30 p.m. Virtual Meeting

### MEETING MINUTES

**Present from the Board:** Chair Patsy Brison, Vice Chair Anna Ponder, Lisa Laudermilch, Charles Walczak, David Fingerhut, Peter Kristian, Robert Johnson

**Absent from the Board:** None

**Present from Town Council:** Tamara Becker, Glenn Stanford, Tom Lennox

**Present from Town Staff:** Teri Lewis, Deputy Community Development Director; Nicole Dixon, Development Review Administrator; Missy Luick, Senior Planner; Jayme Lopko, Senior Planner; Teresa Haley, Senior Administrative Assistant

**Others Present:** Curtis Coltrane, Town Attorney

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#### 1. Call to Order

Chair Brison called the meeting to order at 2:30 p.m.

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. **Roll Call** – See as noted above.

#### 4. Welcome and Introduction to Board Procedures

Chair Brison welcomed all in attendance and introduced the Board's procedures for conducting the meeting.

#### 5. Approval of Agenda

Chair Brison asked for a motion to approve the agenda as presented. Mr. Kristian moved to approve. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote 7-0-0.

#### 6. Approval of Minutes

##### a. January 24, 2022, Meeting

Chair Brison asked for a motion to approve the minutes of the January 24, 2022, meeting as revised. Mr. Kristian moved to approve the minutes as revised. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 7-0-0.

#### 7. Appearance by Citizens

Public comments concerning agenda items were to be submitted electronically via the Open Town Hall HHI portal. Those comments have been distributed to the Board and made part of the official record for this meeting. Citizens were provided the option to sign up for public

comment participation during the meeting by phone. There was one citizen that signed up to speak regarding Item 9.a. and will be called upon during public comment.

## 8. Unfinished Business – None

## 9. New Business

### a. Public Hearing

**VAR-002732-2021** – Request from Nathan Sturre of Cranston Engineering Group, P.C, on behalf of Beaufort County for a variance from LMO Section 16-5-103.D, Adjacent Street Buffer, for relief from the adjacent street buffer adjacent to the access easement; Section 16-5-105.J.7.c, Gates, for relief from the requirement that gates be located at least 100 feet from any arterial or collector street; and Section 16-5-107.D.10, Use of Parking Spaces as Electric Vehicle (EV) Charging Station, for relief of the Electric Vehicle charging station requirement which is required for all multifamily and nonresidential development. The property is known as Fords Shell Ring and is located at 273 Squire Pope Road and has a parcel number of R511 003 000 0222 0000. *Presented by Missy Luick*

Chair Brison opened the Public Hearing.

Ms. Luick presented the application as described in the Staff Report. She stated Staff recommends the Board of Zoning Appeals approve the application based on the Findings of Fact and Conclusions of Law contained in the Staff Report. She explained the variance criteria in detail.

The Board made comments and inquiries regarding: clarification of buffer requirements; discussion regarding the relief needed for location of the gate; confirmation the stacking distance requirement is met; inquiry as to whether this has been done in the past; concern of damage to terrain with installation of utilities; discussion regarding environmental concerns; emphasis that the site is a historical site and the less disturbance the better; inquiry to the installation of fencing and pedestrian access; clarification of the hours of operation to be dawn to dusk; confirmation the access easement leads to piece of landlocked property; and the possibility of providing electric service for the EV charging station by relocating the handicap parking.

Following the Staff presentation and questions by the Board, Chair Brison asked the applicant to make a presentation. Nathan Sturre stated direction from Fire Rescue regarding the gates was to ensure the fire apparatus could be pulled off the road. He explained in order to meet the 100-foot requirement, they would have to shift all parking which would result in more development of the site. He said they are trying to keep the natural feel of the property with zero impact where it is possible. Mr. Sturre noted installation of an EV charging station would create a good bit of disturbance to the site. Stephanie Nagid, Beaufort County Passive Parks Manager, stated the decision to realign the access was due to the proximity of the existing access to the marsh area. She explained the process regarding keeping the construction and site-disturbance impact to a minimum.

The Board made comments and inquiries regarding: confirmation that both properties that are adjacent to the site are zoned conservation and there are very limited uses of the properties; confirmation the only way to get utilities to the adjacent properties is through the access; discussion of the precautions the County will undertake if archaeological artifacts are discovered during construction; the possibility of running conduit for utilities; concern regarding efforts in trying to accommodate an EV charging station; clarification the intent was the least amount of disturbance to the site as possible; statement from the applicant they would not move the project forward without the relief from the requirement of an EV charging station; comments

regarding the small size of the property, low number of parking spaces, the length of the trail and the time that will be spent on site by visitors not warranting an EV charging station; confirmation of the time spent at small, passive parks; discussion regarding the various levels of charging stations required by the LMO for installation; inquiry as to security for the property; concern of setting a precedent regarding granting relief of the required EV charging station; an explanation that each request is unique and based on the circumstances involving that particular case which does not set a precedent as all cases are considered when the facts are presented for that particular case; and an inquiry as to why the gate is needed.

Chair Brison asked for Staff Rebuttal. Ms. Luick stated that new or relocated utilities shall be installed underground per LMO Section 16-5-110. E., confirming overhead installation would not be permitted. Chair Brison stated overhead installation could possibly be accomplished with a variance.

Chair Brison asked for public comment. Ms. Haley noted that Mr. Thomas Barnwell did sign up to make public comment, but he had not joined the meeting. She stated staff was unsuccessful in contacting Mr. Barnwell.

Chair Brison incorporated all the evidence, including the staff report, application, documents, and testimony provided during the hearing into the record. Chair Brison closed the public hearing at 3:50 p.m.

The Board made final comments and inquiries regarding: an expression of concern for approving relief of the Electric Vehicle charging station requirement; comments regarding the uniqueness of the property; concern of prioritizing one value over another; concern for setting a precedent; the lack of supporting information/documentation regarding harming the site with the installation of the EV charging station; concern regarding granting a variance to the Town and County, especially regarding a variance to the Town's LMO; confirmation 40 feet is enough space for drivers to pull in and back out; comments in support of protecting archaeological sites; and a concern for the lack of effort to try and install an EV charging station which is required by the LMO.

Upon the conclusion of discussion, Chair Brison asked for a motion.

Mr. Kristian moved to approve the application based on those Findings of Facts and Conclusions of Law contained in the Staff Report with the caveat that each variance is considered on its merits and because of the unique nature of this site being an archeological site in its entirety and we're trying to minimize any disturbance to the surrounding area. Mr. Johnson seconded. By way of roll call, the motion passed 5-2-0 (for the motion – Kristian, Laudermilch, Ponder, Johnson, Fingerhut; against the motion – Walczak, Brison).

#### **b. Public Hearing**

**VAR-002853-2021** – Request from John Nicholas Crago for a variance from LMO Section 16-4-102.B.7.c, Use-Specific Conditions for Principal Uses, for proposed screened outside storage of bicycles in the Light Commercial (LC) District where outside storage of bicycles is not allowed. The property is located at 13 Executive Park Road and has a parcel number of R552 015 000 0087 0000. **WITHDRAWN**

Chair Brison noted the above referenced variance has been withdrawn.

### **10. Board Business**

#### **a. Review of Amendments to the Rules of Procedure**

Ms. Luick stated staff reviewed the Municipal Association of South Carolina (MASC) guide rules for the Rules of Procedure for Boards of Zoning Appeals, in addition to reviewing other rules of procedure for various South Carolina municipalities. She noted most communities use the MASC rules as their guide. She reviewed and summarized each recommended change and the updates within the document.

The Board reviewed the draft amendments and made comments and inquiries regarding: notation of a correction the Board year is July 1 through June 30; leave in regular and special meeting where referenced; clarification on the rehearing requirements; change party to person in the oath statement; change language throughout the document regarding signing up for public comment to adapt to virtual meetings; and discussion regarding public comment during appeals.

Following discussion, Chair Brison requested that staff make the suggested changes and corrections and bring the revised draft to the Board in March for review with anticipated consideration for approval scheduled for April.

## **11. Staff Reports**

### **a. Status of Appeals to Circuit Court**

Mr. Curtis Coltrane informed the Board there have been no changes to report since the last meeting.

### **b. Waiver Report**

Chair Brison noted the report was included in the agenda packet and invited Board members to ask questions. There were none.

Chair Brison invited Nicole Dixon to give an update regarding LMO amendments. Ms. Dixon stated that at the present time a list has been compiled and is being routed through upper management for approval to move forward. She added that once that is complete, the list will be sent to the consultant for drafting the amendments. They will then go through the adoption process earmarked for later this year. Chair Brison inquired as to whether the amendments suggested by the BZA were moving forward. Ms. Dixon stated she was unsure as to their status. Chair Brison requested that Ms. Dixon inquire on the status of the suggested amendments and report back to the Board at the March meeting.

## **12. Adjournment**

The meeting was adjourned at 4:36 p.m.

**Submitted by:** Vicki Pfannenschmidt, Secretary

**Approved:** [DATE]



# TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court | Hilton Head Island, SC 29928 | 843-341-4757 | FAX 843-842-8908

## STAFF REPORT VARIANCE

<b>Case #:</b>	<b>Public Hearing Date:</b>
VAR-000462-2022	March 28, 2022

<b>Parcel or Location Data:</b>	<b>Property Owner and Applicant</b>
Parcel#: R510 005 000 016K 0000 Address: 12 Wiley Road Parcel size: 0.77 acres Net acreage: 0.60 net acres Zoning: RM-4 (Low to Moderate Density Residential District) Overlay: AOD (Airport Overlay District)	Eva Monzon PO Box 22495 Hilton Head Island, SC 29925

<b>Application Summary:</b>
<p>Request from Eva Monzon for a variance from LMO Section 16-5-103.E, Adjacent Use Buffer Requirements, to allow a driveway to encroach within the adjacent use buffer. The property is located at 12 Wiley Road and has a parcel number of R510 005 000 016K 0000.</p>

<b>Staff Recommendation:</b>
<p>Staff recommends the Board of Zoning Appeals find this application to be consistent with the Town's Our Plan and does serve to carry out the purposes of the LMO, based on those Findings of Fact and Conclusions of Law as determined by the LMO Official and enclosed herein. Staff recommends that the Board of Zoning Appeals approve this application with the following conditions:</p> <ol style="list-style-type: none"> <li>1. The vehicular driveway should be 20 feet wide and shall only lessen in width of no less than 14 feet wide within the vicinity of the existing home.</li> <li>2. A Small Residential Development Plan Review is required for this project in which landscaped buffers will be required.</li> <li>3. Landscape buffer mitigation will be required to offset the area of buffer within the driveway encroachment.</li> </ol>

**Background:**

The subject property is located on Wiley Road on the north end of the island off Dillon Road. The property is adjacent to tidal marsh (See Attachment A, Vicinity Map). The property is zoned RM-4 which allows 4 dwelling units per net acre. The property is 0.77 acres with a net acreage of 0.60 acres. (Net acreage is determined by calculating total parcel acreage (0.77 acres) minus tidal wetland acreage (0.17 acres) which equals 0.60 net acres). There is enough density to add one additional dwelling unit to the parcel.

The subject property was created from a subdivision in September 1976 when a large triangular marshfront property was subdivided into two smaller triangular parcels referred to as 6A and 6B on the subdivision plat from 1976 (See Attachment D, Subdivision Plat). The subject lot, 6A, is currently developed with a one-story single-family brick home. The existing driveway runs from Wiley Road along the property line between parcels 6A and 6B near the existing home. The adjacent lot, 6B, has not been developed.

When the 1976 subdivision occurred, no setbacks or buffers were required between parcels 6A and 6B. The current driveway serving the existing home is conforming. Because the applicant is proposing to further develop parcel 6A by adding another dwelling, a small residential development plan review is required. This includes a requirement for adjacent use setbacks and buffers to be applied to the parcel. Per Section 16-5-103.E, Adjacent Use Buffer Requirements, development shall provide a buffer along common property lines with adjoining properties. A 10-foot adjacent use setback and Type A (Option 2, 10-foot) adjacent use buffer are required. Per LMO Section 16-5-105.A.5.e.ii.01.(A), the driveway width is required to be at least 14 feet wide and no more than 20 feet wide. Per International Fire Code Section 503.2.1 fire apparatus access roads shall have an unobstructed width of 20-feet. There is also a tidal wetland buffer that runs along the rear of the property.

The applicant is proposing to utilize the existing driveway for access to the additional home site and is requesting a variance from the adjacent use buffer requirements. This is the only viable location for the access due to the existing home placement, irregular shape of the parcel, and especially the narrow triangular connection to Wiley Road. The parcel has site constraints that make access to the developable area difficult without reconfiguring the entire site and/or relocation of existing structures. (See Attachment C, Applicant's Site Plan).

**Applicant's Grounds for Variance, Summary of Facts and Conclusions of Law:****Grounds for Variance:**

According to the applicant, there is a need to provide another dwelling unit on the site due to the upcoming displacement of a family member from the Roller's Trailer Park. Adding another dwelling to the parcel requires a Small Residential Development Plan Review that requires the application of adjacent use setbacks and buffers between properties. With the additional development of the parcel, the existing driveway is now within the adjacent use buffer. It must also be widened to meet the minimum driveway width requirements and Fire and Rescue requirements. The applicant attempted to acquire access to the site from Cheryl's Bluff, a right-of-way adjacent to the property, but was

unsuccessful. The irregular shape of the parcel with a narrow pie-shaped parcel connection to the Wiley Road cul-de-sac, combined with the adjacent use buffer requirements of the LMO present extraordinary and exceptional conditions that pertain to the parcel.

**Summary of Fact:**

- The applicant seeks a variance as set forth in LMO Section 16-2-103.S.

**Conclusion of Law:**

- The applicant may seek a variance as set forth in LMO Section 16-2-103.S.

**Summary of Facts and Conclusions of Law:**

**Summary of Facts:**

- Application was submitted on February 16, 2022 as set forth in LMO Section 16-2-102.C and Appendix D-23.
- Notice of the Application was published in the Island Packet on March 6, 2022 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on March 9, 2022 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on March 11, 2021 as set forth in LMO Section 16-2-102.E.2.
- The Board has authority to render the decision reached here under LMO Section 16-2-102.G.

**Conclusions of Law:**

- The application is in compliance with the submittal requirements established in LMO Section 16-2-102.C.
- The application and notice requirements comply with the legal requirements established in LMO Section 16-2-102.E.2.

*As provided in LMO Section 16-2-103.S.4, Variance Review Standards, a variance may be granted in an individual case of unnecessary hardship if the Board determines and expresses in writing all of the following findings of fact.*

**Summary of Facts and Conclusions of Law:**

*Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property (LMO Section 16-2-103.S.4.a.i.01):*

**Findings of Fact:**

- The subject property is irregular in shape. It is mostly triangular, which is similar to the adjacent lot, but not typical with other the lots in the vicinity. The triangular lot shape creates a narrow connection to the Wiley Road cul-de-sac and offers limited options for driveway placement.



- Per LMO Section 16-5-105.A.5.e.ii.01.(A), the driveway width is required to be at least 14 feet wide and no more than 20 feet wide. Per International Fire Code Section 503.2.1 fire apparatus access roads shall have an unobstructed width of 20-feet.
- The existing lot does not have a setback or buffer between lots 6A and 6B, therefore, the existing driveway currently meets the LMO requirements for access to a single-family home. When a second home is added to the parcel, a Type A, Option 2 Adjacent Use Buffer is required between lots 6A and 6B.
- The placement of the existing home and the required Type A, Option 2 Adjacent Use Buffer on the parcel does not allow room for a 20-foot fire apparatus road to access the developable area to the rear of the property without reconfiguring the lot.
- The property contains limited frontage on Wiley Road and contains a tidal wetland which runs along the rear of the parcel.

**Conclusion of Law:**

- This application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are extraordinary and exceptional conditions that pertain to this particular property.

**Summary of Facts and Conclusions of Law:**

*Criteria 2: These conditions do not generally apply to other properties in the vicinity (LMO Section 16-2-103.S.4.a.i.02):*

**Findings of Fact:**

- Other properties in the area are rectangular in shape, which is a more typical lot shape that provides a greater opportunity for access to the adjacent street.
- While there are other properties in the vicinity located on the tidal wetland, the subject property has the tidal wetland and associated buffer which limits development of the parcel.
- The property contains existing development that limits additional development without reconfiguring the site and/or relocation of existing structures.

**Conclusion of Law:**

- This application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are extraordinary or exceptional conditions that apply to the subject property that do not also generally apply to other properties in the vicinity.

**Summary of Facts and Conclusions of Law:**

*Criteria 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 (LMO Section 16-2-103.S.4.a.i.03):*

**Findings of Fact:**

- The existing driveway would become nonconforming when a second home is added to the parcel.
- Per LMO Section 16-5-105.A.5.e.ii.01.(A), the driveway width is required to be at least 14 feet wide and no more than 20 feet wide. Per International Fire Code Section 503.2.1 fire apparatus access roads shall have an unobstructed width of 20-feet.
- The placement of the existing home and the required Type A, Option 2 Adjacent Use Buffer on the parcel does not allow room for a 20-foot fire apparatus road to access the developable area to the rear of the property without reconfiguring the lot and/or relocating the existing structure.
- The applicant attempted to acquire access to the site from Cheryl's Bluff, a right-of-way adjacent to the property, but was unsuccessful.

**Conclusion of Law:**

- This application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are extraordinary or exceptional conditions that apply to the subject property that would prohibit or unreasonably restrict the utilization of the property.

**Summary of Facts and Conclusions of Law:**

*Criteria 4: The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variance (LMO Section 16-2-103.S.4.a.i.04):*

**Findings of Facts:**

- Staff has received no letters of opposition to this variance request at the time this Staff Report was completed.
- The purpose of the adjacent street and use buffer standards is to spatially separate development from adjacent streets and adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential adverse impacts (e.g., noise, odor, fumes) from adjacent street traffic, create an attractive streetscape for motorists, allow the location of certain dissimilar land uses adjacent to one another by mitigating potential negative effects between the uses, and provide space for landscaping that can help improve air and water quality and be used to reduce stormwater runoff.
- The applicant would like to develop the property with two homes and is requesting to utilize the existing vehicular driveway which is located within the Type A Option 2 adjacent use buffer.
- Adding an additional home on the subject property will not be of substantial detriment to the adjacent property or the public good as it fits within the overall character of the zoning district.

**Conclusion of Law:**

- This application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the

variance will not be of substantial detriment to the adjacent property or the public good.

**LMO Official Determination:**

Staff recommends the Board of Zoning Appeals find this application to be consistent with the Town's Our Plan and does serve to carry out the purposes of the LMO, based on those Findings of Fact and Conclusions of Law as determined by the LMO Official and enclosed herein. Staff recommends that the Board of Zoning Appeals approve this application with the following conditions:

1. The vehicular driveway should be 20 feet wide and shall only lessen in width of no less than 14 feet wide within the vicinity of the existing home.
2. A Small Residential Development Plan Review is required for this project in which landscaped buffers will be required.
3. Landscape buffer mitigation will be required to offset the area of buffer within the driveway encroachment.

**BZA Determination and Motion:**

The "powers" of the BZA over variances are defined by the South Carolina Code, Section 6-29-800, and in exercising the power, the BZA may grant a variance "in an individual case of unnecessary hardship if the board makes and explains in writing ..." their decisions based on certain findings or "may remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review."

This State law is implemented by the Hilton Head Island Land Management Ordinance, Chapter 2, Article 103 and the Rules of Procedure for the BZA.

A written Notice of Action is prepared for each decision made by the BZA based on findings of fact and conclusions of law.

**The BZA can either Approve the application, Disapprove the application, or Approve with Modifications. Findings of Fact and Conclusions of Law must be stated in the motion.**

**PREPARED BY:**

ML  
Missy Luick, *Senior Planner*

March 14, 2022  
DATE

**REVIEWED BY:**

ND  
\_\_\_\_\_  
Nicole Dixon, AICP, CFM, *Development  
Review Program Manager*

March 16, 2022  
\_\_\_\_\_  
DATE

SC  
\_\_\_\_\_  
Shawn Colin, AICP, *Assistant Town Manager -  
Community Development*

March 16, 2022  
\_\_\_\_\_  
DATE

**ATTACHMENTS:**

- A) Vicinity Map
- B) Applicant's Narrative
- C) Applicant's Site Plan
- D) Subdivision Plat
- E) Site Pictures
- F) Adjacent Use Buffer Standards
- G) Fire Code Reference



Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928  
(843) 341-4600

## Town of Hilton Head Island

**12 Wiley Road**  
**Attachment A: Vicinity Map**

100 50 0 100 Feet



This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.

## Attachment B- Applicant's Narrative

Eva Monzon  
12 Wiley Road  
Hilton Head Island, SC

February 16, 2022

Board of Zoning Appeals  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

Re. 12 Wiley Road, Request for Variance from Section 16-5-103E

Greetings,

I am planning to place a trailer on my property at 12 Wiley Road so my daughter, Alexandra, who is being displaced because of the Rollers Trailer Park development, will have a place to live. The size of my property is sufficient for adding the trailer. Total area is 0.77 acres, and the land beyond the tidal wetland buffer is 0.15 acres, leaving 0.62 acres. The trailer's location will meet all required setbacks. We will meet all Town requirements for placing and connection of the trailer. The attached marked-up survey shows the trailer location and the driveway location.

My existing driveway is 17 ft 3 in. wide and is partially located in the buffer zone. I understand that placing the second home on my property will require a 10-ft wide Type A buffer and this requires relief from Section 16-5-103E, Adjacent Use Buffer Requirements. I would like to apply for relief from Section 16-5-103E.

My reasons for requesting the variance are:

- This gravel drive has been used as the driveway for 12 Wiley Road since the house was constructed in the 1970s. There have never been any problems with access by cars or trucks. The driveway is less than 150 feet long.
- My daughter is being displaced from her current home by the Rollers Trailer Park development. She has not been able to find another location for her trailer, and I would like to have her trailer placed on my property.
- As shown in the attached copy of my survey, my property is substantial in size at 0.77 acres. However, the pie-shaped property has a narrow entrance from Wiley Road, and there is not room to widen the driveway.

As shown on the survey, there is a potential entrance from Cheryl's Bluff. However, I have spoken with the owner of that property and he is unwilling to grant me easement, and he is unwilling to provide a written statement to that effect.

My responses to the four variance criteria are given below:

1. The exceptional conditions are described above.
2. I do not believe that my request for a variance has any conditions that would apply to other properties in the area.
3. Enforcing the 10-ft Type A buffer requirement would unreasonably restrict my use of my property and would leave my daughter with no place to site her trailer.
4. I do not believe granting this variance will have any negative effect at all on the public good or the character of the zoning district.

I respectfully request your approval of this variance request. Please feel free to contact me at 843 298-4630, and I will be pleased to appear at a meeting before the Board of Zoning Appeals.

Thank you for your consideration,

Eva Monzon

Attachment B- Applicant's Narrative

**Luick, Missy**

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**From:** Paulette Luciano <pluciano@nandinainc.com>  
**Sent:** Monday, March 14, 2022 4:51 PM  
**To:** Luick, Missy  
**Cc:** Eva Monzon; Jay Williams  
**Subject:** RE: Variance public notice requirements and procedures

**THIS MESSAGE ORIGINATED OUTSIDE YOUR ORGANIZATION**

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Hi Missy:

I have had our Senior CAD technician to calculate the area of Eva's property, excluding the tidal marsh area that is outside the Critical Line. It seems there is 25,918 square feet or 0.60 Acres, which Bill Anderson verified.

● Sincerely,

**Paulette Luciano | Office Manager**

**Nandina, Inc.**  
**10 Oak Park Drive, Unit C1**  
**Hilton Head Island, SC 29926**  
**P 843 681 3248**

This electronic transmission contains information, which is confidential and/or privileged. This information is intended for use only by the addressee indicated above. If you are not the intended recipient, please be advised that any disclosure, copying, distribution, or use of the contents of this information is strictly prohibited and that any misdirected or improperly received information must be returned to Nandina, Inc. immediately or deleted. Your cooperation in contacting the sender of erroneous receipt is requested.

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**From:** Eva Monzon [REDACTED]  
**Sent:** Monday, March 14, 2022 12:06 PM  
**To:** Paulette Luciano <pluciano@nandinainc.com>  
**Subject:** Fwd: Variance public notice requirements and procedures

Sent from my iPhone

Begin forwarded message:

**From:** "Luick, Missy" <[missyl@hiltonheadislandsc.gov](mailto:missyl@hiltonheadislandsc.gov)>  
**Date:** March 14, 2022 at 11:55:33 AM EDT  
**To:** Jay Williams [REDACTED]  
**Cc:** Eva Monzon [REDACTED]  
**Subject:** RE: Variance public notice requirements and procedures

Eva,

## Attachment B- Applicant's Narrative

The survey says the parcel size is .77 acres.

We need to know the net acreage of the parcel (Net acreage = total acreage- tidal wetland). I'm sure it is greater than .5 acres and 2 units are allowed, but the surveyor should know.

Can you please get me that information as soon as possible? I'm working on my staff report and need that figure.

Thank you  
Missy

PS. I'll be stopping by today to take pictures of the driveway.







**Missy Luick**

SENIOR PLANNER

Office: (843) 341-4693

Website: [hiltonheadislandsc.gov](http://hiltonheadislandsc.gov)

Address: Town of Hilton Head Island  
1 Town Center Court  
Hilton Head Island, SC 29928

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**From:** Jay Williams [REDACTED]  
**Sent:** Friday, March 11, 2022 12:25 PM  
**To:** Luick, Missy <[missyl@hiltonheadislandsc.gov](mailto:missyl@hiltonheadislandsc.gov)>  
**Cc:** Eva Monzon [REDACTED]  
**Subject:** Re: Variance public notice requirements and procedures

**THIS MESSAGE ORIGINATED OUTSIDE YOUR ORGANIZATION**

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Thanks, Ms. Luick-  
Eva is mailing the packet to the 55 folks.....and will be on the Zoom call on the 28th.  
Thank you for all your help!  
Jay Williams

On Thu, Mar 3, 2022 at 11:19 AM Luick, Missy <[missyl@hiltonheadislandsc.gov](mailto:missyl@hiltonheadislandsc.gov)> wrote:

Eva,  
We have received your submittal for a variance for 12 Wiley Road. The case number is **VAR-000462-2022**. The variance will be heard by the Board of Zoning Appeals on **Monday, March 28, 2022 at 2:30 p.m.**

## Attachment B- Applicant's Narrative

Please find the BZA Rules of Procedure attached. The procedures for a Variance Request are included in Article VII (pages 13 & 14). Please review those procedures to prepare for the BZA meeting. Here is a summary:

- Staff will give a presentation (up to 20 minutes)- the board asks questions during and after presentation
- Applicant will give a presentation (up to 20 minutes)- the board asks questions during and after presentation
- If needed, there is a 5-minute rebuttal for Staff/Applicant
- Board questions and board discussions
- Public comment
- Board final discussion and motion

Also attached is a public notice letter, vicinity map, list of frequently asked questions, instructions for the public to use the Town's online portal, and public notice mailing addresses within 350' of the parcels. It is the applicant's responsibility to notify property owners within 350' of the Variance request by first-class mail (per LMO Section 16-2-102.E.2.c.). The public notice letter (plus attachments) must be sent no later than **March 12, 2022** (15 days in advance of the meeting).

Additionally, a public notice sign will be posted at the site by the Town no later than March 12 as well.

When the meeting packet is published (likely on 3/21), I will send you a link to the full packet.

This will be a virtual meeting. You will receive a Zoom invitation as the meeting date nears. When you join the meeting, you will be placed in a "waiting room" until your application is up for consideration. Because of this, it is critical that you sign in to Zoom using your first and last name, and/or the phone number that you provided, so that we can identify you and put you in the meeting at the appropriate time. If you will have additional applicant team members in the meeting, please email me the names, email addresses and phone numbers of each participant who will participate in the public hearing.

Please let me know if you have any questions.

Thank you,  
Missy



## Attachment B- Applicant's Narrative



### **Missy Luick**

SENIOR PLANNER

Office: (843) 341-4693

Website: [hiltonheadislandsc.gov](http://hiltonheadislandsc.gov)

Address: Town of Hilton Head Island

1 Town Center Court

Hilton Head Island, SC 29928

---

**From:** Eva Monzon [REDACTED]

**Sent:** Tuesday, February 22, 2022 10:39 PM

## Attachment B- Applicant's Narrative

**To:** Luick, Missy <[missyl@hiltonheadislandsc.gov](mailto:missyl@hiltonheadislandsc.gov)>

**Cc:** Jay Williams [REDACTED]

**Subject:** Drawing

THIS MESSAGE ORIGINATED OUTSIDE YOUR ORGANIZATION

Hi Mrs Missy

This is the drawing from 12 Wiley, can you  
Please let us know if we need to make any  
Changes.

Thank you

Eva

Sent from my iPhone

### Disclaimer

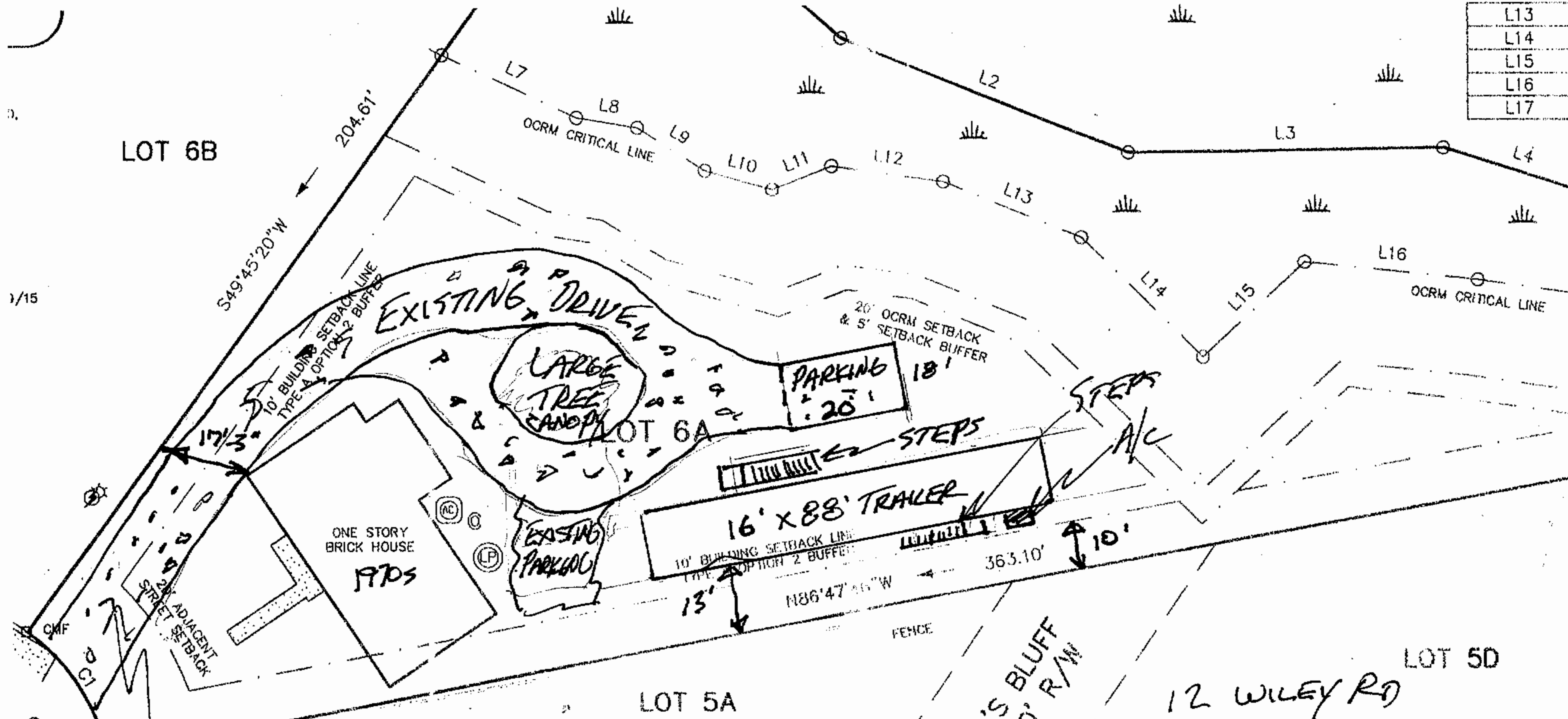
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L13
L14
L15
L16
L17

THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT (SCDHEC OCRM) PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF SCDHEC OCRM, SCDHEC OCRM IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION, AT ANY TIME, IN ANY CRITICAL AREA, ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREON OR NOT.

*T. R. G.*  
 SIGNATURE DATE 7-15-2020

THE CRITICAL LINE SHOWN ON THIS PLAT IS VALID FOR FIVE YEARS FROM THE DATE OF THIS SIGNATURE, SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE.

- NOTES:
- 1). THIS PLAT HAS BEEN PREPARED WITHOUT BENEFIT OF A COMPLETE TITLE SEARCH BY SEA ISLAND LAND SURVEY, LLC.
  - 2). THIS PROPERTY MAY BE SUBJECT TO EASEMENTS OF RECORD AND COVENANT RESTRICTIONS AS RECORDED IN THE OFFICE OF THE CLERK FOR BEAUFORT COUNTY.
  - 3). SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1982.
  - 4). BUILDING SETBACKS, WHETHER SHOWN OR NOT, SHOULD BE VERIFIED BY THE LOCAL BUILDING AUTHORITY.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

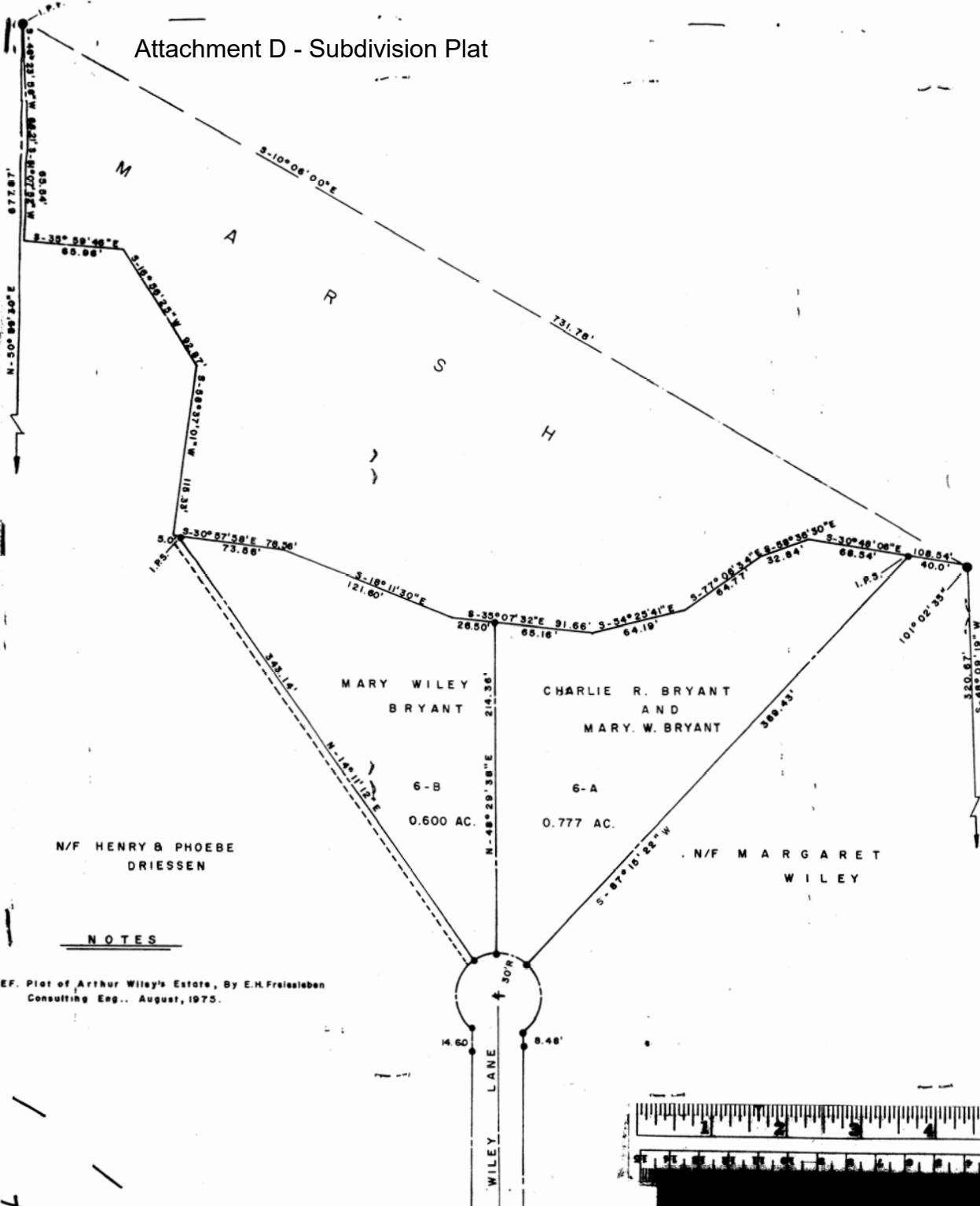


*CRUSHED STONE ALL-WEATHER DRIVING SURFACE*

S.F.  
 CEL: 16K  
 ONE A7 - 14.0'

*12 WILEY RD  
 LOCATION OF NEW TRAILER & PARKING*

Attachment D - Subdivision Plat



PLAT  
 SUBDIVISION OF LOT 6  
 ARTHUR WILEY ESTATE  
 UNION CEMETARY ROAD  
 HILTON HEAD ISLAND, S. C.

FOR:  
 MRS. MARY WILEY BRYANT  
 HILTON HEAD ISLAND, S. C.  
 SCALE: 1"=50' SEPT., 1976

NOTES

REF. Plat of Arthur Wiley's Estate, By E.H. Freiesleben  
 Consulting Eng., August, 1975.



E. H. FREIESLEBEN P.E. & L.S. 4624



E.H. FREIESLEBEN CONSULTING P.E. & L.S.		
P.O. DRAWER 1568 HILTON HEAD ISLAND, S.C. 29928		
SCALE	1" = 50'	REVISIONS
DATE	9/1/76	
DR.	HC	
AP. VD.		
TITLE		
SUBDIVISION LOT 6		

PLAT BOOK 25

34

Attachment E - Site Photos  
VAR-000462-2022  
Date taken: March 14, 2022



Attachment E - Site Photos  
VAR-000462-2022  
Date taken: March 14, 2022





Attachment E - Site Photos  
VAR-000462-2022  
Date taken: March 14, 2022



Attachment E - Site Photos  
VAR-000462-2022  
Date taken: March 14, 2022



Attachment E - Site Photos  
VAR-000462-2022  
Date taken: March 14, 2022



Attachment E - Site Photos  
VAR-000462-2022  
Date taken: March 14, 2022



**E. Adjacent Use Buffer Requirements**

1. Unless expressly exempted or modified in this subsection, **development** shall provide a buffer along common property lines with adjoining properties that is of the type designated in Table 16-5-103.E, Adjacent Use Buffer Requirements, for the proposed **use** and the classification of the **use** of the **adjacent** property (or zoning of a vacant **adjacent** property). Descriptions and width and screening requirements for the various buffer types are set out in Sec. 16-5-103.F, Buffer Types.

TABLE 16-5-103.E: ADJACENT USE BUFFER REQUIREMENTS <sup>1</sup>				
PROPOSED USE <sup>2</sup>	REQUIRED BUFFER TYPE <sup>2</sup>			
	USE OF ADJACENT DEVELOPED PROPERTY <sup>3</sup>			
	SINGLE-FAMILY DWELLING	ALL OTHER RESIDENTIAL USES; COMMERCIAL RECREATION	PUBLIC, CIVIC, INSTITUTIONAL, AND EDUCATION; RESORT ACCOMMODATIONS; OFFICES; COMMERCIAL SERVICES; VEHICLE SALES AND SERVICES; BOAT RAMPS, DOCKING FACILITIES, AND MARINAS; AGRICULTURAL	INDUSTRIAL USES
	ZONING OF ADJACENT VACANT PROPERTY			
	CON, PR, RSF-3, RSF-5, RSF-6, RM-4	RM-8, RM-12	CR, CC, WMU, S, SPC, RD, MS, MV, MF, LC, NC, MED, PD-1	IL
<i>Single-Family</i>	A <sup>4</sup>	A <sup>4</sup>	C <sup>4</sup>	D <sup>4</sup>
<ul style="list-style-type: none"> <li>All Other Residential <b>Uses</b></li> <li>Commercial Recreation</li> </ul>	A	n/a	B	D
<ul style="list-style-type: none"> <li>Public, Civic, Institutional, and Education</li> <li>Resort Accommodations</li> <li>Offices</li> <li>Commercial Services</li> <li>Vehicle Sales and Services</li> <li><b>Boat Ramps, Docking Facilities, or Marinas</b></li> </ul>	C	B	n/a	A

**TABLE 16-5-103.E: ADJACENT USE BUFFER REQUIREMENTS<sup>1</sup>**

PROPOSED USE <sup>2</sup>	REQUIRED BUFFER TYPE <sup>2</sup>			
	USE OF ADJACENT DEVELOPED PROPERTY <sup>3</sup>			
	SINGLE-FAMILY DWELLING	ALL OTHER RESIDENTIAL USES; COMMERCIAL RECREATION	PUBLIC, CIVIC, INSTITUTIONAL, AND EDUCATION; RESORT ACCOMMODATIONS; OFFICES; COMMERCIAL SERVICES; VEHICLE SALES AND SERVICES; BOAT RAMPS, DOCKING FACILITIES, AND MARINAS; AGRICULTURAL	INDUSTRIAL USES
	ZONING OF ADJACENT VACANT PROPERTY			
	CON, PR, RSF-3, RSF-5, RSF-6, RM-4	RM-8, RM-12	CR, CC, WMU, S, SPC, RD, MS, MV, MF, LC, NC, MED, PD-1	IL
Industrial <i>Uses</i>	D <sup>4</sup>	D	A	n/a

NOTES: n/a = not applicable

1. Descriptions and width and screening requirements for the various buffer types are set out in Sec. 16-5-103.F, Buffer Types.
2. When a shared **access easement** is located along a common property line, any required buffer shall be provided to the interior of the **access easement**. An adjacent use buffer from an easement line is not required for non-single-family properties.
3. See [Sec. 16-10-103](#) for a description or definition of the listed **use** classification and types.
4. Single family subdivision exterior boundary only.

2. The **Official** may waive the requirement for an adjacent use buffer for non-single family properties on determining that the proposed **development** and the **adjacent development** function as a single **development**. The criteria to determine if the properties will function as a single development may include the recording of a cross-access easement agreement between the two properties.

**Luick, Missy**

---

**From:** Fister Joheida  
**Sent:** Tuesday, March 15, 2022 7:29 AM  
**To:** Luick, Missy  
**Subject:** Re: Fire Code section that requires 20' all weather driving surface

Yes.

Thank you,  
Joheida Fister  
Deputy Chief/Fire Marshal/PIO  
843-247-3741  
joheidaf@hiltonheadislandsc.gov

Sent from my mobile device.

---

**From:** Luick, Missy <missyl@hiltonheadislandsc.gov>  
**Sent:** Monday, March 14, 2022 5:26:22 PM  
**To:** Fister Joheida <JoheidaF@hiltonheadislandsc.gov>  
**Subject:** Re: Fire Code section that requires 20' all weather driving surface

For the cite to the fire code, how exactly do I do that? Is it International Fire Code and then the section number you gave?

**MISSY LUICK**

SENIOR PLANNER

Office: (843) 341-4693

Website: [hiltonheadislandsc.gov](http://hiltonheadislandsc.gov)

Address: Town of Hilton Head Island  
1 Town Center Court,  
Hilton Head Island, SC 29928

---

**From:** Fister Joheida <JoheidaF@hiltonheadislandsc.gov>  
**Sent:** Monday, March 14, 2022 5:24 PM  
**To:** Luick, Missy <missyl@hiltonheadislandsc.gov>  
**Subject:** RE: Fire Code section that requires 20' all weather driving surface

Awesome thank you, that is helpful.

Thank you,

## Attachment G - Fire Code Reference



### Joheida Fister

DEPUTY CHIEF/FIRE MARSHAL/PIO

Office: (843) 682-5140  
Mobile: (843) 247-3741  
Website: [hiltonheadislandsc.gov](http://hiltonheadislandsc.gov)  
Address: Hilton Head Island Fire Rescue  
40 Summit Drive  
Hilton Head Island, SC 29926



---

**From:** Luick, Missy <[missyl@hiltonheadislandsc.gov](mailto:missyl@hiltonheadislandsc.gov)>  
**Sent:** Monday, March 14, 2022 5:24 PM  
**To:** Fister Joheida <[JoheidaF@hiltonheadislandsc.gov](mailto:JoheidaF@hiltonheadislandsc.gov)>  
**Subject:** Re: Fire Code section that requires 20' all weather driving surface

It's 16-5-105.A.5.e.ii.(A)

A residential driveway is considered a one way one lane driveway.

The LMO says a residential driveway is required at 14-20 feet.

Excerpt

(A)One-way one-lane driveways shall be at least 14 feet wide and no more than 20 feet wide, as measured between the edges of paving.

### MISSY LUICK

SENIOR PLANNER

Office: (843) 341-4693  
Website: [hiltonheadislandsc.gov](http://hiltonheadislandsc.gov)  
Address: Town of Hilton Head Island  
1 Town Center Court,  
Hilton Head Island, SC 29928

---

**From:** Fister Joheida <[JoheidaF@hiltonheadislandsc.gov](mailto:JoheidaF@hiltonheadislandsc.gov)>  
**Sent:** Monday, March 14, 2022 4:56 PM  
**To:** Luick, Missy <[missyl@hiltonheadislandsc.gov](mailto:missyl@hiltonheadislandsc.gov)>  
**Subject:** RE: Fire Code section that requires 20' all weather driving surface

What part of the LMO requires 14 feet? I know we have it in there for one way drive aisle to be 14 feet.

The fire code section and the definition are below.

### 503.2.1 Dimensions.

Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm Section 503.6, and an unobstructed vertical clearance of not less than 13 feet 6 inches (4115 mm).



Attachment G - Fire Code Reference

**FIRE APPARATUS ACCESS ROAD.** A road that provides fire apparatus access from a fire station to a fire such as *fire lane*, public street, private street, parking lot lane and access roadway.

Thank you,



**Joheida Fister**

DEPUTY CHIEF/FIRE MARSHAL/PIO

Office: (843) 682-5140

Mobile: (843) 247-3741

Website: [hiltonheadislandsc.gov](http://hiltonheadislandsc.gov)

Address: Hilton Head Island Fire Rescue  
40 Summit Drive  
Hilton Head Island, SC 29926



---

**From:** Luick, Missy <[missyl@hiltonheadislandsc.gov](mailto:missyl@hiltonheadislandsc.gov)>

**Sent:** Monday, March 14, 2022 2:19 PM

**To:** Fister Joheida <[JoheidaF@hiltonheadislandsc.gov](mailto:JoheidaF@hiltonheadislandsc.gov)>

**Subject:** Fire Code section that requires 20' all weather driving surface

Joheida,

I have a staff report for a variance on Wiley Road.

Can you tell me the section number in the Fire Code that requires the 20' wide all weather driving surface?

Currently, I have the fact written as: The LMO requires the driveway width to be at least 14 feet wide and no more than 20 feet wide. The Fire Code requires the driveway be a 20-foot wide all weather driving surface.

The staff report and attachments (minus the staff photos, need to go to the site today) are attached.

We are recommending approval with 2 conditions: The vehicular driveway should be 20 feet wide and shall only lessen in width of no less than 14 feet wide within the vicinity of the existing home.

A Small Residential Development Plan Review is required for this project.

The applicant has stated that the driveway is less than 150 feet. So, that means that no turn around is required, correct?

Can you please take a look at the Fire Code reference and let me know. Please also look at the Applicant's site plan and let me know if it looks do-able.

To me, it looks like if they get the variance that the ADPR is approvable.

Thanks so much,  
Missy

## Attachment G - Fire Code Reference



### **Missy Luick**

SENIOR PLANNER

Office: (843) 341-4693

Website: [hiltonheadislandsc.gov](http://hiltonheadislandsc.gov)

Address: Town of Hilton Head Island  
1 Town Center Court  
Hilton Head Island, SC 29928



## TOWN OF HILTON HEAD ISLAND

---

### *Community Development Memo*

TO: Board of Zoning Appeals  
FROM: Missy Luick, *Senior Planner*  
VIA: Josh Gruber, *Deputy Town Manager*  
CC: Shawn Colin, *Assistant Town Manager – Community Development*  
DATE: March 21, 2022  
SUBJECT: Consideration of Board of Zoning Appeals Rules of Procedure Amendment

---

#### **Recommendation:**

Staff recommends that the BZA consider the proposed amendments to the Rules of Procedure.

#### **Summary:**

Upon review at the February 28, 2022 meeting, an updated Rules of Procedure Proposed Amendment is before the board for consideration.

#### **Background:**

Staff has had communications with the BZA Board Chair regarding possible amendments to the BZA Rules of Procedure. The board discussed possible amendments to the Rules of Procedure at the March 22, 2021 meeting. Since then, staff has made monthly reports to the BZA regarding the Rules of Procedure amendment progress.

Attachment: BZA Rules of Procedure Proposed Amendment

*Board of Zoning Appeals*  
*Rules of Procedure*  
*Town of Hilton Head Island*  
Proposed Amendment

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**Article I**  
**Purpose and Responsibilities**

The Board of Zoning Appeals exists to provide final administrative decisions for the Town of Hilton Head Island to enforce the zoning ordinance in accordance with State law, subject to an appeal to circuit court by an appropriate interested party. Its main responsibilities include hearing and deciding: (a) appeals from administrative decisions of the Land Management Ordinance (LMO) ~~Administrator~~ Official and from Planning Commission actions on certain traffic analysis plans; (b) applications for variances from LMO requirements; and (c) applications to permit uses by special exception. The powers of the Board of Zoning Appeals also include remanding a matter to an administrative official if the record is deemed insufficient, issuing subpoenas for witness appearances, and certifying contempt to the circuit court. In exercising these powers, the Board of Zoning Appeals may, in conformity with State law and the LMO, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination of ~~the LMO Official an Administrator~~, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. All final decisions and orders of the Board must be in writing and be permanently filed in the office of the Board as a public record.

**Article II**  
**Authority**

**Section 1. Authority.**

The Town of Hilton Head Island Board of Zoning Appeals is established by Appendix A-3 of the Land Management Ordinance (LMO) of the Town of Hilton Head Island pursuant to the authority of ~~Section~~ S.C. Code Ann. § 6-29-780, et seq. (Supp. 2021, As Amended), ~~of the Code of Laws of South Carolina,~~ and hereinafter shall be referred to as the "Board."

**Section 2. Territorial Jurisdiction.**

Pursuant to Appendix A-3.E of the LMO, the Board shall have jurisdiction over all the lands within the Town. This jurisdiction may be expanded by the Town Council by ordinance and/or by intergovernmental agreement, in accordance with ~~Section~~ S.C. Code § 6-29-330 (Supp. 2021, As Amended) of the Code of Laws of South Carolina.

**Article III**  
**Rules of Procedure**

**Section 1. Rules of Procedure.**

These *Rules of Procedure* are adopted by the Board to carry out its powers and responsibilities under S.C. Code Ann. §§ 6-29-780, 6-29-790, 6-29-800, and 6-29-810 (Supp. 2021, As Amended) and Appendix A-3 of the LMO. A portion or section of the *Rules of Procedure* may be suspended by majority vote of the Board to meet particular circumstances. If there is a situation where these *Rules of Procedure* do not specifically apply, then the most recent edition of *Robert's Rules of Order* shall

govern the conduct of meetings. ~~An informational chart summarizing types of motions and votes in Robert's Rules of Order is attached.~~

## **Section 2. Amendment.**

~~These rules~~ Rules of Procedure may be amended at any Regular Meeting or Special Meeting of the board by majority vote of the members of the board at least seven days after the written amendment is delivered to all members ~~time by an affirmative vote of a majority of the members of the Board; provided however, that such amendment(s) shall have first been presented to the entire Board, in writing, at a Regular or Special Meeting preceding the Regular or Special Meeting at which the vote is taken.~~

## **Article IV** **Board Organization and Duties**

### **Section 1. Membership.**

**A. Number and Qualifications.** The Board shall consist of seven members appointed by the Town Council. To the extent practicable, the appointed members may include at least one attorney and one design professional (either a registered architect or a registered landscape architect). None of the members shall hold an elected public office or position with the Town of Hilton Head Island or Beaufort County, South Carolina.

**B. Length of Terms.** Members of the Board shall be appointed annually for three-year terms effective each July 1, with all such terms ending on June 30 of the applicable year, unless a member is appointed to fill a vacancy. Vacancies shall be filled by the Town Council by appointments for the balance of any unexpired terms.

**C. Board Year.** A Board year is July 1 through June 30.

**D. Term Limits.** No member may serve more than two successive terms, except for extraordinary circumstances where Council believes it to be in the best interest of the community to have a continuation for a specific period of a particular member of the Board. This limitation shall not prevent any person from being appointed to the Board after an absence of one year. Service for a partial term of less than 1½ years shall not constitute a term of service for the purpose of these term limits.

**E. Attendance/Absences.** Board members are expected to attend all Board meetings. Each member of the Board who has prior knowledge that they will not be able to attend a scheduled Regular Meeting of the board shall notify the Secretary no later than 4:30pm the business day before the meeting. In the case of an emergency, a member shall give the earliest possible notification. The Secretary or Staff shall notify the ~~Chairman~~ in the event that the projected absence(s) will produce a lack of a quorum.

**F. Removal.** Three (3) absences at Regular or Special Meetings of the Board during one Board year (July 1 through June 30) shall be cause for recommendation by the ~~Chairman~~ to the Town Council to reconsider the appointment of that member. Attendance records may be reviewed



annually by the Board in executive session during the 9<sup>th</sup> month of each Board year.

**FG. Education.** ~~The Code of South Carolina~~ S.C. Code Ann. § 6-29-1340 (Supp. 2021, As Amended) requires a six (6) hour Orientation Program and a three (3) hour/year Continuing Education Program per year for each Board member. Board members shall complete the orientation training and continuing education and submit the required forms to the Secretary no later than June 1 each year.

## **Section 2. Election of Officers.**

The officers of the Board shall be a ~~Chairman~~ and a ~~Vice-Chairman~~ for serving one-board year terms beginning on the first meeting in July. They are elected annually by the Board members at the beginning of each Board year no later than at the last meeting in July. Neither of these two positions shall be filled by a member beginning his or her first year of service as a Board member. Members that leave the Board and are re-appointed after a period of no more than three years may be elected to an officer position in his or her first year of service. Nominations for the ~~Chairman~~ and ~~Vice-Chairman~~ shall be made from the floor at the meeting.

A majority vote is normally required to elect to office. If no one in an election receives a majority vote, the vote must be repeated until one of them does get a majority.

**A. Chairman – Term and Duties.** The term shall be for one year. At the ~~end~~ beginning of each Board year, the ~~Chairman~~ may be re-elected subject to his/her appointment term. The ~~Chairman~~ shall have the following duties:

1. In consultation with the Staff Board Coordinator, delegate the Secretary to prepare agendas for all meetings;
2. Conduct all meetings and hearings of the Board, meaning that the ~~Chairman~~—
  - i. Is responsible for maintaining order.
  - ii. Should begin the meeting promptly at the scheduled hour if a quorum is present.
  - iii. Should have a well-prepared agenda and abide by it.
  - iv. Should be familiar with the procedural rules of the board.
  - v. Keeps the board working together by explaining procedure clearly and communicating the next business in order.
  - vi. Should “assign” the floor by recognizing those members who wish to speak by calling them by name. No other member may interrupt or call out remarks without being out of order. Private discussion between members while another has the floor is out of order and disruptive members should be reminded of this rule.
  - vii. Should impartially call on members wishing to speak and should give members on both sides of an issue an opportunity to speak.
  - viii. Should remain calm and objective, keeping the meeting moving.
  - ix. Should always confirm that all members understand the motion and that the Secretary has fully recorded the motion.
  - x. Should open debate by saying “Is there any discussion?” The ~~Chairman~~ *must* open all debatable questions to debate.

- xi. Should recognize members who wish to speak by stating their names.
  - xii. Should be a voting member and vote on all cases before the Board. If the Chairman wishes to make a motion, he/she should pass the gavel to the Vice-Chairman for conducting the meeting.
  - xiii. Should request that a motion with grounds (facts and conclusions) be made by any member. If necessary, may assist the member in formulating the motion. (Complex motions may be brought to the meeting pre-written.)
  - xiv. Should request any member to second the motion.
  - xv. If a motion fails to get a second, should state, "Since there is no second, the motion is not before the Board."
  - xvi. If seconded, should ask the members if there is any discussion of the motion.
  - xvii. Should not allow irrelevant discussion.
  - xviii. At the conclusion of any discussion of a seconded motion, should put the question to a vote by requesting the Secretary to call the roll.
  - xix. Should announce the result of the vote.
  - xx. At the conclusion, should adjourn the meeting without motion – "If there is no further business and there is no objection, the meeting will be adjourned. There being no objection, the meeting is adjourned."
3. Act as spokesperson for the Board;
  4. Sign documents for the Board. Note, final decisions are signed by the moving member, the Chairman, and the seconding member;
  5. Act or designate a Board member to act as liaison with other governmental agencies and Town boards;
  6. Assign or delegate tasks to other Board members as may be necessary to perform the Board's functions;
  7. Transmit reports and recommendations to Town Council;
  8. Ensure that all business is conducted in accordance with the S.C. Code Ann. § 6-29-790 (Supp. 2021, As Amended) ~~SC Code~~, the LMO, and these Rules of Procedure;
  9. Cancel a scheduled Board meeting if there are no agenda items; and
  10. Perform other duties approved by the Board.

**B. Vice-Chairman.** A Vice-Chairman shall be elected by the Board from among the members in the same manner and for the same term as the Chairman. The Vice-Chairman shall serve as Acting Chairman in the absence of the Chairman, and, at such time, the Vice-Chairman shall have the same powers and duties as the Chairman. The Vice-Chairman shall succeed the Chairman, if the office is vacated before the term has expired, to serve the remainder of the unexpired term of the Chairman. A new Vice-Chairman shall be elected at the next regular meeting of the Board. In the absence of both the Chairman and Vice-Chairman, an acting Chairman shall be elected by the members present at a meeting of the Board.

### **Section 3. Secretary—Appointment and Duties.**

~~During the July meeting of each year~~ With the advice and consent of the Town's Assistant Town Manager - Community Development, at the beginning of the board year, the Board shall annually appoint or reappoint a member of the Town's Community Development Department staff shall be

~~appointed by the Board~~ to independently act as the Secretary of the Board. The Secretary will not be eligible to vote or to otherwise participate or deliberate in the proceedings of the Board. The Secretary shall:

1. Publish and post notices of all meetings of the Board;
2. As delegated by the Chairman, prepare meeting agendas;
3. Distribute to each Board member in advance of each meeting--the agenda, prior meeting draft minutes for approval, and all written submissions by staff and applicants on each agenda item, and other relevant materials;
4. Record the proceedings of meetings on audio tape and prepare written minutes of meetings for approval by the Board at its next regular meeting, recording in the written minutes the attendance of members at each meeting, the attendance of Council members, the attendance of staff, and a detailed summary of all discussions during each meeting;
5. Maintain the Board's notices, correspondence, reports and forms as public records for a period of time consistent with the records retention schedule of the Town of Hilton Head Island;
6. Assist in the preparation and forwarding of all reports and recommendations of the Board; and
7. Maintain each final decision of the Board as a permanent record as required by the S.C. Code Ann. § 6-29-790 (Supp. 2021, As Amended) SC Code.

#### **Section 4. Staff Board Coordinator.**

The Community Development Director shall appoint a member of Staff to assist the Chairman and the Secretary in Board coordination, including:

1. Ensuring all postponed agenda items are rescheduled;
2. Ensuring public notices are accurately written for publication;
3. Ensuring the minutes accurately reflect the actions taken in the meeting;
4. Coordinating with pertinent staff on submittal of agenda items to the Secretary for distribution to the Board;
5. Scheduling mandatory training sessions for the Board;
6. Ensuring the Board's Rules of Procedure remain updated;
7. Attending all Board meetings and resolving any questions or requests by the Board; and
8. Assisting the Secretary in the efficient running of the public meetings.

### **Article V** **Meetings and Quorum**

#### **Section 1. Regular and Special Meetings.**

~~A.~~ **Meeting Schedule.** An annual schedule of regular meetings and work sessions of the Board shall be adopted, published and posted at the Town Government Center in late Fall of each year for the next calendar year. Unless rescheduled by a vote of the Board, meetings shall be held at the time and place stated in notices. Meetings shall be open to the public.

**B. Regular Meetings.** Regular Meetings of the Board shall be held on the fourth Monday of each month or such other date as determined by the ~~Chairman~~ or with input from Staff. Notification of all Applications for Appeal, Variance and Special Exception scheduled and any other matters for consideration at each regular meeting of the Board will be in accord with the public notice requirements of ~~the SC Code~~ S.C. Code Ann. § 6-29-790 (Supp. 2021, As Amended) and S.C. Code Ann. § 30-4-10 et seq. (Supp. 2021, As Amended) as implemented by the Town's LMO.

**C. Special Meetings.** Special Meetings of the board may be called at any time by the ~~Chairman~~ or requested by the Staff. At least forty-eight (48) hours public notice shall be provided for any Special Meeting of the board including the time, place and particular agenda item(s) scheduled for consideration consistent with the notice requirements of ~~the SC Code~~ S.C. Code Ann. § 6-29-790 (Supp. 2021, As Amended) and S.C. Code Ann. § 30-4-10 et seq. (Supp. 2021, As Amended) as implemented by the Town's LMO.

**D. Virtual Meetings.** Meetings of the Board can be conducted virtually under the authority of, and procedure described in Town Code: § 2-5-10, et seq. Municipal Code of the Town of Hilton Head Island, South Carolina (1983, As Amended).

**D.E. Cancellation of Meetings.** Whenever there is no business scheduled for any Regular or Special Meeting of the Board, the ~~Chairman~~ or Staff may cancel such Regular Meeting by giving notice to all members of the Board, as well as the public, no less than twenty-four (24) hours prior, whenever possible, to the time set for any such Regular Meeting.

## Section 2. Quorum.

A majority of the Board shall constitute a quorum for the conduct of business. The Secretary will notify the ~~Chairman~~ in the event projected absences will result in the lack of a quorum. If a quorum is established, then a member leaves, the quorum is no longer present. In the absence of a quorum, no further business requiring a vote shall be transacted and any such business shall be postponed to the next meeting.

## Section 3. Conflict of Interest

At a minimum, South Carolina law regarding conflicts of interest ~~{S. C. Code Ann. § 8-13-10, et seq.; (Supp. 1994)2021, As Amended}~~ shall control Board members' actions. In addition, any member of the Board who believes that he or she has or may have a conflict of interest of any nature on any matter before the Board shall, prior to the case at the Regular or Special Meeting at which such matter may be heard or considered by the Board:

1. Prepare a written Potential Conflict of Interest Form describing the matter requiring action or decisions and the nature of his/her potential conflict of interest with respect to the action or decision;
2. File the Potential Conflict of Interest Form with the Secretary; and,

3. Provide a copy of the Potential Conflict of Interest Form to the Chairman.

Upon receipt of a Potential Conflict of Interest Form from any member of the Board, as required in section II (J)(A), *supra.*, the Chairman shall cause the Potential Conflict of Interest form to be recorded in the minutes and shall require that the member filing such Potential Conflict of Interest Form be excused from any votes, deliberations, and any other actions on the matter on which the potential conflict of interest or conflict of interest exists.

Any Board member so disqualified shall leave the dais while the disqualifying matter is being considered and refrain from deliberating or voting on the question.

## **Article VI**

### **Meeting Administration, Public Comment, Notices, Fees, Voting Supplemental Submissions/Briefs**

#### **Section 1. Media Notices.**

The Secretary shall give the notice required by statute or ordinance for all meetings of the Board as per Section 16-2-102.E of the LMO. All Board meetings shall be open to the public and all requirements of the South Carolina Freedom of Information Act [S. C. Code Ann. § 30-4-10, *et seq.* (Supp. 2021, As Amended 1994)] shall be complied with in the conduct of meetings.

#### **Section 2. Agenda (Order of Business)**

A written agenda shall be furnished by the Secretary to each member of the Board and media. An agenda may be changed at the related meeting by a majority vote of the members present. Public Hearing items should be so noted with each pertinent item. Generally, the agenda should contain:

1. Call to Order;
2. Roll Call;
3. Freedom of Information Act Compliance;
4. Use of Cellular Telephones or Other Electronic Sound Emitting Devices Prohibited;
5. Review of Meeting Protocol as described within, including Citizen Participation;
6. Approval of Agenda;
7. Approval of Minutes of Previous Meeting
8. Old Business;
9. New Business;
10. Board Business;
11. Staff Reports;
12. Adjournment.

#### **Section 3. Minutes.**

**A. Meetings. Minutes** Conduct of meetings is governed by the ~~Code of South Carolina~~ S.C. Code Ann §§ (30-4-70 through 30-4-90 (Supp. 2021, As Amended). Minutes of each Board meeting shall be recorded by the Secretary and approved at the next available meeting after their preparation. Final approved Minutes shall be available on microfilm for previous years, and may be posted on the Town's Web site for public information.

**B. Minimum Contents of Minutes.**

1. Kind of meeting (regular or special).
2. Name of the organization.
3. Date and place of the meeting.
4. Presence of the ~~Chairman~~ and Secretary or the names of substitutes.
5. Presence of a quorum.
6. Names of all Board members, Council members, and Staff.
7. Time the meeting was called to order.
8. Whether the minutes of the previous meeting were approved or corrected.
9. All adopted and defeated motions and grounds (facts and conclusions). Withdrawn motions need not be recorded.
10. Name of the maker of the motion and the seconding member.
11. Summary of all presentations and discussions.
12. Motions, including proposed findings and conclusions, must be recorded verbatim.
13. Record the vote of each member upon each question, or, if absent or failing to vote, indicating that fact.
14. The adjournment and the time of adjournment.

**~~E.~~ C. Lack of Quorum.** If there is lack of a quorum of the Board, minutes may be recorded but shall include a statement in the header of each page indicating that a quorum was not present and the minutes are not official. Such minutes shall not be approved by the Board at a later meeting. (There are different quorums, depending on the agenda item.)

**Section 4. Public Comment.**

In the case of a Variance or Special Exception application, at the conclusion of presentations by Staff and the Applicant, the ~~Chairman~~ will open the public hearing. The ~~Chairman~~ may set a time limit for all public comments and may determine the order of the comments. The ~~Chairman~~ will recognize citizens to comment and request that they sign up to speak at the podium. Each person will have the opportunity to speak for three (3) minutes. At the conclusion of the public comment, the ~~Chairman~~ will close the public hearing. Staff and/or the Applicant may request that the ~~Chairman~~ allow additional clarification after the public comments. Public comment is not permitted in a case involving an appeal from an ~~Administrator~~ LMO Official decision.

**Section 5. Submission Deadline for Regular Meetings.**

The deadline for the filing of a complete Application with narrative for Variance or Special Exception or Request for Appeal shall be thirty (30) calendar days prior to any Regular Meeting of the Board. Any

submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion.

### **Section 6. Meeting Protocol.**

The ~~Chairman~~ will review the protocol at the start of each meeting. The meeting protocol includes further information about the following: speaker sign-up sheet, length of time for speakers, the order of presentation, and the opening and closing of a public hearing. The speaker sign-up sheet will be placed at the podium for speakers to sign when they come up to speak.

### **Section 7. Filing of Application, Fees and Notice.**

All Applications and Appeals scheduled for review by the Board shall be filed by the interested property owner(s) or by a property owner aggrieved by an ~~Administrator's~~ LMO Official's decision, or by a representative with a written certification of authority by such property owner. All Applications and Appeals shall satisfy all fees and notice requirements in accord with the provisions outlined in the LMO. In any case where the owner of record of the real property affected by any Application for Special Exception or Application for Variance, or his/her certified representative, is not the Applicant, the Applicant shall serve notice of the Application to the contiguous owner(s) of record within the time frames and as described in the LMO. Such notice shall include the time and place of the Board meeting at which the Application shall be heard.

### **Section 8. Motions and Final Decisions.**

A Motion by a Board member is the procedure leading to a final decision by the Board when the Motion is seconded by another Board member and adopted by a vote of a quorum of the Board. A Motion is to be made to describe the proposed decision with findings and conclusions to support the Motion. If the Motion is seconded and adopted by the Board, the final decision, contained in a Notice of Action, must be in writing and be permanently filed in the office of the Board as a public record. The final decision must include findings and conclusions and be delivered to parties of interest by certified mail.

### **Section 9. Voting.**

1. A Board member must be present at the beginning of each case to be permitted to discuss and vote on the case. If a Board member that was absent at the beginning of the hearing establishes requisite knowledge of the case, the member may be permitted to discuss and vote on the case by a majority vote of the Board.
2. All members of the Board, including the ~~Chairman~~, shall be voting members, and shall be entitled to vote on any issue before the Board unless disqualified by law.
3. For Appeals from ~~Administrator's~~ LMO Official's decision, a majority vote of the entire Board shall be necessary, thus requiring at least 4 affirmative votes to pass a motion.
4. A simple majority of a quorum shall be required to conduct all other Board business including a decision on an Application for Variance or Special Exception.

## **Section 10. Supplemental Submissions/Briefs.**

Any supplemental written submission or legal brief must be delivered [One (1) hard copy or one (1) copy sent via e-mail] to the Secretary of the Board no later than 8:00am four business days before the public meeting day in order for the Secretary to distribute such submission to each Board member by the close of business that day. Town Staff, or the opposing party, has two business days after receipt of the supplemental submission to respond in writing. This excludes any business days when the Town is closed. The Board reserves the right to require or permit later written submissions or briefs and/or proposed findings of fact and conclusions of law to be submitted by the Appellant, Applicant for Variance or Special Exception, or Town Staff. Any submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion. Any written or oral information sent directly to any Board member shall be disregarded and promptly turned over to the Chairman through the Secretary of the Board.

## **Section 11. Communication Among Board Members or With an Outside Party.**

- A. There shall be no communication in writing, orally, or by e-mail by any Board member with any other Board member or any outside party regarding the substance of any matter before the Board that is or may be brought to a vote other than during a public meeting.
- B. Once a decision has been rendered by the BZA, there shall be no further discussions by any Board member with staff, applicants or their attorneys or representatives. Any such communications regarding a decision should be made to the Town Attorney.
- C. Communication with staff or outside parties to communicate procedural matters or general positions or opinions of the BZA will be at the discretion of the Chairman or by an affirmative vote of the majority of the Board members. The Chairman or his designee will be responsible for all such written/verbal communications with anyone other than the remainder of the Board members and Staff.
- D. Board members should refrain from discussing an upcoming agenda item with the Applicant, his Attorney, or his Agent, either through written or verbal communication. Board members should refrain from discussing an upcoming agenda item with Staff either through written or verbal communication, except to clarify facts or request additional information. All discussion of the item should take place in the public meeting. This is to avoid the appearance of improper ex parte communications.

## **Article VII**

### **Procedures for Hearing an Application for a Variance**

The following procedures shall be applicable in the presentation of a Request for a Variance.

#### **Section 1. Presentation of the Town Staff and Applicant.**

1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Variance. During the presentation by Staff, members of the Board of Zoning Appeals



may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.

2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Variance. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.
6. Any person who presents evidence shall be administered the following oath by the chair, "Do you swear or affirm the testimony you are about to give shall be the truth and nothing but the truth?" Once the affiant answers in the affirmative, they may present testimony. Oaths may be given collectively at the onset of hearings to all prospective witnesses.

## **Section 2. Public Comment.**

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the ~~sign-up~~ signup sheet. Each person will have the opportunity to speak for three (3) minutes. Alternatively, should the meeting be conducted entirely or in part remotely, the Chair shall follow the same procedure, minus the podium and the signup sheet.
2. The Applicant and/or Town Staff shall clarify any information presented by the public before the Board makes a motion.

## **Section 3. Vote on Application for Variance.**

1. Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Application for Variance.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision and appropriate references to the relevant criteria of the LMO.
3. Pursuant to the provisions of the LMO the Board shall approve the Application for Variance, approve the Application for Variance with conditions or modifications; or, deny the Application for Variance.
4. Following the vote, the Staff shall prepare a written Notice of Action. The written notice of action shall include decision of the Board as well as the findings of fact and conclusions of law adopted by the Board with respect to the Application for Variance.
5. The Notice of Action shall be mailed by certified letter to the Applicant and record owner of the real property affected by the Application for Variance, if different from that of the Applicant.

6. The decision of the board shall be deemed final and applicable upon mailing of the Notice of Action.
7. The certificate of mailing shall be made a part of the board's file on the Application for Variance.

**Article VIII**  
**Procedures for Hearing an Application for Special Exception**

The following procedures shall be applicable in the presentation of an Application for Special Exception:

**Section 1. Presentation of the Town Staff and Applicant.**

1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Special Exception. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Special Exception. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or the Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.
6. Any person who presents evidence shall be administered the following oath by the chair, "Do you swear or affirm the testimony you are about to give shall be the truth and nothing but the truth?" Once the affiant answers in the affirmative, they may present testimony. Oaths may be given collectively at the onset of hearings to all prospective witnesses.

**Section 2. Public Comment.**

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the ~~sign-up~~ signup sheet. Each person will have the opportunity to speak for three (3) minutes. Alternatively, should the meeting be conducted entirely or in part remotely, the Chair shall follow the same procedure, minus the podium and the signup sheet.
2. The Applicant and/or Town Staff shall clarify any information presented by the public before the board makes a motion.

### **Section 3. Vote on Application for Special Exception.**

1. Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Application for Special Exception.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision and appropriate references to the relevant criteria of the LMO.
3. Pursuant to the provisions of the LMO, the Board shall approve the Application for Special Exception, approve the Application for Special Exception with conditions as stated in the LMO or deny the Application for Special Exception.
4. Following the vote, the staff shall prepare a written Notice of Action. The written notice of action shall include the decision of the Board as well as the findings of fact and conclusions of law adopted by the board with respect to the Application for Special Exception.
5. The Notice of Action shall be mailed by certified letter to the Applicant and record owner of the real property affected by the Application for Special Exception, if different from that of the Applicant.
6. The decision of the board shall be deemed final and applicable upon mailing of the Notice of Action.
7. The certificate of mailing shall be made a part of the board's file on the Application for Special Exception.

## **Article IX** **Procedures for Hearing an Appeal**

The following procedures shall be applicable in the presentation of an Appeal from a decision of the LMO Official ~~any Administrator~~:

### **Section 1. Jurisdiction.**

Once an appeal has been taken from any final decision of the LMO Official ~~Administrator~~, the jurisdiction of the LMO Official ~~Administrator~~, from which the appeal was taken, shall cease.

### **Section 2. Presentation of the Appellant, Town Staff and Other Necessary Parties.**

1. The Appellant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Appellant believes supports the Appeal. During the presentation by the Appellant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the ~~Chairman~~, the Appellant's time may be extended if the Appellant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Appeal. During the presentation by Staff, members of the Board of Zoning Appeals may ask such

questions as they deem appropriate. At the discretion of the ~~Chairman~~, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.

3. Where the Appellant is someone other than the Property Owner of the Property that is the subject of the Appeal, the Property Owner or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Property Owner believes supports the position of the Property Owner with respect to the Appeal. During the presentation by the Property Owner or their Agent, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the ~~Chairman~~, the Property Owner's time may be extended if the Property Owner is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
4. Where the Appellant is someone other than the Holder of the Permit or Approval or their Agent for the Property that is the subject of the Appeal, the Holder of the Permit or Approval or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that he/she believes supports their position with respect to the Appeal. During the presentation by the Holder of the Permit or Approval or their Agent, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the ~~Chairman~~, the Holder of the Permit or Approval or their Agent's time may be extended if he/she is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
5. The ~~Chairman~~ may allow a maximum of five (5) minutes each for all parties to present any desired rebuttal.
6. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Appellant, Property Owner, Holder of the Permit or Approval or their Agent or Staff as the members deem appropriate.
7. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.
8. Public comment is not permitted in a case involving an appeal from an ~~Administrator~~ LMO Official decision.
9. All parties shall be subject to the submittal requirements as set forth in Article 6, Section 10 of the Rules of the Procedure.
10. Any person who presents evidence shall be administered the following oath by the chair, "Do you swear or affirm the testimony you are about to give shall be the truth and nothing but the truth?" Once the affiant answers in the affirmative, they may present testimony. Oaths may be given collectively at the onset of hearings to all prospective witnesses.

### **Section 3. Vote on the Appeal.**

Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Appeal.

1. Pursuant to the provisions of Section 16-2-103.T.4.d of the LMO, the Board shall:
  - a) Affirm the action of the ~~Administrator~~ LMO Official from which the Appeal was taken;or,

- b) Modify the action of the ~~Administrator~~ LMO Official from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the ~~Administrator~~ LMO Official from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
  - c) Reverse the action of the ~~Administrator~~ LMO Official from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the ~~Administrator~~ LMO Official from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
  - d) Remand the action of the ~~Administrator~~ LMO Official from which the Appeal was taken for such further proceedings as the Board of Zoning Appeals may deem appropriate.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision.
  3. Following the Vote, the Board shall issue a written Notice of Action. The written notice of action shall include the decision as well as the findings of fact and conclusions of law adopted by the Board.
  4. The Notice of Action shall be mailed by certified letter to the Appellant and Record Owner of the real property affected by the Appeal, if different from that of the Appellant.
  5. The decision of the Board shall be deemed final and applicable upon mailing of the Notice of Action.
  6. The certificate of mailing shall be made a part of the board's file on the Appeal.

## **Article X**

### **Procedures for a Remand**

#### **Section 1. Remand.**

1. A member of the Board may move for a remand at any time, subject to review and determination by the Board. The motion shall specifically set forth factual and/or legal grounds that cause the record to be insufficient.
2. If a remand is granted, the Town and the Applicant shall obtain and present all additional information needed to render the record sufficient as detailed in the motion for the remand.

## **Article XI**

### **Motions**

#### **Section 1. Motion for a ~~Reconsideration~~ Rehearing.**

1. The Board may ~~reconsider~~ rehear any decision made under Section 16-2-103.E.3.d, 16-2-103.S.3.d or 16-2-103.T.4.d of the Land Management Ordinance.
2. Any party aggrieved by a decision of the Board, ~~if they desire to do so, is required to file any~~ may file a Petition for Rehearing ~~Reconsideration by delivering the same to the Administrator within ten (10) days from the date of hearing. "Delivered" as referenced in this section, means actual delivery~~ by delivery of the Petition for Rehearing to the

~~Administrator~~ LMO Official within ten (10) days from the date of the mailing of the Notice of Action. As used in this section “delivery” means actual delivery.

3. The Petition for Rehearing Reconsideration shall be in writing and shall ~~state with particularity the points alleged to have been overlooked or misinterpreted the Board be accompanied by new evidence which could not have been presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.~~
4. The Petition for Rehearing Reconsideration shall be presented to the Board at the next regular scheduled meeting following the filing of the Petition for Rehearing Reconsideration after compliance with the public notice requirements for a Board Public Meeting per the LMO.
5. Motions:
  - a. A Motion to Grant the Petition for Rehearing Reconsideration may only be made by a member of the Board who voted on the prevailing side in the original vote.
  - b. The effect of the granting of a Motion for Rehearing Reconsideration shall be that the Board will review the entire matter as if no previous vote had been taken.
  - c. A Motion to Deny the Petition for Rehearing Reconsideration may be made by any member of the Board. The effect of a vote denying a Petition for Rehearing Reconsideration is that the vote shall be considered to be the Board’s final action on the matter. A Notice of Action shall be delivered to the Applicant following such vote.
6. Successive Petitions for Rehearing Reconsideration are prohibited. No matter that has been ~~reconsidered~~ reheard may be ~~reconsidered~~ reheard a second time. The Board may not reconsider a denial of a Petition for Rehearing Reconsideration.

## **Section 2. Motion to Dismiss.**

Any interested party to a matter pending before the BZA may file a Motion to Dismiss the pending matter. The purpose of a Motion to Dismiss is to seek dismissal of the matter prior to the hearing on the merits of the pending matter.

1. A Motion to Dismiss may assert matters relating to procedure or jurisdiction including:
  - a. Failure to comply with requirements of the LMO,
  - b. Lack of jurisdiction,
  - c. Standing,
  - d. Other matters not relating to the merits of the matter.
2. A Motion to Dismiss shall be in writing, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.
3. A Motion to Dismiss may be supported by briefs of the law, affidavits or other matters pertinent to the Motion.
4. Any interested party may file briefs and other materials in response to the Motion, in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.
5. The Motion to Dismiss will be normally heard at the same meeting as the related appeal; however, the ~~Chairman~~ or ~~Vice Chairman~~, in the absence of the ~~Chairman~~, upon request, in his sole discretion, may permit the motion to be heard at an earlier meeting.

### **Section 3. Motion for Postponement.**

The Town, the Applicant or a Member of the Board may request a postponement of an application at any time, subject to the review and determination of the Board.

The Chairman or Vice Chairman, in the absence of the Chairman, may for good cause grant one postponement request for a period of up to three months from the month of the original hearing date. Any subsequent postponement requests shall be discussed and voted on by the Board

A Motion for Postponement shall be in writing, stating the reasons for the requested postponement, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.

### **Section 4. Motion for Withdrawal of Application.**

The applicant may request a withdrawal of an application prior to the ruling. A Motion for Withdrawal of the Application shall be in writing, stating the reasons for the requested withdrawal, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.

The Board shall have the opportunity to discuss the reasons for the application being withdrawn; unless the project has been abandoned. In the absence of the applicant, if the withdrawal is questioned by the Board, the case will be postponed to the next meeting.

## **Article XII** **Miscellaneous**

### **Section 1. Executive Session.**

If a member determines after reviewing the applicable cases that they would benefit from the advice of legal counsel in Executive Session they shall contact the Chairman or his designee. The Chairman will determine if an Executive Session is warranted. If the Chairman decides that the membership would benefit from an Executive Session, they will inform the Board's Secretary of the request. The Chairman's decision can be overridden by a majority vote of the Board taken at a regular or special meeting of the BZA.

Executive Session is a meeting at which the proceedings are secret. A member can be punished under disciplinary procedure if he violates the secrecy of an executive session. Anyone else permitted to be present is honor-bound not to divulge anything that occurred.

Permitted reasons should include:

1. Personnel reasons
2. Contracts
3. Legal advice relating to pending, threatened or potential claim
4. Discussion regarding development of security personnel
5. Investigative proceedings regarding allegations of criminal misconduct

6. Economic development (specific criteria in FOIA)
7. Legal advice relating to procedural, conflict of interest, or general issues unrelated to a specific matter before the Board.

Entering and Adjourning an Executive Session:

1. A motion to close the current meeting and go into executive session is made and passed by a majority vote;
2. ~~Chairman~~ must announce the specific purpose of the executive session;
3. No formal action may be taken in executive session except to:
  - a. Adjourn
  - b. Return to public session

The Board can request attendance by non-members as they deem appropriate.

**Section 2. Recess.**

A recess shall be declared as deemed appropriate by the ~~Chairman~~ or by majority vote of the members present at the meeting. No discussion of the agenda item shall be conducted by Board members during the recess.

**For the Board of Zoning Appeals  
Town of Hilton Head Island, South Carolina**

Date of Approval: ~~January 27, 2020~~

By: \_\_\_\_\_  
Patsy Brison  
~~Chairman~~



## Attachment for Reference

### TYPES OF MOTIONS

<b>Main Motions</b>	<del>A main motion is defined as a proposal that certain action is taken or an opinion be expressed by the group. The words to use are: "I Move."</del>
<b>Secondary Motions</b>	<del>A secondary motion is one which can be made <i>while</i> the main motion is on the floor and <i>before</i> it has been decided.</del> Secondary motions are divided into three classes which relate to their use in parliamentary procedure. Those classes are: ○ Subsidiary motions ○ Privileged motions ○ Incidental motions
<b>Subsidiary Motions</b>	<del>Subsidiary motions relate directly to the motion on the floor. They may change the words, send it to a committee, delay it, etc.</del> They are designed to expedite business by disposing of the pending motion other than by adopting or rejecting it. <i>Subsidiary motions are the class of motions most frequently used in meetings.</i> These motions have rank (order of precedence of motions) among themselves. A motion of higher rank can be made while a motion of lower rank is on the floor. The lower rank motion "yields" to the higher rank motion. (Motion to postpone has higher rank than the motion to commit and takes precedence. If motion to postpone is adopted, the main motion and the motion to commit are postponed until the next meeting.)
<b>Privileged Motions</b>	<del>Privileged motions are motions of an emergency nature,</del> such as to recess or adjourn. They do not relate to the motion on the floor but to the welfare of the group. They are of high rank and must be handled before any other business that may be pending.
<b>Incidental Motion</b>	<del>Incidental motions are procedural.</del> They deal with process, such as enforcing proper procedure, correcting errors, verifying votes, etc. When introduced, they must be decided before business can resume.
<b>Amending Motion</b>	General consent can be used with amendments to motions if the Chairman feels the group will accept the amendment. "If there is no objection, the motion is so amended." <i>Restate the motion.</i>
<b>Motions Commit</b>	Have precedence over the motion to amend. <del>More than one motion can be on the floor but only one question.</del> All pending motions must relate to the main motion on the floor. No new business may be introduced.
<b>Point of Order</b>	Motion used if a board member feels the Chairman is failing to operate within the rules.

## **Restorative Motions or Motions that Bring Back a Question**

<b>Restorative Motion</b>	<p><b>Allows a group to change its mind.</b></p> <ul style="list-style-type: none"> <li>○ They are a separate category because of their contradiction to the parliamentary rule that once a question has been decided it cannot be brought up again at the same meeting.</li> <li>○ Within limits, members have the right to rethink a situation if they feel their decision has been made too quickly or without enough information.</li> <li>○ The two most commonly used restorative motions are: <i>Rescind</i> and <i>Reconsider</i>.</li> </ul>
<b>Rescind</b>	<p><b>Rescind is the motion to use to quash or nullify a previously adopted motion.</b> It may strike out an entire motion, resolution, bylaw, etc.</p> <ul style="list-style-type: none"> <li>○ Rescind is <i>not in order</i> when any action has already been taken as a result of the vote, such as any kind of contract when the other party has been notified.</li> <li>○ It must be seconded.</li> <li>○ It requires a <i>two thirds</i> vote unless <i>notice has been given</i> at the previous meeting, either verbally or in writing. If notice has been given, the motion requires only a <i>majority</i> vote.</li> </ul>
<b>Reconsider</b>	<p><b>Reconsider is the motion which allows a group to reconsider the vote on a motion.</b> It enables a majority of the members, within a limited time, to bring back a motion for further consideration after it has been acted upon. Its purpose is to prevent hasty or ill advised action.</p> <ul style="list-style-type: none"> <li>○ Reconsider has special rules to prevent its abuse by a disgruntled minority, since it allows a question already decided to be brought up again.</li> <li>○ Rules limit who can make the motion. <b>It can only be made by someone who voted on the prevailing (winning) side.</b></li> <li>○ <b>It has a time limit. It must be made on the same day that the vote to be reconsidered was taken.</b></li> <li>○ It requires a second.</li> <li>○ It may be debated and it opens up the motion to which it is applied to debate.</li> <li>○ It requires only a majority vote.</li> <li>○ It may be made and seconded while other business is pending because of its time limit. However, it is not debated and voted on until the business on the floor is completed.</li> <li>○ All action that might come out of the original motion is stopped at the time that reconsider is made and seconded. This is the main value of the motion, and it should be made as quickly as the situation calling for it is recognized.</li> </ul>
<b>Amend a Motion</b>	<p><b>Change the wording to make it clearer, more complete, or more acceptable before the motion is voted upon.</b> The amendment must be germane to the motion on the floor to be in order. Adoption of the amendment does not adopt the motion. If the group votes “no” on the amendment, the motion is on the floor in its original wording.</p>
<b>Amend an Amendment</b>	<p>First amendment is called the primary and the amendment to the amendment is the secondary amendment. Only two amendments may be pending at any time. First vote on the amendment to the amendment (secondary), then vote on the</p>

	<del>original amendment (primary), then vote on the main motion. Amendments require a majority vote.</del>
<b>Friendly Amendments</b>	<del>Change in wording to enhance the original motion — can be changed by general consent.</del>
<b>Hostile Amendments</b>	<del>Gives a different meaning to a motion and may defeat the intent of the main motion.</del>
<b>To Commit or Refer a Motion</b>	<del>Sends the question to a small group (committee) to be studied and put into proper form for the group to consider. Motion includes specific directions as to where the question ought to go (what committee). Motion can be applied to any main motion with any amendments that may be pending. It must be seconded, it can be debated, and requires a majority vote.</del>
<b>Postpone</b>	<del><b>Delays action on a question until later in the same meeting or until the next meeting. A motion cannot be postponed further than the next regular meeting.</b> Can be applied to all main motions, it must be seconded, it can be debated, it can be amended (as to time of the postponement), it requires a majority vote. Motion is called up automatically when the time to which it was postponed arrives (place under Unfinished Business on agenda of next meeting).</del>
<b>Limit Debate</b>	<del><b>Motion to exercise special control over debate</b> — reducing the number and length of speeches allowed. Used with any motion, must be seconded, is not debatable, can be amended (but only as to the length of speeches or when the vote will be taken), requires 2/3 vote, vote must be taken by show of hands or a rising vote in a large group. (Need a timekeeper and timer if speeches have a time limit.)</del>
<b>Previous Question</b>	<del><b>The motion used to cut off debate and to bring the group to an immediate vote on the pending motion. (Call the question for an immediate vote).</b> Previous question can be ruled out of order if the motion is debatable and has not received debate. Motion requires 2/3 vote (by show of hands or standing vote). Not debatable.</del>
<b>Postpone Indefinitely</b>	<del>Lowest-ranked subsidiary motion is used to kill a main motion. It avoids a direct vote on the question on the floor. Shouldn't be used.</del>
<b>Lay on the Table</b>	<del>Highest-ranked subsidiary motion. Cannot be amended or debated. It is out of order when used to “kill or avoid dealing with a measure”. <b>Was designed as a courtesy motion to allow a group to set aside a question for something more important, such as arrival of a speaker.</b></del>
<b>Withdraw a Motion</b>	<del><b>Permission to withdraw a motion allows a member who realizes he has made a hasty or ill-advised motion to withdraw it with the consent of the group.</b> This device saves time in disposing of the motion. The presiding officer usually handles the request by use of general consent.</del>
<b>Dilatory Tactics</b>	<del>A dilatory tactic is the misuse of parliamentary procedure to deliberately delay or prevent action in a meeting. It is the duty of the presiding officer to prevent a dissident minority from misusing legitimate forms of motions to obstruct business. Such motions should be ruled out of order or those members engaged in such game playing should not be recognized.</del>

## TYPES OF VOTES

<b>Majority Vote</b>	<ul style="list-style-type: none"> <li>• <del>More than half of the votes cast.</del></li> <li>• <del>The minority has the right to be heard, but once a decision has been reached by a majority of the members present and voting, the minority must then respect and abide by the decision.</del></li> </ul>
<b>Silence is Consent</b>	<del>Those members who do not vote, agree to go along with the decision of the majority by their silence.</del>
<b>Two-thirds Vote</b>	<del><b>A two-thirds vote is necessary whenever you are limiting or taking away the rights of members or whenever you are changing something that has already been decided.</b></del> A two-thirds vote has at least twice as many votes on the winning side as on the losing side. A show of hands should be taken for <i>all</i> motions requiring a <i>two-thirds</i> vote. If a motion requires a two-thirds vote, the Chairman should inform the group of that.
<b>General Consent</b>	<del><b>Is an informal agreement of the group, the method in which action is taken without a formal vote or on occasion without a motion.</b></del> The Chairman initiates the procedure to expedite business. Usually done to approve and correct the minutes. <ul style="list-style-type: none"> <li>• <del>The presiding officer always pauses after asking if there is any objection. If there is <i>any</i> objection, the matter is put to a vote in the usual way.</del></li> <li>• <del>A member may object because he feels it is important to have a formal vote and dispel any suspicion of railroading.</del></li> </ul>
<b>Tie Vote</b>	<del>Is a <i>lost</i> vote because a majority was not obtained. The <i>Chairman is not compelled to break a tie.</i> While the Chairman has a right to vote as a member, it is recommended he not vote unless the vote is by ballot. He may also vote in cases where the vote would change the result. The Chairman should appear impartial.</del>



## TOWN OF HILTON HEAD ISLAND

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### *Board of Zoning Appeals Memo*

**TO:** Board of Zoning Appeals  
**FROM:** Missy Luick, Senior Planner  
**DATE:** March 21, 2022  
**SUBJECT:** Waiver Report

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The BZA requested that staff keep them informed of substitutions of nonconformities for redevelopment that are granted by staff. A memo is distributed every month at the regular BZA meeting and is discussed under staff reports on the agenda.

The following language is contained in Section 16-7-101.F, Substitutions of Nonconformities for Redevelopment, which gives the Administrator the power to grant such substitutions for existing nonconforming structures and site features.

LMO Section 16-7-101.F:

“To provide flexibility and encourage redevelopment of sites with nonconforming features or structures, the Official is authorized to approve a Development Plan for such sites if the proposed development:

1. Will not include any new development that increases the amount of encroachment into any required buffer or setback;
2. Will not increase the impervious cover on the site over the maximum allowed for the district or the existing impervious cover, whichever is greater;
3. Will not result in a density in excess of what is allowed under this Ordinance, or the existing density, whichever is greater;
4. Will lessen the extent of existing nonconforming site features to the greatest extent possible;
5. Will not have an adverse impact on the public health, safety or welfare; and
6. Will lessen the extent of nonconformities related to any existing nonconforming structure on the site to the greatest extent possible.”

Three waivers have been granted by staff since the February 28, 2022 BZA meeting.

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- 1** **WAIV-000014-2021 – 13 Singleton Beach**– An administrative waiver for substitution of nonconformities for redevelopment was submitted for a pool and pool deck replacement project within the wetland buffer. The replacement of a pool and pool deck is only allowed in the non-conforming footprint if the applicant is willing to take steps to bring the property more into conformance with the standards of the Town’s LMO, which included a dune mitigation planting plan. Pursuant to Land Management Ordinance (LMO) Section 16-7-101.F, Substitution of Nonconformities for Redevelopment, when the applicant demonstrates that a nonconforming site can be redeveloped meeting the requirements of LMO Section 16-7-101. F, then the Official may waive the standard. Because the applicant met all of the required criteria, the waiver was approved.
- 2** **WAIV-000483-2022 – 85 Pope Avenue, Crave Station restaurant**- An administrative waiver for substitution of nonconformities for redevelopment was submitted for the Crave Station restaurant project located at 85 Pope Avenue, in conjunction with DPR-000135-2022. The request is a waiver from the parking standards as the existing parking lot is considered a non-conforming site feature. Pursuant to Land Management Ordinance (LMO) Section 16-7-101.F, Substitution of Nonconformities for Redevelopment, when the applicant demonstrates that a nonconforming site can be redeveloped meeting the requirements of LMO Section 16-7-101. F, then the Official may waive the standard. Because the applicant met all of the required criteria for the parking lot, the waiver was approved.
- 3** **WAIV-000595-2022 – 61 Dillon Road, Palmetto Coastal Landscaping**- An administrative waiver from the access to street standards was submitted for the proposed Palmetto Coastal Landscaping development located at 161 Dillon Road, in conjunction with DPR-001642-2021. Per LMO Section 16-5-105.J.2, access points along a Minor Arterial Road are to be located a minimum of 200 feet from the next adjacent access point. Dillon Road is a Minor Arterial Road according to LMO Section 16-5-105.B. The proposed drive aisle entrance doesn’t meet the 200 foot separation requirement from the existing drive aisles along the same side of Dillon Road. Pursuant to LMO Section 16-5-105.J.8, when the applicant demonstrates that a lot of record would be rendered unusable by the strict application of the standards in this subsection (Sec. 16-5-105.J, Access to Streets) in a format consistent with that of a variance request (Sec. 16-2-103.S) and that the vehicular access point is otherwise optimally located so as to provide acceptable turning radii and minimize adverse impact, the Official may waive the standard. The applicant demonstrated that the above criteria was met, and because the proposed drive entrance is optimally located to preserve significant size trees, the waiver was approved.