



Town of Hilton Head Island
Board of Zoning Appeals Special Meeting

July 29, 2020 at 9:00 a.m. Virtual Meeting

MEETING MINUTES

Present from the Board: Chairman Jerry Cutrer, Vice Chair Patsy Brison, Lisa Laudermilch, Anna Ponder, Charles Walczak, John White

Absent from the Board: Robert Johnson (excused)

Present from Town Council: Tamara Becker

Present from Town Staff: Nicole Dixon, Development Review Administrator; Josh Gruber, Assistant Town Manager; Teri Lewis, Deputy Director of Community Development; Missy Luick, Senior Planner; Tyler Newman, Senior Planner; Stephen Ryan, Staff Attorney; Teresa Haley, Senior Administrative Assistant

1. Call to Order

Chairman Cutrer called the meeting to order at 9:00 a.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. Swearing in Ceremony for Reappointed Board Member Charles Walczak – Josh Gruber, Assistant Town Manager, performed the swearing in ceremony for reappointed Board Member Charles Walczak.

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. Mr. Walczak moved to approve. Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 6-0-0.

7. Approval of Minutes

a. Meeting of January 27, 2020

Chairman Cutrer asked for a motion to approve the minutes of the January 27, 2020 regular meeting. Vice Chair Brison moved to approve. Mr. White seconded. By way of roll call, the motion passed with a vote of 6-0-0.

8. Citizen Comments

Pursuant to the Board's Rules of Procedure, public comment is not permitted in a case involving an appeal from an administrator decision. Public comments were permitted on the variance application. All public comments received by Staff 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 no requests from citizens to participate by phone.

9. Requests for Postponement Approved by the BZA Chairman – The cases listed below have been granted a postponement by the BZA Chairman and placed on the agenda to establish an original hearing date for the request.

- **VAR-000284-2020** – Request from Edward K. Pritchard, III for a variance from LMO Sections 16-5-102, Setback Standards and 16-5-103, Buffer Standards for an existing non-permitted food truck and associated screening fence to remain in the required adjacent use setback and buffer. The property address is 15 Marshland Road with a parcel number of R510 008 000 013H 0000. No action was taken by the Board on the application.
- **VAR-000352-2020** – Request from James Schwamman for a variance from LMO Sections 16-5-102, Setback Standards and 16-5-103, Buffer Standards for an existing patio which is encroaching 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. No action was taken by the Board on the application.
- **APL-000760-2020** – William M. Bowen, on behalf of Island Club III Horizontal Property Regime, is appealing staff's determination, dated March 24, 2020, that an unimproved right-of-way, currently functioning as a drainage easement and pedestrian access to the beach, is classified as a street. No action was taken by the Board on the application.

10. New Business

a. Election of Officers for July 1, 2020 – June 30, 2021 term

Mr. Walczak made a motion to nominate and elect Jerry Cutrer to serve as Chairman for the new term. Dr. Ponder seconded. There were no additional nominations for the office of Chairman and Mr. Cutrer accepted the nomination. The motion was approved by acclamation.

Ms. Laudermilch made a motion to nominate and elect Patsy Brison to serve as Vice Chair for the new term. Mr. White seconded. There were no additional nominations for the office of Vice Chair and Ms. Brison accepted the nomination. The motion was approved by acclamation.

Vice Chair Brison made a motion to appoint Teresa Haley to serve as Secretary for the new term. Ms. Laudermilch seconded. The motion was approved by acclamation.

b. Public Hearing

VAR-001076-2020 – Request for a variance from Joe DePauw, on behalf of Hog Mountain Holdings LLC, from LMO Section 16-5-102, Setback Standards, for a proposed enclosed stair to encroach 4'-0" into the required adjacent use setback. The property address is 34 Palmetto Bay Road with a parcel number of R552 014 000 0050 0000.

Chairman Cutrer asked Tyler Newman to present on behalf of Staff. Mr. Newman 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.

The Board made comments and inquiries regarding: whether the proposed stairway is located in the existing slab or footprint of the building; why an enclosed staircase is not among allowable exceptions; clarification on the unbuildable area mentioned in the applicant's narrative; concern the redeveloped building is expanding beyond the existing foundation; whether the existing foundation is stable; consideration for moving the building so that there would be no encroachment; the applicant was previously granted five waivers by Town Staff; comparison of approved plans by Town Staff and the applicant's proposal.

Chairman Cutrer asked if the applicant would like to make a presentation. The applicant presented statements regarding the grounds for the variance and answered the Board's questions.

The Board made additional comments and inquiries regarding: insurance policy provisions that cover costs of improvements necessary to restore a building and meet code changes; the proposed stairway is outside of the existing footprint; the structure to enclose the stairway would be different than an open stairway, but the foundation would remain the same in either stairway option; the LMO and the International Building Code (IBC) appear to conflict on this issue; there would be additional costs if the existing cooler and freezer were relocated; implementing one staircase would be inefficient and impact daily operations and deliveries.

Chairman Cutrer opened the hearing for public comments and none were received at this time. The Board made final comments on the application and then Chairman Cutrer asked for a motion.

Dr. Ponder moved that the Board of Zoning Appeals approve the application based on the following Findings of Fact and Conclusions of Law:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property because of the fire that took place in June 2019 as well as other circumstances and the history of the property.
2. These conditions, for instance, the fire, do not generally apply to other properties in the vicinity although some of the historic conditions might.
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. For instance, the effective use of the staircase by staff and patrons and also the use of the entrance for deliveries of supplies, etc.
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.

Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 5-1-0. (Roll: Cutrer, Laudermilch, Ponder, Walczak, White – for the motion; Brison – against the motion.)

At 10:33 a.m., immediately following the vote on the variance application, the Chairman obtained general consent to briefly recess the meeting. At 10:38 a.m., with all Board Members present, the Chairman reconvened the meeting.

c. Hearing

APL-001105-2020 – Request for Appeal from Jason Bullock with E-Ride LLC. The appellant is appealing staff’s determination, dated May 15, 2020, that mokes (electric car) and skoozas (scooter) are classified as Auto Rentals and Auto Sales.

Chairman Cutrer outlined the procedures for the appeal hearing process. Chairman Cutrer invited the appellant to proceed with his presentation. The appellant presented the case as described in the Board’s agenda package.

The Board made comments and inquiries regarding: a standard Class C driver’s license is required to drive a moke; the State allows a low speed vehicle to be operated by a licensed driver; the appellant’s rental agreement requires the licensed person to be 21 to rent a moke; low speed vehicle as defined by SC Motor Vehicle Code; classification of moke and skooza according to the SC Motor Vehicle Code; how to ensure moke and skooza rentals will not be used on the bike paths.

Chairman Cutrer asked Teri Lewis to present on behalf of Staff. Ms. Lewis presented Staff’s findings as described in the Board’s agenda package.

The Board made additional comments and inquiries regarding: classifying the use of mokes and skoozas; in order for these types of vehicles to be allowed in SPC which is the location of the property there would need to be a text amendment to the LMO; it appears Staff is in favor of amending the LMO to allow these vehicles; the process for potential changes to the LMO to allow this use; consideration for proposing a definition for low speed vehicles, create it as a use under Auto Rentals and Auto Sales and in certain zoning districts; Staff’s determination letter dated August 3, 2017 related to the use of mopeds, segways, golf carts or bicycles as an Auto Rental; the BZA does not have jurisdiction to amend the text of the LMO to add definitions.

Chairman Cutrer asked for rebuttals of the appellant and Staff. Following the rebuttals, the Board made closing remarks on the appeal and Chairman Cutrer asked for a motion.

Vice Chair Brison moved that the Board of Zoning Appeals affirm the Staff determination. Ms. Laudermilch seconded. By way of roll call, the motion failed with a vote of 2-4-0. (Roll: Brison, Laudermilch – for the motion; Cutrer, Ponder, Walczak, White – against the motion.)

Mr. Walczak moved that the Board of Zoning Appeals reverse the determination of the LMO Official pursuant to LMO Section 16-2-103.T.5.a., based on the following:

Finding of Fact: The LMO Official made an error in applying the definition of Auto Rentals and Auto Sales to the use of Mokes and Skoozas.

Conclusion of Law: The use of Mokes and Skoozas is most appropriately classified as Other Commercial Services.

Mr. White seconded. By way of roll call, the motion passed with a vote of 4-2-0. (Roll: Cutrer, Ponder, Walczak, White – for the motion; Brison, Laudermilch – against the motion.)

d. Hearing

APL-001167-2020 – Request for Appeal from Douglas W. MacNeille, Esq. on behalf of Hilton Head Helicopters, LLC d/b/a Atomic VR Virtual Reality. The appellant is appealing staff’s determination, dated May 22, 2020, that a Virtual Reality Helicopter Arcade Game business is not permitted at 52 Gateway Circle, a property that is zoned Light Industrial.

Chairman Cutrer outlined the procedures for the appeal hearing process. Chairman Cutrer invited the appellant to proceed with his presentation. The appellant presented the case as described in the Board's agenda package.

The Board made comments and inquiries regarding: the virtual reality arcade game is primarily used for customers waiting to go on the helicopter tour; a small percentage of customers use only the virtual reality arcade game; the virtual experience use appears to be incidental to the primary business use which is helicopter tours; the helicopter tour is one fee and the virtual reality game is an add-on experience; the helicopter tours make up about 90% of the revenue; there is only one company with one EIN number offering both helicopter tours and virtual reality experiences; helicopter tour prices vary from \$39 per person up to \$349 per person and the virtual reality experience is approximately a \$20 add-on.

Chairman Cutrer asked Nicole Dixon to present on behalf of Staff. Ms. Dixon presented Staff's findings as described in the Board's agenda package.

The Board made additional comments and inquiries regarding: whether the doctrine of equitable estoppel applies to the case; the County granting the appellant permission to operate a virtual reality arcade in the Commercial Operating Agreement does not affect the appeal; issuance of a business license does not necessarily grant zoning designations; the original application submitted in 2015 by the previous owner was approved in error; the appellant's submittal in 2020 was denied by Town Staff because the proposed virtual reality game business is classified as an Indoor Commercial Recreation Use which is not a use that is permitted in the IL zoning district; the marketing of virtual experiences for the business appears to be minimal; clarification of staff's classification of the virtual experience as a primary use; the history and concern of one business that requires two business licenses for the two separate uses; as the previous owner had done, the appellant submitted for two business licenses for the two uses in 2019 and 2020; the previous owner occupied the business since 2015 and had two separate licenses, one for helicopter tours and the other for the virtual experiences; Staff recently determined the business license issued in 2015 for the virtual experiences was issued in error; consideration of the intent of the uses permitted in this zoning district when the LMO was written.

Chairman Cutrer asked for rebuttals of the appellant and Staff. Following the rebuttals, the Board made closing remarks on the appeal and Chairman Cutrer asked for a motion.

Upon the conclusion of the discussion, Chairman Cutrer asked for a motion.

Vice Chair Brison moved that the Board of Zoning Appeals reverse the determination of Staff pursuant to LMO Section 16-2-103.T.5.a., based on the following:

Findings of Fact:

- The helicopter tour business is the primary or principal use on the property within the Light Industrial (IL) zoning district.
- The virtual experiences as described in the testimony today are incidental or ancillary to that primary or principal use on the property.

Conclusion of Law:

- The helicopter tour business is allowed within the Light Industrial (IL) zoning district along with the incidental or ancillary use.

Ms. Laudermilch seconded. By way of roll call, the motion passed with a vote of 6-0-0.

11. Staff Report

a. Waiver Approvals Summary 2017-Present

Vice Chair Brison recommended that the Board forward the summary to the Planning Commission and appropriate persons to review and determine whether amendments to the LMO might be appropriate. Dr. Ponder seconded. By way of roll call, the motion passed with a vote of 6-0-0.

b. Waiver Report – The report was included in the Board’s agenda package.

12. Adjournment

The meeting was adjourned at 1:32 p.m.

Submitted by: Teresa Haley, Secretary

Approved: August 31, 2020