

**THE TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
**Minutes of the Monday, July 26, 2010 Meeting**  
**2:30pm – Benjamin M. Racusin Council Chambers**      **APPROVED**

Board Members Present:      Chairman Roger DeCaigny, Vice Chairman Peter Kristian,  
Alan Brenner, Michael Lawrence, Jack Qualey, and Bob Sharp

Board Members Absent:      Stephen Murphy

Council Members Present:      Mayor Pro Tem Ken Heitzke

Town Staff Present:      Heather Colin, Development Review Administrator  
Anne Cyran, Planner  
Kathleen Carlin, Board Secretary

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**1.      CALL TO ORDER**

**2.      ROLL CALL**

**3.      SWEARING IN CEREMONY**

Mayor Pro Tem Ken Heitzke performed the swearing in ceremony. Mr. Peter Kristian was sworn in as a new member of the Board. Mr. Alan Brenner and Mr. Roger DeCaigny were both sworn in for a second three-year term.

**4.      NOMINATION AND ELECTION OF OFFICERS 2010 – 2011**

Ms. Heather Colin began by requesting nominations for the office of Chairman. Mr. Jack Qualey made a **motion** to **nominate** Mr. Roger DeCaigny to continue serving as Chairman for 2010 – 2011. Mr. Brenner **seconded** the motion. Mr. DeCaigny **accepted** the nomination to serve. There were no further nominations, and the motion to elect Mr. DeCaigny as Chairman for 2010 – 2011 **passed** with a vote of 6-0-0.

Ms. Heather Colin then requested nominations for the office of Vice Chairman. Mr. Sharp made a **motion** to **nominate** Mr. Peter Kristian to serve as Vice Chairman for 2010 – 2011. Mr. Brenner **seconded** the motion. Mr. Kristian **accepted** the nomination to serve. There were no further nominations, and the motion to elect Mr. Kristian as Vice Chairman for 2010 – 2011 **passed** with a vote of 6-0-0.

Ms. Colin announced that staff has a new policy related to the Board's occasional need to gain access to gated communities for the purpose of inspecting properties under their review. Starting immediately, all applicants that have property under review and located within gated communities will be required to provide the Board with individual gate passes. The gate passes should be valid up to one week prior to the actual meeting date and should be available for pickup at the subject's gated community's pass office.

**5. APPROVAL OF THE AGENDA**

Vice Chairman Kristian made a **motion** to **approve** the agenda as presented. Mr. Qualey **seconded** the motion and the motion **passed** with a vote of 6-0-0.

**6. APPROVAL OF THE MINUTES**

Mr. Qualey made a **motion** to **approve** the minutes of the June 28, 2010 meeting as presented. Mr. Sharp **seconded** the motion and the motion **passed** with a vote of 5-0-1. Mr. Kristian did not participate in the vote.

**7. UNFINISHED BUSINESS**

None

**8. NEW BUSINESS**

**PUBLIC HEARING**

**VAR100003:** Neil Gordon, on behalf of Pasquale and Karen Diccianni, is requesting a variance from Land Management Ordinance Section 16-6-204, Wetland Buffers, to allow proposed additions to the house and deck to encroach into the wetland buffer. The property is located at 34 Spartina Court and is identified as parcel 84 on Beaufort County Tax Map 14B.

Ms. Anne Cyran made the presentation on behalf of staff. The staff recommended that the Board of Zoning Appeals *disapprove* the application based on the Findings of Facts and Conclusions of Law stated in the staff's report. If the Board approves the application, the staff recommended that the applicant's landscape plan be used to replant the wetland buffer.

Ms. Cyran stated that the Community Development Department received an application for variance from Neil Gordon on behalf of Karen Diccianni for the following Section of the Land Management Ordinance: 16-6-204, Wetland Buffers. The applicant requested the variance to allow the proposed additions to the house and deck to encroach into the wetland buffer.

The subject parcel, 34 Spartina Court, is located in the PD-1 Zoning District. The property is bound by a lagoon on the northeast; single family homes on the northwest and southeast; and Spartina Court on the southwest. The subject 1,950 square foot house was built on the 0.18 acre lot in 1995. The home's existing deck and stairs encroach into the wetland buffer. The current owner purchased this property in 2007.

In May of 2010, the applicant discussed with Town staff the proposed addition to the house and deck, including stairs and pervious pavers, which would encroach into new areas of the wetland buffer. Staff informed the applicant that a variance would be required for the additions as proposed. The staff also informed the applicant that the owner could build an addition to the house without obtaining a variance, and that the owner could redevelop the areas of the deck and stairs that currently encroach into the buffer with an administrative waiver. The applicant chose to apply for an application for variance.

Ms. Cyran presented a detailed review of the application concluding with the staff's Findings of Facts and Conclusions of Law. The Board and staff discussed several issues

including staff's recommendation for native vegetation, the wetland buffer, water quality and wildlife habitat.

The applicant, Mr. Neil Gordon, Architect, presented statements in support of the application including the history of the property and comments regarding the proposed location of the screened porch addition. At the completion of the applicant's presentation, Chairman DeCaigny requested public comments and none were received. The public hearing for this application was then closed. The Board discussed the application. At the completion of their discussion, Chairman DeCaigny requested that a motion be made.

Mr. Qualey made a **motion** to **approve** Application for Variance, VAR100003, based on the following facts: (1) the subdivision was laid out prior to the implementation of the wetland buffer in question; (2) the home was built and approved by the Town prior to building permit applications being scrutinized for this wetland buffer; therefore, the hardship was actually not of the applicant's making. It was due to the imposition of the wetland buffer after the subdivision was created; (3) because the applicant is going to implement an improved landscape plan that will enhance the absorption of the runoff of the expanded roof area, that is a win-win situation for the Town and the neighborhood. Mr. Sharp **seconded** the motion. Vice Chairman Kristian stated concern that the application has not met all six of the required criteria.

Chairman DeCaigny requested a brief recess in order for Mr. Qualey to address the individual required criteria.

Following the brief recess, Mr. Qualey stated the following reasons for the application meeting the required criteria: (1) there are extraordinary conditions pertaining to this particular property due to the wetland buffer being passed after the subdivision plat was approved, thus reducing this applicant's ability to improve this dwelling by making the addition in question; (2) these conditions do not generally apply to other properties in the vicinity, and in fact, all of the lots in this subdivision are adversely affected by the imposition of this wetland buffer essentially after the fact; and outside of this particular subdivision, the lots in the area of this subdivision are much, much larger and can be redeveloped and improved without having to go through this type of variance process; (3) the application of the LMO will unreasonably restrict the full utilization of the property by preventing the reasonable addition of the screen porch in question; (4) the hardship is not the result of the applicant's own actions. The redesign alternative would result in the removal of a large laurel oak tree that provides shade, and privacy and aesthetic benefits; (5) the granting of the variance does not substantially conflict with the Comprehensive Plan and the LMO. To the contrary, it is insubstantial in nature and is a minor addition to the property. The required new landscape plan is both beneficial and a mitigating factor; (6) the granting of the variance will not be a detriment to adjacent property or the public good, and the character of the district will not be harmed by granting the variance in question, which the Town staff also agreed applies in this situation. Mr. Sharp again **seconded** the motion.

Vice Chairman Kristian and Mr. Qualey discussed several issues including the timing of the wetland buffer requirement in relationship to the approval of the home. The motion **passed** with a vote of 5-1-0. Vice Chairman Kristian was opposed to the motion.

**9. BOARD BUSINESS**

None

**10. STAFF REPORT**

Ms. Colin stated that the staff has no agenda items for the August 23, 2010 meeting. Chairman DeCaigny approved the cancellation of the August 23, 2010 meeting.

**11. ADJOURNMENT**

The meeting was adjourned at 3:45pm.

Submitted By:

Approved By:

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Kathleen Carlin  
Board Secretary

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Roger DeCaigny  
Chairman