

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, October 28, 2013 Meeting
2:30p.m. - Benjamin M. Racusin Council Chambers **Approved**

Board Members Present: Chairman Peter Kristian, Vice Chairman Glenn Stanford, Irvin Campbell, David Fingerhut, Michael Lawrence, and P. Jeffrey North

Board Members Absent: None

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Teri Lewis, LMO Official
Brian Hulbert, Board Attorney
Heather Colin, Development Review Administrator
Kathleen Carlin, Secretary

1. Call to Order

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

2. Roll Call

3. Freedom of Information Act Compliance

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

4. Introduction to Board Procedures

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

5. Approval of the Revised Agenda

Prior to requesting a motion to approve the revised agenda, Chairman Kristian requested that the staff clarify the two applications for appeal that have postponed from the agenda. Ms. Dixon stated that the Board's review of Application for Appeal APL130004 is postponed to the November 25, 2013 meeting at the applicant's request.

The applicant for Application for Appeal APL130006 has requested that the Board's review be postponed to the January 2014 meeting. A motion for the postponement of APL130004 is required because the application has already been granted one postponement. Chairman Kristian then requested that a motion be made.

Mr. North made a **motion** to **approve** the postponement of APL130004 as requested by the applicant. This application will be reviewed at the November 25, 2013 meeting. The motion was **seconded** by Mr. Lawrence and **passed** with a vote of 6-0-0. Chairman Kristian then requested that a motion be made to approve the revised agenda.

Vice Chairman Stanford made a **motion** to **approve** the revised agenda. Mr. Lawrence **seconded** the motion and the motion **passed** with a vote of 6-0-0.

6. Approval of the Minutes

Chairman Kristian requested that a motion be made to approve the minutes of the September 23, 2013 meeting.

Vice Chairman Stanford made a **motion** to **approve** the minutes of the September 23, 2013 meeting as presented. Mr. Campbell **seconded** the motion and the motion **passed** with a vote of 6-0-0.

7. Unfinished Business

None

8. New Business

VAR130009: Duke and Tammy Novak are requesting a variance from Land Management Ordinance Section 16-5-205, Subdivision Miscellaneous Standards, to construct a swimming pool and screened-in lanai within the 5' internal property line setback. The property is located at 30 Peregrine Drive and is further identified as parcel 343 on Beaufort County Tax Map 11. Chairman Kristian introduced the application and opened the public hearing. Chairman Kristian then 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 *disapprove* the application based on the Findings of Facts and Conclusions of Law stated in the LMO Official Determination and contained in the staff's report.

Ms. Dixon presented an in-depth overhead review of the application including a review of the vicinity map, aerial photo, photos of the site, and the site plan.

The subject parcel is located in the Peregrine Point subdivision off of Marshland Road. The subdivision was approved in 2004 and the house was constructed in March 2005. The current owner of the property is now wishing to construct a swimming pool and deck within a screen-in lanai in the rear of the property. Because the house is already built, there is limited buildable area left on the property. The applicant is proposing to construct the pool and lanai within the 5-foot internal property line.

The applicant claims in the narrative that their property suffers from two primary building restrictions that are outside of their control. The first restriction is that the original developer of the project designed the subdivision so that acreage was taken from their lot to be used for open space requirements. The second restriction is that the house was constructed twelve feet behind the front setback to preserve a cluster of live oak trees.

Ms. Dixon reviewed the Findings of Fact and Conclusions of Law. Based on these Findings of Fact and Conclusions of Law, the applicant has not met all six of the required criteria.

The Board and Ms. Dixon discussed the definition of open space requirements and the location and condition of a nearby lagoon. At the completion of the staff's presentation, Chairman Kristian requested that the applicants make their presentation.

Mr. Duke Novak and Mrs. Tammy Novak presented statements in support of the application. The applicants discussed their desire to construct a swimming pool within a single story screened-in lanai at the rear of their property. The applicants reviewed the staff's Findings of Fact and Conclusions of Law and stated that they believe the application meets the required criteria.

The Board and the applicants discussed the application. Chairman Kristian and Vice Chairman Stanford stated that the Board is required to follow the laws stated in the Land Management Ordinance with regard to setback requirements. The Board asked the applicants if they have tried to redesign the proposed pool so that it fits within the required setback. The applicants stated that they have tried to redesign the pool to make it fit, but it is not possible.

The applicants introduced Mr. Judd Carstens, their landscape architect, to the Board. Mr. Carstens presented statements regarding the six required criteria, the setback requirements, and the location and condition of the existing lagoon.

At the completion of the applicant's presentation, Chairman Kristian requested public comments and the following were received:

Mrs. Queen Mary Allen Davis stated that the Allen family owns property located on Marshland Road. Mrs. Davis inquired about the application's impact on her family's property. Ms. Dixon stated that the application will have no impact on the Allen family property. Ms. Dixon presented statements regarding the Town's notification requirements to property owners located within 350-ft. of the subject property. At the completion of public comments, Chairman Kristian stated that the public hearing for this application is closed.

Chairman Kristian then invited discussion by the Board. The Board discussed the application. The Board stated their concern that the application does not meet the six required criteria. Following final comments, Chairman Kristian requested that a motion be made.

Vice Chairman Stanford made a **motion** to **disapprove** Application for Variance VAR130009 because the application does not meet the staff's Findings of Fact and Conclusions of Law. The application does not meet the six required criteria. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 6-0-0.

11. Board Business

a. Adoption of BZA Schedule of Meetings – 2014

The Board and staff reviewed the BZA's 2014 Meeting Schedule. Chairman Kristian requested that a motion be made to adopt the schedule. Mr. Lawrence made a **motion** to adopt the 2014 Meeting Schedule as presented. Vice Chairman Stanford **seconded** the motion and the motion **passed** with a vote of 6-0-0.

b. Adoption of new procedures for hearing Motions to Dismiss an Appeal

Ms. Dixon reported that a draft set of procedures on Motions to Dismiss an Appeal will be presented to the Board for their consideration on November 25, 2013. The Board will review the draft set of procedures at that time and the public will have an opportunity to present comments. The Board will adopt the final set of procedures on motions to Dismiss an Appeal at their December 16, 2013 meeting.

12. Staff Report

Waiver Report - Ms. Nicole Dixon presented the Waiver Report on behalf of staff.

13. Adjournment

The meeting was adjourned at 3:10p.m.

Submitted By:

Approved By:

November 25, 2013

Kathleen Carlin
Secretary

Peter Kristian
Chairman