



The Town of Hilton Head Island
Regular Board of Zoning Appeals Meeting
Monday, September 27, 2010
2:30 p.m. Benjamin M. Racusin Council Chambers
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 the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.

4. WIRELESS TELEPHONE USAGE

Please turn off all wireless telephones so as not to interrupt the meeting.

5. WELCOME AND INTRODUCTION TO BOARD PROCEDURES

6. APPROVAL OF AGENDA

7. APPROVAL OF MINUTES – July 26, 2010 Meeting

8. UNFINISHED BUSINESS

None

9. NEW BUSINESS

PUBLIC HEARING

APL100007: Request for Appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC. The Community Development Department issued a letter stating revocation proceedings will not be pursued for a notice of action, approving a tabby walkway and brick areas at Edgewater on Broad Creek. The appellant contends that the Community Development Department erred in its decision and is requesting that town staff be directed to institute proceedings to revoke the notice of action.

Presented by: Jayme Lopko

PUBLIC HEARING

SER100002: Request for Special Exception for a bar in the Stony Mixed Use (SMU) Zoning District. Randal R. Smith of Kool Runnins Bar & Lounge LLC is proposing to operate a bar in an existing building at Fairfield Square. The property is located at 160 William Hilton Parkway and is further identified as Parcel #72A on Beaufort County Tax Map #7, and is owned by the JMC Holding LLC.

Presented by: Nicole Dixon

10. BOARD BUSINESS

11. STAFF REPORT

1. Waiver Report
2. Rules of Procedure

12. ADJOURNMENT

THE TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, July 26, 2010 Meeting
2:30pm – Benjamin M. Racusin Council Chambers DRAFT

Board Members Present: Chairman Roger DeCaigny, Vice Chairman Peter Kristian,
 Alan Brenner, Michael Lawrence, Jack Qualey, and Bob Sharp

Board Members Absent: Stephen Murphy

Council Members Present: Mayor Pro Tem Ken Heitzke

Town Staff Present: Heather Colin, Development Review Administrator
 Anne Cyran, Planner
 Kathleen Carlin, Board Secretary

1. CALL TO ORDER

2. ROLL CALL

3. SWEARING IN CEREMONY

Mayor Pro Tem Ken Heitzke performed the swearing in ceremony. Mr. Peter Kristian was sworn in as a new member of the Board. Mr. Alan Brenner and Mr. Roger DeCaigny were both sworn in for a second three-year term.

4. NOMINATION AND ELECTION OF OFFICERS 2010 – 2011

Ms. Heather Colin began by requesting nominations for the office of Chairman. Mr. Jack Qualey made a **motion to nominate** Mr. Roger DeCaigny to continue serving as Chairman for 2010 – 2011. Mr. Brenner **seconded** the motion. Mr. DeCaigny **accepted** the nomination to serve. There were no further nominations, and the motion to elect Mr. DeCaigny as Chairman for 2010 – 2011 **passed** with a vote of 6-0-0.

Ms. Heather Colin then requested nominations for the office of Vice Chairman. Mr. Sharp made a **motion to nominate** Mr. Peter Kristian to serve as Vice Chairman for 2010 – 2011. Mr. Brenner **seconded** the motion. Mr. Kristian **accepted** the nomination to serve. There were no further nominations, and the motion to elect Mr. Kristian as Vice Chairman for 2010 – 2011 **passed** with a vote of 6-0-0.

Ms. Colin announced that staff has a new policy related to the Board’s occasional need to gain access to gated communities for the purpose of inspecting properties under their review. Starting immediately, all applicants that have property under review and located within gated communities will be required to provide the Board with individual gate passes. The gate passes should be valid up to one week prior to the actual meeting date and should be available for pickup at the subject’s gated community’s pass office.

5. APPROVAL OF THE AGENDA

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

6. APPROVAL OF THE MINUTES

Mr. Qualey made a **motion** to **approve** the minutes of the June 28, 2010 meeting as presented. Mr. Sharp **seconded** the motion and the motion **passed** with a vote of 6-0-0.

7. UNFINISHED BUSINESS

None

**8. 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.

Ms. Anne Cyran made the presentation on behalf of staff. The staff recommended that the Board of Zoning Appeals *disapprove* the application based on the Findings of Facts and Conclusions of Law stated in the staff's report. If the Board approves the application, the staff recommended that the applicant's landscape plan be used to replant the wetland buffer.

Ms. Cyran stated that the Community Development Department received an application for variance from Neil Gordon on behalf of Karen Diccianni for the following Section of the Land Management Ordinance: 16-6-204, Wetland Buffers. The applicant requested the variance to allow the proposed additions to the house and deck to encroach into the wetland buffer.

The subject parcel, 34 Spartina Court, is located in the PD-1 Zoning District. The property is bound by a lagoon on the northeast; single family homes on the northwest and southeast; and Spartina Court on the southwest. The subject 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. The current owner purchased this 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. Staff informed the applicant that a variance would be required for the additions as proposed. The staff also 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. The applicant chose to apply for an application for variance.

Ms. Cyran presented a detailed review of the application concluding with the staff's Findings of Facts and Conclusions of Law. The Board and staff discussed several issues including staff's recommendation for native vegetation, the wetland buffer, water quality and wildlife habitat.

The applicant, Mr. Neil Gordon, Architect, presented statements in support of the application including the history of the property and comments regarding the proposed location of the screened porch addition. At the completion of the applicant's presentation, Chairman DeCaigny requested public comments and none were received. The public hearing for this application was then closed. The Board discussed the application. At the completion of their discussion, Chairman DeCaigny requested that a motion be made.

Mr. Qualey made a **motion** to **approve** Application for Variance, VAR100003, based on the following facts: (1) the subdivision was laid out prior to the implementation of the wetland buffer in question; (2) the home was built and approved by the Town prior to building permit applications being scrutinized for this wetland buffer; therefore, the hardship was actually not of the applicant's making. It was due to the imposition of the wetland buffer after the subdivision was created; (3) because the applicant is going to implement an improved landscape plan that will enhance the absorption of the runoff of the expanded roof area, that is a win-win situation for the Town and the neighborhood. Mr. Sharp **seconded** the motion. Vice Chairman Kristian stated concern that the application has not met all six of the required criteria.

Chairman DeCaigny requested a brief recess in order for Mr. Qualey to address the individual required criteria.

Following the brief recess, Mr. Qualey stated the following reasons for the application meeting the required criteria: (1) there are extraordinary conditions pertaining to this particular property due to the wetland buffer being passed after the subdivision plat was approved, thus reducing this applicant's ability to improve this dwelling by making the addition in question; (2) these conditions do not generally apply to other properties in the vicinity, and in fact, all of the lots in this subdivision are adversely affected by the imposition of this wetland buffer essentially after the fact; and outside of this particular subdivision, the lots in the area of this subdivision are much, much larger and can be redeveloped and improved without having to go through this type of variance process; (3) the application of the LMO will unreasonably restrict the full utilization of the property by preventing the reasonable addition of the screen porch in question; (4) the hardship is not the result of the applicant's own actions. The redesign alternative would result in the removal of a large laurel oak tree that provides shade, and privacy and aesthetic benefits; (5) the granting of the variance does not substantially conflict with the Comprehensive Plan and the LMO. To the contrary, it is insubstantial in nature and is a minor addition to the property. The required new landscape plan is both beneficial and a mitigating factor; (6) the granting of the variance will not be a detriment to adjacent property or the public good, and the character of the district will not be harmed by granting the variance in question, which the Town staff also agreed applies in this situation. Mr. Sharp again **seconded** the motion.

Vice Chairman Kristian and Mr. Qualey discussed several issues including the timing of the wetland buffer requirement in relationship to the approval of the home. The motion **passed** with a vote of 5-1-0. Vice Chairman Kristian was opposed to the motion.

9. BOARD BUSINESS

None

10. STAFF REPORT

Ms. Colin stated that the staff has no agenda items for the August 23, 2010 meeting. Chairman DeCaigny approved the cancellation of the August 23, 2010 meeting.

11. ADJOURNMENT

The meeting was adjourned at 3:45pm.

Submitted By:

Approved By:

Kathleen Carlin
Board Secretary

Roger DeCaigny
Chairman

DRAFT



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Jayme Lopko, AICP, Senior Planner and Board Coordinator
VIA: Teri B. Lewis, AICP, LMO Official
DATE September 13, 2010
SUBJECT: APL100007 - Edgewater

Staff has received an appeal from Chester C. Williams on behalf of Ephesian Ventures, LLC, regarding the July 28, 2010 letter stating the Town of Hilton Head Island will not take steps to revoke a Notice of Action for XDPR100013, which permits a tabby walkway and brick areas at Edgewater on Broad Creek.

The appellant is appealing this decision and asking that the Board reverse the decision of the LMO Official and find that the Notice of Action should be revoked. The record as attached consists of the following documents: Appeal Application, Appellant's Narrative titled Attachment 1, Determination Letter titled Exhibit A, XDPR100013 File and Notice of Action titled Exhibits B & C, Deed Information titled Exhibit D, and Other Letters from the Town and Appellant titled Exhibits E-J. We reserve the right to submit additional items in connection with this appeal.

If you have any questions, feel free to contact Jayme Lopko at 341-4695 or jaymel@hiltonheadislandsc.gov.



LAW OFFICE OF
CHESTER C. WILLIAMS, LLC

17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

August 9, 2010

HAND DELIVERED
and
VIA EMAIL TO TeriL@HiltonHeadIslandSC.gov

Teri B. Lewis, AICP
LMO Official
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

RE: Appeal of Administrative Determination Regarding Revocation of
Notice of Action on Expedited Development Plan Review
Application No. XDPR100013 – Our File No. 01505-005

Dear Teri:

We are pleased to deliver to you herewith for filing with the Town's Board of Zoning Appeals our appeal on behalf of our client, Ephesian Ventures, LLC, regarding the administrative determination made in your July 28, 2010 letter to us. Also enclosed is our check for \$100.00 payable to the Town for the required filing fee for this appeal.

By way of his copy of this letter, we advise Roger A. DeCaigny, the Chairman of the Board of Zoning Appeals, of our filing of this appeal to the Board of Zoning Appeals on behalf of Ephesian Ventures, LLC.

Because Edgewater on Broad Creek Owners' Association, Inc. is the permittee under Expedited Development Plan Review Application No. XDPR100013, it may be a necessary party to this appeal. By way of his copy of this letter, we serve a copy of our appeal on Michael W. Mogil, Esq., the attorney for Broad Creek Owners' Association, Inc.

Please let us know if you, your staff, or the Board of Zoning Appeals require any further information from or on behalf of our client with respect to this appeal or the enclosed motion.



LAW OFFICE OF
CHESTER C. WILLIAMS, LLC

Teri B. Lewis, AICP
August 9, 2010
Page 2

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC



This signature is an electronic reproduction

Chester C. Williams

CCW:skt

Enclosures

cc: Mr. Roger A. DeCaigny
Michael W. Mogil, Esquire
Gregory M. Alford, Esquire



Town of Hilton Head Island
 Community Development Department
 One Town Center Court
 Hilton Head Island, SC 29928
 Phone: 843-341-4757 Fax: 843-842-8908
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY	
Date Received:	_____
Accepted by:	_____
App. #: APL	_____
Meeting Date:	_____

Applicant/Agent Name: Epehsian Ventures, LLC Company: Chester C. Williams, Attorney for the Applicant
 Mailing Address: Post Office Box 6028 City: Hilton Head island State: SC Zip: 29938
 Telephone: 843-842-5411 Fax: 843-842-5412 E-mail: Firm@CCWLaw.net

APPEAL (APL) SUBMITTAL REQUIREMENTS

- Digital Submissions may be accepted via e-mail by calling 843-341-4757.** The following items must be attached in order for this application to be complete:
- A detailed narrative stating the Town Official or Body the made the decision, the date of the decision you are appealing, the decision you are appealing, the basis for your right to appeal, the grounds of the appeal, and citing any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the Board of Zoning Appeals. **See Attachment 1**
 - Any other documentation used to support the facts surrounding the decision. **See Attachment 1**
 - Filing Fee - \$100.00 cash or check made payable to the Town of Hilton Head Island.

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature: _____ Date: August 9, 2010
 Chester C. Williams, Attorney for the Applicant

STATE OF SOUTH CAROLINA)	BEFORE THE BOARD OF ZONING
)	APPEALS
)	OF THE TOWN OF HILTON HEAD
)	ISLAND, SOUTH CAROLINA
)	
)	REQUEST FOR APPEAL
COUNTY OF BEAUFORT)	NO. APL10000_____

**ATTACHMENT 1
TO THE APPEAL APPLICATION OF
EPHESIAN VENTURES, LLC**

NARRATIVE

I. RESERVATION OF RIGHTS

Nothing in this Attachment 1 or the Request for Appeal to which it is attached should be construed or interpreted as an admission by Ephesian Ventures, LLC that jurisdiction lies with the Board of Zoning Appeals of the Town of Hilton Head Island for all of the issues presented herein. This appeal to the Board of Zoning Appeals is being filed with the LMO Official in case the LMO Official refuses to accept for filing an appeal by Ephesian Ventures, LLC to the Planning Commission that is substantially similar to this appeal. Ephesian Ventures, LLC believes that jurisdiction to hear some, if not all, of the issues raised in this appeal may lie with the Planning Commission, and not with the Board of Zoning Appeals.

II. INTRODUCTION

This Attachment 1 is part of the Request for Appeal (this “Appeal”) filed by Ephesian Ventures, LLC (“Ephesian”) in connection with the letter from Teri



B. Lewis, AICP, the LMO Official for the Town of Hilton Head Island (the “Town”), to the undersigned Chester C. Williams dated July 26, 2010 (the “07/26/10 Letter”)¹ by which Mrs. Lewis has declined to institute revocation proceedings for the Notice of Action dated April 15, 2010 (the “Notice of Action”) on Expedited Development Plan Review Application No. XDPR100013 (the “XDPR Application”)² filed on April 12, 2010 on behalf of Edgewater on Broad Creek, HPR (the “Edgewater HOA”). The Notice of Action³ purports to permit the construction of a tabby pathway on property which is subject to restrictive covenants and easements and other rights held by Ephesian. This Narrative is submitted to the Town as part of this Appeal, for inclusion in the record of this Appeal, and for review by the Town’s Board of Zoning Appeals (the “BZA”).

Ephesian owns a 16.01 acre tract adjacent to the property of Edgewater on Broad Creek Horizontal Property Regime (the “Regime”). The Regime was created by the recording of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase I) on December 31, 2002 in Beaufort County Record Book 1689 at Page 574 (the “Master Deed”).⁴ The Master Deed submitted 7.64 acres of the Edgewater on Broad Creek property (the “Regime Property”) to the provisions of the South Carolina Horizontal Property Act, Section 27-31-10, *et seq.* of the Code of Laws of South Carolina (1976), as amended (the “SC Code”). Ephesian is the owner of property at Edgewater on Broad Creek (the “16.01 Acre Tract”) not included in the Regime Property.

¹ A copy of the 07/26/10 Letter is attached to this Narrative as Exhibit A.

² A copy of the XDPR Application is attached to this Narrative as Exhibit B.

³ A copy of the Notice of Action is attached to this Narrative as Exhibit C.

⁴ The Master Deed as recorded, including all exhibits, is 91 pages. Ephesian has previously provided copies of the Master Deed to the Town Staff. Because of the size of the document, a copy of the Master Deed is not attached to this Narrative as an exhibit; however, Ephesian will have a copy of the Master Deed available at the hearing of this Appeal, and will readily provide a copy to any member of the BZA upon request.



Ephesian acquired the 16.01 Acre Tract by way of that certain deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049.⁵ Ephesian's deed also conveys to Ephesian the rights of the Declarant under the Master Deed and numerous reserved easements and other interests in the Regime Property, as more fully discussed below.

The Regime Property is designated as Beaufort County tax parcel R510-011-000-0177-0000, and the 16.01 Acre Tract is designated as Beaufort County tax parcel R510-011-000-0004-0000.

This Appeal seeks to reverse the decision of the LMO Official to refuse to institute revocation proceedings under Section 16-63-301(C) of the Town's Land Management Ordinance (the "LMO") regarding the Notice of Action. The 07/26/10 Letter says that the administrative determination contained therein may be appealed to the BZA.

III. BACKGROUND

On or about April 9, 2010, the Edgewater HOA started site work and construction of a tabby pathway on a portion of the Regime Property, without seeking the consent of Ephesian for such work. That same day, Nicole Dixon, Planner for the Town, on behalf of the Town, ordered that such site work and construction activities cease until the proposed work was properly permitted by the Town. Ephesian believes that, as a result of the Town's stop work order, the XDPR Application was filed with the Town on April 12, 2010.

By way of a letter to Ms. Dixon on April 15, 2010, the undersigned, on behalf of Ephesian, asked that Ms. Dixon provide Ephesian with notice of the filing of the XDPR Application, specifically for the purpose of reviewing the XDPR Application for compliance with applicable restrictive covenants.⁶

⁵ A copy of Ephesian's deed is attached to this Narrative as Exhibit D.

⁶ A copy of the April 15, 2010 letter to Ms. Dixon is attached to this Narrative as Exhibit E.



However, Ephesian was not advised by Ms. Dixon of the filing of the XDPR Application until the undersigned received an email from Ms. Dixon on April 20, 2010,⁷ in which Ms. Dixon advised the undersigned of the issuance of the Notice of Action. The undersigned and Ephesian did not receive copies of the XDPR Application and the Notice of Action until they were obtained from a review of the Town's file on the XDPR Application on April 26, 2010.

By way of a letter to Teri B. Lewis, AICP, the Town's LMO Official, on April 28, 2010, Ephesian, through the undersigned, notified the Town that the XDPR Application contained factual inaccuracies and was improperly issued.⁸ That letter identified Ephesian as the holder of the rights of the Declarant (the "Declarant Rights") under the Master Deed by way of the Ephesian Deed, advised Mrs. Lewis and the Town of certain rights reserved under the Master Deed to the Declarant and held by Ephesian, further advised Mrs. Lewis and the Town of restrictive covenants contained in the Master Deed that are applicable to the Regime Tract, and informed the Town that the restrictive covenants applicable to the Regime Tract are contrary to, conflict with, or prohibit the activity permitted by the XDPR Application and the Notice of Action.

On April 30, 2010, in her letter to IMC Resort Services, Inc., the Edgewater HOA's agent on the XDPR Application,⁹ Mrs. Lewis, rescinded the Notice of Action, stating:

The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed

⁷ A copy of the April 20, 2010 email from Ms. Dixon is attached to this Narrative as Exhibit F.

⁸ A copy of the April 28, 2010 letter to Ms. Lewis (without the two enclosures, which are the Master Deed and Ephesian's deed) is attached to this Narrative as Exhibit G.

⁹ A copy of Mrs. Lewis' April 30, 2010 letter to IMC Resort Services, Inc. is attached to this Narrative as Exhibit H.



Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1). According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy. South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants. Therefore, prior to the review of any subsequent applications, you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your applications. (Emphasis added.)

On May 19, 2010, the Edgewater HOA filed an appeal of the rescission of the Notice of Action; however, on June 25, 2010 Mrs. Lewis advised the Edgewater HOA by her letter of that date that her rescission of the Notice of Action was improper under LMO Section 16-3-310(C), and that the rescission of the Notice of Action would be held in abeyance.¹⁰ Based on Mrs. Lewis' withdrawal of her rescission of the Notice of Action, the Edgewater HOA's appeal was rendered moot, and the Notice of Action is still effective.

By way of a letter dated July 8, 2010, the undersigned, on behalf of Ephesian, requested that Mrs. Lewis, as the LMO Official, institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-301(C) on the basis that the XDPR Application contained a material misrepresentation by the landowner or its agent.¹¹ Thereafter, Mrs. Lewis declined to institute the requested revocation proceedings in the 07/26/10 letter.

Ephesian alleges that Mrs. Lewis, as the LMO Official, has a duty to enforce the provisions of the LMO, and that duty imposes on her an obligation to institute revocation proceedings regarding the Notice of Action if, in fact, she believes the XDPR Application contains misinformation that is a material misrepresentation by the landowner or its agent. To that end, Ephesian now

¹⁰ A copy of Mrs. Lewis' June 25, 2010 letter to IMC Resort Services, Inc. is attached to this Narrative as Exhibit I.

¹¹ A copy of the July 8, 2010 letter from the undersigned to Mrs. Lewis is attached to this Narrative as Exhibit J.



seeks an order of the BZA directing Mrs. Lewis to institute the requested revocation proceedings.

IV. APPEALS OF ADMINISTRATIVE DECISIONS

Under applicable state law, Section 6-29-340(B) of the Code of Laws of South Carolina (1976), as amended (the “SC Code”), which is part of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “State Enabling Act”), charges the Planning Commission with the power and duty to, among other things, prepare and recommend for adoption to the Town Council regulations for the subdivision or development of land, and appropriate revisions thereof, and “to oversee the administration of the regulations that may be adopted [by the Town] as provided in [the State Enabling Act]”. Section 6-29-800(A)(1) of the State Enabling Act grants the BZA the power “to hear and decide appeals where it is alleged there is error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the [Town’s] zoning ordinance”; and SC Code Section 6-29-800(B) provides that appeals to the BZA may be taken by any person aggrieved.

Notwithstanding the fact that the 07/26/10 Letter says that the administrative determination contained therein may be appealed to the BZA, Ephesian believes that the Town’s Planning Commission, and not the BZA, may have jurisdiction to hear some, if not all, of the issues raised in this Appeal.

V. THE XDPR APPLICATION

A review of the Town’s file on the XDPR Application clearly indicates that the XDPR Application was incomplete when filed and when the Notice of Action was issued.

More importantly, the XDPR Application represents that there are no recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request. As noted in the April 28, 2010 letter to



Mrs. Lewis, and as confirmed in Mrs. Lewis' April 30, 2010 letter, the representation made on behalf of the Association in the XDPR Application regarding recorded private covenants and/or restrictions is clearly factually inaccurate. Specifically, Mrs. Lewis said in her letter that "... misinformation was provided by you [the Edgewater HOA's agent] as part of the application."

VI. THE NOTICE OF ACTION

As mentioned above, the XDPR Application was submitted in response to Ms. Dixon's order to cease work on the tabby walkway that was under construction by the Edgewater HOA.

Ephesian notes for the record that it has neither consented to nor approved of the filing of the XDPR Application as it relates to Ephesian's interests in the Regime Property. Ephesian also notes for the record that it categorically has not, and does not, consent to any work on the Regime Property that may have an adverse impact on its interests in the Regime Property, including the work purportedly permitted by the Notice of Action, absent specific written approval from Ephesian.

Ephesian asserts that Notice of Action was wrongfully and improperly issued by the Town to the Edgewater HOA because of, among other things, the misinformation contained in the XDPR Application.

Ephesian further asserts that if the misinformation contained in the XDPR Application is a material misrepresentation by the Edgewater HOA or its agent, then Mrs. Lewis has an obligation to seek to revoke the Notice of Action; however, Mrs. Lewis has declined to do so. Ephesian, whose rights have been violated by the work authorized by the Notice of Action, is clearly aggrieved by Mrs. Lewis' refusal to revoke the Notice of Action, and therefore has filed this Appeal to the BZA.



VII. STANDING

Ephesian has standing to file this Appeal to the BZA because the 07/26/10 Letter says it is appealable to the BZA. In addition, because Ephesian holds easements and other rights in and to the Regime Property, including the Declarant Rights, under applicable restrictive covenants contained in the Master Deed, Ephesian has standing to file this Appeal to the BZA under Section 6-29-760(C) of the State Enabling Act; and Ephesian also has standing to file this Appeal under LMO Section 16-3-2001.¹²

VIII. NECESSARY PARTY

The Edgewater HOA, as the permittee under the Notice of Action, may be a necessary party to this Appeal. Accordingly, Ephesian asks that the Edgewater HOA receive notice of all matters and hearings associated with this Appeal.¹³

IX. GROUNDS FOR APPEAL

Ephesian alleges that Mrs. Lewis, as the LMO Administrator, has a duty and obligation to institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-310(C) if she believes the XDPR Application contains a material misrepresentation by the Edgewater HOA or its agent.

¹² LMO Section 16-3-2001 seems to indicate that an appeal of a decision, interpretation, or determination of the LMO Administrator lies to the Board of Zoning Appeals; however, because this Appeal is centered on the Notice of Action on the XDPR Application, which is clearly part of the land development regulations of the LMO, out of an abundance of caution, Ephesian has also filed a similar appeal to the Planning Commission.

¹³ See *Spanish Wells Property Owners Association, Inc. v. Board of Adjustment of the Town of Hilton Head Island*, 367 S.E.2d 160 (SC 1988), a copy of which is attached to this Narrative as Exhibit K.



X. EPHESIAN'S ARGUMENTS FOR APPEAL

A. MATERIAL MISREPRESENTATION IN THE XDPR APPLICATION

Ephesian owns property that is adjacent to the Regime Tract, and holds easements and other rights, including the Declarant Rights, over the Regime Tract pursuant to the recorded private covenants and restrictions contained in the Master Deed.

The XDPR Application represents that there are no “recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request”. Based on the covenants and restrictions contained in the Master Deed and the easements and other rights in and to the Regime Property now held by Ephesian under the Master Deed, Ephesian submits that this representation is factually inaccurate.¹⁴

The Town, through Mrs. Lewis, as the LMO Official, and the Town Attorney, Gregory M. Alford, Esq., is already on the record as agreeing with Ephesian that the XDPR Application contained “misinformation” regarding applicable restrictive covenants, that the project proposed by the XDPR Application “is in violation of the Master Deed”, and that “Ephesian retains all rights that went with the property transfer as part of the bankruptcy.” Specifically, in her April 30, 2010 letter to IMC Resort Services, Inc., the agent for the Edgewater HOA on the XDPR Application, Mrs. Lewis stated:

The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1).” (Emphasis added.)

¹⁴ Ephesian has no reason to believe that this factual inaccuracy in the XDPR Application was an intentional misrepresentation by or on behalf of the Edgewater HOA; instead, Ephesian assumes this factual inaccuracy was a mistake on the part of the Edgewater HOA.



Clearly, that letter evidences a determination by Mrs. Lewis, as the LMO Official, and Gregory M. Alford, Esq., the Town Attorney, that the XDPR Application contains misinformation that is a material misrepresentation.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended, prohibits the Town from issuing any permit if the Town has knowledge from any source of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity. Based on the determinations made by Mrs. Lewis, as the LMO Official, and the Town Attorney as set forth in Mrs. Lewis' April 30, 2010 letter, it is readily apparent that the XDPR Application would not, and could not, have been approved by the Town but for the material misrepresentation in the XDPR Application.

Under LMO Section 16-8-103(A), Mrs. Lewis, as the LMO Official and the Administrator of the LMO, has responsibility for enforcement of the LMO; and under LMO Section 16-8-103(C)(2), Mrs. Lewis has a duty to take whatever action is necessary to assure compliance with the provisions of the LMO. Based upon the specific determinations made in her April 30, 2010 letter, after review by the Town Attorney, that misinformation was provided to the Town as part of the XDPR Application and that the project proposed by the XDPR Application is in violation of the Master Deed, it is incumbent upon Mrs. Lewis to institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-310(C), as a material misrepresentation in an application is a clear basis for revocation of a permit.

Ephesian submits that Mrs. Lewis and her staff cannot sit idly by and take no action in such circumstances, particularly when she and the Town Attorney have already made determinations which are conclusive to the issues.

Because the XDPR Application contains a material misrepresentation by the Edgewater HOA or its agent, under LMO Sections 16-8-103(A) and 16-8-103(C)(2), Mrs. Lewis has a duty and obligation to enforce the provisions of, and to assure compliance with, the LMO, and should therefore proceed to institute revocation proceedings regarding the Notice of Action under LMO



Section 16-3-310(C), and the BZA, pursuant to its appeal jurisdiction, should order her to do so.

B. CONSTITUTIONAL ISSUES

Ephesian further believes that Mrs. Lewis' refusal to institute revocation proceedings regarding the Notice of Action under LMO Section 16-3-310(C) is wrong because the work purportedly permitted by the Notice of Action has a material detrimental effect on protected property rights and interests of Ephesian in the Regime Property, without having afforded Ephesian the right to notice and an opportunity to be heard in the XDPR Application process, in violation of the equal protection and due process clauses of the United States Constitution and South Carolina Constitution. Mrs. Lewis' refusal to properly revoke the Notice of Action is arbitrary and capricious, in derogation of Ephesian's protected property interests, and without a reasonable basis or justification in law or fact, for the reasons specified above.

XI. CONCLUSION

Because the Notice of Action is based on the incomplete and factually inaccurate XDPR Application, which contains a material misrepresentation by the Edgewater HOA or its agent, and because the Edgewater HOA did not obtain Ephesian's consent before the project permitted by the Notice of Action was undertaken, the Notice of Action should be revoked, and Mrs. Lewis should be directed to institute revocation proceedings under LMO Section 16-3-310(C). Accordingly, Ephesian asks that the BZA (a) consider the issues raised in this Appeal and the pertinent provisions of the State Enabling Act, the LMO, and other applicable law, (b) find that the Notice of Action should be revoked under LMO Section 16-3-310(C), and (c) reverse the decision of the LMO Official to refuse to institute revocation proceedings regarding the Notice of Action.

Ephesian reserves the right to submit additional materials, documents, and information to the BZA in connection with this Appeal.



Respectfully submitted on behalf of Ephesian Ventures, LLC this 9th day of August, 2010.



Chester C. Williams, Esquire
Law Office of Chester C. Williams, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
843-842-5411
843-842-5412 (fax)
Firm@CCWLaw.net



TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
<http://www.hiltonheadislandsc.gov>

VIA E-MAIL

July 26, 2010

Mr. Chester C. Williams
17 Executive Park Road, Suite 2
PO Box 6028
Hilton Head Island, SC 29938-6028

Dear Chet:

This letter is in reference to your correspondence dated July 8, 2010 regarding XDPR100013 [the tabby sidewalk at Edgewater on Broad Creek]. Your letter requests that I, acting in my capacity as the LMO [Land Management Ordinance] Official for the Town, revoke the Notice of Action issued for XDPR100013 on the grounds that misinformation was provided as part of the application. As I stated in my June 25, 2010 letter to Mr. Bucko [property manager for Edgewater at Broad Creek] at this time, staff is holding the revocation of the Notice of Action for XDPR100013 in abeyance until such time that Edgewater and Ephesian have resolved the covenant dispute. You were copied on this letter. Staff has not changed their position on this issue and therefore at this time I do not intend to take steps to initiate revocation proceedings under LMO Section 16-3-310(C).

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-2001 should you disagree with this administrative determination you may appeal to the Town's Board of Zoning Appeals (BZA) within 14 calendar days of the receipt of the above decision.

Sincerely,



Teri B. Lewis
LMO Official

cc: Gregory M. Alford
Stephen G. Riley
Charles F. Cousins
Michael Mogil

**TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
MASTER APPLICATION FORM**

Exhibit B (4 Pages)

ONE TOWN CENTER COURT • HILTON HEAD ISLAND, SC 29928 • 843-341-4757 • FAX 843-842-8908

Please TYPE or PRINT legibly

NAME OF DEVELOPMENT or BUSINESS EDGEWATER ON BROADCREEK, HPR

STREET ADDRESS 50 VERBENA LANE HHI, SC 29926

ZONING DISTRICT _____ OVERLAY DISTRICT _____

TAX DISTRICT _____ MAP _____ PARCEL (S) _____

LAND OWNER _____ APPLICANT _____ AGENT _____

EDGEWATER ON BROADCREEK, HPR EDGEWATER ON BROADCREEK, HPR IMC RESORT SERVICES, INC.

NAME N/A ← SAME SAME

COMPANY ← SAME ← SAME 2 CORPUS CHRISTIE PLACE, STE 302

MAILING ADDRESS HILTON HEAD SE 29928 ← SAME HILTON HEAD, SC 29928

CITY 843-785-4775 STATE X107 ZIP 843-785-3901 ← SAME 843-301-3857 / 843-785-3901

TELEPHONE _____ FAX _____ Bus License # 11152 Bus License# 2605

(For DRB, DR & SUB Only) (For DRB, DR & SUB Only)

EMAIL ADDRESS _____ EMAIL ADDRESS _____ ATB@IMCRESORTSERVICES.COM

*** A CHECK-IN CONFERENCE IS REQUIRED FOR THESE ITEMS. SEE LMO 16-3-104 FOR MORE INFORMATION. ATTACH THE NECESSARY SUPPLEMENTAL FORM(S).**

- | | |
|---|--|
| <input type="checkbox"/> APPEAL * | <input type="checkbox"/> ZONING MAP AMENDMENT * |
| <input type="checkbox"/> DEVELOPMENT PLAN REVIEW (DPR)* | <input type="checkbox"/> DESIGN REVIEW BOARD |
| <input type="checkbox"/> PLANNED UNIT DEVELOPMENT * | <input type="checkbox"/> PUBLIC PROJECT |
| <input type="checkbox"/> SPECIAL EXCEPTION * | <input type="checkbox"/> SIGN PERMIT |
| <input type="checkbox"/> SUBDIVISION * | <input type="checkbox"/> TREE APPROVAL |
| <input type="checkbox"/> VARIANCE * | <input type="checkbox"/> WETLAND ALTERATION |
| <input type="checkbox"/> ABBREVIATED DPR* | <input checked="" type="checkbox"/> EXPEDITED DPR* |

Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request?

YES NO

If so, a copy of the private covenants and/or restrictions must be submitted with this application.

TO THE BEST OF MY KNOWLEDGE, THE INFORMATION ON THIS APPLICATION AND ALL ADDITIONAL DOCUMENTATION IS TRUE, FACTUAL AND COMPLETE. I HEREBY AGREE TO ABIDE BY ALL CONDITIONS OF ANY APPROVALS GRANTED BY THE TOWN OF HILTON HEAD ISLAND. I UNDERSTAND THAT SUCH CONDITIONS SHALL APPLY TO THE SUBJECT PROPERTY ONLY AND ARE A RIGHT OR OBLIGATION TRANSFERABLE BY SALE.

[Signature]
SIGNATURE

4-9-10
DATE

I UNDERSTAND THAT IN THE EVENT OF A STATE OF EMERGENCY, DUE TO A DISASTER, THOSE REVIEW & APPROVAL TIMES SET FORTH IN THE LAND MANAGEMENT ORDINANCE MAY BE SUSPENDED.

[Signature]
SIGNATURE

4-9-10
DATE

FOR OFFICIAL USE ONLY

DATE RECEIVED: 4/12/2010
ACCEPTED BY: [Signature]

MASTER TRACKING NUMBER: _____

COMMUNITY DEVELOPMENT DEPARTMENT
EXPEDITED DEVELOPMENT PLAN REVIEW
SUPPLEMENTAL APPLICATION FORM
THIS FORM MUST BE ACCOMPANIED BY A MASTER APPLICATION FORM.

Please TYPE or PRINT legibly

PROJECT/DEVELOPMENT NAME: **EDGEWATER ON BROADCREEK, HPR**
OWNER/AGENT SUBMITTING APPLICATION: **IMC RESORT SERVICES, INC - AGENT**
NAME **AJ BUCKO**
E-MAIL ADDRESS* **AJB@IMCRESORTSERVICES.COM**
PHONE NUMBER **843-301-3857**
FAX NUMBER **843-785-3906**

APPLICATION SUBMISSION REQUIREMENTS:

APPLICANTS SHALL SUBMIT ALL THE FOLLOWING MATERIALS BEFORE AN APPLICATION SHALL BE CONSIDERED COMPLETE:

- NOTARIZED** WRITTEN CERTIFICATION, SIGNED BY THE OWNER(S) OF RECORD OF THE PROPERTY, THAT THE OWNER(S) CONSENT TO THE PROPOSED DEVELOPMENT. CERTIFICATION IS NOT NECESSARY IF THE OWNER IS THE APPLICANT.
- WRITTEN NARRATIVE DESCRIBING THE SCOPE OF THE PROJECT.
- FOUR (4) COPIES OF A SURVEY OF AREA OF THE PROPERTY BEING AFFECTED BY THIS APPLICATION SHOWING EXISTING TOPOGRAPHY, ALL TREES 6 INCHES IN DIAMETER AND LARGER, ALL IMPROVEMENTS, AND IF APPLICABLE, THE LOCATION OF BORDERING STREETS, MARSHES AND BEACHES.
- N/A** A LANDSCAPE PLAN SHOWING ANY CHANGES BEING PROPOSED, IF APPLICABLE.
- N/A** A COPY OF APPROVAL FROM ANY OUTSIDE AGENCIES, IF APPLICABLE.
- N/A** A COPY OF APPROVAL FROM ANY PROPERTY OWNERS ASSOCIATION, IF APPLICABLE.
- Application Fee (\$100)

*IF YOU WOULD LIKE TO RECEIVE COMMENTS AND/OR APPROVALS VIA E-MAIL PLEASE INCLUDE YOUR E-MAIL ADDRESS.

ADDITIONALLY IF YOU WOULD LIKE TO RECEIVE THE COMMUNITY DEVELOPMENT DEPARTMENT QUARERLY NEWSLETTER VIA EMAIL PLEASE INDICATE BY SIGNING BELOW.

SIGNATURE

DATE

FOR OFFICIAL USE ONLY	
DATE RECEIVED: <u>4/12/20</u>	TIME: <u>1:45 pm</u>
ACCEPTED BY: <u>NO</u>	APPLICATION NUMBER: <u>XDRR100013</u>

April 9, 2010

Re: Expedited Development Plan Review Supplemental Application Form

This letter certifies that the current Board of Director's for Edgewater on Broadcreek, HPR has approved, on behalf of all 23 Owners, the proposed plan for a tabby walkway with (2) brick features (please refer to narrative describing scope of work).



**Bobby Fitzgerald
Edgewater on Broadcreek, HPR
Acting Vice President
In Charge of Landscape Committee**

4/9/2010
Date

ORIGINAL RECEIPT

TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, SC 29928

Receipt Number: **R10001023**

Issuing Officer: LC

(Receipt not valid without Issuing Officer's initials.)

OWNER: EDGEWATER ON BROADCREEK
BUSINESS NAME:
APD #: XDPR100013
SITE ADDRESS: 50 VERBENA LANE ****
ACCOUNT NUMBER: ??
NOTATION: IMC RESORT SVC, 2 CORPUS CHRISTI, #302, HHI SC 29928

TRANSACTION DATE: 04/12/2010

TOTAL PAYMENT: 100.00

TRANSACTION LIST:

Type	Method	Description	Amount
Payment	Check	6198	100.00

ACCOUNT ITEM LIST:

Item#	Fee Description	Account Code	Total Fee	Total Paid	Current Pmt
5405	Expedited DPR	11001-40401	100.00	100.00	100.00

ISSUED BY: LYNNC
DATE: April 12, 2010 01:50 PM

Copy Reprinted on 04-12-2010 at 13:51:29

NOTICE OF ACTION

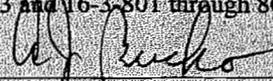
Exhibit C (2 Pages)

APPLICATION #

XDPR100013

Name of Development: EDGEWATER ON BROADCREEK		Location: 50 VERBENA LANE
Owner: EDGEWATER ON BROADCREEK	Applicant: EDGEWATER ON BROADCREEK	Agent:
Location and Development Information:		
Description: 145FT TABBY WALKWAY, 2 BRICK CIRCLE SITING AREAS, 12FT & 6 FT.		
Zoning District: WMU	Tax District Map Parcel: R51001100001770000	
Overlay District(s): 500 ft of OCRM Critical Line		
Approved Site Plan Information:		
Date of latest revision of approved site plan:	Based on Plans by: IMC Resort Services	
	Plans Titled: Edgewater on Broad Creek	
Any deviation from the approved plans will require additional review.		
Case Manager: NICOLE DIXON	Sign: 	
Date Issued: 04/15/2010	Expiration Date: 04/15/2011	

Pursuant to LMO 16-3-310 or 16-3-608, this approval expires as indicated above unless a complete building permit application is submitted, or where no building permit is required, a Certificate of Compliance is obtained. Pursuant to LMO 16-3-706, the Building Official can issue no final Certificate of Occupancy until the Planning Division issues a final Certificate of Compliance. For more information, see LMO 16-3-703 and 16-3-801 through 807 (Development Sureties).

Print Name: AJ Bucko Signature:  Date: 4-15-10

Owner or Authorized Agent of Owner

Conditions of the Approval:

Town Staff conditions are included, additional pages may be attached.

1: No additional excavation can be done to install sidewalk and associated brick areas/circle. All bricks must be laid on a sand base.

2: If any base is installed for the sidewalk, the material must not be limestone (use granite instead).

15 PB
21
700ER haw
1489

RECORDED
2008 Jul -18 12:59 PM
Sharon O. Burns
BEAUFORT COUNTY AUDITOR

BEAUFORT COUNTY SC - ROD
BK 02742 PGS 2049-2063
FILE NUM 2008043041
07/07/2008 02:53:34 PM
REC'D BY P BAXLEY RCPT# 551338
RECORDING FEES 21.00
County Tax 9,900.00
State Tax 23,400.00
Transfer Tax 22,500.00

Document prepared by
W. Thomas Vernon
Attorney at Law, P.C.
2511 Wilmot Avenue
Columbia, SC 29205

Upon filing, please return
to above address.

Exhibit D (15 Pages)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)

QUIT CLAIM DEED

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS: KEVIN CAMPBELL, TRUSTEE IN BANKRUPTCY FOR BROAD CREEK EDGEWATER, LP, SENDS GREETING:

WHEREAS, on May 9, 2007, BROAD CREEK EDGEWATER, LP was placed in an involuntary bankruptcy under Chapter 7 or the Bankruptcy Code in the United States Bankruptcy Court for the District of South Carolina, as is recorded in said Office in Case No. 07-0546; and

WHEREAS, by Order for Relief entered on June 6, 2007, the Honorable David R. Duncan, Judge, United States Bankruptcy Court, BROAD CREEK EDGEWATER, LP was adjudicated and entitled to relief under the Bankruptcy Code; and

WHEREAS, by Order Authorizing Sale, signed by the Honorable David R. Duncan, Judge, United States Bankruptcy Court, Kevin Campbell, Trustee in Bankruptcy for BROAD CREEK EDGEWATER, LP, was authorized to sell the estate's interest in the property described more fully below, lying and being in the County of Beaufort, State of South Carolina. (Attached hereto and incorporated by reference as **Exhibit B**)

NOW, KNOW ALL MEN BY THESE PRESENTS, that I, the said Kevin Campbell, Trustee in Bankruptcy for **BROAD CREEK EDGEWATER, LP, a South Carolina Limited Partnership** (hereinafter the "Grantor") in consideration of the sum of Nine Million and no/100s Dollars (\$9,000,000.00) to it in hand paid at and before the sealing and delivery of these presents by **EPHESIAN VENTURES, LLC, a Nevada Limited Liability Company** (hereinafter the "Grantee"), in the State aforesaid the receipt of which is hereby acknowledged has granted, bargained, sold and remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said Grantee all of its right, title and interest in the following property:

See Exhibit A attached hereto and incorporated herein by reference.

Grantee's address: c/o W. Thomas Vernon
2511 Wilmot Avenue
Columbia, South Carolina 29205

ADD DMP Record 7/15/2008 11:31:14 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist Map SMap Parcel Block Week

R510 011 000 0004 0000 00

ADD DMP Record 7/15/2008 11:31:24 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist Map SMap Parcel Block Week

R510 011 000 0177 0000 00

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

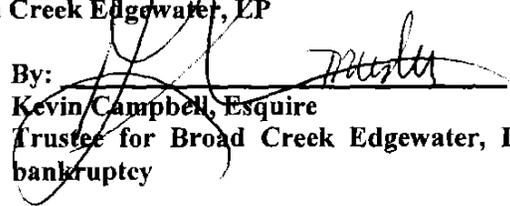
TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, Ephesian Ventures, LLC, its successors and assigns, forever, so that the Grantor, Broad Creek Edgewater, LP, nor its successors and assigns, nor any other entity, person or persons, claiming under it, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof.

WITNESS the Grantor's Hand and Seal this 7th day of July in the year of our Lord Two Thousand Eight (2008).

Signed, Sealed and Delivered in the Presence of:



Broad Creek Edgewater, LP

By: 
Kevin Campbell, Esquire
Trustee for Broad Creek Edgewater, LP in bankruptcy

STATE OF SOUTH CAROLINA)
) CHARLESTON)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Broad Creek Edgewater, LP, by Kevin Campbell, Esquire, its Trustee sign, seal and as the Grantor's act and deed deliver the within Limited Warranty Deed and that deponent with Michael Conway witnessed the execution thereof.


(witness)

SWORN to before me this 7th of July, 2008.

 (Seal)
Notary Public for South Carolina
My Commission expires: 8/31/11

Exhibit A
Property Description

All that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, and also the approximately 16.01 acres shown as "ADDITIONAL PROPERTY OF EDGEWATER ON BROAD CREEK" on that plat entitled "SURVEY OF :EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. *RS10-011-000-0004-0000*

Being also all rights retained by Grantor, if any, to that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 7.64 acres, shown as "REGIME PARCEL I" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME-PHASE I" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515, dated December 19, 2002, and recorded in Plat Book 91 at Page 5 in the Office of the ROD for Beaufort County on 12/31/02. (hereinafter also referred to as "Adjacent Tract").

Together with all Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in the aforesaid property:

- a. Seller's non-exclusive easement for ingress and egress over the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and
- b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract, and
- c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre), and
- d. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by

action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, and any other rights affecting the Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation to pay the Town of Hilton Head Transfer Tax; all of which are hereinafter referred to as the "Property."

The foregoing property is being acquired from Broad Creek Edgewater, LP, by and through Kevin Campbell, Esquire, the duly appointed and acting Trustee for Broad Creek Edgewater, LP, a South Carolina Limited Partnership, in bankruptcy and pursuant to an order to be issued by the United States Bankruptcy Court. The foregoing property is a portion of the property acquired by Broad Creek Edgewater, LP, a South Carolina Limited Partnership by deeds recorded in the Office of the ROD for Beaufort County, South Carolina Book 1194, at Page 2435, Book 1196, at Page 2438 and Book 1196, at Page 2441.

EXHIBIT B

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: 07-02546-DD

**ORDER APPROVING SALE FREE AND CLEAR OF LIENS, JUDGMENTS AND
ENCUMBRANCES PURSUANT TO 11 U.S.C. §363(f)**

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby **ORDERED**.

**FILED BY THE COURT
05/27/2008**



Entered: 05/28/2008

A handwritten signature in black ink, appearing to read "S. R. O.", written over a horizontal line.

US Bankruptcy Court Judge
District of South Carolina

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:)
BROAD CREEK EDGEWATER, LP) B/K Case No. 07-02546-DD
Debtor.) Chapter 7
ORDER APPROVING SALE

THIS MATTER comes before the Court upon the application of Kevin Campbell, the duly appointed and acting Chapter 7 Trustee for the above Debtor (hereinafter referred to as the "Trustee") for authority to sell the property of the estate identified on the attached Exhibit "A" (hereinafter referred to as the "Edgewater Property") free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f). There were no objections to the application.

The Trustee proposes to sell the Edgewater Property to Bear Properties, LLC, a Georgia Limited Liability Company, or its assigns (the "Buyer"). The Buyer is a good faith purchaser for value under §363(m) and does not have any known adverse interest in this case or any parties involved in this case, including the Debtor, its counsel and the U.S. Trustee's office. The Buyer is not a creditor of the Debtor. The sales price is \$9,000,000, with a closing to take place after Court approval at a date not more than thirty (30) days from the entry of a final Order approving the sale (including any appeals or other actions which would limit the finality of this Order), at place and time to be agreed upon by the parties.

EXCEPT AS OTHERWISE PROVIDED IN THE PURCHASE AGREEMENT, THE TRUSTEE IS SELLING THE ABOVE-REFERENCED PROPERTY "AS IS," WITH NO WARRANTIES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, WARRANTY AS TO TITLE. THE BUYER AGREES TO RECEIVE THE PROPERTY WITH ALL FAULTS. THE TRUSTEE MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE PROPERTY, AND SPECIFICALLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR USE.

THE TRUSTEE SHALL PROVIDE AT CLOSING "INSURABLE TITLE." INSURABLE TITLE IS DEFINED AS TITLE THAT IS FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES BASED ON AN ORDER ENTERED BY THE BANKRUPTCY COURT ALLOWING THE TRUSTEE TO CONVEY THE PROPERTY FREE AND CLEAR OF ANY SUCH LIENS AND ENCUMBRANCES AND INSURABLE WITHOUT INDEMNITY BY THE TRUSTEE AT NORMAL RATES BY A REPUTABLE NATIONAL TITLE COMPANY (AS CHOSEN BY THE PURCHASER PURSUANT TO THE AGREEMENT BEING APPROVED BY THIS ORDER) AND THAT ALL LIENS AND ENCUMBRANCES ATTACH ONLY TO THE PROCEEDS OF THE SALE AND TITLE IS SUBJECT TO COVENANTS, CONDITIONS

AND RESTRICTIONS OF RECORD, INCLUDING, BUT NOT LIMITED TO, THE MASTER DEED AND THE GENERAL OR STANDARD CONDITIONS OF ANY TITLE INSURANCE COMPANY, BUT SPECIFICALLY EXCLUDING PARAGRAPH 5 OF THE OCTOBER 31, 2006 ORDER ISSUED BY THE COURT OF COMMON PLEAS FOR THE COUNTY OF BEAUFORT WHICH SUIT WAS BROUGHT BY PAIL L. HUMMEL, ROBERT J. DEMA, JOHN EDWARDS, JR., JAQUELINE HEISS, KEN MEEKS, ROBERT FITZGERALD AND JOHN DOE PLAINTIFFS 1 -20 INDIVIDUALLY AND AS CO-OWNERS IN EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME (THE "PLAINTIFFS") AND PLAINTIFF'S COUNSEL STIPULATED AT THE HEARING ON THE APPLICATION FOR SALE OF PROPERTY THAT PARAGRAPH 5 WAS NO LONGER VALID AND WOULD NOT EFFECT THE PROPERTY AND RIGHTS BEING SOLD TO PURCHASER HEREIN.

THE BUYER HAS BEEN GIVEN AN OPPORTUNITY TO HAVE TITLE TO THE REAL PROPERTY RESEARCHED AND ACCEPTS THE STATUS OF THE REAL PROPERTY. THE TRUSTEE DOES NOT PROVIDE LIEN OPINIONS. PROPERTY TO BE CONVEYED BY QUIT CLAIM DEED.

THE BUYER HAS BEEN GIVEN THE OPPORTUNITY TO EXAMINE THE PROPERTY BEFORE SIGNING ANY CONTRACT OR SUBMITTING A BID TO PURCHASE THE PROPERTY, AND TO PERFORM SUCH TESTING, IF APPLICABLE, TO DETECT POSSIBLE LATENT DEFECTS.

At closing, with the exception of the real estate commission, the Trustee shall be authorized to pay normal seller's closing costs as set forth in the Purchase Agreement.

Alex Graham, Auctioneer (SC License #3997); Sperry Van Ness Commercial Properties, LLC, 1250 Fairmont Avenue, Mt. Pleasant, SC 29464, has been duly appointed as the Trustee's sale's agent. Except as provided for herein, a sales commission of Four (4%) percent of the contract sales price shall be paid, with the Trustee being responsible for the payment of the Trustee's agent two (2%) percent commission and one (1%) percent Buyer's agent commission. The Buyer shall be responsible for paying the remaining one (1%) percent Purchaser's agent commission. As provided for herein, the real estate commissions will not be paid at closing, but shall attach to the net sale proceeds pending agreement between the parties or further Order of this Court.

There is a disputed first mortgage lien held by Regions Bank, dated May 6, 2005, as assigned to Distinct Edgewater, LLC on January 3, 2007. There are related UCC-1's also of record held by Regions Bank and also assigned to Distinct Edgewater, LLC. The Trustee disputes the amount owed to this creditor. This creditor's lien shall attach to the net sale proceeds until an agreement is reached between the parties, or further order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by Strecansky & Co. (Case No. 06-CP-07-2497). The Trustee believes that this cause of action has been sold and/or assigned to CDCJ Holdings, LLC. The Trustee has filed an adversary proceeding

(Adv. Pro. No. 07-80149-DD) to have this Court determine the validity and extent of this lien. The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee disputes that certain Mechanic's Lien action filed by KRA, Inc. (Case No. 06-CP-07-2325). The Trustee believes that this cause of action has been sold and/or assigned to Distinct SC Limited, LLC. The Trustee has filed an adversary proceeding (Adv. Pro. No. 07-80105-DD) to have this Court determine the validity and extent of this lien. The Trustee believes that the lien was not properly perfected or is not otherwise valid. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

Pursuant to a Court approved lending order filed on August 23, 2007 and May 6, 2008, there is a mortgage from the Debtor to John W. Baird as Trustee for the John W. Baird Trust, dated August 23, 2007. This mortgage secures certain amounts that have already been paid or will be paid to the Estate for expenses, including, but not limited to, adequate protection payments, operating costs, and costs and fees of marketing, as well as potential future advances to the Estate. Pursuant to said Order, this lien is junior and subordinate to all presently existing liens, judgments or encumbrances on the subject property to the extent those liens, judgments or encumbrances are not otherwise voided or avoided by further Order of this Court.

The Trustee disputes a purported lien or security interest held by Landplan Partnership, Inc. as recorded in M/L Book 27 at Page 505. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes that certain Mechanic's Lien action filed by Pro Slab, Incorporated (Case No. 07-CP-07-92). An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported lien or security interest held by Calibogue Enterprises as recorded in M/L Book 28 at Page 1958. An Order finding this lien to be invalid has been entered by this Court. This sale is free and clear of this avoided lien.

The Trustee disputes a purported judgment lien or security interest held by Paul A. Hummel, et al. under Case No. 06-CP-07-3556 as recorded in Judgment Book 2006-2556. The Trustee believes that the lien constitutes an avoidable preference and/or fraudulent conveyance. Further, the Trustee disputes the amount owed to this creditor. This disputed lien shall attach to the net sale proceeds until an agreement is reached between the parties or further Order of this Court.

The Trustee is not aware of any other liens, judgments, encumbrances or other

interests. To the extent they may exist, they are disputed and they shall attach to the estate's interest in the net sale proceeds pursuant to 11 U.S.C. §363(f)(4). This sale is free and clear of all liens, judgments encumbrances and other interests pursuant to 11 U.S.C. §363(f).

Net sale proceeds is defined as those funds remaining after payment of normal seller's closing costs, as set forth in the Purchase Agreement or otherwise provided for in this Order.

In the event that after payment of all valid and perfected superior liens, county real property and other taxes and seller's closing costs and other expenses provided for herein, if there remains insufficient net sale proceeds to pay all Chapter 7 administrative claims, including the real estate/sales commissions, the Chapter 7 administrative claims, including real estate/sales commissions, shall be pro-rated.

In the event the net sale proceeds are sufficient and the administrative claims are paid in full, including the full commission to the Sales Agent/Auctioneer, then the Sales Agent/Auctioneer shall repay to the Estate the costs and expenses incurred in the marketing and sale and/or auction of the property, which could be in the approximate amount of \$32,042, which sums have or will be advanced to the Estate by the John W. Baird Trust, pursuant to previous Court Order and secured by the mortgage referenced herein.

If for any reason this sale does not occur within the time set forth herein, the Trustee may instead sell this property to a back-up bid for the same or higher price, provided it closes within 60 days of the date of the final entry of this Order.

I find that this matter is properly before this Court and that there were no objections filed to this Notice of Sale.

I find that ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order. It is, therefore

ORDERED, ADJUDGED and DECREED that the Trustee is authorized to sell and to convey the above-described property free and clear of all liens, judgments and encumbrances pursuant to 11 U.S.C. §363(f), on the terms and conditions recited herein and to sign any and all documents necessary to effectuate the transfer.

IT IS FURTHER ORDERED that the ten (10) day stay pursuant to Fed.R.Bankr.P. 6004(g) be waived in this matter and that upon the entry of the Order the Trustee be allowed to immediately enforce and implement the terms of said Order.

IT IS FURTHER ORDERED that the disputed liens set forth herein shall attach to the net sale proceeds as provided for herein until disbursed pursuant to further Order of this Court;

IT IS SO ORDERED!

EXHIBIT "A"

All Declarant (as that term is defined in the Master Deed noted below) rights, title to real estate, covenants, restrictions, improvements and any other rights now held by Seller as owner or Declarant in all that certain piece, parcel, tract of land located on Hilton Head Island, Beaufort County, South Carolina, consisting of approximately 16.01 acres and shown as "Additional Property of Edgewater on Broad Creek" on that certain plat entitled "SURVEY OF: EDGEWATER ON BROAD CREEK HORIZONTAL PROPERTY REGIME - PHASE 1" prepared by Surveying Services, Inc., certified to by James W. Edwards, SCRLS #15515 dated December 19, 2002, and recorded in Plat book 91 at page 5 in the ROD Office for Beaufort County South Carolina on 12/31/02, and all that certain piece, parcel of tract of land, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing approximately 16.01 acres, shown as "Additional Property of Edgewater on Broad Creek" on that certain ALTA/ACSM LAND TITLE SURVEY prepared for Bear Properties, LLC, certified by Terry G. Hatchell of Surveying Consultants, Bluffton, SC, SCRLS No. 11059 dated May 16, 2008, to be recorded, together with:

- a. A non-exclusive easement for ingress and egress over Seller's interest, if any, in the streets and highways, open or proposed, in front of or adjoining the land and across that certain tract of land containing 7.64 acres, more or less (the "Adjacent Tract") previously submitted to that certain Master Deed Establishing Edgewater on Broad Creek Horizontal Property Regime recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Record Book 1689 at Page 574 (the "Master Deed"); and
- b. all developmental rights, easements, rights of way, ponds, lagoons, waterways, privileges, permits, licenses, appurtenances and other rights pertaining thereto, if any, for the Property and the Adjacent Tract; and
- c. to the extent such exists, water and sewage capacity and spray field rights for the entire Project [which shall herein be used to describe the Property described in Exhibit A and the adjacent tract containing approximately 7.64 acres] and any remaining such rights and/or capacity in (including a capacity which at a minimum would allow a density of twelve units per acre); and
- d. the right to use all documents called for in this Agreement to be delivered to Purchaser in the same manner as Seller; and
- e. all rights and obligations as the Declarant (but none of the Declarant obligations, if any if such purported and alleged obligations: (a) arose following the recordation of the original Master Deed [which was recorded on December 31, 2002, in the Office of the Register of Deeds for Beaufort County South Carolina in Book 1689 at page 574] by action or inaction of the Seller and/or (b) have not been the subject of a valid amendment of said Master Deed recorded in the Office of the Register of Deeds for Beaufort County, South Carolina as of the date this Agreement is first executed by the Purchaser, which such purported and/or alleged obligations are set out in Exhibit G) under the Master Deed, and any other rights affecting the

Property and all of Seller's interest in any roadways, bridges, access ways, easements, covenants, restrictions, or right affecting the Property (provided, however, Purchaser shall not be obligated in any way to perform any duty, take on any burden, pay any sum due by Seller in connection with the transfer of these rights or otherwise, except for Purchaser's obligation, as provided in this agreement, to pay the Town of Hilton Head Transfer Tax;

All of which is hereinafter referred to as the "Edgewater Property".

Bankruptcy Noticing Center
 2525 Network Place, 3rd Floor
 Herndon, Virginia 20171-3514

CERTIFICATE OF SERVICE

District/off: 0420-2
 Case: 07-02546

User: douglase
 Form ID: pdf01

Page 1 of 1
 Total Served: 7

Date Rcvd: May 28, 2008

The following entities were served by first class mail on May 30, 2008.
 aty +J. Ronald Jones, Jr., 126 Seven Farms Drive, Suite 200, Charleston, SC 29492-8144
 aty +Michael H. Conrady, 890 Johnnie Dodds Blvd, PO Box 684, Mount Pleasant, SC 29465-0684
 aty Michael W. Mogil, 303 Professional Building, Hilton Head Island, SC 29928
 aty +R. Geoffrey Levy, 2300 Wayne Street, Columbia, SC 29201-2057
 tr +Kevin Campbell, PO Box 684, Mount Pleasant, SC 29465-0684
 ust +US Trustee's Office, Strom Thurmond Federal Building, 1835 Assembly St., Suite 953,
 Columbia, SC 29201-2448
 adb +BROAD CREEK EDGEWATER, LP, 389 Marshland Road, Hilton Head Island, SC 29926-2103

The following entities were served by electronic transmission.
 NONE.

TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

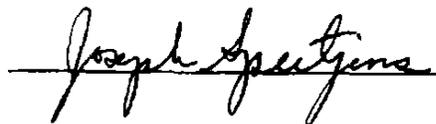
Addresses marked '-' were corrected by inserting the ZIP or replacing an incorrect ZIP.
 USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 30, 2008

Signature:



**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: 071-2546

The relief set forth on the following pages, for a total of 2 pages including this page,
is hereby **ORDERED**.

FILED

at ___ O'clock & ___ min ___ M

FILED BY THE COURT ON MAY 2 2 2008



United States Bankruptcy Court
Columbia, South Carolina (23)

A handwritten signature in black ink, appearing to read "D. Duncan", written over a horizontal line.

David R. Duncan
US Bankruptcy Court Judge
District of South Carolina

ENTERED: **ENTERED**

MAY 2 3 2008

R. S. S.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:)
) Chapter 7
Broad Creek Edgewater, LP,)
) Case No.: 07-02546-dd
Debtor.)
_____)

ORDER APPROVING BIDDING PROCEDURES

This proceeding comes before the Court on the notice and motion of the Chapter 7 trustee for approval of certain bidding proceeding to assist in selling the Debtor's assets.

The Court has been informed that all parties in interest have been notified of the proposed bidding procedures, and no objections to the proposed bidding procedures have been received. The Chapter 7 trustee has represented to the Court that such bidding procedures are in the best interest of the creditors of the estate. It is therefore,

ORDERED, ADJUDGED, AND DECREED, that the bidding procedures set forth in the Motion are approved and the Asset Purchase Agreement with Bear Properties LLC is approved, including the termination fee of \$200,000, the initial overbid of \$350,000 and subsequent bidding increments of \$50,000.

The Applicant:

/s/ Kevin Campbell
Kevin Campbell, Chapter 7 Trustee

Bankruptcy Noticing Center
 2525 Network Place, 3rd Floor
 Herndon, Virginia 20171-3514

CERTIFICATE OF SERVICE

District/off: 0420-2
 Case: 07-02546

User: shealy
 Form ID: pdf01

Page 1 of 1
 Total Served: 6

Date Rcvd: May 23, 2008

The following entities were served by first class mail on May 25, 2008.

aty +John Timothy Stack, Office of the United States Trustee, 1835 Assembly Street Suite 953,
 Columbia, SC 29201-2448
 aty +Joseph F. Buzhardt, III, Office of the United States Trustee, 1835 Assembly Street Suite 953,
 Columbia, SC 29201-2448
 aty +Michael H. Conrady, 890 Johnnie Dodds Blvd, PO Box 684, Mount Pleasant, SC 29465-0684
 tx +Kevin Campbell, PO Box 684, Mount Pleasant, SC 29465-0684
 ust +US Trustee's Office, Strom Thurmond Federal Building, 1835 Assembly St., Suite 953,
 Columbia, SC 29201-2448
 adb +BROAD CREEK EDGEWATER, LP, 389 Marshland Road, Hilton Head Island, SC 29926-2103

The following entities were served by electronic transmission.
 NONE.

TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

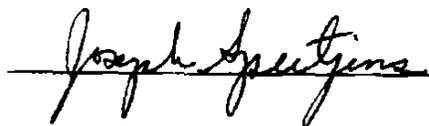
Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
 USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have served the attached document on the above listed entities in the manner shown, and prepared the Certificate of Service and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 25, 2008

Signature:





LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Exhibit E (2 Pages)

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

April 15, 2010

Ms. Nicole Dixon
Planner
Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek - Edgewater HOA Swimming Pool
Applications – Our File Nos. 015005-001 and 01505-004

Dear Nicole:

Following-up regarding the above matter, we understand the Town's Design Review Board has approved the aesthetics of the proposed site plan for the swimming pool proposed by the Edgewater HOA.

As we understand our last discussion with you regarding the proposed HOA swimming pool on this past Tuesday morning, the Edgewater HOA will be required by the Town to obtain development plan review approval before they are able to apply for and obtain a building permit for their proposed pool. We are reviewing those issues on behalf of our client, Ephesian Ventures, LLC, the owner of the substantial portion of the Edgewater property that is the subject of permits issued by the Town.

You have advised us that you will provide us with a copy of any development plan review applications submitted by the Edgewater HOA for their proposed pool. We trust this will include any proposals to amend any existing permits, and we would also appreciate receiving copies of any other permit applications that the Edgewater HOA may submit in connection with its proposed pool.

In addition, we would appreciate receiving copies of any applications submitted by the Edgewater HOA with respect to the sidewalk or other pathway installation which is underway last week, which we understand has been stopped by the Town.



LAW OFFICE OF
CHESTER C. WILLIAMS, LLC

Ms. Nicole Dixon
April 15, 2010
Page 2

Thanking you for your consideration regarding this matter, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt

Exhibit F (1 Page)

From: Dixon Nicole [mailto:nicoled@hiltonheadislandsc.gov]
Sent: Tuesday, April 20, 2010 9:04 AM
To: Firm@CCWLaw.net
Subject: Edgewater

Chet,

I also forgot to mention that the other applicant for Edgewater did come in and get an XDPR for the tabby sidewalk last week and it was approved and I believe they have completed that work. Let me know if you have any questions about that. When they come in for the DPR for the pool, I will let you know and you can stop by and take a look at their plans.

Nicole Dixon, Planner
Community Development Department
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
843-341-4686
fax 843-842-8908

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed.

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This message has been scanned for viruses and spam by MX Logic.



LAW OFFICE OF
CHESTER C. WILLIAMS, LLC
17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Exhibit G (3 Pages)

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

April 28, 2010

Teri B. Lewis, AICP
LMO Official
Community Development Department
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Edgewater on Broad Creek; Tabby Pathway; Expedited Development
Plan Review Application No. XDPR100013 – Our File No. 01505-005

Dear Teri:

We represent Ephesian Ventures, LLC (“Ephesian”), which owns a 16.01 acre tract adjacent to the Edgewater on Broad Creek Horizontal Property Regime (the “Regime”). The Regime was established by the Master Deed (the “Master Deed”) recorded on December 31, 2002 in the Office of the Register of Deeds for Beaufort County, SC in Record Book 1689 at Page 574. A copy of the Master Deed is enclosed herewith.

The Master Deed submitted 7.64 acres of the Edgewater on Broad Creek property to the provisions of the South Carolina Horizontal Property Act, Section 27-31-10, *et. seq.* of the Code of Laws of South Carolina (1976), as amended (the “Act”). Ephesian is the owner of property at Edgewater on Broad Creek not submitted to the provisions of the Act by the Master Deed.

Ephesian is also the holder of the rights of the Declarant under the Master Deed by way of that certain Quitclaim Deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP, recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049 (the “Quitclaim Deed”). A copy of the Quitclaim Deed is enclosed herewith.

It has come to Ephesian’s attention that Edgewater on Broad Creek Owners’ Association, Inc. (the “Edgewater HOA”) filed the above-referenced application for Expedited Development Plan Review (the “XDPR Application”) on April 12, 2010 in connection with the construction of a tabby pathway and related recreational amenities on the Regime property. A Notice of Action on the XDPR Application was issued on April 15, 2010.



By way of our letter of April 15, 2010 to Nicole Dixon, we had asked that Nicole advise of us the filing of the XDPR Application, specifically for the purpose of reviewing the XDPR Application for compliance with applicable restrictive covenants. A copy of our April 15, 2010 letter to Nicole is enclosed. However, despite our written request, we were not advised by Nicole of the filing of the XDPR Application until we received her email of April 20, 2010, in which Nicole also advised us of the issuance of the Notice of Action on the XDPR Application. We obtained a copy of the XDPR Application on April 26, 2010 when we reviewed the Town's file on the XDPR Application.

Among the rights reserved under the Master Deed to the Declarant, as defined in the Master Deed, and held by Ephesian pursuant to the Quitclaim Deed, are the right to improve the Regime by clearing, tree pruning, constructing additional parking and common facilities, including, but not necessarily limited to recreational facilities, drainage facilities, lagoons, and the like. In addition, Ephesian holds rights of ingress and egress across the Regime property, the rights to install utility and drainage lines, equipment and facilities over the Regime property, and the right to grant easements over the Regime property. Further, Ephesian owns all water and sewer lines, pipes, pumps, pumping stations, and other equipment and facilities on the Regime property. We refer you to Exhibit A to the Master Deed.

Our review of the Town's file on the XDPR Application clearly indicates that the XDPR Application was incomplete when filed and when the Notice of Action was issued. The XDPR Application also represents that there are no recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request. As you can readily ascertain from this letter, Ephesian believes this representation is clearly false, as the Edgewater HOA's tabby pathway and related recreational amenities are in conflict with, and prohibited by, the provisions of the Master Deed.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended provides, in part,

(B) If a local planning agency has actual notice of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity:

(3) from any other source including, but not limited to, other property holders, the local planning agency must not issue the permit unless the local planning agency receives confirmation from the applicant that the restrictive covenant has been released for the tract or parcel of land by action of the appropriate authority or property holders or by court order.



Ephesian does not intend to relinquish any rights reserved to the Declarant under the Master Deed and the Quitclaim Deed, and is opposed to the project contemplated by the XDPR Application. Accordingly this letter provides the Town of Hilton Head Island with actual notice of a restrictive covenant on the Regime property that is contrary to, conflicts with, or prohibits the permitted activity.

We trust that the Town will take the appropriate action by rescinding the Notice of Action on the XDPR Application, and by not issuing any permit or other Notice of Action in connection with the XDPR Application until the XDPR Application is complete, and there is full compliance with the provisions of Section 1145(B)(3) of the South Carolina Code.

With best regards, we are

Very Truly Yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt
Enclosures

**TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
[Http://www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)**

IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR10013

April 30, 2010

Dear Mr. Bucko:

Town Staff has rescinded the Notice of Action issued to Edgewater on Broad Creek to construct a tabby walkway and brick areas at 50 Verbena Lane (Expedited Development Plan Review (XDPR10013). The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1). According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy. South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants. Therefore, prior to the review of any subsequent applications, you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your application.

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-309 should you disagree with the denial of XDPR100013 you may appeal to the Town's Planning Commission.

Additionally, the approval to install a new pool, Design Review Board application DR100017 has been voided by Town Staff for the reasons as described in the first paragraph above.

Please contact me if you have any additional questions concerning this matter.

Sincerely,



Teri Lewis, AICP
LMO Official

Cc: Chester C. Williams

**TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
[Http://www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)**

June 25, 2010
IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR100013

Dear Mr. Bucko:

This letter is in reference to the revocation of the Notice of Action issued for XDPR100013. On April 30, 2010, I sent you a letter stating that Town Staff was rescinding the Notice of Action issued for XDPR100013 due to discovery that misinformation was provided as part of the application. It is apparent that a neighboring property owner (Ephesian) claims certain covenant rights and controls which are disputed by Edgewater. It would appear that this is a civil dispute between two property owners which needs to be resolved by a court.

In addition, during a recent review of the Town's Land Management Ordinance (LMO) and discussions with legal staff, Town Staff realized that we revoked the Notice of Action without following the proper procedure listed in the LMO for revoking a permit. LMO Section 16-3-310.C states the following:

A vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval.

Based on the above section Staff should not have revoked the Notice of Action for XDPR100013 without prior notice and a public hearing.

At this time staff is going to hold the revocation in abeyance until such time that Edgewater and Ephesian have resolved the covenant dispute. As a result of this decision, APL100004 is moot and staff is in the process of refunding the \$100 application fee. Additionally the approval issued for XDPR100013 will remain in place subject to the outcome of the pending covenant dispute.

Also, in accordance with LMO Section 16-3-309 the issuance of the NOA for XDPR100013 may be appealed for a period of 30 days; the appeal period was interrupted by our letter of April 30, 2010. This above mentioned interruption results in the appeal period being tolled for 15 days and therefore any interested parties still have an additional 15 days to appeal the NOA for XDPR100013.

Please contact me if you have any additional questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Teri Lewis". The signature is written in a cursive, flowing style.

Teri Lewis, AICP
LMO Official

cc: Gregg Alford
Brian Hulbert
Michael Mogil
Chester C. Williams



LAW OFFICE OF
CHESTER C. WILLIAMS, LLC

17 Executive Park Road, Suite 2
Post Office Box 6028
Hilton Head Island, SC 29938-6028
Telephone (843) 842-5411
Telefax (843) 842-5412
Email Firm@CCWLaw.net

Exhibit J (4 Pages)

Chester C. Williams
ALSO MEMBER LOUISIANA BAR

Thomas A. Gasparini
ALSO MEMBER CALIFORNIA BAR
(Inactive)
ALSO MEMBER OHIO BAR
(Inactive)

July 8, 2010

Teri B. Lewis, AICP
LMO Official
Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928

HAND DELIVERED

RE: Edgewater on Broad Creek; Expedited Development Plan Review
Application No. XDPR100013 for Tabby Pathway – Our File No.
01505-005

Dear Teri:

On behalf of our client Ephesian Ventures, LLC (“Ephesian”), we request that you, as the LMO Official for the Town of Hilton Head Island (the “Town”), initiate proceedings under Section 16-3-310(C) of the Town’s Land Management Ordinance (the “LMO”) to revoke the approval of Expedited Development Plan Review Application No. XDPR100013 (the “XDPR Application”) evidenced by the April 15, 2010 Notice of Action (the “Notice of Action”) of the XDPR Application on the grounds that there was a material misrepresentation by the landowner or its agent in the XDPR Application.

Ephesian owns a 16.01 acre tract adjacent to the Edgewater on Broad Creek Horizontal Property Regime (the “Regime”). The Regime was established by the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase I) recorded on December 31, 2002 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 1689 at Page 574 (the “Master Deed”). We have previously provided you with a copy of the Master Deed, and we refer you to our letter to you of April 28, 2010.

Ephesian is the holder of the rights of the Declarant under the Master Deed by way of that certain Quitclaim Deed from the Trustee in Bankruptcy for Broad Creek Edgewater, LP, recorded on July 7, 2008 in Beaufort County Record Book 2742 at Page 2049 (the “Quitclaim Deed”). We have previously



provided you with a copy of the Quitclaim Deed, and we again refer you to our letter to you of April 28, 2010.

We also refer you to your letter dated April 30, 2010 to IMC Resort Services, Inc., the agent for the Edgewater Regime on the XDPR Application, by which you rescinded the Notice of Action, stating:

The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1)." (Emphasis added.)

A copy of your April 30, 2010 letter is enclosed herewith. Clearly, that letter evidences a determination by you, as the LMO Official, and Gregory M. Alford, Esq., the Town Attorney, that the XDPR Application contains misinformation that is a material misrepresentation.

Thereafter, by way of your June 25, 2010 letter to IMC Resort Services, Inc., you advised the Edgewater Regime that your April 30, 2010 revocation of the Notice of Action did not follow the procedure set forth in LMO Section 16-3-310(C), and that revocation is now being held in abeyance.

Section 6-29-1145(B)(3) of the Code of Laws of South Carolina (1976), as amended, prohibits the Town from issuing any permit if the Town has knowledge from any source of a restrictive covenant on a tract or parcel of land that is contrary to, conflicts with, or prohibits the permitted activity. Based on the determinations made by you, as the LMO Official, and the Town Attorney as set forth in your April 30, 2010 letter, it is readily apparent that the XDPR Application would not, and could not, have been approved by the Town but for the material misrepresentation in the XDPR Application.

Under LMO Section 16-8-103(A), you, as the LMO Official and the Administrator of the LMO, have responsibility for enforcement of the LMO; and under LMO Section 16-8-103(C)(2), you have a duty to take whatever action is necessary to assure compliance with the provisions of the LMO. Based upon the specific determinations made in your April 30, 2010 letter, after review by the Town Attorney, that misinformation was provided by you as part of the XDPR Application and that the project proposed by the XDPR Application is in violation of the Master Deed, it is incumbent upon you to institute revocation proceedings regarding the XDPR Application and the Notice of Action under LMO Section 16-3-310(C), as a material misrepresentation in an application is



a clear basis for revocation of a permit. We submit that you and your Staff cannot sit idly by and take no action in such circumstances, particularly when you and the Town Attorney have already made determinations which are conclusive to the issues.

On behalf of Ephesian, we formally request that you immediately take appropriate steps to initiate revocation proceedings under LMO Section 16-3-310(C) regarding the Notice of Action, and suspend the effectiveness of the Notice of Action pending those proceedings.

With best regards, we are

Very truly yours,

LAW OFFICE OF CHESTER C. WILLIAMS, LLC

Chester C. Williams

CCW:skt

Enclosure

cc: Stephen G. Riley, AICP
Charles F. Cousins, AICP
Gregory M. Alford, Esq.

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT
One Town Center Court, Hilton Head Island, S.C. 29928
(843) 341-4757 Fax (843) 842-7228
[Http://www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)

IMC Resort Services, Inc
2 Corpus Christi Place
Suite 302
Hilton Head Island, SC 29928

RE: Edgewater on Broad Creek, tabby walkway
XDPR10013

April 30, 2010

Dear Mr. Bucko:

Town Staff has rescinded the Notice of Action issued to Edgewater on Broad Creek to construct a tabby walkway and brick areas at 50 Verbena Lane (Expedited Development Plan Review (XDPR10013). The Notice of Action has been rescinded and the project denied based on discovery that misinformation was provided by you as part of the application. After further review by the Town's attorney, the proposed project is in violation of the Master Deed Establishing the Edgewater on Broad Creek Horizontal Property Regime (Phase 1). According to information contained in the deed, Ephesian retains all rights that went with the property transfer as part of the bankruptcy. South Carolina Code of Laws (Section 6-29-1145(B)(3)) prohibits the issuance of permits and approvals if they are contrary to the restrictive covenants. Therefore, prior to the review of any subsequent applications, you must receive written approval from Ephesian based on requirements in the recorded covenants and submit it as part of your application.

Please be aware that per Town Land Management Ordinance (LMO) Section 16-3-309 should you disagree with the denial of XDPR100013 you may appeal to the Town's Planning Commission.

Additionally, the approval to install a new pool, Design Review Board application DR100017 has been voided by Town Staff for the reasons as described in the first paragraph above.

Please contact me if you have any additional questions concerning this matter.

Sincerely,



Teri Lewis, AICP
LMO Official

Cc: Chester C. Williams

H

Supreme Court of South Carolina.
 SPANISH WELLS PROPERTY OWNERS
 ASSOCIATION, INC., Respondent,

v.

BOARD OF ADJUSTMENT OF the
 TOWN OF HILTON HEAD ISLAND,
 South Carolina, Petitioner.

In re CALIBOGUE SQUARE SUBDIVI-
 SION.

No. 22859.

Heard March 8, 1988.
 Decided April 11, 1988.

After town planning commission granted preliminary development permit, property owners association appealed the commission's action to the Board of Adjustment. The Board of Adjustment denied the appeal, and association appealed to the Court of Common Pleas. The Court of Common Pleas, Beaufort County, John H. Waller, Jr., J., granted Board of Adjustment's motion to dismiss, and association appealed. The Court of Appeals, [292 S.C. 542, 357 S.E.2d 487](#), reversed, and board sought review. The Supreme Court granted certiorari to review, and held that party, who was granted development permit, was necessary party to appeal of its permit.

Reversed.

West Headnotes

Zoning and Planning 414 ↪ 1602

414 Zoning and Planning

414X Judicial Review or Relief

414X(B) Proceedings

414k1600 Parties

414k1602 k. Necessary and indispensable parties. [Most Cited Cases](#)

(Formerly 414k582.1, 414k582)

Party who was granted development permit was necessary party to appeal of its permit.

****161 *67** Curtis L. Coltrane and James M. Herring, of Herring, Meyer & Coltrane, P.A., Hilton Head Island, for petitioner.

Phillip C. Lyman, of Lyman & Howell, P.A., Hilton Head Island, for respondent.

***68 PER CURIAM:**

This case involves a development dispute on Hilton Head Island. This Court granted certiorari to review the decision of the Court of Appeals in *Spanish Wells Property Owners Ass'n v. Board of Adjustment*, [292 S.C. 542, 357 S.E.2d 487 \(Ct.App.1987\)](#). We now reverse and remand.

The Hilton Head Island Planning Commission granted a preliminary development permit to Calibogue Yacht Properties, Inc. (Calibogue). Respondent Spanish Wells Property Owners Association, Inc. (Spanish Wells) objected to the issuance and appealed to petitioner Board of Adjustment (Board). The Board denied the appeal, and Spanish Wells appealed to the circuit court. The Board moved to dismiss under [Rule 12\(b\)\(7\), SCRCF](#), arguing that Calibogue was a necessary party to the appeal under [Rule 19, SCRCF](#). The circuit court granted the motion to dismiss, but allowed Spanish Wells fifteen days leave to join Calibogue. Spanish Wells instead appealed the order; the Court of Appeals reversed, holding that Calibogue was a proper, but not necessary, party to the appeal.

The sole question we address here is whether a permittee is a necessary party to an action to revoke a development permit.

Other jurisdictions are divided on whether the permittee or successful applicant is a necessary party to an appeal instituted by an aggrieved party. The emerging majority view is that the permittee is a necessary party. See 3 Rathkopf, *The Law of Zoning and Planning* § 42.05[3] (4th Ed.1980 & Supp.1987) (citing numerous cases espousing “ascending” view); [101A C.J.S. Zoning and Planning § 301 \(1979\)](#).

We find the reasoning behind the majority rule convincing. Designating the permittee a necessary party insures the most vitally interested party's participation in the appellate process. See [Cathcart-Maltby-Clearview Community Council v. Snohomish County, 96 Wash.2d 201, 634 P.2d 853 \(1981\)](#) (owner-applicant is party “most affected” and is necessary to any proceeding to invalidate his interest). Participation*69 by the most interested party serves judicial economy. Additionally, the majority rule insures that where a circuit court reverses a permit approval, the permittee will be bound because it is a party to the appeal. See [Hidden Lake Development Co. v. District Court, 183 Colo. 168, 515 P.2d 632 \(1973\)](#); accord [Board of Commissioners of Mesa County v. Carter, 193 Colo. 225, 564 P.2d 421 \(1977\)](#); [Lanaux v. City of New Orleans, 489 So.2d 329 \(La.Ct.App.1986\)](#); [Schroeder v. Burleigh County Board of Commissioners, 252 N.W.2d 893 \(N.D.1977\)](#).

For the foregoing reasons, we adopt the majority rule and hold that a development permittee is a necessary party to an appeal of its permit. The trial court therefore correctly ruled that Calibogue was a necessary party to Spanish Wells' appeal of the permit approval. Accordingly, the decision of the Court of Appeals to the contrary is **162 reversed and the circuit court's order

is affirmed.

REVERSED.

S.C.,1988.
Spanish Wells Property Owners Ass'n, Inc.
v. Board of Adjustment of Town of Hilton
Head Island
295 S.C. 67, 367 S.E.2d 160

END OF DOCUMENT



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 SPECIAL EXCEPTION

Case #:	Name of Development:	Public Hearing Date:
SER100002	Kool Runnins Bar & Lounge LLC	September 27, 2010

Parcel or Location Data:	Property Owner	Applicant
Address: 160 William Hilton Pkwy Parcel#: R511 008 000 072A 0000 Zoning: SMU (Stony Mixed Use Zoning District), COR (Corridor Overlay District) Acreage: 1.97	JMC Holding LLC 160 William Hilton Parkway Hilton Head Island, SC 29926	Randal R. Smith 6 Ironwood Circle Bluffton, SC 29910

Application Summary:

Randal R. Smith of Kool Runnins Bar & Lounge LLC is proposing to operate a bar in a vacant building at Fairfield Square in the SMU (Stony Mixed Use) Zoning District, which requires special exception approval according to Land Management Ordinance (LMO) Section 16-4-1104, Use Table.

Background:

The applicant wishes to operate a bar in the vacant building at Fairfield Square. The existing building used to be a barber shop and is no longer in business. The subject property is located at 160 William Hilton Parkway in the SMU zoning district and is considered a shopping center with existing commercial establishments. The parcel is surrounded by a Town owned park to the north, residential use to the west, vacant property to the south and a medical office to the east.

Applicant's Grounds for Special Exception, Summary of Facts and Conclusions of Law:

Grounds for Special Exception:

Randal Smith is requesting a special exception for a bar use in the SMU zoning district per the requirements of LMO Section 16-4-1104, Use Table. The applicant states in the narrative that the bar will be operating in an existing vacant building and that he is not proposing to make any external changes to the building, the property or to any natural resources on site. Because the property is already commercially developed, the applicant believes the proposed use is compatible with the surrounding uses. The applicant states in the narrative that he will provide outside security to ensure there will be no outside loud noise, disturbances or nuisances to the surrounding properties and businesses.

Summary of Fact:

- Applicant seeks a special exception as set forth in LMO Section 16-3-1801.

Conclusion of Law:

- Applicant may seek a special exception for the proposed use as set forth in LMO Section 16-3-1801.

LMO Official Summary of Facts and Conclusions of Law:

Summary of Facts:

- Application was submitted as set forth in LMO Section 16-3-1802.
- Notice of the Application was published in the Island Packet on August 15, 2010 as set forth in LMO Sections 16-3-110 and 16-3-111.
- Notice of the Application was posted and mailed as set forth in LMO Sections 16-3-110 and 16-3-111.
- The applicant submitted an affidavit stating they met the mailed notice requirements as set forth in LMO Section 16-3-111.
- The Board has authority to render the decision reached here under LMO Section 16-3-1804.

Conclusions of Law:

- The application is in compliance with the submittal requirements established in LMO Section 16-3-1802.
- 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 16-3-1805, Special Exception Review Criteria, the BZA shall approve an application for use by special exception if and only if the applicant shall demonstrate that the proposed use and any associated development will be consistent with the following criteria.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 1: It will be in accordance with the Comprehensive Plan (LMO 16-3-1805A):

Findings of Fact:

- The applicant will be operating a business in an existing vacant building. There are no proposed improvements planned for the site, nor will there be any negative impacts to the existing vegetation or natural resources on site.
- The property is already developed with utilities and access in place.

Conclusion of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805A because the granting of this special exception is supported by the adopted 2010 Comprehensive Plan.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 2: It will be consistent with the ‘character and purpose’ statement of the applicable district (LMO 16-3-1805B):

Finding of Fact:

- Pursuant to LMO Section 16-4-210, it is the intent of the Stoney Mixed Use District to encourage cooperation between property owners in the development of their properties, to provide for connectivity between their properties, and to create an atmosphere which is more pedestrian friendly than traditional commercial development. Uses permitted in this district allow for a mix of residential, commercial, office, and some resort accommodations. This district has unique opportunities due to its Island gateway location, the large amount of shoreline along the tidal creeks, and constraints due to the largest volume of traffic on Hilton Head Island (traveling on US 278). The uses permitted in this district are intended to balance these opportunities and constraints. Development should utilize access other than US 278 whenever possible, and should take advantage of the views across the tidal creeks in the area.

Conclusions of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805B.
- The proposed bar business will be consistent with the character and purpose of this district because it is locating in an existing shopping center with a well balance of mixed land uses surrounding the property.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 3: It will be compatible with the existing uses adjacent to and near the property (LMO-3-1805C):

Finding of Fact:

- The proposed business will be operating in a location where there is a medical office across the street, an adjacent Town park, residential use in the rear, a boat business nearby, and within an existing shopping center with other commercial establishments.

Conclusions of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805C.
- Although there is adjacent single family residential use, the proposed business will be locating within an existing shopping center currently occupied by commercial businesses; therefore staff finds the application will be compatible with the surrounding land uses in this area.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 4: It will not be hazardous, detrimental or disturbing to present surrounding land uses due to noise, glare, smoke, dust, odor, fumes, water pollution or general nuisance (LMO 16-3-1805D):

Findings of Fact:

- The applicant has stated he will provide outside security to ensure there will be no outside loud noise, nuisance or any other kind of disturbances to the surrounding land uses.
- The proposed use is not known to be hazardous and will not be disturbing to the surrounding land uses due to glare, dust, odor, fumes, or water pollution.

Conclusion of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805D because the proposed use will not be hazardous, detrimental or disturbing to present surrounding land uses.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 5: It will not otherwise adversely affect the development of the general neighborhood or of the district in which the use is proposed (LMO 16-3-1805E):

Findings of Fact:

- The proposed use is a commercial use to be located in the SMU zoning district, which allows for commercial and mixed uses.
- There is already a restaurant with a bar located in the rear of the subject property.
- The applicant has stated he will provide outside security to ensure there will be no outside loud noise, nuisance or any other kind of disturbances to the surrounding land uses and of the general neighborhood.

Conclusions of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805E.
- The granting of the special exception will not adversely affect the development of the general neighborhood or the SMU zoning district because the proposed use is compatible with the existing land uses in this vicinity and the applicant will provide security to prevent any outside nuisances or disturbances.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 6: It will be consistent with existing and planned pedestrian and vehicular circulation adjacent to and near the property (LMO 16-3-1805F):

Findings of Fact:

- The subject property is located on William Hilton Parkway, with curb cuts and vehicular access already in place.
- There are no existing pedestrian pathways immediately adjacent to or near the subject property.

Conclusion of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805F because the application is consistent with the existing pedestrian and vehicular circulation near the property.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 7: It will have adequate water and sewer supply, storm water facilities, waste disposal and other public services (LMO 16-3-1805G):

Findings of Fact:

- The site is served by Hilton Head PSD for water and has a septic tank.
- The proposed business will be operating in an existing building, which is part of an existing shopping center that is already fully developed and has existing storm water and other services adequate to serve the development.

Conclusion of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805G because there is already adequate utilities and infrastructure servicing the property.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 8: It will be developed in a way that will preserve and incorporate any important natural features that are a part of the site (LMO 16-3-1805H):

Finding of Fact:

- The proposed business will be operating in an existing vacant building. There is no plan to develop the property any further at this time.

Conclusion of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805H because there will be no impact on the natural resources with the proposed application.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 9: It will conform to any specific criteria or conditions specified for that use by special exception in the applicable district or for the proposed use, as set forth in Chapter 4 of this Title (LMO 16-3-1805I):

Findings of Fact:

- Pursuant to Section 16-4-1340, the specific use standards for a nightclub or bar, the business is required to meet certain criteria and conditions.
- The proposed business is not located within 200 feet from any existing church, public or private school, or residential district.
- The proposed business is not located within 500 feet of an existing nightclub or bar.
- The proposed business is located south of US Highway 278.

Conclusion of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805I because the proposed application meets all the criteria specified for this use.

LMO Official Summary of Facts and Conclusions of Law:

Criteria 10: It will not be contrary to the public health, safety and welfare, provided that a denial based exclusively on this language shall include explicit findings regarding the way in which granting the special exception would be contrary to the public health, safety and welfare (LMO 16-3-1805J):

Finding of Fact:

- Staff does not have any explicit findings to show that the proposed use will be contrary to the public health, safety and welfare of others.

Conclusion of Law:

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-3-1805J because the proposed application will not be contrary to the public health, safety and welfare.

LMO Official Determination:

Based on the above Findings of Fact and Conclusions of Law, the LMO Official determines that the request for special exception should be granted to the applicant for the proposed bar business in the SMU zoning district because it is in conformance with the Comprehensive Plan and the Land Management Ordinance.

Staff Recommendation:

Determination: Staff recommends the Board of Zoning Appeals **approve** the application based on the above Findings of Fact and Conclusions of Law.

BZA Determination and Motion:

The "powers" of the BZA over special exceptions are defined by the South Carolina Code, Section 6-29-800, and in exercising the power, the BZA may "permit uses by special exception subject to the terms and conditions for the uses set forth for such uses in the zoning ordinance..." 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 III 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.

PREPARED BY:

ND

Nicole Dixon
Planner

September 7, 2010

DATE

REVIEWED BY:

JL

Jayne Lopko, AICP
Senior Planner

September 10, 2010

DATE

ATTACHMENTS:

- A) Vicinity Map
- B) Applicant's Narrative
- C) Site Plan
- D) Picture



Special Exception Request



Kool Runnins Bar and Lounge LLC Narrative

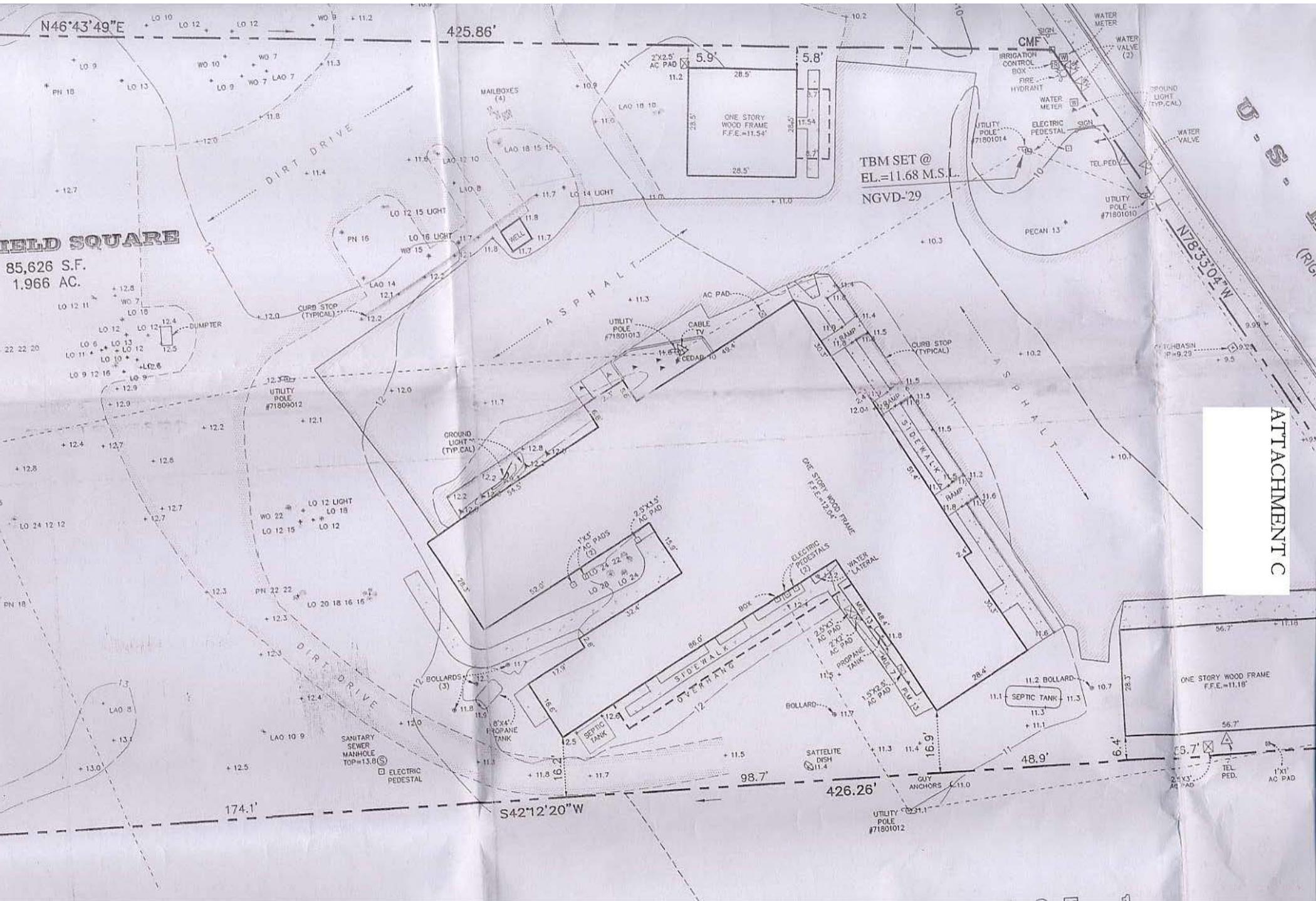
sherry17@myway.com

06:30 p.m.

Para babydee203@hotmail.com

Narrative for: Kool Runnins Bar and Lounge LLC Special Exeptions Letter.

- (a). We will be occupying a building that is already built and designed in accordance with the Comprehensive Plan for the Town of Hilton Head Island. We will not be cutting down any trees or damaging any of the landscape. We will be supported by natural resources that is already there.
- (b). The building is located in an area that is already commercially developed. We will not be adding to the building or doing any form of construction. We will be using the existing building which is appropriate and business ready for the type of business we would like to add there.
- (c). We will be occupying a building within a commercial area which has already been commercially developed. Currently there is a restaurant and a convenience/grocery store. Therefore we will be compatible with the existing uses of the property.
- (d). Kool Runnins Bar and Lounge LLC will be operational between the hours of 12:00noon - 2:00am. There will be no cooking on the premises, we will have no stoves or fryers. We will have a microwave as we will be selling prepackaged food/meals and will need a microwave in order to prepare hot food for sale. Kool Runnins Bar and Lounge LLC will be a NO SMOKING establishment which we will make known verbally, and by visable none/no smoking signs and if necessary enforced by security. There will be no loud music that will be played to either disturb or be a nuisance to present surrounding land uses. Low music will be played on the inside for easy listening pleasure. The outside will be fully secure as we will have outside security personnel who will ensure, and enforce that there will be no form of group congregation on the outside, loud noise, or any kind of disturbances.
- (e). We will not be doing any form of construction or addition to the property or building. Kool Runnins Bar and Lounge LLC will not affect the surrounding neighbourhood.
- (f). Building is already located on commercial property which has adequate parking and pedestrian and vehicular circulation.
- (g). The property is already a fully developed site and all utilities are in place.
- (h). We will be doing no construction on the property and will be adding nothing on the outside.
- (i). We have discussed the criteria and conditions applicable to the proposed use by Kool Runnins Bar and Lounge LLC with the Town of Hilton Head Island planning personnels and, we have met the criteria.
- (j). Kool Runnins Bar and Lounge LLC will have experienced and professional employees who ensure the safety and welfare of our customers by:
- (1) Limit consumption of alcohol
 - (2) Check id cards to ensure proper drinking age
 - (3) Added security for a no weapons and drug free environment.



ATTACHMENT C



ATTACHMENT D

Proposed Special Exception Location



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Jayme Lopko, AICP, Senior Planner
DATE: September 10, 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 July Board of Zoning Appeals meeting.

Administrative Waivers

August

1. Turtle Lane Club located at 1 Beach Lagoon Road, requested to make site improvements in drainage and drive aisles resurfacing. A waiver was granted due to the alteration of existing nonconforming site features. This waiver was granted as part of an Expedited Development Plan Review with a specific site plan. The site will be inspected as part of the Certificate of Compliance to ensure all improvements were made according to the approved site plan.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Jayme Lopko, AICP, Senior Planner
DATE: September 10, 2010
SUBJECT: Rules of Procedure

Staff has drafted the following amendments to the Rules of Procedure for discussion:

Article V. Meetings and Quorum

Section 2. Quorum.

~~A quorum shall consist of four (4) members of the board for regular business and six (6) members for an appeal from the Administrator's decision.~~ 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.

Article VI. Meeting Administration, Public Comment, Notices, Fees, Voting Supplemental Submissions/Briefs

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 decision, a majority vote of the entire Board shall be necessary, thus requiring at least 4 affirmative votes to pass a motion ~~6 members to be present~~.
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 [~~Original plus seven (7) copies~~ one (1) hard copy or one (1) copy sent via e-mail] to the Secretary of the Board no later than 8:00am the business day 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. 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.

South Carolina State Code of Laws**SECTION 6-29-780. Board of zoning appeals; membership; terms of office; vacancies; compensation.**

(A) As a part of the administrative mechanism designed to enforce the zoning ordinance, the zoning ordinance may provide for the creation of a board to be known as the board of zoning appeals. Local governing bodies with a joint planning commission and adopting a common zoning ordinance may create a board to be known as the joint board of appeals. All of these boards are referred to as the board.

(B) The board consists of not less than three nor more than nine members, a majority of which constitutes a quorum, appointed by the governing authority or authorities of the area served. The members shall serve for overlapping terms of not less than three nor more than five years or after that time until their successors are appointed. A vacancy in the membership must be filled for the unexpired term in the same manner as the initial appointment. The governing authority or authorities creating the board of zoning appeals may remove any member of the board for cause. The appointing authorities shall determine the amount of compensation, if any, to be paid to the members of a board of zoning appeals. None of the members shall hold any other public office or position in the municipality or county.