



Town of Hilton Head Island  
**Board of Zoning Appeals Meeting**  
September 28, 2020 at 2:30 p.m. Virtual Meeting  
**MEETING MINUTES**

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

**Absent from the Board:** None

**Present from Town Council:** David Ames, Tamara Becker, Glenn Stanford

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

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**1. Call to Order**

Chairman Cutrer called the meeting to order at 2:30 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 amend the agenda to add a discussion of the October 2020 meeting schedule under New Business. Vice Chair Brison made a motion to add a discussion of the October 2020 meeting schedule under New Business and a status of the Board's request for LMO amendments based on action taken at the January and July meetings under Staff Report. Mr. Johnson seconded. By way of roll call, the motion passed with a vote of 7-0-0. Vice Chair Brison moved to approve the agenda as amended. Mr. White seconded. By way of roll call, the motion passed with a vote of 7-0-0.

**7. Approval of Minutes**

**a. Special Meeting of August 31, 2020**

Chairman Cutrer asked for a motion to approve the minutes of the August 31, 2020 special meeting. Mr. Walczak moved to approve. Vice Chair Brison seconded. By way of roll call, the motion passed with a vote of 7-0-0.

## 8. Citizen Comments

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. Unfinished Business

- a. **VAR-001461-2020** – Request from Michael Liker for a variance from LMO Section 16-3-106.H.4.b., Forest Beach Neighborhood Character Overlay (FB-NC-O) District for a proposed driveway to be built parallel within the adjacent use buffer and exceeding the 24 foot width maximum. The property address is 3 Alder Lane with a parcel number of R550 015 00A 0075 0000.

Chairman Cutrer explained that since this application was presented at the last meeting, there is not a need to have a complete rehearing. However, Staff and the applicant will have the opportunity to make comments. Ms. Luick presented a summary of the application, the outcome of the last meeting, and an update on the status of the Marriott approval to remove a portion of the wall in order for the driveway to be access directly. Staff's recommendation remains that the Board of Zoning Appeals deny the application, based on the Findings of Fact and Conclusions of Law contained in the Staff Report. The applicant presented statements regarding the grounds for the variance and answered the Board's questions. The applicant indicated the Marriott has given him verbal approval for the portion of the wall to be removed.

The Board made comments and inquiries to Staff regarding: show the site plan highlighting the variance area and the outline of the driveway as currently proposed; whether a building permit can be issued if a conditional variance is granted; whether site preparation can begin if a condition variance is granted; the width of the existing curb cut; safety concerns for pedestrians and vehicles crossing the multi-use pathway; the legal status of Alder Lane; whether records indicate curb cut access was granted for this property; concern the Marriott approval was given verbally and nothing is in writing; whether the SC Code allows the Board to legally accept hearsay testimony; what the terms of a conditional variance can be; fill is considered development and cannot be added to a site without a permit.

The Board made comments and inquiries to the applicant regarding: the current status of the Marriott approval to remove a portion of the wall; the applicant's expectation regarding timing of final Marriott approval; the initial work that would be able to be done if a building permit is issued upon a conditional variance; how long the initial work would take before construct begins and the driveway would have to be staked out; the house could be designed differently to meet all LMO requirements.

Vice Chair Brison moved that the Board of Zoning Appeals deny the variance application, based on the Findings of Fact and Conclusions of Law contained in the Staff Report, with the following modifications:

*Criteria 4:* The authorization of the variance will be of substantial detriment to the adjacent property or the public good, and the character of the zoning district where the property is located will be harmed by the granting of the variance.

Additional Findings of Facts:

- The variance would be contrary to the requirements of the Forest Beach Neighborhood Character Overlay District.
- The provisions of the LMO Section 16-2-103.S.4.c the fact that the property may be utilized more profitably should the variance be granted may not be considered as grounds for a variance.

Amended and restated Conclusions of Law:

- The Board of Zoning Appeals concludes that this application does not meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the proposed variance will be a substantial detriment to the adjacent property, the public good, and the character of the zoning district where the property is located.

Chairman Cutrer asked for a second to the motion and no second was received. Therefore, the motion died due to lack of a second.

*At 3:37 p.m., Mr. White left the meeting and a quorum of the Board remained in effect.*

Following the failed motion, the Board continued discussions about the implications of approval and denial of the variance; various ways in which the house could be redesigned and the driveway could be reconfigured to meet LMO requirements; concerns for granting a variance without Marriott written approval to remove the wall and setting a bad precedent. The Board expressed sympathy to the applicant's timeline to construct the home and noted the optimal solution is for the Marriott to proceed with approval of the wall removal to allow straight in access of the driveway, and therefore, eliminating the need for a variance. Following the discussion, Chairman Cutrer asked for a motion.

Dr. Ponder moved that the Board of Zoning Appeals deny the application based on the Findings of Fact and Conclusions of Law contained in the Staff Report. Mr. Johnson seconded. By way of roll call, the motion passed with a vote of 6-0-0. (Roll: Brison, Cutrer, Johnson, Laudermilch, Ponder, Walczak – for the motion; none opposed.)

## **10. New Business**

*At 4:11 p.m., Dr. Ponder left the meeting and a quorum of the Board remained in effect.*

### **a. Discussion of the October Meeting Schedule**

Due to the number of applications for the October meeting, Chairman Cutrer asked the Board Members to consider (i) moving the October 26 regular meeting time earlier to 1:30 p.m. to hear two applications and (ii) holding a special meeting on October 29 to hear the five remaining applications which have similar requests.

Vice Chair Brison made a motion to move the October 26, 2020 regular meeting time to 1:30 p.m. Mr. Walczak seconded. The motion passed with a vote of 5-0-0.

Vice Chair Brison made a motion to schedule a special meeting for October 29, 2020 at 1:00 p.m. to hear the remaining applications. Mr. Walczak seconded. The motion passed with a vote of 5-0-0.

## **11. Staff Report**

- a. Waiver Report – The report was included in the Board’s agenda package.
- b. Update on LMO amendments recommended by the BZA at the January and July meetings – Ms. Dixon reported that Staff is reviewing the waivers in question and if it is determined that amendments are warranted based on that review, then it will be included in the 2020 LMO Amendments list. Chairman Cutrer requested this report be placed on one of the October meeting agendas.

**12. Adjournment**

The meeting was adjourned at 4:16 p.m.

**Submitted by:** Teresa Haley, Secretary

**Approved:** October 26, 2020