

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals **APPROVED**
Minutes of Monday, January 26, 2015 2:30pm Meeting
Benjamin M. Racusin Council Chambers

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

Board Members Absent: Michael Lawrence

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Heather Colin, Development Review Administrator
Brian Hulbert, Staff Attorney
Charles Cousins, Director of Community Development
Kathleen Carlin, Secretary

1. Call to Order

Chairman Stanford called the meeting to order at 2:30p.m.

2. Pledge of Allegiance to the Flag

Chairman Stanford stated that starting today the BZA will open their meetings with the Pledge of Allegiance to the flag. The Pledge of Allegiance will appear on future agendas.

3. Roll Call

4. Freedom of Information Act Compliance

Public notice of this meeting has been published and posted in compliance with the Freedom of Information Act and Town of Hilton Head Island requirements.

5. Swearing in Ceremony for returning BZA member, Chairman Glenn Stanford

Brian Hulbert, Staff Attorney, performed the swearing in ceremony for returning BZA Chairman Glenn Stanford.

6. Welcome and Introduction to Board Procedures

Chairman Stanford welcomed the public and introduced the Board's procedures for conducting the business meeting.

7. Approval of Agenda

Mr. Fingerhut made a **motion** to **approve** the agenda as presented. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

8. Approval of the Minutes

Vice Chairman North made a **motion** to **approve** the minutes of the June 23, 2014 meeting as submitted. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 5-0-0.

9. Unfinished Business

None

10. New Business

Public Hearing

SER-002322-2014: Kerry Pollock of Comedy Magic Cabaret, on behalf of Richard Kolsch with Miller Family Limited Partnership, is requesting special exception approval for a comedy club per the restrictions placed on the property when it was rezoned to the Planned Development (PD-1) Zoning District on June 5, 2012. As part of the rezoning (ZMA120003), the use indoor entertainment was listed as a use that requires special exception approval. The property is located in the Palmetto Dunes Resort at 807 William Hilton Parkway and is further identified as parcel 16A on Beaufort County Tax Map 12. Chairman Stanford introduced the application and requested that the staff make their presentation.

Ms. Nicole Dixon made the presentation on behalf of staff. The staff recommended that the Board approve application SER-002322-2014 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 the vicinity map, the applicant's narrative, and the site plan.

Mr. Kerry Pollock of Comedy Magic Cabaret, on behalf of Richard Kolsch with Miller Family Limited Partnership, LLC, is requesting special exception approval for a comedy club per the restrictions placed on the property when it was rezoned to the Planned Development (PD-1) Zoning District on June 5, 2012. As part of the rezoning (ZMA120003), the use of indoor entertainment was listed as a use that requires special exception approval.

The subject parcel is located at 807 William Hilton Parkway and is currently developed with a shopping center known as Plantation Center. The property is bound by Greenwood Development marketing offices to the north, Greenwood Development property maintenance and storage yard and the Palmetto Dunes POA Office redevelopment to the east, a vacant property and the Hunter building with commercial uses to the south, and Hilton Head Chamber of Commerce and the Arts Center of Coastal Carolina buildings to the west across William Hilton Parkway.

The Comedy Magic Cabaret currently operates out of the Kingfisher restaurant in Shelter Cove. The owner of the business is wishing to relocate to the Fidelity building in Plantation Center. Plantation Center was rezoned in June 2012 from OL (Office/Institutional Low Intensity) to the PD-1 (Planned Development) Zoning District as part of the Palmetto Dunes Resort. As part of that rezoning approval, restrictions were placed on what uses were permitted and what uses would require special exception approval by the Board of Zoning Appeals. Indoor entertainment was a use that was listed as requiring special exception approval. Indoor Entertainment is now referred to as Indoor Commercial Recreation under the new LMO. The proposed comedy club is considered an indoor commercial recreation use.

Ms. Dixon reviewed the Findings of Fact and Conclusions of Law contained in the staff's report. Based on the Findings of Fact and Conclusions of Law, the LMO Official has determined that the request for a special exception should be granted to the applicant for the

proposed Indoor Commercial Recreation use in the PD-1 Zoning District because it is in conformance with the Comprehensive Plan and the Land Management Ordinance. Following staff's presentation, Chairman Stanford requested that the applicant make his presentation.

Mr. John Biddle, applicant's representative, presented statements in support of the application. The Board discussed several issues including the nature of the business and its hours of operation. Following final comments by the Board, Chairman Stanford requested that a motion be made.

Vice Chairman North made a **motion** that the Board **approve** application SER-002322-2014 as presented by the staff based on the Findings of Fact and Conclusions of Law contained in the staff's report. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

11. Board Business

a) Adoption of the 2015 BZA Meeting Schedule

The Board reviewed the 2015 meeting schedule with staff. The staff clarified the correct meeting date in May, which is **Wednesday, May 13th**. The change in the regular meeting schedule is due to the Memorial Day holiday and other scheduling conflicts. Mr. Hulbert presented comments regarding potential conflicts in application filing dates. The staff will confirm that the filing dates are correct. The Board will adopt the 2015 Meeting Schedule at their next meeting.

b) Revisions to Rules of Procedure

At the June 23, 2014 meeting the Board reviewed and discussed proposed revisions to the Rules of Procedure regarding the timing allowed for supplemental submissions, to allow staff to have a chance to respond to such supplements and to give the Board additional time to review the information. Corrections were also made to an incorrect citing of a code section. The proposed changes were approved at the June 23, 2014 meeting but never formally adopted since the BZA has not had a regular meeting since June 2014.

Since the June 23rd meeting, the re-write of the Land Management Ordinance was adopted by Town Council on October 7, 2014. The staff reviewed the Rules of Procedure and made revisions based on code section changes and other minor revisions. These changes are located on Pages 5, 10, 12, 17, 18 and 19 of the current Rules of Procedure.

Chairman Stanford began with a review of the existing Rules of Procedures on a page by page basis. Chairman Stanford requested clarification from the staff on Section 3. (Page 10) Conflict of Interest. Brian Hulbert, Staff Attorney, presented statements with regard to filing the required Conflict of Interest Form with the BZA Secretary. The Conflict of Interest Form is attached to the approved minutes and becomes a permanent part of the record. There were no additional comments provided by the Board on the current Rules of Procedure or the proposed minor revisions. Chairman Stanford then requested public comments and the following were received:

Chester C. Williams, Esq., presented statements in concern of the following item:

- a) Article XI, Motions, Section 1. Motion for Reconsideration (pages 18-19), item 7. The time for Appeal from any decision of the Board under Section ~~16-3-1804, Section 16-3-1905 or Section 16-3-2003~~ 16-2-103.E.3.d, 16-2-103.S.3.d or 16-2-103.T.4.d of the LMO to Circuit Court shall be stayed by the timely filing of a Petition for Reconsideration and shall run from the receipt of the written Notice of Action Denying the Petition, or the written Notice of Action delivered after the board has Reconsidered the matter, as the case may be.

Mr. Williams stated that he is concerned with when the original decision by the Board had been mailed. Under South Carolina Code Section 6-29-820, Sub. A, it states that an appeal must be filed within 30 days after the decision by the Board is mailed. Mr. Williams stated that he does not believe that the BZA has the authority to change what the State law says in their Rules of Procedure.

Chairman Stanford and Mr. Williams discussed Mr. Williams' concern with the case law and State statute stating that the filing deadline is jurisdictional. A solution would be a period of time before the action by the BZA is final in which an applicant has the power to file a motion for reconsideration. Mr. Williams' solution is not to send out the Notice of Action by the Board until the five days has run out. The Notice of Action shall be mailed by certified letter to the Appellant and Record Owner of the real property affected by the Appeal, if different from that of the Appellant. Chairman Stanford requested that Brian Hulbert, Staff Attorney, respond to Mr. Williams' concern on this issue.

Mr. Hulbert presented a legal opinion on the appeal process and filing a motion for reconsideration. One option is not to allow a motion for reconsideration. Chairman Stanford presented comments in concern of jurisdictional issues which are unintended. Chairman Stanford stated that the solution could be that the Notice of Action would go out on the sixth (6th) business day after the decision of the BZA.

Mr. Hulbert and Ms. Dixon presented statements regarding the current Rules of Procedure as related to the certified mailing of Notices of Action within five business days of a decision by the BZA. Ms. Dixon stated that this is a requirement of the LMO. Chairman Stanford recommended that the Notice of Action be mailed on the sixth (6th) day after the decision has been made by the BZA. Mr. Hulbert stated that there is a code section in the LMO that stipulates the five business days mailing requirement. Ms. Dixon presented additional comments regarding this section of the LMO. Mr. Williams presented follow up statements on this section of the LMO. Mr. Williams stated that the state code does not have this requirement.

Vice Chairman North recommended that the Board table this issue today and request that Brian Hulbert, Staff Attorney, reconcile the different code sections presented today by Ms. Dixon and Mr. Williams. The Board agreed with this recommendation and Chairman Stanford requested that a motion be made.

Vice Chairman North made a **motion** that the Board **table** consideration of this section of the new Rules of Procedures. The Board asks legal counsel, Brian Hulbert, to propose to the BZA revised language which reconciles the code provision that Ms. Nicole Dixon has read and the code provision that Mr. Williams has raised that will provide a simple and elegant way of making sure that an appellant's right under the state statute is

protected. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 5-0-0.

- b) Chester Williams, Esq. stated that he also has a concern with Section 3. Motion for Postponement (Pages 19-20). The new code now has a section on requests to defer a hearing (postponement). Mr. Williams stated that this section of the new code sounds a lot like postponement. The new code LMO Sec. 16-2-102 E.3 states an applicant may submit to the official a written request to defer the hearing on an application as long as required notice of the hearing on an application has not yet been provided. Mr. Williams presented comments regarding the 30 day and the 14 day requirements. Mr. Williams also presented comments regarding a motion for deferring an application. Mr. Williams stated that there seems to be a conflict in investing the authority to the BZA Chairman when the code states that the body has to vote. Chairman Stanford requested that Mr. Brian Hulbert review this issue to see if there is a violation with the proposed Rule that is in conflict with the new LMO.

12. Staff Reports

- a) Ms. Dixon presented the staff's Waiver Report to the Board.
- b) Ms. Dixon stated that the staff has received no new applications for the February 23, 2015 meeting. Chairman Stanford approved the cancellation of this meeting.

13. Adjournment

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

Submitted By:

Approved By:

March 23, 2015

Kathleen Carlin
Secretary

Glenn Stanford
Chairman