

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of July 27, 2015 2:30pm Meeting **APPROVED**
Benjamin M. Racusin Council Chambers

Board Members Present: Acting Chairman Jeffrey North, David Fingerhut, Steve Wilson,
John White, Lisa Laudermilch and Jerry Cutrer

Board Members Absent: Chairman Glenn Stanford

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Teri Lewis, LMO Official
Brian Hulbert, Staff Attorney
Anne Cyran, Senior Planner
Charles Cousins, Director of Community Development
Jill Foster, Deputy Director of Community Development
Kathleen Carlin, Secretary

1. Call to Order

2. Pledge of Allegiance to the Flag

3. Roll Call

4. Freedom of Information Act Compliance

Public notification of the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.

5. Swearing in Ceremony for New and Reappointed Board of Zoning Appeals Members

Brian Hulbert, Esq., performed the swearing in ceremony for reappointed BZA member, Mr. Steve Wilson, and new BZA members, Mr. John White, Ms. Lisa Laudermilch, and Mr. Jerry Cutrer. Chairman North welcomed the members and thanked them for their service.

6. Election of Officers for the July 1, 2015 – June 30, 2016 term

Chairman North made a **motion** to elect Mr. Glenn Stanford to serve as Chairman for the new term. Mr. Wilson **seconded** the motion. There were no additional nominations for the office of Chairman and the motion to elect Mr. Stanford as Chairman **passed** unanimously.

Mr. Fingerhut then made a **motion** to elect Mr. Jeffrey North to serve as Vice Chairman for the new term. Mr. Wilson **seconded** the motion. There were no additional nominations for the office of Vice Chairman and the motion to elect Mr. North as Vice Chairman **passed** unanimously.

Chairman North then made a **motion** to appoint Ms. Kathleen Carlin to serve as Secretary for the new term. Mr. Fingerhut **seconded** the motion and the motion **passed** unanimously.

7. Welcome and Introduction to Board Procedures

Chairman North welcomed the Board, the staff, the applicants, and the public to today's meeting. Chairman North reviewed the BZA's procedures for conducting the business meeting.

8. Approval of Agenda

The agenda was **approved** as presented by staff by general consent.

9. Approval of the Minutes

Mr. Fingerhut made a **motion** to **approve** the minutes of the March 23, 2015 meeting as presented. Mr. Wilson **seconded** the motion and the motion **passed** unanimously.

10. Unfinished Business

None

11. New Business

Public Hearing

VAR-000939-2015:

HHI Partners, LLC is requesting a variance from Land Management Ordinance (LMO) Section 16-4-102.B.4.b.i, Use-Specific Conditions for Principal Uses, in order to construct guest rooms on the first floor of a proposed hotel in the Coligny Resort (CR) zoning district. They are also requesting a variance from LMO Section 16-3-105.B.3, Development Form and Parameters, in order to allow a portion of the hotel to be greater than 60' in height. The property is located at 81 Pope Avenue and is further identified as parcel 10 on Beaufort County Tax Map 18. Chairman North introduced the application, opened the public hearing, and requested that the staff make their presentation.

Ms. Teri Lewis made the presentation on behalf of staff. Ms. Lewis presented an in-depth overhead review of the application including the Vicinity Map, Copy of LMO Section 16-4-102.B.4.b.i, and the applicant's narrative & exhibits. Based on the staff's Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should be **granted** to the applicant.

The subject parcel is located at 81 Pope Avenue in the newly created CR zoning district. The former zoning on this parcel did not allow hotels but under the new LMO and associated zoning map, hotels are permitted by condition in the CR zoning district. The applicant proposes to locate a hotel in the rear of the property and would like to have six guest rooms on the first floor of the hotel. The applicant also proposes a slight increase in the height of the proposed hotel. The applicant proposes up to 2% of the roof to be five feet above the sixty foot (60') height limit to allow for the elevator penthouse and an additional 15% of the roof to be two feet above the sixty foot (60') height limit to allow for the roof-top rooms.

The site is currently developed with a shopping center that includes a mix of retail shops and restaurants. The land surrounding the subject parcel includes a gas station, Coligny Villas and a small shopping center. Ms. Lewis reviewed the Findings of Fact and Conclusions of Law contained in the staff's report. Following the staff's presentation, Chairman North requested that the applicant make his presentation.

Mr. Rob Ponder, architect for the project, presented statements in support of the application. Mr. Ponder discussed several issues including the use, the density, and height of the building. Mr. Ponder also discussed By Right uses. Following the applicant's presentation, Chairman North requested public comments and the following were received:

- (1) Mr. Tom Crews, Chairman of the former LMO Rewrite Committee, stated that the reason the “no hotel rooms on the first floor” provision was included in the LMO was to foster pedestrian traffic, and that in this case, because the hotel is more than 75 feet from Pope Avenue, hotel rooms on the first floor would not create a pedestrian deadzone.
- (2) Mr. Jay Owen, Vice President of the Coligny Villas Board of Directors, stated that he believes the application will have an adverse effect on the Coligny Villas property. Mr. Owen stated his concern with noise from the pool and bar. The building height and activity level on the sixth floor of the hotel will cause problems and will be detrimental to property values.
- (3) Mr. Stan Devee, resident of Coligny Villas, presented statements in opposition to the application due to safety concerns with traffic, parking, and noise.

Following all public comments, Chairman North closed the public hearing and invited discussion by the Board. The Board discussed the application in depth. A couple of Board members stated their concern with the request for variance in density (the increase in number of rooms on the ground floor from six to eight rooms.)

Ms. Lewis stated that the Coligny District is unique in that there is no density limitation. There is no set limitation on the number of hotel rooms, dwelling units, or square footage. The density is controlled by such things as height limitations and parking requirements. The Board and the applicant discussed the building height and the density in depth. Following final discussion by the Board, Chairman North requested that a motion be made.

Mr. Wilson made a **motion** to **approve** application VAR-000939-2015 as presented based on the Findings of Fact and Conclusions of Law contained in the staff’s report. Mr. Cutrer **seconded** the motion and the motion **passed** with a vote of 6-0-0.

Public Hearing
VAR-001055-2015:

John P. Qualey, Jr. is requesting a variance from Land Management Ordinance Sections 16-5-102.C, Adjacent Street Setback Requirements, 16-5-102.D Adjacent Use Setback Requirements, 16-5-103.D, Adjacent Street Buffer Requirements and 16-5-103.E, Adjacent Use Buffer Requirements in order to construct four single family homes within the existing adjacent use and adjacent street setbacks and setback angles and the adjacent use and adjacent street buffers. The property is located at 22 Bradley Circle and is further identified as parcel 22U on Beaufort County Tax Map 8. Acting Chairman North introduced the application, opened the public hearing, and requested that the staff make their presentation.

Ms. Teri Lewis made the presentation on behalf of staff. Staff recommended that the Board of Zoning Appeals **approve** application VAR-001055-2015 based on the Findings of Fact and Conclusions of Law contained in the staff’s report. Ms. Lewis presented an in-depth overhead review of the application including the Vicinity Map, the Site Plan and the Applicant’s submittal, and Letter of Opposition.

The subject parcel is located at 22 Bradley Circle. This parcel was rezoned from the RM-8 (Residential Moderate Density) district to the RD (Resort Development) zoning district on October 7, 2014 as part of the LMO rewrite process. This district has a maximum height of 75’ and a maximum density of 16 dwelling units per acre.

The property owner is proposing to subdivide the property into 4 single family lots for the purpose of renting them out as resort homes. The property is currently occupied by a single family home; this residence will be demolished before the four new homes are built. The property to the south contains Marriott's Surf Watch timeshare development, the property to the north and west contains single family homes and the property to the east contains five single family lots.

The applicant would like to reduce the adjacent use setback from 27 ft. to 15 ft. They would like to reduce the setback angle from 60 degrees to 75 degrees. The request for the reduction in setback angle is for three sides except for the tidal marsh side. Ms. Lewis presented a review of the elevations. Ms. Lewis presented the staff's Findings of Fact and Conclusions of Law. Following the staff's presentation, Chairman North requested that the applicant make his presentation.

Jack Qualey, Esq., presented statements in support of the application on behalf of his client. Mr. Qualey stated he believes that all of the requirements for a Variance have been met by the application. Mr. Qualey stated that the property owner exercised due diligence in purchasing the property and the implementation of case law being presented today will limit the owner's utilization of the property.

Following the applicant's presentation, Chairman North requested public comments and the following were received:

- 1) Ms. Tamra Becker, resident of Bradley Circle, presented statements in opposition to the application due to concerns with pedestrian and bicycle safety, aesthetics, and parking.
- 2) Mr. Ted Whitaker, resident of Bradley Circle, presented statements in opposition to the application due to the concerns already stated.
- 3) E. Richardson LaBruce, Esq., on behalf of CSB Development Company, Inc., presented statements in opposition to the application based on the need to comply with the Land Management Ordinance and the Comprehensive Plan.
- 4) Mr. Chris Abrens, property owner, presented statements in support of the application.

Following all public comments, Chairman North closed the public hearing and invited discussion by the Board. The Board discussed the application in depth, especially the issue of unnecessary hardship.

Chairman North, Mr. Hulbert, and Mr. Qualey discussed a Supreme Court case that may or may not be applicable to the application.

Mr. Hulbert stated that it is up to the Board to decide if there is unnecessary hardship associated with the application. Mr. Hulbert presented statements regarding the guidelines for determining hardship. Mr. Hulbert stated that the variance can only be granted if there is unnecessary hardship. In order for there to be unnecessary hardship the Board must find that each one of the four criteria has been met. Following final discussion by the Board, Chairman North requested that a motion be made.

Mr. Fingerhut made a **motion to disapprove** application VAR-001055-2015 based on the following Findings of Fact:

- (1) There are no extraordinary or exceptional conditions pertaining to the subject property.
- (2) Since there are no extraordinary or exceptional conditions, the subject property is not different from other properties in the vicinity.

- (3) The application of the LMO to the subject property does not effectively prohibit or unreasonably restrict the utilization of the property.
- (4) The granting of the variances would be detrimental to adjacent property and the public good based on the testimony of the public regarding the requested variances.

Mr. White **seconded** the motion and the motion **passed** with a vote of 4-2-0. Mr. Wilson was against the motion and Mr. Cutrer was against the motion.

Public Hearing

VAR-1077-2015:

Katie Kabala with Atlantic States Management, on behalf of the Colonnade Club Board of Directors, is requesting a variance from Land Management Ordinance Section 16-6-104.F, Specimen Tree Preservation, to remove a specimen tree. The tree is located outside of 200 Colonnade Road, Unit 208, further identified as Beaufort County Tax Map parcel number R550 015 000 314E 0000. Acting Chairman North introduced the application, opened the public hearing, and requested that the staff make their presentation.

Ms. Anne Cyran made the presentation on behalf of staff. The staff recommended that the Board **approve** the application based on the Findings of Fact and Conclusions of Law contained in the staff's report with the following conditions: (1) the applicant shall apply for a Natural Resources Permit to remove the subject tree; and (2) the applicant shall plant four, Category I mitigation trees per LMO Section 16-6-104.I.3. Ms. Cyran presented an in-depth overhead review of the application including an aerial photo of the site and the applicant's narrative.

The Colonnade Club buildings were constructed in 1986 using plans approved by Beaufort County. Current LMO standards would not allow the construction of a building so close to a tree. Given the growth rate of magnolia trees, the subject tree, which is now 38 inches DBH, was probably not specimen size (30 DBH) at the time of construction.

In March 2015, the owner of Colonnade Club Unit 208 received a home inspection report stating that the subject Magnolia tree is pressing against the eaves of the home. The report advised the homeowner to have the tree and roof inspected and to take action to prevent structural damage to the roof.

Colonnade Club's regime management company, Atlantic States Management (ASM), hired Arbor Nature to inspect the tree. Arbor Nature reported that, since the trunk is within a few inches of the edge of the roof and within a foot of the building, there isn't enough room for the tree to continue to grow. Arbor Nature stated the only options are to remove the tree or to remove part of the building.

In April 2015, the applicant submitted a natural resources application to remove the tree. Rocky Browder, the Town's Environmental Planner, examined the tree and determined that it is healthy. He denied the application because removing a healthy specimen size tree would be a violation of LMO Section 16-6-104.F, Specimen Tree Preservation. He recommended that the applicant explore alternatives to removing the tree or to seek a variance per LMO Section 16-6-104.F.

In May 2015, the applicant submitted the request for a variance to remove the tree. Town staff met with the applicant and Arbor Nature to examine the tree. Staff recommended that the applicant explore the possibility of modifying the building to accommodate the tree instead of removing it.

In June 2015, the applicant hired Robert Fletcher, General Contractor and owner of PCT Services of Hilton Head, to determine if any alterations could be made to the building to preserve the tree. He

reported that making those alterations would require hiring an architect to redesign the building, obtaining required approvals and permits from Colonnade Club, Shipyard Plantation, and the Town of Hilton Head Island, renovating the exterior and interior of Units 207 and 208 to accommodate the change to the roof, and renovating the deck of Unit 207 to accommodate the trunk. Mr. Fletcher reported that these alterations would not, however, negate the damage that the root system of the tree will eventually put on the foundation of the building.

Based on Arbor Nature's and Mr. Fletcher's reports, the applicant determined that they must remove the tree to prevent future damage to the building. Ms. Cyran presented the Findings of Fact and Conclusions of Law contained in the staff's report. Following the staff's presentation, Chairman North requested that the applicant make her presentation.

Ms. Katie Kabala presented brief statements in support of the application. Following the applicant's presentation, Chairman North requested public comments and none were received. Chairman North then closed the public hearing and invited discussion by the Board. Following the Board's brief discussion, Chairman North requested that a motion be made.

Mr. Cutrer made a **motion to approve** application VAR-1077-2015 with the following conditions as recommended by staff: (1) the applicant shall apply for a Natural Resources Permit to remove the subject tree; and (2) the applicant shall plant four, Category I mitigation trees per LMO Section 16-6-104.I.3. Mr. White **seconded** the motion and the motion **passed** with a vote of 6-0-0.

Public Hearing
VAR-001204-2015:

Greg Francese of Cuda Company Real Estate, on behalf of property owner Charles Lasky, is requesting a variance from Land Management Ordinance Section 16-6-102.D, Wetland Buffer Standards, in order to construct a patio and dock within the 20 foot tidal wetland buffer. The property is located at 8 Queens Way and is further identified as parcel 301 on Beaufort County Tax Map 16A. Acting Chairman North introduced the application, opened the public hearing, and requested that the staff make their presentation.

Ms. Nicole Dixon made the presentation on behalf of staff. The staff recommended that the Board **disapprove** the application, based on the Findings of Fact and Conclusions of Law contained in the staff's report.

The subject parcel is located at 8 Queens Way in Leamington, which is part of the Palmetto Dunes Resort Master Plan. The property is bound by a wetland on one side and single family residences on the other three sides.

The applicant is proposing to construct a brick patio and a 12 foot by 11 foot dock within the 20 foot wetland buffer. The wetland buffer is currently heavily vegetated. After speaking with a representative from the Leamington ARB, staff was made aware that the Leamington private covenants do not allow permanent pavers within 10 feet of the property line and the dock is only allowed to be 12 feet by 6 feet.

The applicant states in the narrative that the proposed patio will be an expansion of the existing brick patio which will lead up to the existing retaining wall and proposed dock. The applicant states that as the property owner is aging he is concerned about potential tripping hazards and wishes to have a safe path from the existing patio to the dock. Ms. Dixon presented the Findings of Fact and Conclusions of Law contained in the staff's report. The application does not meet the four criteria required for a

variance. Following the staff's presentation, Chairman North requested that the applicant make his presentation.

Mr. Greg Francese, with Cuda Company Real Estate, the contractor for the project, presented statements on behalf of the property owner, Mr. Charles Lasky. Mr. Francese presented statements regarding the patio, the proposed dock, the retaining wall, and pavers. The applicant also discussed concerns with safe access and hardship. The applicant is looking for guidelines in the selection of materials for the proposed dock.

Following the applicant's presentation, Chairman North requested public comments and the following were received: (1) Ms. Leslie Howard presented statements in opposition to the application on behalf of the Leamington Property Owner's Association. Following public comments, Chairman North closed the public hearing and invited discussion by the Board.

The Board discussed the staff's recommendation for denial of the application. At the completion of their discussion, Chairman North recommended that, rather than deny the application today, the applicant should work with staff to achieve better compliance with the LMO.

Ms. Dixon stated that regardless of what is proposed at a later date, the applicant will still require a variance due to the encroachment into the wetland buffer. Ms. Dixon recommended that the application be tabled until the August meeting to give the applicant time to work with staff to revise the plan to be less intrusive in the wetland buffer. The Board agreed with the staff's recommendation. Following final comments by the Board, Chairman North requested that a motion be made.

Mr. Cutrer made a **motion to remand** application VAR-001204-2015 back to the staff for additional consideration. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 6-0-0.

12. Board Business

Adoption of the revised Rules of Procedure

Chairman North requested that a motion be made for adoption of the revised Rules of Procedure. Mr. Fingerhut made a **motion to adopt** the revised Rules of Procedure as submitted by the staff. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 6-0-0.

13. Staff Reports

Waiver Report

Ms. Dixon presented the Waiver report on behalf of staff.

14. Adjournment

The meeting was adjourned at 5:00p.m.

Submitted By:

Kathleen Carlin
Secretary

Approved By:

Jeffrey North
Acting Chairman

August 24, 2015