



The Town of Hilton Head Island
Board of Zoning Appeals Regular Meeting
Monday, January 27, 2020 – 2:30 p.m.
Benjamin M. Racusin Council Chambers

AGENDA

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

1. **Call to Order**
2. **Pledge of Allegiance**
3. **FOIA Compliance** – Public notification of this meeting has been published, posted, and distributed in compliance with the South Carolina Freedom of Information Act and the requirements of the Town of Hilton Head Island.
4. **Roll Call**
5. **Welcome and Introduction to Board Procedures**
6. **Approval of Agenda**
7. **Approval of Minutes** – Meeting of October 28, 2019
8. **Unfinished Business**
9. **New Business**
 - a. **Public Hearing**
VAR-002648-2019 – Request from Jason Bullock for a variance from LMO Section 16-4-102.B.7.c, Use-Specific Conditions for Principal Uses, for proposed screened outside storage of bicycles in the Light Commercial (LC) District where outside storage of bicycles is not allowed. The property is located at 3 Pensacola Place and has a parcel number of R552 015 00C 0094 0000. *Presented by Missy Luick*
 - b. **APL-002639-2019** – Request for Appeal from Mike Palmieri with Side Hustle Beer Company LLC. The appellant is appealing staff's determination, dated December 16, 2019, that a Nano Brewery is classified as a manufacturing use and therefore is not permitted at 144 Arrow Road, in the Sea Pines Circle (SPC) zoning district.
10. **Board Business**
 - a. Review and adoption of revised amendments to the Rules of Procedure
11. **Staff Report**
 - a. Waiver Report
12. **Adjournment**

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



Town of Hilton Head Island
Board of Zoning Appeals
Special Meeting

Monday, October 28, 2019 at 2:30 p.m.
Benjamin M. Racusin Council Chambers

MEETING MINUTES

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

Absent from the Board: None

Present from Town Council: Tamara Becker

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

1. Call to Order

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

2. Pledge of Allegiance

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

4. Roll Call – See as noted above.

5. Welcome and Introduction to Board Procedures

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

6. Approval of Agenda

Chairman Cutrer asked for a motion to approve the agenda. Vice Chair Brison moved to approve. Mr. Johnson seconded. The motion passed with a vote of 7-0-0.

7. Approval of Minutes

a. Special Meeting of July 15, 2019

Chairman Cutrer asked for a motion to approve the minutes of the July 15, 2019 special meeting as written. Mr. White moved to approve. Mr. Walczak seconded. The motion passed with a vote of 6-0-1. Vice Chair Brison abstained from the vote as she recused herself from the hearing at the subject meeting.

b. Regular Meeting of July 22, 2019

Chairman Cutrer asked for a motion to approve the minutes of the July 22, 2019 regular meeting as corrected. Vice Chair Brison moved to approve. Mr. White seconded. The motion passed with a vote of 7-0-0.

8. Unfinished Business – None

9. New Business – None

10. Board Business

a. Review of revised amendments to the Rules of Procedure

The Board and public made comments on the revised amendments. Upon the conclusion of the discussion, the Board indicated the proposed language is currently acceptable. The revised amendments will be presented for a vote at the next meeting.

b. Review and Adoption of 2020 Meeting Schedule

Vice Chair Brison moved to approve as submitted. Dr. Ponder seconded. The motion passed with a vote of 7-0-0.

11. Staff Report

- a. Waiver Report –** The report was included in the Board’s packet. Vice Chair Brison commented that it would be helpful to have a map of where the setback waiver was granted. Vice Chair Brison expressed concern about the authority of staff to approve setback waivers, suggested the Board review the number that have been granted in the past two to three years, and consider whether a different way to approach setbacks should be recommended.

12. Adjournment

The meeting was adjourned at 2:57 p.m.

Submitted by: Teresa Haley, Secretary

Approved: [DATE]



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-002648-2019	January 27, 2020

Parcel or Location Data:	Property Owner	Applicant
Parcel#: R552 015 00C 0094 0000 Parcel size: 0.79 acers Zoning: LC (Light Commercial District) Overlay: COR (Corridor Overlay District)	Island Cruisers Bike Rental LLC 3 Pensacola Place Hilton Head Island, SC 29928	Jason Bullock 25 Knightsbridge Lane Hilton Head Island, SC 29928

Application Summary:

Jason Bullock, on behalf of Island Cruisers Bike Rental, is requesting a variance from LMO Section 16-4-102.B.7.c, Use-Specific Conditions for Principal Uses, for proposed screened outdoor storage of bicycles in the Light Commercial (LC) District where outdoor storage of bicycles is not allowed. The property is located at 3 Pensacola Place and is within the Corridor Overlay District.

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 condition:

- The applicant obtains minor development plan review and minor corridor review approvals which shall include a landscaping plan to plant areas of the buffer adjacent to Shipyard golf course that are currently void of vegetation.

Background:

The lot subject to this application is owned by Island Cruisers Bike Rental LLC. The property is located at 3 Pensacola Place near New Orleans Road and is currently developed as an office building.

The rear of the property abuts Shipyard Golf Course. The property is zoned Light Commercial (LC) and bicycle shops are allowed in this district; however outdoor storage of bicycles is not allowed.

Bicycle shops are allowed in 10 zoning districts: Main Street (MS), Sea Pines Circle (SPC), Light Commercial (LC), Community Commercial (CC), Marshfront (MF), Stoney (S), Mitchelville (MV), Waterfront Mixed Use (WMU), Resort Development (RD) and Coligny Resort (CR). Of the 10 zoning districts where bicycle shops are allowed, only 2 districts do not allow outdoor bicycle storage: Light Commercial (LC) and Community Commercial (CC) per LMO Section 16-4-102.B.7.c.

Prior to closing on the property at 3 Pensacola Place, representatives with the business met with Town staff representatives regarding the intended use of the property including outdoor storage of bicycles. Town staff gave incorrect information regarding the outdoor storage component of the use. While bicycle shops are an allowed use in the Light Commercial district, outdoor storage of bicycles is not an allowed use.

The applicant is requesting a variance for screened outdoor bicycle storage.

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

Grounds for Variance:

Due to the incorrect information given by Town staff, the applicant or applicant's agent purchased real property in the Light Commercial District where bicycle shops are allowed, but a use-specific condition prohibits outdoor storage of bicycles in this district. The applicant or applicant's agent would not have purchased the property at 3 Pensacola Place if outdoor storage of bicycles was not allowed because outdoor storage of bicycles is an essential component of their business.

It has been confirmed by Town staff that the applicant/applicant's agent did reach out to staff for verification of the intended use of the property within the timeline indicated in the applicant's submittal. However, even though staff gave incorrect information related to the use of the property, the avenue to seek relief from the regulation is through the variance process.

The subject property is located on a non-arterial cul-de-sac street that is shared among only 2 commercial properties, which is fairly unique among Light Commercial zoned properties on the island. Of the Light Commercial zoned properties located in the vicinity south of William Hilton Parkway between Pope Avenue and the Shipyard entrance, 3 and 4 Pensacola Place are the only properties in that zoning district that are not located on a minor or major arterial.

According to the applicant, due to the fact that staff gave incorrect information related to the intended use of outdoor bicycle storage, the use-specific condition unreasonably restricts the applicant/applicant's agent from utilizing the property for its intended business use as a bicycle rental shop with outdoor storage of bicycles. If approved, the use will not be of substantial detriment to the public good or the character of the zoning district since the adjacent neighbor with the most visual views of the subject property is 4 Pensacola Place which, according to the applicant, is under contract by the applicant as a "sister company" that has "no issue with the variance." The current buffer between the subject property and the golf course will obscure much of the view of the proposed screened outdoor storage area. It is unlikely that any of the private residences in the Shipyard community will see the outdoor storage area screen from their properties. Additionally, the New

Orleans commercial buildings that are adjacent to 3 Pensacola Place also have existing buffer vegetation that will block most of the view of the screened outdoor storage area.

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 December 27, 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 January 5, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of the Application was posted on January 10, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on January 11, 2020 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 30 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
- Notice of application was published 23 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was posted 18 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- Notice of application was mailed 17 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- The application and notice requirements comply with the legal requirements established in LMO Section 16-2-102.E.2.

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

Summary of Facts and Conclusions of Law:

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

Findings of Fact:

- Most properties in the Light Commercial district are located on a major or minor arterial.
- The subject property is zoned Light Commercial but it is not located on a major or minor arterial.
- The subject property is located on a cul-de-sac street shared by only 2 properties.
- Staff gave incorrect information about the proposed condition associated with the use (outdoor storage of bicycles) prior to the applicant purchasing the property.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are extraordinary and exceptional conditions that pertain to this particular property.
- Having a Light Commercial property that is not located on a major or minor arterial is considered an extraordinary and exceptional condition.
- Staff concludes that because incorrect information about the condition associated with the proposed use was given to the applicant, he purchased the property.

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 Fact:

- Of the Light Commercial zoned properties located in the vicinity south of William Hilton Parkway between Pope Avenue and the Shipyard entrance, 3 and 4 Pensacola are the only properties in that zoning district that are not located on a minor or major arterial.
- The subject property is the only property within the vicinity that staff gave incorrect information about the proposed condition associated with the use.

Conclusion of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because the extraordinary conditions only apply to the property subject to this application and do not generally apply to other properties in the vicinity.

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 Fact:

- Per LMO Section 16-4-102.B.7.c., Use-Specific Conditions for Principal Uses (Bicycle Shops),

outdoor storage of bicycles is permitted only in the CR, SPC, MS, WMU, S, MF, MV, and RD Districts.

- Town staff gave incorrect information to the applicant/applicant's agent related to the intended condition associated with the use (outdoor bicycle storage) prior to the applicant purchasing the property.

Conclusion of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because the extraordinary conditions do prohibit and unreasonably restrict the property from having outdoor storage of bicycles which is an essential part of their business.

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 proposing a vegetative screen and fence that will screen the outdoor bicycle storage area, which will meet the requirements of LMO Section 16-5-113, Fences and Walls.
- The applicant is proposing a fence enclosure that will be painted to match the color of the existing building.
- The applicant is not proposing to remove any existing vegetated buffer areas.
- The current buffer between the subject property and the adjacent properties is vegetated enough that it will obscure much of the view of the proposed screened outdoor storage area.
- Staff received one phone call in opposition to this request.
- Stall could not identify any reasons the request would be detrimental to the adjacent property or public good.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the variance will not be of substantial detriment to adjacent properties or the public good because the existing buffer and planned screen will obscure much of the view of the proposed outdoor storage of area.
- The variance will allow the use of outdoor storage of bicycles in a screened area to be located in a way that will avoid disturbing existing vegetated buffers and the fence will be painted to match the color of the existing building.

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 with the following

condition:

1. The applicant obtains minor development plan review and minor corridor review approvals which shall include a landscaping plan to plant areas of the buffer adjacent to Shipyard golf course that are currently void of vegetation.

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:

ML
Missy Luick, Senior Planner

January 13, 2020
DATE

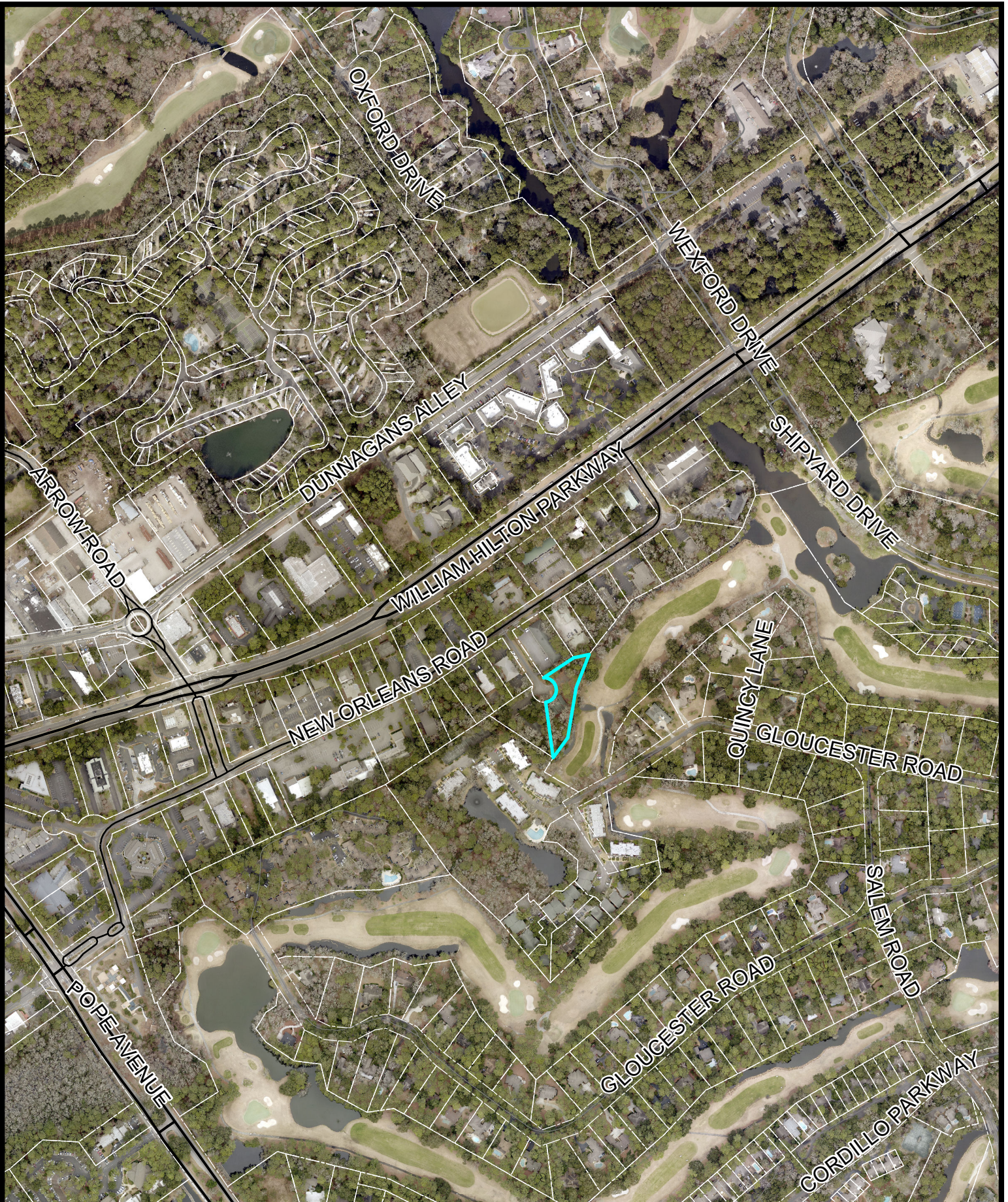
REVIEWED BY:

ND
Nicole Dixon, AICP, CFM, Development
Review Administrator

January 17, 2020
DATE

ATTACHMENTS:

- A) Vicinity Map
- B) Applicant's Narrative
- C) Site Plan
- D) Pictures



Town of Hilton Head Island

3 Pensacola Place
Attachment A: Vicinity Map



Town of Hilton Head Island
One Town Center Court
Hilton Head Island, SC 29928
(843) 341-4600

550 275 0 550 Feet

This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.

ISLAND CRUISERS BIKE RENTALS, LLC

13 EXECUTIVE PARK ROAD
HILTON HEAD ISLAND, SC 29928
843.785.4321

December 27, 2019

The Town of Hilton Head Island
Board of Zoning Appeals
One Town Center Court
Hilton Head Island, SC 29928

RE – Variance for submittal for outside storage of bicycles and the construction of a fence at 3 Pensacola Place.

Dear Board of Zoning Members:

We are writing to request a variance to the Town of Hilton Head LMO Section 16-4-102.B.7.c to allow for outside storage of bicycles at 3 Pensacola Place, which is located in the Light Commercial (LC) District. Currently, outdoor storage of bicycles is permitted only in the CR, SPC, MS, WMU, S, MF, MV and RD Districts. Upon receipt of this variance to allow for outdoor storage in the LC district, we will follow all requirements to screen the area with vegetation, fences and walls.

A summary of facts are as follows:

- Island Cruisers has served Hilton Head and its tourists since 1983.
- We currently operate from 13 Executive Park Road and have done so since before the LMO's promulgation.
- At 13 Executive Park Road we store bicycles outside behind a screened fence to the rear of the building and partially screened with vegetation in the parking lot in front of the building.
- Exterior storage is highest during off season months. From March – October, the majority of the inventory is with rental customers.
- The majority of the company's customers are located on the South End of Hilton Head and we are able to better serve them from a South End location.
- 13 Executive Park Road is located in the Light Commercial (LC) District.
- 3 Pensacola Place is located in the Light Commercial (LC) District.
- 13 Executive Park Road and 3 Pensacola Place are approximately 0.44 mile from each other as the crow flies.
- 13 Executive Park Road is on a highly traveled side street used by locals and tourists.
- 3 Pensacola Place is located at the end of an infrequently traveled street with only one other building on the cul-de-sac – 4 Pensacola Place
- We have a contract to purchase 4 Pensacola Place through a commonly owned company.
- The rear portion of both 13 Executive Park Road and 3 Pensacola Place border Shipyard Plantation's golf course with 3 Pensacola Place having a drainage canal for an approximately 30 feet of additional buffer from the golf course.

History of our ownership of 3 Pensacola Place:

Being considerate of the way our current location looks on a heavily traveled street, our representatives began searching for a new location during Summer 2019. We looked for a location that allows us to serve the island with a focus on the South End, efficient in and out of delivery vehicles, and enough space to store our inventory. After a thorough review of available locations, we determined 3 Pensacola Place would not only meet our operational needs, but exceeded our desire for seclusion as it is on a street not traveled by either tourists or locals. Unless you are coming to 3 or 4 Pensacola Place, you have no reason to travel that street. We then entered into a contract to purchase the property.

After entering the contract to purchase, but prior to closing, our manager Weldon "Dondi" Wall, Jr., met with Town Representatives on multiple occasions. Mr. Wall reviewed our intentions of outside bicycle storage and construction of a fence around the storage area. In each of these meetings Mr. Wall was informed it was ok and we needed only to submit photos of the current area and a drawing of where the fence would be located for the Town's approval. Based on these representations by Town Employees and the location's great attributes, we purchased the property November 22, 2019.

Shortly after purchasing 3 Pensacola Place, 4 Pensacola place listed for sale. We immediately signed a contract for purchase of 4 Pensacola, through a related entity, since it was our intention to eventually own both 3 and 4 Pensacola Place. As a result, we will be the only owner of property at the end of the Pensacola Place.

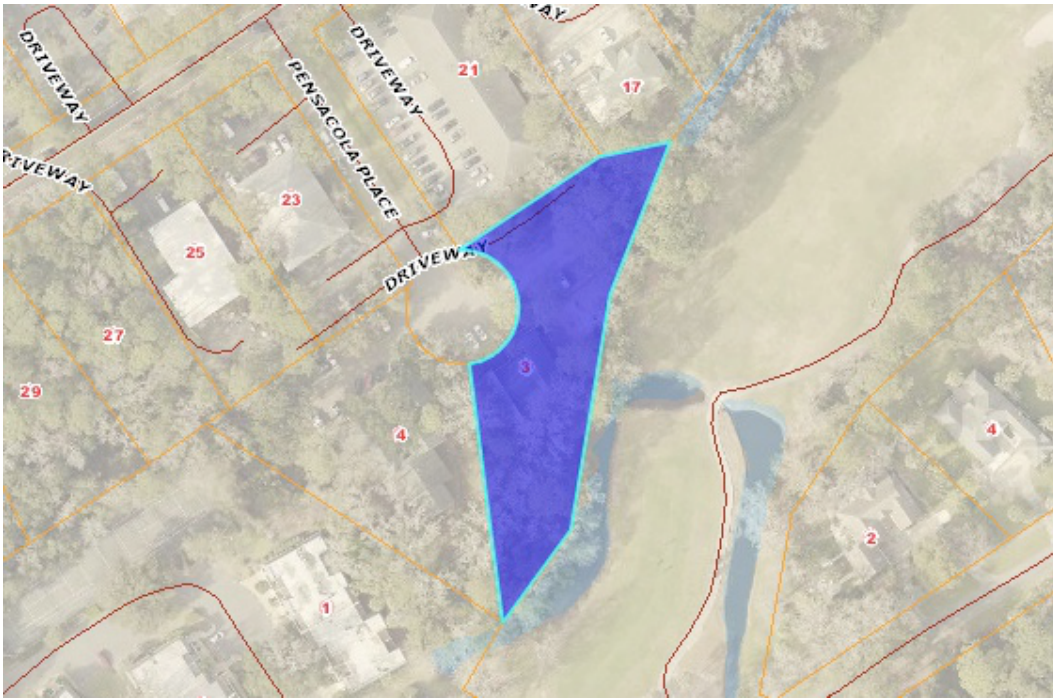
After purchasing 3 Pensacola Place and signing the contract on 4 Pensacola Place, Mr. Wall returned to the Town of Hilton Head's office to obtain a business license for the new location along with photos and fence location for approval for the fence construction. At this meeting he was informed by the Town Representative they made a mistake in the prior communications and while they could grant the business license to operate a bicycle shop at 3 Pensacola Place, bicycles would not be allowed to be stored outside – fenced or unfenced.

Justification for granting a variance:

Per section 16-2-103.S.4 an appeal may be granted by the Board of Zoning Appeals if it concludes that the strict enforcement of any appropriate dimension, development, design, or performance standard set forth in this Ordinance would result in unnecessary hardship. A variance may be granted in an individual case of unnecessary hardship if the Board of Zoning Appeals determines and expresses in writing all of the following findings:

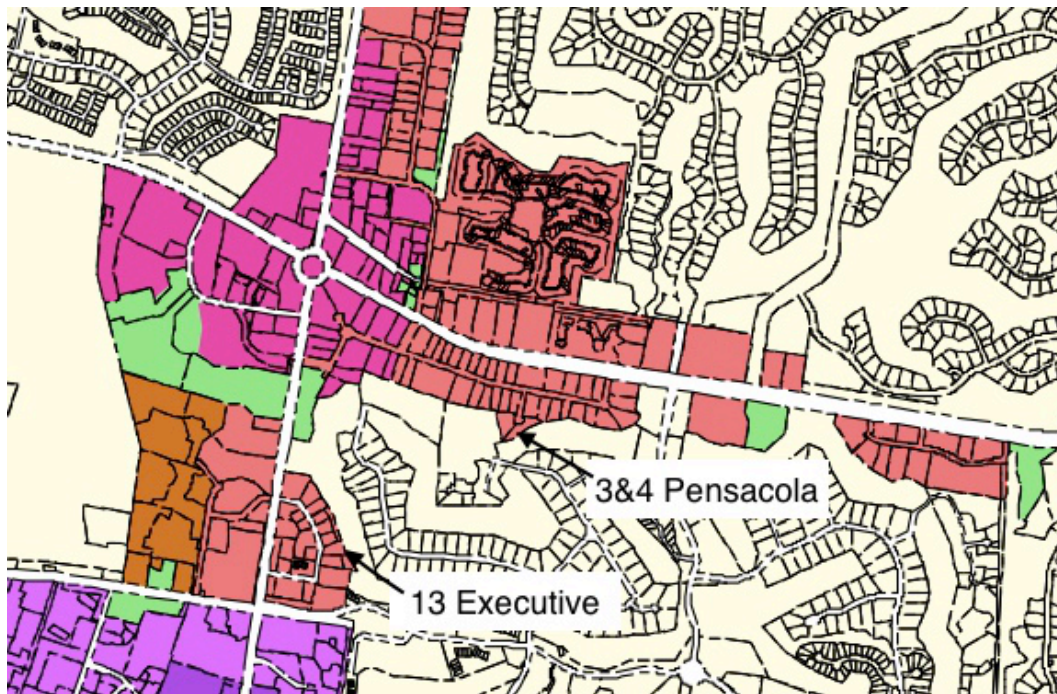
1 – There are extraordinary and exception conditions pertaining to the particular piece of property;

3 Pensacola Place is one of only two parcels on a very infrequently traveled street. While the vast majority of parcels in the LC District are on major roadways and visible to residents and tourists, 3 Pensacola Place is a very unique property with only one other parcel sharing the cul-de-sac – 4 Pensacola Place, which we have a contract to purchase. 3 Pensacola shares a border with only 4 other properties – 4 Pensacola Place, 17 New Orleans, 21 New Orleans, and the Shipyard golf course. Based on its secluded location it is unlike any other parcels in the LC District as can be seen in the following overhead view of the property.



2 – These Conditions do not generally apply to other properties in the vicinity.

Elaborating more on the answers in 1 above, 3 & 4 Pensacola Place are both very unique in that they are the only two parcels on the South End situated on their own cul-de-sac. The vast majority of other parcels in the LC district on the South End of Hilton Head are on very heavily traveled roadways.



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.

Prior to our purchase of 3 Pensacola, our manager Weldon “Dondi” Wall, Jr., met with Town Representatives on multiple occasions. In each of these meetings, Mr. Wall reviewed our intentions to store bicycles outside and construct a fence around the storage area. The Town Representative informed Mr. Wall at these meetings that outside storage of bikes is ok and we needed only to submit photos of the current area and a drawing of where the fence would be located for the Town's approval. Based on these representations by Town Employees and the location's great attributes, we purchased the property November 22, 2019. Had we been told by the Town Representative in any of these meetings that outdoor storage of bikes was not permitted, we would not have purchased the property and found a different location that allowed for storage. Due to the Town Representatives' misstatement we are now the owners of a building that can not be used for its intended purpose. Only through granting of this variance can we use it for its intended purpose as the building is not large enough to store our inventory of bicycles inside.

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.

Hilton Head has an overabundance of under and unused office buildings. As the requirement for office space on Hilton Head decreases through technology and business dynamics, creative uses of existing buildings and land are required to keep them from falling into disrepair. By converting 3 Pensacola into our headquarters we are able to transform an office building that was used by only 3 people into a space that employs 16-18 people during season and 7 people full time. Additionally, this location will allow us to better serve the tourist community, expand the products and services we provide, and increase our sales tax revenue.

The parcels that share the most property line with 3 Pensacola Place are 4 Pensacola Place (soon to be owned by a sister company) and the Shipyard golf course. As the owners of 4 Pensacola Place, we have no issue with the variance. Shipyard golf course currently shares a property line with our existing location. The distance from the fence will be increased at 3 Pensacola due to the drainage canal and the layout of the golf course. The property line with 21 New Orleans is to the side of that building and has significant natural vegetation that will be maintained. The property line with 17 New Orleans is to the rear of that building and also has significant natural vegetation that will be maintained. The property is so secluded, it is unlikely anyone will even know a fence has been constructed, let alone bikes stored behind it.

Further, not only will the common good not be harmed, it will be improved. Given the very public nature of our current location at 13 Executive Park, moving to a new location will eliminate the storage of bicycles and other equipment on a very heavily traveled street. It will also allow that building to be utilized by a operator who can benefit from its traffic count.

Additional information for why granting a variance is in the best interest of all:

As a final point to consider, if we were operating another type of business at 3 Pensacola Place we would be able to store products and/or vehicles outside without need for a Variance. For example if we operated an auto repair shop, Per LMO Section 16-4-102-8.b temporary outdoor vehicle storage

may be allowed in an outdoor storage area located behind or to the side of the principal structure that is screened from public view. All automobile parts and similar materials shall be stored within an enclosed building or totally screened from view by an opaque or privacy fence. If we were a contractor per LMO Section 16-4-102-6.iii we could have outdoor storage since we do not have direct vehicular access to a major arterial. Finally, if we were a light industrial, manufacturer, or warehouse operator per LMO Section 16-4-102-9.i we could have outdoor storage of product if fully screened. It is only bicycles shops that are precluded from outside storage in the LC District.

While we recognize other operators may not keep their inventory well organized, ours will be neatly organized and out of sight from all property lines and adjacent rights-of-way by any combination of an opaque fence, wall, or landscaped berm that is at least six feet high as detailed in LMO Section 16-4-103-5. It is our intent to construct a wood fence painted to match the building's color to the left and rear of the building.

We believe 3 Pensacola Place is a far superior to our current location to properly shield our bicycle inventory from the public's view. We hope you agree the unique nature of 3 Pensacola Place allows for a positive response to all four requirements to grant a Variance. Finally we reserve the right to submit additional materials, documents and information to the BZA in connection with this Appeal.

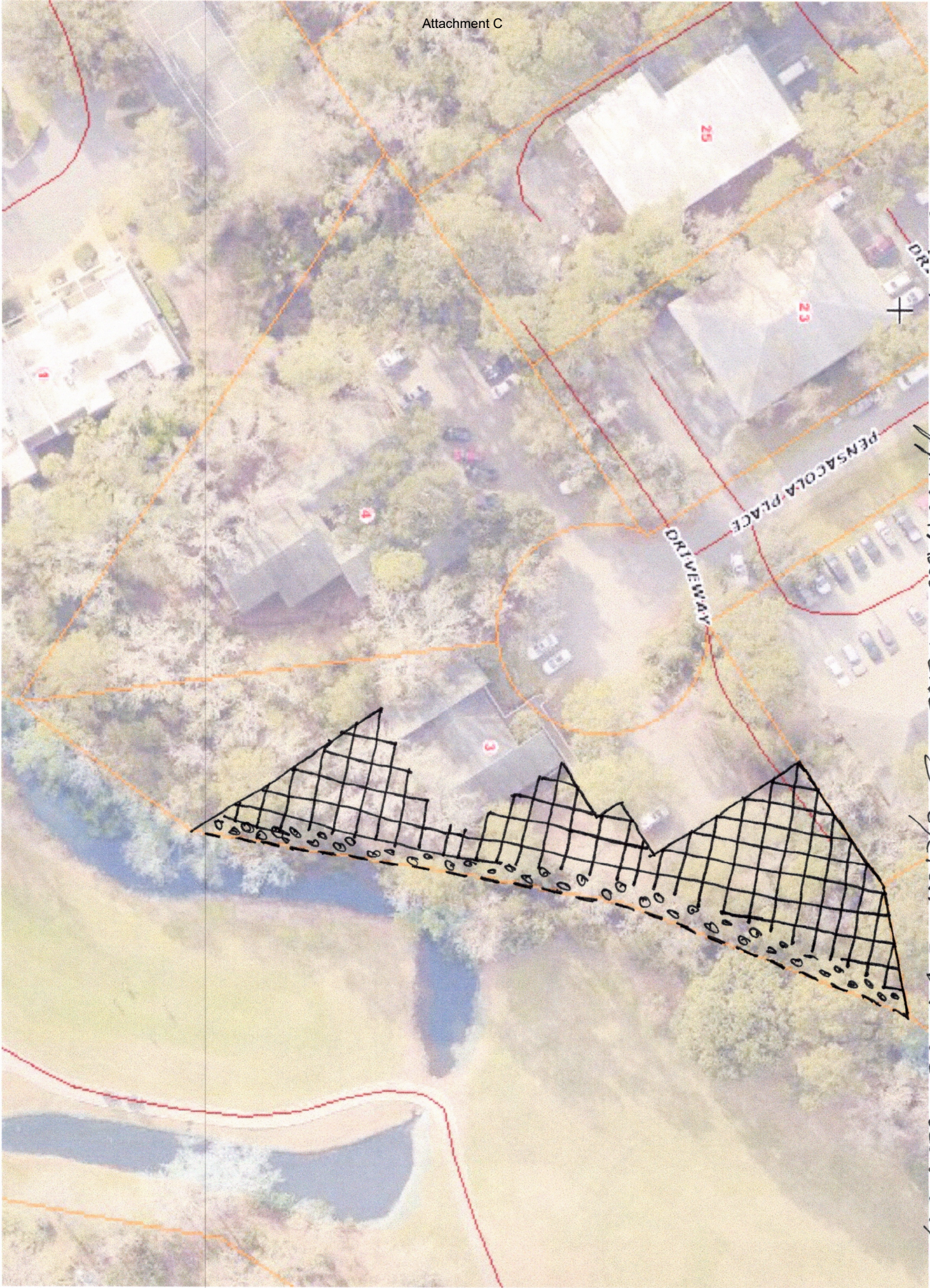
Respectfully submitted by the property owner on behalf of itself this 27th day of December 2019.

ISLAND CRUISERS BIKE RENTALS, LLC.



Jason Bullock
Representative

3 Pensacola Place Approximate Fence & Vegetative Barrier Locations



- = Fence
- - - - = Vegetative Barrier
- ▣ = Bicycles
- ⦿ = Type B2 Buffer

3 Pensacola Place
VAR-002648-2019
Site Photos taken 1/8/2020



3 Pensacola Place
VAR-002648-2019
Site Photos taken 1/8/2020



3 Pensacola Place
VAR-002648-2019
Site Photos taken 1/8/2020



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Site Photos taken 1/8/2020



3 Pensacola Place
VAR-002648-2019
Site Photos taken 1/8/2020





TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
VIA: Teri Lewis, AICP, *Deputy Director of Community Development*
FROM: Nicole Dixon, AICP, CFM, *Development Review Administrator*
DATE: January 17, 2020
SUBJECT: APL-002639-2019

Staff has received an appeal from Mike Palmieri with Side Hustle Beer Company, LLC. Mr. Palmieri is appealing staff's determination, dated December 16, 2019, that a Nano Brewery is classified as a manufacturing use and therefore is not permitted at 144 Arrow Road, in the Sea Pines Circle (SPC) zoning district.

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: LMO Sections
- Attachment D: Definitions from A Planner's Dictionary
- Attachment E: Determination Request
- Attachment F: Zoning Verification

Staff reserves the right to submit additional documents.

If you have any questions, please contact Nicole Dixon at 843-341-4686 or nicoled@hiltonheadislandsc.gov.

Side Hustle Beer Company (SHBC)

Appeal Submittal for January 27, 2020 BZA Meeting

Agenda

- Side Hustle Beer Company LLC (SHBC) - Business Description
- Communication timeline with the Town of HHI
- What we are appealing and why

SHBC is a Nano Brewery

“A scaled down microbrewery, often run by solo entrepreneur, produces small batches”. US Dept of Treasury defines nanobreweries as “very small brewery operations” that produce beer for sale

- Nano brewing equipment used is very similar to Home Brew systems.
- To legally sell beer you must have a business location and Federal/State Alcohol Licenses.
- Applied under the SC State ABL maximum 48-oz. license (no food required).
- Leased the former Sunny Daze Surf Shop at 144 Arrow Road, unit A (760 SFT) in the Sea Pines Circle (SPC) District, Arrow Circle area.
- No construction required, simply place equipment and operate our fully electric set up from a 200-amp panel.
- Brew ~200 Barrels (BBL) per year, for reference:
 - Brewery is >15,000 BBL per year
 - Microbrewery is <15,000 BBL per year
 - Nanobreweries are generally considered <2,000 BBL per year, some areas even less BBL's.
- Brew beer, dispense beer, sell from premise only.
 - We are **not wholesaling or distributing** our beer!

Trends in Craft Beer Breweries

- There are >8K craft beer breweries of all shapes and sizes.
- The trend is quickly moving towards smaller breweries with a 'premise-only' sales model, eliminating wholesaling and distributing as they significantly dilute profit margins.
- Smaller equipment (less capital) and smaller space (less rent) create opportunities for neighborhood type 'beer-only' establishments (A.K.A. the Nano Brewery).

Nationally

- 1,653 in 2009
- 7,450 in 2018
- 8,000+ in 2019

South Carolina

- 16 in 2011
- 82 in 2018 *Note: Charleston County now has 31 operating breweries with more planned.*

Beaufort County

- 3 in Bluffton
- 1 Ridgeland
- 1 on Hilton Head (*same one by the airport since 2015*)

SHBC State License – Brewery Permit

ATTACHMENT A

1350

dor.sc.gov



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

ABL PERMIT/LICENSE REQUIREMENTS

ABL-975
(Rev. 5/15/19)
4589

BEER AND WINE PERMIT DEFINITIONS

Off-Premises Beer and Wine Permit (PBG):

Authorizes the sale of beer and wine "to go" only.

On-Premises Beer and Wine Permit (PBW):

Authorizes the sale of beer and wine "to go" and consumption on the licensed premises.

7-Day On-Premises Beer and Wine Permit (PO7):

Authorizes the sale of beer and wine "to go" and consumption on the licensed premises, seven days a week. If you are not planning to sell "to go" on Sunday, apply for the PBW. Only issued in counties and municipalities that have passed a referendum allowing Sunday sales of beer and wine and has been approved for Sunday sales of alcoholic liquors, authorized by SC Code Section 61-6-2010.

7-Day Off-Premises Beer and Wine Permit (P7B):

Authorizes the sale of beer "to go" only, seven days a week, with no restrictions on hours of sale. Only issued in counties or municipalities that have passed a referendum allowing the Sunday sale of beer.

Brewpub Permit (PBB):

Authorizes the sale of beer and wine, the manufacture of beer, and the consumption of these products on the permitted premises.

Sunday/Sabbath Beer and Wine Permit (PRB):

Authorizes the sale and consumption of beer and wine on Sunday if you close your business on Saturday for religious purposes. Only issued in counties or municipalities that have passed a referendum allowing the Sunday sale of beer.

Brewery Permit (PWY):

A brewery constructed, maintained, and/or operated in this State for the production of any beer, ale, porter, or other similar malt or fermented beverage containing no more than 14% alcohol by weight.

Beer and/or Wine Wholesaler Permit (PWB):

Any person who makes the first sale within this State or who sells or distributes any quantity of beer or wine to any other person for resale. Does not include any person who produces wine in the State from fruits grown within the State by or for the manufacturer.

Our license type PWY is one-size fits all, nowhere does it say 'factory' or 'manufacturing'.

Timeline of Communication with Town

- 10/21/19: SHBC requests zoning verification letter by detailing our business to be operated at 144 Arrow Road, inside the Sea Pines Circle (SPC) District.
- 10/23/19: Received town zoning verification approval, classifying us as “Nightclub or Bar.”

Upon receipt we moved forward to set up the business for a 1/15/20 opening, we have spent >\$25K to date:

- Fully Executed lease agreement 11/1
- Filed for Federal and State Alcohol licenses (Fed approval received on 12/2)
- Purchased / Ordered Brewing Equipment
- Passed 3-Week Public Notice ending 11/27
- Passed SLED ABL Notice ending 12/7
- 11/20/19: Town tells Landlord likely denying business license.
- 12/10/19: SHBC provides ‘interpretation’ document and supporting narrative.
- 12/16/19: Town sends a ‘rescind’ letter on prior zoning verification.

The letter states that “staff gave you incorrect information” and that we were now being classified as “manufacturing” which is not an approved use for the SPC.

Note: Since the LMO does not have any kind of brewery definition they referred to “A Planner’s Guide” citing Brewery, Brewpub and Microbrewery, but did not cite the second and third examples under Microbrewery which are more in line with a smaller (nano) brewery.

Perspective as we go into the appeal

Please keep in mind these 3-examples of made fresh, sold fresh beverage businesses:

- Squeezing lemons into water and adding sugar does not make you a lemonade manufacturer or lemonade factory.
- Running hot water through ground up coffee beans does not make you a coffee manufacturer or coffee factory.
- Adding grain to boiling water and then fermenting it does not make you a beer manufacturer or beer factory.



These are not factories or manufacturers, they simply make and sell beverages.

Appealing LMO Determination & Source Used

Determination classifying us under LMO 16-10-103.I.2

1. We are appealing the determination that we are ‘manufacturing’ goods.
2. The LMO is absent in listing any type of brewery or nano brewery, therefore we were incorrectly determined as ‘manufacturing’ use which would only be permitted in a Light Industrial district.
3. Based on a nano brewery function and equipment used, we should be classified **Commercial Services** type ‘*Other Commercial Services*’ in the LMO.
4. SPC Zoning of “Mixed Use” is applicable to SHBC as we:
 - Are aligned with the vision for revitalization of the Arrow Circle area
 - Adding a business that is non-existent on the south end of the island today
 - Creating a point of interest for trolley passengers, bicyclist, pedestrians and ‘south-enders’

LMO Section Cited

- Chapter 16-9: - Disaster Recovery
- ▼ Chapter 16-10: - Definitions, Interpretation, and Measurement

Sec.16-10-101. - General Rules for Interpretation modified

Sec.16-10-102. - Rules of Measurement

Sec.16-10-103. - Use Classifications, Use Types, and Definitions

Sec.16-10-104. - Table of Contents modified

Sec.16-10-105. - General Definitions modified

- Appendix A: - Advisory and Regulatory Bodies and Persons

- Appendix B: - Maps and Tables

Appendix C: - Recommendations

This sentence was cited in the letter (next slide)

In the examples below it there is not a single one that is remotely related to brewing beer, or making any kind of beverage.

A light industrial *use* is primarily engaged in the *repair* or servicing of industrial, business, or consumer machinery, equipment, products or by-products. Examples of light industrial *uses* include: welding shops; machine shops; tool *repair*; electric motor *repair*; *repair* of scientific or professional instruments; *building*, heating, plumbing or electrical contractors; printing, publishing and lithography; exterminators; janitorial and *building maintenance* services; fuel oil distributors; research, testing and *development* laboratories; laundry, dry-cleaning and carpet cleaning facilities; and photo-finishing laboratories.

A manufacturing *use* is primarily engaged in the manufacturing, processing, fabrication, packaging, or assembly of goods. Examples of manufacturing *uses* include catering establishments; woodworking, cabinet makers; production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products; motion picture production facilities; concrete batching and asphalt mixing; production or fabrication of metals or metal products including enameling and galvanizing; manufacture or assembly of equipment, instruments, including musical instruments, appliances, precision items and other electrical items; production of artwork and toys; and sign making. This *use* type does not include *seafood processing*.

A warehouse *use* is primarily engaged in the storage or movement of goods for themselves or other businesses. Examples of warehouse *uses* include separate warehouses used by retail stores (such as furniture and appliance stores); household moving and general freight storage; food storage; cold storage plants, including frozen food lockers; parcel services; and the stockpiling of sand, gravel, or

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

www.hiltonheadislandsc.gov

John J. McCann
Mayor

Via E-mail

William D. Harkins
Mayor Pro Tem

December 16, 2019

Council Members

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

Mr. Mike Palmieri
PO Box 20143
Hilton Head Island, SC 29925

Dear Mr. Palmieri:

Stephen C. Riley
Town Manager

This letter is in response to your request for a determination related to a building you leased at 144 Arrow Road. You have asked for a determination regarding the ability to operate a Nano Brewery at the subject property. The property is identified as Parcel 276A on Beaufort County Tax Map 15 and is zoned SPC (Sea Pines Circle District).

On October 21, 2019 you submitted a zoning verification request for the subject property and asked if a brewery was permitted at that location. Staff gave you incorrect information stating that the use would be classified as a "Nightclub or Bar" per the Land Management Ordinance (LMO). Based on the incorrect zoning verification, you leased the building. A Nightclub or Bar is defined in LMO Section 16-10-103.G.2 as "an establishment that sells alcoholic beverages for consumption on the premises, and that may provide live or televised entertainment or dancing. Food items may be offered for sale to patrons, but the sale of food items is not a major source of revenue."

It wasn't until you submitted the application for your business license that you were informed the zoning verification was incorrect and that your application was being denied. Staff informed you the incorrect zoning verification has since been rescinded and suggested you submit a request for determination regarding the use.

You stated in your request that you are proposing to make craft beer and sell it on a to-go basis, with a license from the state that allows a limited consumption of 48 ounces per customer on premise. The South Carolina Alcohol Beverage Licensing does not consider beer as an alcoholic beverage, and therefore your proposed use of crafting and selling beer at your site would not meet the definition of a "Nightclub or Bar".

The term Brewery is not defined in the LMO. LMO Section 16-10-101.K, Term Not Defined, states that when a term is not defined in the LMO, the Official is authorized to interpret its meaning based upon definitions used in acceptable sources. One such source listed is A Planner's Dictionary, which defines a brewery as "an industrial use that brews ales, beers, meads, and/or similar beverages on site. Breweries are classified as a use that manufactures more than 15,000 barrels of beverage (all beverages combined) annually. In addition, uses that manufacture 15,000 barrels of beverage or less, but which do not meet

ATTACHMENT A

- We brew beer like Starbucks brews coffee – they are 'brewed' beverages
- We both serve our beverages in consumable containers
- We both sell on-site and products can be consumed there or purchased to-go
- Neither of us are "manufacturing" anything

one or more of the additional requirements needed to be considered brewpubs, are breweries."

A Planner's Dictionary defines a brewpub as "a restaurant that manufactures up to 5,000 barrels of fermented malt beverages per year on premises for either consumption on premises in hand-capped or sealed containers in quantities up to one-half barrel or 15.5 gallons sold directly to the consumer. Wholesaling shall be permitted only where authorized within the zoning code. An eating place that includes the brewing of beer as an accessory use." It also defines a microbrewery as a "facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail, or wholesale, on or off premise, with a capacity of not more than 15,000 barrels per year."

LMO Cited

While the LMO does not specifically define brewery, a brewery has historically been classified by Town staff as a Manufacturing use, which is how the use is classified numerous ways in A Planner's Dictionary, as noted above. Manufacturing is defined in LMO Section 16-10-103.L.2 as a use primarily engaged in the manufacturing, processing, fabrication, packaging, or assembly of goods. Because you are producing, processing and packaging the beer on site, your use is classified as a manufacturing use, which is not permitted in the SPC Zoning District.

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.

Sincerely,



Nicole Dixon, AICP, CFM
Development Review Administrator

Cc: Teri Lewis, Deputy Director of Community Development

Nano-Brewery classification of Commercial Services

(LMO 16-10-103 Sec. G)

G. Commercial Services

1. Description

Establishments involved in the sale, rental, and incidental servicing of goods and commodities that are generally delivered or provided **on the premises** to a consumer. Commercial Services may also include uses that provide personal services, or product repair , or services for consumer and business goods. Commercial Services does not include sales or service establishments related to vehicles (considered Vehicle Sales and Services), or establishments primarily selling supplies to contractors or retailers (considered *Wholesale Sales*), or the provision of financial, professional, or business services in an office setting (considered *Office Uses*), or *uses* providing recreational or entertainment opportunities (considered Commercial Recreation Uses). **Accessory uses** may include offices, storage of goods, **assembly or repackaging of goods for on-site sale**, concessions, ATM machines, and outdoor display of merchandise.

This is a catch all category, **why wouldn't this be applicable for SHBC?**

There is not a category for a lemonade stand, coffee bar or brewery so they have go somewhere, or create the category.

Sea Pines Circle Zone – Mixed Use

The purpose of the Sea Pines Circle (SPC) District is to provide *lands* for commercial and *mixed-use development* at moderate to relatively high intensities in the area around Sea Pines Circle. District regulations emphasize moderate-scale *buildings* and *shopping centers* that balance the needs of the driving public and pedestrian activity and circulation among the district's retail, dining, and entertainment activities. The district is also intended to accommodate nighttime activities.

Some of the diverse businesses currently operating:

- Storage Facility
- Shipping & Packaging Store
- Car Wash
- Commercial Laundry Facility (why isn't this in **Light Industrial**?)
- Strip Club
- Coffee Shops
- Ice Cream Shop
- Chocolate Shops
- Banks
- Restaurants
- Yoga Studios
- Liquor Store

Appealing LMO Determination & Source Used

A Planner's Dictionary Source

1. *A Planner's Dictionary* is not inclusive of nano breweries, which are a growth trend as craft brewers move away from a distribution model and focus on premise sales only.
2. In our rescind letter, the first example in the 'microbrewery' category was cited; however, the two below it are more aligned with a nano brewery and were not considered.
3. In terms of function and equipment, nano breweries are most similar to these other SPC businesses:
 - Starbucks Coffee, 'brews' coffee as main income source
 - Hilton Head Ice Cream, makes their own ice cream (even does custom orders and wholesales to local restaurants)
 - Chocolates By The Sea, makes their own chocolates and other treats

Source Used “A Planner’s Dictionary”

■ **brewery** An industrial use that brews ales, beers, meads, and/or similar beverages on site. Breweries are classified as a use that manufactures more than 15,000 barrels of beverage (all beverages combined) annually. In addition, uses that manufacture 15,000 barrels of beverage or less, but which do not meet one or more of the additional requirements needed to be considered brewpubs, are breweries. (*Bloomington, Ind.*)

A facility with a capacity to manufacture more than 1 million barrels of alcoholic and nonalcoholic malt liquor a year. This definition excludes brew-on-premises stores as defined herein and/or small breweries operated in conjunction with a bar or restaurant defined herein as an accessory use. (*St. Paul, Minn.*)

■ **brewpub** (*See also microbrewery*) A restaurant that manufactures up to 5,000 barrels of fermented malt beverages per year on premises for either consumption on premises in hand-capped or sealed containers in quantities up to one-half barrel or 15.5 gallons sold directly to the consumer. Wholesaling shall be permitted only where authorized within the zoning code. (*Madison, Wisc.*)

■ **microbrewery** (*See also brewpub*) A facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail, or wholesale, on or off premise, with a capacity of not more than 15,000 barrels per year. The development may include other uses such as a standard restaurant, bar or live entertainment as otherwise permitted in the zoning district. (*Kalamazoo, Mich.*)

A facility at which beer, fermented on the premises, is bottled and sold. The volume of production of such facility may not exceed 200 gallons a day. (*Dona Ana County, N.Mex.*) (2,354 barrels per year)

An establishment where beer, ale, etc. are brewed, typically in conjunction with a bar, tavern, or restaurant use. The maximum brewing capacity shall not exceed 20,000 gallons per year. (*Fort Wayne, Ind.*) (645 barrels per year)

This was cited in the rescind letter.

Why weren't these two considered?
Their capacity output indicates something far closer to that of a nanobrewery.

In Summary

- Respectfully request that our classification be determined as “Other Commercial Services” and in the future that Nano Brewery is written into the LMO when it is next updated.
- View our business with excitement as a first of it’s kind on the island and a new point of interest in the SPC as part of the continued Arrow Circle revitalization.
- Help us make this exciting new business a reality for the 2020 spring season.

(Appendix contains additional data on interactions with the Town of HHI and other supporting documents)

Appendix

Zoning Verification Request (10/21/19)



● **Mike Palmieri** <mike.palmieri@att.net>

To: teril@hiltonheadislandsc.gov



Oct 21 at 2:45 PM



Hello Teri,

I am writing you for a zoning certification letter for the property located at 144 Arrow Road (PIN: R552 015 000 276A 0000 / AIN: 04298263) owned by Clear Daze LLC.

We have reviewed the Sea Pines Circle zoning district and want to ensure that the site is indeed eligible to host a nano sized craft beer facility. Our business will produce small quantity craft beer and sell it primarily on a to-go basis with growler (container) fills and packaged cans. We would offer limited tap room pours as we are applying for licensing that allows a maximum 48-ounces per customer for on premise consumption, and also precludes us from operating a brew pub / restaurant.

I recognize you may have follow up questions, which I am readily available to talk through at your convenience. I just wanted to provide you some background context on this request.

Thank you, I look forward to hearing from you.

Best regards,

Mike Palmieri
Side Hustle Beer Company
[843-290-4046](tel:843-290-4046)



Zoning Verification Response Email 10/23/19

• FW: 144 Arrow Road Zoning Verification Request

Yahoo/Inbox ★



• **Luick, Missy** <missyl@hiltonheadislandsc.gov>

To: mike.palmieri@att.net



Oct 23 at 4:14 PM



Hello Mr. Palmieri,

Attached is the zoning verification letter per your request.

Thank you,

Missy

Missy Luick

Senior Planner

Community Development Department

Town of Hilton Head Island

1 Town Center Court

Hilton Head Island, SC 29928

O: [\(843\) 341-4693](tel:(843)341-4693)

F: (843) 842-8908

missyl@hiltonheadislandsc.gov

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Thomas W. Lennox
Glenn Stanford

Stephen G. Riley
Town Manager

VIA E-MAIL

October 23, 2019

Mr. Mike Palmieri
Side Hustle Beer Company
Mike.palmieri@att.net

Re: 144 Arrow Road

Dear Mr. Palmieri,

This letter is in response to your request for a zoning verification letter for property located at 144 Arrow Road, further identified as R552 015 000 276A 0000. Please be aware that it is not a Town of Hilton Head Island policy to conduct a detailed site analysis; therefore, this correspondence will verify zoning, permitted land use and density only.

The subject parcel is zoned SPC (Sea Pines Circle District) identified on the Town of Hilton Head's Official Zoning Map. The subject parcel is not part of a PUD. The parcel is located within the Corridor Overlay District. The parcel is regulated by Land Management Ordinance (LMO) Section 16-3-105.M as well as other development standards sections in the LMO. I have attached the section of the LMO that addresses uses and density for this zoning district. The use you describe is considered Nightclub or Bar which is an allowed use in the SPC district. The LMO defines Nightclub or Bar as "an establishment that sells alcoholic beverages for consumption on the premises, and that may provide live or televised entertainment or dancing. Food items may be offered for sale to patrons, but the sale of food items is not a major source of revenue." The density in the SPC district is limited to 10,000 GFA per net acre. The approximate parcel area is 0.1899 acres.

You can contact me at either (843) 341-4693 or missyl@hiltonheadislandsc.gov if you have any additional questions.

Sincerely,



Missy Luick
Senior Planner

cc: File

ATTACHMENT A

Verification Letter 10/23/19

Upon receipt of this letter we launched our business:

1. Fully Executed a 3-yr lease eff. 11/1/19
2. Filed Federal (TTB) & State Licensing 11/4/19
3. Received Federal **approval** as of 12/2/19!
4. **Passed** 3-week Public Notice 11/27/19
5. **Passed** SLED ABL Notice 12/7/19
6. Purchased kettles & tanks for a 1/15/20 opening!

Spent over >\$25K in personal funds for licensing and equipment in November.

On November 20th we received word from our Landlord that our license was being denied, this was mentioned to him while he was at the town conducting other business. We contacted the town and had some back and forth exchange of calls and emails during the Thanksgiving week into early December. The town had internal meetings without resolution which led us to completing a Written Interpretation Request, which we submitted along with our narrative on December 10th.

LMO Interpretation Narrative Email 12/10/19

• LMO Interpretation (brewery)

Yahoo/Sent ★



• **Mike Palmieri** <mike.palmieri@att.net>

To: Dixon Nicole



Dec 10 at 4:25 PM



Hi Nicole,

I have attached the interpretation form (based on the details I know about the parcel) and also attached a narrative document. I am happy to attend an in-person meeting if a committee would like to further discuss the request.

Thank you,

Mike Palmieri
[843-290-4046](tel:843-290-4046)

On Tuesday, December 10, 2019, 01:26:47 PM EST, Dixon Nicole <nicoled@hiltonheadislandsc.gov> wrote:

Mike,

Per our conversation, please see attached determination request. Again please be as detailed as possible in your narrative about what your proposed use is and how the business will function. Thank you!

Nicole Dixon, AICP, CFM

Development Review Administrator

Town of Hilton Head Island

One Town Center Court

Hilton Head Island, SC 29928

Nicole,

While we are willing to alter our plans to fit the SPC district to make us a 'bar' I prefer to maintain the original business we submitted and were approved by LMO for SPC zoning verification. Our business was outlined as follows:

1. Brew small quantity craft beer utilizing nano-sized kettles and tanks.
2. Sell tap room pours (maximum 48-ounces per customer for on premise consumption).
3. Sell beer to-go with growler (container) fills and packaged cans.

Since the time of receiving the LMO verification we have executed a lease and filed federal and state license paperwork (federal license was approved on Monday 12/2) and procured equipment and many expenses in preparation for our opening.

Because breweries are not readily defined or understood being a newer business, I want to share some additional information. Most craft breweries are born from home brewing. Every household can own and operate a home brew system without any training or licensing. It is no different than virtually every house having a coffee maker and BBQ grill. For us, we are renting a 760sft retail space and placing kettles and tanks in it. The very same kettles and tanks that I can place inside my home garage and brew beer without any special approvals or permits. I can consume the beer and share with friends over 21-years of age, I just can't sell it from my garage.


A couple other points about how we differ for the better from homebrewing: 1) Most homebrewers mill their grain (create dust) whereas we order our grains pre-milled. 2) Most homebrew systems use propane-fired jet burners outside their kettles; we are using electric heating elements inside our kettles to boil water and beer (like electric hot water tanks). Nothing more than a 200-amp panel is required to run our system, we just plug and play.

From what I can see, the SPC district has a **commercial laundry plant**, tortilla factory, t-shirt factory, **made on site ice cream shop**, a cushion & upholstery company and **coffee shops**. For reference I have attached pure definitions that illustrate the difference of Brew/Brewery versus Factory/Manufacturing. We are not manufacturing, warehousing or wholesaling any goods in our 760sft space. We are simply brewing beer and selling on premise. For comparison, Starbucks in SPC is brewing coffee and selling on premise, they are not a factory or manufacturer of coffee.

12/22/19 Note: Having received the HHI Zoning Map we verified that the Commercial Laundry Plant (15 Dunnagans Alley, occupying majority of 13,550sft) with multiple roof cowl & stack vents is in the SPC district. This is not a coin laundromat, it is a significant commercial laundering operation and would need to be in **Light Industrial** zoning. Also verified in SPC are Hilton Head Ice Cream at 55 New Orleans Road, and the Starbucks at 11 Palmetto Bay Road. ²¹

ATTACHMENT A

factory


[ˈfakt(ə)rē] 

NOUN

1. a building or group of buildings where **goods are manufactured or assembled chiefly by machine.**
 "a clothing factory" · [\[more\]](#)
synonyms: works · plant · manufacturing complex/facility · yard · mill · industrial unit · business unit · workshop · shop · shop floor · manufactory
- a person, group, or institution that **continually produces a great quantity of something specified**
 "a huge factory of lying, slander, and bad English"

vs.

brewery

[ˈbrō(ə)rē] 


NOUN

breweries (plural noun)

- a place where beer is made commercially.**
 "work continued on the new lager brewery in Alton"

There is nothing machinery/mechanical or great quantity/large scale about our brewery!

manufacture

[ˌmæn(y)əˈfak(t)ʃhər] 


VERB

manufacturing (present participle)

1. make (something) **on a large scale using machinery.**
 "a company that manufactured paint-by-number sets"
synonyms
 make · produce · mass produce · build · construct · assemble · put together · create · fabricate · prefabricate · turn out · process · form · fashion · model · mold · shape · forge · engineer
- make or produce (something abstract) in **a merely mechanical way.**
 "Julia manufactured a smile"
synonyms
 make · produce · mass produce · build · construct · assemble · put together · create · fabricate · prefabricate · turn out · process · form · fashion · model · mold · shape · forge · engineer

vs.

brew

[brō] 

VERB

brewing (present participle)

1. make (beer) **by soaking, boiling, and fermentation.**
 "within five years the company will brew as much beer in China as in Australia" · [\[more\]](#)
synonyms
 ferment · make
2. make (tea or coffee) **by mixing it with hot water.**
 "I've just brewed some coffee" · [\[more\]](#)
synonyms
 prepare · infuse · make · mast · be in preparation · stew · mash



12/22/19: Our brewing buddies

Interpretation Follow Up Email 12/13/19

ATTACHMENT A

• Re: LMO Interpretation (brewery)

Yahoo/Sent ★



• **Mike Palmieri** <mike.palmieri@att.net>

To: Dixon Nicole



Dec 13 at 2:07 PM



Hi Nicole,

I just wanted to share some additional information while this is still being reviewed.

In my interpretation document I referenced homebrewing (HB) and thought that I would compile some photos illustrating what a HB system looks like in a garage / basement scenario. As you will see below, it is wide open for how HB is accomplished, anything from basic pots and coolers to pro-style set ups. There are even countertop systems that people use in apartments and condos. The systems below are .5 to 1 barrel size. We were going to open our business with a 1-barrel system but that would require brewing 3-days a week. Instead we will use 3-barrel pots so we will just need to brew once weekly to meet our annual volume goal of ~150 barrels.

In the interpretation document I referenced Starbucks as another prevalent brewing business. For comparison, a typical Starbucks sells over 500-barrels in coffee each year. A typical Starbucks employees 10.8 people, most are part-timers. Our business only has three of us involved. Only one of us will work at the brewery full time. Why? Because another partner has a full time job and can only work off-hours and I currently work part-time in my former career. Typically our business will have 1-2 of us there, rarely the three of us. I share this to emphasize that a 1-2 person business is about as small scale as you can make one.

Another note is that we will be closed for retail sales on our brewing day. We will only sell beer when we are not brewing, which we plan to have limited retail hours 5-days per week.

I am available at any time to come down and meet with you and the team, please let me know as we have many items pertaining to the business in a holding pattern now.

Thank you,

Mike

Homebrew Examples in Follow Up Email 12/13/19

ATTACHMENT A



Challenge with Semantics

We are no more a beer factory or beer manufacturer than this sweet shop in the SPC district is a chocolate factory or manufacturer. We brew beer that you can drink on premise and/or buy packaged to go, just like Starbucks in Island Crossing brews coffee that you can drink on premise and/or buy packaged to go.

Definitions can use broad brush strokes and lump a lot of things together that are clearly not the same.



HH ICE CREAM makes their products on site, does custom orders and also wholesales to The Old Oyster Factory and The Sea Pines Beach Club and many others. Yet, they are not a factory or manufacturer.



N.H. law gives nanobreweries a larger standing

ATTACHMENT A

As the first state to license nanobrewery operations, New Hampshire has given the small industry a lot of room to grow

By Brandon Gee Globe Correspondent, February 5, 2013, 12:00 a.m.



If we are going to consider what other states are doing in “A Planner’s Dictionary” let’s please consider N.H. as they are a trend setter!

“The craft beer industry has been exploding,” said Representative Mark Warden, a Manchester Republican who sponsored the nanobrewery law. “We’re just trying to support it.”

The larger microbreweries typically require a six-figure investment to get off the ground. But nanobreweries can start producing barrels of beer for just a fraction of that cost.

The New Hampshire law also offers other money-saving advantages. Nanobrewers can apply for a separate brewery license that costs just \$240 a year, rather than \$1,200, and can serve beer without the usual requirement that the brewery function as a “brew pub” by also selling hot food.

The term “nanobrewery” arose in recent years as an informal term for an operation even smaller than the typical microbrewery that produces no more than 15,000 barrels a year. The New Hampshire law describes a nanobrewery as a producer of less than 2,000 barrels, or 63,000 gallons of beer, a year.

Hobbyists and others who want to test a product concept find it increasingly possible to tap the market for popular craft beers with those low-budget nanobreweries.

“Essentially, it’s just a scaled-up home-brew system,” Neel said recently, while measuring out the dextrose used to prime his beer for bottling at the Candia Road Brewing Co.

In **2011**, New Hampshire created a nanobrewery license that allows a brewery to produce up to 2,000 barrels per year.

It allows them to sell limited amounts of beer on premises, as opposed to the free samples allowed at breweries holding a beverage manufacturer's license.

By July 2013 there were 23 nanobreweries and as of February 2019, there were 38 nanobreweries licensed in New Hampshire.

Note: There were 81 total breweries in NH at the end of 2018, with nanobreweries representing 47% of the total.

Nano Recognition

In addition to the trend setting work done in New Hampshire in 2011. Today you will find 'Nanobrewery' as a standalone definition from Microbrewery in Wiki.

Definitions [\[edit \]](#)

Microbrewery [\[edit \]](#)

Although the term "microbrewery" was originally used in relation to the size of breweries, it gradually came to reflect an alternative attitude and approach to brewing flexibility, adaptability, experimentation and customer service. The term and trend spread to the US in the 1980s and was eventually used as a designation of breweries that produce fewer than 15,000 U.S. beer barrels (1,800,000 liters; 460,000 U.S. gallons) annually.^[7]

Microbreweries gradually appeared in other countries, such as [New Zealand](#) and [Australia](#). Craft beer and microbreweries were cited as the reason for a 15 million L (4.0 million US gal) drop in alcohol sales in New Zealand over 2012, with New Zealanders preferring higher-priced premium beers over cheaper brands.^[8]

Nanobrewery [\[edit \]](#)

The website The Food Section defines a "nanobrewery" as "a scaled-down microbrewery, often run by a solo entrepreneur, that produces beer in small batches."^[9] The US Department of the Treasury defines nanobreweries as "very small brewery operations" that produce beer for sale.^[10]

Our 'In-State Brewery' ^{ATTACHMENT A} PWY License

Sales for Premise Consumption

- Maximum ABV is 12%.
- Maximum 48oz per individual in a 24-hour period, of which no more than 16oz can exceed 8% ABV.

Sales for Off Premise Consumption

- Maximum ABV is 14%.
- Maximum per individual is 288oz per day.

Note: We are not wholesaling or distributing our beer, we are premise sales only.

Other SC Cities want breweries!

Cities like North Charleston, Rock Hill and Myrtle Beach have been working on zoning to create the opportunity for local breweries to open and attract business as well as revitalize areas.

What cities should know about beer and breweries

How to accommodate breweries and public sipping

Craft brewing in South Carolina is growing rapidly thanks in part to changes made to state law over the last several years and a rising interest among both young professionals and older craft fans. From brewery openings to more festivals featuring craft beer, cities and towns are benefiting from this growth.

"I contend that due to folks traveling to our breweries, cumulatively, our breweries are our second largest tourism destination, behind the [North Charleston Coliseum](#)."

(Ryan Johnson, the city's economic development and public relations coordinator.)

LOCAL

A brew pub near you? Rock Hill may make it easier to attract craft beer businesses

Rock Hill leaders are one step closer to making it easier for new beer to be poured in the city.

The Rock Hill City Council approved on first reading Monday night an ordinance to establish craft breweries as a new type of business under the city's zoning laws. The new measure would make it easier for small craft breweries, limited to 15,000 barrels of production a year, to come to Rock Hill, according to Bill Meyer, the city's planning and development director.

Myrtle Beach planners say three brew pubs could come to downtown

The craft beer explosion has mostly skipped over Myrtle Beach, with only a handful of places in the city serving their own product.

It's in contrast to much of the nation, where brew pubs are popping up in up-and-coming areas of cities.

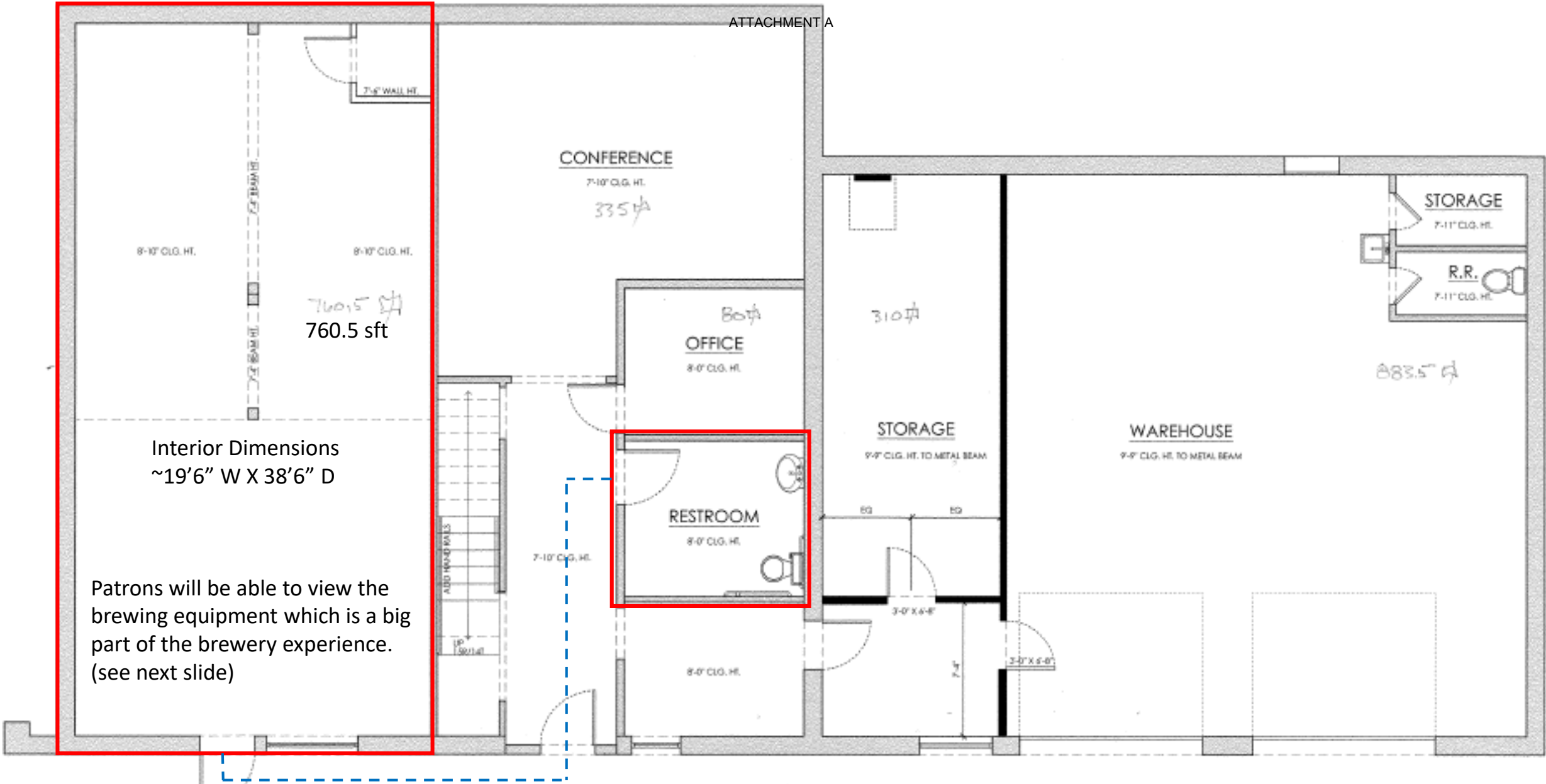
SHBC will be the smallest brewery in South Carolina

(We are more interested in being the best beer made in SC!)

ATTACHMENT A

Former Sunny Daze Surf Shop





760.5 sq ft
760.5 sft

Interior Dimensions
~19'6" W X 38'6" D

Patrons will be able to view the brewing equipment which is a big part of the brewery experience. (see next slide)

- NOTES:
- FLOOR PLAN BASED OFF FIELD MEASUREMENTS AND ALL LOCATIONS SHOULD BE CONSIDERED +/-
 - WALLS AND DOORS SHOWN IN SOLID HATCH ARE SHOWN PER CODE / LIFE SAFETY REQUIREMENTS AND ARE NOT EXISTING.

Nano Brewery Examples ATTACHMENT A

(These spaces are larger than ours, some kettles & tanks are larger as well.)



Sec. 16-3-105. – Mixed-Use and Business Districts

A. General Purposes

The *mixed-use* and business *base zoning districts* established in this section are intended to provide a range of business and *mixed-use development* opportunities in appropriate locations. More specifically, they are intended to:

1. Provide appropriately located *lands* for the full range of business *uses* needed by the Town's residents, businesses, and workers, consistent with the goals, objectives, and policies of the *Comprehensive Plan*;
2. Strengthen the Town's economic base, and provide employment opportunities close to home for residents of the Town and surrounding communities;
3. Create suitable environments for various types of business *uses*, and protect them from the adverse effects of incompatible *uses*;
4. Create suitable environments for various types of *mixed-use development*, where business, office, retail, and residential *uses* are designed and integrated in compatible ways; and
5. Minimize the impact of business *development* on residential districts and *uses*, and sensitive natural environments.

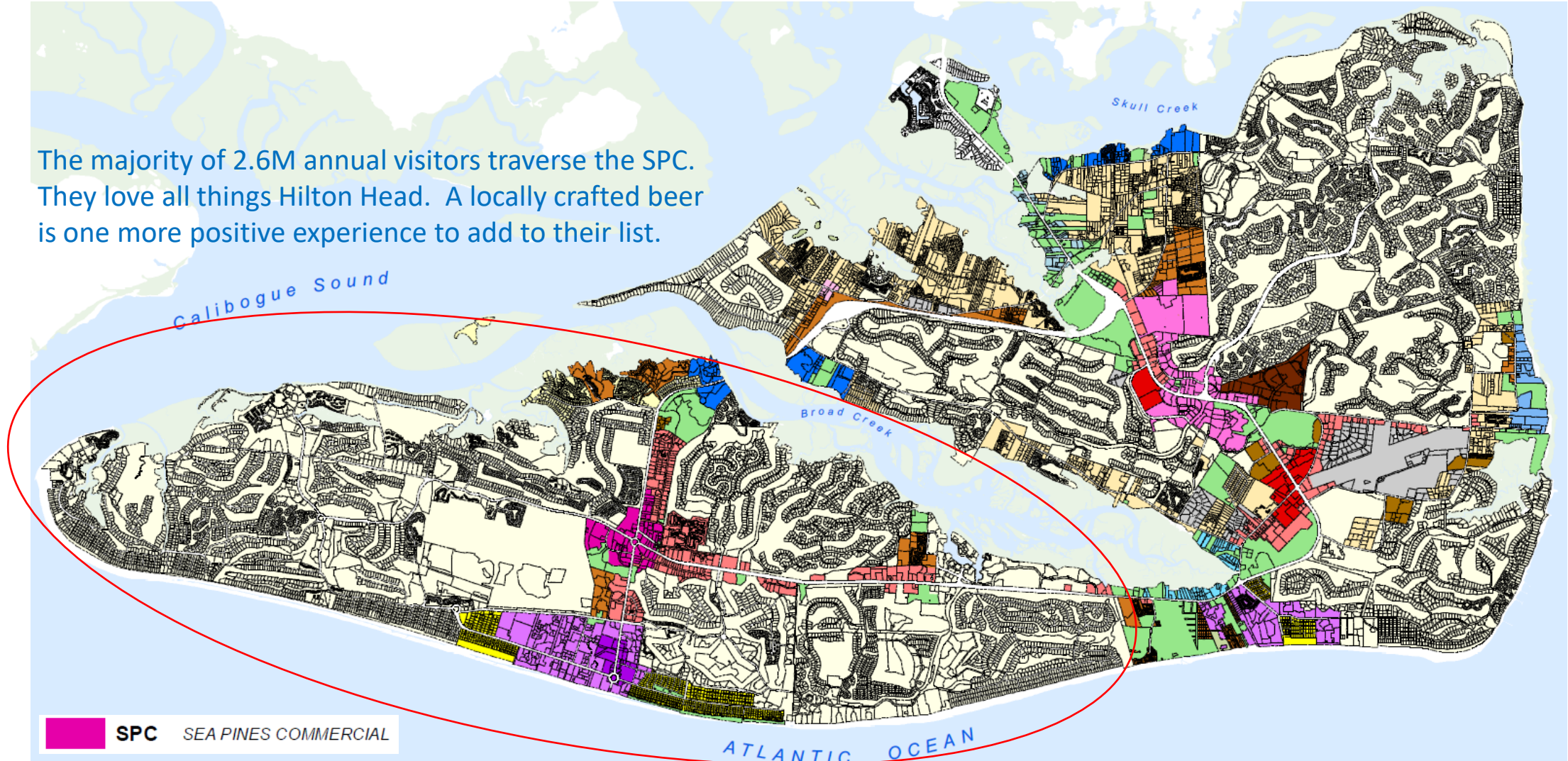
Sea Pines Circle District

1. Purpose

The purpose of the Sea Pines Circle (SPC) District is to provide *lands* for commercial and *mixed-use development* at moderate to relatively high intensities in the area around Sea Pines Circle. District regulations emphasize moderate-scale *buildings* and *shopping centers* that balance the needs of the driving public and pedestrian activity and circulation among the district's retail, dining, and entertainment activities. The district is also intended to accommodate nighttime activities.

Population & Tourism Density Area

The majority of 2.6M annual visitors traverse the SPC. They love all things Hilton Head. A locally crafted beer is one more positive experience to add to their list.



APPROXIMATE TROLLEY TIMES:

EVERY DAY OF THE WEEK (ALL TIMES P.M.)

SOUTHBOUND (SHELTER COVE TO COLIGNY)

1	2	3	4	5	6	7	8
1:00	1:03	1:08	1:11	1:15	1:18	1:20	1:25
1:30	1:33	1:38	1:41	1:45	1:48	1:50	1:55
2:00	2:03	2:08	2:11	2:15	2:18	2:20	2:25
2:30	2:33	2:38	2:41	2:45	2:48	2:50	2:55

TROLLEYS CONTINUE OPERATING ON SAME SCHEDULE ARRIVING AT EACH STOP APPROXIMATELY EVERY 30 MINUTES.

9:30	9:33	9:38	9:41	9:45	9:48	9:50	9:55
10:00	10:03	10:08	10:11	10:15	10:18	10:20	10:25

NORTHBOUND (COLIGNY TO SHELTER COVE)

8	9	10	5	11	12	1
1:00	1:02	1:04	1:10	1:15	1:18	1:25
1:30	1:32	1:34	1:40	1:45	1:48	1:55
2:00	2:02	2:04	2:10	2:15	2:18	2:25
2:30	2:32	2:34	2:40	2:45	2:48	2:55

TROLLEYS CONTINUE OPERATING ON SAME SCHEDULE ARRIVING AT EACH STOP APPROXIMATELY EVERY 30 MINUTES.

9:30	9:32	9:34	9:40	9:45	9:48	9:55
10:00	10:02	10:04	10:10	10:15	10:18	10:25

TROLLEYS RUN UNTIL MIDNIGHT EVERY FRIDAY AND SATURDAY.

- TROLLEY AMENITIES:**
- FREE WI-FI
 - BICYCLE RACKS
 - AIR CONDITIONING
 - 100% ACCESSIBLE LOW-FLOOR VEHICLES
 - DEPLOYABLE RAMP FOR EASY BOARDING
 - NOSTALGIC WOOD INTERIORS AND SEATING
 - PAYMENT AND TRACKING APPS



It would be pretty cool to have a craft brewery located by the Arrow Road Trolley Stop!

Craft Beer, it's a thing!

ATTACHMENT A

Defining a couple of terms relevant to craft beer enthusiasts:

Beer Nerd

(Nerd has a positive connotation in the beer world)

A person who enjoys not only drinking beer, but is a connoisseur who enjoys all types, and who is well educated in the procedures involved with its production from boiling water to pitching yeast; slang for home brewer.

Beercation

Just like what it sounds like, beer + vacation.

According to the Brewers Association, a trade organization that promotes craft brewers, more than 10 million people toured small and independent craft breweries in 2014.

With the rise of beer-focused tourism, social media users have coined the term 'beercation' to refer to any trip where they tour a brewery, attend a beer festival, sample local beer or do nearly anything else beer-related.

TOWN OF HILTON HEAD ISLAND

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John J. McCann
Mayor

Via E-mail

William D. Harkins
Mayor ProTem

December 16, 2019

Council Members

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

Mr. Mike Palmieri
PO Box 20143
Hilton Head Island, SC 29925

Dear Mr. Palmieri:

Stephen G. Riley
Town Manager

This letter is in response to your request for a determination related to a building you leased at 144 Arrow Road. You have asked for a determination regarding the ability to operate a Nano Brewery at the subject property. The property is identified as Parcel 276A on Beaufort County Tax Map 15 and is zoned SPC (Sea Pines Circle District).

On October 21, 2019 you submitted a zoning verification request for the subject property and asked if a brewery was permitted at that location. Staff gave you incorrect information, stating that the use would be classified as a "Nightclub or Bar" per the Land Management Ordinance (LMO). Based on the incorrect zoning verification, you leased the building. A Nightclub or Bar is defined in LMO Section 16-10-103.G.2 as "an establishment that sells alcoholic beverages for consumption on the premises, and that may provide live or televised entertainment or dancing. Food items may be offered for sale to patrons, but the sale of food items is not a major source of revenue."

It wasn't until you submitted the application for your business license that you were informed the zoning verification was incorrect and that your application was being denied. Staff informed you the incorrect zoning verification has since been rescinded and suggested you submit a request for determination regarding the use.

You stated in your request that you are proposing to make craft beer and sell it on a to-go basis, with a license from the state that allows a limited consumption of 48 ounces per customer on premise. The South Carolina Alcohol Beverage Licensing does not consider beer as an alcoholic beverage, and therefore your proposed use of crafting and selling beer at your site would not meet the definition of a "Nightclub or Bar".

The term Brewery is not defined in the LMO. LMO Section 16-10-101.K, Term Not Defined, states that when a term is not defined in the LMO, the Official is authorized to interpret its meaning based upon definitions used in acceptable sources. One such source listed is *A Planner's Dictionary*, which defines a brewery as "an industrial use that brews ales, beers, meads, and/or similar beverages on site. Breweries are classified as a use that manufactures more than 15,000 barrels of beverage (all beverages combined) annually. In addition, uses that manufacture 15,000 barrels of beverage or less, but which do not meet

ATTACHMENT B

one or more of the additional requirements needed to be considered brewpubs, are breweries.”

A Planner's Dictionary defines a brewpub as “a restaurant that manufactures up to 5,000 barrels of fermented malt beverages per year on premises for either consumption on premises in hand-capped or sealed containers in quantities up to one-half barrel or 15.5 gallons sold directly to the consumer. Wholesaling shall be permitted only where authorized within the zoning code. An eating place that includes the brewing of beer as an accessory use.” It also defines a microbrewery as a “facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail, or wholesale, on or off premise, with a capacity of not more than 15,000 barrels per year.”

While the LMO does not specifically define brewery, a brewery has historically been classified by Town staff as a Manufacturing use, which is how the use is classified numerous ways in *A Planner's Dictionary*, as noted above. Manufacturing is defined in LMO Section 16-10-103.I.2 as *a use primarily engaged in the manufacturing, processing, fabrication, packaging, or assembly of goods*. Because you are producing, processing and packaging the beer on site, your use is classified as a manufacturing use, which is not permitted in the SPC Zoning District.

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.

Sincerely,



Nicole Dixon, AICP, CFM
Development Review Administrator

Cc: Teri Lewis, Deputy Director of Community Development

Town of Hilton Head Island

Excerpts from Land Management Ordinance (LMO)

Chapter 16-10: Definitions, Interpretation, and Measurement

Section 16-10-101: General Rules for Interpretation

K. Term Not Defined

If a term used in any chapter of this *Ordinance* is not defined, the *Official* is authorized to interpret its meaning through the Interpretation procedure (see Sec. 16-2-103.R, Written Interpretation) based upon the definitions used in accepted sources—including, but not limited to, *A Planners Dictionary* , *A Glossary of Zoning, Development, and Planning Terms* , and *A Survey of Zoning Definitions* (all published by the American Planning Association), as well as general dictionaries such as *Merriam-Webster* , *American Heritage* , *Webster's New World* , and *New Oxford American* dictionaries.

Section 16-10-103: Use Classifications, Use Types, and Definitions

G.2. Use Types and Definitions: Nightclub or Bar

An establishment that sells alcoholic beverages for consumption on the *premises*, and that may provide live or televised entertainment or dancing. Food items may be offered for sale to patrons, but the sale of food items is not a major source of revenue.

I.2. Use Types and Definitions: Light Industrial, Manufacturing, or Warehouse Use

A manufacturing *use* is primarily engaged in the manufacturing, processing, fabrication, packaging, or assembly of goods. Examples of manufacturing *uses* include catering establishments; woodworking, cabinet makers; production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products; motion picture production facilities; concrete batching and asphalt mixing; production or fabrication of metals or metal products including enameling and galvanizing; manufacture or assembly of equipment, instruments, including musical instruments, appliances, precision items and other electrical items; production of artwork and toys; and sign making. This *use* type does not include *seafood processing*.

A Planners Dictionary



cem-e-tery \se-mə-ter-ē\ Land used or dedicated to the burial of the dead, including crematoriums, mausoleums, necessary sales, and maintenance facilities.



ar-chi-tec-tur-al fea-ture \är-kə,tek-chər-rəl fē-chər\ Part, portion, or projection adding to the beauty or elegance of a building, exclusive of signs, not necessary for the structural integrity or habitability of the building.



fire hy-drant \fir 'hī-drənt\ Provides water for fire-fighting purposes without restriction as to use for that purpose.



skate-park \skāt 'pärk\ A public facility that is designed for use by persons riding skateboards, in-line skates, or roller skates.

Edited by Michael Davidson and Fay Dolnick



American Planning Association

Planning Advisory Service
Report Number 5xx/5xx

grades, or embankments on property of a different ownership or noncontiguous property of the same ownership. (*Moorpark, Calif.*)

■ **botanical gardens** A public or private facility for the demonstration and observation of the cultivation of flowers, fruits, vegetables, or ornamental plants. (*Renton, Wash.*)

■ **bottle club** Any establishment engaged in the business of catering to patrons who bring to the establishment an alcoholic beverage to be consumed on the premises with a mixer or other beverage, ice, food, or container furnished by the establishment for a consideration, or in connection with the viewing of, entertainment for a consideration, or where admission to the premises is for a consideration. (*Boca Raton, Fla.*)

Any business or commercial operation, whether open to the public or where entrance is limited by any fee, cover charge, membership, or other similar requirement, to which patrons bring with them alcoholic liquor to be consumed or stored for consumption on the business premises, and where such business or premises is not licensed to sell alcoholic liquor. (*Lincoln, Nebr.*)

An establishment where no alcoholic beverages are sold, but where members, guests, or customers provide their own alcoholic beverages, paying a fee or other consideration for admission or membership, or for set-ups. (*Limington, Maine*)

■ **boulevard** (See *street, boulevard*)

■ **boundary** A line, which may or may not follow a visible feature, that defines the limits of a geographic entity such as a block, block numbering area, census tract, county, or place. (*United States Census Bureau*)

■ **bowling alley** An establishment that devotes more than 50 percent of its gross floor area to bowling lanes, equipment, and playing area. (*Austin, Tex.*)

Indoor facility for the sport of ten-pin or duck-pin bowling, with customary accessory uses such as snack bars. (*Leesburg, Va.*)

■ **breakaway wall** A wall that is not part of the structural support of the build-

ing and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system. (*Escambia County, Fla.*)

■ **breakwater** (See also *jetty; seawall*) A protective structure, usually built offshore for the purpose of protecting the shoreline or harbor areas from wave action. (*Renton, Wash.*)



breakwater

A fixed or floating off-shore structure that protects a shoreline from wave action or currents. (*Yakima County, Wash.*)

■ **breezeway** A structure for the principal purpose of connecting the main building or buildings on a property with other main buildings or accessory buildings. (*Camas, Wash.*)

A roofed passageway, open on at least one side, the design and construction of which is in keeping with that of the main building and which provides direct access between a main and attached accessory building. (*Lake Elsinore, Calif.*)

A roofed, open-sided passage way for the purpose of connecting the primary structure with another part of a primary structure or accessory building(s) on a single property. (*Dewey Beach, Del.*)

A roofed passageway, open on at least two sides, connecting the main structure on a site with another main structure or accessory use on the same site. (*Sedona, Ariz.*)

■ **brewery** An industrial use that brews ales, beers, meads, and/or similar beverages on site. Breweries are classified as a use that manufactures more than

15,000 barrels of beverage (all beverages combined) annually. In addition, uses that manufacture 15,000 barrels of beverage or less, but which do not meet one or more of the additional requirements needed to be considered brewpubs, are breweries. (*Bloomington, Ind.*)

A facility with a capacity to manufacture more than 1 million barrels of alcoholic and nonalcoholic malt liquor a year. This definition excludes brew-on-premises

stores as defined herein and/or small breweries operated in conjunction with a bar or restaurant defined herein as an accessory use. (*St. Paul, Minn.*)

■ **brew-on-premises store** A facility that provides the ingredients and equipment for a customer to use to brew malt liquor at the store. Intoxicating liquor may not be sold or otherwise provided to customers of a brew-on-premises store unless the owner of the brew-on-premises store holds the appropriate liquor license. Customers using the brew-on-premises store must be of minimum age to purchase intoxicating liquor. Intoxicating malt liquor brewed by a customer may not be sold and must be used by the customer for personal or family use. (*St. Paul, Minn.*)

■ **brewpub** (See also *microbrewery*) A restaurant that manufactures up to 5,000 barrels of fermented malt beverages per year on premises for either consumption on premises in hand-capped or sealed containers in quantities up to one-half barrel or 15.5 gallons sold directly to the consumer. Wholesaling shall be permitted only where authorized within the zoning code. (*Madison, Wisc.*)

An eating place that includes the brewing of beer as an accessory use. The brewing operation processes water, malt, hops, and yeast into beer or ale by mashing, cooking, and fermenting. The area used for brewing, including bottling and kegging, shall not exceed 25 percent of the total floor area of the commercial space. The brewery shall not produce more than 1,500 barrels of beer or ale per year. A barrel is equivalent to 31 gallons. (*Vail, Colo.*)

A restaurant that prepares handcrafted natural beer as an accessory use intended for consumption on the premises. Production capacity shall be limited to not more than 5,000 barrels per year. Such accessory use may occupy up to 30 percent of the gross floor area of the restaurant. (*Melbourne, Fla.*)

A commercial business which conducts the retail sale of beer (malt beverages with alcohol content as defined by federal law) which is brewed on the premises in compliance with applicable state and federal laws. Such establishments may also include restaurants as an accessory use. Live entertainment is subject to the use requirements of district in which the establishment is located. (*San Juan Capistrano, Calif.*)

■ **bridge** A structure carrying a path, street, or railway over water, and necessary support structures. (*Seattle, Wash.*)

A crossing over a watercourse, railway, freeway, or canyon. (*Kern County, Calif.*)

A structure, including supports, erected over a depression or an obstruction, such as water or a highway or railway, and having a track or passageway for carrying traffic. (*Polk County, Fla.*)



bridge

■ **broadcasting studio** (See also *communications services*) Commercial and public communications uses including radio and television broadcasting and receiving stations and studios, with facilities entirely within buildings. (*Truckee, Calif.*)

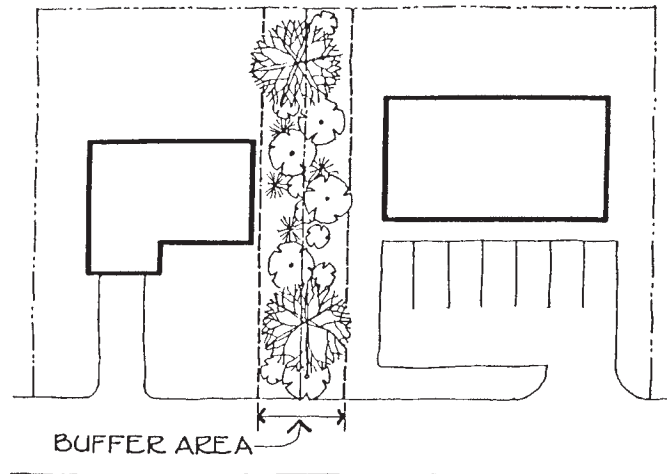
An establishment containing one or more broadcasting studios for over-the-air, cable or satellite delivery of radio or television programs, or studios for the audio or video recording or filming of musical performances, radio or television programs or motion pictures. This term does not include a transmission tower. (*Milwaukee, Wisc.*)

■ **brownfield** Abandoned, idled, or underused industrial and commercial facilities where expansion or redevelopment

A vacant or unoccupied site with respect to any portion of which the owner has reasonable cause to believe may, as a result of any prior commercial or industrial activity by any person, have been environmentally contaminated by the release or threatened release of a hazardous substance as defined under [chapter] in a manner that would interfere with the owner's intended use of such site. (*New Castle County, Del.*)

A site which has remained un- or underused due to real or perceived environmental contamination; often a site of previous industrial use. (*Washtenaw County, Mich.*)

■ **buffer** (See also *screening definitions*) A strip of land, fence, or border of trees, etc., between one use and another, which



buffer strip

ment is complicated by real or perceived environmental contamination. (*United States Environmental Protection Agency*)

may or may not have trees and shrubs planted for screening purposes, designed to set apart one use area from another. An appropriate buffer may vary depending on uses, districts, size, etc., and shall be determined by the [appropriate local board]. (*Pomfret Township, N.Y.*)

An area of land, including landscaping, berms, walls, fences, and building setbacks, that is located between land uses of different character and is intended to mitigate negative impacts of the more intense use on a residential or vacant parcel. (*Dona Ana County, N.Mex.*)

A strip of land with natural or planted vegetation located between a structure and a side or rear property line intended

social integration with that core. Qualification of an MSA requires the presence of a city with 50,000 or more inhabitants, or the presence of an urbanized area and a total population of at least 100,000 (75,000 in New England). (*United States Census Bureau*)

■ **mezzanine** (See also *floor; story*) An intermediate floor placed in any story or room. When the total area of any such mezzanine floor exceeds 33.3 percent of the total floor area in the room or story in which the mezzanine floor occurs, it shall be considered as constituting an additional story. The clear height above or below a mezzanine floor construction shall be not less than seven feet. (*Coral Gables, Fla.*)

An intermediate or fractional story between the floor and ceiling of a main story, used for a purpose accessory to the principal use. A mezzanine is usually just above the ground or main floor and extending over only part of the main floor. The floor area of a mezzanine is included in calculating the floor area ratio of a structure. (*Gurnee, Ill.*)

A story which covers one-third or less of the area of the story directly underneath it. A mezzanine shall be deemed a full story if it covers more than one-third of the area of the story directly underneath such mezzanine story. (*Waukesha, Wisc.*)

One or more intermediate levels between the floor and ceiling of a story. (*Concord, N.C.*)

A story which covers one-third or less of the area of the story directly underneath it. A mezzanine story shall be deemed a full story in case it covers more than one-third of the area of the story directly underneath said mezzanine story. (*Livermore, Calif.; Wayne County, Ind.*)

■ **microbrewery** (See also *brewpub*) A facility for the production and packaging of malt beverages of low alcoholic content for distribution, retail, or wholesale, on or off premise, with a capacity of not more than 15,000 barrels per year. The development may include other uses such as a standard restaurant, bar or live entertainment as otherwise permitted in the zoning district. (*Kalamazoo, Mich.*)

A facility at which beer, fermented on the premises, is bottled and sold. The volume of production of such facility may not exceed 200 gallons a day. (*Dona Ana County, N.Mex.*)

An establishment where beer, ale, etc. are brewed, typically in conjunction with a bar, tavern, or restaurant use. The maximum brewing capacity shall not exceed 20,000 gallons per year. (*Fort Wayne, Ind.*)

■ **microclimate** The climate of a small, distinct area, such as a city street or a building's courtyard; can be favorably altered through functional landscaping, architecture, or other design features. (*California Planning Roundtable*)

■ **migrant agricultural labor housing** (See *farm employee housing*)

■ **migrant farm worker** (See also *farm worker*) Any person employed in the planting, cultivation, or harvesting of agricultural crops who is not indigenous to, or domiciled in, the locale where so employed. (*State of Florida*)

■ **migrant farm worker carrier** Any person who transports, or who contracts or arranges for the transportation of, nine or more migrant farm workers to or from their employment by motor vehicle other than a passenger automobile or station wagon, except a migrant farm worker transporting himself or his immediate family. (*State of Florida*)

■ **military installation** Military facilities of the federal and state governments. (*Fredericksburg, Tex.*)

■ **mine** An area of land and all private ways and roads appurtenant thereto, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed or constructed on, under, or above the surface of such land by any person, used in, or to be used in, or resulting from (including the reclamation of mined areas or the storage of materials in mined areas), or to facilitate the work of exploring for, developing of, or extracting by any means or method in such area all minerals, inorganic and organic, from their natural deposits. The term "mine" also includes all mineral processing and

milling facilities except those used in the processing of source materials. (*Concord, N.C.*)

An area of land upon which operations to extract valuable mineral deposits or other materials—typically, but not limited to, phosphate or sand—have been conducted, are being conducted, or are planned to be conducted. (*Polk County, Fla.*)

■ **mined lands** The surface, subsurface, and ground water of an area in which surface mining operations will be, are being, or have been conducted, including private ways and roads appurtenant to any area, land excavations, workings, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, surface mining operations are located. (*Truckee, Calif.*)

■ **mineral** Any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including but not limited to coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum. (*Truckee, Calif.*)

A naturally occurring element or combination of elements, metallic or nonmetallic, that occur in the earth in a solid, liquid, or gaseous state, but shall not include soil. (*Bayfield County, Wisc.*)

Sand, gravel, clay, shale, gypsum, halite, limestone, dolomite, sandstone, other stone, metalliferous or nonmetalliferous ore, or other material or substance of commercial value excavated in a solid state from natural deposits on or in the earth, but not including coal, peat, or topsoil. (*Trenton Township, Ohio*)

Gravel, sand, and metallic and nonmetallic substances of commercial value. (*Yakima County, Wash.*)

■ **mineral extraction** (See also *extractive industry; quarry; sand and gravel pit*) The extraction of metallic and nonmetallic minerals or materials, including rock crushing, screening, and the accessory



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

FOR OFFICIAL USE ONLY

Date Received: _____
 Accepted by: _____

DPR/SUB # _____ Parcel Number [PIN]: R552 015 000 276A 0000

Project Name: Nano Brewery

Project Address: 144 Arrow Road Unit A

Applicant/Agent Name: Mike Palmieri

Company: Side Hustle Beer Company LLC

Mailing Address: PO Box 21043

City: Hilton Head Island State: SC Zip: 29925

Telephone: 843-290-4046

Fax: _____ E-mail: mike.palmieri@att.net

Zoning District: Sea Pines Circle

Overlay District(s): _____

WRITTEN INTERPRETATION REQUEST

Applications may be submitted only by persons with a direct interest in the matter requested for interpretation (e.g., landowner or contract purchaser of a relevant property, applicant for or holder of an affected permit).

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

X A statement detailing the applicant's direct interest in the matter requested for interpretation.

X Check which of the following type of interpretation is being applied for and provide a narrative detailing the request :

_____ **LMO Section 16-2-103.R.4.a - Zoning Map Boundaries** - Interpretation of zoning district boundaries on the Official Zoning Map.

X **LMO Section 16-2-103.R.4.b - Unspecified Uses** - Interpretation of whether an unspecified use is similar to a use or is prohibited in a zoning district.

_____ **LMO Section 16-2-103.R.4.c - Text Provisions** - Interpretation of text provisions and their application.

Note: Further documentation may be required upon review of the application.

Are there recorded private covenants and/or restrictions that are contrary to, conflict with, or prohibit the proposed request? If yes, a copy of the private covenants and/or restrictions must be submitted with this application. YES NO

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.

Mike Palmieri

SIGNATURE

12/10/2019

DATE

Nicole,

While we are willing to alter our plans to fit the SPC district to make us a 'bar' I prefer to maintain the original business we submitted and were approved by LMO for SPC zoning verification. Our business was outlined as follows:

1. Brew small quantity craft beer utilizing nano-sized kettles and tanks.
2. Sell tap room pours (maximum 48-ounces per customer for on premise consumption).
3. Sell beer to-go with growler (container) fills and packaged cans.

Since the time of receiving the LMO verification we have executed a lease and filed federal and state license paperwork (federal license was approved on Monday 12/2) and procured equipment and many expenses in preparation for our opening.

Because breweries are not readily defined or understood being a newer business, I want to share some additional information. Most craft breweries are born from home brewing. Every household can own and operate a home brew system without any training or licensing. It is no different than virtually every house having a coffee maker and BBQ grill. For us, we are renting a 760sft retail space and placing kettles and tanks in it. The very same kettles and tanks that I can place inside my home garage and brew beer without any special approvals or permits. I can consume the beer and share with friends over 21-years of age, I just can't sell it from my garage.

A couple other points about how we differ for the better from homebrewing: 1) Most homebrewers mill their grain (create dust) whereas we order our grains pre-milled. 2) Most homebrew systems use propane-fired jet burners outside their kettles; we are using electric heating elements inside our kettles to boil water and beer (like electric hot water tanks). Nothing more than a 200-amp panel is required to run our system, we just plug and play.

From what I can see, the SPC district has a commercial laundry plant, tortilla factory, t-shirt factory, made on site ice cream shop, a cushion & upholstery company and coffee shops. For reference I have attached pure definitions that illustrate the difference of Brew/Brewery versus Factory/Manufacturing. We are not manufacturing, warehousing or wholesaling any goods in our 760sft space. We are simply brewing beer and selling on premise. For comparison, Starbucks in SPC is brewing coffee and selling on premise, they are not a factory or manufacturer of coffee.

factory

[ˈfakt(ə)rē] 🔊

NOUN

- a building or group of buildings where **goods are manufactured or assembled chiefly by machine.**
"a clothing factory" · [\[more\]](#)
synonyms: [works](#) · [plant](#) · [manufacturing complex/facility](#) · [yard](#) · [mill](#) · [industrial unit](#) · [business unit](#) · [workshop](#) · [shop](#) · [shop floor](#) · [manufactory](#)
- a person, group, or institution that **continually produces a great quantity of something specified**
"a huge factory of lying, slander, and bad English"

vs.

brewery

[ˈbrō(ə)rē] 🔊

NOUN

breweries (plural noun)

- a place where beer is made commercially.**
"work continued on the new lager brewery in Alton"

There is nothing machinery/mechanical or great quantity/large scale about our brewery!

manufacture

[ˌmæn(y)əˈfak(t)ʃhər] 🔊

VERB

manufacturing (present participle)

- make (something) **on a large scale using machinery.**
"a company that manufactured paint-by-number sets"
synonyms
[make](#) · [produce](#) · [mass produce](#) · [build](#) · [construct](#) · [assemble](#) · [put together](#) · [create](#) · [fabricate](#) · [prefabricate](#) · [turn out](#) · [process](#) · [form](#) · [fashion](#) · [model](#) · [mold](#) · [shape](#) · [forge](#) · [engineer](#)
- make or produce (something abstract) in **a merely mechanical way.**
"Julia manufactured a smile"
synonyms
[make](#) · [produce](#) · [mass produce](#) · [build](#) · [construct](#) · [assemble](#) · [put together](#) · [create](#) · [fabricate](#) · [prefabricate](#) · [turn out](#) · [process](#) · [form](#) · [fashion](#) · [model](#) · [mold](#) · [shape](#) · [forge](#) · [engineer](#)

vs.

brew

[brō] 🔊

VERB

brewing (present participle)

- make (beer) **by soaking, boiling, and fermentation.**
"within five years the company will brew as much beer in China as in Australia" · [\[more\]](#)
synonyms
[ferment](#) · [make](#)
- make (tea or coffee) by mixing it with hot water.
"I've just brewed some coffee" · [\[more\]](#)
synonyms
[prepare](#) · [infuse](#) · [make](#) · [mash](#) · [be in preparation](#) · [stew](#) · [mash](#)

VIA E-MAIL

October 23, 2019

Mr. Mike Palmieri
Side Hustle Beer Company
Mike.palmieri@att.net

Re: 144 Arrow Road

Dear Mr. Palmieri,

This letter is in response to your request for a zoning verification letter for property located at 144 Arrow Road, further identified as R552 015 000 276A 0000. Please be aware that it is not a Town of Hilton Head Island policy to conduct a detailed site analysis; therefore, this correspondence will verify zoning, permitted land use and density only.

The subject parcel is zoned SPC (Sea Pines Circle District) identified on the Town of Hilton Head's Official Zoning Map. The subject parcel is not part of a PUD. The parcel is located within the Corridor Overlay District. The parcel is regulated by Land Management Ordinance (LMO) Section 16-3-105.M as well as other development standards sections in the LMO. I have attached the section of the LMO that addresses uses and density for this zoning district. The use you describe is considered Nightclub or Bar which is an allowed use in the SPC district. The LMO defines Nightclub or Bar as "an establishment that sells alcoholic beverages for consumption on the premises, and that may provide live or televised entertainment or dancing. Food items may be offered for sale to patrons, but the sale of food items is not a major source of revenue." The density in the SPC district is limited to 10,000 GFA per net acre. The approximate parcel area is 0.1899 acres.

You can contact me at either (843) 341-4693 or missyl@hiltonheadislandsc.gov if you have any additional questions.

Sincerely,



Missy Luick
Senior Planner

cc: File

M. Sea Pines Circle (SPC) District

<h1 style="margin: 0;">SPC</h1> <h2 style="margin: 0;">Sea Pines Circle District</h2>				
<h3>1. Purpose</h3>				
The purpose of the Sea Pines Circle (SPC) District is to provide lands for commercial and mixed-use development at moderate to relatively high intensities in the area around Sea Pines Circle. District regulations emphasize moderate-scale buildings and shopping centers that balance the needs of the driving public and pedestrian activity and circulation among the district's retail, dining, and entertainment activities. The district is also intended to accommodate nighttime activities.				
<h3>2. Allowable Principal Uses</h3>				
USE CLASSIFICATION/TYPE		USE-SPECIFIC CONDITIONS	MINIMUM NUMBER OF OFF-STREET PARKING SPACES	
Residential Uses				
Mixed-Use	PC	Sec. 16-4-102.B.1.a	Residential	1.5 per du
			Nonresidential	1 per 500 GFA
Multifamily	P		1 bedroom	1.4 per du
			2 bedroom	1.7 per du
			3 or more bedrooms	2 per du
Public, Civic, Institutional, and Educational Uses				
Community Service Uses	P		1 per 400 GFA	
Education Uses	P		Colleges and High Schools	10 per classroom
			Elementary and Junior High/Middle Schools	4 per classroom
			Other Education Uses	See Sec. 16-5-107.D.2
Government Uses	P		Fire Stations	4 per bay + 1 per 200 GFA of office area
			Other	1 per 200 GFA of office area
Major Utilities	SE		1 per 1,500 GFA	
Minor Utilities	P		n/a	
Public Parks	P		See Sec. 16-5-107.D.2	
Religious Institutions	P		1 per 3 seats in main assembly area	
Telecommunication Antenna, Collocated or Building Mounted	PC	Sec. 16-4-102.B.2.e	n/a	
Telecommunication Towers, Monopole	PC	Sec. 16-4-102.B.2.e	1	
Health Services				
Other Health Services	P		1 per 225 GFA	
Commercial Recreation				
Indoor Commercial Recreation Uses	P		1 per 3 persons + 1 per 200 GFA of office or similarly used area	
Office Uses				
Contactor's Offices	PC	Sec. 16-4-102.B.6.a	1 per 350 GFA of office/administrative area	
Other Office Uses	P		1 per 350 GFA	
Commercial Services				
Adult entertainment use	SE	Sec. 16-4-102.B.7.a	1 per 100 GFA	
Animal Services	PC	Sec. 16-4-102.B.7.b	1 per 225 GFA	
Bicycle Shops	PC	Sec. 16-4-102.B.7.c	1 per 200 GFA	
Convenience Stores	PC	Sec. 16-4-102.B.7.d	1 per 200 GFA	
Eating Establishments	P		1 per 100 sf of gross floor area and outdoor eating area	

SPC Sea Pines Circle District

Grocery Stores			
Grocery Stores	P		1 per 200 GFA
Liquor Stores	SE	Sec. 16-4-102.B.7.g	1 per 200 GFA
Nightclubs or Bars	PC	Sec. 16-4-102.B.7.h	1 per 70 GFA
Open Air Sales	PC	Sec. 16-4-102.B.7.i	1 per 200 sf of sales/display area
Shopping Centers	PC	Sec. 16-4-102.B.7.j	1 per 335 GFA
Other Commercial Services	P		See Sec. 16-5-107.D.2
Vehicle Sales and Services			
Auto Rentals	PC	Sec. 16-4-102.B.8.a	See Sec. 16-5-107.D.2
Car Washes	P		10 per wash unit for automatic wash + 5 per bay for manual wash
Commercial Parking Lot	PC	Sec. 16-4-102.B.8.d	See Sec. 16-5-107.D.2
Gas Sales	PC	Sec. 16-4-102.B.8.e	
Industrial Uses			
Self-Service Storage	PC	Sec. 16-4-102.B.9.c	1 per 15,000 GFA of storage and office area

3. Development Form Standards

MAX. DENSITY (PER NET ACRE)		LOT COVERAGE	
Residential	12 du		Max. Impervious Cover 60%
Nonresidential	10,000 GFA		Min. Open Space for Major Residential Subdivisions 16%

MAX. BUILDING HEIGHT

All Development	45 ft ¹
-----------------	--------------------

USE AND OTHER DEVELOPMENT STANDARDS

See Chapter 16-4: Use Standards, Chapter 16-5: Development and Design Standards, and Chapter 16-6: Natural Resource Protection.

TABLE NOTES:

P = Permitted by Right; PC = Permitted Subject to Use-Specific Conditions; SE = Allowed as a Special Exception; du = **dwelling units**; sf = square feet; GFA = **gross floor area** in square feet; ft = feet; n/a = not applicable

1. May be increased by up to ten percent on demonstration to the **Official** that:

- a. The increase is consistent with the character of **development** on surrounding **land**;
- b. **Development** resulting from the increase is consistent with the purpose and intent of the **building height** standards;
- c. The increase either (a) is required to compensate for some unusual aspect of the site or the proposed **development**, or (b) results in improved site conditions for a **development** with **nonconforming site features**;
- d. The increase will not pose a danger to the public health or safety;
- e. Any adverse impacts directly attributable to the increase are mitigated; and
- f. The increase, when combined with all previous increases allowed under this provision, does not result in a cumulative increase greater than ten percent.

(Revised 4-18-2017 - Ordinance 2017-05, § 1(Exh. A))

Luick, Missy

From: Dixon Nicole
Sent: Tuesday, October 22, 2019 3:24 PM
To: Luick, Missy
Subject: FW: 144 Arrow Road Zoning Verification Request

Missy, please see below and [handle. If you have questions about it, we can discuss at our mtg tomorrow. thanks](#)

[Nicole Dixon, CFM](#)
[Development Review Administrator](#)
[Town of Hilton Head Island](#)
[One Town Center Court](#)
[Hilton Head Island, SC 29928](#)
[O: 843-341-4686](#)
[F: 843-842-8908](#)
nicoled@hiltonheadislandsc.gov
www.hiltonheadislandsc.gov



From: Lewis Teri
Sent: Tuesday, October 22, 2019 3:22 PM
To: Dixon Nicole <nicoled@hiltonheadislandsc.gov>
Subject: FW: 144 Arrow Road Zoning Verification Request

Nicole-
Would you please have either Missy or Tyler handle the below?
Thanks.
Teri

From: Mike Palmieri [<mailto:mike.palmieri@att.net>]
Sent: Monday, October 21, 2019 2:45 PM
To: Lewis Teri <TeriL@hiltonheadislandsc.gov>
Subject: 144 Arrow Road Zoning Verification Request

Hello Teri,

I am writing you for a zoning certification letter for the property located at 144 Arrow Road (PIN: R552 015 000 276A 0000 / AIN: 04298263) owned by Clear Daze LLC.

We have reviewed the Sea Pines Circle zoning district and want to ensure that the site is indeed eligible to host a nano sized craft beer facility. Our business will produce small quantity craft beer and sell it primarily on a to-go basis with growler (container) fills and packaged cans. We would offer limited tap room pours as we are applying for licensing that allows a maximum 48-ounces per customer for on premise consumption, and also precludes us from operating a brew pub / restaurant.

I recognize you may have follow up questions, which I am readily available to talk through at your convenience. I just wanted to provide you some background context on this request.

Thank you, I look forward to hearing from you.

Best regards,

Mike Palmieri
Side Hustle Beer Company
843-290-4046



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Missy Luick, *Senior Planner*
DATE: January 17, 2020
SUBJECT: Revisions to Rules of Procedure

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

Article III, Section 2 of the Rules provides that amendments to the Rules of Procedure must first be presented to the Board at a Regular or Special meeting preceding the Meeting at which a vote is held on the amendment. The attached version of the Rules of Procedure was presented for your review at the October 28, 2019 meeting, and action is requested at the January 27, 2020 meeting.

In the attached document, revisions have been made to:

- Article XI, Section 3, on page 19

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

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Article I
Purpose and Responsibilities

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

Article II
Authority

Section 1. Authority.

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

Section 2. Territorial Jurisdiction.

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

Article III
Rules of Procedure

Section 1. Rules of Procedure.

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

Section 2. Amendment.

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

Article IV **Board Organization and Duties**

Section 1. Membership.

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

Section 2. Election of Officers.

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

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

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

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

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

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

Section 3. Secretary—Appointment and Duties.

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

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

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

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

Section 4. Staff Board Coordinator.

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

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

Article V **Meetings and Quorum**

Section 1. Regular and Special Meetings.

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

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

Section 2. Quorum.

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

Section 3. Conflict of Interest

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

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

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

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

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

Section 1. Media Notices.

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

Section 2. Agenda (Order of Business)

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

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

Section 3. Minutes.

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

B. Minimum Contents of Minutes.

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

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

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

Section 4. Public Comment.

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

Section 5. Submission Deadline for Regular Meetings.

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

Section 6. Meeting Protocol.

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

Section 7. Filing of Application, Fees and Notice.

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

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

Section 8. Motions and Final Decisions.

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

Section 9. Voting.

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

Section 10. Supplemental Submissions/Briefs.

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

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

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

Article VII

Procedures for Hearing an Application for a Variance

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

Section 1. Presentation of the Town Staff and Applicant.

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

Section 2. Public Comment.

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

Section 3. Vote on Application for Variance.

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

Article VIII

Procedures for Hearing an Application for Special Exception

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

Section 1. Presentation of the Town Staff and Applicant.

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

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

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

Section 2. Public Comment.

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

Section 3. Vote on Application for Special Exception.

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

Article IX
Procedures for Hearing an Appeal

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

Section 1. Jurisdiction.

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

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

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

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

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

Section 3. Vote on the Appeal.

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

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

Article X **Procedures for a Remand**

Section 1. Remand.

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

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

Article XI **Motions**

Section 1. Motion for a Reconsideration.

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

Section 2. Motion to Dismiss.

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

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

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

Section 3. Motion for Postponement.

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

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

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

Section 4. Motion for Withdrawal of Application.

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

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

Article XII **Miscellaneous**

Section 1. Executive Session.

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

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

Permitted reasons should include:

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

Entering and Adjourning an Executive Session:

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

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

Section 2. Recess.

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

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

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

By: _____
Jerry W. Cutrer
Chairman

Attachment for Reference

TYPES OF MOTIONS

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

Restorative Motions or Motions that Bring Back a Question

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

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

TYPES OF VOTES

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



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Missy Luick, *Senior Planner*
DATE: January 6, 2020
SUBJECT: Substitutions of Nonconformities for Redevelopment

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

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

LMO Section 16-7-101.F:

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

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

There have been 3 Substitution of Nonconformity for Redevelopment waivers that have been granted by staff since the October 28, 2019 BZA meeting.

1. **1016 William Hilton Parkway, Goodwill** – In conjunction with the Goodwill Renovation project, a waiver request was submitted because the existing site contains impervious surface area and parking lot features that are nonconforming. The request was to not increase any impervious surface and to bring the parking more into conformance with the LMO. Due to the fact that the existing site is currently nonconforming, the renovations will not increase any nonconformity and the re-development will be adding 8 wheel stops to bring the parking more into

conformance, and the LMO Section 16-7-101.F permits a waiver provided certain criteria are met, the waiver was approved.

2. **2042 Deer Island, Meis Residence Renovations-** In conjunction with renovations to the Meis Residence, a waiver request was submitted to add an upper level 8' by 12' wood deck partially in the tidal buffer and to reconstruct decks and stairways which are existing nonconforming structures in the tidal buffer. The existing property contains nonconforming structures in the tidal buffer and the addition of the upper level deck was only allowed with removal of impervious asphalt underneath the existing octagon deck and removal of impervious asphalt sidewalk and replacement with pervious brick pavers. Due to the fact that the existing site is currently nonconforming, the renovations will not increase any nonconformity and the redevelopment will be removing impervious surface in the tidal buffer, the waiver was approved.

3. **Unaddressed property between 557 and 571 Spanish Wells Road, Nadine Chaplin Property-** In conjunction with a small residential development project request for four dwelling units, a waiver request was submitted to reduce the required street access separation. The request was to reduce the required street access separation from 200' to 109' and 133' respectively. Due to the fact that the site plan proposed aligns the access with Oakview Road, which is directly across the street from the proposed access, and the proposed access is 274' from the busier East Spanish Wells intersection and the LMO Section 16-5-105.I.8 permits a waiver provided certain criteria are met, the waiver was approved.