

**TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
**Minutes of the Monday, July 27, 2009 Meeting**  
**2:30pm – Benjamin M. Racusin Council Chambers** **DRAFT**

Board Members Present: Chairman Roger DeCaigny, Vice Chairman David D’Amico, Alan Brenner, Michael Lawrence, Jack Qualey, Stephen Murphy and Bob Sharp

Board Members Absent: None

Council Members Present: Bill Ferguson

Town Staff Present: Jayme Lopko, Senior Planner & Board of Zoning Appeals Coordinator  
Anne Cyran, Planner  
Kathleen Carlin, Administrative Assistant

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*Mrs. Jayme Lopko presented introductory statements on behalf of staff. The Board of Zoning Appeals is without a Chairman or Vice Chairman to begin today’s business meeting.*

*The first order of business was to swear in three new Board members: Mr. Michael Lawrence, Mr. Jack Qualey, and Mr. Stephen Murphy. Mayor Pro Tem Ken Heitzke performed the swearing in ceremony. Mr. Heitzke welcomed the three new Board members and thanked them for their service to the community.*

*The second item of business was to elect a Chairman and Vice Chairman for July 2009 – June 2010. In compliance with the Board’s Rules of Procedure, only Mr. D’Amico, Mr. DeCaigny, Mr. Brenner and Mr. Sharp are eligible to serve as officers for July 2009 – June 2010.*

*Mrs. Lopko began by requesting nominations from the Board for the office of Chairman. Mr. Brenner nominated Mr. DeCaigny to serve as Chairman. Mr. DeCaigny accepted the nomination to serve. There were no further nominations for the office of Chairman. The Board voted unanimously to elect Mr. DeCaigny as the new Chairman for 2009/2010.*

*Mrs. Lopko then requested nominations for the office of Vice Chairman. Mr. Qualey made a motion to nominate Mr. D’Amico to serve as Vice Chairman. Mr. D’Amico accepted the nomination to serve. There were no further nominations for the office of Vice Chairman. The board voted unanimously to elect Mr. D’Amico as the new Vice Chairman for 2009/2010.*

**I CALL TO ORDER**

**II ROLL CALL**

### III APPROVAL OF THE AGENDA

Vice Chairman D'Amico recommended that the Board consider amending the Rules of Procedure. Vice Chairman D'Amico recommended that the Chairman be required to participate in the vote with the rest of the members (versus voting only to break a tied vote).

Mrs. Lopko stated that this request should be considered under Board Business or Staff Reports. The Board can discuss potential amendments to their Rules of Procedure, but nothing can be changed today.

Mrs. Lopko recommended that the Chairman consider naming a Rules of Procedure Committee to review the Board's current Rules of Procedure in its entirety.

Today's business agenda was approved by the Board by general consent.

### IV APPROVAL OF THE MINUTES

Mr. Sharp made a **motion to approve** the minutes of the June 22, 2009 meeting as presented. Mr. Brenner **seconded** the motion and the motion **passed** with a vote of 4-0. Mr. Lawrence, Mr. Qualey, and Mr. Murphy abstained from the vote.

### V UNFINISHED BUSINESS

None

### VI NEW BUSINESS

*(Mr. Qualey recused himself from review of the following application due to a potential conflict of interest. A Conflict of Interest form was completed for the record.)*

#### **PUBLIC HEARING**

**VAR090004:** Tim Herndon is requesting a variance from Land Management Ordinance Sections 16-5-706.B, Setbacks for Fences, and 16-5-808, Permitted Activity in Street Buffers, to construct a seven foot high fence along 80 feet of Pine Field Road. The property is located at 13 Pine Field Road.

Ms. Anne Cyran made the presentation on behalf of staff. The staff recommended that the Board of Zoning Appeals *disapprove* the application because not all of the required criteria have been met as stated in the staff's Findings of Facts and Conclusions of Law.

The application is to build a seven-foot high fence along 80-feet of Pine Field Road. The fence is on the property line between a parcel and the road. There is an existing seven-foot high fence in this location that the staff has already approved (this fence would join the existing seven-foot high fence).

The applicant purchased two lots at the end of Pine Field Road and created a three-lot minor subdivision. This subdivision was approved by the Town in 2006. The applicant had a pre-application meeting with the staff in February 2008. The purpose of the meeting was to discuss annexing these lots into the adjacent Crosswinds community. Staff provided the applicant with information regarding the requirements for adding these lots to a major subdivision; however, the fences were not discussed.

In May 2009 the applicant removed an existing seven-foot high fence on the property line along Lot # 1 and half of Lot # 2. This was brought to the staff's attention by a neighbor who complained because the applicant then began constructing a new seven-foot high fence on the property line along Lot # 1 and the entire length of Lot # 2.

The staff informed the applicant that the fence could be replaced where it previously existed, but if a new fence was built in an area where a fence did not previously exist, it would have to meet the current requirements of the LMO. The LMO would allow a four-foot high fence on the property line that is adjacent to Pine Field Road. Alternately, the LMO would allow a higher fence (up to 35-feet) beyond the 20-foot Adjacent Street Setback and Buffer.

The applicant then applied for a variance to construct a seven-foot high fence on the property line of Lot # 2. The proposed fence would begin where the new seven-foot fence ends so both Lot # 1 and Lot # 2 would have a seven-foot fence along the entire property line of Pine Field Road.

Ms. Cyran completed her presentation and the Board and staff discussed several issues including the grandfathered fence. Chairman DeCaigny then requested that the applicant make his presentation.

Mr. Tim Herndon, property owner, presented statements in support of the application. The applicant discussed the approval of the annexation process with Crosswinds. The applicant stated his concern with conflicting information received from the Town. The misinformation has resulted in financial hardship. The applicant presented details regarding neighboring property owners on Pine Field Road.

The Board and the applicant discussed the use restrictions associated with the property including emergency access. The Board stated concern with the miscommunication of information from the Town. The Town created a financial hardship for the applicant by approving work that later had to be stopped. The applicant is entitled to rely on the information that he receives from the Town.

At the completion of the applicant's presentation, Chairman DeCaigny requested public comments. The following citizens presented statements for the record: Mr. Bill Fishburne , representative of the Crosswinds community, presented statements in support of the application. Mr. Robert Giordano and Mr. Tom Welch presented statements in opposition to the application.

At the completion of the public comments, Chairman DeCaigny stated that the public hearing for this application is closed.

The Board discussed the application. At the completion of the discussion, Chairman DeCaigny requested that a motion be made.

Mr. Alan Brenner made a **motion to approve** Application for Variance VAR090004, Pine Field Road Subdivision, based on the criteria required for approval of the application. The applicant had a right to rely on what he was told and what was in writing and he did so to his detriment. Mr. Sharp **seconded** the motion and the motion **passed** with a vote of 5-0-1.

**PUBLIC HEARING**

**VAR090005:** Nathan Jones and Thomas Viljac are requesting a variance from Land Management Ordinance Sections 16-5-704, Adjacent Use Setback, 16-5-806, Adjacent Use Buffers, and 16-6-204, Wetland Buffer, to allow a new deck to remain in the Adjacent Use Setback and in the Wetland and Adjacent Use Buffers. The property is located at 18 Simmons Road, further identified as Parcel R510 011 000 007F 0000.

Chairman DeCaigny reported that the review of this application is postponed to the August 24, 2009 meeting.

**VII STAFF REPORT**

1. Mrs. Jayme Lopko presented the staff's Administrative Waiver report.
2. Mrs. Jayme Lopko presented statements regarding State mandated Training Requirements.
3. Mrs. Lopko reviewed the *BZA Reference Manual*. Board members are encouraged to bring their Reference Manuals with them to all BZA meetings.
4. Mrs. Lopko and the Board discussed the process for amending the Rules of Procedure. It was recommended that Mrs. Lopko review the existing Rules of Procedure and make a recommendation to the Board.

**VIII ADJOURNMENT**

The meeting was adjourned at 4:20pm.

Submitted By:

Approved By:

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Kathleen Carlin  
Administrative Assistant

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Roger DeCaigny  
Chairman