



Town of Hilton Head Island  
**Board of Zoning Appeals Meeting**

June 27, 2022, at 2:30 p.m.

Benjamin M. Racusin Council Chambers

## **MEETING MINUTES**

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

**Absent from the Board:** Chair Patsy Brison (excused)

**Present from Town Council:** Glenn Stanford, Alex Brown

**Present from Town Staff:** Shawn Colin, Assistant Town Manager – Community Development; Michael Connolly, Senior Planner; Nicole Dixon, Development Review Program Manager; Shea Farrar, Senior Planner; Teri Lewis, Customer Service Manager; Trey Lowe, Planner; Chris Yates, Development Services Manager; Teresa Haley, Community Development Coordinator

---

### **1. Call to Order**

Acting Chair Ponder 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. Presentation of the Town's Crystal Award to outgoing Board Member Lisa Laudermilch**  
Shawn Colin, Assistant Town Manager – Community Development, presented the award to Ms. Laudermilch and thanked her for her many years of service to the Town of Hilton Head Island.

### **5. Welcome and Introduction to Board Procedures**

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

### **6. Approval of Agenda**

Chair Ponder 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 of 6-0-0.

### **7. Approval of Minutes**

a. April 25, 2022, Meeting

Chair Ponder asked for a motion to approve the minutes of the April 25, 2022, meeting. Mr. Walczak moved to approve. Mr. Kristian seconded. By way of roll call, the motion passed with a vote of 6-0-0.

### **8. Appearance by Citizens**

Public comments concerning agenda items were submitted electronically via the Open Town Hall HHI portal. Those comments were delivered to the Board and made part of the official record.

## 9. Unfinished Business – None

## 10. New Business

### a. Public Hearing

**VAR-000620-2022** – 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.

Chair Ponder opened the Public Hearing.

Ms. Farrar presented the application as described in the Staff Report. Staff recommends the Board of Zoning Appeals find the application not to be consistent with the Town's Our Plan and does not serve to carry out the purposes of the LMO, based on those Findings of Fact and Conclusions of Law contained in the Staff Report. Staff recommends that the Board of Zoning Appeals deny the application.

The Board made comments and inquiries regarding: clarification on what is meant by accessory use and how it pertains to this case; whether there are other screened storage along Executive Park Road; whether bicycle parts are permitted to be stored outdoors; whether anything in the LMO regarding this particular use has changed since January 2020; facts related to a similar variance application heard by the Board in January 2020; why staff determined the prior case met all four variance criteria, but this case does not; the prior case was driven by a staff error but it was not the only criteria considered; concern why same considerations for previous application were not given in this case as staff reviews each application on its own merits; consideration for the extraordinary condition that the property in the previous case is not located on a major or minor arterial consistent with the subject property.

Following the Staff presentation and questions by the Board, Chair Ponder asked the applicant to make a presentation. Mr. Crago presented his grounds for variance as described in his submittal materials.

The Board made comments and inquiries regarding: the applicant's business has been in operation since 2017 and in this location for two years; outside storage of bicycles began in approximately Fall of 2021; the applicant was informed by staff that he was not in compliance after staff received complaints; staff reviewed all of the bicycle businesses on the Island; the applicant indicated he has alternative storage options should the variance be denied, although it would make it difficult for him to run his business.

Chair Ponder asked for Staff Rebuttal. Staff had no rebuttal.

The Board inquired about the part of the ordinance pertaining to this issue possibly being rewritten. Staff explained the process for a proposed amendment to the LMO.

Chair Ponder asked for applicant rebuttal. The applicant had no rebuttal.

Chair Ponder asked for public comment. Two members of the public expressed their opposition to the application. A third member of the public reviewed each of the four criteria and explained

why the application does or does not apply, placing emphasis on why the LMO does not allow outdoor storage in the LC zoning district.

The Board asked for clarification to confirm: that staff supported the 2020 application for several reasons, not only because of a staff error; and what constitutes outside storage.

Chair Ponder incorporated all the evidence, including the staff report, application, documents, and testimony provided during the hearing into the record. Chair Ponder closed the public hearing at 3:25 p.m.

The Board made final comments and inquiries regarding: one member expressed support for the variance; several members expressed support for the staff's position; consideration of supporting the variance since a change to the LMO is planned to be proposed to change this use in the LC zoning district; consideration of supporting a temporary solution until a decision is made on whether or not the LMO changes regarding this issue; concern that if the applicant wants to use outdoor storage he must meet all four criteria for a variance; the applicant was aware of the restrictions at time of purchasing the property; the Board is required to abide by the current LMO and not a possible change, and that each application meets the four criteria; a prior BZA wrote a letter to the appropriate governmental bodies to make this change in the LMO and it has not been done; the Board urged Town Council and staff to move forward with this change in the LMO.

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

Mr. Walczak moved to deny the variance based on the Findings of Facts and Conclusions of Law found in the Staff Report. Mr. Johnson seconded. By way of roll call, the motion failed 3-3-0. (Roll: for the motion – Fingerhut, Johnson, Walczak; against the motion – Kristian, Laudermilch, Ponder).

The Board requested legal direction as to how to proceed. At 3:38 p.m., Chair Ponder gaveled for a brief recess so that staff may locate an available attorney. At 3:43 p.m., Chair Ponder called the meeting back to order and called upon Mr. Gruber for a recommendation. Mr. Gruber explained the Board's options to proceed.

Mr. Kristian moved to approve the variance based on the following Findings of Facts and Conclusions of Law:

#### Criteria 1

##### Findings of Fact:

- Most properties in the Light Commercial district are located on a major or minor arterial.
- The subject property is zoned Light Commercial, but it is not located on a major or minor arterial.

##### Conclusions of Law:

- The application does meet the criteria as for in LMO Section 16-2-103.S.4.a.i.01 because there are extraordinary and exceptional conditions that pertain this particular property.
- Having a Light Commercial property that is not located on a major or minor arterial is considered an extraordinary and exceptional condition.

#### Criteria 2

Finding of Fact:

- Of the Light Commercial zoned properties located in the vicinity of New Orleans Road and William Hilton Parkway, this is one of the only properties in that zoning district that is not located on a minor or major arterial.

Conclusion of Law:

- The application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because the extraordinary conditions only apply to the property subject to this application and do not generally apply to other properties in the vicinity.

Criteria 3

Finding of Fact:

- Per LMO Section 16-4-102.B.7.c., Use-Specific Conditions for Principal Uses (Bicycle Shops), outdoor storage of bicycles is permitted only in the CR, SPC, MS, WMU, S, MF, MV, and RD Districts.

Conclusion of Law:

- This application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because the extraordinary conditions do prohibit and unreasonably restrict the property from having outdoor storage of bicycles which is an essential part of the business.

Criteria 4: The Findings of Facts and Conclusions of Law contained in the Staff Report.

Mr. Fingerhut seconded. There was brief discussion among the Board regarding: the current law in place must be followed as to whether the application meets the four criteria; there is both support and opposition among citizens to change the existing law and so Town Council may not decide to change it; if the law changes, then the applicant will have the right to change; the Board's right to use discretion in granting the variance considering the criteria appear to match the previous case in which the variance was granted. The Board expressed sympathy to the owner and encouraged him to use his alternative storage options. Upon the conclusion of the discussion, the motion failed 1-4-1. (Roll: for the motion – Kristian; against the motion – Fingerhut, Johnson, Laudermilch, Walczak; abstained – Ponder).

Mr. Fingerhut moved that the Board of Zoning Appeals deny the variance based upon the Findings of Fact and Conclusions of Law of the Town Staff regarding Criteria 1 through 3, and as to Criteria 4, the Board make the specific Finding of Fact that it is against the public good in this area based upon the testimony heard at this hearing. Mr. Johnson seconded. By way of roll call, the motion passed with a vote of 5-1-0. (Roll: for the motion – Fingerhut, Johnson, Laudermilch, Ponder, Walczak; against the motion – Kristian).

Mr. Kristian stated he voted against the motion based on the criteria given, and he believes procedurally it is not in order.

Mr. Kristian made a supplemental motion that the Board of Zoning Appeals ask Town Staff and the Planning Commission to move with all deliberate speed to look at this portion of the LMO and revise as appropriate. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 6-0-0.

**b. Public Hearing**

**VAR-001455-2022** – Request from Jason and Abigail Rudasill for a variance from LMO Sections 16-3-106.J.4, Holiday Homes Neighborhood Character Overlay District

Regulations, 16-5-102.D, Adjacent Use Setbacks and 16-5-103.E, Adjacent Use Buffers, to construct a pool and deck within the setbacks and buffers. The subject property is located at 31 Oleander Street with a parcel number of R510 009 000 0830 0000.

Chair Ponder opened the Public Hearing.

Ms. Dixon presented the application as described in the Staff Report. Staff recommends the Board of Zoning Appeals find the application to be inconsistent with the Town's Our Plan and does not serve to carry out the purposes of the LMO, based on those Findings of Fact and Conclusions of Law contained in the Staff Report. Staff recommends that the Board of Zoning Appeals deny the application.

The Board made comments and inquiries regarding: the buffer can be reduced to 10 feet with appropriate plantings, however, the applicant did not want to pursue this option; the adjacent Town property is currently zoned Parks & Recreation; the property has always had a 20' setback requirement; there are two provisions in this case and generally the more strict law is followed; clarification on the options for a pool on the property under current LMO provisions; confirmation the applicant could redesign the pool and deck so that they fit within the LMO requirements; concerns about the property owner's rights; any new structures have to comply with the current LMO; clarification on the site plan noting the red line to the rear is the 10' setback per the Holiday Homes overlay requirements and the blue line is the 20' setback; the pool can go to the blue line with the decking going 5' beyond the line and with proper vegetation; there are several lots in the vicinity with the same 20' setback requirement.

Following the Staff presentation and questions by the Board, Chair Ponder asked the applicant to make a presentation. Mr. Rudasill presented his grounds for variance as described in his submittal materials.

The Board made comments and inquiries regarding alternate design plans. The applicant indicated he has an alternate plan that he did not submit but brought it with him today.

Chair Ponder asked for Staff Rebuttal. Staff had no rebuttal.

Chair Ponder asked for applicant rebuttal. The applicant asked whether the alternate drawing can be submitted, and the Board denied it.

Chair Ponder asked for public comment. Three members of the public spoke in opposition to the variance, noting concerns with this property and other properties operating as short-term rentals in their neighborhood.

Chair Ponder incorporated all the evidence, including the staff report, application, documents, and testimony provided during the hearing into the record. Chair Ponder closed the public hearing at 4:46 p.m.

The Board made final comments and inquiries regarding: agreement if the pool is to be built that it should be built within the setbacks and meet all LMO requirements; the application does not meet the four criteria; buffers and setbacks are in place to protect the community and the criteria are not met in this case to grant a variance. The Board noted short-term rentals are not within their purview, however, Town Council recently passed an ordinance to address residents' concerns regarding short-term rentals. Chair Ponder commended staff for trying to work with applicant to find a solution.

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

Mr. Kristian moved to deny the application based on those Findings of Facts and Conclusions of Law contained in the Staff Report. Mr. Walczak seconded. By way of roll call, the motion passed by a vote of 6-0-0.

#### **11. Board Business – None**

#### **12. Staff Reports**

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

Mr. Coltrane was not in attendance to report on the item.

**b. Status of LMO Amendments**

Ms. Dixon noted staff is working diligently to get the first set of draft amendments scheduled in the review process.

**c. Waiver Report**

Ms. Dixon noted the report was included in the agenda package and offered to answer any questions by the Board. The Board had no questions.

The Board commended staff for their professionalism and due diligence on the applications that come before them.

#### **13. Adjournment**

With no other business before the Board, the meeting was adjourned at 4:53 p.m.

**Submitted by:** Teresa Haley, Secretary

**Approved:** July 25, 2022