

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of Monday, May 19, 2014 Meeting 2:30p.m.
Municipal Court Courtroom, Building D

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

Board Members Absent: None

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
Richard Spruce, Flood Plain Administrator & Plans Examiner
Jayme Lopko, Senior Planner
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 BZA's procedures for conducting the business meeting.

5. Approval of the Agenda

Chairman Kristian requested that a change be made in the review order of today's business items. Chairman Kristian requested that Application for Appeal, APL130010, be heard first and the Board agreed to the change. Chairman Kristian requested that a motion be made to approve the agenda as revised.

Vice Chairman Stanford made a **motion** to **approve** the agenda as revised. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 7-0-0.

6. Approval of the Minutes

Chairman Kristian requested that a motion be made to approve the minutes of the April 28, 2014 meeting. Mr. Fingerhut made a **motion** to **approve** the April 28, 2014 minutes as submitted. Vice Chairman Stanford **seconded** the motion and the motion **passed** with a vote of 7-0-0.

(Chairman Kristian recused himself from review of the following New Business item, Application for Appeal, APL130010, due to a professional conflict of interest. A Conflict of Interest Form was completed, signed by Chairman Kristian, and attached to the record. Chairman Kristian requested that Vice Chairman Stanford preside over this portion of the meeting.)

Hearing

APL130010: Request from Terry A. Finger on behalf of Kittredge S. Collins and Michael Moy. The appellant is appealing the Town's determination on December 11, 2013 that the business license issued to On the Water Tours was issued in error, that the land uses assigned to the property (located at 421 Squire Pope Road) do not allow the activities conducted by On the Water Tours and that jet skis cannot be considered a form of embarkation.

Terry Finger, Esq., requested that the Board's review of this application be postponed to the June 23, 2014 meeting. The Board agreed to the appellant's request and Acting Chairman Stanford requested that a motion be made.

Mr. North made a **motion to approve** the appellant's request to postpone the review of Application for Appeal, APL130010, to the June 23, 2014 meeting. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 7-0-0.

7. Unfinished Business

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 presented a brief introduction and requested that staff make their presentation.

Ms. Anne Cyran made the presentation on behalf of staff. At the April 28, 2014 meeting, the Board postponed making a decision on this application and requested that the applicant provide a revised site plan that shows the footprint of the house moved out of the adjacent use setbacks as much as possible and more towards Mossy Oaks Lane. Ms. Cyran presented the applicant's revised site plan for the Board's review. The staff recommends approval of the application with the revised site plan. Following staff's presentation, Chairman Kristian requested that the applicant make his presentation.

Mr. Joel Lewis presented statements in support of the application on behalf of property owners, Mr. and Mrs. Frank Sloane. Mr. Lewis described several elements of the revised site plan. Following the applicant's presentation, Chairman Kristian requested public comments and none were received. Chairman Kristian then stated that the public hearing for this application is closed.

The Board discussed the revised site plan; the Board stated that they approve the revised site plan. Following this discussion, Chairman Kristian requested that a motion be made.

Mr. Wilson made a **motion** to **approve** Application for Variance, VAR140001, based on the Findings of Fact and Conclusions of Law stated in the staff's report. Approval is based on the revised site plan presented today. Vice Chairman Stanford **seconded** the motion and the motion **passed** with a vote of 7-0-0.

8. New Business
Public Hearing

VAR140002: Danielle and Jim Jacobs are requesting a variance from Land Management Ordinance Sections 16-5-704, Minimum Required Setback Area, and 16-5-806, Required Buffers, to construct exterior stairs and a patio within the 30 foot exterior boundary setback and buffer. The property is located at 27 Bellhaven Way and is further identified as parcel 50C on Beaufort County Tax Map 11. Chairman Kristian introduced the application and requested that the staff make their presentation.

Ms. Dixon presented the application on behalf of staff. Staff recommended that the Board of Zoning Appeals approve the application based on the Findings of Facts and Conclusions of Law stated in the staff's report. The staff recommended that the following condition be included: that the stairs, landing and patio are constructed only up to the 20 foot exterior boundary setback and buffer line.

Ms. Dixon presented an in-depth review of the application including the site plan, the vicinity map, and aerial photos of existing conditions. The subject parcel is located at 27 Bellhaven Way in the Mulberry Place Phase II subdivision off of Yacht Cove Drive. The parcel is bound by Shelter Cove Lane, Bellhaven Way and single family residential lots.

Ms. Dixon stated it was brought to the staff's attention that the property owner was constructing a patio in the rear of the house without a building permit. When the staff did an inspection, they found the property owner had removed trees and started building without a building permit, and that the patio was being built within the subdivision's exterior boundary setback and buffer.

The Mulberry Place Phase II subdivision was approved in May 1995. In November 1996, Thomas Brencko, Manager of Current Planning, wrote a letter outlining changes to the approval. The letter states that, "Pursuant to the Memorandum of Understanding regarding the Yacht Cove Residential Development, setbacks and buffers along the external boundaries (of the subdivision) shall be maintained in accordance with the original approvals. In (the case of Mulberry Place Phase II), the minimum setback is 30 feet."

The original approvals and Memorandum of Understanding referenced in the letter were not included in the subdivision's file. Without the approvals or memorandum, it is unclear why a 30 foot exterior boundary setback and buffer was required for this subdivision.

At the time the subdivision was approved in 1995, the LMO required a 20 foot exterior boundary setback and buffer for subdivisions. The LMO still requires a 20 foot exterior boundary setback and buffer for all single family residential subdivisions. Since the patio was already under construction, the property owner had the choice of either removing what was constructed or applying for a variance. Ms. Dixon reviewed the staff's Findings of Fact and Conclusions of Law. Following staff's presentation, Chairman Kristian requested that the applicant make his presentation.

Mr. Jim Jacobs, property owner, presented statements in support of the application. Mr. Jacobs stated that he is willing to work with the staff to be compliant with LMO regulations. Following the applicant's presentation, Chairman Kristian requested public comments and none were received. Chairman Kristian then closed the public hearing for this application.

The Board discussed the application for variance. Following their discussion, Chairman Kristian requested that a motion be made.

Vice Chairman Stanford made a **motion to approve** Application for Variance, VAR140002, based on the Findings of Fact and Conclusions of Law contained in the staff's report including the staff's recommended condition. Mr. Campbell **seconded** the motion and the motion **passed** with a vote of 7-0-0.

Hearing

Motion to Reconsider SER140001: The Church of Christ on Hilton Head Island is requesting that the Board of Zoning Appeals reconsider their decision to grant a special exception for the use of a kennel and boarding facility at 25 Bow Circle. Chairman Kristian introduced the Motion and stated that public comments are not allowed in the Motion to Reconsider. Chairman Kristian then requested that the applicant make his presentation.

Chester C. Williams, Esq., presented the petition for the Motion to Reconsider on behalf of Church of Christ. Mr. Williams gave a brief history of the Application for Special Exception Review that was approved by the BZA on April 28, 2014. The Board approved the application by a vote of 5-1.

Mr. Williams stated that approval of SER140001 is in violation of the Land Management Ordinance's density criteria. Mr. Williams stated that he believes the staff report for this application does not contain all of the required criteria for approval of the application.

Mr. Williams stated that the parking requirements are not compliant with the LMO. Twenty-five parking spaces are required; however, only 14 parking spaces are shown as available. The existing structure is non-conforming and changing the use from office to kennel will not bring the structure into conformance. Approval of the application will allow for an increase in the non-conformity of the structure. Chairman Kristian stated that the Board is only hearing the Motion for Reconsideration today.

Mr. Williams stated that the above referenced information was not included in the staff's report and was not available for consideration by the Board at their April 28, 2014 meeting. Mr. Williams stated that the use is not in accordance with the Comprehensive Plan (because an increase in non-conformity is in conflict with the Comprehensive Plan.) The Board and Mr. Williams discussed the Motion to Reconsider. Chairman Kristian requested that the staff respond to the statements presented by Mr. Williams.

Ms. Anne Cyran responded on behalf of the staff. The staff received the Petition for Reconsideration of the approval of Special Exception application SER140001 for the Red

Rover Inn on May 5, 2014. The staff's responses to the Bases for Reconsideration are as follows:

A. The Application was not complete.

Staff's response: Per LMO Section 16-3-1802, Special Exception Review – Submission Requirements, “An application for special exception review shall consist of information necessary for the Board of Zoning Appeals to make a determination regarding the special exception request, including, but not limited to the following:

1. A sketch plan showing the preliminary proposed siting of structures or use on the subject property.”

The aerial photograph of the site and the description of the proposed use in the applicant's narrative adequately address this criterion. The site is already developed, the aerial photograph shows both the existing buildings and the parking and the applicant's narrative states the proposed use will be confined to the existing structures.

B. The Application contains materially misleading information.

Staff's response: The Town does not interpret or enforce private covenants or restrictions. The applicant is responsible for ensuring the information provided on the application form and in the application materials is true, factual and complete. Per South Carolina State Code Section 6-29-1145, the Town is required to inquire if the subject parcel of land is restricted by a covenant that is contrary to, restricts or prohibits the permitted activity. The applicant stated on her application that there were not restrictive covenants; therefore the Town was not aware of any covenants on the property until such time that the Motion for Reconsideration was submitted. Staff has since reviewed the covenants submitted by the Church of Christ and believes that application SER140001 is not in violation of these covenants. There is no evidence to indicate that the normal activities or existence of the dogs at the Red Rover Inn will be obnoxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood.

In terms of the cross parking easement, the terms of the agreement do state that the Church has rights to parking on the subject site on Sundays and Wednesday evenings and that the owner of the subject property has rights to parking on the subject site on Mondays through Saturdays; however, there are provisions for both to ask for additional days or times for additional activities. Ms. Grisette made it clear in her presentation to the BZA on April 28th, 2014 that she would be willing to work around special activities of the church and staff believes that the onus is on the church to do the same with Red Rover Inn.

C. Conditions imposed on the Application are not reflected in the Notice of Action.

Staff's response: The Board's motion to approve the application was based on the staff report and the information, particularly the hours of operation proposed by the applicant, contained in the staff report, which is the LMO Official Determination. The Notice of Action states “The Board of Zoning Appeals has determined that they: Approve the application *based on those Findings of Facts and Conclusions of Law found in the LMO Official Determination.*”

D. The approved Special Exception Use violates Section 16-4-1332 of the LMO.

Staff's response: Condition A in LMO Section 16-4-1332, Kennel, Boarding/Pet Store/Veterinary Hospital, states that, "All kennels and runs and other areas where animals are to be kept must be located within the building and suitably insulated to prevent noise from reaching neighboring properties."

The condition states that the containment areas – kennels, runs and other areas – must be **kept** [emphasis added] within the building; it does not state that the animals may not leave the building at any time. As stated in the Findings of Fact for Criteria 9 in the staff report, kennels and runs and other areas where the animals will be kept are proposed to be located within the building.

Staff's response: Condition B in LMO Section 16-4-1332, Kennel, Boarding/Pet Store/Veterinary Hospital, states that, "There shall be no objectionable odors generated by the use detectable from neighboring properties."

As stated in the Findings of Fact for Criteria 9 in the staff's report, the applicant states the waste will be immediately bagged and discarded and that the elimination area will be cleaned and disinfected on a daily basis. The Town cannot assume that the applicant's plan to prevent objectionable odors from reaching neighboring properties will not be sufficient without evidence to the contrary.

Ms. Cyran also presented statements regarding the issue of non-conforming uses and non-conforming structures. Lastly, Ms. Cyran presented statements with regard to Mr. Williams' Supplement to the Motion to Reconsider. The Board questioned the issue of parking requirements with the staff. Following their discussion, Chairman Kristian requested that the applicant in this case, Ms. Paige Grisette, make her presentation.

Ms. Grisette presented brief comments in support of the application. Ms. Grisette presented statements regarding the Board's approval of the application on April 28, 2014.

Chester Williams, Esq., presented follow up statements regarding the staff's comments on parking, density, and specific conditions. Following these statements, Chairman Kristian invited discussion from the Board. Chairman Kristian requested legal advice from Brian Hulbert, Staff Attorney, with regard to the Board's action on this matter. The only Board members who can make a motion on this matter are Chairman Kristian, Mr. North, Mr. Fingerhut and Mr. Campbell (Mr. Lawrence was absent from the April 28th Board meeting and Vice Chairman Stanford was in opposition to the April 28th motion to approve.)

Following final comments, Chairman Kristian requested a motion on the Motion to Reconsider SER140001. No motion by the available Board members was made and Chairman Kristian stated that the Motion to Reconsider SER140001 is **denied** based on the lack of a motion.

For the record, Chester Williams, Esq., requested finality from the Board on the issue of the Motion to Reconsider SER140001. Mr. Williams requested that the Board either approve the motion or deny the motion. The Board stated that since a motion was not made by the Board, no additional action is needed.

10. Board Business

Chairman Kristian requested that the Board consider revising the Rules of Procedure related to the submission deadline for the staff's receipt of supplemental materials. The submission deadline is currently the Friday prior to the meeting date (i.e. 24-hours). The Board discussed the issue and agreed with the need to increase the days for the receipt of additional submission materials from one business day to four business days prior to the meeting date.

Ms. Dixon stated that she will provide the recommended revision to the Rules of Procedure as part of the June 23, 2014 packet.

11. Staff Reports

Ms. Dixon presented comments regarding upcoming training opportunities. Ms. Dixon also presented the Board members with their required hours of training.

12. Adjournment

The meeting was adjourned at 4:40p.m.

Submitted By:

Approved By:

June 23, 2014

Kathleen Carlin
Secretary

Peter Kristian
Chairman