TOWN OF HILTON HEAD ISLAND **APPROVED**
Board of Zoning Appeals
Minutes of Monday, March 23, 2015 2:30pm Meeting
Benjamin M. Racusin Council Chambers

Board Members Present:	Chairman Glenn Stanford, Irv Campbell, David Fingerhut, Michael Lawrence, and Steve Wilson
Board Members Absent:	Vice Chairman P. Jeffrey North
Council Members Present:	None
Town Staff Present:	Nicole Dixon, Senior Planner & Board Coordinator Teri Lewis, LMO Official Brian Hulbert, Staff Attorney Kathleen Carlin, Secretary

1. Call to Order
Chairman Stanford called the meeting to order at 2:30p.m.

2. Pledge of Allegiance to the Flag

3. Roll Call

4. Freedom of Information Act Compliance
Public notice of this meeting has been published and posted in compliance with the Freedom of Information Act and Town of Hilton Head Island requirements.

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 presented. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

7. Approval of the Minutes
Mr. Fingerhut made a **motion** to **approve** the minutes of the January 26, 2015 meeting as submitted. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

8. Unfinished Business
None

9. New Business
Public Hearing
VAR-000272-2015:

Cynthia and Cornelius Cornelssen are requesting a variance from Land Management Ordinance Section 16-6-102.D, Wetland Buffer Standards, in order to construct a pool within the 20 foot tidal wetland buffer. The property is located at 294 Seabrook Drive and is further identified as parcel 426 on Beaufort County Tax Map 4B. Chairman Stanford introduces the application and requested that the staff make their presentation.

Ms. Nicole Dixon made the presentation on behalf of staff. The staff recommended that the Board of Zoning Appeals approve this application with the condition that the remaining areas of the wetland buffer that do not contain existing vegetation be planted with wetland buffer materials, based on the Findings of Fact and Conclusions of Law contained in the staff report.

Ms. Dixon presented an in-depth overhead review of the application including a review of the Vicinity Map, Location Map, As-Built survey, proposed Site Plan and photos of existing conditions.

The subject parcel is located at 294 Seabrook Drive in Hilton Head Plantation. The applicants purchased the home in 2013 and are proposing to construct a raised pool within the footprint of their existing wooden deck and spa. The property is surrounded by the tidal marsh in the rear, a single family residence on one side, and the Country Club of Hilton Head Golf Course on the other side and across Seabrook Drive. The existing house and deck, built in 1991, are considered non-conforming structures as portions of them are located within the 20-ft. tidal wetland buffer.

The applicant states in the narrative that the proposed pool will allow them to spend more time outdoors enjoying the views of the marsh and golf course. The applicant states that due to the situation of the house on the property, the proposed pool location on the existing deck is the only available option for them without disrupting the structure of the house or impacting existing vegetation in any way.

Ms. Dixon reviewed the Findings of Facts and Conclusions of Law. Based on the Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should be granted to the applicant with the condition that the remaining areas of the wetland buffer that do not contain existing vegetation be planted with wetland buffer materials. The Hilton Head Plantation Property Owners Association has approved the application as submitted. The adjacent Hilton Head Plantation Golf Course has approved access to their property during this construction. Following the staff's presentation, Chairman Stanford invited the applicant to make his presentation.

The applicant, Mr. Neal Cornelssen, presented statements in support of the request for variance application. Chairman Stanford requested public comments on the application and none were received. The Board discussed the application including the size of the lot, the size of the pool, the type of encroachment and the location of wetlands. Following final comments by the Board, Chairman Stanford requested that a motion be made.

Mr. Fingerhut made a **motion** to **approve** Application for Variance VAR-000272-2015 as submitted by staff including the condition that the remaining areas of the wetland buffer that do not contain existing vegetation be planted with wetland buffer materials. Mr. Campbell **seconded** the motion and the motion **passed** with a vote of 5-0-0.

10. Board Business

a) Adoption of the BZA – 2015 Meeting Schedule

Chairman Stanford requested that a motion be made to approve the 2015 Meeting Schedule. Mr. Fingerhut made a **motion** to **approve** the 2015 Meeting Schedule as presented. Mr. Wilson **seconded** the motion and the motion **passed** with a vote of 5-0-0.

b) Revisions to Rules of Procedure

At the January 26, 2015 BZA meeting the Board asked Brian Hulbert, Staff Attorney, to provide a recommendation to the Board on two issues concerning the Rules of Procedure. The two issues, raised by Chester C. Williams, Esq., during a discussion of the Rules of Procedure, are as follows. The staff memo included in the March 23rd meeting packet included the following information and recommendation from Mr. Hulbert:

1. **Motion for Reconsideration**.

Article XI, Motions, Section 1, Motion for Reconsideration, paragraph 7, provides that the time for appeal from any decision of the BZA to Circuit Court shall be stayed by the timely filing of a Petition for Reconsideration and shall run from the receipt of the written Notice of Action Denying the Petition, or written Notice of Action delivered after the BZA has reconsidered the matter, as the case may be. Mr. Williams expressed an opinion that he did not believe the BZA had the authority to stay the statutory requirement that an appeal be filed with the Circuit Court within 30 days of the final decision.

South Carolina Code of Laws Section 6-29-820 requires that any appeal be filed within 30 days after the decision of the Board is mailed. LMO Section 16-2-102 H.1 requires that the Official provide the Applicant a written copy of the decision within 5 days after the Board issues a final decision. In my opinion, neither the Town nor the BZA has the authority to stay the statutory 30 day filing period for an appeal from the BZA. Because this is imposed in the state law, it cannot be modified unless authorized by statute or by a Court of law.

Therefore my recommendation is that paragraph 7 should be deleted in its entirety. The BZA should continue to issue a final decision in a timely manner on any application it considers per the LMO and the Official should ensure that an Applicant is provided a written copy of the final decision, by mail, within 5 days after the BZA issues a final decision. The 30 day time clock begins upon the mailing of the final decision. If an Applicant elects to file a motion for reconsideration, the time period would continue to run during the consideration of the motion. A new time period would begin if the Motion were granted, as by rule the matter would be considered as if no previous vote had been taken. Once the BZA reached a final decision on the matter heard pursuant to the granting of the Motion for Reconsideration, then a new 30 day clock would begin upon mailing of the final decision. The Applicant or Town would be able to appeal this new final decision.

Prior to today's meeting Chairman Stanford stated his concern to Mr. Hulbert that the removal of Paragraph 7 in its entirety may inadvertently cause a trap for the unwary. Mr. Hulbert stated that there is no legal requirement under state law for the Board to accept a

Motion for Reconsideration. The Board and Mr. Hulbert discussed the Motion for Reconsideration and the Notice for Appeal requirements. Following this discussion, Chairman Stanford invited Chester C. Williams, Esq., to present statements to the Board.

Mr. Williams stated his concern with what happens to an applicant whose application has been denied by the Board because it leaves the only recourse of appealing before the Circuit Court. The timing of the mailing of the notice of the decision is a real concern because it starts the 30 day clock running. Mr. Williams stated that state law keys in on the mailing of the notice.

Chairman Stanford and Mr. Hulbert discussed the issue of providing a copy of the order versus mailing a copy of the order commencing that period of time. Mr. Hulbert stated that the Code requires that a mailing of the decision by the BZA is required within five days of the Board's final decision (this starts the running of the clock).

Mr. Hulbert stated that when the BZA makes a decision on an application it is a final decision and the Code requires that the Town mails that decision or delivers that decision within five days. The Town cannot hold up the delivery of the BZA's decision. Chairman Stanford and Mr. Hulbert discussed the requirements of a Motion for Reconsideration. Mr. Hulbert stated that he is not comfortable delaying BZA decisions. Final decisions should be delivered in a timely manner rather than trying to anticipate an unforeseen situation down the road by an applicant.

Chairman Stanford stated that because it is a matter of existing procedure for the Town, he is inclined to leave the language as is with regard to when the Town would mail the final order. The Board cannot order the Town to wait until after the five days have occurred to mail the Board's final decision.

Chairman Stanford stated that the Board agrees that Paragraph 7 should be deleted and requested that a motion be made. Mr. Hulbert stated that the Board would need to make a motion and vote on this issue at the next meeting. This is the only change that was recommended by the BZA with regard to the Rules of Procedure.

2. **Motion for Postponement.**

Mr. Williams expressed concern that there was a conflict between the LMO and the BZA Rules of Procedure as to how a hearing may be postponed. Specifically, Mr. Williams states that Section 16-2-102.e 3 seems to require that the body of the BZA has to vote to postpone a hearing, whereas Rule of Procedure XI Section 3 allows for the Chairman or Vice Chairman, in the absence of the Chairman, to postpone a hearing for good cause one time for up to 3 months from the original hearing date.

In Mr. Hulbert's opinion, the Rules of Procedure and LMO are not in conflict with each other on postponement. Nowhere in the LMO Section cited by Mr. Williams does it require the body to vote to allow a postponement. The LMO specifically states "The body may grant the request and concurrently set a new hearing date for the application for good cause shown." In my opinion, this does not preclude the BZA body from delegating this authority to the Chairman or Vice Chairman to act on behalf of the body. Mr. Williams makes an interpretation that the LMO requires only the full body of the BZA can postpone a hearing. I do not concur that this is a correct reading of the LMO.

I believe that the BZA may elect to require the request for postponement be decided by the full body of the BZA at a public meeting, or that the BZA may delegate this authority to the Chairman or Vice Chairman in the interest of expediency and in order to not require the matter come to a public meeting just to determine if the matter should be postponed or that it be required to occur at the originally scheduled date. Therefore, I do not believe any change to this Rule of Procedure is required; however, if the BZA desires, it could amend the Rule to require that a Motion for Postponement or request to defer a hearing be acted upon by the full BZA at a public meeting or hearing.

Following the Board's discussion on the Motion for Postponement, the Board agreed to leave the language as is.

11. Staff Reports

a) Ms. Dixon presented the staff's Waiver Report to the Board.

12. Adjournment

The meeting was adjourned at 3:50p.m.

Submitted By: Approved By: June 27, 2015

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Kathleen Carlin
Secretary

P. Jeffrey North
Acting Chairman