



Town of Hilton Head Island
Board of Zoning Appeals Meeting
October 26, 2020 at 1:30 p.m. Virtual Meeting
MEETING MINUTES

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

Absent from the Board: John White (excused), Anna Ponder (excused)

Present from Town Council: Tamara Becker, Glenn Stanford

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

Others Present: Curtis Coltrane, Town Attorney

1. Call to Order

Chairman Cutrer called the meeting to order at 1:30 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. Pledge of Allegiance

4. Roll Call – See as noted above.

5. Welcome and Introduction to Board Procedures

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

6. Approval of Agenda

Chairman Cutrer asked for a motion to approve the agenda. Vice Chair Brison moved to approve. Ms. Laudermilch seconded. The motion passed by a vote of acclamation.

7. Approval of Minutes

a. Meeting of September 28, 2020

Chairman Cutrer asked for a motion to approve the minutes of the September 28, 2020 meeting. Mr. Walczak moved to approve. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 5-0-0.

8. Citizen Comments

All public comments received by the Town were provided to the Board for review and made a part of the official record. Citizens were provided the opportunity to sign up for public

comment participation by phone during the meeting. There were no requests from citizens to participate by phone.

9. Requests for Postponement Approved by the BZA Chairman – The cases listed below have been 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 these items.

- VAR-001853-2020 – 121 Sandcastle Court
- VAR-001854-2020 – 127 Sandcastle Court
- VAR-001874-2020 – 125 Sandcastle Court

10. New Business

a. **APL-000760-2020** – Request for Appeal from William M. Bowen, P.A. on behalf of Island Club III Horizontal Property Regime. The appellant is appealing staff's determination, dated March 24, 2020, that an unimproved right-of-way off of Folly Field Road, currently functioning as a drainage easement and pedestrian access to the beach, is classified as a street and does require an adjacent street setback and buffer from it.

Chairman Cutrer outlined the procedures for the appeal hearing process. Chairman Cutrer invited the appellant to proceed with his presentation. Mr. William Bowen, on behalf of Island Club III Horizontal Property Regime, presented his case as described in the Board's agenda package.

The Board made comments and inquiries regarding: the proposed structure would replace the current storage container in the same location; the container may have been placed in its current location prior to the incorporation of the Town; whether water flows through the drainage ditch; whether the 2009 plat serves as approval of the container by the Town; how the lane is used for public access; whether the plat shows that the unopened lane does not extend to Folly Field Road; the right-of-way is not indicated on the plat; what classifies the unimproved right-of-way as a street per the LMO; whether a variance was granted for the lift station near Folly Field Road that appears to be in a buffer; it appears the lane existed prior to Town incorporation; the County records do not provide more information than it's an unopened lane and drainage easement; whether there is another location on the property that the container can be moved to; both a drainage easement and a street can exist in the same space; the current physical condition of the area does not change what the plat says.

Chairman Cutrer asked Ms. Nicole Dixon to present on behalf of staff. Ms. Dixon presented staff's findings as described in the Board's agenda package. Ms. Dixon noted that she received a telephone call from the Folly Field Property Owners Association, the owner of the subject land, indicating the right-of-way is for a drainage easement and potential future pedestrian access. The Folly Field POA called the Town and Mr. Bowen to ask about Mr. Bowen having their land surveyed.

The Board made additional comments and inquiries regarding: another location on the property that could accommodate the structure; the Town has no record of the storage container being permitted, nor would it be permitted under current regulations; the unopened lane appears to stop at a parcel owned by the Folly Field POA and not be

able to provide access to the beach; the definitions of “street” and “other street”; staff finds that buffer and setback standards are to apply at this location because it is consider other street, however, there is no definition in the LMO for other street, but there is for street; the definition of street requires that the lane be used or intended to be used for vehicular, bicycle, and pedestrian traffic; concern why this is being called a street when it does not meet the definition; whether the lane could accommodate a one-way street; the lane leads to nowhere; the two streets could be connected and provide better access to the beach; the lane does not have to directly connect to the beach; staff finds that if the Board determines this is a street, then a 20’ adjacent street setback and buffer are required; staff finds that if the Board determines this is not a street, then a 20’ adjacent use setback and buffer are required; why the appellant decided to appeal staff’s determination rather than pursue a variance to reduce the buffer requirement; the acreage of the Island Club property as a whole and the individual regimes; concern if the adjacent use setback and buffer apply, then the appellant would have to come back before the Board with another appeal.

Chairman Cutrer asked for rebuttals of the appellant and staff. Following the rebuttals, the Board made closing remarks on the appeal and Chairman Cutrer asked for a motion.

Vice Chair Brison moved to reverse the determination of staff because staff made an error in determining whether a requirement of the LMO was met, based on the following reasons:

Findings of Fact:

- The 20-foot unopened lane does not meet the definition of street in the LMO, because it is not used or intended to be used primarily for carrying vehicular, bicycle, and pedestrian traffic, and providing a principal means of access to abutting property.
- The use of the unopened lane is more similar to a drainage easement as defined in the LMO.

Conclusion of Law:

- The required adjacent street setback and buffer does not apply.

Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 4-1-0. (Roll: Brison, Cutrer, Laudermilch, Walczak – for the motion; Johnson – against the motion.)

11. Board Business

a. Review and Adoption of 2021 Meeting Schedule

Ms. Laudermilch moved to approve the 2021 Meeting Schedule as presented. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 5-0-0.

12. Staff Report

- a. Update on LMO amendments recommended by the BZA at the January and July meetings – Ms. Dixon reported that the BZA’s recommendation is under review and if it is determined that amendments are warranted, then they will be part of the 2020 LMO Amendments, which are currently in process.
- b. Waiver Report – The report was included in the Board’s agenda package.

13. Adjournment

The meeting was adjourned at 3:23 p.m.

Submitted by: Teresa Haley, Secretary

Approved: November 23, 2020