

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the July 24, 2017 2:30pm Regular Meeting
Benjamin M. Racusin Council Chambers

Board Members Present: Chairman David Fingerhut, Vice Chairman Jerry Cutrer, John White, Lisa Laudermilch, Charles Walczak

Board Members Absent: Robert Johnson (excused), Steve Wilson (excused)

Council Members Present: Kim Likins, *Mayor Pro Tem*

Town Staff Present: Brian Hulbert, Staff Attorney; Teri Lewis, LMO Official; Judy Nash Timmer, Senior Planner; Teresa Haley, Senior Administrative Assistant

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 Newly Appointed Board of Zoning Appeals Member

Kim Likins, *Mayor Pro Tem*, performed the swearing in ceremony for newly appointed Board member Charles Walczak.

6. Welcome and Introduction to Board Procedures

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

7. Approval of Agenda

Mrs. Laudermilch made a motion to approve the agenda as submitted. Vice Chairman Cutrer seconded. The motion passed with a vote of 5-0-0.

8. Approval of the Minutes – Meeting of June 26, 2017

Vice Chairman Cutrer made a motion to approve the minutes of the June 26, 2017 regular meeting as corrected. Mr. White seconded. The motion passed with a vote of 5-0-0.

9. Executive Session – Receive legal advice regarding the pending Sparkleberry Lane Variance.

At 2:35p.m., Vice Chairman Cutrer moved to go into Executive Session for the purpose of receiving legal advice regarding the pending Sparkleberry Lane Variance. Mrs. Laudermilch seconded. The motion passed with a vote of 5-0-0.

At 2:58p.m., the Board returned to the dais. Chairman Fingerhut called the meeting back to order and stated that no action was taken in the Executive Session.

10. Unfinished Business

Public Hearing

VAR-0444-2017: Robert M. Deeb, Jr. of Novit & Scarminach, P.A., on behalf of property owners, Edward & Susan Forbes, is requesting a variance from LMO Section 16-5-102.D, Adjacent Use Setback Requirements in order to build a recreational vehicle garage within the required 30' adjacent use setback. The property is located at 12 and 14 Sparkleberry Lane and is identified as Parcel #'s 1007 and 1008 on Tax Map # 9.

Chairman Fingerhut asked the applicant to come forward. Mr. Deeb presented his rebuttal to the Island Club's position expressed at the last meeting. Mr. Deeb further answered questions presented by the Board.

The Board asked whether the garage could be built on the North/Northeast part of the property or elsewhere. Mr. Deeb referenced the survey showing live oaks in the Northern part of the property. The Board reiterated that the Town believes the property is zoned PD-1, and asked whether the PD-1 zoning district prohibits a garage, and it does not.

Chairman Fingerhut asked Staff to come forward with anything else. Staff provided additional letters that were submitted since the meeting packet was published. Also, Staff pointed out an incorrect reference made in the Staff Report. Conditions 1 and 2 in the Staff Recommendation, make reference to Attachment "D". The correct attachment to reference is Attachment "E".

Chairman Fingerhut opened the meeting for public comments. R.J. Martin, Steve Parker, Walter Nester, Esq., on behalf of the Island Club, and Sally Ayotte presented statements in opposition of the variance. Chester Williams, Esq. addressed the Board regarding restrictive covenants.

Chairman Fingerhut provided Staff the opportunity to address public comment. Staff had no further comment. Chairman Fingerhut asked the applicant for rebuttal on public comment. Mr. Deeb presented statements regarding restrictive covenants.

Chairman Fingerhut asked the Board for further discussion. The Board indicated that the only basis that it can make decisions on for a variance is the four criteria. There has been conflicting testimony on whether or not restrictive covenants apply to the subject property. However, the Board believes the issue regarding restrictive covenants is outside of its purview and should be handled by the appropriate body.

Mr. White moved to deny the variance request. Chairman Fingerhut called a five minute recess 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.

Following the recess, Chairman Fingerhut called the meeting back to order. Mr. White stated his Findings of Fact and Conclusions of Law. Vice Chairman Cutrer made a motion to amend the conclusion on criteria 1. Mr. White seconded the motion as amended and the motion passed with a vote of 4-0-1. (Mr. Walczak abstained from the review and vote of VAR-0444-2017 as he was not an active Board member at the initial hearing held on June 26, 2016.)

Mr. White's motion to deny the variance application is based on the following Findings of Fact and Conclusions of Law:

1. There are no extraordinary and exceptional conditions pertaining to the particular piece of property.
2. The application of the LMO to the subject property does not effectively prohibit or unreasonably restrict the utilization of the property.
3. The granting of the variance would be detrimental to the adjacent property and the public good based on the testimony of the public regarding the requested variance.

Mrs. Laudermilch seconded. The motion passed with a vote of 4-0-1. (Mr. Walczak abstained from the review and vote of VAR-0444-2017 as he was not an active Board member at the initial hearing held on June 26, 2016.)

11. New Business – None

12. Board Business

- a) Drafting of a letter to Town Council recommending an LMO amendment regarding impervious surface coverage requirements in the Mitchelville (MV) Zoning District

Vice Chairman Cutrer provided a discussion draft and Chairman Fingerhut provided comments thereto. Mrs. Lewis presented statements regarding the process for the letter to go to the Planning Commission and Town Council. The letter will be first presented to the LMO Committee at their upcoming meeting.

Mr. White moved to approve the letter with Chairman Fingerhut's comments. Vice Chairman Cutrer seconded. The motion passed with a vote of 5-0-0.

13. Staff Reports

Waiver Report – The Waiver Report was included in the Board's packet.

14. Adjournment

The meeting was adjourned at 3:58p.m.

Submitted by: Teresa Haley, Secretary

Approved: August 28, 2017

David Fingerhut, Chairman