



Town of Hilton Head Island
Board of Zoning Appeals Meeting
Monday, March 26, 2012
2:30 p.m. 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 – Regular Meeting of January 23, 2012

8. Unfinished Business

Public Hearing

VAR110005: Clotilde Book is requesting a variance from LMO Section 16-4-704, Forest Beach Neighborhood Character Overlay District Regulations, to allow a proposed addition to the house to encroach into the rear adjacent use setback and buffer. The property is located at 22 Sandpiper Street and is further identified as Parcel 496 on Beaufort County Tax Map 15A. *This application has been withdrawn at the applicant's request.*

Public Hearing

VAR110006: James Hicks is requesting a variance from LMO Section 16-6-204, Wetland Buffers, to allow proposed additions to the existing house and deck to encroach up to five feet into the wetland buffer. The property is located at 2 Berkshire Court and is further identified as Parcel 256 on Beaufort County Tax Map 15D. *Presented by: Anne Cyran*

9. New Business

None

10. Board Business

11. Staff Report

Waiver Report - *Presented by: Nicole Dixon*

12. Adjournment

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

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TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, January 23, 2012 Meeting
2:30p.m. - Benjamin M. Racusin Council Chambers

DRAFT

7 Board Members Present: Chairman Roger DeCaigny, Vice Chairman Peter Kristian,
8 Alan Brenner, Michael Lawrence, Jack Qualey, Stephen Murphy
9 and Glenn Stanford
10
11 Board Members Absent: Michael Lawrence and Stephen Murphy, Excused
12
13 Council Members Present: None
14
15 Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
16 Anne Cyran, Senior Planner
17 Heather Colin, Development Review Administrator
18 Teri Lewis, LMO Official
19 Richard Spruce, Plans Administrator
20 Kathleen Carlin, Board Secretary

21
22 **1. CALL TO ORDER**

23 Chairman DeCaigny called the meeting to order at 2:30p.m.
24

25 **2. ROLL CALL**

26
27 **3. INTRODUCTION TO BOARD PROCEDURES**

28 Chairman DeCaigny stated the Board's procedures for conducting today's business meeting.
29

30 **4. APPROVAL OF THE AGENDA**

31 Mr. Stanford made a **motion** to **approve** the agenda as presented. Vice Chairman Kristian
32 **seconded** the motion and the motion **passed** with a vote of 5-0-0.
33

34 **5. APPROVAL OF THE MINUTES**

35 Vice Chairman Kristian made a **motion** to **approve** the minutes of the November 28, 2011
36 meeting as presented. Mr. Brenner **seconded** the motion and the motion **passed** with a vote
37 of 5-0-0.
38

39 **6. UNFINISHED BUSINESS**

40 None
41

42 **7. NEW BUSINESS**

43 **Public Hearing**

44 **SER110006**: Request for Special Exception for a Telecommunications Facility in the
45 Parks and Recreation (PR) Zoning District. Jay Sanders of American Tower Corporation is
46 proposing to construct a cell tower near the Reverse Osmosis Plant on Jenkins Island. The

1 property is located at 11 Gateway Drive, and is further identified as Parcel 99 on Beaufort
2 County Tax Map 6.

3 Ms. Nicole Dixon made the presentation on behalf of staff. Ms. Dixon stated that based on
4 the Findings of Fact and Conclusions of Law contained in the staff's report, the LMO
5 Official has determined that the request for a special exception should be *granted* to the
6 applicant for the proposed Telecommunications Facility in the PR Zoning District. The
7 application is in conformance with the Comprehensive Plan and the Land Management
8 Ordinance.

9
10 The applicant is proposing to construct a 148-foot cell tower for AT&T near the Reverse
11 Osmosis Plant on Town-owned property on Jenkins Island. This tower will improve coverage
12 to in-building and in-vehicle users who are currently experiencing dropped calls and slow
13 data speeds in this area. On September 20, 2011, Town Council approved the conceptual
14 location of the proposed cell tower.

15
16 The applicant is requesting special exception approval for a Telecommunications Facility in
17 the PR Zoning District per the requirements of LMO Section 16-4-1204, Use Table. The
18 applicant stated in the narrative that the cell tower will be constructed near the existing
19 Reverse Osmosis Plant so that there will be minimal tree disturbance. The applicant believes
20 the proposed use will be compatible with surrounding uses because it will be located near an
21 existing utility and there are sufficient buffers surrounding the use so that the remainder of
22 the property can still be used as a park. The tower will contain telecommunications
23 equipment that will produce little to no noise and will not generate glare, smoke, dust, odor,
24 fumes, water pollution or general nuisance. Ms. Dixon reviewed the Findings of Fact and
25 Conclusions of Law. Following the staff's presentation, Chairman DeCaigny requested that
26 the applicant make his presentation.

27
28 Mr. Jay Sanders, the applicant's representative, presented statements in support of the
29 application. Following Mr. Sanders' presentation, Chairman DeCaigny requested public
30 comments and the following were received. Mr. Ernie Lindblad, citizen, presented comments
31 regarding the height and visibility of the tower. Following these comments and final
32 discussion by the Board, Chairman DeCaigny requested that a motion be made.

33
34 Vice Chairman Kristian made a **motion** to grant **approval** of Application for Special
35 Exception, SER110006, as presented by the staff based on the Findings of Fact and
36 Conclusions of Law contained in staff's report. Mr. Stanford **seconded** the motion and the
37 motion **passed** with a vote of 5-0-0.

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39 **Public Hearing**

40 **VAR110005:** Clotilde Book is requesting a variance from LMO Section 16-4-704, Forest
41 Beach Neighborhood Character Overlay District Regulations, to allow a proposed addition
42 to the house to encroach into the rear adjacent use setback and buffer. The property is
43 located at 22 Sandpiper Street and is further identified as Parcel 496 on Beaufort County
44 Tax Map 15A.

45
46 Ms. Anne Cyran made the presentation on behalf of staff. Staff recommended that the
47 Board of Zoning Appeals *disapprove* the application based on the LMO Official
48 Determination and the Findings of Facts and Conclusions of Law stated in the staff's report.

1
2 Ms. Clotilde Book, property owner, applied for a building permit on November 16, 2011 to
3 build a 525 square foot addition on her 1,260 square foot house. Based on a consultant's
4 recommendations to improve energy efficiency, the building plans include two additions to
5 fill out the original H-shaped floor plan and repairs to the roof, insulation and duct work. The
6 building permit was approved, and the additions and repairs are currently underway. The
7 approved additions will not encroach into any setbacks or buffers. There is an existing shed
8 on the side of the house that is legally non-conforming because it encroaches 42 square feet
9 into the side adjacent use setback and buffers. The total size of that encroachment is 3.5% of
10 the setback and buffer area.

11
12 Ms. Cyran stated that Ms. Book would like to amend the approved building plan to add a gas
13 fireplace in the back of the house. Ms. Book states the fireplace would heat the house warmer
14 and more efficiently than other options. As this property is located in the North Forest Beach
15 Neighborhood Character Overlay District, it is subject to a 12 foot adjacent use setback and
16 buffer on the rear of the property. The proposed fireplace would require a 48 square foot
17 encroachment (12 wide by four feet deep) into this setback and buffer. The total size of the
18 proposed encroachment would be 3.6% of the setback and buffer area.

19
20 Ms. Cyran presented an in-depth review of the application including a visual overhead
21 review of the property and site plan. Ms. Cyran reviewed the applicant's proposed addition.
22 The variance is required because the owner has amended the existing approved building
23 permit to build a fire place that will encroach into the rear adjacent use setback and buffer
24 area. Ms. Cyran then reviewed the Findings of Fact and Conclusions of Law; the application
25 has not met five of the six required criteria. Following the staff's presentation, Chairman
26 DeCaigny requested that the applicant make her presentation.

27
28 Ms. Clotilde Book presented statements in support of the application. Ms. Book stated that
29 she would like to amend the approved building plan in order to add a gas fireplace in the
30 back of the house. The Board stated concern with some discrepancies in her application and
31 the intent of her project. The Board and the staff discussed the possible intrusion of the roof
32 overhangs into the buffer. Following this discussion, and in the interest of time, the Board
33 recommended that the Board **table** further discussion and action on VAR110005 until the
34 end of today's New Business. In the meantime, the Board would like staff to determine if the
35 roof overhang extends into the buffer. Chairman DeCaigny requested that a motion be made.

36
37 Vice Chairman Kristian made a **motion** to **table** further discussion on Application for
38 Variance, VAR110005, until the end of the meeting. Mr. Qualey **seconded** the motion and
39 the motion **passed** with a vote of 5-0-0.

40 41 **Public Hearing**

42 **VAR110006:** James Hicks is requesting a variance from LMO Section 16-6-204, Wetland
43 Buffers, to allow proposed additions to the existing house and deck to encroach up to five
44 feet into the wetland buffer. The property is located at 2 Berkshire Court and is further
45 identified as Parcel 256 on Beaufort County Tax Map 15D.

46 Ms. Anne Cyran made the presentation on behalf of staff. The staff recommended that the
47 Board of Zoning Appeals *disapprove* the application based on the LMO Official
48 Determination and the Findings of Facts and Conclusions of Law stated in the staff's report.

1 If the application is approved by the Board, staff recommends that the Board of Zoning
2 Appeals adds a condition that the owner must plant the remaining portion of the wetland
3 buffer with native wetland vegetation per a planting plan approved by Town staff.
4

5 Ms. Cyran presented an in-depth review of the application including visual overhead reviews
6 of the site and vicinity. Ms. Cyran reviewed the Findings of Facts and Conclusions of Law.
7 Ms. Cyran stated that the application does not meet five of the six required criteria.
8 Following staff's presentation, Chairman DeCaigny requested that the applicant make his
9 presentation.
10

11 Applicant, Mr. Jim Hicks, presented statements in support of his application. Mr. Hicks
12 discussed the safety reasons for wanting to add a rear exit. Mr. Hicks stated that he wanted
13 also like to add a small functional area to the rear outside. The applicant stated that he is
14 requesting a variance for 90 square feet (5' out and then across to the edge of the home). Mr.
15 Hicks stated that he believes his application meets five of the six required criteria. The
16 Board and the applicant discussed the issue of the stairs and the need for symmetry.
17

18 The Board and the applicant discussed the location of the stairs. Ms. Cyran presented
19 statements regarding the location of the stairs, a patio area, and the encroachment into the
20 buffer. The Board stated concern with the application because it seems to be too vague. The
21 applicant should meet with his architect and develop plans that are clear and understandable.
22 Mr. Stanford suggested that the applicant table further discussion on the application to allow
23 time for the applicant to meet with his architect. The applicant stated that he would like the
24 issue to be resolved by the Board today, if possible. Following the applicant's presentation,
25 Chairman DeCaigny requested public comments and none were received. Following final
26 comments by the Board, Chairman DeCaigny requested that a motion be made.
27

28 Mr. Stanford made a **motion** for the Board to **disapprove** Application for Variance,
29 VAR110006, based on the Findings of Fact and Conclusions of Law stated in the staff's
30 report. Vice Chairman Kristian **seconded** the motion. Before the vote was taken on the
31 motion, Mr. Qualey stated his agreement with Mr. Stanford's earlier suggestion that the
32 applicant table further action on the application to allow time for the applicant to clarify his
33 plans. A clearer, more detailed submission based on today's discussion will be needed.
34

35 The Board and the applicant discussed this idea and the applicant agreed. Following the
36 discussion, Chairman DeCaigny requested that the previous motion be withdrawn. Mr.
37 Stanford then **withdrew** his motion for denial and Vice Chairman Kristian **withdrew** his
38 **second** to the motion. Chairman DeCaigny then requested that a new motion be made.
39

40 Mr. Stanford made a new **motion** that the Board should **table** further discussion and action
41 on Application for Variance, VAR110006, to the March 26, 2012 meeting. Vice Chairman
42 Kristian **seconded** the motion and the motion **passed** with a vote of 5-0-0.
43

44 **Public Hearing**

45 **VAR110007:** Request for variance from LMO Sections 16-5-704, Adjacent Use Setback and
46 16-5-806, Adjacent Use Buffer. Brad O'Keefe, with South Island Public Service District, is
47 requesting a variance from the adjacent use setback and buffer to construct a new water

1 supply well. The property is located at 7 Delander Wireless Court, and is further identified as
2 Parcel 918 on Beaufort County Tax Map 14.

3
4 Ms. Nicole Dixon made the presentation on behalf of staff. The staff recommended that the
5 Board of Zoning Appeals *approve* the application based on the Findings of Facts and
6 Conclusions of Law stated in the LMO Official Determination and the staff report. The
7 subject property is currently used by the SIPSD as a key part of the Island's public water
8 supply infrastructure. The property contains an elevated water storage tank that provides
9 operating, emergency and fire fighting water storage volumes.

10
11 The SIPSD relies on wells that withdraw groundwater from the Upper Floridian Aquifer for a
12 significant part of the public water supply. Studies have indicated that the Upper Floridian
13 Aquifer groundwater levels are declining as a result of regional over-drafting and some are
14 experiencing failures due to saltwater intrusion. Recent studies conclude that other wells
15 located in the vicinity of the subject property will fail within the next several years due to
16 saltwater intrusion.

17
18 The SIPSD has been working with their engineering and geohydrologist consultants who
19 recommend that the SIPSD replace the failed Upper Floridian Aquifer wells with aquifer
20 storage and recovery wells that are finished in the Middle Floridian Aquifer. The location of
21 the new wells is constrained by several parameters, such as having to be in proximity to large
22 diameter transmission and distribution pipelines. The subject property meets all of the
23 requirements, but the location of the existing water storage tank limits the possible locations
24 for the new well on the site due to requirements for safely setting and operating the well
25 drilling rig and related equipment.

26
27 In order to meet the safety requirements, the new well needs to be located within the adjacent
28 use setback and buffer. The applicant has discussed the situation with staff and has decided
29 to seek a variance in order to be able to use the property for a new well site. The property is
30 surrounded by vacant Town-owned land to the south and east and by multifamily residential
31 uses to the north and west. The applicant has received temporary construction easements and
32 a pollution free radius easement from the Town for the construction of the proposed well site.

33
34 Ms. Dixon presented an in-depth review of the application including a review of the
35 Findings of Fact and Conclusions of Law. The application meets all of the required criteria.
36 Following the staff's presentation, Chairman DeCaigny requested that the applicant make his
37 presentation.

38
39 Mr. Brad O'Keefe, with South Island Public Service District, presented statements in support
40 of the application. Following the applicant's presentation, Chairman DeCaigny requested
41 public comments.

42
43 Chester C. Williams, Esq., stated his concern with a fairness issue. The staff has
44 recommended that this application be approved whereas the staff recommended disapproval
45 of a similar application, VAR110005. Mr. Kevin Camp, area resident, presented statements
46 in concern of potential noise and other issues. The applicant responded to Mr. Camp's
47 concerns. This concluded public comments.

1
2 Ms. Teri Lewis presented statements in support of the staff's review. Mr. Qualey stated that
3 he agrees with the public comments presented by Chester C. Williams with regard to the
4 fairness issue (of applications VAR110005 and VAR110007). The Board discussed the
5 similarity of the two applications. Ms. Nicole Dixon stated that the staff evaluates each
6 application on an individual basis. Staff does not agree that the two applications are similar
7 due to the clear differences in each of the properties. The staff stands by their
8 recommendation to approve VAR1100007 and disapprove VAR110005. Following final
9 discussion by the Board, Chairman DeCaigny requested that a motion be made.

10
11 Vice Chairman Kristian made a **motion** to **approve** Application for Variance VAR110007 as
12 presented based on the Findings of Fact and Conclusions of Law stated in the staff's report.
13 Mr. Brenner **seconded** the motion and the motion **passed** with a vote of 4-1-0. Mr. Qualey
14 was opposed to the motion. Mr. Qualey stated that he is opposed to the motion because he
15 does not think that the applicant meets the requirement that there are extraordinary and
16 exceptional conditions pertaining to this particular piece of property.

17
18 Vice Chairman Kristian then made a **motion** for the Board to return to their earlier review of
19 Application for Variance, VAR110005. Mr. Brenner **seconded** the motion and the motion
20 **passed** with a vote of 5-0-0.

21
22 Ms. Cyran presented a brief overview of the application and presented reasons for the
23 Forest Beach Neighborhood Character Overlay District Regulations. The staff and the
24 Board discussed the roof overhang. The staff and the Board discussed the fireplace addition.

25
26 Ms. Cyran stated that granting the variance would allow 4' x 12' allowing plenty of room for
27 the fireplace and the existing overhang. If the variance is denied, the applicant will need to
28 remove the overhang portion that has been built into the setback and buffer area, and she
29 would have to find another place for the fireplace.

30
31 Mr. Brenner stated that he is concerned with the age of the property because the home was
32 built prior to the LMO and incorporation of the Town. The property should be
33 grandfathered because of the extensive renovations going on at the property. The Board
34 should encourage the property owner to complete her plans despite the encroachment, which
35 is minimal and well screened from the road.

36
37 Ms. Cyran stated that the criteria for granting a variance are very strict. Many people do not
38 meet the criteria. The reason that we have the variance process is for exceptional properties.
39 The idea is not to increase non-conformity. Mr. Qualey stated that he disagrees with Mr.
40 Brenner, because he believes the applicant has created her own hardship.

41
42 The applicant asked if the Board could table the application in order to allow additional time
43 to provide the needed information. She would like to determine exactly where the
44 edge of the building is and a few other features. The Board and the applicant discussed the
45 roof overhang. Mr. Richard Spruce, Plans Administrator, presented statements on behalf of
46 the Community Development Department. The Board stated that they will need a survey that
47 shows where the overhang is in relationship to the setback line. The Board stated that they
48 do not have enough information at this time.

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The applicant requested that her application be **tabled** until the February 27, 2012 meeting. The Board agreed to the applicant's request and Chairman DeCaigny requested that a motion be made.

Mr. Brenner made a **motion to table** Application for Variance VAR110005 until the February 27, 2012 meeting. Mr. Stanford **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**8. Staff Report
Waiver Report**

Ms. Dixon stated that there are 2 new waivers to report this month.

9. ADJOURNMENT

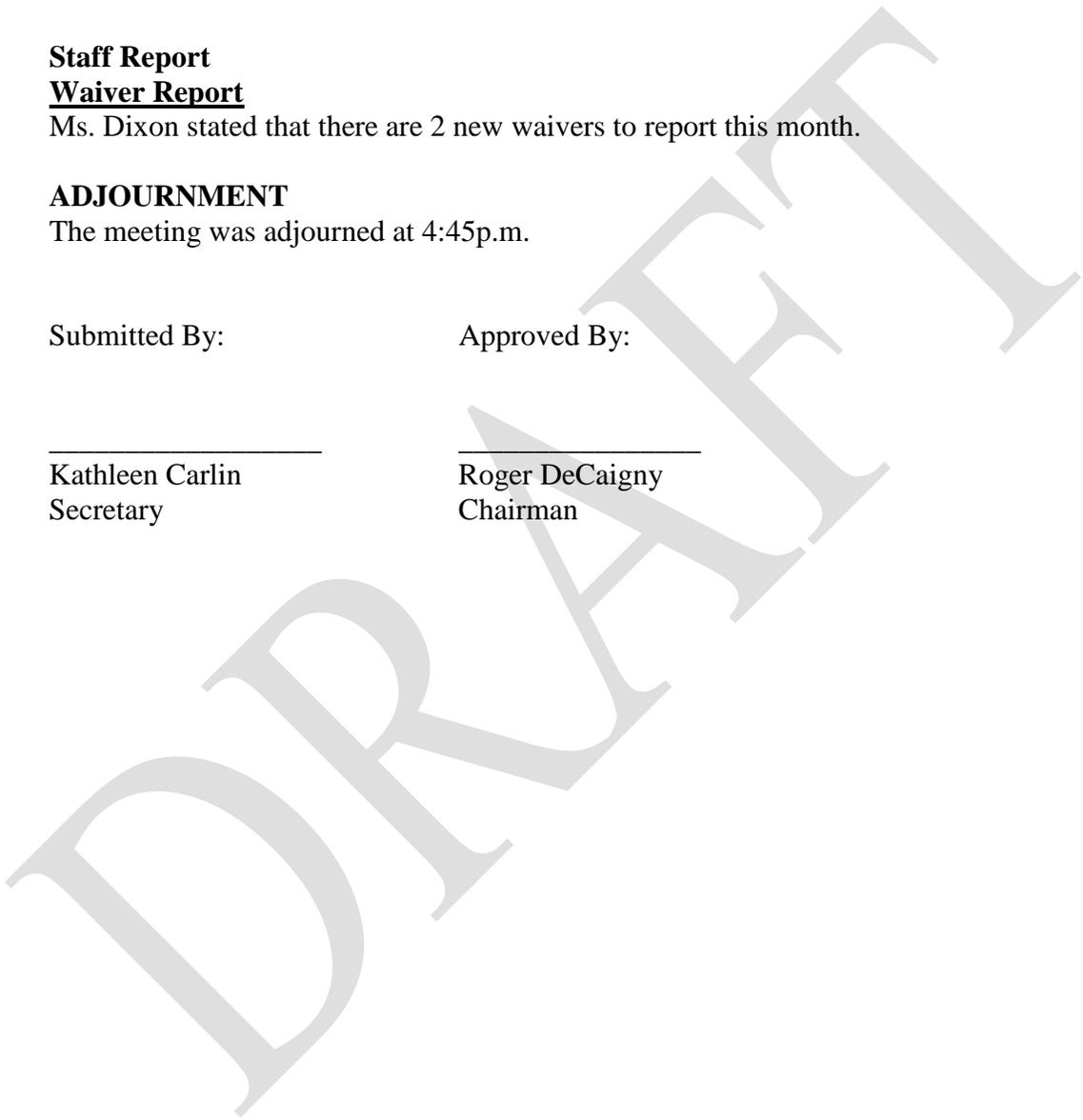
The meeting was adjourned at 4:45p.m.

Submitted By:

Kathleen Carlin
Secretary

Approved By:

Roger DeCaigny
Chairman





TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
VIA: Nicole Dixon, CFM, *Senior Planner & Board Coordinator*
FROM: Anne Cyran, AICP, *Senior Planner*
DATE: March 12, 2012
SUBJECT: VAR110006 2 Berkshire Court

At the January 23, 2012 Board meeting this application was tabled to allow time for the applicant to clarify his plans and provide a clearer, more detailed submission. The revised submittal provided by the applicant requests an eighteen inch encroachment into the adjacent wetland buffer instead of the five feet originally requested. The staff report has been updated to reflect this revision, but staff's recommendation has not changed.

Please contact me at (843) 341-4697 or at annec@hiltonheadislandsc.gov if you have any questions.



TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court

Hilton Head Island, SC 29928

843-341-4757

FAX 843-842-8908

STAFF REPORT VARIANCE

Case #	Public Hearing Date
VAR110006	March 26, 2012

Parcel or Location Data	Property Owner & Applicant
Address: 2 Berkshire Court Parcel#: R550 015 00D 0256 0000 Zoning: PD-1 (Wexford Plantation) Acreage: 0.25	James Hicks 2 Berkshire Court Hilton Head Island SC 29928

Application Summary
James Hicks, the property owner, is requesting a variance from Land Management Ordinance (LMO) Section 16-6-204.B.1, Wetland Buffers – Minimum Width of Buffer The applicant is requesting a variance from the wetland buffer requirement to allow eighteen inches of an addition to his house to encroach into the wetland buffer.

Background
The house on the subject parcel was built in 2006, and Jim Hicks, the current owner, purchased it in 2009. There is a lagoon behind the house which is required per LMO Section 16-6-204.B to have a 20 foot wide wetland buffer. Mr. Hicks would like to build an addition on the back of his house to expand the existing screened porch. He would also like to build a staircase on the back of the house that will provide direct access to the back yard. A portion of the proposed addition and the proposed staircase would encroach into the wetland buffer. (See Attachment D.) Mr. Hicks applied for a variance in December to allow these encroachments. At the January 23, 2012 Board of Zoning Appeals meeting, the application was tabled to allow time for the applicant to clarify his plans and provide a clearer, more detailed submission. The revised submittal provided by the applicant request an eighteen inch encroachment into the adjacent wetland buffer instead of the five feet originally requested. Staff recommends that, if the variance is approved, that the Board of Zoning Appeals adds a condition that the owner must plant the remaining portion of the wetland buffer with native wetland vegetation per a planting plan approved by Town staff.

Applicant's Grounds for Variance, Summary of Facts and Conclusions of Law
<p>Grounds for Variance</p> <p>The applicant is requesting a variance to add an addition and a staircase to his house which would encroach eighteen inches into the adjacent wetland buffer area. The applicant states the encroachment is necessary to build a staircase that will provide direct access from the house to the back yard.</p> <p>Summary of Facts</p> <ol style="list-style-type: none"> 1. The applicant seeks a variance from LMO Section 16-6-204.B, Wetland Buffers – Minimum Width of Buffer. 2. The applicant proposes to construct an addition and a staircase on the back of his house, eighteen inches of which would encroach into the wetland buffer. <p>Conclusion of Law:</p> <ol style="list-style-type: none"> 1. The applicant may seek a variance from the requested LMO section as set forth in 16-3-1901.

Staff Summary of Facts and Conclusions of Law
<p>Summary of Facts:</p> <ol style="list-style-type: none"> 1. Application was submitted as set forth in LMO Section 16-3-1903. 2. Notice of the Application was published in the Island Packet on December 18, 2011 as set forth in LMO Sections 16-3-110 and 16-3-111. 3. Notice of the Application was posted and mailed as set forth in LMO Sections 16-3-110 and 16-3-111. 4. The Board has authority to render the decision reached here under LMO Section 16-3-1905. <p>Conclusions of Law:</p> <ol style="list-style-type: none"> 1. The application is in compliance with the submittal requirements established in LMO Section 16-3-1903. 2. The application and notice requirements comply with the legal requirements established in LMO Sections 16-3-110 and 16-3-111. 3. The applicant submitted an affidavit stating they met the mailed notice requirements as set forth in LMO Section 16-3-111.

As provided in LMO Section 16-3-1906, Criteria for Approval of Variances, a variance may be granted in an individual case of unnecessary hardship if the Board determines and expresses in writing all of the following findings of fact.

Staff Summary of Facts and Conclusions of Law
<p><i>Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property. (LMO Section 16-3-1906A(1))</i></p> <p>Findings of Fact:</p> <ol style="list-style-type: none"> 1. The property is 0.25 acres. 2. The property is rectangular. 3. The property does not contain wetlands.

Conclusions of Law:

1. This application **does not** meet this variance criteria as set forth in LMO Section 16-3-1906A(1).
2. There are no extraordinary or exceptional conditions pertaining to this property because the parcel is of average size, is rectangular in shape and does not contain any wetlands.

Staff Summary of Facts and Conclusions of Law

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

Finding of Fact:

1. There are no extraordinary or exceptional conditions pertaining to this property.

Conclusions of Law:

1. This application **does not** meet this variance criteria as set forth in LMO Section 16-3-1906A(2)
2. There are no extraordinary or exceptional conditions pertaining to this property and therefore there are no conditions to compare to other properties in the vicinity.

Staff Summary of Facts and Conclusions of Law

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

Finding of Fact:

1. There are no extraordinary or exceptional conditions pertaining to this property.

Conclusions of Law:

1. This application **does not** meet this variance criteria as set forth in LMO Section 16-3-1906A(3).
2. There are no extraordinary or exceptional conditions pertaining to this property and therefore the application of the LMO to the property would not effectively prohibit or unreasonably restrict the utilization of the property.

Staff Summary of Facts and Conclusions of Law

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

Findings of Fact:

1. The applicant would like to expand an existing screened porch.
2. The applicant could limit the proposed addition to the areas of the yard that are not in the wetland buffer.
3. The house currently has two exits that meet International Building Code standards.
4. The applicant could design a staircase on the back of the house that does not encroach into the wetland buffer.

Conclusions of Law:

1. This application **does not** meet this variance criteria as set forth in LMO Section 16-3-1906A(4).
2. This hardship is the result of the applicant's own actions because the applicant could design

the addition so it wouldn't encroach into the wetland buffer.

Staff Summary of Facts and Conclusions of Law

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

Findings of Fact:

1. The Comprehensive Plan addresses the proposed variance in the following sections:
Natural Resources Element Goal 3.3 - Protect Quality of Life through Environmental Preservation
D. The goal is to preserve open space (including improvement and enhancement of existing).
E. The goal is to enhance, create and maintain vegetated riparian wetland buffers with viewing corridors and windows.
2. The LMO addresses the proposed variance in the following sections:
LMO 16-6-204 states that the placement of structures in the wetland buffer is prohibited.

Conclusions of Law:

1. This application **does not** meet this variance criterion as set forth in LMO Section 16-3-1906A(5).
2. The granting of this variance substantially conflicts with the Comprehensive Plan because the addition and staircase would encroach into the buffer, in contrast with the goals of the Natural Resources Element.
3. The granting of this variance substantially conflicts with the goals of the LMO because the wetland buffer currently does not have any encroachments and the proposed addition and staircase would make the buffer a legally nonconforming site feature and would make the house a legally nonconforming structure.

Staff Summary of Facts and Conclusions of Law

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

Findings of Fact:

1. The proposed addition and staircase would not have an effect on the adjacent property.
2. Staff has not received any comments from the public regarding this application.

Conclusions of Law:

1. This application **does** meet this variance criteria as set forth in LMO Section 16-3-1906A(6).
2. There is no evidence that the granting of this variance will be a substantial detriment to adjacent properties or the public good. There is no evidence that the character of the district will be harmed by the granting of this variance.

Staff Recommendation

Staff recommends that the Board of Zoning Appeals *disapprove* the application based on those Findings of Facts and Conclusions of Law as stated in the LMO Official Determination and this staff report. Staff recommends that if the application is approved, that the Board of Zoning Appeals adds a condition that the owner must plant the remaining portion of the wetland buffer with native wetland vegetation per a planting plan approved by Town staff.

BZA Determination and Motion

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

This State law is implemented by the Hilton Head Island Land Management Ordinance, Chapter 2, Article 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:

AC

Anne Cyran, AICP
Senior Planner

March 12, 2012

DATE

REVIEWED BY:

ND

Nicole Dixon, CFM
Senior Planner & BZA Coordinator

March 12, 2012

DATE

ATTACHMENTS:

- A) Vicinity Map
- B) Aerial Photo
- C) Applicant's Revised Narrative & Submittal
- D) Photos



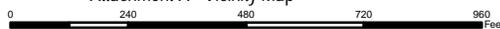
2 Berkshire Court



TOWN OF HILTON HEAD ISLAND
 ONE TOWN CENTER COURT
 HILTON HEAD ISLAND, SC 29928
 (843) 341-6000

December 19, 2011

2 Berkshire Court
 VAR110006
 Attachment A - Vicinity Map



1 inch = 389 feet



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



BERKSHIRE COURT

FAIRFAX LANE

Subject Parcel

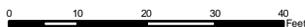


TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, SC 29928
(843) 341-6000

December 19, 2011

2 Berkshire Court
VAR110006

Attachment B - Aerial Photo



1 inch = 28 feet



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March 6, 2012

Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, South Carolina 29928

Dear Sir / Madam:

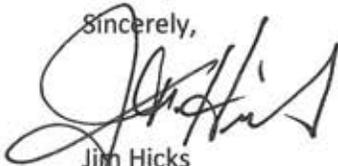
This modified variance request is in reference to the previously submitted and tabled VAR110006. This document is provided to clarify changes to our original submission and to provide renderings and designs requested by the Board of Zoning Appeals during the meeting on January 23, 2012. During the January 23 meeting the variance request was tabled until March 26 to enable us to contract with an architect to provide details of the requested variance and renderings of the proposed project.

The request has been successfully completed and the process has produced some favorable results.

- The renderings provided by Merrill Pasco make it much easier to present the proposed project to the Board of Zoning Appeals.
- The result of the architectural design has reduced the amount of buffer intrusion required and requested from the original five feet to just eighteen (18) inches. This reduces the amount of buffer impacted to less than 30 square feet.
- The design has resulted in a very attractive presentation including steps that are functional without being visible from the street. The rear access will resolve our extraordinary and exceptional condition in a manner that is appealing, functional, and require only minimal intrusion into the wetland buffer.

Thank you for the opportunity to include the preliminary design into this phase of the approval process. We now have a design and request that we feel are compatible with the community, the objectives of the LMO, and the specifics of the six criteria for approval of our request for a variance.

Sincerely,



Jim Hicks
2 Berkshire Court
Hilton Head Island, SC 29928

Variance Request – 110006 – Tabled from January meeting – Jim Hicks

Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property.

Response: Our house needs a rear access to provide an appropriate level of safety and egress / regress. The two exits from our house are both on the front side (front door and door to the garage) and are located only 22 feet apart. This creates an “*extraordinary and exceptional condition*” that needs to be corrected.

Criteria satisfied.

Criteria 2: These conditions do not generally apply to other properties in the vicinity.

Response: There are three other houses built on Berkshire Court and there are no other houses directly visible from any side of the house. All of the other houses have direct access from both the front and the back of their structures.

Criteria satisfied.

Criteria 3: Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonable restrict the utilization of the property.

Response: In order to eliminate the existing “*extraordinary and exceptional condition*” and to maintain the appearance, appeal, and symmetry of the existing house we have had an addition designed by local architect Merrill Pasco. The level of the deck has been lowered to reduce the number of steps required and therefore allow the incorporated symmetrical decks to be built slightly closer to the existing house. The design by Mr. Pasco requires only minor intrusion into the buffer according to a strict interpretation of the LMO. Accordingly, the application of the LMO would effectively unreasonably restrict the utilization of the property.

Criteria satisfied.

Criteria 4: Is not the result of the applicant’s own action.

Response: The hardship is a result of the original design of the house and not a result of our actions. We have taken strong steps to minimize the intrusion into the buffer.

Criteria satisfied.

Criteria 5: Granting the variance does not substantially conflict with the Comprehensive Plan and the purposes of the LMO.

The proposed variance has been reduced with professional guidance and will not substantially conflict with the Comprehensive Plan. We are request a variance to impact less than 30 square feet of buffer setback. This will not rise to the level of substantial impact to the Comprehensive Plan.

Criteria satisfied.

Criteria 6: The authorization of the variance will not be of substantial detriment to adjacent property or the public good, and the character of the district will not be harmed by the granting of the variance.

The Staff Report on our request agrees that the variance will not have a detrimental impact.

Criteria satisfied.

Enclosures:

1. Renderings designed by Merrill Pasco, Architect
2. Memorandum from Merrill Pasco, Architect
3. Elevations – all four sides
4. Foundation / Slab Plan
5. Site Plan

MEMORANDUM

March 1, 2012

TO: Jim Hicks

RE: Variance Request

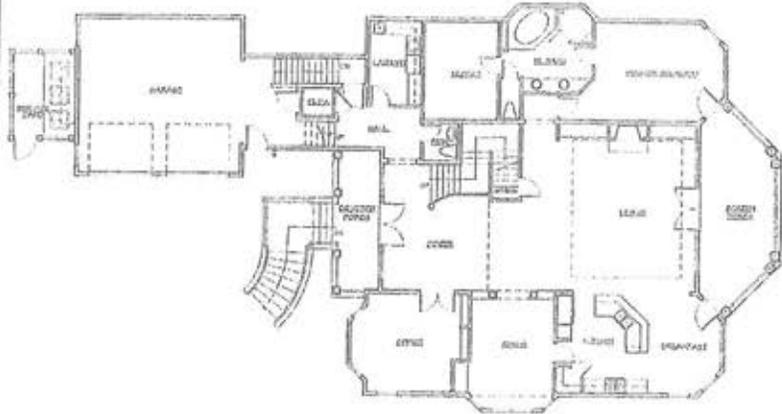
I will leave a PDF file at Savannah Blueprint (located behind Panera Bread) where you can order prints for your review and submittal to the board.

I would include in your submittal to the Variance Board the following rationale:

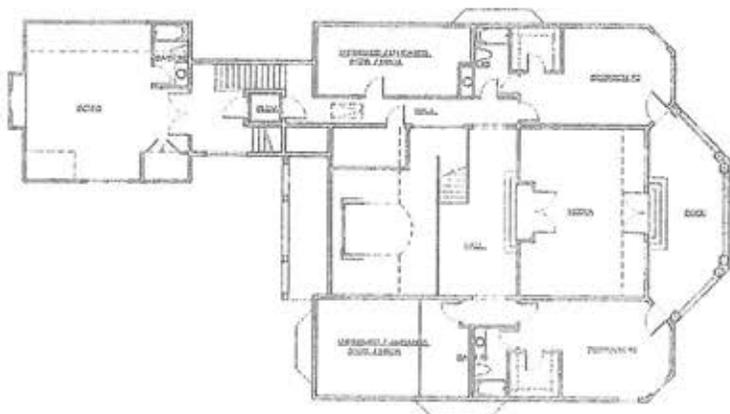
1. The fire safety of your residence would be greatly improved by providing a means of rear egress, which is presently lacking.
2. You and your wife would like to add open space at the living level for outdoor activities (grilling, access to gardens, spa, etc); preserving the present balance and symmetry of the rear façade of your home will require matching side decks.
3. The minimum space needed to accommodate this, as determined by architectural investigations, will require approximately an 18" variance from the 20' setback from the OCRM line.
4. These setback lines are determined individually by site visit, and in the case of wetland lagoons are generally established by "top of bank" observations – which in turn are set by the slope of final grades, (varying typically from 1 in 3 to 1 in 6).
5. As a consequence, these delineations vary somewhat from situation to situation, and a variance of 18" is within any reasonable "margin of error".
6. Neither adjoining neighbors nor the community at large will be adversely affected by granting such minor variance.

7. Buffer/foundation landscaping will be installed, commensurate with community standards.
8. The under-deck structure will match the construction of the residence, ie, stucco with painted wood louver panels for flood water egress.

Enclosure #3



FIRST FLOOR PLAN



SECOND FLOOR PLAN



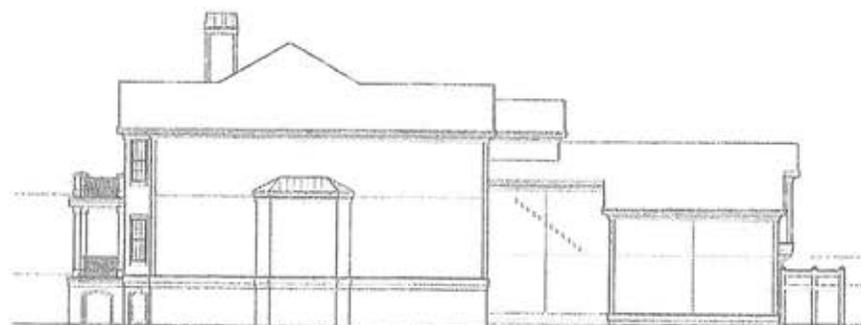
FRONT ELEVATION



REAR ELEVATION



RIGHT SIDE ELEVATION



LEFT SIDE ELEVATION

A Single Family Residence for
Joey Spado
Lot 2 Berkshire Court
Windsor Plantation
Hilton Head Island, South Carolina

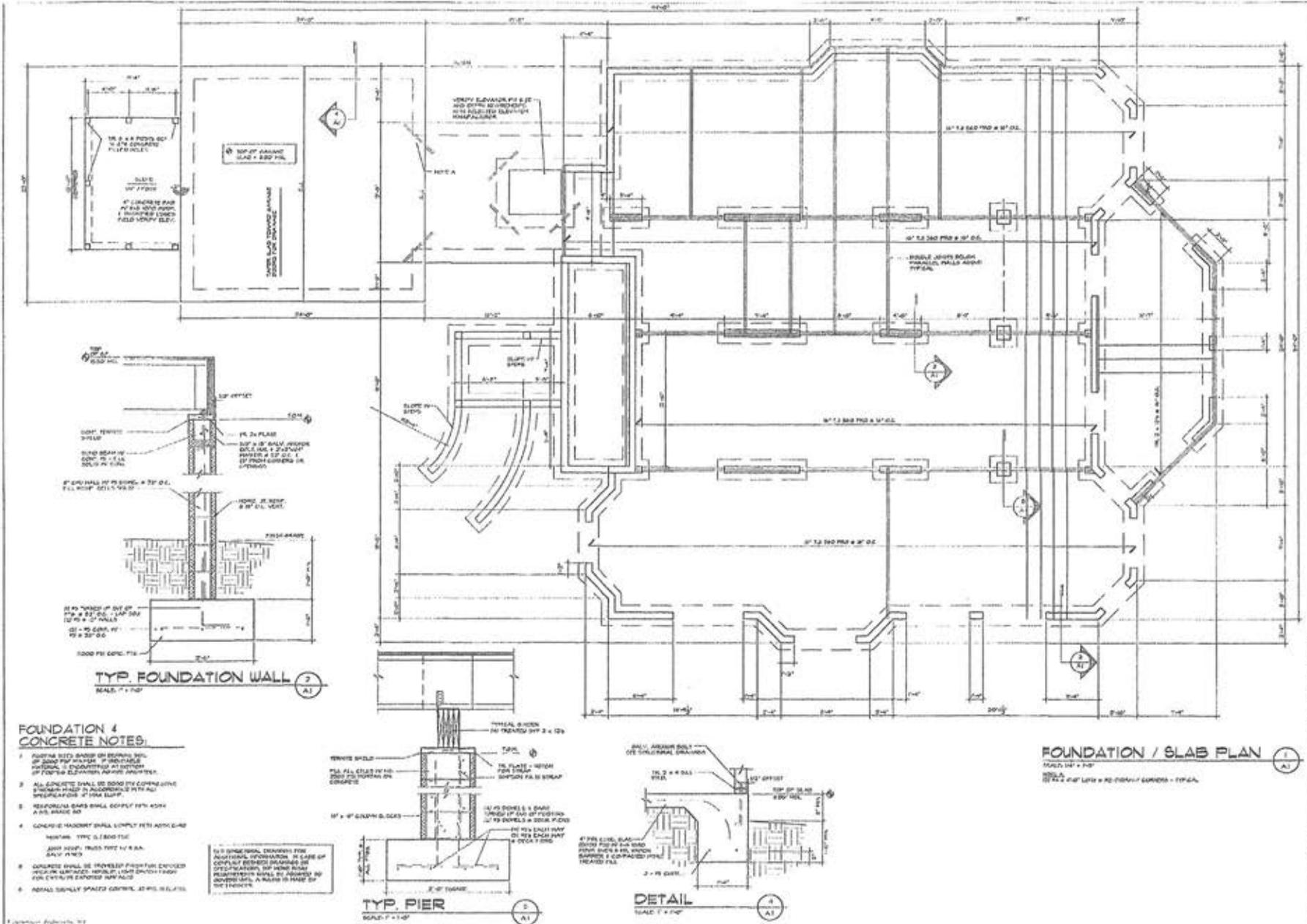
Sodemann Architects, Inc.
P.O. Box 5452
Hilton Head Island, SC 29929
Tel: 843-548-5728 Fax: 843-542-6700

DATE	06/17
BY	06/17
REV	01
DATE	

SCALE
1"=4'-0"

PHASE
CONCEPT

Enclosure #4



A Single Family Residence for:
Joey Spado
 Lot 2 Berkeley Court
 Westford Plantation
 Hilton Head Island, South Carolina

Sodemann Architects, Inc.
 P.O. Box 4408
 Hilton Head Island, SC 29928
 Tel: 843-543-0720 Fax: 843-543-0720

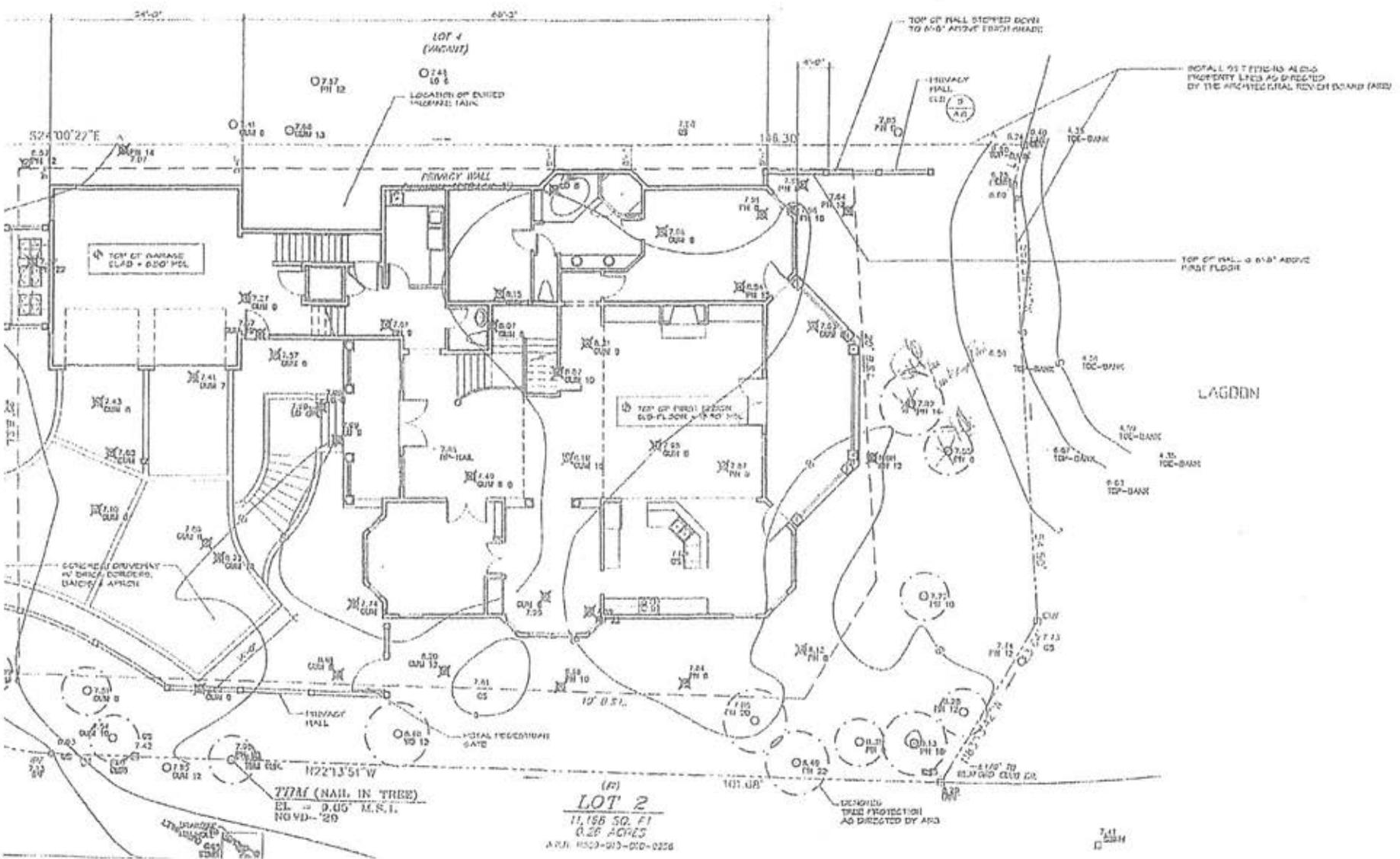
DATE: 10/27/07
 SHEET: 11 OF 18
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 PROJECT: [Signature]

11/11/07

A.1

Envelope #5

EL. FA
HP. 21'
55.78'



A Single Family Residence for
Joey Spado
 Lot 2 Berkshire Court
 Westford Plantation
 Hilton Head Island, South Carolina

Sodemann Architects, Inc.
 P.O. Box 5488
 Hilton Head Island, SC 29928
 TEL: 843-845-5729 Fax: 843-845-5720

DATE	11-01-05
NO.	20037

(P)
LOT 2
 11,188 SQ. FT.
 0.26 ACRES
 A.P.N. 1503-010-010-0256

TDM (NAIL IN TREE)
 EL. = 9.05' M.S.L.
 NO. 411-20

VAR110006, 2 Berkshire Court
Staff Report – Attachment D

Back of the House, Southeast Side



Back of the House, Southwest Side



Back of House, Area of Proposed Addition





TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE: March 12, 2012
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.”

There were no waivers granted by staff since the January Board of Zoning Appeals meeting.