



Town of Hilton Head Island
Board of Zoning Appeals Meeting
December 14, 2020 at 2:30 p.m. Virtual Meeting
MEETING MINUTES

Present from the Board: Chair Patsy Brison, Lisa Laudermilch, Charles Walczak, John White

Absent from the Board: Vice Chair Anna Ponder (excused), Robert Johnson (excused)

Present from Town Council: Tamara Becker, Glenn Stanford

Present from Town Staff: Nicole Dixon, Development Review Administrator; Brian Eber, NPDES 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 2:31 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

Chair Brison asked for a motion to approve the agenda as presented. Ms. Laudermilch moved to approve. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 4-0-0.

6. Approval of Minutes

a. November 23, 2020 Regular Meeting

Chair Brison asked for a motion to approve the minutes of the November 23, 2020 regular meeting as presented. Mr. White moved to approve. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 4-0-0.

7. Citizen Comments

Public comments concerning agenda items were to be submitted electronically via the Open Town Hall portal. All comments received via the portal 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 has 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 the item.

- APL-002275-2020 – Request for Appeal from Leslie Ford, on behalf of Cedar Woods Property Owners Association. The appellant is appealing staff's denial of a tree removal request in the open space behind 16 Song Sparrow Lane, sent to applicant on November 9, 2020.

9. New Business

a. Public Hearing

VAR-001977-2020 – Request from Bruce Gray 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 fence to remain in the adjacent use setback and buffer. The property address is 11 Sandcastle Court with a parcel number of R511 009 000 1108 0000.

Chair Brison opened the public hearing for VAR-001977-2020.

Ms. Luick presented the application as described in the Staff Report. 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. Without objection, the Staff Report and presentation was incorporated by reference as part of the record. The Board had no questions for Staff at this time.

Following the Staff presentation, Chair Brison asked the applicant to make a presentation. Bruce Gray made a presentation regarding the grounds for variance application VAR-001977-2020, and answered questions by the Board. The Board discussed the application at length with the applicant, including: the applicant had the home built on the lot; the applicant indicated there was no flexibility to have the home constructed closer to the front property line in order to have adequate space for a rear patio; the term "vicinity" is subject to interpretation; generally a vicinity map shows the home location in relationship to the area; vicinity in this case means the Sandcastles by the Sea subdivision; the applicant indicated he did not have knowledge of the setback and buffer area at the time of purchase; the applicant indicated the home builder said he did not need to seek a variance to construct the patio; the applicant did not contact the Town about building a patio; the applicant did not look at the recorded plat or survey to see where the building line is located; the applicant indicated a surveyor staked his rear property line to be located within the lagoon; the as-built survey shows the rear property line at the edge of the lagoon as opposed to inside the lagoon; the applicant indicated he had no control to alter the plans and could not build the home smaller to accommodate the oak tree and the rear property line; currently the home is a rental property.

Chair Brison asked for any rebuttal by Staff. Staff pointed out that the shape of the encroachment area does taper off; a tidal pond lagoon is located in rear of the applicant's property so there will be fluctuation in water levels on the property based on the tides.

Chair Brison asked for any rebuttal by the applicant. Mr. Gray had no rebuttal and thanked the Board for their time.

Chair Brison confirmed that written public comments were distributed to the Board and made part of the record. The applicant's application and presentation were made part of the record without objection. Staff confirmed that there were no callers or additional public comments at this time. Chair Brison inquired to Mr. Curtis Coltrane about the letter and recorded Declaration of Covenants submitted by Mr. Richardson LaBruce on behalf of the Hilton Head Beach & Tennis Property Owners'. The documents were submitted to the Board as evidence that the Board can utilize in a manner it deems appropriate. The applicant was not aware of the restrictive covenants and did not communicate as such as required on the application. Following the discussion regarding public comment, Chair Brison closed the public hearing.

The Board made final comments and inquiries regarding: the status of replatting the Sandcastles by the Sea subdivision; even with a replatted subdivision, a majority of the properties would still have encroachments and be in violation of the LMO; how the restrictive covenants by Hilton Head Beach & Tennis Property Owners' impacts the Sandcastles by the Sea subdivision; not hearing any legal reason to grant a variance; concern that a large house was built on a small lot and so close to a lagoon and further impacted by a patio encroachment; expressed sympathy to the property owner, however, the Board is tasked with whether the property meets the criteria for a variance. Following the discussion, Chair Brison asked for a motion.

Mr. Walczak moved that the Board of Zoning Appeals deny application VAR-001977-2020 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 4-0-0. (Roll: Brison, Laudermilch, Walczak, White – in favor of the motion; none against; no abstentions.)

b. Hearing

Motion to Reconsider VAR-001976-2020 – Alexandra Barnum, on behalf of Joseph DeVito, is requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 117 Sandcastle Court.

c. Hearing

Motion to Reconsider VAR-001985-2020 – Kevin and Martha Grandin are requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 115 Sandcastle Court.

d. Hearing

Motion to Reconsider VAR-001874-2020 – Anne Marie and Lloyd Burke are requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 125 Sandcastle Court.

e. Hearing

Motion to Reconsider VAR-001935-2020 – Reza Kajbaf requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 105 Sandcastle Court.

f. Hearing

Motion to Reconsider VAR-001853-2020 – Richard Ross requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 121 Sandcastle Court.

g. Hearing

Motion to Reconsider VAR-001854-2020 – Richard Ross requesting that the Board of Zoning Appeals reconsider their decision to deny the requested variance for 127 Sandcastle Court.

Chair Brison read the hearings into the record for Motion to Reconsider VAR-001976-2020, Motion to Reconsider VAR-001985-2020, Motion to Reconsider VAR-001874-2020, Motion to Reconsider VAR-001935-2020, Motion to Reconsider VAR-001853-2020, and Motion to Reconsider VAR-001854-2020 (collectively, the “Motions to Reconsider”). Chair Brison presented statements regarding the procedure for the hearings. A motion to grant a 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, for any of the related variance applications, it 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 a 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.

Chair Brison asked each applicant to make a presentation. Alexandra Barnum made a presentation on her request that the Board reconsider their decision to deny VAR-001976-2020. Kevin and Martha Grandin made a presentation on their request that the Board reconsider their decision to deny VAR-001985-2020. Anne Marie and Lloyd Burke made a presentation on their request that the Board reconsider their decision to deny VAR-001874-2020. Reza Kajbaf made a presentation on his request that the Board reconsider their decision to deny VAR-001935-2020. Richard Ross made a presentation on his requests that the Board reconsider their decisions to deny VAR-001853-2020 and VAR-001854-2020.

The Board made comments and inquiries to the applicants, including: finding it difficult to believe that nobody reviewed the documentation to see that there are setbacks and buffers applicable to the properties; the impact of a patio encroachment versus a retaining wall; the negative impacts of the combined patio encroachments as it relates to stormwater runoff. The original stormwater runoff calculations were performed based on the required vegetated buffer and no permeable pavers. A vegetated buffer includes native plantings, not simply grass. Staff does not believe the retaining walls negatively impact stormwater runoff. The Board made brief inquiries to Mr. Coltrane regarding the purpose of a Motion to Reconsider. The Board discussed whether the evidence presented today rises to the level that the matter should be reheard.

Following the applicants’ presentations, Chair Brison asked for any rebuttal by the applicants and Staff. Ms. Barnum, Mr. and Mrs. Grandin, Mr. and Mrs. Burke, Mr. Kajbaf, and Mr. Ross made their rebuttals. Staff made rebuttals as well.

One member of the Board indicated there were issues in the original public hearings that were not grasped and can see a valid reason to reconsider these applications. Other

members of the Board indicated there was not anything presented today to satisfy a rehearing of these applications. Following the Board's brief remarks, Chair Brison asked if there was a motion on each application.

Mr. Walczak moved to deny the Motion to Reconsider VAR-001976-2020. Mr. White seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Walczak, White – in favor of the motion; Laudermilch – against the motion; no abstentions.)

Mr. Walczak moved to deny the Motion to Reconsider VAR-001985-2020. Mr. White seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Walczak, White – in favor of the motion; Laudermilch – against the motion; no abstentions.)

Mr. Walczak moved to deny the Motion to Reconsider VAR-001874-2020. Mr. White seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Walczak, White – in favor of the motion; Laudermilch – against the motion; no abstentions.)

Mr. White moved to deny the Motion to Reconsider VAR-001935-2020. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Walczak, White – in favor of the motion; Laudermilch – against the motion; no abstentions.)

Mr. White moved to deny the Motion to Reconsider VAR-001853-2020. Mr. Walczak seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Walczak, White – in favor of the motion; Laudermilch – against the motion; no abstentions.)

Mr. Walczak moved to deny the Motion to Reconsider VAR-001854-2020. Mr. White seconded. By way of roll call, the motion passed with a vote of 3-1-0. (Roll: Brison, Walczak, White – in favor of the motion; Laudermilch – against the motion; no abstentions.)

10. Board Business – None

11. Staff Report

- a. Update on the 2020 LMO amendments recommended by the BZA – Ms. Dixon reported that because of the COVID-19 pandemic, the 2020 set of LMO amendments were delayed. Staff is planning for a set of 2021 LMO amendments which will include the BZA's recommendations.
- b. Update on any proposed LMO amendments that address waivers issued by Staff – Chair Brison requested that due to the late hour, this item be placed on the January meeting agenda.
- c. Waiver Report – The Waiver Report was included in the Board's agenda package.

Ms. Luick reported that Staff desires to split the seven applications for January into two meetings. Staff will review the public meeting calendar and then contact the Board Members and applicants for their availability regarding a second meeting date.

12. Adjournment – The meeting was adjourned at 5:59 p.m.

Submitted by: Teresa Haley, Secretary

Approved: January 28, 2021