

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the January 25, 2016 2:30pm Meeting
Benjamin M. Racusin Council Chambers

Board Members Present: Chairman Glenn Stanford, Vice Chairman Jeffrey North, David Fingerhut, Jerry Cutrer, Lisa Laudermilch and John White

Board Members Absent: Steve Wilson

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Teri Lewis, LMO Official
Jill Foster, Deputy Director of Community Development
Brian Hulbert, Staff Attorney
Heather Colin, DRZ Administrator
Shawn Colin, Deputy Director of Community Development
Anne Cyran, Senior Planner
Eileen Wilson, Senior Administrative Assistant

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 agenda was approved as presented.

7. Approval of the Minutes

The minutes of the December 14, 2015 meeting were approved as presented.

8. New Business

APL-2043-2015: Request for Appeal from Taiwan Scott on behalf of Gullah Geechee Catering, LLC. The appellant is appealing staff's determination, dated October 21, 2015, that 15 Marshland Road and 13 Marshland Road do not function together as a single development and therefore the adjacent use setback and buffer requirements are applicable.

Presented by: Teri Lewis

Chairman Sanford stated that this appeal is a complex matter and the Board will be liberal on time but insist we stay on point with the issue that is before the BZA today. Other history does not have much to do with what is before us. I encourage everyone to stay on task on this case before us today. With Appeal cases there is no public comment.

Ms. Lewis stated that with an Appeal, the Appellant will go first since the staff position is we clearly support our position.

Mr. Scott representing Gullah Geechee Catering, LLC thanked the Board members for taking the time to be a part of this Board. Mr. Scott stated “for the record after I present the facts and the board wants to hear rebuttal regarding Town staff’s 300+ pages, I am willing and prepared to speak about it.”

After carefully reading the LMO, it states that the LMO Official can waive the buffer and setback if they feel that the proposed development and the adjacent development can function as a single development. I have not found criteria for the Official to use in determining this. The burden falls on the applicant to provide information to the Official to justify the waiver. The availability of the waiver appears to be based solely on the Official’s decision.

Here are the facts I believe justify the waiver regarding a single functioning development:

- These properties have been used as a mixed use property for over 20 years by the previous owner and now the current owners (The Arnals and myself).
- Both properties have marshfront mixed use zoning. The adjacent owner has advertised the sale of local honey since he purchased the property in 2013. Once my application was filed, the Official removed the signs and threatened to issue fines.
- The adjacent owner has a business license to sell honey to the public.
- The adjacent owner states that they also have an agricultural license to harvest and process honey. The adjacent owner has been selling honey wholesale and retail to the public since they purchased the property.
- The adjacent owner has held bee club functions at which at least 20 cars would utilize my property for parking.
- The adjacent owners have had their personal car parked on my property for over two years.
- The customers that cater their business have to park on my property. The customers that cater their business have to drive over my property.
- The adjacent owners have stood before the DRB on 9/22/2015 have not only stated their support of my business but that we have been working together since they purchased the property in 2013.
- The adjacent owner has stated that the reason they have a home based business and not commercial is for tax and insurance purposes.
- The adjacent owner and I have a reciprocal access easement across each other’s property.

Gullah Geechee Catering, LLC has a business license as well to cater to the public. There will be a farmers market on site that will have local vendors displaying native goods and services. Town of Hilton Head Island Official, Heather Colin stated in a meeting held on 9/8/2015 in her office, that I have met the requirements for the waiver. She stated that I would have to provide a copy of the easement agreement. For these very apparent reasons, and facts, the waiver of setback and buffer are justifiable. Staff has not given a justifiable reason not to waive the setback and buffer. Thank you for your time and patience in this matter.

Ms. Lewis, LMO Official stated that the LMO states that the Official may waive the requirement for the adjacent use setback and buffer on determining that the proposed development and the adjacent development function as a single development. After meeting with Mr. Scott, after looking at the proposals for his project, I made the determination that a single family residence and a commercial business would not function as a single development. We do not have criteria in here; we generally use common sense and looking at the project on a case by case basis as to whether they would function as a single development. I let Mr. Scott know that was the determination. We had several discussions about it prior to me sending him the formal determination. We wanted to give him a chance to appeal that determination. The reason you received so much information and some of it was duplicate is because the state code requires we send every piece of information that relates to the file. There was so many pieces of this and so much that had started early on that we did not want to take the chance before the BZA or if it goes further than this to circuit court.

The letter staff wrote to Mr. Scott on 9/2/2015 after he had submitted his minor development plan review application, stated that the wood screen fence surrounding the food truck and the enclosed building encroach into the 30' adjacent use setback from Lot 7. The building and fence enclosure would not have been permitted in the setback area if the building permit applications for these structures were submitted as part of a commercial development instead of residential accessory structures. They do not have to be removed to bring the site into full compliance with the LMO. At that point we thought that Mr. Scott had received a building permit for both the shed and the fence. We went back through our records and talked to members of our building permit staff and we could not find a permit for the fence, only for the shed. So we determined the shed could stay but not the fence and mobile truck.

Part of the issue we had all along, is that despite going through a Pre-Application meeting in 2013, and finding out the rules and regulations, the shed and the fence and the food truck were put up without the appropriate permits. Part of the reason we are here is that a lot of things are going on after the fact. Typically if somebody comes in for a Pre-Application meeting proposing something that would be in a buffer or setback, we would advise they get a variance from the BZA if they didn't feel they could relocate it out of that buffer and setback. That is something that I put into the letter to the BZA that perhaps if Mr. Scott wanted to apply for a variance from this board from the setback requirements, given some of the restraints of the property, we felt that staff could support that.

Mr. North stated to Ms. Lewis: "you have found and determined that this is not a single development – the two parcels viewed together." Ms. Lewis replied "I found that it did not function as a single development."

Comments made by the Arnals:

- We never told Tai we were going to sell our honey over there because quite frankly we don't produce that much honey.
- We made it clear to the Town that we were not working with Mr. Scott and never had any intention to work together.
- We have a few customers a week; I would describe it as hobby bee keeping.
- I did speak at the DRB meeting on 9/22/2015 to state that we did not object to the colors.
- Our concern is the easement is going to be overburdened if a restaurant is going to be allowed to use this and affect our ability to get in and out of our driveway.
- We sent a letter on October 2, 2015 to the Town and by Oct 7 the Town had issued a cease and desist order because no permits are in place for this project. This project was a residential

storage shed built without permits. Mr. Scott started building a commercial kitchen in that facility almost immediately and again we thought the permits were in place.

- We intend to sell our property as a house not as a honey home-based business.
- We have a restaurant being proposed on the other side of us.
- If Mr. Scott wants setbacks waived from the building, the residential storage shed lies within the setback, brick patio lies within the setback, the food truck lies within the setback, and the bike rack lies within the setback.
- The issue is we have a barbeque cooker right on top of our property; we will be living next to a restaurant if this gets permitted the way that it currently is.

Ms. Lewis stated that the Town has setbacks and buffers in place to protect unlike uses from each other. So we look very carefully when we are thinking about waiving those adjacent setback and buffers particularly if we were looking at waiving it between a single family property and a commercial property.

If Mr. Scott came in for the appropriate permits as he showed on that pre-application, there would have been fewer conflicts with the setbacks and buffers or if he had submitted that to us first we would have identified that certain items needed to be moved out of the setbacks and buffers.

Mr. Scott stated for the record, that he met with Town Official Heather Colin and she stated that I meet the criteria for the waiver and to bring in a copy of the deed to verify we have a reciprocal easement. And I want to put that on record. I wish we would have started this off by swearing everybody in because the facts are there in black and white and all I have standing behind me is the truth.

Ms. Heather Colin stated that she did meet with Mr. Scott and we discussed all sorts of different aspects of his development and one of them was whether he would qualify for this waiver. I did tell him to bring in the easement documents that he had and that would be something we would consider. Until I have those documents in front of me and until I know how that development is going to be developed, I do not know what the final interpretation is going to be. I did tell him to bring that information to me and I would review it and I would discuss it with Teri Lewis the LMO Official. And that is what was said.

Chairman Stanford closed the hearing at 3:50 p.m.

Chairman Stanford stated that there is a reason for buffers so that a residential property can have a reasonable separation from a commercial use. To me what I see here is a residential property that has an incidental business which is permitted and taxed as a residential property in contrast to a piece of property that is solely a commercial use with no residential use what so ever and is taxed in the commercial fashion at the 6% rate.

Mr. Cutrer stated that the appellant's argument boils down to whether these two properties should be appropriately treated as a single development. And the two arguments for that are that there is a shared access agreement which seems to imply some sort of joint activity and that the Arnals are operating a commercial business. The facts are that we heard the shared access easement was an unfortunate thing caused by the prior property owner. Subdivision of this land into two parcels and that driveway was sort of lined up with both properties. So in order to use that driveway it came about that a shared access easement that driveway was necessary to simply gain access to the property and I don't see that as having any further meaning in terms of some agreement to conduct joint operations. The second fact is that the Arnals live in a single family house, single family zone,

pay single family taxes and they have an incidental use permitted under the Town's code for this home based business.

Mr. North stated that there is a third point and that is that the people are driving upon the shared access easement and then onto Mr. Scott's property getting out and walking over to the other property for commercial purposes. The waiver that he would receive depends entirely on what you have said correctly, whether it is a single development or not.

These customers of the Arnals, they drive on this shared access and they pull onto Mr. Scott's land and they then get out, leave their cars on his land and go over to the Arnal's property and they make purchases. All of which is for a commercial purchase and a use. And I would submit that that makes it a development. And therefore the waiver should have been granted.

Chairman Stanford stated that before we have a motion and a vote, I would like to express appreciation to everyone for in fact staying on point about this and for the most part, dealing with what is exactly before us and that is whether or not this is a single development.

Mr. Cutrer made a motion to **deny** the application for **APL-2043-2015** appealing staff's determination, dated October 21, 2015, that 15 Marshland Road and 13 Marshland Road do not function together as a single development and therefore the adjacent use setback and buffer requirements are applicable. Mr. White seconded the motion. The motion passes with a vote of 4-2.

Roll: Stanford: for the motion; North: **against** the motion; Cutrer: for the motion; Fingerhut: for the motion; Laudermilch: **against** the motion; White: for the motion

PUBLIC HEARING

VAR-2298-2015: On behalf of Beaufort County, Jon Rembold applied for a variance from LMO Section 16-3-106.E, Airport Overlay (A-O) District, to reduce the adjacent street buffer along the west side of Summit Drive from 75 feet to 20 feet. The applicant is requesting the variance to allow the relocation of the General Aviation Replacement Ramp and the helicopter parking pad, per the Airport Layout Plan in the Hilton Head Island Airport Master Plan and in compliance with FAA requirements.

Ms. Anne Cyran presented the application on behalf of Beaufort County Jon Rembold, Airports Director. Ms. Cyran stated that the staff recommends the Board of Zoning Appeals approve the request with the condition that the street buffer be measured from the property line not the edge of pavement. In the application summary and in the materials submitted by the applicant, the site plan shows that the 20 feet area is measured from the edge of pavement; our street buffers are always measured from the edge of right of way or the property line.

In relocating the apron, it will require the removal of trees in that buffer area. Beaufort County is proposing to reduce that buffer area so that there is no encroachment in there. There is an additional change and that is the relocation of the helicopter pad between the airport rescue & fire fighting facility and Summit Drive. The exact location of the pad has not been determined yet. It will be in the open space in that area but that will also require some clearing of the buffer area.

Chairman Stanford asked if there are any private property owners along Summit Drive and the affected area. Ms. Cyran replied that those areas are owned by the airport.

Ms. Cyran stated that the trees that will be removed from the buffer, will be part of a plan where that if it is determined that those trees must be replaced, they will be replaced with lower vegetation.

Town staff will determine if the 20 foot adjacent street buffer meets the current LMO standards for planting requirements for buffer of that width. There may be additional buffer requirements since it is such a drastic change from 75 feet to 20 feet. That buffer will be increased with low plantings that are more appropriate for use by the airport. Our recommendation is that the BZA approve the request with the condition that the 20 foot street buffer be measured from the property line also known as the edge of right of way on Summit Drive.

Chairman Stanford opened the meeting for public comment.

Mr. Lance Pyle, Port Royal Plantation General Manager stated that the Hilton Head Airport and Port Royal Plantation are neighbors. As a community we request that the BZA takes this into consideration as you evaluate the County's request for a variance. The request if approved, would contribute to an increase in airport noise level in our community. Over the years a number of noise mitigating trees between Port Royal and the airport have been removed for the recycling center, the fire station, and the airport fire & rescue as well as Town offices. The request made by the County if approved, means a loss of existing trees in the airport and the community. In addition, the County plans to develop more hangar space in the area of three acres currently heavily treed land adjacent to the airport fire & rescue facility. Finally, as identified in the master plan, the County has projected future hangar development which requires clearing of an additional 16 acres immediately adjacent to the cul-de-sac at the end of Summit Drive. Most of the 16 acres – 13 of which are owned by the Town means the possibility for another 16 acres to be cleared, in addition to the three which we strongly oppose. The activity of tree removal continues and the source of the noise comes closer to the homes in Port Royal Plantation. The continued removal of trees should be considered in this decision making process while the County is required in some manner to mitigate for the trees they are removing, it does not mitigate to noise that we will receive by those trees being removed. We respectfully request that some of the trees be replaced with noise mitigation by the Board if they so choose to approve this request. We therefore request that the Board upon approval request additional mitigation for noise mitigation along Summit Drive within the 20 foot buffer that they are asking for.

Mr. Fingerhut made a motion based on the Findings of Facts and Conclusions of Law to **approve VAR-2298-2015 with the condition** by staff that the 20 foot street buffer be measured from the property line; and the 20 foot adjacent street buffer be intensely replanted to ameliorate the noise from the airport. Mr. North seconded the motion. The motion **passed** unanimously.

10. Staff Reports

None

11. Adjournment

The meeting was adjourned at 4:20 p.m.

Submitted By:

Approved By:

Eileen Wilson

Sr. Administrative Assistant

Approved 02/22/2016

Glenn Stanford, Chairman