

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, March 25, 2013 Meeting
2:30p.m. - Benjamin M. Racusin Council Chambers

APPROVED

Board Members Present: Chairman Roger DeCaigny, Vice Chairman Peter Kristian, Alan Brenner, Irv Campbell, Michael Lawrence, Stephen Murphy and Glenn Stanford

Board Members Absent: None

Council Members Present: Bill Harkins

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Anne Cyran, Senior Planner
Heather Colin, Development Review Administrator
Kathleen Carlin, Secretary

1. Call to Order

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

5. Approval of the Agenda

Vice Chairman Kristian made a **motion** to **approve** the agenda as presented. Mr. Brenner **seconded** the motion and the motion **passed** with a vote of 7-0-0.

6. Approval of the Minutes

Vice Chairman Kristian made a **motion** to **approve** the minutes of the December 17, 2012 meeting as presented. Mr. Stanford **seconded** the motion and the motion **passed** with a vote of 7-0-0.

7. Unfinished Business

None

**8. New Business
Public Hearing**

VAR130002: Louise Cohen is requesting a variance from Land Management Ordinance Section 16-5-704, Minimum Required Setback Area, and Section 16-5-806, Required Buffers, to allow an existing mobile home to encroach into the adjacent street setback, and adjacent use setback and buffer. The property is located at 187 Gum Tree Road and is further identified as parcel 48 on Beaufort County Tax Map 3. Chairman DeCaigny introduced the application and opened the public hearing. Chairman DeCaigny then requested that the staff make their presentation.

Ms. Anne Cyran made the presentation on behalf of staff. The staff recommended that the Board of Zoning Appeals *approve* the application based on the LMO Official Determination and the Findings of Facts and Conclusions of Law contained in the staff's report.

Ms. Cyran presented an in-depth overhead review of the application including an aerial photo, an aerial photo with the mobile home location, site photos, an aerial photo with setbacks and buffers, and an aerial photo with mobile home location, setbacks and buffers. The subject parcel is located at 187 Gum Tree Road in the RM-4 Zoning District. The parcel is bisected by Gum Tree Road. The subject parcel is bounded by three residential parcels on the southwest; three undeveloped parcels on the northwest; an undeveloped parcel and Chinaberry Ridge on the northeast, and two single family parcels on the southeast. The portion of the subject parcel that requires the variance is the rectangle to the southwest of Gum Tree Road.

In mid-January, Mr. Madison Robinson, a mobile home mover, and Mr. Mario Gomez, the future resident of the mobile home, asked Community Development Department staff whether a mobile home could replace a house that had been demolished. The staff advised them to apply for a mobile home placement permit.

In early February, the staff noticed that a new mobile home had been placed on the subject parcel. Also in early February, Mr. Robinson and Mr. Gomez applied for a mobile home placement permit. They informed the staff that the mobile home had been placed on the parcel, but it did not have utility service. Staff advised them that the home had been placed without first obtaining a mobile home placement permit, in violation of the LMO. The mobile home had been placed within an adjacent street setback, an adjacent use setback and an adjacent use buffer, also in violation of the LMO. The staff advised Mr. Robinson and Mr. Gomez that the mobile home needed to be moved out of these areas to be brought into compliance with the LMO.

Mr. Robinson and Mr. Gomez informed the staff that the parcel is too narrow to locate the mobile home in an area that doesn't encroach into setbacks or buffers. Staff advised them that their alternative to removing the mobile home from the parcel is to apply for a variance from the LMO.

Per LMO Section 16-7-707.C, a mobile home in a nonconforming location (i.e. encroaching into a buffer) can be replaced by another mobile home in the same location if the replacement is complete within a year of the original home's removal. That

provision of the LMO does not apply to this situation, however, because the house and related structures had been demolished in September of 2007.

In early February, Ms. Louise Cohen, the property owner, submitted the application for a variance from the adjacent street setback, the rear adjacent use setback and the rear adjacent use buffer to allow the mobile home to remain in its current location. The home encroaches into 954 square feet (or 5.5 percent) of the 17,336 square foot adjacent street setback. It encroaches into 244 square feet (or 2.7 percent) of the 9,040 square foot rear adjacent use setback and buffer.

Ms. Cyran reviewed the Findings of Fact and Conclusions of Law with the Board. Following the staff's presentation, Chairman DeCaigny requested that the applicant make their presentation. The applicant was present at the meeting but did not have any additional comments. Chairman DeCaigny requested public comments on this application and none were received. Chairman DeCaigny then stated that the public hearing for this application is closed.

The Board discussed the application with the staff. Following final comments by the Board, Chairman DeCaigny requested that a motion be made.

Mr. Campbell made a **motion** to **approve** Application for Variance, VAR130003, as submitted based on the Findings of Fact and Conclusions of Law contained in the staff's report. Vice Chairman Kristian **seconded** the motion and the motion **passed** with a vote of 7-0-0.

Public Hearing

VAR130003: Request for variance from LMO Sections 16-5-202, General Requirements, 16-5-1201, Off-Street Parking Required, 16-5-704, Minimum Required Setback Area, 16-5-806, Required Buffers and 16-5-508, Street Intersections. Bret Pruehs with McNair Law Firm, on behalf of CJT Real Property, LLC, is requesting a variance from these sections to change the use designation of the existing multi-family residential development from a horizontal property regime to a single family attached major subdivision. The property is located at 2 Tidal Bluff Road, and is further identified as Parcel 17 on Beaufort County Tax Map 5. Chairman DeCaigny introduced the application and opened the public hearing. Chairman DeCaigny 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 *approve* 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 the vicinity map, the applicant's narrative, an as-built of the property, and proposed subdivision plan.

The applicant is requesting a variance from the above referenced sections of the LMO in order to meet the requirements to change the use designation of the subject property from a Multi-Family Residential to a Single Family Residential Major Subdivision. The applicant has no plans at this time to change the development of the land. The layout and design will

remain the same. The development will function the same way it was originally intended. The only change the applicant is proposing is to change the use designation.

The applicant met with the staff several times over the last year to discuss their desire to modify the use designation of the existing Tidal Bluff development from a multi-family residential to a single family attached major subdivision. The built environment, consisting of fifteen buildings with two units in each separated by firewalls, will not change. Boundary lines will be inserted between the current units on a subdivision plat. In order to do so, the applicant needs to comply with the subdivision requirements that are outlined in the LMO. Because the development is existing, the applicant is limited with what site changes he can make. He is proposing to make Tidal Bluff Road a right-of-way, which is a requirement for a major subdivision, but there are several subdivision requirements that the applicant cannot meet.

The applicant is requesting a variance to change the use designation of the existing Tidal Bluff development from a multi-family residential development to a single family attached major subdivision. Currently Tidal Bluff is owned by CJT Real Property, LLC who rents the units to long term tenants. The owner wishes to terminate the horizontal property regime and re-configure the development as thirty single family residences. The applicant states that the change in legal structure is desirable because lenders in the current real estate market prefer to lend to owners whose security is single family residences as opposed to condominium units.

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

Mr. Bret Pruehs, McNair Law Firm, presented statements in support of the application. The Board, the applicant, and the staff discussed the requested change in use designation of the property from condominium (Multi-Family Residential) to Single Family Residential Major Subdivision. Ms. Dixon stated that in order to turn the property into a Single -Family attached subdivision the applicant needs to meet the subdivision regulations outlined in the LMO. Additional paving in some of the areas will be required along the edge of the drive aisle. The development will continue to exist and function as it does today. Ms. Dixon reviewed the four sections of the LMO pertaining to the application.

Vice Chairman Kristian stated his concern with changing the use from condominium (Multi-Family Residential) to a Single Family Residential Major Subdivision. Ms. Dixon stated that the property is owned by one property owner.

Mr. Bret Pruehs and the Board discussed several issues including the ownership of the property and future plans for the property. The property owner has no plans at this time to sell the property. The owner plans to operate the property as it exists today. The Board stated concern with the application's inability to meet LMO requirements. The Board stated their concern with granting a variance for financial gain as well as potential displacement of the property's renters. Selling the property off to individual investors could pose a real concern with upkeep and maintenance.

Ms. Dixon stated that the Town has no jurisdiction in overseeing covenants. The Property Owners Association (POA) will continue to maintain the common space for this property. The Board stated concern with taking action on this application that will ultimately result in the deterioration of the property. The Board stated that they are not comfortable approving the application as presented today because they have concerns with future maintenance and upkeep of the property. The Board stated that they would like to receive assurance from the applicant on what the covenants contain prior to taking action on the application.

The Board requested a brief recess in their deliberations at 3:40p.m. The Board reconvened the meeting at 3:50p.m. Following final discussion between the Board, the applicant, and the staff, the applicant requested that action by the Board on this application be postponed to the April 22, 2013 meeting. This will allow time for the staff to research a couple of outstanding issues. The Board granted the request. Chairman DeCaigny stated that action on Application for Variance Request VAR130003 is remanded to the April 22, 2013 meeting.

9. Board Business

None

10. Staff Report

Ms. Dixon presented the Waiver Report to the Board.

11. Adjournment

The meeting was adjourned at 4:30p.m.

Submitted By:

Approved By:

April 22, 2013

Kathleen Carlin
Secretary

Roger DeCaigny
Chairman