

**TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
**Minutes of the Monday, February 24, 2014 Meeting**  
**2:30p.m. - Benjamin M. Racusin Council Chambers** **Approved**

Board Members Present: Chairman Peter Kristian, Vice Chairman Glenn Stanford, Irv Campbell, David Fingerhut, Michael Lawrence and Steve Wilson

Board Members Absent: P. Jeffrey North

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator  
Anne Cyran, Senior Planner  
Teri Lewis, LMO Official  
Heather Colin, Development Review Administrator  
Brian Hulbert, Board Attorney  
Jayme Lopko, Senior Planner  
Charles Cousins, Director of Community Development  
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. Chairman Kristian stated that he will recuse himself from review of application for appeal, APL130008, appearing under Unfinished Business, due to a professional conflict of interest. Vice Chairman Stanford will assume the role of Chairman for the review of APL130008.

**5. Approval of the Agenda**

Chairman Kristian requested that a motion be made to approve the agenda. Vice Chairman Stanford made a **motion** to **approve** the agenda as presented. 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 January 24, 2014 meeting. Mr. Lawrence made a **motion** to **approve** the January 24, 2014 minutes as presented. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 5-0-1. Mr. Campbell abstained from the vote due to his absence from the meeting.

Chairman Peter Kristian recused himself from review of the following application, Application for Appeal, APL130008, based on a professional conflict of interest. A Conflict of Interest Form was completed and signed by Chairman Kristian and attached to the record. Chairman Kristian requested that Vice Chairman Stanford serve as Acting Chairman for this portion of the meeting.

Mr. Irv Campbell recused himself from review of APL130008 due to his absence from the first hearing of the application on January 24, 2014. Mr. Campbell completed and signed a Conflict of Interest Form for the record.

## 7. **Unfinished Business**

### **APL130008:**

Request from Brad Wainwright. The appellant is appealing the Town's decision on October 23, 2013 to issue approval of a minor zoning map amendment to change the land use designation on a portion of parcel 60 on Tax Map 3 from 'Open Space' to 'Open Space/Telecommunication Facilities'.

Acting Chairman Stanford presented brief comments regarding the first hearing of the appeal on January 24, 2014. Since that time the Board has received notification from the applicant for the zoning map amendment that they intend to withdraw their application for the zoning map amendment.

Acting Chairman Stanford requested that a motion be made for the Board to go into an Executive Session to receive legal advice from Brian Hulbert, Board Attorney, concerning the procedures that are applicable to this matter. The Board agreed to meet in an Executive Session with Mr. Hulbert. Acting Chairman Stanford then requested that a motion be made.

Mr. Wilson made a **motion** for the Board to go into an Executive Session. Mr. Lawrence **seconded** the motion and the motion **passed** with a vote of 4-0-0. Acting Chairman Stanford called a recess in the proceedings at this time.

When the meeting resumed, Acting Chairman Stanford stated that the Board met with Board attorney, Brian Hulbert, to receive legal advice concerning several procedural matters. No decisions concerning application for appeal APL130008 have been made.

Acting Chairman Stanford stated that Crown Castle has requested to withdraw their application for the zoning map amendment. That request was denied by the Town because the Town had already acted on the application. Subsequently, Crown Castle made a request that the Town rescind the Notice of Action. The Town agreed to rescind the Notice of Action. The question before the Board at this time is whether this matter is now moot.

Chester C. Williams, Esq., counsel for the appellant, Mr. Brad Wainwright, presented statements on behalf of his client. Mr. Williams stated that he had not been informed that Crown Castle had requested to rescind the Notice of Action in this matter.

Jack Qualey, Esq., counsel for Hilton Head Plantation and for Crown Castle also presented brief statements on behalf of his clients. Mr. Qualey stated that he was aware of the rescission of the Notice of Action but not the request to withdraw the zoning map

amendment application. Mr. Qualey stated that he believes the end result is the same, however, because Crown Castle has requested rescission of the Notice of Action.

Brian Hulbert, Board Attorney, presented statements regarding the issue. Mr. Hulbert stated that Acting Chairman Stanford is correct in his summation of facts. The case manager for the zoning map amendment application, Mrs. Jayme Lopko, presented statements on behalf of the staff regarding the timeline of events.

Jack Qualey, Esq., stated that the Town staff believes that it is at the discretion of the Board to decide whether or not they can or will accept the end of this appeal. Since the Town has rescinded the notice of action, it appears that the application for appeal is now moot.

Mr. Qualey stated that he, the appellant, Mr. Brad Wainwright, and his legal counsel, Chester Williams, have come to an agreement on several issues that they would like to bring before the Board for their consideration.

Mr. Qualey, Mr. Wainwright, and Mr. Williams jointly request that the Board accept the notice of rescission that was requested by Ms. Jenna McKee, attorney for Crown Castle, on behalf of Zoning Map Amendment application, ZMA130005. They jointly ask that the Board accept the letter from Mrs. Jayme Lopko to the applicant confirming that the Notice of Action regarding the zoning map amendment was rescinded on February 14, 2014. Mr. Qualey requested that this become part of the official record.

Mr. Qualey stated that the Board is also asked to affirm the decision of that action at the request of the zoning map amendment applicant. Also the Board should confirm that the application for the zoning map amendment is void because it has been rescinded. In addition, we further ask that the Board confirm that this application for appeal is ended.

Mr. Williams requested that the fee paid to the Town for the application for appeal be refunded to the appellant, Mr. Wainwright. Acting Chairman Stanford asked if Mr. Williams is in agreement with the statements just presented by Mr. Qualey. Mr. Williams stated that he is in agreement with these statements.

Acting Chairman Stanford then requested that the staff make their presentation. Ms. Teri Lewis stated that the staff has two concerns: (1) the first is related to the voiding of the application for zoning map amendment as this may be a matter outside of the Board's jurisdiction; (2) the refund of the fee for the application for appeal is also not before the Board. The staff will need to review the LMO to determine whether the fee can be refunded to the appellant.

Chester Williams, Esq., stated that he believes this matter is correctly before the Board of Zoning Appeals and the Board should ratify the action. Following final discussion by the Board, Acting Chairman Stanford requested that a motion be made.

Mr. Fingerhut made a **motion** that the Board should **dismiss** application for appeal, APL130008, as moot based on the representations of both of the parties in this matter. The Board should not be giving advisory opinions on these issues. Acting Chairman Stanford stated that he agrees with this statement. Mr. Lawrence **seconded** the motion and the motion **passed** with a vote of 4-0-0.

**8. New Business  
Public Hearing**

**VAR130015:**

Cameron & Cameron Custom Homes, on behalf of Sheila Hammer, is requesting a variance from Land Management Ordinance Section 16-6-204, Wetland Buffers, to build a pool in a portion of the wetland buffer. The subject parcel is located at 19 Knightsbridge Lane and is further identified as parcel 337 on Beaufort County Tax Map 15D. Chairman Kristian introduced the application and opened the public hearing. Chairman Kristian then requested that the 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 the vicinity map, an aerial photo, the site plan and photos of the existing conditions. 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 19 Knightsbridge Lane in Wexford Plantation in the PD-1 Zoning District. The subject parcel is bound by an undeveloped parcel on the north, Knightsbridge Lane on the east, a single family house to the south and a tidal wetland (lagoon) to the west.

Wexford Plantation's tidal wetland was developed between 1979 and 1986. The subject parcel is separated from the wetland by a concrete bulkhead, as are most of the parcels adjacent to the wetland in Wexford. The State of South Carolina's Department of Health and Environmental Control's (DHEC) Ocean & Coastal Resource Management (OCRM) determined that the tidal wetlands Critical Line (the boundary of the wetland system) is located at the edge of the bulkhead.

Land Management Ordinance (LMO) Section 16-2-204, Wetland Buffers, requires a 20-foot buffer from tidal wetlands for single family residential structures and uses. These wetland buffer standards have been in place since the LMO was enacted in 1987. Most properties in the vicinity of the subject parcel have wetland buffers that do not conform to the standards of the LMO because they have sod or non-native vegetation planted in the wetland buffer.

A building permit was issued for a new house on the subject parcel on February 19, 2013. Andrea Eldred of Cameron & Cameron Custom Homes approached Town staff in December 2013 with an application to add a pool. The staff informed Ms. Eldred that, because the proposed pool was shown in the 20-foot wetland buffer, a variance would be required prior to review and approval of a building permit for the pool.

Along with the variance request, the applicant submitted a proposed landscape plan for the wetland buffer to mitigate the effects of the encroachment of the pool into the buffer. The Town's Environmental Planner has approved the proposed landscape plan.

Ms. Cyran presented 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 his presentation.

Mr. Nathan Cameron, Cameron & Cameron Custom Homes, agent for the applicant, presented statements in support of the application. Chairman Kristian and the applicant discussed the six criteria necessary for approval of the application. Ms. Andrea Eldred also presented statements on behalf of the applicant. Ms. Eldred reviewed several of the criteria and stated that she believes the application should be approved. There are several existing homes in Wexford with non-compliant pools that encroach into the buffer. The applicant and the Board discussed several issues including the wetland buffer and the landscaping plan.

Following the applicants' presentation, Chairman Kristian requested public comments and the following were received: (1) Ms. Deb Palazzo, Wexford Plantation representative, presented statements with regard to the existing bulkhead and 20-foot buffer from the tidal wetlands; (2) Mr. Dean Pierce, Esq., counsel for adjacent property owners, presented statements in opposition to the application.

Following all public comments, Chairman Kristian stated that the public hearing for this application is closed. The Board discussed several issues including the OCRM critical line and the existing non-conforming properties in Wexford. Several Board members expressed concern with the existing non-conforming pools in Wexford. Chairman Kristian stated that the Board is required to follow the LMO in addressing all six of the required six criteria. Following final comments by the Board, Chairman Kristian requested that a motion be made.

Mr. Fingerhut made a **motion** that the Board should adopt the staff's recommendation for **denial** of VAR130015 based on the Findings of Fact and Conclusions of Law contained in the staff's report. Mr. Lawrence **seconded** the motion and the motion **passed** with a vote of 4-2-0. Ms. Heather Colin presented statements on behalf of staff with regard to waivers and non-conformities contained in the LMO. These issues will need to be decided if other properties in Wexford wish to develop or redevelop in the future.

**9. Board Business**

None

**10. Staff Report**

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

**11. Adjournment**

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

Submitted By:

Approved By:

Approved By:

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Kathleen Carlin  
Secretary

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Glenn Stanford  
Acting Chairman  
(For review of APL130008)

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Peter Kristian  
Chairman  
(For review of VAR130015)