



Town of Hilton Head Island
Board of Zoning Appeals
Monday, March 25, 2019 at 2:30 p.m.
Benjamin M. Racusin Council Chambers

MEETING MINUTES

Presented from the Board: Chairman David Fingerhut, Vice Chairman Jerry Cutrer, Patsy Brison, Charles Walczak, Robert Johnson, John White, Lisa Laudermilch

Absent from the Board: None

Present from Town Council: None

Present from Town Staff: Rocky Browder, Environmental Planner; Nicole Dixon, Development Review Administrator; Brian Hulbert, Staff Attorney; Taylor Ladd, Senior Planner; Teri Lewis, Deputy Director of Community Development; Teresa Haley, Senior Administrative Assistant

1. Call to Order

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

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. Welcome and Introduction to Board Procedures

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

6. Approval of Agenda

Chairman Fingerhut asked for a motion to approve the agenda. Ms. Brison moved to approve. Mr. Johnson seconded. The motion passed with a vote of 6-0-0.

7. Approval of the Minutes – Meeting of November 26, 2018

Chairman Fingerhut asked for a motion to approve the minutes of the November 26, 2018 meeting. Vice Chairman Cutrer moved to approve. Mr. Walczak seconded. The motion passed with a vote of 6-0-0.

8. Unfinished Business – None

9. New Business

Mr. White entered the meeting at this time.

a. Public Hearing

VAR-000329-2019 - Deborah Murphy is requesting a variance from LMO Section 16-6-104.F, Specimen Tree Preservation, to remove a specimen sized hickory tree located at the

Ocean Course Villas in Sea Pines. The tree is located on Ocean Course Villas Owners Association property located at 108 North Sea Pines Drive between Units 556 and 557. The property is further identified as Parcel # 122A on Tax Map # 17.

Ms. Ladd presented the application as described in the Staff Report. During the statutory publishing period, Staff received three letters in support of the variance. 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. If the Board of Zoning Appeals contemplates approval, Staff recommends the following conditions:

1. The hickory tree shall be mitigated as per LMO requirements at one tree per ten-inches removed. Specifically, mitigating this hickory would require two (2) Category I or Category II trees be planted in the property common area that are at least 2-inch caliper and 10-feet in height. Or, one (1) 4-inch caliper Category I or Category II tree may be planted.
2. Prior to removal, the applicant shall obtain a Natural Resources Permit and provide a tree mitigation and landscape plan for Staff approval with the permit application.

Chairman Fingerhut asked the Board for comments and inquiries to Staff. The Board made comments and inquiries regarding: the age, lifespan, and size of the subject tree; consideration of exemptions listed in LMO Section 16-6-104.B.2; under what conditions the Town would approve the application; the subject tree is on the HOA property; the HOA provided an owner affidavit and authorized removal of the subject tree; other hickory trees in the area overhang parking; and a process question pertaining to consideration of surrounding property owners' letters.

Chairman Fingerhut asked if the applicant would like to make a presentation. Ms. Deborah Murphy, the applicant, thanked Ms. Ladd for her assistance throughout the variance application process. The applicant presented statements regarding her grounds for the variance and answered questions presented by the Board.

Chairman Fingerhut asked the Board for comments and inquiries to the applicant. The Board made comments and inquiries regarding: the damage that occurred to the applicant's vehicle; HOA provides weekly maintenance on the property; the applicant performs own maintenance on property; the applicant confirmed adherence to mitigation requirements; the applicant hired an arborist to evaluate the tree; possibly parking in the overflow parking area; and the amount of hickory nuts in other nearby parking spaces.

The Board made additional comments and inquiries to Staff regarding: the exemptions listed in LMO Section 16-6-104.B.2; and mitigation requirements and process.

Chairman Fingerhut opened the meeting for public comments. One member of the public expressed sympathy to the applicant, but does not support removal of the subject tree.

The Board further discussed the variance request and the testimony presented today. Upon the conclusion of the discussion, Chairman Fingerhut asked for a motion.

Mr. Walczak moved to *deny* the application based on the Findings of Facts and Conclusions of Law contained in the Staff Report. Mr. White seconded. The motion *failed* with a vote of 3-4-0. (Roll: Walczak, Fingerhut, White – for the motion; Brison, Johnson, Cutrer, Laudermilch – against the motion.)

Vice Chairman Cutrer moved to *approve* the application with the conditions set forth below and the following Findings 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):

- The subject tree canopy overhanging the Unit 557 entryway and parking space is a unique condition and meets this criteria.

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 conditions stated in Criteria 1 do not apply to other properties in the vicinity. This criteria is met.

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):

- Because of these conditions, the application of the Ordinance would unreasonably restrict the utilization of the property.
- The applicant demonstrated they have suffered personal property damage and they are exposed to certain risks entering and leaving their unit because of the tree.

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):

- The authorization of this variance will not be a detriment to adjacent property.
- The character of the zoning district will be mitigated by the planting of mitigation trees.

Conditions of Approval:

1. The hickory tree shall be mitigated as per LMO requirements at one tree per ten-inches removed. Specifically, mitigating this hickory would require two (2) Category I or Category II trees be planted in the property common area that are at least 2-inch caliper and 10-feet in height. Or, one (1) 4-inch caliper Category I or Category II tree may be planted.
2. Prior to removal, the applicant shall obtain a Natural Resources Permit and provide a tree mitigation and landscape plan for staff approval with the permit application.

Mr. Johnson seconded. The motion *passed* with a vote of 4-3-0. (Roll: Brison, Johnson, Cutrer, Laudermilch – for the motion; Walczak, Fingerhut, White – against the motion.)

10. Board Business

a. Review of proposed amendments to the Rules of Procedure

Staff made changes to the rules based on the feedback given at the last meeting. The Board and public made comments on those changes. Upon the conclusion of the discussion, the Board asked Staff to incorporate the changes and present at the next regularly held meeting.

11. Staff Report

a. Update on APL-000942-2018 – 17 Trail Beach Manor Cat Sanctuary

Ms. Lewis presented an in depth update. The Board expressed concerns with the information presented and their expectations of the BZA decision on this case. Staff will look into the Board's concerns discussed today and report back.

b. Update on Circuit Court Cases

Ms. Dixon reported the update. The Board requested Staff to provide reports on cases as they arise, as opposed to annual updates.

c. Waiver Report – The Waiver Report was included in the Board's packet.

12. Adjournment

The meeting was adjourned at 4:22 p.m.

Submitted by: Teresa Haley, Secretary

Approved: June 24, 2019