

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the Monday, April 28, 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, P. Jeffrey North and Steve Wilson

Board Members Absent: Michael Lawrence

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Anne Cyran, Senior Planner
Teri Lewis, LMO Official
Brian Hulbert, Staff Attorney
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

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. Wilson **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 February 24, 2014 meeting. Vice Chairman Stanford made a **motion** to **approve** the February 24, 2014 minutes as presented. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 6-0-0.

7. Unfinished Business

None

8. New Business
Public Hearing

SER140001: 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 25 Bow Circle and is further identified as parcel 860 on Beaufort County Tax Map 14.

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. The staff recommended that the Board of Zoning Appeals *approve* the application based on the Findings of Facts and Conclusions of Law.

The subject parcel is located at 25 Bow Circle in the CC Zoning District. The subject parcel is bound by Bow Circle to the northeast, the Church of Christ to the southeast, Palmetto Bay Road and an undeveloped lot owned by the Town of Hilton Head Island to the southwest, and an undeveloped lot owned by the Town of Hilton Head Island to the northwest.

The subject parcel was developed in 1982 and contains a 5,566 square foot building with an attached garage and associated parking. The property was previously used by the South Island Public Service District as an office.

The applicant is requesting special exception approval to operate a kennel and boarding facility in the Commercial Center (CC) Zoning District per the requirement of LMO 16-4-1204, Use Table. The applicant's narrative states that the business will operate in the existing building and that no site changes will be required to accommodate the use. The applicant states the proposed use will be compatible with surrounding uses because the use is consistent with the Character and Purpose of the CC Zoning District and the site is already developed. The applicant states the proposed uses will not be a nuisance to neighboring properties because measures will be taken to minimize noise and odor. These measures include:

- Keeping the dogs inside at all other times. The dogs will only be taken outside to relieve them;
- Not taking the dogs outside during the bible class and worship services of the adjacent church;
- Not allowing owners to pick up dogs during the bible class and worship services of the church;
- Designing the interior space so that 89% of the kennels face away from the church;
- Constructing a privacy fence around the area where the dogs will relieve themselves to limit the dogs' vision of stimulus and prevent barking;
- Using ultra-sonic emitters and/or collars to discourage the dogs from barking;
- Immediately bagging waste and depositing it in lid-tight containers;
- Using a bacteria-killing cleaning product to clean the driveway on a daily basis;
- Creating 37 kennels, which will allow greater separation of the dogs and the ability to manage noise;
- Using an existing sound-proof room in the center of the building for a play area;
- Replacing the existing garage door with a heavier, more insulated door so the garage can be used as a play area while minimizing noise.

Ms. Cyran presented the staff's Findings of Fact and Conclusions of Law. At the completion of the staff's presentation, Chairman Kristian requested that the applicant make her presentation.

Ms. Paige Grisette presented a brief history of the application and discussed the measures that she will take to minimize the noise and odor associated with this business. Following the applicant's presentation, Chairman Kristian requested public comments and the following were received. The following citizens presented statements in opposition to the application due to their concerns with noise and sanitation issues:

(1) Ward Borden, Esq., (on behalf of Church of Christ); (2) Dan Hammond, Minister, Church of Christ; (3) (unidentified Church member); (4) Bill Mitsker, Church member; (5) Dan Grayhouse, Church Elder; (6) Dave Mathews, Church member; (7) Drew Hendricks, Church Elder; (8) Mary Kay Mitsker, Church member; (9) Samuel Kraft, Church member.

The following citizens provided public comments in support of the application based on their friendship/business relationship with Ms. Paige Grisette: (1) John Hansel; (2) Sharon Saunders; (3) Ann Lawless; (4) Don Baker; and (5) Jean Hansel.

Following the receipt of all public comments, Chairman Kristian stated that the public hearing for this application is closed.

Vice Chairman Stanford and Mr. Brian Hulbert, Staff Attorney, discussed the application and enforcement of the associated conditions. Mr. Hulbert presented statements in concern of the Town's ability to enforce Code violations and Public Nuisance violations on Sundays.

Board member, Mr. North, and Mr. Hulbert discussed imposing the conditions that are associated with the potential approval of the Special Exception application. Due process must be considered. Mr. Hulbert discussed the Town's procedure for handling violations of the Municipal Code and Public Nuisance laws.

Chairman Kristian stated his concern with the business being counter indicated with the Church's Sunday worship schedule and extensive social programs throughout the week. Ms. Grisette stated that she wishes to be a good neighbor and will work with the Church to alleviate their concerns with her business. The Board inquired about the applicant's level of interest in working with the Church to accommodate the Church's worship schedule and social schedule. Ms. Grisette emphasized her interest in being a good neighbor and working with the Church.

As part of the discussion, Vice Chairman Stanford stated that he is very impressed with the applicant, her business model, and her intent to be a good neighbor. However, this type of commercial use has the built-in risk and exposure of being detrimental or disturbing to the present surrounding land due to its use, odor or general nuisance which is Criteria # 4. Vice Chairman Stanford stated that he does not believe that this application complies with Criteria # 4.

The Board discussed if the application is a lawful use of the property in accordance with the requirements of the Town of Hilton Head Island. Regardless of how they may feel on an emotional level, the Board stated that they need to decide if the application is compliant

based on the law. The Board discussed several of the staff's Findings of Fact and Conclusions of Law. The Board also discussed the conditions that may be attached to their approval of the application. Following final comments by the Board, Chairman Kristian requested that a motion be made.

Mr. North made a **motion** that the Board **approve** Application for Special Exception, SER140001, based on the staff's Findings of Fact and Conclusions of Law. Approval of the application is subject to the conditions and representations that Ms. Paige Grisette has made today.

Ms. Grisette has stated that she will work with the elders of the Church of Christ to adjust the drop-off and pickup schedule of dogs in order to accommodate the legitimate interests of the Church including the Church's Sunday Worship Schedule, social schedule and other occasional activities. Although the Board may not be in a position to legally impose these conditions, it will be incumbent upon Ms. Grisette to work effectively with the Church. Ms. Grisette should work with the Church of Christ to accommodate their worship services, their social calendar, as well as other activities. A calendar of Church events including a schedule of worship services, bible studies, as well as other Church activities should be secured by Ms. Grisette. It also should be the responsibility of Church officials to keep Ms. Grisette and her business staff informed of the Church's schedule. Proper notice should be provided to the applicant of all Church activities that may affect the drop-off and pick up schedule.

Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-1-0. Vice Chairman Stanford was opposed to the motion.

Public Hearing

VAR140001: Joel Lewis, on behalf of Frank and Cheri Sloane, is requesting a variance from Land Management Ordinance Section 16-5-704, Minimum Required Setback Area. The applicant proposes to build a single family house that encroaches into adjacent use setbacks. The subject parcel is located at 9 Mossy Oaks Lane, further identified as Parcel 487 on Beaufort County Tax Map 12. 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. The staff recommended that the Board of Zoning Appeals *disapprove* the application based on the Findings of Facts and Conclusions of Law contained in the staff's report. Ms. Anne Cyran presented an in-depth overhead review of the application including the site plan, vicinity map, zoning map and aerial photo.

The subject parcel is located at 9 Mossy Oaks Lane in the RM-4 Zoning District. The subject parcel is a corner lot, bound by Mossy Oaks Lane on the north and west, a single family house on the east, and an undeveloped lot on the south. The subject parcel is undeveloped.

The property owners hired the applicant, Joel Lewis of Castle Point Construction, to design a house with the primary living space on the ground floor with guest rooms on the second floor. The Crosswinds Property Owners' Association and Architectural Review Board require that homes are built with a minimum of 2,400 heated square feet. Mr. Lewis designed the house based on plat notes stating that the parcel's setbacks are 10 feet from Mossy Oaks Lane, 15 feet behind the lot and seven feet from the adjacent lot to the south.

The applicant approached Town staff for a variance to allow the garage to encroach four feet into the 15 foot setback behind the lot. Town staff informed the applicant that the setback on the south side of the parcel is 15 feet wide, not seven feet wide, and that the house is shown encroaching four feet into that setback as well.

The Crosswinds Phase II subdivision plat shows the subject parcel has a 10 foot setback from Mossy Oaks Lane, a 15 foot setback from the adjacent lot to the south and a 15 foot setback behind the lot to the northeast. All of the parcels along that section of Mossy Oaks Lane have a 10 foot setback from Mossy Oaks Lane and a 15 foot setback on the northeast side of the parcel. However, all of the other parcels along that section of Mossy Oaks Lane have a seven foot setback from the adjacent lot to the north or south instead of a 15 foot setback like the subject parcel.

The Town of Hilton Head Island Land Management Ordinance (LMO) Section 16-5-205.A requires a five foot setback along all internal property lines for lots divided into single family detached homes. Further, LMO Sections 16-5-704.B and 16-5-806.B require a 20 foot setback and buffer along all non-arterial streets. It is unknown why the Crosswinds subdivision was designed with larger than required setbacks along internal property lines and a smaller than required adjacent street setback and buffer.

The subject parcel is located in the Low Density Residential (RM-4) Zoning District. Thirteen lots in the Crosswinds subdivision are located in the RM-4 Zoning District, while the remaining 53 lots are located in the Planned Unit Development (PD-1) Zoning District in Indigo Run.

The fact that the subject parcel is located in the RM-4 Zoning District means that that parcel is subject to the design standards in Chapter 5 of the LMO. Any deviations from the approved subdivision plat must be approved by the Town of Hilton Head Island Board of Zoning Appeals as a variance and the request must meet all six criteria in LMO Section 16-3-1906.A. If the subject parcel was located in the PD-1 Zoning District, the parcel would be exempt from site specific design standards and the applicant's request to build in the setback would only require approval by the Indigo Run Property Owners' Association and the Crosswinds Property Owners' Association, which do not use the six criteria in LMO Section 16-3-1906.A when reviewing such deviations. Ms. Cyran presented the staff's Findings of Fact and Conclusions of Law. Following the staff's presentation, Chairman Kristian requested that the applicant make his presentation.

Mr. Joel Lewis, on behalf of Frank and Cheri Sloane, presented statements in support of the application. The applicant stated his disagreement with several of the staff's Findings of Fact and Conclusions of Law including the applicant's belief that there are extraordinary and exceptional conditions pertaining to this particular piece of property. Following the applicant's presentation, Chairman Kristian requested public comments. The property owner, Mr. Frank Sloane, presented additional comments in support of the application.

Following these public comments, Chairman Kristian stated that the public hearing for this application is closed.

Vice Chairman Stanford stated that the staff's Findings of Fact and Conclusions of Law state that the applicant failed to demonstrate that the house could not be built within the required setbacks. Vice Chairman Stanford recommended that the applicant take some extra time beyond today's meeting to design the house in such a way that it will fit within the required setback. Chairman Kristian agreed with Vice Chairman Stanford and recommended that the applicant work with the property owner to shift the design of the house so that it fits within the required footprint and setback lines. Vice Chairman Stanford stated that the BZA is constrained by the law and the applicant has not been able to demonstrate hardship. Following final discussion, the applicant decided to accept the Board's recommendation.

Following final comments, the Board agreed to **postpone** their decision on this application until the meeting on May 19, 2014. Chairman Kristian requested that a motion be made.

Vice Chairman Stanford made a **motion** that the BZA postpone their decision on Application for Variance, VAR140001, until the May 19, 2014 meeting. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 6-0-0.

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 5:15p.m.

Submitted By:

Approved By:

May 19, 2014

Kathleen Carlin
Secretary

Peter Kristian
Chairman