



Town of Hilton Head Island
Board of Zoning Appeals Meeting
Monday, March 25, 2013 at 2:30p.m
Benjamin M. Racusin Council Chambers
AGENDA

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 – December 17, 2012

8. Unfinished Business

None

9. New Business

Public Hearing

VAR130002: Louise Cohen is requesting a variance from Land Management Ordinance Section 16-5-704, Minimum Required Setback Area, and Section 16-5-806, Required Buffers, to allow an existing mobile home to encroach into the adjacent street setback, and adjacent use setback and buffer. The property is located at 187 Gum Tree Road and is further identified as parcel 48 on Beaufort County Tax Map 3. *Presented by: Anne Cyran*

Public Hearing

VAR130003: Request for variance from LMO Sections 16-5-202, General Requirements, 16-5-1201, Off-Street Parking Required, 16-5-704, Minimum Required Setback Area, 16-5-806, Required Buffers and 16-5-508, Street Intersections. Bret Pruehs with McNair Law Firm, on behalf of CJT Real Property, LLC, is requesting a variance from these sections to change the use designation of the existing multi-family residential development from a horizontal property regime to a single family attached major subdivision. The property is located at 2 Tidal Bluff Road, and is further identified as Parcel 17 on Beaufort County Tax Map 5. *Presented by: Nicole Dixon*

10. Board Business

11. Staff Report

a) 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, December 17, 2012 Meeting
2:30p.m. - Benjamin M. Racusin Council Chambers

DRAFT

Board Members Present: Chairman Roger DeCaigny, Vice Chairman Peter Kristian,
Alan Brenner, Michael Lawrence, Stephen Murphy and Glenn Stanford

Board Members Absent: Irv Campbell

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Heather Colin, Development Review Administrator
Ed Boring, Deputy Fire Chief
Kathleen Carlin, Secretary

1. Call to Order

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

2. Roll Call

3. Freedom of Information Act Compliance

Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and Town of Hilton Head Island requirements.

4. Introduction to Board Procedures

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

5. Approval of the Agenda

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

6. Approval of the Minutes

Vice Chairman Kristian made a **motion** to **approve** the minutes of the September 24, 2012 meeting as presented. Mr. Brenner **seconded** the motion and the motion **passed** with a vote of 6-0-0.

7. Unfinished Business

None

1
2
3
4 **8. New Business**
5 **Public Hearing**

6 **VAR120006:** Request for variance from LMO Section 16-5-1503, Elevation of Sites. The
7 Town of Hilton Head Island is requesting a variance to raise the site elevation to 5 feet above
8 existing grade in some areas in order to build the new Fire Station #6 to a finished floor
9 elevation of 20 feet. The property is located at 12 Dalmatian Lane, and is further identified as
10 Parcel 19 on Beaufort County Tax Map 12. Chairman DeCaigny requested that the staff make
11 their presentation.

12
13 Ms. Nicole Dixon made the presentation on behalf of staff. Staff recommended that the Board
14 of Zoning Appeals *approve* the application based on the Findings of Facts and Conclusions of
15 Law stated in the LMO Official Determination and in the staff's report.

16
17 On behalf of the Town of Hilton Head Island, Mr. Matt Brown with Stewart Cooper Newell
18 Architects submitted a development project review application in October of 2012 to construct
19 the new Fire Station # 6. The building is proposed to be elevated to 20-feet from Mean Sea
20 Level using up to five feet of fill in some areas, which is prohibited by LMO Section 16-5-1503,
21 Elevation of Sites. According to the applicant and the Town's Fire Chief, the new fire station
22 must be constructed at 20-feet MSL in order to provide a safe haven for Fire & Rescue
23 personnel as well as to provide a fully functioning critical service facility before, during and
24 after a Category 3 or lower hurricane.

25
26 In order to accommodate hurricane storm surge issues, a 20-foot finished floor elevation for all
27 new fire stations was a policy that was implemented after the completion of Fire Station # 3 and
28 before the design began for Fire Station # 7. Fire Stations # 4, 5 and 7 are built at an elevation
29 of 20-feet. In 2008, the Town received variance approval from the Board of Zoning Appeals,
30 for Fire Station # 5, to elevate the site with more than 3 feet of fire in order to building the
31 station to 20-feet MSL.

32
33 The subject parcel is located within the Palmetto Dunes Resort Master Plan and is surrounded
34 by Town-owned land, a debris storage yard, a recycling area and the St. Andrews multi-family
35 development. The current Fire Station # 6 building will be utilized by Palmetto Dunes for a
36 guest pass office. The new Fire Station # 6 will be constructed further down Dalmatian Lane in
37 an already cleared portion of the property.

38
39 Ms. Dixon presented a brief review of the Findings of Fact and Conclusions of Law. Mr. Ed
40 Boring, Deputy Fire Chief, presented additional comments in support of the application. The
41 Board and Deputy Fire Chief Boring discussed the intent of the application including safety
42 considerations. At the completion of staff's presentation, Chairman DeCaigny requested public
43 comments and none were received. Following final discussion by the Board, Chairman
44 DeCaigny requested that a motion be made.

45
46 Mr. Stanford made a **motion to approve** Request for Variance Application VAR120006 as
47 presented by staff based on the Findings of Fact and Conclusions of Law stated in the staff's

1 report. Vice Chairman Kristian **seconded** the motion and the motion **passed** with a vote of
2 6-0-0.
3

4 **10. Board Business**

5 None
6

7 **11. Staff Report**

8 Ms. Dixon presented the staff's Waiver Report to the Board. Ms. Dixon reported that the staff
9 training on Ethics that was scheduled to follow the 3:00p.m Planning Commission meeting on
10 December 19th is canceled due to a scheduling conflict. This training will be rescheduled. Ms.
11 Dixon also reported that the regular BZA meeting on Monday, January 28, 2013 is canceled due
12 to a lack of agenda items. However, the staff will provide mandated Board training on this date
13 at 2:30p.m. Mr. Rocky Browder is scheduled to present training on Tree Preservation and
14 Pruning.
15

16 **12. Adjournment**

17 The meeting was adjourned at 3:00p.m.
18
19

20 Submitted By:

Approved By:

21
22 _____
23 Kathleen Carlin
24 Secretary
25

21
22 _____
23 Roger DeCaigny
24 Chairman
25



**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 # | Address of Development | Public Hearing Date |
|------------|------------------------|---------------------|
| VAR#130002 | 187 Gum Tree Road | March 25, 2013 |

| Parcel Data | Applicant & Owner |
|--|--|
| Tax Map ID: Map 3, Parcel 48 Street Address: 187 Gum Tree Road Zoning District: RM-4 Overlay District: COR (Corridor Overlay) | Louise Cohen 3 Farmer's Club Road Hilton Head Island, SC 29926 |

Application Summary

The Community Development Department received a variance request from Louise Cohen for the following Sections of the Land Management Ordinance (LMO):

16-5-704, Minimum Required Setback Area
16-5-806, Required Buffers

The applicant is requesting the variance to allow a recently placed mobile home to encroach into the adjacent street setback, the rear adjacent use setback and the rear adjacent use buffer.

u

The subject parcel is located at 187 Gum Tree Road in the RM-4 Zoning District. The parcel is bisected by Gum Tree Road. As shown on the Vicinity Map (Attachment A), the subject parcel is bounded by: three residential parcels on the southwest; three undeveloped parcels on the northwest; an undeveloped parcel and Chinaberry Ridge on the northeast; and two single family parcels on the southeast. The portion of the subject parcel that requires the variance is the rectangle to the southwest of Gum Tree Road.

In mid-January, Madison Robinson, a mobile home mover, and Mario Gomez, the future resident of the mobile home, asked Community Development Department staff whether a mobile home could replace a house that had been demolished. Staff advised them to apply for a mobile home placement permit.

In early February, staff noticed a new mobile home had been placed on the subject parcel.

Also in early February, Mr. Robinson and Mr. Gomez applied for a mobile home placement

permit. They informed staff that the mobile home had been placed on the parcel, but it did not have utility service. Staff advised them that the home had been placed without first obtaining a mobile home placement permit, in violation of the LMO. The mobile home had been placed within an adjacent street setback, an adjacent use setback and an adjacent use buffer, also in violation of the LMO. Staff advised Mr. Robinson and Mr. Gomez that the mobile home needed to be moved out of these areas to be brought into compliance with the LMO.

Mr. Robinson and Mr. Gomez informed staff that the parcel is too narrow to locate the mobile home in an area that doesn't encroach into setbacks or buffers. Staff advised them that their alternative to removing the mobile home from the parcel is to apply for a variance from the LMO.

Per LMO Section 16-7-707.C, a mobile home in a nonconforming location (i.e. encroaching into a buffer) can be replaced by another mobile home in the same location if the replacement is complete within a year of the original home's removal. That provision of the LMO does not apply to this situation, however, because the house and related structures had been demolished in September of 2007.

In early February, Louise Cohen, the property owner, submitted the application for a variance from the adjacent street setback, the rear adjacent use setback and the rear adjacent use buffer to allow the mobile home to remain in its current location. The home encroaches into 954 square feet (or 5.5 percent) of the 17,336 square foot adjacent street setback. It encroaches into 244 square feet (or 2.7 percent) of the 9,040 square foot rear adjacent use setback and buffer.

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

Grounds for Variance

The applicant is applying for a variance from LMO Section 16-5-704, Minimum Required Setback Area, and Section 16-5-806, Required Buffers, to allow a recently placed mobile home to encroach into the adjacent street setback, the rear adjacent use setback and the rear adjacent use buffer. The applicant states the variance is needed because the parcel is too narrow to locate the mobile home in an area that doesn't encroach into setbacks or buffers.

Summary of Facts

1. Applicant seeks variances from LMO Section 16-5-704, Minimum Required Setback Area, and Section 16-5-806, Required Buffers.
2. The applicant is proposing to allow a recently placed mobile home to encroach into the adjacent street setback, the rear adjacent use setback and the rear adjacent use buffer.

Conclusion of Law

1. Applicant may seek variances from the requested LMO sections as set forth in 16-3-1901.A.

Staff Determination

Staff recommends that the Board of Zoning Appeals **approve** the application based on the Findings of Facts and Conclusions of Law.

Staff Summary of Facts and Conclusions of Law

Summary of Facts

1. Application was submitted as set forth in LMO Section 16-3-1903.
2. Notice of the Application was published in the Island Packet on Sunday, February 17, 2013, as set forth in LMO Sections 16-3-110 and 16-3-111.
3. Notice of the Application was posted as set forth in LMO Sections 16-3-110 and 16-3-111.
4. Notice of the Application met the mailing criteria in LMO Sections 16-3-110 and 16-3-111.
5. Staff received an affidavit of compliance from the applicant as set forth in LMO Section 16-3-111.
6. The Board has authority to render the decision reached here under LMO Section 16-3-1905.

Conclusions of Law

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

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

Staff Summary of Facts and Conclusions of Law

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

Findings of Fact

1. The subject parcel is bisected by Gum Tree Road.
2. The subject parcel is subject to a 40 foot adjacent street setback on each side of the parcel fronting Gum Tree Road.
3. The portion of the subject parcel where the mobile home is located (hereafter “the parcel”) is long and narrow, an average of 75 feet deep by 450 feet long.

Conclusions of Law

1. This application meets the variance criteria as set forth in LMO 16-3-1906.A.1.
2. The fact that the parcel is subject to two 40 foot adjacent street setbacks and the fact that a portion of the parcel subject to the setback is unusually shaped are both extraordinary and exceptional conditions.

Staff Summary of Facts and Conclusions of Law

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

Findings of Fact

1. All parcels fronting Gum Tree Road are subject to a 40 foot adjacent street setback.
2. None of the nearby parcels are bisected by Gum Tree Road.
3. Four nearby parcels fronting Gum Tree Road are about the same depth as the parcel

(about 75 feet).

4. Most parcels in the vicinity are deeper than 75 feet.

Conclusions of Law

1. This application meets the variance criteria as set forth in LMO 16-3-1906.A.2.
2. The subject parcel is the only one required to have two 40 foot adjacent street setbacks.
3. The subject parcel is one of a few particularly narrow parcels with frontage on Gum Tree Road.

Staff Summary of Facts and Conclusions of Law

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

Findings of Fact

1. The parcel is 32,670 square feet (0.75 acres).
2. The application of the adjacent street setback and the adjacent use setbacks and buffers reduces the buildable area of the parcel by 85 percent, to 4,817 square feet (0.11 acres).
3. The parcel is an average of 75 feet deep by 450 feet wide.
4. The application of the adjacent street setback and the adjacent use setbacks and buffers reduces the buildable area of the parcel to an average of 14 feet deep by 412 feet wide.
5. The mobile home that was placed on the property is 30 feet deep by 68 feet long.
6. Neighboring mobile homes have similar dimensions.
7. There are two other mobile homes on the parcel. One home is located almost entirely in the adjacent street setback, and half of the other home is located in the adjacent street buffer.

Conclusions of Law

1. This application meets the variance criteria as set forth in LMO 16-3-1906.A.3.
2. The application of the adjacent street and adjacent use setbacks and buffers reduces the buildable area of the property to such a degree that use of the property is effectively prohibited.

Staff Summary of Facts and Conclusions of Law

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

Findings of Fact

1. The mobile home was placed on the parcel without the required placement permit.
2. The mobile home is located about the same distance from the right-of-way as the two other mobile homes on the parcel.
3. The mobile home is located in roughly the same area as a house that was previously demolished.

Conclusions of Law

1. This application meets the variance criteria as set forth in LMO 16-3-1906.A.4.
2. Though the mobile home was placed on the parcel without first receiving the required permit, the home was located in a logical area relative to the right-of-way and

the existing homes.

Staff Summary of Facts and Conclusions of Law

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

Finding of Fact

- 1. The Comprehensive Plan does not speak to the issues in this application.

Conclusions of Law

- 1. This application meets meet the variance criteria as set forth in LMO 16-3-1906.A.5.
- 2. This application has no known conflict with the Comprehensive Plan.

Staff Summary of Facts and Conclusions of Law

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

Findings of Fact

- 1. Staff did not identify any detriment to the adjacent property, the public good or the character of the district that would be caused by granting the variance.
- 2. Staff has not received any comments regarding the variance application.

Conclusions of Law

- 1. This application meets the variance criteria as set forth in LMO 16-3-1906.A.6.
- 2. There is no evidence that granting the variance would be a substantial detriment to adjacent property, the public good or the character of the district.

PREPARED BY:

AC

 Anne Cyran, AICP
 Senior Planner

March 4, 2013

 DATE

REVIEWED BY:

ND

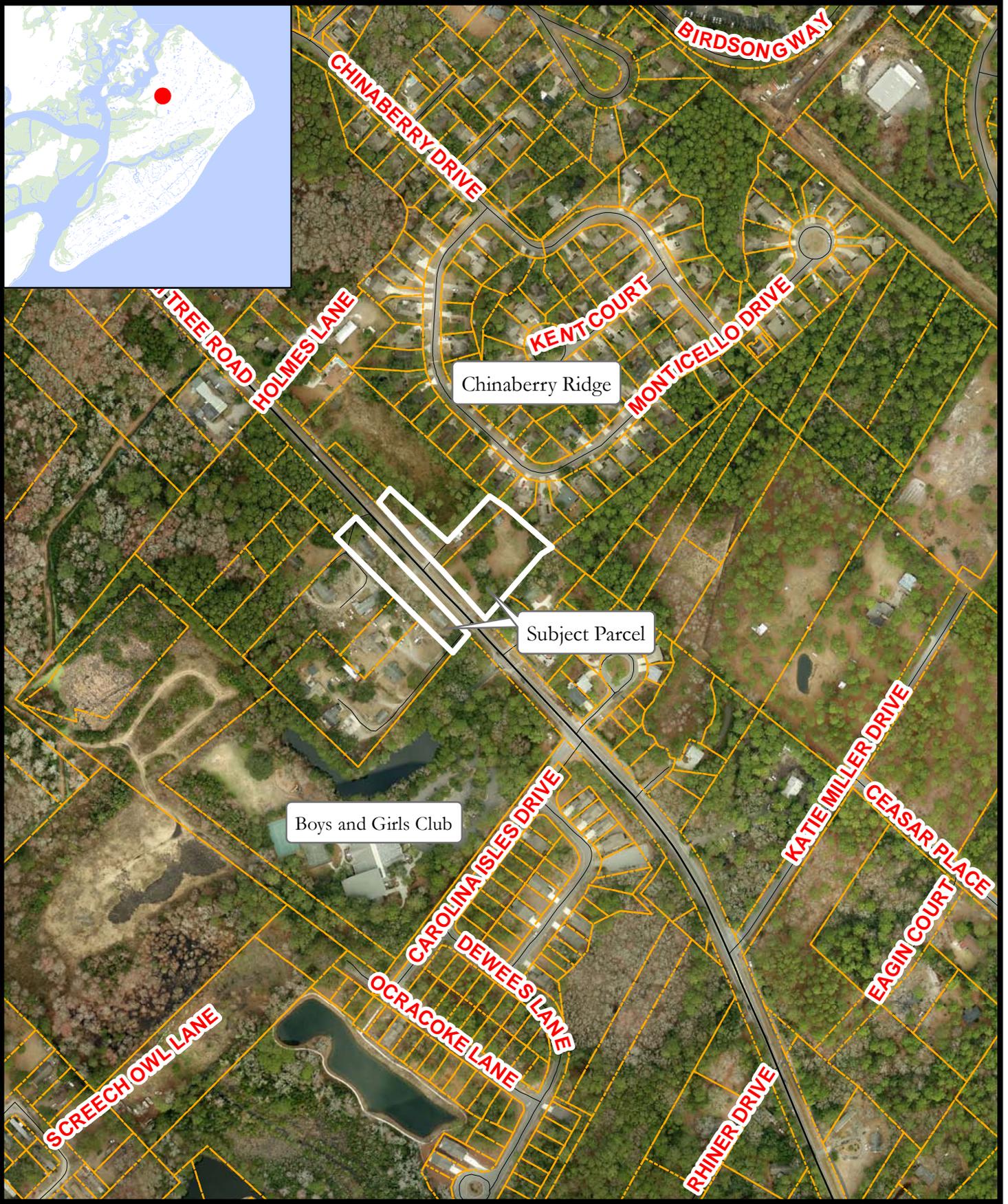
 Nicole Dixon, CFM
 Senior Planner & BZA Coordinator

March 4, 2013

 DATE

ATTACHMENTS

- A) Vicinity Map
- B) Aerial Photo
- C) Aerial Photo with Mobile Home Location
- D) Applicant’s Narrative
- E) Site Photos
- F) Aerial Photo with Setbacks and Buffers
- G) Aerial Photo with Mobile Home Location, Setbacks and Buffers



Town of Hilton Head Island
 One Town Center Court
 Hilton Head Island, SC 29928
 (843) 341-6000

187 Gum Tree Road
 VAR130002

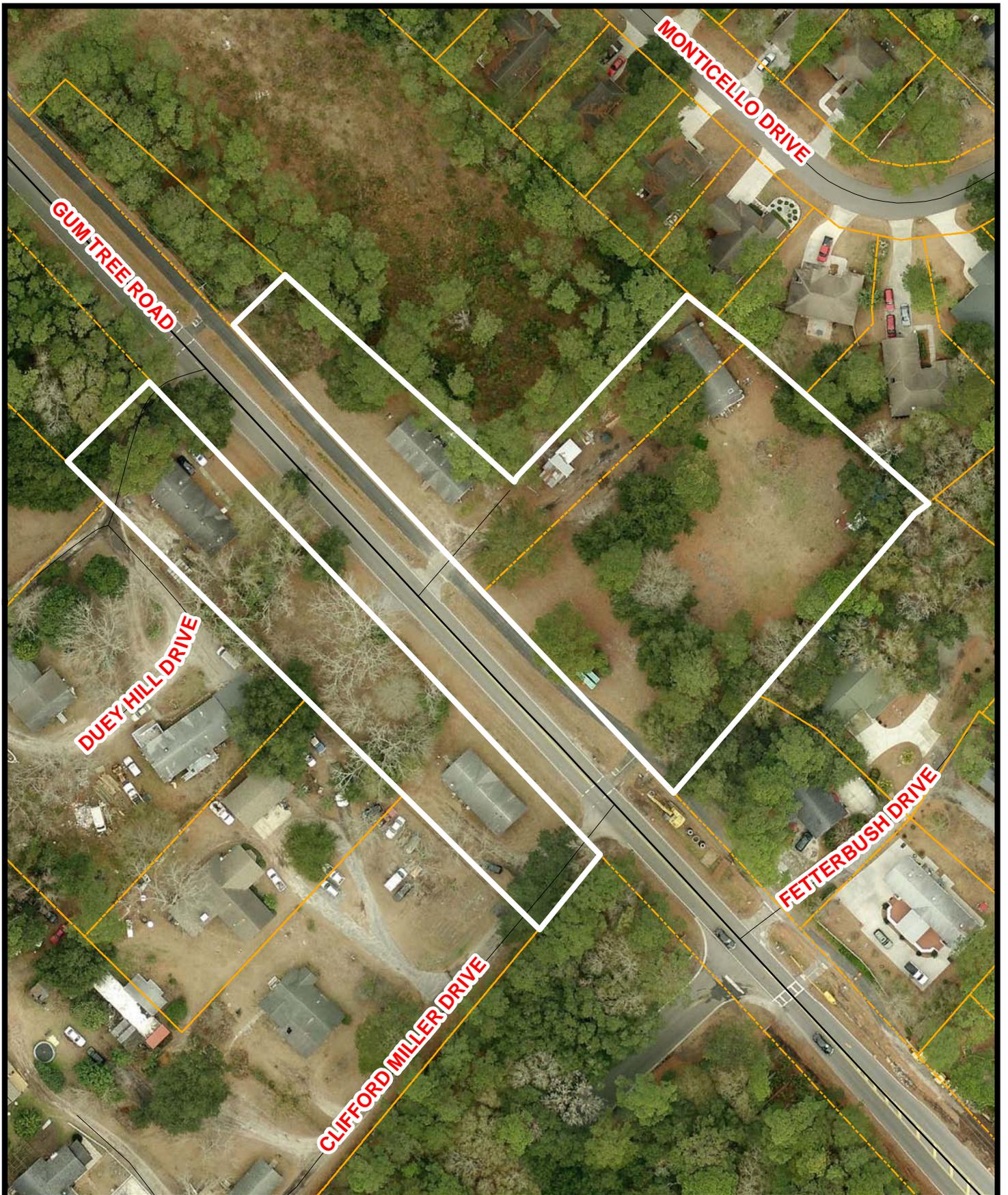
Attachment A - Vicinity Map



1 inch = 364 feet



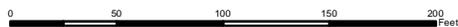
This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.



Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-6000

187 Gum Tree Road
VAR130002

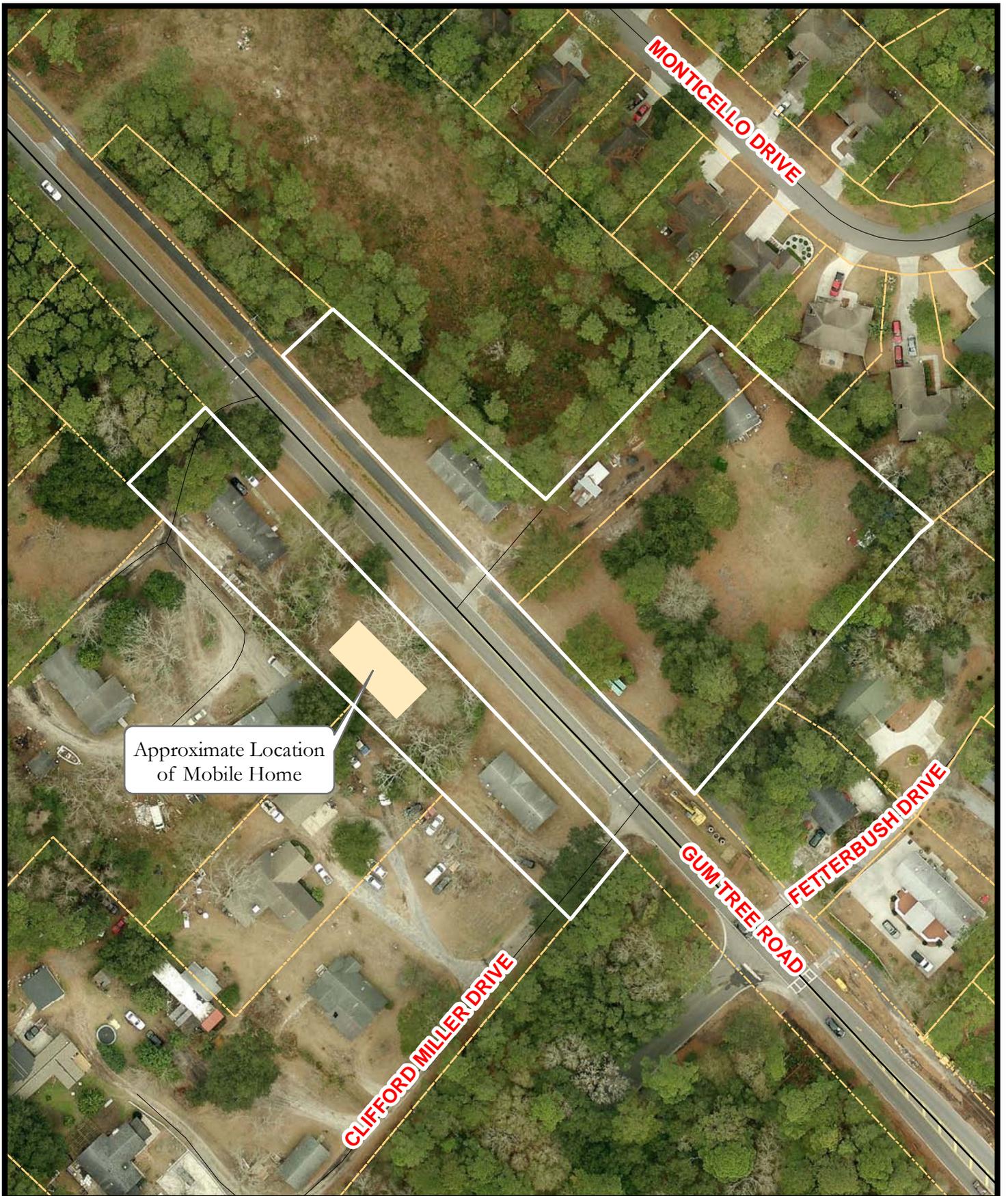
Attachment B- Aerial Photo



1 inch = 90 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.



Approximate Location
of Mobile Home

CLIFFORD MILLER DRIVE

MONTICELLO DRIVE

GUM TREE ROAD

FETTERBUSH DRIVE



Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-6000

187 Gum Tree Road
VAR130002

Attachment C - Aerial Photo with Mobile Home Location



1 inch = 96 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.

VAR130002, 187 Gum Tree Road
Staff Report, Attachment D: Applicant's Narrative

- A) There are extraordinary and exceptional conditions pertaining to the particular piece of property.
- a) The mobile home lot is too narrow to fit any size home on it with a 40ft set back for the road.
- B) These conditions do not generally apply to other properties in the vicinity.
- b) Other properties in the vicinity back property lines are more than 100ft from the road allowing a 40ft setback
- C) Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
- c) Because of the set back I am not able to place a home on my property where I already have sewer and water on the property.
- D) Is not the result of the applicant's own actions.
- d) The Town Of Hilton Head changed the set backs on my property without considering that my property was too narrow to have a home more than 40ft from the road
- E) Granting of the variance does not substantially conflict with the Comprehensive Plan and the purpose of the LMO.
- e) The two homes on both sides of my lot are less than 20ft from the road due to their size.
- F) 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.
- f) If I place a home between the two existing homes which are closer to the road, the home in the middle cannot be seen if you were to stand alongside the existing homes.

VAR130002, 187 Gum Tree Road
Attachment E: Site Photos (Page 1)
Subject Mobile Home



VAR130002, 187 Gum Tree Road
Attachment E: Site Photos (Page 2)
Neighboring Mobile Home (Right)

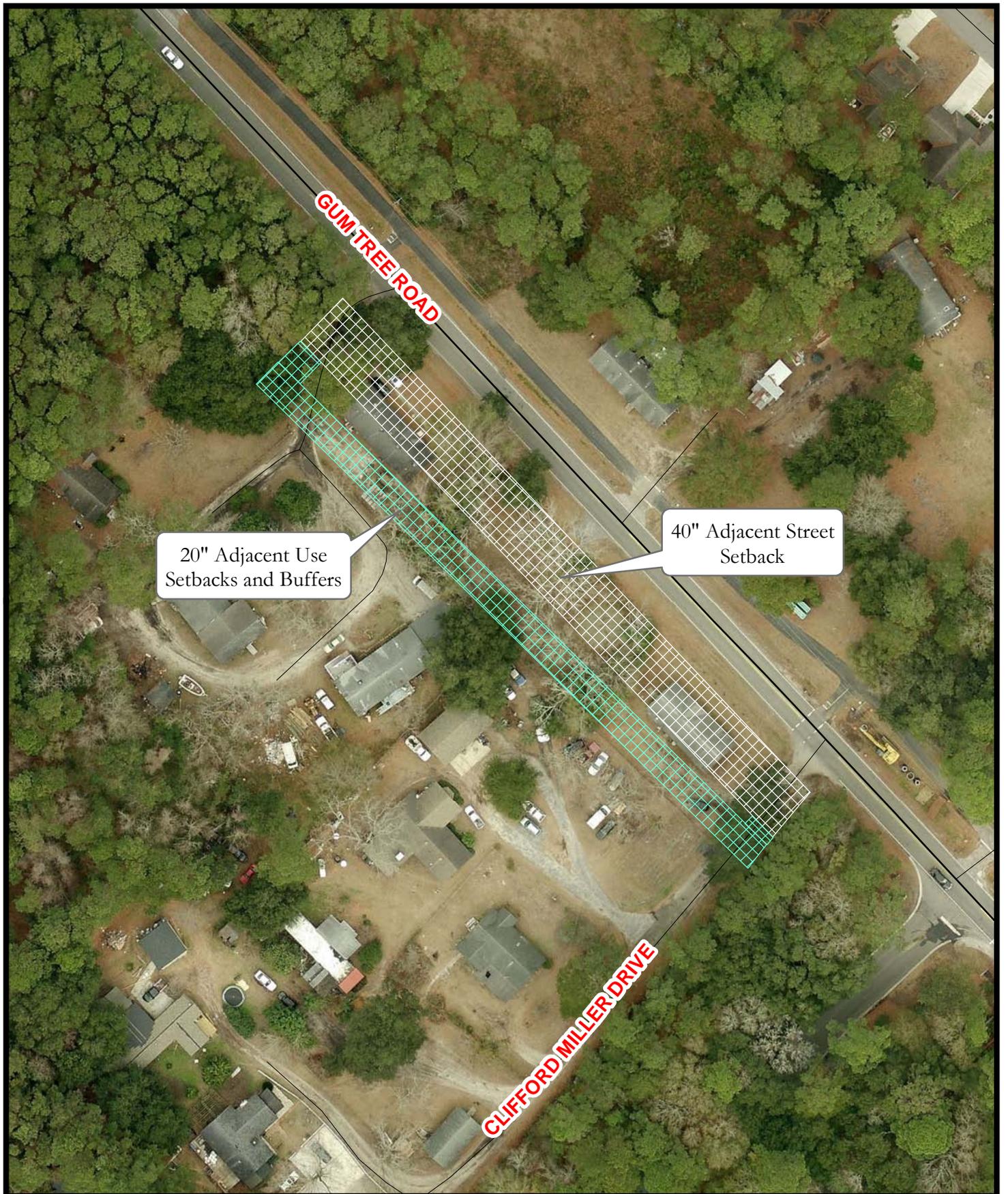


VAR130002, 187 Gum Tree Road
Attachment E: Site Photos (Page 3)
Neighboring Mobile Home (Left)



VAR130002, 187 Gum Tree Road
Attachment E: Site Photos (Page 4)
Rear Adjacent Use Setback & Buffer Area





20" Adjacent Use Setbacks and Buffers

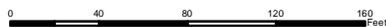
40" Adjacent Street Setback



Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-6000

187 Gum Tree Road
VAR130002

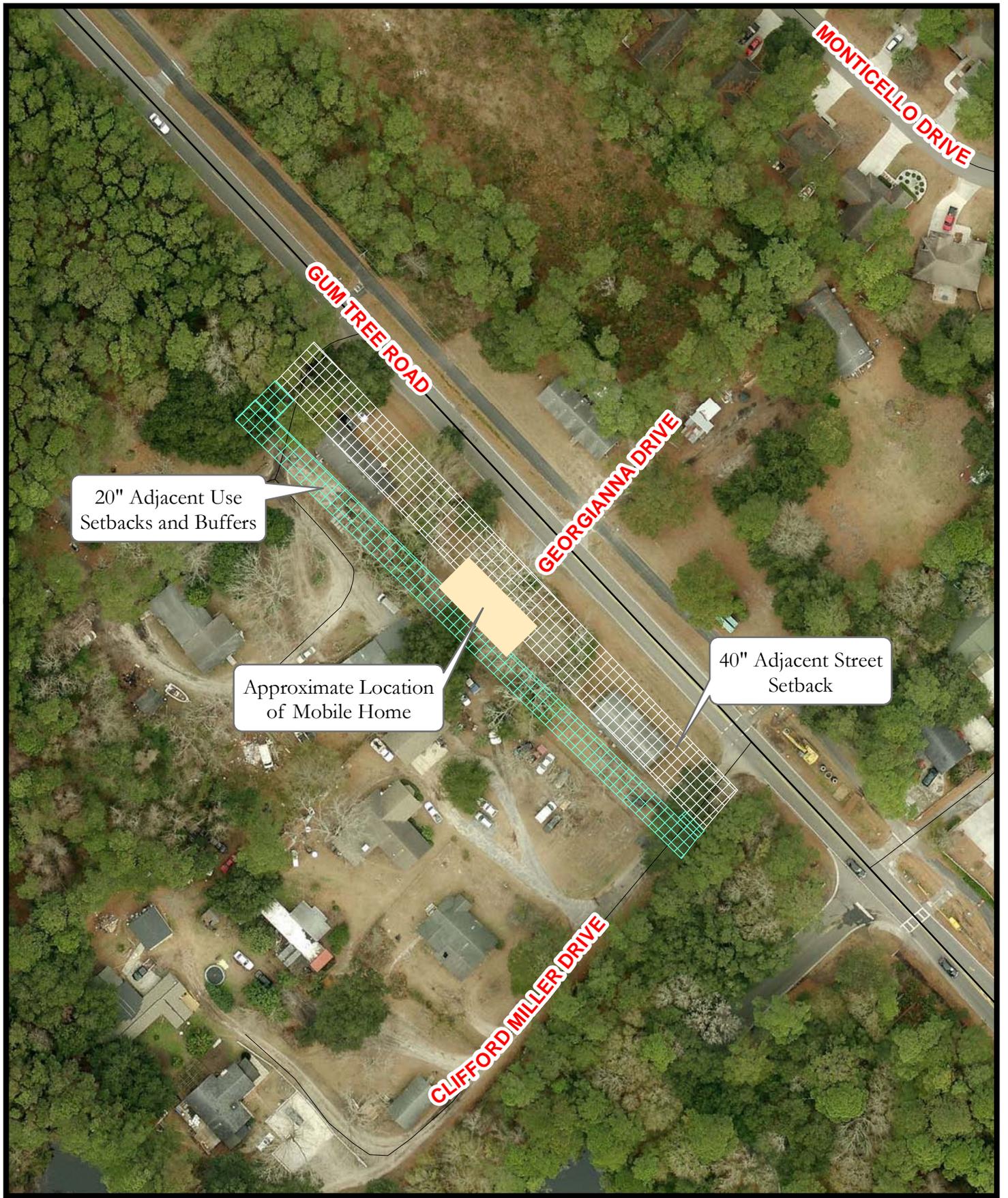
Attachment F - Aerial Photo with Setbacks and Buffers



1 inch = 86 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.



20" Adjacent Use Setbacks and Buffers

Approximate Location of Mobile Home

40" Adjacent Street Setback

GUM TREE ROAD

GEORGIANNA DRIVE

MONTICELLO DRIVE

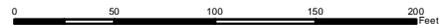
CLIFFORD MILLER DRIVE



Town of Hilton Head Island
 One Town Center Court
 Hilton Head Island, SC 29928
 (843) 341-6000

187 Gum Tree Road
 VAR130002

Attachment G - Aerial Photo with Mobile Home Location, Setbacks and Buffers



1 inch = 95 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.



**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: |
|-----------|----------------------|
| VAR130003 | March 25, 2013 |

| Parcel or Location Data: | Property Owner | Applicant |
|---|--|--|
| Address: 2 Tidal Bluff Road Parcel#: R510 005 000 0017 0000 Zoning: RM-4 (Low Density Residential) Acreage: 4.96 | CJT Real Property LLC 6130 Harris Technology Blvd. Charlotte, NC 28269 | Bret T. Pruehs McNair Law Firm PO Drawer 3 Hilton Head Island, SC 29938 |

| Application Summary: |
|--|
| <p>Bret Pruehs with McNair Law Firm, on behalf of CJT Real Property, LLC, is requesting a variance from Land Management Ordinance (LMO) Sections:</p> <ul style="list-style-type: none"> ○ 16-5-202, General Requirements, which requires that all lots in a subdivision have frontage to the access required by Section 16-5-204 ○ 16-5-1201, Off-Street Parking Required, which requires 2 off-street parking spaces per unit for single family attached dwellings ○ 16-5-704, Minimum Required Setback Area, which requires a 20 foot adjacent street and adjacent use setback ○ 16-5-806, Required Buffers, which requires a 20 foot adjacent street and adjacent use buffer ○ 16-5-508, Street Intersections, which requires sight triangle easements be established on the corners of intersecting streets <p>The applicant is requesting a variance from these sections of the LMO in order to meet the requirements to change the use designation of the subject property from a Multi-Family Residential to a Single Family Residential Major Subdivision. The applicant has no plans at this time to change the development of the land; the layout and design will remain the same, the development will function the same way it was originally intended; the only change the applicant is proposing is to change the use designation.</p> |

| Background: |
|---|
| <p>The applicant met with staff several times over the last year to discuss their desire to modify the use designation of the existing Tidal Bluff development from a multi-family residential to a single family attached major subdivision. The built environment, consisting of fifteen buildings with two units in each separated by firewalls, will not change. Boundary lines will be inserted between the current units on a subdivision plat. In order to do so, the applicant needs to comply with the subdivision requirements that are outlined in the LMO. Because the development is existing, the applicant is limited with what site changes he can make. He is proposing to make Tidal Bluff Road a right-of-way, which is a requirement for a major subdivision, but there</p> |

are several subdivision requirements that the applicant cannot meet.

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

Grounds for Variance:

The applicant is requesting a variance to change the use designation of the existing Tidal Bluff development from a multi-family residential development to a single family attached major subdivision. Currently Tidal Bluff is owned by CJT Real Property, LLC who rents the units to long term tenants. The owner wishes to terminate the horizontal property regime and re-configure the development as thirty single family residences. The applicant states that the change in legal structure is desirable because lenders in the current real estate market prefer to lend to owners whose security is single family residences as opposed to condominium units.

Summary of Facts:

The applicant seeks a variance from LMO Sections:

- o 16-5-202, General Requirements, which requires that all lots in a subdivision have frontage to the access required by Section 16-5-204.
- o 16-5-1201, Off-Street Parking Required, which requires 2 off-street parking spaces per unit for single family attached dwellings.
- o 16-5-704, Minimum Required Setback Area, which requires a 20 foot adjacent street and adjacent use setback.
- o 16-5-806, Required Buffers, which requires a 20 foot adjacent street and adjacent use buffer.
- o 16-5-508, Street Intersections, which requires sight triangle easements be established on the corners of intersecting streets.
- o The applicant is proposing to change the use designation of the development from a multi-family residential development to a single family attached major subdivision.

Conclusion of Law:

- o 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:

Summary of Facts:

- o Application was submitted as set forth in LMO Section 16-3-1903.
- o Notice of the Application was published in the Island Packet on February 17, 2013 as set forth in LMO Sections 16-3-110 and 16-3-111.
- o Notice of the Application was posted and mailed as set forth in LMO Sections 16-3-110 and 16-3-111.
- o The Board has authority to render the decision reached here under LMO Section 16-3-1905.

Conclusions of Law:

- o The application is in compliance with the submittal requirements established in LMO Section 16-3-1903.
- o The application and notice requirements comply with the legal requirements established in LMO Sections 16-3-110 and 16-3-111.
- o The applicant submitted an affidavit stating they met the mailed notice requirements as set forth in LMO Section 16-3-111.

As provided in 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:

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

Findings of Fact:

- Even though the property is 4.96 acres in size, it is long and narrow in shape.
- The property was developed in 2003 and met all LMO requirements that were applicable at the time for a multi-family residential development.

Conclusions of Law:

- This application does meet this variance criteria as set forth in LMO Section 16-3-1906A(1) because there are extraordinary and exceptional conditions that pertain to this particular piece of property.
- Because the property is long and narrow in shape and bound by existing development on site, the lot is extraordinary.

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:

- The other properties in the vicinity are not long and narrow in shape.

Conclusion of Law:

- This application does meet this variance criteria as set forth in LMO Section 16-3-1906A(2) because there are extraordinary and exceptional conditions pertaining to this property that do not apply 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))

Findings of Fact:

- LMO Section 16-5-202, General Requirements, requires that all lots in a subdivision have frontage to the access required by Section 16-5-204. Because of the way the development was originally designed and built, not all of the lots will have frontage to the street access.
- LMO Section 16-5-1201, Off-Street Parking Required, requires 2 off-street parking spaces per unit for single family attached dwellings. Because of the way the development was originally designed and built, the parking is located along the street. The site does have adequate parking supply to meet the requirements, they just won't be located off-street.
- LMO Section 16-5-704, Minimum Required Setback Area, requires a 20 foot adjacent street and adjacent use setback. As part of the applicants plan to change the use to a subdivision, he will plat Tidal Bluff Road as a 40 foot right-of-way, which creates the requirement of a 20 foot setback from the edge of the right-of-way. There is also a 20 foot adjacent use setback along the boundary of the property. There are a few structural encroachments into the setback.
- LMO Section 16-5-806, Required Buffers, requires a 20 foot adjacent street and adjacent use buffer. As part of the applicants plan to change the use to a subdivision, he will plat Tidal Bluff Road as a 40 foot right-of-way, which causes the requirement of a 20 foot adjacent street buffer. There is also a 20 foot adjacent use buffer along the boundary of the property. There are a few structural encroachments, parking and the proposed right-of-way located within the buffer.
- LMO Section 16-5-508, Street Intersections, requires sight triangle easements be established on the

corners of intersecting streets. The applicant is able to provide the sight triangle easement on the northern intersecting corner of his access, but not fully in conformance with the southern corner because it would encroach onto the adjacent property.

Conclusions of Law:

- This application does meet this variance criteria as set forth in LMO Section 16-3-1906A(3) because the application of the LMO to this particular property does restrict the owner from changing the use designation of the development.
- The Tidal Bluff development met all applicable LMO requirements at the time of original approval and the applicant is requesting this variance from several major subdivision requirements just so that he can change the use designation from multi-family to a single family residential subdivision.

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:

- The property was developed in 2003 by a previous owner.
- The financial lending laws changed after the property was already developed as a multi-family development.

Conclusions of Law:

- This application does meet this variance criteria as set forth in LMO Section 16-3-1906A(4) because this hardship is not the result of the applicant's own actions.
- The applicant is limited with the constraints of the already developed site. The proposed change in use makes financing secured by the property owner or individual residences more readily available.

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:

- LMO Section 16-5-202, General Requirements, requires that all lots in a subdivision have frontage to the access required by Section 16-5-204. Because of the way the development was originally designed and built, not all of the lots will have frontage to the street access.
- LMO Section 16-5-1201, Off-Street Parking Required, requires 2 off-street parking spaces per unit for single family attached dwellings. Because of the way the development was originally designed and built, the parking is located along the street. The site does have adequate parking supply to meet the requirements, they just won't be located off-street.
- LMO Section 16-5-704, Minimum Required Setback Area, requires a 20 foot adjacent street and adjacent use setback. As part of the applicants plan to change the use to a subdivision, he will plat Tidal Bluff Road as a 40 foot right-of-way, which creates the requirement of a 20 foot adjacent street setback. There is also a 20 foot adjacent use setback along the boundary of the property. There are a few structural encroachments into the setbacks.
- LMO Section 16-5-806, Required Buffers, requires a 20 foot adjacent street and adjacent use buffer. As part of the applicants plan to change the use to a subdivision, he will plat Tidal Bluff Road as a 40 foot right-of-way, which creates the requirement of a 20 foot adjacent street buffer. There is also a 20 foot adjacent use buffer along the boundary of the property. There are a few structural encroachments, parking and the proposed right-of-way located within the buffers.
- LMO Section 16-5-508, Street Intersections, requires sight triangle easements be established on the corners of intersecting streets. The applicant is able to provide the sight triangle easement on the

northern intersecting corner of his access, but not fully in conformance with the southern corner because it would encroach onto the adjacent property.

The Comprehensive Plan addresses the proposed variance in the following sections:

5.1 Housing Units and Tenure

Implications for the Comprehensive Plan: Although, an increase in the total number of housing units contributes to the economic tax base for the Town, it is important that both the quantity as well as the quality of the housing stock is maintained to sustain current and future population and overall property values. As the amount of available land declines for new development, it will be very important to maintain a high quality housing stock on residential properties. In addition, the availability of various housing types is important for the housing market viability to accommodate the diverse needs of the Island's population.

5.2 Housing Options

Goal 5.2 D: The goal is to monitor changing demographics and trends in housing development to provide housing options that meet market demand.

Conclusions of Law:

- This application does meet this variance criteria as set forth in LMO Section 16-3-1906A(5) because the granting of this variance does not substantially conflict with the purposes of the LMO and the Comprehensive Plan.
- The property is developed as a multi-family development. The applicant is proposing to change the use designation to a single family subdivision. Because the applicant isn't planning on changing the design of the development at all, the development can and will still function effectively, as originally was designed and consistent with the purposes of the LMO.
- The approval of the requested variances accommodates the conversion of an existing development to single family residences, which will help to increase the availability of various housing types on the Island and help to better meet market demands.

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:

- The property is already developed and there are no site changes proposed, other than improvements to the drive aisle.
- Staff did not receive any negative feedback regarding the proposed variance request.

Conclusion of Law:

- This application does meet this variance criteria as set forth in LMO Section 16-3-1906A(6) because there are no changes being made to the development that will be a detriment to the adjacent property and the public good.

Staff Recommendation:

Staff recommends that the Board of Zoning Appeals *approve* the application, based on those Findings of Facts and Conclusions of Law as stated in the LMO Official Determination and this staff report.

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:

ND

Nicole Dixon, CFM
Senior Planner & BZA Coordinator

February 27, 2013

DATE

ATTACHMENTS:

- A) Vicinity Map
- B) Applicant’s Narrative
- C) As-built of property
- D) Proposed subdivision plan




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

Town of Hilton Head Island
ATTACHMENT A
Vicinity Map



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.

February 14, 2013

Board of Zoning Appeals - (*Via E-Mail (nicoled@hiltonheadislandsc.gov)*)
Town of Hilton Head Island

Bret T. Pruehs

Re: CJT Real Property, LLC Variance Request
Our File No. 053810-00007

bpruehs@mcnair.net
T 843.785.2171
F 843.686.5991

Dear Sir or Madam:

This correspondence is provided in support of the CJT Real Property, LLC’s application for variances from certain requirements called for by the Town of Hilton Head Island’s Land Management Ordinance (“LMO”). The specific variances requested relate to the CJT Real Property, LLC’s desire to modify the existing legal structure for the property currently known as Tidal Bluff located off of Dillon Road. Tidal Bluff consists of thirty (30) existing units. There are fifteen (15) existing buildings with two (2) units each separated by firewalls. CJT Real Property, LLC owns all 30 units, and they are currently rented to long term tenants. CJT Real Property, LLC wishes to terminate the horizontal property regime and re-configure Tidal Bluff as 30 single family residences. This entails inserting boundary lines between current units on a plat and complying with subdivision requirements under the LMO.

The variances requested herein call for very limited physical changes to the property. The physical modifications contemplated are in deference to requests of staff of the Town of Hilton head Island (“Town”). The change in legal structure is desirable because lenders in the current real estate market prefer to lend to owners whose security is single family residence(s) as opposed to condominium units. Therefore, a change in the existing legal structure potentially lowers the carrying cost of the Tidal Bluff project. The contemplated change in legal structure makes its continued operation as long-term rental property more feasible, and it enhances the marketability of the property.

The following is a table that itemizes the variances being requested and the applicable sections of the LMO which are necessary to convert Tidal Bluff to single family residences:

| LMO § | Issue |
|-------------------------|---|
| 16-5-202 | Does not have frontage to Dillon Road required by § 16-5-5-204. |
| 16-5-1201 | The LMO requires 2 off-street parking spaces per unit for single family attached dwellings. Parking for residences is currently located on the street and not on the proposed individual lots. |
| 16-5-704A & 16-5-806A | The proposed redevelopment does not comply with use setback and buffer width requirements for the areas of the exterior boundary buffer where the right of way/new pavement encroaches (along right side of the drive aisle and in the rear of the development) and where unit 26B and the wood decks encroach. There is not sufficient room to comply with LMO requirements. |
| 16-5-704B & 16-5-806(B) | Reduce adjacent street setback and buffer width for the areas where any structure or parking encroach it. There is not sufficient room to comply |

McNair Law Firm, P. A.
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928

Mailing Address
Post Office Drawer 3
Hilton Head Island, SC 29938

mcnair.net

| | |
|----------|---|
| | with LMO requirements. |
| 16-5-508 | Sight triangle easements are not in conformity with LMO requirements. Compliance would require encroaching on an adjacent property. |

This narrative provided below is intended to explain how and why the requested variances meet the criteria of LMO §16-3-1906.

There are extraordinary and exceptional conditions pertaining to the particular piece of property

Tidal Bluff Horizontal Property Regime is a mature, multi-building condominium development. The 15 buildings with two (2) units per building is very typical of a “town home” type structure, however, the original developer opted for a condominium structure. There are not many existing condominium properties capable of being converted to single family residences which distinguishes Tidal Bluff.

These conditions do not generally apply to other properties in the vicinity

Other properties in the vicinity are generally not condominium structures with all units existing on ground level and susceptible to re-characterization as single family residences.

Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property

As mentioned above, the existing improvements have been approved and currently exist as a condominium. There is very limited physical modification being contemplated. The requested variances are intended to facilitate a modification of the legal structure of the property which will, potentially, decrease costs of the owner and enhance the property’s viability as a long-term rental facility.

Is not the result of the applicant’s own actions

CJT Real Property, LLC acquired this property via a foreclosure sale and was not the original developer of this project.

Granting of variance does not substantially conflict with the comprehensive plan and the purposes of the Land Management Ordinance

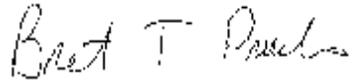
The granting of the requested variance does not substantially conflict with the comprehensive plan and purposes of the LMO. To the contrary, the granting of the variances will help advance one of the LMO’s purposes to promote general welfare. Tidal Bluff is an affordable housing option that is currently operated by a single owner for long term rent. The reconfiguration contemplated creates additional flexibility for the owner from an operations standpoint. It also makes properties potentially more marketable were they to be sold individually as single family residences as opposed to condominium units, which is generally beneficial to nearby properties.

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

There will be no detriment to adjacent property based upon the requested variance. There is very limited change to the aesthetics and, to the extent there is change, such changes are based upon specific request of the Town’s staff. The contemplated change in legal structure makes financing secured by the Tidal Bluff project or individual residences therein more readily available. This does not entail a detriment to the public at large or nearby property owners.

Thank you for your consideration of this variance request. Please let me know if I can provide any further information for you in consideration of these requests.

Sincerely,

A handwritten signature in cursive script that reads "Bret T. Pruehs".

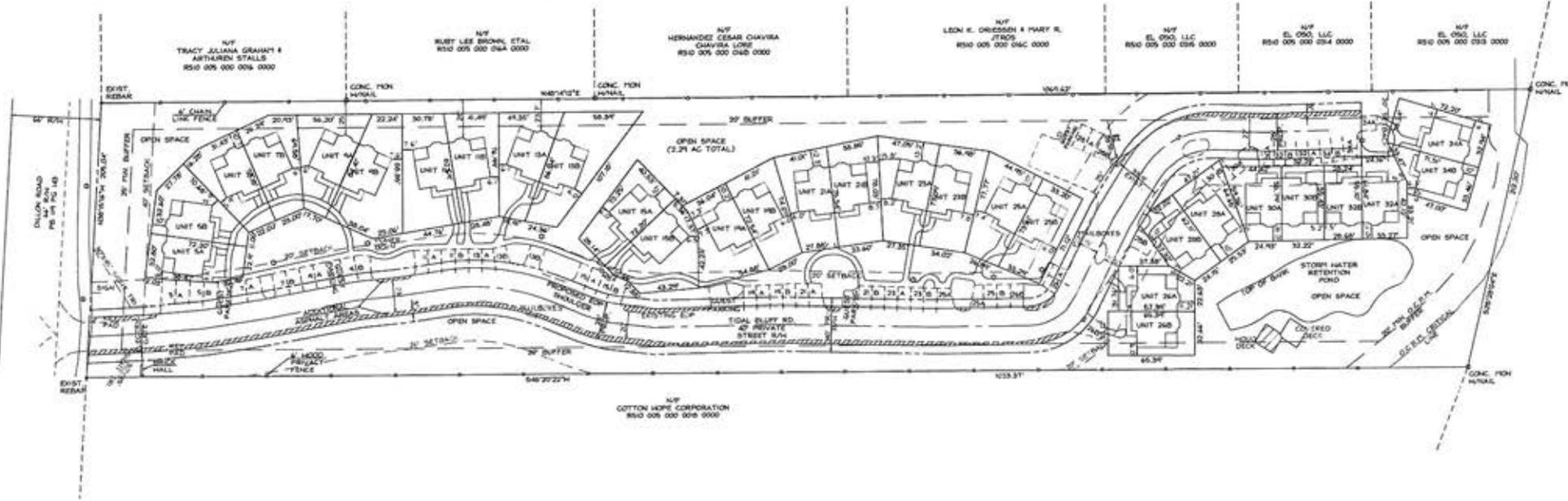
Bret T. Pruehs
On behalf of CJT Real Property, LLC

BTP:kgf
Attachment

ATTACHMENT D

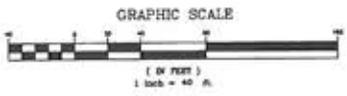
NOTES:

1. MAP REF: PG 04 PG 04
2. ZONED: RPT-4
3. AREAS:
 TOTAL SITE AREA: 4.76 AC
 R/W AREA: 0.76 AC
 TOTAL LOT AREA: 1.73 AC
 OPEN SPACE PROVIDED: 2.21 AC (46.2%)
 R/W OPEN SPACE REQUIRED: 0.61 AC
4. TOTAL NUMBER OF LOTS: 30
5. 20' SETBACK FROM R/W OF TIGAL BLUFF RD.



ELECTRONIC COPY

THIS IS AN ELECTRIC DATA FILE THAT IS CERTIFIED DOCUMENT IS FOR REVIEW ONLY TO BE USED FOR RECORDATION, SALL CONVENTANCES.



| LINETYPE LEGEND | |
|-----------------|--------------------------|
| --- | PUBLIC R/W |
| --- | ADJONER |
| --- | PROPERTY LINE |
| --- | SETBACK |
| --- | BUFFER |
| --- | EXISTING ESP |
| --- | ADDITIONAL ASPHALT AREAS |
| + | LAND POST |
| * | SEWER |
| o | CONCRETE NON-FRONT |





TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE: March 1, 2013
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 last Board of Zoning Appeals meeting.

Administrative Waivers

February - 2013

1. A project at 18 New Orleans Road (Reebok Crossfit): the applicant requested to make improvements to an existing non-conforming parking lot: it lacked the required number of spaces for the use, didn't meet parking design standards, etc. A waiver was granted because the applicant was making improvements that were bringing the site more into compliance with the LMO by adding parking spaces, wheel stops, and landscaping.