

**TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
**Minutes of the Monday, August 24, 2009 Meeting**  
**2:30pm – Benjamin M. Racusin Council Chambers**

**APPROVED**

Board Members Present: Acting Chairman David D’Amico, Alan Brenner, Michael Lawrence, Jack Qualey, Stephen Murphy and Bob Sharp

Board Members Absent: Chairman Roger DeCaigny

Council Members Present: Bill Ferguson, Bill Harkins and George Williams

Town Staff Present: Jayme Lopko, Senior Planner & Board of Zoning Appeals Coordinator  
Anne Cyran, Planner; Nicole Dixon, Planner  
Kathleen Carlin, Administrative Assistant

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**I CALL TO ORDER**

**II ROLL CALL**

**III APPROVAL OF THE AGENDA**

Acting Chairman D’Amico requested that the review order of Unfinished Business item, Application for Variance VAR090005, and New Business item, Application for Variance VAR090006, be reversed. The Board agreed to the requested change in order. The **revised** agenda was **approved** by general consent.

**IV APPROVAL OF THE MINUTES**

The minutes of the July 27, 2009 meeting were **approved** as presented by general consent.

**V NEW BUSINESS**

**PUBLIC HEARING**

**VAR090006:** Request for a variance from LMO Section 16-4-704, Forest Beach Neighborhood Character Overlay District Regulations. Ken Rabon, on behalf of Vincent & Madelyn Callahan, is requesting a variance from the Forest Beach Neighborhood Character Overlay District adjacent use setback and buffer requirements to install a dining room expansion within the adjacent use setback and buffer. The property is located at 109 Oceanwood Trace, further identified as Parcel 520 on Beaufort County Tax Map # 15A.

Ms. Nicole Dixon made the presentation on behalf of staff. The applicant is requesting a variance from Land Management Ordinance (LMO) Section 16-4-704, Forest Beach Neighborhood Character Overlay District Regulations (FBNCOD), which requires a 10 foot adjacent use setback and buffer from the rear property line.

The applicant is requesting a variance from setback and buffer requirements to construct an approximate 20 square foot kitchen and dining room expansion within the FBNCOD adjacent use setback and buffer. The applicant wishes to extend their kitchen and dining room to allow

for more room to host family gatherings. The applicant claims the existing house, which is considered nonconforming due to its location within the setback and buffer, was built prior to their purchasing it and prior to the adoption of the LMO. The applicant claims if the house was originally built more centrally located on the lot, it would not be nonconforming.

Ms. Dixon reviewed the Summary of Facts and the Conclusions of Law. The applicant has not met all six required criteria. The Board and the staff discussed the site plan, the floor plan, setback and buffers. Following the staff's presentation, Chairman D'Amico requested that the applicant make his presentation.

Mr. Ken Rabon presented statements in support of the application. Mr. Rabon discussed the criteria required for approval of the application. At the completion of the discussion, Chairman D'Amico requested public comments and none were received. Chairman D'Amico requested that a motion be made.

Mr. Qualey made a **motion** to **deny** Application for Variance VAR090006 based on the Findings of Fact and Conclusions of Law contained in the staff's report. The applicant has not met all six of the required criteria for approval of the application. Mr. Brenner **seconded** the motion and the motion **passed** with a vote of 5-0-0.

## **PUBLIC HEARING**

**VAR090005:** Nathan Jones and Thomas Viljac are requesting a variance from Land Management Ordinance Sections 16-5-704, Adjacent Use Setback, 16-5-806, Adjacent Use Buffers, and 16-6-204, Wetland Buffer, to allow a new deck to remain in the Adjacent Use Setback and in the Wetland and Adjacent Use Buffers. The property is located at 18 Simmons Road.

Ms. Anne Cyran made the presentation on behalf of staff. The subject parcel is located at 18 Simmons Road in the WMU Zoning District. The parcel is bounded by an undeveloped lot on the north; Broad Creek Marina Village on the west; Simmons Bar on the east; and Broad Creek on the south. Up the Creek Pub is located in the southeast corner of the property, adjacent to Broad Creek.

Broad Creek Marina was recently redeveloped in two phases. A commercial building and the docks were redeveloped in 2005 and a residential subdivision was developed in 2007. As part of these improvements, the existing 1,300 square foot ship's store was redeveloped into a pub. The redevelopment did not increase the size of the pub. The old pub had a 5 foot wide deck along its western and southern sides, and stairs on the southern side of the building provided access to the second floor office. A pathway ran south from the pub (toward Broad Creek) to a 300 square foot detached deck. The pub's decks were rebuilt and expanded in 2007. The work was done without review or approval from the Design Review Board, without a review of the proposed changes to the site plan by the Planning Division, and without a building permit. The front and side decks were expanded by 760 square feet out and back to connect to the detached deck. The new deck is in violation of the LMO because it encroaches into the 20 foot Adjacent Use Setback and Buffer, the 20 foot Minimum Wetland Buffer, and the 40 foot Average Wetland Buffer.

The staff met with a representative of Broad Creek Marina to discuss the violations and possible resolutions. When the issue was not resolved, Broad Creek Marina was required to either remove the new areas of deck that encroached into the setback and buffers or to apply for a variance to allow the encroachments.

Mr. Viljak, a representative of Broad Creek Marina, submitted a variance application with a new as-built survey of the property. The survey, approved by the South Carolina Department of Health and Environmental Control (SCDEC), shows the OCRM Critical Line in a new location. The new location of the Critical Line reduces, but does not eliminate the encroachment of the new deck into the setback and buffers. The new deck also does not meet the 40 foot Average Wetland Buffer.

A new, larger pub could be accommodated on the parcel without encroaching into setbacks or buffers. The approved redevelopment plan for Broad Creek Marina, which was approved in 2005, includes a proposed 3,700 square foot ship's store. As it is proposed, the ship's store would not encroach into the 20 foot Adjacent Use Setback and Buffer or the 20 foot Minimum Wetland Buffer, and it would meet the 40 foot Average Wetland Buffer.

Ms. Cyran reviewed the Summary of Facts and Conclusions of Law. The Board and the staff discussed the required criteria. At the completion of the staff's presentation, Chairman D'Amico requested that the applicant make his presentation.

Applicant, Mr. Thomas Viljak presented statements in support of the application. Mr. Viljak presented the history of the project including the redevelopment process. Mr. Viljak presented statements in response to the six required criteria. Mr. Roger Freedman, property owner, also presented statements in support of the application. At the completion of the board's discussion, Chairman D'Amico requested that a motion be made.

Mr. Jack Qualey made a **motion to deny** Application for Variance, VAR090005, based on the Findings of Facts and Conclusions of Law found in the staff's report. The applicant has not met the six required criteria necessary for approval of the application. Mr. Brenner **seconded** the motion and the motion **passed** with a vote of 5-0-0.

## **PUBLIC HEARING**

**SER090002:** Michael McCoy is requesting a Special Exception to operate a liquor store in the Commercial Center (CC) district. The property is located at 26 Palmetto Bay Road (Unit 4), further identified as Parcel 51A on Beaufort County Tax Map 14.

Ms. Anne Cyran made the presentation on behalf of the staff. The applicants wish to operate a liquor store at 26 Palmetto Bay Road, in the Commercial Center (CC) zoning district. The Town of Hilton Head Island Land Management Ordinance (LMO) Section 16-4-1104, Use Table, states a special exception is required for a liquor store in the CC zoning district. LMO Section 16-4-1234, Liquor Store, states liquor stores are permitted subject to the following standards: it is not located less than 200 feet from the nearest property line of any existing church or place of worship, public or private school, or residential district; and it is not located within 500 feet of an existing liquor store. The proposed location meets both standards.

The subject parcel is located at 26 Palmetto Bay Road in the CC zoning district. The parcel is bounded by other retail shops in the shopping center on the northeast; a vehicle detailing shop on the northwest; retail shops on the southeast; and Palmetto Bay Road on the southwest.

In November of 2008, the applicants received a special exception for a liquor store use at 6 Bow Circle. They propose to relocate their store to 26 Palmetto Bay Road. At the completion of the staff's presentation and discussion by the board, Chairman D'Amico requested comments from the public and none were received. Chairman D'Amico requested that a motion be made.

Mr. Qualey made a **motion** to **approve** Special Exception Application, SER090002 as presented by the staff. The application has met the standards required for approval. Mr. Sharp **seconded** the motion and the motion **passed** with a vote of 5-0-0.

## **VII STAFF REPORT**

1. Mrs. Lopko presented the recommended revisions to the Rules of Procedures for discussion.
2. Mrs. Lopko presented the Waiver Report.

## **VIII ADJOURNMENT**

The meeting was adjourned at 4:25pm.

Submitted By:

Approved By:

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Kathleen Carlin  
Administrative Assistant

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David D'Amico  
Acting Chairman