



**Town of Hilton Head Island
Board of Zoning Appeals Regular Meeting
Monday, March 25, 2019 – 2:30 p.m.
Benjamin M. Racusin Council Chambers
AGENDA**

As a courtesy to others please turn off/silence all electronic devices during the meeting.

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Freedom of Information Act Compliance**
Public notification of this meeting has been published, posted, and distributed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island.
5. **Welcome and Introduction to Board Procedures**
6. **Approval of Agenda**
7. **Approval of the Minutes** – Meeting of November 26, 2018
8. **Unfinished Business**
9. **New Business**
 - a. **Public Hearing**
VAR-000329-2019 – Deborah Murphy is requesting a variance from LMO Section 16-6-104.F, Specimen Tree Preservation, to remove a specimen sized hickory tree located at the Ocean Course Villas in Sea Pines. The tree is located on Ocean Course Villas Owners Association property located at 108 North Sea Pines Drive between Units 556 and 557. The property is further identified as Parcel # 122A on Tax Map # 17. *Presented by Taylor Ladd*
10. **Board Business**
 - a. Review of proposed amendments to the Rules of Procedure
11. **Staff Report**
 - a. Update on APL-000942-2018 – 17 Trail Beach Manor Cat Sanctuary – *Teri Lewis*
 - b. Update on Circuit Court Cases – *Nicole Dixon*
 - c. Waiver Report
12. **Adjournment**

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

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the November 26, 2018 2:30 p.m. Regular Meeting
Benjamin M. Racusin Council Chambers

Board Members Present: Chairman David Fingerhut, Vice Chairman Jerry Cutrer, Patsy Brison, Charles Walczak, Lisa Laudermilch

Board Members Excused: Robert Johnson, John White

Council Members Present: None

Town Staff Present: Nicole Dixon, Development Review Administrator; Taylor Ladd, Senior Planner; Teresa Haley, Senior Administrative Assistant

1. Call to Order

Chairman Fingerhut called the meeting to order at 2:32 p.m.

2. Pledge of Allegiance to the Flag

3. Roll Call

4. Freedom of Information Act Compliance

Public notification of the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.

5. Welcome and Introduction to Board Procedures

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

6. Approval of Agenda

Chairman Fingerhut asked for a motion to approve the agenda. Mr. Walczak moved to approve. Vice Chairman Cutrer seconded. The motion passed with a vote of 5-0-0.

7. Approval of the Minutes – Meeting of September 24, 2018

Chairman Fingerhut asked for a motion to approve the minutes of the September 24, 2018 meeting. Ms. Brison moved to approve. Ms. Laudermilch seconded. The motion passed with a vote of 5-0-0.

8. Unfinished Business – None

9. New Business – None

10. Board Business

- a. Review and Adoption of proposed amendment to the Rules of Procedure to allow property owners to speak at appeal hearings

Ms. Ladd clarified the proposed amendments shall not be adopted today. Staff made changes to the rules based on the feedback given at the last meeting. Today is the opportunity for the Board and public to review and comment on those changes. If there are no further changes, the amendments can be presented for adoption at the next regularly held meeting. If further changes are needed, then those changes will be incorporated by Staff and presented for review at the next regularly held meeting. Ms. Ladd then reviewed the proposed changes as provided in the Board's agenda package.

Chairman Fingerhut asked for public comments. Chester Williams made comments on the proposed amendments. The Board and Mr. Williams discussed the proposed amendments and his comments. Upon the conclusion of the discussion, the Board asked Staff to draft the following changes:

- Delete the changes made on Page 11 Section 4;
- On Page 16 Section 2, separate paragraph 7 into paragraphs 3 and 4 for the property owner and the permit holder respectively;
- In Section 2 of Page 16, make the applicable changes to include the property owner and the permit holder as parties to the proceedings.

b. Review and Adoption of 2019 Meeting Schedule

Mr. Walczak moved to approve the 2019 Meeting Schedule as submitted. Vice Chairman Cutrer seconded. The motion passed with a vote of 5-0-0.

11. Staff Report

- a. Waiver Report** – The Waiver Report was included in the Board's packet.

Ms. Ladd indicated the December meeting was cancelled due to a lack of agenda items. A Board training session will be held immediately following this meeting. Staff will continue to update the Board on upcoming trainings.

The Board asked Staff to provide at a future meeting an update on their recent cases that have been appealed to the Circuit Court.

12. Adjournment

The meeting was adjourned at 2:56 p.m.

Submitted by: Teresa Haley, Secretary

Approved:

David Fingerhut, Chairman



TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court

Hilton Head Island, SC 29928

843-341-4757

FAX 843-842-8908

STAFF REPORT VARIANCE

Case #:	Public Hearing Date:
VAR-000329-2019	March 25, 2019

Parcel or Location Data:	Property Owner	Applicant
<u>Address:</u> 108 N. Sea Pines Dr. <u>Parcel:</u> R550 017 000 122A 0000 <u>Zoning:</u> PD-1 Sea Pines	Ocean Course Villas Owners Association 2 Corpus Christie Place Hilton Head Island, SC 29928	Deborah Murphy 108 N. Sea Pines Drive, Unit 557 Hilton Head Island, SC 29928

Application Summary:

Deborah Murphy is requesting a variance from Land Management Ordinance (LMO) Section 16-6-104.F, Specimen Tree Preservation, to remove a specimen size hickory tree at the Ocean Course Villas in Sea Pines. The tree is located on Ocean Course Villas Owners Association property at 108 North Sea Pines Drive between Units 556 and 557. See Attachment A for tree location and vicinity map.

Staff Recommendation:

Staff recommends the Board of Zoning Appeals **deny** the application based on the Findings of Fact and Conclusions of Law contained in the staff report.

If the Board of Zoning Appeals contemplates approval, staff recommends the following conditions:

1. The hickory tree shall be mitigated as per LMO requirements at one tree per ten-inches removed. Specifically, mitigating this hickory would require two (2) Category I or Category II trees be planted in the property common area that are at least 2-inch caliper and 10-feet in height. Or, one (1) 4-inch caliper Category I or Category II tree may be planted.
2. Prior to removal, the applicant shall obtain a Natural Resources Permit and provide a tree mitigation and landscape plan for staff approval with the permit application.

Background:

LMO Section 16-6-104.F.2.a.ii, Specimen Tree Preservation, states specimen trees shall not be cut, removed, pushed over, killed, or otherwise harmed. However, LMO Section 16-6-104.F.2.b states if the preservation of a specimen tree causes unnecessary hardship, the applicant may apply for a variance.

Built in the late 1970s, Ocean Course Villas is a condo association located in Sea Pines consisting of twenty units in a cluster of four buildings with associated parking. All the condos have views across a lagoon to the Sea Pines Atlantic Dunes Course 10th hole. Public property records indicate the applicant purchased their condo, Unit 557, in 2012 as a second home.

Based on a conversation staff had with a tenant on site, the condos do not appear to have assigned parking. The residents and tenants tend to park in front of their units, but this is not required and there are numerous parking spaces throughout the property on either side of the drive aisle. Parking spaces are not striped or marked with wheel stops, and the number of spaces provided for residents and their guests on site cannot be determined. Staff was unable to find a copy of the property covenants, rules or restrictions to determine for sure if parking is assigned.

The subject tree is located on common property in a landscaped area between the parking spaces in front of Units 556 and 557. On the site survey submitted, Attachment C, the hickory is shown in the middle of a small grove of trees, including three sweet gums and a live oak. The canopy is shown to extend partially over the parking area in front of Unit 557. This survey, dated 2014, shows the hickory as being 23-inches DBH. Staff conducted a site visit and determined that the tree is now 24-inches DBH and the 13-inch gum shown on the plan has since been removed.

Per the LMO Table 16-6-104.F.1, Specimen Trees, all hickory species are defined as being specimen size at 20-inches DBH. Trees are listed on this table because they are either federally listed threatened, rare or endangered species, uncommon in the area, or unique to the character of Hilton Head Island. According to the Town Sustainable Practices Coordinator, Sally Krebs, hickories are considered uncommon and unique on the island, typically occurring geographically on the tops of old dune fields on barrier islands. Hilton Head's remnant old dune fields have not substantially survived development of the island, so most of the older stands of hickories have long been removed. Hickory tree nut production occurs primarily in late summer to autumn with nuts falling through the winter. The amount of nut production and when they drop has to do with seasonal conditions in the spring and summer.

The arborist contracted with the Town, James Ellis of Jones Brother Tree Surgeons, has visited the site and made a determination that the tree is healthy. See Attachment E for his statement. The Town's Environmental Planner, Rocky Browder, agrees with the arborist's assessment. Mr. Ellis states the tree appears to have received a major pruning, likely as a result of Hurricane Matthew. This precludes the ability to further prune the tree to alleviate nut production in proximity to Unit 557, and there is no guarantee any major pruning would mitigate the problems stated by the applicant. There are limits to the amount of pruning any one tree can survive before its health is compromised. Specifically, LMO Section 16-6-104.B.2.a.viii permits routine seasonal pruning of up to 10% of a tree's leaf surface without requiring a permit if certain conditions are met. According to Mr. Browder, the commonly accepted rule of thumb is to prune no more than 30% once every three years.

On a site visit, staff did observe another large hickory overhanging parking spaces between Units 562 and 563. This hickory is measured to be 17.5-inches DBH. Behind the mailbox cluster on the property, there is also a small stand of younger hickories in the vegetated buffer area along North Sea

Pines Drive and adjacent to the multi-use pathway, including a hickory overhanging one of the community entrances. See Attachment D for photos of the subject tree, others in the area and the property.

Staff observed the neighboring Spicebush residential community at 124 North Sea Pines Drive has several larger hickories preserved in the landscaped common areas. Also, the single family residences located across the street from Ocean Course Villas at 117 and 121 North Sea Pines Drive have hickories in their front yards and overhanging driveways and parking areas. Several of these trees appear to be specimen size. The preservation of common landscape areas during the development of these communities in Sea Pines has protected the remnant hickory trees which have been able to proliferate and repopulate the area over time.

A Natural Resource Permit application requesting removal of the tree submitted October 2018 was denied by the Town's Environmental Planner due to the tree's specimen classification and healthy condition. Approval of this application by the Board of Zoning Appeals and subsequent Natural Resources Permit for the removal of the subject tree would require on-site mitigation at the property owner or applicant's expense as defined in the LMO Section 16-6-104.I, Standards for Supplemental and Replacement Trees. Per the LMO, the required mitigation would be one Category I or Category II tree planted for every ten-inches removed. For this hickory, two (2) replacement trees are required to be 2-inch caliper and ten-feet tall at the time of installation, or one (1) 4-inch caliper Category I or Category II tree may be substituted to meet the requirement. The tree categories are listed on LMO Table 16-6-104.H, Tree Equivalency Table.

Applicant's Grounds for Variance, Summary of Facts and Conclusions of Law:

Grounds for Variance:

The applicant states the variance is necessary because the hickory tree canopy overhangs their walkway and parking area, which is impacted by the tree's nut production. The applicant has provided evidence that the hickory nuts have caused damage to their vehicle parked in front of their unit, and stated that the hickory nuts falling on their walkway pose a potential tripping hazard. They would like to be able to remove the tree to avoid further damage to their vehicle and potential tripping hazards on their walkway.

The applicant states they have not witnessed other units with any hickory trees overhanging the parking areas. They have not tried other measures to mitigate this issue prior to requesting removal of the tree other than leaf-blowing their parking and walkway areas and parking to the far left in the space in front of their condo. See Attachment B for the applicant's narrative and exhibits.

Summary of Facts:

- The applicant seeks a variance as set forth in LMO Section 16-2-103.S.

Conclusion of Law:

- The applicant may seek a variance as set forth in LMO Section 16-2-103.S.

Summary of Facts and Conclusions of Law:

Summary of Facts:

- Application was submitted on February 14, 2019 as set forth in LMO Section 16-2-102.C and Appendix D-19.

- Notice of the Application was published in the Island Packet on March 3, 2019 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on March 8, 2019 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on March 2, 2019 as set forth in LMO Section 16-2-102.E.2.
- The Board has authority to render the decision reached here under LMO Section 16-2-102.G.

Conclusions of Law:

- The application is in compliance with the submittal requirements established in LMO Section 16-2-102.C.
- The application was submitted 39 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
- Notice of application was published 22 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was posted 17 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was mailed 23 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- The application and notice requirements comply with the legal requirements established in LMO Section 16-2-102.E.2.

As provided in LMO Section 16-2-103.S.4, Variance Review Standards, a variance may be granted in an individual case of unnecessary hardship if the Board determines and expresses in writing all of the following findings of fact.

Summary of Facts and Conclusions of Law:

Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property (LMO Section 16-2-103.S.4.a.i.01):

Findings of Fact:

- The subject tree is 24-inches DBH, which is specimen size per LMO Table 16-6-104.F.1.
- The tree is located in a common landscape area between the parking spaces in front of Units 556 and 557 at Ocean Course Villas in Sea Pines.
- The applicant states the extraordinary conditions are that the tree canopy overhangs the parking space in front of their unit and the hickory nuts dent their vehicle and pose a tripping hazard on the walkway.
- There are other hickory trees located in the common landscape areas of Ocean Course Villas the neighboring Spicebush community, adjacent single-family residences and in the street buffer, where their hickory nuts appear to be impacting parking areas and pathways.

Conclusions of Law:

- Staff concludes this application **does not meet the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are no extraordinary and exceptional conditions that pertain to the property or the subject tree.

- The presence of other hickories on the subject property and neighboring properties in proximity to other parking areas and pathways means that this is not an extraordinary or exceptional condition.

Summary of Facts and Conclusion of Law:

Criteria 2: These conditions do not generally apply to other properties in the vicinity (LMO Section 16-2-103.S.4.a.i.02):

Findings of Fact:

- There are no extraordinary or exceptional conditions that pertain to this property or the subject tree.
- Other units and parking areas in Ocean Course Villas are subject to hickory nut production from hickory trees in the vicinity.
- Neighboring multifamily and single-family residential properties have hickories located in landscaped areas.

Conclusion of Law:

- Staff concludes this application **does not meet the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary or exceptional conditions that apply to the subject property or subject tree that do not generally apply to other properties or condo units in the vicinity.

Summary of Facts and Conclusion of Law:

Criteria 3: Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property (LMO Section 16-2-103.S.4.a.i.03):

Findings of Fact:

- There are no extraordinary or exceptional conditions that pertain to this property or the subject tree.
- The subject tree is not preventing the use or unreasonably restricting utilization of the Ocean Course Villas common area, parking spaces or Unit 557. There are other parking spaces in proximity to the condo that are not under a hickory tree, the condo unit is accessible and livable and the subject tree does not prevent access to common areas.

Conclusion of Law:

- Staff concludes this application **does not meet the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary or exceptional conditions that apply to the subject property or subject tree that effectively prohibit or unreasonably restrict the utilization of the property.

Summary of Facts and Conclusion of Law:

Criteria 4: The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variance (LMO Section 16-2-103.S.4.a.i.04):

Findings of Fact:

- The purpose of the ordinance for specimen tree preservation is to protect trees either federally listed as threatened, rare or endangered, uncommon in the area, or unique to the character of Hilton Head Island as defined by the LMO Table 16-6-104.F.1. The LMO includes a provision that a variance may be sought if the preservation of a specimen tree causes unnecessary hardship.
- The applicant states their hardship is the damage caused to their vehicle by the hickory nuts when they park in spaces in front of Unit 557, as well as the potential tripping hazard on the walkway near Unit 557.
- The applicant is requesting the removal of a specimen size hickory, which is considered an uncommon and unique species on Hilton Head Island.
- LMO Section 16-6-104, Tree Protection, states that specimen trees contribute to the ambiance, economy, and quality of life on Hilton Head Island.
- The subject tree is located on common property, owned by the Ocean Course Villas Owners Association. There are other hickory trees observed to be located in common areas in this community, the neighboring Spicebush residential community, adjacent single-family homes and in the street buffer.
- Staff received a letter of support for the removal of the tree from the Ocean Course Villas Owners Association Board. See Attachment B for this letter.
- Staff received a letter of support for the removal of the tree from the owner of Unit 556, which is adjacent to the subject tree. See Attachment F for this letter.

Conclusion of Law:

- Staff concludes this application **does not meet the criteria** as set forth in LMO Section 16- 2-103.S.4.a.i.04 because granting the variance to remove a specimen size hickory tree will be a detriment to the public good. Specimen tree removal because a resident finds it a nuisance is a precedent that could be detrimental to the natural environment and character of the Island.

LMO Official Determination:

Based on the above Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should not be granted to the applicant. The application does not meet all four of the required variance review criteria as set forth in the LMO.

BZA Determination and Motion:

The "powers" of the BZA over variances are defined by the South Carolina Code, Section 6-29-800, and in exercising the power, the BZA may grant a variance "in an individual case of unnecessary hardship if the board makes and explains in writing ..." their decisions based on certain findings or "may remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review."

This State law is implemented by the Hilton Head Island Land Management Ordinance, Chapter 2, Article 103 and the Rules of Procedure for the BZA.

A written Notice of Action is prepared for each decision made by the BZA based on findings of fact and conclusions of law.

The BZA can either Approve the application, Deny the application, or Approve with Modifications. Findings of Fact and Conclusions of Law must be stated in the motion.

PREPARED BY:

TL

Taylor Ladd, Senior Planner

March 11, 2019

DATE

REVIEWED BY:

ND

Nicole Dixon, CFM, Development Review
Administrator

March 11, 2019

DATE

ATTACHMENTS:

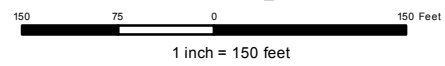
- A) Vicinity Map
- B) Applicant's Narrative
- C) Applicant's Site Survey
- D) Site Photos
- E) Arborist Statement by Jones Brothers Tree Surgeons
- F) Email from Ocean Course Villas Unit 556 Owner

Legend

-  Subject Property
-  Parcels



108 North Sea Pines Drive- Specimen Tree Location



Printed 2/26/2019

The information on this map has been compiled from a variety of sources and is intended to be used only as a guide. It is not intended to be used as a legal document or as a basis for any legal action. The Town of Helton Head Island assumes no liability for inaccuracies or omissions in this map. For more information, please contact the Planning Department.



Attachment B

Subject: Removal of Specimen Hickory Tree Appeal
Variance application #329-2019

Response to LMO Section 16-2-103.S.4.a Variance Review Standards:

01 – Extraordinary and exceptional conditions pertaining to the particular piece of property:

The hickory tree poses a threat to property and person due to the fact that it's canopy over hangs our designated parking place and the entrance to our Villa. The shedding of the nuts has damaged our automobile, as evidenced by the attached estimate from APEX auto body repair to remove the dents.

More importantly, however, the nuts pose a human personal hazard as we leave and enter our Villa. In the evening they are hard to see, and I have personally stepped on one and fallen. Luckily, I caught myself and ended up with only skinned hands instead of a turned ankle or broken hip.

02 – These conditions do not generally apply to the other properties in the vicinity:

The main canopy of the tree, and the range in which the nuts fall, is mainly above our designated area. There are some nuts that drop by unit #556, but it they do not generally reach their parking area. I have walked the property of our complex of 20 units and our unit is the only one with a hickory tree that covers a personal space.

03 – Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property:

As stated in item 01, the nuts fall directly on our only designated parking area and entrance thereby causing physical damage to our automobile and the hazard of personal physical damage when entering or leaving the premises. (See attached photos of limited parking area, entrance to our Villa, and the adjacent cluster of trees. The hickory has the tie around its trunk.)

04 – The authorization of the Variance will not be of substantial detriment to adjacent property or the public good and the character of the zoning district where the property is located will not be harmed by the granting of the Variance.

As you can see from the attached photos, the hickory is in a cluster of trees. Its removal would not alter the look for landscape and natural beauty of the area between the Villas.

Submitted by: Deborah W. Murphy

----- Forwarded message -----

Attachment B

From: Bryan Dorshimer [REDACTED]
Date: Thu, Feb 21, 2019 at 8:29 AM
Subject: FW: Hickory Tree Removal
To: Douglas Murphy [REDACTED]

Morning Sir,

I hope that you are doing very well and having a nice week.

The other Directors reviewed your request and approved the removal of the Hickory Tree.

Take care and have a wonderful day.

Respectfully,

Bryan Dorshimer

IMC Resort Services, Inc.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

www.IMCResortServices.com

From: Douglas Murphy [REDACTED]
Sent: Sunday, February 17, 2019 12:57 PM
To: Bryan Dorshimer [REDACTED]
Subject: Hickory Tree Removal

Bryan,

In submitting our request for a Variance to remove the Hickory Tree, they asked if the POA Board would approve the removal should it be granted.

Please poll the Board and get their response. For their information, we are asking for a variance to remove the Hickory Tree next to our parking area. Its nuts are falling over our parking area and damaging our car. We just had a repair bill of over \$500 to remove the dents.

Secondly, the nuts are causing a physical hazard as we enter and leave our Villa.

I have attached a copy of the Narrative we filed with our appeal that will explain the issues. You might want to attach it to your email to the Board.

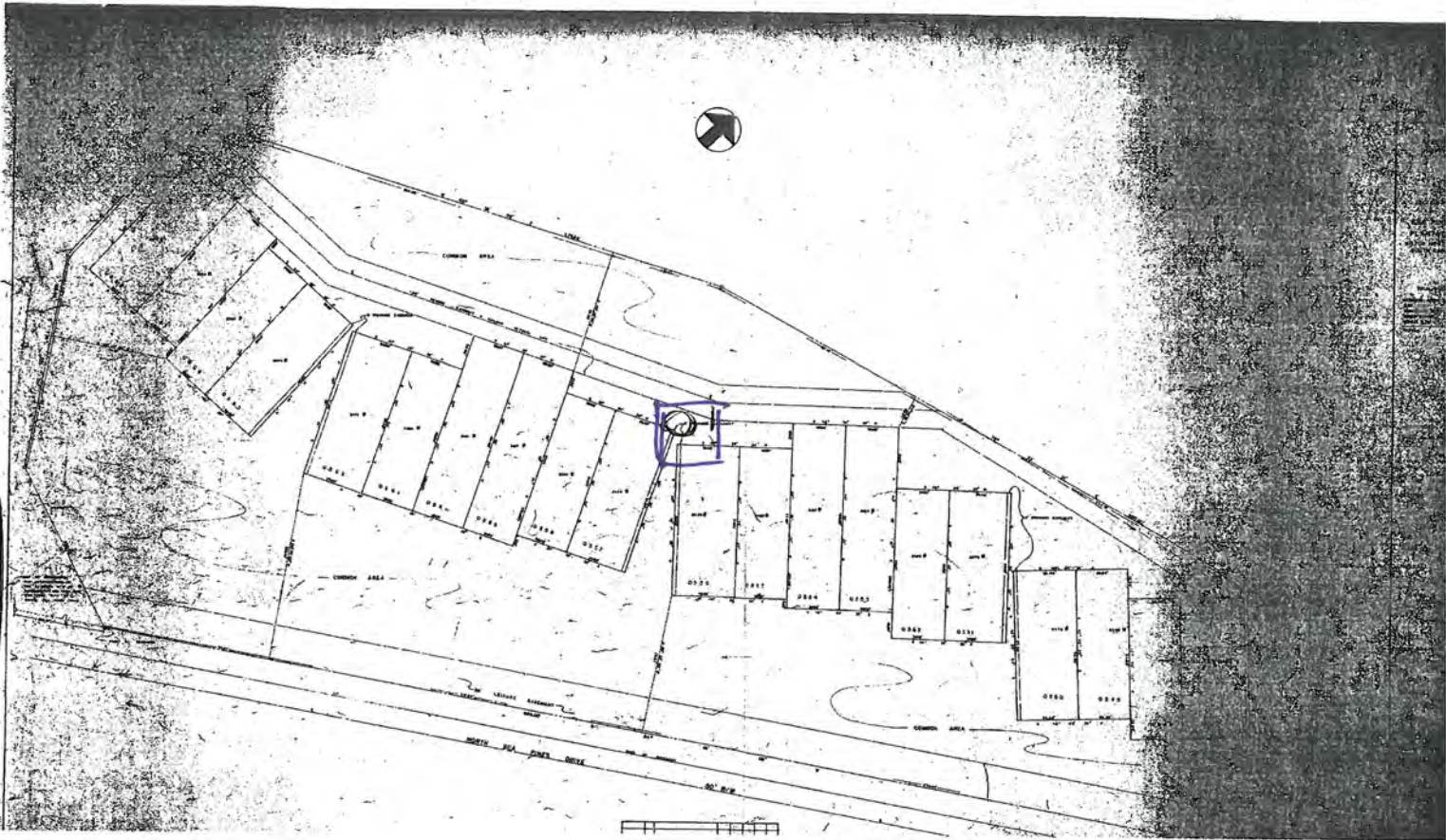
Please respond to me with the decision of the Board and I will forward it to the Town.

Thank you for your assistance with this matter.

Doug and Deb Murphy

Attachment B

329-2019



Attachment B

329-2019



Attachment B

VAR 329-2019



PARKING AREA FOR unit #557 @
108 N. SEA PINES DR.

Attachment B

VAR 329-2019



108 N. SEA PINES DR. #557

Attachment B

VAP 329-2019



108 N. SEA PINES DR. # 557

Attachment B

VAR 329-2019



VAR 329-2019



APEX PDR
ApexPDR.com
Tax ID: Tax ID 27-5553033

Estimate #: 776
Date: 10/15/2018
Estimated By: Donnie Pease

Advanced Auto Body
Hilton Head Island, SC

Year: **2016** Vin: **WBA3V7C52G5A26188** Total: **\$516.70**
Make: **BMW** Stock/Ro#:
Model: **4 Series** Odometer:
Color: **White** License:
Services: **Hail: \$437.50**
R&I: \$79.20(1.80hrs @ \$44.00/hr)

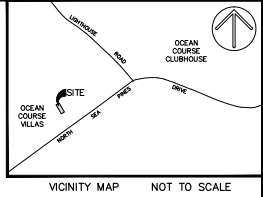
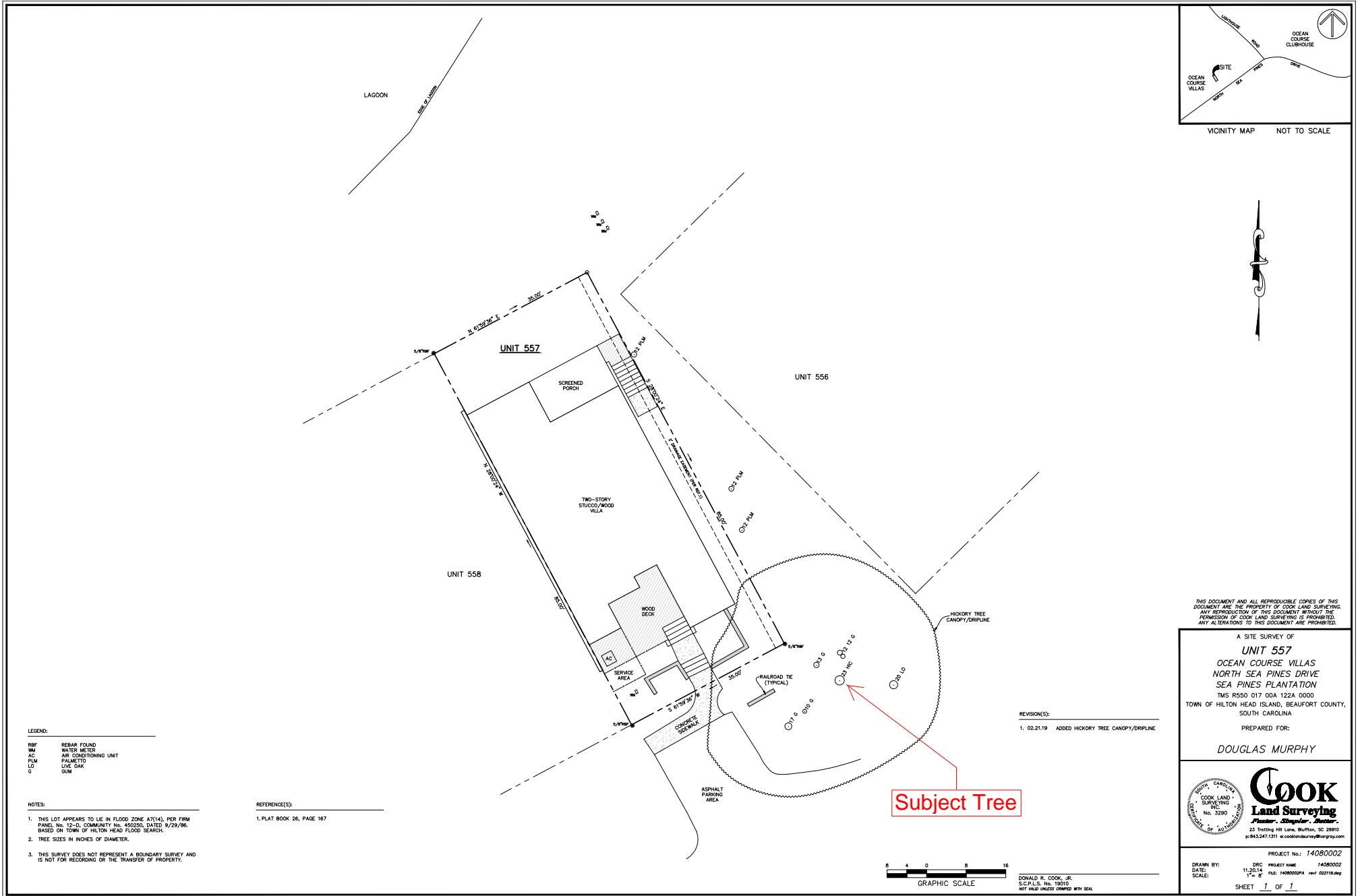
		Price	Body	Paint
HOOD - (PDR: \$187.50, R&I: \$79.20)				
PDR	1-5 dents, Half	\$150.00		
Add-On	Aluminum, 25.00%	\$37.50		
R&I	Insulator		0.50	
R&I	Hood		1.30	
ROOF - (PDR: \$250.00)				
PDR	1-5 dents, Half	\$200.00		
Add-On	Double Panel/Glue Pull, 25.00%	\$50.00		

Grand Total: \$516.70

signature

By signing above, I hereby authorize APEX PDR to perform the estimated repairs to my vehicle(s), and hereby grant you and/or your employees, permission to operate the vehicle(s) herein described on streets, highways or elsewhere for the purpose of testing and/or inspection and/or transport to the repair location. APEX PDR will not be held responsible for loss or damage to the vehicle(s) or any articles left in the vehicle in case of fire, theft, accident or any other cause beyond our control.

Attachment C



THIS DOCUMENT AND ALL REPRODUCIBLE COPIES OF THIS DOCUMENT ARE THE PROPERTY OF COOK LAND SURVEYING. ANY REPRODUCTION OF THIS DOCUMENT WITHOUT THE PERMISSION OF COOK LAND SURVEYING IS PROHIBITED. ANY ALTERATIONS TO THIS DOCUMENT ARE PROHIBITED.

A SITE SURVEY OF
UNIT 557
 OCEAN COURSE VILLAS
 NORTH SEA PINES DRIVE
 SEA PINES PLANTATION
 TMS R550 017 00A 122A 0000
 TOWN OF HILTON HEAD ISLAND, BEAUFORT COUNTY,
 SOUTH CAROLINA

PREPARED FOR:
DOUGLAS MURPHY



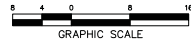
PROJECT No.: 14080002
 DRAWN BY: [blank] DATE: 11.25.14
 SCALE: 1" = 8'
 SHEET 1 OF 1

LEGEND:
 RBF REBAR FOUND
 WM WATER METER
 AC AIR CONDITIONING UNIT
 PLM PALMETTO
 LD LIVE OAK
 G GUM

NOTES:
 1. THIS LOT APPEARS TO LIE IN FLOOD ZONE A7(1A), PER FIRM PANEL No. 12-D, COMMUNITY No. 450250, DATED 9/29/86. BASED ON TOWN OF HILTON HEAD FLOOD SEARCH.
 2. TREE SIZES IN INCHES OF DIAMETER.
 3. THIS SURVEY DOES NOT REPRESENT A BOUNDARY SURVEY AND IS NOT FOR RECORDING OR THE TRANSFER OF PROPERTY.

REFERENCE(S):
 1. FLAT BOOK 26, PAGE 147

REVISION(S):
 1. 02.21.19 ADDED HICKORY TREE CANOPY/DRIFLINE



DONALD R. COOK, JR.
 S.C.P.L.S. No. 19010
 NOT VALID UNLESS COUNTERED WITH SEAL

Attachment D



Unit 557

Unit 556

Subject Tree

Parking Area

Parking Area

Attachment D



Unit 557

Unit 556

Subject Tree

22 Feet

Parking Area

Attachment D



Unit 557

18 Feet

Parking area with
space for two vehicles

14 Feet

Subject Tree



Unit 557

Unit 556

Parking Area



Hickory Nuts in
Common Area





Hickory Nuts

Attachment D

Typical Ocean Course Villas Parking



Typical Ocean Course Villas Parking



Attachment D

Typical Ocean Course Villas Parking



Attachment D

Typical Ocean Course Villas Parking




Attachment D



17.5-inch DBH
Hickory On Property

Parking Area near
Unit 563



← 17.5-inch DBH
Hickory On Property

Parking Area near
Unit 562

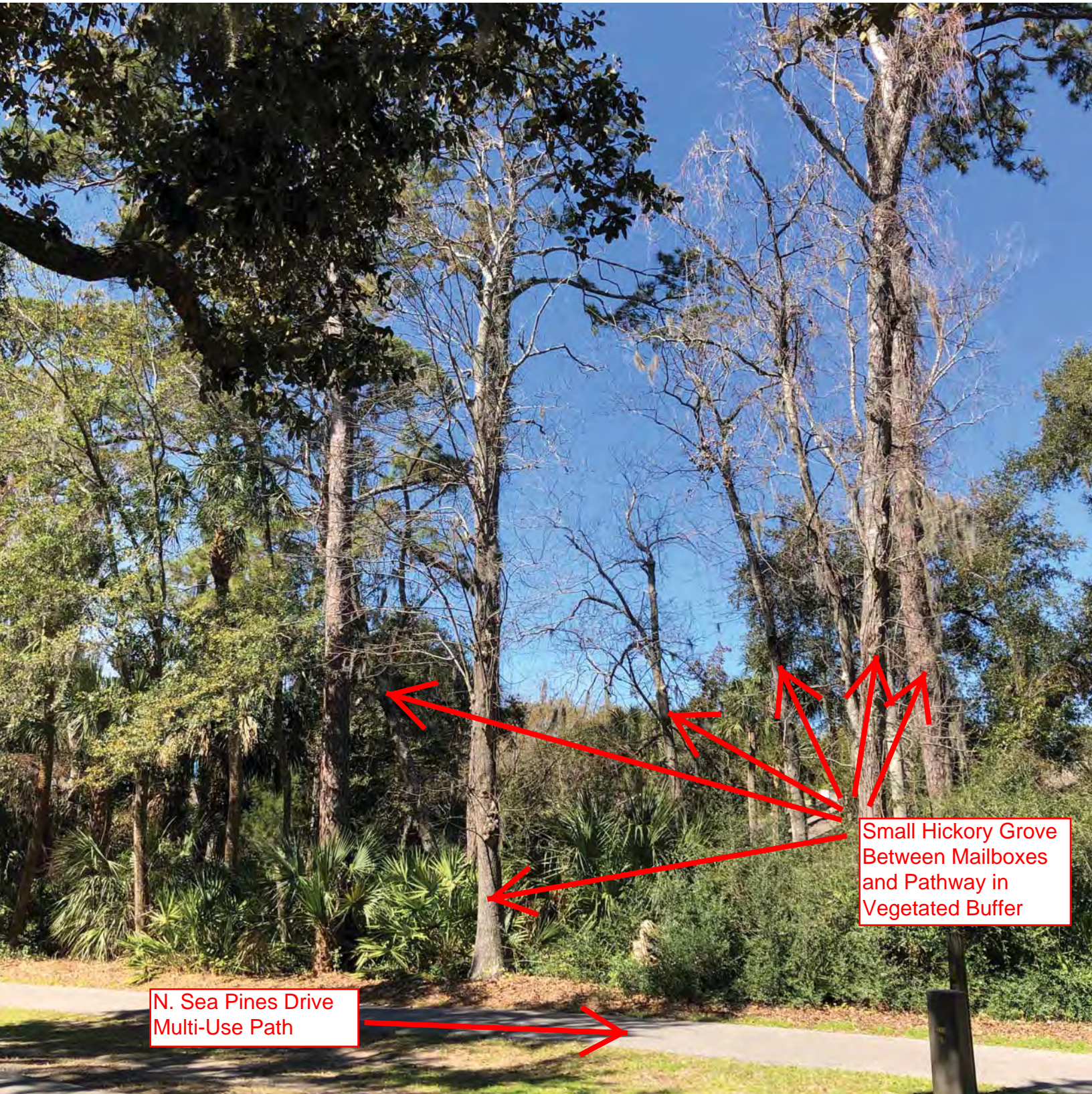
Unit 563

Unit 562

Parking Area
Near Unit 562



Attachment D



N. Sea Pines Drive
Multi-Use Path

Small Hickory Grove
Between Mailboxes
and Pathway in
Vegetated Buffer

Hickory at
Ocean Course
Villas Entrance



Hickories at
Spicebush



Attachment D



Hickory at
Spicebush

Hickories at
117 North Sea
Pines Drive



Attachment E

----- Forwarded message -----

From: "James Ellis" <jamesellis@jonesbrotherstreesurgeons.com>

To: "Browder Rocky" <rockyb@hiltonheadislandsc.gov>

Subject: Ocean Course Villas

Date: Wed, Feb 27, 2019 6:05 AM

Rocky,

The 26" Hickory Tree located to the Right Side of the Parking Area associated with Unit 557 is not Dead, Diseased nor Dying from Visual Inspection. As seen in the attached photo there has been a large co-dominant leader that was removed at one point in time. This has limited further pruning option for the to Tree to continue to thrive or be viable. From what I can gather this cut was made during a hurricane Matthew cleanup effort. The current owner of the unit is complaining about the nut production and it dropping and hitting his vehicles. As seen in the second attach photo there is no way to prune the canopy without infringing with the 25% canopy loss guidelines. Even with All pruning and removal of highlighted areas occurred, I doubt we can guarantee that the hickory nuts would not land in the parking area. Please let us know if you have any questions or concerns.

Best regards,

James Ellis | Horticulturist

ISA Certified Arborist

ISA Tree Risk Assessment Qualified

Jones Brothers Tree Surgeons

843.842.4686

<https://www.jonesbrotherstreesurgeons.com>



Professional Tree Care Experts

Serving the Lowcountry since 1973.

Attachment E



Attachment E



Attachment F

From: [REDACTED]
To: Ladd, Taylor
Cc: [REDACTED]
Subject: VAR-000329-2019
Date: Tuesday, March 05, 2019 1:34:16 PM

Hello,

I am writing in regards to the variance referenced above originally requested by Deborah Murphy. The hearing is to take place on March 25th at 2.30pm and unfortunately not being a fulltime resident will prevent me from being able to attend. I am the owner of Unit #556 Ocean Course Villas in Sea Pines and as stated in the notice of public hearing the hickory tree in questions sits between my villa and The Murphy's (#557).

I fully support the request that Mrs. Murphy is making as I have had several dents on the hood and roofs of my vehicles over recent years, and I've also had rental guests complain about it. Not only is it causing damage to vehicles, it is a safety risk at night. Some of the nuts are hard to see when its dark and they are large enough to cause someone to twist an ankle and / or fall if you happen to step on one. As a property owner of a rental property, I work hard to minimize the risk of a guest being injured and thus reduce my liability. Unfortunately I have stepped on these a few times myself and almost fallen, so I know it can easily happen.

If you would like to contact me for further discussion I can be reached at either number below. I would greatly appreciate it if you would acknowledge receipt of my email at your convenience.

Sincerely,

Jay L. Alls

108 N Sea Pines Drive
Ocean Course Villas #556
Hilton Head, SC.

Jay Alls
Director - Industrial
DC Metro

Wolseley Industrial Group

[REDACTED]
[REDACTED]

www.wolseleyind.com



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Taylor Ladd, *Senior Planner*
DATE: March 11, 2019
SUBJECT: Revisions to Rules of Procedure

At the November 26, 2018 BZA meeting, the Board reviewed and discussed amendments to the Rules of Procedure as presented by Staff. Based on this discussion, a few minor revisions have been made. The attached revised version of the Rules of Procedure are presented for your review.

In the attached document, revisions have been made to:

- Contents (Article IX, Section 2 title) on page 3,
- Article IX, Section 2 on page 16 and 17, and
- General document formatting and pagination.

Prior revisions on page 11 have been removed as per direction from the BZA.

Since the November meeting, revisions have been made to Article IX, Section 2 as per suggestion by public comment and Board discussion at the meeting. Staff has also corrected page numbers and listed the reference attachments in the Contents. Action may be taken to accept these revisions at the March 25, 2019 meeting. If there are no revisions needed, the BZA may vote to approve the amended Rules of Procedure at the next meeting.

As per the Rules of Procedure Article III, Section 2, *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.*

*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 9th 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 bylaws.
 - 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.

C. 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 Applicant, and Interested Parties.

1. ~~2.~~ The Appellant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Appellant believes supports the Application for an 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. ~~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 an 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 Building Permit holder of the Property that is the subject of the Appeal, the Building Permit holder or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Building Permit holder believes supports the position of the Building Permit holder with respect to the Appeal. During the presentation by the Building Permit holder 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 Building Permit holder's time may be extended if the Building Permit holder is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
5. ~~3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal. The Chairman may allow a maximum of five (5) minutes each for all parties to present any desired rebuttal.~~
6. ~~4.~~ Following the presentation, the Board of Zoning Appeals may ask such additional questions of the ~~Applicant~~ Appellant, Property Owner, Building Permit holder or Staff as the members deem appropriate.
7. ~~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.
8. ~~6.~~ 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 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: DATE, 2019

By: _____
David Fingerhut
Chairman

DRAFT

Attachment for Reference

TYPES OF MOTIONS

Main Motions	A main motion is defined as a proposal that certain action is taken or an opinion be expressed by the group. The words to use are: "I Move."
Secondary Motions	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. Secondary motions are divided into three classes which relate to their use in parliamentary procedure. Those classes are: <ul style="list-style-type: none"> ○ Subsidiary motions ○ Privileged motions ○ Incidental motions
Subsidiary Motions	Subsidiary motions relate directly to the motion on the floor. They may change the words, send it to a committee, delay it, etc. 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.)
Privileged Motions	Privileged motions are motions of an emergency nature, 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.
Incidental Motion	Incidental motions are procedural. They deal with process, such as enforcing proper procedure, correcting errors, verifying votes, etc. When introduced, they must be decided before business can resume.
Amending Motion	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>
Motions Commit	Have precedence over the motion to amend. More than one motion can be on the floor but only one question. All pending motions must relate to the main motion on the floor. No new business may be introduced.
Point of Order	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

Restorative Motion	<p>Allows a group to change its mind.</p> <ul style="list-style-type: none"> ○ 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. ○ Within limits, members have the right to rethink a situation if they feel their decision has been made too quickly or without enough information. ○ The two most commonly used restorative motions are: <i>Rescind</i> and <i>Reconsider</i>.
Rescind	<p>Rescind is the motion to use to quash or nullify a previously adopted motion. It may strike out an entire motion, resolution, bylaw, etc.</p> <ul style="list-style-type: none"> ○ 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. ○ It must be seconded. ○ 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.
Reconsider	<p>Reconsider is the motion which allows a group to reconsider the vote on a motion. 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"> ○ Reconsider has special rules to prevent its abuse by a disgruntled minority, since it allows a question already decided to be brought up again. ○ Rules limit who can make the motion. It can only be made by someone who voted on the prevailing (winning) side. ○ 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. ○ It requires a second. ○ It may be debated and it opens up the motion to which it is applied to debate. ○ It requires only a majority vote. ○ 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. ○ 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.
Amend a Motion	<p>Change the wording to make it clearer, more complete, or more acceptable before the motion is voted upon. 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>
Amend an Amendment	<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.
Friendly Amendments	Change in wording to enhance the original motion – can be changed by general consent.
Hostile Amendments	Gives a different meaning to a motion and may defeat the intent of the main motion.
To Commit or Refer a Motion	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.
Postpone	Delays action on a question until later in the same meeting or until the next meeting. <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).
Limit Debate	Motion to exercise special control over debate – 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.)
Previous Question	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). 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.
Postpone Indefinitely	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.
Lay on the Table	Highest-ranked subsidiary motion. Cannot be amended or debated. It is out of order when used to “kill or avoid dealing with a measure”. 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.
Withdraw a Motion	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. This device saves time in disposing of the motion. The presiding officer usually handles the request by use of general consent.
Dilatory Tactics	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

Majority Vote	<ul style="list-style-type: none"> • More than half of the votes cast. • 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.
Silence is Consent	Those members who do not vote, agree to go along with the decision of the majority by their silence.
Two-thirds Vote	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. 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.
General Consent	<p>Is an informal agreement of the group, the method in which action is taken without a formal vote or on occasion without a motion. The Chairman initiates the procedure to expedite business. Usually done to approve and correct the minutes.</p> <ul style="list-style-type: none"> • 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. • A member may object because he feels it is important to have a formal vote and dispel any suspicion of railroading.
Tie Vote	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.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Taylor Ladd, *Senior Planner*
DATE: March 11, 2019
SUBJECT: Substitutions of Nonconformities for Redevelopment

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 seven Substitutions of Nonconformity for Redevelopment that have been granted by staff since the November 26, 2018 BZA meeting.

1. **17 Foxbriar Lane, Tuffin Residence** – As part of a pool deck renovation to remove and replace the existing, failing deck partially encroaching in the tidal wetland buffer on the property, the applicant requested an administrative waiver for existing Nonconforming Site Features. This request was to remove the existing failing and unsafe deck and replace it with pervious pavers within the existing deck footprint. The applicant also will be enhancing the buffer with native plants to offset the buffer disturbed area. Since the request met the criteria for a waiver per LMO Section 16-7-101.F, Substitution of Nonconformities for Redevelopment, the waiver was approved.
2. **3 Avocet Road, Sea Crest Surf and Racquet Club** -- As part of the Minor DPR-001911-2018 application to convert and unused tennis court into overflow parking, the applicant requested an administrative waiver for existing Nonconforming Site Features. This request was to allow the parking lot to be developed within the existing tennis court footprint that is nonconforming with current adjacent street buffer requirements. Since the applicant is installing a more conforming parking area with landscape islands and wheel stops, the request met the criteria for a waiver and it was approved.
3. **3 Burkes Beach, Vacation Homes of Hilton Head** – As part of the Major DPR-002568-2018 application to redevelop the property with a mixed use office and residential building, the applicant requested an administrative waiver for existing Nonconforming Site Features. This request was to allow driveway and parking encroachment into the adjacent use buffer. Since a large, impervious, concrete slab existing in the buffer was proposed to be

removed and the site buffers are to be improved with all required landscaping, the request met the criteria for a waiver and it was approved to allow a significantly smaller area of impervious driveway and pervious parking to encroach in the buffer.

4. **3 Palmetto Bay Road, Enmarket Station Carwash** – As part of the Minor DPR-000047-2019 application to remove and replace the carwash exterior accessory structure that houses the plumbing equipment, the applicant requested an administrative waiver for existing Nonconforming Structures. This request was to allow the existing equipment shed that currently resides in the adjacent use setback to be removed and replaced in the exact same location. Since the renovation is an improvement on what was a dilapidated structure and they are not proposing to expand the footprint of the new equipment shed, the request met the criteria for waiver and it was approved.

5. **27 Old Wild Horse, Nimmer Landscape Service** – As part of the Minor DPR-000301-2019 application to redevelop the property with a landscape business while retaining two of four existing residences, the applicant requested an administrative waiver for existing Nonconforming Site Features. This request was to allow the pre-existing driveway to remain in the adjacent use buffer and serve as a 10-foot wide service driveway for the business. Due to the existing driveway's existing path being along the property line, in the buffer, and also next to a 67" specimen live oak, staff has asked the applicant to maintain the driveway as far away from the tree as possible, which leaves it partially in the buffer. Since the applicant is proposing to narrow the driveway to 10-feet, offset it by 15-feet from the trunk, protect the critical root zone with a permanent fenced area, maintain a planted buffer next to the service drive, decrease impervious cover in the tree's dripline by the removal of a building on the property and bring the rest of the property buffers into conformity as much as possible with landscape improvements, the request met the waiver criteria and it was approved.

6. **63 South Sea Pines Drive, Behar Residence** – As part of a property boundary fence installation adjacent to the pool and pool deck located on the property, the applicant requested an administrative waiver for existing Nonconforming Site Features. A portion of the existing pool and pool deck are nonconforming as they encroach in the tidal wetland buffer delineated for the property. In order to install a fence, it has to go around the pool deck and into the tidal wetland buffer. Since the applicant will be enhancing the buffer with native plants to offset the buffer disturbed area, the request met the criteria for a waiver and it was approved.

7. **15 Moonshell Road, Viventi Residence** – As part of a renovation to enclose a deck located in the adjacent street setback and buffer, the applicant requested an administrative waiver for existing Nonconforming Structures. The deck is currently elevated above grade which is paved for the driveway and parking underneath. As part of the renovation, the steps accessing the original deck and front entrance currently located in the setback and buffer will be removed and relocated. Since they are not increasing the impervious area in the setback and buffer, removing the nonconforming steps such that a very small portion of the new steps will be in the setback and buffer and not adding any new site features to the setback and buffer, the request met the criteria for a waiver and was approved.