



**Town of Hilton Head Island
Board of Zoning Appeals
Regular Meeting
May 23, 2016 - 2:30 p.m.
Benjamin M. Racusin Council Chambers
AGENDA**

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**
6. **Approval of Agenda**
7. **Approval of the Minutes** – Regular Meeting April 25, 2016
8. **New Business**
PUBLIC HEARING
VAR-587-2016: Richard Schwartz, on behalf of Village Park Homes, is requesting a variance from LMO Sections 16-5-102, Adjacent Use Setbacks and 16-5-103, Adjacent Use Buffers, to build a pool within the 20 foot adjacent use setback and buffer. The property is located at 27 Sandcastle Court and is identified as Parcel # 1116 on Beaufort County Tax Map# 9. *Presented by: Nicole Dixon*
9. **Board Business**
10. **Staff Reports**
Waiver Report
11. **Adjournment**

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

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the April 25, 2016 2:30pm Meeting
Benjamin M. Racusin Council Chambers

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

Board Members Absent: Jeffrey North (excused), John White (excused)

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Anne Cyran, Senior Planner
Heather Colin, Development Review Administrator
Brian Hulbert, Staff Attorney
Jill Foster, Deputy Director of Community Development
Teresa Haley, 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 submitted. Ms. Laudermilch **seconded** the motion. The motion **passed** with a vote of 5-0-0.
7. **Approval of the Minutes**
Mr. Cutrer made a motion to **approve** the minutes of the March 28, 2016 meeting as submitted. Mr. Wilson **seconded** the motion. The motion **passed** with a vote of 5-0-0.
8. **New Business**

PUBLIC HEARING

VAR-587-2016: Richard Schwartz, on behalf of Village Park Homes, is requesting a variance from LMO Section 16-5-103, Adjacent Use Buffers, to build a pool within the 20 foot adjacent

use buffer. The property is located at 27 Sandcastle Court and is identified as Parcel # 1116 on Beaufort County Tax Map# 9. **This item has been postponed until the May 23rd meeting.**

PUBLIC HEARING

VAR-0350-2016: Dan Campbell, on behalf of Resort Investment Corp., is requesting a variance from Land Management Ordinance (LMO) Sections 16-5-102, Setback Standards, and 16-5-103, Buffer Standards, to allow an existing, non-permitted dumpster enclosure to encroach into an adjacent use setback and buffer area. The subject parcel is Hilton Head Resort Phase II, 663 William Hilton Parkway, Beaufort County Parcel # 25 on Tax Map# 12.

Ms. Cyran presented an in-depth review of the project as set forth in the staff report. Ms. Cyran clarified concerns and answered questions by the Board. Staff recommends the Board of Zoning Appeals **approve** the application based on the Findings of Fact and Conclusions of Law contained in the staff report.

Chairman Stanford requested the applicant make a presentation. The applicant expressed appreciation toward Ms. Cyran's presentation. The applicant explained the purpose of relocating the dumpster enclosure and answered questions by the Board.

Chairman Stanford opened the meeting for public comment. One member of the public spoke in favor of the variance request. Ms. Cyran received one letter in opposition of the variance request.

Chairman Stanford requested comments from the Board. The Board discussed alternative locations on the property for the dumpster enclosure and inquired as to the utilization of the dumpster.

Mr. Fingerhut made a motion to **approve** the application based on the Findings of Fact and Conclusions of Law contained in the staff report. Mr. Cutrer **seconded** the motion. The motion **passed** with a vote of 5-0-0.

9. Board Business – None

10. Staff Reports

Waiver Report – Ms. Dixon indicated the Waiver Report was included in the packet.

11. Adjournment

The meeting was adjourned at 3:00p.m.

Submitted By:

Approved By:

Teresa Haley, Secretary

Glenn Stanford, Chairman



TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

| | | | |
|-----------------------|------------------------------|--------------|------------------|
| One Town Center Court | Hilton Head Island, SC 29928 | 843-341-4757 | FAX 843-842-8908 |
|-----------------------|------------------------------|--------------|------------------|

STAFF REPORT VARIANCE

| Case #: | Public Hearing Date: |
|-----------------|----------------------|
| VAR-000587-2016 | May 23, 2016 |

| Parcel or Location Data: | Property Owner & Applicant |
|--|--|
| <p>Parcel#: R511 009 000 01116 0000 Address: 27 Sandcastle Court Acreage: 0.08 acres Zoning: RD (Resort Development District) Overlay: COR (Corridor Overlay District)</p> | <p>Richard Schwartz Village Park Homes, LLC PO Box 23376 Hilton Head Island, SC 29925</p> |

Application Summary:

Richard Schwartz, on behalf of Village Park Homes, is requesting a variance from LMO Sections 16-5-102, Adjacent Use Setbacks and 16-5-103, Adjacent Use Buffers, to build a pool within the 20 foot adjacent use setback and buffer.

Staff Recommendation:

Staff recommends the Board of Zoning Appeals **disapprove** the application, based on the Findings of Fact and Conclusions of Law contained in the staff report.

Background:

The subject property is located in the Sandcastles by the Sea subdivision off of Folly Field Road. The subdivision was approved in 2005. Only about 6 homes have been built so far, several are currently under construction, as is Lot 10, the subject property.

The subdivision is surrounded by the Hilton Head Beach and Tennis Resort (multi-family residential) to the east, single family residential to the south, Town-owned property and single family residential to the north and Adventure Cove, Carrabbas restaurant and an office building to the west.

The future owner of the subject lot applied for a building permit for a pool, while the house is still

under construction. The pool permit was denied by staff because it was shown in the 20 foot setback and buffer. The applicant and owner met with staff to discuss their options. During this meeting staff was made aware that the buffer had already been cleared for this lot as well as at least one other lot in the subdivision. The Town's Code Enforcement division conducted a site visit and issued citations for clearing the buffer without a permit. The applicant will be required to re-plant the buffer; either the full 20 feet or the reduced 10 feet, depending on what the BZA decides with this variance request.

When staff met with the property owner and developer, the setback and buffer standards in the Land Management Ordinance (LMO) were reviewed. At the time the subdivision was originally approved, a 20 foot setback and buffer was required around the perimeter of the subdivision, as shown on the subdivision plat (Attachment C). The newly revised LMO, adopted in 2014, has flexibility with the buffer standards and requires either a 20 foot buffer or a more heavily vegetated ten foot buffer for single family residential use adjacent to a multifamily residential use. A 20 foot setback is still required under the revised LMO along the perimeter of a single family subdivision adjacent to a multifamily residential use. The developer asked if they could use the ten foot buffer option for their property. After discussions with the Town Attorney, it was determined that since the subdivision plat was recorded prior to the revised LMO, with a 20 foot buffer requirement, in order to reduce that 20 foot buffer to a 10 foot buffer, the entire subdivision plat would need to be revised and recorded. But even if the entire subdivision plat was revised to show a reduced 10 foot buffer, they would still have to meet a 20 foot setback requirement and would not be able to construct the pool. The applicant decided to pursue the variance.

Applicant's Grounds for Variance, Summary of Facts and Conclusions of Law:

Grounds for Variance:

According to the applicant, they lost area in the rear of the lot because they were required to move the house back 9 feet in addition to their front setback and buffer in order to meet their setback angle requirement. The applicant states that if the rear setback and buffer was reduced to ten feet they could build a pool and utilize the minimal space in the rear of the property.

Summary of Fact:

- The applicant seeks a variance as set forth in LMO Section 16-2-103.S.

Conclusion of Law:

- The applicant may seek a variance as set forth in LMO Section 16-2-103.S.

Summary of Facts and Conclusions of Law:

Summary of Facts:

- Application was submitted on March 25, 2016 as set forth in LMO Section 16-2-102.C and Appendix D-23.
- Notice of the Application was published in the Island Packet on May 1, 2016 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on April 6, 2016 as set forth in LMO Section 16-2-102.E.2.

- Notice of Application was mailed on April 28, 2016 as set forth in LMO Section 16-2-102.E.2.
- The Board has authority to render the decision reached here under LMO Section 16-2-102.G.

Conclusions of Law:

- The application is in compliance with the submittal requirements established in LMO Section 16-2-102.C.
- The application was submitted 59 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
- Notice of application was published 22 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was posted 46 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was mailed 25 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- The application and notice requirements comply with the legal requirements established in LMO Section 16-2-102.E.2.

As provided in LMO Section 16-2-103.S.4, Variance Review Standards, a variance may be granted in an individual case of unnecessary hardship if the Board determines and expresses in writing all of the following findings of fact.

Summary of Facts and Conclusions of Law:

Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property (LMO Section 16-2-103.S.4.a.i.01):

Findings of Facts:

- The property is rectangular in shape.
- The lot is about 0.08 acres in size.
- The property does not contain any wetlands or other natural features that prohibit development on the lot.

Conclusion of Law:

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because the property is average in shape and size and does not contain any extraordinary or exceptional conditions.

Summary of Facts and Conclusions of Law:

Criteria 2: These conditions do not generally apply to other properties in the vicinity (LMO Section 16-2-103.S.4.a.i.02):

Findings of Facts:

- There are no extraordinary or exceptional conditions that pertain to this property.
- The other properties in the vicinity are similar in shape and size and do not typically contain any wetlands or natural features.

Conclusion of Law:

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary or exceptional conditions that apply to the subject property that do not generally apply to other properties in the vicinity.

Summary of Facts and Conclusions of Law:

Criteria 3: Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property (LMO Section 16-2-103.S.4.a.i.03):

Findings of Facts:

- There are no extraordinary or exceptional conditions that pertain to this property.
- The subdivision was approved in accordance with the LMO at the time with the 20 foot adjacent use setback and buffer shown. Setback angles were also required at the time the subdivision was originally approved.

Conclusion of Law:

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary or exceptional conditions that apply to the subject property that would restrict the utilization of the property.

Summary of Facts and Conclusions of Law:

Criteria 4: The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variance (LMO Section 16-2-103.S.4.a.i.04):

Findings of Facts:

- The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential negative effects between adjacent uses and provide space for landscaping that can help improve air and water quality and be used to reduce storm water runoff.
- The applicant is requesting to reduce the adjacent use buffer from 20 to 10 feet.
- Staff has received several letters in opposition of this variance request (see Attachment G).

- Staff has been informed that private covenants exist that prohibits disturbance of the 20 foot buffer along the lagoon in between the Sandcastles by the Sea subdivision and the Hilton Head Beach and Tennis Resort development (see Attachment H).

Conclusion of Law:

- Staff concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the variance will be of substantial detriment to adjacent property.

LMO Official Determination:

Based on the above Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should not be granted to the applicant because all four of the variance criteria have not been met.

BZA Determination and Motion:

The "powers" of the BZA over variances are defined by the South Carolina Code, Section 6-29-800, and in exercising the power, the BZA may grant a variance "in an individual case of unnecessary hardship if the board makes and explains in writing ..." their decisions based on certain findings or "may remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review."

This State law is implemented by the Hilton Head Island Land Management Ordinance, Chapter 2, Article 103 and the Rules of Procedure for the BZA.

A written Notice of Action is prepared for each decision made by the BZA based on findings of fact and conclusions of law.

The BZA can either Approve the application, Disapprove the application, or Approve with Modifications. Findings of Fact and Conclusions of Law must be stated in the motion.

PREPARED BY:

ND

 Nicole Dixon, CFM, Senior Planner

May 3, 2016

 DATE

REVIEWED BY:

HC

 Heather Colin, AICP, Development Review
 Administrator

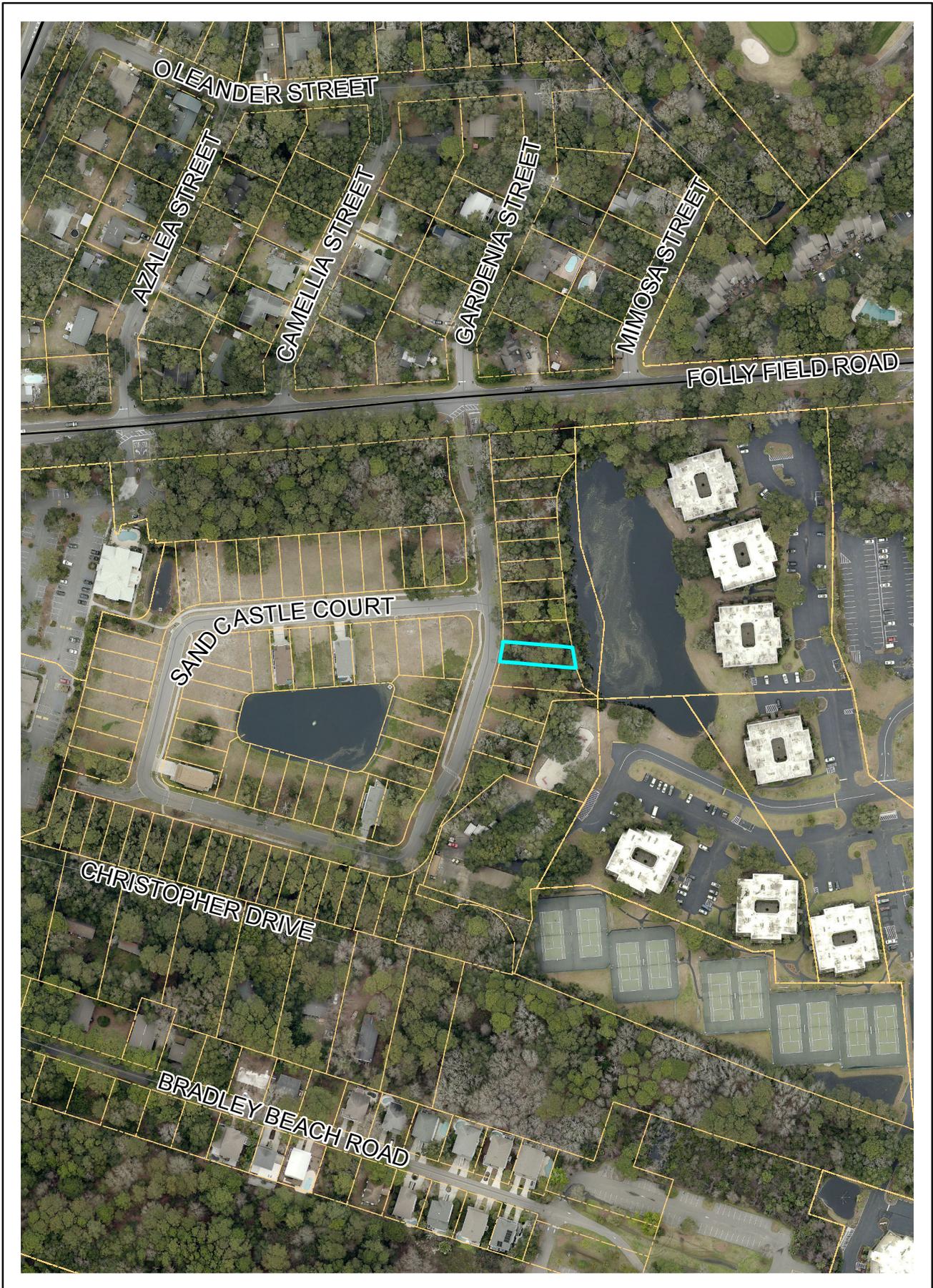
May, 2016

 DATE

ATTACHMENTS:

- A) Vicinity Map
- B) Applicant's Narrative
- C) Subdivision Plat
- D) Proposed Site Plan with pool
- E) Proposed Site Plan showing full lot with reduced buffer
- F) Pictures
- G) Letters of Opposition
- H) Letter from Attorney regarding covenants

ATTACHMENT A



VAR-000587-2016 Vicinity Map

ATTACHMENT B



**VARIANCE REQUEST
SAND CASTLES BY THE SEA
LOT 10 PARCEL R511 0099 000 1194 0000**

The homesites in SCBS are mostly rectangular in shape. The home sites are approximately 33' wide by 110' deep on average.

Reason for request:

We needed to move the house back 9' during the permitting process to meet the building codes in this subdivision.

The homesite has an unusual REAR SHAPE of the property, which is different than the most of the properties in the subdivision.

Our rear property BSL is 20 feet and the buffer is 20 feet.

Variance Request:

Our variance request is to LMO 16-5 – 103.E and F and 102.D

Our variance request is to change to the current LMO 16-5 Type A – Option 2 buffer size which states that the buffer can be 10' wide along the rear of the property line. We also request that 20' setback be reduced to a 10' setback line.

Specific Criteria Answers:

1. The shape of the rear of this homesite is individual and exceptional in the community- most others are squared off.
2. The shape does not apply to others in the community.
3. Due to the shape and use ability, the future home owner would have planned differently on exterior use. The pushing back of the home during permit phase took away the 9' needed from the rear of the property.
4. No harm will come to neighboring property

This property is on a lagoon and across from Beach and Tennis resort. The lagoon is a wide body of water that is apart of the SCBS subdivision open space that acts as a natural buffer as well as the embankment of the Beach and Tennis resort is a manicured low maintenance lawn grass- no trees, no shrubs or natural areas.

Our request to reduce both the buffer and setback will not be out of place against the current buffer style of the Beach and Tennis Resort.

Explanation:

The buffer variance request if granted will allow the contracted homeowner to utilize the minimal space in the rear of the property which could not be used otherwise due to the buffer requirements.

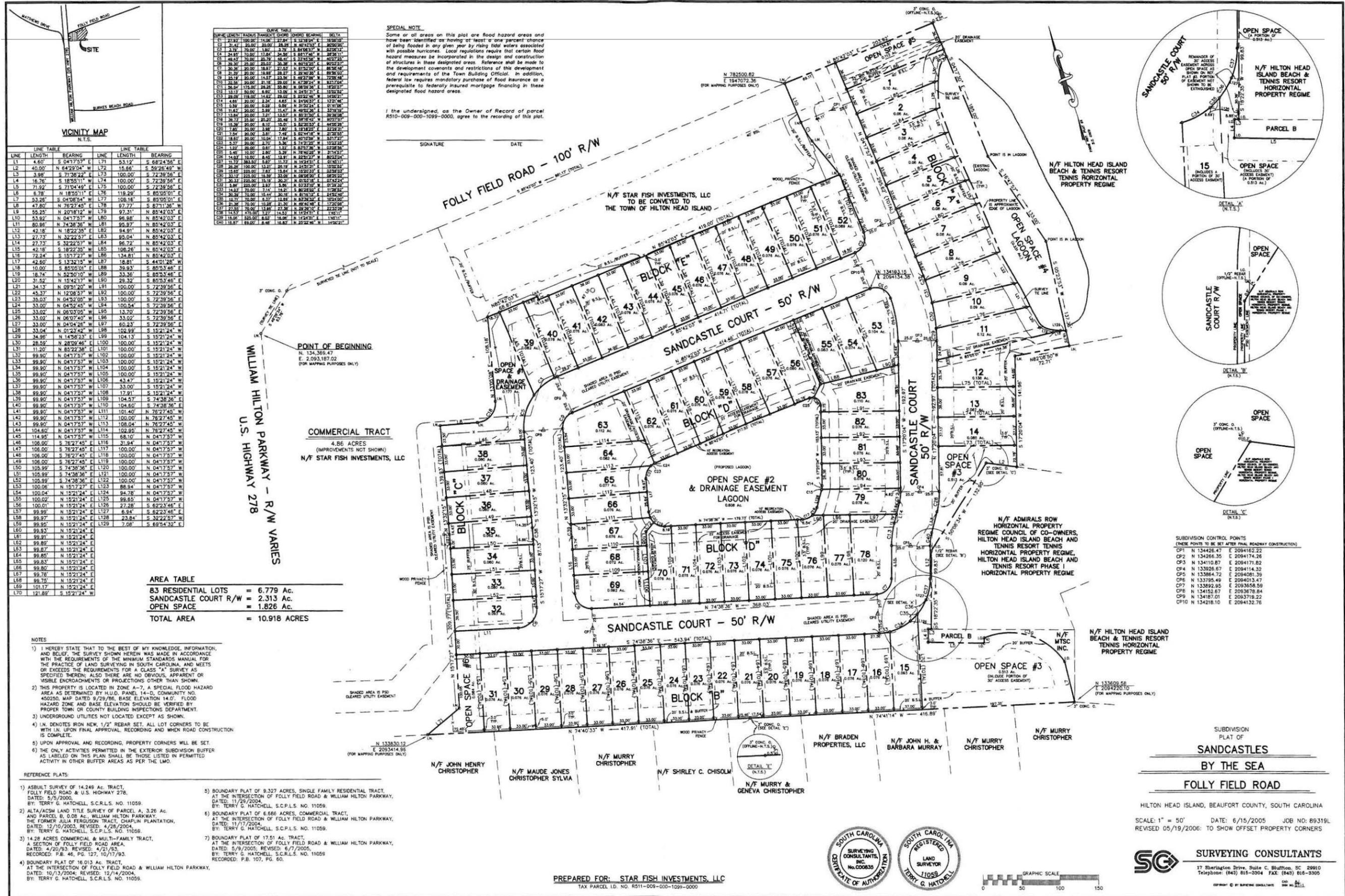
Thank you for consideration.

Please see exhibits.



Richard Schwartz
President
Village Park Homes

ATTACHMENT C







ATTACHMENT G

From: rdubois@ups.com
To: [Dixon Nicole](#)
Cc: duboisity@gmail.com
Subject: Sandcastle Court Variance - VAR 000587-2016
Date: Thursday, April 14, 2016 10:19:50 AM
Importance: High

Ms. Dixon,

We are property owners in Tennis Villa B at Hilton Head Island Beach and Tennis Resort. Tennis Villa B is on one side of the lagoon with Sandcastles on the opposite side.

We are opposed to reducing the variance to construct a pool for homes being built along the lagoon. In addition, we are requesting that the developer plant a buffer of trees to replace those removed along the lagoon. If a pool is approved and the entire tree buffer removed for 1 of the properties (2 are currently being built), then a precedent has been set that every property along the lagoon would be allowed a variance.

The Town of Hilton Head Island has been very strong in preserving the natural beauty of the island and these types of variances need to be declined. To help resolve the situation, we are in favor of Sandcastles constructing a community pool in the center of the neighborhood where it wouldn't impact any natural water or other current buffers.

Thank You,

Bob Dubois

Hilton Head Island Beach and Tennis Resort – Tennis Villa B16

Bob Dubois

UPS

Customer Technology Marketing

rdubois@ups.com

678-746-8546

ATTACHMENT G

From: [Bertrand, Jim \[DPYUS\]](#)
To: [Dixon Nicole](#)
Subject: FW: Var-000587-2016 27 Sandcastle Court -Parcel #1116
Date: Thursday, April 14, 2016 3:00:48 PM

From: Bertrand, Jim [DPYUS]
Sent: Thursday, April 14, 2016 2:58 PM
To: 'nicoled@hitlonheadislandsc.gov'
Subject: Var-000587-2016 27 Sandcastle Court -Parcel #1116

To: Nichole Dixon

Please note that **we are not** in favor of this variance.

We have two lots in Sandcastle and this would set a precedent which is not the correct thing to do.

I have served on HOA board and associated with other HOA's in other parts of the country and once you do this it causes multiple issues in the subdivision.

Any questions please do not hesitate to call me.

Please confirm that you received this e-mail.

Regards,
Jim & Christine Bertrand

Jim Bertrand
Director
Codman Neuro
Ph: (404)387-1121
Email: jbertra@its.jnj.com

CODMAN NEURO

 **DePuySynthes**
COMPANIES OF 

ATTACHMENT G

From: thebeelers@bellsouth.net
To: [Dixon Nicole](#)
Subject: Board of Zoning Appeals
Date: Saturday, April 23, 2016 12:46:34 PM

RE: Request to reduce the buffer at 27 Sandcastle Court

Thank you for notifying us of the upcoming Board of Zoning Appeals public hearing on Monday, April 25, 2016. Since we do not live on site and are unable to appear in person, I'm hoping to give you our comments to present via email. We are NOT in favor of granting this request.

This is the first property to be built on the lagoon in Sandcastle Court, and the buffer was established well prior to building. We feel strongly that reducing this buffer would destroy the aesthetic of the natural lagoon, as well as set a bad precedent for other properties on the jointly shared lagoon. Since our property (in Hilton Head Beach and Tennis Resort) faces the lagoon, we have enjoyed the natural look and the bird sanctuary it provides for many years. How horrible it would be to have to look at less nature and more concrete. Other than aesthetics, reducing the buffer also eliminates the natural habitat of the lagoon. We're all for maintaining the natural state of the lagoon and its inhabitants as much as possible.

Please consider voting NO to this request. There are many other building sites in the Sandcastle Court neighborhood that would be more suited should the owners choose to build a pool.

Let's not destroy the natural habitat that so many on the other side of the lagoon have enjoyed for many years to accommodate one new homeowner.

DeWitt and Carolyn Beeler
Hilton Head Beach and Tennis Owners

Sent from Windows Mail

ATTACHMENT G

From: [Barbara Morgan](#)
To: [Dixon Nicole](#)
Subject: Opposition to Requested Variance
Date: Wednesday, April 27, 2016 1:08:05 PM

As the sole owner of the property originally recorded as "Property Address: 52 Sandcastle Court; Property Description: Lot 78, Block D," I am totally opposed to the requested variance on 27 Sandcastle Court (which is identified as Parcels #1116 on Beaufort County Tax Map #9) requesting to reduce the buffer to 10 feet to construct a pool in the rear yard.

James D. Moebes
1 Pine Crest Road
Birmingham, AL 35223
Phone: 205-870-7144

ATTACHMENT G

April 17, 2016

Dear Sir/Madam,

As owners of property at Hilton Head Beach and Tennis Resort, we are against the approval of variance VAR: 000587-2016 to reduce the buffer to ten feet in order to build a pool. We are sending this letter because we live out of state and cannot attend the Board of Zoning Appeals meeting as scheduled.

The reason we oppose this move is because of its proximity to our condo in the Tennis Villa building D.

This buffer was put in for a reason and helps keep our area private and a natural environment for the island's wildlife. We purchased our unit with the assurance the area would remain as is and the buffer would be followed as stated.

In summary, we the owners of D-5 Tennis Villa do not want the passage of this variance. (000587-2016).

Sincerely,

Joan Lukowsky

David Lukowsky

Lauren Lukowsky Rogers

From: [Knapp, David](#)
To: [Dixon Nicole](#)
Subject: response to VAR-000587-2016
Date: Tuesday, May 03, 2016 1:17:45 PM

Nicole, I own and reside part-time in Hilton Head Beach and Tennis unit B-10 which overlooks the pond/lagoon. Since construction began in Sandcastle along the opposite side of the lagoon I have noticed a reduction in the previous volume of natural fauna which used to migrate around and through the pond/lagoon. The units currently being constructed in Sandcastle along the lagoon appear to be designed in good taste. However, I feel that construction of a pool in the backyard of parcel #1116, regardless of the size, just 10' off the bank buffer will further impede migratory wildlife along the bank. Though I cannot stop or prevent construction of a pool, as allowed by the existing ordinances, I do ask the Town of Hilton Head to reconsider allowing further encroachment on the existing bank and not approve this variance.

If I can make the May 23rd meeting I will, but at this time I do not believe that will be possible

David Knapp (dknapp@golder.com) | Associate and Sr. LFG Consultant | **Golder Associates Inc.**

3730 Chamblee Tucker Road, Atlanta, Georgia, USA 30341

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ATTACHMENT H

FINGER, MELNICK & BROOKS, P.A. ATTORNEYS AT LAW

TERRY A. FINGER •
THOMAS L. BROOKS
TYLER A. MELNICK
BENJAMIN T. SHELTON
E. RICHARDSON LaBRUCE

Of Counsel:
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erlabruce@fingerlaw.com

Also admitted in:
* Georgia
† New York

o Court Certified Mediator
• Court Certified Arbitrator / Mediator

April 25, 2016

Via U.S. Mail and E-Mail (NicoleD@hiltonheadislandsc.gov):

Ms. Nicole Dixon, Project Manager
TOWN OF HILTON ISLAND
One Town Center Court
Hilton Head Island, South Carolina 29928

Re: Variance Application for 27 Sandcastle Court; VAR-000587-2016
Parcel Number R511-009-000-1116-0000 (Village Park Homes)
Our File No. 0191.124 – Hilton Head Beach & Tennis

Dear Nicole,

This firm has the privilege of serving as general counsel to Hilton Head Beach & Tennis Resort (herein, “*HHB&T*”), HHB&T Convention Center, Inc. (herein, the “*Convention Center*”), Admirals Row Owners Association, Inc. (herein, “*Admirals Row*”), Ocean Villas Owners Association, Inc. of Hilton Head (herein, “*Ocean Villas*”), and Tennis Villas Owners Association, Inc. (herein, the “*Association*”), and in such capacity, we have been asked to review and respond to the above-referenced Variance Application filed by Richard Schwartz, on behalf of Village Park Homes. Further, our clients have requested that I attend the meeting of the Hilton Head Island Board of Zoning Appeals scheduled for May 23, 2016, at 2:30 p.m. on their behalf and in opposition to the proposed variance. In advance thereof, I respectfully bring the following to your attention:

As is evident from the *Declaration of Restrictive Covenants (Landscape Buffer)* dated May 19, 1993, attached hereto as Exhibit “A,” Frank F. Russo and Madeline E. Russo, the prior owners of record of the subject property and the entirety of Sandcastles by the Sea subdivision, entered into an agreement with the Association to plant and maintain a twenty (20.00’) foot landscape buffer in between their property and the lagoon that separates Sandcastles by the Sea and HHB&T. This Declaration was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, on June 17, 1993, in Record Book 631 at Page 1810.

ATTACHMENT H

Ms. Nicole Dixon

April 25, 2016

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Despite the express language of the above-referenced Declaration prohibiting “that portion of the Property lying within twenty feet (20’) of the lagoon separating the Property at its eastern boundary from the property of the Regime” from being used as anything other than “a landscaped buffer between the Property and the Regime property,” the applicant has requested a variance in the Town’s buffer requirement for the sole purpose of constructing a pool in the rear yard. Such development is unambiguously prohibited by the Declaration; therefore, in accordance with S.C. Code Ann. § 6-29-1145 and the LMO, the Town of Hilton Head may be statutorily precluded from permitting the requested development and/or approving the variance application. *See also Talbot v. Myrtle Beach Board of Adjustment*, 222 S.C. 165, 72 S.E.2d 66 (1952)(“It is worthy of notice that a zoning law cannot constitutionally relieve land within the district covered by it from lawful restrictions affecting its use, imposed by covenants.”)(internal citations omitted); LMO Section 16-1-106(B).

Perhaps even more importantly, despite the existence of a private agreement prohibiting the requested development, granting a variance is an exceptional power which should only be exercised sparingly and can be validly used only where a situation falls fully within the specified conditions set forth by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (the “Act”) and local zoning ordinances. *Restaurant Row Associates v. Horry County*, 335 S.C. 209, 516 S.E.2d 442, *rehearing denied, certiorari denied* 528 U.S. 1020 (1999); *Hodge v. Pollock*, 223 S.C. 342, 75 S.E.2d 752 (1953). Pursuant to the Act, the Board of Zoning Appeals has the power “to hear and decide appeals for variance from the requirements of the zoning ordinance when strict application of the provisions of the ordinance would result in unnecessary hardship.” S.C. Code Ann. § 6-29-800(A)(2); *see also* LMO Section 16-2-103.S.

Ultimately, that is the question before the Board of Zoning Appeals: Does the application of the subdivision buffer and setback restrictions to this particular property result in an unnecessary hardship to the property owner? As set forth by the South Carolina Supreme Court,

Although there is no set definition, this Court has established guidelines for determining “unnecessary hardship.” First, a claim of unnecessary hardship cannot be based upon conditions created by the owner nor can one who purchases property after the enactment of a zoning regulation complain that a nonconforming use would work an unnecessary hardship upon him. *Rush v. City of Greenville*, 246 S.C. 268, 143 S.E.2d 527 (1965).

Restaurant Row Assoc., 335 S.C. at 218. In the case at hand, the current property owner purchased the Property on or about April 15, 2015, nearly a decade after the twenty (20’) foot setback and buffer requirements were imposed on the Property by the Town as a result of the original developer’s subdivision approval. As such, the applicant fails to establish a single change in circumstances or conditions that occurred subsequent to the purchase of the property that would render the enforcement of the validly existing setback and buffer restrictions as an

ATTACHMENT H

Ms. Nicole Dixon
April 25, 2016
3 | Page

“unnecessary hardship.”

Further, when deciding whether to grant a variance, the Board of Zoning Appeals must be guided by standards which are specific in order to prevent the ordinance from being invalid and arbitrary. *Id.*; *Schloss Poster Adv. Co. v. City of Rock Hill*, 190 S.C. 92, 2 S.E.2d 392 (1939). As established by the Town’s Land Management Ordinance, an applicant must meet the following four threshold elements before the Board of Zoning Appeals can legally grant a variance:

01. There are extraordinary and exceptional conditions pertaining to the particular piece of property;
02. These conditions do not generally apply to other properties in the vicinity;
03. Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
04. The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variance.

See LMO Section 16-2-103.S.4.a.i.01 – 04.

Ultimately, the four elements set forth above revolve around one simple principle: “Citizens owning land of indiscernible differences are entitled to be treated equally, for the government cannot benefit one person and arbitrarily deprive another.” *Talbot*, 222 S.C. at 165. Therefore, “before a variance can be allowed on the ground of ‘unnecessary hardship’, there must at least be proof that a particular property suffers a singular disadvantage through the operation of a zoning regulation.” *Restaurant Row Associates*, 335 S.C. 209, 516 S.E.2d 442 (citing *Application of Groves*, 226 S.C. 459, 463, 85 S.E.2d 708, 710 (1955))(emphasis added).

The subject property is but one lot in an 83 lot subdivision. Each and every lot therein is subject to the exact same twenty (20’) foot buffer and setback requirements. As such, the applicant cannot remotely establish that its property, which is nearly an exact replica of every other lot in the community, is beset by such extraordinary and exceptional conditions as to effectively prohibit its full use and enjoyment. For these reasons, among others, the applicant’s variance request fails to meet the high threshold established by our Supreme Court and our legislature and, accordingly, the Board of Zoning Appeals should deny the variance application.

If you have any questions, please do not hesitate to contact me. I thank you for your time and look forward to your response.

ATTACHMENT H

Ms. Nicole Dixon

April 25, 2016

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With kind regards, I am

Very truly yours,

FINGER, MELNICK & BROOKS, P.A.



E. Richardson LaBruce

ERL/

Enclosures: Declaration of Restrictive Covenants
cc: Mrs. Kate Clewell, Executive Director HHB&T (*e-mail only*)
Mr. James Kennedy, President of Admirals Row (*e-mail only*)
Mr. Bobby Singley, President of Ocean Villas (*e-mail only*)
Mr. Peter Rice, President of the Association (*e-mail only*)
Mr. Richard Schwartz, President of Village Park Homes (*US Mail only*)

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) DECLARATION OF RESTRICTIVE COVENANTS
(LANDSCAPE BUFFER)

This Declaration of Restrictive Covenants is entered into this 19th day of May, 1993, by FRANK F. RUSSO and MADELINE E. RUSSO ("Declarant").

WHEREAS, Declarant is the owner of the real property (the "Property") containing 14.28 acres, more or less, which is located at the intersection of Folly Field Road with William Hilton Parkway, and which is more fully described in the attached Exhibit "A;" and

WHEREAS, Tennis Villas Owners Association, Inc. (the "Association") is the legal representative of the owners of condominium units in the Tennis Villas Horizontal Property Regime (the "Regime") in Hilton Head Beach & Tennis Resort (the "Resort") which is located immediately to the east of the Property, as shown on the plat of survey described in Exhibit "A" (the "Plat"); and

WHEREAS, Declarant, the Association, and the other property owners associations in the Resort entered into that certain "Agreement," dated as of April 3, 1993, pursuant to which Declarant agreed to impose certain restrictive covenants upon a portion of the Property in exchange for certain agreements made by the Association and the other property owners associations.

NOW, THEREFORE, for good and valuable consideration, including the agreements and mutual promises of the parties contained in the Agreement, Declarant does hereby declare that the following restrictive covenants are imposed upon that portion of the Property lying within twenty feet (20') of the lagoon separating the Property at its eastern boundary from the property of the Regime and within twenty feet (20') of the northern and western property line of "Parcel A" shown on the Plat, which shall be referred to as the "20' Landscape Buffer."

1. LANDSCAPED BUFFER. Such 20' Landscape Buffer shall be restricted to use as a landscaped buffer between the Property and

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the Regime property, provided that the Declarant may install utilities and drainage facilities therein and may install, maintain, and replace the Service Road shown on the Plat (designated as "Crusher-Run Road" thereon). If the Service Road is relocated by Declarant or by any subsequent owner of the Property, in compliance with the terms of the "Grant of Easements" from Declarant to the Association dated and recorded simultaneously herewith, the owner of the Property shall install landscaping in the location of the aforesaid Service Road similar to the other landscaping within the 20' Landscape Buffer.

2. **INSTALLATION OF PLANT MATERIALS.** Declarant shall install landscaping plant materials within the 20' Landscape Buffer in accordance with the landscaping plan approved by the Town of Hilton Head Island as a part of the development plan approval for the Property. If in the opinion of the Association, such landscape plan does not adequately screen the roads, lighting, or structures on the Property, or the Association determines in its sole discretion that there is a need to maintain, cut, or prune plant growth on the Property to maintain a neat appearance, a non-easement appurtenant to the Regime property is hereby granted by Declarant to the Association to enter upon the 20' Landscape Buffer to plant additional landscape materials to supplement the then existing landscaping and/or to maintain, cut, or prune plant growth. If entry on the Property is to be made by the Association pursuant to this easement, the Association shall give the owner of the Property written notice thereof at least three (3) days in advance, and the Association shall indemnify and hold the owner of

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the Property harmless from any loss, damage, costs, claims or causes of action as a result of the exercise of such right of entry. Any landscaping materials installed by the Association on the Property shall become a part of the Property and shall be owned by the owner thereof, provided that the Declarant will allow the Association to promptly remove any plants or trees previously installed by the Association in the event the landscaping is subsequently altered to require said removal, which removal shall be at no expense to the Declarant.

3. RE-DEVELOPMENT OF THE PROPERTY. After the landscaping plan described in Paragraph 2 above has been implemented, the Declarant and their successors in title to the Property may not remove or substantially alter the trees and plant materials within the 20' Landscape Buffer (except for routine maintenance and replacement thereof), unless the Property is re-developed, with the lagoon between the properties to be utilized as an amenity in connection with any structure erected on the Property. For example, if a hotel or restaurant is built on the Property, and the developer orients the building in the direction of the lagoon between the Property and the Regime property to provide a view of the lagoon, the owner of the Property may alter trees and other landscaping within the 20' Landscape Buffer to enhance the view of the lagoon. However, if the Property is re-developed for a use which does not make use of the view (for example, the loading or service area for a commercial establishment), the owner of the Property must maintain a "total landscape buffer" (as defined in the Town of Hilton Head Island's ordinances) within the 20'

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Landscape Buffer. The Declarant hereby grants to the Association a non-exclusive easement appurtenant to the Regime property to enter upon the 20' Landscape Buffer to plant additional landscape materials to supplement the then existing landscaping and/or to maintain, cut, or prune plant growth, if, in the opinion of the Association, such total landscape buffer does not adequately screen the improvements of the Property, or if the Association determines in its sole discretion that there is a need to maintain, cut, or prune plant growth on the Property to maintain a neat appearance. If entry on the Property is to be made by the Association pursuant to this easement, the Association shall give the owner of the Property written notice thereof at least three (3) days in advance, and the Association shall indemnify and hold the owner of the Property harmless from any loss, damage, costs, claims, or causes of action as a result of the exercise of such easement. Any landscaping installed by the Associations on the Property shall become a part of the Property and owned by the owner thereof, provided that Declarant will allow the Association to promptly remove and plants or trees previously installed by the Association in the event the landscaping is subsequently altered to require said removal, which removal shall be at no expense to Declarant.

4. FOUNDATION PLANTINGS. The owner of the Property shall be obligated to install adequate foundation plantings along the portion of buildings visible from the Regime property to screen the foundations and other areas below the first finished floor from view.

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IN WITNESS WHEREOF, this Declaration of Restrictive Covenants has been executed as of the day and year first above written.

WITNESSES:

Marie Murray
MARIE MURRAY

Frank F. Russo
FRANK F. RUSSO

Julianne McKeever
JULIANNE MCKEEVER

Madelaine E. Russo
MADELINE E. RUSSO

STATE OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA) PROBATE

PERSONALLY appeared before me the undersigned witness who, after first being duly sworn, states on oath that (s)he saw the within named FRANK F. RUSSO and MADELINE E. RUSSO sign, seal and deliver the within Declaration of Restrictive Covenants, and that (s)he with other witness named up above witnessed the execution thereof.

Marie Murray
(Witness) MARIE MURRAY

Sworn to and subscribed before me this 19th day of May, 1993.

Janelle M. Ansko
Notary Public for Pennsylvania
My Commission Expires: _____

NOTARIAL SEAL
JANELLE M. ANSKO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires November 13, 1995

ATTACHMENT H

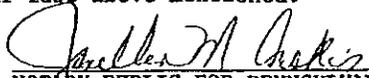
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STATE OF PENNSYLVANIA)
COUNTY OF PHILADELPHIA)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 19th day of May, 1993, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared FRANK F. RUSSO and MADELINE E. RUSSO, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, who acknowledged the same by signing their names.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

 [SEAL]
NOTARY PUBLIC FOR PENNSYLVANIA
My Commission Expires: _____

NOTARIAL SEAL
JANELLE M. ANSIOS, Notary Public
City of Philadelphia, Phila. County
My Commission Expires November 13, 1996

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EXHIBIT "A" TO DECLARATION OF RESTRICTIVE COVENANTS

ALL that certain piece, parcel or tract of land, situate lying and being in the Town of Hilton Head Island, Beaufort County, South Carolina, containing 14.28 acres, more or less, and being more fully shown on a plat of survey prepared by Coastal Surveying Co., Inc., Jerry L. Richardson, S.C.R.L.S. No. 4784, dated April 20, 1993, entitled "A Plat of 14.28 Acres Commercial & Multi-Family Tract Boundary Survey, A Section of the Folly Field Road Area," which plat is recorded in the R.M.C. Office for Beaufort County in Plat Book 46 at Page 127.

ATTACHMENT H

Walz
FILED
THERESA A. MORRIS
R.M.C.
BEAUFORT COUNTY, S.C. */MLL*
93 JUN 17 AM 11:08
BK *631* PG *1810*
FOLDER #

1817



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE: May 9, 2016
SUBJECT: Substitutions of Nonconformities for Redevelopment

The Board of Zoning Appeals (BZA) requested that staff keep them informed of substitutions of nonconformities for redevelopment that are granted by staff. A memo is distributed every month at the regular BZA meetings and is 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.

The following language is contained in Section 16-7-101.F, Substitutions of Nonconformities for Redevelopment, which gives the Administrator the power to grant such substitutions for existing nonconforming structures and site features.

LMO Section 16-7-101.F:

“To provide flexibility and encourage redevelopment of sites with nonconforming features or structures, the Official is authorized to approve a Development Plan for such sites if the proposed development:

1. Will not include any new development that increases the amount of encroachment into any required buffer or setback;
2. Will not increase the impervious cover on the site over the maximum allowed for the district or the existing impervious cover, whichever is greater;
3. Will not result in a density in excess of what is allowed under this Ordinance, or the existing density, whichever is greater;
4. Will lessen the extent of existing nonconforming site features to the greatest extent possible;
5. Will not have an adverse impact on the public health, safety or welfare; and
6. Will lessen the extent of nonconformities related to any existing nonconforming structure on the site to the greatest extent possible.”

The following Substitutions of Nonconformities for Redevelopment have been granted by staff since the April 2016 Board of Zoning Appeals meeting.

1. Blazing Star Lane road improvements - As part of the project, improvements were proposed to the existing right-of-way which includes the driveway entrances for several residential properties in the form of asphalt aprons. The aprons will match existing conditions as closely as possible. The driveway entrances are currently non-conforming

to the driveway width standards that are provided in the Land Management Ordinance (LMO). Because the project will be rehabilitating the street and improving the driveway entrances with asphalt aprons in the most feasible locations, the waiver was granted.

2. Simmons Fish Camp expansion project- 11 Simmons Road. As part of that project, they were required to make improvements to the existing parking. The parking lot is currently non-conforming to the parking design standards that are provided in the Land Management Ordinance (LMO). Since the applicant will be bringing the parking lot more into compliance with the LMO, the waiver was granted.