

**TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
**Minutes of the Monday, November 25, 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, and Steve Wilson

Board Members Absent: Michael Lawrence and P. J. North

Council Members Present: George Williams

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator  
Brian Hulbert, Board Attorney  
Rocky Browder, Environmental Planner  
Teri Lewis, LMO Official  
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 Agenda**

Ms. Dixon reported that Application for Appeal APL130004 is withdrawn from Unfinished Business. The applicant and staff were successful in resolving the issues associated with this application for appeal. Chairman Kristian requested that a motion be made to approve the agenda as amended.

Vice Chairman Stanford made a **motion** to **approve** the agenda as amended by staff. The motion was **seconded** by Mr. Campbell and **passed** with a vote of 5-0-0.

**6. Approval of the Minutes**

Chairman Kristian requested that a **motion** be made to **approve** the minutes of the October 28, 2013 meeting.

Vice Chairman Stanford made a **motion** to **approve** the minutes of the October 28, 2013 meeting as presented. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 4-0-1 (Mr. Wilson abstained from the vote).

**7. Swearing in Ceremony for new BZA Member, Mr. Steve Wilson**

Brian Hulbert, Staff Attorney, performed the swearing-in ceremony for Mr. Steve Wilson on behalf of staff. Chairman Kristian welcomed Mr. Wilson and thanked him for his service to the Board of Zoning Appeals and to the community.

**8. Unfinished Business**

None

**9. New Business**

**VAR130010:** Don Sigmon, owner of the South Beach Racquet Club, is requesting a variance from Land Management Ordinance Section 16-6-204, Wetland Buffers, to construct a deck expansion within the 20 foot wetland buffer. The property is located at 230 South Sea Pines Drive and is further identified as parcel 1127 on Beaufort County Tax Map 17. Chairman Kristian introduced the application and opened the public hearing. Chairman Kristian then requested that staff make their presentation.

Ms. Nicole Dixon made the presentation on behalf of staff. Ms. Dixon presented an in-depth overhead review of the application including the vicinity map, aerial photo, and site plan. Staff recommended that the Board *approve* the application with the conditions that a berm be created along the edge of the bulkhead to divert stormwater and landscaping be installed in between the bulkhead and deck to improve water quality protection, where there is now just grass.

The South Beach Racquet Club was originally constructed in 1971 as two tennis courts and has grown over the years to 13 courts and a pro shop building that was constructed in 1987. Because of the success of the club and a very active tennis membership with numerous members and social events, the club is now wishing to expand the deck to accommodate the members and guests for the social activities.

When the club began planning the deck expansion, they discovered that the freshwater detention lagoon on their property had recently been determined to be a wetland. Several years ago, Sea Pines Community Services Association (CSA) allowed the weir between the lagoon system and Braddock Cove to remain open allowing tidal water intrusion into the freshwater detention lagoon. It was done in order to raise the lagoons depth and population of the fish in the lagoon in response to a request from adjacent property owners. Because of this, the freshwater lagoon has since become salt water and is now classified as a tidal wetland by the U.S. Army Corps of Engineers and the South Carolina Department of Health and Environmental Control (DHEC). This was not a natural environment change, but a change initiated by CSA.

LMO Section 16-6-204 requires a 20-foot buffer from tidal wetlands. With the buffer now applied to the property, the existing building encroaches into it and is now considered a non-conforming structure even though it was conforming to all requirements when it was originally constructed. According to LMO Section 16-7-301, a non-conforming structure shall not be expanded, enlarged, relocated or redeveloped, in whole or in part, unless the result is to bring the structure into conformance.

Because of these LMO requirements, the applicant is requesting a variance to eliminate approximately 65 linear feet (1300 square feet) of the wetland buffer to make the existing building conforming and allow the deck expansion.

Ms. Dixon reviewed the Findings of Fact and Conclusions of Law contained in the staff's report. At the completion of staff's presentation, Chairman Kristian requested that the applicant make his presentation.

Mr. Don Baker, Square Feet Architects, presented brief statements in support of the application. Following these statements, Chairman Kristian requested public comments and none were received. Chairman Kristian then closed the public hearing for the application. The Board discussed the application including the staff's recommended conditions. Following their discussion, Chairman Kristian requested that a motion be made.

Vice Chairman Stanford made a **motion to approve** application for variance VAR130010 with the condition that the width of the buffer be reduced to zero within the prescribed areas on the plan subject to the conditions imposed by staff for the creation of a berm with appropriate landscaping. The application is consistent with the Findings of Fact and Conclusions of Law stated in the staff's report. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**VAR130011**: Bill Fishburne, on behalf of Jon Watson, is requesting a variance from Land Management Ordinance Section 16-6-402, Wetland Buffers. The applicant proposes to build a fence and install a grassed lawn in the wetland buffer. The property is located at 56 Hearthwood Drive and is further identified as parcel 226 on Beaufort County Tax Map 14B. Chairman Kristian introduced the application and opened the public hearing. Chairman Kristian then requested that staff make their presentation.

Ms. Anne Cyran made the presentation on behalf of staff. Ms. Cyran presented an in-depth overhead review of the application including a vicinity map, aerial photo, and site plan. The staff recommended that the Board *disapprove* the application based on the Findings of Facts and Conclusions of Law contained in the staff's report.

The subject parcel is located at 56 Hearthwood Drive in the PD-1 (Sea Pines) Zoning District. The parcel is bounded by an undeveloped lot on the southwest, an undeveloped lot and open space on the northwest; Hearthwood Drive on the northeast, and a lagoon on the southeast.

The subject parcel was previously undeveloped. A building permit was issued for the house on the subject parcel on January 10 2013. A building permit was issued for the pool on June 6, 2013. The proposed fence and grassed lawn in the wetland buffer were not approved as part of either permit. Town staff informed the applicant that a variance would be required to build the fence and install a sod lawn in the wetland buffer. The application was submitted on October 11, 2013.

The saltwater lagoon south of the subject parcel was dug between 1965 and 1972, and it was expanded between 1972 and 1979. When construction of the lagoon was complete in 1979, the land adjacent to the lagoon was clear of vegetation. By 1995, the land next to the lagoon was covered with vegetation.

The lagoon is classified as a tidal wetland. In May 2012, the State of South Carolina's Department of Health and Environmental Control's (DHEVC) Ocean & Coastal Resource Management (OCRM) determined that the lagoon's Critical Line – the boundary of the wetland system – on the subject parcel is located between four and 20-ft. inland from the edge of the water. In July 2013, the property owner requested a new determination of the Critical Line, and OCRM determined the location of the Critical Line had not changed since May 2012.

Other properties in the vicinity, most of which were developed between 1972 and 1995, have an abrupt transition – a bulkhead, rip-rap or an eroded band – between the land and the edge of the water. The OCRM Critical Line on these parcels is located at the edge of the water.

Land Management Ordinance Section (LMO) 16-6-204.B requires a 20-ft. wetland buffer, measured landward from the Critical Line, on the subject parcel. The wetland buffer is defined as an undeveloped area planted with native wetland vegetation. When the subject parcel was developed, vegetation was removed from the wetland buffer, in violation of LMO Section 16-6-204.C. To resolve this violation, the wetland buffer must be re-planted per a plan approved by Town staff. The staff has approved a re-planting plan.

The LMO's wetland buffer standards have been in place since the LMO was enacted in 1986. Some properties in the vicinity were developed prior to the enactment of the LMO and some were developed after the LMO was enacted. Most properties in the vicinity of the subject parcel have wetland buffers that do not conform to the standards of the LMO. The non-conformities include structures built in the buffer, paving in the buffer and sod and non-native vegetation planted in the buffer. The non-conformities that did not pre-date the LMO developed over time: a grassed lawn was installed after a bulkhead was built; or an area was paved without a permit being obtained. Ms. Cyran reviewed the Findings of Fact and Conclusions of Law contained in the staff's report. The application does not meet the six required criteria. The Board and the staff discussed the bulkhead. OCRM permits of bulkheads. Mr. Rocky Browder presented statements on behalf of Natural Resources.

Following the staff's presentation, Chairman Kristian requested that the applicant make his presentation.

Mr. Bill Fishburne, Total Design Concepts, presented statements in support of the application on behalf of Mr. Jon Watson, property owner. Mr. Fishburne presented an overhead review of the project including several photos of the site. The applicant reviewed the staff's Findings of Fact and Conclusions of Law. The applicant stated that he believes the application meets the required criteria and should be approved.

Following the applicant's presentation, Chairman Kristian requested public comments and none were received. Chairman Kristian then closed the public hearing for the application.

The Board discussed the application including the bulkhead and OCRM line. Vice Chairman Stanford stated that the Board is required to follow the law in making their determination on the application. Following the Board's discussion, Chairman Kristian requested that a motion be made.

Mr. Fingerhut made a **motion** to affirm the staff's recommendation to **disapprove** application for variance, VAR130011, based on the Findings of Fact and Conclusions of Law contained in the staff's report. Vice Chairman Stanford **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**10. Board Business**

Adoption of new procedures for hearing Motions to Dismiss an Appeal

Ms. Dixon presented the staff's draft set of procedures on Motions to Dismiss an Appeal to the Board for their consideration. Ms. Dixon requested that the Board members review the draft set of procedures in preparation for their approval at the next Board meeting. The Board will adopt the final set of procedures on Motions to Dismiss an Appeal on December 16, 2013. Chairman Kristian stated that the Board will accept public comments on the draft procedures on December 16, 2013.

**11. Staff Report**

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

**12. Adjournment**

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

Submitted By:

Approved By:

December 16, 2013

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Kathleen Carlin  
Secretary

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Peter Kristian  
Chairman