

**TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
**Minutes of the Monday, January 25, 2010 Meeting**  
**2:30pm – Benjamin M. Racusin Council Chambers** **APPROVED**

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

Board Members Absent: None

Council Members Present: None

Town Staff Present: Jayme Lopko, Senior Planner & BZA Coordinator;  
Brian Hulbert, Staff Attorney  
Kathleen Carlin, Board Secretary

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**I CALL TO ORDER**

**II ROLL CALL**

**III APPROVAL OF THE AGENDA**

Mr. Sharp made a **motion** to **approve** the agenda as presented. Vice Chairman D’Amico **seconded** the motion and the motion **passed** with a vote of 7-0-0.

**IV APPROVAL OF THE MINUTES**

Mr. Lawrence made a **motion** to **approve** the minutes of the December 21, 2009 meeting as presented. Mr. D’Amico **seconded** the motion and the motion **passed** with a vote of 7-0-0.

**V UNFINISHED BUSINESS**

None

**VI NEW BUSINESS**

**PUBLIC HEARING**

**VAR090010:** Request for a variance from LMO Sections 16-5-202, General Requirements, 16-5-203, Layout of Lots and Blocks, 16-5-704B, Adjacent Street Setbacks, and 16-5-806B, Adjacent Street Buffers. Scott Monson with Thomas & Hutton Engineering, on behalf of Robert Denckhoff with Abbey Glen, is requesting a variance from lot frontage, lot layout, adjacent street setback and adjacent street buffer requirements in order to meet the requirements to change the use of the subject property from Multi-Family Residential to a Single Family Residential Major Subdivision. The development known as Abbey Glen is located at 664 Spanish Wells Road.

Mrs. Lopko made today’s staff presentation on behalf of Ms. Nicole Dixon, case manager. The staff recommended that this application for variance be *disapproved* because it has not met the six required criteria necessary for approval.

The applicant stated in the narrative that this property was acquired and the developer designed the project well over two years ago when mortgage and banking practices were aggressive in financing condominium projects. Since then, the applicant has obtained DPR approval, but cannot obtain financing.

The applicant now intends to convert the use of the property from a Multi-Family condominium project to a Single Family Attached Subdivision, keeping the same layout and design as originally approved. The applicant states the success of the project is dependent upon the conversion to a housing product that is financially attainable through current mortgage practices.

In January 2007, the applicant attended a pre-application meeting for his proposed project, which was a 30 lot Single Family Residential Subdivision. In October 2007, the applicant attended a second pre-application meeting because the proposed plans changed to a 40 unit Multi-Family Residential development. In December of 2007, the applicant submitted a Development Plan Review (DPR) application for a Multi-Family Residential development consisting of 40 condominium and townhouse style units, a clubhouse and a pool. After six rounds of revisions and re-submissions, the applicant received a Notice of Action on June 24, 2009, approving the Multi-Family development.

A couple of months prior to receiving DPR approval, the applicant had several discussions with staff regarding the Multi-Family use designation as it pertains to current financial lending guidelines. The applicant informed staff that financial institutions were no longer lending money for projects with the use designation of Multi-Family Residential.

On June 19, 2009, staff met with the applicant, another developer and a representative of the Home Builders Association to discuss zero lot line developments and financial guidelines and restrictions. The applicant informed the staff that he wanted to change the parcel's use designation from Multi-Family Residential to a Single Family Residential Subdivision.

The staff informed him that to do so, the property had to meet LMO requirements for Single Family Residential Subdivisions. The applicant stated that there should be a way of subdividing the quad units and townhouse units without having to meet the major subdivision requirements and that it has been done in other jurisdictions. The applicant was asked to provide the regulations from the municipalities for the staff to review and consider for possible future amendments to the LMO.

During this meeting (and prior to the Notice of Action being issued), the staff informed the applicant that if he moved forward with his project as a Multi-Family Residential development and then came back to the Town to request a variance to make the project a Single Family Residential development, the staff would not support the variance application because the applicant was made aware of the situation before the plans were approved.

The applicant decided to move forward with the Multi-Family Residential project and received DPR approval on June 24, 2009. The applicant has since applied for a variance from several LMO requirements so that he can change the property's use designation to a Single Family Residential Major Subdivision, without changing the design of the approved plans.

The applicant stated in the narrative that the property was acquired and the developer designed the project well over two years ago when mortgage and banking practices were aggressive in

financing condominium projects. Since then, the applicant has obtained DPR approval, but cannot obtain financing. The applicant now intends to convert the use of the property from a Multi-Family condominium project to a Single Family Attached Subdivision, keeping the same layout and design as originally approved. The applicant states the success of the project is dependent upon the conversion to a housing product that is financially attainable through current mortgage practices.

Mrs. Lopko reviewed the Summary of Facts and Conclusions of Law. Based on these findings, the LMO Official determined that the applicant has not satisfied all six of the criteria required to grant a variance. The applicant does not meet criteria one, two and three because there are no extraordinary or exceptional conditions which pertain to this property. The applicant does not meet criteria four because the hardship is the result of his own actions. The applicant does not meet criteria 5 because the granting of the variance is in substantial conflict with the LMO. The applicant meets criteria six because the granting of the variance will not be of substantial detriment to the adjacent property or the public good. At the completion of the staff's presentation, Chairman DeCaigny requested that the applicant make their presentation.

Applicants, Mr. David Brown and Mr. Robert Denckhoff, presented statements in support of the application. The applicants provided the Board with a new document detailing several points of their case. The Board reported that they were reviewing the document for the first time. Following the applicant's presentation, the Board reported concern that the application has not met the six required criteria necessary for approval. The Board stated that they are not lawfully permitted to approve an application that has not met all six required criteria necessary for approval. Following this discussion, Chairman DeCaigny requested public comments. The following citizens presented statements for the record: Richard Williams, Jr., and Chester C. Williams, Esquire.

Following public comments and additional discussion by the Board, the applicants requested a 5-minute recess so that they could review their application. The Board granted the applicants' request for the 5-minute recess. When the meeting reconvened, the applicants requested that action on the application be tabled until the Board's next meeting so that they could further review the application. The Board discussed the applicant's request and then unanimously voted to remand the application to the February 22, 2010 meeting.

## **VII BOARD BUSINESS**

Chairman DeCaigny requested that the Board meet in a brief Executive Session to discuss personnel matters. The Board went into executive session at 4:30pm and reconvened at 4:45pm.

## **VIII STAFF REPORT**

Mrs. Jayme Lopko stated there were no waivers to report on this month's Waiver Report.

## **IX ADJOURNMENT**

The meeting was adjourned at 4:50pm.

Submitted By:

Approved By:

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Kathleen Carlin  
Board Secretary

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Roger DeCaigny  
Chairman