

**TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
**Minutes of the Monday, September 23, 2013 Meeting**  
**2:30p.m. - Benjamin M. Racusin Council Chambers**

**APPROVED**

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

Board Members Absent: Michael Lawrence

Council Members Present: Lee Edwards and Bill Harkins

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator  
Teri Lewis, LMO Official  
Brian Hulbert, Board Attorney  
Charles Cousins, Director of Community Development  
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 sadly reported that the Board of Zoning Appeals has lost one of its members. Mr. Stephen Murphy, who had been a Board member since July 2009, passed away suddenly on August 24, 2013 at his Connecticut home. Mr. Murphy's participation and contributions to the Town's Board of Zoning Appeals will be greatly missed.

Chairman Kristian then presented an introduction to the Board's procedures for conducting the business meeting. Today's agenda has been revised to include a motion to dismiss Application for Appeal APL130006 (scheduled for review on October 28, 2013.) Following this introduction, Chairman Kristian requested that a motion be made to approve the agenda.

**5. Approval of the Agenda**

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

**6. Approval of the Minutes**

Vice Chairman Stanford made a **motion** to **approve** the minutes of the July 22, 2013 meeting as presented. Mr. Campbell **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**7. Unfinished Business**

None

**8. New Business**

A) **APL130004**: Request for Appeal from Bonnie and Steve Fisher. The appellant is appealing the Town's decision (made on July 16, 2013) that the materials covering the windows at 123 Mathews Drive are considered to be signs. Chairman Kristian introduced the application and requested that staff make their presentation.

Ms. Teri Lewis made the presentation on behalf of staff. The staff has received an appeal from Steve and Bonnie Fisher regarding the July 16, 2013 letter stating that the materials covering the windows at 123 Mathews Drive are considered to be window signs. The appellants are appealing the Town's decision that these materials are considered to be signs and are asking that the Board reverse the decision of the Land Management Ordinance (LMO) Official and find that the materials are not signs and therefore can remain.

Ms. Lewis presented an in-depth overhead review of the application including correspondence between Town staff and Mrs. Bonnie Fisher, correspondence from the Floors to Go Director of Marketing, and Before and After photographs of the site. The Board and staff discussed the definition of a sign as defined by the LMO. At the completion of the staff's presentation, Chairman Kristian requested that the applicants make their presentation.

Mr. Steve Fisher and Mrs. Bonnie Fisher presented statements in support of the application. Mr. and Mrs. Fisher stated that they are the business owners of Floors to Go. They are appealing the Town's decision because they believe the graphic displays are window treatments and sun protectors rather than signs. The Board and the applicants discussed a couple of issues including the size and the intent of the window signs and the requirements of the LMO's Sign Ordinance.

Vice Chairman Stanford stated that the Board of Zoning Appeals is required to follow the LMO. Vice Chairman Stanford and other Board members recommended that the applicant work with the Town staff to find some middle ground. The size of the signs needs to be reduced to a size that is compliant with the LMO (no more than 25% of the window size.) The applicants stated that they will work with staff in an effort to redesign the signs. At the completion of the Board's discussion, Chairman Kristian requested that a motion be made.

Mr. Stanford made a **motion** to **remand** Application for Appeal APL130004 to staff and the appellant in an effort to bring the size of the signs into conformance with the LMO's Sign Ordinance. The application will return to the BZA on October 28, 2013. Mr. North **seconded** the motion and the motion **passed** with a vote of 5-0-0.

**B) SER130002:** Paige Grisette is requesting special exception approval from Land Management Ordinance Section 16-4-1204, Use Table, to allow a kennel and boarding in the Commercial Center (CC) Zoning District. The property is located at 77 Arrow Road and is further identified as parcel 842 on Beaufort County Tax Map 14. 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 Ms. Anne Cyran, case manager. The staff recommended that the Board *approve* Application for Special Exception, SER130002, based on the Findings of Fact and Conclusions of Law contained in the staff's report.

Ms. Dixon presented an in-depth overhead review of the application including an aerial photo of the vicinity and an aerial photo of the site. The subject parcel is located at 77 Arrow Road in the CC Zoning District. The parcel is bound by an undeveloped lot on the northwest; Arrow Road on the southwest; a power line easement on the northeast; and Precision Auto on the southeast.

The subject parcel was developed in 1983 and contains a 7,668 square foot building with associated parking. The property was previously used as a children's day care facility. A fenced-in area behind the building was used as a playground. In August, the applicant asked the staff about the requirements for operation of a kennel and boarding facility in an existing, unoccupied building at 77 Arrow Road. The staff informed the applicant that these uses would require a special exception. Ms. Dixon reviewed the Findings of Fact and Conclusions of Law contained in the staff's report. Following the staff's presentation, Chairman Kristian requested that the applicant make her presentation.

Ms. Paige Grisette presented statements in support of her application. The Board and the applicant discussed several issues including the indoor/outdoor containment of the dogs. They also discussed concerns with noise and the need to buffer the area against noise. At the completion of the applicant's presentation, Chairman Kristian requested public statements and the following were received in opposition to the application:

Westin Newton, Esq., legal representative, for Wexford Homeowners Association; Ms. Susan Fishel, General Manager, Wexford; Mr. Tom Wirth, resident; Mr. Mike Levine, resident; Ms. Penny Cozzi, resident; Mrs. Laura Levine, resident; and Mr. Alan Gragano, resident. All public comments were in opposition to the application due to concerns with noise nuisance and negative impacts on Wexford's property values. Following all public comments, Chairman Kristian stated that the public hearing for this application is closed.

Chairman Kristian requested additional information from the staff regarding their interpretation of the word "kept". Ms. Dixon stated that this word is interpreted to mean where the animals sleep or are housed indoors. The Board and staff discussed a couple of other issues including the location of the pathway in relationship to the property line.

The Board and staff also discussed the Findings of Fact and Conclusions of Law, particularly with regard to the application's compliance with Criteria # 3 and Criteria # 4. The Board asked the staff if they could place a condition on their approval of the application. Ms.

Dixon stated that conditions may not be placed on a special exception application.

Brian Hulbert, Staff Attorney, stated that he agrees with Ms. Dixon that conditions may not be placed on a special exception application. Town staff does not have the manpower or the expertise to enforce conditions that are placed on a special exception application.

As part of the discussion, the Board asked Ms. Grisette if she would be willing to work to buffer the property against noise nuisance. Ms. Grisette stated that she would be willing to work to buffer the noise. A couple of Board members stated their concern with the noise issue as well as the application's lack of compliance with Criteria # 3 and Criteria # 4. Following final discussion by the Board, Chairman Kristian requested that a motion be made.

Vice Chairman Stanford made a **motion to deny** Application for Special Exception, SER130002 on the grounds that the application violates Criteria # 3 & Criteria # 4 and presents detrimental disturbance to surrounding lands. Vice Chairman Stanford stated the application is in violation of LMO Section 6-4-1332, which prohibits kennels with outdoor runs. There was no second to the motion and the motion **failed**. Chairman Kristian then requested that a second motion be made.

Mr. North made a **motion to approve** Application for Special Exception, SER130002. Mr. Campbell **seconded** the motion. Chairman Kristian stated that he would not be in favor of the motion because of being sympathetic to the concerns of the residential neighborhood. Chairman Kristian stated that his approval of the application would be contingent on the placement of conditions that would be enforceable by the Town. In the absence of those conditions, he would not be in favor of the motion. Mr. Campbell presented statements in support of the motion due to the location of other boarding facilities operating in close proximity to residential neighborhoods.

Following final discussion by the Board, the motion to **approve** Application SER130002 **passed** with a vote of 3-2-0.

C) **VAR130007**: Roger Freedman is requesting a variance from Land Management Ordinance Sections 16-5-704, Minimum Required Setback Area, 16-5-806, Required Buffers, and 16-5-809, Permitted Activity in Other Buffer Areas, to allow an aerial ropes course to be located in the adjacent use setback and buffer. The property is called Zip Line Hilton Head, located at 33 Broad Creek Marina Way and is further identified as parcel 379 on Beaufort County Tax Map 11. 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. Staff recommended that application VAR130007 be *denied* because the application does not meet all six of the required criteria. Ms. Dixon presented an in-depth overhead review of the application including an aerial photo of the site and a complete review of the project.

The subject parcel along with a few surrounding properties are developed as Zip Line Hilton Head. It is surrounded by Town-owned property, the Broad Creek Marina Boat Storage Facility, Indigo Run and the waters of Broad Creek. The project was developed and launched in the spring of 2012, and since has had approximately 17,000 people take the 2 hour zipline tour.

The owner now wishes to expand the project to include an aerial ropes course through the trees, which would be located in the adjacent use setback and buffer adjacent to Town-owned property. Ms. Dixon reviewed the Findings of Fact and Conclusions of Law contained in the staff's report. The Board and staff discussed several issues including the location of the project in the buffer, the definition of a buffer, and the purpose of a buffer. The project is not listed as a permitted activity in the buffer. Ms. Dixon discussed the fact that even though the application does not meet all six variance criteria, the Town did provide a letter to the applicant stating they did not object to the application as an adjacent property owner. Following the staff's presentation, Chairman Kristian requested that the applicant make his presentation.

Mr. Roger Freedman, property owner, presented statements in support of the application. Mr. Freedman presented a brief history of the existing site and his desire to add an aerial ropes course to the property. The Board and the applicant discussed the intent of the project and the unique size of the property. Mr. Freedman stated that he believes his application fits the intent of the Land Management Ordinance. Following the applicant's presentation, Chairman Kristian requested public comments and none were received. Chairman Kristian stated that the public hearing for this application is closed.

The Board discussed the Findings of Fact and Conclusions of Law contained in the staff's report. The Board discussed the Town's goal of promoting business on Hilton Head Island. The Board stated that the application causes no harm to adjacent property owners. It is located on a very narrow parcel of land and enforcement of the buffer seems unreasonable in this case. Following final comments by the Board, Chairman Kristian requested that a motion be made.

Mr. North made a **motion** to **approve** Application for Variance VAR130007 based on the following Findings of Fact and Conclusions of Law:

Criteria # 1 – We find that because of the configuration and location of the parcel, there are extraordinary and exceptional conditions pertaining to the particular piece of property.

Criteria # 2 – Because of the uniqueness of the parcel, these conditions do not generally apply to other properties in the vicinity.

Criteria # 3 – We find that the application of the LMO to this particular piece of property would affectively prohibit or unreasonably restrict the applicant's utilization of the property.

Criteria # 4 – We find this hardship is not the result of the applicant's own actions.

Criteria # 5 & # 6 – We agree with the staff's Findings of Fact and Conclusions of Law.

Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 5-0-0. Mr. Roger Freedman expressed his appreciation to the Board and to staff for their professional assistance with this application.

**D) Motion to dismiss appeal** filed by Curtis L. Coltrane on behalf of Alethea W.

Jackson and David Jackson regarding **Application for Appeal APL130006** (scheduled for review on October 28, 2013.)

Chairman Kristian introduced the motion to dismiss Application for Appeal AP130006 filed by Curtis Coltrane on behalf of his clients, Mr. and Mrs. David Jackson (scheduled for review on October 28, 2013.)

Rand E. Hanna, III, Esquire, presented opening statements on behalf of the applicant and its successor and title, HSSC, LLC. Mr. Hanna stated that he represents Dr. Singh, an investor in 217 Beach City Road, LLC. Dr. Singh and other investors were the owners of this project prior to September 2013. Mr. Hanna presented a brief history of the project. 217 Beach City Road, LLC, was formed in January 2009.

Dr. Singh was one of several passive investors in the company. Other investors in the project included the White sisters of Hilton Head Island. Beach City Place was originally approved for 32 single-family building lots along with associate common areas on approximately 8.25 acres. Mr. Hanna presented details regarding the bankruptcy status and subsequent law suit filed against the company by Mrs. Alethea White, one of the White sisters. Mr. Hanna also discussed the restrictive covenants associated with the property. Mr. Hanna stated that the draft covenants for this property were never finalized or timely filed.

Mr. Hanna stated that his client would like to place a manufactured home on Lot # 1, Beach City Place, located at 2 Circlewood Drive. Mr. Hanna stated that his client would like to work with the White sisters on an agreeable solution to development of this property. Mr. Hanna stated that there are no provisions in the Town's Land Management Ordinance that would prohibit the placement of a manufactured home or other factory built housing on Lot # 1 of Beach City Place (or on any other subdivided lot in Beach City Place.)

The Board and Mr. Hanna discussed several issues including the correspondence from the Town, the zoning district RM-4, and the lack of recorded covenants for the property. The Board and Mr. Hanna also discussed the intent and timeliness of the application for appeal. Vice Chairman Stanford and Mr. Hanna discussed the grounds for the application for appeal.

Mr. Hanna requested that the Board dismiss this appeal on two grounds: (1) the letter and the approvals are ministerial acts rather than an interpretation or determination of the Administrator; and (2) the appeal was filed in an untimely manner.

Following Mr. Hanna's presentation, Chairman Kristian invited Curtis Coltrane, Esq. to make his presentation to the Board

Curtis Coltrane, Esq., presented statements on behalf of his clients, Alethea W. and David Jackson. Mr. and Mrs. Jackson are property owners of Lot # 8, Beach City Road, Beach City Place Subdivision. Mr. Coltrane stated that his clients object to the Board's consideration of the motion to dismiss filed by HSSC, LLC. This objection is because there is no authority in either the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 or the Land Management Ordinance of the Town of Hilton Head Island, or the Board of Zoning Appeals' Rules of Procedure for filing to allow this.

The Board should, therefore, decline to hear it or rule on it.

Mr. Coltrane stated that he disagrees with many of the statements and interpretations presented by Mr. Hanna. Mr. Coltrane and the Board discussed the Board's authority in determining this application. Mr. Coltrane presented statements regarding due process. Mr. Coltrane presented statements with regard to the timelines of the application. Chairman Kristian and Mr. Coltrane discussed a couple of issues including if the application was properly filed. The Board and Mr. Coltrane discussed the lack of a process in deciding this matter.

It is unfair to his client. It denies people due process because they do not know what to do.

Mr. North presented statements with regard to the administrative law side of the discussion and material issue of facts.

Chester C. Williams, Esq., also presented statements in support of Application for Appeal APL130006. Mr. Williams and the Board discussed the Board's ability to hear a motion to dismiss.

Mr. Williams reviewed his conversation with Ms. Donna Horsman, Planning Assistant, on June 11, 2013. Mr. Williams stated that at that time he requested a written determination by the LMO Official that there are no provisions in the Town's LMO that would prohibit the placement of a manufactured home or other factory built housing on Lot # 1 of Beach City Place.

Mr. Williams and the Board discussed the notification issue and the timeliness of the appeal. Mr. Williams stated that there is no requirement for notification to surrounding property owners in this matter. It is a constructive notice issue only.

Mr. Coltrane stated that this is not a constructive notice issue. Mr. Coltrane presented statements regard to the notification issue. 14-days from the date of receipt by the Town.

Brian Hulbert, Board Attorney, presented statements regarding the Board's authority. Inherent in their ability to hear the case, the Board needs to use its own judgment to decide whether to hear a motion to dismiss or not. Mr. Hulbert stated that he agrees with the movers of this position. The other issue before the Board is more difficult that is regarding the restrictive covenants. Mr. Hulbert discussed the issue of restrictive covenants and the notification issue to Mr. and Mrs. Jackson.

Mr. Hulbert and Chairman Kristian discussed the issue of covenants and the substance of the issues. The Town does not have the authority to decide covenants on private land. The issue is very complex and difficult to understand. The Board discussed the circuit courts action in this matter (which is not a final determination). The Board, Mr. Williams and Mr. Coltrane discussed the Town's code for manufactured homes and restrictive covenants. At the completion of the discussion, Chairman Kristian requested that a motion be made.

Vice Chairman Stanford made a **motion** that the motion to dismiss be **denied** on the grounds that: (1) this board has the authority to act on motions to dismiss; and (2) the appeal was timely filed. Mr. North **seconded** the motion and the motion **passed** with a vote of 5-0-0.

Chairman Kristian requested that staff develop draft procedures to hear motions to Dismiss an Appeal. The draft procedures should be brought to the Board for consideration as soon as they are available.

**9. Staff Report**

None

**10. Adjournment**

The meeting was adjourned at 5:30p.m.

Submitted By:

Approved By:

October 28, 2013

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Kathleen Carlin  
Secretary

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Peter Kristian  
Chairman

