



Town of Hilton Head Island

Board of Zoning Appeals Meeting

Monday, July 22, 2024, 2:30 PM

**1 Town Center Court, Hilton Head Island, SC
Benjamin M. Racusin Council Chambers**

- 1. Call to Order**
- 2. Welcome and Introduction to Board Procedures**
- 3. Adoption of the Agenda**
- 4. Approval of the Minutes**
 - a. Regular Meeting Minutes of June 24, 2024.
- 5. Unfinished Business**
- 6. New Business**
 - a. Nomination and Election of Officers for July 1, 2024 - June 30, 2025.
 - b. Appointment of Board Secretary for July 1, 2024 - June 30, 2025.
- 7. Public Comment - Non Agenda Items**
- 8. Board Business**
- 9. Staff Reports**
- 10. Adjournment**

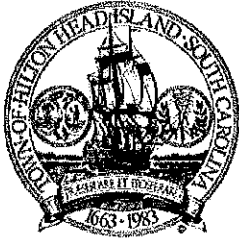
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Municipal Association of South Carolina (MASC) Civility Pledge:

“I pledge to build a stronger and more prosperous community by advocating for civil engagement, respecting others and their viewpoints, and finding solutions for the betterment of my city or town.”



**Town of Hilton Head Island
BOARD OF ZONING APPEALS MEETING
Monday, June 24, 2024, 2:30 PM
Minutes**

1. Call to Order

Chair Fingerhut called the Meeting to order at 2:30 p.m. Present were: David Fingerhut, Kay Bayless, Steve DeSimone, Peter Kristian, Michael Sackheim and Amy Fee. Mr. Johnson was excused.

2. Swearing in Ceremony of new Board Member Amy Fee, performed by Shawn Colin, Assistant Town Manager

Mr. Shawn Colin swore in Amy Fee and thanked her for her service to the Board of Zoning Appeals and the Community.

3. Welcome and Introduction to Board Procedures

Chair Fingerhut welcomed all in attendance and explained the Board's procedures for conducting the meeting.

4. Adoption of the Agenda

Chair Fingerhut asked if staff had any changes to the Agenda. Mr. Connolly advised that staff would like Item 8e removed. The Election of Officers will take place at the next meeting. Mr. Kristian moved to approve the Agenda as amended. Mr. Sackheim seconded. The Agenda was unanimously approved.

5. Approval of the Minutes

a. Regular Meeting Minutes of May 22, 2023

Mr. DeSimone moved to approve the Minutes of May 22, 2023. Mr. Sackheim seconded. The Minutes were approved. Ms. Bayless was not present at the May 22, 2023 Meeting and Ms. Fee was not a member yet.

b. Special Meeting Minutes of June 8, 2023

Mr. DeSimone moved to approve the Minutes of June 8, 2023. Mr. Sackheim seconded. The Minutes were approved. Ms. Fee was not a Member yet.

6. Appearance by Citizens

No Citizens spoke on items unrelated to items not on the Agenda. There were several comments received on the Town's Open Town Hall Portal. The comments were sent to all Board Members and made a part of the Official Record.

7. Unfinished Business

None

8. New Business

a. Public Hearing

VAR-000802-2024 - Request from Richard Dietrich of The Renovators of SC , on behalf of Vinod Rajasekaran, owner of 59 Sandcastle Court, also identified as Beaufort County Tax Map Parcel R511 009 000 1125 0000, for a Variance from LMO Section 16-5-102.D, Adjacent Use Setback Standards, to allow a proposed home to encroach into the setback angles.

Chair Fingerhut opened the Public Hearing for VAR-000802-2024, VAR-000803-2024 and VAR-000804-2024 - a request for all intents and purposes is the same Variance pertaining to 59 Sandcastle Court, 129 Sandcastle Court and 9 Sandcastle Court to allow the homes to encroach into the adjacent use setback angles. The presentation addressed all three Variance Requests.

Michael Connolly presented the Applications as described in the staff reports. Staff recommends the Board of Zoning Appeals find the requests to be inconsistent with the Town's Our Plan and does not serve to carry out the purposes of the LMO, based on those Findings of Facts and Conclusions of Law as determined by the LMO Official. Staff recommends that the Board of Zoning Appeals deny the Applications.

The Board made comments and inquiries regarding: how many of the homes actually meet the setback angle requirement; how did the Town approve three building permits without setback angles; the builder has been aware of the setback requirements since 2022 and nonetheless submitted new applications ignoring it; sounds like we are being asked to make a determination based on past mistakes and maybe compound past mistakes; is it customary or the Town not to enforce building standards on such a large scale - it seems this entire community was built without setback angles as required.

Missy Luick, Director of Planning who attended the meeting remotely spoke to past Planning Review of the setback angles and advised she has been with the Town for five years, so cannot speak to some of the past Planning Review errors that were made by staff. The setback angle was required in the old LMO as well as in the 2014 rewrite. We have over the years amended our Plan Review Check List over time when we have noticed that certain requirements of the Code were just not being met through regular Plan Review. That is what appears to have happened in this particular Sub Division.

Once staff was made aware that we were making errors in our Plan Review procedures, we then added that to our Plan Review Check List and then enforced it going forward.

Following the staff presentation and questions from the Board, Chair Fingerhut asked the Applicant to make a presentation. Mr. Dietrich of The Renovators of SC presented his grounds for Variance as described in his submittal materials.

The Board made comments and inquiries regarding: were you allowed to build the three homes without the setback angle; what is the average size of the home that was not held to the standard and the setback angles; when the Town was made aware of the setback angle; how many additional homes will be built; sounds like the majority of homes have not been subject to the setback angles.

Chair Fingerhut asked for Staff Rebuttal. Staff had no rebuttal.

Chair Fingerhut asked for applicant rebuttal. The applicant had no rebuttal.

Chair Fingerhut asked for public comment. Two members of the public spoke in support of the three Variance requests. One member stated he was not here in support or against the Variance, but rather of concern, as it is essential to Hilton Head Beach & Tennis that the law is followed. Despite the difficulties that individuals may face with certain development proposals before the Town that zoning regulations are not mere suggestions - they are the law.

Chair Fingerhut incorporated all the evidence, including the Staff Report, Application, Documents, and testimony provided during the Hearing into record. Chair Fingerhut closed the Public Hearing.

The Board made final comments and inquiries regarding: the Town dropped the ball, and we have not enforced defacto since the inception of this subdivision and if you would hold someone to a setback angle would make those homes out of character in the community; it is regrettable that a Town Official would sign a letter that bases his own Variance to what is required in the LMO upon a possible amendment to the LMO to be made by Officials other than him. It is clear that this situation is very frustrating and there have been problems with prior construction efforts there. The basic facts are the LMO was in place before any house was built there. The HOA cannot enact requirements that conflict with the Town's Ordinances. We have to decide whether we will continue to make mistakes as were made in the past or whether we are going to enforce the Ordinance as it is written; the criteria of extraordinary and exceptional conditions have been met for these Variance because of the unfairness to the investors in the remaining homes.

Upon the conclusion of discussion, Chair Fingerhut asked for a Motion.

Mr. Kristian moved to approve the Application for VAR-000802-2024 based on the Findings of Fact and Conclusions of Law submitted by the Applicant and that the Board of Zoning Appeals approve this Variance. Mr. Sackheim seconded. Ms. Bayless said she does not feel there are Findings of Fact and Conclusions of Law that are stated in the submission by the Applicant. Mr. Kristian stated the Applicant proposed what he felt met the criteria and that is what I am submitting. Chair Fingerhut agreed and said the Applicant took the four criteria and made his argument. The Motion passed with a vote of 4-2. Ms. Bayless and Ms. Fee were opposed.

b. Public Hearing

VAR-000803-2024 - Request from Richard Dietrich of The Renovators of SC, on behalf of Rosanne Magers, owner of 129 Sandcastle Court, also identified as Beaufort County Tax Map Parcel R511 009 000 1157 0000, for a Variance from LMO Section 16-5-102.D, Adjacent Use Setback Standards, to allow a proposed home to encroach into the setback angles.

Mr. Kristian moved to approve the Application for VAR-000803-2024 based on the Findings of Fact and Conclusions of Law submitted by the Applicant and that the Board of Zoning Appeals approve this Variance. Mr. Sackheim seconded. Ms. Bayless said she does not feel there are Findings of Fact and Conclusions of Law that are stated in the submission by the Applicant. Mr. Kristian stated the Applicant proposed what he felt met the criteria and that is what I am submitting. Chair Fingerhut agreed and said the Applicant took the four criteria and made his argument. The Motion passed with a vote of 4-2. Ms. Bayless and Ms. Fee were opposed.

c. Public Hearing

VAR-000804-2024 - Request from Richard Dietrich of The Renovators of SC, on behalf of Charlotte Russo, owner of 9 Sandcastle Court, also identified as Beaufort County Tax Map Parcel R511 009 000 1107 0000, for a Variance from LMO Section 15-5-102.D, Adjacent Use Setback Standards, to allow a proposed home to encroach into the setback angles.

Mr. Kristian moved to approve the Application for VAR-000804-2024 based on the Findings of Fact and Conclusions of Law submitted by the Applicant and that the Board of Zoning Appeals approve this Variance. Mr. Sackheim seconded. Ms. Bayless said she does not feel there are Findings of Fact and Conclusions of Law that are stated in the submission by the Applicant. Mr. Kristian stated the Applicant proposed what he felt met the criteria and that is what I am submitting. Chair Fingerhut agreed and said the Applicant took the four criteria and made his argument. The Motion passed with a vote of 4-2. Ms. Bayless and Ms. Fee were opposed.

d. Public Hearing

VAR-000818-2024 - Request from Judd Carstens of Witmer Jones Keefer, on behalf of Dave Peacock, owner of 19 Ibis Street, also identified as Beaufort County Tax Map Parcel R550 015 00A 0111 0000, for a Variance from LMO Section 16-3-106.H.4.d, Floor Area Ratio requirements, to exceed the maximum gross floor area by 2,259 square feet for the development of a detached garage with guest rooms.

Chair Fingerhut opened the Public Hearing for VAR-000818-2024 a request from Judd Carstens of Witmer Jones, Keefer on behalf of Dave and Jane Peacock, owner of 19 Ibis Street for a Variance to exceed the maximum gross floor area by 2,259 square feet for the development of a detached garage with guest rooms.

Michael Connolly presented the Application as described in the staff report. Staff recommends the Board of Zoning Appeals find the request to be inconsistent with the Town's Our Plan and does not serve to carry out the purposes of the LMO, based on those Findings of Fact and Conclusions of Law as determined by the LMO Official. Staff

recommends the Board of Zoning Appeals deny the Application.

The Board made comments and inquiries regarding: the size of the lot and whether it has ever been subdivided; whether this will create a multifamily property on the lot; The Application does not give information on the detached garage with guest rooms - will it have cooking, laundry facility in addition to sleeping space.

Following the staff presentation and questions from the Board, Chair Fingerhut asked the Applicant to make a presentation. Mr. Judd Carstens of Witmer Jones Keefer on behalf of Dave and Jane Peacock presented his grounds for Variance as described in his submittal materials. Mr. & Mrs. Peacock also spoke with the Board regarding their Application for a Variance and advised it is not nor ever has been their intention to rent out the property.

The Board made comments and inquiries regarding: questioned if they had two lots we wouldn't be having this discussion; is the space above the garage considered a separate dwelling unit where someone could independently rent it; does the detached garage with guest rooms serve as additional stand alone living quarters; concern that even though the Peacock's want to be in the home for 20+ years, doesn't mean they will be and this property can be sold; why not subdivide the lot;

Chair Fingerhut asked for Staff Rebuttal. Staff had no rebuttal - Brian Eber clarified the process for a Major Subdivision change and how long it would take.

Chair Fingerhut asked for Applicant Rebuttal. Applicant had no rebuttal.

Chair Fingerhut asked for public comment. One member from the public expressed concern that granting this Variance would set a very bad precedent. North Forest Beach is zoned single family. The LMO was created for a specific reason and not to allow massive structures in a single family neighborhood.

Chair Fingerhut incorporated all the evidence, including the Staff Report, Application, Documents, and testimony provided during the Hearing into record. Chair Fingerhut closed the Public Hearing.

The Board made final comments and inquiries regarding: this is a very large structure and it will be very attractive for some investor to come along and make them an offer they cannot refuse and we will end up with a huge hotel with dozens of cars utilizing that space and it will not keep in character with the neighborhood; it is this Board's duty to follow the LMO, particularly in a case where another solution is available that still lets us uphold the letter of the LMO; very cognizant of the objections that have been voiced by the neighbors and the HOA and the fact that none of us can predict the future; this request is not in keeping with the character of Forest Beach; there is no unnecessary hardship here - there is a clear path to avoid making this sort of request.

Upon the conclusion of discussion, Chair Fingerhut asked for a Motion.

Ms. Bayless moved to deny the Application based on the Findings of Fact and Conclusions of Law as set forth in the staff memo. Mr. Kristian seconded. The Motion passed with a vote of 6-0.

e. Election of Officers for July 1, 2023 - June 30, 2024 Term

This item was removed from the Agenda and will be on the July, 2024 Agenda.

9. Board Business

a. Review and Adoption of 2024 Meeting Schedule

Ms. Bayless moved to approve the 2024 Meeting Schedule. Mr. Sackheim seconded. The 2024 Meeting schedule was unanimously approved.

Chairman Fingerhut presented outgoing member, Peter Kristian with a Certificate of Appreciation and thanked him for his years of service to the Board of Zoning Appeals and to the Community.

10. Staff Reports

a. Status of Appeals to Circuit Court

No Report.

b. Status of LMO Amendments

Alexis McIlwee, Principal Planner, gave a brief update on the LMO project and stated they are working right now towards the Priority Amendment Set that was brought before the Public Planning Committee on May 9, 2024. All the Priority Amendments are moving forward to a Workshop in August. The LMO Overhall Project is also underway. We have a June Workshop with the Code Consultant and are currently working on the Table of Contents or the organization of the Code Overhall. We will be working on discussing those changes, whether they are policy or administration, with members of Town Council at that Workshop.

c. Recent FAR Update - Forest Beach .55 to .45

Michael Connolly reviewed the Ordinance that recently passed reducing the FAR in the Forest Beach Area Overlay to .45. The 5,000 sq. ft. restriction in the Forest Beach Area Overlay with respect to Gross Floor Area will remain the same.

11. Adjournment

The Meeting was adjourned at 5:25 p.m.

Approved:

The recording of this Meeting can be found on the Town's website at www.hiltonheadislandsc.gov