Town of Hilton Head Island
Board of Zoning Appeals
Regular Meeting
Monday, July 27, 2015 2:30 p.m.
Benjamin M. Racusin Council Chambers
AGENDA

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. **Swearing in Ceremony for New and Reappointed Board of Zoning Appeals Members**
   Performed by: Brian Hulbert, Town Attorney

6. **Election of Officers for the July 1, 2015 – June 30, 2016 term**

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

8. **Approval of Agenda**

9. **Approval of the Minutes** – March 23, 2015 Meeting

10. **Unfinished Business**
    None

11. **New Business**
    Public Hearing
    VAR-000939-2015:
    HHI Partners, LLC is requesting a variance from Land Management Ordinance (LMO) Section 16-4-102.B.4.b.i, Use-Specific Conditions for Principal Uses, in order to construct guest rooms on the first floor of a proposed hotel in the Coligny Resort (CR) zoning district. They are also requesting a variance from LMO Section 16-3-105.B.3, Development Form and Parameters, in order to allow a portion of the hotel to be greater than 60' in height. The property is located at 81 Pope Avenue and is further identified as parcel 10 on Beaufort County Tax Map 18.
    Presented by: Teri Lewis

    Public Hearing
    VAR-001055-2015:
    John P. Qualey, Jr. is requesting a variance from Land Management Ordinance Sections 16-5-102.C, Adjacent Street Setback Requirements, 16-5-102.D Adjacent Use Setback Requirements, 16-5-103.D, Adjacent Street Buffer Requirements and 16-5-103.E, Adjacent Use Buffer Requirements in order to construct four single family homes within the existing adjacent use and adjacent street setbacks and

setback angles and the adjacent use and adjacent street buffers. The property is located at 22 Bradley Circle and is further identified as parcel 22U on Beaufort County Tax Map 8.
Presented by: Teri Lewis

Public Hearing
VAR-1077-2015: Katie Kabala with Atlantic States Management, on behalf of the Colonnade Club Board of Directors, is requesting a variance from Land Management Ordinance Section 16-6-104.F, Specimen Tree Preservation, to remove a specimen tree. The tree is located outside of 200 Colonnade Road, Unit 208, further identified as Beaufort County Tax Map parcel number R550 015 000 314E 0000. *Presented by: Anne Cyran*

Public Hearing
VAR-001204-2015: Greg Francese of Cuda Company Real Estate, on behalf of property owner Charles Lasky, is requesting a variance from Land Management Ordinance Section 16-6-102.D, Wetland Buffer Standards, in order to construct a patio and dock within the 20 foot tidal wetland buffer. The property is located at 8 Queens Way and is further identified as parcel 301 on Beaufort County Tax Map 16A.
Presented by: Nicole Dixon

12. Board Business
a) Adoption of the revised Rules of Procedure

13. Staff Reports
a) Waiver Report

14. 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, March 23, 2015 2:30pm Meeting
Benjamin M. Racusin Council Chambers

Board Members Present:	Chairman Glenn Stanford, Irv Campbell, David Fingerhut, Michael Lawrence, and Steve Wilson
Board Members Absent:	Vice Chairman P. Jeffrey North
Council Members Present:	None
Town Staff Present:	Nicole Dixon, Senior Planner & Board Coordinator Teri Lewis, LMO Official Brian Hulbert, Staff Attorney 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

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

6. 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.

7. Approval of the Minutes
Mr. Fingerhut made a **motion** to **approve** the minutes of the January 26, 2015 meeting as submitted. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

8. Unfinished Business
None

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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. Chairman Stanford introduces 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 of Zoning Appeals approve this 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.

Ms. Dixon presented an in-depth overhead review of the application including a review of the Vicinity Map, Location Map, As-Built survey, proposed Site Plan and photos of existing conditions.

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-ft. tidal wetland buffer.

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.

Ms. Dixon reviewed the Findings of Facts and Conclusions of Law. Based on the 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. The Hilton Head Plantation Property Owners Association has approved the application as submitted. The adjacent Hilton Head Plantation Golf Course has approved access to their property during this construction. Following the staff's presentation, Chairman Stanford invited the applicant to make his presentation.

The applicant, Mr. Neal Cornelssen, presented statements in support of the request for variance application. Chairman Stanford requested public comments on the application and none were received. The Board discussed the application including the size of the lot, the size of the pool, the type of encroachment and the location of wetlands. Following final comments by the Board, Chairman Stanford requested that a motion be made.

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Mr. Fingerhut made a **motion** to **approve** Application for Variance VAR-000272-2015 as submitted by staff including the condition that the remaining areas of the wetland buffer that do not contain existing vegetation be planted with wetland buffer materials. Mr. Campbell **seconded** the motion and the motion **passed** with a vote of 5-0-0.

10. Board Business

a) Adoption of the BZA – 2015 Meeting Schedule

Chairman Stanford requested that a motion be made to approve the 2015 Meeting Schedule. Mr. Fingerhut made a **motion** to **approve** the 2015 Meeting Schedule as presented. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

b) Revisions to Rules of Procedure

At the January 26, 2015 BZA meeting the Board asked Brian Hulbert, Staff Attorney, to provide a recommendation to the Board on two issues concerning the Rules of Procedure. The two issues, raised by Chester C. Williams, Esq., during a discussion of the Rules of Procedure, are as follows. The staff memo included in the March 23rd meeting packet included the following information and recommendation from Mr. Hulbert:

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.

Prior to today's meeting Chairman Stanford stated his concern to Mr. Hulbert that the removal of Paragraph 7 in its entirety may inadvertently cause a trap for the unwary. Mr. Hulbert stated that there is no legal requirement under state law for the Board to accept a

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Motion for Reconsideration. The Board and Mr. Hulbert discussed the Motion for Reconsideration and the Notice for Appeal requirements. Following this discussion, Chairman Stanford invited Chester C. Williams, Esq., to present statements to the Board.

Mr. Williams stated his concern with what happens to an applicant whose application has been denied by the Board because it leaves the only recourse of appealing before the Circuit Court. The timing of the mailing of the notice of the decision is a real concern because it starts the 30 day clock running. Mr. Williams stated that state law keys in on the mailing of the notice.

Chairman Stanford and Mr. Hulbert discussed the issue of providing a copy of the order versus mailing a copy of the order commencing that period of time. Mr. Hulbert stated that the Code requires that a mailing of the decision by the BZA is required within five days of the Board's final decision (this starts the running of the clock).

Mr. Hulbert stated that when the BZA makes a decision on an application it is a final decision and the Code requires that the Town mails that decision or delivers that decision within five days. The Town cannot hold up the delivery of the BZA's decision. Chairman Stanford and Mr. Hulbert discussed the requirements of a Motion for Reconsideration. Mr. Hulbert stated that he is not comfortable delaying BZA decisions. Final decisions should be delivered in a timely manner rather than trying to anticipate an unforeseen situation down the road by an applicant.

Chairman Stanford stated that because it is a matter of existing procedure for the Town, he is inclined to leave the language as is with regard to when the Town would mail the final order. The Board cannot order the Town to wait until after the five days have occurred to mail the Board's final decision.

Chairman Stanford stated that the Board agrees that Paragraph 7 should be deleted and requested that a motion be made. Mr. Hulbert stated that the Board would need to make a motion and vote on this issue at the next meeting. This is the only change that was recommended by the BZA with regard to the Rules of Procedure.

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 Mr. Hulbert's 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.

Following the Board's discussion on the Motion for Postponement, the Board agreed to leave the language as is.

11. Staff Reports

a) Ms. Dixon presented the staff's Waiver Report to the Board.

12. Adjournment

The meeting was adjourned at 3:50p.m.

Submitted By:	Approved By:
_____	_____
Kathleen Carlin	Glenn Stanford
Secretary	Chairman

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TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court	Hilton Head Island, SC 29928	843-341-4757	FAX 843-842-8908

STAFF REPORT
VARIANCE

Case #:	Public Hearing Date:	Development Name:
VAR-000939-2015	July 27, 2015	Heritage Plaza

Parcel Data:	
Address: 81 Pope Avenue Parcel: R552 018 000 0010 0000 Acreage: 3.75 acres Zoning: CR (Coligny Resort)	
Property Owner:	HHI Partners, LLC PO Box 212839 Augusta, GA 30917
Applicant:	Same as above
Agent:	Same as above

Application Summary:

HHI Partners, LLC, on behalf of B & C Commercial, LLC, is requesting a variance from the following Sections of the Land Management Ordinance (LMO):

- 16-4-102.B.4.b.i. Use-Specific Conditions for Principal Uses – Resort Accommodations – Hotels. This section puts a condition on hotels located in the CR (Coligny Resort) zoning district, specifically that guest rooms are prohibited on the first floor of a hotel.
- 16-3-105.B.3 – Coligny Resort District – Maximum Building Height. This section states that the maximum height in the CR zoning district is 60 feet once the setback angle is attained.

Staff Recommendation:

Staff recommends the Board of Zoning Appeals **approve** the application based on the Findings of Fact and Conclusions of Law contained in the staff report.

Background:

The subject parcel is located at 81 Pope Avenue in the newly created CR zoning district. The former zoning on this parcel did not allow hotels but under the new LMO and associated zoning map, hotels are permitted by condition in the CR zoning district. The applicant proposes to locate a hotel in the rear of the property and would like to have six guest rooms on the first floor of the hotel. The applicant also proposes a slight increase in the height of the proposed hotel. The applicant proposes up to 2% of the roof to be five feet above the sixty foot (60') height limit to allow for the elevator penthouse and an additional 15% of the roof to be two feet above the sixty foot (60') height limit to allow for the roof-top rooms. The site is currently developed with a shopping center that includes a mix of retail shops and restaurants. The land surrounding the subject parcel includes a gas station, Coligny Villas and a small shopping center.

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

Grounds for Variance:

- A variance is required because
- (a) the applicant would like to construct a hotel on the parcel. The applicant is proposing to locate six guest rooms on the ground floor of the hotel. Guest rooms are prohibited on the ground floor of hotels located in the CR zoning district; and
- (b) the applicant would like to increase one portion of the roof to 65 feet and another portion of the roof to 62 feet. The maximum building height in the CR zoning district is 60 feet.

Summary of Facts:

- 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 May 7, 2015 as set forth in LMO Section 16-2-102.C and Appendix D-23. • An update to the application was submitted on June 26, 2015. • Notice of the Application was published in the Island Packet on July 5, 2015 as set forth in LMO Section 16-2-102.E.2. • Notice of the Application was posted on July 9, 2015 as set forth in LMO Section 16-2-102.E.2. • Notice of Application was mailed on June 30, 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 31 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO. • Notice of application was published 23 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO. • Notice of application was posted 18 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 Fact:** • At 375' deep this property is deeper than most of the properties located along Pope Avenue. • Retail buildings will remain along the front portion of the property adjacent to Pope Avenue. • The proposed hotel will have amenities on the roof, including the pool, that are not available elsewhere on the site.

- In order to comply with the Americans with Disabilities Act (ADA), all guests of the hotel must have access to the same amenities.

Conclusions of Law:

- Staff concludes that this request **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 LMO Rewrite Committee established the subject condition (that hotels in the CR district not have guest rooms on the first floor) to ensure that there would be interaction between the buildings and the pedestrians in this walking district.
- The hotel is proposed to be located at the rear of the property, well away from the pedestrian area along Pope Avenue which means that pedestrian activity along the hotel front is unlikely.
- The property has some retail spaces at the front of the existing shopping center, two restaurants and a bike shop. These spaces will remain and will provide the pedestrian/building interaction that was anticipated by the subject condition.
- Per ADA requirements, an elevator must be provided in order for all guests of the hotel to be able to access the rooftop pool. The top of the elevator shaft, in order to meet required safety requirements will be at 64'-4" above the base flood elevation.

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 Fact:

- The two commercial properties adjacent to the subject property have depths of approximately 200 feet and 115 feet.
- There are no other hotels in the nearby vicinity.

Conclusions of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.02 because these conditions do not generally apply to other properties in the vicinity.
- The adjacent commercial properties do not have as much depth as the subject property and therefore it would be difficult, if not impossible for them to develop retail space at the front of the parcel and a hotel at the rear of the same parcel.
- Since there are no other hotels in the immediate vicinity, this conditions does not apply.

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 Fact:

- The applicant's narrative states that the inability to develop six guest rooms on the first floor of the proposed hotel will unreasonably restrict the utilization of the property because it restricts the use on a building that is not adjacent to Pope Avenue.
- The hotel will be set back approximately 250 feet from Pope Avenue.
- The applicant's narrative states that the inability to receive the height variance will unreasonably restrict the property because it will force them to lose an entire floor of the proposed hotel.

Conclusions of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.03 because the application of this Ordinance to the subject property would unreasonably restrict the utilization of the property.
- Since the intent of the subject condition was to enhance interaction between structures located along Pope Avenue and pedestrians and because the hotel will be located 250 feet from Pope Avenue, the requirement to prohibit guest rooms on the first floor of the proposed hotel would unreasonably restrict the use of the property.
- Since the requested increase is requested for such a small percentage of the roof (2% at 65' and 15% at 62') and the alternative is to lose an entire floor of the hotel, not granting the variance would unreasonably restrict the use of 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 Fact:

- Staff found no evidence that allowing six guest rooms on the first floor of the proposed hotel would have an effect on adjacent property.
- Staff found no evidence that increasing the height of the roof to 65' for 2% of the roof and 62' for 15% of the roof would have an effect on adjacent property.

Conclusions of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.04.
- The added hotel rooms on the first floor of the proposed hotel should have no effect on the adjacent property or the public good, and the character of the zoning district will not be affected by granting the variance.
  The minimal added increase in height should have no effect on the adjacent property or the public good, and the character of the zoning district will not be affected by granting the variance.

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.

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:

TBL

Teri B. Lewis, LMO Official — 7/10/15 DATE

REVIEWED BY:

ND

Nicole Dixon, CFM, Board Coordinator — 7/14/15 DATE

REVIEWED BY:

HC

Heather Colin, AICP, Development Review Administrator — 7/14/15 DATE

ATTACHMENTS:

A) Vicinity Map
B) Copy of LMO Section 16-4-102.B.4.b.i
C) Applicant's Narrative & Exhibits

VAR 939-2015 Vicinity Map

LMO Section 16-4-102.B.4.b.i

Hotels located in the CR District shall have guest rooms with gross floor area no smaller than 100 square feet. Such rooms shall not be located on the first floor of any hotel.

Hilton Head Island New Hotel Variance Narrative
RE: LMO Section 16-4-102.B.4.b.i

HHI Partners, LLC is requesting a variance for relief from LMO Section 16-4-102.B.4.b.i for the new hotel proposed at 81 Pope Avenue. The proposed hotel will be located on a 375 foot deep, mixed use site behind existing buildings and businesses that are to remain. Existing (aged) structures on the west (back) side of the site will be demolished to provide space for the new hotel. The hotel would only have six guestrooms on the ground floor. The remainder of the ground floor will be "retail like" uses including.... hotel meeting rooms, hotel guest dining spaces as well as other hotel and guest support spaces. The portions of the hotel structure that will be visible between the existing buildings on the front of the property will be the "retail like" spaces.

The referenced LMO section restricts the use of spaces on the ground floor of any building in the Coligny Resort District, and specifically, does not allow hotel guestrooms on the ground floor of any structure. The developers are desiring to build a hotel on the rear of the site with guestrooms on the ground floor. The location of rooms on the ground floor will raise the need for a variance. The Owners of the property offer the following in support of the Variance request (Variance requirements are in red):

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

This property is deeper than most of the "retail" parcels along Pope Avenue and Lagoon Road and has been previously developed. There are existing low rise retail buildings along the frontage of Pope Avenue which will remain and block the view of the ground floor portions of the buildings at the rear of the site.

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

For most of the Coligny Resort District, the parcels are about half of the depth as the subject property. There are very few parcels that are as deep as the subject property....thus, the condition of the deep parcel, generally, does not apply to the other properties in the District.

03. 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; and

This restriction puts an unnecessary hardship on the hotel by restricting the use of the spaces on the ground floor in a building that, for the most part, is not visible from the public way. On this particular parcel, the hotel will not be located directly on Pope Avenue, instead it will be located at the rear of the site, set back from Pope Avenue by roughly 250 feet. The hotel will be located behind other existing single story buildings and businesses. Retail spaces located 250' from the major road and behind other buildings will have no street frontage or visibility to passing pedestrians or motorists, and as a result will not be successful.

04. 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.

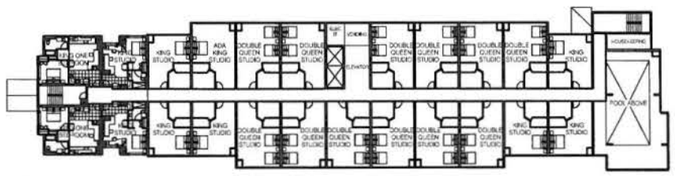
The buildings and businesses on the front of the subject property are in keeping with the intent of the LMO Section in that these buildings are of mixed commercial and retail uses with street frontage and

visibility. These businesses/structures preserve the overall character of the Coligny Resort District and will make this property look like the other properties in the District. The authorization of the Variance will not be detrimental to the adjacent properties because the structure that will house the hotel is completely behind the structures on those properties. The overall character of the zoning district will not be harmed by having guestrooms on the ground floor of the building at the rear of the subject property.

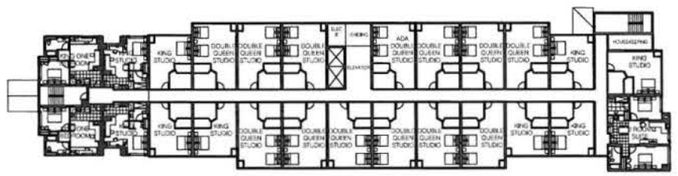
HHI Partners, LLC requests that a Variance be granted to allow guestrooms on the ground floor of the structure at the rear of the subject property.

Woodhaven Dr
Waterside Dr
Cordillo Pkwy
Wild Wing Cafe
Pope Ave
Frosty Frog Cafe
Coligny Plaza Shopping Center
Nassau St
Tanglewood Dr
De Allyon Ave
Coligny Beach Park
Eastway
S Forest Beach Dr
Avocet Rd
Lagoon Rd
Bittern St
Dove St
Curlew Rd
Egret St
Flamingo St
Gannet St
Heron St
Park Rd
Ibis St
N Forest Beach Dr
Dune Ln

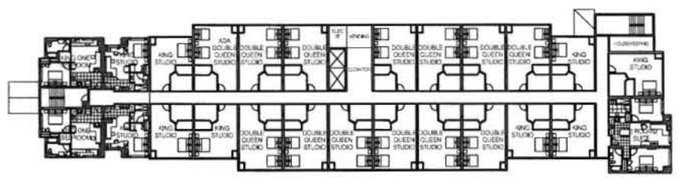
SIXTH FLOOR/ROOF LEVEL PLAN



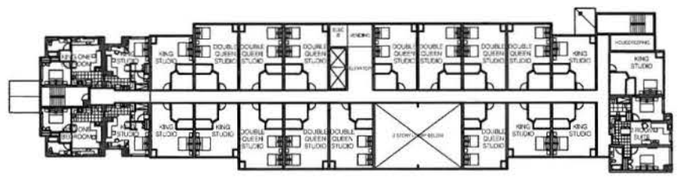
FIFTH FLOOR PLAN



FOURTH FLOOR PLAN



THIRD FLOOR PLAN



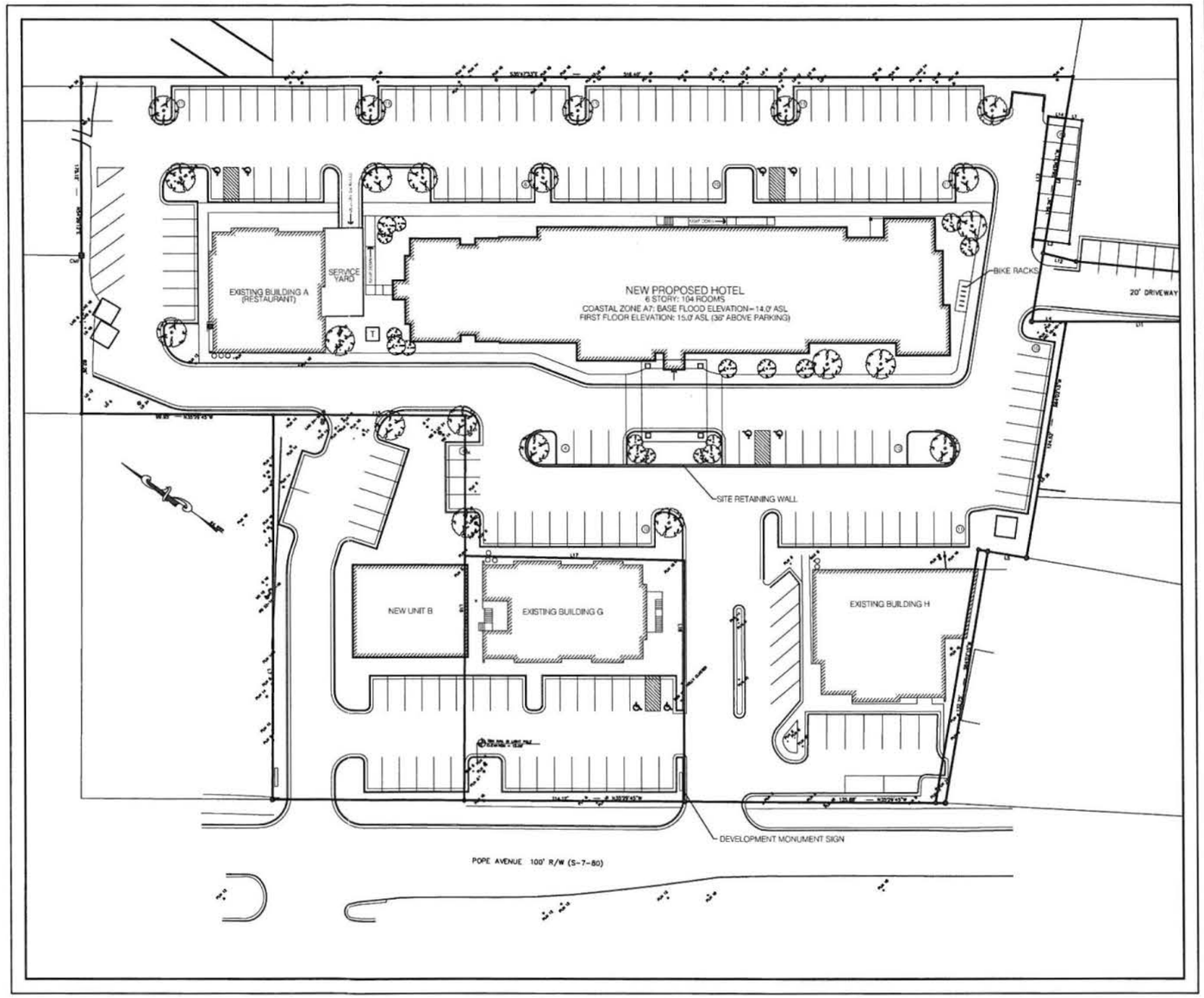
SECOND FLOOR PLAN

FIRST FLOOR PLAN

HOTEL FLOOR PLANS

GUESTROOM MIX	FLOOR					
ROOM TYPE	1	2	3	4	5	TOTAL
KING STUDIO	4	9	9	8	6	36
KING ONE BEDROOM	1	2	2	2	2	9
DOUBLE QUEEN STUDIO	1	11	12	12	12	48
TWO BEDROOM SUITE	-	-	1	-	1	2
ADA KING STUDIO	-	-	-	-	1	1
ADA KING ONE BEDROOM	1	-	-	-	-	1
ADA DOUBLE QUEEN STUDIO	-	-	1	1	-	2
ADA TWO BEDROOM SUITE	1	-	-	-	-	1
TOTALS	8	23	25	23	21	100

104 ROOM H&C SQ FT	
FIRST FLOOR	17,517
SECOND FLOOR	17,198
THIRD FLOOR	17,198
FOURTH FLOOR	17,198
FIFTH FLOOR	17,198
SIXTH FLOOR	2,420
TOTAL	88,729
AVERAGE PER ROOM	853 SF



SITE PLAN

ROBERT W. PONDER ARCHITECT
3140 Lakeview Drive
Duluth, GA 30096
770-833-3015
770-449-8861 fax

THIS DRAWING IS PRELIMINARY, AND NOT FOR CONSTRUCTION, RECORDING PURPOSES OR IMPLEMENTATION.

No.	Date	Revision

DEVELOPER:

2743 PERIMETER PARKWAY
B-100 #370
AUGUSTA, GEORGIA 30909

PROJECT:

NEW HOTEL

81 POPE AVENUE
HILTON HEAD, SC

HOTEL SITE & FLOOR PLANS
SCALE: 1"=30'

DOCUMENTS

job no.:	14029
date:	02.26.15
by:	T.E.R.
app:	R.W.P.
file name:	HH-A1.DWG
sheet no.:	A-1

2015 COPYRIGHT - PONDER & PONDER ARCHITECTS

NOTES:
1) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.
2) SEA ISLAND LAND SURVEY, LLC. CERTIFIES TO THE BOUNDARY, TOPOGRAPHIC AND ASBUILT INFORMATION PROVIDED HEREON AS THE DATE OF THE SURVEY. THIS SURVEY MAY BE USED IN DIGITAL FORMAT AS A BASE FOR OTHERS AND ANY REVISIONS OR ADDITIONS MADE HEREAFTER IS NOT THE RESPONSIBILITY OF SEA ISLAND LAND SURVEY, LLC. A HARD COPY AVAILABLE FROM SEA ISLAND LAND SURVEY, LLC. WILL BE THE ONLY OFFICIAL DOCUMENT.
3) SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988.
4) HORIZONTAL DATUM IS S.C. STATE PLANE NAD 83.
5) VERTICAL DATUM IS NGVD29.
6) CONTOUR INTERVAL IS 1'.
7) USE OF THIS PROPERTY MAY BE AFFECTED BY THE TERMS OF CONVENANTS RELATING TO THIS PLANNED COMMERCIAL DEVELOPMENT.
8) BUILDING SETBACKS, WHETHER SHOWN OR NOT, SHOULD BE VERIFIED BY THE LOCAL BUILDING AUTHORITY.
9) THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A COMPLETE TITLE SEARCH AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
10) IF IDENTIFICATION OF TREES IS CRITICAL TO DEVELOPMENT, AN ARBORIST SHOULD BE CONSULTED TO VERIFY SUCH TREE IDENTIFICATION.

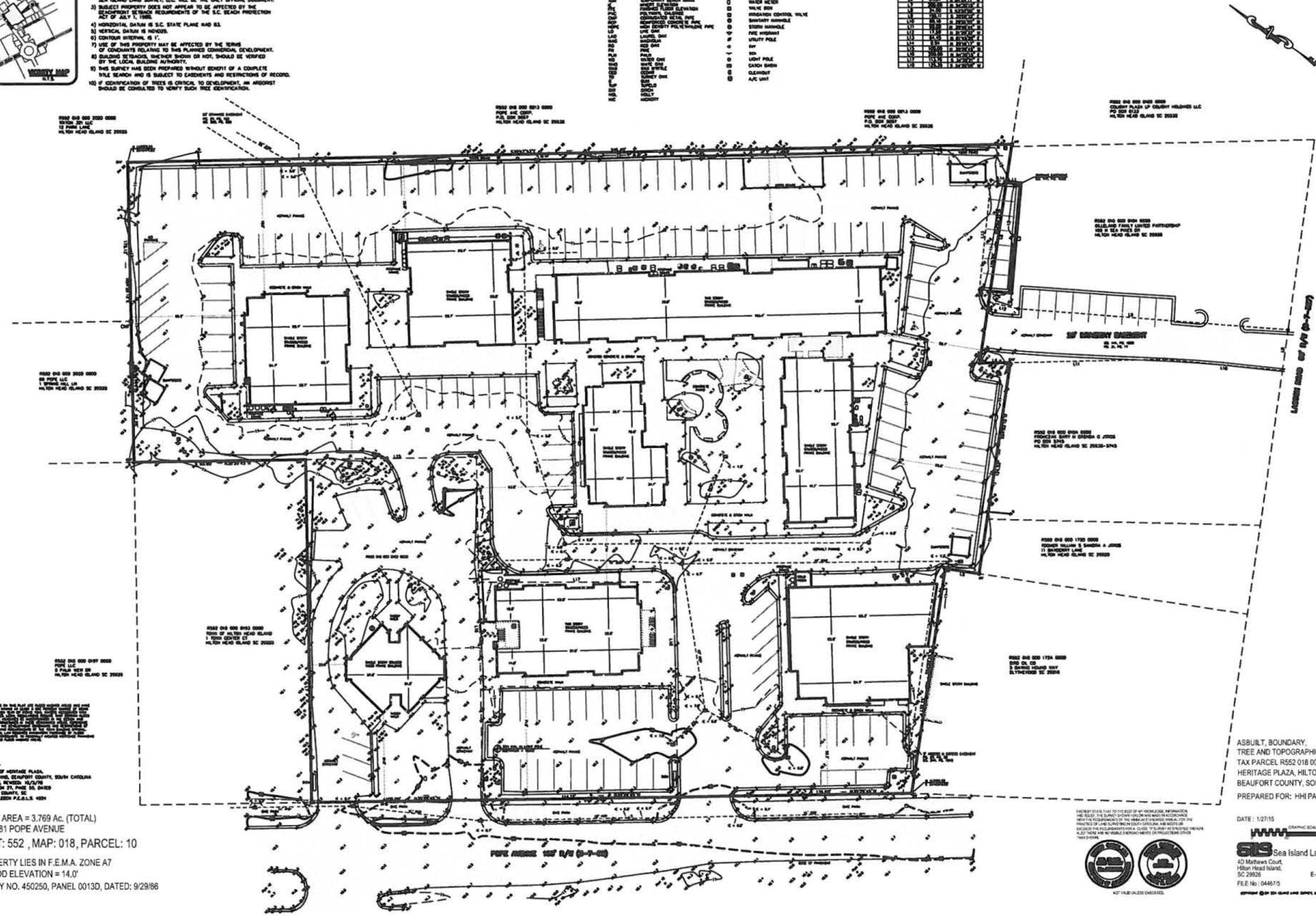
LEGEND & SYMBOLS:
TREE SIZES ARE INCHES IN DIAMETER

SPOT ELEVATION
CONTOUR
3" CONCRETE MONUMENT FOUND
1/2" IRON PIN FOUND
P.K. NAIL FOUND
TEMPORARY BENCH MARK
INVERT ELEVATION
FINISHED FLOOR ELEVATION
POLYVINYL CHLORIDE
CORRUGATED METAL PIPE
REINFORCED CONCRETE PIPE
HIGH DENSITY POLYETHYLENE PIPE
LIVE OAK
LAUREL OAK
MAGNOLIA
RED OAK
PINE
PALM
WATER OAK
WHITE OAK
WAX MYRTLE
CEDAR
TURKEY OAK
GUM
TUPELO
BIRCH
HOLLY
HICKORY

ELECTRIC SERVICE
ELECTRIC TRANSFORMER
TELEPHONE SERVICE
TELEVISION SERVICE
WATER METER
VALVE BOX
IRRIGATION CONTROL VALVE
SANITARY MANHOLE
STORM MANHOLE
FIRE HYDRANT
UTILITY POLE
GUY
SOH
LIGHT POLE
CATCH BASIN
CLEANOUT
A/C UNIT

LINE TABLE

LINE	LENGTH	BEARING
L1	8.57	[illegible]
L2	64.72	[illegible]
L3	13.44	[illegible]
L4	17.85	[illegible]
L5	20.23	[illegible]
L6	64.64	[illegible]
L7	200.00	[illegible]
L8	24.00	[illegible]
L9	200.11	[illegible]
L10	68.16	[illegible]
L11	19.00	[illegible]
L12	17.59	[illegible]
L13	64.45	[illegible]
L14	8.51	[illegible]
L15	100.00	[illegible]
L16	200.00	[illegible]
L17	113.15	[illegible]
L18	125.35	[illegible]



REFERENCE PLAT
1) ASBUILT PLAT OF HERITAGE PLAZA, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA DATED: 8/20/76, REVISED: 10/3/76 RECORDED IN BOOK 27, PAGE 30, DATED RMC. BEAUFORT COUNTY, SC BY: E.M. FROEBLEBEN P.E.&L.S. 4024

PROPERTY AREA = 3.769 Ac. (TOTAL)
ADDRESS: 81 POPE AVENUE
DISTRICT: 552 , MAP: 018, PARCEL: 10

THIS PROPERTY LIES IN F.E.M.A. ZONE A7
BASE FLOOD ELEVATION = 14.0'
COMMUNITY NO. 450250, PANEL 0013D, DATED: 9/29/86

NOT VALID UNLESS EMBOSSED

ASBUILT, BOUNDARY,
TREE AND TOPOGRAPHIC SURVEY OF:
TAX PARCEL R552 018 000 0010 0000,
HERITAGE PLAZA, HILTON HEAD ISLAND,
BEAUFORT COUNTY, SOUTH CAROLINA
PREPARED FOR: HHI PARTNERS, LLC

DATE : 1/27/15 SCALE : 1" = 60'
GRAPHIC SCALE

SLS Sea Island Land Survey, LLC.
4D Mathews Court, Hilton Head Island, SC 29926
Tel (843) 681-3248
Fax (843) 689-3871
E-mail: slls@sprynet.com
FILE No.: 04467/5
DWG No.: 2-1731

HEIGHT VARIANCE NARRATIVE

1. We have been told that the base flood elevation for the site is 14'-0" above mean sea level.
2. The drawings we have produced show the first floor of the hotel at 15'-0" above mean sea level to allow for the first floor slab to be slightly above the flood plain.
3. The hotel has one floor of lobby/public areas/back-of-house areas (with guestrooms), four levels of guestrooms, and a roof with an assembly use and a pool.
4. The first floor of the hotel is 12'-0" clear and the upper floors are 8'-8" clear. These are the minimum heights needed for the hotel to function properly and for them to comply with franchise standards.
5. With the five floors at their needed heights, the top of the concrete pavers at the roof level are at 52'-2" above the base flood elevation of 14'-0". This surface constitutes 86% of the roof area and is 7'-10" below the height limit.
6. There are 2,272 square feet of "rooms" on the roof level that support the assembly and pool uses. These include an elevator lobby, two stairwells, public restrooms, a warming kitchen, pool equipment room, storage, etc… With these rooms at 8'-8" clear in height, and with about 1'-4" of roof structure/insulation/roofing, the height of these rooms is 61'-0" above the base flood elevation. These rooms constitute 13% of the roof area and are 1'-0" above the height limit.
7. In order to comply with the American with Disabilities Act (ADA), we need to provide elevator access to the roof-top uses. The manufactures of the elevators require clear overhead space above the elevator for the safety of the elevator repair person. This means that the top of the elevator shaft, accounting for the required clear height/structure/insulation/roofing, will be at 64'-4" above the base flood elevation. The elevator shaft constitutes only 1% of the roof area and will be 6'-4" above the height limit.
8. If you "weight" the height of our roof (area times height), our "average" roof is 54.0162' in height (almost 6 feet below the height limit).
9. We will have a parapet/handrail around all of the roof surface. These will be 48 inches in height to prevent a fall hazard. The tops of the parapets/handrails will be just above 58 feet above the base flood elevation.
10. **The height variance HHI Partners, LLC is requesting is to have up to two percent (2%) of our roof to be five feet (5'-0") above the sixty foot (60') height limit to allow for the elevator penthouse and an additional fifteen percent (15%) of our roof to be two feet (2'-0") above the sixty foot (60') height limit to allow for the roof-top rooms.** I have slightly increased these areas and heights from the exhibits provided to allow for the possible "growth" of the building features as the design progresses.

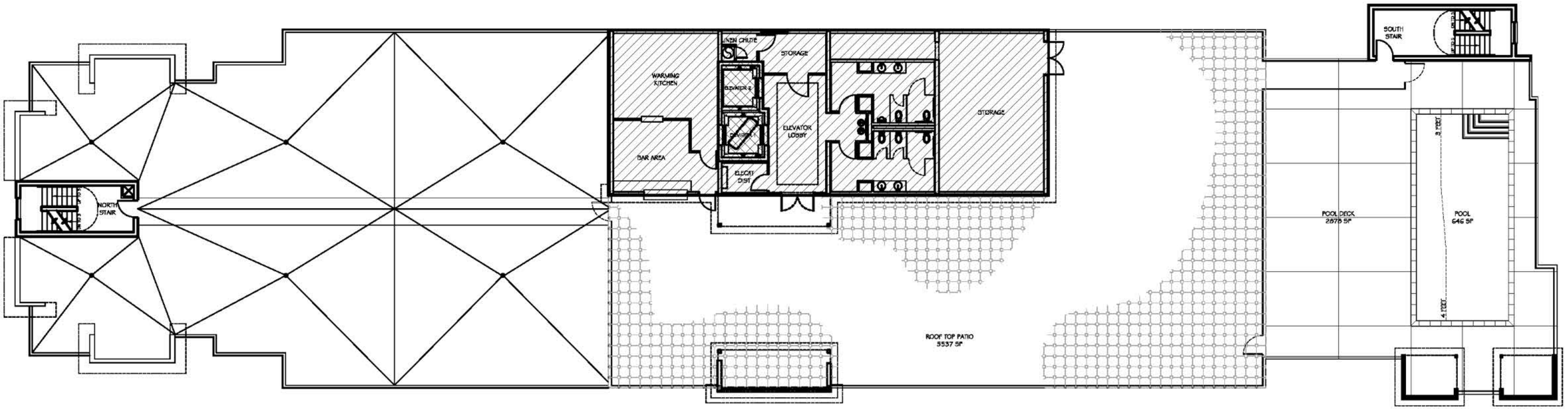
In complying with the variance requirements, we further offer:

1. Extraordinary/exceptional conditions: Being in the path of a potential flood surge makes the owners of the hotel want to place their hotel one foot above the base flood elevation of 14'-0" above sea level. This vertical increase raises approximately 15% of the top floor one foot above the allowed zoning height. Having a roof-top "public" use causes the Owners of the hotel to provide ADA access to the roof. The safety requirements of the elevator manufacturer pushes the elevator penthouse five feet above the allowed zoning height.
2. Other properties: The requested height increase is for a building that will be set back quite a distance from the main street and will be behind a row of 1-2 story retail buildings that will help screen the rear building. Most of the other properties in the district are not deep enough for

them to have a building that will be screened from the main street by other buildings in front of them.

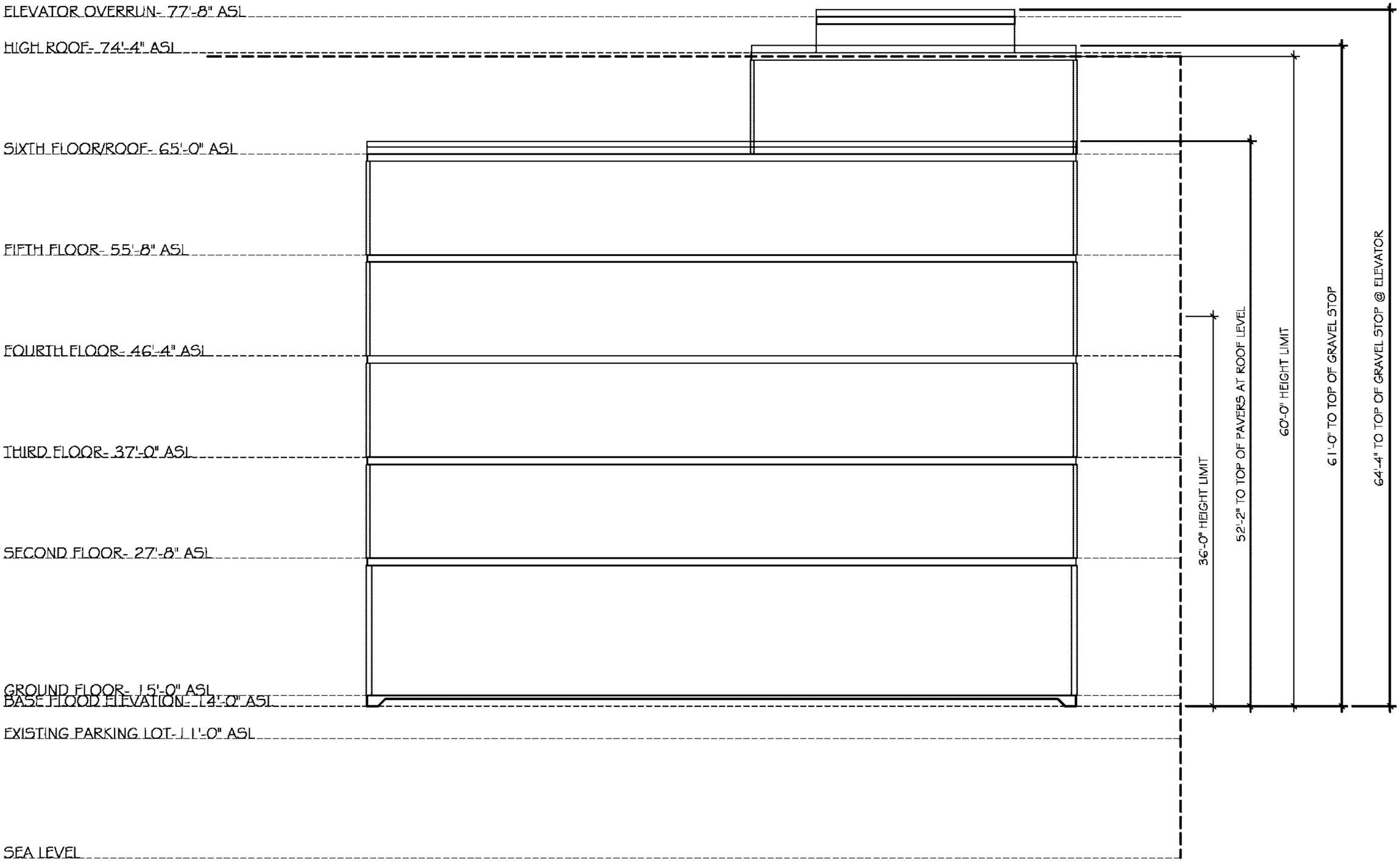
3. Restrict use: If the zoning height limit is applied to the elevator penthouse and to the top 2 feet of the roof-top rooms, it will require removing an entire floor of the building below it to gain a roof-top use. The height limit being enforced on a small portion of the roof will unreasonably restrict the utilization of the site for the Owner's intended use.
4. Will not be detrimental to other properties: The owners of the hotel could construct a hotel on the site that had a flat roof at exactly 60' above the base flood elevation. Instead, the Owners are proposing to construct a hotel that only has a "weighted average" of 54'-1" above the base flood elevation (6 feet lower than they could build). The owner does not belief having a building with only 17% of the roof slightly above the allowed zoning height will be a "substantial detriment" to adjacent properties.

HHI Partners, LLC requests that a Variance be granted to allow the hotel to slightly exceed the allowable building height.



SIXTH FLOOR/ROOF
0 GUESTROOMS
2,433 SQ. FT.

17,461 TOTAL ROOF AREA
15,028 SQUARE FEET AT 52'-2" (86%)
2,272 SQUARE FEET AT 61' HEIGHT (13%)
161 SQUARE FEET AT 65'-0" HEIGHT (1%)


ELEVATOR OVERRUN- 77'-8" ASL
HIGH ROOF- 74'-4" ASL
SIXTH FLOOR/ROOF- 65'-0" ASL
FIFTH FLOOR- 55'-8" ASL
FOURTH FLOOR- 46'-4" ASL
THIRD FLOOR- 37'-0" ASL
SECOND FLOOR- 27'-8" ASL
GROUND FLOOR- 15'-0" ASL
BASE FLOOD ELEVATION- 14'-0" ASL
EXISTING PARKING LOT- 11'-0" ASL
SEA LEVEL
36'-0" HEIGHT LIMIT
52'-2" TO TOP OF PAVERS AT ROOF LEVEL
60'-0" HEIGHT LIMIT
61'-0" TO TOP OF GRAVEL STOP
64'-4" TO TOP OF GRAVEL STOP @ ELEVATOR

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court	Hilton Head Island, SC 29928	843-341-4757	FAX 843-842-8908

STAFF REPORT
VARIANCE

Case #:	Public Hearing Date:	Development Name:
VAR-1055-2015	June 22, 2015	22 Bradley Circle Resort Homes

Parcel Data:	
Address: 22 Bradley Circle Parcel: R510 008 000 022U 0000 Acreage: .916 gross acres, .499 net acres Zoning: RD (Resort Development)	
Property Owner:	Christopher Abreu 70 Somersby Way Farmington CT 06032
Applicant:	John P. Qualey, Jr. P.O. Box 10 Hilton Head Island, SC 29938
Agent:	Same as above

Application Summary:

John P. Qualey, Jr., on behalf of Christopher Abreu, is requesting a variance from the following Sections of the Land Management Ordinance (LMO):

- 16-5-102.C. Adjacent Street Setback Requirements
- 16-5-102.D. Adjacent Use Setback Requirements
- 16-5-103.D. Adjacent Street Buffer Requirements

Staff Recommendation:

Staff recommends the Board of Zoning Appeals **approve** the application based on the Findings of Fact and Conclusions of Law contained in the staff report.

Background:

The subject parcel is located at 22 Bradley Circle. This parcel was rezoned from the RM-8 (Residential Moderate Density) district to the RD (Resort Development) zoning district on October 7, 2014 as part of the LMO rewrite process. This district has a maximum height of 75' and a maximum density of 16 dwelling units per acre. The property owner is proposing to subdivide the property into 4 single family lots for the purpose of renting them out as resort homes. The property is currently occupied by a single family home; this residence will be demolished before the four new homes are built. The property to the south contains Marriott's Surf Watch timeshare development, the property to the north and west contains single family homes and the property to the east contains five single family lots.

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

Grounds for Variance:

- A variance is required because the applicant would like to reduce the adjacent use setback and adjacent use setback angle on the south side of the property. The required adjacent use setback on the south side is 30' and the required adjacent use setback angle on the south side is 60 degrees. Per Note 5 under Table 16-5-102.D, the required adjacent use setback of 30' may be reduced by 10% to 27' if the applicant meets six conditions. Staff has determined that the applicant meets the conditions necessary to receive the reduction in the adjacent use setback. The property owner has stated that the application of the 27' adjacent use setback and the 60 degree setback angle on the south side of the property will result in the loss of significant portions of several floors on the home located on the south side. The applicant is seeking a variance to reduce the required adjacent use setback from 27' to 15' and to reduce the setback angle from 60 degrees to 75 degrees.
- A variance is required because the applicant would like to reduce the adjacent street setback angle on the west side of the property. The required adjacent street setback angle on the west side is 60 degrees. The property owner has stated that the application of the 60 degree setback angle on the west side of the property will result in the loss of portions of the home located on the west side. The applicant is seeking a variance to reduce the setback angle from 60 degrees to 75 degrees.
- A variance is required because the applicant would like to reduce the adjacent street setback, the adjacent street setback angle and the adjacent street buffer on the north side of the property. Due to the fact that this is a corner lot, the required setback from Terra Bella Trace is 10'. Per Note 4 under Table 16-5-102.C, the required adjacent street setback of 10' may be reduced by 20% to 8' if the applicant meets six conditions. Staff has determined that the applicant meets the conditions necessary to receive the reduction in the adjacent street setback. Although the applicant is

showing an 8 foot setback on their submitted site plan, the setback, per LMO Table 16-5-102.C.1, must be measured from the easement line to the closest portion of the structure; therefore they only have 5 feet between the edge of the easement and the structure. The required adjacent street setback angle on the north side is 60 degrees. The property owner has stated that the application of the 60 degree setback angle on the north side of the property will result in the loss of portions of the home located on the north side. The required adjacent street buffer is 10'. Per Note 6 under Table 16-5-103.F, the required adjacent street setback of 10' may be reduced by 20% to 8' if the applicant meets six conditions. Staff has determined that the applicant meets the conditions necessary to receive the reduction in the adjacent street buffer. There is only 5' of buffer between the edge of the easement and the structure. The applicant is seeking a variance to reduce the adjacent street setback angle from 60 degrees to 75 degrees, reduce the adjacent street setback from 8' to 5' and to reduce the adjacent street buffer from 8' to 5'.

Summary of Facts:

- 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 May 22 2015 as set forth in LMO Section 16-2-102.C and Appendix D-23.
- An update to the application was submitted on June 26, 2015.
- Notice of the Application was published in the Island Packet on July 5, 2015 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on July 9, 2015 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on July 9, 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 31 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
- Notice of application was published 23 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was posted 18 days prior to the meeting, therefore meeting the

15 day deadline required in the LMO.

- Notice of application was mailed 18 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 Fact:

- The subject property is bound on the south side by the Marriott Surf Watch project which is classified in the LMO as Resort Accommodations and on the north side by Terra Bella Trace, an access easement.
- A new LMO was adopted on October 7, 2014. There were two changes made that directly affect the subject project. A requirement was added that setback, setback angles and buffers are required from an access easement and an adjacent use setback angle is required for single family homes.

Conclusions of Law:

- Staff concludes that this request **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 location of the subject property adjacent to a Resort Accommodations use creates an exceptional condition because the difference in use types requires that a greater adjacent use setback be provided on the portion of the property that borders the Surf Watch property.
- An adjacent use setback angle would not have previously been required on this property.
- Setbacks, setback angles and buffers are now required from access easements under the new LMO; in the previous LMO, setbacks and setback angles were measured from the property line rather than from the access easement. If the applicant were able to still measure the setback from the property line, the required setback would be 75 degrees instead of 60 degrees and the applicant would not need to apply for a variance.

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 Fact:

- The majority of the adjacent and nearby parcels are developed as single family homes.
- The required adjacent use setback between two Single Family uses is 20'. The required adjacent use setback angle is 75 degrees.
- The subject property is surrounded by two streets, a resort accommodations use and a wetland.

Conclusions of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.02 because these conditions do not generally apply to other properties in the vicinity.
- With the exception of the Surf Watch project, the remaining parcels are all developed with single family uses. This means that their setback is 10' less than what is required for the subject property. Additionally the setback angle for the adjacent and nearby properties is 75 degrees which is a difference of 15 degrees between what is required for the subject property on the south side.
- The three other properties in the area that were developed adjacent to access easements developed under the old LMO and therefore did not have setback and setback angle requirements from an access easement.
- Many of the properties in this area are only bound by a single street; additionally those other properties are also surrounded by single- family, rather than resort accommodations uses.

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 Fact:

The applicant's narrative states that the inability to develop the property with the requested variances will unreasonably restrict the utilization of the property because it places setbacks, buffers and setback angles on this property that are not applicable to other properties in the vicinity.

Conclusions of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.03 because the application of this Ordinance to the subject property would unreasonably restrict the utilization of the property compared to other properties in the vicinity.

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 Fact:

- Staff found no evidence that reducing the adjacent use setback by 12 feet, the adjacent street buffer by 3 feet and the setback angle from 60 degrees to 75 degrees would have a negative effect on adjacent property.

Conclusions of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.04.
- The reduced setback, setback angle and buffer should have no effect on the adjacent property or the public good, and the character of the zoning district will not be affected by granting the variance.

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.

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:

TBL	7/13/15
Teri B. Lewis, LMO Official	DATE

REVIEWED BY:

ND 7-14-15

Nicole Dixon, CFM, Board Coordinator DATE

REVIEWED BY:

HC 7-13-15

Heather Colin, AICP, Development Review Administrator DATE

ATTACHMENTS:

A) Vicinity Map
B) Applicant's Submittal
C) Letter of Opposition

VAR 1055-2015 Vicinity Map

Town of Hilton Head Island

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

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

Applicant/Agent Name: John P. Qualey, Jr. Company: Qualey Law Firm, P.A.
Mailing Address: P.O. Box 10 City: HHI State: SC Zip: 29938
Telephone: 785-3525 Fax: 785-3526 E-mail: jack.qualey@qualeylaw.com

Project Name: Project Address: 22 Bradley Circle, HHI, SC
Parcel Number [PIN]: R 5 1 0 0 0 8 0 0 0 0 2 2 U 0 0 0 0
Zoning District: Resort Development (RD) Overlay District(s): N/A

VARIANCE (VAR) SUBMITTAL REQUIREMENTS

Digital Submissions may be accepted via e-mail by calling 843-341-4757. The following items must be attached in order for this application to be complete:

x A narrative that lists what Sections of the LMO you are requesting a variance from and explain **WHY** the variance is requested and **HOW** the request meets **all** of the criteria of LMO Section 16-2-103.S.4.a. Variance Review Standards

x A copy of correspondence providing notice of a public hearing to all land owners of record within three hundred and fifty (350) feet on all sides of the parcel(s) being considered for a variance. Such notice shall be mailed by first class mail fifteen days (15) prior to the Board of Zoning Appeals meeting per LMO Section 16-2-102.E.2.e.ii. Mailed Notices. A sample letter can be obtained at the time of submittal. Also provide a list of owners of record to receive notification. The Town can assist in providing this listing by calling 843-341-4757.

x Affidavit of Ownership and Hold Harmless Permission to Enter Property

x A site plan to scale of 1"=30' that clearly shows the requested variance in relation to the affected site and surrounding parcels and uses. Submit an 11"X17" (or smaller) copy of the plan.

x Filing Fee - $250.00 cash or check made payable to the Town of Hilton Head Island

Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request? If yes, a copy of the private covenants and/or restrictions must be submitted with this application. ☐YES ☒NO

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

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

Applicant/Agent Signature: John P. Qualey, Jr. Date: May 22, 2015
John P. Qualey, Jr.

Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-341-2087
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY
Date Received: _____
App. #: _____
Form revised 10-2012

AFFIDAVIT OF OWNERSHIP AND HOLD HARMLESS PERMISSION TO ENTER PROPERTY

The undersigned being duly sworn and upon oath states as follows:

1. I am the current owner of the property which is the subject of this application.
2. I hereby authorize JOHN P. QUALEY, JR. (ATTORNEY) to act as my agent for this application only.
3. All statements contained in this application have been prepared by me or my agents and are true and correct to the best of my knowledge.
4. The application is being submitted with my knowledge and consent.
5. Owner grants the Town, its employees, agents, engineers, contractors or other representatives the right to enter upon Owner's real property, located at 22 BRADLEY CIRCLE, HILTON HEAD, SC 29928 (address), R510 008 000 0022 0000 (parcel ID) for the purpose of application review, for the limited time necessary to complete that purpose.
   Description of Work: VARIANCE APPLICATION
6. Owner agrees to hold the Town harmless for any loss or damage to persons or property occurring on the private property during the Town's entry upon the property, unless the loss or damage is the result of the sole negligence of the Town.
7. I acknowledge that the Town of Hilton Head Island Municipal Code requires that all construction in a Special Flood Hazard Zone be constructed in accordance with the following provisions that:
   a. any enclosed area below the base flood elevation will be used solely for parking of vehicles, limited storage or access to the building. This space will never be used for human habitation without first becoming fully compliant with the Town's Flood Damage Controls Ordinance in effect at the time of conversion.
   b. all interior walls, ceilings and floors below the base flood elevation will be constructed of flood resistant materials.
   c. all mechanical, electrical and plumbing devices will be installed above base flood elevation.
   d. walls of the enclosed area below base flood elevation will be equipped with at least two openings which allow automatic entry and exit of flood water. Openings will be on two different walls with at least one square inch of free area for every square foot of enclosed space and have the bottom of openings no more than a foot above grade.
   e. the structure may be subject to increased premium rates for flood insurance from the National Flood Insurance Program.
8. I understand that failure to abide by Town permits, any conditions, and all codes adopted by the Town of Hilton Head Island deems me subject to enforcement action and/or fines.

Print Name: Christopher Abreu	Owner Signature: [signature]
Phone No.: 860-810-8173	Email: cbabreu@aol.com
Date: 5/21/2015	

The foregoing instrument was acknowledged before me by Christopher Abreu, who is personally known to me or has produced _____ as identification and who did not take an oath.

WITNESS my hand and official seal this 21 day of May, A.D., 2015.

Nancy H. Fuller
Notary Public Signature

My Commission expires: 5/31/17
Please affix seal or stamp.

NARRATIVE FOR VARIANCE APPLICATION

22 BRADLEY CIRCLE, TOWN OF HILTON HEAD ISLAND, SC

TAX MAP NO.: R510-008-000-022U-0000

The Applicant owns 22 Bradley Circle, which is known as "Revised Lot 3" and which contains 0.916 acres, of which 0.417 is "Wetlands" as shown on the plat of the property recorded in Plat Book 93 at Page 182. The Applicant is proposing to subdivide the property into 4 single family resort lots, upon which single family homes will be constructed. Without the Variance requested by the Applicant, the side setback or buffer applicable to the South property line would be 27'wide and the setback angle along that side of the property would be 60°. The application of such 27' setback and 60° setback angle to this property would result in the loss of portions of several floors of the home located along the South property line and will adversely affect the architectural symmetry of the project by having a 75° angle on the North side of the site (adjacent to single family uses) vs. a 60° angle on the South side (adjacent to multi-family uses). The Applicant seeks a Variance to allow a 15' side setback or buffer and a matching 75° setback angle along the South property line, the combination of which will eliminate the loss of any portion of the home located along that property line and will maintain the architectural symmetry.

The attached Site Plan depicting the proposed location of the homes on the 4 lots demonstrates that even with the requested 15' setback from the Marriott property line, the home on Lot 4 will be located 21' from that property line due to the effect of the setback angle. Also attached is an elevation drawing which shows the application of the requested 60° setback angle with the reduced 15' setback.

A Variance may be granted by the Board of Zoning Appeals if it concludes that the strict enforcement of any appropriate dimensional, development, design or performance set forth in the LMO would result in unnecessary hardship to the applicant.

The Applicant requests a Variance from the following Section of the LMO:

LMO Section 16-5-102.D Side Setback and Side Setback Angle along South property line of the property.

In this case, the Applicant requests a Variance from the cited LMO Sections, because:

A. **There are extraordinary and exceptional conditions pertaining to the Applicant's property, including the following:** *(a) it is bounded on the South side by the Marriott SurfWatch timeshare project, which is a multi-family project and would otherwise require a 30' setback (less 10% if approved by the Zoning Official) and would require a 60° setback angle, whereas the other side of the property only requires a 75° setback angle due to the adjoining single family use; (b) it is bounded on the East side by wetlands, which results in additional buffers and setbacks which further restrict development of the site; and (c) it is bounded on the North side by a 25' wide access easement, which has also reduced the amount of developable land for the Applicant's intended project.*

B. **These conditions do not generally apply to other properties in the vicinity.** *To the Applicant's knowledge, there are no other properties in the vicinity which have such adjoining uses and conditions that adversely affect development of the sites.*

C. **Because of these conditions, the application of this Ordinance to this particular property will effectively prohibit or unreasonably restrict the utilization of the property.** *The application of this Ordinance would unreasonably restrict Applicant's utilization of the property, because the imposition of the 30' setback and a 60° setback angle from the Marriott SurfWatch multi-family use will result in an unreasonable reduction in the size and/or configuration of the single family units proposed for the site.*

D. **The authorization of the Variances 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 Variances.** *The Variance will not be of substantial detriment to adjacent property, because the only adjacent property affected by the Variance is the Marriott SurfWatch timeshare project, and the closest SurfWatch building is approximately 50' from the property line. The SurfWatch building is screened from the Applicant's property by abundant and mature landscaping, as will be demonstrated by photographs to be submitted by the Applicant to the BZA. There is no detriment to the public good, nor will the character of the zoning district (Resort Development District) be harmed by the granting of the Variances to reduce the side setback distance to 15' between the Applicant's property and the SurfWatch project, particularly in view of the fact that there will be more than 65' between the vertical improvements on the two adjoining properties. The requested Variance to change the setback angle to 75° will also have little, if any, effect on the adjoining SurfWatch project due to the distance between the buildings, and it will result in a more symmetrical appearance by having the same setback angle on the North and South sides of the project.*

AMENDED NARRATIVE FOR VARIANCE APPLICATION

22 BRADLEY CIRCLE, TOWN OF HILTON HEAD ISLAND, SC

TAX MAP NO.: R510-008-000-022U-0000

The Applicant owns 22 Bradley Circle, which is known as "Revised Lot 3" and which contains 0.916 acres, of which 0.417 is "Wetlands" as shown on the plat of the property recorded in Plat Book 93 at Page 182. The Applicant is proposing to subdivide the property into 4 single family resort lots, upon which single family homes will be constructed. Without the Variance requested by the Applicant, the side setback or buffer applicable to the South property line would be 27'wide, the setback angle along that side of the property would be 60°, and the setback angle along Bradley Circle would be 60º. The application of such 27' setback and 60° setback angle to this property would result in: (a) the loss of portions of several floors of the home located along the South property line and along the West (front) property line; and (b) will adversely affect the architectural symmetry of the project by having a 75° angle on the North side of the site (adjacent to single family uses) vs. a 60° angle on the South side (adjacent to multi-family uses) and a 60º angle along the West (front) of the property along Bradley Circle. The Applicant seeks a Variance to allow a 15' side setback or buffer and a matching 75° setback angle along the South and West property lines, the combination of which will eliminate the loss of any portion of the home located along those property lines and will maintain the architectural symmetry.

The attached Site Plan depicting the proposed location of the homes on the 4 lots demonstrates that even with the requested 15' setback from the Marriott property line, the home on Lot 4 will be located 21' from that property line due to the effect of the setback angle. Also attached is an elevation drawing which shows the application of the requested 60° setback angle with the reduced 15' setback.

A Variance may be granted by the Board of Zoning Appeals if it concludes that the strict enforcement of any appropriate dimensional, development, design or performance set forth in the LMO would result in unnecessary hardship to the applicant.

The Applicant requests a Variance from the following Sections of the LMO:

1. LMO Section 16-5-102.C: Adjacent Street Setback Requirements along the West property line of the property.

2. LMO Section 16-5-102.D Side Setback and Side Setback Angle along South property line of the property.

In this case, the Applicant requests a Variance from the cited LMO Sections, because:

A. **There are extraordinary and exceptional conditions pertaining to the Applicant's property, including the following:** *(a) it is bounded on the South side by the Marriott SurfWatch timeshare project, which is a multi-family project and would otherwise require a 30' setback (less 10% if approved by the Zoning Official) and would require a 60º setback angle, whereas the other side of the property only requires a 75º setback angle due to the adjoining single family use; (b) it is bounded on the East side by wetlands, which results in additional buffers and setbacks which further restrict development of the site;*

and (c) it is bounded on the North side by a 25' wide access easement, which has also reduced the amount of developable land for the Applicant's intended project.

B. **These conditions do not generally apply to other properties in the vicinity.** *To the Applicant's knowledge, there are no other properties in the vicinity which have such adjoining uses and conditions that adversely affect development of the sites.*

C. **Because of these conditions, the application of this Ordinance to this particular property will effectively prohibit or unreasonably restrict the utilization of the property.** *The application of this Ordinance would unreasonably restrict Applicant's utilization of the property, because the imposition of the 30' setback and a 60º setback angle from the Marriott SurfWatch multi-family use will result in an unreasonable reduction in the size and/or configuration of the single family units proposed for the site. In addition, the imposition of a 60º minimum setback angle along Bradley Circle (West boundary line) will also result in an unreasonable reduction in the size and/or configuration of the units proposed for the site.*

D. **The authorization of the Variances 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 Variances.** *The Variance will not be of substantial detriment to adjacent property, because the only adjacent property affected by the Variance is the Marriott SurfWatch timeshare project, and the closest SurfWatch building is approximately 50' from the property line. The SurfWatch building is screened from the Applicant's property by abundant and mature landscaping, as will be demonstrated by photographs to be submitted by the Applicant to the BZA. There is no detriment to the public good, nor will the character of the zoning district (Resort Development District) be harmed by the granting of the Variances to reduce the side setback distance to 15' between the Applicant's property and the SurfWatch project, particularly in view of the fact that there will be more than 65' between the vertical improvements on the two adjoining properties. The requested Variance to change the setback angle to 75º along the South and West property lines will also have little, if any, effect on the adjoining SurfWatch project due to the distance between the buildings, and it will result in a more symmetrical appearance by having the same setback angle on the North, South and West sides of the project.*

Plat Book 93 Page 182

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	18.78	40.00	9.55	18.73	N65°16'42"E	26°53'47"

LINE TABLE		
LINE	LENGTH	BEARING
L1	61.34	S44°56'15"W
L2	65.28	S45°32'11"W
L3	15.67	N48°32'13"E
L4	23.53	N50°06'06"E
L5	18.67	N45°27'50"W
L6	21.17	N43°31'37"E
L7	23.87	S44°06'24"E
L8	18.87	S44°32'20"W
L9	27.47	S33°27'31"W
L10	37.72	S38°01'30"W
L11	31.46	S26°01'21"W
L12	32.23	S52°36'16"E
L13	8.70	S06°31'38"W
L14	130.79	S53°31'38"E
L15	111.67	N63°08'31"W
L16	102.34	S21°37'36"W

AREA TABLE			
LOT NO.	HIGH	WET	TOTAL
REVISED LOT 3	0.468 Ac.	0.417 Ac.	0.818 Ac.
REVISED LOT 4	0.385 Ac.	1.343 Ac.	1.728 Ac.
TOTAL AREA	0.853 Ac.	1.760 Ac.	2.547 Ac.

BEAUFORT COUNTY SC - ROD
BK 00085 PG 0182
FILE NUM 2002046108
08/05/2003 05:07:08 PM
RECD BY P BAILEY RCPT# 108173
RECORDING FEES 10.00

REFERENCE PLAT

1) PLAT - TOPO OF LOTS 2 & 4, JOSEPHINE EPRESENT'S SUBDIVISION, HILTON HEAD ISLAND, BEAUFORT COUNTY, S.C.
DRAWN: 5/10/79
RECORDED IN BOOK , PAGE , DATED
RMC, BEAUFORT COUNTY, SC
BY: E.H. PROCELOCKH, S.C. R.P.V & L.S. NO. 9824

PROPERTY AREA = 2.547 Ac.
ADDRESS: #26 & 22 BRADLEY CIRCLE
DISTRICT: 510 , MAP: 08 , PARCELS: 22U & 22V

THIS PROPERTY LIES IN F.E.M.A. ZONE A7-14, A7-15, & V9-16
COMMUNITY NO. 450250, PANEL: 0014D, DATED: 9/29/86

NOTES:

1) THE SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A COMPLETE TITLE SEARCH BY SEA ISLAND LAND SURVEYS LLC.
2) HORIZONTAL DATUM IS S.C. STATE PLANE COORDINATES.
3) BUILDING SETBACKS, WHERE SHOWN, ARE NOT, SHOULD BE VERIFIED BY THE LOCAL BUILDING AUTHORITY OR HOMEOWNER ASSOCIATION.
4) TREES AND NO VERTICAL IMPROVEMENTS UPON ADJACENT PROPERTY.
5) SUBJECT PROPERTY AFFECTED IN THE BEACH FRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988

THIS PLAT IS APPROVED BY THE DEPARTMENT OF PLANNING AND DEVELOPMENT OF HILTON HEAD ISLAND, SC LAND MANAGEMENT ORDINANCE according to Section:
B 16.1.1006 B 16.1.1008 B 16.1.1009
Certified by: M. Benson
Title: Planner Date: 8/8/03

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON 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.

SOUTH CAROLINA REGISTERED PROFESSIONAL ENGINEER — SOUTH CAROLINA REGISTERED PROFESSIONAL LAND SURVEYOR

NOT VALID UNLESS EMBOSSED

BOUNDARY RECONFIGURATION SURVEY OF:
LOTS 3 & 4, BRADLEY CIRCLE,
CHAPLIN COMMUNITY, HILTON HEAD ISLAND,
BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR: STAYSAIL DEVELOPMENT, LLC.

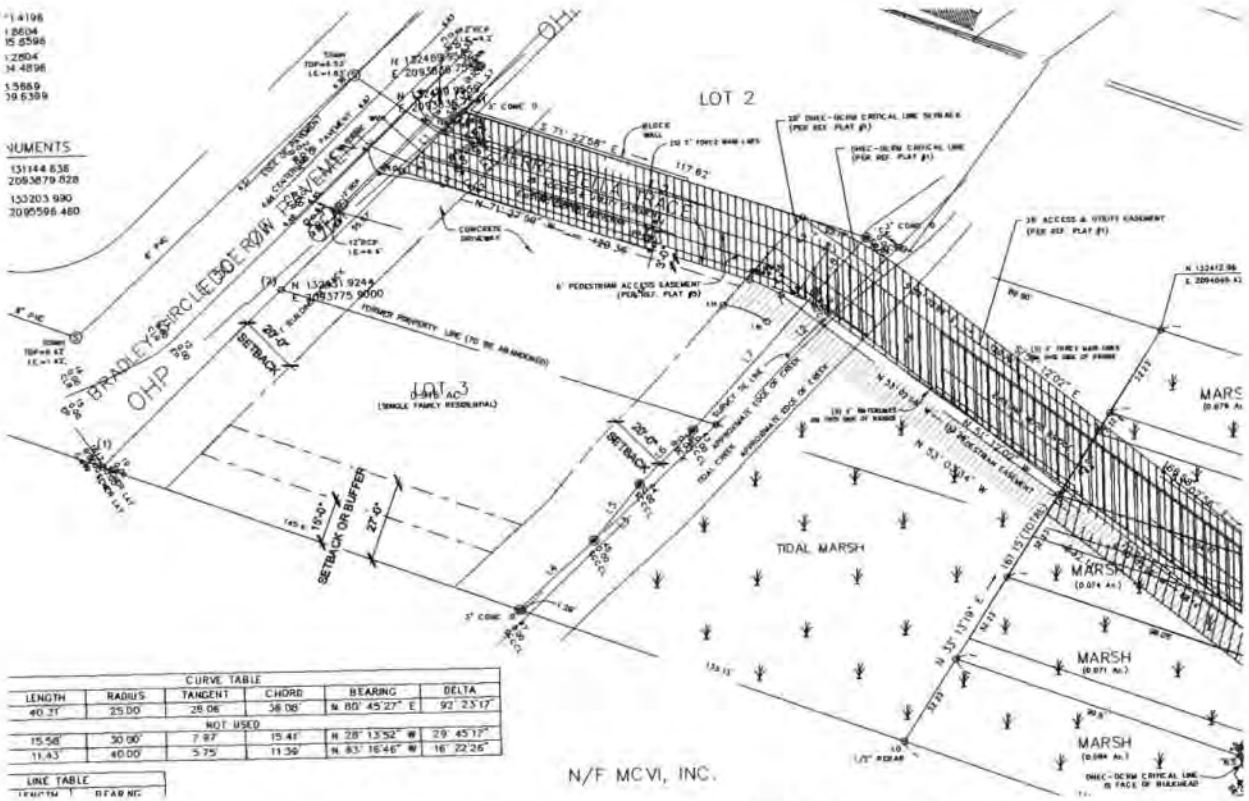
DATE : 06/12/03 SCALE : 1" = 50'

GRAPHIC SCALE 0 25 50

SIS Sea Island Land Survey, LLC.
P.O. Box 21568, Hilton Head Island, SC 29925 Tel (843) 681-3248
4-D Matthews Court, Hilton Head Island, SC 29926 Fax (843) 689-5871

FILE No : 010759 DWG No. : 3-974

COPYRIGHT © 2003 SEA ISLAND LAND SURVEYS, LLC

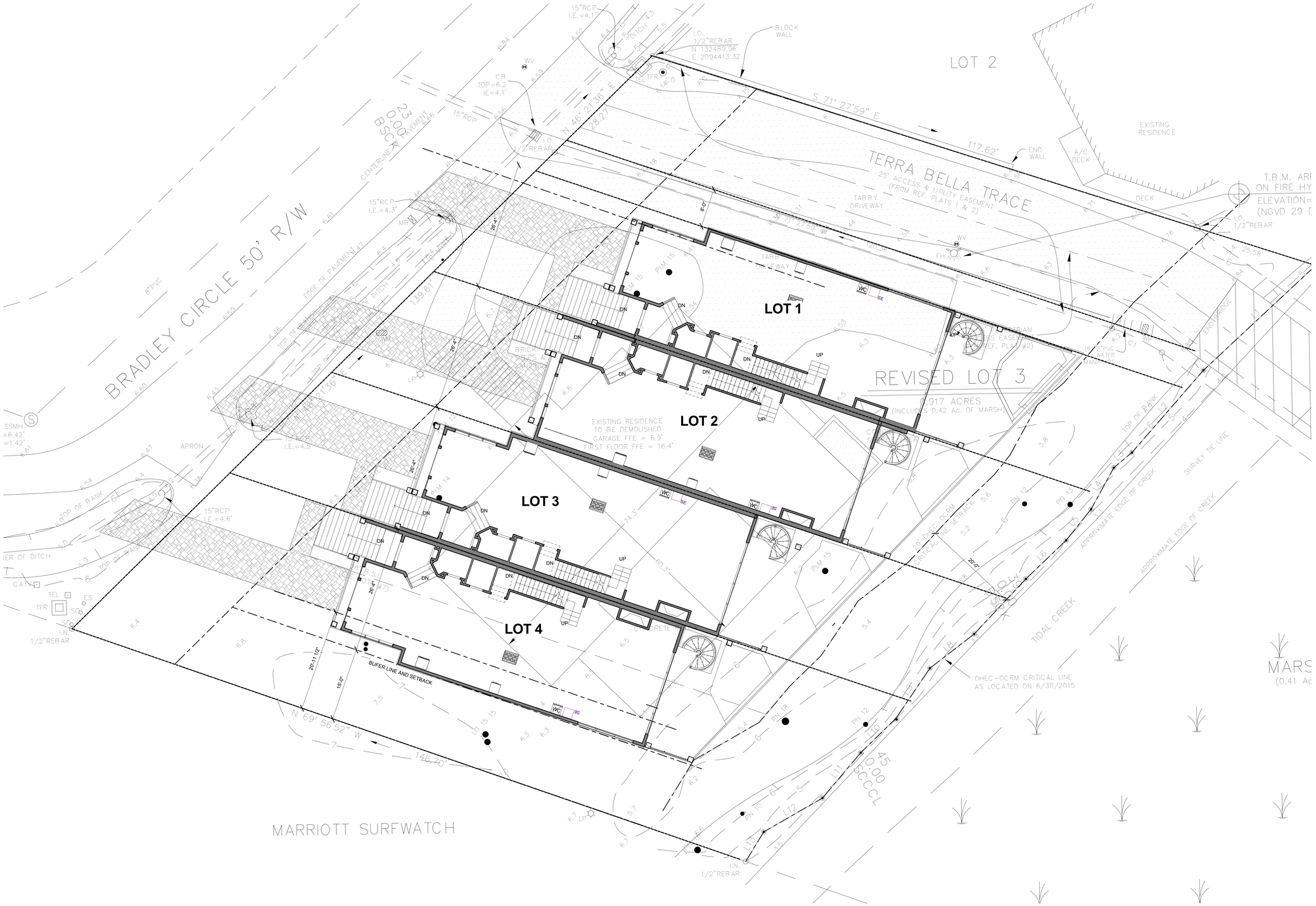


CURVE TABLE					
LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
40.21'	25.00'	26.08'	36.08'	N 80° 45'27" E	92° 23'17"
NOT USED					
15.58'	30.00'	7.97'	15.41'	N 28° 13'52" W	29° 45'17"
11.43'	40.00'	5.75'	11.39'	N 83° 16'46" W	16° 22'26"

LINE TABLE
LENGTH BEARING

SITE PLAN SURVEYING OPTION 1

SCALE : 1" = 30'-0"



SITE PLAN

SCALE : 1/8" = 1'-0"

LOT 22 BRADLEY CIRCLE, HILTON HEAD ISLAND SC
TRANSCON IND. LLC

Revision Schedule		
No.	Description	Date

Project Number	22 B
Date	07-08-15
Drawn By	Author
Checked By	Checker

D-5

Scale 1/8" = 1'-0"

7/8/2015 11:01:37 AM

Autodesk Revit
F:\ALEX PROJECTS\RADU\22 BRADLEY CIRCLE\22 BRADLEY CIRCLE ARCHITECTURAL PROJECT 06-24-15.rvt

SITE PLAN

ELEVATION SETBACK LINE 8'-75 DEEGRE

SCALE : 1/4" = 1'-0"

LOT 22 BRADLEY CIRCLE, HILTON HEAD ISLAND SC

TRANSCON IND. LLC

Revision Schedule		
No.	Description	Date

Project Number	22 B
Date	07-08-15
Drawn By	Author
Checked By	Checker

D

Scale 1/4" = 1'-0"

7/8/2015 11:00:46 AM

Autodesk Revit

F:\ALEX PROJECTS\RADU\22 BRADLEY CIRCLE\22 BRADLEY CIRCLE ARCHITECTURAL PROJECT 06-24-15.rvt

ELEVATION SETBACK 75 d

ELEVATION SETBACK NO ANGLE

SCALE : 1/4" = 1'-0"

LOT 22 BRADLEY CIRCLE, HILTON HEAD ISLAND SC

TRANSCON IND. LLC

Revision Schedule

No.	Description	Date

Project Number	22 B
Date	07-08-15
Drawn By	Author
Checked By	Checker

D-1

Scale 1/4" = 1'-0"

7/8/2015 11:01:04 AM

Autodesk Revit

F:\ALEX PROJECTS\RADU\22 BRADLEY CIRCLE\22 BRADLEY CIRCLE ARCHITECTURAL PROJECT 06-24-15.rvt

ELEVATION SETBACK NO ANGLE

ELEVATION SETBACK LINE 8'-60 DEEGRE

SCALE : 1/4" = 1'-0"

LOT 22 BRADLEY CIRCLE, HILTON HEAD ISLAND SC

TRANSCON IND. LLC

Revision Schedule		
No.	Description	Date

Project Number	22 B
Date	07-08-15
Drawn By	Author
Checked By	Checker

D-2

Scale 1/4" = 1'-0"

7/8/2015 11:01:14 AM

Autodesk Revit

F:\ALEX PROJECTS\RADU\22 BRADLEY CIRCLE\22 BRADLEY CIRCLE ARCHITECTURAL PROJECT 16-24-15.rvt

ELEVATION SETBACK 60 d

BUILDING SECTION 60

SCALE : 1/4" = 1'-0"

LOT 22 BRADLEY CIRCLE, HILTON HEAD ISLAND SC
TRANSCON IND. LLC

Revision Schedule		
No.	Description	Date

Project Number	22 B
Date	07-08-15
Drawn By	Author
Checked By	Checker

D-3

Scale 1/4" = 1'-0"

7/8/2015 11:01:21 AM

Autodesk Revit

F:\ALEX PROJECTS\RADU\22 BRADLEY CIRCLE\22 BRADLEY CIRCLE ARCHITECTURAL PROJECT 06-24-15.rvt

FRONT SETBACK 60
D

BUILDING SECTION 75

SCALE : 1/4" = 1'-0"

LOT 22 BRADLEY CIRCLE, HILTON HEAD ISLAND SC
TRANSCON IND. LLC

Revision Schedule		
No.	Description	Date

Project Number	22 B
Date	07-08-15
Drawn By	Author
Checked By	Checker

D-4

Scale 1/4" = 1'-0"

7/8/2015 11:01:31 AM

Autodesk Revit

F:\ALEX PROJECTS\RADU\22 BRADLEY CIRCLE\22 BRADLEY CIRCLE ARCHITECTURAL PROJECT 06-24-15.rvt

FRONT SETBACK 75
D

FINGER, MELNICK & BROOKS, P.A.

ATTORNEYS AT LAW

TERRY A. FINGER ▪
THOMAS L. BROOKS.
TYLER A. MELNICK
BENJAMIN T. SHELTON
E. RICHARDSON LaBRUCE

Of Counsel:
ANNE C. MARSCHER *□
ARTHUR F. ANDREWS†□

35 Hospital Center Common, Suite 200 (29926)
Post Office Box 24005
Hilton Head Island, South Carolina 29925
(843) 681-8802 Facsimile
(843) 681-7000 Telephone
erlabruce@fingerlaw.com

Also admitted in:
* Georgia
† New York

□ Court Certified Mediator
▪ Court Certified Arbitrator / Mediator

June 19, 2015

Via U.S. Mail and E-Mail (*TeriL@hiltonheadislandsc.gov*):

Ms. Teri Lewis, Zoning Administrator
Town of Hilton Island
One Town Center Court
Hilton Head Island, South Carolina 29928

Re: Variance Application for 22 Bradley Circle; VAR-001055-2015
Parcel Number R510-008-000-022U-0000 (Qualey)

Dear Ms. Lewis,

Please be advised that I represent CSB Development Company, Inc., the owner of Lots 4A through 4D of Terra Bella Trace Subdivision on Hilton Head Island, South Carolina. CSB has asked that I review and respond to the Variance Application filed by John P. Qualey, Jr., on behalf of the owner of 22 Bradley Circle. Further, CSB has requested that I attend the meeting of the Hilton Head Island Board of Zoning Appeals scheduled for June 22, 2015 at 2:30 p.m. on its behalf and in opposition to the proposed variance. In advance thereof, I respectfully bring the following to your attention.

From the outset, it must be noted that granting a variance is an exceptional power which should only be exercised sparingly and can be validly used only where a situation falls fully within the specified conditions set forth by the South Carolina Comprehensive Planning Act and local zoning ordinances. *Restaurant Row Assoc. v. Horry County*, 335 S.C. 209, 516 S.E.2d 442 (1999); *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953). When deciding whether to grant a variance, the Board of Zoning Appeals must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary. *Id.*; *Schloss Poster Adv. Co. v. City of Rock Hill*, 190 S.C. 92, 2 S.E.2d 392 (1939).

Section 6-29-800 of the South Carolina Code empowers a board of zoning appeals with the ability to grant a variance from the provision of a zoning ordinance "in an individual case of unnecessary hardship." As set forth by the South Carolina Supreme Court,

> Although there is no set definition, this Court has established guidelines for determining "unnecessary hardship." First, a claim of unnecessary hardship cannot be based upon conditions created by the owner nor can one who purchases

> property after the enactment of a zoning regulation complain that a nonconforming use would work an unnecessary hardship upon him. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965).

Restaurant Row Assoc., 335 S.C. at 218. In this case, the applicant purchased the property that is the subject of this variance request on April 22, 2015, exactly one month prior to the submission of the variance request. As such, the applicant fails to establish a single change in circumstances or conditions that occurred subsequent to the purchase of the property that would render the enforcement of the validly existing zoning ordinance as an "unnecessary hardship." Rather, it seems reasonable to assume that the applicant purchased the property with full knowledge of the existence of the Marriott SurfWatch timeshare project, the Hilton Head Land Management Ordinance and the alleged "unnecessary hardship" created thereby.

Further, "before a variance can be allowed on the ground of `unnecessary hardship', there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation." *Id.*, (citing *Application of Groves*, 226 S.C. 459, 463, 85 S.E.2d 708, 710 (1955)). The applicant has failed to adequately demonstrate how its location adjacent to a "Resort Accommodation" is such a peculiar condition as to necessitate a variance. The simple fact that the LMO anticipated single family homes being next to properties zoned as Resort Accommodations undercuts the very nature of this contention.

For these reasons, among others, the applicant's variance request fails to meet the high threshold established by our Supreme Court and our legislature. In addition, questions remain as to whether the applicant's proposed subdivision and construction would comply with other provisions of the LMO regardless of whether the Board of Zoning Appeals grants the variances currently being requested. For example, the subject property appears to have a twenty-five (25.00') foot right-of-way known as "Terra Bella Trace" running along its northern boundary, as indicated on the plat attached hereto as Exhibit A. If Terra Bella Trace constitutes a "street" for the purposes of the LMO - "[a]n existing or planned public ***right-of-way*** or private easement used or intended to be used primarily for carrying vehicular, bicycle and pedestrian traffic and providing a principal means of access to abutting property" - the proposed subdivision would be in violation of LMO Section 16-5-105. From a cursory review of the attached plat, Terra Bella Trace appears to provide, at the very least, a private vehicular and pedestrian easement to a five lot subdivision that lacks any other means of access.

Variances should be granted sparingly and only in "exceptional" cases. The construction of transient, high-density residential units on the property will create numerous public safety issues for the owners of Terra Bella Trace, the residents and guests of the subject property, and all persons that may use Bradley Circle. For the sake of the Town of Hilton Head and the other property owners in and around Bradley Circle, it is imperative that the Hilton Head Island Board of Zoning Appeals deny Mr. Qualey's variance application.

If you have any questions, please do not hesitate to contact me. I thank you for your time and look forward to your response.

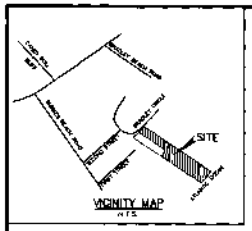
With kind regards, I am

Very truly yours,

FINGER, MELNICK & BROOKS, P.A.

/s/ E. Richardson LaBruce
E. Richardson LaBruce

ERL/
Enclosures: Plat of Terra Bella Trace
cc: John P. Qualey, Jr., Esq. (*e-mail only*)
CSB Development Company (*e-mail only*)
Mr. Ed Flynn (*e-mail only*)



LOT CORNERS

1	N 132374.0960 E 2094715.2581
2	N 132531.8243 E 2093725.8001
3	N 132589.9538 E 2094413.3932
4	N 132748.6691 E 2094989.8923
5	N 132152.4008 E 2094303.3282

OCRM BASELINE

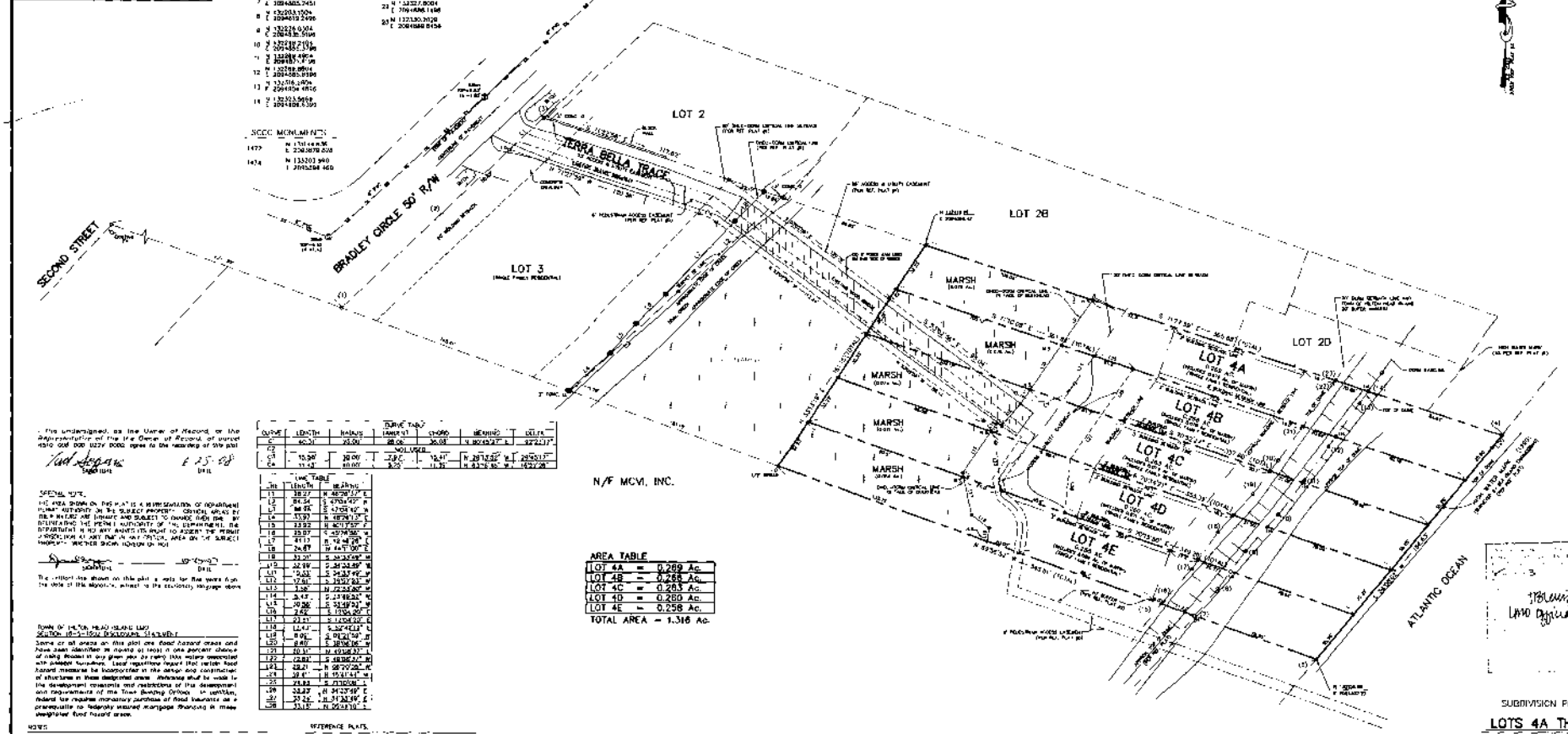
7	N 132188.6973 E 2094805.7451
8	N 132203.1504 E 2094812.2496
9	N 132224.0.04 E 2094836.5598
10	N 132237.2193 E 2094854.3798
11	N 132284.4964 E 2094957.7128
12	N 132289.8614 E 2094985.8598
13	N 132516.1404 E 2094904.4816
14	N 132513.8498 E 2094908.5.392

SCCC MONUMENTS

1477	N 131[illegible] E 2093870.2[illegible]
1474	N 133203.990 E 2095294.460

OCRM SETBACK LINE

16	N 132153.9730 E 2094783.3419
16	N 132185.5404 E 2094788.5296
17	N 132215.4504 E 2094843.1490
18	N 132217.8294 E 2094918.2196
19	N 132280.6804 E 2094936.8189
20	N 132281.3064 E 2094955.2796
21	N 132301.4194 E 2094989.9298
22	N 132327.8004 E 2094986.1498
23	N 132330.3628 E 2094988.8156



CURVE TABLE						
CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C	60.31	25.00	28.06	N 80°49'37" E	137°21'17"
C2	NO CURVE USED				
C3	15.58	30.00	7.82	15.41	N 28°13'53" W	29°51'17"
C4	11.42	30.00	3.55	11.35	N 43°16'55" W	19°27'28"

LINE TABLE		
LINE	LENGTH	BEARING
L1	38.27	N 46°28'57" E
L2	84.54	S 47°04'43" E
L3	84.55	S 47°08'42" W
L4	13.90	N 48°18'13" E
L5	33.92	N 40°17'57" E
L6	35.97	S 49°38'50" W
L7	41.13	S 42°48'28" E
L8	24.87	N 44°17'00" E
L9	33.20	S 38°35'49" W
L10	32.99	S 34°34'39" W
L11	70.53	S 34°37'49" W
L12	17.61	S 35°37'33" W
L13	3.38	N 72°53'00" W
L14	3.47	S 23°48'52" W
L15	30.36	S 53°49'52" W
L16	2.62	S 13°04'20" E
L17	21.41	S 12°04'20" E
L18	12.47	S 32°40'13" E
L19	8.05	S 82°21'50" W
L20	8.80	S 18°06'06" W
L21	30.51	N 31°08'37" E
L22	12.87	S 48°06'57" W
L23	33.21	N 38°70'28" W
L24	38.41	N 15°31'47" W
L25	24.84	S 27°07'00" E
L26	33.27	N 34°37'49" E
L27	37.26	N 31°33'49" E
L28	33.15	N 05°49'10" E

AREA TABLE		
LOT 4A	=	0.289 Ac.
LOT 4B	=	0.268 Ac.
LOT 4C	=	0.263 Ac.
LOT 4D	=	0.260 Ac.
LOT 4E	=	0.256 Ac.

TOTAL AREA = 1.316 Ac.

- The undersigned, as the Owner of Record, or the Representative of the (If a Corp) of Record, of parcel R510 008 000 022V 0000, agree to the recordation of this plat

Ted Logan 6-25-08
SIGNATURE DATE

SPECIAL NOTE:
THE AREA SHOWN ON THIS PLAT IS A REPRESENTATION OF DEPARTMENT FLOOD AUTHORITY (DFA) THE SUBJECT PROPERTY. CERTAIN AREAS BY THE FLOOD AND DRAINAGE AND SUBJECT TO CHANGE WITH THE DFA DETERMINES THE PERMIT AUTHORITY OF THE DEPARTMENT. THE DEPARTMENT IS NOT ANY WAYS LIABLE OR RESPONSIBLE FOR THE PERMIT JURISDICTION OF ANY PART IN ANY PORTION AREA ON THE SUBJECT PROPERTY WHETHER SHOWN HEREON OR NOT.

SIGNATURE DATE

The restrictions shown on this plat are only for the years from the date of this signature, subject to the exclusionary language above

TOWN OF HILTON HEAD ISLAND LAND SECTION 16-3-1510 DISCLOSURE STATEMENT

Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of rising flooded in any given year (a 100 year) associated with adjacent bodies. Local regulations require that certain flood hazard measures be incorporated in the design and construction of structures in these designated areas. Reference shall be made to the development covenants and restrictions of the development and requirements of the Town Zoning Ordinance. In addition, federal law requires mandatory purchase of flood insurance as a prerequisite to federally insured mortgage financing in these designated flood hazard areas.

NOTES:

1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON 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.

2) THE REFERENCE PLAT OF THIS PROPERTY IS LOCATED IN ZONE AE (EL 8-10) A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY HILTON HEAD, PANEL 34-01, COMMUNITY NO. 450250, MAP DATED 9/28/2006. BASE ELEVATION 10.0 (EL 8-10). FLOOD HAZARD ZONE AND BASE ELEVATION SHOULD BE VERIFIED BY PROPER TOWN OR COUNTY BUILDING INSPECTIONS DEPARTMENT.

3) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.

4) THIS SURVEY WAS PERFORMED WITHOUT BENEFIT OF A CURRENT TITLE REPORT.

5) BOUNDARY, BEACH ACT AND OCRM CRITICAL LINE INFORMATION WERE TAKEN FROM REFERENCE PLAT #1.

6) NO CONSTRUCTION IS ALLOWED BEYOND THE BUILDING SETBACK LINE ALONG THE FOR OF THE DUNE. THERE SHALL BE NO STORAGE, GRADING, DESTRUCTION, OR ALTERATION OF EXISTING VEGETATION OR BREACHING OF THE DUNE.

7) BUILDING SETBACK LINES SHOWN ARE SHOWN AS DIRECTED BY OWNER. THE TOWN OF HILTON HEAD OR ANY REVIEW BOARD AFFECTING THIS PROPERTY SHOULD BE CONSULTED TO VERIFY SETBACK REQUIREMENTS

REFERENCE PLATS:

1) SUBDIVISION PLAT OF RESURVEY OF LOTS 3 & 4, JOSEPHINE DRIESSEN'S SUBDIVISION. DATED: 7/28/2003. BY: RALPH D. VANMOORE, SCCR L.S. NO. 7606.
2) BOUNDARY RECONSTRUCTION SURVEY OF: LOTS 3 & 4, BRADLEY CIRCLE, CHAPLIN COMMUNITY. DATED: 8/13/2003. BY: RALPH D. VANMOORE, SCCR L.S. NO. 7606. RECORDED: P.B. 93, PG. 182, 8/23/2003.
3) SKYSAIL SITE DEVELOPMENT PLAN. SKYSAIL DEVELOPMENT, L.L.C. DATED: 8/27/2003. BY: CARNEY F. STANLEY, SCCPE NO. 8011
4) A TOPOGRAPHIC SURVEY OF: LOT 4. BRADLEY CIRCLE, CHAPLIN COMMUNITY. DATED: 8/29/2003. REVISED: 11/03/2003. BY: JOHN R. CHARTR, SCCR L.S. NO. 11807
5) BOUNDARY PLAT OF 8' PEDESTRIAN ACCESS EASEMENT IN FAVOR OF LOT 2, BRADLEY CIRCLE. DATED: 3/31/04, REVISED: 3/31/2005. BY: TERRY D. HATCHELL, SCCPLS NO. 14501.

LEGEND

CONC. O	CONCRETE MONUMENT OLD, (FOUND)
I.N.	IRON PIN NEW, 1/2" REBAR SET
I.O.	IRON PIN OLD, (FOUND)
N.S.	NAIL SET IN FACE OF TELEPHONE

PREPARED FOR: GSB DEVELOPMENT COMPANY, INC.
ADDRESS: TERRA BELLA TRACE
PARENT TAX PARCEL ID No. R510-008 000 022V-0000

SOUTH CAROLINA SURVEYING CONSULTANTS, INC. CERTIFICATE OF AUTHORIZATION

SOUTH CAROLINA REGISTERED LAND SURVEYOR 17009 TERRY D. HATCHELL

GRAPHIC SCALE 0 30 60 90

Beaufort County SC-ROD
BK 00125 PG 0113
DATE 08/26/2008 10:01:33 AM
INSTR # 2008046020 RCPTS 84863

Tbauer
LMO Official 6/24/08

SUBDIVISION PLAT OF

LOTS 4A THRU 4E
TERRA BELLA TRACE

A SECTION OF

FORMER LOTS 3 & 4
JOSEPHINE DRIESSEN'S SUBDIVISION

HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 30' DATE: 10/22/2007 JOB NO: 0750170
REVISED 11/12/2007 TO ADD SETBACKS
REVISED 11/26/2007 TO INCORPORATE TOWN COMMENTS
REVISED 02/12/2008 TO REVISE ACCESS EASEMENT
REVISED 06/16/2008 TO REVISE BUILDING SETBACKS

SURVEYING CONSULTANTS
19 Sherington Drive, Suite C, Bluffton, SC 29910
BC Telephone: (843) 815 3304 FAX: (843) 815 3408
HI Telephone: (808) 886-0996 FAX: (808) 886-2168

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court	Hilton Head Island, SC 29928	843-341-4757	FAX 843-842-8908

STAFF REPORT
VARIANCE

Case #:	Public Hearing Date:	Development Name:
VAR-1077-2015	July 27, 2015	Colonnade Club (Shipyard Plantation)

Parcel Data	Property Owner	Applicant & Agent
Address: 200 Colonnade Road, Unit 208 **Parcel**: R550 015 000 314E 0000 **Zoning**: PD-1 (Planned Development Mixed Use District) – Shipyard Plantation	Dennis & Marolyn Ulery 3191 Birchton Road Ballston Spa, NY 12020	Atlantic States Management, Inc. 4 Pensacola Place, Suite B Hilton Head, SC 29928

Application Summary:

Atlantic States Management, on behalf of the property owner and the Colonnade Club Board of Directors, is requesting a variance from Land Management Ordinance (LMO) Section 16-6-104.F, Specimen Tree Preservation. This section states that specimen trees shall not be cut, removed, pushed over, killed, or otherwise harmed. The applicant is requesting the variance to remove a healthy, specimen-size, 38 inch DBH (diameter at breast height) Magnolia tree adjacent to Units 207 and 208 of the Colonnade Club building.

The applicant is requesting to remove the tree to prevent damage to the building. The tree has not yet damaged the building, but the trunk is within one foot of the building, and the tree is growing into the building's roof, deck, and foundation. The applicant explored making alterations to the building to accommodate the tree instead of removing it. They found that the required alterations to the building would be substantial and that no alteration could mitigate the effect of the tree's roots on the foundation.

The applicant states the Colonnade Club regime is willing to comply with any required mitigation planting if the application is approved.

Staff Recommendation:

Staff recommends the Board of Zoning Appeals **approve** the application based on the Findings of Fact and Conclusions of Law contained in the staff report **with the following conditions**:

1. The applicant shall apply for a Natural Resources Permit to remove the subject tree.
2. The applicant shall plant four, Category I mitigation trees per LMO Section 16-6-104.I.3.

Background:

The Colonnade Club buildings were constructed in 1986 using plans approved by Beaufort County. Current LMO standards would not allow the construction of a building so close to a tree. Given the growth rate of magnolia trees, the subject tree, which is now 38 inches DBH, was probably not specimen size (30 DBH) at the time of construction.

In March 2015, the owner of Colonnade Club Unit 208 received a home inspection report stating that the subject Magnolia tree is pressing against the eaves of the home. The report advised the homeowner to have the tree and roof inspected and to take action to prevent structural damage to the roof.

Colonnade Club's regime management company, Atlantic States Management (ASM), hired Arbor Nature to inspect the tree. Arbor Nature reported that, since the trunk is within a few inches of the edge of the roof and within a foot of the building, there isn't enough room for the tree to continue to grow. Arbor Nature stated the only options are to remove the tree or to remove part of the building.

In April 2015, the applicant submitted a natural resources application to remove the tree. Rocky Browder, the Town's Environmental Planner, examined the tree and determined that it is healthy. He denied the application because removing a healthy specimen size tree would be a violation of LMO Section 16-6-104.F, Specimen Tree Preservation. He recommended that the applicant explore alternatives to removing the tree or to seek a variance per LMO Section 16-6-104.F.

In May 2015, the applicant submitted the request for a variance to remove the tree. Town staff met with the applicant and Arbor Nature to examine the tree. Staff recommended that the applicant explore the possibility of modifying the building to accommodate the tree instead of removing it.

In June 2015, the applicant hired Robert Fletcher, General Contractor and owner of PCT Services of Hilton Head, to determine if any alterations could be made to the building to preserve the tree. He reported that making those alterations would require hiring an architect to redesign the building, obtaining required approvals and permits from Colonnade Club, Shipyard Plantation, and the Town of Hilton Head Island, renovating the exterior and interior of Units 207 and 208 to accommodate the change to the roof, and renovating the deck of Unit 207 to accommodate the trunk. Mr. Fletcher reported that these alterations would not, however, negate the damage that the root system of the tree will eventually put on the foundation of the building.

Based on Arbor Nature's and Mr. Fletcher's reports, the applicant determined that they must remove the tree to prevent future damage to the building.

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

Grounds for Variance:
The applicant states the variance is required from LMO Section 16-6-104.F because Town staff will not issue a Natural Resources Permit to allow the applicant to remove the specimen tree. The applicant states that all possible alternatives to removing the tree have been explored, but that the only way to prevent damage to the building is to remove the tree. The applicant states the Colonnade Club regime is willing to plant mitigation trees as required by the LMO.

Summary of Facts:

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

Conclusion of Law:

1. 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:

1. Application was submitted on May 28, 2015 as set forth in LMO Section 16-2-102.C and Appendix D-23.
2. Notice of the Application was published in the Island Packet on July 5, 2015 as set forth in LMO Section 16-2-102.E.2.
3. Notice of the Application was posted on July 9, 2015 as set forth in LMO Section 16-2-102.E.2.
4. Notice of Application was mailed on July 2, 2015 as set forth in LMO Section 16-2-102.E.2.
5. The Board has authority to render the decision reached here under LMO Section 16-2-102.G.

Conclusions of Law:

1. The application is in compliance with the submittal requirements established in LMO Section 16-2-102.C.
2. The application was submitted 67 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
3. Notice of application was published 22 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
4. Notice of application was posted 18 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
5. Notice of application was mailed 25 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
6. 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 Fact:

1. The trunk of the subject tree is located approximately one foot from the edge of the building.
2. Most specimen trees are not located so close to buildings that their trunks are only a foot away from a building.

Conclusion of Law:

1. Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.01 because the especially close proximity of the tree trunk to the building is an extraordinary and exceptional condition that pertains to this particular 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):

Finding of Fact:

1. Staff is not aware of any other specimen tree in the vicinity that is located so close to a building.

Conclusion of Law:

1. Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.02 because the very close proximity of the tree trunk to the building is a condition that does 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 Fact:

1. The subject tree is healthy and will continue to grow closer to the building.
2. The applicant is seeking the variance to prevent damage to the building.
3. The applicant explored other alternatives to removing the tree.
4. The applicant could make alterations to the building's design to avoid contact between the tree and the roof and deck.

Conclusion of Law:

1. Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.03 because, though the applicant has explored alternatives to removing the tree, the subject tree will continue to grow, eventually damaging the building and effectively prohibiting the reasonable use of the building. No reasonable alternative is available to prevent the tree's roots from damaging the foundation of the building.

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 Fact:

1. LMO Section 16-6-104, Tree Protection, states that specimen trees contribute to the ambience, economy, and quality of life on Hilton Head Island.
2. LMO Section 16-6-104.F, Specimen Tree Preservation includes a provision that a variance may be sought if the preservation of a specimen tree causes unnecessary hardship.
3. Staff found no evidence that the authorization of the variance will be of substantial detriment to the adjacent property or the public good.
4. Staff found no evidence that the character of the zoning district will be harmed by the granting of the variance.

Conclusions of Law:

1. Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.04.
2. Since there are no reasonable alternatives available to prevent the tree's roots from damaging the foundation of the building, the preservation of the tree is an unnecessary hardship.
3. Though the LMO guides development to preserve specimen trees, staff can find no evidence that the removal of this tree will be of substantial detriment to adjacent property, the public good, or the character of the zoning district.

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 with the following conditions**:

1. The applicant shall apply for a Natural Resources Permit to remove the subject tree.
2. The applicant shall plant four, Category I mitigation trees per LMO Section 16-6-104.I.3.

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:

AC — July 9, 2015

Anne Cyran, AICP, Senior Planner — DATE

REVIEWED BY:

ND — July 13, 2015

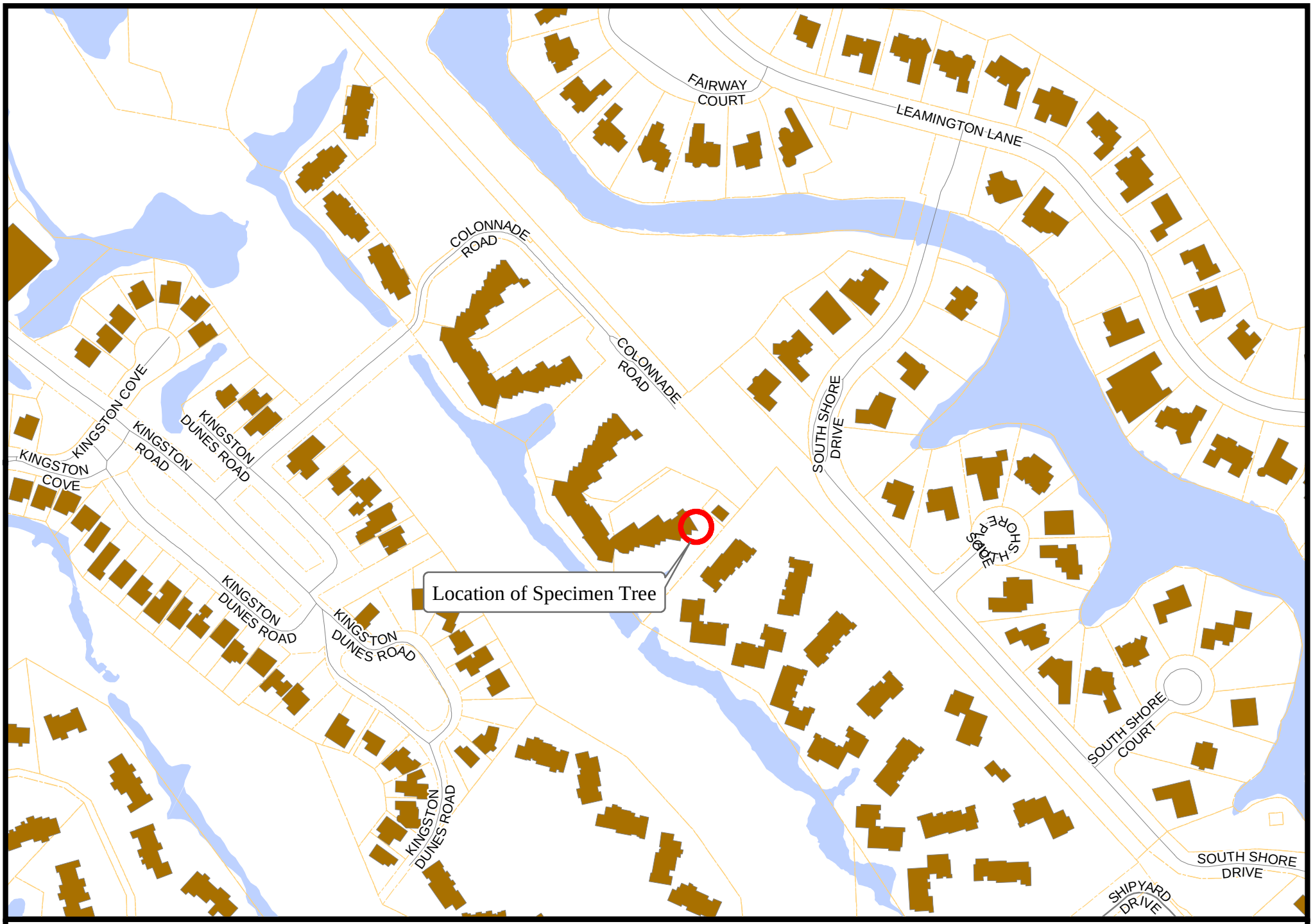
Nicole Dixon, CFM, Board Coordinator — DATE

REVIEWED BY:

HC	July 9, 2015
Heather Colin, AICP, Development Review Administrator	DATE

ATTACHMENTS:

A) Location Map
B) Aerial Photo
C) Applicant's Narrative & Exhibits
D) Photos



TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, S.C. 29928
PHONE (843) 341 - 4600
Date Created: 06/29/2015

VAR-1077-2015 Colonnade Club Magnolia

Location Map

1 inch = 272 feet

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or stated completion or for any losses arising from the use of the map.

VAR-1077-2015 Colonnade Club Magnolia

Aerial Photo

TOWN OF HILTON HEAD ISLAND
ONE TOWN CENTER COURT
HILTON HEAD ISLAND, S.C. 29928
PHONE (843) 341 - 4600

Date Created: 06/29/2015

1 inch = 44 feet

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is provided without any warranty or representation as to the accuracy or completeness of the data shown. The Town of Hilton Head Island assumes no liability for its accuracy or stated completion or for any losses arising from the use of the map.

June 23, 2015

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

To Whom It May Concern:

On March 24, 2015, Atlantic States Management, the regime manager of Colonnade Club, received a CL-100 report that noted that there was a large tree pressing on the roof of the home at 208 Colonnade Club. As this item would fall under the regime's responsibility to take care of, Atlantic States Management contacted Arbor Nature for a price to remove the tree. The proposal was approved by the Board of Directors with Colonnade Club as well as Shipyard. The application was denied by the town.

The tree is a 38" magnolia tree that is growing into the side of the building. Arbor Nature has recommended this tree be removed as it is the trunk itself that is posing a hazard to the building by way of growing into the building and not simply the branches. Specifically, Daniel Cosgrove with Arbor Nature noted "The criteria for removal I would say is that the trunk of the tree is growing into the side of the building. Due to its location right against the side of the building, there isn't enough room for the tree to continue to develop. Trimming the tree isn't a viable option because the main trunk is the issue. The only options would be to remove the tree or remove part of the building."

The regime would like to request a variance for the removal of this tree as the tree meets the requirements for the variance criteria as stated below:

1- The area extraordinary and exceptional conditions pertaining to the particular piece of property.
    a. The large tree is growing into the roof of the home and if it continues to grow, will cause leaks.
    b. Despite being a regime management company for many local regimes and communities, this is not a problem that we usually encounter.
2- These conditions do not generally apply to other properties in the vicinity.
    a. There are no other trees that are dangerously close to any other homes in the area.
3- Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
    a. We are concerned that if we allow this tree to continue to grow that it will cause damage to the home located at 208 Colonnade Club.
    b. If the tree were allowed to continue to grow where it stands, it would first cause issues with the roof at unit 208 Colonnade Club. The tree could grow into the

4 Pensacola Place Suite B | Hilton Head Island, SC 29928
P.O. Box 7431 | Hilton Head Island, SC 29938
Phone: (843) 785-3278 | Fax: (843) 785-3381

roof, dislodging roofing material and cause leaks to unit 208. If still allowed to grow as it has (Arbor Nature mentioned these specimens grow as much as a half inch a year), it will cause damage to the deck on the unit 207. The tree is clost to pushing into and damaging the railing on the deck at unit 207 and if allowed to grow further it will damage the floor of that deck, possibly warping that floor material and causing leaking into the sliding door of that unit. Additionally, the roots could cause major foundation damage to the villas which would in turn damage other nearby connected villas.

c. We have spoken to a certified builder, Robert Fletcher of PCT on Hilton Head Island who said that it is not a viable option to cut into the roof of unit 208 Colonnade Club to allow the tree to grow as he would also have to cut into the porch of the unit below and the tree would still continue to damage the foundation below both units.

d. IF the result would be to remove 4 inches of the roof, we would first need approval from the homeowners of unit 208 and 207. The regime would contact an architect to discuss the necessary design to work around the tree. There would have to be extensive redesigning of the exterior of the units to allow for this change. Obviously the interiors of the units would need new drywall, painting and any other necessary repairs for this change as well. These changes would be disruptive for weeks, if not longer, to both units 207 and 208, who both rent out their units and would lose potential rental income. These exterior changes would have to be approved by the Colonnade Club Board of Directors, the Shipyard Board of Directors and the Town of Hilton Head. IF the result would be to remove 4 inches of the roof near unit 208, it could be assumed that the deck to the below unit would be moved around somehow to accommodate the growing girth of the specimen tree but it still would NOT negate the damage the that root system of such a large tree would eventually put on the foundation of this property.

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

a. If there are any mitigation plantings required based on the removal of this magnolia, the Colonnade Club regime would be happy to comply.

b. There are several open areas nearby where mitigation trees can be planted where they will not conflict with the buildings of Colonnade Club.

c. If the magnolia tree is removed now instead of using a stop-gap solution and waiting until it causes further problems with the building, the mitigation trees planted will have more time to grow and flourish in the community.

The Colonnade Club Regime appreciates the time and consideration for this variance request.

4 Pensacola Place Suite B | Hilton Head Island, SC 29928
P.O. Box 7431 | Hilton Head Island, SC 29938
Phone: (843) 785-3278 | Fax: (843) 785-3381

Sincerely,

Stacy Kaeding
Property Manager

SK;kk

4 Pensacola Place Suite B | Hilton Head Island, SC 29928
P.O. Box 7431 | Hilton Head Island, SC 29938
Phone: (843) 785-3278 | Fax: (843) 785-3381

Inspection Report

Dennis and Marolyn Ulery

Property Address:
208 Colonnade
Shipyard
Hilton Head SC

Coastal Home Inspection Services, LLC

Keith and Jamie Hutcheson
10 Strandhill Avenue
Bluffton, SC 29910
(843) 706-3969

Repair Summary

Coastal Home Inspection Services, LLC

10 Strandhill Avenue
Bluffton, SC 29910
(843) 706-3969

Customer
Dennis and Marolyn Ulery

Address
208 Colonnade
Shipyard
Hilton Head SC

The following items or discoveries indicate that these items, components, or systems do not function as intended, adversely affects the habitability of the dwelling, or appear to warrant further investigation by a specialist. Some items listed in this summary, while reported that they are currently functioning acceptably, appear to have a current condition that may render them in need of repair/replacement in the very near future. These items are listed to draw attention to their condition which should be investigated further by a licensed Contractor specializing in the related field. This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper functioning condition or recommend items for upgrade to enhance the function, efficiency, or safety of the home. Items of this nature may be found in the Maintenance/Monitor/Upgrade Summary following this section. The Summary section(s) is not the entire report. The complete report may include additional information of concern to the customer. It is recommended that the customer read the complete report.

1. Exterior

1.1 LANDSCAPING AND VEGETATION

Inspected, REPAIR OR REPLACE

A large tree is pressing against the eaves of the home in the rear. This tree should be reviewed by the HOA and repairs/removal made to prevent structural roof damage to the home. (Picture 1)

1. Exterior

1.1 (Picture 1)

2. Roofing

2.0 **ROOF COVERINGS**

Inspected, REPAIR OR REPLACE

Overall, the roof covering is in satisfactory condition for its age. Inspector could not determine age, although it does appear to have normal signs of wear for an older surface. There appears to be several years of remaining life left on the surface. However, there are a few items that should be addressed to prevent any water intrusion inside the attic and/or home.

Repair:

- a few chipped/missing shingles were seen at the rear ridges of the home. (Picture 1) (Picture 2)

2.0 (Picture 1)

2.0 (Picture 2)

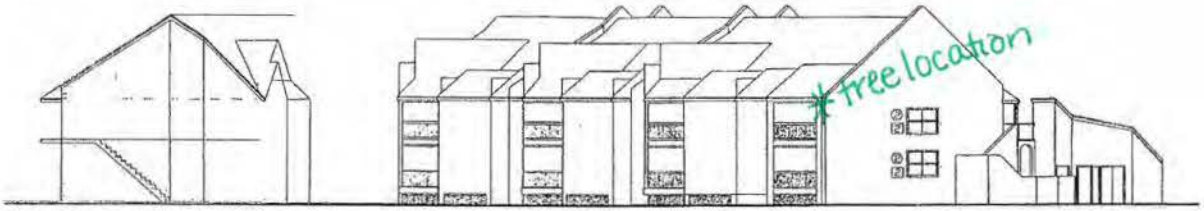
4. Insulation and Ventilation

4.2 **VENTING SYSTEMS (kitchens, baths and laundry)**

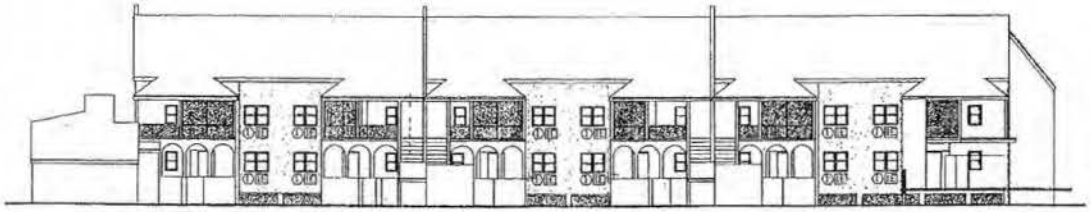
Inspected, REPAIR OR REPLACE

ST. GEORGE'S ROAD (60' R/W)
TRANSITION TO MATCH EXISTING ASPHALT PAVING
MATCH LINE - SEE BELOW RIGHT
MATCH LINE - SEE SHEET NO. 6
MATCH LINE - SEE SHEET NO. 6
MATCH LINE - SEE ABOVE LEFT
CONSTRUCT SWALES TO GRADES SHOWN - SEE DETAIL SHEET FOR TYPICAL SECTION. TO BE FIELD LOCATED BY OWNER.
"SEA EAGLE" BLDG. No. 6 12 UNITS
"SEA EAGLE" BLDG. No. 4 12 UNITS
"SEA EAGLE" BLDG. No. 5 12 UNITS
F.F. 13.0
LAGOON NO. 3
* tree location
"AS-BUILT" (11-20-86)
FOR LEGEND AND GENERAL NOTES SEE SHEET No. 04
GENERAL REVISIONS
COLONNADE
PAVING, GRADING AND DRAINAGE PLAN
C5

REAR ELEVATION



REAR ELEVATION



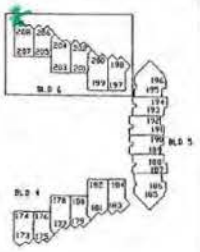
COURTYARD ELEVATION

BUILDING 6 ELEVATIONS
NTS

LEGEND

○ = BASE BID CASEMENT WINDOW KEY

□ = ALTERNATE BID DOUBLE HUNG WINDOW KEY



KEY PLAN

THIS DRAWING IS CERTIFIED TO BE A TRUE ORIGINAL WHEN SEALED BELOW

CORPORATE SEAL

PROFESSIONAL SEAL

DESIGNED BY: AD
CAD BY: AD
CHECKED BY: JBO

ENGINEERED SYSTEMS
SUITE 200 FOUNTAIN CENTER
HILTON HEAD ISLAND, SC 29928
843/686-5300

A WINDOW REPLACEMENT PROJECT
FOR:
COLONNADE CLUB
SHIPYARD PLANTATION
HILTON HEAD ISLAND, SOUTH CAROLINA

REVISION	DATE	DESCRIPTION
		ISSUED FOR BIDDING

PROJECT NUMBER
207108
DRAWING
A-16
SHEET NUMBER
16 OF 20

Dennis R. Ulery
3191 Birchton Rd.
Ballston Spa, NY 12020
518 882-6232 home 518 258-8001 cell

To: Katie Kabala, Anne Cyran

From: Dennis R. Ulery

Date: July 8, 2015

VAR-1077-2015

Background

On March 19, 2015 Coastal Home Inspection Services conducted an inspection of Colonnade Club 208. This inspection was a requirement of the sales contract. One of the findings in the inspection report was the presence of a large tree pressing against the eaves at the rear of the home's roof.

Further inspection found that the base of the tree trunk was very near the foundation of the building, and the root system appeared to be affecting the building foundation.

Discussion

As the listed owner of Colonnade Club 208, I was notified of a public hearing to be held on July 27, 2015. I am unable to attend that meeting and I offer this statement of my concerns as owner, which are consistent with concerns expressed by Atlantic States Management.

I applaud and support the Hilton Head desire to maintain a natural environment which is one of the many attributes of Hilton Head Island that attracted us to purchase the villa in Colonnade Club. I am reasonably certain that when the villas were constructed in 1986 the tree in question was much smaller and may have been below the size required for identification. Thirty years later the tree has encroached on the roof structure of the villas and jeopardizes the foundation with its root system. Regrettably, the only lasting solution seems to be removal of the tree.

Removal today will be a much more difficult task than it would have been thirty years ago due to the size and location of the tree. Other options to keep the tree will not provide a lasting solution, since the tree will continue to develop a root system that will eventually damage the foundation.

Conclusion

Given the information above, it is my conclusion that a variance from Land Management Ordinance Section 16-6-104.F should be granted so that the tree may be expeditiously removed.

Dennis R. Ulery Marolyn L Ulery

Dennis R and Marolyn L Ulery
3191 Birchton Rd
Ballston Spa, NY 12020

TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court	Hilton Head Island, SC 29928	843-341-4757	FAX 843-842-8908

STAFF REPORT
VARIANCE

Case #:	Public Hearing Date:
VAR-001204-2015	July 27, 2015

Parcel or Location Data:	Property Owner	Applicant
Address: 8 Queens Way Parcel#: R520 016 00A 0301 0000 Acreage: .33 acres Zoning: PD-1 (Planned Development Mixed Use District) – Palmetto Dunes Resort	Charles Lasky 3634 Timberbrooke Tr Poland, OH 44514	Greg Francese Cuda Company Real Estate PO Box 3320 Bluffton, SC 29910

Application Summary:

Greg Francese of Cuda Company Real Estate, on behalf of property owner Charles Lasky, is requesting a variance from Land Management Ordinance (LMO) Section 16-6-102.D, Wetland Buffer Standards, in order to construct a patio and dock within the 20 foot tidal wetland buffer.

Staff Recommendation:

Staff recommends the Board of Zoning Appeals **disapprove** the application, based on the Findings of Fact and Conclusions of Law contained in the staff report.

Background:

The subject parcel is located at 8 Queens Way in Leamington, which is part of the Palmetto Dunes Resort Master Plan. The property is bound by a wetland on one side and single family residences on the other three sides.

The applicant is proposing to construct a brick patio and a 12 foot by 11 foot dock within the 20 foot wetland buffer. The wetland buffer is currently heavily vegetated as shown by the pictures in Attachment D.

After speaking with a representative from the Leamington ARB, staff was made aware that the Leamington private covenants do not allow permanent pavers within 10 feet of the property line and the dock is only allowed to be 12 feet by 6 feet.

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

Grounds for Variance:

The applicant states in the narrative that the proposed patio will be an expansion of the existing brick patio which will lead up to the existing retaining wall and proposed dock. The applicant states that as the property owner is aging he is concerned about potential tripping hazards and wishes to have a safe path from the existing patio to the dock.

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 June 16, 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 July 5, 2015 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on July 7, 2015 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on July 6, 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 20 days prior to the meeting, therefore meeting the

15 day deadline required in the LMO.

- Notice of application was mailed 21 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 basically rectangular in shape.
- There is an existing patio on the right side of the home.
- The right side of the property is bound by a tidal lagoon.

Conclusion of Law:

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are no extraordinary and exceptional conditions that pertain to this particular 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:

- There are no extraordinary or exceptional conditions that pertain to the subject property.
- Most of the properties in the vicinity are rectangular in shape, and are bound by the same tidal wetland.

Conclusion of Law:

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary conditions that apply to the subject property that 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):

Finding of Fact:

- There are no extraordinary or exceptional conditions that pertain to the subject property.

Conclusion of Law:

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary conditions that apply to the subject property that would prohibit or restrict the utilization of 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 patio and dock within the 20 foot tidal wetland buffer.
- In order to do so, existing vegetation within the buffer will have to be removed.
- Per LMO Section 16-6-102, Wetland Protection, buffers shall be provided along the perimeter of wetlands to protect the wetlands from impacts of adjacent development and to allow for filtration of stormwater runoff before it enters the wetlands. Wetland buffers also minimize erosion and sedimentation and provide important wildlife habitat.
- The applicant received approval from DHEC for the proposed dock.

Conclusion of Law:

- Staff concludes that while this application will not be a substantial detriment to the adjacent property, it will be a detriment to the wetland by destroying the wetland buffer and therefore does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04.

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 not be granted to the applicant.

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	July 1~~0~~4, 2015
Nicole Dixon, CFM, Senior Planner	DATE

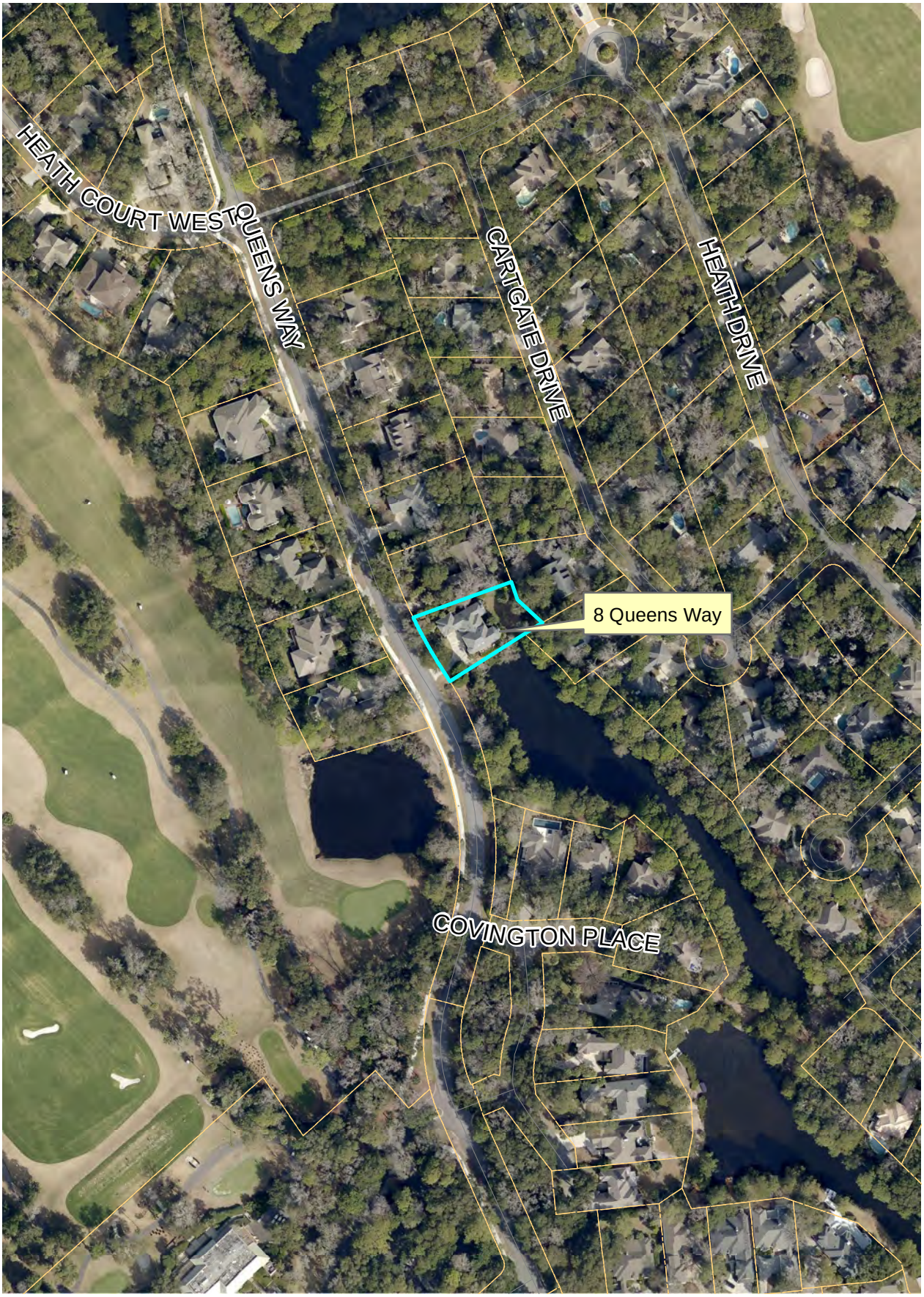
REVIEWED BY:

TL	July 10, 2015
Teri Lewis, AICP, LMO Official	DATE

ATTACHMENTS:

A) Vicinity Map
B) Applicant's Narrative
C) Proposed Site Plan and Elevation
D) Pictures

ATTACHMENT A



VAR-001204-2015 Vicinity Map

ATTACHMENT B

Lasky Residence

8 Queens Way, Leamington, Palmetto Dunes

Scope of work:

Extend rear patio and add 11 x 12 deck over the lagoon.

Seeking a variance to install Tremron Mega Olde Towne brick in Sierra color from existing brick patio to the deck.

The existing "porch" is a brick manufactured structure that is attached to the house and is made from standard bricks. It is about 2-3 feet off of the ground and enters directly into the side of the house. The brick color is an off red and it has a full wrought iron handrail around it.

The brick paver area that we are seeking approval on is going to be at grade level to the best of our ability to achieve a safe level walkway to the dock that was approved. We do not intend to elevate this other than to allow steps to manage the existing grade of the side yard.

ATTACHMENT B

6/24/15

To: Nicole Dixon

Senior Planner

Community Development Depart

Re: Lasky Residence - 8 Queens Way- Variance Request

I am writing to request a Variance in the type of material that can be used to join an existing brick patio to a new dock to be constructed. The dock has been approved by DHEC (permit # GP-11-SW-022(15)). The pavers we would like to use are Tremron Mega Olde Towne, the color is Sierra. A large sample of the proposed pavers can be seen as part of the driveway for Courtyard Landscape Supply, off Marshland Road. The pavers are varying in color, and have a very natural look. We would be the General Contractor for the job.

I would like to address the concerns and criteria of LMO Section 16-2-103.S.4.a:

01. The main reason we ask to consider this Variance is really a matter of safety.

The owner is concerned about having a smooth access from the patio to the dock. He is concerned about avoiding a potential tripping hazard, especially as he gets older.

Our interest is to provide a safe path to the new dock. Having a flat area in front of the existing patio will allow a safe walkway.

02. To the best of my knowledge, and my surveying the adjacent properties, this condition is unique to this area of the subdivision.

03. The application of this Ordinance would, in our belief, restrict access to the dock by the property owner.

04. The issuing of this Variance will not be a detriment to the adjacent properties or the public good. The pavers will be very close to grade level and will not be visible to virtually anyone due to the tight location of the house and lagoon.There will be no steps other then that necessary to manage the existing grade at the side yard.

The color and pattern chosen is very natural looking and will not stand out.

The installation of the pavers would be in harmony with the existing vegetation and landscape.

We thank you for your time in considering this Variance.

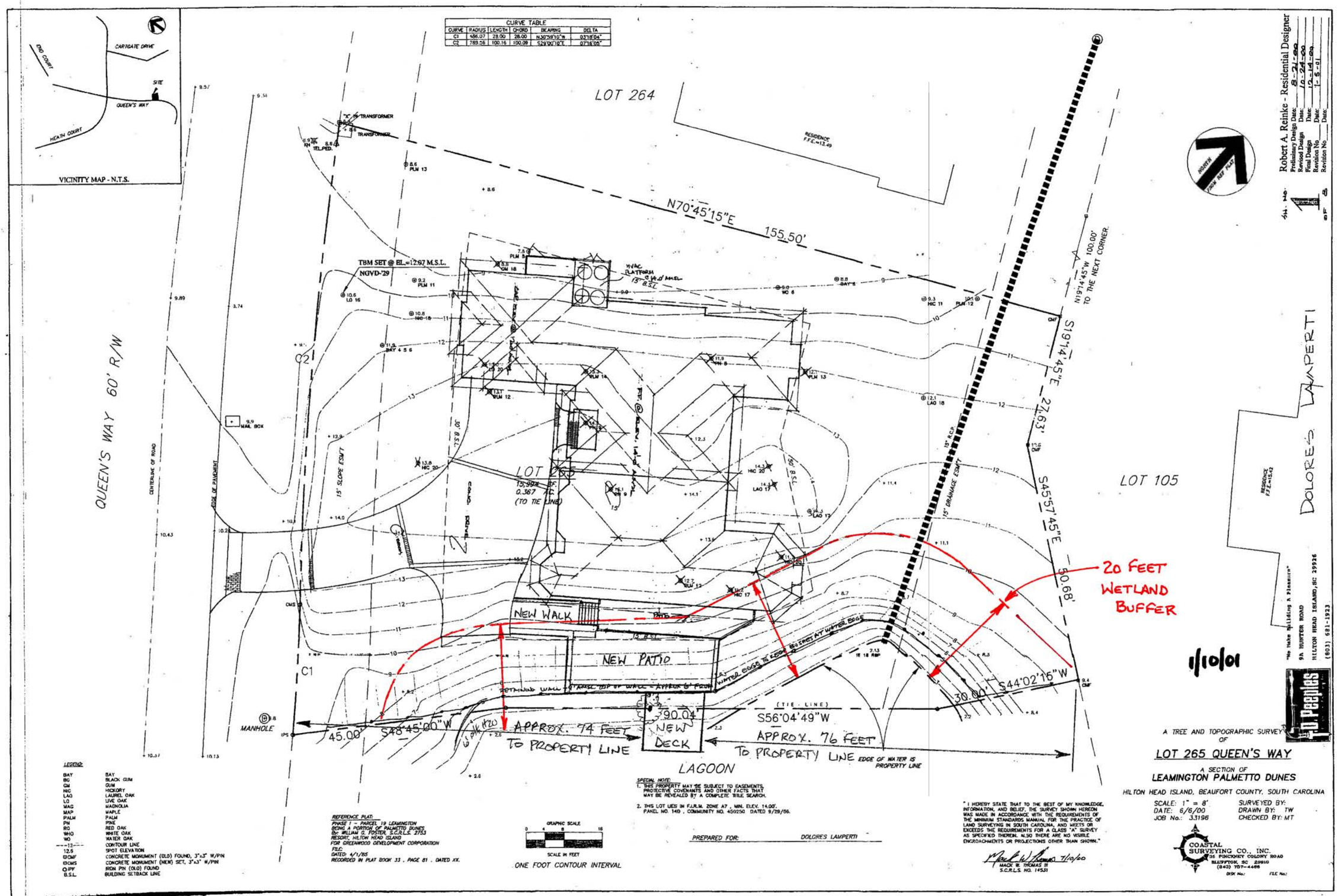
On behalf of the property owners, Charles and Debbie Lasky;

Greg Francese

Cuda Company

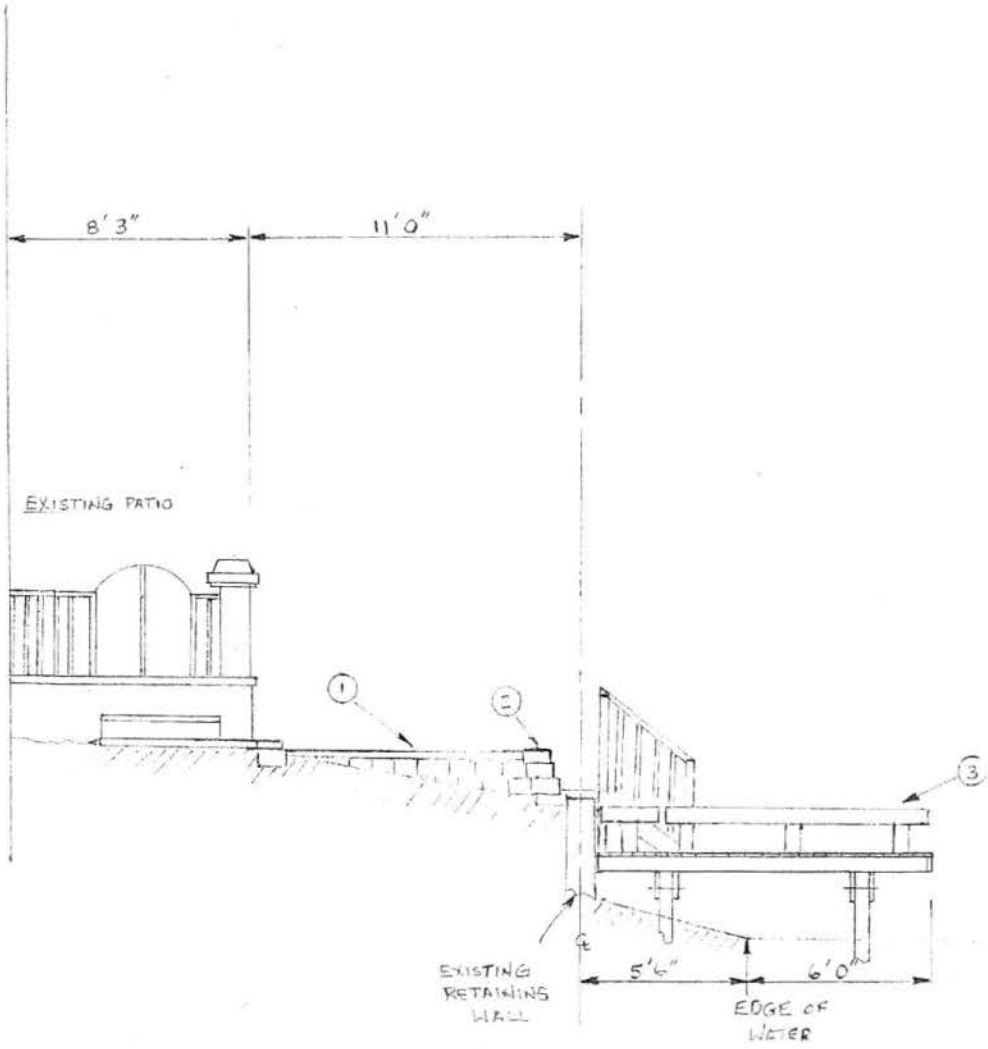
Acting Agent

ATTACHMENT C



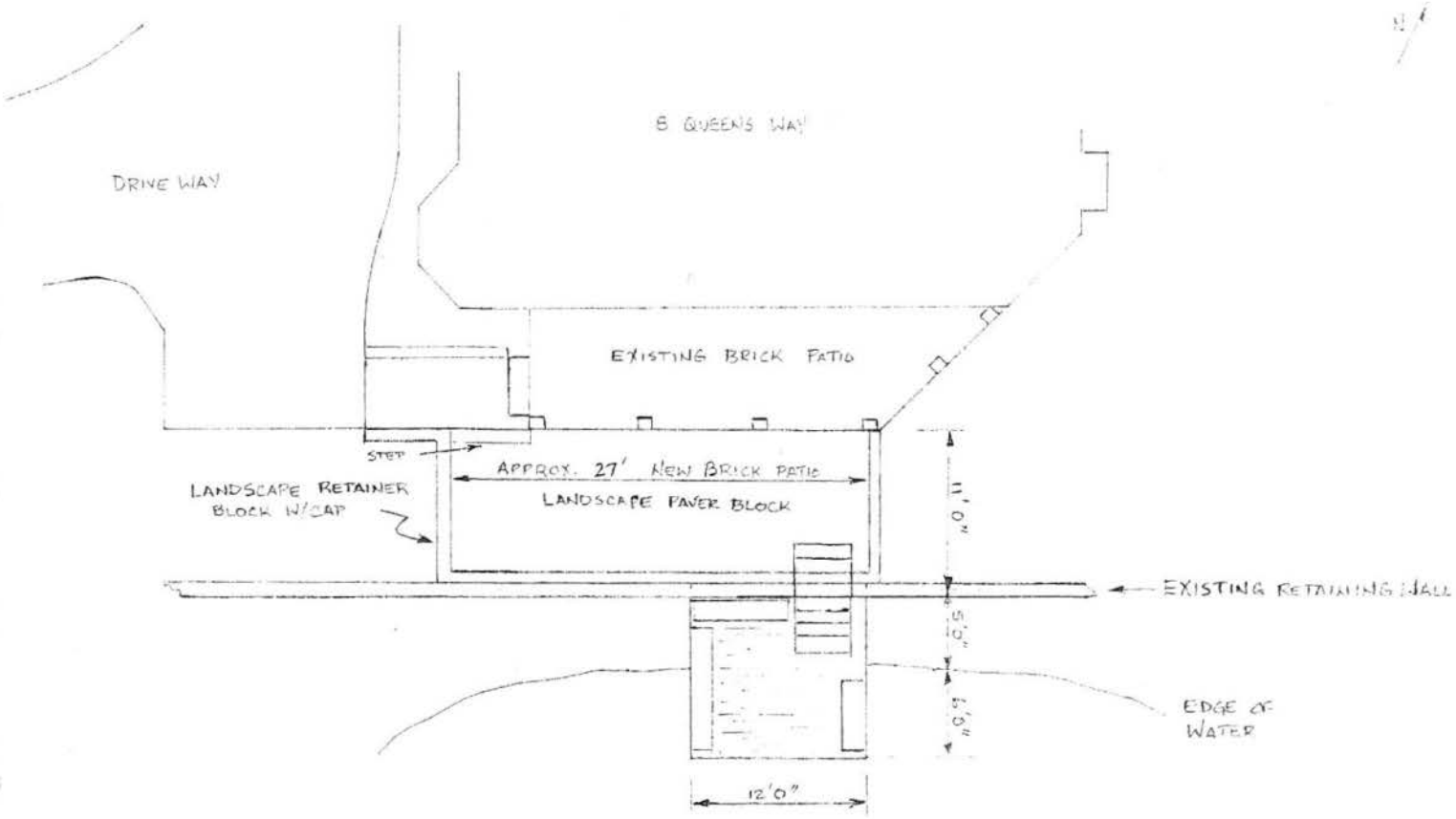
ATTACHMENT C

1	LANDSCAPE PAVER BLOCK (NEW)
2	LANDSCAPE RETAINER BLOCK W/CAP (NEW)
3	PERIMETER [illegible] FOR DECK



SCALE ½" = 1'0"

ATTACHMENT C



SCALE 1/8" = 1'0"

ATTACHMENT D

Existing Patio

Wetland Buffer Vegetation

ATTACHMENT D

ATTACHMENT D

Proposed Brick Pavers

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE July 10, 2015
SUBJECT: Revisions to Rules of Procedure

At the March 23, 2015 Board of Zoning Appeals meeting, the Board reviewed and discussed proposed revisions to the Rules of Procedure. The attached final version of the Rules of Procedure will be adopted at the July 27, 2015 meeting.

Town Government Center ♦ One Town Center Court ♦ Building C
Hilton Head Island ♦ South Carolina ♦ 29928
843-341-4757 ♦ (FAX) 843-842-8908

Board of Zoning Appeals
Rules of Procedure
Town of Hilton Head Island

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Article I
Purpose and Responsibilities

The Board of Zoning Appeals exists to provide final administrative decisions for the Town of Hilton Head Island to enforce the zoning ordinance in accordance with State law, subject to an appeal to circuit court by an appropriate interested party. Its main responsibilities include hearing and deciding: (a) appeals from administrative decisions of the Land Management Ordinance (LMO) Administrator and from Planning Commission actions on certain traffic analysis plans; (b) applications for variances from LMO requirements; and (c) applications to permit uses by special exception. The powers of the Board of Zoning Appeals also include remanding a matter to an administrative official if the record is deemed insufficient, issuing subpoenas for witness appearances, and certifying contempt to the circuit court. In exercising these powers, the Board of Zoning Appeals may, in conformity with State law and the LMO, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination of an Administrator, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. All final decisions and orders of the Board must be in writing and be permanently filed in the office of the Board as a public record.

Article II
Authority

Section 1. Authority.

The Town of Hilton Head Island Board of Zoning Appeals is established by Appendix A-3 of the Land Management Ordinance (LMO) of the Town of Hilton Head Island pursuant to the authority of Section 6-29-780, *et seq.*, of the Code of Laws of South Carolina, and hereinafter shall be referred to as the "Board."

Section 2. Territorial Jurisdiction.

Pursuant to Appendix A-3.E of the LMO, the Board shall have jurisdiction over all the lands within the Town. This jurisdiction may be expanded by the Town Council by ordinance and/or by intergovernmental agreement, in accordance with Section 6-29-330 of the Code of Laws of South Carolina.

Article III
Rules of Procedure

Section 1. Rules of Procedure.
These *Rules of Procedure* are adopted by the Board to carry out its powers and responsibilities under SC Code 6-29-780, -790, -800, and -810 and Appendix A-3 of the LMO. A portion or section of the *Rules of Procedure* may be suspended by majority vote of the Board to meet particular circumstances. If there is a situation where these *Rules of Procedure* do not specifically apply, then the most recent edition of *Robert's Rules of Order* shall govern the conduct of meetings. An informational chart summarizing types of motions and votes in Robert's Rules of Order is attached.

Section 2. Amendment.

These rules may be amended at any time by an affirmative vote of a majority of the members of the Board; provided however, that such amendment(s) shall have first been presented to the entire Board, in writing, at a Regular or Special Meeting preceding the Regular or Special Meeting at which the vote is taken.

Article IV
Board Organization and Duties

Section 1. Membership.

A. Number and Qualifications. The Board shall consist of seven members appointed by the Town Council. To the extent practicable, the appointed members may include at least one attorney and one design professional (either a registered architect or a registered landscape architect). None of the members shall hold an elected public office or position with the Town of Hilton Head Island or Beaufort County, South Carolina.

B. Length of Terms. Members of the Board shall be appointed annually for three-year terms effective each July 1, with all such terms ending on June 30 of the applicable year, unless a member is appointed to fill a vacancy. Vacancies shall be filled by the Town Council by appointments for the balance of any unexpired terms.

C. Term Limits. No member may serve more than two successive terms, except for extraordinary circumstances where Council believes it to be in the best interest of the community to have a continuation for a specific period of a particular member of the Board. This limitation shall not prevent any person from being appointed to the Board after an absence of one year. Service for a partial term of less than 1½ years shall not constitute a term of service for the purpose of these term limits.

D. Attendance/Absences. Board members are expected to attend all Board meetings. Each member of the Board who has prior knowledge that they will not be able to attend a scheduled Regular Meeting of the board shall notify the Secretary no later than 4:30pm the business day before the meeting. In the case of an emergency, a member shall give the earliest possible notification. The Secretary or Staff shall notify the Chairman in the event that the projected absence(s) will produce a lack of a quorum.

E. Removal. Three (3) absences at Regular or Special Meetings of the Board during one Board year (July 1 through June 30) shall be cause for recommendation by the Chairman to the Town Council to reconsider the appointment of that member. Attendance records may be reviewed annually by the Board in executive session during the 9th month of each Board year.

F. Education. The Code of South Carolina requires a six (6) hour Orientation Program and a three (3) hour/year Continuing Education Program for each Board member.

Section 2. Election of Officers.

The officers of the Board shall be a Chairman and a Vice-Chairman for one-year terms beginning on the first meeting in July. They are elected annually by the Board members no later than at the last meeting in July. Neither of these two positions shall be filled by a member beginning his or her first year of service as a Board member. Members that leave the Board and are re-appointed after a period of no more than three years may be elected to an officer position in his or her first year of service. Nominations for the Chairman and Vice-Chairman shall be made from the floor at the meeting.

A majority vote is normally required to elect to office. If no one in an election receives a majority vote, the vote must be repeated until one of them does get a majority.

A. Chairman – Term and Duties. The term shall be for one year. At the end of each Board year, the Chairman may be re-elected subject to his/her appointment term. The Chairman shall have the following duties:

1. In consultation with the Staff Board Coordinator, delegate the Secretary to prepare agendas for all meetings;
2. Conduct all meetings and hearings of the Board, meaning that the Chairman—
    - i. Is responsible for maintaining order.
    - ii. Should begin the meeting promptly at the scheduled hour if a quorum is present.
    - iii. Should have a well prepared agenda and abide by it.
    - iv. Should be familiar with the procedural rules of the bylaws.
    - v. Keeps the board working together by explaining procedure clearly and communicating the next business in order.
    - vi. Should "assign" the floor by recognizing those members who wish to speak by calling them by name. No other member may interrupt or call out remarks without being out of order. Private discussion between members while another has the floor is out of order and disruptive members should be reminded of this rule.
    - vii. Should impartially call on members wishing to speak and should give members on both sides of an issue an opportunity to speak.
    - viii. Should remain calm and objective, keeping the meeting moving.
    - ix. Should always confirm that all members understand the motion and that the Secretary has fully recorded the motion.
    - x. Should open debate by saying "Is there any discussion?" The Chairman *must* open all debatable questions to debate.
    - xi. Should recognize members who wish to speak by stating their names.
    - xii. Should be a voting member and vote on all cases before the Board. If the Chairman wishes to make a motion, he/she should pass the gavel to the Vice-Chairman for conducting the meeting.
    - xiii. Should request that a motion with grounds (facts and conclusions) be made by any member. If necessary, may assist the member in formulating the motion. (Complex motions may be brought to the meeting pre-written.)
    - xiv. Should request any member to second the motion.

xv. If a motion fails to get a second, should state, "Since there is no second, the motion is not before the Board."
xvi. If seconded, should ask the members if there is any discussion of the motion.
xvii. Should not allow irrelevant discussion.
xviii. At the conclusion of any discussion of a seconded motion, should put the question to a vote by requesting the Secretary to call the role.
xix. Should announce the result of the vote.
xx. At the conclusion, should adjourn the meeting without motion – "If there is no further business and there is no objection, the meeting will be adjourned. There being no objection, the meeting is adjourned."

3. Act as spokesperson for the Board;
4. Sign documents for the Board. Note, final decisions are signed by the moving member, the Chairman, and the seconding member;
5. Act or designate a Board member to act as liaison with other governmental agencies and Town boards;
6. Assign or delegate tasks to other Board members as may be necessary to perform the Board's functions;
7. Transmit reports and recommendations to Town Council;
8. Ensure that all business is conducted in accordance with the SC Code, the LMO, and these Rules of Procedure;
9. Cancel a scheduled Board meeting if there are no agenda items; and
10. Perform other duties approved by the Board.

B. Vice-Chairman. A Vice-Chairman shall be elected by the Board from among the members in the same manner and for the same term as the Chairman. The Vice-Chairman shall serve as Acting Chairman in the absence of the Chairman, and, at such time, the Vice-Chairman shall have the same powers and duties as the Chairman. The Vice-Chairman shall succeed the Chairman, if the office is vacated before the term has expired, to serve the remainder of the unexpired term of the Chairman. A new Vice-Chairman shall be elected at the next regular meeting of the Board. In the absence of both the Chairman and Vice-Chairman, an acting Chairman shall be elected by the members present at a meeting of the Board.

Section 3. Secretary—Appointment and Duties.

During the July meeting of each year, a member of the Town's Community Development Department shall be appointed by the Board to independently act as the Secretary of the Board. The Secretary will not be eligible to vote or to otherwise participate or deliberate in the proceedings of the Board. The Secretary shall:

1. Publish and post notices of all meetings of the Board;
2. As delegated by the Chairman, prepare meeting agendas;
3. Distribute to each Board member in advance of each meeting--the agenda, prior meeting draft minutes for approval, and all written submissions by staff and applicants on each agenda item, and other relevant materials;
4. Record the proceedings of meetings on audio tape and prepare written minutes of meetings

for approval by the Board at its next regular meeting, recording in the written minutes the attendance of members at each meeting, the attendance of Council members, the attendance of staff, and a detailed summary of all discussions during each meeting;

5. Maintain the Board's notices, correspondence, reports and forms as public records for a period of time consistent with the records retention schedule of the Town of Hilton Head Island;
6. Assist in the preparation and forwarding of all reports and recommendations of the Board; and
7. Maintain each final decision of the Board as a permanent record as required by the SC Code.

Section 4. Staff Board Coordinator.

The Community Development Director shall appoint a member of Staff to assist the Chairman and the Secretary in Board coordination, including:

1. Ensuring all postponed agenda items are rescheduled;
2. Ensuring public notices are accurately written for publication;
3. Ensuring the minutes accurately reflect the actions taken in the meeting;
4. Coordinating with pertinent staff on submittal of agenda items to the Secretary for distribution to the Board;
5. Scheduling mandatory training sessions for the Board;
6. Ensuring the Board's Rules of Procedure remain updated;
7. Attending all Board meetings and resolving any questions or requests by the Board; and
8. Assisting the Secretary in the efficient running of the public meetings.

Article V
Meetings and Quorum

Section 1. Regular and Special Meetings.

A. Meeting Schedule. An annual schedule of regular meetings and work sessions of the Board shall be adopted, published and posted at the Town Government Center in late Fall of each year for the next calendar year. Unless rescheduled by a vote of the Board, meetings shall be held at the time and place stated in notices. Meetings shall be open to the public.

B. Regular Meetings. Regular Meetings of the Board shall be held on the fourth Monday of each month or such other date as determined by the Chairman or with input from Staff. Notification of all Applications for Appeal, Variance and Special Exception scheduled and any other matters for consideration at each regular meeting of the Board will be in accord with the public notice requirements of the SC Code as implemented by the Town's LMO.

C. Special Meetings. Special Meetings of the board may be called at any time by the Chairman or requested by the Staff. At least forty eight (48) hours public notice shall be provided for any Special Meeting of the board including the time, place and particular agenda item(s) scheduled for consideration consistent with the notice requirements of the SC Code as implemented by the

Town's LMO.

D. Cancellation of Meetings. Whenever there is no business scheduled for any Regular or Special Meeting of the Board, the Chairman or Staff may cancel such Regular Meeting by giving notice to all members of the Board, as well as the public, no less than twenty-four (24) hours prior, whenever possible, to the time set for any such Regular Meeting.

Section 2. Quorum.

A majority of the Board shall constitute a quorum for the conduct of business. The Secretary will notify the Chairman in the event projected absences will result in the lack of a quorum. If a quorum is established, then a member leaves, the quorum is no longer present. In the absence of a quorum, no further business requiring a vote shall be transacted and any such business shall be postponed to the next meeting.

Section 3. Conflict of Interest

At a minimum, South Carolina law regarding conflicts of interest [S. C. Code Ann. § 8-13-10, *et seq.*, (Supp. 1994)] shall control Board members' actions. In addition, any member of the Board who believes that he or she has or may have a conflict of interest of any nature on any matter before the Board shall, prior to the case at the Regular or Special Meeting at which such matter may be heard or considered by the Board:

1. Prepare a written Potential Conflict of Interest Form describing the matter requiring action or decisions and the nature of his/her potential conflict of interest with respect to the action or decision;

2. File the Potential Conflict of Interest Form with the Secretary; and,

3. Provide a copy of the Potential Conflict of Interest Form to the Chairman.

Upon receipt of a Potential Conflict of Interest Form from any member of the Board, as required in section II (J)(A), *supra.*, the Chairman shall cause the Potential Conflict of Interest form to be recorded in the minutes and shall require that the member filing such Potential Conflict of Interest Form be excused from any votes, deliberations, and any other actions on the matter on which the potential conflict of interest or conflict of interest exists.

Any Board member so disqualified shall leave the dais while the disqualifying matter is being considered and refrain from deliberating or voting on the question.

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

Section 1. Media Notices.

The Secretary shall give the notice required by statute or ordinance for all meetings of the Board as per Section 16-2-102.E of the LMO. All Board meetings shall be open to the public and all requirements of the South Carolina Freedom of Information Act [S. C. Code Ann. § 30-4-10, *et seq*. (Supp. 1994)] shall be complied with in the conduct of meetings.

Section 2. Agenda (Order of Business)

A written agenda shall be furnished by the Secretary to each member of the Board and media. An agenda may be changed at the related meeting by a majority vote of the members present. Public Hearing items should be so noted with each pertinent item. Generally, the agenda should contain:

1. Call to Order;
2. Roll Call;
3. Freedom of Information Act Compliance;
4. Use of Cellular Telephones or Other Electronic Sound Emitting Devices Prohibited;
5. Review of Meeting Protocol as described within, including Citizen Participation;
6. Approval of Agenda;
7. Approval of Minutes of Previous Meeting
8. Old Business;
9. New Business;
10. Board Business;
11. Staff Reports;
12. Adjournment.

Section 3. Minutes.

A. Meetings. Minutes of meetings is governed by the Code of South Carolina (30-4-70 through 30-4-90). Minutes of each Board meeting shall be recorded by the Secretary and approved at the next available meeting after their preparation. Final approved Minutes shall be available on microfilm for previous years, and may be posted on the Town's Web site for public information.

B. Minimum Contents of Minutes.

1. Kind of meeting (regular or special).
2. Name of the organization.
3. Date and place of the meeting.
4. Presence of the Chairman and Secretary or the names of substitutes.
5. Presence of a quorum.
6. Names of all Board members, Council members, and Staff.
7. Time the meeting was called to order.
8. Whether the minutes of the previous meeting were approved or corrected.
9. All adopted and defeated motions and grounds (facts and conclusions). Withdrawn motions need not be recorded.
10. Name of the maker of the motion and the seconding member.

11. Summary of all presentations and discussions.
12. Motions, including proposed findings and conclusions, must be recorded verbatim.
13. Record the vote of each member upon each question, or, if absent or failing to vote, indicating that fact.
14. The adjournment and the time of adjournment.

C. Lack of Quorum. If there is lack of a quorum of the Board, minutes may be recorded but shall include a statement in the header of each page indicating that a quorum was not present and the minutes are not official. Such minutes shall not be approved by the Board at a later meeting. (There are different quorums, depending on the agenda item.)

Section 4. Public Comment.

In the case of a Variance or Special Exception application, at the conclusion of presentations by Staff and the Applicant, the Chairman will open the public hearing. The Chairman may set a time limit for all public comments and may determine the order of the comments. The Chairman will recognize citizens to comment and request that they sign up to speak at the podium. Each person will have the opportunity to speak for three (3) minutes. At the conclusion of the public comment, the Chairman will close the public hearing. Staff and/or the Applicant may request that the Chairman allow additional clarification after the public comments. Public comment is not permitted in a case involving an appeal from an Administrator decision.

Section 5. Submission Deadline for Regular Meetings.

The deadline for the filing of a complete Application with narrative for Variance or Special Exception or Request for Appeal shall be thirty (30) calendar days prior to any Regular Meeting of the Board. Any submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion.

Section 6. Meeting Protocol.

The Chairman will review the protocol at the start of each meeting. The meeting protocol includes further information about the following: speaker sign-up sheet, length of time for speakers, the order of presentation, and the opening and closing of a public hearing. The speaker sign-up sheet will be placed at the podium for speakers to sign when they come up to speak.

Section 7. Filing of Application, Fees and Notice.

All Applications and Appeals scheduled for review by the Board shall be filed by the interested property owner(s) or by a property owner aggrieved by an Administrator's decision, or by a representative with a written certification of authority by such property owner. All Applications and Appeals shall satisfy all fees and notice requirements in accord with the provisions outlined in the LMO. In any case where the owner of record of the real property affected by any Application for Special Exception or Application for Variance, or his/her certified representative, is not the Applicant,

the Applicant shall serve notice of the Application to the contiguous owner(s) of record within the time frames and as described in the LMO. Such notice shall include the time and place of the Board meeting at which the Application shall be heard.

Section 8. Motions and Final Decisions.

A Motion by a Board member is the procedure leading to a final decision by the Board when the Motion is seconded by another Board member and adopted by a vote of a quorum of the Board. A Motion is to be made to describe the proposed decision with findings and conclusions to support the Motion. If the Motion is seconded and adopted by the Board, the final decision, contained in a Notice of Action, must be in writing and be permanently filed in the office of the Board as a public record. The final decision must include findings and conclusions and be delivered to parties of interest by certified mail.

Section 9. Voting.

1. A Board member must be present at the beginning of each case to be permitted to discuss and vote on the case. If a Board member that was absent at the beginning of the hearing establishes requisite knowledge of the case, the member may be permitted to discuss and vote on the case by a majority vote of the Board.
2. All members of the Board, including the Chairman, shall be voting members, and shall be entitled to vote on any issue before the Board unless disqualified by law.
3. For Appeals from Administrator's decision, a majority vote of the entire Board shall be necessary, thus requiring at least 4 affirmative votes to pass a motion.
4. A simple majority of a quorum shall be required to conduct all other Board business including a decision on an Application for Variance or Special Exception.

Section 10. Supplemental Submissions/Briefs.

Any supplemental written submission or legal brief must be delivered [One (1) hard copy or one (1) copy sent via e-mail] to the Secretary of the Board no later than 8:00am four business days before the public meeting day in order for the Secretary to distribute such submission to each Board member by the close of business that day. Town Staff, or the opposing party, has two business days after receipt of the supplemental submission to respond in writing. This excludes any business days when the Town is closed. The Board reserves the right to require or permit later written submissions or briefs and/or proposed findings of fact and conclusions of law to be submitted by the Appellant, Applicant for Variance or Special Exception, or Town Staff. Any submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion. Any written or oral information sent directly to any Board member shall be disregarded and promptly turned over to the Chairman through the Secretary of the Board.

Section 11. Communication Among Board Members or With an Outside Party.

A. There shall be no communication in writing, orally, or by e-mail by any Board member with any other Board member or any outside party regarding the substance of any matter before the Board

that is or may be brought to a vote other than during a public meeting.

B. Once a decision has been rendered by the BZA, there shall be no further discussions by any Board member with staff, applicants or their attorneys or representatives. Any such communications regarding a decision should be made to the Town Attorney.

C. Communication with staff or outside parties to communicate procedural matters or general positions or opinions of the BZA will be at the discretion of the Chairman or by an affirmative vote of the majority of the Board members. The Chairman or his designee will be responsible for all such written/verbal communications with anyone other than the remainder of the Board members and Staff.

D. Board members should refrain from discussing an upcoming agenda item with the Applicant, his Attorney, or his Agent, either through written or verbal communication. Board members should refrain from discussing an upcoming agenda item with Staff either through written or verbal communication, except to clarify facts or request additional information. All discussion of the item should take place in the public meeting. This is to avoid the appearance of improper ex parte communications.

Article VII
Procedures for Hearing an Application for a Variance

The following procedures shall be applicable in the presentation of a Request for a Variance.

Section 1. Presentation of the Town Staff and Applicant.

1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Variance. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Variance. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.

Section 2. Public Comment.

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the sign up sheet. Each person will have

the opportunity to speak for three (3) minutes.

2. The Applicant and/or Town Staff shall clarify any information presented by the public before the Board makes a motion.

Section 3. Vote on Application for Variance.

1. Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Application for Variance.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision and appropriate references to the relevant criteria of the LMO.
3. Pursuant to the provisions of the LMO the Board shall approve the Application for Variance, approve the Application for Variance with conditions or modifications; or, deny the Application for Variance.
4. Following the vote, the Staff shall prepare a written Notice of Action. The written notice of action shall include decision of the Board as well as the findings of fact and conclusions of law adopted by the Board with respect to the Application for Variance.
5. The Notice of Action shall be mailed by certified letter to the Applicant and record owner of the real property affected by the Application for Variance, if different from that of the Applicant.
6. The decision of the board shall be deemed final and applicable upon mailing of the Notice of Action.
7. The certificate of mailing shall be made a part of the board's file on the Application for Variance.

Article VIII
Procedures for Hearing an Application for Special Exception

The following procedures shall be applicable in the presentation of an Application for Special Exception:

Section 1. Presentation of the Town Staff and Applicant.

1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Special Exception. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Special Exception. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.

3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or the Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.

Section 2. Public Comment.

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the sign up sheet. Each person will have the opportunity to speak for three (3) minutes.
2. The Applicant and/or Town Staff shall clarify any information presented by the public before the board makes a motion.

Section 3. Vote on Application for Special Exception.

1. Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Application for Special Exception.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision and appropriate references to the relevant criteria of the LMO.
3. Pursuant to the provisions of the LMO, the Board shall approve the Application for Special Exception, approve the Application for Special Exception with conditions as stated in the LMO or deny the Application for Special Exception.
4. Following the vote, the staff shall prepare a written Notice of Action. The written notice of action shall include the decision of the Board as well as the findings of fact and conclusions of law adopted by the board with respect to the Application for Special Exception.
5. The Notice of Action shall be mailed by certified letter to the Applicant and record owner of the real property affected by the Application for Special Exception, if different from that of the Applicant.
6. The decision of the board shall be deemed final and applicable upon mailing of the Notice of Action.
7. The certificate of mailing shall be made a part of the board's file on the Application for Special Exception.

Article IX
Procedures for Hearing an Appeal

The following procedures shall be applicable in the presentation of an Appeal from a decision of any Administrator:

Section 1. Jurisdiction.

Once an appeal has been taken from any final decision of Administrator, the jurisdiction of the Administrator, from which the appeal was taken, shall cease.

Section 2. Presentation of the Town Staff and Applicant.

1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for an Appeal. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for an Appeal. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.
6. Public comment is not permitted in a case involving an appeal from an Administrator decision.

Section 3. Vote on the Appeal.

Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Appeal.

1. Pursuant to the provisions of Section 16-2-103.T.4.d of the LMO, the Board shall:

   a) Affirm the action of the Administrator from which the Appeal was taken; or,
   b) Modify the action of the Administrator from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the Administrator from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
   c) Reverse the action of the Administrator from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the Administrator from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
   d) Remand the action of the Administrator from which the Appeal was taken for such further proceedings as the Board of Zoning Appeals may deem appropriate.

2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision.
3. Following the Vote, the Board shall issue a written Notice of Action. The written notice of action shall include the decision as well as the findings of fact and conclusions of law

adopted by the Board.

4. 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.
5. The decision of the Board shall be deemed final and applicable upon mailing of the Notice of Action.
6. The certificate of mailing shall be made a part of the board's file on the Appeal.

Article X
Procedures for a Remand

Section 1. Remand.

1. A member of the Board may move for a remand at any time, subject to review and determination by the Board. The motion shall specifically set forth factual and/or legal grounds that cause the record to be insufficient.
2. If a remand is granted, the Town and the Applicant shall obtain and present all additional information needed to render the record sufficient as detailed in the motion for the remand.

Article XI
Motions

Section 1. Motion for a Reconsideration.

1. The Board may reconsider any decision made under Section 16-2-103.E.3.d, 16-2-103.S.3.d or 16-2-103.T.4.d of the Land Management Ordinance.
2. Any party aggrieved by a decision of the Board, if they desire to do so, is required to file any Petition for Reconsideration by delivering the same to the Administrator within five (5) days from the date of hearing. "Delivered" as referenced in this section, means actual delivery.
3. The Petition for Reconsideration shall be in writing and shall state with particularity the points alleged to have been overlooked or misinterpreted the Board.
4. The Petition for Reconsideration shall be presented to the Board at the next regular scheduled meeting following the filing of the Petition for Reconsideration after compliance with the public notice requirements for a Board Public Meeting per the LMO.
5. Motions:
    a. A Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side in the original vote.
    b. The effect of the granting of a Motion for Reconsideration shall be that the Board will review the entire matter as if no previous vote had been taken.
    c. A Motion to Deny the Petition for Reconsideration may be made by any member of the Board. The effect of a vote denying a Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter. A Notice of Action shall be delivered to the Applicant following such vote.

6. Successive Petitions for Reconsideration are prohibited. No matter that has been reconsidered may be reconsidered a second time. The Board may not reconsider a denial of a Petition for Reconsideration.

Section 2. Motion to Dismiss.

Any interested party to a matter pending before the BZA may file a Motion to Dismiss the pending matter. The purpose of a Motion to Dismiss is to seek dismissal of the matter prior to the hearing on the merits of the pending matter.

1. A Motion to Dismiss may assert matters relating to procedure or jurisdiction including:
    a. Failure to comply with requirements of the LMO,
    b. Lack of jurisdiction,
    c. Standing,
    d. Other matters not relating to the merits of the matter.
2. A Motion to Dismiss shall be in writing, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.
3. A Motion to Dismiss may be supported by briefs of the law, affidavits or other matters pertinent to the Motion.
4. Any interested party may file briefs and other materials in response to the Motion, in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.
5. The Motion to Dismiss will be normally heard at the same meeting as the related appeal; however, the Chairman or Vice Chairman, in the absence of the Chairman, upon request, in his sole discretion, may permit the motion to be heard at an earlier meeting.

Section 3. Motion for Postponement.

The Town, the Applicant or a Member of the Board may request a postponement of an application at any time, subject to the review and determination of the Board.

The Chairman or Vice Chairman, in the absence of the Chairman, may for good cause grant one postponement request for a period of up to three months from the original hearing date. Any subsequent postponement requests shall be discussed and voted on by the Board

A Motion for Postponement shall be in writing, stating the reasons for the requested postponement, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.

Section 4. Motion for Withdrawal of Application.

The applicant may request a withdrawal of an application prior to the ruling. A Motion for Withdrawal of the Application shall be in writing, stating the reasons for the requested withdrawal, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.

The Board shall have the opportunity to discuss the reasons for the application being withdrawn; unless the project has been abandoned. In the absence of the applicant, if the withdrawal is questioned by the Board, the case will be postponed to the next meeting.

Article XII
Miscellaneous

Section 1. Executive Session.

If a member determines after reviewing the applicable cases that they would benefit from the advice of legal counsel in Executive Session they shall contact the Chairman or his designee. The Chairman will determine if an Executive Session is warranted. If the Chairman decides that the membership would benefit from an Executive Session, they will inform the Board's Secretary of the request. The Chairman's decision can be overridden by a majority vote of the Board taken at a regular or special meeting of the BZA.

Executive Session is a meeting at which the proceedings are secret. A member can be punished under disciplinary procedure if he violates the secrecy of an executive session. Anyone else permitted to be present is honor-bound not to divulge anything that occurred.

Permitted reasons should include:

1. Personnel reasons
2. Contracts
3. Legal advice relating to pending, threatened or potential claim
4. Discussion regarding development of security personnel
5. Investigative proceedings regarding allegations of criminal misconduct
6. Economic development (specific criteria in FOIA)
7. Legal advice relating to procedural, conflict of interest, or general issues unrelated to a specific matter before the Board.

Entering and Adjourning an Executive Session:

1. A motion to close the current meeting and go into executive session is made and passed by a majority vote;
2. Chairman must announce the specific purpose of the executive session;
3. No formal action may be taken in executive session except to:
    a. Adjourn
    b. Return to public session

The Board can request attendance by non-members as they deem appropriate.

Section 2. Recess.

A recess shall be declared as deemed appropriate by the Chairman or by majority vote of the

members present at the meeting. No discussion of the agenda item shall be conducted by Board members during the recess.

For the Board of Zoning Appeals
Town of Hilton Head Island, South Carolina

By: _____

Date of Approval: April 27, 2015

Glenn Stanford
Chairman

Attachment for Reference

TYPES OF MOTIONS

Main Motion	**A main motion is defined as a proposal that certain action is taken or an opinion be expressed by the group.** The words to use are: "I Move."
Secondary Motions	**A secondary motion is one which can be made *while* the main motion is on the floor and *before* it has been decided.** Secondary motions are divided into three classes which relate to their use in parliamentary procedure. Those classes are: o Subsidiary motions o Privileged motions o Incidental motions
Subsidiary Motions	**Subsidiary motions relate directly to the motion on the floor. They may change the words, send it to a committee, delay it, etc**. They are designed to expedite business by disposing of the pending motion other than by adopting or rejecting it. *Subsidiary motions are the class of motions most frequently used in meetings*. These motions have rank (order of precedence of motions) among themselves. A motion of higher rank can be made while a motion of lower rank is on the floor. The lower rank motion "yields" to the higher rank motion. (Motion to postpone has higher rank than the motion to commit and takes precedence. If motion to postpone is adopted, the main motion and the motion to commit are postponed until the next meeting.)
Privileged Motions	**Privileged motions are motions of an emergency nature,** such as to recess or adjourn. They do not relate to the motion on the floor but to the welfare of the group. They are of high rank and must be handled before any other business that may be pending.
Incidental Motion	**Incidental motions are procedural**. They deal with process, such as enforcing proper procedure, correcting errors, verifying votes, etc. When introduced, they must be decided before business can resume.
Amending Motion	General consent can be used with amendments to motions if the Chairman feels the group will accept the amendment. "If there is no objection, the motion is so amended." *Restate the motion.*
Motions Commit	Have precedence over the motion to amend. **More than one motion can be on the floor but only one question.** All pending motions must relate to the main motion on the floor. No new business may be introduced.
Point of Orde	Motion used if a board member feels the Chairman is failing to operate within the rules.

Restorative Motions or Motions that Bring Back a Question

Restorative Motion	**Allows a group to change its mind.** o They are a separate category because of their contradiction to the

	parliamentary rule that once a question has been decided it cannot be brought up again at the same meeting. o Within limits, members have the right to rethink a situation if they feel their decision has been made too quickly or without enough information. o The two most commonly used restorative motions are: ***Rescind*** and ***Reconsider***.
Rescind	**Rescind is the motion to use to quash or nullify a previously adopted motion.** It may strike out an entire motion, resolution, bylaw, etc. o Rescind is *not in order* when any action has already been taken as a result of the vote, such as any kind of contract when the other party has been notified. o It must be seconded. o It requires a *two-thirds* vote unless *notice has been given* at the previous meeting, either verbally or in writing. If notice has been given, the motion requires only a *majority* vote.
Reconsider	**Reconsider is the motion which allows a group to reconsider the vote on a motion**. It enables a majority of the members, within a limited time, to bring back a motion for further consideration after it has been acted upon. Its purpose is to prevent hasty or ill-advised action. o Reconsider has special rules to prevent its abuse by a disgruntled minority, since it allows a question already decided to be brought up again. o Rules limit who can make the motion. **It can only be made by someone who voted on the *prevailing* (winning) side.** o **It has a *time limit*. It must be made on the *same day* that the vote to be reconsidered was taken.** o It requires a second. o It may be debated and it opens up the motion to which it is applied to debate. o It requires only a majority vote. o It may be made and seconded while other business is pending because of its time limit. However, it is not debated and voted on until the business on the floor is completed. o All action that might come out of the original motion is stopped at the time that reconsider is made and seconded. This is the main value of the motion, and it should be made as quickly as the situation calling for it is recognized.
Amend a Motion	**Change the wording to make it clearer, more complete, or more acceptable *before the motion is voted upon*.** The amendment must be germane to the motion on the floor to be in order. Adoption of the amendment does not adopt the motion. If the group votes "no" on the amendment, the motion is on the floor in its original wording.
Amend an Amendment	First amendment is called the primary and the amendment to the amendment is the secondary amendment. Only two amendments may be pending at any time. First vote on the amendment to the amendment (secondary), then vote on the original amendment (primary), then vote on the main motion. Amendments require a majority vote.
Friendly	Change in wording to enhance the original motion – can be changed by general

Amendments	consent.
Hostile Amendments	Gives a different meaning to a motion and may defeat the intent of the main motion.
To Commit or Refer a Motion	Sends the question to a small group (committee) to be studied and put into proper form for the group to consider. Motion includes specific directions as to where the question ought to go (what committee). Motion can be applied to any main motion with any amendments that may be pending. It must be seconded, it can be debated, and requires a majority vote.
Postpone	**Delays action on a question until later in the same meeting or until the next meeting**. *A motion cannot be postponed further than the next regular meeting*. Can be applied to all main motions, it must be seconded, it can be debated, it can be amended (as to time of the postponement), it requires a majority vote. Motion is called up automatically when the time to which it was postponed arrives (place under Unfinished Business on agenda of next meeting).
Limit Debate	**Motion to exercise special control over debate** – reducing the number and length of speeches allowed. Used with any motion, must be seconded, is not debatable, can be amended (but only as to the length of speeches or when the vote will be taken), requires 2/3 vote, vote must be taken by show of hands or a rising vote in a large group. (Need a timekeeper and timer if speeches have a time limit.)
Previous Question	**The motion used to cut off debate and to bring the group to an immediate vote on the pending motion. (Call the question for an immediate vote).** Previous question can be ruled out of order if the motion is debatable and has not received debate. Motion requires 2/3 vote (by show of hands or standing vote). Not debatable.
Postpone Indefinitely	Lowest-ranked subsidiary motion is used to kill a main motion. It avoids a direct vote on the question on the floor. Shouldn't be used.
Lay on the Table	Highest-ranked subsidiary motion. Cannot be amended or debated. It is out of order when used to "kill or avoid dealing with a measure". **Was designed as a courtesy motion to allow a group to set aside a question for something more important, such as arrival of a speaker.**
Withdraw a Motion	**Permission to withdraw a motion allows a member who realizes he has made a hasty or ill-advised motion to withdraw it with the consent of the group**. This device saves time in disposing of the motion. The presiding officer usually handles the request by use of general consent.
Dilatory Tactics	A dilatory tactic is the misuse of parliamentary procedure to deliberately delay or prevent action in a meeting. It is the duty of the presiding officer to prevent a dissident minority from misusing legitimate forms of motions to obstruct business. Such motions should be ruled out of order or those members engaged in such game playing should not be recognized.

TYPES OF VOTES

Majority Vote	• **More than half of the votes cast.** • The minority has the right to be heard, but once a decision has been reached by a majority of the members present and voting, the minority must then respect and abide by the decision.
Silence is Consent	Those members who do not vote, agree to go along with the decision of the majority by their silence.
Two-thirds Vote	**A two-thirds vote is necessary whenever you are limiting or taking away the rights of members or whenever you are changing something that has already been decided.** A two-thirds vote has at least twice as many votes on the winning side as on the losing side. A show of hands should be taken for *all* motions requiring a *two-thirds vote*. If a motion requires a two-thirds vote, the Chairman should inform the group of that.
General Consent	**Is an informal agreement of the group, the method in which action is taken without a formal vote or on occasion without a motion.** The Chairman initiates the procedure to expedite business. Usually done to approve and correct the minutes. • The presiding officer always pauses after asking if there is any objection. If there is *any* objection, the matter is put to a vote in the usual way. • A member may object because he feels it is important to have a formal vote and dispel any suspicion of railroading.
Tie Vote	Is a *lost* vote because a majority was not obtained. The *Chairman is not compelled to break a tie*. While the Chairman has a right to vote as a member, it is recommended he not vote unless the vote is by ballot. He may also vote in cases where the vote would change the result. The Chairman should appear impartial.

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE July 10, 2015
SUBJECT: Substitutions of Nonconformities for Redevelopment

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 March 2015 Board of Zoning Appeals meeting.

Substitutions of Nonconformities for Redevelopment

April – 2015

1. A project at 41 South Forest Beach Drive (Adventure Inn Redevelopment): the applicant requested to realign and improve the access drives in conjunction with the redevelop of the Adventure Inn property. Per LMO Section 16-5-105.I.2, access points along a Minor Arterial Road are to be located a minimum of 200 feet from the next adjacent access point. For the overflow parking lot property across the street, the existing access onto South Forest Beach Drive did not meet the access separation requirements. The applicant was wishing to continue the use of the existing drive. Because they were improving the existing drive to meet current LMO standards and because using the existing drive they were allowing for the least amount of impacts to the existing trees, bike path, utilities and stormwater facilities, the waiver was granted. For the main property, the main access drive is to be realigned with a future design of Lemoyne Avenue, at the request of the Town's Engineering staff. This realigned access will not meet the separation requirement but because this was a request of Town staff, the waiver was granted.

May – 2015

1. A project at 231 Seabrook Drive (Spring Lake Pool Improvements): the applicant requested to redevelop the old pool and pool deck. The property is currently nonconforming to the Wetland Buffer Standards in the LMO as the existing concrete deck and trellis are located within the 25 foot wetland buffer. Since the applicant was reducing the footprint of the concrete deck adjacent to the wetland by adding 179 square feet of pervious area and adding vegetation to this area, bringing it more into compliance with the LMO, the waiver was granted.