



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

July 25, 2022, at 2:30 p.m.

Benjamin M. Racusin Council Chambers

## **MEETING MINUTES**

**Present from the Board:** Chair Patsy Brison, Vice Chair Anna Ponder, David Fingerhut, Peter Kristian, Kay Bayless

**Absent from the Board:** Charles Walczak, Robert Johnson (excused)

**Present from Town Council:**

**Present from Town Staff:** Josh Gruber, Deputy Town Manager; Nicole Dixon, Development Review Program Manager; Shea Farrar, Senior Planner; Michael Connolly, Senior Planner; Trey Lowe, Planner; Aaron Black, Facilities Manager; Teresa Haley, Community Development Coordinator; Karen Knox, Senior Administrative Assistant

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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. Swearing In Ceremony of Reappointed Board Member Anna Ponder and New Board Member Kathryn Bayless**

Joshua Gruber, Deputy Town Manager swore in reappointed Board Member Anna Ponder and new member Kathryn Bayless.

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

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

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

Chair Brison asked for a motion to approve the agenda as presented. Mr. Kristian moved to approve. Vice Chair Ponder seconded. By way of roll call, the motion passed with a vote of 5-0-0.

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

#### **a. June 27, 2022, Meeting**

Chair Brison asked for a motion to approve the minutes of the June 27, 2022, meeting. Mr. Fingerhut moved to approve. Mr. Kristian seconded. By way of roll call, the motion passed with a vote of 4-0-0. Ms. Bayless abstained as she was not a member of the Committee at the time.

## 8. Appearance by Citizens

No comments were received via the Open Town Hall HHI portal.

## 9. Unfinished Business – None

## 10. New Business

### a. Election of Officers for the July 1, 2022 – June 30, 2023, Term

Chair Brison asked for a motion to nominate a board member to serve as Chair for the new term. Mr. Kristian moved to nominate Ms. Brison as Chair. Dr. Ponder seconded. The motion passed with a vote of 4-0-1. Ms. Brison abstained.

Chair Brison asked for a motion to nominate a board member to serve as Vice Chair for the new term. Mr. Kristian moved to nominate Dr. Ponder as Vice Chair. Mr. Fingerhut seconded. The motion passed with a vote of 4-0-1. Dr. Ponder abstained

Chair Brison asked for a motion to nominate Karen Knox to serve as Secretary for the new term. Dr. Ponder moved to nominate Karen Knox as Secretary. Mr. Kristian seconded. The motion passed with a vote of 5-0-0.

### b. APL-001469-2022 – Request for Appeal from Jason Bullock of Island Cruisers Bike Rentals. The appellant is appealing staff's determination, dated May 19, 2022, that the outside storage of bicycles for the Hilton Head Bicycle Company located at 112 Arrow Road, is a legal non-conforming use.

Chair Brison outlined the procedures for the appeal hearing process. Chair Brison invited the Appellant to proceed with his presentation. Mr. Jason Bullock on behalf of Island Cruisers Bike Rentals presented his case as described in the Board's Agenda Package.

The Board made comments and inquiries about where in the LMO it talks about ownership interest changing and having that affect a non-conforming use.

Chair Brison asked Ms. Nicole Dixon to present on behalf of staff. Ms. Dixon stated Jason Bullock of Island Cruisers Bike Rentals is appealing staff's determination under date of May 19, 2022, that the outside storage of bicycles for the Hilton Head Bicycle Company located at 112 Arrow Road is a legal nonconforming use. Ms. Dixon gave an in-depth history and timeline which led to staff's determination that the outside storage of bicycles for the Hilton Head Bicycle Company located at 112 Arrow Road, is a legal non-conforming use. Based on recent site visits, the outdoor storage of bicycles is behind the building and not visible from Arrow Road. Staff, based on recommendations from the Board of Zoning Appeals, added having outdoor storage of bicycles be permitted in the LC Zoning District to the list of proposed LMO amendments. We have a list of LMO Amendments that are going to go through the review and adoption process shortly, which includes this amendment. Should the amendment be approved, bicycle shops with outdoor storage will be permitted in the LC Zoning District.

The Board made additional comments and inquiries regarding the relevant rules about ownership; the number of complaints that were made against other businesses and if they were made by the same individual; whether there are any provisions that address change in ownership; whether fencing or screening is considered a site feature.

Chair Brison asked the Property Owner, Jim Hall to present. Mr. Hall stated we are here today because of LMO 16-4-102 requiring that a bicycle shop comply with certain conditions. Hilton Head Bicycle is located in the LC District and the Ordinance states that outdoor storage of bicycles is not allowed in this district. Bikes being stored behind fences and screened from public view shouldn't be a problem. The purpose of this Hearing is to decide an Appeal filed by Mr. Bullock. He is appealing the letter to me from the Town dated May 19<sup>th</sup> and requesting that the Town reverse its decision and not allow Hilton Head Bicycle Company to store bikes outside. Mr. Hall provided the Board with a Spreadsheet entitled "Bike Companies – Compliance Spreadsheet" which is a copy of the tracking form that the Town has been using in meeting with Mr. Bullock on a regular basis that lists the 34 bike shops, the status of their compliance and the Code Enforcement actions that have been taken. This document will be marked Exhibit "A" and made part of the official record. Mr. Bullock didn't follow the rules for his Appeal, including not putting in the required Code Citation, not providing any basis for his appeal, materially misrepresenting statements and throwing wild guesses about new companies being formed. The Appeal should be denied simply on these grounds. I have been advised the Town ruled correctly in allowing the legal non-conformity as detailed in the letter from Shawn Colin to the Hilton Head Bicycle Company on May 19, 2022. Mr. Hall presented the Board with an email exchange under date of January 28, 2020, between the Town and Mr. Bullock. This document will be marked Exhibit "B" and made part of the official record. Mr. Hall stated this email exchange initiates with Mr. Bullock asking the Town about him ending one LLC and starting a new LLC and whether the legal non-conforming variance he has at 3 Pensacola Place goes with the land or with the business entity. The response back from the Town is the Variance goes with the land. Mr. Bullock has benefited from the exact same thing that we are here today to try and not allow for me. Mr. Hall concluded by stating bike shops are here for a reason and we are here to send a message to the Town – this war on the bike shops and this harassment is too much. Mr. Hall also mentioned that one bike shop, Coastal Bikes went out of business. The campaign that has been conducted for two years by one individual in an effort to damage his competitors and weaponize the Town against them needs to be stopped. After Mr. Hall's presentation, he answered questions posed to him by the Board.

Ms. Nicole Dixon stated there is no presentation by the holder of the permit or their Agent for the property.

Chair Brison asked if the Appellant had a rebuttal. Mr. Bullock stated he is not on a campaign to hurt anyone, reduce trade or eliminate competition. I am simply here to have everyone follow the LMO consistently. Mr. Bullock stated he has no idea who Coastal Bikes is. If they went out of business, I am very sorry for that, but have no idea who they are. The Board had no questions for the Appellant.

Staff had no rebuttal for the Appellant.

Chair Brison asked the Property Owner, Mr. Hall for his rebuttal and instructed Mr. Hall this rebuttal is in response solely to Mr. Bullock's rebuttal, not to introduce new evidence into the record. Mr. Hall stated there are photographs taken by Mr. Bullock of Coastal Bikes so when he says he doesn't know who they are it is hard to believe. In Mr. Bullock's rebuttal he still has yet to say any relevant LMO that has to do with the change of business ownership. There were no questions from the Board on Mr. Hall's rebuttal.

Chair Brison stated there is no public comment on an Appeal Case. At this time the Chair would enter into the record the evidence. Included in the record that the Board received the

following documents: letter to the Board of Zoning Appeals dated May 31, 2022, from Island Cruisers Bike Rentals consisting of 9 pages signed by Jason Bullock on behalf of Island Cruisers Bike Rentals. In addition to the record furnished to the Board includes May 19, 2022, letter to James E. Hall, Owner Hilton Head Bicycle Company from Town of Hilton Head Island signed by Shawn Colin, Assistant Town Manager, Community Development, LMO Official; and letter dated December 1, 2021, to Teri Lewis, Deputy Community Development Director Town of Hilton Head Island from Hilton Head Bicycle Company signed by James E. Hall, Owner. In addition to that, the other documents produced in evidence today by Mr. Hall are Exhibit "A", entitled Bike Companies-Compliance Spreadsheet which is a document he received from the Town of Hilton Head Island in response to a FOIA request. In addition, Mr. Hall produced Exhibit "B" which is an email chain starting under date of April 28, 2022, from Teri Lewis to Missy Luick. Also, as part of the record the testimony provided by witnesses today. Chair Brison asked if there were any objections to any of those items or testimony being entered into the record. Hearing none, The Chair incorporates all that evidence into the record. The Hearing is now closed on this matter. The Board will enter into discussion prior to considering a motion and vote on the case. The Board has as part of its process form Motions for matters which come before it and we have a form entitled Appeal Motion which Board Members can use in their discussion and subsequently in making a Motion on this matter.

The Board made closing remarks on the appeal. Mr. Kristian stated bike use is an absolute necessity on Hilton Head Island and it is enjoyed by family and individuals all the time. All the folks that supply that service should be commended. Obviously, it is a competitive business and requires a lot of work and effort to keep the public safe and happy. I indicated at the last BZA meeting that I felt the LMO was being weaponized, and I continue to have that belief. The staff time that has gone into this, the amount of time many of you have spent defending yourselves, it is a cost you should not have to endure. The email exchange that Mr. Hall provided is quite telling where it indicates to Mr. Bullock that the Variance runs with the land. We are arguing exactly the opposite here today. This is troubling as well. Mr. Bullock was granted a variance legitimately by the BZA and he argues against others from getting the same consideration. Ms. Bayless stated she adopts the same comments that Mr. Kristian has made. Secondly, there is only one conclusion to draw as to whether a non-conforming use runs with the land and not the business. The LMO is clear in my opinion that the use is with the property and not with the business entity. Mr. Fingerhut echoed the comments of his colleagues and stated the Town staff made the correct decision. Dr. Ponder stated in 2020 as a Board we asked the Town to reconsider this matter of outdoor storage in certain districts on the Island. I think there is no one on this Board who is not supportive of the amazing work that you do as businesses. Most would like to support strong enterprise on this Island for residents, tourists. I would like to reiterate strong support and encouragement for the Town to take this up. It has been two years and we are here for the third time listening to much of the same words and sentiments. I would truly like to encourage some serious consideration from the Town to 1) consider the residents and the businesses involved and 2) to think about this Board and what we were asked to consider in these matters. I would like to see Town Council get to this issue as quickly as possible, so we are not here again. Nothing here today has persuaded me to disagree with how Town Staff has ruled here. Chair Brison stated she has looked at the relevant Chapter regarding non-conformities in the LMO to see if there was any language regarding ownership and have not found any. During the testimony of Ms. Dixon today we went through the entire Chapter to look for that language and I asked her questions regarding specific sub-sections within that LMO because that is the crux of the matter – whether there was an error in the interpretation of the language regarding non-conformities in the LMO. I have not heard any

testimony or seen any documents which would show that the ownership of the business controls the question about non-conforming use. Chair Brison stated that she was disturbed that the staff member, Shawn Colin who wrote the letter under date of May 19, 2022, indicating the Town's formal determination that outside bicycle storage at 112 Arrow Road is a legal nonconforming use was not present at the meeting and noted it would be helpful in the future for the staff member who makes the decision to be here for our proceedings. Chair Brison appreciated Ms. Dixon's testimony and expertise but indicated Ms. Dixon did not make this determination. I join the Vice Chair to ask the Town Council and the Planning Commission to consider addressing this Sub-Section regarding outdoor storage for bicycle shops and move it along as quickly as possible. Chair Brison asked for a motion.

Mr. Kristian moved to affirm the decision and the interpretation made by Staff on this matter based on the Findings of Fact and conclusion of law included in the staff's representation as indicated in Staff's letter under date of May 19, 2022. Dr. Ponder seconded. By way of roll call, the motion passed with a vote of 5-0-0.

## **11. Board Business –**

Chair Brison asked for a motion to thank Ms. Teresa Haley for her service to the Board of Zoning Appeals with our grateful thanks and congratulations and best wishes on her promotion. Mr. Fingerhut moved to approve. Mr. Kristian seconded. The motion passed with a vote of 5-0-0. The entire board thanked Ms. Haley for her kindness and dedication to the Board over the past 6 years.

## **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 she will be presenting the list of potential LMO Amendments to the Public Planning Committee on August 4, 2022, for their support in the prioritization of the list. We have it separated into several different tiers. We will move the first tier which we have called Tier 1A forward after we get the support from that meeting. In Tier 1A is the Amendment to include outdoor storage bicycles and the LC Zoning District. Ms. Dixon noted it is going to the Public Planning Committee first to make sure we have our prioritization correct in what their needs and goals are. It is not going to them for any action. It will then be put on the LMO Committee Agenda and then Planning Commission for Public Hearing. The Board noted that with all the Committees it must go before it will be several months. Ms. Dixon noted that staff didn't have it on hold or not take it forward for any reason. When we started bringing forth our first set two years ago, Covid happened, things got put on hold, we had higher priorities we were given to take forward, management shifted and changed, and we are dealing with circumstances out of our control. Chair Brison respectfully requested that this goes straight to the LMO Committee of the Planning Commission and bypass the Town Council's Public Planning Committee as it is high time, we did this. Chair Brison asked for a motion from the Board to direct the Chair to write a letter to the Mayor and the Town Manager to make that request on this specific issue. Mr. Kristian moved to approve. Ms. Bayless seconded. The motion passed with a vote of 5-0-0.

### **c. Waiver Report**

Ms. Dixon noted that based on the Board's concern over the last several years regarding the number of waivers that had been issued, it has been the direction of our upper management to no longer have staff grant waivers. We are no longer reviewing or taking them through any type of process. You will no longer receive a Waiver Report. The provisions in the non-conforming section in Chapter 7 do allow for substitution of non-conformities for redevelopment – those were not considered Waivers and we will continue to review those. I wanted to see if it was at the Board's recommendation or request that you still receive a report at your meeting on those requests that we do review and approve or deny. Ms. Dixon advised staff is currently advising Applicants to come to the BZA for variances from those sections of the LMO where it currently says you need to get a Waiver. Mr. Kristian inquired how much increased activity will that place on the BZA's agenda if staff is not making those judgment calls. Ms. Dixon advised it all depends on what types of application or requests we receive, and which ones comes to fruition with going for a Variance. Ms. Dixon stated included in the LMO Amendments in Tier 1A is the removal of all staff granted Waivers. Any section in the LMO that suggests that you can get a Waiver from staff will be stricken through. Ms. Dixon said it is of the opinion of upper management that Waivers are not legal. Rather it being at staff's discretion to waive requirements in the LMO, it is more appropriate for it to come to the BZA as a Variance. This has not gone through the process yet but is on our list. Mr. Kristian said he does not want to be listening to things that could easily be determine by staff and if staff can make a decision in a lot less time than bringing it to the BZA it will set these people back and burden them. Dr. Ponder stated this is not the best possible course of action. Chair Brison echoed the concern expressed by two other Board members and questioned why the Town is deciding to not do this – until the LMO has been amended because in effect the Town is ignoring compliance with the LMO by not pursuing Waivers unless the Town has been given a legal opinion. The Chair entertained a motion to prepare a letter to the Town Manager and the Mayor and request that the LMO Section regarding Waivers proceed until there is an Amendment. Mr. Kristian moved to approve. Ms. Bayless seconded. The motion passed with a vote of 5-0-0.

### **13. Adjournment**

With no other business before the Board, the meeting was adjourned at 4:35 p.m.

**Submitted by:** Karen Knox, Secretary

**Approved:** September 26, 2022