

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the September 24, 2018 2:30 p.m. Regular Meeting
Benjamin M. Racusin Council Chambers

Board Members Present: Chairman David Fingerhut, Vice Chairman Jerry Cutrer, Patsy Brison, Charles Walczak, John White, Lisa Laudermilch

Board Members Excused: Robert Johnson

Council Members Present: None

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

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call**
4. **Freedom of Information Act Compliance**
Public notification of the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.
5. **Swearing in Ceremony for Reappointed Member Patsy Brison**
Brian Hulbert, Staff Attorney, performed the swearing in ceremony for reappointed Board Member Patsy Brison.
6. **Welcome and Introduction to Board Procedures**
Chairman Fingerhut welcomed the public and introduced the Board's procedures for conducting the business meeting.
7. **Approval of Agenda**
Chairman Fingerhut asked for a motion to approve the agenda. Mr. Walczak moved to approve. Ms. Brison seconded. The motion passed with a vote of 6-0-0.
8. **Approval of the Minutes – Meeting of August 27, 2018**
Chairman Fingerhut asked for a motion to approve the minutes of the August 27, 2018 meeting. Mr. White moved to approve. Mr. Walczak seconded. The motion passed with a vote of 5-0-1. Ms. Brison abstained as she was not present at the subject meeting.
9. **Unfinished Business – None**
10. **New Business**
 - a. **Public Hearing**

VAR-001924-2018: David McNair of McNair Building Construction, Inc, on behalf of Greg Poe, is requesting a variance from LMO Section 16-6-102.D, Wetland Buffer Standards, to build a residential pool in the wetland buffer and setback. The property is located at 58 Broad Pointe Drive and is identified as Parcel # 257 on Tax Map # 11.

Ms. Ladd presented an in depth review of the project as described in the Staff Report as provided in the Board's agenda package. Since the posting of the meeting packet, Staff has determined the five-foot buffer setback portion of the standards does not apply to the pool and the pool deck. By definition, pools are considered structures, but not buildings, and are typically permitted within setbacks elsewhere in town. So the five-foot setback does not apply and any reference should be disregarded.

Staff recommends the Board of Zoning Appeals approve the application based on the Findings of Fact and Conclusions of Law contained in the Staff Report. If the Board of Zoning Appeals approves the application, Staff recommends the following condition of approval: The applicant shall provide native wetland vegetation in other portions of the wetland buffer on the property per a planting plan approved by Town Staff.

Chairman Fingerhut asked for comments from the Board. The Board made comments and inquiries regarding: the timeline of events; the OCRM Critical Line certification issued in 2016; the five-foot buffer setback applies to buildings, surface parking lots, and vehicular access ways; the OCRM certification is a requirement for a building permit; the delineation of the critical line changed between January and July of 2018; the revised OCRM Critical Line was issued July 31, 2018; the revised line reduced the buildable area of the property from approximately 14,570 square feet (57.5%) to 9,240 square feet (36.5%); the approved building permit in February 2018 allows what was on the plan at that time with the old buffer location; the approved plan included the pool deck, and not the pool, as the pool requires a separate permit; the language of the OCRM certification; the critical line changed during the process of construction, which is not typical; the original critical line and the revised/new critical line were compared; the height of the pool deck; approximately 27 lots are subject to a wetland, 9 have pools and one of those is community pool, and 8 or 9 are vacant lots; the property owner owns the lot adjacent to the subject property; setback requirements enforced by the Town versus the PUD; LMO Section 16-6-102.D.2.b does not apply to single family homes; the potential impacts to the environment; conditional approval to include a planting plan for Staff review; the distance between the property line and the back corner of the house; the dimensions of the pool deck and its distance to the critical line; the stairs at the back side of the house were removed from the plans; the locations of the disturbed and the undisturbed areas and the general replanting area; and the possible reasons for the change in the critical line.

Chairman Fingerhut asked the applicant to come forward. The applicant presented statements regarding the grounds for the variance and answered questions presented by the Board.

The Board made additional comments and inquiries regarding: the potential to move the pool further away from the critical line; the required buffer from the critical line and the wetland buffer setback is fixed; the pool deck and a portion of the driveway invades the buffer pursuant to the approved building permit; and the applicability of each criteria.

Chairman Fingerhut opened the meeting for public comments and none were received. Chairman Fingerhut asked for a motion.

Mr. Walczak moved to approve the variance application based upon the Finding of Fact and Conclusions of Law contained in the Staff Report with the Staff recommended condition that the applicant shall provide native wetland vegetation in other portions of the wetland buffer on the property per a planting plan approved by Town Staff. Mr. White seconded. The motion failed with a vote of 3-3-0.

(Roll: Walczak, Cutrer, White – for the motion; Brison, Fingerhut, Laudermilch – against the motion.)

The Board then discussed options to mitigate the intrusion to the critical area.

Ms. Brison moved to approve the application based on those Findings of Facts and Conclusions of Law found in the LMO Official Determination with the following modification:

1. The additional finding of fact be added to Criteria 2 that none of the other properties in the vicinity on the tidal wetland subject to state regulation through OCRM have wetland buffer areas on three sides.

And with the following conditions:

1. The applicant shall relocate the pool and pool deck as much as feasible outside of the buffer area, with Town Staff determining the feasibility of the relocation.
2. The applicant shall provide native wetland vegetation in other portions of the wetland buffer on the property per a planting plan approved by Town Staff.

Ms. Laudermilch seconded. The motion passed with a vote of 6-0-0.

11. Board Business

- a. Review proposed amendment to the Rules of Procedure to allow property owners to speak at appeal hearings

The Board discussed the proposed amendment and made additional proposed changes. Chairman Fingerhut asked for public comment. Chester Williams presented statements in support of the proposed amendment and suggested expanding beyond the property owner, to include property owner or agent or permit holder. He added the appellant should have the last opportunity to comment at the hearing.

Upon public comment, the Board concluded to add the following to Article IX, Section 2: Paragraph 8. The Property Owner, or his Agent, or Permit Holder, shall be subject to the submittal requirements set forth in Article VI, Section 10, Supplemental Submissions/Briefs, of the Rules of Procedure.

Staff will make the changes for the Board to review and approve at a future meeting.

12. Staff Report

- a.** Waiver Report – The Waiver Report was included in the Board’s packet.

Ms. Ladd indicated the October meeting will be cancelled due to a lack of agenda items.

13. Adjournment

The meeting was adjourned at 4:15 p.m.

Submitted by: Teresa Haley, Secretary

Approved: November 26, 2018

David Fingerhut, Chairman