



Town of Hilton Head Island
Board of Zoning Appeals Meeting
November 23, 2020 at 2:30 p.m. Virtual Meeting
MEETING MINUTES

Present from the Board: Chair Patsy Brison, Vice Chair Anna Ponder, Robert Johnson, Lisa Laudermilch, Charles Walczak, John White

Absent from the Board: None

Present from Town Council: None

Present from Town Staff: 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

Chair Brison called the meeting to order at 2:32 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. Roll Call – See as noted above.

4. Welcome and Introduction to Board Procedures

Chair Brison welcomed all in attendance and introduced the Board's procedures for conducting the meeting.

5. Approval of Agenda

Ms. Luick indicated that the agenda needs to be amended to include two postponement requests received over the weekend. The first postponement was requested by Jennifer Miotto for VAR-001983-2020 of 27 Sandcastle Court and subsequently granted by Chair Brison. The second postponement was requested by Brian Ritchey for VAR-001894-2020 of 25 Sandcastle Court. This is Mr. Ritchey's second postponement request and therefore, required to be heard and decided upon today by the full Board. Chair Brison asked for a motion to approve the agenda as amended. Ms. Laudermilch moved to approve the agenda as amended. Mr. Johnson seconded. By way of roll call, the motion passed with a vote of 6-0-0.

6. Approval of Minutes

- a. October 26, 2020 Regular Meeting
- b. October 29, 2020 Special Meeting

Chair Brison asked for a motion to approve the minutes of the October 26, 2020 regular meeting and the October 29, 2020 special meeting. Ms. Laudermilch moved to approve. Mr. White seconded. By way of roll call, the motion passed with a vote of 6-0-0.

7. Citizen Comments

Public comments concerning agenda items were to be submitted electronically via the Open Town Hall portal. All comments received by the Town were provided to the Board for review and made a part of the official record. Citizens were also provided the option to sign up for public comment participation by phone during the meeting. There were no requests to participate by phone.

8. Request 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-001983-2020 – 27 Sandcastle Court

9. New Business

a. Announcement of New Chair Patsy Brison and Election of New Vice Chair

The prior former Chairman Jerry Cutrer was recently elected to the Town's Public Service District Board of Commissioners. Per the BZA Rules of Procedure, the Vice Chair, Patsy Brison, shall succeed the Chairman to serve the remainder of his unexpired term. Chair Brison was announced and welcomed as the new Chair of the Board of Zoning Appeals.

Chair Brison asked for a motion to nominate a Board Member to serve as Vice Chair for the remaining term ending June 30, 2021. Mr. Walczak moved to nominate Anna Ponder to serve as Vice Chair for the remaining term ending June 30, 2021. Mr. White seconded. Dr. Ponder accepted the nomination. Chair Brison asked if there were any other nominations for Vice Chair and there were none. Chair Brison then asked for a motion to accept the nomination of Dr. Ponder as Vice Chair by acclamation. Mr. White moved to accept. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 6-0-0.

b. Motion for Postponement by Brian Ritchey for VAR-001894-2020 (25 Sandcastle Court)

Mr. White moved that the postponement be granted for VAR-001894-2020 and it be heard at the January 25, 2021 BZA meeting. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 6-0-0. (Roll: Brison, Johnson, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

c. Public Hearing

VAR-001853-2020 – Request from Richard Ross 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 and patio to remain in the adjacent use setback and buffer. The property address is 121 Sandcastle Court with a parcel number of R511 009 000 1153 0000.

d. Public Hearing

VAR-001854-2020 – Request from Richard Ross 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 and patio to remain in the adjacent use setback and buffer. The property address is 127 Sandcastle Court with a parcel number of R511 009 000 1156 0000.

e. Public Hearing

VAR-001874-2020 – Request from Anne Marie Burke 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 and patio to remain in the adjacent use setback and buffer. The property address is 125 Sandcastle Court with a parcel number of R511 009 000 1155 0000.

f. Public Hearing

VAR-001976-2020 – Request from Alexandra Barnum, on behalf of Joseph DeVito, for a variance from 15-5-102, Setback Standards, 16-5-103, Buffer Standards and 16-5-113 Fence and Wall standards, to allow an existing patio and retaining wall to remain in the adjacent use setback and buffer. The property address is 117 Sandcastle Court with a parcel number of R511 009 000 1151 0000.

g. Public Hearing

VAR-001985-2020 – Request from Kevin Grandin 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 and patio to remain in the adjacent use setback and buffer. The property address is 115 Sandcastle Court with a parcel number of R511 009 000 1150 0000.

Chair Brison opened the public hearings for VAR-001853-2020, VAR-001854-2020, VAR-001874-2020, VAR-001976-2020, and VAR-001985-2020 (collectively, the “Applications”).

Ms. Luick and Mr. Newman presented the Applications as described in the Staff Reports. Staff’s presentation included: a global overview of the Applications, including the subdivision’s development history, applicable LMO Setback, Buffer and Fence & Wall Standards, and summary of the common LMO violations in the subdivision; a detailed review of the variance requests individually; and the criteria to be met for a variance. 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. Staff incorporated by reference the Staff Reports and variance applications as part of the record.

The Board made comments and inquiries to Staff regarding the activities that may occur in the required buffers as set forth in the LMO.

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

Richard Ross made a presentation regarding the grounds for variance applications VAR-001853-2020 and VAR-001854-2020, and answered questions by the Board. The Board made comments and inquiries on this application regarding: clarification on the as-built surveys; the applicant built each home; the surveys were ordered by the builder and delivered to the applicant as part of closing on each property; the applicant claimed he did not know about the buffer restrictions when he purchased the property; the applicant claimed there is no increase in stormwater runoff since the patio pavers were installed; there has not been a professional engineering analysis performed to confirm there is no increase in runoff; the Town is not responsible for fixing the applicant’s drainage issues; the applicant is amenable to add additional foliage to the backyard if required by the Board; there are no

current plans for development on the abutting Town-owned property; the Town is pursuing a rezoning application of the abutting Town-owned property from Resort Development to Parks and Recreation; the rezoning requires approval by the Town's Planning Commission and Town Council; replatting the Sandcastles by the Sea subdivision would allow for a reduced buffer option for some of the properties; the northern boundary properties would not be eligible for a reduced buffer option next to the Town-owned property because it is zoned Resort Development; therefore, the replatting and the rezoning of the Town-owned property would be required to be eligible for the reduced buffer option; the reduced buffer option would still require at least a portion of the patios to be taken out.

Anne Marie and Lloyd Burke made a presentation regarding the grounds for variance application VAR-001874-2020, and answered questions by the Board. The Board made comments and inquiries on this application regarding: the current conditions of the backyard is sparse in landscaping; additional foliage is needed between the patio and the fencing; the applicant would be amenable to adding additional foliage; a professional analysis on drainage/runoff would help prove the applicants claim that there are no negative impacts; the applicant received an as-built survey of the property shows the buffer and setback markings; the applicant indicated they did not look into LMO requirements before having the patio encroachments built.

Alexandra Barnum, on behalf of Joseph DeVito, made a presentation regarding the grounds for variance application VAR-001976-2020, and answered questions by the Board. The Board made comments and inquiries on this application regarding: the applicant indicated this home is a rental about half of the time and the property owner resides in the home the other half.

Kevin and Martha Grandin made a presentation regarding the grounds for variance application VAR-001985-2020, and answered questions by the Board. The Board made comments and inquiries on this application regarding: the applicant indicated the setback is shown on one survey and not on another; the applicant had both surveys in hand when the home was completed and Certificate of Occupancy received; construction of the home had started when the applicant closed on the home in October 2019; the applicant home was the last one built on the northern boundary; the applicant is unaware of who built the first patio encroachment.

Chair Brison asked for rebuttals by Staff. Ms. Dixon clarified information about the as-built surveys shown during the applicant presentations. The approved subdivision plat that was stamped was shown. The Town does not require that every single lot on the plat be labeled with the setback and buffer because it is difficult to read on each individual lot on a large subdivision like this one. However, the setback and buffer line are clearly delineated and throughout the boundary of the subdivision plat. Another version of the survey was also shown during applicant presentations. That survey was provided by the Town for reference with the violation letter that was sent to each applicant. It was taken from the building permit records, which does not require a setback and buffer be labeled. It was provided as a reference to show where you are allowed to build to and what the encroachments are.

The Board made questions and inquiries regarding: if the rezoning of the Town's property to Parks and Recreation does occur, but the subdivision is not replatted, the 20 ft buffer can

be reduced to 10 ft, but there is still a 20 ft setback requirement; it appears that all of the patio encroachments would still encroach into the setback and if the buffer is reduced to 10 ft width then all of the patio encroachments potentially except for one (115 Sandcastle Court) would still encroach into the buffer; stormwater calculations were considered as part of this subdivision approval, and the current conditions, the patio encroachments, were not what was reviewed and approved by the Town; the buildable area is shown on all lots that are seeking a variance today; the applicants had notice of the buildable area on their plat and as-built survey; clarification on terminology of a rear yard.

Chair Brison asked for rebuttals by the applicants. Mr. Ross, Mr. and Mrs. Burke, Ms. Barnum, and Mr. and Mrs. Grandin made their rebuttals.

Ms. Dixon indicated the subdivision was designed to meet certain stormwater calculations based on the impervious surface. When the homeowners' added these improved surfaces and for all of these lots, the threshold of the stormwater retention lagoon is impacted. Regarding the stockpile in the rear of the yards that was mentioned is in fact a berm. A berm can be in a buffer and this one was part of the approved subdivision plans. The berm should have been vegetated as part of the Certificate of Occupancy.

The Board commented that the berm was created to prevent water from draining onto the Town's property and that may be required by State code.

Chair Brison confirmed that written public comments were distributed to the Board and made part of the record. The applicants' applications and presentations were without objection made part of the record. Staff confirmed that there were no callers or additional public comments at this time. Chair Brison closed the public hearings on the Applications.

At 5:42 p.m., Chair Brison declared a brief recess in the meeting. At 5:48 p.m., with all Board Members back in attendance, Chair Brison reconvened the meeting.

The Board expressed sympathy toward the applicants, however, the applications do not appear to meet all four criteria for a variance. The Board agreed the lots are small, however, the applicants chose to build on them and the Town regulations should still apply. One Board member expressed if serious landscaping improvements were made and the stormwater issues were resolved, then perhaps it could help. One Board member indicated the Board must decide based on what has been provided and that the buffer and stormwater calculations need to meet Town regulations. Following the discussion, Chair Brison asked for a motion.

Mr. Johnson made a motion to continue the applications to the December BZA meeting so that the applicants can come back with a professional engineering report addressing the original drainage calculations and how each individual patio impacts the drainage. Ms. Laudermilch seconded. By way of roll call, the motion failed with a vote of 1-5-0. (Roll: Johnson – in favor of the motion; Brison, Laudermilch, Ponder, Walczak, White – against the motion; no abstentions.)

At 6:22 p.m., Mr. Johnson excused himself from the meeting and a quorum of the Board remained in effect.

Dr. Ponder moved that the Board of Zoning Appeals deny application VAR-001853-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

Mr. Walczak moved that the Board of Zoning Appeals deny application VAR-001854-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Mr. White seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

Mr. White moved that the Board of Zoning Appeals deny application VAR-001874-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

Dr. Ponder moved that the Board of Zoning Appeals deny application VAR-001976-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Mr. White seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

Mr. Walczak moved that the Board of Zoning Appeals deny application VAR-001985-2020 based on the Findings of Fact and Conclusions of Law as set forth in the Staff Report. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 5-0-0. (Roll: Brison, Laudermilch, Ponder, Walczak, White – in favor of the motion; none against; no abstentions.)

At 7:09 p.m., Dr. Ponder excused herself from the meeting and a quorum of the Board remained in effect.

h. Hearing

Motion to Reconsider VAR-001875-2020 – Eric Schnider is requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 119 Sandcastle Court.

Chair Brison presented statements regarding the procedure for this hearing. A motion to grant the Motion for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, application VAR-001875-2020, will be heard at the January 25, 2021 BZA meeting. It will be as though no previous vote had been taken on the application. A motion to deny the Motion for Reconsideration can be made by any member of the Board. The effect of a vote denying a Motion for Reconsideration is that the vote shall be considered the Board's final action on the matter.

Mr. Schnider made an in-depth presentation on his request that the Board reconsider their decision to deny the variance for 119 Sandcastle Court. Following Mr. Schnider's presentation, Chair Brison asked if anyone would like to make a motion on this matter.

Ms. Laudermilch moved to grant the Motion to Reconsider VAR-001875-2020. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Laudermilch, Walczak, White – in favor of the motion; Brison – against the motion; no abstentions.)

Following the vote, Chair Brison pointed out that application VAR-001875-2020 will be scheduled for the January 25, 2021 BZA meeting.

i. Hearing

Motion to Reconsider VAR-001870-2020 – George F. Zitlaw, Jr. is requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 123 Sandcastle Court.

Chair Brison presented statements regarding the procedure for this hearing. A motion to grant the Motion for Reconsideration may only be made by a member of the Board who voted on the prevailing side (voted to deny) in the original vote. If the Motion for Reconsideration is granted, application VAR-001870-2020, will be heard at the January 25, 2021 BZA meeting. It will be as though no previous vote had been taken on the application. A motion to deny the Motion for Reconsideration can be made by any member of the Board. The effect of a vote denying a Motion for Reconsideration is that the vote shall be considered the Board's final action on the matter.

Mr. Zitlaw, Jr. made an in-depth presentation on his request that the Board reconsider their decision to deny the variance for 123 Sandcastle Court. Following Mr. Zitlaw, Jr.'s presentation, Chair Brison asked if anyone would like to make a motion on this matter.

Ms. Laudermilch moved to grant the Motion to Reconsider VAR-001870-2020. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Laudermilch, Walczak, White – in favor of the motion; Brison – against the motion; no abstentions.)

Following the vote, Chair Brison pointed out that application VAR-001870-2020 will be scheduled for the January 25, 2021 BZA meeting.

10. Board Business – None

11. Staff Report

a. Waiver Report – The Waiver Report was included in the Board's agenda package.

12. Adjournment

The meeting was adjourned at 7:30 p.m.

Submitted by: Teresa Haley, Secretary

Approved: December 14, 2020