

**TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
**Minutes of the Monday, October 24, 2011 Meeting**  
**2:30p.m. - Benjamin M. Racusin Council Chambers**      **APPROVED**

Board Members Present:      Chairman Roger DeCaigny, Vice Chairman Peter Kristian,  
Jack Qualey, Stephen Murphy and Glenn Stanford

Board Members Absent:      Alan Brenner and Michael Lawrence, Excused

Council Members Present:      None

Town Staff Present:      Anne Cyran, Senior Planner  
Heather Colin, Development Review Administrator  
Teri Lewis, LMO Administrator  
Kathleen Carlin, Board Secretary

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**1.      CALL TO ORDER**

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

**2.      ROLL CALL**

**3.      INTRODUCTION TO BOARD PROCEDURES**

Chairman DeCaigny stated the Board's procedures for conducting today's business meeting.

**4.      APPROVAL OF THE AGENDA**

Vice Chairman Kristian made a **motion** to approve the agenda as presented. Mr. Qualey **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**5.      APPROVAL OF THE MINUTES**

Mr. Stanford made a **motion** to **approve** the minutes of the August 22, 2011 meeting as presented. Vice Chairman Kristian **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**6.      UNFINISHED BUSINESS**

None

**7.      NEW BUSINESS**

**Public Hearing**

**VAR110002:** A request for a variance from LMO Sections 16-5-806B, Adjacent Street Buffers and 16-5-1207, Parking Area Design. Don Guscio, on behalf of Frank Guidobono, is requesting a variance from adjacent street buffers and parking area design in order to construct a drive aisle for a drive up window at SCBT Bank. The property is located at 5 Park Lane and is further identified as parcel 235 on Beaufort County Tax Map 15C.

Ms. Anne Cyran made the presentation on behalf of staff. The staff recommended that the Board of Zoning Appeals **disapprove** the application based on the Findings of Facts and Conclusions of Law.

Ms. Cyran stated that the Community Development Department has received an application for a variance from Don Guscio, on behalf of Frank Guidobono, for the following Sections of the Land Management Ordinance (LMO): 16-5-704, Adjacent Street Setback; 16-5-806, Adjacent Street Buffers; and 16-5-1207, Parking Area Design.

The applicant is requesting the variances from adjacent street setbacks and buffers and parking area design requirements in order to add a drive-thru window with a canopy and a drive aisle to an existing building to make the tenant space more marketable to future tenants, particularly banks. Ms. Cyran stated that the subject parcel is bounded by William Hilton Parkway on the north, Park Lane on the south and east, and 1 Park Lane (an office building) on the west.

The 6,048 square foot building, which is divided into two suites, was built in 2005. One suite is currently leased by Charter I Realty. South Carolina Bank & Trust (SCBT) will vacate the other suite this November. The parcel is located in the OL (Office/Institutional Low Intensity) Zoning District. Land uses permitted in the OL Zoning District are primarily office and institutional with light traffic. Permitted commercial uses include institutions, eating establishments without a drive-thru, offices and banks or financial institutions.

When the parcel received a Development Plan Review permit in 2002, banks and financial institutions were not permitted uses in the OL Zoning District. An amendment to the LMO in May 2004 allowed banks and financial institutions as a permitted land use in the OL Zoning District with the conditions that no more than 25% of the gross floor area is utilized as a teller lobby and there are no more than 2 drive up stalls. These restrictions limit the amount of traffic visiting the site, which maintains the character of the low intensity OL Zoning District. The owner states that, had banks and financial institutions been allowed in the zoning district when the site was being developed, a drive-up window and drive aisle would have been built on the site.

Ms. Cyran stated that the applicant met with Town staff in mid-August to discuss the requirements for adding a drive-thru window with a canopy to the building to make it more marketable to future tenants, particularly to banks. The owner stated that renovating the interior of the tenant space for any use other than a bank would be prohibitively expensive. Richard Spruce, the Town's Commercial Plans Review Administrator, inspected the suite and determined that extensive interior renovations would not be necessary to change the use from a bank to an office or institutional use due to the fact that only 25% of the floor area is used as a teller lobby – the rest of the suite is designed for offices.

LMO Section 16-3-1906, Criteria for Approval of Variances, Part C, Factors not to be considered, states "The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance." This is supported by South Carolina State Code Section 6-29-800(A)(2)(d)(i), which also states "The fact that

property may be utilized more profitably, if a variance is granted, may not be considered grounds for a variance.”

The proposed drive-thru window and drive aisle would be added to the north side of the building, near William Hilton Parkway. The building currently conforms to the required adjacent street setback and to the minimum and average adjacent street buffers from William Hilton Parkway. Constructing the drive-thru window and canopy would require encroaching up to seven feet into the 50 foot adjacent street setback. Constructing the drive aisle would require encroaching up to seven feet into the 50 foot minimum adjacent street buffer. The addition of the drive aisle to the site will also change the calculations for the 60 foot average adjacent street buffer; adding the drive aisle will make the adjacent street buffer non-conforming.

Constructing the drive-thru window and drive aisle would require the removal of several trees, but the applicant states in the narrative that the owner understands that tree replacement may be a condition of the project approval and he is willing to replace the trees.

The site’s parking lot currently conforms to the LMO parking area design standards. Constructing the drive aisle in the proposed location would require altering the existing parking lot. The drive aisle would be adjacent to a disabled accessible parking space, instead of being separated from the space by a landscaped median as required by LMO parking area design standards. Two parking spaces would be removed, but the site will still meet the minimum number of parking spaces required.

The proposed drive aisle would not meet the LMO parking area design standard of 160 feet of aggregate total stacking depth without obstructing parking bays or drive aisles. The drive aisle would allow approximately 60 feet of stacking depth without obstructions and 75 feet of stacking depth with obstructions to adjacent parking spaces and the drive aisle. The Fire Marshal and the Traffic Engineer have both reviewed the proposed plan and state that, given the light amount of traffic generated by this use, the parking lot and drive aisle could both function properly with 60 feet of stacking depth.

Ms. Cyran stated that if the variances are granted, the proposed addition must be approved by the Town’s Design Review Board. The DRB will review the visual impact of the addition and may require additional vegetation in the adjacent street buffer for screening. Town staff will also review the footprint of the additions and issue tree replacement requirements in an Expedited Development Review application. Ms. Cyran provided an in-depth review of the application including the Finding of Facts and Conclusions of Law.

The Board and the staff discussed the Findings of Fact and Conclusions of Law. Ms. Cyran stated that there is a financial issue with this application. The State Code “The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance specifically states that the application cannot benefit by financial gain in granting the variance.

Ms. Cyran reviewed the six required Criteria with the Board. The application does not meet all six of the required Criteria; the application meets only Criteria # 5 and # 6. Following

this discussion, Chairman DeCaigny then requested that the applicant make his presentation.

The applicant, Mr. Don Guscio, and Mr. Frank Guidobono, property owner, presented statements in support of the application. Mr. Guscio stated that he believes the six required criteria have been met by the application. Mr. Guidobono presented statements in support of the proposed use. The Board and the applicants discussed several issues including the existing ordinance, variances to the existing ordinance, and the buffers.

Following the Board's discussion, Chairman DeCaigny requested public comments and none were received. Chairman DeCaigny then requested that a motion be made. Mr. Qualey made a **motion to approve** Application for Variance Request, VAR110002, request for a variance from LMO Sections 16-5-806B, Adjacent Street Buffers and 16-5-1207, Parking Area Design subject to the following conditions: (1) the canopy of the drive through window be scaled back so that it does not extend over the 50-ft buffer and 50-ft. setback lines. The motion is based on the applicant's compliance with the six criteria for a variance and based on the fact that the current conditions and application of the ordinance would unreasonably restrict the utilization of the property so that the applicant could not use it property as a bank building with a drive through. Mr. Stanford seconded the motion for purposes of discussion.

Vice Chairman stated that, as much as he would like to approve the application, the application does not meet the six required criteria. Ms. Cyran requested that Mr. Qualey address each of the six criteria for the record. (1 – 4 for the notice of action).

Mr. Qualey stated that his motion is based on compliance by the applicant with the six required criteria including the fact that there are extraordinary and exceptional conditions pertaining to this particular piece of property. This condition meets Criteria # 1. This is because of the impact of the setbacks from Highway 28 and the two adjoining streets. The application meets Criteria # 2 because these conditions do not generally apply to other properties in the vicinity, the conditions being the setbacks from Highway 278 and the two adjoining streets. They do apply to some properties, but not in general to other properties in the vicinity. Criteria # 3 is met because the application of the LMO to this particular piece of property would effectively unreasonably restrict the utilization of the property as a bank space with a drive-thru which virtually all banks require in this market. Criteria # 4 is met because the hardship is not the result of the applicant's own actions. In this case, the hardship is the result of the Town changing its LMO to allow banks in this zone subsequent to the applicant's development permit having been approved and construction starting on the site. The staff has agreed that the applicant meets Criteria # 5 and Criteria # 6.

Vice Chairman Kristian stated that he disagrees with the motion because the application does not meet 1 – 4 of the required criteria. Following final discussion on the motion, Chairman DeCaigny requested that a vote on the motion. The motion **failed** with a vote of 2-3-0. Chairman DeCaigny, Vice Chairman Kristian, and Mr. Murphy voted against the motion because they believed that the applicant has not met the six required criteria. Chairman DeCaigny then requested that a second motion be made.

Vice Chairman Kristian made a **motion** that the Board **approves** the staff's recommendation of **denial** of Application of Request for Variance, VAR110003, based on the staff's Findings of Fact and Conclusions of Law. Mr. Murphy **seconded** the motion and the motion **passed** with a vote of 3-2-0. Mr. Qualey and Mr. Stanford were against the motion.

**8. Board Business**

Board of Zoning Appeals – Meeting Scheduled for 2012

Chairman DeCaigny requested that a motion be made for approval of the BZA – Meeting Schedule for 2012.

Mr. Qualey made a **motion** to **approve** the BZA Meeting Schedule for 2012 as presented by the staff. Vice Chairman Kristian **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**9. Staff Report**

Ms. Heather Colin presented the staff's Waiver Report to the Board.

**10. ADJOURNMENT**

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

Submitted By:

Approved By:

November 28, 2011

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Kathleen Carlin  
Secretary

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Roger DeCaigny  
Chairman