

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

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## **Article I**

### **Purpose and Responsibilities**

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

## **Article II**

### **Authority**

#### **Section 1. Authority.**

The Town of Hilton Head Island Board of Zoning Appeals is established by Appendix A-3 of the Land Management Ordinance (LMO) of the Town of Hilton Head Island pursuant to the authority of S.C. Code Ann. § 6-29-780, *et seq.* (Supp. 2021, As Amended), and hereinafter shall be referred to as the "Board."

#### **Section 2. Territorial Jurisdiction.**

Pursuant to Appendix A-3.E of the LMO, the Board shall have jurisdiction over all the lands within the Town. This jurisdiction may be expanded by the Town Council by ordinance and/or by intergovernmental agreement, in accordance with S.C. Code § 6-29-330 (Supp. 2021, As Amended) of the Code of Laws of South Carolina.

## **Article III**

### **Rules of Procedure**

#### **Section 1. Rules of Procedure.**

These *Rules of Procedure* are adopted by the Board to carry out its powers and responsibilities under S.C. Code Ann. §§ 6-29-780, 6-29-790, 6-29-800, and 6-29-810 (Supp. 2021, As Amended) and Appendix A-3 of the LMO. A portion or section of the *Rules of Procedure* may be suspended by majority vote of the Board to meet particular circumstances. If there is a situation where these *Rules of Procedure* do not specifically apply, then the most recent edition of *Robert's Rules of Order* shall govern the conduct of meetings.

## **Section 2. Amendment.**

These Rules of Procedure may be amended at any Regular Meeting or Special Meeting of the board by majority vote of the members of the board at least seven days after the written amendment is delivered to all members.

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

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

- A. Number and Qualifications.** The Board shall consist of seven members appointed by the Town Council. To the extent practicable, the appointed members may include at least one attorney and one design professional (either a registered architect or a registered landscape architect). None of the members shall hold an elected public office or position with the Town of Hilton Head Island or Beaufort County, South Carolina.
- B. Length of Terms.** Members of the Board shall be appointed annually for three-year terms effective each July 1, with all such terms ending on June 30 of the applicable year, unless a member is appointed to fill a vacancy. Vacancies shall be filled by the Town Council by appointments for the balance of any unexpired terms.
- C. Board Year.** A Board year is July 1 through June 30.
- D. Term Limits.** No member may serve more than two successive terms, except for extraordinary circumstances where Council believes it to be in the best interest of the community to have a continuation for a specific period of a particular member of the Board. This limitation shall not prevent any person from being appointed to the Board after an absence of one year. Service for a partial term of less than 1½ years shall not constitute a term of service for the purpose of these term limits.
- E. Attendance/Absences.** Board members are expected to attend all Board meetings. Each member of the Board who has prior knowledge that they will not be able to attend a scheduled Regular Meeting of the board shall notify the Secretary no later than 4:30pm the business day before the meeting. In the case of an emergency, a member shall give the earliest possible notification. The Secretary or Staff shall notify the Chair in the event that the projected absence(s) will produce a lack of a quorum.
- F. Removal.** Three (3) absences at Regular or Special Meetings of the Board during one Board year (July 1 through June 30) shall be cause for recommendation by the Chair to the Town Council to reconsider the appointment of that member. Attendance records may be reviewed annually by the Board in executive session during the 9<sup>th</sup> month of each Board year.
- G. Education.** The S.C. Code Ann. § 6-29-1340 (Supp. 2021, As Amended) requires a six (6) hour Orientation Program and a three (3) hour Continuing Education Program per year for each Board

member. Board members shall complete the orientation training and continuing education and submit the required forms to the Secretary no later than June 1 each year.

## **Section 2. Election of Officers.**

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

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

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

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

- motions may be brought to the meeting pre-written.)
- xiv. Should request any member to second the motion.
  - xv. If a motion fails to get a second, should state, “Since there is no second, the motion is not before the Board.”
  - xvi. If seconded, should ask the members if there is any discussion of the motion.
  - xvii. Should not allow irrelevant discussion.
  - xviii. At the conclusion of any discussion of a seconded motion, should put the question to a vote by requesting the Secretary to call the role.
  - xix. Should announce the result of the vote.
  - xx. At the conclusion, should adjourn the meeting without motion – “If there is no further business and there is no objection, the meeting will be adjourned. There being no objection, the meeting is adjourned.”
- 3. Act as spokesperson for the Board;
  - 4. Sign documents for the Board. Note, final decisions are signed by the moving member, the Chairman, and the seconding member;
  - 5. Act or designate a Board member to act as liaison with other governmental agencies and Town boards;
  - 6. Assign or delegate tasks to other Board members as may be necessary to perform the Board’s functions;
  - 7. Transmit reports and recommendations to Town Council;
  - 8. Ensure that all business is conducted in accordance with the S.C. Code Ann. § 6-29-790 (Supp. 2021, As Amended), the LMO, and these Rules of Procedure;
  - 9. Cancel a scheduled Board meeting if there are no agenda items; and
  - 10. Perform other duties approved by the Board.

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

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

With the advice and consent of the Town’s Assistant Town Manager - Community Development, at the beginning of the board year, the Board shall annually appoint or reappoint a member of the Town’s Community Development Department staff to independently act as the Secretary of the Board. The Secretary will not be eligible to vote or to otherwise participate or deliberate in the proceedings of the Board. The Secretary shall:

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

- and other relevant materials;
4. Record the proceedings of meetings on audio tape and prepare written minutes of meetings for approval by the Board at its next regular meeting, recording in the written minutes the attendance of members at each meeting, the attendance of Council members, the attendance of staff, and a detailed summary of all discussions during each meeting;
  5. Maintain the Board's notices, correspondence, reports and forms as public records for a period of time consistent with the records retention schedule of the Town of Hilton Head Island;
  6. Assist in the preparation and forwarding of all reports and recommendations of the Board; and
  7. Maintain each final decision of the Board as a permanent record as required by the S.C. Code Ann. § 6-29-790 (Supp. 2021, As Amended).

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

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

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

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

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

- A. Meeting Schedule.** An annual schedule of regular meetings and work sessions of the Board shall be adopted, published and posted at the Town Government Center in late Fall of each year for the next calendar year. Unless rescheduled by a vote of the Board, meetings shall be held at the time and place stated in notices. Meetings shall be open to the public.
- B. Regular Meetings.** Regular Meetings of the Board shall be held on the fourth Monday of each month or such other date as determined by the Chair or with input from Staff. Notification of all Applications for Appeal, Variance and Special Exception scheduled and any other matters for consideration at each regular meeting of the Board will be in accord with the public notice requirements of S.C. Code Ann. § 6-29-790 (Supp. 2021, As Amended) and S.C. Code Ann. § 30-4-10 *et seq.* (Supp. 2021, As Amended) as implemented by the Town's LMO.
- C. Special Meetings.** Special Meetings of the board may be called at any time by the Chair or



requested by the Staff. At least forty eight (48) hours public notice shall be provided for any Special Meeting of the board including the time, place and particular agenda item(s) scheduled for consideration consistent with the notice requirements of the S.C. Code Ann. § 6-29-790 (Supp. 2021, As Amended) and S.C. Code Ann. § 30-4-10 *et seq.* (Supp. 2021, As Amended) as implemented by the Town's LMO.

**D. Virtual Meetings.** Meetings of the Board can be conducted virtually under the authority of, and procedure described in Town Code: § 2-5-10, *et seq. Municipal Code of the Town of Hilton Head Island, South Carolina* (1983, As Amended).

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

## **Section 2. Quorum.**

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

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

At a minimum, South Carolina law regarding conflicts of interest S. C. Code Ann. § 8-13-10, *et seq.* (Supp. 2021, As Amended) shall control Board members' actions. In addition, any member of the Board who believes that he or she has or may have a conflict of interest of any nature on any matter before the Board shall, prior to the case at the Regular or Special Meeting at which such matter may be heard or considered by the Board:

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

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

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

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

**Section 1. Media Notices.**

The Secretary shall give the notice required by statute or ordinance for all meetings of the Board as per Section 16-2-102.E of the LMO. All Board meetings shall be open to the public and all requirements of the South Carolina Freedom of Information Act S. C. Code Ann. § 30-4-10, *et seq.* (Supp. 2021, As Amended) shall be complied with in the conduct of meetings.

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

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

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

**Section 3. Minutes.**

**A. Meetings.** Conduct of meetings is governed by the S.C. Code Ann §§ 30-4-70 through 30-4-90 (Supp. 2021, As Amended). Minutes of each Board meeting shall be recorded by the Secretary and approved at the next available meeting after their preparation. Final approved Minutes shall be available on microfilm for previous years, and may be posted on the Town's Web site for public information.

**B. Minimum Contents of Minutes.**

1. Kind of meeting (regular or special).

2. Name of the organization.
3. Date and place of the meeting.
4. Presence of the Chair and Secretary or the names of substitutes.
5. Presence of a quorum.
6. Names of all Board members, Council members, and Staff.
7. Time the meeting was called to order.
8. Whether the minutes of the previous meeting were approved or corrected.
9. All adopted and defeated motions and grounds (facts and conclusions). Withdrawn motions need not be recorded.
10. Name of the maker of the motion and the seconding member.
11. Summary of all presentations and discussions.
12. Motions, including proposed findings and conclusions, must be recorded verbatim.
13. Record the vote of each member upon each question, or, if absent or failing to vote, indicating that fact.
14. The adjournment and the time of adjournment.

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

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

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

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

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

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

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

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

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

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

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

## **Section 9. Voting.**

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

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

Any supplemental written submission or legal brief must be delivered [One (1) hard copy or one (1) copy sent via e-mail] to the Secretary of the Board no later than 8:00am four business days before the public meeting day in order for the Secretary to distribute such submission to each Board member by the close of business that day. Town Staff, or the opposing party, has two business days after receipt of the supplemental submission to respond in writing. This excludes any business days when the Town is closed. The Board reserves the right to require or permit later written submissions or briefs and/or proposed findings of fact and conclusions of law to be

submitted by the Appellant, Applicant for Variance or Special Exception, or Town Staff. Any submission or brief containing any citation to an opinion of a court must include a complete copy of the cited opinion. Any written or oral information sent directly to any Board member shall be disregarded and promptly turned over to the Chair through the Secretary of the Board.

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

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

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

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

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

- 1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Variance. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chair, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
- 2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Variance. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chair, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
- 3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.

4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.
6. Any person who presents evidence shall be administered the following oath by the chair, “Do you swear or affirm the testimony you are about to give shall be the truth and nothing but the truth?” Once the affiant answers in the affirmative, they may present testimony. Oaths may be given collectively at the onset of hearings to all prospective witnesses.

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

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the signup sheet. Each person will have the opportunity to speak for three (3) minutes. Alternatively, should the meeting be conducted entirely or in part remotely, the Chair shall follow the same procedure, minus the podium and the signup sheet.
2. The Applicant and/or Town Staff shall clarify any information presented by the public before the Board makes a motion.

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

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

## **Article VIII**

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

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

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

1. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Application for a Special Exception. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chair, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. The Applicant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Applicant believes supports the Application for a Special Exception. During the presentation by the Applicant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chair, the Applicant's time may be extended if the Applicant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. The Staff shall have a maximum of five (5) minutes to present any desired rebuttal.
4. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Applicant or the Staff as the members deem appropriate.
5. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.
6. Any person who presents evidence shall be administered the following oath by the chair, "Do you swear or affirm the testimony you are about to give shall be the truth and nothing but the truth?" Once the affiant answers in the affirmative, they may present testimony. Oaths may be given collectively at the onset of hearings to all prospective witnesses.

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

1. The Chair will call on interested citizens and request that they come to the podium, state their name for the record and place their name on the signup sheet. Each person will have the opportunity to speak for three (3) minutes. Alternatively, should the meeting be conducted entirely or in part remotely, the Chair shall follow the same procedure, minus the podium and the signup sheet.
2. The Applicant and/or Town Staff shall clarify any information presented by the public before the board makes a motion.

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

1. Following the presentation by all parties as set forth above, the Board, upon a Motion duly made and seconded, shall vote on the Application for Special Exception.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision and appropriate references to the relevant criteria of the LMO.
3. Pursuant to the provisions of the LMO, the Board shall approve the Application for Special Exception, approve the Application for Special Exception with conditions as stated in the LMO or deny the Application for Special Exception.

4. Following the vote, the staff shall prepare a written Notice of Action. The written notice of action shall include the decision of the Board as well as the findings of fact and conclusions of law adopted by the board with respect to the Application for Special Exception.
5. The Notice of Action shall be mailed by certified letter to the Applicant and record owner of the real property affected by the Application for Special Exception, if different from that of the Applicant.
6. The decision of the board shall be deemed final and applicable upon mailing of the Notice of Action.
7. The certificate of mailing shall be made a part of the board's file on the Application for Special Exception.

## **Article IX**

### **Procedures for Hearing an Appeal**

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

#### **Section 1. Jurisdiction.**

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

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

1. The Appellant shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Appellant believes supports the Appeal. During the presentation by the Appellant, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chair, the Appellant's time may be extended if the Appellant is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
2. Staff shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Staff believes support the position of Staff with respect to the Appeal. During the presentation by Staff, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chair, Staff's time may be extended if the Staff is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
3. Where the Appellant is someone other than the Property Owner of the Property that is the subject of the Appeal, the Property Owner or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that the Property Owner believes supports the position of the Property Owner with respect to the Appeal. During the presentation by the Property Owner or their Agent, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chair, the Property Owner's time may be extended if the Property Owner is unable to complete the presentation



due to questioning from the Board of Zoning Appeals.

4. Where the Appellant is someone other than the Holder of the Permit or Approval or their Agent for the Property that is the subject of the Appeal, the Holder of the Permit or Approval or their Agent shall have a maximum of twenty (20) minutes to present the facts and applicable legal principles that he/she believes supports their position with respect to the Appeal. During the presentation by the Holder of the Permit or Approval or their Agent, members of the Board of Zoning Appeals may ask such questions as they deem appropriate. At the discretion of the Chair, the Holder of the Permit or Approval or their Agent's time may be extended if he/she is unable to complete the presentation due to questioning from the Board of Zoning Appeals.
5. The Chair may allow a maximum of five (5) minutes each for all parties to present any desired rebuttal.
6. Following the presentation, the Board of Zoning Appeals may ask such additional questions of the Appellant, Property Owner, Holder of the Permit or Approval or their Agent or Staff as the members deem appropriate.
7. The Board may subpoena witnesses and in the case of contempt may certify such fact to the Circuit Court having jurisdiction over such matters.
8. Public comment is not permitted in a case involving an appeal from an LMO Official decision.
9. All parties shall be subject to the submittal requirements as set forth in Article 6, Section 10 of the Rules of the Procedure.
10. Any person who presents evidence shall be administered the following oath by the chair, "Do you swear or affirm the testimony you are about to give shall be the truth and nothing but the truth?" Once the affiant answers in the affirmative, they may present testimony. Oaths may be given collectively at the onset of hearings to all prospective witnesses.

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

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

1. Pursuant to the provisions of Section 16-2-103.T.4.d of the LMO, the Board shall:
  - a) Affirm the action of the LMO Official from which the Appeal was taken; or,
  - b) Modify the action of the LMO Official from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the LMO Official from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
  - c) Reverse the action of the LMO Official from which the Appeal was taken, and to that end, the Board of Zoning Appeals shall have all of the powers of the LMO Official from which the Appeal was taken, and may issue a permit, or direct that a permit be issued; or,
  - d) Remand the action of the LMO Official from which the Appeal was taken for such further proceedings as the Board of Zoning Appeals may deem appropriate.
2. The Motion shall contain, at a minimum, a finding of those facts which the member making the Motion deems material to the decision.
3. Following the Vote, the Board shall issue a written Notice of Action. The written notice of action shall include the decision as well as the findings of fact and conclusions of law adopted

- by the Board.
4. The Notice of Action shall be mailed by certified letter to the Appellant and Record Owner of the real property affected by the Appeal, if different from that of the Appellant.
  5. The decision of the Board shall be deemed final and applicable upon mailing of the Notice of Action.
  6. The certificate of mailing shall be made a part of the board's file on the Appeal.

## **Article X**

### **Procedures for a Remand**

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

1. A member of the Board may move for a remand at any time, subject to review and determination by the Board. The motion shall specifically set forth factual and/or legal grounds that cause the record to be insufficient.
2. If a remand is granted, the Town and the Applicant shall obtain and present all additional information needed to render the record sufficient as detailed in the motion for the remand.

## **Article XI**

### **Motions**

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

1. The Board may rehear any decision made under Section 16-2-103.E.3.d, 16-2-103.S.3.d or 16-2-103.T.4.d of the Land Management Ordinance.
2. Any party aggrieved by a decision of the Board, may file a Petition for Rehearing by delivery of the Petition for Rehearing to the LMO Official within ten (10) days from the date of the mailing of the Notice of Action. As used in this section "delivery" means actual delivery.
3. The Petition for Rehearing shall be in writing and shall be accompanied by new evidence which could not have been presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome.
4. The Petition for Rehearing shall be presented to the Board at the next regular scheduled meeting following the filing of the Petition for Rehearing after compliance with the public notice requirements for a Board Public Meeting per the LMO.
5. Motions:
  - a. A Motion to Grant the Petition for Rehearing may only be made by a member of the Board who voted on the prevailing side in the original vote.
  - b. The effect of the granting of a Motion for Rehearing shall be that the Board will review the entire matter as if no previous vote had been taken.
  - c. A Motion to Deny the Petition for Rehearing may be made by any member of the Board. The effect of a vote denying a Petition for Rehearing is that the vote shall be considered to be the Board's final action on the matter. A Notice of Action shall be delivered to the Applicant following such vote.

6. Successive Petitions for Rehearing are prohibited. No matter that has been reheard may be reheard a second time. The Board may not reconsider a denial of a Petition for Rehearing.

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

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

1. A Motion to Dismiss may assert matters relating to procedure or jurisdiction including:
  - a. Failure to comply with requirements of the LMO,
  - b. Lack of jurisdiction,
  - c. Standing,
  - d. Other matters not relating to the merits of the matter.
2. A Motion to Dismiss shall be in writing, and be filed and served in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.
3. A Motion to Dismiss may be supported by briefs of the law, affidavits or other matters pertinent to the Motion.
4. Any interested party may file briefs and other materials in response to the Motion, in accordance with Article VI, Section 10, Supplemental Submissions/Briefs.
5. The Motion to Dismiss will be normally heard at the same meeting as the related appeal; however, the Chair or Vice Chair, in the absence of the Chair, upon request, in his sole discretion, may permit the motion to be heard at an earlier meeting.

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

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

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

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

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

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

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

## **Article XII**

### **Miscellaneous**

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

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

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

Permitted reasons should include:

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

Entering and Adjourning an Executive Session:

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

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

#### **Section 2. Recess.**

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

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

Date of Approval: April 25, 2022

By: \_\_\_\_\_  
**Patsy Brison**  
Chair