



Town of Hilton Head Island
Board of Zoning Appeals Meeting
May 24, 2021 at 2:30 p.m. Virtual Meeting
MEETING MINUTES

Present from the Board: Chair Patsy Brison, Vice Chair Anna Ponder, Robert Johnson, Lisa Laudermilch, Charles Walczak, David Fingerhut, John White

Absent from the Board: None

Present from Town Council: Alex Brown, Tamara Becker, Bill Harkins

Others Present: Curtis Coltrane, Town Attorney (attended as an observer only for Item 8.a.); Tom Mikell, Town Counsel for Item 8.a.

Present from Town Staff: Josh Gruber, Deputy Town Manager; Jennifer Ray, Interim Community Development Director; Teri Lewis, Deputy Community Development Director; Nicole Dixon, Development Review Administrator; Anne Cyran, Senior Planner; Missy Luick, Senior Planner; Tyler Newman, Senior Planner; Diane Busch, Staff Attorney; Teresa Haley, Senior Administrative Assistant

1. Call to Order

Chair Brison called the meeting to order at 2:31 p.m.

2. FOIA Compliance – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.

3. Roll Call – See as noted above.

4. Welcome and Introduction to Board Procedures

Chair Brison welcomed all in attendance and reminded the attendees that since this is a continuance from April 26, 2021 the Board's procedures for conducting the meeting are still in effect.

5. Approval of Agenda

Chair Brison asked for a motion to approve the agenda as presented. Mr. Walczak moved to approve. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 7-0-0.

6. Approval of Minutes

a. April 26, 2021 Meeting

Chair Brison asked for a motion to approve the minutes of the April 26, 2021 meeting as presented. Mr. Walczak moved to approve. Mr. Johnson seconded. By way of roll call, the motion passed with a vote of 7-0-0.

b. April 29, 2021 Special Meeting

Chair Brison asked for a motion to approve the minutes of the April 29, 2021 special meeting as presented. Mr. White moved to approve. Mr. Johnson seconded. By way of roll call, the motion passed with a vote of 3-0-3. (Mr. Fingerhut, Mr. Walczak and Ms. Laudermilch abstained

as they were not present at the subject meeting. Dr. Ponder had left the meeting when this motion was made.)

7. Appearance by Citizens

Public comments concerning agenda items were to be submitted electronically via the Open Town Hall portal. There were no comments via the portal. Citizens were also provided the option to give public comment during the meeting by phone. There were no requests.

8. Unfinished Business

a. Public Hearing

VAR-000818-2021 – Request from Edward K. Pritchard, III for a variance from LMO Sections 16-5-102, Setback Standards and 16-5-103, Buffer Standards for an existing non-permitted food truck and associated screening fence to remain in the required adjacent use setback and buffer. The property address is 15 Marshland Road with a parcel number of R510 008 000 013H 0000. *Note: This public hearing is continued from the Board of Zoning Appeals meeting on Monday, April 26, 2021.*

Public Hearing - Continued

Chair Brison stated the continuation of the public hearing is a result from the Board having subpoenaed a staff member as a witness and certain documents from staff. Chair Brison also noted for the record that the Chair became concerned about the conflicts of interest by the Town Attorney and a question about conflicts of interest of the Staff Attorney directing the staff as to whether or not to respond to questions from the Board. Chair Brison said on April 27, 2021, she sent an email to the Mayor, Mayor Pro-Tem, and Town Council members requesting independent counsel for the Board of Zoning Appeals for the continuation of this hearing. She said it is her understanding the Town is not providing the Board with independent counsel.

Chair Brison reported the subpoena was issued by the Chair on May 14, 2021, and directed to Anne Cyran, requiring her to bring the documents and correspondence requested within the subpoena. Chair Brison asked if there was any objection to the subpoena. Mr. Pritchard objected stating the Board does not have the authority to subpoena the documents and the Supreme Court has issued a ruling that the Board of Zoning Appeals can only consider the four issues of criteria on a variance request. Chair Brison requested that Ms. Busch advise the Board. Ms. Busch noted the Town complied with the request to issue a subpoena but anything other than the here and now and the criteria the Board has to consider, that being the four conditions, are the only things relevant. She stated the Town is cooperating with the Board but the Town's position aligns with Mr. Pritchard's comments. Mr. Mikell referenced the Supreme Court case rendered on May 12, 2021, which is explicit that only the four criteria for variances are to be applied for consideration. He said in the case the Circuit Court had used facts from a previous hearing which the Appeals Court threw out because they didn't meet the four corner test.

Chair Brison overruled the objections stating the September 2, 2015 letter was introduced at the beginning of the hearing on April 26, 2021 and admitted into the record without objection. She added that Anne Cyran is present and the Board has been furnished with two documents; the September 2, 2015 letter and an additional letter from Teri Lewis dated October 21, 2015, noting the Board will apply the four criteria as required by law and the evidence will be used to apply to those four criteria and the Board will hear the evidence subpoenaed. She noted Anne Cyran's presence and asked if there was any objection to her testifying. Mr. Pritchard stated no objection only if Ms. Cyran testified regarding issues related to the four criteria and nothing else.

Anne Cyran was identified and available for questions. Ms. Cyran answered the questions from the Board regarding identification and confirmation of the September 2, 2015 letter.

Teri Lewis was asked to answer questions regarding the October 21, 2015 letter. Ms. Lewis answered the questions from the Board regarding identification and confirmation of the October 21, 2015 letter. Mr. Fingerhut referenced page 140 of the January 25, 2016 Board of Zoning appeals packet and asked that it be entered into the record at Board Exhibit 1. Mr. Pritchard objected noting it was a 2015 document and this is a 2021 zoning variance request. He questioned its relevance stating the task being applied is not legally correct. Chair Brison allowed the document to be entered into the record stating the Board will determine its relevance during their deliberation. Ms. Busch clarified, for the record, that the matters in 2015 did not involve any application for a variance.

Mr. Pritchard defended his position by stating there was adequate information before the board meeting the requirements of the four criteria needed for approval. He expressed concern about some of the comments being made and noted the question isn't whether or not you can physically fit something on the property in another form or fashion but the test really is whether or not the application of the ordinance to the particular piece of property would effectively prohibit or unreasonable restrict the utilization of the property.

Chair Brison asked for public comments. Ms. Haley confirmed there were no callers or additional public comments at this time.

Chair Brison incorporated all evidence heard at the initiation of the Public Hearing on April 26, 2021 and the continuation of this hearing on May 24, 2021, as part of the record, subject to the objections made.

Chair Brison closed the Public Hearing at 3:42 p.m.

The Board made final comments and inquiries regarding: how does the property unusually restrict utilization; configuration of items on the property; wetland constraint; proof that the conditions do not apply to other properties in the area; relocation of the food truck; the amount of property available within the site; adjacent use setback; and the lack of public comments or complaints.

Chair Brison asked for a motion concerning the application.

Dr. Ponder moved that the Board of Zoning Appeals approve VAR-000818-2021 application based on those Findings of Fact and Conclusions of Law such as:

Findings of Fact:

For Criteria 1: extraordinary and exceptional conditions pertaining to the particular piece of property – I would say that the nature of the piece of property itself, particularly with regard to the wetlands, excludes it from generality because it is very particular and the nature of wetlands themselves are in fact very particular, not general. Therefore, I think there are exceptional and extraordinary conditions pertaining to this particular piece of property.

Criteria 2: because of the particular nature of wetlands themselves and the way that this area of the island plays out, these conditions do not generally apply. They are in fact not general. They are particular. So, they do not generally apply to other properties in the vicinity, even though there may be wetlands in the vicinity. It is very particular that is how wetlands operate.

Criteria 3: the particular nature of this property and the way it is configured would in fact restrict the utilization of the property.

Criteria 4: there has not been any proof that the granting of this variance would be of substantial detriment to any adjacent property or to the public good.

Conclusion of Law:

Therefore, I move that the Board of Zoning Appeals grant this variance based on the four criteria presented.

Ms. Laudermilch seconded. Motion passed with a vote of 4-3-0. (Ponder, White, Laudermilch, Brison – for the motion; Walczak, Fingerhut, Johnson – against the motion.)

9. New Business - None

10. Staff Reports

At this time, Dr. Ponder left the meeting and a quorum of the Board remained in effect.

a. Status of Appeals to Circuit Court

No report.

b. Status of LMO Amendments

Ms. Dixon reported the first set of proposed amendments are scheduled to be introduced at the June 2, 2021 Public Planning Committee meeting.

c. Status of Amendments to BZA Rules of Procedure

Ms. Luick stated she and Ms. Busch met to discuss the draft Rules of Procedure amendment and a red-line edit of the document has been sent out for staff review. She noted that research continues on the appeals and public comment component and as soon as a final draft is prepared it will be included in a future agenda packet.

d. Waiver Report - The Waiver Report was included in the Board's agenda package.

11. Board Business

a. Discussion of consideration of LMO Amendments related to lot sizes and setbacks

Chair Brison noted the concern of the BZA regarding property owners of small lots coming before the Board for variances. Ms. Dixon stated that the variance requests coming forward resulted from violations or complaints. She said staff is working on educational materials and an outreach to the community regarding buffers and setbacks. Ms. Dixon said that while a property owner may not need a permit for their project, they still need to abide by the Land Management Ordinance. She stated that with a focus on education and an outreach plan, hopefully, this can be accomplished.

b. Board Training – How To Conduct Meetings

At this time, Mr. Fingerhut and Mr. Walczak left the meeting. Ms. Luick presented the Board Training to Ms. Laudermilch, Mr. Johnson, Mr. White, and Chair Brison.

12. Adjournment

The meeting was adjourned at 5:02 p.m.

Submitted by: Vicki Pfannenschmidt, Secretary

Approved: June 28, 2021