



**Town of Hilton Head Island
Board of Zoning Appeals
Regular Meeting
Monday, February 24, 2014 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 the Minutes** – January 27, 2014 meeting
8. **Unfinished Business**
Hearing
APL130008: Request from Brad Wainwright. The appellant is appealing the Town’s decision on October 23, 2013 to issue approval of a minor zoning map amendment to change the land use designation on a portion of parcel 60 on Tax Map 3 from “Open Space” to “Open Space/Telecommunication Facilities.” *Presented by: Teri Lewis*
9. **New Business**
Public Hearing
VAR130015: Cameron & Cameron Custom Homes, on behalf of Sheila Hammer, is requesting a variance from Land Management Ordinance Section 16-6-204, Wetland Buffers, to build a pool in a portion of the wetland buffer. The subject parcel is located at 19 Knightsbridge Lane and is further identified as parcel 337 on Beaufort County Tax Map 15D. *Presented by: Anne Cyran*
10. **Board Business**
11. **Staff Reports**
Waiver Report
12. **Adjournment**

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

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, January 27, 2014 Meeting
2:30p.m. - Benjamin M. Racusin Council Chambers

DRAFT

Board Members Present: Chairman Peter Kristian, Vice Chairman Glenn Stanford, David Fingerhut, Michael Lawrence, P. Jeffrey North and Steve Wilson

Board Members Absent: Irv Campbell

Council Members Present: Bill Harkins and George Williams

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Teri Lewis, LMO Official
Brian Hulbert, Board Attorney
Jacob Deuel, GIS Administrator
Jayme Lopko, Senior Planner
Charles Cousins, Deputy Director of Community Development
Kathleen Carlin, Secretary

1. Call to Order

Chairman Kristian 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 Kristian welcomed the public and introduced the Board's procedures for conducting the business meeting. The Board will review two applications for appeal today. Chairman Kristian stated that he will recuse himself from review of the second application, APL130008, due to a professional conflict of interest. Vice Chairman Stanford will assume the role of Chairman for the review of APL130008. Chairman Kristian stated that there is no public comment during the appeal process for applications for appeal.

5. Approval of the Agenda

Chairman Kristian requested that a motion be made to approve the agenda. Vice Chairman Stanford made a **motion to approve** the agenda as presented. The motion was **seconded** by Mr. Lawrence and **passed** with a vote of 6-0-0.

6. Approval of the Minutes

Chairman Kristian requested that a motion be made to approve the minutes of the regular BZA meeting held on December 16, 2013. Mr. Wilson made a **motion to approve** the

December 16, 2013 minutes as presented. Vice Chairman Stanford **seconded** the motion and the motion **passed** with a vote of 6-0-0.

Chairman Kristian then requested that a motion be made to **approve** the minutes of the special BZA meeting held on January 8, 2014. Vice Chairman Stanford made a **motion** to **approve** the January 8, 2014 minutes as presented. Mr. North **seconded** the motion and the motion **passed** with a vote of 6-0-0.

7. **Unfinished Business**

APL130006:

Request from Curtis L. Coltrane on behalf of Alethea W. Jackson and David Jackson. The appellant is appealing the Town's action on June 12, 2013 to permit 217 Beach City Road, LLC to place manufactured homes on the lots lying within the 32 lot single family subdivision known as Beach City Place. Chairman Kristian introduced the application and requested that Curtis Coltrane, Esq., make his presentation.

Curtis Coltrane, Esq., stated that he is representing David and Alethea Jackson in this matter. Mr. Coltrane stated that his clients have filed an appeal related to the Town's issuance of certain permits for manufactured housing within the Beach City Place subdivision.

Due to certain events that have occurred both within the context of this application for appeal and a lawsuit entered into by Mr. and Mrs. Jackson, an entity known as HSSC, and the Town through their attorney, Gregg Alford, Esq., the parties have agreed that APL130006 should be removed from the Board's consideration at this time per a Tolling Agreement. Mr. Coltrane stated that he is requesting a continuance of APL130006 on behalf of his clients through the Tolling Agreement.

The Tolling Agreement would cause the parties, Mr. and Mrs. Jackson, and HSSC to stand back during the duration of the pending lawsuit in Circuit Court. The Circuit Court will govern what the parties have to do. At this point in time neither Mr. and Mrs. Jackson nor HSSC have any particular desire to move forward. Both parties have consented to the terms of the Tolling Agreement. Mr. Coltrane stated that there is no time limit on the Tolling Agreement.

The Board members, Brian Hulbert, Board Attorney, and Mr. Coltrane briefly discussed the Tolling Agreement. Chairman Kristian then requested that a motion be made on the appellant's request for continuance of APL130006.

Vice Chairman Stanford made a **motion** to **grant** the appellant's **request** for continuance of APL130006 per the terms of the Tolling Agreement. APL130006 will be tolled indefinitely or until otherwise instructed by the parties to resume hearings by the Board. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 6-0-0.

Chairman Peter Kristian recused himself from review of the following application, Application for Appeal, APL130008, based on a professional conflict of interest. A Conflict of Interest Form was completed and signed by Chairman Kristian and attached to the record. Chairman Kristian stated for the record that he has not discussed application APL130008 with any members of the Board. Chairman Kristian appointed Vice Chairman Stanford to act as Chairman for this portion of the meeting.

8. New Business

Hearing

APL130008:

Request from Brad Wainwright. The appellant is appealing the Town's decision on October 23, 2013 to issue approval of a minor zoning map amendment to change the land use designation on a portion of parcel 60 on Tax Map 3 from 'Open Space' to 'Open Space/Telecommunication Facilities'.

Prior to beginning the review of this application, Acting Chairman Stanford requested that the Board go into an Executive Session for the purpose of seeking legal advice from Brian Hulbert, Board attorney. The purpose of the Executive Session will be to seek legal advice on procedural matters related to client-attorney privilege. The Board agreed with the request for an Executive Session and Chairman Stanford requested that a motion be made.

Mr. North made a **motion** for the Board to go into an Executive Session with Brian Hulbert, Board Attorney, for the purpose of seeking legal advice on procedural matters related to client-attorney privilege. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 5-0-0. Acting Chairman Stanford then called for a recess. The business meeting will resume following the Executive Session.

When the meeting was called back to order, Acting Chairman Stanford stated that the Board received legal advice from Brian Hulbert, Esq., on a couple of procedural issues. No decisions have been reached by the Board with regard to the review of APL130008.

Acting Chairman Stanford then requested that Chester C. Williams, Esq., an attorney for the appellant, present opening statements on behalf of his client.

Chester C. Williams, Esq., began by stating his concern with the availability of only five Board members to decide this case. This is a minimum quorum of Board members and would require a super majority of votes to prevail. Mr. Williams stated that there is nothing stated in the law that authorizes the Board to require a super majority vote of any matters except some very limited issues and those are not appeals. Mr. Williams stated that this is unfair to the appellant and should not be allowed.

Acting Chairman Stanford stated that he would like to hear from the Town regarding the timeline and staff's receipt of the objections from the law firm of Mr. James Scheider, attorney, for the appellant.

Ms. Teri Lewis stated that Mr. Scheider's request for postponement of APL130008 was received by the staff via e-mail on Friday, January 24, 2014 at 10:54 a.m. Staff believes that the motion for postponement contained in the letter was received by staff in an untimely manner and is in violation of the Board's Rules of Procedure.

The Board's Rules of Procedure state that all motions must be received by staff no later than 8:00a.m on the Friday prior to the public hearing date. The Board discussed the timeline and appellant's motion for continuance.

Following this discussion, Acting Chairman Stanford asked the Board if there is a motion as to whether or not the Board should consider the request for postponement contained in Mr. Scheider's letter.

Chester C. Williams stated that he sees nothing in the Board's Rules that addresses a timeline for the receipt of a motion to postpone.

Acting Chairman Stanford stated that he believes the Rules state that all requests, including motions, must be received by or before 8:00a.m on the Friday prior to the public hearing date.

Following final comments, Acting Chairman Stanford asked the Board if they wish to take action regarding the timeliness of the request for postponement received on January 24, 2014.

Mr. North made a **motion** that the Board should **deny** the appellant's request for postponement of APL130008 based on the fact that the motion for postponement was not received in a timely manner as required in the Board's Rules of Procedure. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 5-0-0.

For historical reference, the staff received an appeal from Brad Wainwright regarding the October 23, 2013 approval of an administrative rezoning for a portion of parcel 60 as identified on Beaufort County Tax Map 3. The land use on the subject parcel was previously designated as 'Open Space'; the rezoning changed the land use designation to 'Open Space/Telecommunications Facilities'.

The staff made the decision to approve the request for a minor zoning map amendment (in conformance with Land Management Ordinance (LMO) Section 16-3-1707.A.3) after determining that the amendment had the support of the affected property owners. The referenced LMO section requires that the applicant send a letter to all property owners within 100 feet of the property proposed for a telecommunications facility (five property owners were determined to be located within 100 feet of the subject property.)

Upon notification, two property owners responded in favor of the request, two property owners responded opposed to the request and one property owner did not respond. Property owners were notified that if they chose not to respond to the notification they would be considered not opposed to (or in favor of) the request. With three out of five property owners in favor of the request, staff made the determination that a majority of the affected property owners supported the request to change the land use designation from 'Open Space' to 'Open Space/Telecommunications Facilities'.

The appellant is appealing the Town's decision to issue the minor zoning map amendment on the grounds that (1) the LMO lacks a definition as to who is an 'affected' property owner and (2) it is illegal for the Administrator to rezone restricted open space via a minor amendment.

Acting Chairman Stanford requested that the appellant for APL130008 make his presentation.

James Scheider, Esq., attorney for the appellant, presented introductory statements on behalf of his client. Mr. Scheider then requested that the appellant, Mr. Brad Wainwright, address the Board.

Mr. Brad Wainwright, appellant, made his presentation to the Board. Mr. Wainwright distributed a handout to each Board member and provided an overhead presentation of several slides of his property in Hilton Head Plantation, adjoining residential property, and the proposed site of the subject cell tower.

Mr. Wainwright stated that the application is in appeal of minor zoning map amendment, ZMA130005. On October 23, 2013 an administrative rezoning took place for a parcel in Hilton Head Plantation. The LMO references the notification of property within 100-feet of the parcel under consideration. The LMO also states if the change does not have the support of the affected property owners, the request for a minor amendment will be denied. The LMO does not define "affected" property owners. It does not state that being 100-feet from the parcel is a condition for being included as an "affected" property owner.

Mr. Wainwright stated that seven property owners on White Tail Deer Lane and two property owners from Dolphin Head Drive object to this project. The seven property owners' last names are: Angelo, Kaplan, Argent, Moss, Premo, Genzer, Brower, Wahl and Wainwright.

Survey information provided by the Town lists the owners of the property and shows their relative proximity to the proposed project. Each property referenced is within 350-ft. of the subject parcel, some are as close as 100-feet. The landscape view of these nine property owners will be permanently changed from natural open space to a cell tower if the cell tower is built.

The decision to add "telecommunications facilities" as a permitted use by a minor amendment is appealed. The appeal is based on the lack of a definition in the LMO as to who is an "affected" property owner. The nine property owners listed do not support the proposed project. They consider themselves negatively "affected" by the project. The property owners are concerned that their property values may be impacted due to their close proximity to the cell tower. Mr. Wainwright also questioned the legality of the Town's LMO Administrator to rezone restricted 'open space' via a minor zoning map amendment.

Mr. Wainwright discussed the staff's original list of affected property owners and their revised list of property owners located within 100-ft. of the project. Mr. Wainwright stated that an adjacent property owner, Mr. David Premo's, lot was dropped from the original list. The Hilton Head Plantation POA was added to the list.

Mr. Wainwright stated that the Hilton Head Plantation POA should not be included on the list of five property owners within 100-ft. of the property. Mr. Premo's property is within 100-ft. of the project and he should be returned to the list of affected property owners.

Mr. Wainwright stated that changing the 'Open Space' zoning designation is in violation of the Hilton Head Plantation's Covenants. This application for appeal is based on the lack of a definition in the LMO as to who is an "affected" property owner. The nine property owners in this matter do not support the proposed project. They believe that they will be negatively impacted by the project. The LMO does not state that being 100-ft. from the project is a condition for being included as an affected property owner.

Mr. Wainwright stated that he believes the Hilton Head Plantation POA should be excluded due to a conflict of interest. The list of nine property owners are within 350-ft. of the project and they consider themselves “affected” property owners. The LMO is ambiguous in this regard. Mr. Wainwright stated that the proposed project is too large for this small, densely populated street.

Mr. Wainwright stated that the application is in violation of Hilton Head Plantation POA covenants regarding “Open Space”. The right to enjoy open space is stated in the POA’s covenants. The Town needs to investigate compliance with the covenants because this application does not have the approval of the affected property owners.

Chester C. Williams presented statements regarding the issues that were raised in Mr. Scheider’s letter dated January 23, 2014. These issues were also raised in Mr. Wainwright’s letter to Ms. Teri Lewis dated Dec. 11, 2013. They are a matter of public record.

Mr. Williams stated that one of the issues is the resolution of the underlying subdivision application. It is difficult for the Board to move forward with this appeal until the underlying subdivision issues are resolved. There was originally an approval of a minor subdivision application that did subdivide out this 2.0 acre tract.

Mr. Williams presented an overhead review of the approved subdivision plan. That subdivision application was appealed primarily on the grounds that it was approved as a minor subdivision. Minor subdivisions are available only for residential properties and this is not residential.

Mr. Williams stated that the Town admitted the error and the staff went back and redid the subdivision application. The applicant filed a new major subdivision application on November 22, 2013. The Town approved the new application on November 26, 2013. When the Town went back and withdrew the original approval and substituted a new approval, the appellant withdrew their appeal of the original approval.

Last week the appellant filed an appeal of the revised approval. If that application is successful and this subdivision is voided, then application for zoning map amendment ZMA130005 would be invalidated. The 2.0 acre tract was subdivided out of a much larger tract that is shown on the original subdivision plat.

Mr. Williams stated that he believes the subdivision application was filed in order to minimize the number of people who are entitled to get notice of the minor master plan amendment application. The Board should not decide this application until the final determination of the subdivision application is resolved by the Planning Commission. This application will be reviewed by the Planning Commission in March.

In his December 11th letter, Mr. Wainwright objected to the record (all of the papers constituting the record of the appeal). Mr. Williams stated that he believes that there are additional pieces of record that were not provided to the Board for review. The Board received a partial record of the case which is in violation of state law and the appellant’s rights.

Mr. Williams stated his concern that the appellant has been provided with all of the information that is needed. Mr. Williams stated his concern with the accuracy of the Town's GIS system in determining who is and who is not an affected property owner.

Mr. Williams stated that the term for an "affected" property owner contained in the LMO is ambiguous and can mean different things to different people. Mr. Williams reiterated his concern with the Board's receipt of the full public record.

Mr. Williams reviewed the notification requirements for ZMA130005 including the location of Mr. Premo's property. Mr. Williams stated his concern that the Hilton Head Plantation POA received a notice the second time, but Mr. David Premo, located within 100-ft. of the project, did not receive a notice the second time.

Mr. Williams presented an overhead review of the survey using a surveyor's scale ruler. Mr. Williams measured the lines and distance of Mr. Premo's property from the project. Mr. Williams stated that the survey shows that Mr. Premo's property is within 100 ft. of the project.

Mr. Williams stated that the Town has an obligation to inquire if the requested activity violates the Hilton Head Plantation POA covenants. The open space should be preserved as open space. Open space should not be used for utilities. At the completion of these comments, Acting Chairman Stanford requested that the staff make their presentation.

Ms. Teri Lewis presented statements on behalf of staff. What is before the Board today is a decision as to whether or not the staff was correct in issuing the Notice of Action for Minor Zoning Map Amendment ZMA130005.

This zoning map amendment changed the land use designation from "Open Space" to "Open Space/Telecommunications Facility". The staff believes that they followed the appropriate steps and ordinances in issuing the Notice of Action. The staff believes that the Board should uphold the staff's decision to issue that Notice of Action.

Ms. Lewis stated that the appellant appealed the staff's decision to issue the minor zoning map amendment on two grounds: (1) that the LMO lacks a definition as to who is an affected property owner; and (2) that it is illegal for the Administrator to rezone restricted 'open space' via a minor amendment.

Ms. Lewis stated that the Board received a copy of all of this information as part of their packet. The Town Council adopted changes related to Planned Unit Development Review of Minor Amendments in 2012. That amendment allowed property within a PUD to be rezoned via the minor zoning map amendment process rather than the major zoning map amendment process.

For the major zoning map amendment process, it goes through the Planning Commission for a public hearing and then to Town Council for two readings to be adopted by Ordinance.

With a minor zoning map amendment process related to telecommunication towers that was adopted by Town Council back in 2012, as long as it was determined that the change had the support of the affected property owners, the staff could issue the minor zoning map amendment.

The staff agrees that there is no definition of an affected property owner within the Land Management Ordinance, specifically the minor zoning map amendment section. However, when you read that section of the LMO, it talks about first sending a written notification to all property owners within 100-ft. of the subject parcel. The subject parcel is the parcel where the land use is proposed to be changed to allow a telecommunications facility.

The clear intent is to let those residents located within 100-ft. know that the land use of the property that is within 100-ft. of property that they own may be changed.

In terms of the notification process, Mr. Williams has stated that the staff sent out the first notification, received too many objections, and decided to redo it in order to weigh the issue in the applicant's favor; this is not how it happened.

The staff realized that they had made two errors: (1) the staff provided a list of local addresses rather than those in the Assessor's data base which is what the LMO requires. The notification should be sent to the owner of record since many owners live out of town; and (2) because this parcel had been newly created, the GIS staff geo-referenced in the subject parcel picked a point and created a 100-ft. buffer that parcel. This ended up showing five properties at the time which staff believed were the five affected property owners.

Ms. Lewis stated that GIS is accurate and it gave us a new list of property owners. We sent those notices to the five property owners. Upon notification, two property owners responded in favor of the request, two property owners responded opposed to the request and one property owner did not respond.

Property owners were notified that if they chose not to respond to the notification they would be considered not opposed to (or in favor of) the request. With three out of five property owners in favor of the request, staff made the determination that a majority of the property owners supported the request to change the land use designation from 'Open Space' to 'Open Space/Telecommunications Facilities'.

The staff found that the majority of the property owners were in favor. The Notice of Action for the minor zoning map amendment was then issued for that property.

Ms. Lewis stated that the staff disagrees that the property lines shown on Mr. Williams' survey are accurate. Ms. Lewis presented comments regarding the Town's use of GIS in other lists of property owners. The GIS is very accurate and it gave staff a new list of property owners.

With regard to the Mr. Williams' second argument, the staff finds nothing that prohibits the rezoning of open space via a minor zoning map amendment process.

Ms. Lewis stated that staff has met with their legal counsel to discuss the issue of the POA's covenants. The staff believes that utilities were contemplated on open space property and the staff believes that the notification process was appropriately carried out.

Ms. Lewis also presented comments regarding the process for amending the LMO. Ms. Lewis also presented comments regarding the LMO re-write process that is currently underway.

The staff's files and records are all of public record; the staff does not believe anything has been withheld from the record.

Acting Chairman Stanford stated that the main issue of concern seems to be the location of the Premo lot (is it within 100-ft. for notification purposes). Acting Chairman Stanford questioned why the lot was included on the list once and later excluded from the list.

Chester C. Williams presented statements in response to the location of Premo property in relationship to the power easement. Using the surveyor's scale, the Premo's lot is less than 100-ft. from the property under consideration for the zoning map amendment application.

Mr. Williams presented statements in concern of the accuracy of the Town's GIS system. The surveyor's process would have been substantially different than what we are looking at today; therefore, the notice is defective. Mr. Williams presented statements in concern of the errors made in the first mailing.

Mr. Williams also stated that there is no evidence that all of the mailed notices reached the intended property owners.

At this point in the discussion, Mr. North requested that the Board go into an Executive Session for the purpose of seeking legal advice from Brian Hulbert, Board attorney. The purpose of the Executive Session will be to seek legal advice on procedural matters. The Board agreed with the request for an Executive Session and Acting Chairman Stanford requested that a motion be made.

Mr. North made a **motion** for the Board to go into an Executive Session with Brian Hulbert, Board Attorney, for the purpose of seeking legal advice. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

Acting Chairman Stanford called for a recess in the meeting. The meeting will resume following the Executive Session.

When the meeting was called back to order, Acting Chairman Stanford stated that the Board received legal advice from Brian Hulbert, Esq., on legal issues related to the application. No decisions were reached by the Board concerning APL130008 during the Executive Session.

Acting Chairman Stanford stated that the Board is very concerned about the distance measurements from the applicable easement parcel to the adjacent parcels, particularly to Mr. Premo's parcel.

Acting Chairman Stanford stated that the Board has been provided with copies of the site surveys that Mr. Williams has been discussing. Acting Chairman Stanford requested that Mr. Williams continue his discussion of the two surveys plans. Mr. Williams continued his presentation of Exhibit "A" and Exhibit "B".

Mr. Williams used an engineering scale that allows the user to scale off property at 1-inch equals 30-feet. The measurement of 100-ft. begins at the boundary of the subdivision or the tower easement area. Acting Chairman Stanford agreed that the measurement scale does not work on Exhibit "B".

What is the difference between the two surveys? The subdivision plan is Exhibit "A" a subdivision plat. It shows what is designated at parcel 1. The smaller one, which is a broad land survey, is Exhibit "B".

Acting Chairman Stanford asked the Town staff to bring their GIS representative before the Board. Ms. Lewis then introduced Mr. Jacob Deuel, the Town's GIS Administrator.

Mr. Deuel explained the Town's process for conducting a GPS survey. Mr. Deuel discussed the survey marked Exhibit "A". Mr. Deuel confirmed the Town's interpretation of the distance of Parcel 15 from its nearest point to the parcel that is identified as tower easement area 3,500 sq. ft.

Acting Chairman Stanford asked Mr. Deuel if he is concerned with the accuracy of Mr. Williams' presentation. Mr. Deuel stated that the analysis of what the staff uses is different than what has been presented by Mr. Williams today.

Mr. Deuel stated that GIS stands for Geographic Information Systems. GIS is not surveying - GIS is a representation of data. There are discrepancies when geographic data is used in instances such as this discussion.

Mr. Deuel explained the GIS procedure for developing the list of addresses. The process is called Geo-Referencing. It takes a survey such as the one discussed today and brings it into the GIS system. The distance for the buffer that was used in this case is 100-ft. Mr. Deuel explained the staff's use of Control Points on the survey. The Board and Mr. Deuel discussed the issue of Control Points. The Board and the staff discussed the function and the accuracy of a land surveyor versus GIS data analysis.

Mr. Deuel stated that the staff does not necessarily agree that the lines shown on the survey for Parcel 15 are accurate. There are no control points so the staff is uncertain about the accuracy of the boundary lines shown on the survey for Parcel 15. Mr. Williams responded with comments regarding the subdivision plat in relationship to Mr. Premo's property, Parcel 15.

Chester C. Williams, Esq., presented statements in concern of the staff's GIS presentation.

Acting Chairman Stanford requested comments from the legal representative for the Hilton Head Plantation POA. Mr. Jack Qualey, Esq., stated that his client does not agree with what Mr. Williams has stated today; however, they have no comments at this time.

Ms. Jenna McGee, Esq., attorney for Crown Castle, acknowledged that the survey being discussed by Mr. Williams today is signed by a certified surveyor. However, we have not heard any testimony today from a licensed surveyor (this should have been afforded to the Board.) At the completion of these comments, Acting Chairman Stanford invited discussion by the Board.

Mr. North stated that he is concerned that the Board has not heard from a licensed land surveyor regarding the accuracy of the survey. Perhaps the Board should consider adjourning today's meeting in order to bring a certified land surveyor before the Board to

confirm the accuracy of what has been brought before them today. If the survey is accurate, then Mr. Premo's lot does appear to be well within 100-ft. of the project.

Acting Chairman Stanford asked if the Board can adjourn their meeting with the request that the staff provide the requested information (a certified land surveyor) to confirm the accuracy of the GIS information before the Board in time for the February 24, 2014 meeting.

Brian Hulbert, Esq., stated that the Board can certainly make this request. Acting Chairman Stanford then requested that a motion on this issue be made.

Mr. North made a **motion** that the Board **suspends** their discussion of APL130008 in order to receive additional information from staff on the accuracy of the surveyor's plan. Additional testimony is needed from the certified land surveyor (Mr. Gore) on the accuracy of the survey. Mr. Fingerhut **seconded** the motion.

Mr. Wilson stated that he does not believe there is any value in having additional testimony from a certified land surveyor. The survey is properly certified as correct and accurate and that should be sufficient for the Board.

Acting Chairman Stanford stated that the issue is that the survey is a survey of the tower easement parcel and not a survey of Parcel 15. Expert testimony is therefore necessary on the lines and measurements. Brian Hulbert stated that both sides should be afforded the opportunity to see what will be presented to the Board in advance of the next meeting.

Acting Chairman Stanford repeated the motion - Mr. North has made a **motion** that the Board **suspends** their discussion of APL130008 at this time in order to receive additional information on the accuracy of the surveyor's plan. Additional testimony is needed from the certified land surveyor, Mr. Gore on the accuracy of the survey. The certified surveyor should appear before the Board at the next meeting on Monday, February 24, 2014. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 4-1-0.

9. Board Business

None

10. Staff Report

Waiver Report - Ms. Nicole Dixon presented the Waiver Report on behalf of staff.

11. Adjournment

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

Submitted By:

Approved By:

Approved By:

February 24, 2014

Kathleen Carlin
Secretary

Glenn Stanford
Acting Chairman
(For review of APL130008)

Peter Kristian
Chairman



**TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT
DEPARTMENT**

One Town Center Court	Hilton Head Island SC 29928	843-341-4757	FAX 843-842-8908
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**STAFF REPORT
VARIANCE**

Case #	Name of Development	Public Hearing Date
VAR#130015	19 Knightsbridge Lane	February 24, 2014

Parcel Data	Owner	Applicant
Tax Map ID: Map 15D, Parcel 337 Address: 19 Knightsbridge Lane Zoning District: PD-1 (Wexford) Overlay District: COR	Sheila Hammer 16 Eagle Court Hampton ON, Canada LOB 1JO	Cameron & Cameron Custom Homes PO Box 1751 Bluffton SC 29910

Application Summary

The Community Development Department received a request for a variance from Cameron & Cameron Custom Homes for the following Section of the Land Management Ordinance (LMO):

16-6-204, Wetland Buffers

The applicant proposes to build a pool in a portion of the wetland buffer.

Background

The subject parcel is located at 19 Knightsbridge Lane in Wexford Plantation in the PD-1 Zoning District. As shown on the Vicinity Map (Attachment A), the subject parcel is bound by an undeveloped parcel on the north, Knightsbridge Lane on the east, a single family house to the south and a tidal wetland (lagoon) to the west.

Wexford Plantation's tidal wetland was developed between 1979 and 1986. The subject parcel is separated from the wetland by a concrete bulkhead, as are most of the parcels adjacent to the wetland in Wexford. The State of South Carolina's Department of Health and Environmental Control's (DHEC) Ocean & Coastal Resource Management (OCRM) determined the tidal wetland's Critical Line (the boundary of the wetland system) is located at the edge of the bulkhead.

Land Management Ordinance (LMO) Section 16-6-204, Wetland Buffers, requires a 20-foot buffer from tidal wetlands for single family residential structures and uses. These wetland buffer standards have been in place since the LMO was enacted in 1987. Most properties in the vicinity of the subject parcel have wetland buffers that do not conform to the standards of the LMO because they have sod or non-native vegetation planted in the wetland buffer. A building permit was issued for a new house on the subject parcel on February 19, 2013. Andrea Eldred of Cameron & Cameron Custom Homes approached Town staff in

December 2013 with an application to add a pool. Staff informed Ms. Eldred that, because the proposed pool was shown in the 20-foot wetland buffer, a variance would be required prior to review and approval of a building permit for the pool.

Along with the variance request, the applicant submitted a proposed landscape plan for the wetland buffer to mitigate the effects of the encroachment of the pool into the buffer. The Town's Environmental Planner has approved the proposed landscape plan.

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

Grounds for Variance

The applicant is applying for a variance from LMO Section 16-6-204, Wetland Buffers to build a pool in a portion of the wetland buffer. The applicant states the variance is needed because the size of the lot and the setbacks required by Wexford Plantation limits the buildable area behind the house.

Summary of Facts

1. Applicant seeks a variance from LMO Section 16-6-204, Wetland Buffers.
2. The applicant is proposing to build a pool in a portion of the wetland buffer.

Conclusion of Law

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

Staff Determination

Staff recommends that the Board of Zoning Appeals **disapprove** 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, January 19, 2014, 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, posted notice, mailed notice and affidavit of compliance 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. There is a tidal wetland along the west side of the subject parcel.
2. LMO Section 16-6-204, Wetland Buffers, requires a 20-foot wetland buffer measured landward from the OCRM Critical Line on single family residential parcels.
3. The subject parcel is located in Wexford Plantation.
4. Wexford Plantation covenants require 15-foot setbacks on the sides of residential parcels adjoining other residential parcels, a 30-foot setback on the side of residential parcels adjoining water, and a 30-foot setback on the side of a residential parcel adjoining a minor street.

Conclusions of Law

1. This application meets the variance criteria as set forth in LMO 16-3-1906.A.1.
2. Since the subject parcel is located on a tidal wetland, the LMO requires a 20-foot wetland buffer measured landward from the OCRM Critical Line.
3. Wexford Plantation’s required setbacks limit the buildable area on the parcel.

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. Many single-family residential parcels in Wexford Plantation, including all of the parcels surrounding the subject parcel, are located on a tidal wetland.
2. All single-family residential parcels located on a tidal wetland are required to maintain a 20-foot wetland buffer measured landward from the OCRM Critical Line per LMO Section 16-6-204.
3. Single-family residential parcels in Wexford Plantation (aside from those in Wexford on the Green, Wexford Commons, and Wexford Garden Homes) are required to meet 15-foot side setbacks and 30-foot street setbacks. Parcels located on the water are also required to meet a 30-foot waterfront setback.

Conclusions of Law

1. This application does not meet the variance criteria as set forth in LMO 16-3-1906.A.2.
2. Since all residential parcels on a tidal wetland are subject to a 20-foot wetland buffer, this condition is generally applicable to other properties in the vicinity.
3. Since similar properties in Wexford Plantation are required to maintain setbacks from adjacent residential properties, the street and the water, these conditions are generally applicable 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 16-3-1906.A.3)

Findings of Fact

- 1. The applicant is able to construct a 6,000 square foot house on the subject parcel without encroaching into the required setbacks or the wetland buffer.

Conclusions of Law

- 1. This application does not meet the variance criteria as set forth in LMO 16-3-1906.A.3.
- 2. The application of the LMO to the subject parcel has not prohibited or unreasonably restricted the use of the property because it is being developed with a reasonably sized house.

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. A 6,000 square foot house was built without encroaching into the wetland buffer.
- 2. The owner is proposing to build a pool in a portion of the wetland buffer.

Conclusions of Law

- 1. This application does not meet the variance criteria as set forth in LMO 16-3-1906.A.4.
- 2. The hardship is the result of the applicant’s own actions because the owner is proposing the encroachment into the wetland buffer.

Staff Summary of Facts and Conclusions of Law

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

Findings of Fact

- 1. The Comprehensive Plan addresses this application in the following areas:

Natural Resource Element

3.1 Water Quality & Quantity – An Implication for the Comprehensive Plan

The data collected on the local, regional and national scale suggests that the current development strategies can have a negative impact on water quality. The Town needs to continue to make water quality and quantity a high priority by encouraging water conservation, reducing impervious surfaces, encouraging environmentally sound drainage and flood control practices, as well as sustainably manage stormwater for small and large scale development.

Goal 3.1 - Protect Water Quality and Quantity

- A. The goal is to preserve all blueways (which includes salt marsh, freshwater wetlands, open canals, ditches and open water systems).
- D. The goal is to encourage private property owners to incorporate water quality

protection measures into their home and/or development.

Implementation Strategy - Protect Water Quality and Quantity

E. Require wetland buffers vegetated with native plants for all land-use types.

Broad Creek Management Plan

Chapter 3 - Water Quality – Implementation Strategy

3. *Encourage property owners to provide vegetated buffers on all receiving water bodies.* This is particularly important for stormwater detention ponds and lagoons. The purpose is to allow for improvement of water quality before it reaches the stormwater system and is discharged into Broad Creek.

2. LMO Section 16-6-201.A, Wetlands – Statement of Purpose and Intent, states that buffers shall serve as an ecological transition zone from non-wetlands to freshwater or tidal wetlands which is an integral portion of the wetlands ecosystem, providing temporary refuge for wetlands fauna during high water episodes, and critical habitat for animals dependent upon but not resident in wetlands. Buffers also serve as a sediment and storm water control zone to reduce the impacts of development upon wetlands and wetland species.
3. LMO Section 16-6-204.C, Wetlands – Prohibited Activities, states that the placement of structures and pervious or impervious surfaces is prohibited in wetland buffer areas.

Conclusions of Law

1. This application does not meet the variance criteria as set forth in LMO 16-3-1906.A.5.
2. The approval of the application would conflict with the Comprehensive Plan because permitting impervious surfaces in a wetland buffer will limit or decrease the water quality measures for this site which is inconsistent with goals and strategies of the Natural Resources Element and the Broad Creek Management Plan.
3. The approval of the application would be in conflict with LMO Section 16-6-201.A because the encroachment of the pool into the wetland buffer would reduce the width of the wetland buffer, which is integral to the wetlands ecosystem.
4. The approval of the application would be in direct conflict with LMO Section 16-6-204.C because structures and impervious surfaces are prohibited in wetland buffers.

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 substantial detriment to the adjacent property that would be caused by granting the variance.
2. The reduction of the wetland buffer would reduce the quality of the wetland's ecosystem and potentially its water quality.
3. The applicant's landscape plan for the wetland buffer would mitigate the

- encroachment of the pool into the wetland buffer.
4. Staff received a letter from the Wexford Plantation Architectural Standards Committee in support of the application as long as it is approved by the Town.
- Conclusions of Law**
1. This application meets the variance criteria as set forth in LMO 16-3-1906.A.6.
 2. Though the loss of a portion of the wetland buffer would cause some detriment to the wetland system, the mitigation of the encroachment would reduce the effects of the loss.
 3. The authorization of the variance will not be a substantial detriment to adjacent property, the public good or the character of the district.

PREPARED BY:

AC

 Anne Cyran, AICP
Senior Planner

February 5, 2014

 DATE

REVIEWED BY:

ND

 Nicole Dixon, CFM
Senior Planner & BZA Coordinator

February 5, 2014

 DATE

REVIEWED BY:

HC

 Heather Colin, AICP
Development Review Administrator

February 5, 2014

 DATE

ATTACHMENTS

- A) Vicinity Map
- B) Aerial Photo
- C) Photos
- D) Applicant’s Narrative
- E) Site Plan
- F) Letter from Wexford Plantation Architectural Standards Committee



19 Knightsbridge Lane



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

19 Knightsbridge Lane
 VAR130015
 Vicinity Map



1 inch = 573 feet



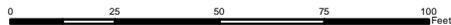
This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.



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

19 Knightsbridge Lane VAR130015

Staff Report Attachment B - Aerial Photo



1 inch = 46 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.

VAR130015, 19 Knightsbridge Lane
Staff Report Attachment C – Photos



Sheila Hammer
16 Eagles Court
Hampton, Ontario L0B1J0

December 13, 2013

Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29918

RE: 19 Knightsbridge Lane – Wexford Plantation

Dear Sir or Madam,

I am writing to request a variance for my property located at 19 Knightsbridge Lane within the Wexford Plantation.

Section 16-6-204 of the LMO states:

Placement of anything of a permanent man-made nature cannot be built or placed within 20 feet of a marshland area.

Wexford Plantation has a man-made concrete wall structure to provide and maintain water levels using a lock system for boat access docking and storage only. There is no marshland in this area and does not impede with any natural vegetation or wildlife.

Due to the size of the lot in this residential area and the restrictions placed by Wexford for the building structure location and that it is not located in a marshland area as per section 16-6-204, we are asking for your approval for a 5 foot variance to install a small outdoor pool.

I have been informed the bylaw is up for review and it may be revised. We are requesting a variance to the new revised bylaw. There are pools in Wexford that have been installed much closer to the concrete wall that we are requesting and have not created any damage to the area.

We are asking you to consider our request.

Thank You,

Sheila Hammer

Sheila Hammer
16 Eagles Court
Hampton, Ontario L0B1J0

December 16, 2013

Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29918

RE: 19 Knightsbridge Lane – Wexford Plantation

Dear Sir or Madam,

I am writing to request a variance for my property located at 19 Knightsbridge Lane within the Wexford Plantation.

In response to the 'Variance Criteria':

- a) The setbacks (front and sides) required by Wexford Plantation on the property, to maintain continuity of the architectural plantation designs, limits the space in the rear of the building.
- b) These conditions have existed on other properties in the past in Wexford where pools have been allowed.
- c) By minimizing the 20 foot variance by 5 feet, the property can be utilized effectively and will not hinder the surrounding areas.
- d) This variance is requested due to the lot size.
- e) This variance does not conflict with any marshland that would affect vegetation or wildlife according to the LMO comprehensive plan.
- f) This variance will not impede any adjacent properties.

Thank you for considering our request.

Sincerely,

Sheila Hammer

VAR130015, 19 Knightsbridge Lane
Staff Report Attachment E - Site Plan

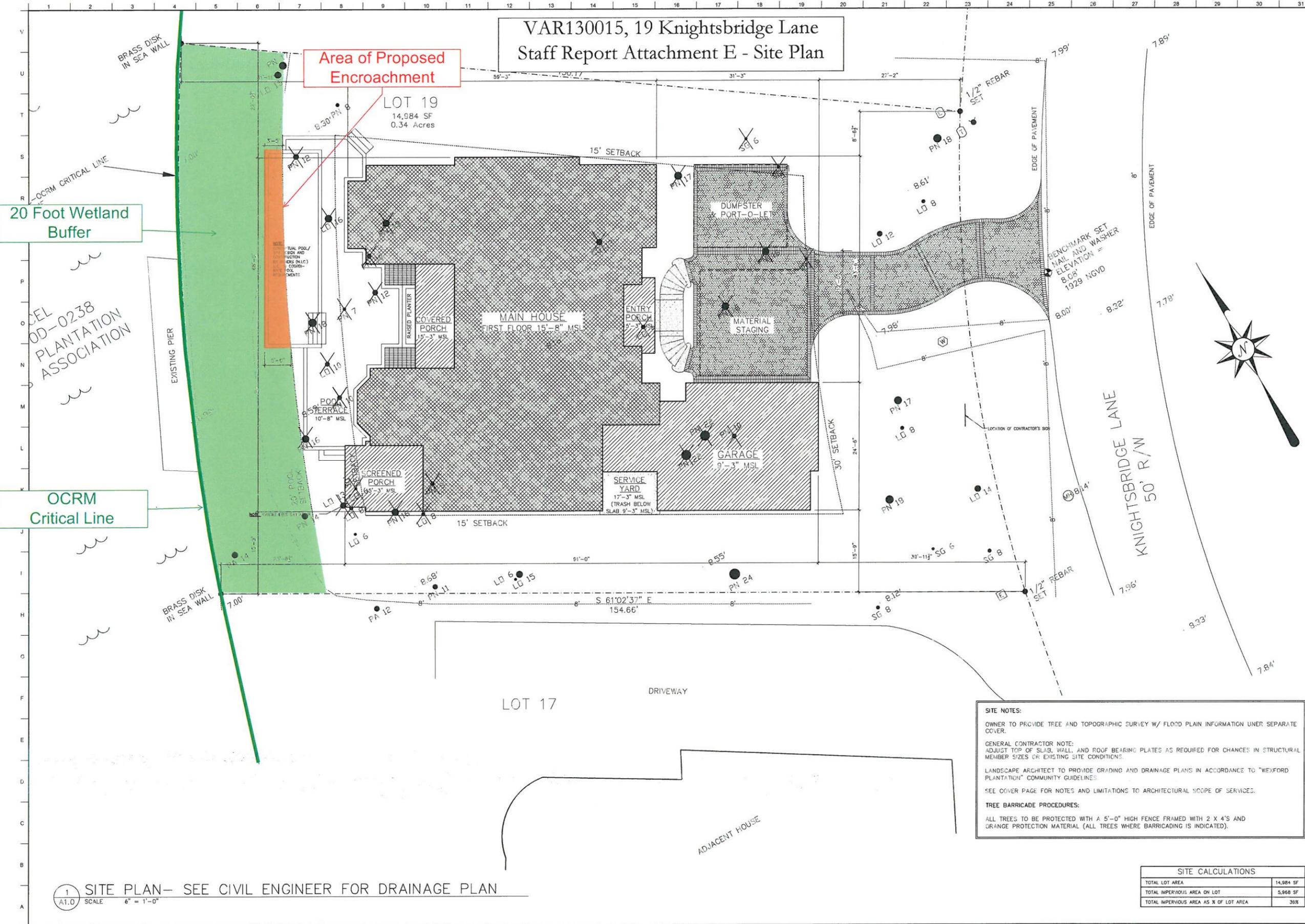
Area of Proposed Encroachment

LOT 19
14,984 SF
0.34 Acres

20 Foot Wetland Buffer

OCRM Critical Line

CEL 0D-0238
PLANTATION
ASSOCIATION



SITE NOTES:
OWNER TO PROVIDE TREE AND TOPOGRAPHIC SURVEY W/ FLOOD PLAIN INFORMATION UNDER SEPARATE COVER.
GENERAL CONTRACTOR NOTE:
ADJUST TOP OF SLAB, WALL, AND ROOF BEARING PLATES AS REQUIRED FOR CHANGES IN STRUCTURAL MEMBER SIZES OR EXISTING SITE CONDITIONS.
LANDSCAPE ARCHITECT TO PROVIDE GRADING AND DRAINAGE PLANS IN ACCORDANCE TO "WEXFORD PLANTATION" COMMUNITY GUIDELINES.
SEE COVER PAGE FOR NOTES AND LIMITATIONS TO ARCHITECTURAL SCOPE OF SERVICES.
TREE BARRICADE PROCEDURES:
ALL TREES TO BE PROTECTED WITH A 5'-0" HIGH FENCE FRAMED WITH 2 X 4'S AND ORANGE PROTECTION MATERIAL (ALL TREES WHERE BARRICADING IS INDICATED).

SITE CALCULATIONS	
TOTAL LOT AREA	14,984 SF
TOTAL IMPERVIOUS AREA ON LOT	5,968 SF
TOTAL IMPERVIOUS AREA AS % OF LOT AREA	39%

1 SITE PLAN - SEE CIVIL ENGINEER FOR DRAINAGE PLAN
A1.0 SCALE 6" = 1'-0"

COURT ATKINS ARCHITECTS
THE HAMMER RESIDENCE
LOT #19, KNIGHTSBRIDGE LANE
WEXFORD PLANTATION, HILTON HEAD, SC

REVISIONS
APPENDIX 1: 02/15/13 ELECTRICAL UPDATES

PROJECT NO. 11-057
DATE 12/20/2013
DRAWN BY
CHECKED BY
SHEET NO. **A1.0**
SITE PLAN

P.O. Box 2178 Bluffton, SC 29915
P: 843.815.2557 F: 843.815.2558

VAR130015, 19 Knightsbridge Lane
Staff Report Attachment F: Letter from Wexford Plantation
Architectural Standards Committee



WEXFORD PLANTATION

ARCHITECTURAL STANDARDS OFFICE
Post Office Box 4100
Hilton Head Island, SC 29938
Telephone: (843) 686-8820
Fax: (843) 686-8819

January 30, 2014

To Whom It May Concern,

I am aware that a variance has been requested from the Town of HH to extend a pool 5 ft into the OCRM buffer. Mr. and Mrs. Gunther Hammer are currently completing a new home at 19 Knightsbridge Lane and in order to fit a reasonable size pool, this 5 ft variance is essential.

The Wexford ASC would grant a 5 ft variance into this OCRM buffer as long as the Town approves it. Wexford would have the following requirements if the variance is approved:

1. The 50% hardscape/softscape ratio must be maintained
2. A revised landscape plan must be submitted and approved
3. An engineered plan for the pool is submitted to the ASC indicating that there is no negative impact on the integrity of the bulkhead.

On behalf of the Hammer's, thank you for your consideration.

Deb Perlozzo

Wexford ASC Administrator

A handwritten signature in blue ink that reads 'Deb Perlozzo'.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE: February 5, 2014
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 January Board of Zoning Appeals meeting.

Administrative Waivers

February - 2014

1. A project at 69 Pope Avenue (Aunt Chilada's): the applicant requested to make improvements to the property with an outdoor bar addition. The property currently exceeds the maximum impervious surface coverage allowed, therefore it is considered a non-conforming site feature. A waiver was granted because the applicant is proposing to make improvements that will reduce the impervious surface coverage on site which will bring the site more into compliance with the LMO.