

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the August 24, 2015 2:30pm Meeting **APPROVED**
Benjamin M. Racusin Council Chambers

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

Board Members Absent: None

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Brian Hulbert, Staff Attorney
Teri Lewis, LMO Official
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. Welcome and Introduction to Board Procedures

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

6. 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 7-0-0.

7. Approval of the Minutes

Mr. Wilson made a **motion** to **approve** the minutes of the July 27, 2015 meeting as presented. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 6-0-1. Chairman Stanford abstained from the vote due to his absence from the meeting.

8. Unfinished Business

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. Chairman Stanford introduced the Unfinished Business item, opened the public hearing, and requested that the staff make their presentation.

Ms. Nicole Dixon made the presentation on behalf of staff. At the BZA meeting held on July 27, 2015, the Board heard application for variance, VAR-001204-2015, for 8 Queens Way for a proposed patio addition and dock within the wetland buffer. Following the Board's discussions with the staff and the applicant, the Board decided to table this item until the August 24, 2015 meeting so that the applicant had time to work with staff to revise the plans to propose something with less impact to the wetland buffer. The applicant has worked with the staff, as well as the Leamington ARB, and has come up with a plan that removes the original patio addition request and just proposes a 5-foot wide pervious paver pathway from the existing patio to the proposed 12-foot wide by 6-foot long dock.

Ms. Dixon presented an in-depth overhead review of the revised project including the narrative, site plan, photos of the pathway pavers, and an aerial view of the site. Ms. Dixon stated that the staff's recommendation of denial has not changed since the initial review because the Findings of Fact and Conclusions of Law for the variance criteria remain the same.

The staff does acknowledge that the applicant did their best to minimize the disturbance of the wetland buffer. Should the BZA decide to approve the application for variance, staff recommends that there be a condition that the remaining portions of the wetland buffer, where there is currently sod, be planted with wetland vegetation. Ms. Dixon stated that the Leamington ARB has reviewed and approved the revised project. At the Board's request, Ms. Dixon presented an in-depth review of the Findings of Fact and Conclusions of Law. Following the staff's presentation, Chairman Stanford requested that the applicant make his presentation.

Mr. Greg Francese, with Cuda Company Real Estate, presented statements in support of the application on behalf of the property owner. Mr. Francese presented the revisions made to the project and stated that the main reason for the request for variance is one of safety. The applicant would like to provide a safe pathway to the new dock. Following the applicant's presentation, Chairman Stanford requested public comments and the following were received:

Chester C. Williams, Esq., presented general statements in support of the application for variance. Following public comments, Chairman Stanford that that the public hearing is closed.

The Board discussed several issues including the non-conforming site feature and difficulties complying with the LMO. Vice Chairman North requested input from Brian Hulbert, Staff Attorney, regarding the applicant's need to meet all four criteria, particularly unnecessary hardship. The BZA discussed the restrictions imposed upon them by the LMO. Following final comments by the Board, Chairman Stanford requested that a motion be made.

Mr. Wilson made a **motion to approve** application for Variance, VAR-001204-2015, with the condition recommended by the staff that the remaining portions of the wetland buffer, where there is currently sod, be planted with wetland vegetation. Chairman Stanford stated that the maker of the motion must find that there are extraordinary circumstances to recommend approval of the application (against the staff's recommendation for denial.)

Ms. Dixon reported that the Rules of Procedure state that if the maker of the motion is making a motion to go against the staff's recommendation, they must state the Findings of Fact and Conclusions of Law in support of the motion. Brian Hulbert, Staff Attorney, stated that, in accordance with town law and state law, the maker of the motion must support the findings of unnecessary hardship.

Ms. Dixon suggested that the Board take a five-minute break so that the maker of the motion can gather his thoughts and develop the Findings of Fact and Conclusions of Law in support of his motion. Chairman Stanford agreed and called a five-minute recess in the proceedings at that time.

Following the five-minute recess, Chairman Stanford called the meeting back to order. Mr. Wilson stated that after additional consideration, he would like to **withdraw** his **motion to approve** application for variance, VAR-001204-2015. Chairman Stanford then requested that another motion be made.

Mr. Fingerhut made a **motion to deny** application of variance, VAR001204-2015, based on Findings of Fact and Conclusions of Law contained in the staff's report. Vice Chairman North **seconded** the motion and the motion **passed** with a vote of 6-1-0. Mr. Wilson was opposed to the motion.

9. New Business

Hearing

Motion to Reconsider VAR-001055-2015:

Jack Qualey, on behalf of the owners of 22 Bradley Circle, is requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variances for 22 Bradley Circle. Chairman Stanford introduced the Motion to Reconsider and requested that Mr. Qualey make his presentation to the Board.

Mr. Qualey presented background statements regarding application for variance, VAR-001055-2015, that was heard by the BZA on July 27, 2015. The applicant 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.

Mr. Qualey reviewed the more specific site plans and the elevations showing the requested variances in detail. Mr. Qualey discussed the points that he believes were overlooked or misinterpreted by the Board in reaching their decision on this application on July 27, 2015. Mr. Qualey discussed the three variances from the LMO that are being sought by the applicant. Following Mr. Qualey's presentation, Chairman Stanford requested that the staff make their presentation.

Ms. Lewis presented background details regarding the application for variance. The subject parcel located at 22 Bradley Circle 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 stated that on July 31, 2015, the staff received Mr. Qualey's Motion for Reconsideration of the denial of Variance application, VAR-001055-2015, for 22 Bradley Circle. Per the BZA's Rules of Procedure, particularly Article IX, Section 1, Motion for Reconsideration, any party aggrieved by a decision of the BZA may file a Motion for Reconsideration within five days from the date of the hearing. The applicant met this requirement. The Motion, in accordance with the Rules of Procedure, has stated the points the applicant believes were overlooked or misinterpreted by the Board at the July 27, 2015 meeting.

Ms. Lewis stated that a Motion to Grant the Motion for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, application for variance VAR 1055-2015, will be heard at the September 28, 2015 BZA meeting. It will be as though no previous vote had been taken on the application.

(Mr. Steve Wilson excused himself from the meeting at 3:25p.m.)

Ms. Lewis stated that a Motion to Deny the Motion for Reconsideration may be made by any member of the Board. The effect of a vote denying a Motion for Reconsideration is that the vote shall be considered to be the Board's final action on the matter. Following final comments by the Board, Chairman Stanford asked the Board if anyone has a motion to reconsider the Board's previous decision to deny the requested variances for 22 Bradley Circle.

Mr. Cutrer stated that although he is not eligible to make a motion today because he voted against the motion at the previous meeting, he would like to recommend that the Board reconsider their motion to deny the requested variances based on the presentations provided by Mr. Qualey. Chairman Stanford thanked Mr. Cutrer for his comments and asked if an eligible member of the Board would like to make a motion to support the applicant's request for reconsideration of the motion. No motion was made by the Board to support reconsideration of the motion.

Chairman Stanford then asked if any member of the Board would like to make a motion to deny the request for reconsideration of the motion. No motion was made by the Board to deny the request for reconsideration of the motion. Chairman Stanford stated that since no motion was made by the Board, the applicant's Motion for Reconsideration has **failed**.

10. Board Business

None

11. Staff Reports

A waiver report was provided to the Board.

12. Adjournment

The meeting was adjourned at 3:35p.m.

Submitted By:

Approved By:

September 28, 2015

Kathleen Carlin
Secretary

Glenn Stanford
Chairman