



Town of Hilton Head Island
Board of Zoning Appeals Meeting
Monday, December 14, 2020 – 2:30 p.m.
AGENDA

In accordance with the Town of Hilton Head Island Municipal Code Section 2-5-15, this meeting is being conducted virtually and can be viewed live on the Town's Public Meeting Facebook Page at <https://www.facebook.com/townofhiltonheadislandmeetings/>. Following the meeting, the video record will be made available on the Town's website at <https://www.hiltonheadislandsc.gov/>.

1. **Call to Order**
2. **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.
3. **Roll Call**
4. **Welcome and Introduction to Board Procedures**
5. **Approval of Agenda**
6. **Approval of Minutes**
 - a. November 23, 2020 Regular Meeting
7. **Citizen Comments**
8. **Request for Postponement Approved by the BZA Chairman** – The case listed below has been granted a postponement by the BZA Chairman and placed on the agenda to establish an original hearing date for the request. No action will be taken by the Board at this time.
 - APL-002275-2020
9. **New Business**
 - a. **Public Hearing**

VAR-001977-2020 – Request from Bruce Gray for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow an existing patio and fence to remain in the adjacent use setback and buffer. The property address is 11 Sandcastle Court with a parcel number of R511 009 000 1108 0000.
 - b. **Hearing**

Motion to Reconsider VAR-001976-2020 – Alexandra Barnum, on behalf of Joseph DeVito, is requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 117 Sandcastle Court.

c. Hearing

Motion to Reconsider VAR-001985-2020 – Kevin and Martha Grandin are requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 115 Sandcastle Court.

d. Hearing

Motion to Reconsider VAR-001874-2020 – Anne Marie and Lloyd Burke are requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 125 Sandcastle Court.

e. Hearing

Motion to Reconsider VAR-001935-2020 – Reza Kajbaf requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 105 Sandcastle Court.

f. Hearing

Motion to Reconsider VAR-001853-2020 – Richard Ross requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 121 Sandcastle Court.

g. Hearing

Motion to Reconsider VAR-001854-2020 – Richard Ross requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 127 Sandcastle Court.

10. Board Business

11. Staff Reports

- a. Update on the 2020 LMO amendments recommended by the BZA
- b. Update on any proposed LMO amendments that address waivers issued by Staff
- c. Waiver Report

12. Adjournment

Public comments concerning agenda items can be submitted electronically via the Open Town Hall HHI portal at <https://hiltonheadislandsc.gov/opentownhall/>. The portal will close 2 hours before the meeting. All comments submitted through the portal will be provided to the Board for review and made part of the official record. Citizens who wish to comment on agenda items during the meeting by phone must contact the Board Secretary at 843-341-4684 no later than 12:00 p.m. the day of the meeting.

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 Meeting
November 23, 2020 at 2:30 p.m. Virtual Meeting
MEETING MINUTES

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

Absent from the Board: None

Present from Town Council: None

Present from Town Staff: Nicole Dixon, Development Review Administrator; Cindaia Ervin, Finance Assistant; Teri Lewis, Deputy Community Development Director; Missy Luick, Senior Planner; Tyler Newman, Senior Planner; Teresa Haley, Senior Administrative Assistant

Others Present: Curtis Coltrane, Town Attorney

1. Call to Order

Chair Brison called the meeting to order at 2:32 p.m.

2. 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.

3. Roll Call – See as noted above.

4. Welcome and Introduction to Board Procedures

Chair Brison welcomed all in attendance and introduced the Board's procedures for conducting the meeting.

5. Approval of Agenda

Ms. Luick indicated that the agenda needs to be amended to include two postponement requests received over the weekend. The first postponement was requested by Jennifer Miotto for VAR-001983-2020 of 27 Sandcastle Court and subsequently granted by Chair Brison. The second postponement was requested by Brian Ritchey for VAR-001894-2020 of 25 Sandcastle Court. This is Mr. Ritchey's second postponement request and therefore, required to be heard and decided upon today by the full Board. Chair Brison asked for a motion to approve the agenda as amended. Ms. Laudermilch moved to approve the agenda as amended. Mr. Johnson seconded. By way of roll call, the motion passed with a vote of 6-0-0.

6. Approval of Minutes

- a. October 26, 2020 Regular Meeting
- b. October 29, 2020 Special Meeting

Chair Brison asked for a motion to approve the minutes of the October 26, 2020 regular meeting and the October 29, 2020 special meeting. Ms. Laudermilch moved to approve. Mr. White seconded. By way of roll call, the motion passed with a vote of 6-0-0.

7. Citizen Comments

Public comments concerning agenda items were to be submitted electronically via the Open Town Hall portal. All comments received by the Town were provided to the Board for review and made a part of the official record. Citizens were also provided the option to sign up for public comment participation by phone during the meeting. There were no requests to participate by phone.

8. Request for Postponement Approved by the BZA Chairman – The case listed below was granted a postponement by the BZA Chairman and placed on the agenda to establish an original hearing date for the request. No action was taken by the Board on the item.

- VAR-001983-2020 – 27 Sandcastle Court

9. New Business

a. Announcement of New Chair Patsy Brison and Election of New Vice Chair

The prior former Chairman Jerry Cutrer was recently elected to the Town's Public Service District Board of Commissioners. Per the BZA Rules of Procedure, the Vice Chair, Patsy Brison, shall succeed the Chairman to serve the remainder of his unexpired term. Chair Brison was announced and welcomed as the new Chair of the Board of Zoning Appeals.

Chair Brison asked for a motion to nominate a Board Member to serve as Vice Chair for the remaining term ending June 30, 2021. Mr. Walczak moved to nominate Anna Ponder to serve as Vice Chair for the remaining term ending June 30, 2021. Mr. White seconded. Dr. Ponder accepted the nomination. Chair Brison asked if there were any other nominations for Vice Chair and there were none. Chair Brison then asked for a motion to accept the nomination of Dr. Ponder as Vice Chair by acclamation. Mr. White moved to accept. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 6-0-0.

b. Motion for Postponement by Brian Ritchey for VAR-001894-2020 (25 Sandcastle Court)

Mr. White moved that the postponement be granted for VAR-001894-2020 and it be heard at the January 25, 2021 BZA meeting. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 6-0-0. (Roll: Brison, Johnson, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

c. Public Hearing

VAR-001853-2020 – Request from Richard Ross for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall and patio to remain in the adjacent use setback and buffer. The property address is 121 Sandcastle Court with a parcel number of R511 009 000 1153 0000.

d. Public Hearing

VAR-001854-2020 – Request from Richard Ross for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall and patio to remain in the adjacent use setback and buffer. The property address is 127 Sandcastle Court with a parcel number of R511 009 000 1156 0000.

e. Public Hearing

VAR-001874-2020 – Request from Anne Marie Burke for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall and patio to remain in the adjacent use setback and buffer. The property address is 125 Sandcastle Court with a parcel number of R511 009 000 1155 0000.

f. Public Hearing

VAR-001976-2020 – Request from Alexandra Barnum, on behalf of Joseph DeVito, for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow an existing patio and retaining wall to remain in the adjacent use setback and buffer. The property address is 117 Sandcastle Court with a parcel number of R511 009 000 1151 0000.

g. Public Hearing

VAR-001985-2020 – Request from Kevin Grandin for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow a retaining wall and patio to remain in the adjacent use setback and buffer. The property address is 115 Sandcastle Court with a parcel number of R511 009 000 1150 0000.

Chair Brison opened the public hearings for VAR-001853-2020, VAR-001854-2020, VAR-001874-2020, VAR-001976-2020, and VAR-001985-2020 (collectively, the “Applications”).

Ms. Luick and Mr. Newman presented the Applications as described in the Staff Reports. Staff’s presentation included: a global overview of the Applications, including the subdivision’s development history, applicable LMO Setback, Buffer and Fence & Wall Standards, and summary of the common LMO violations in the subdivision; a detailed review of the variance requests individually; and the criteria to be met for a variance. Staff recommends the Board of Zoning Appeals deny the Applications, based on the Findings of Fact and Conclusions of Law contained in the Staff Reports. Staff incorporated by reference the Staff Reports and variance applications as part of the record.

The Board made comments and inquiries to Staff regarding the activities that may occur in the required buffers as set forth in the LMO.

Following the Staff presentation and questions by the Board, Chair Brison asked each applicant to make a presentation.

Richard Ross made a presentation regarding the grounds for variance applications VAR-001853-2020 and VAR-001854-2020, and answered questions by the Board. The Board made comments and inquiries on this application regarding: clarification on the as-built surveys; the applicant built each home; the surveys were ordered by the builder and delivered to the applicant as part of closing on each property; the applicant claimed he did not know about the buffer restrictions when he purchased the property; the applicant claimed there is no increase in stormwater runoff since the patio pavers were installed; there has not been a professional engineering analysis performed to confirm there is no increase in runoff; the Town is not responsible for fixing the applicant’s drainage issues; the applicant is amenable to add additional foliage to the backyard if required by the Board; there are no

current plans for development on the abutting Town-owned property; the Town is pursuing a rezoning application of the abutting Town-owned property from Resort Development to Parks and Recreation; the rezoning requires approval by the Town's Planning Commission and Town Council; replatting the Sandcastles by the Sea subdivision would allow for a reduced buffer option for some of the properties; the northern boundary properties would not be eligible for a reduced buffer option next to the Town-owned property because it is zoned Resort Development; therefore, the replatting and the rezoning of the Town-owned property would be required to be eligible for the reduced buffer option; the reduced buffer option would still require at least a portion of the patios to be taken out.

Anne Marie and Lloyd Burke made a presentation regarding the grounds for variance application VAR-001874-2020, and answered questions by the Board. The Board made comments and inquiries on this application regarding: the current conditions of the backyard is sparse in landscaping; additional foliage is needed between the patio and the fencing; the applicant would be amenable to adding additional foliage; a professional analysis on drainage/runoff would help prove the applicants claim that there are no negative impacts; the applicant received an as-built survey of the property shows the buffer and setback markings; the applicant indicated they did not look into LMO requirements before having the patio encroachments built.

Alexandra Barnum, on behalf of Joseph DeVito, made a presentation regarding the grounds for variance application VAR-001976-2020, and answered questions by the Board. The Board made comments and inquiries on this application regarding: the applicant indicated this home is a rental about half of the time and the property owner resides in the home the other half.

Kevin and Martha Grandin made a presentation regarding the grounds for variance application VAR-001985-2020, and answered questions by the Board. The Board made comments and inquiries on this application regarding: the applicant indicated the setback is shown on one survey and not on another; the applicant had both surveys in hand when the home was completed and Certificate of Occupancy received; construction of the home had started when the applicant closed on the home in October 2019; the applicant home was the last one built on the northern boundary; the applicant is unaware of who built the first patio encroachment.

Chair Brison asked for rebuttals by Staff. Ms. Dixon clarified information about the as-built surveys shown during the applicant presentations. The approved subdivision plat that was stamped was shown. The Town does not require that every single lot on the plat be labeled with the setback and buffer because it is difficult to read on each individual lot on a large subdivision like this one. However, the setback and buffer line are clearly delineated and throughout the boundary of the subdivision plat. Another version of the survey was also shown during applicant presentations. That survey was provided by the Town for reference with the violation letter that was sent to each applicant. It was taken from the building permit records, which does not require a setback and buffer be labeled. It was provided as a reference to show where you are allowed to build to and what the encroachments are.

The Board made questions and inquiries regarding: if the rezoning of the Town's property to Parks and Recreation does occur, but the subdivision is not replatted, the 20 ft buffer can

be reduced to 10 ft, but there is still a 20 ft setback requirement; it appears that all of the patio encroachments would still encroach into the setback and if the buffer is reduced to 10 ft width then all of the patio encroachments potentially except for one (115 Sandcastle Court) would still encroach into the buffer; stormwater calculations were considered as part of this subdivision approval, and the current conditions, the patio encroachments, were not what was reviewed and approved by the Town; the buildable area is shown on all lots that are seeking a variance today; the applicants had notice of the buildable area on their plat and as-built survey; clarification on terminology of a rear yard.

Chair Brison asked for rebuttals by the applicants. Mr. Ross, Mr. and Mrs. Burke, Ms. Barnum, and Mr. and Mrs. Grandin made their rebuttals.

Ms. Dixon indicated the subdivision was designed to meet certain stormwater calculations based on the impervious surface. When the homeowners' added these improved surfaces and for all of these lots, the threshold of the stormwater retention lagoon is impacted. Regarding the stockpile in the rear of the yards that was mentioned is in fact a berm. A berm can be in a buffer and this one was part of the approved subdivision plans. The berm should have been vegetated as part of the Certificate of Occupancy.

The Board commented that the berm was created to prevent water from draining onto the Town's property and that may be required by State code.

Chair Brison confirmed that written public comments were distributed to the Board and made part of the record. The applicants' applications and presentations were without objection made part of the record. Staff confirmed that there were no callers or additional public comments at this time. Chair Brison closed the public hearings on the Applications.

At 5:42 p.m., Chair Brison declared a brief recess in the meeting. At 5:48 p.m., with all Board Members back in attendance, Chair Brison reconvened the meeting.

The Board expressed sympathy toward the applicants, however, the applications do not appear to meet all four criteria for a variance. The Board agreed the lots are small, however, the applicants chose to build on them and the Town regulations should still apply. One Board member expressed if serious landscaping improvements were made and the stormwater issues were resolved, then perhaps it could help. One Board member indicated the Board must decide based on what has been provided and that the buffer and stormwater calculations need to meet Town regulations. Following the discussion, Chair Brison asked for a motion.

Mr. Johnson made a motion to continue the applications to the December BZA meeting so that the applicants can come back with a professional engineering report addressing the original drainage calculations and how each individual patio impacts the drainage. Ms. Laudermilch seconded. By way of roll call, the motion failed with a vote of 1-5-0. (Roll: Johnson – in favor of the motion; Brison, Laudermilch, Ponder, Walczak, White – against the motion; no abstentions.)

At 6:22 p.m., Mr. Johnson excused himself from the meeting and a quorum of the Board remained in effect.

Dr. Ponder moved that the Board of Zoning Appeals deny application VAR-001853-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

Mr. Walczak moved that the Board of Zoning Appeals deny application VAR-001854-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Mr. White seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

Mr. White moved that the Board of Zoning Appeals deny application VAR-001874-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

Dr. Ponder moved that the Board of Zoning Appeals deny application VAR-001976-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Mr. White seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

Mr. Walczak moved that the Board of Zoning Appeals deny application VAR-001985-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

At 7:09 p.m., Dr. Ponder excused herself from the meeting and a quorum of the Board remained in effect.

h. Hearing

Motion to Reconsider VAR-001875-2020 – Eric Schnider is requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 119 Sandcastle Court.

Chair Brison presented statements regarding the procedure for this hearing. A motion to grant the Motion for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, application VAR-001875-2020, will be heard at the January 25, 2021 BZA meeting. It will be as though no previous vote had been taken on the application. A motion to deny the Motion for Reconsideration can be made by any member of the Board. The effect of a vote denying a Motion for Reconsideration is that the vote shall be considered the Board's final action on the matter.

Mr. Schnider made an in-depth presentation on his request that the Board reconsider their decision to deny the variance for 119 Sandcastle Court. Following Mr. Schnider's presentation, Chair Brison asked if anyone would like to make a motion on this matter.

Ms. Laudermilch moved to grant the Motion to Reconsider VAR-001875-2020. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Laudermilch, Walczak, White – in favor of the motion; Brison – against the motion; no abstentions.)

Following the vote, Chair Brison pointed out that application VAR-001875-2020 will be scheduled for the January 25, 2021 BZA meeting.

i. Hearing

Motion to Reconsider VAR-001870-2020 – George F. Zitlaw, Jr. is requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 123 Sandcastle Court.

Chair Brison presented statements regarding the procedure for this hearing. A motion to grant the Motion for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, application VAR-001870-2020, will be heard at the January 25, 2021 BZA meeting. It will be as though no previous vote had been taken on the application. A motion to deny the Motion for Reconsideration can be made by any member of the Board. The effect of a vote denying a Motion for Reconsideration is that the vote shall be considered the Board's final action on the matter.

Mr. Zitlaw, Jr. made an in-depth presentation on his request that the Board reconsider their decision to deny the variance for 123 Sandcastle Court. Following Mr. Zitlaw, Jr.'s presentation, Chair Brison asked if anyone would like to make a motion on this matter.

Ms. Laudermilch moved to grant the Motion to Reconsider VAR-001870-2020. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Laudermilch, Walczak, White – in favor of the motion; Brison – against the motion; no abstentions.)

Following the vote, Chair Brison pointed out that application VAR-001870-2020 will be scheduled for the January 25, 2021 BZA meeting.

10. Board Business – None

11. Staff Report

a. Waiver Report – The Waiver Report was included in the Board's agenda package.

12. Adjournment

The meeting was adjourned at 7:30 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

STAFF REPORT VARIANCE

Case #:	Public Hearing Date:
VAR-001977-2020	December 14, 2020

Parcel or Location Data:	Property Owner and Applicant
Parcel#: R511 009 000 1108 0000 Address: 11 Sandcastle Court Parcel size: 0.08 acres Zoning: RD (Resort Development District) Overlay: COR (Corridor Overlay District)	Bruce Gray 22 Dawn Drive Basking Ridge, NJ 07920

Application Summary:
Request from Bruce Gray for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow an existing patio and fence to remain in the adjacent use setback and buffer. The property address is 11 Sandcastle Court with a parcel number of R511 009 000 1108 0000.

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

Background:
<p>The subject property is located in the Sandcastles by the Sea subdivision off Folly Field Road. The subdivision was approved in 2007 (SUB050002). The subdivision is surrounded by the Hilton Head Beach and Tennis Resort (multi-family residential) to the east, single family residential to the south, Town-owned property and Folly Field Road to the north and Adventure Cove, Carrabba’s restaurant and an office building to the west.</p> <p>The subject property, 11 Sandcastle Ct, was constructed in 2018 and purchased by the current owner</p>

in August of 2020 (See Attachment A, Vicinity Map). After the home was constructed and the Certificate of Occupancy was issued, the owner had an approximate 24' 6" by 12' 1" (field measured) paver patio constructed in the rear of the property, extending from the pool area into the rear adjacent use setback and buffer. The patio encroachment is approximately 12' 1" (field measured) in the adjacent use setback and buffer although it tapers to a lesser encroachment length due to the parcel shape. A fence is located in the adjacent setback and buffer and is approximately 13' 4" (field measured) at its greatest distance into the adjacent use setback and buffer although the encroachment length tapers due to the parcel shape. LMO Section 16-5-102.E. allows for "uncovered porches, stoops, decks, patios, or terraces" to extend up to 5 feet into any setback. While a patio can encroach up to 5 feet into a setback, it cannot encroach into a buffer. Portions of the existing patio even exceeds the allowable setback encroachment. The applicant is seeking a 12' encroachment into the setback and buffer.

The Sandcastles by the Sea subdivision was approved with a 20 foot adjacent use setback and buffer around the perimeter of the subdivision (a 25 foot adjacent use buffer was approved on the western subdivision perimeter), as shown on the subdivision plat (See Attachment C, Subdivision Plat).

The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential negative effects between adjacent uses and provide space for landscaping that can help improve air and water quality and be used to reduce storm water runoff. The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments. Buffer and setback areas frequently overlap, but the standards that apply to these areas are different. For example, uncovered patios are allowed to encroach up to 5 feet in setbacks, but patios are not allowed in buffers, which are meant to be landscaped or naturally vegetated.

At the time the subdivision was approved, there was not any flexibility in buffer options. With the 2014 LMO re-write, the buffer standards were made more flexible. This type of development would now require either a Type A Option 1 (20 foot) less densely vegetated buffer or a Type A Option 2 (10 foot) more densely vegetated buffer for single family residential use adjacent to a multifamily residential use. The buffer types and options are explained in Table 16-5-103.F (See Attachment J, Buffer Table). A 20 setback is still required along the perimeter of a single family subdivision adjacent to a multifamily residential use.

In July 2019, Staff received several complaints about property owners removing vegetation in the buffers and making improvements such as patios within the buffer. Upon a site visit, staff found several violations in the area in which we received complaints about. Violation letters were sent to the property owners notifying them of the violation and providing a deadline to remove the encroachments or apply for a variance.

A representative of the property owners contacted staff after receiving the violation letters and asked if the deadline to remove the encroachments could be extended to November 2019, as the majority of the homes are vacation rentals and it was the middle of the summer season. Staff felt that was reasonable and extended the deadline.

In early fall of 2019, the representatives of the property owners met with staff to discuss their options. One of their requests was to reduce the buffer to the 10 foot buffer option. Staff informed them that to utilize the reduced buffer option, the entire subdivision plat would need to be revised and recorded. Town Staff had been working with the representatives to pursue a buffer reduction request for the entire subdivision, but it was determined by the representative to be too costly to do and they didn't think they could get 100% owners consent.

Staff was informed in Spring of 2020 that there were several other properties in this subdivision that had encroachments in the buffer. Staff decided to do a site visit to all of the properties in the subdivision and compiled a list of the violations. In August of 2020 a second violation letter was issued to property owners with a deadline to remove the encroachments and restore the buffers back to a vegetated area by October 1, 2020. The property owners were informed that if they did not adhere to the deadline the Town would place a hold on their parcel making it so that no further building permits could be issued until the violation had been corrected. The property owners were all informed that they also had the option to apply for a variance if they wished to keep the encroachments.

The parcel shape is mostly rectangular, but at the rear of the property, the property is angled slightly to follow the edge of the lagoon. Because of the slightly irregular parcel shape, the dimensions of the setback and buffer encroachments are lesser on the south side of the lot and greater on the north side. (See Attachment D, As-Built). The allowable setback encroachments in Table 16-5-102.E. allows for "uncovered porches, stoops, decks, patios, or terraces" to extend up to 5 feet into any setback.

The applicant is seeking a 12' encroachment to allow the existing paver patio and fence to remain in the rear adjacent use setback and buffer. However, staff field measured the encroachment to be 13'4" into the setback and buffer.

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

Grounds for Variance:

According to the applicant, the relatively small size of the lot combined with the setback and buffer requirements of the LMO are extraordinary and exceptional conditions. According to the applicant, a re-vegetation plan for the buffer has already been approved by the Town in 2018.

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 September 30, 2020 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 November 22, 2020 as set

forth in LMO Section 16-2-102.E.2.

- Notice of the Application was posted on November 29, 2020 as set forth in LMO Section 16-2-102.E.2.
- Notice of Application was mailed on November 21, 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 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:

- Sandcastles by the Sea is a small lot single-family subdivision that consists of 83 lots.
- Most of the lots within the subdivision range from 0.06-0.13 acres with the majority of the lots around 0.07 acres.
- The majority of the lots within the subdivision were platted with a 20' rear setback and buffer.
- The subject property is mostly rectangular in shape as are the majority of the lots in the subdivision.
- The subject lot is 0.08 acres in size.
- The subject property does not contain any unique site features that prohibit development on the lot.

Conclusions of Law:

- This application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are no extraordinary and exceptional conditions that pertain to this particular property.
- The subject property is average in shape and size for the subdivision and does not contain any extraordinary or exceptional conditions that prohibit development on the lot.

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:

- There are no extraordinary or exceptional conditions that pertain to this property.
- The majority of lots in the Sandcastles by the Sea subdivision are nearly identical in size and shape.
- A 20' adjacent use setback and buffer is applied to all properties located on the perimeter of the subdivision, except those on the Western perimeter which have a 25' adjacent use buffer.
- The conditions that apply to the subject property also apply to other properties in the vicinity.

Conclusion of Law:

- This application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary or exceptional conditions that apply to the subject property that do not also 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:

- There are no extraordinary or exceptional conditions that pertain to this property.
- The Sandcastle by the Sea subdivision plat was approved with the 20 foot adjacent use setback and buffer in the rear of the subject property.
- The Sandcastle by the Sea subdivision plat has a note that reads, "The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO".
- LMO Section 16-5-103.J, Development Within Required Buffers, does not list a patio or retaining wall as permitted activities within a required buffer.
- The subject property is currently developed with a 3-story single-family residence with 3,314 heated square feet, 1,137 unheated square feet, 5 bedrooms, 4 bathrooms, garage and a swimming pool.

Conclusion of Law:

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

Summary of Facts and Conclusions of Law:

Criteria 4: The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the

Variance (LMO Section 16-2-103.S.4.a.i.04):

Findings of Facts:

- Staff has received no letters of opposition to this variance request.
- The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers. Such buffers are intended to help mitigate potential negative effects between adjacent uses and provide space for landscaping that can help improve air and water quality and be used to reduce storm water runoff.
- The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments.
- The applicant is requesting to keep the existing paver patio and fence which encroaches into the rear setback and buffer.
- The use of hardscape in the buffer area is a modification to the Civil Engineer stormwater runoff calculations for the Sandcastle by the Sea Subdivision. The area that is considered buffers typically produces very little stormwater runoff due to the existing natural understory flora. When this area is disturbed and modified with patio pavers, gravel & sand it drastically changes the amount of stormwater runoff from what was expected to be from a natural vegetative buffer.
- Staff has been informed that private covenants exist that prohibit disturbance of the 20 foot buffer along the lagoon in between the Sandcastles by the Sea subdivision and the Hilton Head Beach and Tennis Resort development. The private covenants prohibit the developer or property owner from seeking the 10 foot buffer option adjacent to the Hilton Head Beach and Tennis Resort development.

Conclusions of Law:

- This application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the variance will be of substantial detriment to the adjacent property because the purpose of setback and buffer requirements is to provide visual and spatial separation between developments and mitigate the negative effects between adjacent uses.
- Due to the number of buffer encroachments and the impacts to the stormwater system Town Engineering staff recommend that this practice not be allowed to continue.
- While it is not within the Town's purview to enforce private covenants, the Town has been informed that private covenants exist that prohibit disturbance of the 20 foot buffer between the Sandcastles by the Sea subdivision and the Hilton Head Beach and Tennis Resort development.

LMO Official Determination:

Based on the above Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should not be granted to the applicant because all four of the variance criteria have not been met.

--

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

December 4, 2020

DATE

REVIEWED BY:

ND

Nicole Dixon, AICP, CFM, Development
Review Administrator

December 4, 2020

DATE

ATTACHMENTS:

- A) Vicinity Map
- B) Applicant's Narrative
- C) Subdivision Plat
- D) As-built
- E) Site Pictures
- F) Buffer Table



Town of Hilton Head Island

11 Sandcastle Ct.
Attachment A: Vicinity Map



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

175 87.5 0 175 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.

I am writing this letter to request a variance to seek and obtain relief from the following standards:

- **Chapter 16-5-102 Setback Standards**
- **Chapter 16-5-103 Buffer Standards**
- **Chapter 16-5-113 Fence and Wall Standards**

I Respectfully Request:

- **Reduction of the rear vegetative buffer on my lot from the required 20 feet to 8 feet.**

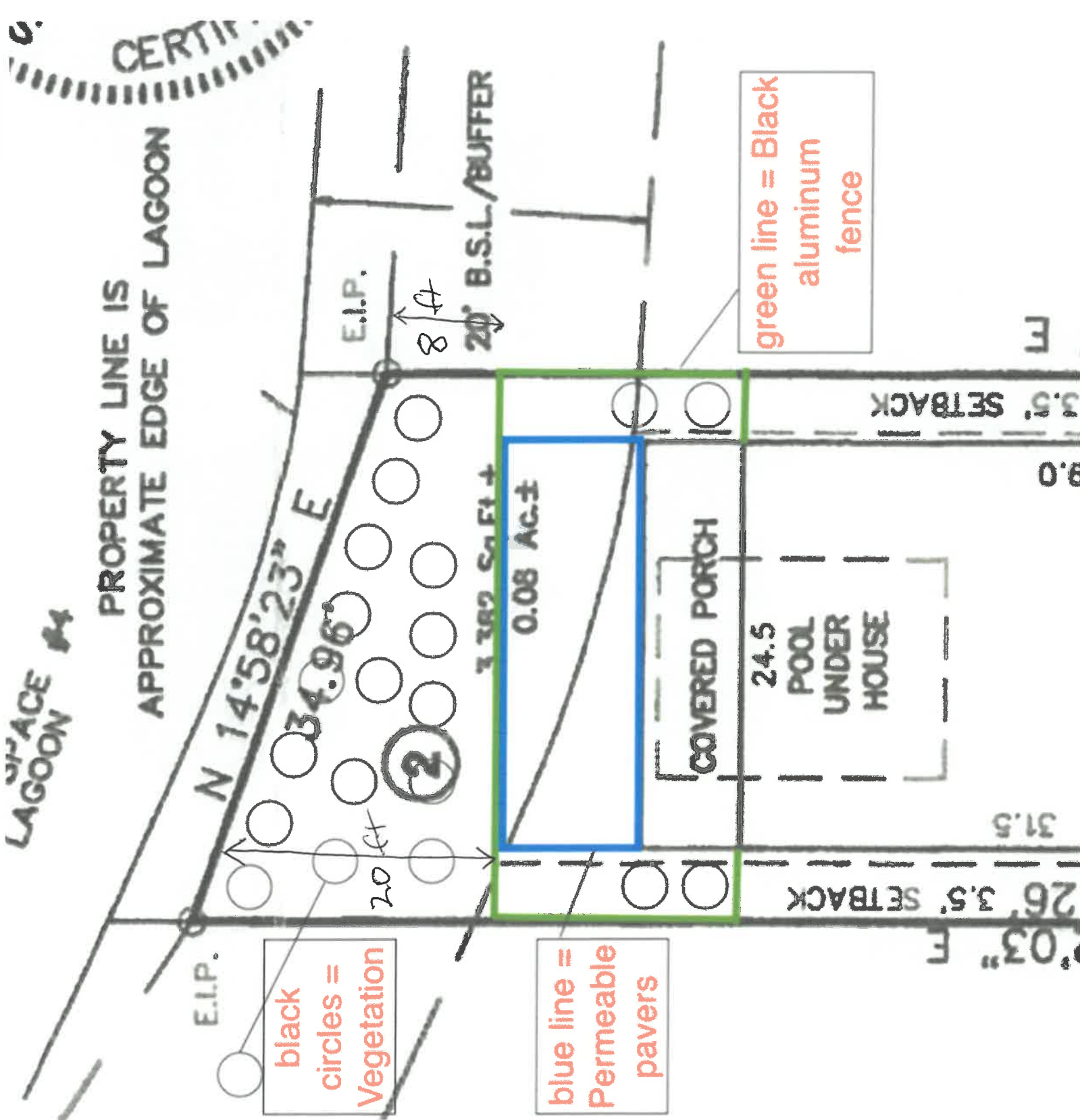
My single-family home is located in the Sandcastles by the Sea neighborhood in Folly Field. The Town of Hilton Head Land Management Ordinance requires an adjacent use buffer along the boundary of my subdivision. In the case of my lot, the buffer is 20 feet from the rear property line. The Town of Hilton Head requires this 20 foot buffer to be a natural vegetated area, and to provide an aesthetic and spatial separation between uses and streets and uses and adjacent properties, and not to have improvements such as patios, retaining walls, and pavers.

I am requesting a variance to allow 12 feet of the vegetation buffer in my backyard to contain improvements of natural looking stone pavers with permeable joints, and an elegant lightweight black aluminum fence surrounding my backyard pool area, to provide a non-obtrusive barrier to alligators from entering the swimming pool and other livable space in the home. As you can see in my survey drawing – there would be 8 feet of buffer in the right rear side and a full 20 feet of buffer on the left rear side. The vegetation buffer would increase from 8 feet to 20 feet as the property deepens across the rear of the property.

I believe the variance I am requesting meets all the towns criteria for approval.

Extraordinary and exceptional conditions pertain to my property and do not apply to other properties in Folly Field or on Hilton Head Island.

The Sandcastle by the Sea neighborhood was a residential planned community first developed back in 2006 by Star Fish Investments LLC. The community was developed into 83 individual buildable lots. All the lots are nearly identical in size and shape, and measure roughly 100 feet long by 33 feet wide, and only average 0.076 acres each. My lot, which measures much less than 1/10th of an acre, is extraordinary and exceptional compared to all the surrounding lots both in Folly Field and on the entire island. In fact, my lot is less than half the size of all the surrounding residential lots in Folly Field. Other residential lots



black circles = Vegetation

blue line = Permeable pavers

green line = Black aluminum fence

LAGOON #4

PROPERTY LINE IS APPROXIMATE EDGE OF LAGOON

$N 14^{\circ}58'23'' E$

$34.96'$

E.I.P.

8 ft

20' B.S.L./BUFFER

31.5 SETBACK

0.08 Ac.±

COVERED PORCH

24.5

POOL UNDER HOUSE

26' 3.5' SETBACK

3.5' SETBACK

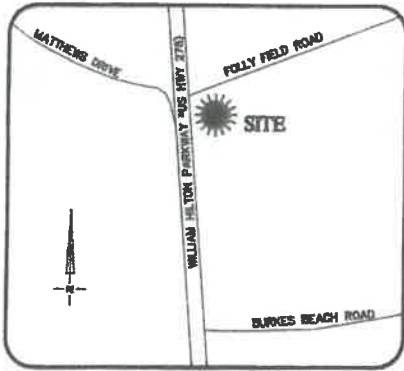
31.5

9.0

F

CERTIFIED

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



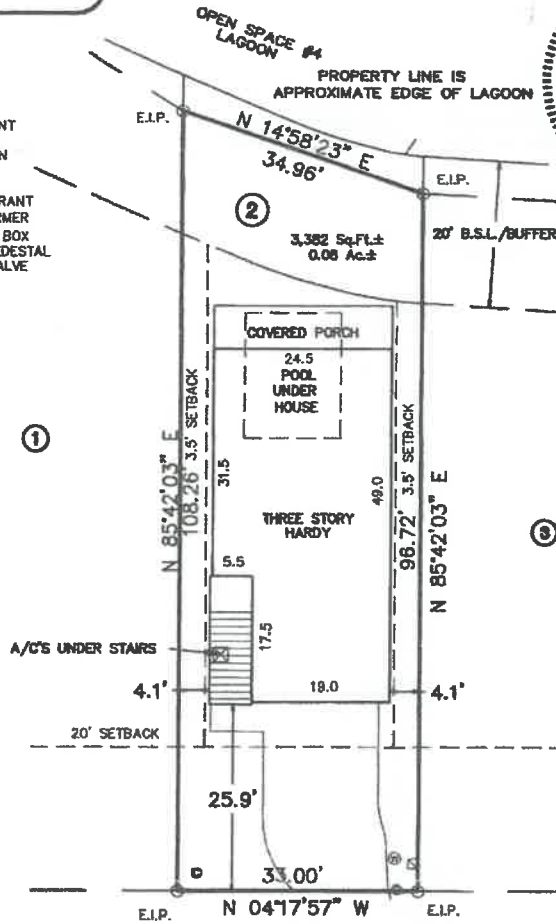
VICINITY MAP
Not To Scale

SIGNED *Matthew D. Clark*
MATTHEW D. CLARK, SCPLS 20187

MB. 00113 PG. 0164



- LEGEND**
- E.I.P. EXISTING IRON PIN
 - E.C.M. EXISTING CONCRETE MONUMENT
 - S.I.P. SET IRON PIN 5/8" REBAR
 - F.P.E. FLOOD PROTECTION ELEVATION
 - PROPERTY LINE
 - - - ADJOINER PROPERTY LINE
 - x * - x FENCE LINE
 - CLEAN OUT
 - LIGHT POST
 - ⊙ MAN HOLE
 - ⊕ TELEPHONE PEDESTAL
 - ⊗ WATER METER
 - CB □ CATCH BASIN
 - FIRE HYDRANT
 - ⊠ TRANSFORMER
 - ⊠ ELECTRIC BOX
 - ⊠ CABLE PEDESTAL
 - ⊠ WATER VALVE
 - ⊠ HVAC



#11 SANDCASTLE COURT

50' R/W

TMS: RS11-009-000-1108-0000

THIS PROPERTY MAY BE SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD OR IMPLIED

FLOOD NOTE:
THIS PROPERTY APPEARS TO BE LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D. PANEL 14-D COMMUNITY NO. 450250, MAP DATED 9/29/86. BASE ELEVATION 14.0'.



PHYSICAL SURVEY

FOR

LOT 2, SANDCASTLES BY THE SEA

Hilton Head Island, Beaufort County, South Carolina

PROPERTY OF: VILLAGE PARK HOMES

MAP BOOK 00113 PAGE 0164 DEED REFERENCE

RLA ASSOCIATES, PA
110 TRADERS CROSS
BLUFFTON, SC 29909
PHONE (843) 705-8030
FAX (843) 839-9092

DRAWN BY: MDC

DATE: APRIL 23, 2019

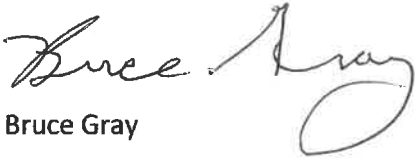
where the property is located will not be harmed by the granting of the Variance.

Our entire backyard is directly backed up to a heavily treed and vegetated buffer adjacent to the lagoon between Sandcastles by the Sea and the Hilton Head Island Beach & Tennis Resort. The lagoon itself provides 100-200 feet of water buffer. I have no rear neighbors. This vegetation prevents any visibility into my backyard from anyone directly behind my property from across the lagoon in the Hilton Head Island Beach & Tennis Resort.

As far as adjacent property impact, the only property owners that can see my property or proposed improvements, are all located on the same street in Sandcastles by the Sea. Each of these adjacent owners have all the same issues as described above and are requesting the same variance I am requesting.

If our Variance is denied, enforcement of this strict vegetation buffer will result in a unnecessary hardship for my family, and if a variance is granted, I feel the spirit of the law will still be observed, public welfare and safety will not be diminished and substantial justice will be done.

Thank you for your time,

A handwritten signature in cursive script that reads "Bruce Gray". The signature is written in black ink and is positioned above the printed name.

Bruce Gray

15035P4D

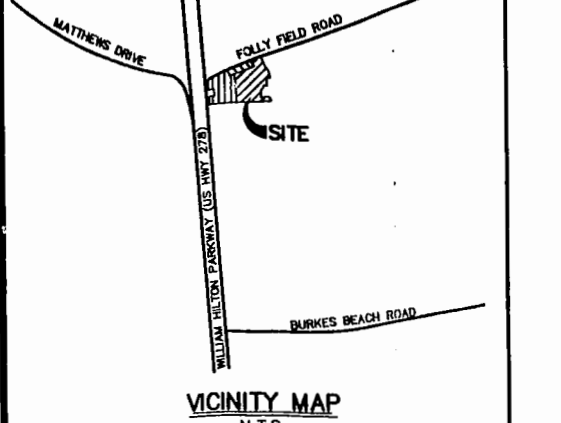


Table with columns: LINE, LENGTH, BEARING, LINE, LENGTH, BEARING. It lists 170 line segments for the subdivision.

AREA TABLE
83 RESIDENTIAL LOTS = 6.779 Ac.
SANDCASTLE COURT R/W = 2.313 Ac.
OPEN SPACE = 1.826 Ac.
TOTAL AREA = 10.918 ACRES

- NOTES
1) I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF...
2) THIS PROPERTY IS LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA...
3) UNDERGROUND UTILITIES NOT LOCATED EXCEPT AS SHOWN.

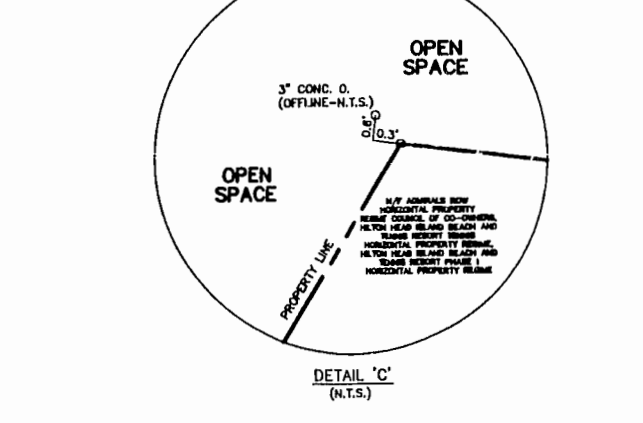
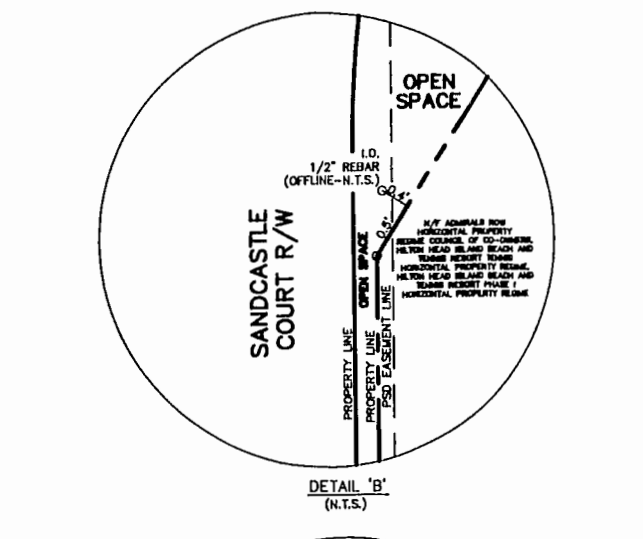
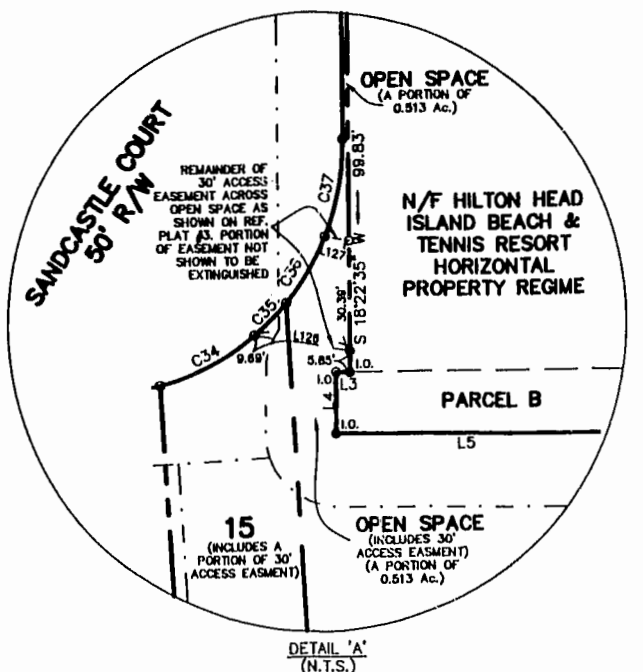
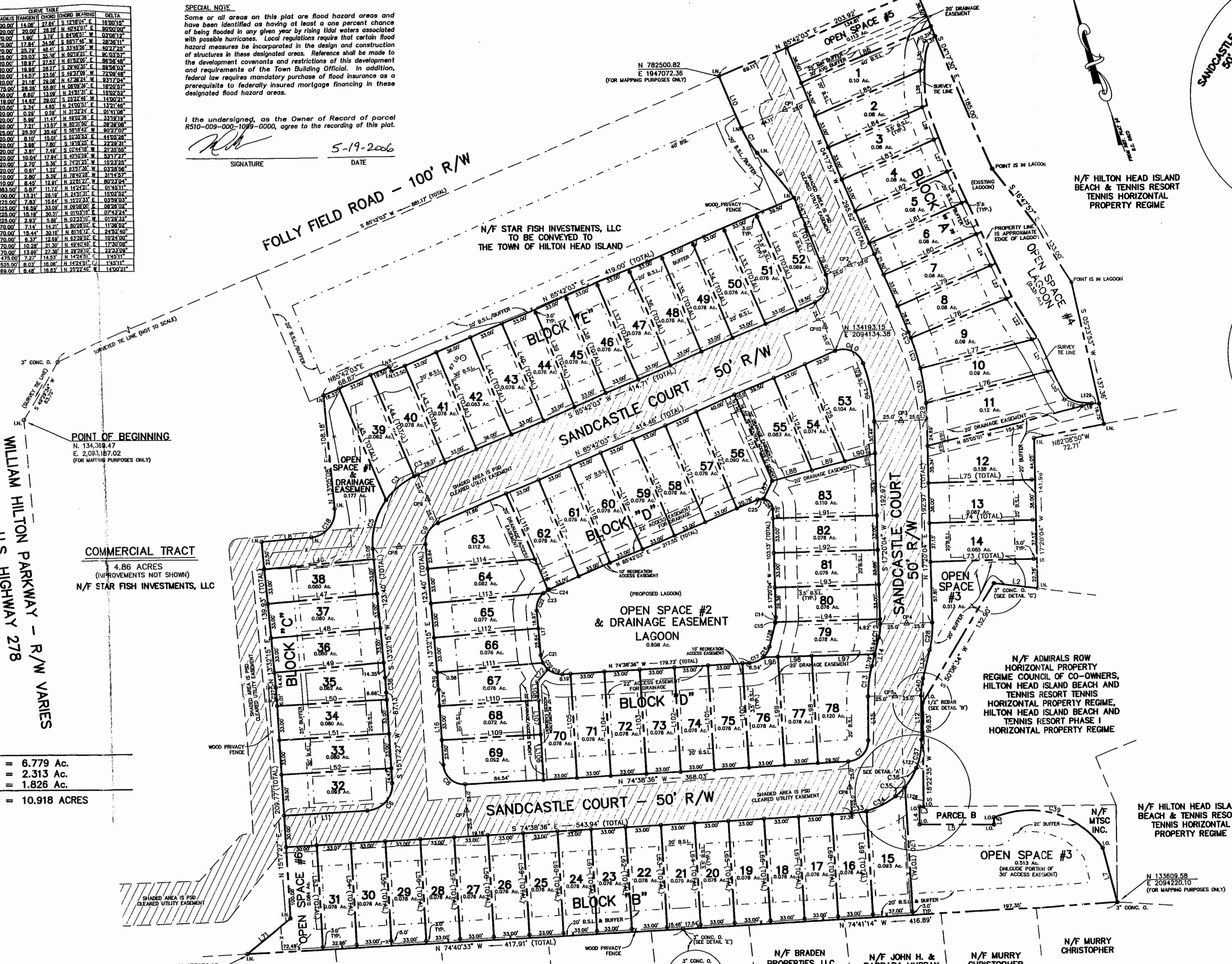
- REFERENCE PLATS
1) ASBUILT SURVEY OF 14.249 AC. TRACT, FOLLY FIELD ROAD & U.S. HIGHWAY 278, DATED: 5/9/2000.
2) ALTA/ACSM LAND TITLE SURVEY OF PARCEL A, 3.26 AC. AND PARCEL B, 0.08 AC. WILLIAM HILTON PARKWAY...

Table with columns: CURVE DATA, BEARING, DISTANCE, BEARING, DISTANCE, BEARING. It lists curve data for the subdivision.

SPECIAL NOTE
Some or all areas on this plat are flood hazard areas and have been identified as having at least a one percent chance of being flooded in any given year by rising tidal waters associated with possible hurricanes...

I, the undersigned, as the Owner of Record of parcel R510-009-000-1099-0000, agree to the recording of this plat.
Signature: [Handwritten Signature]
Date: 5-19-2006

Attachment C



SUBDIVISION CONTROL POINTS
(CHECK POINTS TO BE SET AFTER FINAL ROADWAY CONSTRUCTION)
CPT 1 N 134426.47 E 2094162.22
CPT 2 N 134266.35 E 2094174.28

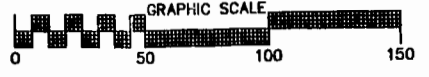
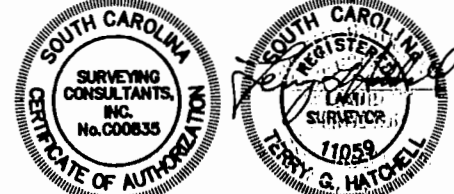
TOWN OF HILTON HEAD ISLAND, SC
SUBDIVISION APPROVAL
Date of approval: 7/9/06
Application Number: S1803002
Certified by: [Signature]
Title: Mgr. Blaz E

SANDCASTLES
BY THE SEA
FOLLY FIELD ROAD

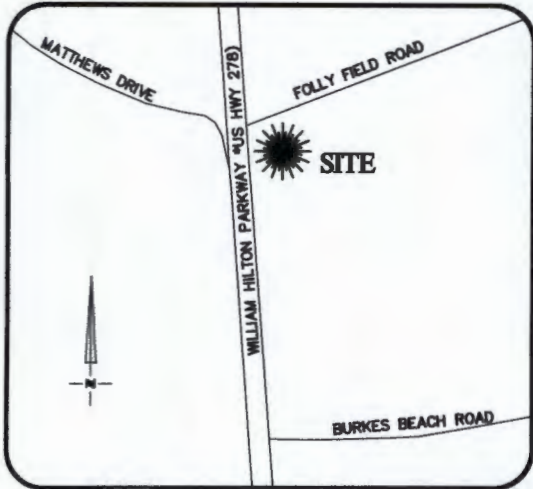
HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA
SCALE: 1" = 50' DATE: 6/15/2005 JOB NO: 89319L
REVISED 05/19/2006 TO SHOW OFFSET PROPERTY CORNERS

Logo for SURVEYING CONSULTANTS, 17 Sherington Drive, Suite C, Bluffton, SC 29910. Telephone: (843) 815-3304 FAX: (843) 815-3305

PREPARED FOR: STAR FISH INVESTMENTS, LLC
TAX PARCEL I.D. NO. R510-009-000-1099-0000



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE MANUAL FOR SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN; ALSO THERE ARE NO VISIBLE ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN.



VICINITY MAP
Not To Scale

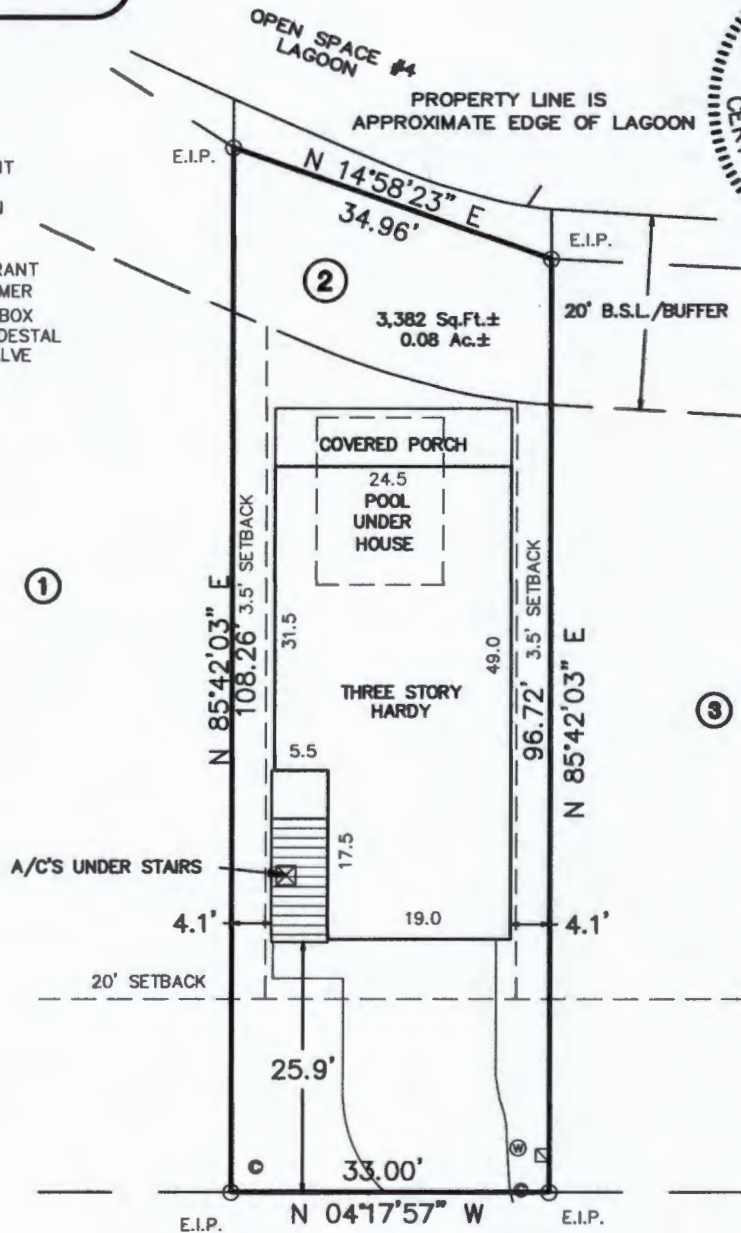
SIGNED MATTHEW D. CLARK, SCPLS 20187

MB. 00113 PG. 0164



LEGEND

- E.I.P. EXISTING IRON PIN
- E.C.M. EXISTING CONCRETE MONUMENT
- S.I.P. SET IRON PIN 5/8" REBAR
- F.P.E. FLOOD PROTECTION ELEVATION
- — — — — PROPERTY LINE
- - - - - ADJOINER PROPERTY LINE
- × × × FENCE LINE
- ⊙ CLEAN OUT
- ⊠ LIGHT POST
- ⊕ MAN HOLE
- ⊗ TELEPHONE PEDESTAL
- ⊙ WATER METER
- CB □ CATCH BASIN
- ⊙ FIRE HYDRANT
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- ⊠ CABLE PEDESTAL
- ⊠ WATER VALVE
- ⊠ HVAC



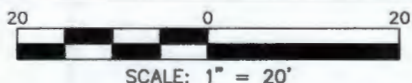
#11 SANDCASTLE COURT

50' R/W

TMS: R511-009-000-1108-0000

THIS PROPERTY MAY BE SUBJECT TO ANY AND ALL APPLICABLE DEED RESTRICTIONS, EASEMENTS, RIGHT-OF-WAY, UTILITIES AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD OR IMPLIED

FLOOD NOTE:
THIS PROPERTY APPEARS TO BE LOCATED IN ZONE A-7, A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY H.U.D. PANEL 14-D COMMUNITY NO. 450250, MAP DATED 9/29/86. BASE ELEVATION 14.0'.



PHYSICAL SURVEY

FOR

LOT 2, SANDCASTLES BY THE SEA

Hilton Head Island, Beaufort County, South Carolina

PROPERTY OF: VILLAGE PARK HOMES

MAP BOOK 00113 PAGE 0164 DEED REFERENCE _____

RLA ASSOCIATES, PA
110 TRADERS CROSS
BLUFFTON, SC 29909
PHONE (843) 705-8030
FAX (843) 839-9092

DRAWN BY: MDC

DATE: APRIL 23, 2019

Attachment E

VAR-001977-2020

11 Sandcastle Ct

Site Photos taken 11/6/2020



Attachment E

VAR-001977-2020

11 Sandcastle Ct

Site Photos taken 11/6/2020



Attachment E

VAR-001977-2020

11 Sandcastle Ct

Site Photos taken 11/6/2020



Attachment E

VAR-001977-2020

11 Sandcastle Ct

Site Photos taken 11/6/2020



Attachment E

VAR-001977-2020

11 Sandcastle Ct

Site Photos taken 11/6/2020



Attachment E

VAR-001977-2020

11 Sandcastle Ct

Site Photos taken 11/6/2020



Attachment F

F. Buffer Types

Table 16-5-103.F, Buffer Types, describes the five different buffer types in terms of their function, opacity, width, and planting requirements. Either of the options under a specific buffer type may be used at the option of the *developer / applicant* . If the square footage of an existing building on a site is being increased by more than 50% then the buffers must be brought into compliance with the standards in this table.

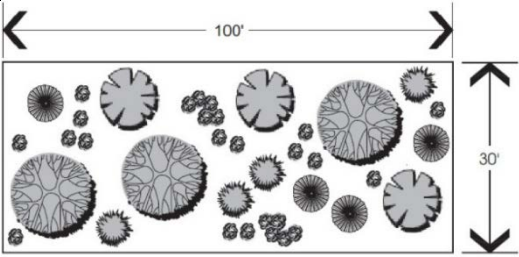
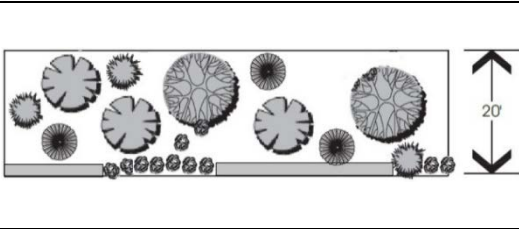
TABLE 16-5-103.F: BUFFER TYPES		
MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS <small>1,2,3,4,5,6,7</small>		
TYPE A BUFFER		
This buffer includes low- <i>density</i> screening designed to partially block visual contact and create spatial separation between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent streets</i> with low traffic volumes.		
Option 1		<ul style="list-style-type: none"> • Width: 20 feet • <i>Overstory trees</i> : 2 every 100 linear feet • <i>Understory trees</i> : 3 every 100 linear feet • Evergreen shrubs: 8 every 100 linear feet
Option 2		<ul style="list-style-type: none"> • Width: 10 feet • <i>Overstory trees</i> : 2 every 100 linear feet • <i>Understory trees</i> : 4 every 100 linear feet • Evergreen shrubs: 10 every 100 linear feet
TYPE B BUFFER		
This buffer includes low- to medium- <i>density</i> screening designed to create the impression of spatial separation without significantly interfering with visual contact between <i>adjacent uses</i> or between <i>development</i> and <i>adjacent</i> minor arterials.		
Option 1		<ul style="list-style-type: none"> • Width: 25 feet • <i>Overstory trees</i> : 3 every 100 linear feet • <i>Understory trees</i> : 6 every 100 linear feet • Evergreen shrubs: 10 every 100 linear feet
Option 2		<ul style="list-style-type: none"> • Width: 15 feet • <i>Overstory trees</i> : 4 every 100 linear feet • <i>Understory trees</i> : 8 every 100 linear feet • Evergreen shrubs: 12 every 100 linear feet
TYPE C BUFFER		
This buffer includes medium- <i>density</i> screening designed to eliminate visual contact at lower levels and create spatial separation between <i>adjacent uses</i> .		
Option 1		<ul style="list-style-type: none"> • Width: 25 feet • <i>Overstory trees</i> : 3 every 100 linear feet • <i>Understory trees</i> : 5 every 100 linear feet • A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide
Option 2		<ul style="list-style-type: none"> • Width: 15 feet • <i>Overstory trees</i> : 4 every 100 linear feet • <i>Understory trees</i> : 6 every 100 linear feet • A solid wall or fence at least 3 feet high or a solid evergreen hedge at least 3 feet high and 3 feet wide • At least 50% of all <i>trees</i> must be evergreen

Attachment F

TABLE 16-5-103.F: BUFFER TYPES
MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS ^{1,2,3,4,5,6,7}

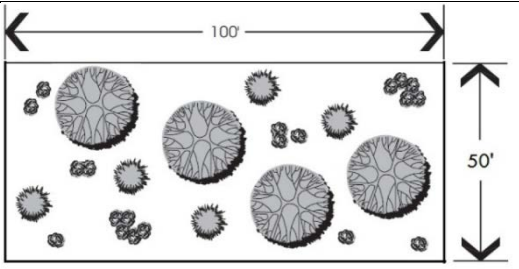
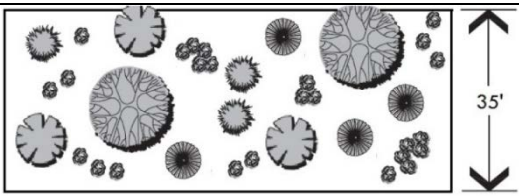
TYPE D BUFFER

The buffer includes high-density screening designed to eliminate visual contact up to a height of six feet and create a strong spatial separation between *adjacent uses*. A Type D buffer is required adjacent to all loading areas per Section 16-5-107.H.8.d, Buffering of Loading Areas.

Option 1		<ul style="list-style-type: none"> • Width: 30 feet • <i>Overstory trees</i> : 5 every 100 linear feet • <i>Understory trees</i> : 6 every 100 linear feet • Evergreen shrubs: 25 every 100 linear feet and at least 6 feet high at maturity • At least 50% of all <i>trees</i> must be evergreen
Option 2		<ul style="list-style-type: none"> • Width 20 feet • <i>Overstory trees</i> : 6 every 100 linear feet • <i>Understory trees</i> : 8 every 100 linear ft • A solid wall or fence at least 6 feet high or a solid evergreen hedge at least 6 feet high and 3 feet wide • At least 50% of all <i>trees</i> must be evergreen

TYPE E BUFFER

This buffer provides greater spacing and medium-*density* screening designed to define "green" corridors along major arterials.

Option 1		<ul style="list-style-type: none"> • Width: 50 feet • <i>Overstory trees</i> : 4 every 100 linear feet • <i>Understory trees</i> : 5 every 100 linear feet • Evergreen shrubs: 20 every 100 linear feet and at least 3 feet high at maturity
Option 2		<ul style="list-style-type: none"> • Width: 35 feet • <i>Overstory trees</i> : 5 every 100 linear feet • <i>Understory trees</i> : 7 every 100 linear feet • Evergreen shrubs: 25 every 100 linear feet and at least 3 feet high at maturity • At least 50% of all <i>trees</i> must be evergreen

Attachment F

TABLE 16-5-103.F: BUFFER TYPES
MINIMUM BUFFER WIDTH AND SCREENING REQUIREMENTS ^{1,2,3,4,5,6, 7}

NOTES:

1. Required *overstory trees* shall be distributed and spaced to maximize their future health and effectiveness as buffers. Other required vegetation shall be distributed within the buffer as appropriate to the function of the buffer.
2. Where an *adjacent use* is designed for solar access, *understory trees* may be substituted for *overstory trees*.
3. Fences or walls within an adjacent street or use buffer shall comply with the standards of [Sec. 16-5-113](#), Fence and Wall Standards.
4. A berm may be provided in conjunction with the provision of a hedge, fence, or wall to achieve *height* requirements, provided its side slopes do not exceed a ratio of three horizontal feet to one vertical foot and the width of its top is at least one-half its *height*.
5. If a buffer length is greater or less than 100 linear feet, the planting requirements shall be applied on a proportional basis, rounding up for a requirement that is 0.5 or greater, and down for a requirement that is less than 0.5. (For example, if the buffer length is 150 linear feet, and there is a requirement that 5 *overstory trees* be planted every 100 linear feet, 8 *overstory trees* are required to be planted in the buffer ($1.5 \times 5 = 7.5$, rounded up to 8)).
6. Minimum buffer widths and minimum planting requirements for adjacent street buffers may be reduced by up to 30 percent in the S District, 20 percent in the RD and IL Districts, and 15 percent in all other districts, on demonstration to the *Official* that:
 - a. The reduction is consistent with the character of *development* on surrounding *land* ;
 - b. *Development* resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;
 - c. The reduction 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 reduction will not pose a danger to the public health or safety;
 - e. Any adverse impacts directly attributable to the reduction are mitigated;
 - f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts; and
 - g. In the S, RD, and IL districts, there are no reasonable options to the reduction that allow *development* of the site to be designed and located in a way that complies with LMO standards.
7. Minimum buffer widths and minimum planting requirements for adjacent use buffers may be reduced by up to 10 percent any district on demonstration to the *Official* that:
 - a. The reduction is consistent with the character of *development* on surrounding *land* ;
 - b. *Development* resulting from the reduction is consistent with the purpose and intent of the adjacent setback standards;
 - c. The reduction 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 reduction will not pose a danger to the public health or safety;
 - e. Any adverse impacts directly attributable to the reduction are mitigated; and
 - f. The reduction, when combined with all previous reductions allowed under this provision, does not result in a cumulative reduction greater than a 30 percent in the S District, 20 percent in the RD and IL Districts, or 15 percent in all other districts.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Missy Luick, *Senior Planner*
DATE: December 2, 2020
SUBJECT: VAR-001976-2020 117 Sandcastle Court – Petition for Reconsideration

On November 23, 2020 variance case VAR-001976-2020 was heard by the Board of Zoning appeals and was denied in a 5-0 vote. On December 1, 2020, staff received the attached Petition for Reconsideration of the denial of Variance application VAR-001976-2020 for 117 Sandcastle Court. Per the BZA's Rules of Procedure, particularly Article IX, Section 1, Motion for Reconsideration, any party aggrieved by a decision of the BZA may file a Petition for Reconsideration within ten days from the date of the hearing. The applicant met this requirement. The Petition, in accordance with the Rules of Procedure, has stated the points the applicant believes were overlooked or misinterpreted by the Board.

At the meeting on December 14, 2020, the Board will review the Petition for Reconsideration and hear from the applicant. The Board will then decide whether or not to grant the Petition for Reconsideration. The Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, VAR-001976-2020 will be heard at a future BZA meeting and it will be as though no previous vote had been taken on the application. A Motion to Deny the Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter.

From: [Lexie Barnum](#)
To: [Dixon Nicole](#)
Subject: Petition for Reconsideration of Variance #VAR-001976-2020
Date: Tuesday, December 1, 2020 3:20:28 PM

THIS MESSAGE ORIGINATED OUTSIDE YOUR ORGANIZATION

Grounds for Petition for Reconsideration, Summary of Facts and Conclusions of Law:

Grounds for Petition:

Applicant feels key facts were overlooked and key points were misinterpreted in the board's decision to deny VAR-001976-2020 at the Board of Zoning Appeals Special Meeting held Monday, November 23rd, 2020

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 presented at BZA special meeting held Monday, November 23rd, 2020:

1. The subject property is .07 acres.
2. The subject property is approximately the same size (.06 - .08 acres) as all of the other properties on the same side of Sandcastle Court as well as the adjacent properties across Sandcastle Court.
3. The subject property is rectangular in shape as are the majority of the adjacent properties.
4. The subject property does not contain any unique site features that prohibit development on the lot.

Conclusions of Law decided by board at BZA special meeting held Monday, November 23rd, 2020:

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

Key Facts overlooked and misinterpreted by the board

- Construction clearing crews disturbed the natural 20-foot buffer at the rear of the

property, not the homeowner. This construction violation is no longer allowed per new ordinances put in place for developing contractors. Under current construction standards the onus is on the contractor to return an adjacent use and set-back buffer to conforming standards and in compliance with the intended storm run-off draining calculations permitted by the Town's development team prior to construction.

- Construction clearing crews removed all the natural vegetation in the buffer, not the homeowner.
- During pre-construction and construction of 119 Sandcastle, an unnatural spoil pile was created at the rear of the property consisting of material graded away from the rest of the Sandcastle subdivision as well as the home's foundation footprint. The spoil pile changed the natural grade of the adjacent use and set-back buffer between the home and the 1.5 acre protected town owned property on opposite side of the buffer.
- The spoil pile left behind by historical developers in the adjacent use and set-back buffer area is covering up the natural understory flora deep beneath the pile at natural grade. Spoil piles negatively impact the amount of stormwater runoff that would have been minimized by a natural vegetative buffer at natural grade.
- Spoil piles are a common issue on Right of Ways for Pipelines and Powerline crossings. FERC and Environmental State Departments across the country require spoil piles created during clearing and grading activities to be removed immediately following downstream construction activities because of the flooding impacts they cause during heavy rain events.
- Design Development Regulation Conformance representative Brian Eber was not available at meeting to address specific water run-off/quality issues specific to the Northern Boundary Subdivision homes relative to their close proximity to the stockpile.
- The engineering solution provided by the 20-inch high retaining wall and permeable pavers at 119 Sandcastle return the adjacent use set-back and buffer to natural grade; removing the spoil pile hazard left behind by developing contractors. It removed the health, safety, and structural integrity hazards caused by rain events flooding the ground level of the home and swimming pool.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because the new findings of fact prove there are extraordinary and exceptional conditions that pertain to this particular 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 presented at BZA special meeting held Monday, November 23rd, 2020:

- The majority of lots in the Sandcastles by the Sea neighborhood are nearly identical in size and shape.

- A 20' adjacent use setback and buffer is applied to all properties located on the perimeter of the subdivision, except those on the Western perimeter which have a 25' adjacent use buffer.

Conclusions of Law decided by board at BZA special meeting held Monday, November 23rd, 2020:

- Board concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary and exceptional conditions that pertain to this particular property that don't also apply to other properties in the vicinity.

Key Facts overlooked and misinterpreted by the board

- The majority of lots in the Sandcastles by the Sea neighborhood do not have a spoil pile left behind by legacy clearing activities that encroached into the rear adjacent use setback and buffer; negatively impacting the intended stormwater runoff draining calculations.
- The ability for Contractors to grossly disturb the natural adjacent use setback and buffer is no longer allowed on the Hilton Head Island. Community development representative Nicole Dixon is on record at the BZA meeting held Thursday, October 29, 2020 stating that un-reclaimed buffer violations left behind by contractors like those at 119 Sandcastle were the impetus for the new ordinance change in construction standards.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are many extraordinary and exceptional conditions that pertain to this particular property that don't apply to other properties in the Folly Field Neighborhood Association.

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 presented at BZA special meeting held Monday, November 23rd, 2020:

- The original developer of the Sandcastles by the Sea neighborhood chose to utilize nearly every square foot of buildable space on the subject property.
- The original subdivision plat for the Sandcastle by the Sea neighborhood requires a 20' adjacent use setback and buffer in the rear of the subject property.
- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, "The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO".
- LMO Section 16-5-103.J, Development Within Required Buffers, does not list a patio or retaining wall as permitted activities within a required buffer.

Conclusions of Law decided by board at BZA special meeting held Monday, November 23rd, 2020:

- Board concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary or exceptional conditions that pertain to this property that unreasonably prohibits the use of the property.

Key Facts overlooked and misinterpreted by the board

- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, “The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO”.
 - The land developers and building contractors violated the permitted activities allowed in the protected zone, leaving behind a spoil pile that changed the run-off calculations. The homeowners tried to fix it.
- Forcing the homeowners to restore their back yard to the unnatural pitch left behind by the spoil pile will result in negative health, safety, and structural integrity impacts caused by flooding during future heavy rain events.

New Conclusions of Law for a quorum to re-consider:

The variance application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are extraordinary or exceptional conditions pertaining to this property that unreasonably prohibits the use of the property.

Summary of Facts and Conclusions of Law:

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

Findings of Fact presented at BZA special meeting held Monday, November 23rd, 2020:

- Staff has received no letters of opposition to this variance request.
- The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers.
- The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments.
- The properties directly adjacent to the subject lot both have encroachments in the setback and buffer and have applied for a variance to keep them.
- The use of hardscape in the buffer area is a modification to the Civil Engineer stormwater runoff calculations for the Sandcastle by the Sea Subdivision. The area that is considered buffers typically produce very little stormwater runoff due to the existing natural understory flora. When this area is disturbed and modified with patio pavers, gravel & sand it drastically

changes the amount of stormwater runoff from what was expected to be from a natural vegetative buffer.

Conclusions of Law decided by board at BZA special meeting held Monday, November 23rd, 2020:

- Board concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the purpose of setback and buffer requirements is to provide visual and spatial separation from the development to the property behind it.
- Due to the number of buffer encroachments and the impacts to the stormwater system Town Engineering staff recommend that this practice not be allowed to continue.

Key Facts overlooked and misinterpreted by the board

- The town's stormwater engineer has not released the results of his site-specific survey on the Northern Boundary Sandcastle Development Properties.
- The Town has been repeatedly asked if the patio/Retaining wall systems currently in place on the Northern Boundary of Sandcastle Subdivision are an improvement to the water quality and storm water run-off calculations ***verses the previous stockpile***. The town refused to answer this question.

New Conclusions of Law for a quorum to re-consider:

- The variance application ***does meet*** the criteria as set forth in *LMO Section 16-2-103.S.4.a.i.04* because there is zero substantial detriment to the protected 1.5 acre lot behind the property.
- The character of the zoning district where the property is located is not harmed by the granting of the Variance.
- The storm water calculations are improved by returning the buffer back to natural grade with a retaining wall.

Applicant's Final Conclusion

The decision made by the board in the BZA special meeting held Monday, November 23rd, 2020 did not consider the fact that the homeowners were trying to rectify and mitigate a dangerous spoil pile encroachment left behind by developers and contractors. The retaining walls and permeable pavers returned the space to natural grade and removed many yards of spoil pile material not containing the natural understory flora.

Any corrective action plan administered by the board to simply remove the "violation" created by the homeowner needs to address the fact that original approved plat was reckless leave a stockpile on the boundary of a lot that is 2 to 3 times smaller than almost other lot's in the Plat's vicinity.

The retaining wall and permeable pavers did not compound the existing violation. The retaining wall and permeable pavers mitigated the gross existing violation not allowed under current building

ordinances.

I formally request a petition for reconsideration for subject variance on the basis that information presented in the 11/23/2020 BZA meeting has outlined above was overlooked and misunderstood.

Thank you for your time,

Alexandra Barnum
Representing Joseph Devito

--



Alexandra Barnum

Lexie Sells Lowcountry
Signature Real Estate Group

- [843-415-6790](tel:843-415-6790)
- lbarnum@lexiesellslowcountry.com
- lexiesellslowcountry.com
- 60 Main Street, Suite A, Hilton Head Island

[View My Listings!](#)



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Tyler Newman, *Senior Planner*
DATE: December 2, 2020
SUBJECT: VAR-001985-2020 115 Sandcastle Court – Petition for Reconsideration of Approval

On November 23, 2020 variance case VAR-001985-2020 was heard by the Board of Zoning appeals and was denied in a 5-0 vote. On December 2, 2020, staff received the attached Petition for Reconsideration of the denial of Variance application VAR-001985-2020 for 115 Sandcastle Court. Per the BZA's Rules of Procedure, particularly Article IX, Section 1, Motion for Reconsideration, any party aggrieved by a decision of the BZA may file a Petition for Reconsideration within ten days from the date of the hearing. The applicant met this requirement. The Petition, in accordance with the Rules of Procedure, has stated the points the applicant believes were overlooked or misinterpreted by the Board.

At the meeting on December 14, 2020, the Board will review the Petition for Reconsideration and hear from the applicant. The Board will then decide whether or not to grant the Petition for Reconsideration. The Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, VAR-001985-2020 will be heard at a future BZA meeting and it will be as though no previous vote had been taken on the application. A Motion to Deny the Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter.

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

**RE: VAR-001985-2020 – Kevin & Martha Grandin
115 Sandcastle Court with a parcel number of R511 009 000 1150 0000**

Dear Ms. Dixon,

We are writing this letter to petition for a motion to reconsider on the above variance case.

Grounds for Petition for Reconsideration, Summary of Facts and Conclusions of Law:

Grounds for Petition:

Applicant feels key facts were overlooked and key points were misinterpreted/misunderstood in the board's decision to deny VAR-001985-2020 at the Board of Zoning Appeals Special Meeting held Monday, November 23rd, 2020

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):

Key Facts overlooked and misunderstood/misinterpreted by the board

- Construction clearing crews disturbed the natural 20-foot buffer at the rear of the property, not the homeowner. *This construction violation is no longer allowed per new ordinances put in place for developing contractors.* Under current construction standards the onus is on the contractor to return an adjacent use and set-back buffer to conforming standards and in compliance with the intended storm run-off draining calculations permitted by the Town's development team prior to construction.
- Construction clearing crews removed all the natural vegetation in the buffer, not the homeowner.
- During pre-construction and construction of 115 Sandcastle, an unnatural spoil pile was created at the rear of the property consisting of material graded away from the rest of the Sandcastle subdivision as well as the home's foundation footprint. The spoil pile changed the natural grade of the adjacent use and set-back buffer between the home and the 1.5 acre protected town owned property on opposite side of the buffer.
- The spoil pile left behind by historical developers in the adjacent use and set-back buffer area is covering up the natural understory flora deep beneath the pile at natural grade. Spoil piles negatively impact the amount of stormwater runoff that would have been minimized by a natural vegetative buffer at natural grade.
- Spoil piles are a common issue on Right of Ways for Pipelines and Powerline crossings. FERC and Environmental State Departments across the country require spoil piles created during clearing and grading activities to be removed immediately following downstream construction activities because of the flooding impacts they cause during heavy rain events.
- Design Development Regulation Conformance representative Brian Eber was not available at the meeting to address specific water run-off/quality issues specific to the Northern Boundary Subdivision homes relative to their close proximity to the stockpile.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2- 103.S.4.a.i.01 because the new findings of fact prove there are extraordinary and exceptional conditions that pertain to this particular 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):

The Town misinterpreted the definition of “Homes in the Vicinity” in their staff report. The correct definition of “the Vicinity” is clearly defined on the as-built survey and the neighborhood master plan. With the Correct definition of “the Vicinity”, our lot is unlike surrounding homes (Folly Field and Burkes Beach Roads) and DOES HAVE extraordinary and exceptional conditions that *do not generally apply to other properties in the vicinity*.

Key Facts overlooked and misinterpreted by the board

- The majority of lots in the Sandcastles by the Sea neighborhood do not have a spoil pile left behind by legacy clearing activities that encroached into the rear adjacent use setback and buffer; negatively impacting the intended stormwater runoff draining calculations.
- The ability for Contractors to grossly disturb the natural adjacent use setback and buffer is no longer allowed on the Hilton Head Island. Community development representative Nicole Dixon is on record at the BZA meeting held Thursday, October 29, 2020 stating that un-reclaimed buffer violations left behind by contractors like those at 115 Sandcastle were the impetus for the new ordinance change in construction standards.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are many extraordinary and exceptional conditions that pertain to this particular property that don't apply to other properties in the Folly Field Neighborhood Association.

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):

Key Facts overlooked and misinterpreted by the board

- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, “The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO”.
 - The land developers and building contractors violated the permitted activities allowed in the protected zone, leaving behind a spoil pile that changed the run-off calculations. The homeowners tried to fix it.
- Forcing the homeowners to restore their back yard to the unnatural pitch left behind by the spoil pile will result in negative health, safety, and structural integrity impacts caused by flooding during future heavy rain events.
- The LMO prohibits the use of the patio which unreasonably restricts the utilization of the property.
- The 20' setback and buffer at the rear of the property effectively prohibits us from having any backyard at all.

New Conclusions of Law for a quorum to re-consider:

The variance application **does meet** the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are extraordinary or exceptional conditions pertaining to this property that unreasonably prohibits the use of the property.

Summary of Facts and Conclusions of Law:

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

Key Facts overlooked and misinterpreted by the board

- The town's stormwater engineer has not released the results of his site-specific survey on the Northern Boundary Sandcastle Development Properties.
- The Town has been repeatedly asked if the patio/Retaining wall systems currently in place on the Northern Boundary of Sandcastle Subdivision are an improvement to the water quality and storm water run-off calculations ***verses the previous stockpile***. The town was unable to answer this question.
- Our property backs up to land owned and protected by the Town of Hilton Head, not another developed property.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in *LMO Section 16-2-103.S.4.a.i.04* because there is zero substantial detriment to the protected 1.5 acre lot behind the property.
- The character of the zoning district where the property is located is not harmed by the granting of the Variance.
- The storm water calculations are improved by returning the buffer back to natural grade with a retaining wall.

Applicant's Final Conclusion

The decision made by the board in the BZA special meeting held Monday, November 23rd, 2020 did not consider the fact that the homeowners were trying to rectify and mitigate a dangerous spoil pile encroachment left behind by developers and contractors. The retaining walls and permeable pavers returned the space to natural grade and removed many yards of spoil pile material not containing the natural understory flora.

Any corrective action plan administered by the board to simply remove the "violation" created by the homeowner needs to address the fact that the original approved plat was reckless leaving a stockpile on the boundary of a lot that is 2 to 3 times smaller than almost any other lots in the Plats vicinity. Removal of what is in place now and restoring it to its original state would be a disaster. All dirt and no vegetation will cause many issues to this homeowner and the neighbors due to increased runoff.

The retaining wall and permeable pavers did not compound the existing violation. The retaining wall and permeable pavers mitigated the gross existing violation not allowed under current building ordinances.

We formally request a petition for reconsideration for subject variance on the basis that information presented in the 11/23/2020 BZA meeting has outlined above was overlooked and misunderstood.

Thank you for your time and consideration. Please let us know if you have any questions or need additional information!

Kevin & Martha Grandin
115 Sandcastle Ct.



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Tyler Newman, *Senior Planner*
DATE: December 3, 2020
SUBJECT: VAR-001874-2020 125 Sandcastle Court – Petition for Reconsideration of Approval

On November 23, 2020 variance case VAR-001874-2020 was heard by the Board of Zoning appeals and was denied in a 5-0 vote. On December 2, 2020, staff received the attached Petition for Reconsideration of the denial of Variance application VAR-001874-2020 for 125 Sandcastle Court. Per the BZA's Rules of Procedure, particularly Article IX, Section 1, Motion for Reconsideration, any party aggrieved by a decision of the BZA may file a Petition for Reconsideration within ten days from the date of the hearing. The applicant met this requirement. The Petition, in accordance with the Rules of Procedure, has stated the points the applicant believes were overlooked or misinterpreted by the Board.

At the meeting on December 14, 2020, the Board will review the Petition for Reconsideration and hear from the applicant. The Board will then decide whether or not to grant the Petition for Reconsideration. The Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, VAR-001874-2020 will be heard at a future BZA meeting and it will be as though no previous vote had been taken on the application. A Motion to Deny the Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter.

From: [Burke Jr, Lloyd](#)
To: [Dixon Nicole](#); [Newman, Tyler](#)
Cc: [Anne Marie Burke](#)
Subject: Petition for Reconsideration: VAR-001874-2020
Date: Wednesday, December 2, 2020 8:59:44 PM

THIS MESSAGE ORIGINATED OUTSIDE YOUR ORGANIZATION

Nicole,

We formally request a petition for reconsideration for subject variance on the basis that information presented in the 11/23/2020 BZA meeting was overlooked and misunderstood.

Grounds for Petition for Reconsideration, Summary of Facts and Conclusions of Law:

Grounds for Petition:

Applicant feels key facts were overlooked and key points were misinterpreted in the board's decision to deny VAR-001874-2020 at the Board of Zoning Appeals Special Meeting held Monday, November 23rd, 2020

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 presented at BZA special meeting held Monday, November 23rd, 2020:

1. The subject property is .07 acres.
2. The subject property is approximately the same size (.06 - .08 acres) as all of the other properties on the same side of Sandcastle Court as well as the adjacent properties across Sandcastle Court.
3. The subject property is rectangular in shape as are the majority of the adjacent properties.
4. The subject property does not contain any unique site features that prohibit development on the lot.

Conclusions of Law decided by board at BZA special meeting held Monday, November 23rd, 2020:

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

Key Facts overlooked and misinterpreted by the board

- Construction clearing crews disturbed the natural 20-foot buffer at the rear of the property, not the homeowner. This construction violation is no longer allowed per new ordinances put in place for developing contractors. Under current construction standards the onus is on the contractor to return an adjacent use and set-back buffer to conforming standards and in compliance with the intended storm run-off draining calculations permitted by the Town’s development team prior to construction.
- Construction clearing crews removed all the natural vegetation in the buffer, not the homeowner.
- During pre-construction and construction of 125 Sandcastle, an unnatural spoil pile was created at the rear of the property consisting of material graded away from the rest of the Sandcastle subdivision as well as the home’s foundation footprint. The spoil pile changed the natural grade of the adjacent use and set-back buffer between the home and the 1.5 acre protected town owned property on opposite side of the buffer.
- The spoil pile left behind by historical developers in the adjacent use and set-back buffer area is covering up the natural understory flora deep beneath the pile at natural grade. Spoil piles negatively impact the amount of stormwater runoff that would have been minimized by a natural vegetative buffer at natural grade.
- Spoil piles are a common issue on Right of Ways for Pipelines and Powerline crossings. FERC and Environmental State Departments across the country require spoil piles created during clearing and grading activities to be removed immediately following downstream construction activities because of the flooding impacts they cause during heavy rain events.
- Design Development Regulation Conformance representative Brian Eber was not available at meeting to address specific water run-off/quality issues specific to the Northern Boundary Subdivision homes relative to their close proximity to the stockpile.
- The engineering solution provided by the 20-inch high retaining wall and permeable pavers at 125 Sandcastle return the adjacent use set-back and buffer to natural grade; removing the spoil pile hazard left behind by developing contractors. It removed the health, safety, and structural integrity hazards caused by rain events flooding the ground level of the home and swimming pool.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2- 103.S.4.a.i.01 because the new findings of fact prove there are extraordinary and exceptional conditions that pertain to this particular 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 presented at BZA special meeting held Monday, November 23rd, 2020:

- The majority of lots in the Sandcastles by the Sea neighborhood are nearly identical in size and shape.
- A 20' adjacent use setback and buffer is applied to all properties located on the perimeter of the subdivision, except those on the Western perimeter which have a 25' adjacent use buffer.

Conclusions of Law decided by board at BZA special meeting held Monday, November 23rd, 2020:

- Board concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary and exceptional conditions that pertain to this particular property that don't also apply to other properties in the vicinity.

Key Facts overlooked and misinterpreted by the board

- The majority of lots in the Sandcastles by the Sea neighborhood do not have a spoil pile left behind by legacy clearing activities that encroached into the rear adjacent use setback and buffer; negatively impacting the intended stormwater runoff draining calculations.
- The ability for Contractors to grossly disturb the natural adjacent use setback and buffer is no longer allowed on the Hilton Head Island. Community development representative Nicole Dixon is on record at the BZA meeting held Thursday, October 29, 2020 stating that un-reclaimed buffer violations left behind by contractors like those at 125 Sandcastle were the impetus for the new ordinance change in construction standards.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are many extraordinary and exceptional conditions that pertain to this particular property that don't apply to other properties in the Folly Field Neighborhood Association.

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 presented at BZA special meeting held Monday, November 23rd, 2020:

- The original developer of the Sandcastles by the Sea neighborhood chose to utilize nearly every square foot of buildable space on the subject property.

The original subdivision plat for the Sandcastle by the Sea neighborhood requires a 20' adjacent use setback and buffer in the rear of the subject property.

- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, "The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO".
- LMO Section 16-5-103.J, Development Within Required Buffers, does not list a patio or retaining wall as permitted activities within a required buffer.

Conclusions of Law decided by board at BZA special meeting held Monday, November 23rd, 2020:

- Board concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary or exceptional conditions that pertain to this property that unreasonably prohibits the use of the property.

Key Facts overlooked and misinterpreted by the board

- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, "The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO".
 - The land developers and building contractors violated the permitted activities allowed in the protected zone, leaving behind a spoil pile that changed the run-off calculations. The homeowners tried to fix it.
- Forcing the homeowners to restore their back yard to the unnatural pitch left behind by the spoil pile will result in negative health, safety, and structural integrity impacts caused by flooding during future heavy rain events.

New Conclusions of Law for a quorum to re-consider:

The variance application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are extraordinary or exceptional conditions pertaining to this property that unreasonably prohibits the use of the property.

Summary of Facts and Conclusions of Law:

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

Findings of Fact presented at BZA special meeting held Monday, November 23rd, 2020:

- Staff has received no letters of opposition to this variance request.
- The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers.
- The purpose of the adjacent use setback standards is to provide separation between

structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments.

- The properties directly adjacent to the subject lot both have encroachments in the setback and buffer and have applied for a variance to keep them.
- The use of hardscape in the buffer area is a modification to the Civil Engineer stormwater runoff calculations for the Sandcastle by the Sea Subdivision. The area that is considered buffers typically produce very little stormwater runoff due to the existing natural understory flora. When this area is disturbed and modified with patio pavers, gravel & sand it drastically changes the amount of stormwater runoff from what was expected to be from a natural vegetative buffer.

Conclusions of Law decided by board at BZA special meeting held Monday, November 23rd, 2020:

- Board concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the purpose of setback and buffer requirements is to provide visual and spatial separation from the development to the property behind it.
- Due to the number of buffer encroachments and the impacts to the stormwater system Town Engineering staff recommend that this practice not be allowed to continue.

Key Facts overlooked and misinterpreted by the board

- The town's stormwater engineer has not released the results of his site-specific survey on the Northern Boundary Sandcastle Development Properties.
- The Town has been repeatedly asked if the patio/Retaining wall systems currently in place on the Northern Boundary of Sandcastle Subdivision are an improvement to the water quality and storm water run-off calculations **verses the previous stockpile**. The town refused to answer this question.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in *LMO Section 16-2-103.S.4.a.i.04* because there is zero substantial detriment to the protected 1.5 acre lot behind the property.
- The character of the zoning district where the property is located is not harmed by the granting of the Variance.
- The storm water calculations are improved by returning the buffer back to natural grade with a retaining wall.

Applicant's Final Conclusion

The decision made by the board in the BZA special meeting held Monday, November 23rd, 2020 did not consider the fact that the homeowners were trying to rectify and mitigate a dangerous spoil pile encroachment left behind by developers and contractors. The retaining walls and permeable pavers returned the space to natural grade and removed many yards of

spoil pile material not containing the natural understory flora.

Any corrective action plan administered by the board to simply remove the "violation" created by the homeowner needs to address the fact that original approved plat was reckless in leaving a stockpile on the boundary of a lot that is 2 to 3 times smaller than almost other lots in the Plat's vicinity.

The retaining wall and permeable pavers did not compound the existing violation. The retaining wall and permeable pavers mitigated the gross existing violation not allowed under current building ordinances.

I formally request a petition for reconsideration for subject variance on the basis that information presented in the 11/23/2020 BZA meeting has outlined above was overlooked and misunderstood.

Thank you for your time,

Anne Marie and Lloyd Burke



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Missy Luick, *Senior Planner*
DATE: December 4, 2020
SUBJECT: VAR-001935-2020 105 Sandcastle Court – Petition for Reconsideration

On October 29, 2020 variance case VAR-001935-2020 was heard by the Board of Zoning appeals and was denied in a 3-1 vote. On December 3, 2020, staff received the attached Petition for Reconsideration of the denial of Variance application VAR-001935-2020 for 105 Sandcastle Court. Per the BZA's Rules of Procedure, particularly Article IX, Section 1, Motion for Reconsideration, any party aggrieved by a decision of the BZA may file a Petition for Reconsideration within ten days from the date of the hearing. An exception to the filing deadline was made in this case due to the pandemic. Due to the exception granted by the Community Development Deputy Director, the applicant met this requirement. The Petition, in accordance with the Rules of Procedure, has stated the points the applicant believes were overlooked or misinterpreted by the Board.

At the meeting on December 14, 2020, the Board will review the Petition for Reconsideration and hear from the applicant. The Board will then decide whether or not to grant the Petition for Reconsideration. The Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, VAR-001935-2020 will be heard at a future BZA meeting and it will be as though no previous vote had been taken on the application. A Motion to Deny the Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter.

Motion to Reconsider

Grounds for Petition for Reconsideration, Summary of Facts and Conclusions of Law

Grounds for Petition:

Applicant feels key facts were overlooked and key points were misinterpreted in the board's decision to deny VAR-001935-2020 at the Board of Zoning Appeals Special Meeting held Thursday, October 29, 2020 – 1:00 p.m.

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 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 presented at BZA special meeting held October 29, 2020 – 1:00 p.m:

1. The subject property is approximately .07 acres.
2. The subject property is approximately the same size (.06 - .08 acres) as all of the other properties on the same side of Sandcastle Court as well as the adjacent properties across Sandcastle Court.
3. The subject property is rectangular in shape as are the majority of the adjacent properties.
4. The subject property does not contain any unique site features that prohibit development on the lot.

Conclusions of Law decided by board at BZA special meeting held October 29, 2020 – 1:00 p.m:

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

Key Facts overlooked and misinterpreted by the board

- Construction clearing crews disturbed the natural 20-foot buffer at the rear of the property, not the homeowner. This construction violation is no longer allowed per new ordinances put in place for developing contractors. Under current construction standards the onus is on the contractor to return an adjacent use and set-back buffer to conforming standards and in compliance with the intended storm runoff drainage calculations permitted by the Town's development team prior to construction.

- Construction clearing crews removed all the natural vegetation in the buffer, not the homeowner.
- During pre-construction and construction of 105 Sandcastle, an unnatural spoil pile was created at the rear of the property consisting of material graded away from the rest of the Sandcastle subdivision as well as the home's foundation footprint. The spoil pile changed the natural grade of the adjacent use and set-back buffer between the home and the 1.5 acre protected town owned property on the opposite side of the buffer.
- The spoil pile left behind by developers in the adjacent use and set-back buffer area is covering up the natural understory flora deep beneath the pile at natural grade. Spoil piles negatively impact the amount of stormwater runoff that would have been minimized by a natural vegetative buffer at natural grade.
- Spoil piles are a common issue on Right of Ways for Pipelines and Powerline crossings. FERC and Environmental State Departments across the country require spoil piles created during clearing and grading activities to be removed immediately following downstream construction activities because of the flooding impacts they cause during heavy rain events.
- Design Development Regulation Conformance representative Brian Eber was not consulted on the specific spoil pile issue site specific to 105 Sandcastle and the adjacent neighbors on the Northern boundary of Sandcastle subdivision. The town's stormwater runoff calculations were based on the effectiveness of permeable pavers holding up over time versus natural vegetation at its natural grade.
- The engineering solution provided by the retaining wall and permeable pavers at 105 Sandcastle return the adjacent use set-back and buffer to natural grade; removing the spoil pile encroachment left behind by developing contractors. It removed the health, safety, and structural integrity hazards caused by rain events flooding the ground level of the home and swimming pool.

New Conclusions of Law for a quorum to re-consider:

- The variance application does meet the criteria as set forth in LMO Section 16-2- 103.S.4.a.i.01 because the new findings of fact prove there are extraordinary and exceptional conditions that pertain to this particular 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 presented at BZA special meeting held October 29, 2020 – 1:00 p.m:

- The majority of lots in the Sandcastles by the Sea neighborhood are nearly identical in size and shape.

- A 20' adjacent use setback and buffer is applied to all properties located on the perimeter of the subdivision, except those on the Western perimeter which have a 25' adjacent use buffer.

Conclusions of Law decided by board at BZA special meeting held October 29, 2020 – 1:00 p.m:

- Board concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are no extraordinary and exceptional conditions that pertain to this particular property that don't also apply to other properties in the vicinity.

Key Facts overlooked and misinterpreted by the board

- The majority of lots in the Sandcastles by the Sea neighborhood do not have a spoil pile left behind by building contractors that encroached into the rear adjacent use setback and buffer; negatively impacting the intended stormwater runoff drainage calculations.
- The ability for Contractors to grossly disturb the natural adjacent use setback and buffer is no longer allowed on the Hilton Head Island. Community development representative Nicole Dixon is on record at the BZA meeting held Thursday, October 29, 2020 stating that un-reclaimed buffer violations left behind by contractors like those at 105 Sandcastle were the impetus for the new ordinance change in construction standards.
- The majority of lots in Folly Field Neighborhood Association and Sandcastle subdivision do not share their entire rear property line buffers with an additional 150 feet of protected Town Owned beautification buffer. See attached picture:



- The 1.5 acres was conveyed to the Town of Hilton Head as a quid pro quo in exchange for the original development notice to proceed. The Folly Field Neighborhood Association expects this beautification buffer to stay in place in order to Shield the Sandcastle subdivision from view of the Folly Field Road street traffic.
- The previous quorum substantiated the town's intent to protect this land by removing any language previously submitted under staff findings suggesting the land could be potentially developed in the future. 105 Sandcastle rear property line buffer being shared with this protected property does make it an outlier to other properties in the Folly Field Neighborhood association.
- The town is currently pursuing a rezoning of this land to the more appropriate PR designation which would make it nearly impossible to develop on the property which has always been the intent. This is unique to 105 sandcastle and the other few properties on that side of the neighborhood.

New Conclusions of Law for a quorum to re-consider:

- The variance application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are many extraordinary and exceptional conditions that pertain to this particular property that don't apply to other properties in the Folly Field Neighborhood Association.

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 presented at BZA special meeting held October 29, 2020 – 1:00 p.m:

- The original developer of the Sandcastles by the Sea neighborhood chose to utilize nearly every square foot of buildable space on the subject property.
- The original subdivision plat for the Sandcastle by the Sea neighborhood requires a 20' adjacent use setback and buffer in the rear of the subject property.
- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, "The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO".
- LMO Section 16-5-103.J, Development Within Required Buffers, does not list a patio or retaining wall as permitted activities within a required buffer.
- A three story single-family residence with 3,314 heated square feet, 1,137 unheated square feet, 5 bedrooms, 4 bathrooms, and a swimming pool has been constructed at the subject property.

Conclusions of Law decided by board at BZA special meeting held October 29, 2020 – 1:00 p.m:

- Board concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are no extraordinary or exceptional conditions that pertain to this property that unreasonably prohibits the use of the property.

Key Facts overlooked and misinterpreted by the board

- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, “The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO”.
- The land developers and building contractors violated the permitted activities allowed in the protected zone, leaving behind a spoil pile that changed the run-off calculations. The homeowners tried to fix it.
- The retaining wall alone cannot prevent mud from entering our pool if the pavers are removed. The pavers and wall work together to correct the runoff problems caused by the soil pile left by the builder’s contractors. Removing them would result in negative health, safety, and structural integrity impacts caused by flooding during future heavy rain events.

New Conclusions of Law for a quorum to re-consider:

- The variance application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are extraordinary or exceptional conditions pertaining to this property that unreasonably prohibits the use of the property.

Summary of Facts and Conclusions of Law: Criteria 4

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

Findings of Fact presented at BZA special meeting held October 29, 2020 – 1:00 p.m.:

- Staff has received no letters of opposition to this variance request.
- The purpose of the adjacent use buffer standards is to spatially separate development from adjacent development with aesthetically pleasing natural or landscaped buffers.
- The purpose of the adjacent use setback standards is to provide separation between structures and property lines. Such separation is intended to maintain and protect the Town's Island character and facilitate adequate air circulation and light between structures in adjacent developments.

- The properties directly adjacent to the subject lot both have encroachments in the setback and buffer and have applied for a variance to keep them.
- While there is a heavily vegetated Town-owned property behind the property that is currently undeveloped, the property could potentially be developed in the future.
- The use of hardscape in the buffer area is a modification to the Civil Engineer stormwater runoff calculations for the Sandcastle by the Sea Subdivision. The area that is considered buffers typically produce very little stormwater runoff due to the existing natural understory flora. When this area is disturbed and modified with patio pavers, gravel & sand it drastically changes the amount of stormwater runoff from what was expected to be from a natural vegetative buffer.

Conclusions of Law decided by board at BZA special meeting held October 29, 2020 – 1:00 p.m.:

- Board concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the purpose of setback and buffer requirements is to provide visual and spatial separation from the development to the property behind it.
- Due to the number of buffer encroachments and the impacts to the stormwater system Town Engineering staff recommend that this practice not be allowed to continue.

Key Facts overlooked and misinterpreted by the board

- Visual and spatial separation is not impacted due to an additional 150' of protected town owned property behind 105 Sandcastle on which they have no intention of developing as evidenced by the struck out finding above.
- The town's stormwater engineer has never performed a site specific survey on the Northern Boundary Sandcastle Development Properties to investigate the improved stormwater impacts the retaining walls and patios provide to the homes on that boundary and the overall subdivision versus the spoil pile encroachment violation left behind by developers and builders.

New Conclusions of Law for a quorum to re-consider:

- The variance application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because there is zero substantial detriment to the protected 1.5 acre lot behind the property.
- The character of the zoning district where the property is located is not harmed by the granting of the Variance.
- The storm water calculations are improved by returning the buffer back to natural grade with a retaining wall.

Applicant's Final Conclusion

- The decision made by the board in the BZA special meeting held Thursday, October 29, 2020 – 1:00 p.m. did not consider the fact that the homeowners were trying to rectify and mitigate a dangerous spoil pile encroachment left behind by developers and contractors. The retaining walls and permeable pavers returned the space to natural grade and removed many yards of spoil pile material not containing the natural understory flora.
- Any corrective action plan administered by the board to simply remove the “violation” created by the homeowner needs to address the fact that original plans for 105 Sandcastle home did allow for it to be “below grade”.
- The retaining wall and permeable pavers did not compound the existing violation. The retaining wall and permeable pavers mitigated the existing violation not allowed under current building ordinances.

I respectfully request one of two motions be made by the board:

1. I request a motion from the board to grant my petition for reconsideration of VAR-001935-2020. Or, as an alternative to a variance:
2. I request a motion to allow the retaining wall and permeable pavers to stay on my property to be grandfathered in as a legal non-conforming encroachment into the adjacent use set-back and buffer as it corrects the negative impacts of the spoil pile encroachment left behind by builders; which is no longer allowed under current ordinances for builders.

Sincerely

Reza Kajbaf



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Tyler Newman, *Senior Planner*
DATE: December 2, 2020
SUBJECT: VAR-001853-2020 121 Sandcastle Court – Petition for Reconsideration of Approval

On November 23, 2020 variance case VAR-001853-2020 was heard by the Board of Zoning appeals and was denied in a 5-0 vote. On December 1, 2020, staff received the attached Petition for Reconsideration of the denial of Variance application VAR-001853-2020 for 121 Sandcastle Court. Per the BZA's Rules of Procedure, particularly Article IX, Section 1, Motion for Reconsideration, any party aggrieved by a decision of the BZA may file a Petition for Reconsideration within ten days from the date of the hearing. The applicant met this requirement. The Petition, in accordance with the Rules of Procedure, has stated the points the applicant believes were overlooked or misinterpreted by the Board.

At the meeting on December 14, 2020, the Board will review the Petition for Reconsideration and hear from the applicant. The Board will then decide whether or not to grant the Petition for Reconsideration. The Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, VAR-001853-2020 will be heard at a future BZA meeting and it will be as though no previous vote had been taken on the application. A Motion to Deny the Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter.

Richard Ross
127 Sandcastle Court
Hilton Head Island, SC 29928
12/01/2020

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

RE:

VAR-001853-2020 – Richard Ross
121 Sandcastle Court with a parcel number of R511 009 000 1153 0000

VAR-001854-2020 – Richard Ross
127 Sandcastle Court with a parcel number of R511 009 000 1156 0000

Dear Ms. Dixon,

I am writing this letter to petition for a motion to reconsider on the 2 above variance cases.

Grounds for Petition:

Applicant feels key facts were overlooked and key points were misinterpreted in the board's decision to deny VAR-001853-2020 and VAR-001854-2020 at the Board of Zoning Appeals Special Meeting held Monday, December 23rd, 2020.

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):

Town underestimated and misrepresented the effect of setback lines on my property in their town report. Town also acknowledged an illegal stockpile left on my lot by the developer yet did not properly acknowledge this stockpile made our property unique with extraordinary and exceptional conditions.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2- 103.S.4.a.i.01 because the new findings of fact prove there are extraordinary and exceptional conditions that pertain to this particular property.

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

The Town incorrectly defined "Homes in the Vicinity". This was a misrepresentation on the towns part in their staff report. The correct definition of "the Vicinity" is clearly defined on the as-build survey and neighborhood master plan. With the Correct definition of "the Vicinity", my lots are unlike surrounding homes and DO HAVE extraordinary and exceptional conditions that *do not generally apply to other properties in the vicinity*.

Key Facts overlooked and misinterpreted by the board

- The majority of lots in the Sandcastles by the Sea neighborhood do not have a spoil pile left behind by legacy clearing activities that encroached into the rear adjacent use setback and buffer; negatively impacting the intended stormwater runoff draining calculations.
- The ability for Contractors to grossly disturb the natural adjacent use setback and buffer is no longer allowed on the Hilton Head Island. Community development representative Nicole Dixon is on record at the BZA meeting held Thursday, October 29, 2020 stating that un-reclaimed buffer violations left behind by contractors like those at 119 Sandcastle were the impetus for the new ordinance change in construction standards.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are many extraordinary and exceptional conditions that pertain to this particular property that don't apply to other properties in the Vicinity.

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):

Key Facts overlooked and misinterpreted by the board

- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, "The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO".
 - The land developers and building contractors violated the permitted activities allowed in the protected zone, leaving behind a spoil pile that changed the run-off calculations. The homeowners tried to fix it.
- Forcing the homeowners to restore their back yard to the unnatural pitch left behind by the spoil pile will result in negative health, safety, and structural integrity impacts caused by flooding during future heavy rain events.
- The LMO prohibits the use of the patio which unreasonably restricts the utilization of the property.
- The 20' setback and buffer in the rear of the property unreasonably restricted the utilization of the backyard.
- I am effectively prohibited from stepping into my backyard.

- Being forced to utilize nearly every square foot of buildable space on the subject property unreasonably restricting the utilization of the backyard.

New Conclusions of Law for a quorum to re-consider:

The variance application **does meet** the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are extraordinary or exceptional conditions pertaining to this property that unreasonably prohibits the use of the property.

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):

Key Facts overlooked and misinterpreted by the board

- The town's stormwater engineer has not released the results of his site-specific survey on the Northern Boundary Sandcastle Development Properties.
- The Town has been repeatedly asked if the patio/Retaining wall systems currently in place on the Northern Boundary of Sandcastle Subdivision are an improvement to the water quality and storm water run-off calculations **verses the previous stockpile**. The town refused to answer this question.
- The towns findings about drainage and water runoff have no bearing on criteria 4.
- Staff has received no letters of opposition to this variance request.
- **Our Properties are NOT adjacent to another developed property.**
- **We are adjacent to land owned and protected by the Town of Hilton Head.**
- Adjacent properties have the same extraordinary and exceptional conditions and are applying for the same variance, thus no harm is incurred to them.
- The storm water calculations are improved by returning the buffer back to natural grade with a retaining wall.
- The character of the zoning district where the property is located is not harmed by the granting of the Variance.

The variance application **does meet** the criteria as set forth in *LMO Section 16-2-103.S.4.a.i.04* because there is zero substantial detriment to the protected 1.5 acre lot behind the property.

All the evidence the town provided during my original hearing regarding drainage and rainfall runoff was incorrect. All the towns presentation on this subject was given by unqualified town staff that were not qualified to give testimony on this subject. This incomplete and miss information given by unqualified town staff employees mislead the board and negatively impacted their decision-making capability.

The town is at fault for insisting to combine northern boundary homes with non-northern boundary homes during the same BZA hearings. This created unnecessary confusion for the board. The towns combined presentation for all the properties mislead the BZA to think northern boundary homes had similar circumstances which was not true. It also made the BZA think if they approved our variance, they would have to approve all the other variances. All these variances are to be considered and voted on

individually, and circumstances of other properties in the neighborhood seeking variances should have no bearing on my variance outcome. The board overlooked this fact.

The believe the towns attorney failed to act properly during my variance hearing, and his actions negatively affected the outcome of my case. The towns attorney should limit his input to procedural law only during my hearing. Instead, he repeatedly gave negative examples and suggestions to the BZA which I believe were intended to steer the board members toward a decision of denial.

I formally request a petition for reconsideration for the above referenced variances on the basis that information presented in the 12/23/2020 BZA meeting outlined above was overlooked and misunderstood.

Thank you for your time,

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Ross', with a long horizontal flourish extending to the right.

Richard Ross



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Tyler Newman, *Senior Planner*
DATE: December 2, 2020
SUBJECT: VAR-001854-2020 127 Sandcastle Court – Petition for Reconsideration of Approval

On November 23, 2020 variance case VAR-001854-2020 was heard by the Board of Zoning appeals and was denied in a 5-0 vote. On December 1, 2020, staff received the attached Petition for Reconsideration of the denial of Variance application VAR-001854-2020 for 127 Sandcastle Court. Per the BZA's Rules of Procedure, particularly Article IX, Section 1, Motion for Reconsideration, any party aggrieved by a decision of the BZA may file a Petition for Reconsideration within ten days from the date of the hearing. The applicant met this requirement. The Petition, in accordance with the Rules of Procedure, has stated the points the applicant believes were overlooked or misinterpreted by the Board.

At the meeting on December 14, 2020, the Board will review the Petition for Reconsideration and hear from the applicant. The Board will then decide whether or not to grant the Petition for Reconsideration. The Motion to Grant the Petition for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, VAR-001854-2020 will be heard at a future BZA meeting and it will be as though no previous vote had been taken on the application. A Motion to Deny the Petition for Reconsideration is that the vote shall be considered to be the Board's final action on the matter.

Richard Ross
127 Sandcastle Court
Hilton Head Island, SC 29928
12/01/2020

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

RE:

VAR-001853-2020 – Richard Ross
121 Sandcastle Court with a parcel number of R511 009 000 1153 0000

VAR-001854-2020 – Richard Ross
127 Sandcastle Court with a parcel number of R511 009 000 1156 0000

Dear Ms. Dixon,

I am writing this letter to petition for a motion to reconsider on the 2 above variance cases.

Grounds for Petition:

Applicant feels key facts were overlooked and key points were misinterpreted in the board's decision to deny VAR-001853-2020 and VAR-001854-2020 at the Board of Zoning Appeals Special Meeting held Monday, December 23rd, 2020.

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):

Town underestimated and misrepresented the effect of setback lines on my property in their town report. Town also acknowledged an illegal stockpile left on my lot by the developer yet did not properly acknowledge this stockpile made our property unique with extraordinary and exceptional conditions.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2- 103.S.4.a.i.01 because the new findings of fact prove there are extraordinary and exceptional conditions that pertain to this particular property.

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

The Town incorrectly defined "Homes in the Vicinity". This was a misrepresentation on the towns part in their staff report. The correct definition of "the Vicinity" is clearly defined on the as-build survey and neighborhood master plan. With the Correct definition of "the Vicinity", my lots are unlike surrounding homes and DO HAVE extraordinary and exceptional conditions that *do not generally apply to other properties in the vicinity*.

Key Facts overlooked and misinterpreted by the board

- The majority of lots in the Sandcastles by the Sea neighborhood do not have a spoil pile left behind by legacy clearing activities that encroached into the rear adjacent use setback and buffer; negatively impacting the intended stormwater runoff draining calculations.
- The ability for Contractors to grossly disturb the natural adjacent use setback and buffer is no longer allowed on the Hilton Head Island. Community development representative Nicole Dixon is on record at the BZA meeting held Thursday, October 29, 2020 stating that un-reclaimed buffer violations left behind by contractors like those at 119 Sandcastle were the impetus for the new ordinance change in construction standards.

New Conclusions of Law for a quorum to re-consider:

- The variance application **does meet** the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because there are many extraordinary and exceptional conditions that pertain to this particular property that don't apply to other properties in the Vicinity.

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):

Key Facts overlooked and misinterpreted by the board

- The original subdivision plat for the Sandcastle by the Sea neighborhood has a note that reads, "The only activities permitted in the exterior subdivision buffer as labeled on this plan shall be those listed in permitted activity in other buffer areas as per the LMO".
 - The land developers and building contractors violated the permitted activities allowed in the protected zone, leaving behind a spoil pile that changed the run-off calculations. The homeowners tried to fix it.
- Forcing the homeowners to restore their back yard to the unnatural pitch left behind by the spoil pile will result in negative health, safety, and structural integrity impacts caused by flooding during future heavy rain events.
- The LMO prohibits the use of the patio which unreasonably restricts the utilization of the property.
- The 20' setback and buffer in the rear of the property unreasonably restricted the utilization of the backyard.
- I am effectively prohibited from stepping into my backyard.

- Being forced to utilize nearly every square foot of buildable space on the subject property unreasonably restricting the utilization of the backyard.

New Conclusions of Law for a quorum to re-consider:

The variance application **does meet** the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because there are extraordinary or exceptional conditions pertaining to this property that unreasonably prohibits the use of the property.

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):

Key Facts overlooked and misinterpreted by the board

- The town's stormwater engineer has not released the results of his site-specific survey on the Northern Boundary Sandcastle Development Properties.
- The Town has been repeatedly asked if the patio/Retaining wall systems currently in place on the Northern Boundary of Sandcastle Subdivision are an improvement to the water quality and storm water run-off calculations ***verses the previous stockpile***. The town refused to answer this question.
- The towns findings about drainage and water runoff have no bearing on criteria 4.
- Staff has received no letters of opposition to this variance request.
- **Our Properties are NOT adjacent to another developed property.**
- **We are adjacent to land owned and protected by the Town of Hilton Head.**
- Adjacent properties have the same extraordinary and exceptional conditions and are applying for the same variance, thus no harm is incurred to them.
- The storm water calculations are improved by returning the buffer back to natural grade with a retaining wall.
- The character of the zoning district where the property is located is not harmed by the granting of the Variance.

The variance application **does meet** the criteria as set forth in *LMO Section 16-2-103.S.4.a.i.04* because there is zero substantial detriment to the protected 1.5 acre lot behind the property.

All the evidence the town provided during my original hearing regarding drainage and rainfall runoff was incorrect. All the towns presentation on this subject was given by unqualified town staff that were not qualified to give testimony on this subject. This incomplete and miss information given by unqualified town staff employees mislead the board and negatively impacted their decision-making capability.

The town is at fault for insisting to combine northern boundary homes with non-northern boundary homes during the same BZA hearings. This created unnecessary confusion for the board. The towns combined presentation for all the properties mislead the BZA to think northern boundary homes had similar circumstances which was not true. It also made the BZA think if they approved our variance, they would have to approve all the other variances. All these variances are to be considered and voted on

individually, and circumstances of other properties in the neighborhood seeking variances should have no bearing on my variance outcome. The board overlooked this fact.

The believe the towns attorney failed to act properly during my variance hearing, and his actions negatively affected the outcome of my case. The towns attorney should limit his input to procedural law only during my hearing. Instead, he repeatedly gave negative examples and suggestions to the BZA which I believe were intended to steer the board members toward a decision of denial.

I formally request a petition for reconsideration for the above referenced variances on the basis that information presented in the 12/23/2020 BZA meeting outlined above was overlooked and misunderstood.

Thank you for your time,

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Ross', with a long horizontal flourish extending to the right.

Richard Ross



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Missy Luick, *Senior Planner*
DATE: December 4, 2020
SUBJECT: Waiver Report

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 two waivers that have been granted by staff since the November 23, 2020 BZA meeting.

1. **WAIV-002215-2020, Northridge Plaza** - In conjunction with a proposed redevelopment project, a waiver request was submitted for Substitution of Nonconformities for Redevelopment. Since the project will not be increasing any impervious cover or density on the site and will be adding lighting, walkways, 379 wheel stops and landscaping to bring the existing parking lot more into conformance with the LMO, the waiver was approved.

2. **WAIV-002316-2020, 50 Capital Drive** – In conjunction with a proposed warehouse building project, a waiver request was submitted for removal of a 30 inch Loblolly Pine tree, a Significant Tree. Upon review, it was determined that the site has constraints due a freshwater wetland on two sides both of which have an associated buffer and setback, the proposed warehouse location avoids a number of specimen trees as well as two significant sized Live Oaks, and the proposed warehouse location avoids impacting the operations of the existing business on site. The waiver was approved to allow removal of the Significant pine tree with the condition that the planting of three (3) Category 3 trees as mitigation be included in the landscaping plan associated with the proposed project.