



**Town of Hilton Head Island  
Board of Zoning Appeals  
Regular Meeting  
Monday, March 23, 2015 2:30 p.m.  
Benjamin M. Racusin Council Chambers  
AGENDA**

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1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call**
4. **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.
5. **Welcome and Introduction to Board Procedures**
6. **Approval of Agenda**
7. **Approval of the Minutes** – January 26, 2015 Meeting
8. **Unfinished Business**  
None
9. **New Business**  
**Public Hearing**  
**VAR-000272-2015:** Cynthia and Cornelius Cornelssen are requesting a variance from Land Management Ordinance Section 16-6-102.D, Wetland Buffer Standards, in order to construct a pool within the 20 foot tidal wetland buffer. The property is located at 294 Seabrook Drive and is further identified as parcel 426 on Beaufort County Tax Map 4B. *Presented by: Nicole Dixon*
10. **Board Business**
  - a) Adoption of the 2015 BZA Meeting Schedule
  - b) Revisions to Rules of Procedure
11. **Staff Reports**
  - a) 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 Monday, January 26, 2015 2:30pm Meeting**  
**Benjamin M. Racusin Council Chambers**

**DRAFT**

Board Members Present: Chairman Glenn Stanford, Vice Chairman P. Jeffrey North, Irv Campbell, David Fingerhut, and Steve Wilson

Board Members Absent: Michael Lawrence

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator  
Heather Colin, Development Review Administrator  
Brian Hulbert, Staff Attorney  
Charles Cousins, Director of Community Development  
Kathleen Carlin, Secretary

**1. Call to Order**

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

**2. Pledge of Allegiance to the Flag**

Chairman Stanford stated that starting today the BZA will open their meetings with the Pledge of Allegiance to the flag. The Pledge of Allegiance will appear on future agendas.

**3. Roll Call**

**4. Freedom of Information Act Compliance**

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

**5. Swearing in Ceremony for returning BZA member, Chairman Glenn Stanford**

Brian Hulbert, Staff Attorney, performed the swearing in ceremony for returning BZA Chairman Glenn Stanford.

**6. Welcome and Introduction to Board Procedures**

Chairman Stanford welcomed the public and introduced the Board's procedures for conducting the business meeting.

**7. Approval of Agenda**

Mr. Fingerhut made a **motion** to **approve** the agenda as presented. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**8. Approval of the Minutes**

Vice Chairman North made a **motion** to **approve** the minutes of the June 23, 2014 meeting as submitted. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**9. Unfinished Business**

None

**10. New Business**

**Public Hearing**

**SER-002322-2014:** Kerry Pollock of Comedy Magic Cabaret, on behalf of Richard Kolsch with Miller Family Limited Partnership, is requesting special exception approval for a comedy club per the restrictions placed on the property when it was rezoned to the Planned Development (PD-1) Zoning District on June 5, 2012. As part of the rezoning (ZMA120003), the use indoor entertainment was listed as a use that requires special exception approval. The property is located in the Palmetto Dunes Resort at 807 William Hilton Parkway and is further identified as parcel 16A on Beaufort County Tax Map 12. Chairman Stanford introduced the application and requested that the staff make their presentation.

Ms. Nicole Dixon made the presentation on behalf of staff. The staff recommended that the Board approve application SER-002322-2014 based on the Findings of Fact and Conclusions of Law contained in the staff's report. Ms. Dixon presented an in-depth overhead review of the application including the vicinity map, the applicant's narrative, and the site plan.

Mr. Kerry Pollock of Comedy Magic Cabaret, on behalf of Richard Kolsch with Miller Family Limited Partnership, LLC, is requesting special exception approval for a comedy club per the restrictions placed on the property when it was rezoned to the Planned Development (PD-1) Zoning District on June 5, 2012. As part of the rezoning (ZMA120003), the use of indoor entertainment was listed as a use that requires special exception approval.

The subject parcel is located at 807 William Hilton Parkway and is currently developed with a shopping center known as Plantation Center. The property is bound by Greenwood Development marketing offices to the north, Greenwood Development property maintenance and storage yard and the Palmetto Dunes POA Office redevelopment to the east, a vacant property and the Hunter building with commercial uses to the south, and Hilton Head Chamber of Commerce and the Arts Center of Coastal Carolina buildings to the west across William Hilton Parkway.

The Comedy Magic Cabaret currently operates out of the Kingfisher restaurant in Shelter Cove. The owner of the business is wishing to relocate to the Fidelity building in Plantation Center. Plantation Center was rezoned in June 2012 from OL (Office/Institutional Low Intensity) to the PD-1 (Planned Development) Zoning District as part of the Palmetto Dunes Resort. As part of that rezoning approval, restrictions were placed on what uses were permitted and what uses would require special exception approval by the Board of Zoning Appeals. Indoor entertainment was a use that was listed as requiring special exception approval. Indoor Entertainment is now referred to as Indoor Commercial Recreation under the new LMO. The proposed comedy club is considered an indoor commercial recreation use.

Ms. Dixon reviewed the Findings of Fact and Conclusions of Law contained in the staff's report. Based on the Findings of Fact and Conclusions of Law, the LMO Official has determined that the request for a special exception should be granted to the applicant for the

proposed Indoor Commercial Recreation use in the PD-1 Zoning District because it is in conformance with the Comprehensive Plan and the Land Management Ordinance. Following staff's presentation, Chairman Stanford requested that the applicant make his presentation.

Mr. John Biddle, applicant's representative, presented statements in support of the application. The Board discussed several issues including the nature of the business and its hours of operation. Following final comments by the Board, Chairman Stanford requested that a motion be made.

Vice Chairman North made a **motion** that the Board **approve** application SER-002322-2014 as presented by the staff based on the Findings of Fact and Conclusions of Law contained in the staff's report. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

## 11. Board Business

### a) Adoption of the 2015 BZA Meeting Schedule

The Board reviewed the 2015 meeting schedule with staff. The staff clarified the correct meeting date in May, which is **Wednesday, May 13<sup>th</sup>**. The change in the regular meeting schedule is due to the Memorial Day holiday and other scheduling conflicts. Mr. Hulbert presented comments regarding potential conflicts in application filing dates. The staff will confirm that the filing dates are correct. The Board will adopt the 2015 Meeting Schedule at their next meeting.

### b) Revisions to Rules of Procedure

At the June 23, 2014 meeting the Board reviewed and discussed proposed revisions to the Rules of Procedure regarding the timing allowed for supplemental submissions, to allow staff to have a chance to respond to such supplements and to give the Board additional time to review the information. Corrections were also made to an incorrect citing of a code section. The proposed changes were approved at the June 23, 2014 meeting but never formally adopted since the BZA has not had a regular meeting since June 2014.

Since the June 23<sup>rd</sup> meeting, the re-write of the Land Management Ordinance was adopted by Town Council on October 7, 2014. The staff reviewed the Rules of Procedure and made revisions based on code section changes and other minor revisions. These changes are located on Pages 5, 10, 12, 17, 18 and 19 of the current Rules of Procedure.

Chairman Stanford began with a review of the existing Rules of Procedures on a page by page basis. Chairman Stanford requested clarification from the staff on Section 3. (Page 10) Conflict of Interest. Brian Hulbert, Staff Attorney, presented statements with regard to filing the required Conflict of Interest Form with the BZA Secretary. The Conflict of Interest Form is attached to the approved minutes and becomes a permanent part of the record. There were no additional comments provided by the Board on the current Rules of Procedure or the proposed minor revisions. Chairman Stanford then requested public comments and the following were received:

Chester C. Williams, Esq., presented statements in concern of the following item:

- a) Article XI, Motions, Section 1. Motion for Reconsideration (pages 18-19), item 7. The time for Appeal from any decision of the Board under Section ~~16-3-1804, Section 16-3-1905 or Section 16-3-2003~~ 16-2-103.E.3.d, 16-2-103.S.3.d or 16-2-103.T.4.d of the LMO to Circuit Court shall be stayed by the timely filing of a Petition for Reconsideration and shall run from the receipt of the written Notice of Action Denying the Petition, or the written Notice of Action delivered after the board has Reconsidered the matter, as the case may be.

Mr. Williams stated that he is concerned with when the original decision by the Board had been mailed. Under South Carolina Code Section 6-29-820, Sub. A, it states that an appeal must be filed within 30 days after the decision by the Board is mailed. Mr. Williams stated that he does not believe that the BZA has the authority to change what the State law says in their Rules of Procedure.

Chairman Stanford and Mr. Williams discussed Mr. Williams' concern with the case law and State statute stating that the filing deadline is jurisdictional. A solution would be a period of time before the action by the BZA is final in which an applicant has the power to file a motion for reconsideration. Mr. Williams' solution is not to send out the Notice of Action by the Board until the five days has run out. The Notice of Action shall be mailed by certified letter to the Appellant and Record Owner of the real property affected by the Appeal, if different from that of the Appellant. Chairman Stanford requested that Brian Hulbert, Staff Attorney, respond to Mr. Williams' concern on this issue.

Mr. Hulbert presented a legal opinion on the appeal process and filing a motion for reconsideration. One option is not to allow a motion for reconsideration. Chairman Stanford presented comments in concern of jurisdictional issues which are unintended. Chairman Stanford stated that the solution could be that the Notice of Action would go out on the sixth (6<sup>th</sup>) business day after the decision of the BZA.

Mr. Hulbert and Ms. Dixon presented statements regarding the current Rules of Procedure as related to the certified mailing of Notices of Action within five business days of a decision by the BZA. Ms. Dixon stated that this is a requirement of the LMO. Chairman Stanford recommended that the Notice of Action be mailed on the sixth (6<sup>th</sup>) day after the decision has been made by the BZA. Mr. Hulbert stated that there is a code section in the LMO that stipulates the five business days mailing requirement. Ms. Dixon presented additional comments regarding this section of the LMO. Mr. Williams presented follow up statements on this section of the LMO. Mr. Williams stated that the state code does not have this requirement.

Vice Chairman North recommended that the Board table this issue today and request that Brian Hulbert, Staff Attorney, reconcile the different code sections presented today by Ms. Dixon and Mr. Williams. The Board agreed with this recommendation and Chairman Stanford requested that a motion be made.

Vice Chairman North made a **motion** that the Board **table** consideration of this section of the new Rules of Procedures. The Board asks legal counsel, Brian Hulbert, to propose to the BZA revised language which reconciles the code provision that Ms. Nicole Dixon has read and the code provision that Mr. Williams has raised that will provide a simple and elegant way of making sure that an appellant's right under the state statute is

protected. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 5-0-0.

- b) Chester Williams, Esq. stated that he also has a concern with Section 3. Motion for Postponement (Pages 19-20). The new code now has a section on requests to defer a hearing (postponement). Mr. Williams stated that this section of the new code sounds a lot like postponement. The new code LMO Sec. 16-2-102 E.3 states an applicant may submit to the official a written request to defer the hearing on an application as long as required notice of the hearing on an application has not yet been provided. Mr. Williams presented comments regarding the 30 day and the 14 day requirements. Mr. Williams also presented comments regarding a motion for deferring an application. Mr. Williams stated that there seems to be a conflict in investing the authority to the BZA Chairman when the code states that the body has to vote. Chairman Stanford requested that Mr. Brian Hulbert review this issue to see if there is a violation with the proposed Rule that is in conflict with the new LMO.

**12. Staff Reports**

- a) Ms. Dixon presented the staff's Waiver Report to the Board.
- b) Ms. Dixon stated that the staff has received no new applications for the February 23, 2015 meeting. Chairman Stanford approved the cancellation of this meeting.

**13. Adjournment**

The meeting was adjourned at 3:40p.m.

Submitted By:

Approved By:

\_\_\_\_\_  
Kathleen Carlin  
Secretary

\_\_\_\_\_  
Glenn Stanford  
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 #:	Public Hearing Date:
VAR-000272-2015	March 23, 2015

Parcel or Location Data:	Property Owner and Applicant
Address: 294 Seabrook Drive Parcel#: R510 004 00B 0426 0000 Acreage: .37 acres Zoning: PD-1 (Planned Development Mixed Use District) – Hilton Head Plantation	Cornelius and Cynthia Cornelssen 294 Seabrook Drive Hilton Head Island, SC 29926

**Application Summary:**

Cornelius and Cynthia Cornelssen are requesting a variance from Land Management Ordinance (LMO) Section 16-6-102.D, Wetland Buffer Standards, in order to construct a pool over an existing deck within the 20 foot tidal wetland buffer.

**Staff Recommendation:**

Staff recommends the Board of Zoning Appeals **approve** the application, **with the condition that the remaining areas of the wetland buffer that do not contain existing vegetation be planted with wetland buffer materials**, based on the Findings of Fact and Conclusions of Law contained in the staff report.

**Background:**

The subject parcel is located at 294 Seabrook Drive in Hilton Head Plantation. The applicants purchased the home in 2013 and are proposing to construct a raised pool within the footprint of their existing wooden deck and spa. The property is surrounded by the tidal marsh in the rear, a single family residence on one side, and the Country Club of Hilton Head

Golf Course on the other side and across Seabrook Drive.

The existing house and deck, built in 1991, are considered non-conforming structures as portions of them are located within the 20 foot tidal wetland buffer.

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

**Grounds for Variance:**

The applicant states in the narrative that the proposed pool will allow them to spend more time outdoors enjoying the views of the marsh and golf course. The applicant states that due to the situation of the house on the property, the proposed pool location on the existing deck is the only available option for them without disrupting the structure of the house or impacting existing vegetation in any way.

**Summary of Fact:**

- The applicant seeks a variance as set forth in LMO Section 16-2-103.S.

**Conclusion of Law:**

- The applicant may seek a variance as set forth in LMO Section 16-2-103.S.

**Summary of Facts and Conclusions of Law:**

**Summary of Facts:**

- Application was submitted on February 10, 2015 as set forth in LMO Section 16-2-102.C and Appendix D-23.
- Notice of the Application was published in the Island Packet on March 1, 2015 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on February 25, 2015 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on February 24, 2015 as set forth in LMO Section 16-2-102.E.2.
- The Board has authority to render the decision reached here under LMO Section 16-2-102.G.

**Conclusions of Law:**

- The application is in compliance with the submittal requirements established in LMO Section 16-2-102.C.
- The application was submitted 41 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
- Notice of application was published 22 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was posted 26 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was mailed 27 days prior to the meeting, therefore meeting the

- 15 day deadline required in the LMO.
- The application and notice requirements comply with the legal requirements established in LMO Section 16-2-102.E.2.

*As provided in LMO Section 16-2-103.S.4, Variance Review Standards, 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.*

**Summary of Facts and Conclusions of Law:**

*Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property (LMO Section 16-2-103.S.4.a.i.01):*

**Findings of Facts:**

- The lot is not rectangular in shape. The golf course property line angles into the subject property almost right up to the existing house, leaving no side yard on that side of the house.
- The OCRM critical line is located in the rear of the property, landward of their property line. When the 20 foot buffer from the critical line is applied, the property essentially has no rear yard.
- The house, which is situated towards the rear of the property, was constructed in 1991. Even though there was a requirement for wetland buffers, the Town was not consistently checking to ensure that those regulations were met during the building permit process at that time. The house and deck were built within the wetland buffer but never received a variance.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are extraordinary and exceptional conditions that pertain to this particular property.
- The restrictions placed on the property by the shape of the adjacent golf course and the tidal wetlands and buffer from it, leave no room for a pool or expansion of any kind on the property.

**Summary of Facts and Conclusions of Law:**

*Criteria 2: These conditions do not generally apply to other properties in the vicinity (LMO Section 16-2-103.S.4.a.i.02):*

**Findings of Facts:**

- Most of the properties in the vicinity are rectangular in shape, and are not restricted by the angles of the golf course property.

- While some of the properties in the vicinity also have the tidal wetland and buffer from it in the rear of their properties, most of the houses appear to be situated more towards the front of the lots, leaving room for a rear yard.

**Conclusion of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because the extraordinary conditions that apply to the subject property do not generally apply to other properties in the vicinity.

**Summary of Facts and Conclusions of Law:**

*Criteria 3: Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property (LMO Section 16-2-103.S.4.a.i.03):*

**Findings of Facts:**

- The lot is not rectangular in shape. The golf course property line angles into the subject property almost right up to the existing house, leaving no side yard on that side of the house.
- The OCRM critical line is located in the rear of the property, landward of their property line. Pursuant to LMO Section 16-6-102.D, Wetland Buffer Standards, there is a 20 foot buffer from the critical line.
- The house and existing deck are located within the 20 foot wetland buffer, making it non-conforming.
- The applicant is proposing to construct a raised pool in the same footprint of the existing deck.

**Conclusion of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because the restrictions placed on the property by the shape of the adjacent golf course and the tidal wetlands and buffer from it, leave no room for a pool or expansion of any kind on the property.

**Summary of Facts and Conclusions of Law:**

*Criteria 4: The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variance (LMO Section 16-2-103.S.4.a.i.04):*

**Findings of Facts:**

- The applicant is proposing to construct a raised pool in the same footprint of the existing deck.
- By utilizing the same non-conforming footprint, the wetland buffer will not be

further impacted.

- There is a heavily vegetated buffer between the subject property and the adjacent lots, therefore the proposed pool will not be visible from either adjacent property.
- The applicant received approval from the Hilton Head Plantation POA for the proposed pool.
- The applicant received permission from the adjacent golf course owner to use their property for access during construction.

**Conclusion of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the variance will not be a substantial detriment to adjacent property or the public good.

**LMO Official Determination:**

**Based on the above Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should be granted to the applicant with the condition that the remaining areas of the wetland buffer that do not contain existing vegetation be planted with wetland buffer materials.**

**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 103 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.

**The BZA can either Approve the application, Disapprove the application, or Approve with Modifications. Findings of Fact and Conclusions of Law must be stated in the determination.**

**PREPARED BY:**

ND

Nicole Dixon, CFM, Senior Planner

March 4, 2015

DATE

**REVIEWED BY:**

HC

Heather Colin, AICP, Development Review  
Administrator

March 5, 2015

DATE

**ATTACHMENTS:**

- A) Vicinity Map
- B) Location Map
- C) Applicant's Narrative
- D) As-Built
- E) Proposed Site Plan
- F) Pictures

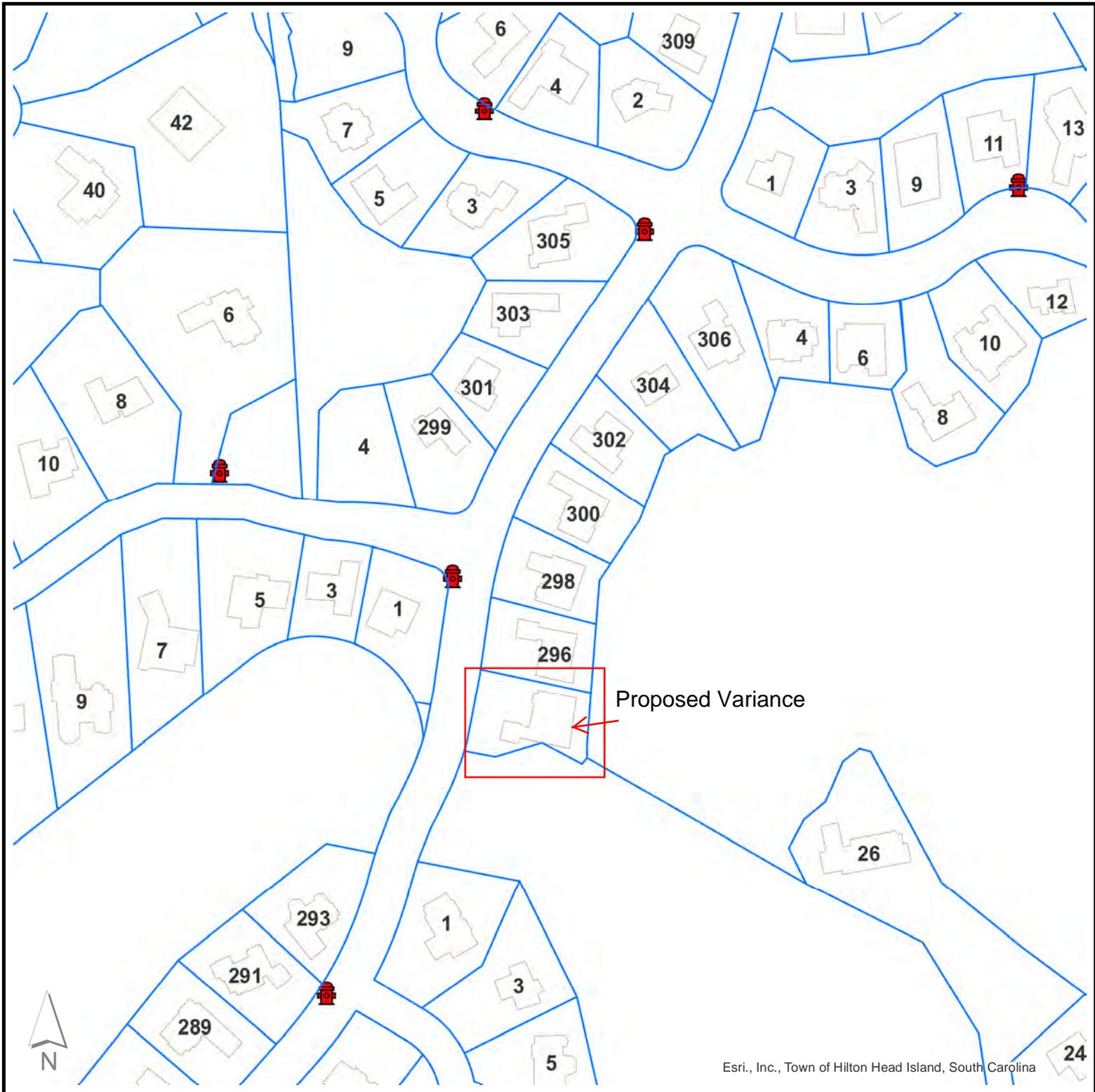


Town of Hilton Head Island  
ATTACHMENT A - 294 Seabrook Drive  
**Location Map**

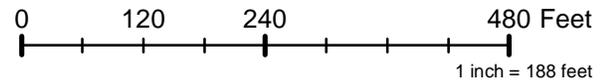
  
TOWN OF HILTON HEAD ISLAND  
ONE TOWN CENTER COURT  
HILTON HEAD ISLAND, S.C. 29928  
PHONE (843) 341-6000



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 SC



## ATTACHMENT B

**Note:** The Town of Hilton Head Island disclaims accountability for this product and makes no warranty express or implied concerning the accuracy thereof. Responsibility for interpretation and application of this product lies with the user. This map is not a legal document.

Author: Town of Hilton Head Island, SC

Date: 3/4/2015

ATTACHMENT C

February 12, 2015

Hilton Head Island Township  
Community Development Department  
One Town Center Court, Building C  
Hilton Head Island, SC 29928

RE: Cynthia and Neil Cornelssen  
294 Seabrook Drive  
Hilton Head Island, SC 29926  
(Hilton Head Plantation)

Dear Sirs/Madam:

We are applying for a variance for our property at 294 Seabrook Drive, seeking to modify the setback line of 20 feet off the OCRM line. This modification would accommodate plans for a raised pool, which would stay within the exact footprint of the existing wooden deck and spa.

The four points of criteria are expressed below as per LMO Section 16-2-103.S.4.a.Variance Review Standards. They are as follows:

1. We are full time residents on Hilton Head Island since 2013 after vacationing here for the past 23 years as well as owning in Sea Pines during that time. We chose this home for several characteristics that make it unique:
  - a. Our rear exterior sits on a tidal marsh. The front has a panoramic view of the Country Club of Hilton Head Gold Course's 13<sup>th</sup> green across the street. One of the sides is directly adjacent to the 14<sup>th</sup> tee. During our extensive home search we were looking for a home that allowed us the opportunity to delve into the lifestyle of what Hilton Head Island is all about, quality of life and enjoying the outdoors. Three-sided views of tidal marsh and golf course are actually quite rare on the island. The back deck, however, is too low to capture the sweeping view of the marsh and the 14<sup>th</sup> tee.
  - b. From the higher level of our kitchen, inside the house, we can see golfers approach the 14<sup>th</sup> hole and storms roll in from the horizon. Outside on the deck, however, the natural vegetation from the marsh limits the view.
2. As referenced above, we are quite familiar with the Island. It came as a surprise during our search for a full time home, how few properties afford multiple-side views. We were lucky to find a property that captures both the natural beauty of the tidal marsh and the rolling beauty of Hilton Head's golf. Having the variance would permit us to take full advantage of the back and side views while spending the maximum amount of time outdoors; the year-long outdoor climate of Hilton Head being one of the original draws for our family. The raised platform would permit year-long enjoyment of the scenery and the pool would help us remain outside in the summer months
3. Due to the conditions of our property, placing the raised pool in the existing footprint of the deck is the only placement available. As is detailed below, the plan respects the original footprint. The variance thus addresses our currently restricted view without disrupting the structure of the house, the footprint, or neighbors in any way.
4. This design plan will not only add value to our existing home but add value to our neighborhood as well. The variance plan insures the integrity of the zoning scheme and will deter in no way from our neighbors' properties.

## ATTACHMENT C

- a. Our plan is within the existing footprint of the wooden deck and spa which was installed in late 1995, as dated in a drawing from November 2, 1995 by Porch Outfitters. Presently, the existing deck and spa has a variable setback of 7.2 to 13 feet from the recently established OCRM line. This maintains the original 20 foot setback as per the drawing dated August 19, 2014 from Atlantic Surveying Company. The pool will add approximately 220 square feet of impervious surface area within this setback area. Please refer to Barnwell Drawing dated January 22, 2015. This should be viewed as a net increase of approximately of 120 feet as the spa, recently removed in the last few months, took up approximately 100 square feet of impervious surface area.
- b. The pool deck surface will be pavers set on a bed of sand. No other solid material, such as concrete, will be used.
- c. Any present surrounding vegetation will not be harmed or moved during construction. Present vegetation is a mixture of myrtles, palms, grasses and hollies. These plantings were well established prior to our ownership in July 2013. The back of the house sits on a tidal marsh where the closest rear neighbor is approximately over 200 yards behind the existing structure. Between the two properties lie a heavily wooded area and numerous plantings on each property such that these plants are maturing naturally and continually, thus, the new structure will not be visible.
- d. On the right side of the house, where the pool will be oriented, is the Country Club of Hilton Head hole #14. The elevated tee boxes completely block any change in elevation from any property owners on the other side of the golf course. In discussions with the County Club, they have shown no concern for the change from a deck to a pool. In fact, they have given us permission, in a letter dated October 2014, to use their property, if needed, in the construction period.
- e. The neighbor on the left side of the house cannot see the existing deck due to natural vegetation. There will be no changes to that vegetation during or after construction.
- f. At no point before, during, or after construction will any additional impervious surfaces or structures be required. The pool equipment will be placed in the existing service area. The materials of construction on the outer surfaces will maintain the exact look of our house as it is presently built. The solid walls of the pool will have an outside coating of stucco that will match exactly in color and texture.
- g. As this proposal fits within both the original and current survey lines, we feel the variance will afford our family the opportunity to increase the use and value of the property without affecting neighbors, the marsh, or the Country Club.

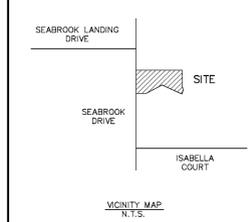
Regards,

Cynthia and Neil Cornelssen

Attachments ( )

# ATTACHMENT D

LOT 2



THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELINEATING THE PERMIT AUTHORITY OF THE DEPARTMENT, THE DEPARTMENT IN NO WAY WAIVES ITS RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREON OR NOT.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_  
 THE CRITICAL LINE SHOWN ON THIS PLAT IS VALID FOR FIVE YEARS FROM THE DATE OF THIS SIGNATURE, SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE.

LINE	BEARING	DISTANCE
L1	S89°24'07" W	18.58
L2	S37°42'53" W	10.92
L3	N27°56'05" E	6.00
L4	S37°22'52" E	6.35
L5	N24°00'58" E	11.89
L6	N11°18'23" E	22.67
L7	N58°17'34" E	9.33
L8	N00°30'42" E	10.08
L9	N03°15'42" E	24.89
L10	N12°04'57" E	5.21

SEABROOK DRIVE  
R/W VARIES

LOT 1  
(0.373 ACRES)  
(16,248 SQ. FT.)  
ST. ADDRESS NO. 294  
ALL IMPROVEMENTS NOT SHOWN



TIDAL MARSH

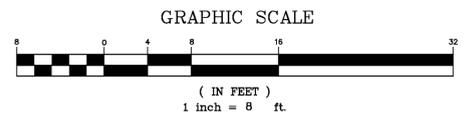
SURVEYED FOR:  
NEIL CORNELSSEN  
AND  
CYNTHIA CORNELSSEN

NOTE: This lot lies in a Federal Flood Plain Zone AZ. Minimum Req. Elevation 14.0 Ft. MSL.

Reference Plat: A PLAT OF ELLIOTT POINT SUBDIVISION LOTS 1-85, A SECTION OF HILTON HEAD PLANTATION, PREPARED BY THOMAS & HUTTON ENGINEERING CO. DATED 01/13/86, REVISED 03/18/86, RECORDED IN BOOK 44 AT PAGE 165.

## A PARTIAL ASBUILT SURVEY

LOT 1 ELLIOTT POINT SUBDIVISION  
A SECTION OF HILTON HEAD PLANTATION  
TOWN OF HILTON HEAD ISLAND  
BEAUFORT COUNTY-SOUTH CAROLINA



RUDY W. WHEELER  
S. C. Prof. Land Surveyor No. 7263  
I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO OBVIOUS, APPARENT OR VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



ATLANTIC SURVEYING CO.  
P.O. BOX 5985  
HILTON HEAD ISLAND, SC 29938  
(843) 785-6262  
FAX (843) 785-9062

JOB NO. 14-107A  
FILE NO. \_\_\_\_\_  
SCALE 1" = 8'  
DATE AUGUST 19, 2014  
OFFICE CK. \_\_\_\_\_ FIELD CK. \_\_\_\_\_



# ATTACHMENT F



# ATTACHMENT F



# ATTACHMENT F



# ATTACHMENT F



**TOWN OF HILTON HEAD ISLAND**

**BOARD OF ZONING APPEALS**

**2015 Public Meeting Schedule**

BZA Powers and Duties	Application Procedure
<p>The Board of Zoning Appeals has the following powers:</p> <p>A. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of Title 16 of the Municipal Code, Land Management Ordinance.</p> <p>B. To hear and decide requests for variance from the Design and Performance Standards of the Land Management Ordinance.</p> <p>C. To review and take action on applications for uses by special exception; and</p> <p>D. To review and take action on appeals of Planning Commission action on certain traffic analysis plans.</p>	<p>Applications for Variance and Special Exception must be completed and submitted not later than 30 days prior to the meeting at which the application will be considered. In addition, Applications for Appeal must be filed not later than 14 days from the date of the decision being appealed.</p> <p>An Application Check-In Conference is required for all applications to determine whether the application meets the minimum requirements for acceptance. Application Check-In Conferences must be scheduled by appointment with the Community Development Department staff.</p>

<u>BZA PUBLIC MEETING DATE</u>	<u>APPLICATION DEADLINE</u>
January 26, 2015 .....	December 26, 2014
February 23, 2015 .....	January 23, 2015
March 23, 2015.....	February 20, 2015
April 27, 2015.....	March 27, 2015
*May 13, 2015 .....	April 13, 2015
June 22, 2015.....	May 22, 2015
July 27, 2015.....	June 26, 2015
August 24, 2015.....	July 24, 2015
September 28, 2015.....	August 28, 2015
October 26, 2015.....	September 25, 2015
*November 16, 2015.....	October 16, 2015
*December 14, 2015.....	November 13, 2015
<p>* <b>Wednesday, May 13<sup>th</sup></b> (due to scheduling conflicts and the Memorial Day Holiday)</p> <p>* <b>November 16<sup>th</sup></b> is the third Monday of the month due to the Thanksgiving Holiday</p> <p>* <b>December 14<sup>th</sup></b> is the second Monday of the month due to the Holidays</p>	

Regular meetings are held on the 4<sup>th</sup> Monday of each month at 2:30pm in Council Chambers.



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## TOWN OF HILTON HEAD ISLAND

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*Legal Services  
Administrative Department*

**TO:** Chairman, Board of Zoning Appeals  
**FROM:** Brian E. Hulbert, Staff Attorney  
**DATE:** February 5, 2015  
**SUBJECT:** **Questions Raised Concerning Proposed Changes to Rules of Procedure**

At the Board of Zoning Appeals (BZA) meeting on January 26, 2015, I was asked to provide a recommendation to the BZA on two issues concerning the Rules of Procedure. Each issue was raised by Attorney Chester Williams during discussion of the Rules of Procedure.

1. **Motion for Reconsideration.**

Article XI, Motions, Section 1, Motion for Reconsideration, paragraph 7, provides that the time for appeal from any decision of the BZA to Circuit Court shall be stayed by the timely filing of a Petition for Reconsideration and shall run from the receipt of the written Notice of Action Denying the Petition, or written Notice of Action delivered after the BZA has reconsidered the matter, as the case may be. Mr. Williams expressed an opinion that he did not believe the BZA had the authority to stay the statutory requirement that an appeal be filed with the Circuit Court within 30 days of the final decision.

South Carolina Code of Laws Section 6-29-820 requires that any appeal be filed within 30 days after the decision of the Board is mailed. LMO Section 16-2-102 H.1 requires that the Official provide the Applicant a written copy of the decision within 5 days after the Board issues a final decision. In my opinion, neither the Town nor the BZA has the authority to stay the statutory 30 day filing period for an appeal from the BZA. Because this is imposed in the state law, it cannot be modified unless authorized by statute or by a Court of law. **Therefore my recommendation is that paragraph 7 should be deleted in its entirety.**

The BZA should continue to issue a final decision in a timely manner on any application it considers per the LMO and the Official should ensure that an Applicant is provided a written copy of the final decision, by mail, within 5 days after the BZA issues a final decision. The 30

day time clock begins upon the mailing of the final decision. If an Applicant elects to file a motion for reconsideration, the time period would continue to run during the consideration of the motion. A new time period would begin if the Motion were granted, as by rule the matter would be considered as if no previous vote had been taken. Once the BZA reached a final decision on the matter heard pursuant to the granting of the Motion for Reconsideration, then a new 30 day clock would begin upon mailing of the final decision. The Applicant or Town would be able to appeal this new final decision.

2. **Motion for Postponement.**

Mr. Williams expressed concern that there was a conflict between the LMO and the BZA Rules of Procedure as to how a hearing may be postponed. Specifically, Mr. Williams states that Section 16-2-102.e 3 seems to require that the body of the BZA has to vote to postpone a hearing, whereas Rule of Procedure XI Section 3 allows for the Chairman or Vice Chairman, in the absence of the Chairman, to postpone a hearing for good cause one time for up to 3 months from the original hearing date.

**In my opinion, the Rules of Procedure and LMO are not in conflict with each other on postponement.** Nowhere in the LMO Section cited by Mr. Williams does it require the body to vote to allow a postponement. The LMO specifically states “The body may grant the request and concurrently set a new hearing date for the application for good cause shown.” In my opinion, this does not preclude the BZA body from delegating this authority to the Chairman or Vice Chairman to act on behalf of the body. Mr Williams makes an interpretation that the LMO requires only the full body of the BZA can postpone a hearing. I do not concur that this is a correct reading of the LMO.

I believe that the BZA may elect to require the request for postponement be decided by the full body of the BZA at a public meeting, or that the BZA may delegate this authority to the Chairman or Vice Chairman in the interest of expediency and in order to not require the matter come to a public meeting just to determine if the matter should be postponed or that it be required to occur at the originally scheduled date. Therefore, I do not believe any change to this Rule of Procedure is required; however, if the BZA desires, it could amend the Rule to require that a Motion for Postponement or request to defer a hearing be acted upon by the full BZA at a public meeting or hearing.



# TOWN OF HILTON HEAD ISLAND

*Community Development Department*

**TO:** Board of Zoning Appeals  
**FROM:** Nicole Dixon, CFM, *Senior Planner*  
**DATE:** March 4, 2015  
**SUBJECT:** Substitutions of Nonconformities for Redevelopment

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The Board of Zoning Appeals (BZA) requested that staff keep them informed of substitutions of nonconformities for redevelopment that are granted by staff. A memo is distributed every month at the regular BZA meetings and is 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.

The following language is contained in Section 16-7-101.F, Substitutions of Nonconformities for Redevelopment, which gives the Administrator the power to grant such substitutions for existing nonconforming structures and site features.

LMO Section 16-7-101.F:

“To provide flexibility and encourage redevelopment of sites with nonconforming features or structures, the Official is authorized to approve a Development Plan for such sites if the proposed development:

1. Will not include any new development that increases the amount of encroachment into any required buffer or setback;
2. Will not increase the impervious cover on the site over the maximum allowed for the district or the existing impervious cover, whichever is greater;
3. Will not result in a density in excess of what is allowed under this Ordinance, or the existing density, whichever is greater;
4. Will lessen the extent of existing nonconforming site features to the greatest extent possible;
5. Will not have an adverse impact on the public health, safety or welfare; and
6. Will lessen the extent of nonconformities related to any existing nonconforming structure on the site to the greatest extent possible.”

The attached is a summary of the Substitutions of Nonconformities for Redevelopment that have been granted by staff since the January 2015 Board of Zoning Appeals meeting.

## Substitutions of Nonconformities for Redevelopment

**February - 2015**

1. A project at 10 Surfwatch Way (Marriott Surfwatch): the applicant requested to remove the picnic tables, concrete walks and fire pit area and construct a sand volleyball court and add landscaping. The property is currently nonconforming to the Wetland Buffer Standards that are provided in the Land Management Ordinance (LMO) as the existing picnic tables, concrete walks and fire pit are located within the 25 foot wetland buffer. A waiver was granted because the applicant will be replacing concrete walks and the fire pit with a sand volleyball court and will be adding vegetation to the site, bringing it more into compliance with the LMO.