



**Town of Hilton Head Island
Board of Zoning Appeals
Monday, September 26, 2016 - 1:00 p.m.
Benjamin M. Racusin Council Chambers**

REVISED 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 Minutes** – August 22, 2016 and August 29, 2016 meetings
8. **New Business**
 - a) **PUBLIC HEARING**
VAR-1613-2016: Linda Piekut, on behalf of the Heritage Library Foundation, is requesting a variance from Land Management Ordinance Section 16-5-103.E, Adjacent Use Buffer, to allow parking for the Zion Chapel-of-Ease Cemetery to encroach into the adjacent use buffer. The subject parcel is Beaufort County Parcel 18 on Tax Map 8 and is located at 574 William Hilton Parkway.
 - b) **Motion to Reconsider APL 1006-2016:** ArborNature LLC and Adam Congrove are requesting that the Board of Zoning Appeals reconsider their decision to uphold the decision of the Official related to APL 1006-2016.
9. **Board Business**
 - a) Approval of 2017 Meeting Schedule
10. **Staff Reports**
 - a) 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 August 22, 2016 2:30pm Meeting
Benjamin M. Racusin Council Chambers

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

Board Members Absent: None

Council Members Present: Mayor David Bennett

Town Staff Present: Greg DeLoach, Assistant Town Manager; Brian Hulbert, Staff Attorney; Shawn Colin, Deputy Director of Community Development; Teri Lewis, LMO Official; Nicole Dixon, Senior Planner & Board Coordinator; 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. Swearing in Ceremony for New and Reappointed Board of Zoning Appeals Members

Mr. Greg DeLoach, Assistant Town Manager, performed the swearing in ceremony for reappointed BZA members, Ms. Lisa Laudermilch, and Mr. David Fingerhut, and new BZA member Mr. Robert Johnson.

6. Election of Officers for the July 1, 2016 – June 30, 2017 term

Mr. Fingerhut made a **motion** to elect Glenn Stanford to serve as Chairman for the new term. Mr. White **seconded** the motion. There were no additional nominations for the office of Chairman and the motion to elect Glenn Stanford as Chairman **passed** unanimously.

Mr. White made a **motion** to elect Jerry Cutrer to serve as Vice Chairman for the new term. Chairman Stanford **seconded** the motion. There were no additional nominations for the office of Vice Chairman and the motion to elect Jerry Cutrer as Vice Chairman **passed** unanimously.

Chairman Stanford made a **motion** to appoint Ms. Teresa Haley to serve as Secretary for the new term. Mr. Wilson **seconded** the motion and the motion **passed** unanimously.

7. Welcome and Introduction to Board Procedures

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

8. Approval of Agenda

Vice Chairman Cutrer made a motion to **approve** the agenda as submitted. Mr. White **seconded** the motion. The motion **passed** with a vote of 7-0-0.

9. Approval of the Minutes

Chairman Stanford requested that the term “restricted” covenants be revised to “restrictive” covenants in the minutes of the May 23, 2016 meeting. Mr. Fingerhut made a motion to **approve** the minutes of the May 23, 2016 meeting as amended. Mr. White **seconded** the motion. The motion **passed** with a vote of 6-0-1. (Mr. Johnson abstained from the vote as he was not present at the meeting.)

10. Unfinished Business – None

11. New Business

(Mr. Johnson recused himself from review of Request from Chester C. Williams: Motion for Stay or Postponement in connection with Appeal APL-001006-2016 due to a professional conflict of interest. A Conflict of Interest form was completed and signed, and attached to the record.)

Request from Chester C. Williams: Motion for Stay or Postponement – filed on behalf of ArborNature, LLC, the Appellant in connection with Application for Appeal APL-001006-2016, which was originally scheduled to be heard by the BZA on June 27, 2016. The Appellant moves for a stay or postponement of further action by the BZA until the issues subject to the appeal are decided by the court in the pending lawsuit.

Chairman Stanford cited specific Board of Zoning Appeals Rules of Procedure related to the case. Chairman Stanford asked Mr. Williams to come forward and make a presentation.

Mr. Williams introduced himself and Mr. Taylor as counsel for ArborNature, LLC, the Appellant. Mr. Williams requested that the Board ignore and strike from the record the letter dated August 8, 2016 from the law firm of Ruth & MacNeille P.A. regarding the ArborNature, LLC appeal (the “Letter”), based upon Article IX, Section 2, Paragraph 6 of the Board of Zoning Appeals Rules of Procedure, which states “Public comment is not permitted in a case involving an appeal from an Administrator decision.”

Chairman Stanford asked Mr. Hulbert whether the Board has the authority to strike the Letter from the record. Mr. Hulbert indicated that the Letter is not a part of the record at this point, as neither party to the appeal case has properly introduced it as part of the record. Mr. Hulbert recommended that the Board make a motion and vote on whether or not to consider the Letter.

Chairman Stanford made a **motion** that the Board disregard the Letter and the contents thereof, and proceed on the record as presented. Mr. Fingerhut **seconded** the motion. The motion **passed** with a vote 6-0-0.

Mr. Williams presented the Motion for Stay or Postponement as described in his letter dated July 22, 2016 and provided in the Board’s packet. Mr. Williams stated that there are numerous factual matters that are identical to both the appeal and pending litigation. Mr. Williams noted a cause of action in the pending lawsuit is an alleged violation of the LMO; and that there is no reason for the BZA to make a determination as to whether or not there is a violation of the LMO at the same time that the

issue is before the Circuit Court. The pending lawsuit gives the opportunity for extensive discovery, which involves depositions. Mr. Williams indicated that while the Board has authority to issue subpoenas; there is nothing that explicitly authorizes or prohibits the Board to issue subpoenas for depositions. Mr. Williams stated that he will want to depose witnesses and there is no reason for the duplication of efforts for both the appeal and the pending litigation cases. Mr. Williams noted the possibility that if the decision in the pending lawsuit is adverse to the Appellant, it may render the appeal case moot. Mr. Williams asked that the appeal be postponed until the pending lawsuit is resolved.

The Board discussed the LMO issue versus the private nuisance claim and whether or not there is potential for conflicting decisions. Mr. Taylor stated an allegation in the pending lawsuit against ArborNature, LLC is that it is in violation of the Town's statute in order to support the nuisance claim. Mr. Taylor stated that generally, courts have held that if you are in violation of a local statute, then you are probably a nuisance. Further, the Circuit Court may have to address this issue as it was brought to them. Mr. Taylor indicated the intention was to have the BZA decide this appeal case, however, the pending lawsuit was filed and should be decided in Circuit Court first.

Chairman Stanford asked for the Town's position. Ms. Lewis stated that Staff does not always take a position on a Motion for Stay or Postponement, but several members of the community have expressed concern about the ongoing activities at ArborNature, LLC. The Town has been receiving complaints for more than a year now. Staff believes it is important to consider everybody's rights. Staff believes that the subject of a private nuisance is separate from a violation of the LMO and that the appeal can move forward without delay.

Chairman Stanford stated that proceeding on the merits now can cause substantial unnecessary expense to the parties and could result in contrary decisions of the BZA and the Circuit Court. The Circuit Court is a more effective and efficient court for deciding these issues. Chairman Stanford asked for comments from the Board. The majority of the Board believes it is the Board's duty to decide on the appeal issue regarding whether or not the Appellant's use of the property is in violation of the LMO. The majority of the Board believes the Circuit Court will decide as to the private nuisance issue in the pending lawsuit. These are separate issues and decisions that would not conflict. The Board expressed concern for prolonging this matter.

Vice Chairman Cutrer made a **motion to deny** the request from Chester C. Williams: Motion for Stay or Postponement in connection with the application for Appeal APL-001006-2016. Mr. White **seconded** the motion. The motion **passed** with a vote of 5-1-0.

(Roll: Mr. Wilson, Mr. Fingerhut, Mr. White, Ms. Laudermilch, Mr. Cutrer – for the motion; Mr. Stanford – against the motion.)

Chairman Stanford stated that the Board, acting through the Chairman, has the power to issue subpoenas limited to persons and entities residing within the Town limits. Mr. Hulbert added that it is the discretion of the Chairman to issue subpoenas for witnesses requested by the Board or either of the two parties to the case.

Chairman Stanford asked for a motion that the Chairman of the Board of Zoning Appeals be permitted to issue subpoenas for live testimony, as well as subpoenas for depositions in anticipation and preparation for the hearing on the merits in this matter. Mr. Hulbert advised asking the parties as to their position prior to the Board making a decision. Mr. Williams stated that he thinks that

depositions afford a much more economical and efficient hearing on the merits. Mr. Taylor stated that the Board may want to consider accepting sworn testimony via the Circuit Court depositions for the purpose of the appeal hearing.

At 3:30p.m., Mr. Fingerhut made a **motion** to enter into Executive Session to receive legal advice related to receiving testimony. Vice Chairman Cutrer **seconded** the motion. The motion passed with a vote of 6-0-0.

Mr. Williams stated his objection to a potential fact witness giving legal advice to the Board on the pending appeal. Mr. Hulbert stated he is employed by the Town as legal counsel to Town created public bodies and Town employees, so such communications are protected by attorney client privilege and he should not be a fact witness in the case.

At 3:40p.m., Chairman Stanford called the meeting back to order and announced there was no action taken as a result of the Executive Session. Chairman Stanford stated that the discussion related to the means of providing testimony before the Board for the hearing.

Vice Chairman Cutrer made a **motion** to **approve** the Chairman of the Board of Zoning Appeals, Glenn Stanford, to sign subpoenas for live testimony of witnesses, with the parties requesting the witnesses to provide the names and the relevance of the expected testimony to the case at hand. Mr. Fingerhut **amended** the motion to add that the Board has no authority to sign subpoenas for pre-hearing discovery, just for live testimony. Vice Chairman Cutrer accepted the amendment to the motion. Mr. Fingerhut **seconded**. The motion **passed** with a vote of 6-0-0.

Chairman Stanford requested that the party requesting the subpoena, prepare the subpoena and provide it to him, understanding that the jurisdiction of that subpoena is limited to persons and entities residing within the Town limits of Hilton Head Island.

Vice Chairman Cutrer commented that the number of witnesses that may be subpoenaed is unknown and therefore, suggested that changing the September 26 meeting start time may be appropriate.

Ms. Laudermilch made a **motion** to **approve** the start time of the Board of Zoning Appeals Meeting on September 26, 2016 to 1:00p.m. Mr. White **seconded** the motion. Chairman Stanford asked for any comments by the parties. Mr. Williams stated that he has no objection. Ms. Lewis stated that Town Staff has no objection. The motion **passed** with a vote of 6-0-0.

12. Board Business – None

13. Staff Reports

Waiver Report – None

14. Adjournment

The meeting was adjourned at 3:45p.m.

Submitted by:

Approved by:

Teresa Haley, Secretary

Glenn Stanford, Chairman

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the August 29, 2016 4:00pm Special Meeting
Benjamin M. Racusin Council Chambers

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

Board Members Absent: Robert Johnson (excused)

Council Members Present: David Ames

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator; Brian Hulbert, Staff Attorney; Teri Lewis, LMO Official; 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

The Board **approve** the agenda by general consent.

7. New Business

Request from Chester C. Williams: Motion for Stay or Postponement – filed on behalf of Arbor Nature LLC, the Appellant in connection with Application for Appeal APL-001006-2016. At the August 22, 2016 meeting, the BZA voted to deny the request to postpone further action by the BZA until the issues subject to the appeal are decided by the court in the pending lawsuit. The BZA voted to hear the appeal at the September 26, 2016 regular meeting. Subsequently, the BZA was informed that the appellant's counsel is unavailable. The BZA will vote on a request for postponement until the October 24, 2016 regular meeting. The BZA will also vote on a 1:00pm meeting start time.

Mr. Williams presented the motion for postponement in connection with Appeal APL-001006-2016 as described in his letter dated August 23, 2016 and provided in the Board's packet. In addition to the packet, Mr. Williams submitted an Affidavit of Thomas C. Taylor for the record. Chairman Stanford asked for the Town's position for this request. Ms. Lewis stated concern for

the additional delay in this case. Ms. Lewis suggested that if the Board grants the request for postponement, that the Board considers conducting a special meeting earlier in October when Mr. Taylor is back versus waiting until the end of October. The Board inquired as to Mr. Taylor's vacation plans being withheld from the initial request for postponement. Mr. Williams indicated that he was unaware of Mr. Taylor's vacation plans until the Board was in executive session on August 22, 2016 and Mr. Taylor had to leave the meeting regarding a separate legal matter. The Board inquired as to the availability of Mr. Williams and Mr. Taylor in September and October. Mr. Williams stepped out to call Mr. Taylor for his availability. The Board discussed holding the hearing on September 19, prior to Mr. Taylor's vacation. Mr. Williams stated that he and Mr. Taylor are available.

Chairman Stanford asked for a motion to call a Board of Zoning Appeals Special Meeting on Monday, September 19, 2016 at 9:00a.m. Mr. Fingerhut moved to **approve** the motion. Ms. Lauder Milch **seconded** the motion. The motion **passed** with a vote 6-0-0.

Chairman Stanford stated that in light of the Board's action, Mr. Williams may choose to withdraw his motion or the Board can rule on it. Mr. Williams stated that he amends his motion to schedule the hearing for September 19, 2016.

Mr. Fingerhut made a motion to **approve** the **amended** request from Chester C. Williams: Motion for Stay or Postponement to have APL-001006-2016 heard at the Board of Zoning Appeals Special Meeting for Monday, September 19, 2016 at 9:00a.m. Vice Chairman Cutrer **seconded** the motion. The motion **passed** with a vote of 6-0-0.

8. Adjournment

The meeting was adjourned at 4:23p.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
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STAFF REPORT VARIANCE

Case #:	Public Hearing Date:	Development Name:
VAR-1613-2016	September 26, 2016	Zion Cemetery Parking Lot Expansion

Parcel Data:	Owner	Applicant
<u>Address:</u> 574 William Hilton Parkway <u>Parcels:</u> R510 008 000 0018 0000 <u>Acreage:</u> 2.47 acres <u>Zoning:</u> PR (Parks and Recreation) COR (Corridor Overlay)	Heritage Library Foundation 852 William Hilton Parkway, Suite 2A Hilton Head Island SC 29928	Linda Piekut Heritage Library Foundation 852 William Hilton Parkway, Suite 2A Hilton Head Island SC 29928

Application Summary:

Linda Piekut, on behalf of the Heritage Library Foundation, is requesting a variance from Land Management Ordinance (LMO) Section 16-5-103.E, Adjacent Use Buffer Requirements to expand the Zion Chapel of Ease Cemetery parking lot into a portion of an adjacent use buffer.

Per LMO Section 16-5-103.E, a Type C Adjacent Use Buffer is required between the cemetery and the property to the north, which is owned by the Town of Hilton Head Island. A Type C Buffer can either be 25 feet wide (Option 1) or 15 feet wide (Option 2). For this property, the applicant selected a Type C, Option 2 buffer.

The subject parcel contains the Baynard mausoleum, the cemetery, and a parking area with nine parking spaces. The applicant is proposing to expand the parking lot by creating a drive aisle around a stand of live oak trees with five parking spaces; two existing spaces would be eliminated in the redesigned lot. The design of the proposed expansion would remove vegetation from a portion of the adjacent use buffer to accommodate the drive aisle and a parking space. The area of encroachment ranges from 5 to 13 feet along 80 feet of the buffer. The encroachment encompasses approximately 20 percent (775 square feet) of the buffer.

Staff Recommendation:

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.

Background:

The subject parcel was developed as a cemetery in 1846. The Heritage Library Foundation, which now owns the parcel, is creating a small outdoor antebellum learning center near the Baynard mausoleum. The project includes expanding the parking area from 9 to 12 parking spaces to accommodate visitors to the center.

The adjacent 1.38 acre parcel to the north was donated to the Town of Hilton Head Island in 2000. The parcel is densely vegetated and it is undeveloped, other than a pathway that runs through the parcel. It doesn't contain any known historically significant features. It is zoned Parks and Recreation (PR). At this time, the Town has no plans to further develop the parcel.

The area available to expand the parking lot is limited by the wetland buffer from Broad Creek to the west, by the cemetery to the south, and by the adjacent use buffer to the north. The applicant designed the drive aisle and parking around the trees to minimize the impacts of the project. The trees range in size from 13 to 30 inches in diameter; none are specimen size.

The applicant discussed the project with Town staff in May. Town staff confirmed that the proposed improvements are ideally located given the limitations of the site and the applicant's desire to save the stand of live oak trees and other nearby trees. Redesigning the parking lot to eliminate the encroachment in the adjacent use buffer would require removing the stand of trees and additional smaller trees between the proposed spaces.

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

Grounds for Variance:

The applicant states the variance is required because the buffer area is the only remaining piece of the property that can be developed. The proposed parking lot is designed to maintain a stand of live oak trees in the area of the proposed parking lot and to minimize impacts to the site. The enlarged parking lot will expand the capacity for programming by 70 percent.

Summary of Facts:

- 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 August 26, 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 September 4, 2016 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on September 7, 2016 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on September 6, 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 31 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 19 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was mailed 20 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 Fact:

- The cemetery, with historically significant features such as the mausoleum, covers the majority of the subject parcel.
- Broad Creek and the required wetland buffer from it take up about 50 feet of the property along the western boundary.
- There is a stand of significant-size live oak trees in the remaining developable area.

Conclusion of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.01 because the site has extraordinary and exceptional conditions limiting development of the site to the area proposed.

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 Fact:

- The property to the north is an undeveloped parcel in the Parks and Recreation (PR) Zoning District. The site has no known historically significant features.
- The property to the south is developed with two commercial buildings with parking for both buildings.

Conclusion of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.02 because the properties in the vicinity are either developed or their development would not be limited by historically significant features.

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 Fact:

- The area directly to the south of the proposed parking area is developed with a cemetery.
- LMO Section 16-6-102.D.2 requires a 35 foot average wetland buffer between tidal wetlands, such as Broad Creek, and pervious parking areas.
- LMO Section 16-5-103.E requires a Type C Adjacent Use Buffer between a cemetery and an undeveloped property located in the PR Zoning District. A Type C Buffer can either be 25 feet wide (Option 1) or 15 feet wide (Option 2). For this property, the applicant selected a Type C, Option 2 buffer.
- LMO Section 16-6-104.B.1.b states “Consistent with the purposes of this section, all persons are encouraged to make all reasonable efforts to preserve and retain any existing stands of trees...”
- There is a cluster of live oak trees in the center of the proposed parking expansion.

Conclusions of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-

2-103.S.4.a.i.03 because, due to the constraints on the property as stated in the Findings of Fact, the application of the ordinance to the property would unreasonably restrict the use of the property.

- The developable area on the site is limited by the cemetery to the south, the wetland and wetland buffer to the west, and the adjacent use buffer to the north.
- The applicant designed the site to preserve a stand of live oak trees, in compliance with LMO Section 16-6-104.B.1.b.

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 Fact:

- The existing drive aisle and parking area already encroach into approximately 36 percent (1,400 square feet) of the adjacent use buffer.
- The proposed encroachment would further reduce the adjacent use buffer by approximately 20 percent.
- At this time, the Town has no plans to develop the parcel to the north, which is densely vegetated.
- Staff did not receive any comments from the public regarding the application.

Conclusions of Law:

- Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.04 because there is no evidence that the authorization of the variance will be a substantial detriment to the adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed.
- Though the proposed encroachment will further reduce the size of the adjacent use buffer, since there are no plans to develop the adjacent property at this time, the reduction of the adjacent use buffer will have little or no impact on the 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 be granted** to the applicant.

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 determination.

PREPARED BY:

AC

Anne Cyran, AICP, Senior Planner

September 12, 2016

DATE

REVIEWED BY:

ND

Nicole Dixon, CFM, Board Coordinator

September 12, 2016

DATE

REVIEWED BY:

TL

Teri Lewis, AICP, LMO Official

September 12, 2016

DATE

ATTACHMENTS:

- A) Location Map
- B) Aerial Photo
- C) Site Plan
- D) Applicant’s Narrative
- E) Photos



Town-Owned Parcel

Subject Parcel
Zion Cemetery Chapel-of-Ease

MATILDA DRIVE

WILLIAM-HILTON PARKWAY

OLEANDER STREET

FOLLY FIELD ROAD

CHRISTOPHER DRIVE



Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4600

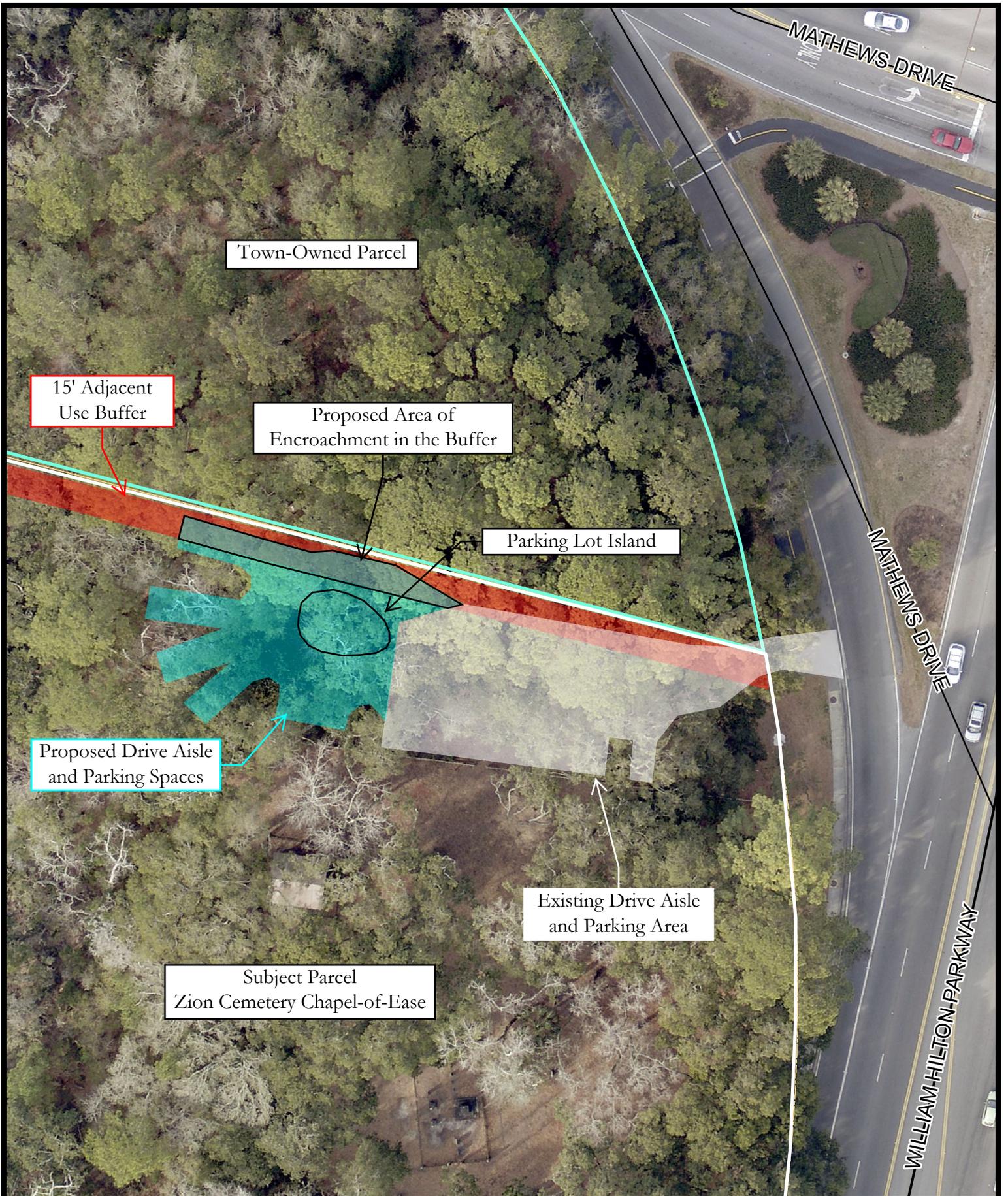
Town of Hilton Head Island

VAR-1613-2016, Zion Cemetery Parking Lot Expansion
Staff Report Attachment A - Location Map



150 75 0 150 Feet

This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.



Town-Owned Parcel

15' Adjacent Use Buffer

Proposed Area of Encroachment in the Buffer

Parking Lot Island

Proposed Drive Aisle and Parking Spaces

Existing Drive Aisle and Parking Area

Subject Parcel
Zion Cemetery Chapel-of-Ease

MATHUEWS DRIVE

MATHUEWS DRIVE

WILLIAM-HILTON PARKWAY



Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4600

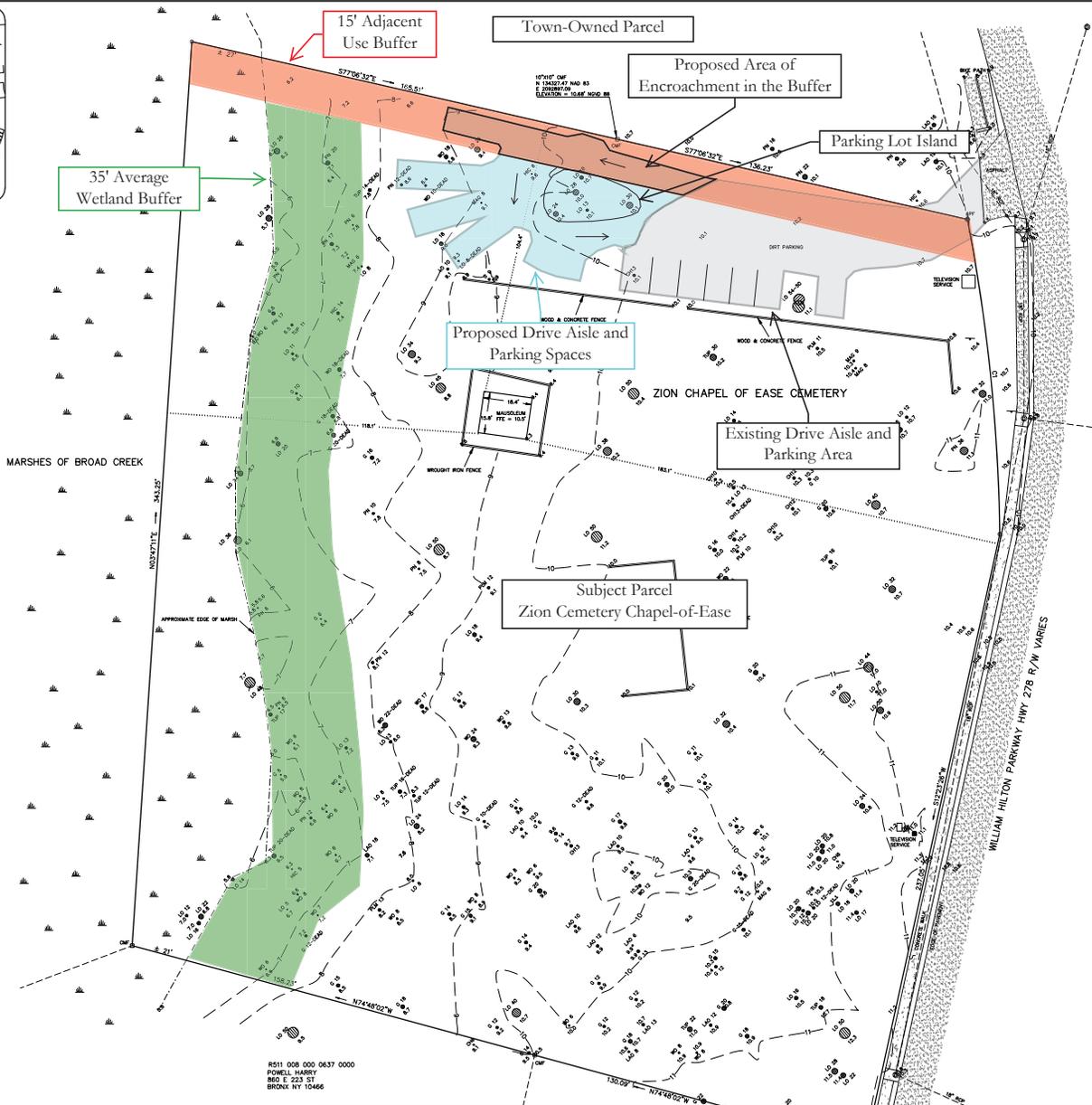
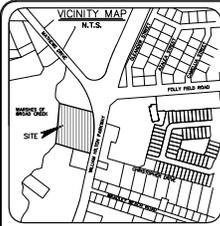
Town of Hilton Head Island

VAR-1613-2016, Zion Cemetery Parking Lot Expansion
Staff Report Attachment B - Aerial Photo



50 25 0 50 Feet

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CURVE TABLE					
CURVE	LENGTH	RADIUS	CHORD	BEARING	DELTA
C1	120.04	166.87	119.88	S005°19'12" E	101°04'54"



- LEGEND & SYMBOLS:**
- TREE SIZES ARE INCHES IN DIAMETER
 - SPOT ELEVATION
 - CONTOUR
 - 1" CONCRETE MONUMENT FOUND
 - 1/2" IRON PIN FOUND
 - REINFORCED CONCRETE PIPE
 - LIVE OAK
 - LAUREL OAK
 - MAGNOLIA
 - PINE
 - PALM
 - WATER OAK
 - HICKORY
 - WILD CHERRY
 - TUPELO
 - TELEVISION SERVICE
 - WATER METER
 - VALVE BOX
 - STORM MANHOLE
 - SIGN

REFERENCE PLAT:

1) A PLAT OF THE ZION CHAPEL OF EASE, HILTON HEAD ISLAND, BEAUFORT COUNTY, S.C. DRAWING APRIL 1979 RECORDED IN BOOK 23, PAGE 128 R/O. BEAUFORT COUNTY, SC BY: COASTAL SURVEYING COMPANY, INC.

PROPERTY AREA = 2.48 AC. 160,063 S.F.
ADDRESS: WILLIAM HILTON PARKWAY
DISTRICT: 810, MAP: 8, PARCEL: 18

THIS PROPERTY LIES IN F.E.M.A. ZONE A7
BASE FLOOD ELEVATION = 14.0'
COMMUNITY NO. 480260, PANEL 0914D, DATED: 9/29/80

R511 008 000 0637 0000
 POWELL HARRY
 R/O E 223 ST
 BRONX NY 10466

VAR-1613-2016, Zion Cemetery Parking Lot Expansion

Staff Report Attachment C - Site Plan

- NOTES:**
- 1) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.
 - 2) SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988.
 - 3) HORIZONTAL DATUM S.C. STATE PLANE NAD 83.
 - 4) VERTICAL DATUM IS NAVD83.
 - 5) THIS SURVEY HAS BEEN PREPARED WITHOUT BENEFIT OF A COMPLETE TITLE SEARCH AND IS SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.
 - 6) IF IDENTIFICATION OF TREES IS CRITICAL TO DEVELOPMENT, AN ARBORIST SHOULD BE CONSULTED TO VERIFY SUCH TREE IDENTIFICATION.

**ASBUILT, TREE AND TOPOGRAPHIC SURVEY OF:
 ZION CHAPEL OF EASE CEMETERY,
 WILLIAM HILTON PARKWAY, HILTON HEAD ISLAND,
 BEAUFORT COUNTY, SOUTH CAROLINA**

**PREPARED FOR:
 HERITAGE LIBRARY FOUNDATION, INC.**

DATE: 11/10/14 **SCALE: 1" = 20'**
REVISED: 11/18/14



SIS Sea Island Land Survey, LLC.
 4D Mathews Court, Hilton Head Island, SC 29928
 Tel: (843) 881-3248 Fax: (843) 883-3671
 E-mail: sis@seaisland.com
FILE No: 1010802 **DWG No.: 5-1680**

Heritage Library Foundation
Zion Chapel of Ease Cemetery
Parking Lot Expansion Project Variance Request

Project Description:

The Heritage Library, owner of the Zion Chapel of Ease Cemetery located at 574 William Hilton Parkway, proposes to make improvements to the property to create an antebellum learning center on site. The total project includes structural restoration of the Baynard mausoleum, new fencing, electricity brought on-site, benches, a speaker's platform, and a podium.

The purpose of this permit is to gain permission to clear brush on the property to expand the parking area by 4 more spaces, which will allow a larger learning center and make the property more viable for programs and tours. We currently have 9 spaces which equates to 27 people if we follow the cemetery guidelines within the municipal code. The additional spaces will add capacity for 12 additional people per program with parking on site.

The brush will be cleared, graded, rolled, covered with wood chips, and then maintained for parking. No paving will be done.

Variance Request:

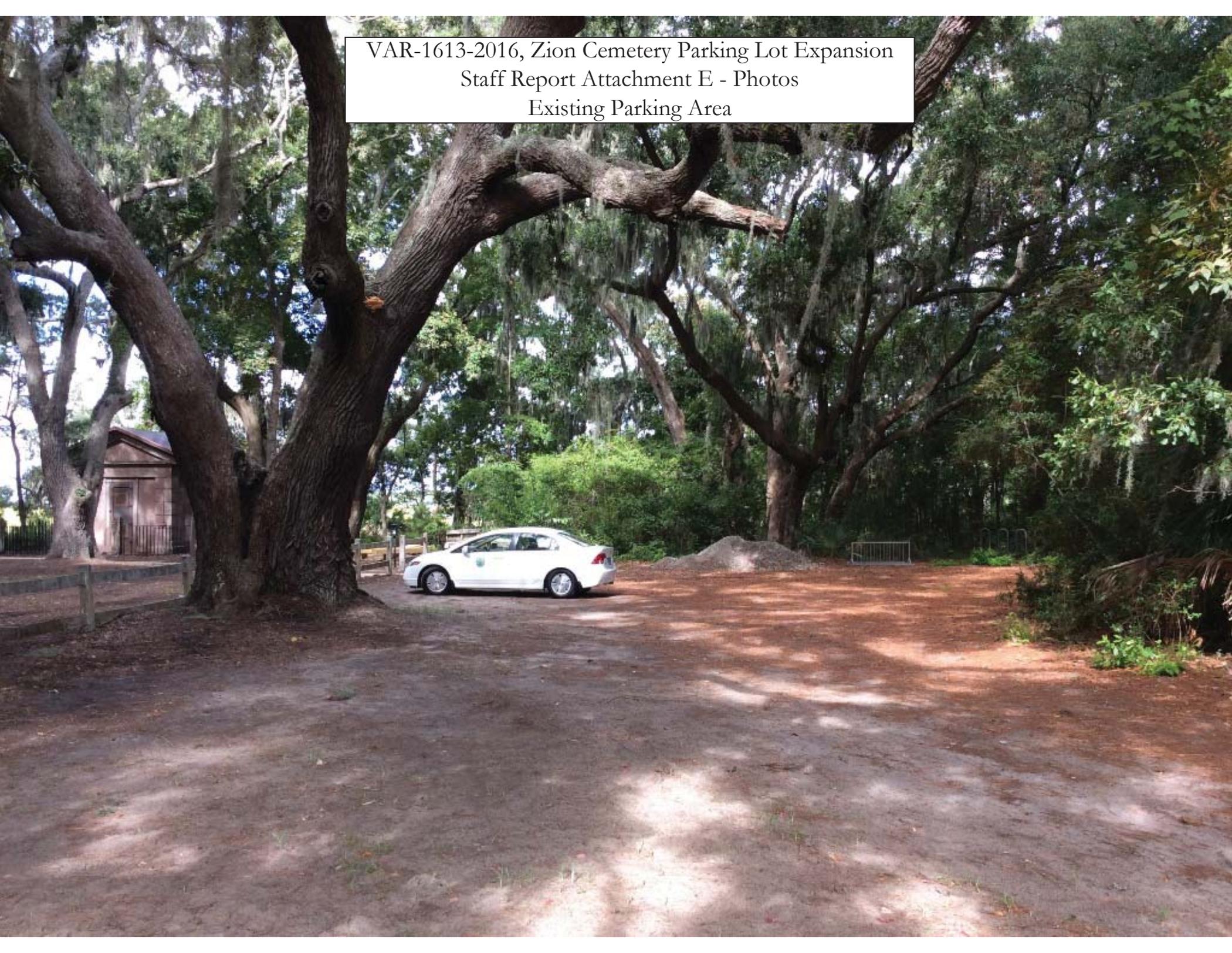
We are requesting this variance because of the historic nature of the property and our desire to accommodate more people at programs at the site. The criteria addressed here:

- 01) Extraordinary and exceptional conditions: The Zion Chapel of Ease is an historic site situated between town land and commercial property with no room for expansion. This particular section is the last remaining piece of the property that could be cleared and used for additional parking.
- 02) Other properties in the vicinity: The immediate neighbors are vacant town land and two small commercial entities. Since this site is historic in nature and a source of revenue for the Heritage Library, we want to attract as many visitors to the site as is possible.
- 03) Restriction of Utilization of the property: As stated in the description, this expansion would increase our capacity for programming by 70%. Restricting the expansion also restricts our ability to promote our programs and restricts our income. Without the variance, we would have to remove the trees that form a grove at the beginning of the expansion area, and that would also be a financial hardship.
- 04) Since this piece of property borders on vacant town land, there will be no impact or detriment to that land or to the public good, nor would it harm the character of the cemetery. In fact, it would open up that section to the creek and improve the view and airflow through the cemetery.

VAR-1613-2016, Zion Cemetery Parking Lot Expansion
Staff Report Attachment E - Photos
Entrance to the Site



VAR-1613-2016, Zion Cemetery Parking Lot Expansion
Staff Report Attachment E - Photos
Existing Parking Area



VAR-1613-2016, Zion Cemetery Parking Lot Expansion
Staff Report Attachment E - Photos
Adjacent Use Buffer



VAR-1613-2016, Zion Cemetery Parking Lot Expansion
Staff Report Attachment E - Photos
Proposed Drive Aisle and Stand of Live Oak Trees



TOWN OF HILTON HEAD ISLAND

BOARD OF ZONING APPEALS

2017 Public Meeting Schedule

BZA Powers and Duties	Application Procedure
<p>The Board of Zoning Appeals has the following powers:</p> <p>A. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of Title 16 of the Municipal Code, Land Management Ordinance.</p> <p>B. To hear and decide requests for variance from the Design and Performance Standards of the Land Management Ordinance.</p> <p>C. To review and take action on applications for uses by special exception; and</p> <p>D. To review and take action on appeals of Planning Commission action on certain traffic analysis plans.</p>	<p>Applications for Variance and Special Exception must be completed and submitted not later than 30 days prior to the meeting at which the application will be considered. In addition, Applications for Appeal must be filed not later than 14 days from the date of the decision being appealed.</p> <p>An Application Check-In Conference is required for all applications to determine whether the application meets the minimum requirements for acceptance. Application Check-In Conferences must be scheduled by appointment with the Community Development Department staff.</p>

<u>BZA PUBLIC MEETING DATE</u>	<u>APPLICATION DEADLINE</u>
January 23, 2017	December 23, 2016
February 27, 2017	January 27, 2017
March 27, 2017.....	February 24, 2017
April 24, 2017.....	March 24, 2017
May 22, 2017	April 21, 2017
June 26, 2017.....	May 26, 2017
July 24, 2017.....	June 23, 2017
August 28, 2017.....	July 28, 2017
September 25, 2017.....	August 25, 2017
October 23, 2017.....	September 22, 2017
November 27, 2017.....	October 27, 2017
*December 18, 2017.....	November 17, 2017

* **December 18th** is the third Monday of the month due to the Holidays

Regular meetings are held on the 4th Monday of each month at 2:30pm in Council Chambers.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE: September 13, 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.”

There have not been any Substitutions of Nonconformities for Redevelopment that have been granted by staff since the August 2016 Board of Zoning Appeals meeting.