



The Town of Hilton Head Island  
**Board of Zoning Appeals Special Meeting**

**Monday, October 28, 2019 – 2:30 p.m.**

Benjamin M. Racusin Council Chambers

## **AGENDA**

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*As a courtesy to others please turn off / silence ALL mobile devices during the meeting. Thank you.*

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. FOIA Compliance** – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
- 4. Roll Call**
- 5. Welcome and Introduction to Board Procedures**
- 6. Approval of Agenda**
- 7. Approval of Minutes**
  - a. Special Meeting July 15, 2019
  - b. Regular Meeting July 22, 2019
- 8. Unfinished Business**
- 9. New Business**
- 10. Board Business**
  - a. Review of revised amendments to the Rules of Procedure
  - b. Review and Adoption of 2020 Meeting Schedule
- 11. Staff Report**
  - a. Waiver Report
- 12. Adjournment**

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



Town of Hilton Head Island  
**Board of Zoning Appeals**  
**Special Meeting**

Monday, July 15, 2019 at 2:30 p.m.  
Benjamin M. Racusin Council Chambers

## **MEETING MINUTES**

**Present from the Board:** Chairman Jerry Cutrer, Vice Chair Patsy Brison, Robert Johnson, Lisa Laudermilch, Anna Ponder, Charles Walczak, John White

**Absent from the Board:** None

**Present from Town Council:** Tamara Becker, Tom Lennox, Glenn Stanford

**Present from Town Staff:** Nicole Dixon, Development Review Administrator; Josh Gruber, Assistant Town Manager; Teri Lewis, Deputy Director of Community Development; Missy Luick, Senior Planner; Teresa Haley, Senior Administrative Assistant

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1. **Call to Order**  
Chairman Cutrer called the meeting to order at 2:30 p.m.
2. **Pledge of Allegiance**
3. **FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the South Carolina Freedom of Information Act and the Town of Hilton Head Island requirements.
4. **Swearing in Ceremony for Reappointed Members Lisa Laudermilch and Robert Johnson, and New Member Anna Ponder** – Josh Gruber, Assistant Town Manager, performed the swearing in ceremony.
5. **Roll Call** – See as noted above.
6. **Welcome and Introduction to Board Procedures**  
Chairman Cutrer welcomed the public and introduced the Board's procedures for conducting the business meeting.
7. **Approval of Agenda**  
Chairman Cutrer asked for a motion to approve the agenda. Vice Chair Brison moved to approve. Mr. Johnson seconded. The motion passed with a vote of 7-0-0.
8. **Approval of Minutes** – Regular Meeting of June 24, 2019  
Chairman Cutrer asked for a motion to approve the minutes of the June 24, 2019 meeting. Vice Chair Brison moved to approve. Ms. Laudermilch seconded. The motion passed with a vote of 7-0-0.
9. **Unfinished Business** – None
10. **New Business**

- a. **APL-001261-2019** – Request for Appeal from Nate Jones with Broad Creek Marina Adventures. The appellant is appealing staff’s determination, dated May 24, 2019, that an outdoor electric go-cart track is not an allowed Outdoor Commercial Recreation use in the Waterfront Mixed Use (WMU) zoning district.

For a full description of the above-referenced appeal hearing, see the certified transcript attached hereto as **Exhibit A** and made a part of the record hereof.

**11. Board Business**

- a. Review of revised amendments to the Rules of Procedure

The Board reviewed the amendments and made a minor administrative correction. Staff will present the revised amendments for the Board’s approval at the next meeting.

**12. Staff Report – None**

**13. Adjournment**

Chairman Cutrer adjourned the meeting at 4:10 p.m.

**Submitted by:** Teresa Haley, Secretary

**Approved:** [DATE]

**EXHIBIT A**

BZA MEETING

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STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

BZA MEETING  
JULY 15, 2019

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22                   The following transcript was transcribed  
23 by Coastal Court Reporting & Video Services from  
24 a audio file provided by The Town of Hilton Head  
25 Island, South Carolina.



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25 CERTIFICATE ----- 108

1 MR. GRUBER: Would you raise your  
2 right hands. Please, repeat after me.

3 I do solemnly swear that I am duly  
4 qualified according to the Constitution  
5 of this state to exercise the duties of  
6 the office to which I have been  
7 appointed, and that I will, to the best  
8 of my ability, discharge the duties  
9 thereof, and preserve, protect, and  
10 defend the Constitution of this state  
11 and of the United States.

12 Congratulations.

13 (Reappointed members and new member  
14 sworn in.)

15 CHAIRMAN CUTRER: Members of the  
16 Board of Zoning Appeals serve  
17 three-year terms and may serve two  
18 consecutive two-year terms if appointed  
19 by the Town Council.

20 We're honored today to be joined  
21 by Dr. Anna Ponder, who's vice  
22 chancellor at the University of South  
23 Carolina Beaufort. This is her first  
24 meeting. And I think we have an  
25 important guest with us today.

## BZA MEETING

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1 Dr. Ponder, would you like to  
2 introduce your guest?

3 DR. PONDER: This is my mother,  
4 Eunice Wilson Ponder.

5 CHAIRMAN CUTRER: Welcome, Ms.  
6 Ponder.

7 (Applause.)

8 CHAIRMAN CUTRER: We also have  
9 several members of the Town Council  
10 present today, Councilman Lennox,  
11 Councilman Stanford, and Councilwoman  
12 Becker.

13 Welcome, all of you, to the Board  
14 of Zoning Appeals. Today our primary  
15 business is to hear appeal of a  
16 determination made by Town staff.  
17 We'll get into procedures in a little  
18 bit, but what I want to say right now  
19 is that we will hear testimony and  
20 arguments from the appellant and from  
21 the Town staff. The Board will have an  
22 opportunity to ask questions as they  
23 deem appropriate, and then they'll be a  
24 motion and a vote.

25 In an appeal, public comments are

## BZA MEETING

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1 not permitted. So we will hear, today  
2 only, from the appellant and the Town  
3 staff.

4 Next item on the agenda is  
5 approval -- pardon me, is approval of  
6 the agenda.

7 Before we do that, I want to say  
8 that as Chairman, I granted an  
9 appeal -- a request, I should say, by  
10 Mr. Taiwan Scott for postponement of  
11 his appeal regarding 5 Candy Doll  
12 Bluff. It was originally on the agenda  
13 for today's meeting, proposed agenda.  
14 He asked for a postponement to try to  
15 work out a solution with staff. And so  
16 pursuant to the rules of the Board of  
17 Zoning Appeals, I, as Chairman, granted  
18 that request for postponement for a  
19 period up to three months.

20 Now, we'll call for approval of  
21 the agenda.

22 Do I hear a motion -- roll call,  
23 did I miss that? You can tell when  
24 there's a rookie Chairman up here,  
25 can't you?



BZA MEETING

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1       Okay. Would the secretary please  
2 call the roll?

3       MS. HALEY: Yes, sir.

4       Mr. Walczak?

5       MR. WALCZAK: Present.

6       MS. HALEY: Mr. Johnson?

7       MR. JOHNSON: Present.

8       MS. HALEY: Mr. Cutrer?

9       CHAIRMAN CUTRER: Present,  
10 apparently in body only.

11       MS. HALEY: Ms. Brison?

12       VICE CHAIRMAN BRISON: Present.

13       MS. HALEY: Mr. White?

14       MR. WHITE: Present.

15       MS. HALEY: Ms. Laudermilch?

16       MS. LAUDERMILCH: Present.

17       MS. HALEY: Dr. Ponder?

18       DR. PONDER: Present.

19       CHAIRMAN CUTRER: Now, the Chair  
20 will entertain a motion to approve the  
21 agenda.

22       VICE CHAIRMAN BRISON: So moved.

23       MR. WALCZAK: Second.

24       CHAIRMAN CUTRER: We have a motion  
25 to second.

BZA MEETING

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1 Any discussion?

2 (No verbal response.)

3 CHAIRMAN CUTRER: Hearing none,

4 all in favor, say aye.

5 (All "Aye.")

6 CHAIRMAN CUTRER: Agenda's

7 approved.

8 Next item is approval of the

9 minutes of the June 24th BZA meeting.

10 Do we have any questions or discussion?

11 If not, the Chair will entertain a

12 motion to approve the minutes as

13 written.

14 VICE CHAIRMAN BRISON: I move to

15 prove the minutes as written.

16 MS. LAUDERMILCH: Second.

17 CHAIRMAN CUTRER: We have motion

18 to second.

19 Any discussion?

20 (No verbal response.)

21 CHAIRMAN CUTRER: Hearing none.

22 All in favor, say aye.

23 (All "Aye.")

24 CHAIRMAN CUTRER: Minutes are

25 approved.

1 Next item on our agenda is  
2 unfinished business, and apparently we  
3 have none, as we usually don't.

4 We have new business, which is  
5 hearing of an appeal and we're going to  
6 hear appeal 001261-2019, which is a  
7 request from Broad Creek Marina  
8 Adventures appealing a decision by the  
9 LMO Administrator that electric  
10 go-carts are not permitted as an  
11 outdoor use.

12 Before we get into that appeal,  
13 I'll recognize Ms. Brison.

14 VICE CHAIRMAN BRISON: Sir,  
15 Mr. Chair, I have spoken about this  
16 matter before the LMO text committee,  
17 so I do believe that I would have  
18 pre-hearing bias and I would ask to be  
19 recused from this matter.

20 CHAIRMAN CUTRER: You are recused,  
21 you may step down.

22 Okay. On to appeal from Broad  
23 Creek Marina Adventures, they are  
24 appealing a staff determination that an  
25 outdoor electric go-cart track is not

1 permitted -- is not a permitted use in  
2 the Waterfront Mixed Use WMU District.

3 Our procedures are that the  
4 appellant will have 20 minutes to  
5 present facts and applicable legal  
6 principles regarding their appeal.  
7 During the applicants presentation,  
8 Board members may ask questions when  
9 recognized by the Chair. Following the  
10 presentation by the appellant, staff  
11 will have 20 minutes to present facts  
12 and applicable legal principles  
13 regarding the appeal. Board members  
14 will have the opportunity to ask  
15 questions of staff when recognized by  
16 the Chair.

17 In cases where the appellant is  
18 someone other than the property owner  
19 or the holder of a permit or approval  
20 for the property, such additional  
21 parties shall have the same rights for  
22 presentation as the appellant and the  
23 staff.

24 Following the presentation by the  
25 appellant and staff, each party will be

1 allowed up to five minutes for  
2 rebuttal, if they so request.  
3 Following the discussion and the  
4 presentation, Board members may ask  
5 such additional questions of the  
6 parties as the members deem  
7 appropriate. Public comment is not  
8 permitted during an appeal an LMO  
9 Administrator decision.

10 At the conclusion of the  
11 presentation and the questions, the  
12 Board members shall discuss the appeal,  
13 and then vote on a motion to either  
14 uphold, modify, or reverse the  
15 official's decision.

16 Before we've begin -- well, I'll  
17 call up the appellant. Would you state  
18 your name, sir, and your connection  
19 with this case?

20 MR. LESEMANN: Yes, sir,  
21 Mr. Chairman. Thank you, ladies and  
22 gentlemen of the Board of Zoning  
23 Appeals. My name is Ellis Lesemann,  
24 I'm legal counsel for Broad Creek  
25 Marina Development, LLC, as well as

1 Broad Creek Marina Adventures, LLC, and  
2 the appeal was submitted on behalf of  
3 both.

4 CHAIRMAN CUTRER: Okay. Would you  
5 explain who the property owner is in  
6 this case?

7 MR. LESEMANN: Yes, Mr. Chairman,  
8 the property owner is Broad Creek  
9 Marina Development, LLC, and through a  
10 corporate structure, they have an  
11 operating entity that conducts a lot of  
12 the day-to-day activities through the  
13 marina on the zip line and some of the  
14 other businesses that -- that you all  
15 may be familiar with.

16 So one is the land ownership  
17 entity, that's the Broad Creek Marina  
18 Development entity, and the other is an  
19 operating management entity, and --

20 CHAIRMAN CUTRER: Okay.

21 MR. LESEMANN: -- that's the Broad  
22 Creek Marina Adventures as it relates  
23 to the outdoor recreation activities on  
24 site.

25 CHAIRMAN CUTRER: Okay. Thank

1 you, Mr. Lesemann. So the property  
2 owner is a co-appellant in this case  
3 and there'll be no parties heard other  
4 than the appellant and the staff?

5 MR. LESEMANN: Yes, sir, that's  
6 correct, I'm here on behalf of both.

7 CHAIRMAN CUTRER: Okay. You may  
8 proceed.

9 MR. LESEMANN: Thank you. Allow  
10 me just a moment to -- Okay. So thank  
11 you.

12 Ladies and gentlemen, again, I'm  
13 here on behalf of Broad Creek Marina  
14 Development and Broad Creek Marina  
15 Adventures. Here, obviously, the  
16 business at hand is to is to request  
17 that you overturn or modify a decision  
18 of Ms. Lewis as the Town's LMO  
19 official.

20 Obviously, any time an issue like  
21 this comes before you, it's partly  
22 about the issue at hand, and it's  
23 partly about the proper balance between  
24 property rights and land regulation on  
25 the other hand. You all not only

1 are -- have to be concerned with this  
2 particular appeal, but also, what does  
3 this appeal mean in a greater sense?

4 And so we're sensitive to these  
5 and want to talk about these issues  
6 because we want you to make the right  
7 decision -- what we believe is the  
8 right decision in this case as well as  
9 for the Town and for other cases that  
10 may come before you.

11 Obviously, I grew up in  
12 Charleston, live in Charleston, I've  
13 had clients down in Hilton Head for  
14 years and have come down here for  
15 years, and I know that this Town has  
16 zoned itself and has handled zoning in  
17 a matter that's somewhat unique in  
18 other municipalities, and in a lot of  
19 good ways in terms of signage and  
20 vegetative buffers and things that you  
21 don't see in other areas. And so  
22 salute these -- you all, these that  
23 came before you, and all that are  
24 involved in the Town's zoning  
25 mechanisms.



1 I'll try to make this large enough  
2 for everyone to read, but as I looked  
3 through the Rules of Procedure and  
4 realize why we were here, the Board of  
5 Zoning Appeals exists to provide final  
6 administrative decisions for the Town  
7 of Hilton Head Island, to enforce the  
8 zoning ordinance in accordance with  
9 state law.

10 And that last phrase there, in  
11 accordance with state law, is what I'm  
12 going to spend a lot of my time here  
13 talking about with you today. And  
14 before -- now that it's dark, it's  
15 harder to see everyone, but I did want  
16 to introduce Mr. Nate Jones, who is the  
17 general manager of my client and also  
18 several folks from the community came  
19 out to give us moral support today.  
20 Mr. Teri Philip, Mr. Robbie Brutus, and  
21 Mr. James Ellis, Mr. Tom Jones, and Mr.  
22 Tom Cruise. So I thank them all for  
23 being here.

24 And understand that public comment  
25 won't be involved, but I'll focus on a

1 lot of legal issues and so probably  
2 best for me to get up and talk about  
3 these.  
4 I think everyone's probably  
5 familiar with the site. At one point  
6 or another, maybe everyone has been to  
7 Broad Creek Marina or to the Up the  
8 Creek Pub and Restaurant or might have  
9 visited one of the businesses that's  
10 there. It is in the -- It is along  
11 Broad Creek. I'm showing an area of  
12 the site. As you can see, it's heavily  
13 wooded. You can see the dry stack  
14 building, which has the red roof. You  
15 can see the pier that leads out towards  
16 the marinas, the ferries that go to  
17 Daufuskie Island, as well as allow a  
18 lot of folks to go out and have  
19 recreational activity.  
20 I've been working with  
21 Mr. Friedman, the owner of the  
22 companies that owned the site for  
23 several years and appreciate the  
24 mission that he has, and what that is  
25 is to bring additional opportunities,

1 some of which are unique to the island  
2 so that it expands what folks can do.  
3 And I think that this is important and  
4 it is part of our appeal for a couple  
5 of reasons.

6 One, obviously, this is a  
7 significant tourist destination. And  
8 does it have and is it keeping up to  
9 date with all the things that families  
10 like to do in this day and age? Golf  
11 is obviously a sport of kings and a  
12 very noble activity, but not everybody  
13 plays golf and not everyone plays  
14 tennis.

15 And the Town has diversified in a  
16 lot of ways and there's a lot of  
17 activities. A couple of these that are  
18 available, I believe only on my  
19 client's site, are a zip line  
20 recreational business as well as a  
21 ropes course, an aerial adventure  
22 business.

23 A third item, and that's the  
24 subject of the appeal today, is to have  
25 an outdoor electric go-cart. So rather

1 than building a large metal building  
2 and having that activity go on inside,  
3 have that activity go on outside and  
4 use electric go-karts and have people  
5 be able to enjoy the outside, which is  
6 why they came to Hilton Head in the  
7 first place, to be outside, but to do  
8 things that are memorable and fun with  
9 their families.

10 One other thing that I can  
11 appreciate as a father of three --  
12 excuse me -- is -- well, what is there  
13 for us to do as a family locally in  
14 Charleston, another tourist town? And  
15 we appreciate the trampoline businesses  
16 and the different things that we can  
17 do, go-karts and putt putt and all the  
18 types of things that make it fun for a  
19 family. And I think, as a town  
20 government, these balances are  
21 important.

22 And making sure that we, yes,  
23 balance the need of everyone that has  
24 an opinion, we balance the need of  
25 residences and residents, and we also

1 be thinking about the needs of tourist  
2 businesses to remain relevant, to  
3 remain attractive, and also to local  
4 families that like to have places to go  
5 with their kids and with their  
6 grandkids, and to have places to have  
7 birthday parties and outings.

8       And so that's the spirit of what's  
9 going on with this property. So, yes,  
10 it's narrow, it relates specifically to  
11 a go-cart track, but, again, in a  
12 broader sense, it relates to my  
13 client's vision for the property. So  
14 as all of you already may know, this is  
15 in the WMU District. I'm showing it  
16 here. It's the parcel to your right as  
17 you see it, the green property there  
18 being owned by the Town, same property  
19 that we just looked at in an overhead  
20 from the area.

21       So it is a Mixed-Use District, so  
22 by that token, it already, from prior  
23 decisions made by prior zoning  
24 officials, already intends to have a  
25 mixture of uses. So a lot of times

1 when something's coming before you all  
2 or before the Town, it would just say,  
3 all right, well how does this new use,  
4 how does it mix with what's already  
5 there?

6 And that's part of the  
7 application, is to say that an outdoor  
8 go-cart business would mix very well  
9 with a zip line business, with dolphin  
10 tours, with ferries to Daufuskie with a  
11 ropes course, and with the things that  
12 are already going on on site.

13 And if we look at the LMO itself,  
14 when we think about the types of uses  
15 that are allowed in the waterfront  
16 mixed uses area, churches, cemeteries,  
17 hotels, multi-family, there's a very  
18 broad range, stadiums, there's a very  
19 broad range of things that would  
20 actually not be as consistent,  
21 potentially, as this sort of activity  
22 would be right here. And would add,  
23 again, another unique element to the  
24 recreational opportunities that are  
25 available to residents and to visitors.

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1 So the process of Mr. Friedman and  
2 Mr. Nate bringing this to you, it goes  
3 back for some time, about a year.  
4 There's been discussions with -- as  
5 Ms. Brison mentioned, prior discussions  
6 before the LMO Committee, prior  
7 discussions with the Planning  
8 Committee, and so some thought has been  
9 put to this.

10 My client did lose a season, all  
11 right, it's going to take a little  
12 while to get things constructed if --  
13 when we're able to get this all figured  
14 out, hopefully in a positive way. But  
15 they've lost a season so we went ahead,  
16 in May, we wrote this letter to  
17 Ms. Lewis at the Town to ask for -- to  
18 go ahead and get a determination from  
19 her on this. We received her  
20 determination from the Town on May  
21 24th.

22 And essentially what it said is,  
23 well, we do have a specific set of  
24 indoor commercial recreational uses  
25 that are listed and we have a set of

1 outdoor commercial recreation uses that  
2 are listed. And we think that since  
3 go-karts appear -- we being the Town --  
4 since go-karts appear in that indoor  
5 list and not in that outdoor list,  
6 therefore, it must not be an approved  
7 outdoor use.

8       And then secondarily, and  
9 Ms. Lewis will certainly be able to  
10 speak more eloquently about the  
11 determination that she gave, but  
12 secondly, there was an idea that, well,  
13 since the majority of the list is do --  
14 of the possible uses do appear to be  
15 used, then -- or listed, then we would  
16 exclude ones that aren't listed in  
17 terms of having so many that are  
18 already there.

19       But I would submit to you that if  
20 only a majority of them are listed,  
21 then they're not all listed. And if a  
22 use meets the definition of an outdoor  
23 commercial recreation use and it's  
24 compatible and it's not the type of  
25 business that the Town has deemed fit



1 to prohibit in some way or to  
2 specifically limit in some way, then we  
3 have to, and I'll get into this in just  
4 a minute -- we, and I believe that you  
5 ladies and gentlemen, are obliged to  
6 enforce this ordinance in compliance  
7 with state law, and we'll talk about  
8 some of these state law determinations.

9 I did submit about an 11 page  
10 appeal, which discusses some of these  
11 state law issues as well as ones that  
12 were mentioned in the prior May letter.  
13 So again, as we get down to uses -- and  
14 I know this is small, but I'll blow it  
15 up -- the Town is thinking of, what are  
16 the commercial recreation uses that are  
17 allowed, and when we look at the  
18 Principal Use Table, indoor commercial  
19 recreation uses, outdoor uses other  
20 than water parks and water parks.

21 There's not a lot of definition in  
22 this principle use table, so is our use  
23 an example of one of these listed uses?  
24 We submit that it is. It's an outdoor  
25 commercial recreational use that's

1 pursued by a business by charging  
2 visitors a fee. As we look over to the  
3 far right, and I know that the column  
4 is not captured, but it is a permitted  
5 with conditions, right?

6 It's a PC activity. As you all  
7 know, P means permitted as of right, PC  
8 means permitted with conditions. So  
9 what's that one condition that's in  
10 Section 164102(b)(5)(b)? It's that  
11 there be access to a minor arterial  
12 road in order for an outdoor commercial  
13 recreational use to be on the property.

14 To not move backwards, but you'll  
15 remember the aerial, and you all have a  
16 good mental map of the island,  
17 Marshland Road runs right alongside  
18 this property, so it meets that one  
19 condition in order to be a permitted  
20 use. It has direct vehicular access to  
21 a minor arterial road.

22 One alternative -- and so we  
23 believe, again, that it is a listed use  
24 because it falls within that  
25 definition. There is an alternative

1 mechanism that you all may have had the  
2 opportunity to also review, and that is  
3 to say, well, if it is an unlisted use,  
4 all right, if we are gonna take the  
5 opinion, we as the Board of Zoning  
6 Appeals, are going to take the opinion  
7 that if the word go-cart doesn't appear  
8 in a specific definition of outdoor  
9 commercial recreation use, that it's an  
10 unlisted use.

11       There is an alternative mechanism  
12 for the Board request or to demand to  
13 approve that this be an allowed use,  
14 and that is one that the Town did not  
15 undertake, but it's to analyze it to  
16 say, okay, let's say it's not listed,  
17 how does it compare to the uses that  
18 are listed and is it sufficiently  
19 compatible with these and is it not of  
20 such a scope and an impact that it  
21 ought to be considered to have been  
22 unlisted, essentially, for a reason?

23       All right. I believe, again, that  
24 the proper interpretation of that list,  
25 what -- uses the word include when it

1 talks about outdoor commercial  
2 recreation uses, and it says, includes  
3 golf courses, driving ranges, zip  
4 lines. That, and I believe that  
5 language in the LMO -- as we'll look at  
6 in just a minute -- that's just to be a  
7 list of examples, that is not an  
8 exclusive list, language in the LMO  
9 bears that out.

10 But even if you were to take that  
11 belief and that were your decision as a  
12 collective group, there is this  
13 alternative mechanism that I'd ask you  
14 to think about. So if one of you  
15 believes that, okay, that's as a body,  
16 that's how we interpret that  
17 definition, but we do have this other  
18 tool available to us and we can talk  
19 about the actual, for example, these  
20 different -- these ten criteria, the  
21 actual projected characteristics of the  
22 unlisted use, the relative amount of  
23 sight area.

24 And we've submitted these in our  
25 submission to the BZA, but, again, when

1 you look at how would a go-cart track  
2 compare to a zip line and compare to  
3 the ropes course, and I think that we  
4 can recognize that these are adding  
5 value to the community, that the hours  
6 of operation, the number of employees,  
7 the number of visitors, the projected  
8 characteristics of the business, if we  
9 look at these ten criteria test, that  
10 it ought to apply and ought to be  
11 allowed on that basis as well. So  
12 there is a portion of the LMO that  
13 defines indoor use and outdoor use.

14 I thought it'd be beneficial if I  
15 were to create a document that  
16 essentially lists them on a  
17 side-by-side basis. Is everybody --  
18 I'm sorry for the -- at one way or the  
19 other, can we all see it? All right.

20 So the definition of indoor and  
21 outdoor are very similar. I'll read  
22 the outdoor, an establishment that  
23 offers entertainment and recreation  
24 activities, events or attractions to  
25 the general public outdoors on a

1 commercial or fee basis.

2 So I underlined the only words  
3 that are different. All right. And  
4 then it goes on to say, outdoor  
5 commercial recreation uses include.

6 And as I mentioned in another  
7 portion of the LMO, it's clarified --  
8 sorry -- they wouldn't use -- the  
9 one listed, for example, is used,  
10 unless otherwise specifically  
11 indicated, lists of items and examples  
12 that use terms like, for example,  
13 including and such as or similar  
14 language are intended to provide  
15 examples and are not exhaustive lists  
16 of all possibilities.

17 And that would stand to reason, as  
18 we go back and we look at that side by  
19 side listing, I'll believe why I think  
20 that the -- I'll indicate to you why I  
21 believe that that interpretation was  
22 incorrect. For example, for an indoor  
23 use, you can see that theme or  
24 amusement park is listed. Highly  
25 unlikely that a theme park or an

1 amusement park is ever going to be  
2 built within an entirely domed or  
3 contained structure.

4       The word boardwalk. The  
5 boardwalks are listed. I might have a  
6 limited understanding -- there might be  
7 other examples I'm just not aware of,  
8 but I picture, sort of, Atlantic City  
9 and Disney World and I picture outdoor  
10 boardwalks, but it's listed is an  
11 indoor use.

12       I see the word swimming pools.  
13 Well, if someone wanted to have a  
14 swimming pool that it was able to have  
15 on a fee basis to folks and wanted to  
16 build that outdoors, well, how would it  
17 be an appropriate interpretation to  
18 say, well, you can have an indoor  
19 swimming pool because it's listed as an  
20 indoor use, but you can't have an  
21 outdoor swimming pool because it isn't  
22 in that short list of example uses that  
23 are on the outdoor use.

24       If you look on the right-hand side  
25 of that document, you won't see

-

1 swimming pool, you won't see boardwalk,  
2 you won't see theme park or amusement  
3 park. Similarly, look at the  
4 right-hand side, you see basketball  
5 court. Well, I think, certainly, the  
6 Board of Zoning Appeals would  
7 appreciate that there could be a  
8 basketball court indoors, and if folks  
9 wanted to charge for that because it  
10 was a special type of basketball court  
11 that the -- that the general public  
12 wanted to pay to go, well, couldn't we  
13 have a basketball court inside? That's  
14 certainly were a lot of them are.

15 Driving ranges. Well, typically,  
16 they're going to be outside, but there  
17 are virtual driving ranges. Sure Fit  
18 is the name of the -- or there's a name  
19 of a local business that has an indoor  
20 simulator and a driving range, it  
21 charges people to do that on an indoor  
22 basis and I don't think that -- I  
23 wouldn't submit that that's an illegal  
24 activity, but it's not listed under  
25 indoor commercial recreation use.



1       So I believe that the comparison  
2 of what's listed indoor can be indoor  
3 and what's listed outdoor can be  
4 outdoor, I think, is incomplete and I  
5 think it's inconsistent with state law,  
6 respectfully. And so we'd ask, in the  
7 view of that general rule of  
8 interpretation, which indicates that a  
9 list ought to be treated as just a  
10 list -- just checking my time -- that  
11 it be allowed.

12       So I mentioned to you about state  
13 law, and what I want to do is talk a  
14 little bit about some principles of  
15 state law as -- in the remaining bit of  
16 time that we've got. Sorry, not it.

17       Basically, what happens in state  
18 law is that it recognizes that -- if we  
19 look at that section there, begins with  
20 the number 47. When interpreting an  
21 ordinance, legislative intent must  
22 prevail if it could be reasonably  
23 discovered in the language used.

24       In construing a statute -- going  
25 down a bit -- it's words must be given,

1 they're playing an ordinary meeting  
2 without resorting to subtle or forced  
3 construction to limit or expand the  
4 statute's operation.

5 And here's the important part,  
6 ordinances that are derogation, right,  
7 that are in reduction of natural rights  
8 of persons over their property, meaning  
9 their right to choose and use their  
10 property to the fullest extent that is  
11 allowed, are to be strictly construed  
12 as they are in derogation of the common  
13 law right to use private property so as  
14 to realize its highest utility and  
15 should not be impliedly extended to  
16 cases not clearly within their scope  
17 and purpose.

18 So I'm going to run out of my 20  
19 minutes before I could talk about the  
20 Keen Sherritt Partnership versus Keen  
21 case, which was a Hilton Head case.  
22 The Helicopter Solutions versus Hindi  
23 case, which was a Myrtle Beach case.  
24 And the Charleston County Parks and  
25 Recreation Commission case versus

1 Summers. But all of these stand for a  
2 few general principles.

3 The Town does get to write  
4 ordinances, and that's within the  
5 Town's police power, and these  
6 ordinances are presumed to be valid  
7 because zoning is a valid exercise of  
8 police power. But ladies and  
9 gentlemen, once they're written,  
10 they're written, and they're to be  
11 interpreted under state law in a manner  
12 that's consistent with the legislative  
13 intent, but that allows the individual  
14 property owner, first, to understand  
15 what's allowed and what's not allowed.  
16 And secondly, to use the property to  
17 the fullest allowed extent.

18 Nothing under the LMO prohibits  
19 the use of the construction of a  
20 go-cart track. It isn't inconsistent  
21 with a Mixed-Use District where other  
22 recreational opportunities already are.  
23 If someone were to read the LMO, they'd  
24 say, okay, outdoor commercial  
25 recreation uses, and although there is

1 a list, this other part of the LMO  
2 tells me that lists aren't exclusive,  
3 they're just examples.

4 So it is an outdoor commercial  
5 recreation use that we believe should  
6 be allowed either as of right, based on  
7 your strict interpretation of that  
8 language as written. Or secondly, if  
9 it is to be deemed an unlisted use, by  
10 following that criteria and allowing  
11 for it to be recognized as an unlisted  
12 use because of its compatibility with  
13 the Town's overall plan and with what's  
14 going on in that property.

15 And I heard the buzzer for my time  
16 and so I appreciate you letting me  
17 conclude and would be available for any  
18 questions or for rebuttal or whatever  
19 is at Board's pleasure.

20 CHAIRMAN CUTRER: We'll see if  
21 there are any questions as a result of  
22 your presentation. I'll start with Mr.  
23 Walczak?

24 MR. WALCZAK: No.

25 CHAIRMAN CUTRER: Mr. Johnson?

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1 MR. JOHNSON: Not at this time.

2 CHAIRMAN CUTRER: Mr. White?

3 MR. WHITE: No.

4 CHAIRMAN CUTRER: Ms. Laudermilch?

5 MS. LAUDERMILCH: Yeah. The only

6 question I have, and I think it's

7 relative, but when the ropes course was

8 constructed, was there any special

9 approvals needed or -- I don't see that

10 as a listed permitted use.

11 MR. LESEMANN: That's a good

12 example. So I've been working with the

13 client. Could I confer with Mr. Jones?

14 CHAIRMAN CUTRER: Sure.

15 MR. LESEMANN: Ms. Laudermilch, we

16 did not go through a specific process

17 at that time. It was a project that

18 was applied for and that passed through

19 all of the necessary approvals of the

20 Board. Maybe this one caught someone's

21 eye that didn't -- in the example of

22 the ropes course.

23 MS. LAUDERMILCH: Okay.

24 MR. LESEMANN: But I think that is

25 actually a good point, and thank you

1 for bringing it, in that there are a  
2 number of businesses that aren't listed  
3 that are operating on a permitted and  
4 legal basis in Town. Thank you.

5 MS. LAUDERMILCH: Thank you.

6 CHAIRMAN CUTRER: Dr. Ponder, any  
7 questions?

8 DR. PONDER: No.

9 CHAIRMAN CUTRER: Okay. Thank  
10 you, Mr. Leeseman.

11 MR. LESEMANN: Thank you.

12 CHAIRMAN CUTRER: We'll now hear  
13 from the Town.

14 MS. LEWIS: Good afternoon, Teri  
15 Lewis, for the record. I will try not  
16 to duplicate too much of what  
17 Mr. Lesemann said, but some of it may  
18 be duplicative, just so that I can  
19 explain -- better explain to you, the  
20 staff's position related to this  
21 proposed determination.

22 All right. So the determination  
23 was that an outdoor electric go-cart  
24 track was not allowed in the Waterfront  
25 Mixed Use or WMU Zoning District. I

1 made this determination in May, and it  
2 was in response to a request from  
3 Mr. Jones and his attorney.

4       There's a little bit of history  
5 here that I would like to go through.  
6 The applicant did submit a  
7 pre-application in August 2018, that's  
8 an opportunity for somebody to submit a  
9 conceptual plan of what they would like  
10 to do, get staff comments from  
11 everybody that would review it so that  
12 they know that, you know, if there are  
13 any changes that they have to make,  
14 hopefully they haven't output a lot of  
15 money or time into that. So that's  
16 a -- something -- an application  
17 process that we offer at the Town.

18       The applicant went through that  
19 process and was advised at that time,  
20 as part of their staff review, that  
21 they wouldn't be able to do an electric  
22 go-cart operation as an allowable  
23 outdoor commercial recreation use  
24 without a change, to the use definition  
25 in the Land Management Ordinance. They

1 were given these comments in August of  
2 2018.

3 They then pursued on LMO Amendment  
4 through the Planning Commission and the  
5 LMO Committee beginning in the fall of  
6 2018. They talked about adding  
7 electric go-cart tracks to the outdoor  
8 commercial recreation use example,  
9 which is found in the definition  
10 section of the Land Management  
11 Ordinance.

12 The LMO Committee and the Planning  
13 Commission both had several meetings  
14 that were pretty well attended by the  
15 public, to talk about whether they  
16 wanted to pursue this LMO amendment.  
17 Ultimately, at the last meeting of the  
18 LMO Committee related to this proposed  
19 use, they decided to recommend to staff  
20 to not pursue an LMO amendment to add  
21 electric go-cart tracks as a use  
22 example for outdoor commercial  
23 recreation.

24 So then the applicant sent a  
25 request to ask staff to consider at --



1 whether outdoor electric go-cart tracks  
2 could be considered as an unlisted use  
3 in the LMO. The LMO does provide a  
4 process for interpreting unlisted uses  
5 in the LMO. Mr. Lesemann went through  
6 some of this.

7 It states that, the LMO official  
8 may interpret a use that is not listed  
9 in the Principal Use Table as being  
10 allowed in a zoning district if the  
11 standards found in the LMO are met, the  
12 specific uses associated with both  
13 indoor and outdoor commercial  
14 recreation are found as examples within  
15 the definition of each use.

16 So electric go-cart tracks are not  
17 expressly listed as a use in the  
18 Principal Use Table, but when you look  
19 at that Use Table, what you find is  
20 you'll see indoor commercial recreation  
21 use, just that broad category listed  
22 and outdoor commercial recreation use  
23 listed as that broad category, and then  
24 water park listed.

25 So you don't see indoor commercial

1 recreation and then several of the  
2 different uses that may be allowed as  
3 indoor recreation in that greater  
4 Principal Use Table. Rather, you see  
5 indoor recreation, whether it's  
6 permitted by right, by condition, or  
7 not at all in certain zoning districts,  
8 and then you would go to the definition  
9 section to figure out what would be  
10 considered indoor -- indoor commercial  
11 recreation use or an outdoor commercial  
12 recreation use.

13 As stated, the LMO does include --  
14 does include commercial recreational as  
15 a use broken out into indoor, outdoor,  
16 and water park. So these uses involve  
17 providing indoor/outdoor facilities for  
18 recreation or entertainment oriented  
19 activities. In this case, in the WMU  
20 Zoning District, indoor commercial  
21 recreation uses are permitted by right.  
22 Outdoor commercial recreation uses are  
23 permitted by condition, and that  
24 condition -- that condition is that the  
25 site has to have direct vehicular

1 access to a minor arterial. So, in  
2 this case, it does mean that -- the  
3 site does meet that condition for their  
4 other outdoor commercial recreation  
5 uses.

6 So, per the LMO, indoor commercial  
7 recreation uses include go-cart tracks  
8 as a use example. It's not listed as  
9 an example of a use under outdoor  
10 commercial recreation uses. And as  
11 Mr. Lesemann pointed out in his  
12 side-by-side demonstration, the LMO is  
13 very specific and lists very specific  
14 uses that are considered to be indoor  
15 commercial recreation and these that  
16 are considered to be outdoor commercial  
17 recreation, and I would argue that  
18 these were deliberately chosen when  
19 that section of the LMO was written.

20 That while it may not make sense  
21 for something like a boardwalk or  
22 amusement park or some midway type  
23 attractions to be outside, I believe  
24 that the Town was doing that  
25 deliberately to protect the -- what

1 Hilton Head Island is known for. And  
2 because it's not listed as -- or  
3 because go-cart tracks are specifically  
4 listed as an indoor commercial  
5 recreation use, I find that it's not an  
6 unlisted use. It is a listed use, it's  
7 just not listed under outdoor  
8 commercial recreation uses.

9 So the majority of the specific  
10 uses associated with both of these are  
11 found as examples. So, again, go-cart  
12 tracks are listed as an indoor  
13 commercial use, they're not listed as  
14 an example under outdoor commercial  
15 use. So it is a use that's found in  
16 the LMO.

17 Staff would ask that the BZA  
18 uphold the determination that an  
19 outdoor electric go-cart track is not  
20 an allowed outdoor commercial  
21 recreation use in the WMU Zoning  
22 District, that it is a listed use.

23 I'd be happy to answer any  
24 questions.

25 CHAIRMAN CUTRER: We'll start at

1 the other end.

2 Dr. Ponder, do you have any

3 questions.

4 DR. PONDER: I do have a question.

5 You stated that you believed that that

6 list was deliberate and it was

7 deliberate to protect what Hilton Head

8 Island was known for.

9 MS. LEWIS: That's correct.

10 DR. PONDER: Could you be a little

11 bit -- could you elaborate on that?

12 Could you be a little bit more specific

13 and could you also speak to how the

14 go-cart track, an outdoor go-cart track

15 would violate that, in your opinion?

16 MS. LEWIS: Sure. So I believe

17 what I'm talking about, that it was

18 deliberately chosen, when I look back

19 at how that amendment was added to the

20 LMO, it was at a time when the -- there

21 were different entities asking to do

22 different uses on Hilton Head Island,

23 some amusement parks and things like

24 that.

25 And we realized, at the time, and

1 this was many years ago, that these  
2 uses weren't specifically called out in  
3 the LMO. So at that point, we  
4 developed language for the LMO that  
5 defined indoor commercial recreation,  
6 outdoor commercial recreation. That's  
7 why I say it was it was deliberate.

8 In order for -- I guess I should  
9 back up. In order for the LMO to be  
10 changed, what happens is it would go  
11 through a review of the LMO Committee,  
12 which is a subcommittee of Planning  
13 Commission. And it would have gotten  
14 there through one of two ways, either  
15 the Planning Commission had asked staff  
16 to take on a particular amendment where  
17 it would have come through the Town  
18 Manager.

19 And the Planning Commission can  
20 take it on either because they've noted  
21 something that needs to be changed or  
22 it could be in the case of what  
23 Mr. Jones did, which was come to the  
24 Planning Commission and ask them to  
25 change the -- consider a change to the

1 LMO.

2       Once it goes to that committee, it  
3 goes to Planning Commission for a  
4 public hearing. After that, it goes to  
5 a Town Council subcommittee for review,  
6 and then on to Town Council for two  
7 readings. I just point that out to  
8 show that it's -- you know, it does  
9 have to be adopted by Town Council and  
10 it does go through a pretty thorough  
11 public process before getting adopted.

12       I'm sorry, now I forgot your  
13 second question.

14       DR. PONDER: How is it that you  
15 believe an outdoor go-cart track would,  
16 sort of, violate what you established  
17 as what Hilton Head is known for?

18       MS. LEWIS: Well, I don't think I  
19 could give my opinion here, what I  
20 could do is interpret the Land  
21 Management Ordinance, that's what my  
22 responsibility is. And when I look at  
23 what's listed for indoor and outdoor  
24 commercial recreation and I see go-cart  
25 tracks specifically listed as indoor,

1 what I interpret is that Town Council  
2 considered go-cart tracks when they  
3 were considering --

4 DR. PONDER: I see.

5 MS. LEWIS: -- commercial  
6 recreation and opted to put it in the  
7 indoor commercial recreation category.

8 One thing I did want to add, if I  
9 may, when you were asking about --  
10 somebody had asked about -- I think it  
11 was you, Ms. Laudermilch, well --  
12 somebody -- you'd had asked about  
13 whether the ropes course had to go  
14 through any kind of special change to  
15 the Code, it didn't, but in order for  
16 them to do the zip line, the Code was  
17 changed to allow that, that's why  
18 you'll see, under outdoor commercial  
19 recreation, one of the examples is zip  
20 line courses.

21 So before that was added to the  
22 LMO, it couldn't be in there, and it  
23 was added, kind of, like that process  
24 that I talked about with the go-karts  
25 and going before the LMO Committee and



1 the Planning Commission. That change  
2 was added and after that, the zip line  
3 was able to be opened.

4 MS. LAUDERMILCH: And I understand  
5 about zip line, I guess what I'm  
6 focusing on is that a lot of this  
7 terminology are examples of uses as  
8 opposed to an exhaustive list of uses.  
9 So I was curious that the ropes course  
10 isn't specifically identified as a use.

11 MS. LEWIS: Absolutely, and so  
12 that's when we would look and see where  
13 it best fit, whereas, in this example  
14 for go-carts, it -- go-cart tracks are  
15 specifically listed as an example under  
16 indoor commercial.

17 CHAIRMAN CUTRER: Dr. Ponder, are  
18 you through with your questions?

19 DR. PONDER: I am, thank you.

20 CHAIRMAN CUTRER: Nothing?

21 MS. LAUDERMILCH: I have nothing  
22 else.

23 MR. WHITE: I guess I'm a little  
24 puzzled by the fact that there seems to  
25 be an exclusion of an outdoor go-cart

1 track, but a large commercial building  
2 that would house this size of a track  
3 is acceptable. It just strikes me.  
4 From an island standpoint, we're always  
5 looking for the lowest profile  
6 activity, it seems to fly in the face  
7 of that.

8 MS. LEWIS: I understand where  
9 you're coming from and that's certainly  
10 something that was discussed when the  
11 Planning Commission, the LMO Committee,  
12 considered whether they wanted to allow  
13 this. The applicant certainly talked  
14 about that he could do it by right in a  
15 large, you know, building.

16 Now, again, that building would  
17 still have to go before the Design  
18 Review Board for approval, it would  
19 have to meet all of the LMO  
20 requirements. But, again, what I can  
21 do is interpret the LMO as it's written  
22 right now.

23 MR. WHITE: Thank you.

24 CHAIRMAN CUTRER: Mr. Johnson?

25 MR. JOHNSON: Perhaps you can

1 refresh my memory. When were these two  
2 lists made -- or three lists, parks,  
3 indoor, outdoor? I mean, is that 20  
4 years ago or ten years ago?

5 MS. LEWIS: I would -- I've been  
6 here at the Town for 21 years and it  
7 was within the time that I was here. I  
8 think I -- if I had to guess, I would  
9 say early 2000s, when I would say.

10 But, again, it did -- you know,  
11 the LMO was totally rewritten in 2014,  
12 and as part of that rewrite, the LMO  
13 Rewrite Committee worked very  
14 specifically with the Use Table, so  
15 they looked at the Use Table and all  
16 the uses and went through them to  
17 determine how they wanted that to look  
18 as part of that LMO rewrite.

19 So it was restudied during that  
20 LMO rewrite process. While some  
21 chapters were carried forward or some  
22 portions of chapters were carried  
23 forward as they were written before the  
24 rewrite, the uses were not one of them,  
25 these were considered by the LMO

1 Rewrite Committee.

2 MR. JOHNSON: Could we assume that  
3 it's not listed because of a noise  
4 factor?

5 MS. LEWIS: That could be one  
6 reason.

7 MR. JOHNSON: Okay. Thank you.

8 CHAIRMAN CUTRER: I'd just follow  
9 up, before I get to Mr. Walczak, on Mr  
10 Johnson's questions. I believe that  
11 the indoor permitted use simply says  
12 go-cart tracks or go-karts and does not  
13 specify or distinguish between gas  
14 powered and electric.

15 MS. LEWIS: That's correct. It  
16 says go-cart tracks.

17 CHAIRMAN CUTRER: Thank you. In  
18 your recollection, when the LMO  
19 Committee was considering the whole  
20 rewrite, was there ever discussion of  
21 the difference between electric and gas  
22 powered go-carts or did that ever come  
23 up?

24 MS. LEWIS: I couldn't say with  
25 100 percent certainty, but I don't

1 believe that it was discussed.

2 CHAIRMAN CUTRER: Okay. Thank  
3 you.

4 Mr. Walczak?

5 MR. WALCZAK: Yeah, my question  
6 was, why did these committees decide  
7 not to include it into -- in the LMO or  
8 recommend inclusion? What was the  
9 real -- what were the reasons behind  
10 not doing that?

11 MS. LEWIS: Oh, when it went  
12 before the plan -- proposed  
13 amendment --

14 MR. WALCZAK: Right. Right.

15 MS. LEWIS: -- went before the  
16 Planning Commission and the LMO  
17 Committee?

18 MR. WALCZAK: Right.

19 MS. LEWIS: So it was -- I think  
20 there were -- there were concerns about  
21 noise from several people. There were  
22 also concerns about the Hilton Head  
23 Island brand from multiple people. I  
24 would say these were the -- these were  
25 the two biggest concerns. Another

1 concern that we heard was related to  
2 trees and removal of trees.

3       Although recognizing that whether  
4 you would put an outdoor go-cart track  
5 or an indoor go-cart track, you would  
6 have to be -- you would have to remove  
7 trees and that would be allowed as part  
8 of your development plan review  
9 process. So there was certainly -- you  
10 know, there were some people that spoke  
11 in support of it, there were people  
12 that spoke against it.

13       The people in support of it were,  
14 you know, looking for other activities  
15 for families, showing that perhaps you  
16 could save more trees if you have this  
17 and it could kind of wind around the  
18 trees versus putting in a building  
19 where you couldn't save any trees. But  
20 the majority of the people that spoke  
21 against it were specifically speaking  
22 about noise and the Hilton Head that  
23 brand.

24       MR. WALCZAK: There are other  
25 districts similar to this spotted

1 throughout the island, right, and I  
2 had -- I didn't look to see  
3 specifically where they're all located,  
4 but it seems to me this would be a  
5 place that could be acceptable for this  
6 rather than, let's say, right on 278,  
7 for example, out in the open where  
8 everybody sees it or whatever.

9       It just seems to me that -- you  
10 know, in other words, if we were to  
11 overrule your decision, I wouldn't want  
12 that to be a blanket, you know, for the  
13 rest of the island, I'd like to -- you  
14 know, in other words, if this is a one  
15 off special use type thing, I could see  
16 where could possibly fit here, but not  
17 fit on other locations.

18       MS. LEWIS: Well, that was one of  
19 the concerns that one of our planning  
20 commissioners brought up, is that, you  
21 know, this does relate specifically to  
22 the WMU Zoning District and this is not  
23 the only property zoned WMU --

24       MR. WALCZAK: Right.

25       MS. LEWIS: -- there are several

1 parcels. There's some parcels along  
2 Marshall Road where Palmetto Bay Marina  
3 is is zoned WMU, and then there's  
4 parcels along Squire Pope Road as well.  
5 So that was one of their concerns, is  
6 that -- that this change wouldn't be  
7 specific to this parcel, it would be  
8 specific to an entire district, and  
9 that district's found in more than just  
10 this area.

11 MR. WALCZAK: Okay. Well, that's  
12 a good reason for not including it,  
13 but, again -- see, I have this thing in  
14 my mind about a special-use permit for  
15 this particular parcel. I don't know  
16 it's not -- I know you and I have had  
17 this conversation, I think, in the  
18 past, and I'm not sure if that  
19 terminology is legal in this state or  
20 whether it's -- that type of thing is  
21 used.

22 MS. LEWIS: Sure. So something --  
23 it actually -- what we do is we do  
24 conditional uses were -- are permitted  
25 by right, which is permitted at the



1 staff level, permitted by condition,  
2 which is also permitted at the staff  
3 level, but these conditions are  
4 established in the Land Management  
5 Ordinance, and then the other is a  
6 special exception.

7       And because the LMO rewrite was so  
8 successfully -- I don't think the BZA  
9 has really entertained any. If so,  
10 maybe just one special exception since  
11 the LMO rewrite was completed. But  
12 that's a use that's allowed in a zoning  
13 district, but may not be appropriate  
14 everywhere in a zoning district, and it  
15 has some specific conditions with it,  
16 and then additional conditions may be  
17 applied to it as well.

18       Examples of uses that require  
19 special exceptions right now in the  
20 Code are waste treatment plants, adult  
21 entertainment, you know, things of that  
22 nature. But it's something that the  
23 Committee and the Planning Commission  
24 did discuss before they decided to not  
25 pursue this, was, you know, would they

1 want to consider allowing this use, but

2 allow it as a special exception.

3 Ultimately, they decided they didn't.

4 CHAIRMAN CUTRER: Any other

5 questions?

6 MR. WHITE: I have another

7 question.

8 CHAIRMAN CUTRER: Go ahead.

9 MR. WHITE: When the committee

10 met, and the subcommittee, I guess, was

11 there any discussion of the new

12 technology and the noise aspect of

13 these newer go-karts, which are

14 electric and, I assume have absolutely

15 no -- virtually no sound with them?

16 MS. LEWIS: There was, there was

17 quite a bit of discussion about that

18 Mr. Jones had actually got. There's an

19 electric go-cart track in Statesboro

20 and he had gone there and done some

21 recordings of it and came back and

22 spoke about that. And I know a couple

23 of Planning Commission Commissioners

24 went as well to visit that go-cart

25 track to try to get an idea of the

1 sense of the noise.

2 But I believe -- I know that -- I  
3 know the Planning Commissioners' field  
4 trip took place after this was already  
5 considered in January. But no,  
6 Mr. Jones did talk about that at the --  
7 at the committee and commission  
8 meetings about how the noise of an  
9 electric go-cart track would certainly  
10 be less than I think people are used to  
11 with a gas powered track.

12 CHAIRMAN CUTRER: Any other  
13 questions there? Okay. The Planning  
14 Commission minutes that we were  
15 provided come from October and December  
16 2018. There was some discussion. It  
17 was apparently a lot of public  
18 opposition at the first hearing,  
19 primarily over noise and other types of  
20 pollution. There was discussion about  
21 electric go-carts, and I believe  
22 several of the Planning Commission  
23 members actually visited this site in  
24 Statesboro, and you know what their  
25 report was?

1 MS. LEWIS: I don't because they  
2 didn't -- like I said, they -- when  
3 they went there, it was after -- after  
4 January when the LMO Committee had  
5 decided not to pursue the amendment.

6 CHAIRMAN CUTRER: The LMO  
7 Committee's recommendation or  
8 non-recommendation, case may be, I  
9 think they -- they didn't recommend  
10 pursuing a text amendment at that time,  
11 so the matter is still, I believe,  
12 ending before the Planning Commission.  
13 They have -- the Planning Commission  
14 hasn't said no, Planning Commission  
15 hasn't said yes.

16 I think it's sort of sitting in  
17 limbo at the Planning Commission; is  
18 that a fair assessment?

19 MS. LEWIS: Maybe. I know that  
20 was something that we discussed with  
21 our attorney, that same exact question  
22 was whether it had -- whether the issue  
23 had died with the LMO Committee or  
24 whether it needed to come back to  
25 Planning Commission, and we felt that

1 it didn't need to be brought back to  
2 the Planning Commission, but I could  
3 certainly pursue that further and  
4 ensure that it's not left as a loose  
5 end.

6 CHAIRMAN CUTRER: Okay. The  
7 Planning Commission has a committee  
8 which is a subset of the Planning  
9 Commission, and I believe, if I'm  
10 correct, in December -- December 19,  
11 2018, they asked the LMO Committee to  
12 look at this matter. And the LMO  
13 Committee, on January 8, 2018,  
14 according to its minutes, had a  
15 discussion.

16 On conclusion of the discussion,  
17 the Committee recommends staff should  
18 not pursue this amendment. But I don't  
19 think the Planning Commission delegated  
20 the final decision to the LMO  
21 Committee, they just asked them to look  
22 at it. LMO Committee said, for reasons  
23 that aren't entirely clear in their  
24 brief minutes, we don't recommend to  
25 pursue it right now.

1 MS. LEWIS: Well, I'll certainly  
2 follow up and, like I said, make sure  
3 that there's not a loose end there that  
4 needs to be taken care.

5 CHAIRMAN CUTRER: I mean, we  
6 have -- I'm tempted to call some  
7 members of the Planning Commission.  
8 But I guess the way I interpret this  
9 situation, Ms. Lewis, is that this is a  
10 matter that came before the Planning  
11 Commission, the Planning Commission  
12 asked it's LMO Committee to look at it,  
13 LMO Committee says, we don't recommend  
14 anything right now. Planning  
15 Commission hasn't dealt with it since  
16 December.

17 MS. LEWIS: Yes. It did kind of  
18 go back and forth. It went to Planning  
19 Commission, they sent it to the LMO  
20 Committee, who felt that they couldn't  
21 make a decision without the review of  
22 the full Planning Commission. Planning  
23 Commission considered it on -- and I  
24 will say, too, at these first two  
25 meetings, the majority of the audience

1 was against the proposed amendment.

2 At the December meeting, the  
3 majority of the audience was for the  
4 proposed amendment and spoke in favor  
5 of it. And so that's why it was sent  
6 back to the LMO Committee to consider.

7 CHAIRMAN CUTRER: So proposed  
8 first time --

9 MS. LEWIS: Right. At LMO  
10 Committee, it was kind of split.

11 CHAIRMAN CUTRER: Well, I can only  
12 make the statement I make based on --

13 MS. LEWIS: Absolutely.

14 CHAIRMAN CUTRER: -- on the record  
15 that was given to us.

16 Anyone else with any questions  
17 from Ms. Lewis at this time?

18 MS. LAUDERMILCH: Teri, do you --  
19 can you put up a map that does show all  
20 of the Waterfront Mixed Use Districts,  
21 please?

22 MS. LEWIS: All right. So the  
23 area -- Okay. So the area that we're  
24 talking about, it's right here, got WMU  
25 here, right here with Palmetto Bay

1 Marina, and then again, along Skull  
2 Creek. So you can see there's several  
3 areas, Waterfront Mixed Use, on the  
4 island.

5 CHAIRMAN CUTRER: And opposite  
6 this property is Marshland Road and on  
7 the other side of Marshland Road is, I  
8 believe, a golf course? Okay.

9 I'm sorry, Ms. Laudermilch, I  
10 interrupted your question.

11 MS. LAUDERMILCH: I wanted to see  
12 what other affected parcels might be.

13 CHAIRMAN CUTRER: Let me pursue  
14 that line of questioning a moment.  
15 We've established now, there other WMU  
16 Zoning Districts?

17 MS. LEWIS: Yes, sir.

18 CHAIRMAN CUTRER: Do you have any  
19 idea, off the top of your head, it's  
20 probably an unfair question -- let me  
21 back up.

22 The ability, even though something  
23 may be a permitted use within a  
24 district, it still has to comply with  
25 all sorts of other requirements, square



1 footage, setbacks, buffers, all that

2 sort of stuff?

3 MS. LEWIS: Absolutely.

4 CHAIRMAN CUTRER: Do you have any

5 idea how much acreage is required for

6 a -- for the electric go-cart track

7 being proposed, if not, I'll ask the --

8 MS. LEWIS: I don't -- the

9 appellant would --

10 CHAIRMAN CUTRER: -- the

11 appellant, we'll ask them.

12 MS. LEWIS: -- probably have a

13 good idea of that.

14 CHAIRMAN CUTRER: All right.

15 We'll get to that in rebuttal. But I

16 guess one of the things that we'd need

17 to consider is whether -- while there

18 may be other WMU Districts, they may or

19 may not be eligible or appropriate

20 for -- the proposed use might not --

21 may or may not fit within, I guess, is

22 where I'm going.

23 Any other questions, Ms. Lewis?

24 MS. LAUDERMILCH: No. More of an

25 editorial comment, but we -- you know,

1 we said earlier, you wouldn't see this  
2 driving down 278. Well, no, you  
3 wouldn't be --

4 MR. WHITE: Well, any road.

5 MS. LAUDERMILCH: Exactly. No  
6 matter what Mixed Use parcel.

7 MR. WHITE: You could go be down  
8 Marshland Road and not see this.

9 MS. LAUDERMILCH: Correct. Yeah.

10 CHAIRMAN CUTRER: Does that  
11 conclude your question?

12 MS. LEWIS: You like me to leave  
13 the map up there or I can -- I can put  
14 it up -- I can provide it to you as  
15 well, if you'd like to look at it that  
16 way.

17 CHAIRMAN CUTRER: Okay. I want to  
18 pursue a couple of questions.

19 On this site already is a ropes  
20 course and a zip line?

21 MS. LEWIS: That's correct.

22 CHAIRMAN CUTRER: The zip Line is  
23 not listed in the examples of outdoor  
24 mixed use?

25 MS. LEWIS: Actually, the --

1 right, zip line is --

2 CHAIRMAN CUTRER: The ropes  
3 course -- the ropes course. The zip  
4 line is a permitted use pursuant to a  
5 text amendment?

6 MS. LEWIS: That's correct.

7 CHAIRMAN CUTRER: Was that  
8 restricted to this site or is it just  
9 in WMU?

10 MS. LEWIS: It's allowed anywhere  
11 that outdoor commercial recreation uses  
12 are allowed.

13 CHAIRMAN CUTRER: Okay. So if a  
14 ropes course is not a listed use, but  
15 is permitted, help me understand how  
16 electric go-cart is not permitted  
17 because it isn't listed. Seems like  
18 we...

19 MS. LEWIS: So, to me, the  
20 difference is that go-cart tracks are  
21 listed, they're just not listed in the  
22 outdoor commercial recreation category.  
23 So, to me, by being listed, my  
24 interpretation, my determination was  
25 that because it's listed under indoor

1 commercial recreation, it was  
2 considered as a use, and it was decided  
3 to put it into that category versus  
4 putting it in the outdoor category.

5 CHAIRMAN CUTRER: Okay. All  
6 right. Thank you.

7 Anybody with any other questions  
8 for Ms. Lewis before we go to rebuttal?

9 (No verbal response.)

10 CHAIRMAN CUTRER: Not. Thank you,  
11 Ms. Lewis.

12 MS. LEWIS: Thank you.

13 CHAIRMAN CUTRER: Mr. Lesemann,  
14 would you care to take another five  
15 minutes or so?

16 MR. LESEMANN: Well, thank you,  
17 and I'll try to be as brief as I can  
18 and make sure I answer any questions  
19 that the Board may have. Mr. Walczak?

20 MR. WALCZAK: Walczak.

21 MR. LESEMANN: Walczak, excuse me.  
22 Lesemann has a lot of similar --  
23 similar issues for me.

24 I wanted to, if I could, respond  
25 to a point that you had made, and I

-

1 think it went to the point of, so what  
2 sort of precedent might be being set?  
3 Part of the reason that I wanted to  
4 talk about, not just the analysis of a  
5 listed versus unlisted use, but then  
6 let's look at it as an unlisted use  
7 because one of the reasons we were  
8 denied, is it isn't listed in the  
9 outdoor category.

10       And then there is the alternative  
11 mechanism under the LMO that says, all  
12 right, it's unlisted under outdoor  
13 commercial recreation use, let's look  
14 at the specifics of this proposed  
15 business, the number of employees, the  
16 site, how does it work together with  
17 the other things that are on the site.

18       And it allows you essentially, as  
19 a BZA, I believe, to make a case  
20 specific determination that doesn't --  
21 that is unique as each opportunity and  
22 each situation is unique, and so I --  
23 the Town and the -- and Ms. Lewis's  
24 determination did not -- didn't go  
25 through that. I think she explained

1 why. She's like, well, it's sort of  
2 unlisted, but it's listed. It's listed  
3 over here, but not there. I think it's  
4 either -- it has to be either listed  
5 are unlisted, right?

6 So if it was listed as an outdoor  
7 commercial recreation use, we probably  
8 wouldn't need to be here, so it must be  
9 unlisted. So if it is unlisted, could  
10 we not look at this specific situation  
11 that brings in the points that many of  
12 you brought up? All right, this is  
13 inappropriate site for this, and I'm  
14 not meaning to speak for anybody, but  
15 it's an appropriate site. It would be  
16 preferable to have it maybe be outside  
17 rather than inside. Honestly, we're  
18 looking at what the island's trying to  
19 promote.

20 MR. WALCZAK: Not to interrupt  
21 you.

22 MR. LESEMAN: Yes.

23 MR. WALCZAK: But do you have a  
24 copy of the site plan that you could  
25 put up to show everyone or?

1 MR. LESEMANN: No. We haven't  
2 gotten that far with it yet because we  
3 really were getting through the process  
4 off, can we -- you incur that cost --

5 MR. WALCZAK: Right, but I did see  
6 a preliminary.

7 MR. LESEMANN: Oh, oh, excuse me.  
8 Let me think of what I've got. Oh, I  
9 have an aerial, but it doesn't have  
10 a -- it doesn't have the layout.

11 MR. WALCZAK: I saw one with a --  
12 the track layout.

13 MR. JONES: We had a track layout  
14 at one meeting.

15 MR. LESEMANN: Do you know if you  
16 have it?

17 MR. WALCZAK: So if he can put it  
18 up so everyone can see.

19 Teri, do you know if you have it?

20 Well, I'll continue and I'll make  
21 it back to that --

22 CHAIRMAN CUTRER: Here we go.  
23 Here we go.

24 MR. LESEMANN: Okay. Thank you.  
25 Help me, if you don't mind.

1 MR. JOHNSON: This might be  
2 helpful, too.

3 MR. LESEMANN: Okay. Did I do  
4 something?

5 MS. LEWIS: No.

6 MR. LESEMANN: Does it need to  
7 switch from the --

8 CHAIRMAN CUTRER: And the  
9 five-minute clock is on hold.

10 MR. LESEMANN: Oh, thank you.

11 CHAIRMAN CUTRER: While we're  
12 waiting, let me ask a question. I  
13 wanted to -- what is -- how much  
14 acreage would be consumed by this  
15 outdoor track if you were to do it?

16 MR. JONES: The track itself would  
17 probably -- oh, sorry.

18 CHAIRMAN CUTRER: And state your  
19 name for the record.

20 MR. JONES: My name is Nate Jones,  
21 I'm the vice president and general  
22 manager of Broad Creek Marina  
23 Adventures.

24 CHAIRMAN CUTRER: Thank you,  
25 Mr. Jones.



1 MR. JONES: Thank you all for your  
2 time. The actual track itself would be  
3 between an acre or two acres. The  
4 track itself and the accompanying, such  
5 as what they call the pit, where the  
6 carts are stored and the -- but not  
7 more than that. I think that that  
8 piece, I believe, it's seven acres.

9 CHAIRMAN CUTRER: And how much  
10 undeveloped acreage do you have right  
11 now?

12 MR. JONES: I think -- I believe  
13 the zip line goes through that  
14 property, which I could show better  
15 with this site plan, but it doesn't  
16 actually disturb much, very much  
17 acreage.

18 CHAIRMAN CUTRER: Okay.

19 MR. JONES: Due to its aerial  
20 nature.

21 CHAIRMAN CUTRER: I think the  
22 other one is --

23 MR. LESEMAN: Yes. This one  
24 shows -- yes, sir. Okay. All right.  
25 So let's look at this together.

1       Yeah, I wonder if I -- so then the  
2 ropes course would be here; is that  
3 right, Nate?

4       MR. JONES: That's correct.

5       MR. LESEMANN: Okay. And  
6 Marshland Road, and then the  
7 traditional entrance to the marina, the  
8 dry storage, the restaurant, and so the  
9 go-cart track as -- as proposed on this  
10 site plan was here, interior from  
11 the -- from the rope course.

12       And then this is also -- this is  
13 owned by.

14       MR. JONES: The Town, I believe.

15       MR. LESEMANN: That -- are we  
16 there yet or -- there's a whole --  
17 there's a whole other parcel right by  
18 the --

19       MR. JONES: There's a strip, I  
20 believe, Town land.

21       MR. LESEMANN: Okay. Yeah, so,  
22 again, not visible from the road and  
23 buffered through -- through that, but  
24 then I -- yeah. And so that would be  
25 it. So that was the site plan that was

1 prepared by Andrews and Burgess and  
2 was, I guess, discussed with the  
3 Planning Commission at the time.

4 MR. WALCZAK: Yeah, the zip line  
5 is the area up in front, right?

6 MR. LESEMANN: Yeah. And so I  
7 think -- isn't this line here, isn't  
8 that representing the -- part of the  
9 zip line; is that right, Nate?

10 MR. JONES: Oh, I'll show you.

11 MR. LESEMANN: Okay.

12 MR. JONES: If you guys don't mind  
13 me.

14 MR. WALCZAK: No, no, go ahead.

15 CHAIRMAN CUTRER: Go ahead,  
16 please.

17 MR. JONES: So the zip line begins  
18 here, continues this way, crisscrosses  
19 here, you know, and crisscrosses the  
20 parcel that comes this way and the  
21 finally comes down that way.

22 MR. WALCZAK: It's kind of L  
23 shaped.

24 CHAIRMAN CUTRER: And point out  
25 the ropes course, please.

1 MR. JONES: The ropes course.

2 MR. WALCZAK: Up in front.

3 CHAIRMAN CUTRER: That's a lot of  
4 vegetation there.

5 MR. JONES: And the ropes course  
6 is very dense. You can barely -- I  
7 don't think you can see it.

8 MR. WALCZAK: Well, you can see  
9 it, but, you know, it's in the trees.

10 MR. JONES: Right.

11 CHAIRMAN CUTRER: Could you also  
12 explain, this is the actual track right  
13 up here?

14 MR. JONES: That's one of the  
15 preliminaries, one we proposed where  
16 we --

17 CHAIRMAN CUTRER: What -- what is  
18 this and this?

19 MR. JONES: So, at one point, this  
20 parcel was to be a residential  
21 community.

22 CHAIRMAN CUTRER: Right.

23 MR. JONES: And this -- there's a  
24 large oak here.

25 CHAIRMAN CUTRER: Okay.

1 MR. JONES: Specimen that goes in  
2 to the road, that -- a lot of that is  
3 going back to nature.

4 CHAIRMAN CUTRER: But that's not  
5 related to the proposed a go-cart  
6 track?

7 MR. JONES: We are still  
8 undetermined to exactly where the  
9 go-cart track will lay.

10 CHAIRMAN CUTRER: Okay.

11 MR. JONES: We'll determine that  
12 with land planners.

13 CHAIRMAN CUTRER: All right.

14 MR. LESEMANN: The point is, it's  
15 not on the road.

16 MR. JONES: It's not going to be  
17 on the road.

18 CHAIRMAN CUTRER: Let's see, where  
19 were we? We're in rebuttal.

20 Mr. Walczak had asked a question,  
21 were you satisfied with your answer?

22 MR. WALCZAK: Yeah, thank you very  
23 much.

24 MR. LESEMANN: Yes, sir. Sure.  
25 So I apologize, I was not at the

1 Planning Commission meeting, that was a  
2 little bit before my time with the  
3 project, but I think it's helpful to  
4 see and it allows --

5 CHAIRMAN CUTRER: Ask a question  
6 related to that. All right. I'm going  
7 to interrupt you, Mr. Johnson wants to  
8 follow up on that question.

9 MR. JOHNSON: Relating to Mr.  
10 White's question earlier on with a big  
11 building or outside/inside, what is the  
12 projected tree removal there? Are you  
13 going to work within the site or is it  
14 going to be clear cut?

15 MR. LESEMAN: No. The idea is it  
16 would not be clear cut. And certainly,  
17 I wouldn't be able to say that zero --  
18 that the application to remove no trees  
19 wouldn't be, but the idea would be just  
20 as with the aerial ropes course and the  
21 zip line, is to incorporate it into the  
22 plan and to work with an arborist and  
23 work, obviously, with the Town so that  
24 it isn't a big metal building.

25 And, Mr. Johnson, if I might, too,

1 unless someone wanted the floor for a  
2 question.

3 CHAIRMAN CUTRER: Go ahead.

4 MR. LESEMANN: I did want to speak  
5 to the issue of noise because I think  
6 it's a good concern that you brought  
7 up. The Town has a noise ordinance  
8 that's applicable to all businesses  
9 within the Town evenly. And,  
10 Mr. Chairman, I think you may have  
11 been, sort of, alluding to this, but  
12 the -- my understanding, and this is  
13 second hand, but that the reports back  
14 from the Statesboro track were that,  
15 okay, that the -- the electric carts  
16 don't have the noise issue.

17 But, again, that -- when we look  
18 at use, okay, it's an allowed use, but  
19 obviously you're not going to be able  
20 to operate in a way that -- that  
21 exceeds the allowed number of hours for  
22 a business that doesn't meet parking  
23 requirements, that's too noisy. And I  
24 think, and likely for good reason,  
25 there was -- and forgive me if I get

1 off -- but some of the neighbors that  
2 were before the Planning Commission, I  
3 think, had been affected by the  
4 location of a wood chipping business,  
5 perhaps?

6 MR. JOHNSON: Yes, uh-huh.

7 MR. LESEMANN: And so that was  
8 obviously a legitimate concern on their  
9 part. This is not a commercial wood  
10 chipping operation and would be  
11 something to operate -- would not seek  
12 any industrial exemptions to noise  
13 ordinances such as these might exist,  
14 and would intend to operate within that  
15 buffered area, obviously, in compliance  
16 with all of the Town's ordinances.

17 And the discussion about the  
18 amendment came up, and I think that  
19 comes back to some of the state law  
20 issues that we talked about. Ms. Lewis  
21 properly said that she has to interpret  
22 the LMO as it's written, but your job  
23 goes farther than that, and it's -- you  
24 have to look at the LMO as it applies  
25 and it as state law applies because all



1 power -- a municipality is a creature  
2 of the state, it only exists because  
3 the state recognizes counties and then,  
4 in turn, towns are recognized.

5 And under these state law  
6 principles, I mean, we look at the  
7 zoning ordinance, should it be that a  
8 property owner has to undertake the  
9 political risk, the burden, and the  
10 pain of getting two words inserted into  
11 the Land Management Ordinance simply to  
12 allow him or her to use their property  
13 for an outdoor commercial recreation  
14 use?

15 Because you could sort of see the  
16 anecdotal way that that list. Okay,  
17 now it has zip lines on it because  
18 Mr. Friedman came forward with  
19 Mr. Jones and they had to go through  
20 that process. That, I believe, is  
21 inconsistent with what that definition  
22 of a list is, what the word include  
23 means.

24 And I think we can only speculate  
25 as to when these lists were originally

1 drawn up, what they might have -- what  
2 the purpose might have been. If the  
3 purpose was to make an amusement park  
4 illegal by only allowing it to be  
5 indoors and then knowing you would  
6 never approve an impact assessment for  
7 an indoor amusement park because it  
8 would exceed -- if that was, in the  
9 end, what was going on in the  
10 legislators minds, then okay, that  
11 might be why they put one thing in one  
12 side and other things in the other.

13 But I don't think that's how we  
14 can read it. I think we have to read  
15 it as state law tells us to read it, in  
16 which is to allow things that aren't  
17 otherwise violating any aspect of the  
18 Town's ordinances, would be beneficial  
19 Mixed-Use District, all the things that  
20 we talked about, so that I don't repeat  
21 myself.

22 Without placing an undue burden on  
23 a landowner to use their property as  
24 the LMO would allow. You know, I think  
25 as we talk about Hilton Head, and

1 obviously, that's something that's very  
2 important to everybody here, and what  
3 is the brand? It's probably a  
4 different thing if you ask different  
5 people.

6       And we certainly don't believe  
7 that we are detracting from it, we  
8 think that we're adding to it and we  
9 think we're making it relevant and  
10 current and fun for families. And as  
11 we want to continue to fill hotels and  
12 restaurants and do all the things. And  
13 plus, allow -- attract the people that  
14 are going to work in all the businesses  
15 that we have so that they've got things  
16 to do and -- with their kids.

17       So these were the reasons that we  
18 came before you, because we believe  
19 that when the LMO is read under the  
20 overlay of state law, that this is  
21 allowed because it should be deemed  
22 within the plain meaning of these  
23 terms. If it isn't and we would want  
24 to look at it as an unlisted use, that  
25 gives us a site specific application,

1 specific way to look at it without  
2 having to add the words to the -- to  
3 the ordinance, but to say, you know, in  
4 this instance, we're good with this as  
5 a group, we discussed the issue of  
6 noise.

7       And so with all of that said, I  
8 appreciate the patience of the Board  
9 for listening to all of us and allowing  
10 Mr. Jones to speak, we'd ask that you  
11 respectfully reverse the determination  
12 of the LMO Official on this or to  
13 indicate that your belief that the  
14 criteria for an unlisted used to be  
15 recognized, based on this application  
16 on this site, be recognized so that it  
17 could pursuit -- be pursued as a -- as  
18 an unlisted use, and so that the  
19 property owner could pursue the benefit  
20 of their of their own property.

21       Thank you all very much.

22       CHAIRMAN CUTRER: Hear from the  
23 Town, Teri, do you have any rebuttal?  
24 And after that, there will be ample  
25 opportunity for Board members to ask

1 questions of all the parties here.

2       Could I ask you to give me my

3 papers back? Thank you.

4       MS. LEWIS: Thank you for giving

5 me the chance to add a couple of

6 things. I'm always concerned when a

7 Board or commission asks to see a site

8 plan that hasn't been approved by staff

9 because, again, it has to meet the --

10 all of the design and performance

11 standards within the Town's Land

12 Management Ordinance.

13       If it's Corridor Overlay District,

14 it also has to meet the Design Review

15 Boards guidelines and aesthetics. And

16 so while it's easy to say, yes, you

17 wouldn't necessarily see it from the

18 road, there could be a chance that it

19 could be in a different location on the

20 site.

21       Or while it may not be visible

22 from this location, it could be visible

23 from some of these other locations in

24 the WMU Zoning District. And that may

25 be fine, I just want you to make

1 that --

2 DR. PONDER: May I ask a question,

3 Mr. Chairman? May I ask a question?

4 CHAIRMAN CUTRER: Hold on just a

5 minute, go ahead.

6 MS. LEWIS: No, I just -- I just

7 want you to keep that in mind, and

8 then, additionally, just the fact that

9 how many trees will or won't come down,

10 that's a difficult thing to say at this

11 point until we have a site that's been

12 reviewed as part of the development

13 review process by our environmental

14 planner and, you know, there's some

15 decision made about what trees come

16 down and if -- if any mitigation would

17 be needed.

18 CHAIRMAN CUTRER: Okay. So we

19 need to limit our deliberation to the

20 question at hand and not get into the

21 specifics of the --

22 MS. LEWIS: Absolutely, because

23 that's a site plan that hasn't been

24 reviewed.

25 CHAIRMAN CUTRER: Okay. All

1 right.

2 Respond, Dr. Ponder.

3 DR. PONDER: And this may only be

4 because it's my first time up here, but

5 I understand that the design hasn't

6 been approved, but wouldn't there be

7 sufficient opportunity through that

8 approvals process to ensure that any of

9 the things we might be concerned about,

10 like its visibility from the street or

11 any of the rest of that, wouldn't --

12 isn't that a possibility of even the

13 likelihood that these things would be

14 part of -- part of the design approvals

15 process and that they're -- that our

16 decision today doesn't necessarily mean

17 that any of these things are likely?

18 MS. LEWIS: Absolutely. No,

19 you're absolutely right that --

20 everything that comes before the Town

21 goes through a pretty rigorous process,

22 a review by staff, sometimes by another

23 committee or commission, and then also

24 by -- most properties, by the Design

25 Review Board as well.

1 And certainly these properties,  
2 given their frontage either on a minor  
3 arterial or their proximity to the  
4 water, would be reviewed by the Design  
5 Review Board. So absolutely, it would  
6 become -- it would be reviewed by the  
7 Design Review Board for aesthetics and  
8 they would consider what it would look  
9 like from the road or from the water.

10 And then also, there would be a  
11 consideration, again, given to the  
12 trees that would be -- that would be  
13 removed. I just, again, like I don't  
14 want to see anybody get tied into a  
15 site plan that hasn't been --

16 CHAIRMAN CUTRER: Okay. So at the  
17 end of our deliberation, the only  
18 question that the BZA will deal with  
19 today is is an electric go-cart track a  
20 permitted use and Waterfront Mixed Use  
21 District, period. Everything else gets  
22 dealt with in a different venue.

23 MR. JOHNSON: I do have a  
24 question.

25 You stated that during the



1 Planning Commission meeting, there was  
2 a great deal of discussion about noise,  
3 I'm having a hard time reconciling that  
4 with outdoor commercial recreational  
5 use listed amphitheaters and band  
6 shells.

7 MS. LEWIS: I understand where  
8 you're coming from. So, again, you  
9 know, what I can do is interpret the  
10 LMO, make a determined based on what my  
11 findings are in it. And, again, you  
12 know, I find that it is a listed use  
13 under indoor commercial recreation. I  
14 understand what you're saying, that  
15 there are other uses listed under  
16 outdoor commercial recreation that  
17 pertain to noise, but, again, my  
18 determination wasn't based on noise at  
19 all.

20 MR. JOHNSON: Thank you.

21 CHAIRMAN CUTRER: Thank you, Teri.

22 MS. LEWIS: Thank you.

23 CHAIRMAN CUTRER: All right.

24 We're going to be in a period of  
25 discussion among the Board members here

1 and questions can be asked to the  
2 parties, and I have a couple.

3 I'd like to ask Mr. Jones to come  
4 up. Could you state your name again  
5 and you're position with the company?

6 MR. JONES: Nathan Jones, vice  
7 president and general manager, Broad  
8 Creek Marina Adventures.

9 CHAIRMAN CUTRER: Okay.  
10 Mr. Jones, could you -- if this were  
11 permitted, could you explain to us how  
12 it would operate? You're gonna have X  
13 number of electric go-carts, you're  
14 going to have maintenance facility, how  
15 would it -- how would it operate?

16 MR. JONES: Oh, the vision at this  
17 time is to have an outdoor electric  
18 go-cart track that weaves in and out of  
19 the natural vegetation, trees that are  
20 on the site. We would have a  
21 semi-covered area for the storage and  
22 the loading and unloading of the  
23 go-karts very similar to the track in  
24 Statesboro that exists. You know, like  
25 a small, covered uploading and

1 unloading, and then a concrete track  
2 that, you know, create that --  
3 minimizes the amount of covered space  
4 that we're using.

5 CHAIRMAN CUTRER: And you envision  
6 people would just come and drive the  
7 carts are there races or are there  
8 corporate outings or how does all that  
9 work?

10 MR. JONES: I envisioned it being  
11 a, you know, pay per person adventure.  
12 It's sort of like the aerial events,  
13 you come for two hours. You know, you  
14 come to go-cart, you can do the track,  
15 five laps for, you know, say, \$15, and,  
16 you know, in addition to what -- our  
17 vision is that it works with the other  
18 business -- outdoor recreation  
19 businesses that we currently have in  
20 place where you can come do this event,  
21 come do that event. Dolphin tour,  
22 guide, have jet ski rental.

23 CHAIRMAN CUTRER: So how many  
24 people would be driving a go-cart at  
25 one time?

-

1 MR. JONES: Possibly 15 carts at  
2 one time.

3 CHAIRMAN CUTRER: Is there a  
4 public announce system or would there  
5 be a public announce system?

6 MR. JONES: We would -- that would  
7 be something we would have to go back  
8 and forth, I'm sure, with the -- you  
9 know, what to do in the Town and the  
10 DRB and things of that nature.

11 I mean, I think that's a good  
12 point, is that this step for us is  
13 not we're building a go-cart track  
14 tomorrow, this step with you guys is to  
15 tell me that we can do this or, you  
16 know, agree with us that it's a list --  
17 a listed -- it should be a listed use.  
18 And then we can go forward with the  
19 different boards that I have to go  
20 through. I'll be in this room a whole  
21 lot.

22 CHAIRMAN CUTRER: Well, I sort of  
23 contradicted myself saying we're going  
24 to stick to the subject at hand, but we  
25 need to understand how this -- that's

1 right, Chairman's prerogative.

2 Thank you. Any other questions

3 for Mr. Jones?

4 (No verbal response.)

5 CHAIRMAN CUTRER: All right.

6 Thank you.

7 Any Board members with any

8 questions for?

9 MR. WALCZAK: I have a question

10 for Teri, do you know -- I'm not sure I

11 can ask this, but do you know whether

12 the Town has -- what kind of plans the

13 Town has for that adjacent property?

14 Has there been anything discussed?

15 MS. LEWIS: Not to my knowledge,

16 but it wouldn't be at my level.

17 MS. LAUDERMILCH: Teri, follow up

18 to that one, though. The adjacent

19 parcel, what is -- is that also zoned

20 Waterfront Mixed Use or what is it? I

21 don't think it is, but what is it's

22 zoning.

23 MS. LEWIS: All right. So the

24 property on this side is zoned R-4, so

25 Residential, low to moderate density.

1 And then the green property, the Town  
2 property is zoned Parks and Recreation.

3 MS. LAUDERMILCH: Thank you.

4 MS. LEWIS: You're welcome.

5 CHAIRMAN CUTRER: Okay. I'm now  
6 going to read some sections of the LMO  
7 that are applicable to what we're about  
8 to do. At the conclusion of that, I'm  
9 going to go down the dais and ask  
10 anyone if they have any comments that  
11 they'd like to make. And following  
12 that, I'll ask for a motion.

13 If you have your LMO with you, you  
14 may want to turn to Page 2-5455,  
15 Section 162103-T, as in tango.

16 Appeal of administrative decisions  
17 and written interpretations to Board of  
18 Zoning Appeals. The Board shall review  
19 the application, hold a hearing, and  
20 make a final decision on the  
21 application. The decision shall be  
22 based solely on the record of the  
23 appeal as supplemented by arguments  
24 presented at the hearing and the  
25 standard set forth in the LMO.

1       The BZA decision shall be one of  
2 the following: Affirmation of the  
3 decision or interpretation in whole or  
4 in part, modification of the decision  
5 or interpretation in whole or in part,  
6 or reversal of the decision or  
7 interpretation in whole or in part.

8       The Board's final decision shall  
9 be in writing and include findings of  
10 facts and conclusions of law separately  
11 stated. The Board's appeals review  
12 standards, which were just referenced,  
13 that we must apply.

14       The Board may modify or reverse a  
15 decision or interpretation only on  
16 determining that the applicant is an  
17 aggrieved person and making one or more  
18 of the following determinations: The  
19 Official made an error in determining  
20 whether a requirement of the LMO was  
21 met. A record must indicate that an  
22 error in judgment occurred or facts,  
23 plans, and regulations were misread in  
24 the original determination. The  
25 Official made the decision based on a

1 requirement not contained in the LMO,  
2 other Town ordinances, or state law.  
3 The Official made an error in applying  
4 a requirement of the LMO.

5 Unless the Board makes one of the  
6 determinations outlined above, it shall  
7 affirm the Official's decision or  
8 interpretation. So we must determine  
9 if an error in judgment was made or not  
10 made, and depending -- once that  
11 decision is made, then we can either  
12 affirm, modify, or reverse the  
13 decision.

14 Having set that groundwork, I'll  
15 go through one more time and if you --  
16 I'm not asking for a motion at this  
17 time, I think it's healthy if we talk  
18 about how we feel or how we view this  
19 matter, and then we'll go down dais,  
20 and after that, I'll ask for a motion.

21 Mr. Walczak, I'll start with you.

22 MR. WALCZAK: Yes. Having  
23 reviewed everything and having heard  
24 all testimony today, I just feel that  
25 there's enough ambiguity here to permit



1 the use in that site. I think it's  
2 the -- it's probably the best site that  
3 we could find for something like this  
4 on the island. I don't think it's  
5 going to be egregious to the point  
6 where it's taking the -- the image of  
7 our island in a different direction. I  
8 think the fact that it will be will be  
9 somewhat secluded in its location.

10 And in all due respect to our  
11 staff, I just think that there's enough  
12 ambiguity in the way things were worded  
13 in the LMO that -- and then the fact  
14 that the appellant makes a good point  
15 of state law and backs up some of that,  
16 these decisions, I would be in favor of  
17 moving forward and reversing.

18 CHAIRMAN CUTRER: I might say  
19 before I go to Mr. Johnson that if  
20 you -- when called on, if you have no  
21 comment, that's okay, too.

22 Mr Johnson?

23 MR. JOHNSON: I'm probably going  
24 to -- I am going to lean towards what  
25 Mr. Walczak said, and I don't have

1 anything additional to add.

2 CHAIRMAN CUTRER: Okay.

3 Mr. White?

4 MR. WHITE: Given the fact that  
5 go-cart track is permissible indoors,  
6 but not outdoors, I see that more as an  
7 omission. It just doesn't make sense  
8 to me.

9 CHAIRMAN CUTRER: Thank you.

10 Ms. Laudermilch?

11 MS. LAUDERMILCH: Yeah, I think  
12 the interpretation, failure or flow, I  
13 think, to me, hinges on two things. I  
14 think it's impossible to possibly  
15 identify every appropriate permitted  
16 use on any type of property. I don't  
17 it -- you know, it might not even  
18 matter, the zoning. And likewise, I  
19 think the identification of a  
20 particular use in one category doesn't  
21 instinctively preclude it from being a  
22 permitted use in another category.

23 So these are, kind of, the two  
24 aspects that I'm focused on.

25 CHAIRMAN CUTRER: Thank you.

1 Dr. Ponder?

2 DR. PONDER: I believe that if --  
3 Ms. Lewis said earlier that the listing  
4 was deliberate, I fear that at the time  
5 it was made, it was made on a dated,  
6 sort of, understanding of what a  
7 go-cart business is, and therefore, I  
8 think this -- we're talking about a  
9 different kind of thing entirely if you  
10 were thinking gas fueled versus  
11 electric.

12 For instance, I also think that by  
13 definition, these lists are not  
14 exhaustive and that we know that  
15 because one of the activities is  
16 already on the property, it's not  
17 listed. And therefore, I just can't  
18 see any reasonable or equitable  
19 rationale for not allowing the track.  
20 And so I would tend toward reversal.

21 CHAIRMAN CUTRER: Okay. The  
22 Chairman's only comment is that I wish  
23 the Planning Commission had done its  
24 job and we weren't having to deal with  
25 this.

1 I'll call for a motion now and  
2 that motion needs to determine that  
3 either there was or wasn't a error in  
4 judgment there, and if so, affirmation,  
5 modification, are reversal. And I  
6 would ask that whatever motion is made,  
7 it be specific to electric go-carts and  
8 not go-carts in general.

9 MR. WALCZAK: Okay. Well, I'll be  
10 glad to move that we reverse the  
11 decision of staff for this particular  
12 application, which involves just  
13 electric carts because of the first  
14 cause of action there, the -- I guess  
15 the LMO calls it an error, and --

16 CHAIRMAN CUTRER: So you would  
17 determine that there's an error in  
18 determining whether requirement was  
19 met?

20 MR. WALCZAK: Right, since  
21 there's -- like I said before, enough  
22 ambiguity in the fact that certain  
23 things are listed where they -- that  
24 shouldn't be listed and so on and so  
25 forth. And I realize this is all part

1 of the motion, but hopefully someone  
2 will write this up so that it sounds  
3 better than what I'm saying.

4 But in essence, I'm saying I move  
5 to reverse the decision of staff on  
6 this issue.

7 CHAIRMAN CUTRER: And what  
8 findings of facts do we have?

9 MR. WALCZAK: The finding -- Well,  
10 the finding, all the --

11 CHAIRMAN CUTRER: The ambiguity?

12 MR. WALCZAK: Yes.

13 CHAIRMAN CUTRER: Okay.

14 MR. WALCZAK: Yes, yes.

15 CHAIRMAN CUTRER: And therefore  
16 permitted.

17 MR. WALCZAK: Like I said, we'll  
18 have to write it up accordingly.

19 CHAIRMAN CUTRER: Is there a  
20 second?

21 MR. WHITE: Second.

22 CHAIRMAN CUTRER: Second by  
23 Mr. White.

24 I'm going to make an attempt at  
25 this. I believe we have a motion on

1 the floor to determine that there was  
2 an error in judgment in determining  
3 whether a requirement of the LMO was  
4 met, and that the words include the  
5 listing of possible permitted uses, was  
6 not intended to be -- it's exclusive,  
7 but rather inclusive.

8 And therefore, the motion is to  
9 reverse the decision of the LMO  
10 Administrator and permit electric  
11 go-karts in LMO -- pardon me, in WMU  
12 Waterfront Mixed Use District.

13 MR. WALCZAK: Close enough.

14 CHAIRMAN CUTRER: That close  
15 enough? All right.

16 We have motion and a second, is  
17 there any discussion?

18 Mr. Johnson?

19 MR. JOHNSON: You read two or  
20 three reasons for reversing and one of  
21 them was an error, which I don't like  
22 that word. I don't think it was an  
23 error, I think it was a  
24 misinterpretation. Was one of these  
25 three a misinterpretation?

1 MR. WALCZAK: What does the LMO  
2 say? What word do they use or does  
3 it --

4 CHAIRMAN CUTRER: I pretty much  
5 copied that from the LMO.

6 MR. JOHNSON: Was there one that  
7 said --

8 CHAIRMAN CUTRER: Well, here we  
9 go.

10 MR. JOHNSON: Okay.

11 CHAIRMAN CUTRER: The record must  
12 indicate an error in judgment occurred  
13 or facts, plans, regulations were  
14 misread in the original.

15 MR. JOHNSON: Error in judgment.

16 CHAIRMAN CUTRER: Would you like  
17 to substitute misread?

18 MR. JOHNSON: Well, I would  
19 encourage --

20 MR. WALCZAK: It's just semantics.

21 MR. JOHNSON: I would encourage  
22 you to say that because I don't think  
23 it was an error, I think it was a  
24 misinterpretation.

25 MR. WALCZAK: Well, in error in

1 reading or in judgment -- in reading  
2 the text in that it was misinterpreted,  
3 yes, an error of misinterpretation.

4 I need a lawyer.

5 MR. JOHNSON: So will you consider  
6 changing your words to that?

7 MR. WALCZAK: Sure. Sure.

8 MR. JOHNSON: I think in fairness  
9 to the Town staff, I do not --

10 CHAIRMAN CUTRER: Go ahead and  
11 make a motion to add misinterpretation  
12 to Mr. Walczak's motion.

13 MR. JOHNSON: I have no problem.

14 CHAIRMAN CUTRER: Would you care  
15 to make that motion?

16 MR. WALCZAK: Why don't we keep it  
17 simple, I'll take the word error out  
18 and put in mis --

19 CHAIRMAN CUTRER: Hang on,  
20 Charlie.

21 MR. JOHNSON: I'd like to make a  
22 motion that Mr. Walczak change his  
23 verbiage from error.

24 CHAIRMAN CUTRER: It is motion be  
25 amended.



1 MR. JOHNSON: That his motion be

2 amended --

3 CHAIRMAN CUTRER: To include.

4 MR. JOHNSON: -- to include --

5 CHAIRMAN CUTRER:

6 Misinterpretation.

7 MR. JOHNSON: -- misinterpretation

8 instead of error.

9 CHAIRMAN CUTRER: Do I have a

10 second to that motion?

11 MR. WHITE: I'll second that

12 motion too.

13 CHAIRMAN CUTRER: Any discussion?

14 (No verbal response.)

15 CHAIRMAN CUTRER: Hearing none,

16 all in favor of the amendment?

17 (All "Aye.")

18 CHAIRMAN CUTRER: Motion is so

19 amended.

20 We now have a motion before the

21 floor to, in short language, reverse

22 the decision. Any further discussion?

23 (No verbal response.)

24 CHAIRMAN CUTRER: Not. Would the

25 secretary call the roll?

1 MS. HALEY: Mr. Walczak?

2 MR. WALCZAK: In favor of the

3 motion.

4 MS. HALEY: Mr. Johnson?

5 MR. JOHNSON: For the motion.

6 MS. HALEY: Mr. Cutrer?

7 CHAIRMAN CUTRER: For the motion.

8 MS. HALEY: Mr. White?

9 MR. WHITE: For the motion.

10 MS. HALEY: Ms. Laudermilch?

11 MS. LAUDERMILCH: For the motion.

12 MS. HALEY: Dr. Ponder?

13 DR. PONDER: For the motion.

14 CHAIRMAN CUTRER: And the vote is?

15 MS. HALEY: Six.

16 CHAIRMAN CUTRER: Motion carries

17 unanimously. This matter is concluded.

18 Thank you.

19 Anyone feel a need for a short

20 break or go on?

21 MR. WALCZAK: Now, what do we

22 have, just the -- this --

23 CHAIRMAN CUTRER: All right. Next

24 item of business is review of revised

25 amendments to the Rules of Procedure.

1 And we welcome Ms. Brison back to  
2 the dais. Good afternoon.

3 MS. DIXON: Good afternoon, Nicole  
4 Dixon, for the record. At your June  
5 meeting, the Town presented revisions  
6 to your Rules of Procedure. There were  
7 some discussion had on the matter, some  
8 suggestions. Staff made these  
9 revisions, brought it back, that's  
10 what's in front of you today.

11 If it all looks good to you all,  
12 we will bring it back at next week's  
13 meeting for adoption.

14 CHAIRMAN CUTRER: Okay. Article  
15 3, Section 2 of our Rules of Procedure  
16 provides that they may be amended by  
17 the affirmative vote of a majority of  
18 the Board, providing such amendments  
19 shall be presented in their entirety to  
20 the entire board at a regular special  
21 meeting -- this being a special  
22 meeting -- with the vote taken at a  
23 subsequent regular or special meeting.

24 If there -- is there any  
25 discussion regarding the proposed

1 changes? Ms. Brison?

2 VICE CHAIRMAN BRISON: Mr. Chair,

3 just a technical thing, I think the

4 draft that we saw, at least what I saw,

5 had a different date and a different

6 Chair's name, so I think these are just

7 scrivener's, just technical changes. I

8 don't want to put this off another

9 month.

10 CHAIRMAN CUTRER: Okay.

11 VICE CHAIRMAN BRISON: Another

12 meeting.

13 MS. DIXON: Where was that located

14 at?

15 VICE CHAIRMAN BRISON: At the very

16 end where the signature of the Rules of

17 Procedure would be. Had Mr. Fingerhut,

18 and I can't remember the date now.

19 MS. DIXON: Okay. That's just an

20 error. I'll take that out and we'll --

21 CHAIRMAN CUTRER: Okay. We'll

22 call that an administrative correction.

23 Any other questions regarding this

24 matter?

25 (No verbal response.)

1 CHAIRMAN CUTRER: If not,  
2 following the review at today's  
3 meeting, the vote to approve the  
4 proposed revisions will take place next  
5 Monday at the July 22nd regular  
6 meeting.

7 Thank you, Nicole.

8 MS. DIXON: Thank you.

9 CHAIRMAN CUTRER: Staff report.  
10 Ms. Lewis, do we have a staff report?  
11 Not at this time? That's acceptable.  
12 Thank you.

13 MR. JOHNSON: I have a staff  
14 question.

15 CHAIRMAN CUTRER: Staff question.

16 MR. JOHNSON: Who is our legal  
17 counsel at this point in time?

18 CHAIRMAN CUTRER: I'm sorry, I'm  
19 meant to announced that at the  
20 beginning. Town is in the process of  
21 recruiting and hiring an attorney,  
22 staff attorney. In the meantime, Mr.  
23 Gruber, our Assistant Town Manager is  
24 acting as counsel.

25 Any other business before this

1 body? Entertain a motion to adjourn.

2 Dr. Ponder, I recognize you for a

3 motion to adjourn.

4 DR. PONDER: Mr. Chairman, I make

5 a motion to adjourn.

6 CHAIRMAN CUTRER: I hear a motion

7 to adjourn, is there a second?

8 MR. WALCZAK: Second.

9 CHAIRMAN CUTRER: Any discussion?

10 (No verbal response.)

11 CHAIRMAN CUTRER: Hearing none,

12 all in favor, say aye.

13 (All "Aye.")

14 CHAIRMAN CUTRER: We're done.

15 Thank you.

16 (Whereupon the audio file ended at

17 this point.)

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1 CERTIFICATE

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4

5 SOUTH CAROLINA :

6 BEAUFORT COUNTY:

7

8

9

10 I, Charles T. Nussbaum, do hereby  
11 certify that the foregoing transcription was  
12 transcribed by me, to the best of my ability,  
13 from tapes provided by The Town of Hilton Head  
14 Island, South Carolina.

15 I further certify that I am not of counsel  
16 to either party, nor interested in the event of this  
17 cause.

18

19

20

21

22 \_\_\_\_\_

23 Charles T. Nussbaum, Jr.  
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Town of Hilton Head Island  
**Board of Zoning Appeals**  
Monday, July 22, 2019 at 2:30 p.m.  
Benjamin M. Racusin Council Chambers

## **MEETING MINUTES**

**Present from the Board:** Chairman Jerry Cutrer, Vice Chair Patsy Brison, Robert Johnson, Anna Ponder, Charles Walczak

**Absent from the Board:** Lisa Laudermilch (excused), John White (excused)

**Present from Town Council:** Tamara Becker

**Present from Town Staff:** Nicole Dixon, Development Review Administrator; Josh Gruber, Assistant Town Manager; Missy Luick, Senior Planner; Teresa Haley, Senior Administrative Assistant

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**1. Call to Order**

Chairman Cutrer called the meeting to order at 2:30 p.m.

**2. Pledge of Allegiance**

**3. FOIA Compliance** – Public notification of this meeting has been published, posted, and mailed in compliance with the South Carolina Freedom of Information Act and the Town of Hilton Head Island requirements.

**4. Roll Call** – See as noted above.

**5. Welcome and Introduction to Board Procedures**

Chairman Cutrer welcomed the public and introduced the Board's procedures for conducting the business meeting.

**6. Approval of Agenda**

Chairman Cutrer asked for a motion to approve the agenda. Mr. Walczak moved to approve. Vice Chair Brison seconded. The motion passed with a vote of 4-0-0.

**7. Approval of Minutes** – None

**8. Unfinished Business** – None

**9. New Business**

**a. Public Hearing**

**VAR-001373-2019** – Request from Greg Goldberg with Spanish Wells Club for a variance from LMO Sections 16-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113, Fence and Wall Standards to construct a tennis court and 9' high fence within the adjacent street setback and buffer. The property address is 1 Brams Point Rd with a parcel number of R510 010 000 046F 0000.

Ms. Luick presented the application as described in the Staff Report. Staff recommends the Board of Zoning Appeals approve the application based on the Findings of Fact and Conclusions of Law contained in the Staff Report.

The Board made comments and inquiries regarding: a small portion of an existing tennis court encroaches into the adjacent street setback of Spanish Wells Road; when the existing four tennis courts were constructed; whether a setback buffer is applicable; the applicable buffer types; the Town process for monitoring the buffer requirement; the required buffer is Type B Option 2 and would fit within the setback and the road; and if the variance is approved, the applicant would be held to their site plan submittal.

Chairman Cutrer asked if the applicant would like to make a presentation. The applicant's legal representative presented statements regarding the grounds for the variance and answered the Board's questions.

The Board made additional comments and inquiries regarding: the width of the new tennis court would be 70 feet; the street right of way; State maintenance sign and its significance; the classification of roads defined in the LMO; Spanish Wells Road is a minor arterial and Brams Point Road is considered other streets; the survey line of demarcation of the two roads; the new tennis court would encroach approximately 17 feet 4 inches into the adjacent street setback; the 15 foot buffer would fit into the remaining feet of the adjacent street setback; the setback measurement begins at the edge of the property line; the existing chain link fence; the landscape plan including the buffer type would be required in the DPR process; the existing tennis courts have a 9 foot high fence; granting the variance would benefit the public and not impose a material detriment.

Chairman Cutrer opened the hearing for public comments and none were received.

Upon the conclusion of the discussion, Chairman Cutrer asked for a motion.

Dr. Ponder moved that the Board of Zoning Appeals approve the application based on those Findings of Facts and Conclusions of Law contained in the Staff Report with the following conditions and additional Findings of Fact and Conclusions of Law:

Conditions of Approval:

1. Encroachment into the LMO-required 40 foot adjacent street setback along Spanish Wells Road (a Minor Arterial Road) must maintain a 17 foot setback from Spanish Wells Road.
2. The buffer established within the setback along Spanish Wells Road must meet the requirements of a Type B, Option 2 Buffer described in Section 16-5-103.F.

Additional Findings of Fact:

- Applicant has testified that the tennis court and related screening can be built while maintaining a 17 foot setback from Spanish Wells Road.
- LMO Section 16-5-103.D requires Type B Buffers along Minor Arterial Roads such as Spanish Wells Road.
- LMO Section 16-5-103.F allows two Type B Buffers; Option 1 with a width of 25 feet and Option 2 with a width of 15 feet.
- Only a Type B, Option 2 Buffer will fit within a 17 foot setback from Spanish Wells Road.

Additional Conclusion of Law:

- A Type B, Option 2 Buffer will meet the requirements of the LMO given a 17 foot setback from Spanish Wells Road.

Chairman Cutrer seconded. The motion passed with a vote of 4-0-0.

*(Mr. Johnson took the dais at this time.)*

## **10. Board Business**

- a. Review and adoption of revised amendments to the Rules of Procedure

Vice Chair Brison moved to approve the revised amendments to the Rules of Procedure. Mr. Johnson seconded. The motion passed with a vote of 5-0-0.

## **11. Staff Report**

- a. Update on Board Training Schedule

Ms. Luick presented the update on the board training schedule. Staff proposed conducting a board training session following the BZA meetings in September, October, and November, pending the length of the agendas. The Board asked staff to instead look into doing the training prior to each meeting. The Board also asked staff to provide information pertaining to recent case law involving BZA decisions.

- b. Waiver Report – The report was included in the Board’s packet.

## **12. Adjournment**

The meeting was adjourned at 3:45 p.m.

**Submitted by:** Teresa Haley, Secretary

**Approved:** [DATE]



# **TOWN OF HILTON HEAD ISLAND**

*Community Development Department*

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**TO:** Board of Zoning Appeals  
**FROM:** Missy Luick, *Senior Planner*  
**DATE:** October 14, 2019  
**SUBJECT:** Revisions to Rules of Procedure

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It was brought to Staff's attention by the Board Chairman, that an amendment to the Rules of Procedure to clarify the period for which the Chairman may grant a postponement of a scheduled hearing is necessary. This was due to a recent case in which the literal interpretation of the Rules of Procedure would have only allowed technically a 2 month postponement.

Article III, Section 2 of the Rules provides that amendments to the Rules of Procedure must first be presented to the Board at a Regular or Special meeting preceding the Meeting at which a vote is held on the amendment. The attached version of the Rules of Procedure is presented for your review, and action will be requested at a subsequent meeting.

In the attached document, revisions have been made to:

- Article XI, Section 3, on page 19



*Board of Zoning Appeals  
Rules of Procedure  
Town of Hilton Head Island*

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**Article I**  
**Purpose and Responsibilities**

The Board of Zoning Appeals exists to provide final administrative decisions for the Town of Hilton Head Island to enforce the zoning ordinance in accordance with State law, subject to an appeal to circuit court by an appropriate interested party. Its main responsibilities include hearing and deciding: (a) appeals from administrative decisions of the Land Management Ordinance (LMO) Administrator and from Planning Commission actions on certain traffic analysis plans; (b) applications for variances from LMO requirements; and (c) applications to permit uses by special exception. The powers of the Board of Zoning Appeals also include remanding a matter to an administrative official if the record is deemed insufficient, issuing subpoenas for witness appearances, and certifying contempt to the circuit court. In exercising these powers, the Board of Zoning Appeals may, in conformity with State law and the LMO, reverse or affirm, wholly or in part, or may modify the order, requirements, decision, or determination of an Administrator, and to that end, has all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit. All final decisions and orders of the Board must be in writing and be permanently filed in the office of the Board as a public record.

**Article II**  
**Authority**

**Section 1. Authority.**

The Town of Hilton Head Island Board of Zoning Appeals is established by Appendix A-3 of the Land Management Ordinance (LMO) of the Town of Hilton Head Island pursuant to the authority of Section 6-29-780, *et seq.*, of the Code of Laws of South Carolina, and hereinafter shall be referred to as the "Board."

**Section 2. Territorial Jurisdiction.**

Pursuant to Appendix A-3.E of the LMO, the Board shall have jurisdiction over all the lands within the Town. This jurisdiction may be expanded by the Town Council by ordinance and/or by intergovernmental agreement, in accordance with Section 6-29-330 of the Code of Laws of South Carolina.

**Article III**  
**Rules of Procedure**

**Section 1. Rules of Procedure.**

These *Rules of Procedure* are adopted by the Board to carry out its powers and responsibilities under SC Code 6-29-780, -790, -800, and -810 and Appendix A-3 of the LMO. A portion or section of the *Rules of Procedure* may be suspended by majority vote of the Board to meet particular circumstances. If there is a situation where these *Rules of Procedure* do not specifically apply, then the most recent edition of *Robert's Rules of Order* shall govern the conduct of meetings. An informational chart summarizing types of motions and votes in Robert's Rules of Order is attached.

## **Section 2. Amendment.**

These rules may be amended at any time by an affirmative vote of a majority of the members of the Board; provided however, that such amendment(s) shall have first been presented to the entire Board, in writing, at a Regular or Special Meeting preceding the Regular or Special Meeting at which the vote is taken.

### **Article IV** **Board Organization and Duties**

#### **Section 1. Membership.**

- A. Number and Qualifications.** The Board shall consist of seven members appointed by the Town Council. To the extent practicable, the appointed members may include at least one attorney and one design professional (either a registered architect or a registered landscape architect). None of the members shall hold an elected public office or position with the Town of Hilton Head Island or Beaufort County, South Carolina.
- B. Length of Terms.** Members of the Board shall be appointed annually for three-year terms effective each July 1, with all such terms ending on June 30 of the applicable year, unless a member is appointed to fill a vacancy. Vacancies shall be filled by the Town Council by appointments for the balance of any unexpired terms.
- C. Term Limits.** No member may serve more than two successive terms, except for extraordinary circumstances where Council believes it to be in the best interest of the community to have a continuation for a specific period of a particular member of the Board. This limitation shall not prevent any person from being appointed to the Board after an absence of one year. Service for a partial term of less than 1½ years shall not constitute a term of service for the purpose of these term limits.
- D. Attendance/Absences.** Board members are expected to attend all Board meetings. Each member of the Board who has prior knowledge that they will not be able to attend a scheduled Regular Meeting of the board shall notify the Secretary no later than 4:30pm the business day before the meeting. In the case of an emergency, a member shall give the earliest possible notification. The Secretary or Staff shall notify the Chairman in the event that the projected absence(s) will produce a lack of a quorum.
- E. Removal.** Three (3) absences at Regular or Special Meetings of the Board during one Board year (July 1 through June 30) shall be cause for recommendation by the Chairman to the Town Council to reconsider the appointment of that member. Attendance records may be reviewed annually by the Board in executive session during the 9<sup>th</sup> month of each Board year.
- F. Education.** The Code of South Carolina requires a six (6) hour Orientation Program and a three (3) hour/year Continuing Education Program for each Board member.

## Section 2. Election of Officers.

The officers of the Board shall be a Chairman and a Vice-Chairman for one-year terms beginning on the first meeting in July. They are elected annually by the Board members no later than at the last meeting in July. Neither of these two positions shall be filled by a member beginning his or her first year of service as a Board member. Members that leave the Board and are re-appointed after a period of no more than three years may be elected to an officer position in his or her first year of service. Nominations for the Chairman and Vice-Chairman shall be made from the floor at the meeting.

A majority vote is normally required to elect to office. If no one in an election receives a majority vote, the vote must be repeated until one of them does get a majority.

**A. Chairman – Term and Duties.** The term shall be for one year. At the end of each Board year, the Chairman may be re-elected subject to his/her appointment term. The Chairman shall have the following duties:

1. In consultation with the Staff Board Coordinator, delegate the Secretary to prepare agendas for all meetings;
2. Conduct all meetings and hearings of the Board, meaning that the Chairman—
  - i. Is responsible for maintaining order.
  - ii. Should begin the meeting promptly at the scheduled hour if a quorum is present.
  - iii. Should have a well prepared agenda and abide by it.
  - iv. Should be familiar with the procedural rules of the board.
  - v. Keeps the board working together by explaining procedure clearly and communicating the next business in order.
  - vi. Should “assign” the floor by recognizing those members who wish to speak by calling them by name. No other member may interrupt or call out remarks without being out of order. Private discussion between members while another has the floor is out of order and disruptive members should be reminded of this rule.
  - vii. Should impartially call on members wishing to speak and should give members on both sides of an issue an opportunity to speak.
  - viii. Should remain calm and objective, keeping the meeting moving.
  - ix. Should always confirm that all members understand the motion and that the Secretary has fully recorded the motion.
  - x. Should open debate by saying “Is there any discussion?” The Chairman *must* open all debatable questions to debate.
  - xi. Should recognize members who wish to speak by stating their names.
  - xii. Should be a voting member and vote on all cases before the Board. If the Chairman wishes to make a motion, he/she should pass the gavel to the Vice-Chairman for conducting the meeting.
  - xiii. Should request that a motion with grounds (facts and conclusions) be made by any member. If necessary, may assist the member in formulating the motion. (Complex motions may be brought to the meeting pre-written.)
  - xiv. Should request any member to second the motion.
  - xv. If a motion fails to get a second, should state, “Since there is no second, the motion

- is not before the Board.”
- xvi. If seconded, should ask the members if there is any discussion of the motion.
  - xvii. Should not allow irrelevant discussion.
  - xviii. At the conclusion of any discussion of a seconded motion, should put the question to a vote by requesting the Secretary to call the role.
  - xix. Should announce the result of the vote.
  - xx. At the conclusion, should adjourn the meeting without motion – “If there is no further business and there is no objection, the meeting will be adjourned. There being no objection, the meeting is adjourned.”
3. Act as spokesperson for the Board;
  4. Sign documents for the Board. Note, final decisions are signed by the moving member, the Chairman, and the seconding member;
  5. Act or designate a Board member to act as liaison with other governmental agencies and Town boards;
  6. Assign or delegate tasks to other Board members as may be necessary to perform the Board’s functions;
  7. Transmit reports and recommendations to Town Council;
  8. Ensure that all business is conducted in accordance with the SC Code, the LMO, and these Rules of Procedure;
  9. Cancel a scheduled Board meeting if there are no agenda items; and
  10. Perform other duties approved by the Board.

**B. Vice-Chairman.** A Vice-Chairman shall be elected by the Board from among the members in the same manner and for the same term as the Chairman. The Vice-Chairman shall serve as Acting Chairman in the absence of the Chairman, and, at such time, the Vice-Chairman shall have the same powers and duties as the Chairman. The Vice-Chairman shall succeed the Chairman, if the office is vacated before the term has expired, to serve the remainder of the unexpired term of the Chairman. A new Vice-Chairman shall be elected at the next regular meeting of the Board. In the absence of both the Chairman and Vice-Chairman, an acting Chairman shall be elected by the members present at a meeting of the Board.

### **Section 3. Secretary—Appointment and Duties.**

During the July meeting of each year, a member of the Town’s Community Development Department shall be appointed by the Board to independently act as the Secretary of the Board. The Secretary will not be eligible to vote or to otherwise participate or deliberate in the proceedings of the Board. The Secretary shall:

1. Publish and post notices of all meetings of the Board;
2. As delegated by the Chairman, prepare meeting agendas;
3. Distribute to each Board member in advance of each meeting--the agenda, prior meeting draft minutes for approval, and all written submissions by staff and applicants on each agenda item, and other relevant materials;
4. Record the proceedings of meetings on audio tape and prepare written minutes of meetings

for approval by the Board at its next regular meeting, recording in the written minutes the attendance of members at each meeting, the attendance of Council members, the attendance of staff, and a detailed summary of all discussions during each meeting;

5. Maintain the Board's notices, correspondence, reports and forms as public records for a period of time consistent with the records retention schedule of the Town of Hilton Head Island;
6. Assist in the preparation and forwarding of all reports and recommendations of the Board; and
7. Maintain each final decision of the Board as a permanent record as required by the SC Code.

#### **Section 4. Staff Board Coordinator.**

The Community Development Director shall appoint a member of Staff to assist the Chairman and the Secretary in Board coordination, including:

1. Ensuring all postponed agenda items are rescheduled;
2. Ensuring public notices are accurately written for publication;
3. Ensuring the minutes accurately reflect the actions taken in the meeting;
4. Coordinating with pertinent staff on submittal of agenda items to the Secretary for distribution to the Board;
5. Scheduling mandatory training sessions for the Board;
6. Ensuring the Board's Rules of Procedure remain updated;
7. Attending all Board meetings and resolving any questions or requests by the Board; and
8. Assisting the Secretary in the efficient running of the public meetings.

### **Article V** **Meetings and Quorum**

#### **Section 1. Regular and Special Meetings.**

- A. Meeting Schedule.** An annual schedule of regular meetings and work sessions of the Board shall be adopted, published and posted at the Town Government Center in late Fall of each year for the next calendar year. Unless rescheduled by a vote of the Board, meetings shall be held at the time and place stated in notices. Meetings shall be open to the public.
- B. Regular Meetings.** Regular Meetings of the Board shall be held on the fourth Monday of each month or such other date as determined by the Chairman or with input from Staff. Notification of all Applications for Appeal, Variance and Special Exception scheduled and any other matters for consideration at each regular meeting of the Board will be in accord with the public notice requirements of the SC Code as implemented by the Town's LMO.
- C. Special Meetings.** Special Meetings of the board may be called at any time by the Chairman or requested by the Staff. At least forty eight (48) hours public notice shall be provided for any Special Meeting of the board including the time, place and particular agenda item(s) scheduled for consideration consistent with the notice requirements of the SC Code as implemented by the Town's LMO.



**D. Cancellation of Meetings.** Whenever there is no business scheduled for any Regular or Special Meeting of the Board, the Chairman or Staff may cancel such Regular Meeting by giving notice to all members of the Board, as well as the public, no less than twenty-four (24) hours prior, whenever possible, to the time set for any such Regular Meeting.

## **Section 2. Quorum.**

A majority of the Board shall constitute a quorum for the conduct of business. The Secretary will notify the Chairman in the event projected absences will result in the lack of a quorum. If a quorum is established, then a member leaves, the quorum is no longer present. In the absence of a quorum, no further business requiring a vote shall be transacted and any such business shall be postponed to the next meeting.

## **Section 3. Conflict of Interest**

At a minimum, South Carolina law regarding conflicts of interest [S. C. Code Ann. § 8-13-10, *et seq.*, (Supp. 1994)] shall control Board members' actions. In addition, any member of the Board who believes that he or she has or may have a conflict of interest of any nature on any matter before the Board shall, prior to the case at the Regular or Special Meeting at which such matter may be heard or considered by the Board:

1. Prepare a written Potential Conflict of Interest Form describing the matter requiring action or decisions and the nature of his/her potential conflict of interest with respect to the action or decision;
2. File the Potential Conflict of Interest Form with the Secretary; and,
3. Provide a copy of the Potential Conflict of Interest Form to the Chairman.

Upon receipt of a Potential Conflict of Interest Form from any member of the Board, as required in section II (J)(A), *supra.*, the Chairman shall cause the Potential Conflict of Interest form to be recorded in the minutes and shall require that the member filing such Potential Conflict of Interest Form be excused from any votes, deliberations, and any other actions on the matter on which the potential conflict of interest or conflict of interest exists.

Any Board member so disqualified shall leave the dais while the disqualifying matter is being considered and refrain from deliberating or voting on the question.

**Article VI**  
**Meeting Administration, Public Comment,**  
**Notices, Fees, Voting Supplemental Submissions/Briefs**

**Section 1. Media Notices.**

The Secretary shall give the notice required by statute or ordinance for all meetings of the Board as per Section 16-2-102.E of the LMO. All Board meetings shall be open to the public and all requirements of the South Carolina Freedom of Information Act [S. C. Code Ann. § 30-4-10, *et seq.* (Supp. 1994)] shall be complied with in the conduct of meetings.

**Section 2. Agenda (Order of Business)**

A written agenda shall be furnished by the Secretary to each member of the Board and media. An agenda may be changed at the related meeting by a majority vote of the members present. Public Hearing items should be so noted with each pertinent item. Generally, the agenda should contain:

1. Call to Order;
2. Roll Call;
3. Freedom of Information Act Compliance;
4. Use of Cellular Telephones or Other Electronic Sound Emitting Devices Prohibited;
5. Review of Meeting Protocol as described within, including Citizen Participation;
6. Approval of Agenda;
7. Approval of Minutes of Previous Meeting
8. Old Business;
9. New Business;
10. Board Business;
11. Staff Reports;
12. Adjournment.

**Section 3. Minutes.**

**A. Meetings.** Minutes of meetings is governed by the Code of South Carolina (30-4-70 through 30-4-90). Minutes of each Board meeting shall be recorded by the Secretary and approved at the next available meeting after their preparation. Final approved Minutes shall be available on microfilm for previous years, and may be posted on the Town's Web site for public information.

**B. Minimum Contents of Minutes.**

1. Kind of meeting (regular or special).
2. Name of the organization.
3. Date and place of the meeting.
4. Presence of the Chairman and Secretary or the names of substitutes.
5. Presence of a quorum.
6. Names of all Board members, Council members, and Staff.

7. Time the meeting was called to order.
8. Whether the minutes of the previous meeting were approved or corrected.
9. All adopted and defeated motions and grounds (facts and conclusions). Withdrawn motions need not be recorded.
10. Name of the maker of the motion and the seconding member.
11. Summary of all presentations and discussions.
12. Motions, including proposed findings and conclusions, must be recorded verbatim.
13. Record the vote of each member upon each question, or, if absent or failing to vote, indicating that fact.
14. The adjournment and the time of adjournment.

**D. Lack of Quorum.** If there is lack of a quorum of the Board, minutes may be recorded but shall include a statement in the header of each page indicating that a quorum was not present and the minutes are not official. Such minutes shall not be approved by the Board at a later meeting. (There are different quorums, depending on the agenda item.)

#### **Section 4. Public Comment.**

In the case of a Variance or Special Exception application, at the conclusion of presentations by Staff and the Applicant, the Chairman will open the public hearing. The Chairman may set a time limit for all public comments and may determine the order of the comments. The Chairman will recognize citizens to comment and request that they sign up to speak at the podium. Each person will have the opportunity to speak for three (3) minutes. At the conclusion of the public comment, the Chairman will close the public hearing. Staff and/or the Applicant may request that the Chairman allow additional clarification after the public comments. Public comment is not permitted in a case involving an appeal from an Administrator decision.

#### **Section 5. Submission Deadline for Regular Meetings.**

The deadline for the filing of a complete Application with narrative for Variance or Special Exception or Request for Appeal shall be thirty (30) calendar days prior to any Regular Meeting of the Board. Any submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion.

#### **Section 6. Meeting Protocol.**

The Chairman will review the protocol at the start of each meeting. The meeting protocol includes further information about the following: speaker sign-up sheet, length of time for speakers, the order of presentation, and the opening and closing of a public hearing. The speaker sign-up sheet will be placed at the podium for speakers to sign when they come up to speak.

#### **Section 7. Filing of Application, Fees and Notice.**

All Applications and Appeals scheduled for review by the Board shall be filed by the interested property

owner(s) or by a property owner aggrieved by an Administrator's decision, or by a representative with a written certification of authority by such property owner. All Applications and Appeals shall satisfy all fees and notice requirements in accord with the provisions outlined in the LMO. In any case where the owner of record of the real property affected by any Application for Special Exception or Application for Variance, or his/her certified representative, is not the Applicant, the Applicant shall serve notice of the Application to the contiguous owner(s) of record within the time frames and as described in the LMO. Such notice shall include the time and place of the Board meeting at which the Application shall be heard.

### **Section 8. Motions and Final Decisions.**

A Motion by a Board member is the procedure leading to a final decision by the Board when the Motion is seconded by another Board member and adopted by a vote of a quorum of the Board. A Motion is to be made to describe the proposed decision with findings and conclusions to support the Motion. If the Motion is seconded and adopted by the Board, the final decision, contained in a Notice of Action, must be in writing and be permanently filed in the office of the Board as a public record. The final decision must include findings and conclusions and be delivered to parties of interest by certified mail.

### **Section 9. Voting.**

1. A Board member must be present at the beginning of each case to be permitted to discuss and vote on the case. If a Board member that was absent at the beginning of the hearing establishes requisite knowledge of the case, the member may be permitted to discuss and vote on the case by a majority vote of the Board.
2. All members of the Board, including the Chairman, shall be voting members, and shall be entitled to vote on any issue before the Board unless disqualified by law.
3. For Appeals from Administrator's decision, a majority vote of the entire Board shall be necessary, thus requiring at least 4 affirmative votes to pass a motion.
4. A simple majority of a quorum shall be required to conduct all other Board business including a decision on an Application for Variance or Special Exception.

### **Section 10. Supplemental Submissions/Briefs.**

Any supplemental written submission or legal brief must be delivered [One (1) hard copy or one (1) copy sent via e-mail] to the Secretary of the Board no later than 8:00am four business days before the public meeting day in order for the Secretary to distribute such submission to each Board member by the close of business that day. Town Staff, or the opposing party, has two business days after receipt of the supplemental submission to respond in writing. This excludes any business days when the Town is closed. The Board reserves the right to require or permit later written submissions or briefs and/or proposed findings of fact and conclusions of law to be submitted by the Appellant, Applicant for Variance or Special Exception, or Town Staff. Any submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion. Any written or oral information sent directly to any Board member shall be disregarded and promptly turned over to the Chairman through the Secretary of the Board.

## **Section 11. Communication Among Board Members or With an Outside Party.**

- A. There shall be no communication in writing, orally, or by e-mail by any Board member with any other Board member or any outside party regarding the substance of any matter before the Board that is or may be brought to a vote other than during a public meeting.
- B. Once a decision has been rendered by the BZA, there shall be no further discussions by any Board member with staff, applicants or their attorneys or representatives. Any such communications regarding a decision should be made to the Town Attorney.
- C. Communication with staff or outside parties to communicate procedural matters or general positions or opinions of the BZA will be at the discretion of the Chairman or by an affirmative vote of the majority of the Board members. The Chairman or his designee will be responsible for all such written/verbal communications with anyone other than the remainder of the Board members and Staff.
- D. Board members should refrain from discussing an upcoming agenda item with the Applicant, his Attorney, or his Agent, either through written or verbal communication. Board members should refrain from discussing an upcoming agenda item with Staff either through written or verbal communication, except to clarify facts or request additional information. All discussion of the item should take place in the public meeting. This is to avoid the appearance of improper ex parte communications.

### **Article VII**

#### **Procedures for Hearing an Application for a Variance**

The following procedures shall be applicable in the presentation of a Request for a Variance.

##### **Section 1. Presentation of the Town Staff and Applicant.**

1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Variance. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Variance. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.

## **Section 2. Public Comment.**

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the sign up sheet. Each person will have the opportunity to speak for three (3) minutes.
2. The Applicant and/or Town Staff shall clarify any information presented by the public before the Board makes a motion.

## **Section 3. Vote on Application for Variance.**

1. Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Application for Variance.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision and appropriate references to the relevant criteria of the LMO.
3. Pursuant to the provisions of the LMO the Board shall approve the Application for Variance, approve the Application for Variance with conditions or modifications; or, deny the Application for Variance.
4. Following the vote, the Staff shall prepare a written Notice of Action. The written notice of action shall include decision of the Board as well as the findings of fact and conclusions of law adopted by the Board with respect to the Application for Variance.
5. The Notice of Action shall be mailed by certified letter to the Applicant and record owner of the real property affected by the Application for Variance, if different from that of the Applicant.
6. The decision of the board shall be deemed final and applicable upon mailing of the Notice of Action.
7. The certificate of mailing shall be made a part of the board's file on the Application for Variance.

## **Article VIII**

### **Procedures for Hearing an Application for Special Exception**

The following procedures shall be applicable in the presentation of an Application for Special Exception:

#### **Section 1. Presentation of the Town Staff and Applicant.**

1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Special Exception. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and

applicable legal principles that the Applicant believes supports the Application for a Special Exception. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.

3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or the Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.

## **Section 2. Public Comment.**

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the sign up sheet. Each person will have the opportunity to speak for three (3) minutes.
2. The Applicant and/or Town Staff shall clarify any information presented by the public before the board makes a motion.

## **Section 3. Vote on Application for Special Exception.**

1. Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Application for Special Exception.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision and appropriate references to the relevant criteria of the LMO.
3. Pursuant to the provisions of the LMO, the Board shall approve the Application for Special Exception, approve the Application for Special Exception with conditions as stated in the LMO or deny the Application for Special Exception.
4. Following the vote, the staff shall prepare a written Notice of Action. The written notice of action shall include the decision of the Board as well as the findings of fact and conclusions of law adopted by the board with respect to the Application for Special Exception.
5. The Notice of Action shall be mailed by certified letter to the Applicant and record owner of the real property affected by the Application for Special Exception, if different from that of the Applicant.
6. The decision of the board shall be deemed final and applicable upon mailing of the Notice of Action.
7. The certificate of mailing shall be made a part of the board's file on the Application for Special Exception.

**Article IX**  
**Procedures for Hearing an Appeal**

The following procedures shall be applicable in the presentation of an Appeal from a decision of any Administrator:

**Section 1. Jurisdiction.**

Once an appeal has been taken from any final decision of Administrator, the jurisdiction of the Administrator, from which the appeal was taken, shall cease.

**Section 2. Presentation of the Appellant, Town Staff and Other Necessary Parties.**

1. The Appellant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Appellant believes supports the Appeal. During the presentation by the Appellant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Appellant's time may be extended if the Appellant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Appeal. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. Where the Appellant is someone other than the Property Owner of the Property that is the subject of the Appeal, the Property Owner or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Property Owner believes supports the position of the Property Owner with respect to the Appeal. During the presentation by the Property Owner or their Agent, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Property Owner's time may be extended if the Property Owner is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
4. Where the Appellant is someone other than the Holder of the Permit or Approval or their Agent for the Property that is the subject of the Appeal, the Holder of the Permit or Approval or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that he/she believes supports their position with respect to the Appeal. During the presentation by the Holder of the Permit or Approval or their Agent, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Holder of the Permit or Approval or their Agent's time may be extended if he/she is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
5. The Chairman may allow a maximum of five (5) minutes each for all parties to present any desired rebuttal.
6. Following the presentation, the Board of Zoning Appeals may ask such additional



questions of the Appellant, Property Owner, Holder of the Permit or Approval or their Agent or Staff as the members deem appropriate.

7. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.
8. Public comment is not permitted in a case involving an appeal from an Administrator decision.
9. All parties shall be subject to the submittal requirements as set forth in Article 6, Section 10 of the Rules of the Procedure.

### **Section 3. Vote on the Appeal.**

Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Appeal.

1. Pursuant to the provisions of Section 16-2-103.T.4.d of the LMO, the Board shall:
  - a) Affirm the action of the Administrator from which the Appeal was taken; or,
  - b) Modify the action of the Administrator from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the Administrator from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
  - c) Reverse the action of the Administrator from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the Administrator from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
  - d) Remand the action of the Administrator from which the Appeal was taken for such further proceedings as the Board of Zoning Appeals may deem appropriate.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision.
3. Following the Vote, the Board shall issue a written Notice of Action. The written notice of action shall include the decision as well as the findings of fact and conclusions of law adopted by the Board.
4. The Notice of Action shall be mailed by certified letter to the Appellant and Record Owner of the real property affected by the Appeal, if different from that of the Appellant.
5. The decision of the Board shall be deemed final and applicable upon mailing of the Notice of Action.
6. The certificate of mailing shall be made a part of the board's file on the Appeal.

## **Article X** **Procedures for a Remand**

### **Section 1. Remand.**

1. A member of the Board may move for a remand at any time, subject to review and determination by the Board. The motion shall specifically set forth factual and/or legal grounds that cause the record to be insufficient.

2. If a remand is granted, the Town and the Applicant shall obtain and present all additional information needed to render the record sufficient as detailed in the motion for the remand.

## **Article XI** **Motions**

### **Section 1. Motion for a Reconsideration.**

1. The Board may reconsider any decision made under Section 16-2-103.E.3.d, 16-2-103.S.3.d or 16-2-103.T.4.d of the Land Management Ordinance.
2. Any party aggrieved by a decision of the Board, if they desire to do so, is required to file any Petition for Reconsideration by delivering the same to the Administrator within ten (10) days from the date of hearing. "Delivered" as referenced in this section, means actual delivery.
3. The Petition for Reconsideration shall be in writing and shall state with particularity the points alleged to have been overlooked or misinterpreted the Board.
4. The Petition for Reconsideration shall be presented to the Board at the next regular scheduled meeting following the filing of the Petition for Reconsideration after compliance with the public notice requirements for a Board Public Meeting per the LMO.
5. Motions:
  - a. A Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side in the original vote.
  - b. The effect of the granting of a Motion for Reconsideration shall be that the Board will review the entire matter as if no previous vote had been taken.
  - c. A Motion to Deny the Petition for Reconsideration may be made by any member of the Board. The effect of a vote denying a Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter. A Notice of Action shall be delivered to the Applicant following such vote.
6. Successive Petitions for Reconsideration are prohibited. No matter that has been reconsidered may be reconsidered a second time. The Board may not reconsider a denial of a Petition for Reconsideration.

### **Section 2. Motion to Dismiss.**

Any interested party to a matter pending before the BZA may file a Motion to Dismiss the pending matter. The purpose of a Motion to Dismiss is to seek dismissal of the matter prior to the hearing on the merits of the pending matter.

1. A Motion to Dismiss may assert matters relating to procedure or jurisdiction including:
  - a. Failure to comply with requirements of the LMO,
  - b. Lack of jurisdiction,
  - c. Standing,
  - d. Other matters not relating to the merits of the matter.
2. A Motion to Dismiss shall be in writing, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.

3. A Motion to Dismiss may be supported by briefs of the law, affidavits or other matters pertinent to the Motion.
4. Any interested party may file briefs and other materials in response to the Motion, in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.
5. The Motion to Dismiss will be normally heard at the same meeting as the related appeal; however, the Chairman or Vice Chairman, in the absence of the Chairman, upon request, in his sole discretion, may permit the motion to be heard at an earlier meeting.

### **Section 3. Motion for Postponement.**

The Town, the Applicant or a Member of the Board may request a postponement of an application at any time, subject to the review and determination of the Board.

The Chairman or Vice Chairman, in the absence of the Chairman, may for good cause grant one postponement request for a period of up to three months from the month of the original hearing date. Any subsequent postponement requests shall be discussed and voted on by the Board.

A Motion for Postponement shall be in writing, stating the reasons for the requested postponement, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.

### **Section 4. Motion for Withdrawal of Application.**

The applicant may request a withdrawal of an application prior to the ruling. A Motion for Withdrawal of the Application shall be in writing, stating the reasons for the requested withdrawal, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.

The Board shall have the opportunity to discuss the reasons for the application being withdrawn; unless the project has been abandoned. In the absence of the applicant, if the withdrawal is questioned by the Board, the case will be postponed to the next meeting.

## **Article XII** **Miscellaneous**

### **Section 1. Executive Session.**

If a member determines after reviewing the applicable cases that they would benefit from the advice of legal counsel in Executive Session they shall contact the Chairman or his designee. The Chairman will determine if an Executive Session is warranted. If the Chairman decides that the membership would benefit from an Executive Session, they will inform the Board's Secretary of the request. The Chairman's decision can be overridden by a majority vote of the Board taken at a regular or special meeting of the BZA.

Executive Session is a meeting at which the proceedings are secret. A member can be punished under disciplinary procedure if he violates the secrecy of an executive session. Anyone else permitted to be present is honor-bound not to divulge anything that occurred.

Permitted reasons should include:

1. Personnel reasons
2. Contracts
3. Legal advice relating to pending, threatened or potential claim
4. Discussion regarding development of security personnel
5. Investigative proceedings regarding allegations of criminal misconduct
6. Economic development (specific criteria in FOIA)
7. Legal advice relating to procedural, conflict of interest, or general issues unrelated to a specific matter before the Board.

Entering and Adjourning an Executive Session:

1. A motion to close the current meeting and go into executive session is made and passed by a majority vote;
2. Chairman must announce the specific purpose of the executive session;
3. No formal action may be taken in executive session except to:
  - a. Adjourn
  - b. Return to public session

The Board can request attendance by non-members as they deem appropriate.

## **Section 2. Recess.**

A recess shall be declared as deemed appropriate by the Chairman or by majority vote of the members present at the meeting. No discussion of the agenda item shall be conducted by Board members during the recess.

**For the Board of Zoning Appeals  
Town of Hilton Head Island, South Carolina**

Date of Approval: ~~July 22, 2019~~

By: \_\_\_\_\_  
Jerry W. Cutrer  
Chairman

## Attachment for Reference

### TYPES OF MOTIONS

<b>Main Motions</b>	<b>A main motion is defined as a proposal that certain action is taken or an opinion be expressed by the group.</b> The words to use are: “I Move.”
<b>Secondary Motions</b>	<b>A secondary motion is one which can be made <i>while</i> the main motion is on the floor and <i>before</i> it has been decided.</b> Secondary motions are divided into three classes which relate to their use in parliamentary procedure. Those classes are: <ul style="list-style-type: none"> <li>○ Subsidiary motions</li> <li>○ Privileged motions</li> <li>○ Incidental motions</li> </ul>
<b>Subsidiary Motions</b>	<b>Subsidiary motions relate directly to the motion on the floor. They may change the words, send it to a committee, delay it, etc.</b> They are designed to expedite business by disposing of the pending motion other than by adopting or rejecting it. <i>Subsidiary motions are the class of motions most frequently used in meetings.</i> These motions have rank (order of precedence of motions) among themselves. A motion of higher rank can be made while a motion of lower rank is on the floor. The lower rank motion “yields” to the higher rank motion. (Motion to postpone has higher rank than the motion to commit and takes precedence. If motion to postpone is adopted, the main motion and the motion to commit are postponed until the next meeting.)
<b>Privileged Motions</b>	<b>Privileged motions are motions of an emergency nature,</b> such as to recess or adjourn. They do not relate to the motion on the floor but to the welfare of the group. They are of high rank and must be handled before any other business that may be pending.
<b>Incidental Motion</b>	<b>Incidental motions are procedural.</b> They deal with process, such as enforcing proper procedure, correcting errors, verifying votes, etc. When introduced, they must be decided before business can resume.
<b>Amending Motion</b>	General consent can be used with amendments to motions if the Chairman feels the group will accept the amendment. “If there is no objection, the motion is so amended.” <i>Restate the motion.</i>
<b>Motions Commit</b>	Have precedence over the motion to amend. <b>More than one motion can be on the floor but only one question.</b> All pending motions must relate to the main motion on the floor. No new business may be introduced.
<b>Point of Order</b>	Motion used if a board member feels the Chairman is failing to operate within the rules.

## Restorative Motions or Motions that Bring Back a Question

<b>Restorative Motion</b>	<p><b>Allows a group to change its mind.</b></p> <ul style="list-style-type: none"> <li>○ They are a separate category because of their contradiction to the parliamentary rule that once a question has been decided it cannot be brought up again at the same meeting.</li> <li>○ Within limits, members have the right to rethink a situation if they feel their decision has been made too quickly or without enough information.</li> <li>○ The two most commonly used restorative motions are: <b><i>Rescind</i></b> and <b><i>Reconsider</i></b>.</li> </ul>
<b>Rescind</b>	<p><b>Rescind is the motion to use to quash or nullify a previously adopted motion.</b> It may strike out an entire motion, resolution, bylaw, etc.</p> <ul style="list-style-type: none"> <li>○ Rescind is <i>not in order</i> when any action has already been taken as a result of the vote, such as any kind of contract when the other party has been notified.</li> <li>○ It must be seconded.</li> <li>○ It requires a <i>two-thirds</i> vote unless <i>notice has been given</i> at the previous meeting, either verbally or in writing. If notice has been given, the motion requires only a <i>majority</i> vote.</li> </ul>
<b>Reconsider</b>	<p><b>Reconsider is the motion which allows a group to reconsider the vote on a motion.</b> It enables a majority of the members, within a limited time, to bring back a motion for further consideration after it has been acted upon. Its purpose is to prevent hasty or ill-advised action.</p> <ul style="list-style-type: none"> <li>○ Reconsider has special rules to prevent its abuse by a disgruntled minority, since it allows a question already decided to be brought up again.</li> <li>○ Rules limit who can make the motion. <b>It can only be made by someone who voted on the prevailing (winning) side.</b></li> <li>○ <b>It has a <i>time limit</i>. It must be made on the <i>same day</i> that the vote to be reconsidered was taken.</b></li> <li>○ It requires a second.</li> <li>○ It may be debated and it opens up the motion to which it is applied to debate.</li> <li>○ It requires only a majority vote.</li> <li>○ It may be made and seconded while other business is pending because of its time limit. However, it is not debated and voted on until the business on the floor is completed.</li> <li>○ All action that might come out of the original motion is stopped at the time that reconsider is made and seconded. This is the main value of the motion, and it should be made as quickly as the situation calling for it is recognized.</li> </ul>
<b>Amend a Motion</b>	<p><b>Change the wording to make it clearer, more complete, or more acceptable before the motion is voted upon.</b> The amendment must be germane to the motion on the floor to be in order. Adoption of the amendment does not adopt the motion. If the group votes “no” on the amendment, the motion is on the floor in its original wording.</p>
<b>Amend an Amendment</b>	<p>First amendment is called the primary and the amendment to the amendment is the secondary amendment. Only two amendments may be pending at any time. First vote on the amendment to the amendment (secondary), then vote on the</p>

	original amendment (primary), then vote on the main motion. Amendments require a majority vote.
<b>Friendly Amendments</b>	Change in wording to enhance the original motion – can be changed by general consent.
<b>Hostile Amendments</b>	Gives a different meaning to a motion and may defeat the intent of the main motion.
<b>To Commit or Refer a Motion</b>	Sends the question to a small group (committee) to be studied and put into proper form for the group to consider. Motion includes specific directions as to where the question ought to go (what committee). Motion can be applied to any main motion with any amendments that may be pending. It must be seconded, it can be debated, and requires a majority vote.
<b>Postpone</b>	<b>Delays action on a question until later in the same meeting or until the next meeting.</b> <i>A motion cannot be postponed further than the next regular meeting.</i> Can be applied to all main motions, it must be seconded, it can be debated, it can be amended (as to time of the postponement), it requires a majority vote. Motion is called up automatically when the time to which it was postponed arrives (place under Unfinished Business on agenda of next meeting).
<b>Limit Debate</b>	<b>Motion to exercise special control over debate</b> – reducing the number and length of speeches allowed. Used with any motion, must be seconded, is not debatable, can be amended (but only as to the length of speeches or when the vote will be taken), requires 2/3 vote, vote must be taken by show of hands or a rising vote in a large group. (Need a timekeeper and timer if speeches have a time limit.)
<b>Previous Question</b>	<b>The motion used to cut off debate and to bring the group to an immediate vote on the pending motion. (Call the question for an immediate vote).</b> Previous question can be ruled out of order if the motion is debatable and has not received debate. Motion requires 2/3 vote (by show of hands or standing vote). Not debatable.
<b>Postpone Indefinitely</b>	Lowest-ranked subsidiary motion is used to kill a main motion. It avoids a direct vote on the question on the floor. Shouldn't be used.
<b>Lay on the Table</b>	Highest-ranked subsidiary motion. Cannot be amended or debated. It is out of order when used to “kill or avoid dealing with a measure”. <b>Was designed as a courtesy motion to allow a group to set aside a question for something more important, such as arrival of a speaker.</b>
<b>Withdraw a Motion</b>	<b>Permission to withdraw a motion allows a member who realizes he has made a hasty or ill-advised motion to withdraw it with the consent of the group.</b> This device saves time in disposing of the motion. The presiding officer usually handles the request by use of general consent.
<b>Dilatory Tactics</b>	A dilatory tactic is the misuse of parliamentary procedure to deliberately delay or prevent action in a meeting. It is the duty of the presiding officer to prevent a dissident minority from misusing legitimate forms of motions to obstruct business. Such motions should be ruled out of order or those members engaged in such game playing should not be recognized.

## TYPES OF VOTES

<b>Majority Vote</b>	<ul style="list-style-type: none"> <li>• <b>More than half of the votes cast.</b></li> <li>• The minority has the right to be heard, but once a decision has been reached by a majority of the members present and voting, the minority must then respect and abide by the decision.</li> </ul>
<b>Silence is Consent</b>	Those members who do not vote, agree to go along with the decision of the majority by their silence.
<b>Two-thirds Vote</b>	<b>A two-thirds vote is necessary whenever you are limiting or taking away the rights of members or whenever you are changing something that has already been decided.</b> A two-thirds vote has at least twice as many votes on the winning side as on the losing side. A show of hands should be taken for <i>all</i> motions requiring a <i>two-thirds</i> vote. If a motion requires a two-thirds vote, the Chairman should inform the group of that.
<b>General Consent</b>	<p><b>Is an informal agreement of the group, the method in which action is taken without a formal vote or on occasion without a motion.</b> The Chairman initiates the procedure to expedite business. Usually done to approve and correct the minutes.</p> <ul style="list-style-type: none"> <li>• The presiding officer always pauses after asking if there is any objection. If there is <i>any</i> objection, the matter is put to a vote in the usual way.</li> <li>• A member may object because he feels it is important to have a formal vote and dispel any suspicion of railroading.</li> </ul>
<b>Tie Vote</b>	Is a <i>lost</i> vote because a majority was not obtained. The <i>Chairman is not compelled to break a tie</i> . While the Chairman has a right to vote as a member, it is recommended he not vote unless the vote is by ballot. He may also vote in cases where the vote would change the result. The Chairman should appear impartial.





**DRAFT**

The Town of Hilton Head Island  
**Board of Zoning Appeals**  
**2020 Meeting Schedule**

BZA Powers and Duties	Application Procedure
<p>The Board of Zoning Appeals has the following powers:</p> <ul style="list-style-type: none"> <li>A. To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of Title 16 of the Municipal Code, Land Management Ordinance.</li> <li>B. To hear and decide requests for variance from the Design and Performance Standards of the Land Management Ordinance.</li> <li>C. To review and take action on applications for uses by special exception; and</li> <li>D. To review and take action on appeals of Planning Commission action on certain traffic analysis plans.</li> </ul>	<p>Applications for Variance and Special Exception must be completed and submitted not later than 30 days prior to the meeting at which the application will be considered. In addition, Applications for Appeal must be filed not later than 14 days from the date of the decision being appealed.</p> <p>An Application Check-In Conference is required for all applications to determine whether the application meets the minimum requirements for acceptance. Application Check-In Conferences must be scheduled by appointment with the Community Development Department staff.</p>

<u>BZA PUBLIC MEETING DATE</u>	<u>APPLICATION DEADLINE</u>
January 27, 2020 .....	December 27, 2019
February 24, 2020 .....	January 24, 2020
March 23, 2020.....	February 21, 2020
April 27, 2020.....	March 27, 2020
*May 18, 2020 .....	April 17, 2020
June 22, 2020.....	May 22, 2020
July 27, 2020.....	June 26, 2020
August 24, 2020.....	July 24, 2020
September 28, 2020.....	August 28, 2020
October 26, 2020.....	September 25, 2020
November 23, 2020.....	October 23, 2020
*December 14, 2020.....	November 13, 2020
<p><i>*May 18<sup>th</sup> and December 14<sup>th</sup> meetings are moved due to the Holidays.</i></p>	

Regular meetings are generally held on the 4<sup>th</sup> Monday of each month at 2:30 p.m. in Benjamin M. Racusin Council Chambers, subject to change with notice.



# TOWN OF HILTON HEAD ISLAND

## Community Development Department

**TO:** Board of Zoning Appeals  
**FROM:** Missy Luick, *Senior Planner*  
**DATE:** October 18, 2019  
**SUBJECT:** Substitutions of Nonconformities for Redevelopment

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The BZA requested that staff keep them informed of substitutions of nonconformities for redevelopment that are granted by staff. A memo is distributed every month at the regular BZA meetings and is discussed under staff reports on the agenda.

The following language is contained in Section 16-7-101.F, Substitutions of Nonconformities for Redevelopment, which gives the Administrator the power to grant such substitutions for existing nonconforming structures and site features.

### LMO Section 16-7-101.F:

“To provide flexibility and encourage redevelopment of sites with nonconforming features or structures, the Official is authorized to approve a Development Plan for such sites if the proposed development:

1. Will not include any new development that increases the amount of encroachment into any required buffer or setback;
2. Will not increase the impervious cover on the site over the maximum allowed for the district or the existing impervious cover, whichever is greater;
3. Will not result in a density in excess of what is allowed under this Ordinance, or the existing density, whichever is greater;
4. Will lessen the extent of existing nonconforming site features to the greatest extent possible;
5. Will not have an adverse impact on the public health, safety or welfare; and
6. Will lessen the extent of nonconformities related to any existing nonconforming structure on the site to the greatest extent possible.”

There have been 3 Substitution of Nonconformity for Redevelopment waivers that have been granted by staff since the July 22, 2019 BZA meeting.

1. **1024 William Hilton Parkway, Slapfish Restaurant** – In conjunction with the Slapfish Restaurant project, a waiver request was submitted for a reduction in the adjacent street setback. The request was to reduce the required setback by 15% which would in effect reduce the 50’ set back to 42.5’. Due to the fact that the existing structure was currently located within the 50’ setback and this reduction would remove the building from the setback, the outdoor dining area was proposed to be located outside of the proposed 42.5’ setback area and the LMO Section 16-5-102.C

permits a reduction of up to 15% provided certain criteria are met, the waiver was approved.

2. **36 Lagoon Road, Weitzner Residence Renovations-** In conjunction with the Weitzner Residence renovation, a waiver request was submitted to enclose the existing carport by joining the existing shed and carport into an enclosed garage with room above. The existing carport and shed are located in the adjacent use buffer and setback and currently non-conforming. Due to the fact that the applicant was not expanding the proposed improvements for the existing structures further into the adjacent use setback and buffer, was improving the buffer area with landscaping and was not increasing the impervious cover or floor area ratio above what is allowed for the Forest Beach Neighborhood Overlay District, the waiver was approved.
3. **424 Squire Pope Road, Bayshore Retirement Living Phase 2-** In conjunction with the Bayshore Retirement Living Phase 2 project, a waiver request was submitted to reduce the required street access separation. The request was to reduce the required street access separation from 200' to 160' which is a reduction of the requirement by 40'. Due to the fact that the site plan proposed aligns the access from Squire Pope Road to both phases of the Bayshore Retirement Development directly across the street from each other, the project functions as one site with joint use and the LMO Section 16-5-105.I.8 permits a waiver provided certain criteria are met, the waiver was approved.