



The Town of Hilton Head Island  
**Board of Zoning Appeals Regular Meeting**  
**Monday, June 24, 2019 – 2:30 p.m.**  
Benjamin M. Racusin Council Chambers  
**AGENDA**

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

1. **Call to Order**
2. **Pledge of Allegiance**
3. **FOIA Compliance** – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
4. **Presentation of the Town’s Crystal Awards to outgoing Chairman David Fingerhut – Presented by Josh Gruber, Assistant Town Manager**
5. **Roll Call**
6. **Welcome and Introduction to Board Procedures**
7. **Approval of Agenda**
8. **Approval of Minutes** – Meeting of March 25, 2019
9. **Unfinished Business**
10. **New Business**
  - a. **APL-000770-2019** – Request for Appeal from William Peratta with Greenberg Farrow, on behalf of McDonald’s. The appellant is appealing staff’s determination, dated March 14, 2019, that the proposed digital menu boards for the property located at 2 Plaza Drive are not permitted per the sign standards in the LMO.
  - b. **Public Hearing**  
**VAR-1162-2019** – Robert Brick, on behalf of James Douglas Lamm, is requesting a variance from LMO Section 16-6-102.D, Wetland Buffer Standards, to construct a home and driveway within the 5 foot setback from the 20 foot wetland buffer. The property is located at 26 Oak Marsh Drive and is identified as Parcel# 307 on Beaufort County Tax Map# 10. *Presented by Nicole Dixon*
  - c. **Election of Officers for the July 1, 2019 – June 30, 2020 Term**
11. **Board Business**
  - a. Review and adoption of revised amendments to the Rules of Procedure

## **12. Staff Report**

- a. Waiver Report

## **13. Adjournment**

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

**TOWN OF HILTON HEAD ISLAND**  
**Board of Zoning Appeals**  
**Minutes of the March 25, 2019 – 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, Robert Johnson, John White, Lisa Laudermilch

Board Members Absent: None

Council Members Present: None

Town Staff Present: Rocky Browder, Environmental Planner; Nicole Dixon, Development Review Administrator; Brian Hulbert, Staff Attorney; Taylor Ladd, Senior Planner; Teri Lewis, Deputy Director of Community Development; Teresa Haley, Senior Administrative Assistant

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1. **Call to Order**  
Chairman Fingerhut called the meeting to order at 2:30 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. Ms. Brison moved to approve. Mr. Johnson seconded. The motion passed with a vote of 6-0-0.
7. **Approval of the Minutes – Meeting of November 26, 2018**  
Chairman Fingerhut asked for a motion to approve the minutes of the November 26, 2018 meeting. Vice Chairman Cutrer moved to approve. Mr. Walczak seconded. The motion passed with a vote of 6-0-0.
8. **Unfinished Business – None**
9. **New Business**  
*Mr. White entered the meeting at this time.*
  - 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.

Ms. Ladd presented the application as described in the Staff Report. During the statutory publishing period, Staff received three letters in support of the variance. 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.

Chairman Fingerhut asked the Board for comments and inquiries to Staff. The Board made comments and inquiries regarding: the age, lifespan, and size of the subject tree; consideration of exemptions listed in LMO Section 16-6-104.B.2; under what conditions the Town would approve the application; the subject tree is on the HOA property; the HOA provided an owner affidavit and authorized removal of the subject tree; other hickory trees in the area overhang parking; and a process question pertaining to consideration of surrounding property owners' letters.

Chairman Fingerhut asked if the applicant would like to make a presentation. Ms. Deborah Murphy, the applicant, thanked Ms. Ladd for her assistance throughout the variance application process. The applicant presented statements regarding her grounds for the variance and answered questions presented by the Board.

Chairman Fingerhut asked the Board for comments and inquiries to the applicant. The Board made comments and inquiries regarding: the damage that occurred to the applicant's vehicle; HOA provides weekly maintenance on the property; the applicant performs own maintenance on property; the applicant confirmed adherence to mitigation requirements; the applicant hired an arborist to evaluate the tree; possibly parking in the overflow parking area; and the amount of hickory nuts in other nearby parking spaces.

The Board made additional comments and inquiries to Staff regarding: the exemptions listed in LMO Section 16-6-104.B.2; and mitigation requirements and process.

Chairman Fingerhut opened the meeting for public comments. One member of the public expressed sympathy to the applicant, but does not support removal of the subject tree.

The Board further discussed the variance request and the testimony presented today. Upon the conclusion of the discussion, Chairman Fingerhut asked for a motion.

Mr. Walczak moved to *deny* the application based on the Findings of Facts and Conclusions of Law contained in the Staff Report. Mr. White seconded. The motion *failed* with a vote of 3-4-0. (Roll: Walczak, Fingerhut, White – for the motion; Brison, Johnson, Cutrer, Laudermilch – against the motion.)

Vice Chairman Cutrer moved to *approve* the application with the conditions set forth below and the following Findings 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):

- The subject tree canopy overhanging the Unit 557 entryway and parking space is a unique condition and meets this criteria.

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

- The conditions stated in Criteria 1 do not apply to other properties in the vicinity. This criteria is met.

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):

- Because of these conditions, the application of the Ordinance would unreasonably restrict the utilization of the property.
- The applicant demonstrated they have suffered personal property damage and they are exposed to certain risks entering and leaving their unit because of the tree.

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):

- The authorization of this variance will not be a detriment to adjacent property.
- The character of the zoning district will be mitigated by the planting of mitigation trees.

Conditions of Approval:

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.

Mr. Johnson seconded. The motion *passed* with a vote of 4-3-0. (Roll: Brison, Johnson, Cutrer, Laudermilch – for the motion; Walczak, Fingerhut, White – against the motion.)

**10. Board Business**

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

Staff made changes to the rules based on the feedback given at the last meeting. The Board and public made comments on those changes. Upon the conclusion of the discussion, the Board asked Staff to incorporate the changes and present at the next regularly held meeting.

**11. Staff Report**

- a. Update on APL-000942-2018 – 17 Trail Beach Manor Cat Sanctuary

Ms. Lewis presented an in depth update. The Board expressed concerns with the information presented and their expectations of the BZA decision on this case. Staff will look into the Board's concerns discussed today and report back.

- b. Update on Circuit Court Cases

Ms. Dixon reported the update. The Board requested Staff to provide reports on cases as they arise, as opposed to annual updates.

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

**12. Adjournment**

The meeting was adjourned at 4:22 p.m.

Submitted by: Teresa Haley, Secretary

Approved:

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David Fingerhut, Chairman



# TOWN OF HILTON HEAD ISLAND

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## *Community Development Department*

**TO:** Board of Zoning Appeals  
**VIA:** Shawn Colin, AICP, *Director of Community Development*  
**FROM:** Teri B. Lewis, AICP, *Deputy Director of Community Development*  
**DATE:** June 12, 2019  
**SUBJECT:** APL-000770-2019

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Staff has received an appeal from William Peratta with GreenbergFarrow, on behalf of McDonald's. Mr. Peratta is appealing staff's determination, dated March 14, 2019, that the digital menu board signs proposed to be located at 2 Plaza Drive do not comply with the Town's sign standards in the LMO (Land Management Ordinance).

Per the Code of Laws of South Carolina, specifically 6-29-800.B, upon receipt of an appeal, staff is required to immediately transmit to the Board all the papers constituting the record upon which the action appealed from was taken. The record as attached consists of the following documents:

- Attachment A - Appellant Submittal
- Attachment B - Staff Determination Letter
- Attachment C - Determination Request
- Attachment D - Vicinity Map

Staff reserves the right to submit additional documents.

Please contact me at (843) 341-4698 or at [teril@hiltonheadislandsc.gov](mailto:teril@hiltonheadislandsc.gov) if you have any questions.



Town of Hilton Head Island  
Community Development Department  
One Town Center Court  
Hilton Head Island, SC 29928  
Phone: 843-341-4757 Fax: 843-842-8908  
[www.hiltonheadislandsc.gov](http://www.hiltonheadislandsc.gov)

<b>FOR OFFICIAL USE ONLY</b>	
Date Received:	_____
Accepted by:	_____
App. #: APL	_____
Meeting Date:	_____

Applicant/Agent Name: William Peratta Company: GreenbergFarrow  
Mailing Address: 1430 W. Peachtree St. NW, Suite 200 City: Atlanta State: GA Zip: 30309  
Telephone: 678-427-5138 Fax: \_\_\_\_\_ E-mail: wperatta@greenbergfarrow.com

**APPEAL (APL) SUBMITTAL REQUIREMENTS**

**If you are interested in submitting your appeal electronically please call 843-341-4757 for more information.**

The following items must be attached in order for this application to be complete:

- A detailed narrative stating the Town Official or Body who made the decision, the date of the decision being appealed, the decision being appealed, the basis for the right to appeal, the grounds of the appeal, cite any LMO Section numbers relied upon; **and** a statement of the specific decision requested of the review body.
- Any other documentation used to support the facts surrounding the decision.
- Filing Fee - \$100.00 cash or check made payable to the Town of Hilton Head Island.

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature:  Date: 3/28/19



March 27, 2019

Ms. Nicole Dixon, CFM  
Development Review Administrator  
Community Development  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

Re: McDonald's Drive-Thru Digital/LED Menu Boards - Appeal to Allow Installation of LED Menu Boards

Dear Ms. Dixon:

McDonald's would like to appeal the determination to not allow McDonald's to have LED/Digital Outdoor Menu Boards at its drive-thru per the letter from you dated March 14, 2019, and requests that the Board of Zoning Appeals reconsider that decision and allow installation of said LED menu boards.

McDonald's would like to install two (2) LED menu boards at the drive-thru where menu boards currently exist behind the restaurant. The first menu board would be a "pre-browse" menu board with a screen size display area of 9 SF and measure 26.8" in width and 47.7" in height (55" diagonal). The second menu board, the primary ordering menu board, would include two (2) of these screens with a total display area of 18 SF. For comparison purposes, the existing primary ordering menu board at the McDonald's restaurant on the southern end of the island measures 43 SF in area (63.5" in height and 99" in width). Thus, the proposed LED menu boards are significantly less in area, approximately 20% and 42%, respectively.

Please note that McDonald's is currently in the process of preparing to remodel it's restaurant, and has applied to the Design Review Board for approval of the building elevations, to be followed by construction documents for permitting. These menu boards would be installed as part of the remodel, if approved. The statements made in the determination letter that denies the digital/LED signs are reiterated below with responses that address the concerns.

- A. As stated in Ms. Dixon's letter, *"The purpose of the Town's sign standards is to protect, preserve, and enhance the unique aesthetic character beauty, and charm of the Town. The regulations are intended to encourage the construction of commercial signs of high-quality materials that are aesthetically pleasing and are compatible with their natural surroundings. While there is value in having commercial signage as a means of locating and identifying commercial establishments, the sign regulations in the Land Management Ordinance (LMO) are meant to discourage the use of commercial signage to sell goods and services and to eliminate a distracting atmosphere that can result by the physical and visual clutter caused by the signs."*
- Sec.16-5-114. - Sign Standards, Para. A – Purpose, lists several goals this section is intended to achieve. The stated purposes include deterring signs from peddling commodities or services,

encourage quality construction, preventing an “advertising war” by businesses through aggressive advertising while improving safety and removing visual clutter due to distracting signage.

- The menu boards at the ordering kiosks in the drive-thru are simply devices intended to assist customers in confirming their orders and are not an advertising channel or billboard. They are designed to be one component of an ordering system which streamlines and facilitates the customer’s ordering experience. In that function they are no different than the order stations and menu boards internal to the store.
- Additionally, the menu boards are located behind the restaurant and not visible from US Hwy. 278. They are not intended to identify the commercial establishment and its location; this purpose is fulfilled by the existing freestanding sign at the corner of Plaza Drive and U.S. Hwy. 278.
- In order to soften the appearance of the LED menu boards and help them blend into the surrounding environment, we propose to house the menu board in a kiosk. The proposed order kiosks which house the menu boards are constructed with the same materials (or wood), colors and design as the main building to ensure a compatible appearance. Using similar materials and designs allows us to create a more unified and subdued environment. By design, the menu boards are to be as simple as possible without gimmicks or irrelevant material that would hinder a smooth ordering process. Please refer to the attached exhibit that depicts the kiosk with the LED menu board.
- The new digital menu boards are designed, above all, to improve customer experience by improving the drive-thru ordering process. They have increased readability – an important consideration for expediting orders and in serving in an aging demographic - due to the digital technology and having closer placement to drivers. The technology also allows for reduced glare, automatically adjusting brightness based on ambient light. Ordering efficiency is increased resulting in a reduction in queuing lines and vehicle idling times.

B. As stated in Ms. Dixon’s letter, *Per LMO Section 16-5-114.1.2, Prohibited Signs, the following types of signs are prohibited: “Signs with animated or moving effects (including but not limited to sign faces that periodically change to show different images or messages), and signs carried, waved, or otherwise displayed by persons either on public ways or in a manner visible from public ways are prohibited. This provision is directed toward such displays intended to draw attention for a commercial purpose, and is not intended to limit the display of placards, banners, flags, or other signage by persons participating in demonstrations, political rallies, and similar events.”*

*Digital signage, by definition, is where video or multimedia content is displayed for informational or advertising purposes. As a digital sign or menu board contains animated or moving effects, it would be classified as a prohibited sign per the LMO.*

- As stated above, menu boards are intended as aids to help customers finalize their orders. They are a component of a system devised to process and complete a customer’s order in the most expeditious manner possible. Menu boards are not designed to entice, persuade or attract customers into McDonald’s, nor are they proposed to be visible from public streets. Their purpose is not to act as a way-faring device to inform travelers a McDonald’s is located at that site. Once a customer has reached a position to view a menu board they have completed their decision-making process to enter McDonald’s for a meal and continue through the drive-thru lane to qualify and place their order.
- In the above review comment it is definitively stated “a digital sign or menu board contains animated or moving effects”. The McDonald’s Outdoor Digital Menu Board does not display animated or

moving effects. They do not have flashy bright images or colors and do not contain animation. The menu boards are merely a static display of menu items and prices. It is simply a picture of what is being offered. A garish or ornate, even entertaining, display would be counter-productive because it would distract drivers in the drive-thru lane, thereby slowing the entire process.

- Regarding the code section about "*sign faces that periodically change*," the only display change occurs when the meal time menu changes – which is two or three times during a 24-hour period. This change is from breakfast to lunch/dinner, and then lunch/dinner to breakfast (lunch and dinner share the same menu). This change occurs as quickly and unobtrusively as changing the channel on your home television. Again, that is the only time the message/menu order items "*periodically change*".

C. *Per LMO Section 16-5-114.D.5, Sign Illumination, internal illumination for menu board signs for eating establishments with a drive-through are permitted provided they do not cause glare hazardous to pedestrians or vehicle drivers or so as to create a nuisance to adjacent properties. Such signs shall be placed and angled so that, to the greatest extent possible, they are not visible from public or private streets.*

- The menu board units are recessed into the order kiosks several inches which helps in shielding the screens from anything but a direct view with the possibility of a 45-degree to 60-degree angle view from Plaza Dr., and a partial view thorough the existing landscape buffer from the adjacent Jiffy Lube business. Please refer to the attached exhibit showing the view angle from Plaza Drive.
- Locating the kiosk behind the store and angling the kiosks away from Plaza Drive, along with careful placement of landscape elements along Plaza Drive and the proposed landscape buffer along the property boundary with Jiffy Lube, the order kiosks will be screened from view as much as possible. No hazardous glare will be directed toward motorists and with a proposed landscaped buffer along the property boundary, with Jiffy Lube, the signs will not be a nuisance. Because the area of the primary LED menu board is approximately 40 to 50 percent smaller than the current primary ordering menu board, it inherently has a reduced visual footprint.

D. *LED is a type of light source, or illumination. As long as LED menu boards meet the conditions provided in Section 16-5-114.D.5, they would be permitted.*

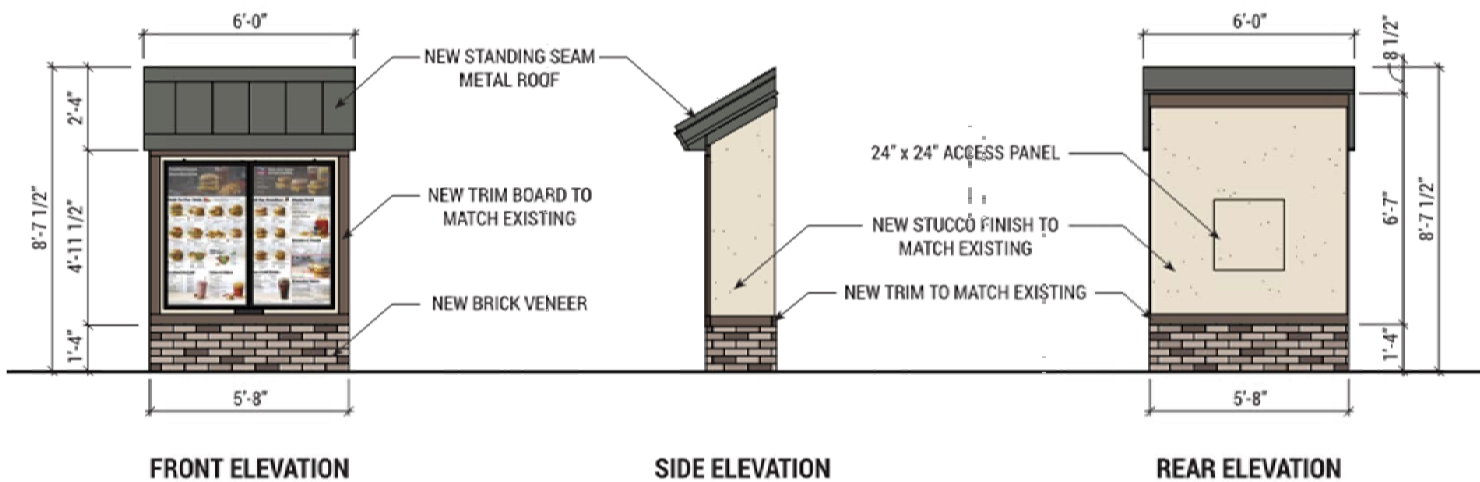
- As described above in item C, and as proposed, the menu boards would meet the conditions specified in Section 16-5-114.D.5, and as such, we believe they should be permitted.

Attached are exhibits showing the proposed LED menu boards, proposed kiosk, and the existing four-panel menu board at the McDonald's on the southern end of the island. Thank you for your consideration.

Sincerely,

William Peratta

EXTERIOR FINISH SCHEDULE	
COLOR SCHEME: 'CRAFTSMAN'	
BUILDING ITEMS	DESCRIPTION
METAL ROOF	STANDING SEAM METAL ROOF BY ENGLERT COLOR: CHARCOAL GRAY
STUCCO	EXISTING STUCCO TO REMAIN NEW STUCCO PAINTED BENJAMIN MOORE "OCTOBER SKY" 2162-70 TO MATCH EXISTING BUILDING
BRICK VENEER	AUTHINTIC BRICK BY MERIDIAN BRICK COLOR: SAVANNAH GRAY



**EXHIBIT A**

**ORDER KIOSK WITH LED MENU BOARDS**

**McDonald's**

Hilton Head Island, SC



EXHIBIT B

EXAMPLE OF LED MENU BOARD

McDonald's  
Hilton Head Island, SC

Area of display

Area of display



EXHIBIT C

LED MENU BOARDS - AREA OF DISPLAY

**McDonald's**

Hilton Head Island, SC

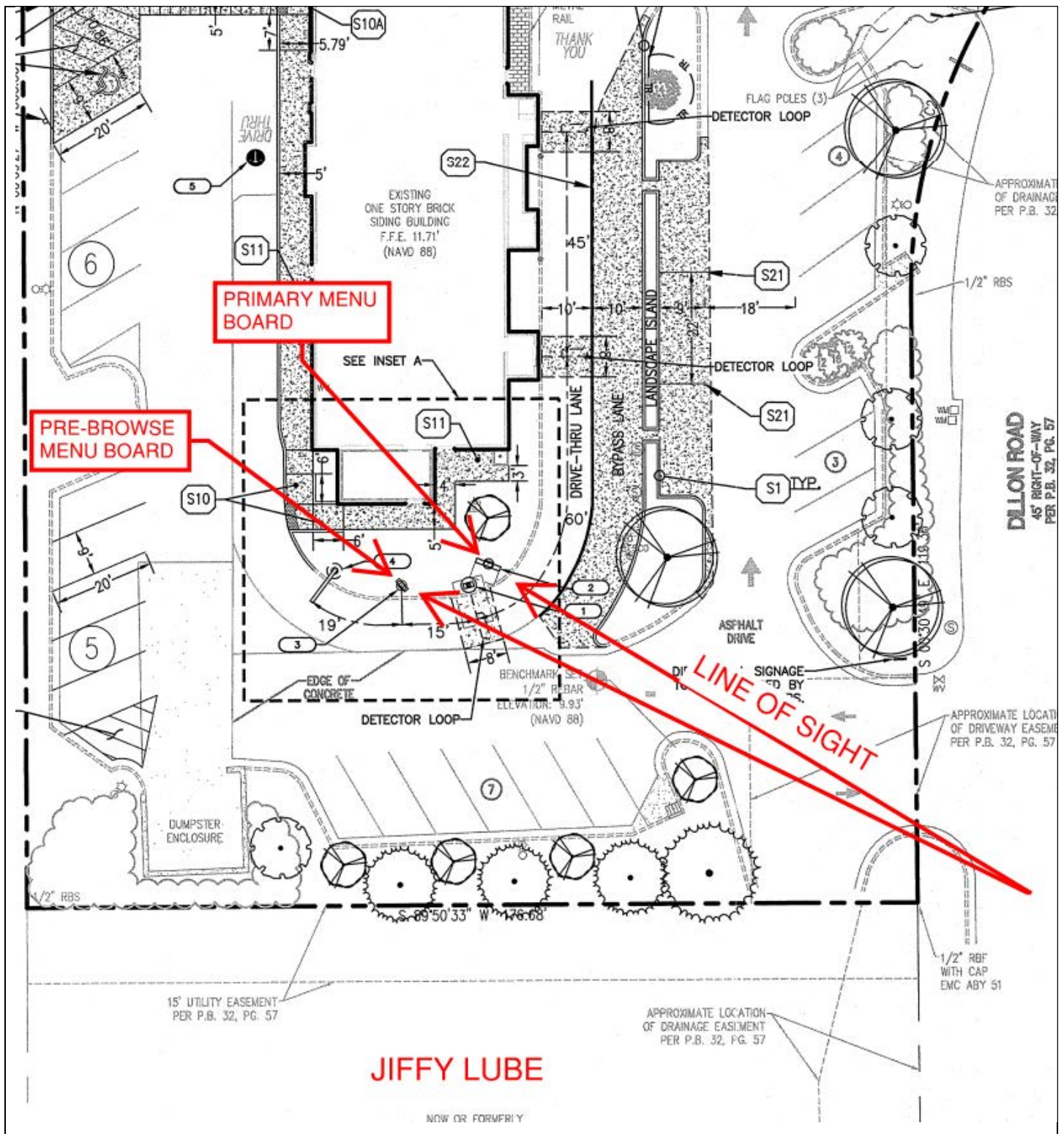


**EXHIBIT D**

**EXISTING ORDER KIOSK WITH PAPER MENU BOARDS AT 50 NEW ORLEANS RD.**

**McDonald's**

**Hilton Head Island, SC**



**EXHIBIT E**  
**LINE OF SIGHT**

**McDonald's**  
Hilton Head Island, SC



## Attachment B

**John J. McCann**  
Mayor

**William D. Harkins**  
Mayor ProTem

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**Council Members**

**David Ames**  
**Tamara Becker**  
**Marc A. Grant**  
**Thomas W. Lennox**  
**Glenn Stanford**

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**Stephen G. Riley**  
Town Manager

### Via E-mail

March 14, 2019

Mr. William Peratta, AICP  
Greenberg Farrow  
1430 West Peachtree Street, NW  
Suite 200  
Atlanta, GA 30309

Dear Mr. Peratta:

This letter is in response to your letter dated February 25, 2019 requesting a formal determination regarding your proposed signs. Specifically, you are inquiring if digital or LED menu boards are permitted to replace the menu boards that are currently located within the drive-through, as part of the redevelopment of the McDonald's at 2 Plaza Drive.

The purpose of the Town's sign standards is to protect, preserve, and enhance the unique aesthetic character, beauty, and charm of the Town. The regulations are intended to encourage the construction of commercial signs of high-quality materials that are aesthetically pleasing and are compatible with their natural surroundings. While there is value in having commercial signage as a means of locating and identifying commercial establishments, the sign regulations in the Land Management Ordinance (LMO) are meant to discourage the use of commercial signage to sell goods and services and to eliminate a distracting atmosphere that can result by the physical and visual clutter caused by signs.

Per LMO Section 16-5-114.I.2, Prohibited Signs, the following types of signs are prohibited: "Signs with animated or moving effects (including but not limited to sign faces that periodically change to show different images or messages), and signs carried, waved, or otherwise displayed by persons either on public ways or in a manner visible from public ways, are prohibited. This provision is directed toward such displays intended to draw attention for a commercial purpose, and is not intended to limit the display of placards, banners, flags, or other signage by persons participating in demonstrations, political rallies, and similar events."

Digital signage, by definition, is where video or multimedia content is displayed for informational or advertising purposes. As a digital sign or menu board contains animated or moving effects, it would be classified as a prohibited sign per the LMO.

Per LMO Section 16-5-114.D.5, Sign Illumination, internal illumination for menu board signs for eating establishments with a drive-through are permitted provided they do not cause glare hazardous to pedestrians or vehicle drivers or so as to create a nuisance to


adjacent properties. Such signs shall be placed and angled so that, to the greatest extent possible, they are not visible from public or private streets.

LED is a type of light-source, or illumination. As long as the LED menu boards meet the conditions provided in Section 16-5-114.D.5, they would be permitted.

Should you wish to appeal this determination to the Board of Zoning Appeals (BZA), you must file an appeal application within 14 calendar days of receipt of this determination.

Should you have any other questions or concerns, please contact me at (843) 341-4686 or [nicoled@hiltonheadislandsc.gov](mailto:nicoled@hiltonheadislandsc.gov).

Sincerely,

A handwritten signature in cursive script that reads "Nicole Dixon".

Nicole Dixon, CFM  
Development Review Administrator



1430 West Peachtree Street, NW  
Suite 200  
Atlanta, GA 30309  
404.601.4000  
www.greenbergfarrow.com  
We Are Global

February 25, 2019

Ms. Nicole Dixon, CFM  
Development Review Administrator  
Community Development Department  
Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, SC 29928

Re McDonald's 2 Plaza Dr. – Request for Digital Menu Board Signs

Dear Ms. Dixon:

As part of McDonald's remodeling efforts for the restaurant at 2 Plaza Drive, McDonald's would like to install digital or LED menu boards in accordance with those shown in "Exhibit A," submitted herewith.

Two (2) digital/LED signs are proposed to be installed. One (1) sign would be the pre-browse board, approximately 10 SF in size; and the other would be a two-panel menu board, approximately 20 SF in size. Both are further described in Exhibit A and are pictured below.



The signs would be placed behind the store very close to the locations of the exiting menu boards, and the message side of the sign would not be visible from US 278 or Plaza Dr.

On behalf of McDonald's USA, LLC, thank you for your consideration.

Sincerely,

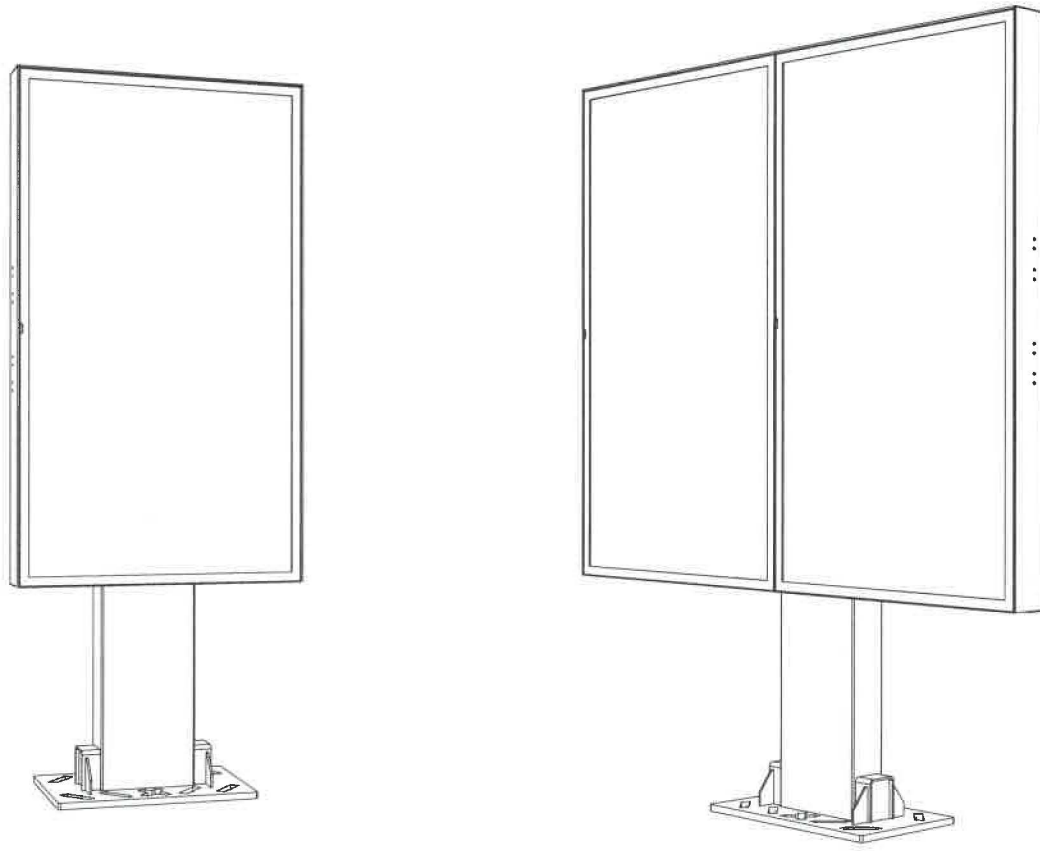
William Peratta, AICP  
GreenbergFarrow



# EXHIBIT A



McDonald's - 2 Plaza Drive



## 55" Outdoor digital menuboard

02-55-2S/D Outdoor Menu Board

Permitting Unit Information

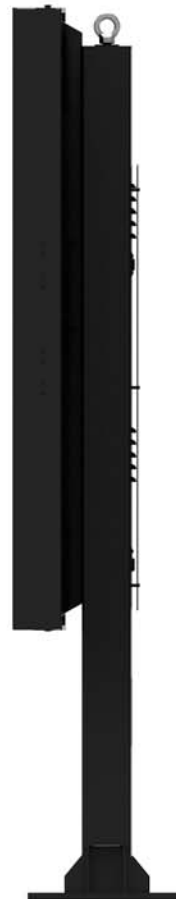
Version 1.0

# Coates ODMB

Single screen unit



Area of display



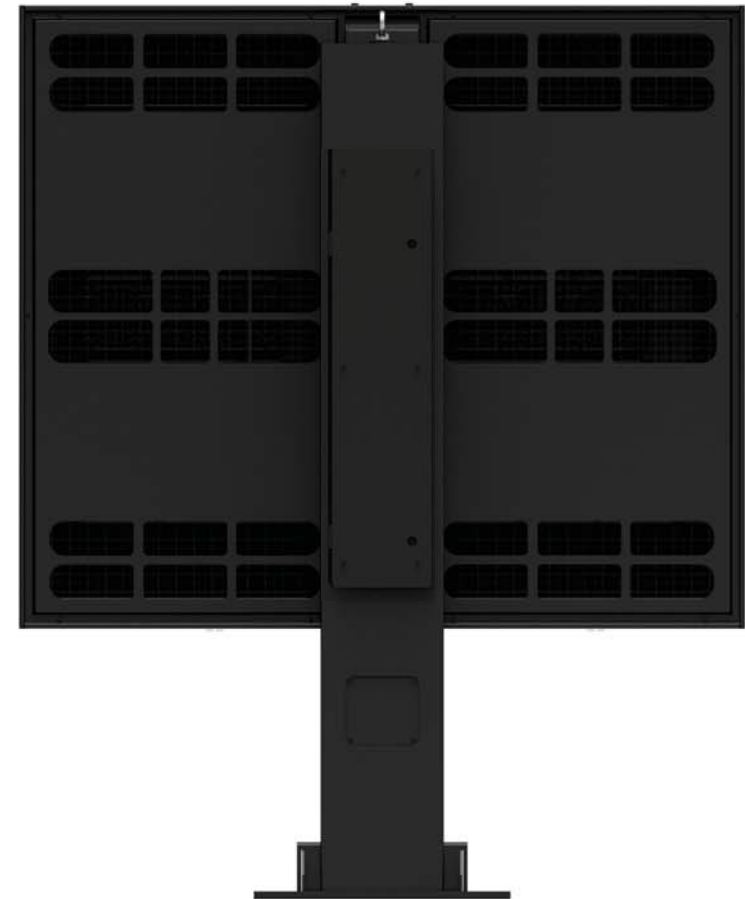
# Coates ODMB

Double screen unit



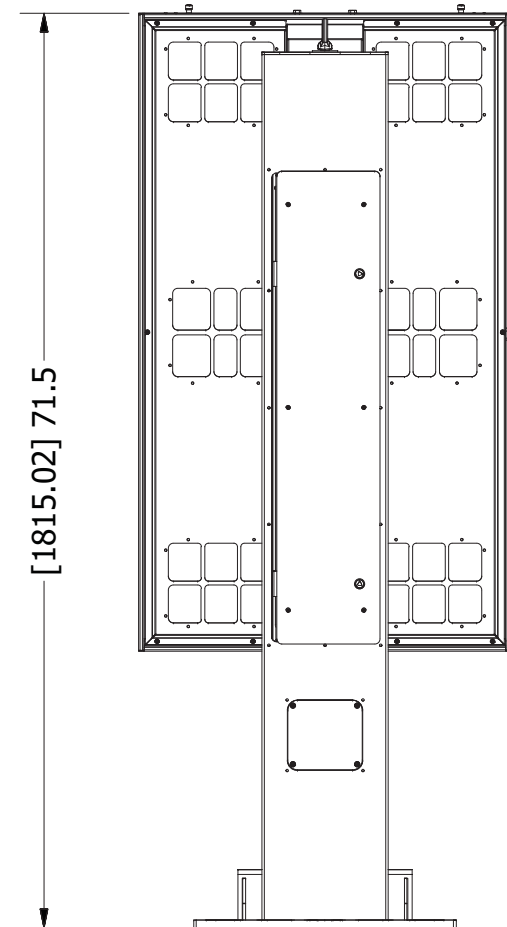
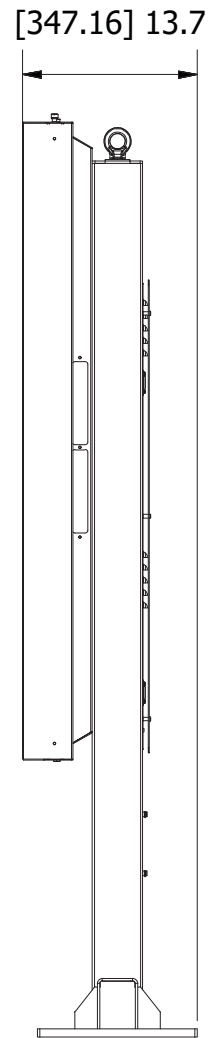
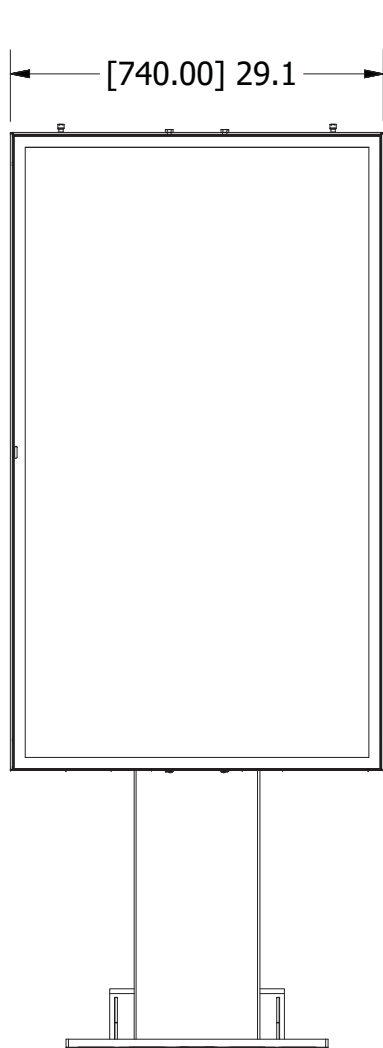
Area of display

Area of display



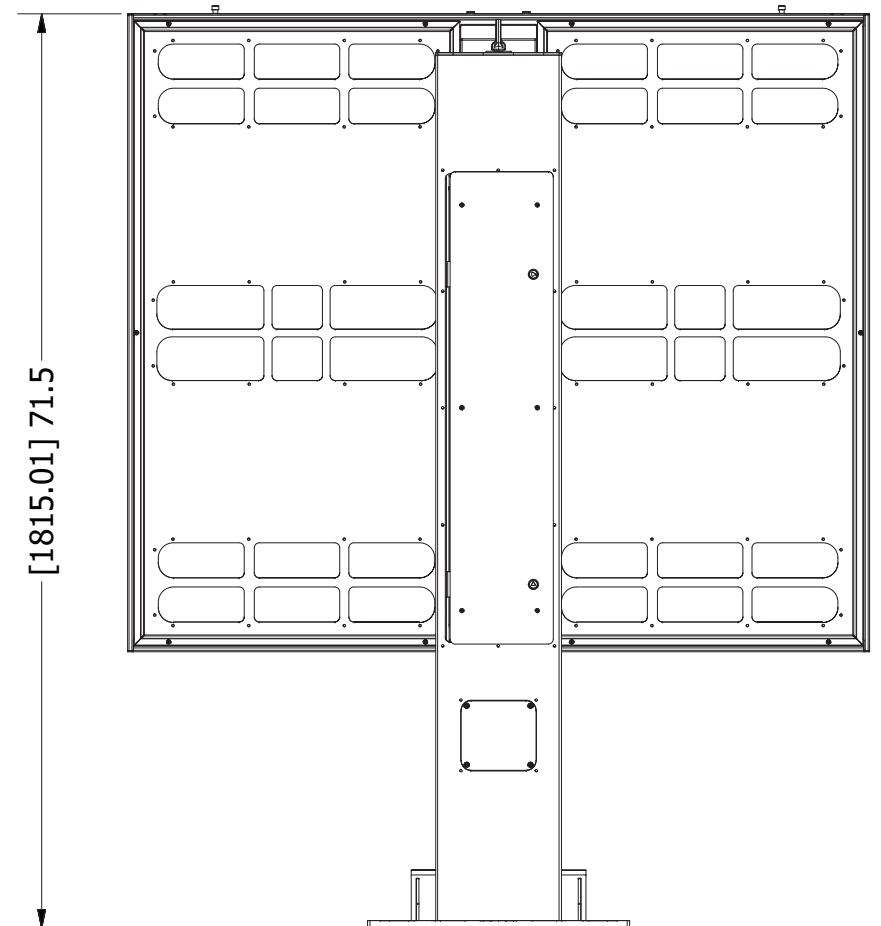
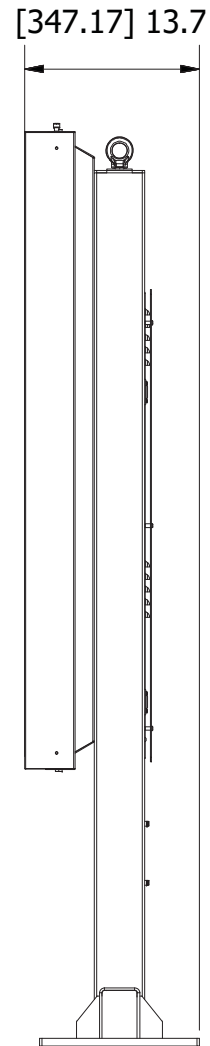
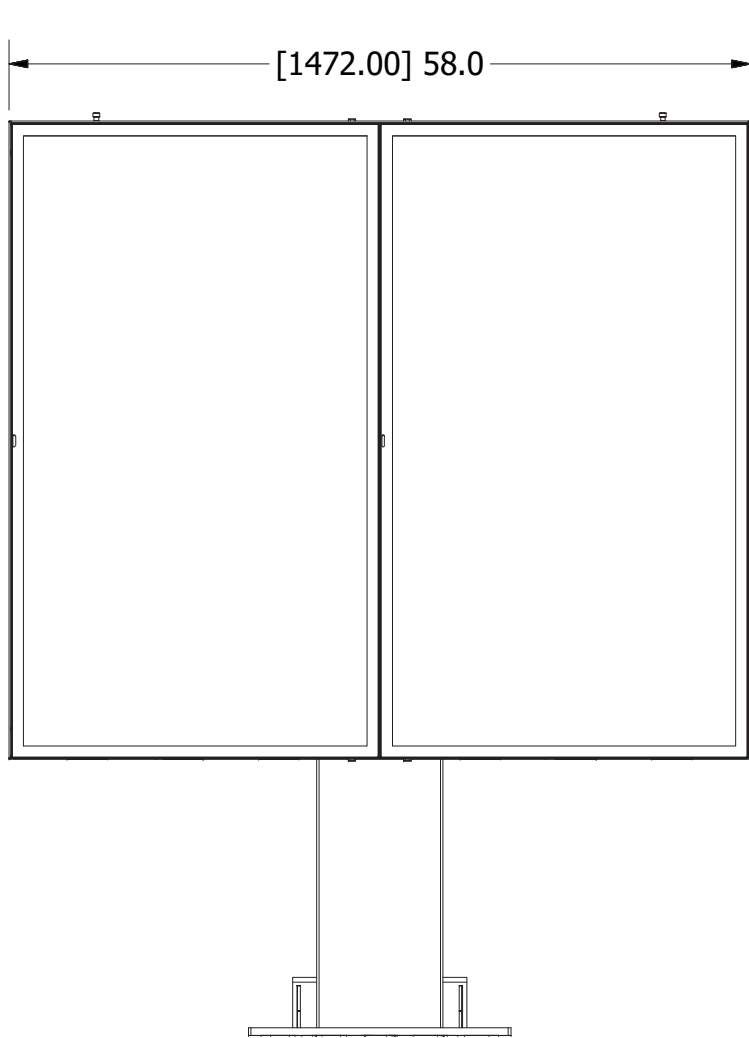
# Coates ODMB

Single screen unit



# Coates ODMB

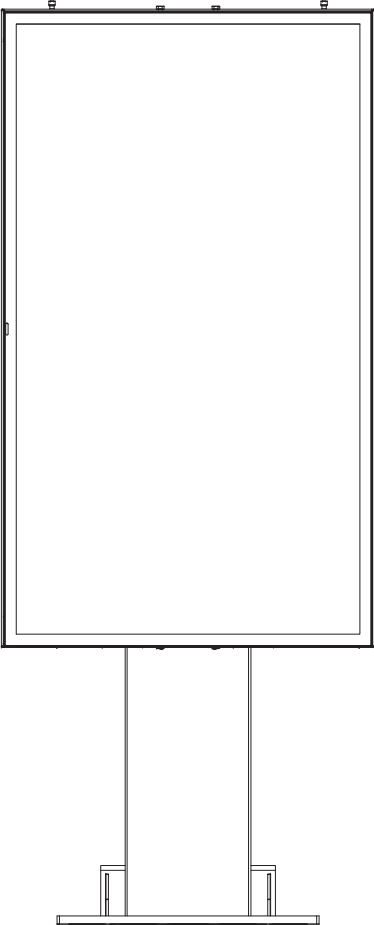
Double screen unit



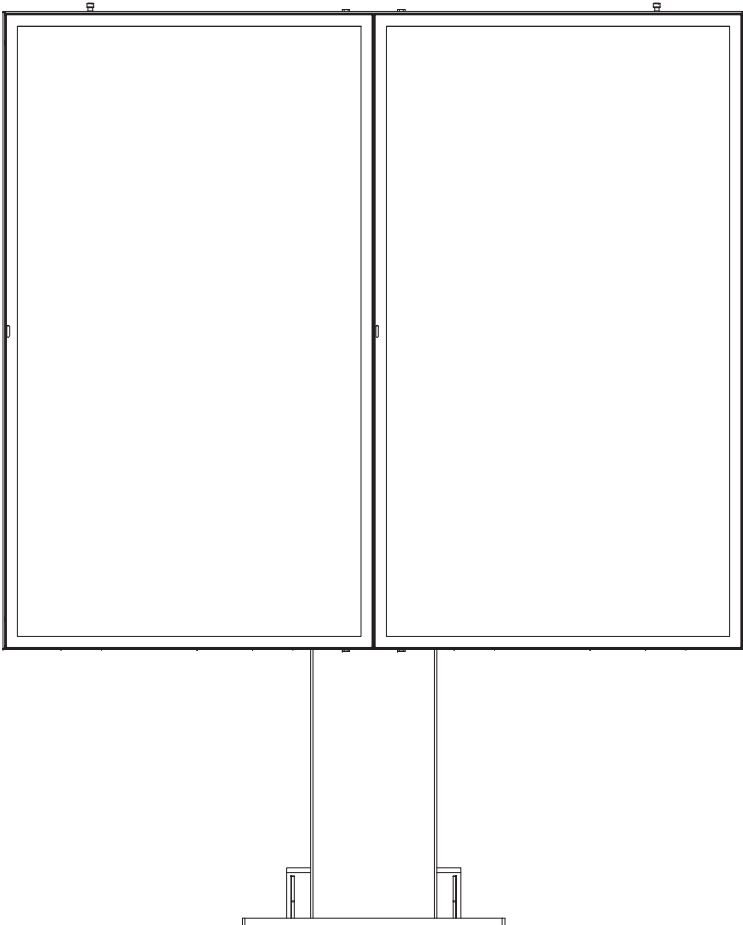


# Coates ODMB

Power draw



Max potential draw 5.7A @110V



Max potential draw 9.8A @110V



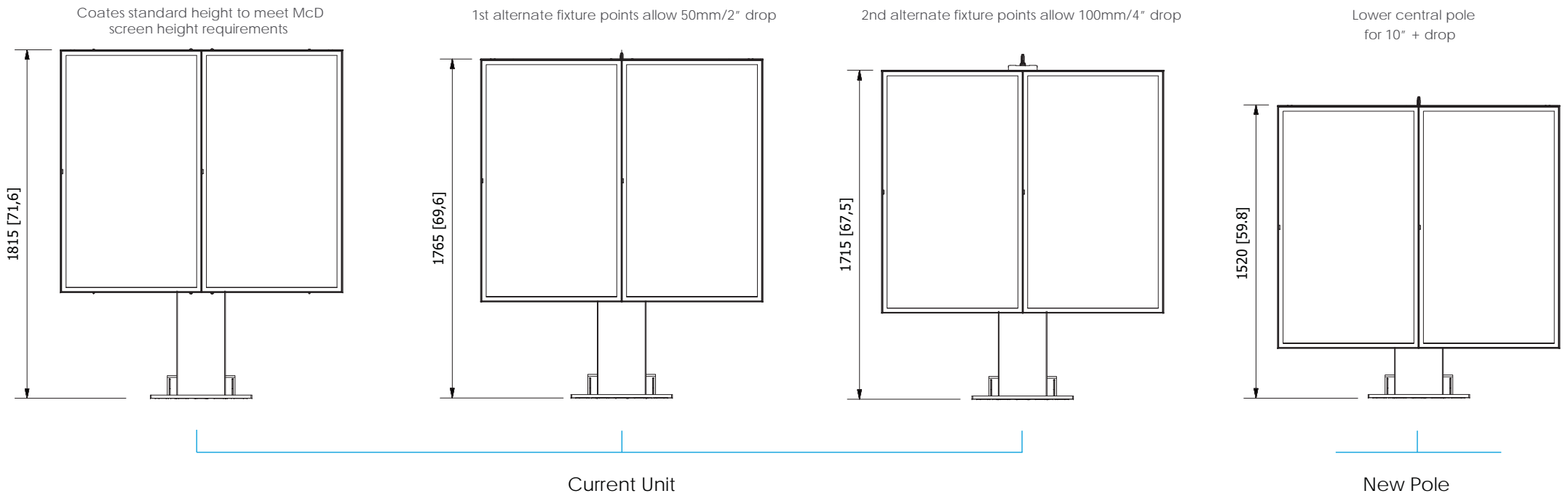
UL48 Electric sign

# Coates ODMB

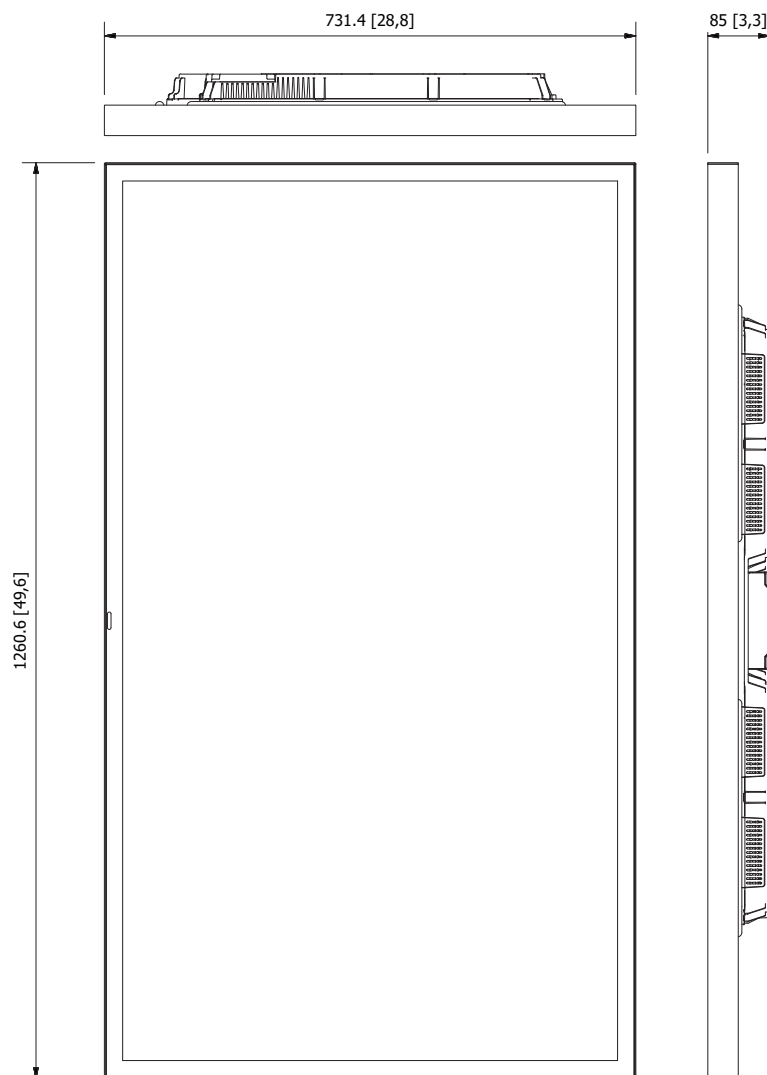
## Height variations



Existing design has multiple fixture points already built in for brackets and screens allow for lowering in 2 additional increments.



# Display specification



## Samsung 550HF

<b>Diagonal Size</b>	<b>55"</b>
<b>Brightness</b>	<b>2500 NIT</b>
<b>Weight</b>	<b>52.6 Kg [118.2 lbs]</b>
<b>Mechanical Specification</b>	
<b>Glass</b>	<b>5T Tempered Glass</b>
<b>Bezel Width</b>	<b>24.9mm [0.98"]</b>
<b>Operation Temperature</b>	<b>-40°C ~ 50 °C [ -40 F ~ 122 F]</b>
<b>Certification</b>	<b>UL : CUL60950-1 (GO)</b>

# Display specification

## Lumen output

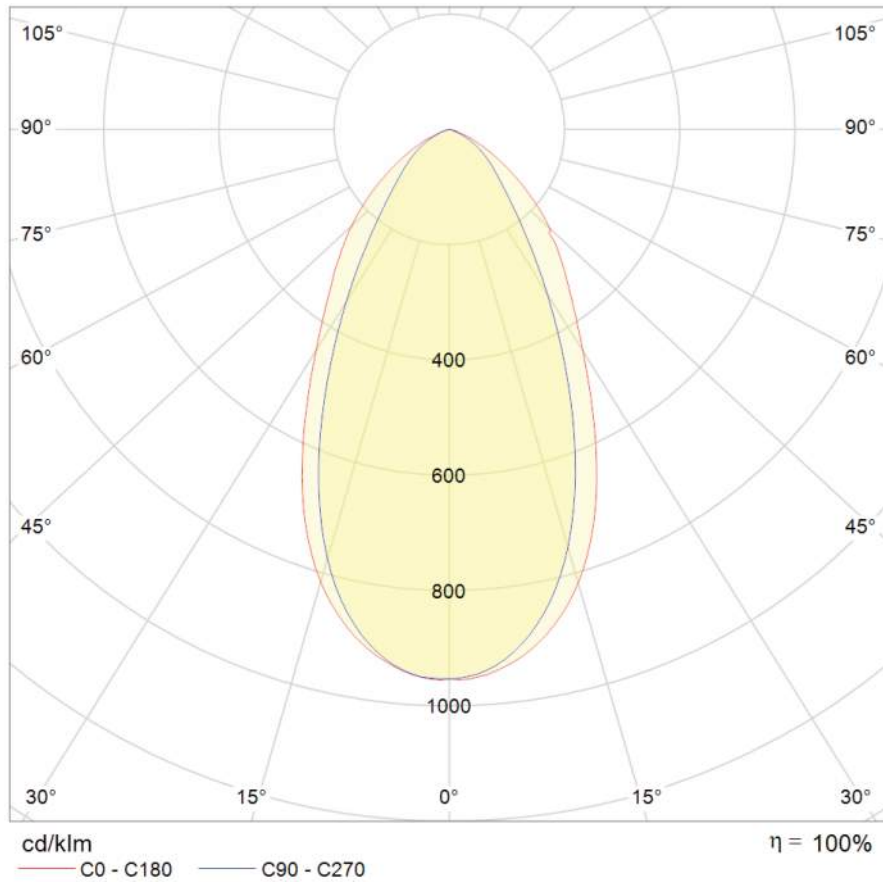


Fig 1.0

The attached is the max potential light output of the screen (see accompanying IES file)

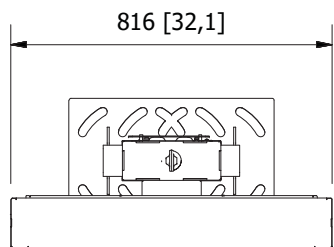
The units have inbuilt ambient light sensors

These light sensors dim the brightness of the screen based on the light surrounding it

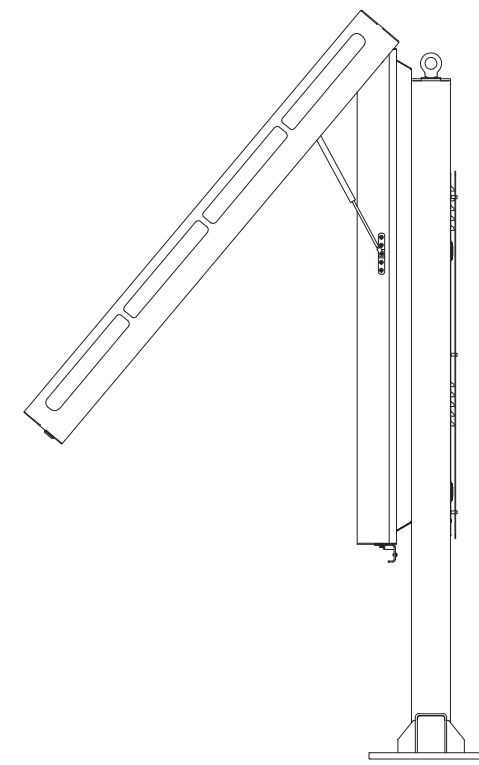
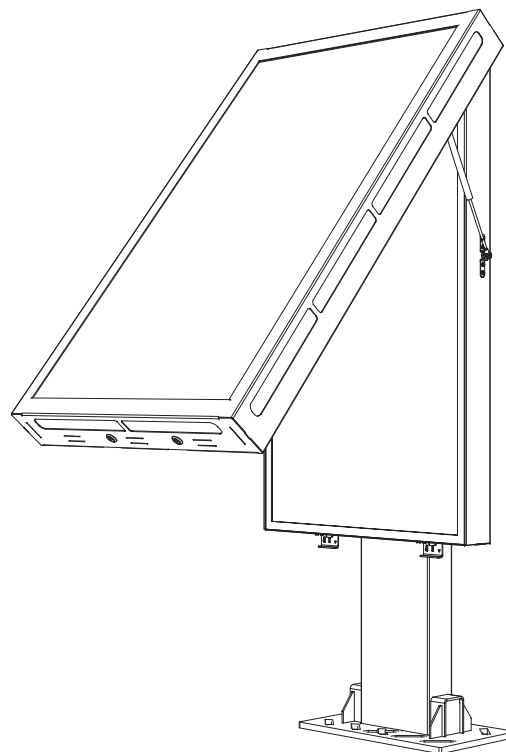
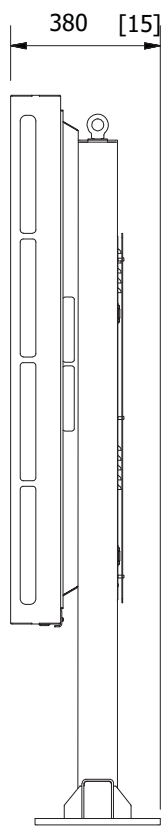
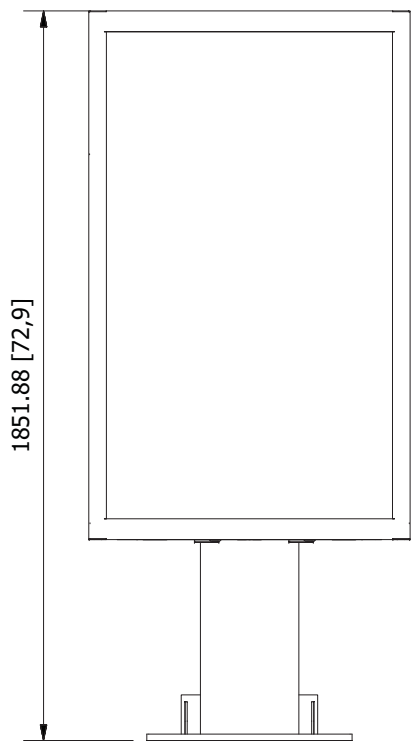
The screens can dim from full brightness 2500nit ( Fig1.) all the way down to 500nit to prevent excessive output (glare) in low light and night time environments

# Coates ODMB

Single with additional security glass

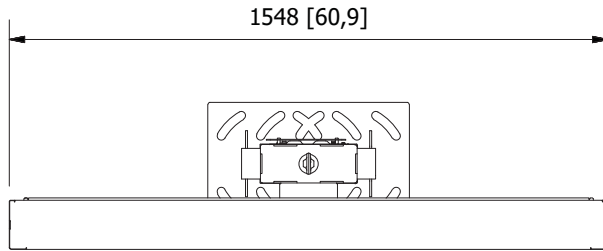


Optional tempered glass security cover  
6mm tempered glass

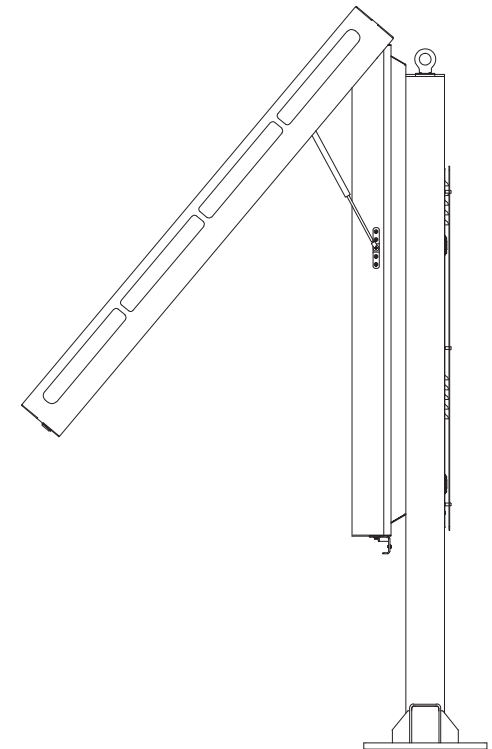
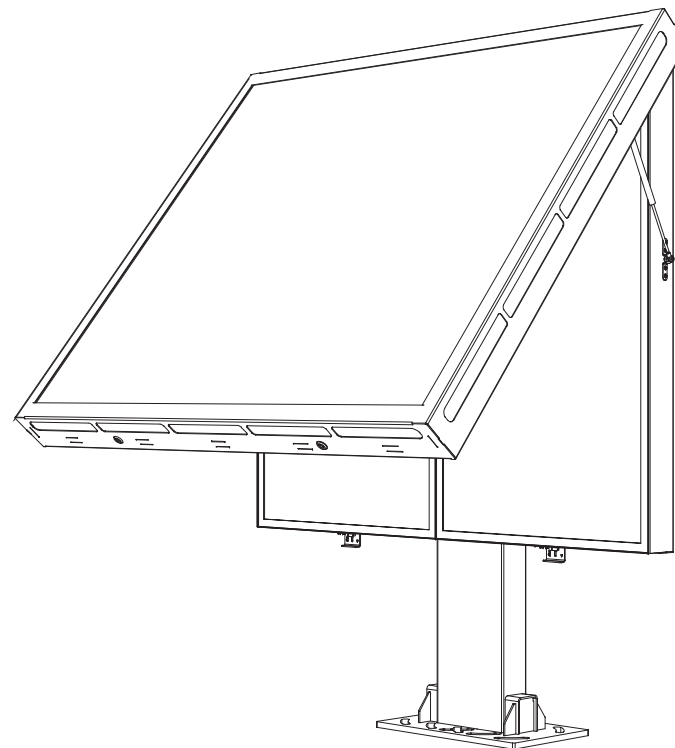
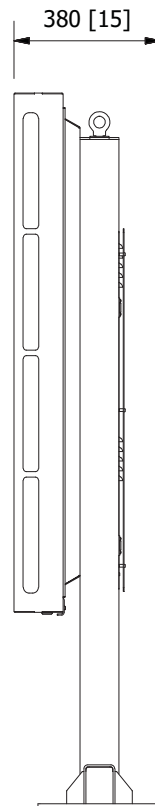
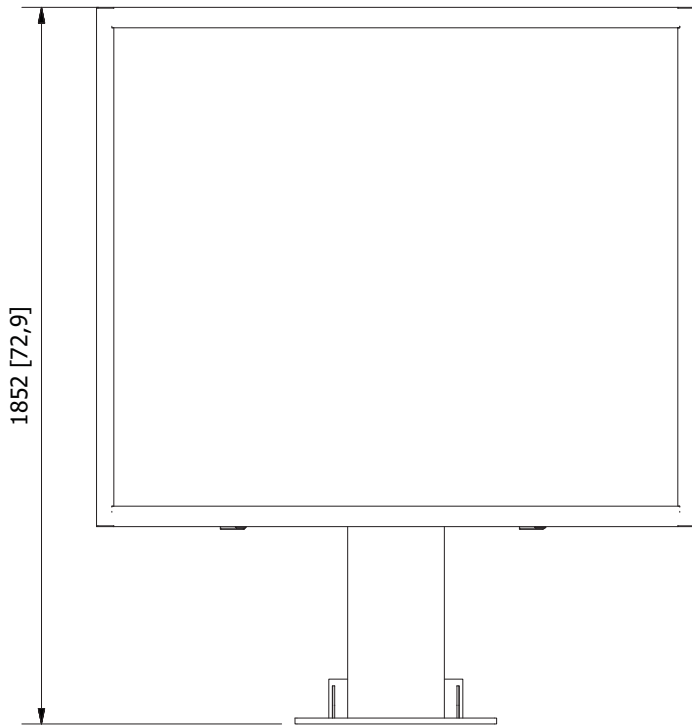


# Coates ODMB

Double with additional security glass



Optional tempered glass security cover  
6mm tempered glass



Coates ODMB  
Additional security glass



# Coates ODMB

Color specification



Unit powder coat color Coates dark grey  
Match Pantone: 446C  
Gloss specification: 7-12 units @60deg





Property highlighted in blue  
subject to Appeal

**APL-000770-2019 Subject Property**

100 50 0 100 Feet



TOWN OF HILTON HEAD ISLAND  
1000 HILTON HEAD ISLAND, S.C. 29928  
PHONE: 843.785.1000 FAX: 843.785.1001  
WWW.HILTONHEADISLANDSC.COM



This information may be used for informational purposes only and is not intended to be used as a legal document. It is not intended to be used as a legal document in the absence of a completed set of plans. The Town of Hilton Head Island assumes no liability for inaccuracies or omissions in this information.



## TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court	Hilton Head Island, SC 29928	843-341-4757	FAX 843-842-8908
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### STAFF REPORT VARIANCE

Case #:	Public Hearing Date:
VAR-001162-2019	June 24, 2019

Parcel or Location Data:	Applicant	Owner
Parcel#: R510 010 000 0307 0000 Address: 26 Oak Marsh Drive Acreage: .19 acres Zoning: RM-4 (Low to Moderate Density Residential)	Robert Brick 156 Sweet Autumn Lane Boone, NC 28607	James Douglas and Kathy Jo Lamm 2521 Albatross Lane Matthews, NC 28104

**Application Summary:**

Robert Brick, on behalf of James Douglas and Kathy Jo Lamm, is requesting a variance from LMO Section 16-6-102.D, Wetland Buffer Standards, to construct a home within the 5 foot setback from the 20 foot wetland buffer. The property is located at 26 Oak Marsh Drive and is identified as Parcel# 307 on Beaufort County Tax Map# 10.

**Staff Recommendation:**

Staff recommends the Board of Zoning Appeals **approve** the application, based on the Findings of Fact and Conclusions of Law contained in the staff report, with the following conditions:

1. The deck in the rear is reduced in size to eliminate any encroachments into the 20 foot wetland buffer and the 5 foot building code setback from the property line.
2. Sediment and erosion control fencing be installed in a way that leaves room for the home to be constructed with as little disturbance and impact to the wetland buffer as possible. The fencing shall be inspected by staff prior to construction. Upon project completion, the areas of the buffer that were disturbed shall be re-planted to create a fully vegetated and functioning wetland buffer.
3. The areas of the wetland buffer that are currently void of vegetation be planted with wetland vegetation upon project completion. The applicant shall submit a landscaping plan for review and approval by the Town's Environmental Planner within 2 weeks of variance approval.
4. Staff shall inspect the property prior to a final Certificate of Occupancy is passed on the building permit to check for compliance with the landscaping plan and buffer impact

mitigation.

**Background:**

The subject property is located in the Oak Marsh Plantation Subdivision. The property is adjacent to another single family residential lot and is bound by the marshes of Old House Creek in the rear and on one side. The applicant is pursuing the purchase of the property from the current owners in order to construct a single family home.

While reviewing Town Code requirements, Oak Marsh Plantation Property Owners Association (POA) building requirements and looking at housing design options, the applicant found that there are several development restrictions that will impact their ability to design a home for the subject property.

The Oak Marsh Plantation POA requires that new homes constructed within the subdivision are built to a minimum of 1500 square feet in size. Staff contacted the POA President to find out if a variance could be obtained from this requirement and was told no.

As the property is adjacent to a tidal wetland, the Land Management Ordinance (LMO) requires a 20 foot buffer from the edge of the wetland. Additionally there is a 5 foot setback from the edge of the wetland buffer for buildings, surface parking lots and vehicular accessways. This 5 foot setback requirement from the wetland buffer was added to the LMO when it was rewritten and adopted in 2014. The intent of the additional 5 foot setback from the wetland buffer is to provide an area in between the wetland buffer and the buildable area of a lot to allow room for construction equipment and materials in order to keep the wetland buffer from being impacted during construction. As shown in Attachment D, the most recent version of the plat of the property which was recorded in 2004, does not have the extra 5 foot setback shown as it was not required at that time.

The Town's Building Code also requires a 5 foot setback from all property lines.

As the property is irregularly shaped and due to these development restrictions, the applicant decided to pursue a variance from the 5 foot setback from the edge of the wetland buffer (see Attachment C) in order to fit a home on the lot. The applicant looked at several different home designs before deciding to apply for a variance but was unable to find one that would meet all requirements.

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

**Grounds for Variance:**

According to the applicant, the variance is required because strict enforcement of the 5 foot setback from the edge of the wetland buffer causes an unnecessary hardship. The applicant states in their narrative that since the property is small, significantly irregularly shaped and located along the marsh, they are faced with difficulty trying to design a home that will meet both POA and Town requirements. The applicant focused on identifying a house design that would minimally impact the marsh and the wetland, be elevated so that it is resistant to hurricanes and high winds, and meet POA requirements for size and elevation, all while meeting their own living needs with space, bedrooms

and bathrooms. The applicant states the design they came up with meets all POA and Town requirements other than three areas of intrusion into the 5 foot setback from the wetland buffer.

**Summary of Fact:**

- 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 May 23, 2019 as set forth in LMO Section 16-2-102.C and Appendix D-23.
- Notice of the Application was published in the Island Packet on June 2, 2019 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on May 31, 2019 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on June 4, 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 32 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 24 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was mailed 20 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 Facts:**

- The subject property is approximately .19 acres in size.
- The subject property, being long and narrow, is irregularly shaped.
- The subject property is bound by the marshes of Old House Creek in the rear and on one side.

**Conclusion of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because the combination of the shape and size of the property and the fact that it is located adjacent to the marsh on two sides of the property are extraordinary and exceptional conditions.

**Summary of Facts and Conclusions 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 Facts:**

- There are a few properties in the vicinity that are irregularly shaped.
- There are no properties in the vicinity that are as small as the subject lot and that are bound on two sides by the marsh.

**Conclusions of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because the extraordinary conditions do not generally apply to other properties in the vicinity.
- While there are other properties in the vicinity that are irregularly shaped, staff could not identify any properties in the vicinity that are this small in size, irregularly shaped and that also are surrounded by the marsh on two sides.

**Summary of Facts and Conclusions 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 Facts:**

- LMO Section 16-6-102.D requires a 20 foot buffer from the edge of the tidal wetland. This section also requires an additional 5 foot building setback from the edge of the 20 foot wetland buffer. The wetland buffer, along with the additional 5 foot setback, encompasses more than half of the property area.
- The requirement for a 5 foot setback from the edge of the wetland buffer was not in the LMO

when the plat of the property was most recently recorded in 2004.

- The Building Code requires a 5 foot setback from the edge of all property lines.
- The Oak Marsh Plantation POA requires that new homes constructed within the subdivision are built to a minimum of 1500 square feet in size.

**Conclusion of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because the extraordinary conditions that pertain to this property combined with the strict application of the LMO, the Building Code and the POA requirements prohibits or restricts the use of the property.

**Summary of Facts and Conclusions 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 Facts:**

- The applicant is requesting a variance from the 5 foot setback from the edge of the 20 foot tidal wetland buffer in order to construct a home.
- The intent of the additional 5 foot setback from the wetland buffer is to provide an area in between the wetland buffer and the buildable area of the lot to allow room for construction equipment and materials in order to keep the wetland buffer from being impacted during construction.
- Staff found no evidence that the authorization of the variance will be of substantial detriment to the adjacent property or the public good.
- Staff found no evidence that the character of the zoning district will be harmed by the granting of the variance.
- Staff did not receive any opposition to the variance request from the public.

**Conclusion of Law:**

- Staff concludes that this application meets the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04.
- Though the LMO requires an additional 5 foot building setback from the edge of the 20 foot wetland buffer in order to avoid disturbance to the wetland buffer during construction, the proposed encroachment only takes up about 50% of the setback in those areas of encroachment.
- If the variance is approved with the recommended conditions imposed during construction, staff can find no evidence that the proposed home encroaching into the setback will be of substantial detriment to the adjacent property, the public good or the character of the zoning district.

**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 be granted to the applicant because all four of the variance criteria have been met. The LMO Official recommends approval with the following conditions:**

1. The deck in the rear is reduced in size to eliminate any encroachments into the 20 foot wetland buffer and the 5 foot building code setback from the property line.
2. Sediment and erosion control fencing be installed in a way that leaves room for the home to be constructed with as little disturbance and impact to the wetland buffer as possible. The fencing shall be inspected by staff prior to construction. Upon project completion, the areas of the buffer that were disturbed shall be re-planted to create a fully vegetated and functioning wetland buffer.
3. The areas of the wetland buffer that are currently void of vegetation be planted with wetland vegetation upon project completion. The applicant shall submit a landscaping plan for review and approval by the Town's Environmental Planner within 2 weeks of variance approval.
4. Staff shall inspect the property prior to a final Certificate of Occupancy is passed on the building permit to check for compliance with the landscaping plan and buffer impact mitigation.

**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, Disapprove the application, or Approve with Modifications. Findings of Fact and Conclusions of Law must be stated in the motion.**

**PREPARED BY:**

ND  
\_\_\_\_\_  
Nicole Dixon, CFM, Development Review  
Administrator

June 12, 2019  
\_\_\_\_\_  
DATE

**REVIEWED BY:**

\_\_\_\_\_

\_\_\_\_\_

TBL

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Teri Lewis, AICP, Deputy Director of  
Community Development

June 12, 2019

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DATE

**ATTACHMENTS:**

- A) Vicinity Map
- B) Applicant's Narrative
- C) Proposed Site Plan
- D) Plat of Property
- E) Alternative Plan
- F) POA Approval





VAR-001162-2019  
ATTACHMENT A - Vicinity Map

ATTACHMENT B

**From:** [REDACTED]  
**To:** [Mendrick, Shari](#); [Dixon Nicole](#)  
**Cc:** ["Wendy Brick"](#)  
**Subject:** Robert Brick - Variance Application  
**Date:** Thursday, May 23, 2019 2:50:41 PM  
**Attachments:** [BRICK SITE PLAN.pdf](#)  
[Variance -BZA Application copy.docx](#)

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To The Community Development Department, Town of Hilton Head Island:

We are requesting a variance in buffer standards to seek and obtain relief from LMO Section 16-6: National Resource Protection: specimen tree and wetland buffer standards.

A variance is requested in order for us to acquire the property from the current landowner (James D and Kathy Lamm) and build a house on Lot 32, #26 Oak Marsh Drive, as strict enforcement of a 5 ft. Buffer from the 20 ft. O.C.R.M. Setback line (Tidal Wetland Buffer) from the marshes of Old House Creek would cause unnecessary hardship.

The Oak Marsh HOA requires a property to be at the least 1400 SF of heated space. We have worked to design a home that will meet the HOA requirements and to also fit on the significantly irregular shape (due to 20 ft. O.C.R.M. Setback line / Tidal Wetland Buffer) of the property in question (Lot 32, #26 Oak Marsh Drive, Oak Marsh Plantation, Tax Parcel No. R510 010 000 0307 0000).

Please reference the attached site plan to scale 1"=30' (using survey provided by current lot owner) and showing proposed house footprint placed on property.

This request meets all variance criteria of LMO Section 16-2-103.S.4.a. Variance Review Standards, to include the following:

01. There are extraordinary and exceptional conditions pertaining to the particular piece of property **(The property is small at .203 acres with an irregular shape and boundaries, due to 20 ft. O.C.R.M. Setback line, build setback and adjacent properties);**

02. These conditions do not generally apply to other properties in the vicinity **(No other lot in the community is this small with such an irregular shape and boundaries);**

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 **(In order to meet minimum HOA size criteria, not encroach on adjacent properties, and fit a house on the irregular shaped property, a variance must be obtained);** and

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 locative will not be harmed by the granting of the Variance **(The requested variance will allow house footprint to abut the O.C.R.M setback line. Authorization of the variance will cause no harm to the zoning district, adjacent property or the public good).**

ATTACHMENT B

**From:** [Bob Brick](#)  
**To:** [Dixon Nicole](#)  
**Cc:** ["Bob Brick"](#); ["Wendy Brick"](#)  
**Subject:** RE: Affidavit of ownership lot 32 #26 oak marsh  
**Date:** Monday, June 03, 2019 3:52:11 PM

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Good morning, Nicole.

Regarding questions #1 and #2, our focus has been on identifying a design that meets 3 primary criteria:

1. Minimal impact on the surrounding environment including, and especially, the marsh
2. Safety features and particularly water (elevated design) and resistance from hurricane/high winds
3. Meets neighborhood criteria for size, elevation, not being intrusive on neighbors, etc. while meeting our living needs (space, bedrooms, bathrooms, etc)

The designs we looked at, including those of the immediate homes in the neighborhood (e.g., 22 and 24 Oak Marsh) did not meet the first criteria as they are very intrusive of the marsh setback. These more rectangular/square type structures just don't work well on this unusually shaped lot without extensive intrusion into the Marsh setback. When we superimposed those home designs on the lot, they were well into the 20' Marsh setback. I've attached an example to illustrate that issue with square/rectangular type designs.

With the limitations of square/rectangular structures for this lot mind, we turned our attention to home designs that were round in nature (to take advantage of the center of the lot which is, more or less, round) and then were able to come up with the idea of adding wings to that design to get to a minimally acceptable square footage (for meet HOA requirements but also to meet our living needs). This particular design not only met the first criteria well (minimal impact on the marsh setback) but also comes with hurricane resistance properties that will provide better safety in high winds and offers better energy efficiency than typically built homes.

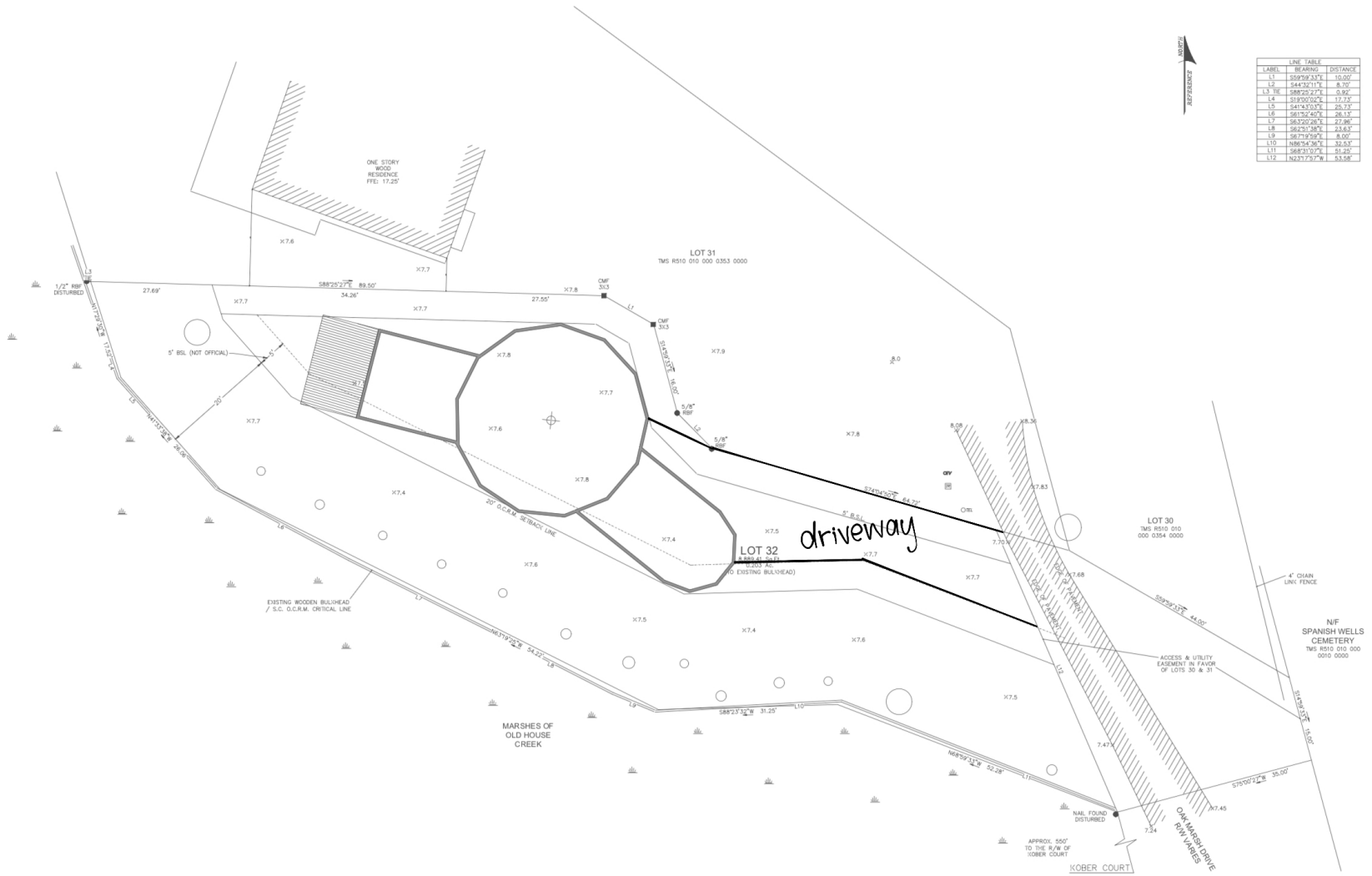
I hope this helps you to understand the process we went through to take a lot that would be otherwise unbuildable without intruding on the marsh setback and find a design solution that meets all of the 3 established criteria.

Relative to elevations of the home, we will be proceeding to that step in the design process once the variance is approved. It isn't prudent for us to invest money in that step of the design process if the BZA does not approve our variance application to build within the build setbacks. Naturally, we expect our final design to go through the customary Hilton Head approval process for new homes and also require approval of the HOA.

Relative to adjusting the angle of the wings, there may be a little bit of play there but very little as we need to leave room for the steps to access our front door. See attached diagram that illustrates that access point.

Let me know if you have any other questions or need more information. I'll be sending out the

# ATTACHMENT C

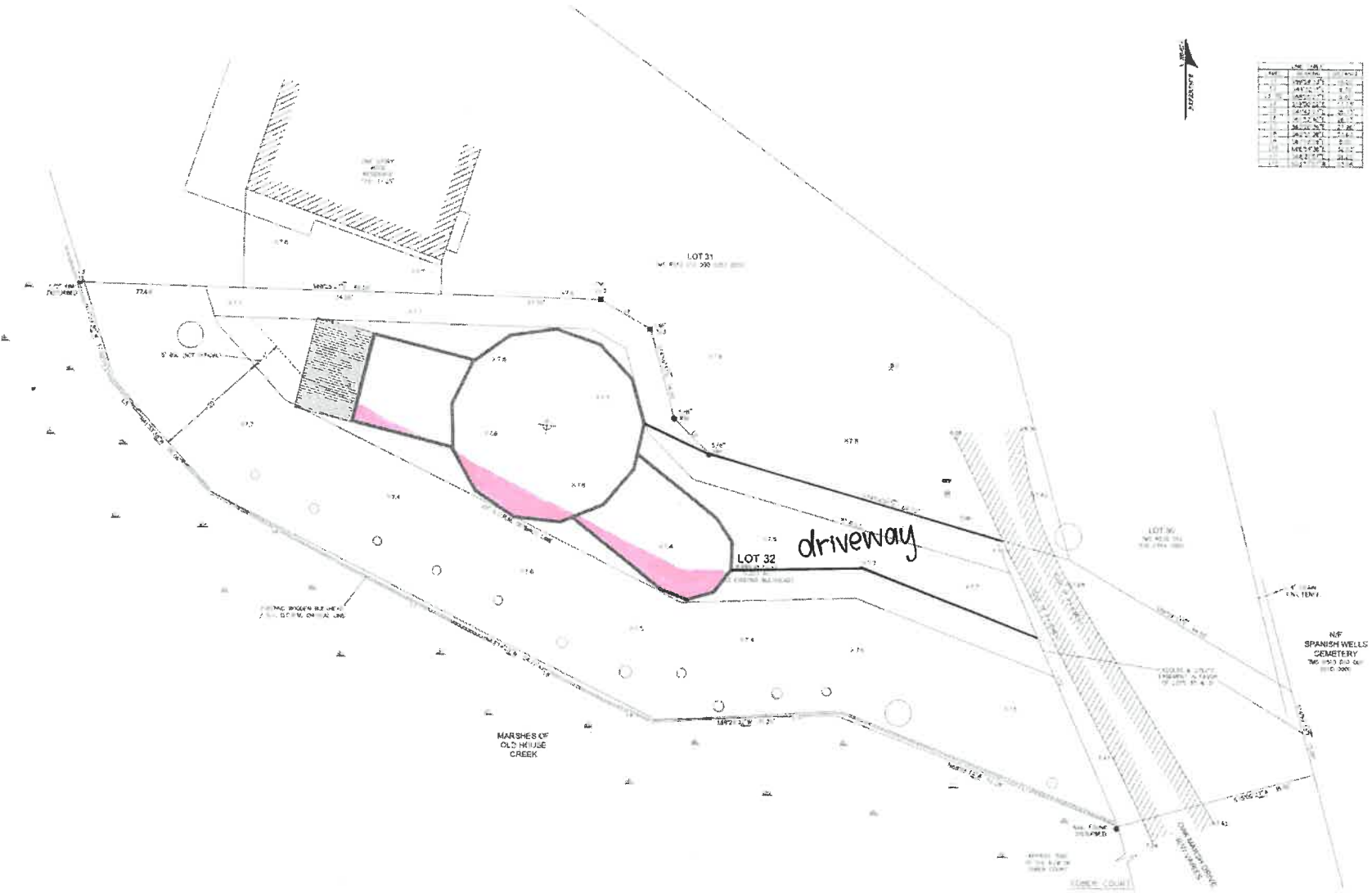


SCALE = 1/8" = 1'-0"

# ATTACHMENT C

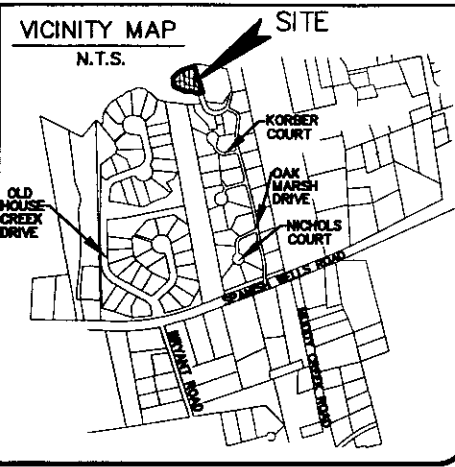


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1	3	N 89° 58' 00" W	143.27
1	4	S 89° 58' 00" E	143.27
1	5	N 89° 58' 00" W	143.27
1	6	S 89° 58' 00" E	143.27
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1	9	N 89° 58' 00" W	143.27
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1	76	S 89° 58' 00" E	143.27
1	77	N 89° 58' 00" W	143.27
1	78	S 89° 58' 00" E	143.27
1	79	N 89° 58' 00" W	143.27
1	80	S 89° 58' 00" E	143.27
1	81	N 89° 58' 00" W	143.27
1	82	S 89° 58' 00" E	143.27
1	83	N 89° 58' 00" W	143.27
1	84	S 89° 58' 00" E	143.27
1	85	N 89° 58' 00" W	143.27
1	86	S 89° 58' 00" E	143.27
1	87	N 89° 58' 00" W	143.27
1	88	S 89° 58' 00" E	143.27
1	89	N 89° 58' 00" W	143.27
1	90	S 89° 58' 00" E	143.27
1	91	N 89° 58' 00" W	143.27
1	92	S 89° 58' 00" E	143.27
1	93	N 89° 58' 00" W	143.27
1	94	S 89° 58' 00" E	143.27
1	95	N 89° 58' 00" W	143.27
1	96	S 89° 58' 00" E	143.27
1	97	N 89° 58' 00" W	143.27
1	98	S 89° 58' 00" E	143.27
1	99	N 89° 58' 00" W	143.27
1	100	S 89° 58' 00" E	143.27



SCALE = 1/8" = 1'-0"

ATTACHMENT D

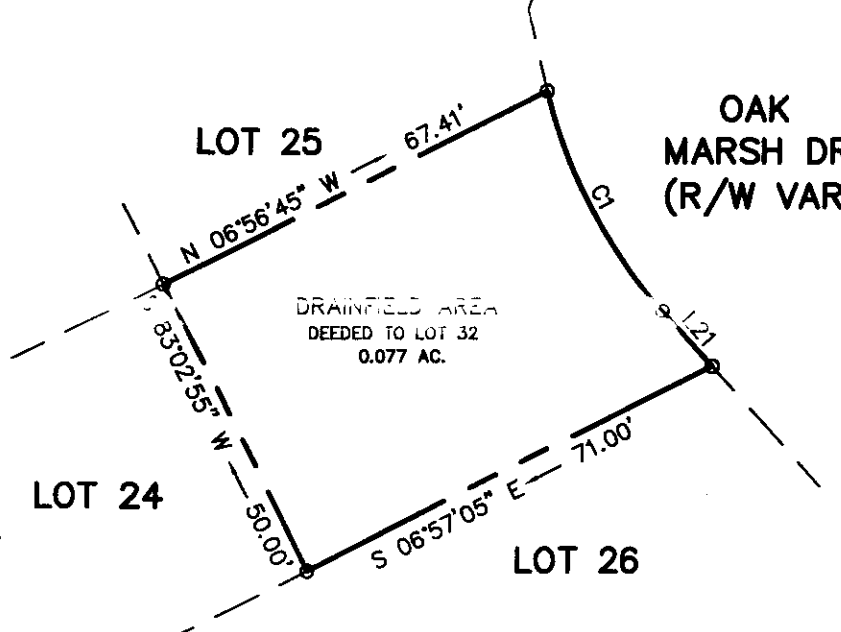


CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	BEARING	DELTA
C1	39.24	79.12	20.03	38.84	N82°11'19"E	28°25'01"

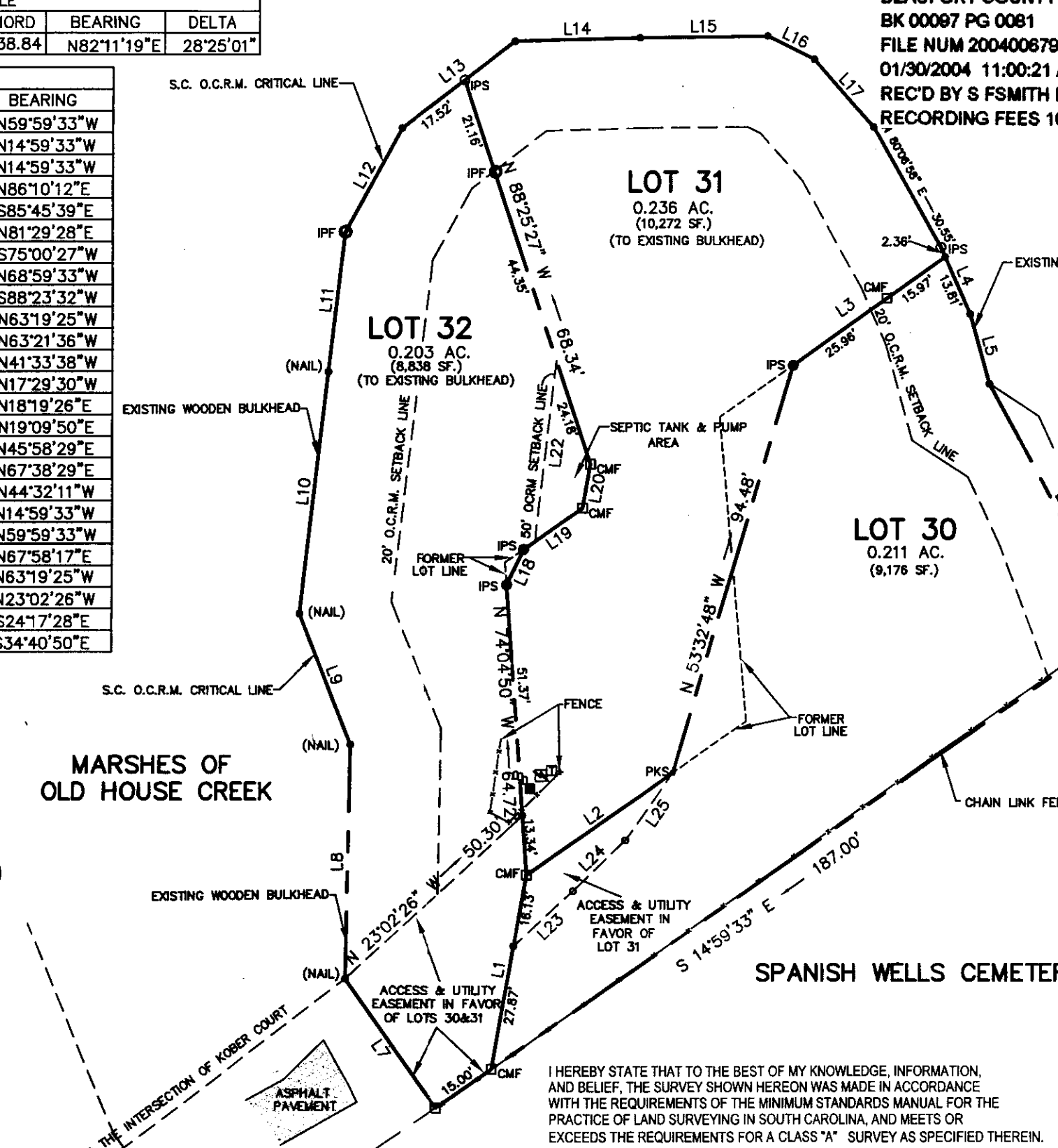
LINE TABLE		
LINE	LENGTH	BEARING
L1	44.00	N59°59'33"W
L2	40.00	N14°59'33"W
L3	41.93	N14°59'33"W
L4	16.17	N86°10'12"E
L5	16.06	S85°45'39"E
L6	61.68	N81°29'28"E
L7	35.00	S75°00'27"W
L8	52.28	N68°59'33"W
L9	31.25	S88°23'32"W
L10	54.22	N63°19'25"W
L11	31.24	N63°21'36"W
L12	26.06	N41°33'38"W
L13	31.60	N17°29'30"W
L14	27.82	N18°19'26"E
L15	28.93	N19°09'50"E
L16	11.71	N45°58'29"E
L17	20.24	N67°38'29"E
L18	8.70	N44°32'11"W
L19	16.00	N14°59'33"W
L20	10.00	N59°59'33"W
L21	11.56	N67°58'17"E
L22	40.49	N63°19'25"W
L23	18.07	N23°02'26"W
L24	15.81	S24°17'28"E
L25	18.56	S34°40'50"E

REFERENCE PLAT  
 1) ASBUILT, BOUNDARY AND TREE AND TOPOGRAPHIC SURVEY OF: LOTS 30, 31 & 32, OAK MARSH PLANTATION, HILTON HEAD ISLAND, S.C. DATED: 11/27/01, RECORDED IN BOOK PAGE, DATED: RMC, BEAUFORT COUNTY, SC BY: JACK JONES, SCRLS.# 13852  
 2) PLAT PREPARED FOR GEORGE BROWN DEVELOPMENT CO. OAK MARSH PLANTATION HILTON HEAD ISLAND, BEAUFORT COUNTY, S.C. DATED: 8/03/82, LAST REVISED: 7/15/86, RECORDED IN BOOK PAGE, DATED: RMC, BEAUFORT COUNTY, SC BY: BENJAMIN WILSON, SCRLS.# 5424

- SYMBOLS**
- ⊠ - ELECTRIC TRANSFORMER
  - - TELEVISION SERVICE
  - - TELEPHONE SERVICE
  - - WATER METER
  - IPF ○ - IRON PIN (OLD)
  - IPSO ○ - 1/2" IRON PIN (SET)
  - CMF □ - 3" CONCRETE MONUMENT FOUND



ADDRESSES: # 22, #24 & #26 OAK MARSH DRIVE  
 DIST. 510, MAP 10, PARCELS 354, 353, & 307  
 THIS PROPERTY LIES IN F.E.M.A. ZONE A7 (BASE FLOOD ELEVATION = 14.0')  
 SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988.



BEAUFORT COUNTY SC - ROD  
 BK 00097 PG 0081  
 FILE NUM 2004006793  
 01/30/2004 11:00:21 AM  
 REC'D BY S FSMITH RCPT# 216312  
 RECORDING FEES 10.00

**MARSHES OF OLD HOUSE CREEK**

S.C. O.C.R.M. CRITICAL LINE

As Plan , Plat , Project  is EXEMPT from the requirements of the Town of Hilton Head Island, SC Land Management Ordinance according to Section:

<input type="checkbox"/> 16.1.100A	<input type="checkbox"/> 16.1.100B
<input type="checkbox"/> 16.1.190C	<input checked="" type="checkbox"/> 16.1.100D

*Ben Brown*  
 Title Planner Date 1-20-04

THE AREA SHOWN ON THIS PLAT IS A GENERAL REPRESENTATION OF DHEC-OCRM PERMIT AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS, BY THEIR NATURE, ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY GENERALLY DELINEATING THE PERMIT AUTHORITY OF THE DHEC-OCRM, THE OFFICE OF OCRM IN NO WAY WAIVES THE RIGHT TO ASSERT PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREIN OR NOT.

*Jim Moore* 1-13-04  
 SIGNATURE DATE  
 THE CRITICAL LINE SHOWN ON THIS PLAT IS VALID FOR THREE YEARS FROM THE DATE OF THIS SIGNATURE, SUBJECT TO THE CAUTIONARY LANGUAGE ABOVE.

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.



A RECONFIGURATION SURVEY OF:  
 LOTS 30, 31 & 32, MARSH DRIVE  
 OAK MARSH PLANTATION, HILTON HEAD ISLAND,  
 BEAUFORT COUNTY, SOUTH CAROLINA  
 PREPARED FOR: JOE & JENNIE MOORE AND  
 LINDA CALVERT

REVISED: 01/08/04 - ACCESS AND UTILITY EASEMENT  
 DATE: 8/08/03 SCALE: 1" = 30'

GRAPHIC SCALE  
 0 30 60 90

**SIS** Sea Island Land Survey  
 P.O. Box 21568, Hilton Head Island, SC 29925 Tel (843) 681-3248  
 4-D Mathews Court, Hilton Head Island, SC 29926 Fax (843) 689-3871  
 JOB No: 01014/6 FILE: 5-746

significant intrusion into marsh setback

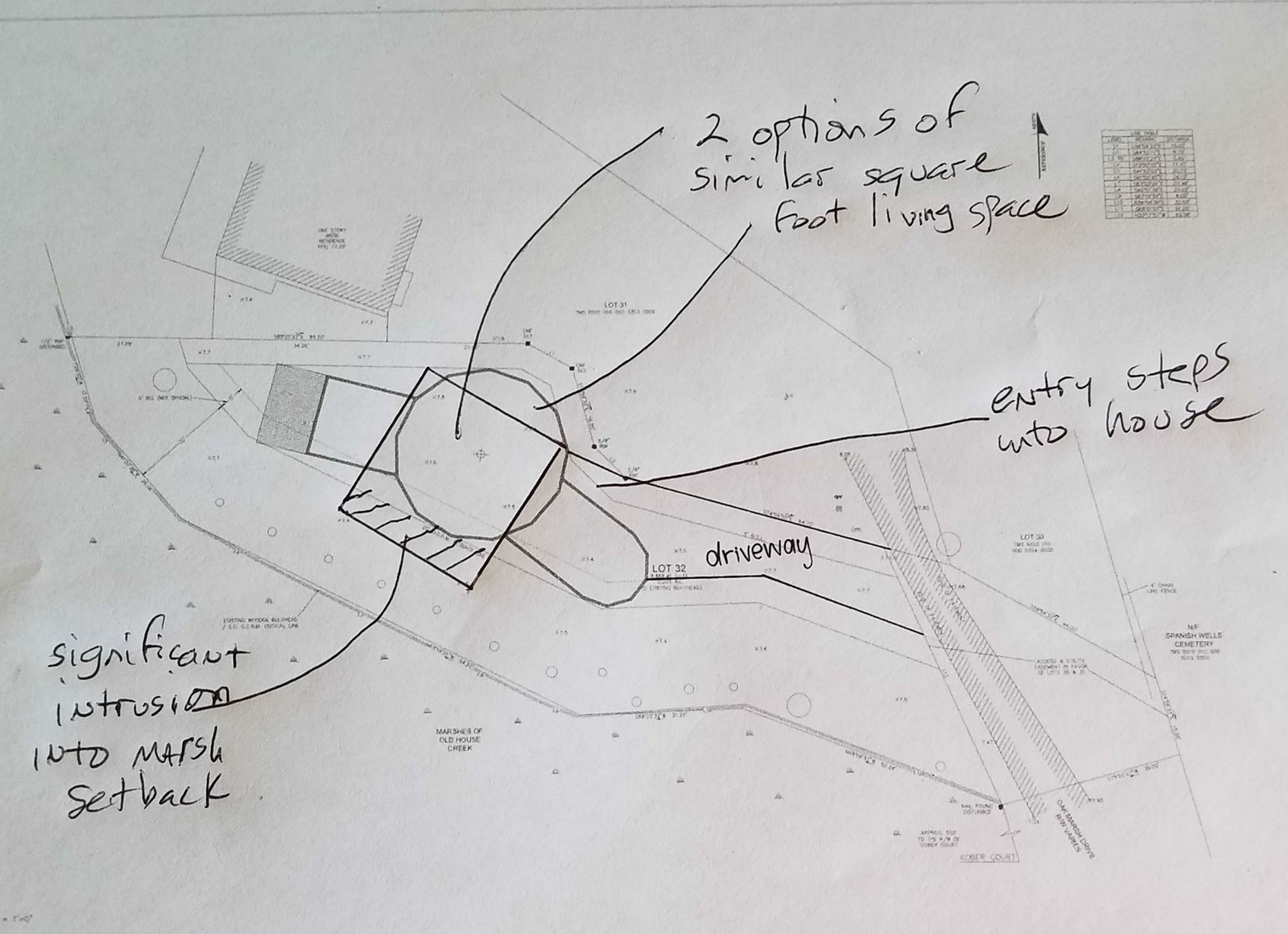
2 options of similar square foot living space

entry steps into house

driveway

NO.	DESCRIPTION	DATE
1	PREPARED BY	11/11/11
2	REVISION	
3	REVISION	
4	REVISION	
5	REVISION	
6	REVISION	
7	REVISION	
8	REVISION	
9	REVISION	
10	REVISION	
11	REVISION	
12	REVISION	
13	REVISION	
14	REVISION	
15	REVISION	
16	REVISION	
17	REVISION	
18	REVISION	
19	REVISION	
20	REVISION	

SCALE = 1/8" = 1'-0"



# ATTACHMENT F

**From:** [philsdock](#)  
**To:** [Dixon Nicole](#)  
**Subject:** Bob Brick Oak Marsh POA  
**Date:** Monday, June 03, 2019 4:17:36 PM

---

Nicole,

Oak Marsh POA has no issue with the set back variance for this plan.

We do now require a minimum sq ft of 1500-1600 now with all new builds to obtain ARB approval.

Thank you,

Phil Smith

President OMPOA

843-301-3474





# TOWN OF HILTON HEAD ISLAND

*Community Development Department*

**TO:** Board of Zoning Appeals  
**FROM:** Taylor Ladd, *Senior Planner*  
**DATE:** May 28, 2019  
**SUBJECT:** Revisions to Rules of Procedure

---

At the March 25, 2018 BZA meeting, the Board reviewed and discussed amendments to the Rules of Procedure as presented by Staff. Based on this discussion, a minor revision has been made. The attached version of the Rules of Procedure is presented for your review.

In the attached document, final revision has been made to:

- Article IX, Section 2, Paragraphs 4 and 6 on page 17

Since the March meeting, a revision has been made to Article IX, Section 2, Paragraphs 4 and 6 as per suggestion by public comment and Board discussion at the meeting, to include “holder of permit or approval” in place of “building permit holder.” Action may be taken to approve the amended Rules of Procedure at the May 20 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 9<sup>th</sup> month of each Board year.
- F. Education.** The Code of South Carolina requires a six (6) hour Orientation Program and a three (3) hour/year Continuing Education Program for each Board member.

## Section 2. Election of Officers.

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

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

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

1. In consultation with the Staff Board Coordinator, delegate the Secretary to prepare agendas for all meetings;
2. Conduct all meetings and hearings of the Board, meaning that the Chairman—
  - i. Is responsible for maintaining order.
  - ii. Should begin the meeting promptly at the scheduled hour if a quorum is present.
  - iii. Should have a well prepared agenda and abide by it.
  - iv. Should be familiar with the procedural rules of the 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 Applicant Appellant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant Appellant believes supports the Application for an Appeal. During the presentation by the Applicant Appellant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Applicant's Appellant's time may be extended if the Applicant 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 Holder of the Permit or Approval of the Property that is the subject of the Appeal, the Building Permit holder Holder of the Permit or Approval or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Building Permit holder Holder of the Permit or Approval believes supports the position of the Building Permit holder Holder of the Permit or Approval with respect to the Appeal. During the presentation by the Building Permit holder Holder of the Permit or Approval or their Agent, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chairman, the Building Permit holder Holder of the Permit or Approval's time may be extended if the Building Permit holder Holder of the Permit or Approval 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 Holder of the Permit or Approval 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

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

## Restorative Motions or Motions that Bring Back a Question

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



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

## TYPES OF VOTES

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



# TOWN OF HILTON HEAD ISLAND

## *Community Development Department*

**TO:** Board of Zoning Appeals  
**FROM:** Taylor Ladd, *Senior Planner*  
**DATE:** June 12, 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 has been one Substitutions of Nonconformity for Redevelopment that have been granted by staff since the March 25, 2019 BZA meeting.

1. **83 Pope Avenue, Temporary Kiosk Site** – As part of due diligence for the placement of a kiosk on this property, a waiver request was submitted for its placement in the adjacent street buffer and setback. The kiosk will be located on the site in a location where there is an existing concrete slab located in the adjacent street setback and buffer. It will be in place temporarily and removed daily, is not a structure, is nonpermanent and is not making the nonconforming setback or buffer worse than existing conditions. 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.