



The Town of Hilton Head Island Regular Board of Zoning Appeals Meeting

Monday, June 28, 2010

2:30 p.m. – Benjamin M. Racusin Council Chambers

AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting.

1. **Call to Order**
2. **Roll Call**
3. **Freedom of Information Act Compliance**
Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
4. **Welcome and Introduction to Board Procedures**
5. **Presentation of the Crystal Award to outgoing BZA member, Mr. David D'Amico**
A farewell reception in appreciation of Mr. D'Amico's six years of service will be held in Council Chambers immediately following today's business meeting.
6. **Approval of Agenda**
7. **Approval of Minutes - Meeting of March 22, 2010**
8. **Unfinished Business**
None
9. **New Business**
None
10. **Board Business**
11. **Staff Report**
 1. Digital "packet" procedure – *Presented by Mrs. Jayme Lopko*
 2. Waiver Report – *Presented by: Mrs. Jayme Lopko*
12. **Adjournment**

Note: A training session to fill the mandatory training requirement will immediately follow the reception for Mr. D'Amico.

Please note that a quorum of Town Council may result if four (4) or more of Town Council members attend this meeting.

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3 **TOWN OF HILTON HEAD ISLAND**
4 **The Board of Zoning Appeals**
5 **Minutes of the Monday, March 22, 2010 Meeting**
6 **2:30pm – Benjamin M. Racusin Council Chambers** **DRAFT**
7

8 Board Members Present: Vice Chairman David D’Amico, Michael Lawrence,
9 Jack Qualey, Stephen Murphy and Bob Sharp

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11 Board Members Absent: Chairman Roger DeCaigny and Alan Brenner

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13 Council Members Present: None

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15 Town Staff Present: Anne Cyran, Planner; Nicole Dixon, Planner
16 Jayme Lopko, Senior Planner & BZA Coordinator
17 Kathleen Carlin, Board Secretary

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20 **I CALL TO ORDER**

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22 **II ROLL CALL**

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24 **III APPROVAL OF THE AGENDA**

25 Mr. Qualey made a **motion** to **approve** the agenda as presented. Mr. Sharp **seconded** the
26 motion and the motion **passed** with a vote of 5-0-0.

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28 **IV APPROVAL OF THE MINUTES**

29 Mr. Murphy made a **motion** to **approve** the minutes of the February 22, 2010 meeting as
30 presented. Mr. Lawrence **seconded** the motion and the motion **passed** with a vote of 5-0-0.

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32 **V UNFINISHED BUSINESS**

33 None

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35 **VI NEW BUSINESS**

36 **PUBLIC HEARING**

37 **VAR100001**: David Stebbing, on behalf of Roger Stebbing, is requesting a variance from
38 LMO Section 16-6-204, Wetland Buffers, to keep non-permitted encroachments in the
39 wetland buffer. The subject property is located at 47 Shearwater Drive.

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41 Ms. Anne Cyran made the presentation on behalf of staff. The staff recommended that the
42 Board of Zoning Appeals **disapprove** the application based on those Findings of Facts and
43 Conclusions of Law stated in the Staff Determination dated March 22, 2010.

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45 Shearwater Plantation is a single-family subdivision located near the end of Jonesville
46 Road. As required by LMO Section 16-6-204, all of the properties in Shearwater abutting
47 the tidal marsh are required to maintain a 20 foot wetland buffer, measured inland from the
48 OCRM Critical Line.

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3 In July of 2005, Crossroads Enterprises applied for a building permit to construct a 3,100
4 square foot house at 47 Shearwater Drive, an undeveloped lot. The certificate of occupancy
5 was issued on March 10, 2006 and the current owner bought the property on March 21,
6 2006.

7
8 A separate building permit for a swimming pool was approved on March 2, 2006. On May
9 2, 2006, Ms. Sarah Skigen, Natural Resources Associate, inspected the pool and found that
10 the wetland buffer had been damaged. The owner was required to plant Spartina in the
11 wetland buffer as mitigation for the damage. On May 15, 2006, Ms. Skigen confirmed the
12 mitigation planting was complete, and the pool permit was finalized on August 18, 2006.

13
14 At some point between February of 2007 and February of 2009, the property owner
15 constructed a retaining wall with backfill in the wetland buffer and topped it with sod and a
16 brick patio and fire pit. The sod, brick patio and fire pit are all prohibited in wetland buffers
17 by LMO Section 16-4-204C. In addition, the required mitigation planting was removed
18 from the wetland buffer in violation of LMO Section 16-6-204C.

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20 In addition, the owner built the wall without obtaining either of the two required permits: a
21 natural resources permit and a building permit. Per LMO Section 16-6-204D(5), a retaining
22 wall with backfill may be constructed in the wetland buffer if a natural resources permit is
23 obtained and the wetland buffer is replanted per a staff-approved landscape plan.

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25 Mr. David Stebbing, agent for the application, was contacted by a Town Code Enforcement
26 Officer when staff discovered the violations. Community Development staff informed Mr.
27 Stebbing that the retaining wall and backfill could remain as they are without obtaining a
28 variance if the owner obtained a natural resources permit. The conditions of the natural
29 resources permit would be to remove the sod, brick patio and fire pit and replant the entire
30 wetland buffer with native vegetation. The owner must obtain a building permit for the
31 wall regardless of whether a variance is granted. In addition, the side wall must be
32 reconstructed off the adjacent property.

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34 Instead, Mr. Stebbing is seeking a variance to reduce the depth of required wetland buffer
35 from 20 feet to 10 feet. If the variance is approved, the retaining wall would be
36 reconstructed so that it ends 10 feet from the property line, and the 10 foot wetland buffer
37 would begin at the end of the wall. Mr. Stebbing proposes to keep the sod and brick patio
38 on the retaining wall, but the fire pit will be removed. The remaining 10 foot wetland
39 buffer would be replanted with Spartina.

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41 Ms. Cyran reviewed the Findings of Fact and the Conclusions of Law. The application has
42 not met the required criteria necessary for approval. At the completion of the staff's
43 presentation and discussion by the Board, acting Chairman D'Amico asked the applicant if
44 he would like to make a presentation. Mr. Stebbing introduced himself to the Board, but
45 made no comments for the record. At the completion of final statements by the Board,
46 Acting Chairman D'Amico requested that a motion be made.

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48 Mr. Qualey made a motion to **disapprove** Application for Variance, VAR100001, based on
49 the Findings of Fact and Conclusions of Law contained in the staff report. Mr. Sharp
50 **seconded** the motion and the motion **passed** with a vote of 5-0-0.

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VII BOARD BUSINESS

None

VIII STAFF REPORT

Mrs. Lopko presented the Waiver Report to the Board.

IX ADJOURNMENT

The meeting was adjourned at 2:50pm.

Submitted By:

Approved By:

Kathleen Carlin
Board Secretary

David D'Amico
Acting Chairman



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Jayme Lopko, AICP, Senior Planner
DATE: June 11, 2010
SUBJECT: Administrative Waivers

The Board of Zoning Appeals (BZA) requested that staff keep them informed of administrative waivers that are granted by staff based on the provisions in Section 16-7-106 of the Land Management Ordinance (LMO). This memo will be distributed every month at the regular BZA meetings and will be discussed under staff reports on the agenda. Even if there have been no waivers for the month, a memo will be included in the packet to inform the BZA members of that.

The following language is contained in Section 16-7-106 Waiver by Administrator which gives the Administrator the power to grant waivers for existing nonconforming structures and site features.

“The Administrator may waive any provision of Article III or IV dealing with nonconforming structures and site features, respectively, upon a determination that:

- A. The proposed expansion, enlargement or extension does not encroach further into any required buffers or setbacks or increase the impervious area; and
- B. The proposed expansion, enlargement, or extension does not occupy a greater footprint than the existing nonconforming site feature or structure; and
- C. The proposed expansion, enlargement, or extension does not result in an increase in density greater than allowed per Sec. 16-4-1501, or the existing density, whichever is greater; and
- D. The applicant agrees to eliminate nonconformities or provide site enhancements that the Administrator determines are feasible in scope and brings the site into substantial conformance with the provisions of this Title (e.g. meeting buffer, impervious area and open space requirements); and
- E. The proposed expansion, enlargement or extension would not have a significant adverse impact on surrounding properties or the public health, safety and welfare; and
- F. If an applicant requests to relocate a nonconforming structure on the same site, they must bring the structure into conformance to the extent deemed practicable by the Administrator.”

The attached is a summary of the administrative waivers that have been granted by staff since the March Board of Zoning Appeals meeting.

Administrative Waivers

April

1. A project at 35 Baynard Park Road, requested to construct a deck addition to an existing single family home. A waiver was granted due to the addition to an existing nonconforming structure. This waiver was granted with conditions to remove existing pavers from the 20 feet wetland buffer and to plant 65 three gallon yaupons mixed with illicium and spartina throughout the 20 foot wetland buffer as shown on the approved site plan.
2. A project at 8 Hickory Lane, requested to construct a deck addition to an existing single family home. A waiver was granted due to the addition to an existing nonconforming structure. This waiver was granted with conditions to remove an existing sidewalk and to remove an existing shed that is located both within the setback and buffer and also off the property.

May

3. A project at 2006 Deer Island Road, requested to construct a wooden boardwalk to an existing single family home. A waiver was granted due to the addition to an existing nonconforming structure. This waiver was granted with the condition that the existing asphalt under the new boardwalk must be removed.

June

4. A project at 5 Azalea Street, requested to construct an addition to an existing single family home. A waiver was granted due to the addition to an existing nonconforming structure. This waiver was granted with conditions to remove an existing shed from the side and rear buffers and to remove the existing hot tub and pavers from the side buffer.