



Town of Hilton Head Island
Board of Zoning Appeals Special Meeting

October 29, 2020 at 1:00 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: Anna Ponder (excused), John White (unexcused)

Present from Town Council: Tamara Becker, Glenn Stanford

Present from Town Staff: Shawn Colin, Community Development Director; 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

Chairman Cutrer called the meeting to order at 1:08 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. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 5-0-0.

7. 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 requests from two citizens to participate by phone.

8. Requests 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-001894-2020 – 25 Sandcastle Court

9. New Business

a. Public Hearing

VAR-000352-2020 – Request from James Schwamman for a variance from LMO Sections 16-5-102, Setback Standards and 16-5-103, Buffer Standards to allow an existing patio to encroach in the adjacent use setback and buffer. The property is located at 13 Sandcastle Court and has a parcel number of R511 009 000 1109 0000.

b. Public Hearing

VAR-001870-2020 – Request from George F. Zitlaw, Jr. 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, patio and fence to remain in the adjacent use setback and buffer. The property address is 123 Sandcastle Court with a parcel number of R511 009 000 1154 0000.

c. Public Hearing

VAR-001875-2020 – Request from Eric Schnider 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, patio and fence to remain in the adjacent use setback and buffer. The property address is 119 Sandcastle Court with a parcel number of R511 009 000 1152 0000.

d. Public Hearing

VAR-001935-2020 – Request from Reza Kajbaf 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, patio and fence to remain in the adjacent use setback and buffer. The property address is 105 Sandcastle Court with a parcel number of R511 009 000 1145 0000.

Ms. Luick and Mr. Newman presented VAR-000352-2020, VAR-001870-2020, VAR-001875-2020, and VAR-001935-2020 (collectively, the “Applications”) as described in the Staff Reports. Staff presented a global and individual review of the Applications. 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.

The Board made comments and inquiries to Staff regarding: the lots are bound by the setback and buffer as platted, not by the current LMO regulation; property boundaries as it pertains to open space and the lagoon areas; measurement of the encroachments into the setback and buffer; who is the builder of the patios and other encroachments.

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

James Schwamman presented statements regarding VAR-000352-2020 grounds for a variance as described in the Staff Report and answered questions by the Board. Mr. Schwamman thanked Staff for their work and professionalism throughout the process. The Board made comments and inquiries on this application regarding: the builder of the encroachments is the husband of the property manager whose last name is Miotto; a copy of the subdivision plat that lists activities not permitted in the buffer was provided to the

applicant; the applicant claimed he could not read the buffer note on the plat because it was blurry; the applicant had a closing attorney; ignorance of the law does not exempt one from it; discussion about seeking a replat alternative to provide relief to the property owners; the cost of replatting the subdivision could be divided by the 83 lots within the subdivision and decrease costs per property owner.

George F. Zitlaw, Jr. presented statements regarding VAR-001870-2020 grounds for a variance as described in the Staff Report and answered questions by the Board. Mr. Zitlaw, Jr. thanked staff for their work throughout the process. The Board made comments and inquiries on this application regarding: the applicant does not know who did the improvements to the property; the applicant did not know about the buffer when he purchased the property; whether the contractor knew there was a buffer; other than the retaining wall and permeable pavers, the applicant did not explore other options to address the sloping issue that caused debris to flow into the pool; the property is a rental that sleeps approximately 22-23 people; the patio and the wall are encroaching approximately 15ft into the buffer and a 5ft buffer remains; vegetation was previously cleared by the builder.

Eric Schnider presented statements regarding VAR-001875-2020 grounds for a variance as described in the Staff Report and answered questions by the Board. Mr. Schnider thanked Staff for their work throughout the process. The Board made comments and inquiries on this application regarding: the patio was installed prior to the applicant purchasing the property; the prior homeowner had issues with debris flowing into the pool and installed the patio; the applicant was not aware of any violations; there are 6 patios on the northern side and 12 buffer violations in the subdivision; there should be some responsibility on the owners and the builder.

At 3:00 p.m., Mr. Walczak left the meeting and a quorum of the Board remained in effect.

Reza Kajbaf presented statements regarding VAR-001935-2020 grounds for a variance as described in the Staff Report and answered questions by the Board. Mr. Kajbaf thanked Staff for their work throughout the process. The Board made comments and inquiries on this application regarding: it is unclear who owns the green fence in the photographs; the applicant is willing to move the retaining wall and fence and reduce the size of the patio that would result in a reduced buffer width.

Chairman Cutrer opened the hearing for public comments. Richardson LaBruce presented statements on behalf of Hilton Head Beach & Tennis in opposition to application VAR-000352-2020. Richard Ross presented statements in support of the variance applications.

Chairman Cutrer asked Staff for final comments. Staff noted that the current LMO standards for adjacent use setback and buffer would not alleviate the situation for the northern bound properties.

The Board began deliberations and made additional comments and inquiries on the applications regarding: the intended benefit of a buffer to assist with stormwater run-off issues; a vegetated buffer is expected to be naturally vegetated and contain more than only grass; the applicants state the builder of the homes cleared the lots; it was the responsibility

of the builder to recreate the required vegetative buffer upon completion of construction; fences are allowed on or along a common property line; if not on or along a common property line, a fence is required to be behind a setback and buffer; a fence to a certain height is allowed within a setback or buffer; any conditions of approval by adjacent development that requires the Town owned property to be retained as a landscape buffer; the Town owned property is not intended to be a buffer for the Sandcastles by the Sea properties; whether any covenants or deed restrictions apply to the Town owned property.

The question was raised regarding whether the Board shall proceed with voting on the applications today or postpone to the next meeting. Vice Chair Brison moved to proceed with the discussion and vote on each application today. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Cutrer, Laudermilch – for the motion; Johnson – against the motion.)

Vice Chair Brison moved that the Board of Zoning Appeals deny application VAR-000352-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report, which has been incorporated by reference in today's evidence at the hearing on this matter, with the following changes:

1. Everywhere the phrase appears "staff finds" or "staff concludes", it shall read the "board finds" or "board concludes".

Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 4-0-0. (Roll: Brison, Cutrer, Johnson, Laudermilch – for the motion; none opposed.)

Vice Chair Brison moved that the Board of Zoning Appeals deny application VAR-001870-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report, which has been incorporated by testimony today into evidence at this hearing, with the following exceptions and modifications:

1. Everywhere the phrase appears "staff finds" or "staff concludes", the term the "board finds" or the "board concludes" be inserted in lieu thereof.
2. Delete the Finding in Criteria 4, the bullet point that reads "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."

Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Cutrer, Laudermilch – for the motion; Johnson – against the motion.)

Vice Chair Brison moved that the Board of Zoning Appeals deny application VAR-001875-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report, and admitted into evidence at the hearing today, both in testimony and by reference, with the exception of:

1. Changing the phrase everywhere it appears the "staff finds" and "staff concludes" to the phrase the "board finds" and the "board concludes" be inserted in lieu thereof.
2. Remove the phrase bulleted in Criteria 4, "While there is a heavily vegetated Town owned property that is currently undeveloped, the property could potentially be developed in the future."

Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Cutrer, Laudermilch – for the motion; Johnson – against the motion.)

Vice Chair Brison moved that the Board of Zoning Appeals deny application VAR-001935-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report, admitted into evidence by testimony or by reference today, with the following modifications:

1. Everywhere the term the “staff finds” and the “staff concludes” be deleted and the phrase the “board finds” and the “board concludes” be inserted in lieu thereof.
2. Under Criteria 4, the Finding which states “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” be deleted.

Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Cutrer, Laudermilch – for the motion; Johnson – against the motion.)

10. Adjournment

The meeting was adjourned at 4:11 p.m.

Submitted by: Teresa Haley, Secretary

Approved: November 23, 2020