

The Town of Hilton Head Island
Regular Board of Zoning Appeals Meeting
Monday, July 26, 2010
2:30 p.m. - Benjamin M. Racusin Council Chambers

Revised Agenda

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting.

1. **Call to Order**
2. **Roll Call**
3. **Freedom of Information Act Compliance**
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
4. **Swearing In Ceremony for New and Returning Board Members** – Mr. Peter Kristian, Mr. Roger DeCaigny and Mr. Alan Brenner *Performed by: Mayor Pro Tem Ken Heitzke*
5. **Nomination and Election of Officers 2010 - 2011**
6. **Welcome and Introduction to Board Procedures**
7. **Approval of Agenda**
8. **Approval of Minutes** – Meeting of June 28, 2010
9. **Unfinished Business**
None
10. **New Business**
PUBLIC HEARING
VAR100003: Neil Gordon, on behalf of Pasquale and Karen Diccianni, is requesting a variance from Land Management Ordinance Section 16-6-204, Wetland Buffers, to allow proposed additions to the house and deck to encroach into the wetland buffer. The property is located at 34 Spartina Court and is identified as parcel 84 on Beaufort County Tax Map 14B. *Presented by: Anne Cyran*
11. **Board Business**
12. **Staff Report**
Waiver Report
13. **Adjournment**

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

TOWN OF HILTON HEAD ISLAND
The Board of Zoning Appeals
Minutes of the Monday, June 28, 2010 Meeting
2:30pm – Benjamin M. Racusin Council Chambers **DRAFT**

Board Members Present: Chairman Roger DeCaigny, Vice Chairman David D’Amico,
 Alan Brenner, Jack Qualey, Stephen Murphy and Bob Sharp

Board Members Absent: Michael Lawrence

Council Members Present: Bill Ferguson

Town Staff Present: Jill Foster, Community Development Department Deputy Director
 Jayme Lopko, Senior Planner & BZA Coordinator
 Kathleen Carlin, Board Secretary

I CALL TO ORDER

II ROLL CALL

III PRESENTATION OF THE TOWN’S CRYSTAL AWARD

Ms. Jill Foster presented the Town’s Crystal Award to outgoing Board member, Mr. David D’Amico. On behalf of staff, Ms. Foster stated her appreciation to Mr. D’Amico for his six years of dedicated service to the Board of Zoning Appeals. The membership also stated their appreciation to Mr. D’Amico for his service to the Board. A Farewell Reception in appreciation of Mr. D’Amico’s service will be held in Council Chambers immediately following today’s business meeting.

IV APPROVAL OF THE AGENDA

Mr. Qualey made a **motion** to **approve** the agenda as presented. Mr. Sharp **seconded** the motion and the motion **passed** with a vote of 6-0-0.

V APPROVAL OF THE MINUTES

Mr. Qualey made a **motion** to **approve** the minutes of the March 22, 2010 meeting as presented. Mr. Brenner **seconded** the motion and the motion **passed** with a vote of 6-0-0.

VI UNFINISHED BUSINESS

None

VII NEW BUSINESS

None

VIII BOARD BUSINESS

None

IX STAFF REPORT

1. Mrs. Jayme Lopko presented the staff's Waiver Report. Since the Board's last meeting, (4) waivers have been granted - 2 in April, 1 in May, and 1 in June.
2. Mrs. Lopko presented the new procedure for posting all meeting "packets" on the Town's website. The staff will provide hardcopies of "packet" materials, on a requested basis, for pickup at the Town.
3. Mrs. Lopko reported that one Variance Application is scheduled for review by the Board on July 26, 2010. Ms. Heather Colin, Development Review Administrator, will conduct that meeting on behalf of staff as Mrs. Lopko will be on vacation.
4. Mrs. Lopko reported that Mr. Peter Kristian will be sworn in as a returning Board member on July 26, 2010. Chairman Roger D'Caigny and Mr. Alan Brenner are also scheduled to be sworn in for a second term on that date.
5. Mrs. Lopko stated that the Board is scheduled to nominate and elect a new Chairman and Vice Chairman for 2010 – 2011 at the start of the July 26th meeting. All seven Board members will be eligible to serve in these positions.
6. Mrs. Lopko stated that one hour of State Mandated Training will be provided by staff in Conference Room # 3 immediately following the reception for Mr. D'Amico.

X ADJOURNMENT

The meeting was adjourned at 2:50pm.

Submitted By:

Approved By:

Kathleen Carlin
Board Secretary

Roger D'Caigny
Chairman



**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**

Case #	Name of Development	Public Hearing Date
VAR#100003	34 Spartina Court	July 26, 2010

Parcel or Location Data	Owner	Applicant
<i>Tax Map ID</i> ◇ Map 14B, Parcel 84 <i>Street Address</i> ◇ 34 Spartina Court <i>Zoning District</i> ◇ PD-1 (Sea Pines) <i>Overlay District</i> ◇ Corridor Overlay	Karen Diccianni 34 Spartina Ct Hilton Head Island SC 29928	Neil Gordon Neil Gordon, Architect PO Box 5643 Hilton Head SC 29938

Application Summary

The Community Development Department has received an application for a variance from Neil Gordon on behalf of Karen Diccianni for the following Section of the Land Management Ordinance (LMO):

16-6-204, Wetland Buffers

The applicant is requesting the variance to allow proposed additions to the house and deck to encroach into the wetland buffer.

Background

The subject parcel is located at 34 Spartina Ct in Sea Pines in the PD-1 Zoning District. As shown on the Vicinity Map (Attachment B), the subject parcel is bounded by: a lagoon on the northeast; single family homes on the northwest and southeast; and Spartina Court on the southwest.

The 1,950 square foot house was built on the 0.18 acre lot in 1995. The home's existing deck and stairs encroach into the wetland buffer (Attachment E). The current owner purchased the property in 2007. In May of 2010, the applicant discussed with Town staff

the proposed addition to the house and deck, including stairs and pervious pavers, which would encroach into new areas of the wetland buffer (Attachment F). Staff informed the applicant that a variance would be required for the additions as they were proposed. Staff informed the applicant that the owner could build an addition to the house without obtaining a variance, and that the owner could redevelop the areas of the deck and stairs that currently encroach into the buffer with an administrative waiver (Attachment G). The applicant chose to apply for a variance.

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

Grounds for Variance:

The applicant is applying for a variance from LMO Section 16-6-204, Wetland Buffers, to allow proposed additions to the house and deck to encroach into the wetland buffer. The applicant states the variance is needed because the lot is small and because building the additions to the west of the house will result in the removal of a laurel oak tree.

Summary of Facts:

1. Applicant seeks a variance for a wetland buffer from LMO 16-3-1901A(4), which includes the requirement to meet specific widths of buffers in LMO Section 16-6-204.

Conclusion of Law:

1. Applicant may seek a variance from the requested LMO section as set forth in 16-3-1901A(4).

Staff Determination

Staff recommends that the Board of Zoning Appeals **disapprove** the application based on the Findings of Facts and Conclusions of Law. If the Board approves the application, staff recommends that the applicant's landscape plan be used to replant the wetland buffer.

Staff Summary of Facts and Conclusions of Law

Summary of Facts:

1. Application was submitted as set forth in LMO Section 16-3-1903.
2. Notice of the Application was published in the Island Packet on Sunday, June 20, 2010, as set forth in LMO Sections 16-3-110 and 16-3-111.
3. Notice of the Application was posted as set forth in LMO Sections 16-3-110 and 16-3-111.
4. Notice of the Application met the mailing criteria in LMO Sections 16-3-110 and 16-3-111.
5. Staff received an affidavit of compliance from the applicant as set forth in LMO Section 16-3-111.
6. The Board has authority to render the decision reached here under LMO Section 16-3-1905.

Conclusions of Law:

1. The application is in compliance with the submittal requirements established in

- LMO Section 16-3-1903.
2. The application and notice requirements comply with the legal requirements established in LMO Sections 16-3-110 and 16-3-111.

As provided in Section 16-3-1906, Criteria for Approval of Variances, staff has based its recommendation on analysis of the following criteria:

Staff Summary of Facts and Conclusions of Law

Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property. (LMO 16-3-1906A(1))

Findings of Fact:

1. The subject parcel is 0.18 acres, while most nearby parcels are an average of 0.2 acres, a difference of about 10%.
2. The subject parcel is located on a tidal lagoon and is required to maintain a 20 foot wetland buffer, as are most properties in the area.

Conclusion of Law:

1. This application does not meet the variance criteria as set forth in LMO 16-3-1906A(1). Though the subject parcel is smaller than nearby parcels, it is not significantly smaller. The fact that the parcel has a 20 foot wetland buffer is not extraordinary because most parcels in the area are located on a lagoon.

Staff Summary of Facts and Conclusions of Law

Criteria 2: These conditions do not generally apply to other properties in the vicinity. (LMO 16-3-1906A(2))

Findings of Fact:

1. The subject parcel is 0.18 acres, while most nearby parcels are an average of 0.2 acres.
2. The subject parcel, like most properties in the area, is located on a tidal lagoon and has a 20 foot wetland buffer.

Conclusion of Law:

1. This application does not meet the variance criteria as set forth in LMO 16-3-1906A(2). Though the parcel is somewhat smaller than nearby parcels, it is not significantly smaller. The fact that the parcel is required to have a 20 foot wetland buffer is not a singular condition because most parcels in the area are located on a tidal lagoon and have the same buffer requirement.

Staff Summary of Facts and Conclusions of Law

Criteria 3: Because of these conditions, the application of the LMO to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property. (LMO 16-3-1906A(3))

Findings of Fact:

1. There is an area in between the house and lagoon and in the west corner of the parcel that would accommodate a screened porch without encroaching further into

the wetland buffer (Attachment G).

2. The existing deck could be raised to meet the screened porch as stated above without expanding its footprint and encroaching further into the wetland buffer. An administrative waiver would be required to redevelop the portions of the deck and steps that currently encroach into the wetland buffer (Attachment G). Staff would grant such a waiver if the property owner agreed to replace the sod in the remaining wetland buffer area with native wetland vegetation.
3. Building the screened porch as stated above would not require a variance because the porch would not encroach into the buffer. If the owner removed the 20 inch laurel oak tree to build the porch, no permit would be required because the tree is on a single family lot. Trees on single family lots that are not located in buffers are exempt from the Town's tree protection standards.

Conclusion of Law:

1. This application does not meet the variance criteria as set forth in LMO 16-3-1906A(3) because, though it may require an administrative waiver, the homeowner could expand the house and redevelop the existing non-conforming deck without obtaining a variance.

Staff Summary of Facts and Conclusions of Law

Criteria 4: This hardship is not the result of the applicant's own actions. (LMO 16-3-1906A(4)).

Finding of Fact:

1. The site is large enough to accommodate the proposed changes without encroaching into the wetland buffer.

Conclusion of Law:

1. This application does not meet the variance criteria as set forth in LMO 16-3-1906A(4) because the owner could redesign the proposed addition so it would not encroach into the wetland buffer.

Staff Summary of Facts and Conclusions of Law

Criteria 5: Granting of the variance does not substantially conflict with the Comprehensive Plan and the purposes of the LMO. (LMO 16-3-1906A(5))

Findings of Fact:

1. LMO 16-6-204 states that the placement of structures in the wetland buffer is prohibited.
2. Goal 4 of the Natural Resources Element of the Comprehensive Plan is to "Incorporate protection of the natural environment into all projects on Town property and encourage large and small-scale environmental preservation efforts by private landowners."

Conclusion of Law:

1. This application does not meet the variance criteria as set forth in LMO 16-3-1906A(5) because the proposed additions encroach into the wetland buffer, a substantial conflict with LMO 16-6-204. The variance would not directly conflict

with Goal 4 of the Natural Resources Element of the Comprehensive Plan because the existing buffer is covered with non-native sod, but the construction of the screened porch and deck would prevent the planting of natural vegetation in those areas.

Staff Summary of Facts and Conclusions of Law

Criteria 6: The authorization of the variance will not be of substantial detriment of adjacent property or the public good, and the character of the district will not be harmed by the granting of the variance. (LMO 16-3-1906A(6)).

Findings of Fact:

1. Staff did not identify any detriment to the adjacent property, the public good or the character of the district that would be caused by granting the variance.
2. Staff received one comment from a neighboring property owner, who objected to the variance and stated it would set a precedent for others who wanted to build in the wetland buffer.

Conclusion of Law:

1. This application meets the variance criteria as set forth in LMO 16-3-1906A(6) because, though one neighbor objects, granting the variance does not appear to be a substantial detriment to adjacent property or the public good.

PREPARED BY:

AC

Anne Cyran
Planner

13 July 2010

DATE

REVIEWED BY:

JL

Jayme Lopko
Senior Planner & BZA Coordinator

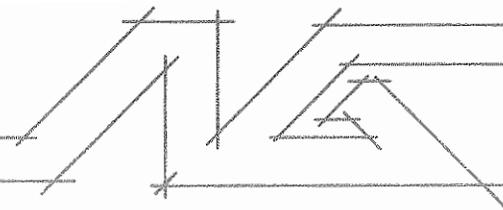
13 July 2010

DATE

ATTACHMENTS:

- A) Applicant’s Narrative
- B) Vicinity Map
- C) Aerial Photo
- D) Photos of Subject Property
- E) Site Plan with Existing Encroachments
- F) Site Plan with Existing and Proposed Encroachments
- G) Site Plan with Buildable Area with Existing Encroachments

NEIL GORDON, A.I.A.



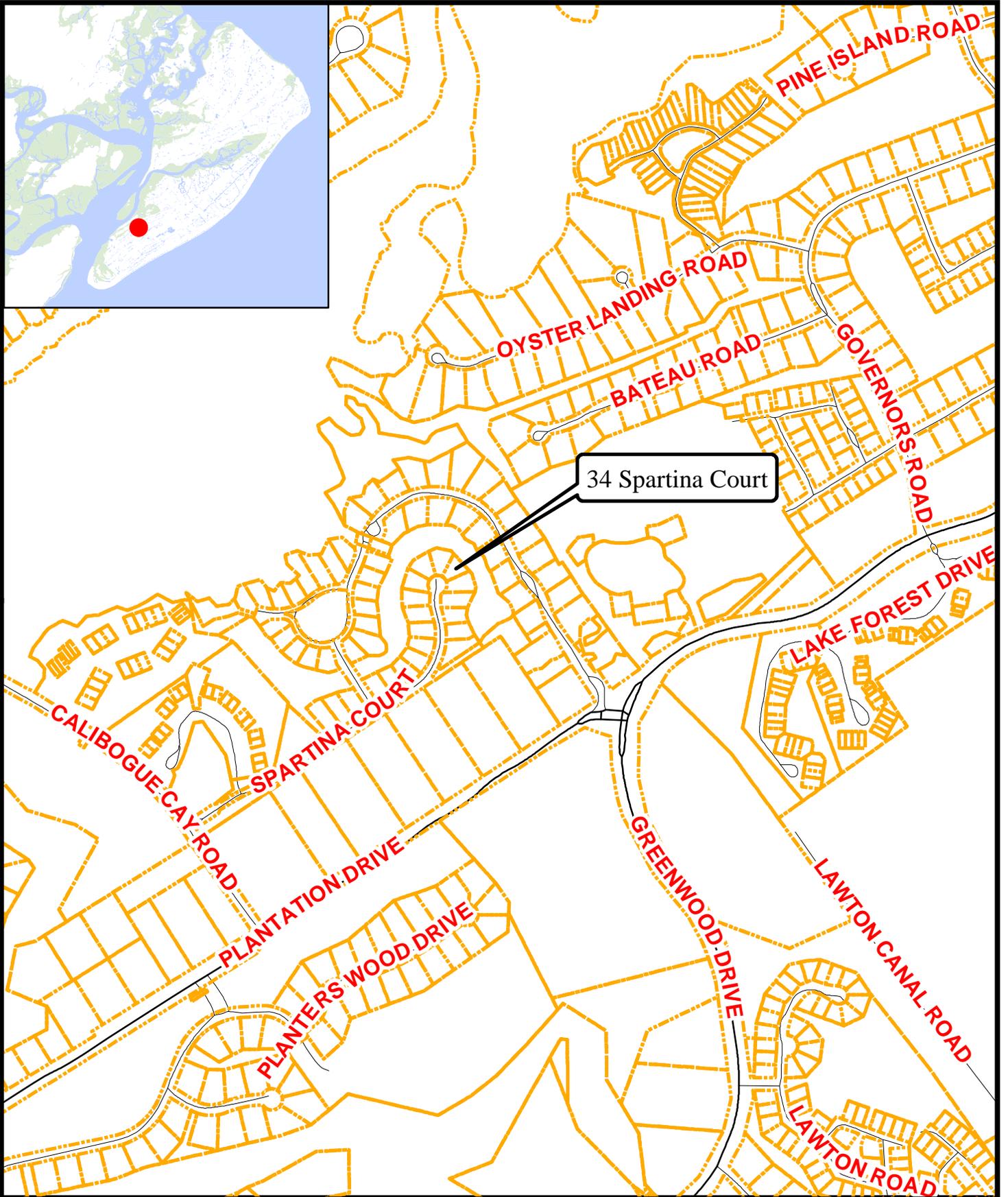
NEIL GORDON ARCHITECT, P.A.
21 OFFICE PARK RD., SUITE 216 SAPELO BLDG.
P.O. BOX 5643 • HILTON HEAD ISLAND, SC 29938
PHONE 843.785.3222 • FAX 843.785.3228
EMAIL: neilgordon@hargray.com

Narrative for a variance:

We are requesting a variance from Section 16 – 6 – 204; Wetland buffer, 20' tidal wetland, for single family dwelling.

We are requesting the variance for a 12' x 15' screened porch addition:

- 1) The property is small and situated on and near the lagoon. The subdivision was never designed with buffer restrictions envisioned.
- 2) Other properties have screened porches that were built prior to the 20' wetland buffer; the owners of this property waited until they moved here permanently to determine if they needed a screened area to enjoy the outdoors, without mosquitoes and bugs and with shade from ultra- violet rays.
- 3) The only area to place such a structure would require the requested variance. The remaining area where the screen porch could be located would be very close to a nice specimen 14" Laurel Oak which would cause damage and loss of the tree root system, which could cause the tree's demise.
- 4) The variance is not a result of the applicants own actions, but of an ordinance that added a buffer to a small property that was never designed to absorb it.
- 5) The granting of the variance does not substantially conflict with the comprehensive plan and the purposes of this land management ordinance. We intend to gutter the roof runoff back behind the 20' buffer allowing the runoff to be filtered through the 20' buffer. We also intend to re-landscape the buffer, re-vegetating in accordance with 16 – 6 – 209 standards.
- 6) The authorization of the variance will not be a substantial detriment to adjacent property, public good or neighborhood character. Due to the handling of the variance as stated above.



34 Spartina Court

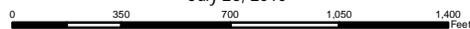


TOWN OF HILTON HEAD ISLAND
 ONE TOWN CENTER COURT
 HILTON HEAD ISLAND, S. C. 29928
 PHONE (843) 341-6000

June 14, 2010
 Project - p:\annec\gis\maps\var100003\vicinity.mxd

34 Spartina Court
 VAR100003

July 26, 2010

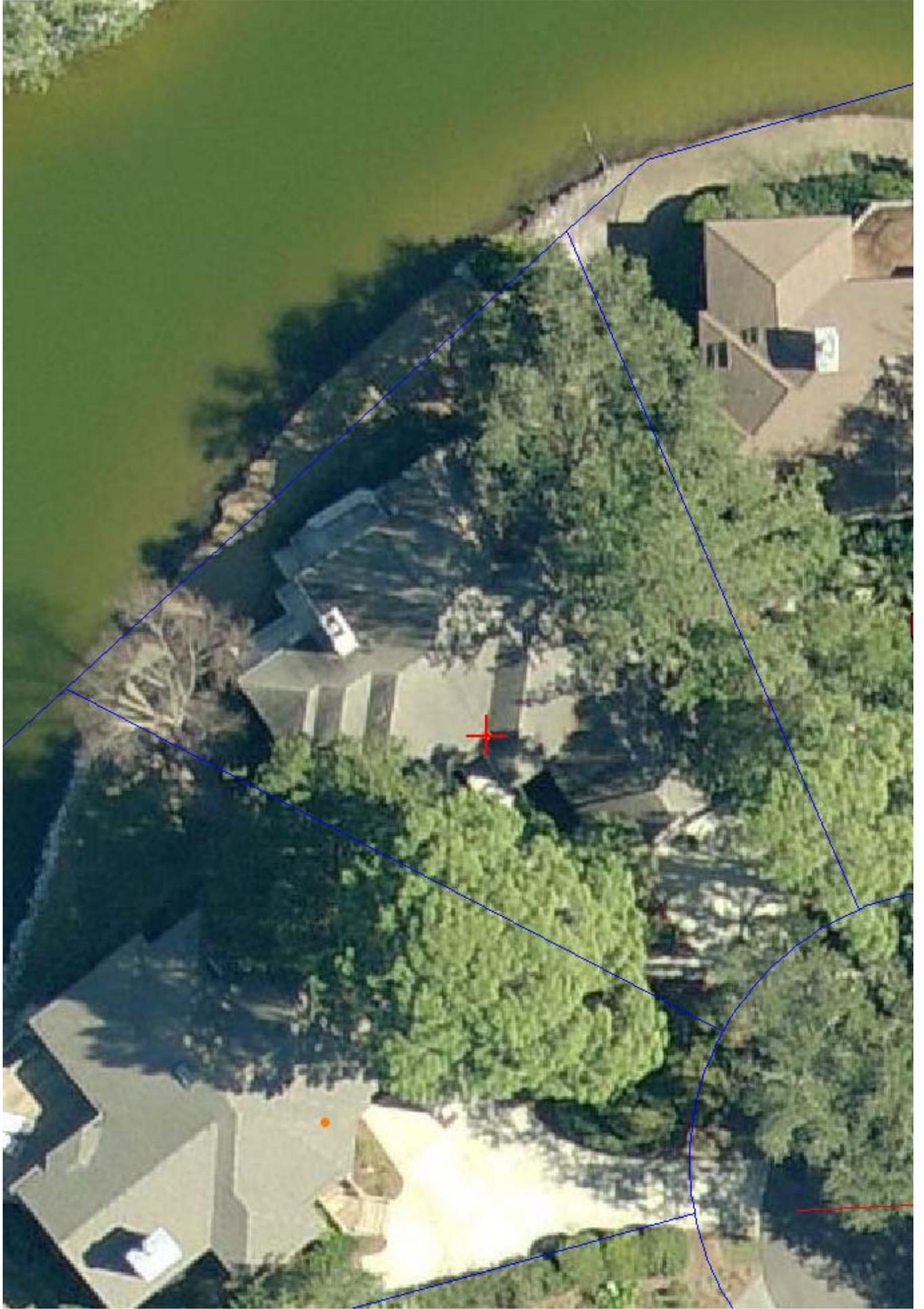


1 inch = 615 feet



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.

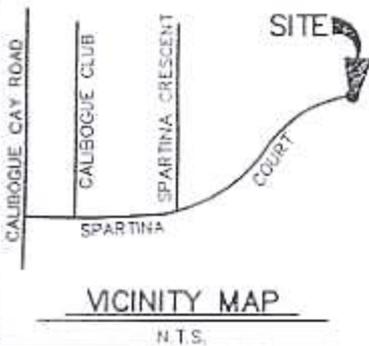
VAR100003, Attachment C



VAR100003, Attachment D



CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	DIRECTION	DELTA
C1	33.41	45.00	17.52	32.65	N 42°41'55" W	42°32'20"



LAGOON PARCEL

EDGE OF LAGOON
TOP OF BANK
109.75'

LOT 35

OCRM Critical Line

Existing Encroachments

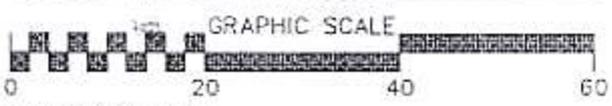
Wetland Buffer Line

LOT 34

LOT 36



TAX PARCEL I.D. NO. DIST 550 MAP 14B PARCEL 84
ADDRESS: #34 SPARTINA COURT



REFERENCE PLAT:
CALIBOGUE CLUB, PHASE III,
SEA PINES PLANTATION,
DATED: 9/6/85,
BY: T.B. RICHARDSON, S.C.R.L.S. NO. 8612.

FLOOD ZONE INFORMATION:
THIS LOT IS LOCATED IN ZONE A-7,
A SPECIAL FLOOD HAZARD AREA AS
DETERMINED BY H.U.D., PANEL 12-D
COMMUNITY NO. 450250, MAP DATED
9/29/85, BASE ELEVATION 14.0'.

MORTGAGE
PLAT OF
LOT 35
SPARTINA COURT
A PORTION OF
SEA PINES
PLANTATION

HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR: PASQUALE DICCIANNI & KAREN DICCIANNI

SCALE: 1" = 20' DATE: 2/17/98 JOB NO. 98043



SURVEYING CONSULTANTS

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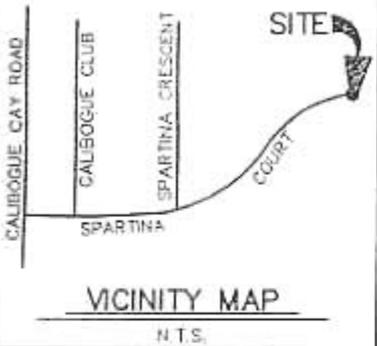
DISK NO. AT-1

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN 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 OBVIOUS, APPARENT OR VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

THIS PLAT IS FOR CLOSING PURPOSES ONLY AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE.



CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	DIRECTION	DELTA
C1	33.41	45.00	17.52	32.65	N 42°41'55" W	42°32'20"



LAGOON PARCEL

EDGE OF LAGOON
TOP OF BANK
109.75'

LOT 35

Buildable Area

OCRM Critical Line

Existing Encroachments
(Areas that could be redeveloped with an administrative waiver)

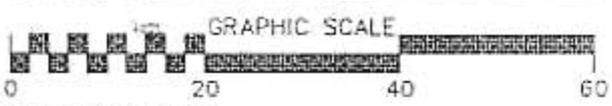
Wetland Buffer Line

LOT 34

LOT 36



TAX PARCEL I.D. NO. DIST 550 MAP 14B PARCEL 84
ADDRESS: #34 SPARTINA COURT



REFERENCE PLAT:
CALIBOGUE CLUB, PHASE III,
SEA PINES PLANTATION,
DATED: 9/6/85,
BY: T.B. RICHARDSON, S.C.R.L.S. NO. 8612.

FLOOD ZONE INFORMATION:
THIS LOT IS LOCATED IN ZONE A-7
A SPECIAL FLOOD HAZARD AREA AS
DETERMINED BY H.U.D., PANEL 12-D
COMMUNITY NO. 450250, MAP DATED
9/29/86, BASE ELEVATION 14.0'.

MORTGAGE
PLAT OF
LOT 35

SPARTINA COURT
A PORTION OF
SEA PINES
PLANTATION

HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR: PASQUALE DICCIANNI & KAREN DICCIANNI

SCALE: 1" = 20' DATE: 2/17/98 JOB NO. 98043



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DISK NO. AT-1

SPARTINA COURT
R/W VARIES

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN 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 OBVIOUS, APPARENT OR VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.

THIS PLAT IS FOR CLOSING PURPOSES ONLY AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE.





TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Jayme Lopko, AICP, Senior Planner
DATE: July 13, 2010
SUBJECT: Administrative Waivers

The Board of Zoning Appeals (BZA) requested that staff keep them informed of administrative waivers that are granted by staff based on the provisions in Section 16-7-106 of the Land Management Ordinance (LMO). This memo will be distributed every month at the regular BZA meetings and will be discussed under staff reports on the agenda. Even if there have been no waivers for the month, a memo will be included in the packet to inform the BZA members of that.

The following language is contained in Section 16-7-106 Waiver by Administrator which gives the Administrator the power to grant waivers for existing nonconforming structures and site features.

“The Administrator may waive any provision of Article III or IV dealing with nonconforming structures and site features, respectively, upon a determination that:

- A. The proposed expansion, enlargement or extension does not encroach further into any required buffers or setbacks or increase the impervious area; and
- B. The proposed expansion, enlargement, or extension does not occupy a greater footprint than the existing nonconforming site feature or structure; and
- C. The proposed expansion, enlargement, or extension does not result in an increase in density greater than allowed per Sec. 16-4-1501, or the existing density, whichever is greater; and
- D. The applicant agrees to eliminate nonconformities or provide site enhancements that the Administrator determines are feasible in scope and brings the site into substantial conformance with the provisions of this Title (e.g. meeting buffer, impervious area and open space requirements); and
- E. The proposed expansion, enlargement or extension would not have a significant adverse impact on surrounding properties or the public health, safety and welfare; and
- F. If an applicant requests to relocate a nonconforming structure on the same site, they must bring the structure into conformance to the extent deemed practicable by the Administrator.”

The attached is a summary of the administrative waivers that have been granted by staff since the June Board of Zoning Appeals meeting.

Administrative Waivers

June

1. A project at 2048 Deer Island Road, requested to replace an existing deck. A waiver was granted due to the alteration of an existing nonconforming structure. This waiver was granted with the condition to plant two rows of spartina grasses where the plants are installed a maximum of 12 inches apart to get required density.