

THE TOWN OF HILTON HEAD ISLAND
CONSTRUCTION BOARD OF ADJUSTMENTS & APPEALS
Special Meeting

Jay R. Owen, Chairman
Neil Gordon, Vice Chairman
Ling Graves
Frank Guidobono
Robert Tanner
Joe Nix



Michael Lynes
Gary M. Schmidt
Robert Zinn
Randy May

AGENDA
Tuesday, May 10, 2016
at 5:30pm in
Conference Room 4

- 1. CALL TO ORDER**
- 2. 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.
- 3. WIRELESS TELEPHONE USAGE**
Please turn off all wireless devices so as not to interrupt the meeting.
- 4. APPROVAL OF AGENDA**
- 5. APPROVAL OF MINUTES**
Approval of the *Revised* CBAA minutes of August 25, 2015
- 6. APPEARANCE BY CITIZENS ON ITEMS UNRELATED TO TODAY'S AGENDA**
- 7. UNFINISHED BUSINESS**
- 8. NEW BUSINESS**
- 9. ADJOURNMENT**

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

**THE TOWN OF HILTON HEAD ISLAND
CONSTRUCTION BOARD OF ADJUSTMENT & APPEALS MINUTES**

Date of Meeting: Tuesday, August 25, 2015

Revised to include more detail.

Members Present: Neil Gordon, Frank Guidobono, Michael Lynes, Randy May, Joe Nix, Jay Owen, Robert Tanner, Robert Zinn

Members Absent: Chauncey Burtch, Ling Graves, Gary Schmidt

Town Council: David Bennett, *Mayor*

Town Staff Present: Jill Foster, *Deputy Director Community Development*; Brian Hulbert, *Staff Attorney*; Bob Klein, *Building Official*; Chris Yates, *Chief Building Inspector*

- I. Call to Order**
Chairman Owen called the meeting to order at 5:30 p.m.
- II. FOIA 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.
- III. Wireless Telephone Usage** Please turn off all wireless devices so as not to interrupt the meeting.
- IV. Approval of Agenda** The agenda was amended to include Election of Officers.
- V. Election of Chairman and Vice Chairman.** Mr. Gordon made a motion to nominate Mr. Jay Owen for Chairman. Mr. Zinn seconded the motion. The motion passed unanimously. Mr. Nix made a motion to nominate Mr. Gordon for Vice Chairman. Mr. Tanner seconded the motion. The motion passed unanimously.
- VI. Approval of Minutes.** The minutes of February 24, 2015 were approved as presented.
- VII. Appearance by Citizens on Items Unrelated to Today's Agenda.** None
- VIII. Unfinished Business.** None
- IX. New Business.**

APPEAL: APL #: 001383-2015

Request for Continuance: Mr. Jack Daly, representing the North Forest Beach Association, requested a 30 day continuance in order to finish collecting evidence. Mr. Daly stated that just today he came across a 1984 photograph showing the thumb latch on an Oceanwalk unit. Mr. Daly stated that the Town has stated from the

beginning that the units always had deadbolts on the unit. Mr. Daly said he is getting good information every day. Mr. Daly would like to get a sworn affidavit from the man that lived in this unit. He is supposed to arrive today but is running late from the airport. Mr. Daly stated that if he had a 30 day continuance, he would have a lot more evidence.

Mr. Klein objected to the continuance stating that this appeal is for Xanadu, not Oceanwalk.

Mr. Daly stated that in most Town documents, both Xanadu and Oceanwalk are lumped together by Charles Cousins or Bob Klein because they fall into the same category of units having been modified into a lock out situation.

Chairman Owen instructed that since the appeal is based on Xanadu issues, all discussions would revolve only around Xanadu and not include Oceanwalk.

Mr. Chester Williams of Chester C. Williams Law Firm spoke as a representative for Ms. Nancy Hoffmann and Mr. Frank Boykin, owners of Xanadu Unit C-8. Mr. Williams agreed that Oceanwalk is not an issue here. He indicated that there were four complaints in the appeal filed by Mr. Sanders - all dealing with Xanadu units. Those issues were all resolved by Mr. Klein with the exception of C-8 which will be resolved when the owners come back in town. In addition, none of those determinations had anything to do with Oceanwalk. Mr. Williams suggested that to give Mr. Daly time to gather more information for Oceanwalk does nothing to further this case.

A member of the Xanadu Board of Directors stated that he read Mr. Klein's report and found it to be very thorough. This audience member stated that in his opinion, this case should be resolved today.

Mr. Sanders, who lives in C-10 and rents out unit D-10, stated that he supports the Request for Continuance. Mr. Sanders stated that he received Mr. Williams' Motion to Dismiss just 24 hours ago, and suggested this is prejudicial to the appellants and to the Board.

An owner of two Xanadu Units stated that he is an out of town owner and granting a 30 day continuance would hurt his ability to attend another meeting.

A past board president of Oceanwalk stated that the Town does not know the level of problems at Oceanwalk. At this time, 44 of 79 units are split rental and are occupied by a criminal element.

One owner stated that the Town does not understand the magnitude of problems at Oceanwalk and indicated the same will happen at Xanadu because it starts with renting lockout units where ready access to the electrical panel is denied, thus being a life safety issue. He stated he thought it is a violation of the electrical code and he

does not understand why the Town continues to fight them on this issue or why the Town would allow this type of low income housing in the heart of the tourist district.

Chairman Owen replied that he sympathizes but it is not pertinent to the issue at hand, which is the Building Official's determination that this situation is in compliance with building code.

Mr. Nix made a **motion to deny** the Request for Continuance. Mr. Tanner **seconded** the motion. The **motion passed** unanimously.

Motion to Dismiss and Motion to Intervene: Mr. Chester Williams presented his Motion to Dismiss Appeal No. 001383-2015 on behalf of Mr. Boykin and Ms. Hoffmann.

Mr. Lynes made a **motion** that the CBAA **go into Executive Session** to seek legal advice pertaining to a Motion to Dismiss Appeal No. 001383-2015, and a Motion to Intervene filed by Mr. Chester Williams on behalf of Mr. Frank Boykin and Ms. Nancy Hoffmann. Mr. Nix **seconded** the motion. The **motion passed** unanimously.

The Board left for Executive Session at **5:45 p.m.**

The Board returned from Executive Session at **6:12 p.m.** No action was taken in Executive Session.

Mr. Nix made a **motion to deny** the Motion to Dismiss Appeal No. 001383-2015 filed by Mr. Chester Williams on behalf of Mr. Frank Boykin and Ms. Nancy Hoffmann. Mr. Lynes **seconded** the motion. The **motion passed** unanimously.

Mr. Tanner made a **motion to deny** Mr. Chester Williams' Motion to Intervene. Mr. May **seconded** the motion. The **motion passed** unanimously.

APL #: 001383-2015:

Forest Beach Owners Association President Jack Daly and Xanadu unit property owners Mr. Henry Sanders and Mr. Thomas Weatherhead are appealing what they interpret is the Building Official Bob Klein's "approving Xanadu unit-splitting and separate renting of mother-in-law (lockout) suites in multi-bedroom condominium units."

Mr. Klein presented information to the CBAA explaining how he came to his determination. Mr. Klein stated that the Xanadu condominiums were permitted, inspected and approved by Beaufort County in 1978 as a single unit in conformance with the building and electrical codes in effect at the time. Mr. Klein stated that the 1979 codes were the oldest codes he had to use as a reference. Mr. Klein presented the definition of a dwelling unit as well as the criteria for single dwelling unit from the 1979 codes and various codes through 2012.

Mr. Klein stated the following:

- The Town does not regulate short term or long term rentals of residential housing.
- The Building Official has never made a determination related to approving/disapproving unit splitting and separate rental of lockout units, as alleged in the appellant's documentation.
- The Building Official determined that the lockout units (C-10, B-8, and D-20) are not separate dwelling units as defined by the building and electrical codes.
- To be a separate dwelling unit, it must have five elements per the Codes: eating, living, sleeping, sanitation and permanent provisions for cooking.
- None of the lockout units have what would be considered permanent provisions for cooking, and therefore are not considered separate dwelling units.

Mr. Jack Daly, representing the Forest Beach Association, presented the case for Mr. Sanders and Mr. Weatherhead. Mr. Daly discussed the following:

- a Notice of Cancellation from the insurer.
- Some owners have modified their closet into a kitchen after original construction. In his opinion, these modifications are unsafe.
- Town policy is causing other homeowners to lose their insurance because of these modifications.
- In an Oceanwalk document, Bob Klein defines "ready access" as a deadbolt door between the lock out unit and the main unit. In Mr. Daly's opinion, that is not ready access.
- Mr. Daly is asking to have the deadbolt locks changed back to a thumb latch for safety. Their concern is that the owner of these lock out units has put a double sided deadbolt lock on the inside bedroom door, thereby physically separating these units. Without a key, the occupant of the lock out unit does not have ready access to the breaker.

Chairman Owens allowed other members of the public to speak.

The Treasurer of Xanadu Board of Directors stated that a representative from an insurance company conducted a walk around and that Xanadu has had an insurance policy in place for a year and a half.

Mr. Sanders stated that in his opinion, these lock out units when physically separated do not qualify as dwelling units, are unsafe, and does not allow an occupant to have ready access to the breaker box through a locked door.

Mr. Weatherhead stated that in his opinion, the units have never been referred to as lock outs, were not designed to be split, are very dangerous, and that it is wrong the Town will not help Xanadu owners.

Mr. Klein reminded the CBAA that as the Building Official, his decision is based on the codes that were in effect at the time. He cannot regulate or police the clientele

that rents these units and explained that the Xanadu Board of Directors has to enforce its own rules and covenants-- the Town cannot enforce their rules for them.

Mr. Nix made a **motion** to **uphold** the Building Official Bob Klein's determination they are a single unit at Xanadu and comply with the building code standards. Mr. Lynes **seconded** the motion. The motion **passed** unanimously.

X. Adjournment.

There being no further business, the meeting adjourned at 7:20 p.m.

Submitted by Eileen Wilson, Senior Administrative Assistant

Approved by: _____
Jay Owen, Chairman

Revisions approved at CBAA meeting held on: _____

DRAFT