

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Circuit Court Judge

Case No. 2018-CP-07-00784

Bradley Circle Vacation Partners, LLC and Monti Development HH, LLC... Appellants,

v.

Town of Hilton Head Island, Town of Hilton Head Island Board of Zoning Appeals,
Tamara Becker, and Rhonda Carper Respondents.

RECORD ON APPEAL – VOLUME I

Drew A. Laughlin, Esquire
P.O. Drawer 21119
Hilton Head Island, SC 29925
(843) 689-5700
Attorneys for the Appellants

Curtis L. Coltrane, Esquire
P.O. Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
Attorneys for Town of Hilton Head Island

Tamara Becker
5 Bradley Circle
Hilton Head Island, SC 29926
Pro Se Respondent

Rhonda Carper
32 Bradley Circle
Hilton Head Island, SC 29926
Pro Se Respondent

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT) Civil Action No.: 2018-CP-07-00784

BRADLEY CIRCLE VACATION)
PARTNERS, LLC and MONTI)
DEVELOPMENT HH, LLC,)

ORDER

Petitioners/Appellants,)

vs.)

TOWN OF HILTON HEAD)
ISLAND, TOWN OF HILTON)
HEAD ISLAND BOARD OF)
ZONING APPEALS, TAMARA)
BECKER and RHONDA CARPER,)

Respondents.)

THIS MATTER came before me for a hearing in chambers in Beaufort, South Carolina on August 23, 2018. The hearing was upon the appeal by the Petitioners/Appellants from a decision previously made by the Town of Hilton Head Island's Board of Zoning Appeals (BZA), concerning issues of allowable heights for residential buildings at certain locations in the Bradley Beach Circle neighborhood of the Town of Hilton Head Island. Appearing for the Petitioners/Appellants was Drew A. Laughlin, Attorney at Law, of the law firm of Laughlin & Bowen, P.C., of Hilton Head Island. Gregory M. Alford, Attorney at Law, of the law firm of Alford Law Firm, LLC, also of Hilton Head Island, appeared on behalf of the Respondents Town of Hilton Head Island (Town) and Town of Hilton Head Island Board of Zoning Appeals. Barry L. Johnson, Attorney at Law, of the law firm of Johnson & Davis, PA, of Bluffton, South Carolina, appeared on behalf of the Respondents Tamara Becker and Ronda Carper. (It has been pointed out to the court that Rhonda Carper is referenced in the official record of this case as such, but the proper spelling of her name is Ronda Carper.)

The parties filed pleadings and the BZA Record was duly filed with the court. Argument was had on all issues, and ably conducted by all counsel.

BACKGROUND

Appellants/Petitioners are the proposed developers/builders of tall, multi-story residence buildings in the Bradley Beach Circle neighborhood of the Town. Respondents Becker and Carper own property and reside in that neighborhood, and object to the proposed heights of those buildings.

In February of 2016, the Appellants/Petitioners applied for a variance from certain requirements of the Town's Land Management Ordinance (LMO) and, as required by law, that variance application was considered by the BZA. Specifically, that variance application (VAR 352-2016) requested only these variances for the subject property:

- A Variance from LMO § 16-5-102, Adjacent Street Setbacks (and setback angles);
- B Variance from LMO § 16-5-103, Adjacent Street Buffers.

Nothing in that variance application requested a variance for any specific heights of the proposed buildings for the subject property. At the time of those proceedings in March 2016, the

LMO Zoning District, in which the subject property was located, limited building heights to 75 feet above base flood elevation.

On March 28, 2016, the BZA granted the two variances requested in VAR 352-2016.

Subsequently, on April 7, 2016, the Town amended the LMO and the Town Zoning Map and placed the subject property into the RM8 Zoning District, with a height limitation of 45 feet above base flood elevation.

¹ Base Flood Elevation is defined in the Town's LMO Section 16-10-102.3

Appellants/Petitioners applied on August 8, 2017 for the Town's permission to build buildings on the subject property to a height of 75 feet above base flood elevation. The Town's LMO Official, by letter dated February 8, 2018, issued her determination that the March 28, 2016 variance granted by the BZA had included a vested right for the Appellants/Petitioners to build to a height of 75 feet above base flood elevation.

Respondents Becker and Carper duly appealed, to the BZA, that determination on February 8, 2018 determination by the Town's LMO Official. On March 26, 2018, the BZA heard the appeal by Respondents Becker and Carper from that February 8, 2018 determination by the LMO Official, regarding the maximum allowable height of the buildings which could be built on the subject properties. The BZA voted to reverse the determination of the LMO Official and, instead, ruled that the March 28, 2016 variances it had granted (VAR 352-2016) did not include a vested right to build to 75 feet above base flood elevation, and that any new building on the subject property would be restricted to a maximum of 45 feet above base flood elevation (the "Decision"). In reaching that Decision, the BZA decided from the record before it that the 2016 variance application (VAR 352-2016) of the Appellants/Petitioners did not include a "site specific development plan" as defined in S.C. Code § 6-29-1520 and LMO Appendix D-19.²

The instant case before this Court arises on the appeal of Appellants/Petitioners from that March 26, 2018 BZA Decision.

ISSUES RAISED ON APPEAL/PETITION

² For purposes of this matter, the terms "site specific development plan" and "Site Plan" are considered by this Court to be the same under applicable law.

The Petitioners/Appellants, by way of their Notice of Appeal and Petition from the Decision, asserted that the BZA's findings and conclusions are arbitrary and capricious, an abuse of the board's discretion, and erroneous as a matter of law alleging that:

- A. the BZA's decision was based on an erroneous construction of S.C. Code Ann. § 6-29-1520 (9) and what constitutes the 'site specific development plan' as defined by that statute;
- B. there is no evidence in the record that reasonably supports the BZA's finding (or erroneous conclusion based on an error of law) that the variance application for the subject property (VAR 352-2016) did not sufficiently describe a site specific development plan, when the application included a development plan which described with reasonable certainty the types and density or intensity of uses for the specific property or properties identified in the application;
- C. the BZA's conclusion of law that the granting of variances in VAR 352-2016 did not create a vested right, as defined by S.C. Code Ann. § 6-29-1520, to build the single-family homes described and depicted in the variance application to maximum height of 75 feet above base flood elevation is error as a matter of law; and
- D. the BZA's conclusion of law that the granting of variances in VAR 352-2016 did not create a vested right, as defined by S.C. Code Ann. § 6-29-1520, and that the properties are therefore restricted to a height of 45 feet above base flood elevation is error as a matter of law.

The Respondents Town and BZA, in response, asserted defenses of (1) general denial; (2) qualified specific denials; (3) failure to state a claim because of the language in the Appeal/Petition; and (4) that the BZA decision is supported by some evidence reasonably

supporting the BZA's factual findings, which is sufficient to satisfy the standard of review in such an appeal as this.

The Respondents Becker and Carper, in response, asserted defenses of (1) qualified general denial; (2) pending ordinance doctrine; (3) Town of Hilton Head Island Land Management Ordinance (LMO) Variance Application Requirements.

STANDARD OF REVIEW

S.C. Code Ann. § 6-29-840 prescribes the standard of review a circuit court should apply when considering an appeal from a local zoning board. That section provides that "[t]he findings of fact by a board of zoning appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code Ann. § 6-29-840(A).

However, a reviewing court in a zoning case may rely on uncontroverted facts which appear in the record, but not in a zoning board's findings." *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (Ct. App. 2000).

A zoning board's factual findings will not be disturbed on appeal unless the record contains no evidence reasonably supporting the findings. *Boehm v. Town of Sullivan's Island Board of Zoning Appeals, et al.*, Opinion No. 5546, filed March 28, 2018. In reviewing questions on appeal, the court should determine only whether the decision of the board is correct as a matter of law. *Id.* However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. An abuse of discretion occurs when a board's decision is unsupported by the evidence or controlled by an error of law. *Id.* "[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Id.* (quoting *Helicopter Sols., Inc. v. Hinde*, 441 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) and *Mikell v.*

City of Charleston, 386 S.C. 153, 158, 687 S.E. 326, 329 (2009)). “Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* quoting *Helicopter Sols*, 414 S.C. 1 at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).

ARGUMENTS OF APPELLANTS/PETITIONERS

In support of their positions, Appellants/Petitioners argue as follows:

First, that EMO § 16-2-102.1 provides that approval of the variance application, VAR 352-2016, constituted approval of the site specific development plan for the subject properties and established a vested right in accordance with the South Carolina Vested Rights Act, S.C. Code Ann. § 6-29-1510, *et seq.*, to undertake and complete the development of the property under the terms and conditions of the site specific development plan.

Second, that S.C. Code Ann. § 6-29-1520 (9) defines “site specific development plan” as “a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties.”

Third, that S.C. Code Ann. § 6-29-1520(10) defines “vested right” as “the right to undertake and complete the development of property under the terms and conditions of the site specific development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter.” “Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances.” *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986).

Fourth, that their 2016 application for variance (VAR 352-2106) clearly described a plan to develop two single family homes with four full stories over parking on two specifically identified parcels (together, the "subject property"). They contend that the application included a subdivision plat, as-built survey, detailed site plans showing the proposed location of the homes on the lots, and elevation drawings of the homes, although their application did not specify the exact height of the homes, because the applicant was not requesting a variance from the allowed height of 75 feet. However, the description given was more than sufficient, in their view, to describe the size and height of the homes with reasonable certainty.

Fifth, that the Record is devoid of evidentiary support for the BZA's finding that the 2016 variance application did not describe a development plan for the subject properties.

Sixth, that S.C. Code Ann. § 6-29-1520(9) requires only that the plan "describe with reasonable certainty the types and density or intensity of uses" for the properties. They contend that the description of the planned development as being two single family homes each with four full stories over parking, the detailed site plan, and the illustrative elevation drawings clearly meet the statutory definition. Further, they contend that the SC statute does not require detailed construction drawings and specifications or a specific height measurement for the homes that are clearly shown to be four stories over parking and located in accordance with a detailed site plan and that, therefore, the BZA's "Finding of Fact" that the variance application lacked a satisfactory development plan was not only factually incorrect, but, *arguendo*, it was also based on an erroneous legal construction of the ordinance. They cite to *Boehm v. Town of Sullivan's Island Board of Zoning Appeals, supra*.

At the hearing before me, Appellants/Petitioners summarized their arguments as boiling down to this: That LMO § 16-2-102.J.1, properly applied, means that the BZA's variance approval of March 28, 2016 (VAR 352-2016) constituted approval of the site specific development plan for

the subject property and established a vested right under S.C. Code § 6-29-1510, et seq., to undertake and develop the subject property under the terms and conditions of that site specific development plan, to a height of 75 feet above base flood elevation.

ARGUMENTS OF RESPONDENTS BECKER AND CARPER

Respondents Becker and Carper argued in support of their positions as follows:

First, that the LMO, in Appendix D-19, adds more local requirements as required to implement the SC statute, and prescribes the "submittal requirements" for a variance application

to the BZA including, in pertinent parts:

A. "A site plan at a scale of 1"=30' accurately showing the variances requested . . ."

and the detailed engineering plan also there required. (LMO Appendix D-19 A.2.).

B. "A written narrative explaining in detail the variance(s) requested and how the

criteria of (LMO) § 16-2-103.S.4, Variance Review Standards, apply to the

request." (LMO Appendix D-19 A.4.).

Second, that nothing was presented in the Record before the BZA in compliance with LMO

Appendix D-19 A.2., and A.4., as quoted above, to demonstrate that the subject variance

application contained either the (A) required 1"=30' site plan accurately showing any height

variance requested, or (B) a narrative requesting such a height variance.

Third, that the 2016 variance requested did not comply with LMO § 16-2-103.S.4, in that

it did not show that the variance would not be a substantial detriment to adjacent property or the

public good, and that the character of the zoning district where the property is located would not

be harmed by the granting of the variance.

Fourth, Respondents Becker and Carper also demonstrated that the drawing on which

Appellants/Petitioners rely (Record, Drawing attached as Attachment G, and Record, BZA

Hearing March 28, 2018, Transcript, p. 28, l. 19 – p. 29, l. 4; p. 40, l. 15 – p. 41, l. 10) for their site-specific plan is for a different property, 22 Bradley Beach Circle, and not for the subject property at 28 Bradley Beach Circle.

Fifth, and in addition, Respondents Becker and Carper asserted that the Pending Ordinance Doctrine applied and barred the Petitioners/Appellants from any vested right to build a building on the subject property in excess of 45 feet above base flood elevation.

At the hearing before me, Respondents Becker and Carper concluded their arguments by asserting that the Decision of the BZA was reasonably supported by the Record and evidence before the BZA, and that the BZA Decision was not erroneous as a matter of law and that the BZA Decision was not an abuse of discretion, nor was it arbitrary or capricious.

ARGUMENTS OF RESPONDENTS TOWN AND BZA

The Respondents Town and BZA supported the arguments of Respondents Becker and Carper and pointed to the absence of a site-specific development plan, compliant with LMO Appendix D-19, as outlined in more detail in the discussion of the arguments of Respondents Becker and Carper. The Respondents Town and BZA also strongly emphasized that the Record before the BZA (and also before this court) contained more than enough evidence from which the BZA could have reasonably, and not erroneously as a matter of law, concluded that there was no LMO-compliant site-specific development plan (Site Plan) at the 2016 BZA variance proceeding sufficient to consider vesting height to 75 feet above base flood elevation.

**CONCLUSIONS OF LAW
FINDINGS OF FACT**

Having duly considered these matters before this court, and having reviewed all of the Record and materials before me, and having evaluated the able (and sometimes contrary) arguments of counsel for the parties, I make the following material Findings of Fact:

- A. The subject property for purposes of this matter is known as 28 Bradley Beach Circle, and 3 Whelk Street, Town of Hilton Head Island, and consists of two parcels: TIN: R510 009 000 0896 0000 (0.115 acres) and TIN R510 009 000 1102 0000 (0.189 acres), and is not the property known as 22 Bradley Beach Circle, Town of Hilton Head Island.
- B. At no time did Appellants/Petitioners apply for a height variance to build on the subject property above 45 feet above base flood elevation.
- C. Appellants/Petitioners never filed with the Town or the BZA a site specific development plan ("Site Plan") for the subject property, containing the elements required by EMO Section D-19 A.2 and A.4.
- D. Before the Appellants/Petitioners applied for permits to build on the subject property, the Town changed the LMO and the Zoning Map, and placed the subject property in a Zoning District RM8, limiting construction of buildings to 45 feet above base flood elevation and that is the limitation currently applicable to Appellants/Petitioners for the subject property.
- E. Appellants/Petitioner never applied for nor acquired any vested right to build to 75 feet above base flood elevation on the subject property.
- F. Any Finding of Fact that is deemed to be a Conclusion of Law shall be deemed such.

CONCLUSIONS OF LAW

Having duly considered these matters before this court, and having reviewed all of the Record and materials before me, and having evaluated the able (and sometimes contrary) arguments of counsel for the parties, I make the following Conclusions of Law:

These variance issues are covered by provisions of the South Carolina Code of Law and the Town's LMO, as follows:

Article A (S.C. Code § 6-29-1540 (2014)), is the "umbrella" or enabling State legislation for the Town's LMO provisions on these variance issues, and provides as follows:

"A vested right established by this article and in accordance with the standards and procedures in the land development ordinances or regulations adopted pursuant to this chapter is subject to the following conditions and

limitations:

(1) the form and contents of a site specific development plan must be prescribed in the land development ordinances or regulations;

(2) the factors that constitute a site specific development plan sufficient to trigger a vested right must be included in the land development ordinances or regulations;

(3) if a local governing body establishes a vested right for a phased development plan, a site specific development plan may be required for approval with respect to each phase in accordance with regulations in effect at the time of vesting;

(4) a vested right established under a conditionally approved site specific development plan or conditionally approved phased development plan may be terminated by the local governing body upon its determination, following notice and public hearing, that the landowner has failed to meet the terms of the conditional approval;

(5) the land development ordinances or regulations amended pursuant to this article must designate a vesting point earlier than the issuance of a building permit but not later than the approval by the local governing body of the site specific development plan or phased development plan that authorizes the developer or landowner to proceed with investment in grading, installation of utilities, streets, and other infrastructure, and to undertake other significant expenditures necessary to prepare for application for a building permit;

(6) a site specific development plan or phased development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation, or special exception is obtained;

(7) a vested right for a site specific development plan expires two years after vesting. The land development ordinances or regulations must authorize a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. The land development ordinances or regulations may authorize the local governing body to:

- (a) set a time of vesting for a phased development plan not to exceed five years; and
- (b) extend the time for a vested site specific development plan to a total of five years upon a determination that there is just cause for extension and that the public interest is not adversely affected. Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations;
- (8) a vested site specific development plan or vested phased development plan may be amended if approved by the local governing body pursuant to the provisions of the land development ordinances or regulations;
- (9) a validly issued building permit does not expire or is not revoked upon expiration of a vested right, except for public safety reasons or as prescribed by the applicable building code;
- (10) a vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval;
- (11) a vested site specific development plan or vested phased development plan is subject to later enacted federal, state, or local laws adopted to protect public health, safety, and welfare including,

but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. The issuance of a building permit vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical, and mechanical codes in force at the time of the issuance of the building permit;

(12) a vested site specific development plan or vested phased development plan is subject to later local governmental overlay zoning that imposes site plan-related requirements but does not affect allowable types, height as it affects density or intensity of uses, or density or intensity of uses;

(13) a change in the zoning district designation or land-use regulations made subsequent to vesting that affect real property does not operate to affect, prevent, or delay development of the real property under a vested site specific development plan or vested phased development plan without consent of the landowner;

(14) if real property having a vested site specific development plan or vested phased development plan is annexed, the governing body of the municipality to which the real property has been annexed must determine, after notice and public hearing in which the landowner is allowed to present evidence, if the vested right is effective after the annexation;

(15) a local governing body must not require a landowner to waive his vested rights as a condition of approval or conditional approval of a site specific development plan or a phased development plan; and (16) the land development ordinances or regulations adopted pursuant to this article may provide additional terms or phrases, consistent with the conditions and limitations of this section, that are necessary for the implementation or determination of vested rights.”

B. The Town’s LMO locally implements the foregoing State statute in several LMO provisions, as follows:

(1) “All words, terms, phrases and expressions used in this **Ordinance** shall have their usual and customary meaning in the context of the general purposes of this **Ordinance** set out in Sec. 16-1-103, Purpose and Intent, and elsewhere. Defined terms in this **Ordinance** shall have the meaning stated in the definition of the term. Defined terms are shown in bold italicized type. Where a defined term is not shown in bold italicized type, it shall have its usual and customary meaning.”

LMO Section 16-10-101

(2) “Site Plan. A detailed engineering plan, to scale, showing **uses**, and **structures**, proposed for a **parcel** of **land** as required by this **Ordinance**.” LMO Section 16-10-104.

(3) Variance Submittal Requirements:

“An **application** for variance shall consist of information necessary for the **Board of Zoning Appeals** to make a determination regarding the variance request, including but not limited to the following:

1. An **application** form as published by the **Official** and appropriate to the variance requested, with a fee as required by Sec. 16-2-102.C.2, Application Fees.

2. A **site plan** at a scale of 1"=30' accurately showing the variance(s) requested. If the **application** is for a variance of Sec. 16-6-102.D, Wetland Buffer Standards, the survey must be **certified by the permitting authority**.

3. Notarized certification, written and signed by the **development site** owner of record, that such owner formally consents to the proposed **development**.

4. A written narrative explaining in detail the variance(s) requested and how the criteria of Sec. 16-2-103.S.4, Variance Review Standards, apply to the variance request.

5. Any supporting documentation deemed necessary by the **applicant**.

6. A copy of the proposed Mailed Notice as required by Sec. 16-2-102.E. LMO Appendix D-19A.

II. Neither LMO Section 16-2-102.J.1, or S.C. Code § 6-29-1520(9) afford Appellants/Petitioners relief from the more particular provisions of the LMO and the SC Code cited in the section next above.

III. There is more than ample evidence in the Record to support the BZA's March 26, 2018 Decision, here appealed from.

IV. There was no error of law, no arbitrariness or capriciousness, and no unreasonableness, in the BZA's Decision that there was no "site specific development plan" before the BZA at the 2016 variance hearing, compliant

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) Civil Action No.: 2018-CP-07-00784

BRADLEY CIRCLE VACATION)
PARTNERS, LLC and MONTI)
DEVELOPMENT HH, LLC,) **ORDER**

Petitioners/Appellants,)
vs.)
TOWN OF HILTON HEAD)
ISLAND, TOWN OF HILTON)
HEAD ISLAND BOARD OF)
ZONING APPEALS, TAMARA)
BECKER and RHONDA CARPER,)
Respondents.)

GENERATED BY THE CLERK

THIS MATTER came before me for a hearing in chambers in Beaufort, South Carolina on August 23, 2018. The hearing was upon the appeal by the Petitioners/Appellants from a decision previously made by the Town of Hilton Head Island's Board of Zoning Appeals (BZA), concerning issues of allowable heights for residential buildings at certain locations in the Bradley Beach Circle neighborhood of the Town of Hilton Head Island.

Appearing for the Petitioners/Appellants was Drew A. Laughlin, Attorney at Law, of the law firm of Laughlin & Bowen, P.C., of Hilton Head Island. Gregory M. Alford, Attorney at Law, of the law firm of Alford Law Firm, LLC, also of Hilton Head Island, appeared on behalf of the Respondents Town of Hilton Head Island (Town) and Town of Hilton Head Island Board of Zoning Appeals. Barry L. Johnson, Attorney at Law, of the law firm of Johnson & Davis, PA, of Bluffton, South Carolina, appeared on behalf of the Respondents Tamara Becker and Ronda Carper. (It has been pointed out to the court that Rhonda Carper is referenced in the official record of this case as such, but the proper spelling of her name is Ronda Carper.)

FILED BY: J. M. ...

The parties filed pleadings and the BZA Record was duly filed with the court. Argument was had on all issues, and ably conducted by all counsel.

BACKGROUND

Appellants/Petitioners are the proposed developers/builders of tall, multi-story residence buildings in the Bradley Beach Circle neighborhood of the Town. Respondents Becker and Carper own property and reside in that neighborhood, and object to the proposed heights of those buildings.

In February of 2016, the Appellants/Petitioners applied for a variance from certain requirements of the Town's Land Management Ordinance (LMO) and, as required by law, that variance application was considered by the BZA. Specifically, that variance application (VAR 352-2016) requested only these variances for the subject property:

- A. Variance from LMO § 16-5-102, Adjacent Street Setbacks (and setback angles);
- B. Variance from LMO § 16-5-103, Adjacent Street Buffers.

Nothing in that variance application requested a variance for any specific heights of the proposed buildings for the subject property. At the time of those proceedings in March 2016, the LMO Zoning District, in which the subject property was located, limited building heights to 75 feet above base flood elevation.

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¹ Base Flood Elevation is defined in the Town's LMO Section 16-10-102.3

RECEIVED VICTA DISTRICT COURT FOR THE COUNTY OF BEAUFORT COMMON PLEAS CASE#2018CP0700784

A. the BZA's decision was based on an erroneous construction of S.C. Code Ann. § 6-29-1520 (9) and what constitutes the site specific development plan as defined by that statute;

B. there is no evidence in the record that reasonably supports the BZA's finding (or erroneous conclusion based on an error of law) that the variance application for the subject property (VAR 352-2016) did not sufficiently describe a site specific development plan, when the application included a development plan which described with reasonable certainty the types and density or intensity of uses for the specific property or properties identified in the application;

C. the BZA's conclusion of law that the granting of variances in VAR 352-2016 did not create a vested right, as defined by S.C. Code Ann. § 6-29-1520, to build the single-family homes described and depicted in the variance application to a maximum height of 75 feet above base flood elevation is error as a matter of law; and

D. the BZA's conclusion of law that the granting of variances in VAR 352-2016 did not create a vested right, as defined by S.C. Code Ann. § 6-29-1520, and that the properties are therefore restricted to a height of 45 feet above base flood elevation is error as a matter of law.

The Respondents Town and BZA, in response, asserted defenses of (1) general denial; (2) qualified specific denials; (3) failure to state a claim because of the language in the Appeal/Petition; and (4) that the BZA decision is supported by some evidence reasonably supporting the BZA's factual findings, which is sufficient to satisfy the standard of review in such an appeal as this.

The Respondents Becker and Carper, in response, asserted defenses of (1) qualified general denial; (2) pending ordinance doctrine; (3) Town of Hilton Head Island Land Management Ordinance (LMO) Variance Application Requirements.

STANDARD OF REVIEW

S.C. Code Ann. § 6-29-840 prescribes the standard of review a circuit court should apply when considering an appeal from a local zoning board. That section provides that “[t]he findings of fact by a board of zoning appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence.” S.C. Code Ann. § 6-29-840(A).

However, a reviewing court in a zoning case may rely on uncontroverted facts which appear in the record, but not in a zoning board’s findings.” *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (Ct. App. 2000).

A zoning board’s factual findings will not be disturbed on appeal unless the record contains no evidence reasonably supporting the findings. *Boehm v. Town of Sullivan’s Island*

Board of Zoning Appeals, et al., Opinion No. 5546, filed March 28, 2018. In reviewing questions on appeal, the court should determine only whether the decision of the board is correct as a matter of law. *Id.* However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its

discretion. An abuse of discretion occurs when a board’s decision is unsupported by the evidence or controlled by an error of law. *Id.* “[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact.” *Id.* (quoting *Helicopter Sols., Inc. v. Hinde*, 441 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) and *Mikell v. Cty. of Charleston*, 386 S.C. 153, 158, 687 S.E. 326, 329 (2009)).

“Although great deference is accorded the decisions of those charged with interpreting and

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applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance.” *Id.* quoting *Helicopter Sols*, 414 S.C. 1 at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).

ARGUMENTS OF APPELLANTS/PETITIONERS

In support of their positions, Appellants/Petitioners argue as follows:

First, that LMO § 16-2-102.J.1 provides that approval of the variance application, VAR 352-2016, constituted approval of the site specific development plan for the subject properties and established a vested right in accordance with the South Carolina Vested Rights Act, S.C. Code Ann. § 6-29-1510, *et seq.*, to undertake and complete the development of the property under the terms and conditions of the site specific development plan.

Second, that S.C. Code Ann. § 6-29-1520 (9) defines “site specific development plan” as “a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties.”

Third, that S.C. Code Ann. § 6-29-1520(10) defines “vested right” as “the right to undertake and complete the development of property under the terms and conditions of the site specific development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter.” “Vested rights under zoning

ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances”. *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986).

Fourth, that their 2016 application for variance (VAR 352-2106) clearly described a plan to develop two single family homes with four full stories over parking on two specifically

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identified parcels (together, the "subject property"). They contend that the application included a subdivision plat, as-built survey, detailed site plans showing the proposed location of the homes on the lots, and elevation drawings of the homes, although their application did not specify the exact height of the homes, because the applicant was not requesting a variance from the allowed height of 75 feet. However, the description given was more than sufficient, in their view, to describe the size and height of the homes with reasonable certainty.

Fifth, that the Record is devoid of evidentiary support for the BZA's finding that the 2016 variance application did not describe a development plan for the subject properties.

Sixth, that S.C. Code Ann. § 6-29-1520(9) requires only that the plan "describe with reasonable certainty the types and density or intensity of uses" for the properties. They contend that the description of the planned development as being two single family homes each with four full stories over parking, the detailed site plan, and the illustrative elevation drawings clearly meet the statutory definition. Further, they contend that the SC statute does not require detailed construction drawings and specifications or a specific height measurement for the homes that are

clearly shown to be four stories over parking and located in accordance with a detailed site plan and that, therefore, the BZA's "Finding of Fact" that the variance application lacked a satisfactory development plan was not only factually incorrect, but, *arguendo*, it was also based on an erroneous legal construction of the ordinance. They cite to *Boehm v. Town of Sullivan's Island Board of Zoning Appeals, supra*.

At the hearing before me, Appellants/Petitioners summarized their arguments as boiling down to this: That LMO § 16-2-102.J.1, properly applied, means that the BZA's variance approval of March 28, 2016 (VAR 352-2016) constituted approval of the site specific development plan for the subject property and established a vested right under S.C. Code § 6-29-

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15:10, et seq., to undertake and develop the subject property under the terms and conditions of that site-specific development plan, to a height of 75 feet above base flood elevation.

ARGUMENTS OF RESPONDENTS BECKER AND CARPER

Respondents Becker and Carper argued in support of their positions as follows:

First, that the LMO, in Appendix D-19, adds more local requirements as required to implement the SC statute, and prescribes the "submittal requirements" for a variance application to the BZA including, in pertinent parts:

- A. "A site plan at a scale of 1"=30' accurately showing the variances requested . . . and the detailed engineering plan also there required. (LMO Appendix D-19 A.2).

B. "A written narrative explaining in detail the variance(s) requested and how the criteria of (LMO) § 16-2-103.S.4, Variance Review Standards, apply to the request." (LMO Appendix D-19 A.4).

Second, that nothing was presented in the Record before the BZA in compliance with LMO Appendix D-19 A.2, and A.4, as quoted above, to demonstrate that the subject variance application contained either the (A) required 1"=30' site plan accurately showing any height variance requested, or (B) a narrative requesting such a height variance.

Third, that the 2016 variance requested did not comply with LMO § 16-2-103.S.4, in that it did not show that the variance would not be a substantial detriment to adjacent property or the public good, and that the character of the zoning district where the property is located would not be harmed by the granting of the variance.

Fourth, Respondents Becker and Carper also demonstrated that the drawing on which Appellants/Petitioners rely (Record, Drawing attached as Attachment G, and Record, BZA

Hearing March 28, 2018 Transcript, p. 28, 1-19 - p. 29, 1-4; p. 40, 1-15 - p. 41, 1-10) for their site-specific plan is for a different property, 22 Bradley Beach Circle, and not for the subject property at 28 Bradley Beach Circle.

ARGUMENTS OF RESPONDENTS BECKER AND CARPER

Fifth, and in addition, Respondents Becker and Carper asserted that the Pending Ordinance Doctrine applied and barred the Petitioners/Appellants from any vested right to build a building on the subject property in excess of 45 feet above base flood elevation.

At the hearing before me, Respondents Becker and Carper concluded their arguments by asserting that the Decision of the BZA was reasonably supported by the Record and evidence before the BZA, and that the BZA Decision was not erroneous as a matter of law and that the BZA Decision was not an abuse of discretion, nor was it arbitrary or capricious.

ARGUMENTS OF RESPONDENTS TOWN AND BZA

The Respondents Town and BZA supported the arguments of Respondents Becker and Carper and pointed to the absence of a site-specific development plan, compliant with LMO Appendix D-19, as outlined in more detail in the discussion of the arguments of Respondents Becker and Carper. The Respondents Town and BZA also strongly emphasized that the Record before the BZA (and also before this court) contained more than enough evidence from which the BZA could have reasonably, and not erroneously as a matter of law, concluded that there was no LMO-compliant site-specific development plan (Site Plan) at the 2016 BZA variance proceeding sufficient to consider vesting height to 75 feet above base flood elevation.

FINDINGS OF FACT

Having duly considered these matters before this court, and having reviewed all of the Record and materials before me, and having evaluated the able (and sometimes contrary) arguments of counsel for the parties, I make the following material Findings of Fact:

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A. The subject property for purposes of this matter is known as 28 Bradley Beach Circle, and 3 Wheelk Street, Town of Hilton Head Island, and consists of two parcels: TIN: R510 009 000 0896 0000 (0.115 acres) and TIN R510 009 000 1102 0000 (0.189 acres), and is not the property known as 22 Bradley Beach Circle, Town of Hilton Head Island.

B. At no time did Appellants/Petitioners apply for a height variance to build on the subject property above 45 feet above base flood elevation.

C. Appellants/Petitioners never filed with the Town or the BZA a site specific development plan ("Site Plan") for the subject property, containing the elements required by LMO Section D-19.A.2 and A.4.

D. Before the Appellants/Petitioners applied for permits to build on the subject property, the Town changed the LMO and the Zoning Map, and placed the subject property in a Zoning District RM8, limiting construction of buildings to 45 feet above base flood elevation and that is the limitation currently applicable to Appellants/Petitioners for the subject property.

E. Appellants/Petitioner never applied for nor acquired any vested right to build to 75 feet above base flood elevation on the subject property.

F. Any Finding of Fact that is deemed to be a Conclusion of Law shall be deemed such.

CONCLUSIONS OF LAW

Having duly considered these matters before this court, and having reviewed all of the Record and materials before me, and having evaluated the able (and sometimes contrary) arguments of counsel for the parties, I make the following Conclusions of Law:

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I. These variance issues are covered by provisions of the South Carolina Code of Law and the Town's LMO, as follows:

A. S.C. Code § 6-29-1540 (2014), is the "umbrella" or enabling State legislation for the Town's LMO provisions on these variance issues, and provides as follows:

"A vested right established by this article and in accordance with the standards and procedures in the land development ordinances or regulations adopted pursuant to this chapter is subject to the following conditions and limitations:

(1) the form and contents of a site specific development plan must be prescribed in the land development ordinances or regulations;

(2) the factors that constitute a site specific development plan sufficient to trigger a vested right must be included in the land development ordinances or regulations;

(3) if a local governing body establishes a vested right for a phased development plan, a site specific development plan may be required for approval with respect to each phase in accordance with regulations in effect at the time of vesting;

(4) a vested right established under a conditionally approved site specific development plan or conditionally approved phased development plan may be terminated by the local governing body upon its determination, following notice and public hearing, that the landowner has failed to meet the terms of the conditional approval;

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(5) the land development ordinances or regulations amended pursuant to this article must designate a vesting point earlier than the issuance of a building permit but not later than the approval by the local governing body of the site specific development plan or phased development plan that authorizes the developer or landowner to proceed with investment in grading, installation of utilities, streets, and other infrastructure, and to undertake other significant expenditures necessary to prepare for application for a building permit;

(6) a site specific development plan or phased development plan for which a variance, regulation, or special exception is necessary does not confer a vested right until the variance, regulation, or special exception is obtained;

(7) a vested right for a site specific development plan expires two years after vesting. The land development ordinances or regulations must authorize a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. The land development ordinances or regulations may authorize the local governing body to:

(a) set a time of vesting for a phased development plan not to exceed five years; and

(b) extend the time for a vested site specific development plan to a total of five years upon a determination that there is just cause for extension and that the public interest is not adversely affected. Upon expiration of a vested right, a building permit may be issued for development only in accordance with applicable land development ordinances or regulations;

(8) a vested site specific development plan or vested phased development plan may be amended if approved by the local governing body pursuant to the provisions of the land development ordinances or regulations;

(9) a validly issued building permit does not expire or is not revoked upon expiration of a vested right, except for public safety reasons or as prescribed by the applicable building code;

(10) a vested right to a site specific development plan or phased development plan is subject to revocation by the local governing body upon its determination, after notice and public hearing, that there was a material misrepresentation by the landowner or substantial noncompliance with the terms and conditions of the original or amended approval;

(11) a vested site specific development plan or vested phased development plan is subject to later enacted federal, state, or local laws adopted to protect public health, safety, and welfare including,

but not limited to, building, fire, plumbing, electrical, and mechanical codes and nonconforming structure and use regulations which do not provide for the grandfathering of the vested right. The issuance of a building permit vests the specific construction project authorized by the building permit to the building, fire, plumbing, electrical, and mechanical codes in force at the time of the issuance of the building permit;

(12) a vested site specific development plan or vested phased development plan is subject to later local governmental overlay zoning that imposes site plan-related requirements but does not affect allowable types, height, as it affects density or intensity of uses, or density or intensity of uses;

(13) a change in the zoning district designation or land-use regulations made subsequent to vesting that affect real property does not operate to affect, prevent, or delay development of the real property under a vested site specific development plan or vested phased development plan without consent of the landowner;

(14) if real property having a vested site specific development plan or vested phased development plan is annexed, the governing body of the municipality to which the real property has been annexed must determine, after notice and public hearing in which the landowner is allowed to present evidence, if the vested right is effective after the annexation;

(15) a local governing body must not require a landowner to waive his vested rights as a condition of approval or conditional approval of a site specific development plan or a phased development plan; and

(16) the land development ordinances or regulations adopted pursuant to this article may provide additional terms or phrases, consistent with the conditions and limitations of this section, that are necessary for the implementation or determination of vested rights.”

B. The Town's LMO locally implements the foregoing State statute in several LMO provisions, as follows:

(1) All words, terms, phrases and expressions used in this **Ordinance** shall have their usual and customary meaning in the context of the general purposes of this **Ordinance** set out in Sec. 16-1-103, Purpose and Intent, and elsewhere. Defined terms in this **Ordinance** shall have the meaning stated in the definition of the term. Defined terms are shown in bold italicized type. Where a defined term is not shown in bold italicized type, it shall have its usual and customary meaning.” LMO Section 16-10-101A.

(2) **Site Plan**: A detailed engineering plan, to scale, showing **uses**, and **structures** proposed for a **parcel** of **land** as required by this **Ordinance**. LMO Section 16-10-104.

(3) **Variance Submittal Requirements**:
An **application** for variance shall consist of information necessary for the **Board of Zoning Appeals** to make a determination

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on the following regarding the variance request, including but not limited to the following:

An **application** form as published by the **Official** and appropriate fee as required by Sec. 16-2-102.C.2, Application Fees.

2. A **site plan** at a scale of 1"=30', accurately showing the variance(s) requested. If the **application** is for a variance of Sec. 16-6-102.D, Wetlands Buffer Standards, the survey must be certified by the permitting authority.

3. Notarized certification, written and signed by the **development site** owner of record, that such owner formally consents to the proposed **development**.

4. A written narrative explaining in detail the variance(s) requested and how the criteria of Sec. 16-2-103.S.4, Variance Review Standards, apply to the variance request.

5. Any supporting documentation deemed necessary by the **applicant**.

6. A copy of the proposed Mailed Notice as required by Sec. 16-2-102.E." LMO Appendix D-19.A.

II. Neither LMO Section 16-2-102.J.1, or S.C. Code § 6-29-1520(9) afford Appellants/Petitioners relief from the more particular provisions of the LMO and the SC Code cited in the section next above.

III. There is more than ample evidence in the Record to support the BZA's March 26, 2018 Decision, here appealed from.

IV. There was no error of law, no arbitrariness or capriciousness, and no unreasonableness, in the BZA's Decision that there was no "site specific development plan" before the BZA at the 2016 variance hearing, compliant with S.C. Code §6-29-1520 and LMO Appendix D-19, and that Appellants/Petitioners had not acquired a vested right to build on the subject property to a height above 45 feet and up to 75 feet, above base flood elevation in the now-existing RM8 Zoning District.

V. Any Conclusion of Law deemed to be a Finding of Fact shall be deemed such.

CONCLUSION

Based on the Record, the applicable law and the foregoing, therefore, I deny the appeal/petition of Appellants/Petitioners and uphold the BZA Decision of March 26, 2018 in this matter.

AND IT IS SO ORDERED.

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APPROVED BY THE CLERK OF THE COURT OF COMMON PLEAS



Beaufort Common Pleas

Case Caption: Bradley Circle Vacation Partners, LLC, plaintiff, et al VS Hilton Head Island, Town Of, defendant, et al

Case Number: 2018CP0700784

Type: Order/Other

So Ordered:

s/Marvin H. Duker III #3069

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Case No.	Case Name	Case Type	Case Status
2018CP0700784	Bradley Circle Vacation Partners, LLC, plaintiff, et al VS Hilton Head Island, Town Of, defendant, et al	Order/Other	So Ordered

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-07-00784

Bradley Circle Vacation Partners, LLC, et al.

Town of Hilton Head Island, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This came before me December 18th, 2018 on Plaintiffs' Motion to Alter and/or Amend, filed November 19th, 2018. After hearing from parties and further review of the file, I hereby deny the motion.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

2019 JAN 23 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700784

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Circuit Court Judge 3069 Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Drew A. Laughlin	Brian E. Hulbert
	Greg M. Alford
	Barry L. Johnson
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

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ELECTRONICALLY FILED - 2019 Jan 23 3:10 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700784

Clerk of Court
 Beaufort Common Pleas
 1000
 State
 Judge Code
 Clerk of Court (Office Use Only)

The judgment was entered on the 10th day of January, 2019, at Beaufort, North Carolina, in the above captioned case, and the same is hereby affirmed and confirmed.

 Clerk of Court

 Attorney for the Plaintiff(s)

 Attorney for the Defendant(s)



Case Caption: Bradley Circle Vacation Partners Llc , plaintiff, et al VS Hilton Head Island Town Of , defendant, et al
Case Number: 2018CP0700784
Type: Order/Other

So Ordered:
 s/Marvin H. Dukes III #3069

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT) CIVIL ACTION NO.: 2018-CP-07-

BRADLEY CIRCLE VACATION)
PARTNERS, LLC and MONTI)
DEVELOPMENT HH, LLC,)

Petitioners/Appellants,)

SUMMONS

v.)

TOWN OF HILTON HEAD ISLAND,)
TOWN OF HILTON HEAD ISLAND)
BOARD OF ZONING APPEALS,)
TAMARA BECKER and RHONDA)
CARPER,)

Respondents.)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you and to serve a copy of your answer to said Petition upon the subscriber, Drew A. Laughlin, Esquire, in his office at the law firm of Laughlin & Bowen, P.C., 92A Main Street, P.O. Drawer 21119, Hilton Head Island, South Carolina 29925 within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, Petitioners/Appellants will apply to the Court for the relief demanded in the Petition and judgment by default will be rendered against you.

STATE OF SOUTH CAROLINA IN THE COUNTY OF COMMON PLEAS

CIVIL ACTION NO. 2018-CP-784

By: s/Drew A. Laughlin

Drew A. Laughlin, SC Bar No. 3141

Attorneys for Appellants/Petitioners

P.O. Drawer 21119

Hilton Head Island, SC, 29925-1119

(843) 689-5700

drew.laughlin@laughlinandbowen.com

April 10, 2018

SUMMONS

Petitioner/Appellant

TOWN OF HILTON HEAD ISLAND

TOWN OF HILTON HEAD ISLAND

NO. 100 OF ZONING ORDINANCE

TAMARA BECKER and KIMONDA

CHAPMAN

Respondents

YOU, THE RESPONDENTS ABOVE-NAMED,

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of

which is herewith served upon you and to serve a copy of your answer to said Petition upon the

undersigned Drew A. Laughlin, Partner in the law firm of Laughlin & Bowen, P.C.,

P.O. Main Street, P.O. Drawer 21119, Hilton Head Island, South Carolina 29925 within 30 days

after the service hereof, exclusive of the day of such service, and if you fail to answer the

Petition within the time aforesaid, the Petitioner's application will apply to the Court for the relief

demanded in the Petition and judgment by default will be rendered against you

BEAUFORT COUNTY COMMON PLEAS - CIVIL ACTION NO. 2018-CP-784

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS)
))
(COUNTY OF BEAUFORT) CIVIL ACTION NO. 2018-CP-07-00784)

BRADLEY CIRCLE VACATION)
PARTNERS, LLC and MONTI)
DEVELOPMENT HH, LLC,)
Petitioners/Appellants,)

NOTICE OF APPEAL
AND PETITION

v.)
TOWN OF HILTON HEAD ISLAND,) (Non-Jury)
TOWN OF HILTON HEAD ISLAND)
BOARD OF ZONING APPEALS,) EXPEDITED HEARING REQUESTED
TAMARA BECKER and RHONDA)
CARPER,)
Respondents.)

COME NOW the Petitioners/Appellants Bradley Circle Vacation Partners, LLC and
Monti Development HH, LLC (collectively hereinafter "Appellants"), by counsel, appeal the
decision of Respondent Town of Hilton Head Island Board of Zoning Appeals, APL439-2018,
on the grounds that the findings and conclusions of the board are arbitrary and capricious, an
abuse of the boards' discretion, and erroneous as a matter of law because:

a. The BZA's decision was based on an erroneous construction of S.C. Code Ann.
Section 6-29-1520(9) and what constitutes "site specific development plan" as defined by that
statute.

b. There is no evidence in the record that reasonably supports the BZA's finding (or
erroneous conclusion based on an error of law) that the variance application for the subject

BEAUFORT COUNTY, SOUTH CAROLINA - BEAUFORT COUNTY COMMON PLEAS - CIVIL PROCEDURE DIVISION

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property (VAR 352-2016) did not sufficiently describe a site specific development plan, when the application included a development plan which described with reasonable certainty the types and density or intensity of uses for the specific property or properties identified in the application.

c. The BZA's conclusion of law that the granting of variances in VAR 352-2016 did not create a vested right, as defined by S.C. Code Ann. Section 6-29-1520, to build the single-family homes described and depicted in the variance application to maximum height of 75 feet above base flood elevation is error as a matter of law.

d. The BZA's conclusion of law that the granting of variances in VAR 352-2016 did not create a vested right, as defined by S.C. Code Ann. Section 6-29-1520, and that the properties are therefore restricted to a height of 45 feet above base flood elevation is error as a matter of law.

This appeal is made pursuant to S.C. Code Ann. Section 6-29-820 *et seq.* In support hereof, Appellants would show and allege:

1. Appellant Bradley Circle Vacation Partners, LLC, a South Carolina limited liability company, is the owner of real property located at 28 Bradley Circle on Hilton Head Island, South Carolina and shown as LOT 1A, containing 0.192 acres, more or less, on the subdivision plat recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 146 at Page 194.

2. Appellant Monti Development HH, LLC, a South Carolina limited liability company, is the owner of real property located at 28 Bradley Circle on Hilton Head Island, South Carolina and shown as LOT 2B, containing 0.192 acres, more or less, on the subdivision plat

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recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 146 at Page 194.

3. Respondent Town of Hilton Head Island is a body politic and a political subdivision of the State of South Carolina situated in Beaufort County, South Carolina.

4. Respondent Town of Hilton Head Island Board of Zoning Appeals (hereinafter, "BZA") is a creation of the Town of Hilton Head Island existing under authority of S.C. Code Ann. Section 6-29-780, et seq., Code of Laws of South Carolina (1976), as amended. The BZA is the governmental entity designated by the Town's Land Management Ordinance ("LMO") to approve variances from provisions of the LMO and to hear appeals of formal written interpretations of the LMO by the Town's LMO Official.

5. Upon information and belief, Respondents Tamara Becker and Rhonda Carper are citizens and residents of the Town of Hilton Head Island.

6. On or about February 26, 2016, Appellants' predecessors in title applied for a variance from certain provisions of the LMO for the development of LOT 1A and LOT 2B (hereinafter the "subject properties"). Specifically, the application sought relief from certain setbacks and buffers and elimination of setback angles so that the properties could be developed as two single family residences of four stories over parking. The application included, among other things, a narrative description of the proposed development and the need for the requested variances, a subdivision plat, site surveys with proposed building footprints, and elevation drawings of the proposed homes.

7. Following a public hearing on March 28, 2016, the BZA approved the requested variances.

8. At the time the variances were approved, the LMO allowed homes on the properties to be built to a maximum height of 75 feet above base flood elevation.

9. In May 2016, after the variances were approved, the Town of Hilton Head Island amended the LMO and reduced the maximum height of homes in the applicable zoning district to 45 feet above base flood elevation.

10. On August 1, 2017, Appellants submitted Applications for Commercial Building Permits to the Town of Hilton Head Community Development Department for the construction of the two single family homes with four stories over parking, substantially identical to those described and depicted in the development plan approved by the BZA when it approved the variances for the properties. The height of the homes described in the plans submitted with the Applications was slightly less than 57 feet above base flood elevation.

11. On August 23, 2017, Appellants' representative, Radu Chindris, received an email from the Town's LMO Official stating:

There is some discrepancy between the variances that you received for 28 Bradley Circle and the settlement agreement related to 28 Bradley Circle in terms of the allowable height at this address. Until such time that this discrepancy regarding the height is resolved between the attorneys for you and the parties involved in the settlement agreement, the Town will not approve any permits for the ... parcels.

12. On August 24, 2017, the LMO Official sent an email to Respondent Tamara Becker:

I wanted to let you know that I sent an email to Radu yesterday letting him know that the building permits at 28 Bradley Circle would not be approved until the height issue was resolved. I told him that his attorney and the attorney for the Toddy's (sic) would need to work out the discrepancy between the language of the settlement agreement and what was vested by the variance. Please call or email me if you need additional information regarding this.

13. Upon information and belief, the settlement agreement referenced in the LMO Official's emails is an agreement that settled an appeal of the subject variances. That agreement

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did not modify, terminate, or limit the variances or Appellants' vested rights or otherwise prohibit the homes described in the Applications.

14. By letter from their counsel dated December 14, 2017, Appellants requested a written interpretation from the LMO Official, pursuant to LMO Section 16-2-103.R, concerning their vested rights under the LMO and their right to receive the requested building permits.

15. By letter dated February 8, 2018, the LMO Official issued a determination that the site plan associated with the variance application is vested for a maximum height of 75' above base flood elevation.

16. Respondents Becker and Carper appealed the LMO Official's determination.

17. At its meeting on March 26, 2018, the BZA voted to modify the determination of the LMO Official. The BZA found (or concluded) that the previous variance application, VAR 352-2016, did not include a site specific development plan as defined in South Carolina Code Ann. Section 6-29-1520 and therefore concluded as a matter of law that approval of the variances did not create a vested right to build to the height allowed when the variances were approved.

STANDARD OF REVIEW

S.C. Code Ann. Section 6-29-840 prescribes the standard of review a circuit court should apply when considering an appeal from a local zoning board. That section provides "[t]he findings of fact by a board of zoning appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." S.C. Code Ann. § 6-29-840(A). However, a reviewing court in a zoning case may rely on uncontroverted facts which appear in the record, but not in a zoning board's findings." *Vulcan Materials Co. v. Greenville Cty. Bd. of Zoning Appeals*, 342 S.C. 480, 491, 536 S.E.2d 892, 898 (Ct. App. 2000).

¹ None of the Respondents to this Petition were parties to the settlement agreement.

A zoning board's factual findings will not be disturbed on appeal unless the record contains no evidence reasonably supporting the findings. *Boehm v. Town of Sullivan's Island Board of Zoning Appeals, et al.*, Opinion No. 5546, filed March 28, 2018. In reviewing questions on appeal, the court should determine only whether the decision of the board is correct as a matter of law. *Id.* However, a decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion. An abuse of discretion occurs when a board's decision is unsupported by the evidence or controlled by an error of law. *Id.*

[I]ssues involving the construction of an ordinance are reviewed as a matter of law under a broader standard of review than is applied in reviewing issues of fact." *Id.* (quoting *Helicopter Sols., Inc. v. Hinde*, 441 S.C. 1, 9, 776 S.E.2d 753, 757 (Ct. App. 2015) and *Mikell v. City of Charleston*, 386 S.C. 153, 158, 687 S.E. 326, 329 (2009)). "Although great deference is accorded the decisions of those charged with interpreting and applying local zoning ordinances, a broader and more independent review is permitted when the issue concerns the construction of an ordinance." *Id.* quoting *Helicopter Sols.*, 414 S.C. 1 at 9-10, 776 S.E.2d at 757 (quoting *Mikell*, 386 S.C. at 158, 687 S.E.2d at 329).

LAW/ANALYSIS

LMO Section 16-2-102.J.1 provides that approval of the variance application, VAR 352-2016, constituted approval of the site specific development plan for the subject properties and established a vested right in accordance with the South Carolina Vested Rights Act, S.C. Code Ann. Section 6-29-1510, *et seq.*, to undertake and complete the development of the property under the terms and conditions of the site specific development plan.

S.C. Code Ann, Section 6-29-1520(9) defines "site specific development plan" as "a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties." (emphasis added)

S.C. Code Ann. Section 6-29-1520(10) defines "vested right" as "the right to undertake and complete the development of property under the terms and conditions of the site specific development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter." "Vested rights under zoning ordinances are undergirded by the same constitutional footing which precludes retroactive application of zoning ordinances". *Friarsgate, Inc. v. Town of Irmo*, 290 S.C. 266, 269, 349 S.E.2d 891, 893 (Ct. App. 1986).

The application for variance (VAR 352-2106) clearly describes a plan to develop two- and three-story residential buildings on the subject property (P) with a maximum of four single family homes with four full stories over parking on two specifically identified parcels. The application included a subdivision plat, as-built survey, detailed site plans showing the proposed location of the homes on the lots, and elevation drawings of the homes. The application did not specify the exact height of the homes, because the applicant was not requesting a variance from the allowed height of 75 feet. However, the description given was more than sufficient to describe the size of the homes with reasonable certainty.

As a result, the transcript of the BZA's March 28, 2016 hearing on the variance application reveals an extended discussion about the height of the homes. Matt Toddy, speaking in opposition to the variance, told the BZA:

[T]he drawing of the proposed building goes four stories over parking.... What you're going to end up with is a very large building, 50 feet high, if not more...

Transcript of March 28, 2016 BZA hearing at page 16.

COMMON PLEAS COURT, JUDGE JAMES R. HARRIS, JR. - COMMON PLEAS COURT, JUDGE JAMES R. HARRIS, JR.

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Charles Gibson told the BZA:

So this essentially would be 70+, up to 75 foot structure We're talking about a structure that could be that tall.

Transcript of March 28, 2016 BZA hearing at page 18.

Nicole Dixon, Town Senior Planner, reminded that BZA that three similar homes had recently been approved in the neighborhood.

The lot 22 (sic) that got approved several months back. This was what was approved for 22 Bradley, and they are four stories over parking. So it will be consistent with what's being redeveloped out there. I just wanted to bring that to your attention.²

Transcript of March 28, 2016 BZA hearing at page 19.

The record is devoid of evidentiary support for the board's finding that the variance application did not describe a development plan for the subject properties.

S.C. Code Ann. Section 6-29-1520(9) requires only that the plan "describe with reasonable certainty the types and density or intensity of uses" for the properties. The description of the planned development as being two single family homes each with four full stories over parking, the detailed site plan, and the illustrative elevation drawings clearly meet the statutory definition. The statute does not require detailed construction drawings and specifications or a specific height measurement for the homes that are clearly shown to be four stories over parking and located in accordance with a detailed site plan. The board's "Finding of Fact" that the variance application lacked a development plan was not only factually incorrect, it was also based on an erroneous construction of the ordinance, which is a legal conclusion, not a factual finding. *Boehm v. Town of Sullivan's Island Board of Zoning Appeals, supra.*

²The homes approved and constructed on Lot 22 are well in excess of 45 feet.

CONCLUSION

The BZA's decision to overrule LMO Official's interpretation and to deny Appellant's vested rights was controlled by errors of law and without evidentiary support. The decision was arbitrary, capricious, and an abuse of the board's discretion.³ It was incorrect as a matter of law and should be reversed.

WHEREFORE, Appellants pray that this honorable Court review the record in this case, including the variance application, VAR 352-2016, the Town Community Development Department's Staff Report and Recommendation on VAR 352-2016 to the BZA, transcript of the BZA public hearing on VAR 352-2016, Appellants' written request for interpretation by the LMO Official dated December 14, 2017, the LMO Official's written determination dated February 2018, the record of the BZA's hearing of March 26, 2018, and the BZA Notice of Action dated March 28, 2018, the controlling sections of the LMO, applicable state statutes and controlling case law and that the court:

1. Reverse the decision of the BZA and its modification of the determination of the LMO Official; and
2. Order that the variance granted in VAR 352-2016 constitutes approval of a site specific development plan for the subject properties and established a vested right in accordance with the South Carolina Vested Rights Act, S.C. Code Ann. Section 6-29-1510, *et seq.*, to undertake and complete the development of the property as two single family residences of four

³ The record before the BZA includes communications between staff of the Town planning department, the Town Attorney, and elected officials of the Town before and after Appellants submitted their applications for building permits that show that the Town planning staff and the Town Attorney understood that approval of the variance established vested rights to build the homes to the height shown on the submitted plans. See, e.g., email from Brian Hulbert, Town Staff Attorney, to TC Gibson dated August 1, 2017; email from Teri B. Lewis dated April 21, 2017. The name of the recipients of this email are identified only as "Terry and Tammy".

stories over parking subject to the then existing maximum height of 75 feet above base flood elevation, and

3. Award Appellants their costs of this action pursuant to S.C. Code Ann. Section 6-29-840(A); and

4. Issue such other and further relief as is just and proper.

WITNESSETH, Appellants pray that this Honorable Court review the record in this case, including the various LMO's, the Town Community Development Department's Staff Report and the BZA, and its decision, and that the court reverse the decision of the BZA and its modification of the determination of the LMO Official dated February 28, 2018, and the BZA Notice of February 28, 2018, the record of the BZA, the controlling sections of the LMO, applicable and that the court: April 10, 2018
By: Drew A. Laughlin
Drew A. Laughlin, SC Bar No. 3141
Attorneys for Appellants/Petitioners
P.O. Drawer 21119
Hilton Head Island, SC 29925-1119
(843) 689-5700
drew.laughlin@laughlinandbowen.com

The record before the BZA includes communications between staff of the Town Planning Department, the Town Council, and staff of the Town Police and Fire Departments. Appellants submitted their application for building permits for the two lots of the property and the Town Council and staff of the Town Planning Department established a vested right in accordance with the South Carolina Vested Rights Act, S.C. Code Ann. Section 6-29-1210, et seq. to undertake and complete the development of the property as two single family residential lots.

The record before the BZA includes communications between staff of the Town Planning Department, the Town Council, and staff of the Town Police and Fire Departments. Appellants submitted their application for building permits for the two lots of the property and the Town Council and staff of the Town Planning Department established a vested right in accordance with the South Carolina Vested Rights Act, S.C. Code Ann. Section 6-29-1210, et seq. to undertake and complete the development of the property as two single family residential lots.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)

COUNTY OF BEAUFORT) Civil Action No.: 2018-CP-07-00784

BRADLEY CIRCLE VACATION)
PARTNERS, LLC and MONTI)
DEVELOPMENT, HH, LLC,) RESPONDENTS', TAMARA BECKER'S AND
RHONDA CARPER'S, SECOND AMENDED
Petitioners/Appellants,) ANSWER TO PETITIONERS' NOTICE OF
APPEAL AND PETITION

vs.

TOWN OF HILTON HEAD)
ISLAND, TOWN OF HILTON)
HEAD ISLAND BOARD OF)
ZONING APPEALS, TAMARA)
BECKER and RHONDA CARPER,)
Respondents.

Respondents, Tamara Becker and Rhonda Carper ("Respondents Becker & Carper"), by and through their undersigned attorney at law, here submit their First Amended Answer to the Petitioners/Appellants' Notice of Appeal/Petition, and respectfully would show unto this Honorable Court as follows:

STANDARD OF REVIEW

An appeal from a board of zoning appeals to the circuit court is governed by S.C. Code Ann. 6-29-840 (2004), which states that "the findings of fact by the board of appeals must be treated in the same manner as a finding of fact by a jury, and the court may not take additional evidence." Furthermore this statute provides that, "[i]n determining the questions presented by the appeal, the court must determine only whether the decision of the board is correct as a matter of law." *Id.*

1. The courts agree with the plain language of this statute: "In reviewing the questions presented by the appeal of a decision of a board of zoning appeals, the court shall

determine only whether the decision of the board is correct as a matter of law. *Helicopter Solutions, Inc. v. Hinde*, 414 S.C. 1, 6, 776 S.E.2d 753, 759 (Ct. App. 2015).

2. "In the context of zoning, a decision of a reviewing body will not be disturbed if there is evidence in the record to support its decision; a court will refrain from substituting its judgment for that of the reviewing body, even if it disagrees with it." *Restaurant Row Assoc. v. Horry County*, 335 S.C. 209, 215, 516 S.E.2d 442, 448 (1999).

3. The decision of a municipal zoning board will be overturned if it is arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion; an abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. *Williams v. Lexington County Board of Zoning Appeals*, 413 S.C. 647, 651, 776 S.E.2d 749, 753 (Ct. App. 2015); *Newton v. Zoning Board of Appeals for Beaufort County*, 396 S.C. 112, 115, 719 S.E.2d 282, 285 (Ct. App. 2011).

4. "The construction of a statute by the agency charged with its administration should be accorded great deference and will not be overruled without a compelling reason." *Vulcan*, at 489, 536 S.E.2d at 901.

5. In applying the standard of appellate review, "[c]ourts reviewing the decisions of zoning boards . . . may look to written documents and records of proceedings as sufficient formats for final decisions, and may rely on uncontroverted facts which appear in the record, but not in a zoning board's findings." *Austin v. Board of Zoning Appeals for Town of Hilton Head Island*, 362 S.C. 29, 33, 606 S.E.2d 209, 213 (Ct. App. 2004); *Vulcan Materials Co. v. Greenville County Board of Zoning Appeals*, 342 S.C. 480, 488, 536 S.E.2d 892, 900 (Ct. App. 2000) [8].

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FOR A FIRST DEFENSE

(Printed Name)

6. Respondents Becker & Carper here repeat *verbatim* each of the above statement of the Appellate Standard of review and paragraphs of this First Amended Answer, Etc. and incorporate same herein by reference.

7. In this case, the Town of Hilton Head Island Board of Zoning Appeals ("BZA") made the following decision ("Decision"), from which Petitioners/Appellants have appealed: The Determination of the Town Official was overruled because:

- A. There was no site specific development plan.
- B. The 2016 Variance did not include any variance for the height(s) of buildings on the subject site.
- C. The Petitioners/Appellants had and have no vested right to construct buildings on the subject site to any particular height.
- D. The BZA decided that the Town Official's Determination on building height was incorrect, and overruled, to the extent that it would have permitted buildings on the subject site to exceed forty-five (45') feet above Base Flood Elevation (BFE).

8. Application of the Standard of Review to the Decision of the BZA, in the light of applicable statutory, ordinance and case law, and upon examination of the Certified Record on Appeal (which was the record before the BZA), leads to these conclusions:

- A. The Decision of the BZA in this case is supported by uncontested evidence in the Record, and
- B. The Decision of the BZA was not controlled by any error of law; and
- C. The Decision of the BZA should not be overruled by this Court.

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**FOR A SECOND DEFENSE
(Qualified General Denial)**

9. Respondents Becker & Carper here repeat *verbatim* each of the above statement of the Appellate Standard of review and paragraphs of this First Amended Answer, Etc. and

incorporate same herein by reference.

10. Respondents Becker & Carper deny each and every allegation set forth in the Petitioners/Appellants' Notice of Appeal/Petition, except such as are hereinafter specifically admitted.

11. Respondents Becker & Carper deny the allegations set forth in Paragraphs a., b., c., and d., of the Notice of Appeal/Petition.

12. Upon information and belief, Respondents Becker & Carper admit the allegations set forth in Paragraphs 1, 2, 3, 4, and 5, of the Notice of Appeal/Petition.

13. Lacking sufficient information or knowledge upon which to form a belief as to the truth or accuracy of the allegations set forth in Paragraphs 6, 7, 8, and 9, of the Notice of Appeal/Petition, the Respondents Becker & Carper deny same.

14. Respondents Becker & Carper admit the allegations set forth in Paragraph 10 of the Notice of Appeal/Petition except as to the last sentence thereof. Lacking sufficient information or knowledge upon which to form a belief as to the truth or accuracy of the allegations set forth in the last sentence of Paragraph 10 of the Notice of Appeal/Petition, Respondents Becker & Carper deny same.

15. Upon information and belief, Respondents Becker & Carper admit the allegations set forth in Paragraphs 11 and 12 of the Notice of Appeal/Petition.

16. Respondents Becker & Carper deny the allegations set forth in Paragraph 13 of the Notice of Appeal/Petition.

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17. Upon information and belief, Respondents Becker & Carper admit the allegations set forth in Paragraphs 14, 15, 16, and 17 of the Notice of Appeal/Petition.

18. The sections titled "Standard of Review" and "Law/Analysis," of the Petitioners/Appellants' Notice of Appeal/Petition, represent only the Petitioners/Appellants' opinions of legal issues, to which no response is required at this time by Respondents Becker & Carper.

FOR A THIRD DEFENSE BY WAY OF FIRST AFFIRMATIVE DEFENSE AND FIRST ADDITIONAL SUSTAINING GROUNDS (LMO Variance Application Requirements)

19. Respondents Becker & Carper here repeat *verbatim* each of the foregoing paragraphs of this First Amended Answer, Etc. and incorporate same herein by reference.

20. The Decision of the BZA was not an erroneous construction of S.C. Code Ann. § 6-29-1520(9), because that statute is to be applied by the BZA, through, and must be read in context with, S.C. Code Ann. § 6-29-1540(1), and the Town of Hilton Head Land Management Ordinance ("LMO") Appendix D-19.A.

21. S.C. Code Ann. § 6-29-1520(9) does define a "site specific development plan" as a "development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific piece of property." S.C. Code Ann. § 6-29-1520(9) (2013).

22. However, in context, S.C. Code Ann. § 6-29-1540(1) further stipulates, "The form and contents of a site-specific development plan must be prescribed in the land development ordinances or regulations." S.C. Code Ann. § 6-29-1540(1) (2013).

23. As applied to the BZA, pursuant to the aforementioned statutory provision, the "form and contents" for a variance are defined in LMO Appendix D-19.A, which prescribes the "submittal requirements" for a variance application to the BZA including in pertinent parts:

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A. "A site plan ["Site-Specific Development Plan"] at a scale of 1"=30' accurately showing the variances requested. Hilton Head, S.C., LMO Appendix D-19.A:2 (2017).

B. "A written narrative explaining in detail the variances requested and how the criteria of [LMO] Section 16-2-103.S:4, Variance-Review Standards, apply to the request." Hilton Head, S.C., LMO Appendix D-19.A.4 (2017).

24. As Respondents/Appellees are informed and believe, and as the Certified Record on Appeal shows, nothing was presented in that Record in compliance with LMO Appendix D-19.A:2, 4, as quoted above, to demonstrate that the 2016 Variance Application of the Petitioners/Appellants for the subject properties ("2016 Variance Application" contained either the required (A) 1"=30' site plan accurately showing any proposed building height for the subject properties, or (B) a narrative requesting such a height variance.

25. The Petitioners/Appellants take the position that the BZA's former approval of the 2016 Variance Application also granted to Petitioners/Appellants a vested right as to a maximum building height of 75' above BFE under the LMO and the South Carolina Code. (See LMO §16-2-102.J:a (2017); LMO § 16-10-105 (2017); S.C. Code Ann. § 6-29-1520(10) (2013)).

26. However, the 2016 Variance Application requested of the BZA, and approved by the BZA Hilton Head, S.C., LMO §16-2-102.J:a (2017); Hilton Head, S.C., LMO § 16-10-105 (2017); S.C were only these:

A. Variance from LMO § 16-5-102, Adjacent Street Setbacks

B. Variance from LMO § 16-5-103.D, Adjacent Street Buffers (regarding setback angles as well).

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Nothing about a specific height was requested, or mentioned in the 2016 Variance Application, or granted in the BZA's Notice of Action on March 28, 2016 regarding the variances:

27. Under LMO § 16-2-103.S.5, "[a]pproval of a variance authorizes only the particular relief approved. It does not exempt the applicant from the responsibility to obtain all other approvals required by this ordinance and any other applicable laws, and does not indicate that the development for which the variance is granted should receive other permits or development approvals under this ordinance unless the relevant and applicable portions of this ordinance or any other applicable laws are met." LMO 16-2-103.S.5.(2017)

28. In addition, the 2016 Variance Application submitted sketches of a building on 28 Bradley Circle, not on the subject property, 28 Bradley Circle, and now argues that such was a site-specific development plan, in spite of the sketches themselves being of a building on the wrong parcel of land.

29. Neither the 2016 Variance Application, nor the Petitioners/Appellants' 2018 reinterpretation of their 2016 Variance Application demonstrated compliance with the S.C. Code Ann. § 6-29-1540(1) or LMO Appendix D-19.A.

30. The 2016 Variance Application did not comply with LMO Appendix D-19.A.2 because that Application did not include a site specific development plan with a scale drawing of

31. The 2016 Variance Application did not comply with LMO Appendix D-19.A.4 in that Petitioners/Appellants did not show that the variances would not be a substantial detriment to adjacent property or the public good, that the character of the zoning district where the subject properties are located would not be harmed by the granting of the variances.

32. The Record shows that in making its 2018 Decision, here appealed from, the BZA properly construed S.C. Code Ann. § 6-29-1520(9) in context with S.C. Code Ann. § 6-29-

§1540(1) of the South Carolina Code and correctly applied those statutory provisions with LMO Appendix D-19.A, as a matter of law.

33. The Decision of the BZA is supported by the Record and evidence before the BZA, and the BZA Decision was not erroneous as a matter of law, and, therefore, the BZA Decision was not reached by any abuse of its discretion.

FOR A FOURTH DEFENSE BY WAY OF A SECOND AFFIRMATIVE DEFENSE AND SECOND ADDITIONAL SUSTAINING GROUNDS (Lack of Vested Right as to Height)

34. Respondents Becker & Carper here repeat *verbatim* each of the foregoing paragraphs of this First Amended Answer, Etc. and incorporate same herein by reference.

35. The LMO particularly limits the scope of interpretation of variances granted: "the approval of a variance authorizes only the particular relief approved." Hilton Head, SC, LMO § 16-2-103.S.5 (2017).

36. The BZA's former approval of the 2016 Variance Application necessarily, as a matter of law, contained only BZA approval of variances related to adjacent street setbacks, adjacent street buffers, (and related, setback angle requirements); and contained no BZA variance approval of any right to any proposed maximum height.

37. Whatever rights were vested in the subject properties when the 2016 Variance Application was approved by the BZA did not vest any rights to maximum height of over forty-five (45) feet above base flood elevation ("BFE").

38. For these reasons, as a matter of law, the approval of the 2016 Variance Application could not have legally created any vested right as to the height of any developments on the subject properties. Therefore, the BZA's conclusion was not an error as a matter of law.

FOR A FIFTH DEFENSE BY WAY OF A THIRD AFFIRMATIVE DEFENSE AND THIRD ADDITIONAL SUSTAINING GROUNDS

(Subject Properties Restricted to a Maximum Height of Forty-Five (45) Feet above BFE)

39. Respondents Becker & Carper here repeat *verbatim* each of the foregoing paragraphs of this First Amended Answer, Etc. and incorporate same herein by reference.

40. The maximum height for any single-family dwellings, the type that the Petitioners/Appellants desire to construct in the zoning area of the subject properties, is restricted to a maximum height of forty-five (45) feet above BFE pursuant to Ordinance No. 2016-07.

Hilton Head, SC, LMO 16-3-105.L (2017).

41. Ordinance No. 2016-07 was adopted on May 17, 2016, well before the Petitioners/Appellants applied for the building permits for the subject properties.

42. At the BZA hearing, the Town Official changed her original February 2018 Determination required the alleged vested right, for building height, of the Petitioners/Appellants multiple times. Regardless, the Petitioners/Appellants had no prior variance for height, and had no vested right as to height resulting from the approved variances, and the building permits were granted to Petitioners/Appellants substantially after the enactment of the Town of Hilton Head Island's ordinance reducing maximum height to forty-five (45) feet above BFE was adopted.

43. For these reasons, the BZA's determination that the buildings to be constructed on the subject properties were restricted to a maximum height of forty-five (45) feet above BFE is correct as a matter of law.

FOR A SIXTH DEFENSE AND FOURTH AFFIRMATIVE DEFENSE AND BY WAY OF FOURTH ADDITIONAL SUSTAINING GROUNDS

(Pending Ordinance Doctrine)

44. Respondents Becker & Carper here repeat *verbatim* each of the foregoing paragraphs of this First Amended Answer, Etc. and incorporate same herein by reference.

45. At the time that the variances were granted by the BZA, the building heights were subject to a proposed ordinance of no more than forty-five (45) feet above BFE.

46. Under the Pending Ordinance Doctrine, whatever vested rights, if any, may have been acquired by the Petitioners/Appellants, did not include a right to build a building on the subject properties to a height in excess of forty-five (45) feet above BFE.

WHEREFORE, Respondents Becker & Carper pray that this Honorable Court, upon having fully inquired into this matter, shall grant its Judgment against the Petitioners/Appellants, and in favor of the Respondents Becker & Carper, as follows:

1. Denying the Appeal/Petition; and
2. Affirming the subject 2018 Decision of the BZA and its modification of the subject determination of the LMO Official; and
3. Ordering that the 2016 Variances granted in VAR 352-2016 did not constitute approval of a site development plan for the subject properties and does not establish a vested right in accordance with the South Carolina Vested Rights Act, S.C. Code Ann. Section 6-29-1510, to undertake and complete the development of the subject properties as two single family residences of four stories over parking exceeding 45 feet above BFE; and
4. Awarding the Respondents Becker & Carper their costs of this action.

Respectfully submitted,

JOHNSON & DAVIS, PA

/s/ Barry L. Johnson

Barry L. Johnson, Attorney at Law
The Victoria Building, Suite 200
10 Pinckney Colony Road
Bluffton, SC 29909
(843) 815-7121
barry@jdwp.com

Bluffton, SC
June 14, 2018

ELECTRONICALLY FILED - 2018 JUN 18 2:53 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700784

Attorneys for Respondents Tamara Becker
and Rhonda Carper

COUNTY OF BEAUFORT

BEAUFORT COUNTY YACHTING
PARTNERS, LLC and MONTI
DEVELOPMENT RE, LLC,

Plaintiffs/Respondents,

TOWN OF HILTON HEAD ISLAND;
TOWN OF HILTON HEAD ISLAND
BOARD OF ZONING APPEALS;
TAMARA BECKER; and RHONDA
CARPER,

Defendants.

IN THE COURT OF COMMON PLEAS
BEAUFORT JUDICIAL CIRCUIT
CASE NO. 2018-CF-0700784

RESPONDENTS, TOWN OF HILTON
HEAD ISLAND and TOWN OF HILTON
HEAD ISLAND BOARD OF ZONING
APPEALS, ANSWER TO APPEAL OF
THE APPELLANT

COMES NOW, the Respondent Board of Zoning Appeals Town of Hilton Head
Island, reserving all rights to amend this Answer within thirty (30) days pursuant to Rule
13(a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the
Answer any defenses and/or objections under Rule 13 of the South Carolina Rules of Civil
Procedure, and reserving all rights to make any motion under Rule 13 of the South Carolina
Rules of Civil Procedure, answering the Appeal of the Appellant as follows:

FOR A FIRST DEFENSE
(Internal Defense)

- a. Any allegations, paragraphs, or statements not hereinbefore expressly admitted, qualified, or explained herein deemed to be denied, and respondent demands strict proof thereof;
- b. That the Respondent is not required to respond to any administrative

RECEIVED BY MAIL - 2018 AUG 18 3:53 PM - BEAUFORT - COMMON PLEAS - OVERSEEN BY 04030309

ELECTRONICALLY FILED - 2018 Aug 17 2:15 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700784

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
BRADLEY CIRCLE VACATION
PARTNERS, LLC and MONTI
DEVELOPMENT HH, LLC,

Petitioners/Appellants,

v.

TOWN OF HILTON HEAD ISLAND;
TOWN OF HILTON HEAD ISLAND
BOARD OF ZONING APPEALS;
TAMARA BECKER; and RHONDA
CARPER,

Respondents.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) C/A No. 2018-CP-07-00784

) RESPONDENTS', TOWN OF HILTON
) HEAD ISLAND and TOWN OF HILTON
) HEAD ISLAND BOARD OF ZONING
) APPEALS, ANSWER TO APPEAL OF
) THE APPELLANT

COMES NOW, the Respondent Board of Zoning Appeals Town of Hilton Head Island, reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, answering the Appeal of the Appellant as follows:

FOR A FIRST DEFENSE
(General Denial)

- a. Any allegation(s), paragraph(s), or statement(s) not hereinafter expressly admitted, qualified, or explained is/are deemed to be denied, and Respondent demands strict proof thereof.
- b. That the Respondent is not required to respond to any administrative paragraph(s) that re-allege(s) foregoing paragraphs or allegations, but, in the event Respondent

BEAUFORT COMMON PLEAS COURT

is required to make such a response. Respondent hereby denies the same and demands strict proof thereof.

That the Respondent is not required to respond to any administrative paragraph(s) that does not set out facts or demand relief but, in the event Respondent is required to make such a response, Respondent hereby denies the same and demands strict proof thereof.

d. That the Respondent is not required to respond to any paragraph(s) that state(s) a legal conclusion but, in the event Respondent is required to make such a response, Respondent hereby denies the same and demands strict proof thereof.

e. Respondent hereby denies each allegation(s), paragraph(s), or statement(s) in the Complaint that state(s) any legal conclusion(s) and, to the extent an answer is required to the same, Respondent hereby denies said allegation(s), paragraph(s), or statement(s) and demands strict proof thereof.

FOR A SECOND DEFENSE
(Specific Allegations)

1. Upon information and belief, Paragraphs a through d of the Appellant's Appeal are administrative paragraph(s) only, and therefore, do not require a response from Respondent.

However, if Respondent is required to make such a response, Respondent hereby denies the same and demands strict proof thereof.

2. Paragraphs 1 and 2 of the Appeal contain no allegations against Respondent, and therefore no answer is required. To the extent an allegation of fact is alleged, Respondent denies the same and demand strict proof thereof.

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3. In response to the allegations contained in Paragraphs 3 and 4 of the Appeal,

Respondent admits that the Town of Hilton Head Island is political subdivision of the State of South Carolina, as defined in S.C. Code Ann. Section 15-78-10, et seq. (South Carolina Tort Claims Act), and that the Town of Hilton Head Island Board of Zoning Appeals is a subdivision of the Town of Hilton Head Island, as defined in S.C. Code Ann. Section 6-29-780, et seq., which is the governmental entity designed to make determinations concerning the provisions of the LMO and to hear appeals of formal written interpretations of the LMO by the Town's LMO Official. Respondent denies the remaining allegations contained in Paragraphs 3 and 4 of the Appeal and demands strict proof thereof at trial.

4. Paragraphs 5 and 6 of the Appeal contain no allegations against Respondent, and therefore no answer is required. To the extent an allegation of fact is alleged, Respondent denies the same and demand strict proof thereof.

5. In response to the allegations contained in Paragraphs 7, 8, 9 and 10 of the Appeal, Respondent admits so much of the allegations contained therein which are consistent with documents of public record. Respondent deny the remaining allegations contained in Paragraphs 7, 8, 9 and 10 and demand strict proof thereof at trial.

6. Upon information and belief, Respondent admits the allegations contained in Paragraphs 11 and 12 of the Appeal.

7. In response to the allegations contained in Paragraph 13 of the Appellant's Appeal, Respondent admit that the parties to the Notice of Appeal and Petition entered into a Settlement Agreement and Restrictive Covenants, and so much of the remaining allegations contained in Paragraph 13 of the Appeal which are consistent with documents of public record. Respondent denies the remaining allegations contained in Paragraph 13 and demands strict proof thereof at trial.

RECORDED & INDEXED - 2018 AUG 17 12:15 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700784

ELECTRONICALLY FILED - 2018 Aug 17 12:15 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700784

8. Paragraph 14, 15 and 16 of the Appeal contain no allegations against Respondent, and therefore no answer is required. To the extent an allegation of fact is alleged, Respondent denies the same and demands strict proof thereof.

9. Upon information and belief, Respondent admits so much of the allegations contained in Paragraph 17 of the Appeal which are consistent with documents of public record. Respondent denies the remaining allegations contained in Paragraph 17 and demands strict proof thereof at trial.

FOR A THIRD DEFENSE
(Failure to State a Claim)

10. The foregoing denials, admissions, and affirmative allegations are re-alleged, as if fully repeated herein.

11. The Appeal of the Appellant fails to set forth a claim upon which relief can be granted because Appellant alleges only that it disagrees with the Board's conclusion, and requests an appeal and pre-litigation mediation, not that the Board acted in an arbitrary and erroneous manner.

FOR A FOURTH DEFENSE
(Decision Supported by Some Evidence)

12. The foregoing denials, admissions, and affirmative allegations are re-alleged, as if fully repeated herein.

13. The Court has the power to review the appeal and determine whether the board made the correct decision as a matter of law. The Courts have found that "the factual findings of the jury will not be disturbed unless a review of the record discloses that there is *no evidence* which reasonably supports the jury's findings." Vulcan Materials Company v. Greenville County Board of Zoning Appeals, 342 S.C. 480, 536 S.E.2d 892 (Ct. App. 2000)

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Therefore, in review of zoning appeals under § 6-29-840, the circuit court must defer to the factual findings of the board unless there is "no evidence" to support that lower body's conclusion.

In the instant case, the Board of Zoning Appeals Town of Hilton Head Island had ample evidence to deny the variance request and the Court should uphold the Board of Zoning Appeals Town of Hilton Head Island's decision.

WHEREFORE, having fully answered the Appeal of the Appellant, the Respondent prays that:

- a) The Appeal be dismissed, with prejudice.
- b) For the Respondent to be reimbursed for the costs and disbursements of this action.
- c) And for all other and further relief as this Honorable Court may deem just and proper.

ALFORD LAW FIRM, LLC
(Location Reported by Home Bridge)

By: /s/ Gregory M. Alford
Gregory M. Alford (6932)
Post Office Drawer 8008
Hilton Head Island, SC 29938
(843) 842-5500

Attorneys for the Respondent
Dated this 17th day of August, 2018
Hilton Head Island, South Carolina.

ELECTRONICALLY FILED - 2018 NOV 19 2:33 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700784

ELECTRONICALLY FILED - 2018 Nov 19 2:33 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700784

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS)
COUNTY OF BEAUFORT) CIVIL ACTION NO.: 2018-CP-07-00784

BRADLEY CIRCLE VACATION)
PARTNERS, LLC and MONTI)
DEVELOPMENT, HH, LLC,)
Petitioners/Appellants,)

PETITIONERS/APPELLANTS'
NOTICE OF MOTION AND MOTION
TO ALTER OR AMEND ORDER

TOWN OF HILTON HEAD ISLAND,)
TOWN OF HILTON HEAD ISLAND,)
BOARD OF ZONING APPEALS,)
TAMARA BECKER and RHONDA)
CARPER,)
Respondents.)

TO: BARRY L. JOHNSON, Esq., Attorney for Respondents Tamara Becker and Rhonda Carper (heretofore erroneously referred to as "Rhonda Carper"); and
GREGORY M. ALFORD, Esq., Attorney for Respondents Town of Hilton Head Island and Town of Hilton Head Island Board of Zoning Appeals;

YOU WILL PLEASE TAKE NOTICE that Petitioners/Appellants Bradley Circle Vacation Partners, LLC and Monti Development HH, LLC ("Petitioners"), by and through their undersigned attorneys, move pursuant to Rule 59(e), SCRCP, for this Court to alter or amend its Order filed on November 7, 2018.

The grounds for this motion are that based on the pleadings filed in this matter, the arguments of counsel, and the certified record of the Town of Hilton Head Island Board of Zoning Appeals ("BZA") presented to the Court, together with any supporting motions,

STATE OF SOUTH CAROLINA - COMMON PLEAS - ORDER IN RE: [illegible]

ELECTRONICALLY FILED - 2018 Nov 19 2:33 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0700784

memoranda, briefs, and the applicable law on these issues, the Court's Order erred and should be altered or amended in the following respects:

1. The Court erred in affirming the Board of Zoning Appeals' interpretation of "site specific development plan." "Site specific development plan" is a term defined by S.C. Code Ann. Section 6-29-1520(9). The BZA's interpretation, which was in direct conflict with the interpretation of the Town's LMO Official, was erroneous as a matter of law.

2. The Court erred by conflating "site specific development plan" with "Site Plan" in Finding of Fact C.

3. The Court erred in finding evidence to support the BZA's finding that the previously approved variance application, VAR 352-2016, did not include a site specific development plan as defined by S.C. Code Section 6-29-1520(9) when the application described a development plan for the subject properties that showed the types and density or intensity of uses for the specific properties. The BZA's finding was in direct conflict with the uncontradicted finding of the Town's LMO Official.

4. The Court erred in finding and concluding that approval of the variance, VAR 352-2016, did not constitute approval of a site specific development plan for completion of two homes of four full stories over parking as described in the variance application.

5. The Court erred in finding that S.C. Code Section 6-29-1520(9) and/or LMO and Appendix D-19 required that the variance application, VAR 342-2106, specify the exact height of the homes described in the application in order for the application to contain a site specific development plan.

6. The Court erred by finding and concluding that approval of the variance application, VAR 342-2106, did not establish a vested right to undertake and complete the two

homes with four stories over parking described in the application subject to the maximum height allowed by the Town's LMO when the variance was approved, irrespective of subsequent changes to the height allowed by the LMO.

7. The Court erred by overlooking or disregarding the undisputed testimony of the Town's LMO Official that the variance application, VAR 352:2106, described two homes to be constructed on the subject properties that would exceed a height of 45' over base flood elevation.

8. The Court erred in considering the absence of an application for a height variance to be a material fact.

9. The Court erred in finding that the variance application, VAR 352-2016, did not meet the submittal requirements set forth in LMO Appendix D-19 A.2 and A.4.

10. The Court erred in finding that LMO Appendix D-19 A.2 and A.4 define "site specific development plan".

11. The Court erred in considering the absence of an application for vested rights to be a material fact.

LAUGHLIN & BOWEN, P.C.

By: s/Drew A. Laughlin

Drew A. Laughlin; SC Bar No. 3141

Attorneys for Appellants/Petitioners

PO Drawer 21119

Hilton Head Island, SC 29925-1119

(843) 689-5700

drew.laughlin@laughlinandbowen.com

November 19, 2018

Barry Johnson

From: efiledonotreply@sccourts.org
Sent: Wednesday, November 07, 2018 10:31 AM
To: Barry Johnson
Cc: Gay Reed
Subject: Courtesy NEF RE: 2018CP0700784

*****IMPORTANT NOTICE - READ THIS INFORMATION*****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP0700784

Official File Stamp: 11-07-2018 10:30:17 AM
Court: CIRCUIT COURT
Common Pleas
Beaufort
Case Caption: Bradley Circle Vacation Partners Llc , plaintiff, et al VS Hilton Head Island Town Of, defendants et alia
Document(s) Submitted: Order-Appeal/Petion Denied,BZA 3/26/18 Decision Upheld Order/Other
Filed by or on behalf of: Marvin H. Dukes, III
Note from the Court: Have reviewed Mr. Laughlin's suggestions

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

- Gregory Milam Alford for Hilton Head Island Town Of, Board Of Zoning Appeals Hilton Head Island Town Of
- Brian Earl Hulbert for Hilton Head Island Town Of, Board Of Zoning Appeals Hilton Head Island Town Of
- Drew A. Laughlin for Bradley Circle Vacation Partners Llc et al
- Barry L. Johnson for Rhonda Carper, Tamara Becker

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

CONFIDENTIALITY NOTICE ~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO.: 2018-CP-07-00784

BRADLEY CIRCLE VACATION)
PARTNERS, LLC and MONTI)
DEVELOPMENT HH, LLC)

Petitioners/Appellants,)
v.) MEMORANDUM IN SUPPORT OF
TOWN OF HILTON HEAD ISLAND,) PETITIONERS' MOTION TO ALTER
TOWN OF HILTON HEAD ISLAND,) OR AMEND
BOARD OF ZONING APPEALS,)
TAMARA BECKER and RHONDA)

CARPER,)
Respondents.)

Petitioners/Appellants Bradley Circle Vacation Partners, LLC and Monti Development
HH, LLC (collectively hereinafter "Appellants") submit this memorandum in support of their
Motion to Alter or Amend this Court's Order of November 7, 2018 ("Order").

The Order affirmed a decision of the Town of Hilton Head Board of Zoning Appeals
("BZA") which overruled an interpretation of the Town's Land Management Ordinance
("LMO") by the Town's LMO Official that Appellants had vested rights to build two single
family homes each having four stories over parking as described and depicted in applications for
variances that had been approved by the BZA, VAR 352-2016, including the right to build the
homes to the maximum building height allowed by the LMO when the variances were granted,
unaffected by subsequently enacted ordinances that would, but for Appellants' vested rights,

FILED IN COURT OF COMMON PLEAS - BEAUFORT COUNTY - SOUTH CAROLINA - 2018 DEC 17 4:49 PM

reduce the maximum allowable height of the homes. Appellants submit that the BZA decision was controlled by an error of law and should be reversed by this Court.

Even though the applications described and depicted a plan to build two single family homes of four stories over parking, included detailed site plans for the positioning the buildings on the properties, and otherwise complied in all respects with all submission requirements, the BZA decided that the plan description was insufficient to constitute a "site specific development plan" for purposes of establishing vested rights solely because the exact height of the proposed homes was not specified. Therefore, the BZA concluded, Appellants' plan was subject to ordinances enacted after approval of the variances that reduced maximum allowable building height from 75' to 45'.

The BZA was not at liberty to create its own definition of what constitutes a "site specific development plan". It is defined by South Carolina and codified in S.C. Code Ann. § 6-29-1520(9). The development plan described in the variance applications was more than sufficient to constitute a "site specific development plan" as defined by state law.

1. The variance applications, VAR 352-2016, met all LMO submittal requirements.

At the outset, it must be recognized that the variance applications were reviewed by both the Town's planning staff and the BZA and were found to meet all of the submittal requirements of LMO Appendix D-19, including the requirements described in Appendix D-19.A.2 and D-19.A.4. These facts are established in the record and are uncontroverted. There is absolutely no evidence in the record to support Finding of Fact C of the Court's Order of November 7, 2018, that "Appellants/Petitioners never filed with the Town or the BZA a site specific development plan ("Site Plan") for the subject property, containing the elements required by LMO Section D-19.A.2 and A.4." (emphasis supplied). This alone is grounds for the Court to alter or amend

its Order. The variances applications were reviewed and approved. It cannot now be said that the applications failed to meet the requirements for their submittal for review.

2. Approval of the variances constituted approval of a site specific development plan and established a vested right to undertake and complete the development of the property in accordance with the plan described in the applications.

LMO Section 16-2-102.J.1.a provides **Approval ... of ... a Variance shall constitute approval of a site specific development plan** that establishes a vested right in accordance with the Vested Rights Act, S.C. Code Ann. §6-29-1510 et seq." (emphasis supplied). In order to obtain a variance, an applicant must submit information to describe his plan for development of the subject property if the variance is granted. The purpose of the submittal requirements in LMO Appendix D-19 is to inform the Town of the applicant's plan for development.

The LMO does not otherwise define "site specific development plan". It is defined by S.C. Code Ann. Section 6-29-1520(9) as "a development plan submitted to a local governing body by a landowner describing with reasonable certainty the types and density or intensity of uses for a specific property or properties." Section 6-29-1520(9) goes on to make it clear that **the plan may take many forms. "The plan may be in the form of, but is not limited to, the following plans or approvals: planned unit development; subdivision plat; preliminary or general development plan; variance; ... or other land-use approval designations as used by a county or municipality."** (emphasis added).

The submittal requirements of LMO Appendix D-19 set forth what the Town requires from applicants for variances to describe their plan for development of the property if the variance is granted. Again, it is beyond argument that the variance applications were reviewed and approved and therefore fully satisfied the requirements of Appendix D-19. The applications described a specific type of use (single-family homes) and the density or intensity of the use (two

homes of four stories over parking on two specific lots) located on the properties in accordance with specific site plans. Approval of the variances established that Appellants had sufficiently described the plan for development.

The BZA committed an error of law when it disregarded state statutory law and required additional information or detail not required by either S.C. Code Ann. Section 6-29-1520(9) or the Town LMO. An exact height specification of homes was not necessary to describe with reasonable certainty the types and density or intensity of uses for the properties if the variances were granted or to satisfy the submittal requirements of LMO Appendix D-19. Approval of the variances established a vested right to build the two homes as described in the variance application.¹ Once that vested right was established, Appellant's development plan was not subject to the later enacted changes in zoning or reductions in allowable height.

In fact, the town planning staff and the BZA knew exactly what would be developed if the variances were granted. Everyone at the hearing on the variance applications, from Town staff, to the BZA, to persons who opposed the applications, knew what would be built on the properties.² Not only was the development plan sufficiently described in the variance applications, Appellants had also only recently received permits to build three other virtually identical homes of four stories over parking nearby in the same neighborhood. The height of those completed homes is approximately 52 – 53 feet above base flood. Everyone understood that Appellants' plan was to build two additional homes substantially identical to the three that had been previously approved and that the height of the homes would exceed fifty feet above base flood elevation, as was permitted at the time. Indeed, an elevation drawing of one of those

¹ In the real world, applicants for variances generally don't yet have detailed construction plans for buildings that can't be built unless the variance is approved.

² See, e.g., Certified Record on Appeal, pp. 235 - 254

three previously approved homes was included in the variance applications as a depiction of what Appellants planned to build on the two lots for which the variances were requested.

CONCLUSION

The BZA's decision to overrule LMO Official's interpretation and to deny Appellant's vested rights was controlled by errors of law and was without evidentiary support. The decision was arbitrary, capricious, and an abuse of the board's discretion. It was erroneous as a matter of law. The Court should alter or amend its Order of November 7, 2018 and reverse the decision of the BZA.

LAUGHLIN & BOWEN, P.C.

By: s/Drew A. Laughlin

Drew A. Laughlin, SC Bar No. 3141
Attorneys for Appellants/Petitioners

P.O. Drawer 21119
Hilton Head Island, SC, 29925-1119
(843) 689-5700

drew.laughlin@laughlinandbowen.com

December 17, 2018

2018-08-23 bradley final transcript

three previously approved forms was included in the variance application as a condition of

which Applicants planned to build on the two lots for which the variances were requested.

1 State of South Carolina } Court of Common Pleas
2 County of Beaufort } 14th Judicial Circuit
No.: 2018-CP-07-00784

The BSA's decision to overturn LMO Official's interpretation and to deny Applicants'

4 BRADLEY CIRCLE VACATION)
5 PARTNERS, LLC and MONTI)
6 DEVELOPMENT HH, LLC,)
7 Petitioners/Appellants,)

8 vs.) HEARING
9 TOWN OF HILTON HEAD)
10 ISLAND, TOWN OF HILTON)
11 HEAD ISLAND BOARD OF)
12 ZONING APPEALS, TAMARA)
13 BECKER and RHONDA CARPER)
14 Respondents,)

August 23rd, 2018

8 TOWN OF HILTON HEAD)
9 ISLAND, TOWN OF HILTON)
10 HEAD ISLAND BOARD OF)
11 ZONING APPEALS, TAMARA)
12 BECKER and RHONDA CARPER)
13 Respondents,)

13 Hearing reported by Deborah S. Thomas,
14 Certified Verbatim Reporter and Notary Public in and
15 for the State of South Carolina; said hearing held
16 before Honorable Marvin H. Dukes, III, Beaufort
17 County Master in Equity and Special Circuit Court
18 Judge in accordance with the South Carolina Rules of
19 Civil Procedure, at the Beaufort County Courthouse,
20 102 Ribaut Road, Room 212, Beaufort, South Carolina
21 on August 23rd, 2018, at the hour of 1:31 p.m.

22
23 DEBORAH S. THOMAS, CVRM
24 156 Argent way
Bluffton, South Carolina 29909
25 (803) 206-7390

1 Appearances
2 Representing the Petitioners/Appellants:

3	2018-08-23 bradley final transcript	2
4	DREW A. LAUGHLIN, ESQUIRE	3
5	Laughlin & Bowen, PC	4
6	Post Office Drawer 21119	5
7	Hilton Head Island, South Carolina 29925-1119	6
8	drew.laughlin@laughlinandbowen.com	7
9	Representing the Respondent Town of Hilton Head	8
10	Island, Town of Hilton Head Island Board of Zoning	9
11	Appeals:	10
12	GREGORY MILAM ALFORD, ESQUIRE	11
13	Alford & Thoreson, LLC	12
14	Alford Law Firm, LLC	13
15	Post Office Box 8008	14
16	Hilton Head Island, South Carolina 29938	15
17	gregg@alfordlawsc.com	16
18	Representing the Respondent Tamara Becker and Rhonda	17
19	Carper:	18
20	BARRY L. JOHNSON, ESQUIRE	19
21	Johnson & Davis, PA	20
22	The Victoria Building, Suite 200	21
23	10 Pinckney Colony Road	22
24	Okatie, South Carolina 29909	23
25	barry@jd-pa.com	24

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1 This hearing is conducted in
2 accordance with the south carolina rules of civil
3 Procedure.
4 JUDGE DUKES: Good afternoon then.
5 we're here in 2018-CP-07-00784. This is Bradley
6 Circle, et al versus Town of Hilton Head. This is
7 an appeal from the Hilton Head Zoning Board of
8 Appeals.

+

4

9 And, Mr. Laughlin, happy to hear from you, 51
 10 sir. 52
 11 MR. LAUGHLIN: Yes, sir, Your Honor, 53
 12 I represent the Petitioners/Appellants Bradley, 54
 13 Circle Vacation Partners, LLC and Monti Development 55
 14 of HH, LLC. This is an appeal from a decision of the 56
 15 Town of Hilton Head Board of Zoning Appeals in which 57
 16 they overruled a LMO interpretation made by the LMO 58
 17 official of the town. 59
 18 The background of this is that my clients 60
 19 own I'll say are two lots in the Bradley Circle 61
 20 neighborhood of Hilton Head Island. Their 62
 21 predecessor in time -- and they had previously -- 63
 22 they've also developed three other homes on the same 64
 23 street with essentially the same configuration that 65
 24 they're trying to do here which is to say four 66
 25 stories over park. 67

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12 site plan and a narrative and things like that. 0

13 Essentially, you've got to tell the town what it is 01

14 you want to do with those variances. What you want 11

15 to develop on that property, which we did get 51

16 An appeal -- court of appeal was filed for 21

17 the grant of those variances. An appeal was filed 11

18 in any event in April of 2016. In May of 2016, town 01

19 council adopted amendments to the land management 01

20 ordinance which included, among other things, 91

21 reducing the maximum height that a home could be 01

22 built on the property from 75 feet to 45 feet. 01

23 Two months later in July of 2016, the 01

24 appeal of the variance was settled. There was a 11

25 settlement agreement entered into which included 11

6 25

1 restrictive covenants which were filed of record and

2 the appeal of the variances was dismissed.

3 By the end of 2016, beginning of 2017, the

4 matter of the height of homes in this neighborhood

5 had become -- had reached some notoriety in the

6 media. August 1, 2017, my client submitted

7 applications for building permits to build two

8 residential structures of four stories over parking

9 exactly as they had been described in the

10 application for the variances.

11 JUDGE DUKES: Now, the variances

12 weren't height variances. These, at the time you

13 applied the --

14 MR. LAUGHLIN: There was no need for

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15 a height variance at the time. We were --
16 JUDGE DUKES: Got you.
17 MR. LAUGHLIN: We were -- we were
18 operating within the then current 75 foot maximum
19 height. So while there were elevation drawings
20 submitted with the application for a variance, they
21 were not to scale. They just simply showed a
22 drawing of homes four stories over parking and the
23 effect of the variance -- requested variance of the
24 setback angles on those structures.

25 JUDGE DUKES: Okay. So nothing was

7
1 requested or granted at the time of the original
2 variance with regard to the height of the houses?

3 MR. LAUGHLIN: Height was not an
4 issue.

5 JUDGE DUKES: Got you.

6 MR. LAUGHLIN: Immediately, the same
7 day my client files the building permits there began
8 to be a flurry of e-mails between residents in the
9 neighborhood, the town in-house attorney, the mayor,
10 the director of the -- director of the planning
11 department, the LMO official who would be basically
12 considering these matters. And those began the same
13 day that the building permit applications were
14 filed. And they continued basically throughout
15 August with elected officials including the mayor
16 sending e-mails directly to town planning staff
17 people inquiring about all of this.

18 Now, this is all in the record. And so
 19 the response of the planning staff, everybody, was
 20 to send out an e-mail saying, help, what do we do?
 21 It looks to us like they're entitled to these
 22 permits. We've got a lot of people objecting. It
 23 looks to us their right to do this is vested by the
 24 grant of the variances. What do we do?
 25 JUDGE DUKES: Why would they be
 vested by the grant of the variances if the
 variances didn't deal with the height?

MR. LAUGHLIN: Okay. Well, I'm going
 to get to that or I can go into that now, whichever
 you want. You want to go to the height of the building
 or do you want to go to the height of the building?
 JUDGE DUKES: No. No. No. Go
 ahead. Go ahead.

MR. LAUGHLIN: So what they decided
 to do was nothing. They were told by some opposed
 to the building permit applications that the
 settlement agreement of the appeal of the variances
 limited these structures to 45 feet in height. They
 do not. But regardless.
 JUDGE DUKES: Just out of curiosity
 how tall are the -- were the proposed structures?
 MR. LAUGHLIN: They do not even
 address that other than to say that properties will
 be developed in accordance with the provisions of
 the LMO. That's all it says.
 So basically, they seized the town

21 staff grabbed on ahold of that. They shouldn't have 35
 22 considered those things at all. They weren't part 28
 23 of what they ought to be considering in reviewing
 24 the building permit application.
 25 But they threw up their hands and they

11 So the respondents here appeared that 1
 12 was heard by the BZA and the BZA overturned the LMO 9
 13 official's interpretation based on its findings that 3

1 sent out e-mails to my client and one of the folks 4
 2 objecting, basically, that says until you guys 2
 3 resolve your dispute over the meaning of that
 4 settlement agreement we're are not issuing any
 5 building permits. Under state law, this position is 8

6 My clients filed a suit seeking a mandamus 9
 7 for the issuance of the permits in September. That 10
 8 was dismissed prior to any answers being filed 11
 9 without prejudice. About that time, town council 12
 10 rezoned the property from resort development to 13
 11 moderate residential which really doesn't have much 14
 12 effect here. In December of 2017, I 15

13 requested, pursuant to provisions of the code that 17
 14 the LMO official provide an LMO - an interpretation 18
 15 and I posited a series of questions basically 19
 16 designed to have them tell me whether or not my 20
 17 clients were vested to build four stories over 21
 18 parking up to a maximum height of 75 feet. And if 22
 19 they were, were they entitled to a permit. 23
 20 The LMO interpretation was, yes. Your 24
 21 clients, by virtue of the granted variance, your 25
 22 clients acquired vested rights to build the

24 development plan for that site represented in the
 25 application for a variance.
 10
 10

1 So the respondents here appealed that. It
 2 was heard by the BZA and the BZA overturned the LMO
 3 official's interpretation based on its findings that
 4 the variance application did not include a site
 5 specific development plan. And if it did, it didn't
 6 say anything about height.
 7 So I filed this appeal and the basic
 8 position is this. Under State law and under Town
 9 law, the granting of a variance vests the right to
 10 develop the property in accordance with the site
 11 specific development plan for the subject
 12 properties.
 13 It defines site specific development plan
 14 as a development plan submitted to a local governing
 15 body by a landowner describing with reasonable
 16 certainty the types and density or intensity of uses
 17 for a specific property or properties.
 18 Now, our materials submitted in 2011 with
 19 the application of variance clearly showed that the
 20 plan was to build four stories over parking exact --
 21 in the exact configuration that the planning staff
 22 had seen before with the three priors which were all
 23 over 45 feet.
 24 It included a narrative. It included a
 25 two scale site plan showing the positioning of these

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1 structures on the properties. And it included
 2 elevation drawings, not to scale, that basically
 3 depicted the four stories over parking structures.
 4 So I don't think there's any question,
 5 Your Honor, that when they granted that variance
 6 they knew with reasonable certainty the types and
 7 density or intensity of uses for the specific
 8 property.
 9 And that, therefore, the whole purpose of
 10 the vesting is, you know, you spend money to get the
 11 ap -- to get the variance. And then once you've got
 12 the variance, you spend money doing plans. You
 13 spend money doing all kinds of things because you're
 14 vested to build that plan regardless of future
 15 changes in the site standards like height. And that
 16 is exactly what vested rights are all about.
 17 Now, it is clear from the transcript of
 18 the hearing on the original variance application
 19 that everyone, including town staff and the
 20 opponents to that variance, were basically telling
 21 the BZA that if you grant these variances, these
 22 buildings could be up to 75 feet in height.
 23 So they knew that when they granted the
 24 variance. And they granted the variance anyway.
 25 And that really is the guts of it. Now, there was a

12 lot of discussion at the BZA hearing on the appeal
 Page 10

2 of the interpretation about, you know, what
 3 information was or wasn't in the variance
 4 application pertaining to height. And there was a lot of discussion about
 5 the not to scale drawings that were submitted. And,
 6 you know, even though they're not to scale, they do
 7 contain some dimensions. And I will tell you that
 8 some of those elevations scale out to one of them
 9 to 58 feet. One of them scales out to less than
 10 45 feet, I believe.

12 But as Terry Lewis, the LMO official, told
 13 the BZA at the appeal hearing, we knew exactly what
 14 these were going to be because we had just -- we had
 15 just processed approvals for the three they had done
 16 previously and these were going to be the same
 17 thing, four stories over parking. And all of
 18 those priors -- prior structures ended up being
 19 something like 52 and a half feet above base flood,
 20 which is -- when we speak about height, we're
 21 talking about above base flood.

22 So, you know, the finding that there was
 23 no site specific development plan although past is a
 24 finding of fact is, in fact, based on the BZA's
 25 interpretation of the statute when about what is

13 And that really is the gist of it. Now there was

1 a site specific development plan. And they
 2 basically decided that if it didn't show the exact
 3 dimensions of the height of these structures that
 4 there wasn't a plan or if there was a plan it didn't

5 mean anything, because it didn't have any height
6 restrictions. And that, therefore, you can build four
7 stories over parking if you want to, but you've got
8 to mash it down 45 feet above base flood. And we
9 just don't think that's the law, Your Honor. We
10 don't think that's a proper interpretation of site
11 specific development plan. It wasn't the
12 interpretation given by the LMO official. And it
13 wasn't -- and it wasn't the -- based -- and it
14 wasn't the interpretation the LMO and the town
15 attorney, not Mr. Alford, but the in-house attorney
16 defended before the BZA.
17 Basically it's -- well, I won't even go
18 there. All of this is essentially laid out in our
19 petition. But I think it's -- you know, it's very
20 clear, very clear that when those variances were
21 granted, everyone knew what proposed -- the proposal
22 of the build was.

23
24 Everybody knew it was going to be four
25 stories over parking. Everybody knew it was going

to be essentially the same configuration as the
three structures that had been approved previously
which were all 52 to 53 feet high over base flood.

There's no question. You read the
transcript of the folks that were objecting to it
and you read the transcript of the appeal of the LMO
official's interpretation where, among other things,

8 Terry Lewis the LMO official reminds the BZA that
9 when they looked at these, they had already looked
10 at three that were essentially exactly the same.

11 And they knew that they would be 45
12 more than 45 feet above base flood. The structures
13 that we proposed to build, in fact, are about
14 57 feet above base flood. That's pretty much what

15 I've got, Your Honor.
16 JUDGE DUKES: Okay, thank you very
17 much. Mr. Alford?

18 MR. ALFORD: Your Honor, I'll defer
19 to Mr. Johnson, if he doesn't mind and I'll go --
20 I'll go last.

21 MR. JOHNSON: May it please the
22 court, for the record, Barry Johnson on behalf of
23 respondents Tamara Becker and Rhonda Carper.

24 I appreciate the procedural and historical
25 explanation that Mr. Laughlin provided to us. There

1 are a few things I might disagree with, but I think
2 they'll be consumed in what I'm going to ask the
3 court to consider.

4 I have marked a number of things in the
5 transcript and can get into more detail than maybe,
6 Your Honor, wants, but I believe that, first of all,
7 Mr. Laughlin has correctly quoted state law in
8 respect to the State Enabling Act for local land
9 regulations which is in six -- Section 6-29-1520,
10 Subsection (9).

11 That states, and with all due respect, the
 12 Appellants/Petitioners want the court to focus on
 13 the first sentence. And they don't want the court
 14 to focus on a related state statute or on a related
 15 town of Hilton Head Island statute in the code of
 16 ordinances. I'm going to work my way through those. In
 17 Section 15-29 the first sentence does say, and we
 18 allude to this in our pleading, that a site specific
 19 development plan means a development plan submitted
 20 to a local governing body by a landowner describing
 21 with a reasonable certainty the types and density or
 22 intensity of uses for a specific property or
 23 properties.

24 It goes on to read the plan may be in the

25 form of but is not limited to the following plans or
 16 approvals: It has a list: Planned unit
 17 development, subdivision plat, preliminary or
 18 general development plan, variance, conditional use
 19 or special use permit, plan, conditional or special
 20 use district zoning plan or other land use approval
 21 designations as are used by a county or
 22 municipality.

23 And then I would have us refer again to
 24 the State Enabling Act Section 6-29-1540 which has
 25 in this preamble, a vested right established by this
 26 article and in accordance with the standards and
 27 procedures in the land development ordinances or

14 regulations, that would be in this case those of the
 15 town of Hilton Head Island, adopted pursuant to this
 16 chapter is subject to the following conditions and
 17 limitations. And there it has got a list of some
 18 conditions and limitations. The first one is
 19 significant. The first one is that the vested right
 20 is subject to the conditions and limitations that
 21 the form and content of a site specific development
 22 plan must be prescribed in the land development
 23 ordinances or regulations, again, of the county or
 24 municipality.

17

1 And then I would have us refer to the Town
 2 of Hilton Head Island Land Management Ordinance,
 3 Appendix D, as in Delta, Number 19. I don't know
 4 that a copy of that is in the record or that a copy
 5 of these two statutes are in the record. And
 6 understanding the issues about filing, I can
 7 subsequently file them, just refer your Honor to
 8 them or hand up paper copies if everybody consents.
 9 But
 10 JUDGE DUKES: You can just email
 11 them with copies to all. PDF is fine. I've got the
 12 code right here front of me.
 13 MR. JOHNSON: All right. In my
 14 addition of the LMO, it's on in the appendices on
 15 Page D, Delta, 24.
 16 JUDGE DUKES: That I don't have, but

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17 if you can send it, that would be great. 18
18 MR. JOHNSON: It says, just for the 19
19 record, Appendix D, Section 19, Sub Capital A, Sub 20
20 1.00 Correction. Yeah, Sub 1. An application for 21
21 variance shall consist of information necessary for 22
22 the Board of Zoning Appeals to make a determination 23
23 regarding the variance request including but not 24
24 limited to the following. 25
25 Number 1, an application form as published

18
1 by the official which is the LMO official that we've
2 been referring to and the appropriate fee paid.
3 Number 2, a site plan at a scale of one
4 inch equals 30 feet, accurately showing the
5 variances requested.
6 If the application is for a variance of
7 Section 16-6-102, Point Capital D, it's in the town
8 ordinance titled Wetland Buffer Standards, the
9 survey must be certified by the permitting
10 authority. Okay?

11 In the record, if you were to refer to
12 this 2016 variance submittal application that
13 Mr. Laughlin referenced, it has a list of five items
14 that must be attached in order for this application
15 to be complete. Quote, unquote
16 And the fourth one is this, quote, a site
17 plan to scale of one inch equals 30 feet that
18 clearly shows the requested variance in relation to
19 the affected site and surrounding parcels and uses.

20 Submit an 11 inch by 17 inch or smaller copy of that
 21 plan.
 22 It is undisputed in the record and
 23 Mr. Laughlin, I think, agrees that there is no such
 24 site specific development plan anywhere in the
 25 record.
 19

1 MR. LAUGHLIN: For the record, I
 2 don't agree, but --

3 MR. JOHNSON: Oh, I thought you said
 4 earlier there's not one that has anything to scale.

5 MR. LAUGHLIN: I said that there's
 6 nothing that tells you what the exact height of the
 7 buildings are.

8 MR. JOHNSON: All right, well, I
 9 will assert and then I will go into the record to
 10 demonstrate that there is no site specific
 11 development plan that complies with that Number 4 of
 12 the items to be attached to a variance application
 13 even though the box is checked with an X to indicate
 14 that it is attached.

15 what is attached that seems to be to
 16 scale, although, the copies in the record I find to
 17 be difficult to read, is a plat, a survey plat,
 18 land survey of the horizontal condition of the land
 19 and these lots.

20 And then one iteration of that has some
 21 shading on it to indicate how, if the variances were
 22 granted, the footprint of those buildings that might

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23 be built there would lay within the lots. One at a
24 zero lot line, no separation between the property
25 line and the building footprint.

1 And the others with significantly reduced
2 buffers and setbacks and side setbacks on site
3 setback angles. There is a sketch. I don't even
4 really call it a drawing, it's certainly not a
5 building plan, of a building that might be what they
6 were thinking of putting on the site.

7 There are references in the record to four
8 stories over parking. There is a statement by Mr.
9 I don't know how to say his name. Chandresh?

10 MR. LAUGHLIN: Chandresh.
11 MR. JOHNSON: Chandresh, who is a
12 developer who I assume has something to do with the
13 appellants or one of them, in which he says that
14 they are considering three story plus, not four
15 story. And I can give you that citation for the
16 record if we need to be specific.

17 But as the BZA at the 2018 appeal, not the
18 BZA at the 2016 original application, burrowed into
19 this following the appeal by these ladies,
20 Ms. Becken and Ms. Carper, the BZA inquired about
21 the basis for the building official's determination
22 letter that said that this property was vested for a
23 building height of 75 feet because of the 2016
24 variance.

25 In the course of the BZA hearing, the BZA

21

1 official said she had recalculated it and she
 2 thought it was 52 feet. I remember it as being
 3 50 feet, one and a half inches or something to that
 4 effect above base flood elevation. And base flood
 5 elevation in that area is indicated in the record to
 6 be about 14 feet above sea level.
 7 So the building official changed her
 8 determination in the middle of the BZA hearing and
 9 indicated in the hearing that she had not told
 10 anybody else that her view had changed. And she
 11 apparently came to that conclusion by some
 12 interpretive measurements she did of one or more of
 13 the three buildings that had been built on the
 14 street which is what got everybody, including the
 15 town council, up in arms.
 16 The sketch, somebody handwrote on the
 17 sketch. And, by the way, the sketch is on some
 18 designer's typical sheet with the masthead saying
 19 who did the drawing and stuff. And it indicates
 20 that it's a drawing of a building at 22 Bradley
 21 Circle which is one of the three buildings that had
 22 previously been built that were not the subject of
 23 this application which is for 22 Bradley Circle.
 24 They never presented anything that was
 25 tied into 28 Bradley Circle except by the

22

1 representation that what they might build might look
 2 like that. There is an attachment called Attachment
 3 that has these two seemingly pencil drawn
 4 sketches. And somebody has, with a squiggly pencil
 5 or pen line at the bottom, indicated that the
 6 wall-to-wall space occupied by the two buildings
 7 might be 49 feet, zero inches. And then their
 8 related easements concerning the property line,
 9 related similar squiggly lines. There's no real
 10 scale there.

11 And these -- when the commissioners at the
 12 2018 hearing that brings us here were -- BZA
 13 members. I mean, were trying to understand this
 14 thing, one of them figured out that maybe the height
 15 of the buildings was less than 49 feet from ground
 16 level according to the way this scale would work if
 17 you flip that around, but that's not even from base
 18 flood elevation.

19 So if your Honor looks at the statutory
 20 scheme -- I think I should say this first. There
 21 was discussion at the 2018 appeal -- BZA appeal
 22 hearing about whether the LMO at Hilton Head deals
 23 with story heights or building heights.

24 And the record was made that some years
 25 back, and I do remember being involved in some of

26 that the LMO regulated the height of building by
 27 the number of stories. But in the times applicable

f

3 here, that had been changed and they no longer did
4 that. And they regulate building heights by
5 measured feet above base flood elevation.
6 And as the chairman of the BZA pointed
7 out, Mr. Fingerhut, for the town to vest a
8 right that is compliant with the LMO that is based
9 on numbers of stories just has no legal
10 relationship. That's my paraphrase. I can pull his
11 quote out. My paraphrase of what he said, has no
12 legal meaning, I think, was his phrase because the
13 LMO does not measure height by the number of
14 stories. It measures it by feet.
15 And if you take the argument of the
16 appellants and you look at this sketch with the hand
17 drawing and the squiggly stuff on it, which they are
18 saying somehow vests height when even the building
19 official couldn't figure out what it meant. And the
20 LMO official, moving from 75 to 50 something and one
21 and a half inches, couldn't figure out what it
22 meant. The commentary of the BZA people said they
23 couldn't figure out what it meant. It's certainly
24 not specific enough for any of them to have figured
25 out what it meant that was based in the law of the

24

1 LMO as to the regulation of height not by stories,
2 but by feet and inches.

3 We all know that building codes have
4 certain requirements of spacing between windows to
5 meet the hurricane code. If this sketch puts those

6 windows closer together than the building code might
7 allow, they don't have a vested right to build this
8 thing the way that little sketch shows in all
9 respects as it shows it.
10 It shows little hand-drawings of what
11 looks to me like some variety of palm or palmetto
12 trees in the front of the building. That didn't
13 give a vested right to that landscaping approval.
14 It didn't give them any vested rights to anything, I
15 believe, under the definition in the LMO Appendix D,
16 Section 19, Sub A, Sub 2 to anything other than the
17 variances they requested.
18 They have to include a site plan at a
19 scale of one inch to 30 feet accurately showing the
20 variances requested. If they get those variances, I
21 believe they are vested under the regulatory scheme,
22 state and local. But they're only vested as to
23 those things.
24 They're not vested as to everything else
25 that they might want to put with -- on the outside

1 and the inside of an envelope shown by a not-to-
2 scale sketch in which there was never a discussion
3 of a height issue, even a description of the height
4 or definition or measurement.
5 And related to that, while this was
6 progressing in 2016 through the BZA variance process
7 with regard only to buffers, setbacks and side
8 angle side angle setbacks, everybody involved in

9 this thing; petitioners, appellants, respondents,
 10 everybody in the town government and whoever cared
 11 about such things on Hilton Head, many people
 12 apparently, were aware that the town was in high
 13 gear to change this ordinance, to rezone the
 14 property back from RD, resort district, to RM,
 15 moderate residential which would have the height
 16 limitation of 45 feet above base flood elevation
 17 rather than the 75 foot above base flood elevation
 18 height limitation in the RD district.
 19 And so the planning commission was going
 20 through its responsibility delegated by the town's
 21 counsel to have a public hearing. The notices were
 22 out. Those things were going on. And there are
 23 arguments as to whether, and we've asserted in
 24 our pleading, the pending ordinance doctrine
 25 applies. And I know there's some potential

9
 26 that they might want to but with -- on the outside

1 challenges to that in the fact situation.
 2 But it is striking that when they got
 3 their variances granted, I believe the date was
 4 March 28th, 2016, for those three items, it was
 5 not until August of 2017, that they did anything to
 6 act one way or another on those variances. And they
 7 did so by submitting an application for a building
 8 permit with the taller buildings.
 9 Nowhere in that time did they apply for a
 10 variance from the height limitation that had been
 11 imposed by the change of the zoning ordinance. And

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12 the LMO going back to the reference to the
13 settlement agreement -- I believe that settlement
14 agreement, which was recorded as also being
15 restrictive covenants, in Section 5 it says that
16 whatever they build there has to be -- has to comply
17 with the LMO.
18 when they filed for the application for
19 the building permit in August of 2017, they had a
20 45 foot above base flood elevation height limit
21 under the rezoned property which they had never
22 tried to do anything about and they should have if
23 they were interested in that.

24 Now, I also want the court to really get a
25 sense. The transcript of the 2018 BZA hearing runs

♀
I can give you a summary of page and line references
to the transcript and I would tell you that in my
opinion the transcript is 127 pages long
1 127 pages. And after all the inquiries and
2 discussions and presentations, the BZA started their
3 own discussion publicly in the meeting of what this
4 meant somewhere around Page 100 or so, 105 or
5 something like that. And made a motion, amended the
6 motion, amended the amendment to the motion, voted
7 on them appropriately in reverse order and
8 determined as a matter of fact -- they treated it as
9 a finding of fact that there was no site-specific
10 plan -- excuse me, site-specific development plan
11 underlying this ordinance.
12 And there was nothing that addressed
13 height. And, therefore, there was no vested right
14 as to height arising from the 2016 BZA variance

15 proceeding. And as a result, the property is
 16 limited under the current zoning to RM-8 to a
 17 building height of 45 feet above base flood
 18 elevation. And it's that process with those analyzes,
 19 and that very careful, detailed consideration given
 20 by the members of the BZA that led to their decision
 21 to modify the LMO official's determination. It is
 22 from that BZA decision that this appeal comes forth.
 23 I can supplement when I send in this copy
 24 of the Hilton Head ordinance, if Your Honor wishes.

28

1 I can give you a summary of page and line references
 2 to the transcript. But I would tell you that in my
 3 own markings and dog-earring corners of the 127
 4 pages, I've probably got 90 pages marked that are
 5 significant to understand the full situation and I
 6 believe it all supports our view of the matter. And
 7 so if Your Honor is uncertain, I would encourage you
 8 to read that transcript.
 9 JUDGE DUKES: Let me ask you
 10 this. Because what I've heard so far, maybe you all
 11 can correct me if I'm wrong because you all have
 12 lived this and read about it and studied about it.
 13 I'm just hearing about it, but oftentimes these are
 14 sort of any evidence sort of issues that come out of
 15 -- come out of these appeals.
 16 This sounds like a legal issue. And the
 17 legal issue is, I think, you all correct me if I'm

21 MR. LAUGHLIN: I think it is a legal 30
 22 issue. And I think the legal issue is this: what 31
 23 is the scope of the rights that were vested by the 32
 24 granting variance, number one, and what is the 33
 25 proper interpretation of site-specific development 34
 30 35
 30 I am not sure if that was considered or not at the hearing. 36
 30 I am not sure if that was considered or not at the hearing. 37

1 plan which is a defined term.

2 And, you know, it is -- it is our position 3
 3 simply that the grant of the variance vested in us 4
 4 the right to proceed with what we showed them, 5
 5 subject to the rules of the road as they existed at 6
 6 the time that the variances were granted, modified 7
 7 only by the variances. 8
 8 You can't change the rules of the road 9
 9 after the variances are granted because the rights 10
 10 are vested. Meaning the rules of the road are set 11
 11 and the scope of the variance is set. There was no 12
 12 variance requested from height because we didn't 13
 13 need a variance from height. We were going to be 14
 14 well below the maximum height at that time. 15
 15 So I think the real -- when you drill down 16
 16 through it, was there a site-specific development 17
 17 plan to which vested rights could attach? And I 18
 18 don't think there's any question that, A, the 19
 19 application for the variance complied with the 20
 20 requirements for that application. They were 21
 21 certainly found to be so by town staff and the BZA 22
 22 when it granted the variance. You can't go back and 23
 23 rehash that now anyway.

24 So, you know, was the material that was
25 submitted, did it describe with reasonable certainty

31

1 the types and density or intensity of uses for a
2 specific property? There's absolutely no question,
3 Your Honor, that this did. Everybody knew what they
4 wanted to build.

5 And the Respondent talked a lot about
6 Attachment H, but there's another attachment
7 immediately preceding it, Attachment G which is also
8 a drawing of a building. It actually contains a
9 little bit more information than Attachment H
10 because it shows you where base flood is.

11 And if you take the measurements indicated
12 at the base and scale them up you get a building of
13 58 feet above base flood, approximately. And it's
14 57 feet that we ended up doing. So, you know, to --
15 I think it's just -- there's just no question in my
16 mind that when the variance was granted by the BZA,
17 it knew, based on the information provided by the
18 applicant, with reasonable certainty what the type
19 and density or intensity of uses would be.

20 The rules of the road when the variances
21 were granted were fixed. Doesn't mean you can build
22 anything you want to. It's got to be consistent
23 with what you showed them you were going to build.
24 And it has to comply with the rules of the road as
25 they existed at the time the variance was granted.

1 So, you know, you can violate building codes that
 2 existed or any of that -- or any of that kind of
 3 stuff.
 4 You have to comply with all of it except
 5 to the extent of your variance. And, you know,
 6 again, when you get a variance, then you begin and
 7 you do all of your work, you drew all the plans that
 8 were necessary to apply for -- you spend money.
 9 Well, you can't change the rules of the
 10 road. If you wanted -- you could change other
 11 rules. If you wanted to attack height you could --
 12 you could do other things to change that would --
 13 that would mitigate the whole thing. But you can't
 14 do that. That's what vested rights is all about.
 15 And I can address the pending ordinance
 16 thing, too. I mean, the case law I think is
 17 certainly Pennsylvania case law upon which --
 18 reverses Rivas that first recognized the pending
 19 ordinance doctrine in South Carolina.
 20 It's up to the -- it's up to the
 21 governmental agency to decide whether or not to
 22 invoke the pending ordinance doctrine. In this
 23 case, they chose not to do so until much later down
 24 the road after the building permits had been applied
 25 for.

1 And as the LMO official and the town
 Page 29

2 attorney told the BZA, it's up to town Council to
3 decide whether it wants to invoke the pending
4 ordinance doctrine. Typically, it invokes it if it
5 wants to after first reading of an ordinance.
6 Even Sherman versus Rivas the court
7 emphasized that we think city's previously
8 publicized declaration of its intention to zone the
9 net area when coupled with the planning and zoning
10 commission's final action on the matter was
11 sufficient to bring the case within the pending
12 ordinance doctrine. Now, in this case the application was
13 filed for the variances were filed in February of
14 2016. Approved in March of 2016. Planning
15 commission, LMO, committee had a meeting on March 7
16 to consider this March 16, 2016 goes to the
17 planning commission. So the application for the variances had
18 already been filed. And there was no suggestion at
19 the time the BZA approved the variances in March
20 of 2016 that there was any pending ordinance. And
21 the building applications were filed in August
22 of 2017.
23
24
25 Town Council didn't rezone the property

34
1 until October of 2017. So, you know, pending
2 ordinance doctrine I think simply doesn't apply. It
3 was not invoked. It cannot be invoked by a third
4 party. It has to be invoked by the governmental

5 agency? ...
 6 JUDGE DUKES: what was the ... and I
 7 was trying to follow the timeline, but what was the
 8 date of the building permit application and what was
 9 the date of passage of the rezoning? How did those
 10 two ...
 11 MR. LAUGHLIN: Rezoning was October
 12 of 2017. Building permit applications were August
 13 of 2017. Now, admittedly prior to that time,
 14 counsel had enacted an ordinance reducing the
 15 maximum height and they did that in May of May
 16 of 2016 which would have been three months after the
 17 application for variances were filed, two months
 18 after the BZA had approved the variances.
 19 And when ... and they never invoked the
 20 pending ordinance doctrine on that, not after first
 21 reading or anything else.
 22 JUDGE DUKES: But it's -- that predates
 23 the application? ...
 24 MR. LAUGHLIN: It predates the ...
 25 MR. NEWTON: The building permits ...
 35

1 MR. LAUGHLIN: -- the building permit
 2 applications, but not the variance.

3 MR. JOHNSON: It predates the
 4 building permit application by about a year and a
 5 half, the height limitation reduction.

6 JUDGE DUKES: So I mean on that one
 7 the pending ordinance doctrine is sort of

8 immaterial, right? I mean, on the building height 31
 9 modification or change and the-- 32
 10 MR. LAUGHLIN: I think it's 33
 11 immaterial for the basic reason it was never 34
 12 invoked. 35
 13 JUDGE DUKES: But, I mean, that's to 36
 14 fill the gap between passage between the time you 37
 15 first think about it and the passage. I mean, 38
 16 that's what the pending ordinance doctrine is about, 39
 17 right? I mean, to fill that gap? 40
 18 MR. LAUGHLIN: I think what it 41
 19 what it ends up really being about is who is racing 42
 20 to do something that they won't be able to do later 43
 21 first. Is the town is the town racing to prevent 44
 22 something that is already in the hopper or is 45
 23 somebody trying to get something before an ordinance 46
 24 is enacted that it knows is going to prevent them 47
 25 and where is the good faith plot. And where -- and 48

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11 MR. NEWTON: Your Honor, I'm sorry.

12 JUDGE DUKES: Yeah. Go ahead.

13 MR. NEWTON: You know I'll be brief

14 as always. I think the court has -- I beat this

15 drum all the time in here. We're at the any

16 evidence, no evidence standard.

17 MR. JOHNSON: Right.

18 MR. NEWTON: And it is, as we've

19 talked about, a really high burden on an appellant.

20 In fact, the only way that an appellant can make it

21 is to take an argument and turn it into a legal

22 argument rather than a factual argument, right?

23 The only way you -- with respect to the

24 court always. The only way you can flip it is if

25 you find an error of law. And so as we sit here, I

26 somebody trying to get something before an appellate

27 is a hard case to know is going to prevent them

28 and where is the good faith plea. And where -- and

37

1 think then we come down to this site specific
2 development plan question, right.

3 I mean, we can bounce a bunch of other
4 stuff around, but that's what you get to. And then
5 at that point, you have to look at the variance that
6 was given in 2016. What did they ask for? What did
7 they get? What did they show?

8 If you look at that variance -- and I'll
9 be happy to pass it up to the court. But they've
10 basically asked for -- this is our friend Mr. Qualey
11 who did it. And I say that in a polite way, kind
12 way. They wanted a variance for adjacent street
13 setback requirements, adjacent street buffers and

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14 side set back angles. If you want to
15 And I think two things. If you want to
16 have a site specific development approval, the word
17 "specific" is there for a reason. It doesn't say
18 site approval. Site specific approval. What is
19 very specific in the variance obtained in 2016 are
20 the horizontal elements of the development. Does
21 that make sense? I mean, if you look at it, you've
22 got you're looking at it from above?
23 JUDGE DUKES: Oh, no. I'm -- it's
24 two dimensional. I get it.
25 MR. NEWTON: Yes, sir. And so no

38
1 question but that they have that variance, that they
2 are allowed to build in that envelope based on what
3 they asked and what they got. What -- and I don't
4 blame them for trying. I'd do the same thing if I
5 was in their shoes.
6 What they're trying to do is bootstrap
7 then that horizontal approval into a vertical
8 approval without meeting the specificity requirement
9 of a site specific development. And that, I think,
10 if you followed the BZA's logic and their
11 conversation is what hung them up.
12 And they said, you know, no. I think the
13 building official was trying to give the benefit of
14 the doubt to the applicant saying, hey, there's a
15 drawing here. I could say it's specific enough.
16 BZA said, no, it's not. It's not a 1:30 scale. It

17 doesn't tell us how tall it's going to be. 31
 18 And that's a fact question. Did you have 32
 19 enough to meet the standard is a fact question that 33
 20 the BZA beat on for the last X number of pages in 34
 21 this transcript. That's the distinction because 35
 22 that sword cuts both ways. Either he's got a 1:30 36
 23 scale showing the height or he doesn't. And you 37
 24 know he doesn't, respectfully to Mr. Laughlin, 38
 25 because in his comments and in the comments of the 39
 40
 41
 42

1 LMO official nobody could really figure out how tall
 2 the building was based on the drawings in the 2016
 3 variance. It's not there. Ergo, it's not specific.
 4 Ergo, it is not a site specific development plan
 5 suitable for vesting.
 6 Take that almost most part type
 7 conversation and then put it in the context of a
 8 standard of review that the court is bound by. And
 9 I think you'll find as it is always I know. Just
 10 getting ready to go. Hang on baby.
 11 JUDGE DUKES: Let him finish.
 12 promise you. we've got till 5:00 o'clock.
 13 MR. NEWTON: No, we don't. I've got
 14 to go. But if you really -- Your Honor, if you take
 15 that balance and then you say, okay, it's close. Is
 16 it site specific? well, it shows four stories. It
 17 shows this. It shows that. It doesn't tell you how
 18 tall it's going to be. Ergo, it is not specific.
 19 It can't be.

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20 And so the Board looked at it. The BZA
21 looked at it and said, well, how tall is it? How
22 tall is it going to be off this drawing? well, you
23 know, we don't know. It might be -- and I think
24 Mr. Laughlin said somewhere between 50 -- 48 and
25 52 feet. But we're not sure. well, it ain't

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specific
MR. LAUGHLIN: That's not what I
said.

MR. NEWTON: well, then let me just
say something. I know the LMO official went through
calculations. And I know, respectfully, your Honor,
if you take that -- here, let me show it to you. I
think -- I think -- because I went back and forth in
my mind about it. You know is it, yes. You know,
times when I thought it was. Times when I thought
it wasn't. But sitting here in this conversation --
may I approach?

JUDGE DUKES: Sure. But, Drew, did
you say one of the buildings meets the requirement
anyway?

MR. LAUGHLIN: Pardon me?

JUDGE DUKES: well, didn't you say
one of the buildings was 42 anyway?

MR. LAUGHLIN: No. The buildings
they want to build are 57 feet above base flood.

JUDGE DUKES: Okay. All right. I
was just wondering why we were talking about that

23 one, but okay. 05
 24 MR. LAUGHLIN: A site specific plan 15
 25 is a plan that is specific to the site. They're 25
 know, we don't know. It might be -- and I think 23
 MR. LAUGHLIN said somewhere between 20 -- 48 and 45
 25 feet. But we're not sure, it ain't 41 25

1 trying -- you know, they're trying to put --
 2 basically say unless we had complete construction
 3 drawings in front of them when we applied for that
 4 variance there is no site specific development plan.
 5 That's just nuts. MR. LAUGHLIN: 5

6 MR. NEWTON: And, Your Honor, I
 7 MR. LAUGHLIN: And you know --

8 JUDGE DUKES: Hold on a second
 9 because Deborah is trying to get it all. So

10 MR. LAUGHLIN: Reasonable certainty
 11 the type, density, and intensity of uses. That's
 12 what the statute says. It doesn't say it doesn't
 13 require any further specificity than that. If it's
 14 enough to tell you what it is we're wanting to build
 15 it's a site specific development plan. 15

16 MR. NEWTON: That's the 2016 variance
 17 package. If you would go back and look, Your Honor
 18 -- 21

19 JUDGE DUKES: So, I've been handed
 20 the variance package which I think is actually -- 21

21 MR. NEWTON: It is in the record.
 22 Yes, sir. MR. LAUGHLIN: 23

23 MR. LAUGHLIN: It is in the record. 25

24 MR. NEWTON: I just -- it just help
 25 that you know, I'm just old school, paper. 25

42

1 JUDGE DUKES: But I mean, there's no
2 dispute but that the variance was sought and granted
3 on two dimensional, horizontal construction set
4 backs.

5 MR. LAUGHLIN: Actually, that's not
6 entirely correct.

7 JUDGE DUKES: Okay. What's the
8 MR. LAUGHLIN: Because one of the
9 variances was for the setback angles. And those are
10 directly related to height. Your Honor, I mean,
11 they're not horizontal at all. Setback angles tell
12 you if you have a building as you get above base
13 flood, you start having to set a setback angle. You
14 can't just build straight up.

15 But -- so, I mean, to say that the
16 variances had nothing to do with anything vertical is
17 just I think incorrect.

18 MR. NEWTON: Well, and let's parse
19 that out, Your Honor, because I do think in all
20 fairness we should. There was some reference to
21 vertical in the variance that you're holding, right?
22 But it's not specific. And that's the problem.

23 MR. LAUGHLIN: It's site specific.

24 MR. NEWTON: That's the design. It
25 is not specific as to the height of the building

1 that will be constructed on the site which is what
2 the requirement is for the vested use.

3 And I would respectfully submit to the
4 court that -- you know, live by the sword, die by
5 the sword. Your Honor, can say, all right, was it
6 site specific? How do you figure that out, Your
7 Honor? What -- where does the court go to find that
8 out? You look at the State statute, right?

9 But then you have to go to the town of
10 Hilton Head Island's LMO that tells you a site
11 plan at a scale of one inch equals 30 feet,
12 accurately showing the variances requested. That is
13 not in the record in the variance applications.
14 Ergo, they're dead. It most certainly is
15 in the record. MR. LAUGHLIN: It most certainly is
16 in the record.

17 MR. NEWTON: Well, I respectfully
18 disagree. Show me. MR. LAUGHLIN: There is a site plan
19 and site plans show you what's the footprint on the
20 site.

21 MR. NEWTON: Yes, sir, I understand.
22 I'm asking -- MR. LAUGHLIN: And that's in the
23 record. It's --

44

1 JUDGE DUKES: You all hold on a
2 second because it's really hard for Deborah to get

3 both of you. Let -- you all help me out. Drew,
4 maybe you could help me. The angle -- the setback
5 angle, if I've heard this term before, dealt with it
6 before --

7 MR. NEWTON: Yeah, Your Honor --

8 MR. LAUGHLIN: Yeah. If you look at
9 the variance application and you look at Attachment

10 G.

11 JUDGE DUKES: Attachment G.

12 MR. NEWTON: My only point, Your
13 Honor, was this and just so I can finish.

14 JUDGE DUKES: All right.

15 MR. NEWTON: I went last and then

16 Drew is beating on me and won't let me finish. So

17 but I would like to finish the thought.

18 JUDGE DUKES: Okay.

19 MR. NEWTON: You go to the State

20 statute about vested rights and it tells you what

21 it's got to be, reasonable certainty. But then it

22 also says you go to the local governing authority

23 and you look at what they require. And what they

24 require, being the Town of Hilton Head Island, is

25 the 1:30 scale to show what's going to be vested.

45 That drawing in your hand, the one that

1 they seek to rely on, and I don't blame them for

2 trying, is not 1:30 scale. It doesn't say anywhere

3 on there. It's not specific. And, therefore, I

4 would submit that the appeal would have to be

5

6 denied.
7 JUDGE DUKES: Thank you.
8 MR. LAUGHLIN: Could I respond to
9 that?

10 MR. NEWTON: Absolutely. Yeah,
11 please.

12 JUDGE DUKES: Well, I'm still
13 wondering what Attachment G is going to say. What's
14 the --
15 MR. LAUGHLIN: Attachment G -- have
16 you found Attachment G?
17 JUDGE DUKES: I've found it. It's
18 got these weird lines

19 MR. LAUGHLIN: Attachment G -- and,
20 actually, Attachment G has enough dimensions on it
21 to where you can pretty much tell within probably an
22 inch or two what the height of that building
23 depicted is. But if you look at the angled drawings
24 that start at the 60 degree drawings that intersect
25 about, you know, the top of the fourth floor of that
46

1 building, absent a variance you would have had to
2 have stayed within the triangle below where those
3 lines intersect.

4 JUDGE DUKES: Then why didn't they
5 ask for a variance?

6 MR. LAUGHLIN: They did ask for a
7 variance. And that is the variance they got, which
8 was from the setback -- one of the variances. There

9 was a variance from the setback angle so that they 57
 10 could build up straight just as shown in Exhibit G 58
 11 for which I will tell you scales out at about 58 feet 59
 12 above base 60
 13 MR. NEWTON: Your Honor, may I 61
 14 approach? 62
 15 MR. LAUGHLIN: Now, the site plan, if 63
 16 you look at the prior exhibits, you will see site 64
 17 plans of exactly where these buildings are going to 65
 18 be on those sites drawn to 1:30 scale exactly as 66
 19 required. And besides, if they had deemed that the 67
 20 application deficient as lacking something, they 68
 21 should have said so then instead of granting the 69
 22 variance 70
 23 MR. NEWTON: Your Honor, may I be 71
 24 heard, briefly? 72
 25 JUDGE DUKES: Well, let me make sure 73

74
 75 47x

1 Drew is finished: 76
 2 MR. NEWTON: Okay. I'm sorry to go 77
 3 ahead. He gets mad. 78
 4 MR. LAUGHLIN: I get worked up. 79
 5 MR. NEWTON: That's okay. I thought 80
 6 you were trying to scale down. Come on. Breathe. 81
 7 Breathe. 82
 8 MR. LAUGHLIN: I don't know whether 83
 9 you saw the flight, though, in terms of how you are 84
 10 interpreting the ordinance. Clearly it was after 85
 11 you helped author the interpretation. 86

12 MR. NEWTON: Do I have to take that
 13 a beating on the record, Your Honor?
 14 JUDGE DUKES: Hold on a second. So,
 15 the variance granted, obviously, the two-dimensional
 16 stuff we all agree on. And then ordinarily it had
 17 sort of a tight angle that would create a point at
 18 the top and they reduced that angle.
 19 MR. LAUGHLIN: Well, they eliminated
 20 it altogether so that you could build
 21 a flat-sided building, essentially?
 22 MR. LAUGHLIN: Exactly, yeah.
 23 MR. NEWTON: And, Your Honor, I need
 24 to tell you the big problem for that drawing in
 25

48

1 Exhibit G. If you look at it, it's for Lot 22
 2 Bradley Circle which is not the subject of this
 3 appeal.

4 MR. LAUGHLIN: It's all it shows
 5 really is that they intended to do the same thing as
 6 that they had done on Lot 22, it's this --
 7 MR. NEWTON: But now --

8 MR. LAUGHLIN: 57-foot building.
 9 MR. NEWTON: But now we're moving
 10 sites around. So we're not site specific.
 11 MR. LAUGHLIN: No, we're not.

12 MR. NEWTON: We're site-specific.
 13 MR. LAUGHLIN: Oh, come on. You're
 14 going to say they didn't know.

15 MR. NEWTON: -- say it right here.

16 MR. LAUGHLIN: -- what sites we're

17 talking about.

18 JUDGE DUKES: You all. You all, hold

19 on a second.

20 MR. LAUGHLIN: Oh, come on, man.

21 JUDGE DUKES: Deborah is really --

22 hold on a second.

23 MR. NEWTON: What are you going to

24 do?

25 JUDGE DUKES: Wait, Greg. Hold on a

49

1 second and let Drew finish.

2 MR. NEWTON: Yes, sir.

3 MR. LAUGHLIN: I think it's absurd to

4 say they didn't know what site they were dealing

5 with. And it's absurd to say they didn't have a

6 site plan for the site in the variance application.

7 They certainly did. And if they needed one and they

8 didn't have it, they should have said so.

9 MR. NEWTON: Well, Your Honor --

10 MR. LAUGHLIN: The fact of the matter

11 is there was no need to give them, all right, this

12 building is going to be 57 feet, six inches because

13 they didn't need a variance because the height was

14 75 feet. And, in fact, at the time you seek the

15 variance, you don't have your building plan anyway?

16 MR. NEWTON: But, Your Honor, my

17 concern is, if I may, he -- with respect, what

18 they're trying to do is if you look at Exhibit G
19 there's a little -- Your Honor, if you look at it
20 like that, this right here --
21 JUDGE DUKES: Right.

22 MR. NEWTON: -- at the bottom, reads,
23 Lot 22, Bradley Circle. And I know Mr. Laughlin is
24 going to holler at me in a minute, but --

25 MR. LAUGHLIN: It already did.

50

1 MR. NEWTON: I know. But what I'm
2 saying, Judge, is that if you look at it, that ain't
3 Lot 2. That ain't Lot 1. It's a whole different
4 site.

5 MR. LAUGHLIN: And I say, so what.

6 It doesn't matter.

7 MR. NEWTON: Well --

8 MR. LAUGHLIN: As part of this

9 application --

10 MR. NEWTON: Respectfully, Your Honor

11 --

12 MR. LAUGHLIN: It was done to depict

13 what the effect of the elimination of the setback

14 was going to be --

15 JUDGE DUKES: Let me ask you this,

16 what was the purpose of eliminating the

17 setback angles?

18 MR. NEWTON: Well, it does deal with

19 height, Your Honor, but it's not specific. That's

20 the problem. You get into -- they want to be

21 at a certain height, but it doesn't -- it's not

22 non-specific. MR. JOHNSON: Yes, Your Honor. 25

23 JUDGE DUKES: But, I mean, at the
24 time, he couldn't have requested a variance on the
25 height because he wasn't trying to go above 75 feet,

MR. NEWTON: I don't think I would have done that. 1

2518

JUDGE DUKES: For what purpose? 2

1 you might? So he wouldn't have -- there wouldn't even

2 have been -- I'm not even sure what they would have done

3 with a -- MR. JOHNSON: Yes, Your Honor. 3

4 MR. NEWTON: I understand that, Your

5 Honor. But that doesn't create a site specific

6 vesting. If he had said, hey, I'm building 75 feet.

7 I want to make sure I'm vested in this. He could

8 have, but he didn't do. And that's the -- you know,

9 that's why, I mean, look, this isn't the easiest

10 one I've ever seen. MR. JOHNSON: I agree with you. 11

11 JUDGE DUKES: Yeah, I mean, in the

12 perfect world, they would have requested a building

13 permit the day after they got the variance. And

14 then I assume we wouldn't have been here, but we

15 don't live in a perfect world, obviously. MR. JOHNSON: 12

16 MR. NEWTON: I don't think I would have done that. 13

17 MR. JOHNSON: Your Honor, at your

18 schedule, I'd like to respond to the question that

19 you asked me a while ago. MR. JOHNSON: Yes, Your Honor. 14

20 JUDGE DUKES: Barry, you are so

21 polite and good at this. I swear you just let them

22 argue back-and-forth and let them wear themselves

23 out and then you come in. So, yes, thank you very

24 much Love to hear from you, Mrs Johnson

25 MR. JOHNSON: Thank you, Yours Honor.

JUDGE DUKES: I heard it

that he couldn't have produced a variance on the

52 feet because he wasn't trying to go above 75 feet

1 MR. NEWTON: I guess that means I'm
2 done?

3 JUDGE DUKES: For awhile.

4 MR. NEWTON: That's fine. Thank you.

5 MR. JOHNSON: I didn't mean to cut
6 him off.

7 JUDGE DUKES: Now you didn't.

8 MR. NEWTON: I think his honor has

9 heard enough from me.

10 MR. JOHNSON: In respect to Greg's

11 response to your question about whether this is a

12 legal issue only or a fact issue and a legal issue,

13 I agree with Greg on that because the conclusion,

14 legal conclusion that the board reached, the BZA

15 reached had to be based on some finding of fact.

16 They had to know what facts they were talking about.

17 And they based it on a finding of fact that uses

18 that exact phrase, over around page 120 to 123 or 4

19 of the transcript.

20 That there was no site specific

21 development plan that was demonstrable as to height

22 in that 2016 variance from which they could now

23 conclude that there's a vested right to 75 feet or

24 58 feet or 50 feet, one and a half inches or

25 52 feet, one and a half inches or 48 feet or 46

♀

53

feet. They couldn't conclude.

And when you apply the standard of review

in this appeal, I think you have to come to the

conclusion that the appeal needs to be denied. In

the Petitioner's pleading and in our response, we

cite many of the same cases. We cite a few cases

they don't cite. I think they cite one we don't

cite. But they all are basically the same thing

about the law and Greg summarized it awhile ago, any

evidence versus no evidence.

There is more than a scintilla. More than

a tiny bit of evidence in this record that you can't

vest if you don't know what the height is. And you

can't vest it by stories because that's not in the

MOA. And so you can't vest it because it's not

specific. You don't know.

And that is an appropriate finding of fact

based on the record and I think an essential finding

of fact before you can evaluate the legitimacy of

the conclusion of law they came to. The conclusion

of law they came to was obviously based on this

Appendix D-19.A.2, defining pursuant to State law

which delegated that to the local government what is

the site plan and what specificity is required.

And I think if you umbrella back to the

♀

State enabling statute, that says that the

4 the law that applies, both from a standard review
 3 supported in the facts that are in the record and in
 2 MR. JOHNSON: That's totally
 1 MR. NEWTON: And, Your Honor --

28 development plan has to be -- has to describe with
 27 reasonable certainty the types and density or
 26 intensity of uses for a specific property or
 25 with properties and things may have
 24 out of and but you've got to have the details of that
 23 it fleshed out at the local ordinance level. And then
 22 when you look at the local ordinance, it has
 21 defined what it requires in order to have reasonable
 20 certainty. And it did so in ID-197A22 of the LMO.
 19 and it's attainable in the ordinance that application
 18 the ordinance, therefore, there's no rational basis
 17 on which the LMO official, MS. LEWIS, determined in
 16 her determination letter that it was vested to
 15 75 feet. There's no rational basis given that
 14 we've absent on which she estimated that it might be 50
 13 and plus feet, but not 75 feet. And so the BZA did the rational thing
 12 operating within the scope of their authority and
 11 responsibility and determined we don't have anything
 10 that is the specific development plan with regard
 9 to the height and there is, therefore, no vested right
 8 in any height under that 2016 variance and under
 7 the law, now, they are stuck with 45 feet above base
 6 with elevation. And so, I think, you're right.
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5 on standpoint and the substantive law, state and local. 8
6 And I think I'm done for the moment. 9
7 Now MR. NEWTON: Your Honor, I would 01
8 just -- and this is somewhat anecdotal, but I think 11
9 relevant. When that vested rights act came out, it 21
10 was right at the crash time of the economy when you 31
11 had all these general permits and things out 41
12 there. The legislature said, all right, we've got 51
13 to do something about this so that everybody doesn't 61
14 get killed. 71
15 when that happened, many, many 81
16 jurisdictions, including Hilton Head, and I think 91
17 probably the roughest one I've seen is Myrtle 05
18 Beach's, went and, I guess, dovetailed into that 15
19 state statute. Said, all right, what are we going 25
20 to do so that we can discern in our own jurisdiction 35
21 what's a site specific development and not just 45
22 rely on the rather -- which is why the state code 55
23 then allows us to do that, the municipalities to do 65
24 that. 75
25 And I think that's important in context 85

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8 BZA said where is it? It's not here. No
 9 site specific development.
 10 I'm going to stop talking now.
 11 JUDGE DUKES: Yes, sir.
 12 MR. LAUGHLIN: There was compliance
 13 with Appendix D-19. And it was found that the
 14 application was found to have complied with it when
 15 the variance was granted. Because D-19 tells you
 16 what you've got to give them to get the variance.

17 MR. NEWTON: As it relates to the
 18 verticality,
 19 MR. LAUGHLIN: No, it doesn't.
 20 MR. NEWTON: I'm sorry. It's
 21 horizontal.
 22 JUDGE DUKES: You've got to stop
 23 talking and let --
 24 MR. LAUGHLIN: It doesn't.
 25 MR. NEWTON: -- I'm sorry.
 57

1 MR. LAUGHLIN: But it doesn't say
 2 that. So, let's posit this. Let's say instead of
 3 reducing the height in that -- in that -- in that
 4 area from 75 to 45 feet, what if they had reduced it
 5 to 20 feet or 25 feet? It would render that
 6 variance even more meaningless than they're trying
 7 to do it now. I mean, the whole purpose of needing
 8 the setback -- the whole purpose of getting the
 9 setback angle variance was because you're building
 10 up.

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11 And, you know, I have to get back, Your
12 Honor, to the fact that the officials who reviewed
13 that variance application knew -- and it's in the
14 record. They say it. They knew that these
15 buildings would be more than 45 feet high. They
16 knew that. The BZA knew that when they granted the
17 variance because it was discussed at the hearing.

18 So I mean, and they knew that it would be
19 four feet -- four stories over parking, and they had
20 similar buildings that we had done to compare it to
21 and we're not -- we're talking, you know, very
22 expensive structures here. You're not going to put
23 eight feet ceilings in them.

24 My point is that everybody knew what would
25 be built when those variances were granted.

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1 Everybody. And you can look at the record and see
2 that everybody knew, including the Respondents. But
3 certainly the LMO official and certainly the BZA.
4 And they really can't be heard now to say, oh, gee
5 whiz. We didn't know when we granted that variance
6 that you were going to build more than 45 feet.
7 The fact of the matter is that the
8 political temperature on this between those dates
9 went up. It got in the paper. It was all over the
10 place. The town council or at least some of them
11 were scrambling around trying to get the heat off of
12 them and do something. That's what happened here.

13 And you can get that from the record, too,

14 by the e-mail traffic going around between all of
 15 these people. And the bad faith started when they
 16 just sat on the building permit applications. Just
 17 sat on them when you've got a dispute with these
 18 people. We're not going to do anything until you
 19 work that out.
 20 JUDGE DUKES: Of course, that's not
 21 what this is about. I mean
 22 MR. LAUGHLIN: No, but I mean, it's
 23 an indication of where this thing was going, Your
 24 Honor.
 25 JUDGE DUKES: All right. Anything
 else for this record? Drew, did you say that that
 notebook is for me?
 MR. LAUGHLIN: It is. And that's the
 entire certified record on appeal, Your Honor.
 JUDGE DUKES: All right. Do we need
 to make that an exhibit?
 MR. LAUGHLIN: I made a copy for
 Barry as well.
 JUDGE DUKES: Okay.
 MR. NEWTON: And, Your Honor, I'll
 stake back what I passed up because it is in the--
 JUDGE DUKES: Okay.
 MR. NEWTON: One he gave you. I
 would only say one thing for the record, Your Honor,
 Vulcan Materials. Vulcan Materials.
 JUDGE DUKES: Okay. Oh.

59

17 MR. NEWTON: City of Greenville,

18 vulcan materials, standard review

19 JUDGE DUKES: I thought you come up

20 with some Star Trek thing.

21 MR. NEWTON: NO. NO. NO. Sir.

22 JUDGE DUKES: Yeah. All right.

23 well, do we need to make that entire notebook --

24 MR. LAUGHLIN: I mean, it is the

25 record already. It's -- I, you know --

60

1 JUDGE DUKES: Okay -- So we don't need

2 to -- that way I can just hang on to it.

3 MR. JOHNSON: And the copy of the --

4 before we close the record, I'd like to add one more

5 thing. This comes from the transcript of the 2016

6 variance hearing (inaudible) Chandresh's quote. So

7 I would like to address this concern. We are not

8 going to increase the height more than it's already

9 there which are existing.

10 JUDGE DUKES: Was that -- is there a

11 page and line?

12 MR. JOHNSON: This particular typing

13 of it is not paginated. So I'll supplement that to

14 the record.

15 JUDGE DUKES: When you say it was

16 already there, were they tearing houses down and

17 replacing them?

18 MR. JOHNSON: Yeah, this whole

19 neighborhood was one of the early neighborhoods in

20 the central part of Hilton Head on the beach. And
21 it's been extensively
22 redeveloped.

23 MR. JOHNSON: redeveloped. Mostly
24 teardowns and build megastructures as of the advent
25 of Mr. Chandresh and his group.

61
-- work --

1 JUDGE DUKES: Megastructures.

2 MR. LAUGHLIN: well, we think that
3 redevelopment was well underway before we got there.

4 But, I mean -- but he's right. I mean, you know,
5 this, you know, the neighborhood is an old --
6 -- neighborhood, largely probably single-story, maybe
7 two-story homes. I'm talking about the old part.

8 And, you know, once they started building causeways
9 across that little marsh area to the beach, then the
10 homes just started getting bigger.

11 MR. JOHNSON: would Your Honor like
12 me to, with everyone's concurrence, send a copy of
13 this LMO statute to be made part of the record or
14 maybe I could just give a copy of it to Deborah now

15 and
16 JUDGE DUKES: Do we need that -- it's
17 a public document. I mean, what would probably be
18 most helpful for me to consider it would be if you
19 could just tuck it in the front of that notebook
20 right there if you've got --

21 MR. JOHNSON: Is that agreeable?

22 JUDGE DUKES: And -- because we're

23 not really making that an exhibit anyway because --

24 MR. LAUGHLIN: I mean, I don't really
25 consider it part of the record. I consider it part

1 of whatever potentially applicable law there is.

2 MR. JOHNSON: Yeah. Yeah.

3 JUDGE DUKES: Yeah, it's just the --
4 yeah.

5 MR. LAUGHLIN: Would, Your Honor --
6 would, Your Honor, like us to submit excerpts from
7 the transcript or --

8 JUDGE DUKES: If you all wanted to,
9 you know, within the next week or so just send me
10 what parts of the transcript you'd like me to focus
11 on that would be fine. If you wanted to do a
12 follow up (inaudible) letter or something. It
13 doesn't have to be a complicated brief or anything.

14 That might help me.

15 Okay. Thank you for picking the right
16 one, Deborah.

17 MR. JOHNSON: Did I give you the
18 right one?

19 JUDGE DUKES: Yeah. She got the
20 right one. Yeah. That would be fine. So is a week
21 good to kind of follow-up copies to everyone? If
22 you could get me pages and lines or whatever, just
23 pages is fine.

24 MR. LAUGHLIN: The only -- the only
25 -- the only other thing I would add, Your Honor, is,

you know, from my client's perspective, you know, that their plans have been delayed considerably.

JUDGE DUKES: Time is of the essence.

MR. LAUGHLIN: So I don't want to rush you and not have you give full consideration to the record and the arguments, but there is some time constraints.

JUDGE DUKES: well, why don't we do this. I mean, if maybe by wednesday or so of next week. Let's say Thursday. No? I'm getting a face.

Is a week good? Next Friday?

MR. LAUGHLIN: I mean, a week is good. I don't have a problem with it.

JUDGE DUKES: Once you all have those in and have copied everyone else, would somebody just

MR. JOHNSON: Could you just make it the following Monday, Judge, so that we've got that weekend to wrap it up?

JUDGE DUKES: Yeah, that's fine.

MR. JOHNSON: The Monday after the Friday?

JUDGE DUKES: we'll do that. Once it's all in, can I get one of you all, perhaps Drew maybe, to get with Heather and just ask her to set

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1 up a phone conference with everybody within a few
2 days after that?
3 MR. LAUGHLIN: Sure.
4 JUDGE DUKES: And that, if nothing
5 else, will keep a fire under me to get it done.
6 MR. LAUGHLIN: Sure? We'll do that.
7 So a week from Monday is that what I heard?
8 MR. JOHNSON: Yes.
9 JUDGE DUKES: Anything else for this
10 record?
11 MR. NEWTON: Are you going to put a
12 page limitation on us?
13 JUDGE DUKES: Three. Anything else,
14 for this record?
15 MR. LAUGHLIN: No, sir, Your Honor.
16 JUDGE DUKES: All right. That will
17 conclude the record.
18 (whereupon, the hearing was concluded
19 at 2:55 p.m.)

2018-08-23 bradley final transcript

3 I, Deborah S. Thomas, Certified Verbatim
Reporter and Notary Public in and for the State of
4 South Carolina, do hereby certify that I reported
the hearing of 2018-CP-07-00784, Bradley Circle
5 Vacation Partners, LLC and Monti Development, LLC
v. Town of Hilton Head Island, Town of Hilton Head
6 Island Board of Zoning Appeals, Tamara Becker and
Rhonda Carper, on the 22nd day of August, 2018; and
7 that the foregoing pages constitute a true and
correct transcription of the said hearing.

8
9 I further certify that I am neither
attorney nor counsel for, nor related to or employed
10 by, any of the parties connected with this action,
nor am I financially interested in said cause.

11
12 I further certify that the original of
said transcript shall be hereafter delivered to
13 Drew A. Laughlin, Esquire, Laughlin & Bowen, PC,
Post Office Drawer 21119, Hilton, Head Island, South
14 Carolina 29925.

15
16 In witness whereof I set my hand and seal
this 20th of April, 2019.

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20 My Commission expires 2/7/28
21 Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

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Susan Vogel

From: Dukes, Marvin <mdukes@bcgov.net>
Sent: Thursday, October 25, 2018 2:23 PM
To: Drew Laughlin
Cc: Susan Vogel; Barry Johnson
Subject: RE: Bradley Circle Vacation Partners v. Town of Hilton Head Island, et al., CA No. 2018CP0700784

Thanks!
I will review the comments. Of course, any acceptance or rejection of the same would be without prejudice to bring up the same issue in a motion to reconsider.

Best,

Marvin H. Dukes, III
Master-in-Equity for Beaufort County
Beaufort County Courthouse
102 Ribaut Road, Room 212
Post Office Drawer 1228
Beaufort, SC 29901
Office: 843.255.5710
Fax: 843.255.9505

Drew A. Laughlin
Laughlin & Bowen, P.C.
92A Main Street
P.O. Drawer 11118
Hilton Head Island, SC 29928
Telephone (843) 699-2700
Fax (843) 699-2700

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From: Drew Laughlin [mailto:drew.laughlin@laughlinandbowen.com]
Sent: Thursday, October 25, 2018 12:10 PM
To: Dukes, Marvin
Cc: Susan Vogel; Barry Johnson
Subject: Bradley Circle Vacation Partners v. Town of Hilton Head Island, et al., CA No. 2018CP0700784

Your Honor,

Thank you for allowing me the opportunity to set forth Petitioner's objections to Respondents Becker and Carper's proposed order. The objections are as follows.

The last sentence of the second paragraph on page 3 states "In reaching that Decision, the BZA decided ... that the 2016 variance application (VAR 352-2016 ... did not include a "site specific development plan" as defined in S.C. Code § 6-29-1520 and LMO Appendix D-19". LMO Appendix D-19, a copy of which is attached, does not define or even mention or refer to "site specific development plan". Footnote 2 at the end of the sentence attempts to equate "site specific development plan" and "Site Plan", but they are not the same thing. The reference to LMO Appendix D-19 at the end of the sentence and footnote 2 should be deleted, as should the similar statement equating site specific development plan with "Site Plan" in the third full paragraph on 9.

Finding of Fact B on page 10 is immaterial. No variance was requested because when the variance application was made, the maximum allowable height was 75' above base flood elevation; no variance from that allowable height was needed. Finding of Fact B is irrelevant and should be deleted.

Finding of Fact C also attempts to conflate "site specific development plan" and "Site Plan" and again attempts to improperly import "site specific development plan" into LMO Appendix D-19. Moreover, the BZA did not find that Petitioner's variance application failed to include a "Site Plan". The BZA's finding was that the application "did not include a site-specific development plan as defined by South Carolina State Code Section 6-29-1520." The reference to "Site Plan" and LMO Appendix D-19 should be deleted from Finding of Fact C. A copy of the BZA decision is attached.

Finding of Fact E as states that we never applied for any vested right. This is also immaterial. There is no application for vested rights. The suggestion that such an application could or should have been made is prejudicial. Finding of Fact E should be deleted.

Conclusion of Law IV on page 17 also attempts to improperly inject "site specific development plan" into LMO Appendix D-19. The reference to LMO Appendix D-19 should be deleted.

Thank you for your consideration.

Drew A. Laughlin
Laughlin & Bower, P.C.
92A Main Street
P.O. Drawer 21119
Hilton Head Island, SC 29926
Telephone (843) 689-5700
Facsimile (843) 689-9300

Master in Equity for Beaufort County
Beaufort County Courthouse
107 Ribout Road, Room 515
P.O. Box 1238
Beaufort, SC 29901
Office: 843.252.2710
Fax: 843.252.8202

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From: Drew Laughlin [mailto:dlaughlin@briarwood.com]
Sent: Tuesday, October 22, 2014 12:10 PM
To: Duke, Mary
Cc: Alan Vogt; Barry Johnson
Subject: Beaufort County Voters' Town of Hilton Head Island - 4th CA 2014-2016

Thank you for allowing the opportunity to set forth my concerns regarding the proposed changes to the contract. The objections are as follows:

The first objection is to the proposed changes to the contract on page 8. The contract states that the contract shall be for a term of 2014-2016. The proposed changes to the contract would allow the contract to be renewed for an additional 2017-2018 term. This is not in the original contract and is a material change to the contract. The second objection is to the proposed changes to the contract on page 9. The contract states that the contract shall be for a term of 2014-2016. The proposed changes to the contract would allow the contract to be renewed for an additional 2017-2018 term. This is not in the original contract and is a material change to the contract. The third objection is to the proposed changes to the contract on page 10. The contract states that the contract shall be for a term of 2014-2016. The proposed changes to the contract would allow the contract to be renewed for an additional 2017-2018 term. This is not in the original contract and is a material change to the contract.

D-19. - Variance

A. Submittal Requirements

An **application** for variance shall consist of information necessary for the **Board of Zoning Appeals** to make a determination regarding the variance request, including but not limited to the following:

1. An **application** form as published by the **Official** and appropriate fee as required by Sec. 16-2-102.C.2, Application Fees
2. A **site plan** at a scale of 1"=30' accurately showing the variance(s) requested. If the **application** is for a variance of Sec. 16-6-102.D, Wetland Buffer Standards, the survey must be certified by the permitting authority
3. Notarized certification, written and signed by the **development site** owner of record, that such owner formally consents to the proposed **development**
4. A written narrative explaining in detail the variance(s) requested and how the criteria of Sec. 16-2-103.S.4, Variance Review Standards, apply to the variance request.
5. Any supporting documentation deemed necessary by the **applicant**.
6. A copy of the proposed Mailed Notice as required by Sec. 16-2-102.E.

Project Name	Applicant	Address
2000 S. 10th St.	Thomas Becker and Ronda Cooper	1210 000 000 000 000 1210 000 000 000 000

Board of Zoning Appeals
 1210 000 000 000 000
 1210 000 000 000 000

At their meeting on March 25, 2018, the Board voted to modify the determination of the
 subject to the extent that the parcel is 18' height and 3' width from the
 subject to a maximum height of 45 feet above base flood elevation. They voted this
 decision on the following findings of fact and conclusion of law:
 Findings of fact: The proposed variance complies with VAR 16-2-103.1 and does not
 the applicant's determination as defined in Board Ordinance 16-2-103.1
 Conclusion of law: The proposed variance complies with VAR 16-2-103.1 and does not
 violate the provisions of VAR 16-2-103.1 and does not violate the provisions of VAR 16-2-103.1



**TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT**

One Town Center Court | Hilton Head Island, SC 29928 | 843-341-4757 | FAX 843-842-8908

BOARD OF ZONING APPEALS

NOTICE OF ACTION

Case #:	Name of Development:	Public Meeting Date:
APL439-2018	28 Bradley Circle and 3 Whelk Street	March 26, 2018

Parcel or Location Data:	Applicant:	Agent:
R510 009 000 0896 0000 and R510 009 000 01102 0000	Tamara Becker and Ronda Carper	Same as applicant

Brief Description:
Staff has received an Appeal from Tamara Becker and Ronda Carper in their capacity as homeowners in the Bradley Circle area. The appellants are appealing staff's determination, dated February 8, 2018, which states that the properties at 28 Bradley Circle and 3 Whelk Street are vested to a maximum height of 75' above the base flood elevation (BFE).

BZA Determination, Findings of Fact and Conclusions of Law:

At their meeting on March 26, 2018, the Board voted to Modify the determination of the LMO Official to the extent that the parcels at 28 Bradley Circle and 3 Whelk Street are subject to a maximum height of 45 feet above base flood elevation. They based this decision on the following Findings of Fact and Conclusion of Law:

Finding of Fact: The previous variance application, VAR 352-2016, did not include a site specific development plan as defined in South Carolina State Code Section 6-29-1520.

Conclusion of Law: Without a site specific development plan, the granting of the variances in VAR-2016 did not create a vested right, as defined by South Carolina State Code Section 6-29-1520, to build at any particular height. Absent any such vested right,

the height restriction is 45 feet above base flood elevation as set forth in the current RM-8 zoning of the property.

Appeal To Circuit Court:

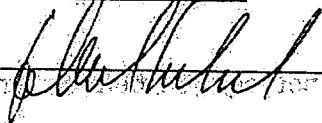
If you believe the Board erred in its decision, you have the right to appeal the decision to Circuit Court. You have two options to appeal to Circuit Court:

1. You may file a petition with the clerk of court in and for the county, in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed within 30 days after the decision of the Board is mailed (South Carolina Code of Laws 6-29-820A). The mailing date of this decision is

March 30, 2018

2. You may file a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with South Carolina Code of Laws Section 6-29-825. Any notice of appeal and request for pre-litigation mediation must be filed within 30 days after the decision of the board is postmarked.

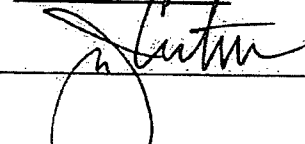
Chairman of BZA:



Date:

3/28/18

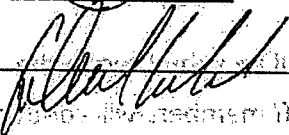
Maker of Motion:



Date:

3/29/18

Second to Motion:



Date:

3/28/18

Note: This decision must be delivered to the parties of interest via certified mail.

Sec.16-2-102. - Standard Review Procedures

A. General

This section describes the procedural steps and other rules that are generally applicable to *applications* reviewed under this *Ordinance*. These standard procedures shall apply to all *applications* unless expressly exempted or alternative procedures are specified in Sec. 16-2-103, Application Specific Review Procedures.

Flow charts in Sec. 16-2-103 depict those procedural steps that apply to the review of the particular type of *application*.

B. Pre-Application Conference

1. Purpose

The purpose of a pre-application conference is to provide an opportunity for the *applicant* to determine the submittal requirements and the procedures and standards applicable to an anticipated *application*. A pre-application conference is also intended to provide an opportunity for *Town* staff to become familiar with, and offer the *applicant* preliminary comments about, the scope, features, and impacts of the proposed *development*, as it relates to *Ordinance* standards.

2. Applicability

A pre-application conference is encouraged, but not required, before submittal of particular *application* types as identified in Sec. 16-2-101, Summary Table of Review Procedures.

3. Procedure

a. Request and Scheduling

Requests for a pre-application conference shall be submitted to the *Official*, who shall determine which *Town* staff members will conduct the conference, schedule the conference at the earliest reasonable time, and notify the *applicant* of the time and place of the conference.

b. Information Submitted For Conference

Before a pre-application conference is held, the *applicant* shall submit to

the **Official** a narrative describing the scope of the proposed **development**, a conceptual **site plan**, and any other information reasonably requested by the **Official**.

c. Conference Actions

Town staff shall review the materials submitted by the **applicant** prior to the conference, and at the conference ask the **applicant** questions about the proposed **application** as appropriate, and identify any concerns or other factors the **applicant** should consider about the **application**.

d. Written Summary

Within five days after completion of the pre-application conference, the **Official** shall provide the **applicant** a brief summary of any issues discussed at the conference that were not addressed by materials and information given to the **applicant** before or at the conference.

4. Effect

Discussions held during the pre-application conference constitute preliminary discussions about an **application** and are not binding on the **Town**.

Processing times for review of applications do not begin until a formal application is submitted.

C. Application Submittal

1. Authority to Submit Applications

Unless expressly stated otherwise in the LMO, **applications** reviewed under this **Ordinance** shall be submitted by the **landowner(s)** of the **land** on which **development** is proposed or a **person** authorized in writing to submit the **application** on behalf of the **landowner(s)**.

2. Application Fees

The **Town Council** shall establish **application** fees from time to time, to defray the cost of processing an **application**.

3. Application Submittal

Applications shall be submitted to the **Official** in the form established by

Appendix D: Application Submittal Requirements, together with the applicable application fee.

4. Application Revision

An applicant may revise an application in response to staff review comments on the application, or in response to review comments from an advisory body or a decision-making body prior to any final action on the application. All revised applications shall be submitted to the Official. If the Official determines that the revisions include significant or substantial changes warranting re-review by staff for compliance with this LMO, the Official may refer the application for additional review as if it were a new application.

5. Application Withdrawal

An applicant may withdraw an application at any time before it is decided by submitting a written request to withdraw the application to the Official.

b. An applicant who has paid the appropriate fee in accordance with this subsection, but chooses to withdraw the application prior to any review or action taken on the application, is entitled to a refund of 50 percent of the fees paid, upon written request to the Official.

D. Staff Review and Action

1. Staff Review and Opportunity to Revise Application

Upon receipt of an application, the Official shall distribute it to all appropriate staff for review and comment. The Official shall review the application, relevant support material, and any comments or recommendations from other review agencies to which the application was referred. If deficiencies in complying with applicable standards of the LMO are identified, the Official shall notify the applicant of such deficiencies and provide the applicant a reasonable opportunity to discuss the deficiencies and revise the application to address them, in accordance with Sec. 16-2-102.C.4, Application Revision.

2. Applications Subject to Advisory or Decision-Making Body Review

a. Staff Report

vi. A final decision by the **Design Review Board** on **applications** appealing decisions by the **Official** on **applications** for Minor Corridor Review or a Sign Permit.

I. **Effect of Permit or Development Approval**

Approval of any **application** in accordance with this **Ordinance** authorizes only the particular **use**, **plan**, or other specific activity approved, and not any other **use**, **plan**, or other specific activity.

J. **Vesting and Expiration of Development Approval or Permit**

1. **Vested Rights for Approvals of Site Specific Development Plans**

a. **General**

Approval or conditional approval of an **application for a Special Exception, Major or Minor Subdivision Review, Major or Minor Development Plan Review, Small Residential Development Review, and a Variance shall constitute approval of a site specific development plan that establishes a vested right in accordance with the Vested Rights Act, S.C. Code Ann. § 6-29-1510 et seq. The vested right shall expire two years after the approval unless the vested right period is extended in accordance with subparagraph b below.**

b. **Extensions of Vested Right Period**

Within 60 days before the expiration of the original two-year **vested right** period or any extension thereof, a **developer** or **landowner** may submit to the **Official** a written request for an additional annual extension of the **vested right** period. The **Official** shall approve requests for up to five annual extensions of the **vested right**.

2. **Expiration of Other Approvals**

a. **General**

Except for approval of Text Amendments, Zoning Map Amendments, and Street/Vehicular Access Easement Names, and approvals subject to the **vested right** provisions in paragraph 1 above, **development** approvals granted in accordance with this **Ordinance** shall expire as stated in Sec.

Sec.16-2-103: Application Specific Review Procedures

A. Overview

1. General

This section sets forth supplemental procedures, review standards, and related information for applications reviewed under this Ordinance as listed in Sec. 16-2-101, Summary Table of Review Procedures.

2. Structure of Procedures

For each type of application reviewed under this Ordinance, the following subsections state the purpose of the subsection and type of permit or development approval, and whether each of the steps in the standard procedure set forth in Sec. 16-2-102, Standard Review Procedures, is

applicable, optional, or not applicable. They also include, for each step, any variations of, or additions to, the standard procedures. This is followed by the review standards for the application and provisions addressing expiration and amendment.

B. Text Amendment

1. Purpose

The purpose of this section is to state the procedure for proposing Text Amendments to this Ordinance to Town Council for its consideration and decision.

2. Text Amendment Procedure

a. Application Submittal

An application to amend the text of this Ordinance may be filed by the Planning Commission or the Town Manager, and any application shall comply with the requirements of Section 16-2-102.C.

(Revised 5-17-2016 Ordinance 2016-07)

b. Staff Review and Action

Overlay (R-O) District; and

- viii. The proposed R-O District is not detrimental to the public health, safety, and welfare.

4. Expiration

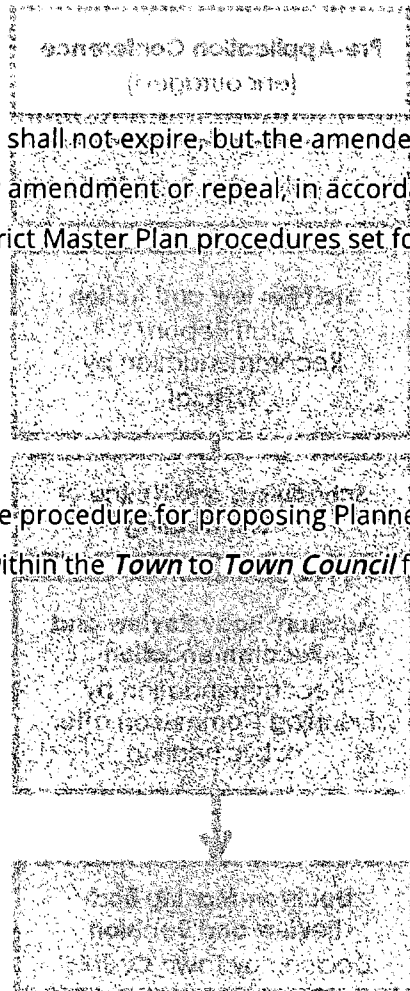
Any Zoning Map Amendment (Rezoning) shall not expire, but the amended *Official Zoning Map* is subject to further amendment or repeal in accordance with the map amendment and PUD District Master Plan procedures set forth in this subsection.

D. Planned Unit Development (PUD) District

1. Purpose

The purpose of this section is to state the procedure for proposing Planned Unit Development zoning for property within the *Town to Town Council* for its consideration and decision.

2. Scope



A planned unit development is established by amendment of the Official Zoning Map to a planned unit development zoning district classification that is defined by a Master Plan.

1. PUD District Review Procedure

2. Pre-Application Conference

Proprietary applications for rezoning to a PUD District are encouraged to request and hold a pre-application conference with Town staff in accordance with Section 16-2-07.2.

3. Final Decision

An application for rezoning to a PUD District shall be filed by the

PUD District

Pre-Application Conference
(encouraged)

Application Submittal

Staff Review and Action
Staff Report/
Recommendation by
Official

Scheduling and Notice of
Public Hearing

Advisory Body Review and
Recommendation
Recommendation by
Planning Commission after
public hearing

Decision-Making Body
Review and Decision
Decision by Town Council

A planned unit *development* is established by amendment of the *Official Zoning Map* to a planned unit *development* zoning district classification that is defined by a Master Plan.

3. PUD District Review Procedure

a. Pre-Application Conference

Prospective *applicants* for rezoning to a PUD District are encouraged to request and hold a pre-application conference with Town staff in accordance with Sec. 16-2-102.B.

b. Application Submittal

An *application* for Planned Unit Development zoning may be filed by the

persons identified in Sec. 16-2-102.C.1, the Town Manager or the **Planning Commission** and any **application** shall be in accordance with Sec. 16-2-102.C.

c. Staff Review and Action

On receiving an **application**, the **Official** shall review the **application** and prepare a staff report with a recommendation for action on the **application** in accordance with Sec. 16-2-102.D. The **Official's** recommendation shall be based on the standards in Sec. 16-2-103.D.4, PUD District Review Standards.

d. Hearing Scheduling and Notice

A public hearing on the **application** shall be scheduled before the **Planning Commission** and all required notices shall be provided in accordance with Sec. 16-2-102.E.

e. Advisory Body Review and Recommendation

The **Planning Commission** shall review the **application** and staff report, hold a public hearing on the **application**, and make a recommendation for action on the **application** in accordance with Sec. 16-2-102.F. The **Planning Commission's** recommendation shall be based on the standards in Sec. 16-2-103.D.4, PUD District Review Standards.

f. Decision-Making Body Review and Decision

i. The **Town Council** shall review the **application**, staff report, and **Planning Commission** recommendation, and make a final decision on the **application**. If the applicant proposes a change or departure from the PUD zoning that is different than what was reviewed by **Planning Commission** the change or departure shall first be submitted to the **Planning Commission** for review and recommendation in accordance with State law. The **Town Council's** decision shall be one of the following:

- 01. Adopt an ordinance approving the PUD District as submitted;
- or
- 02. Adopt a resolution denying the PUD District.

If the applicant proposes a change or departure from the PUD zoning that is different than what was reviewed by **Planning Commission** the **application** shall be remanded to the **Planning Commission** for review of and a recommendation on the proposed changes and departures. The **Planning Commission** shall deliver its recommendation on the proposed changes and departures to the **Town Council** within 30 days after the remand; if the **Planning Commission** fails to do so, it is deemed to have recommended approval of the proposed changes and departures.

g. Post-Decision Actions and Limitations

The **Official** shall provide notice of the final decision on the **application** in accordance with **Sec. 16-2-102.H.1**.

4. PUD District Review Standards

In determining whether to recommend that **Town Council** adopt a proposed PUD zoning district classification, the **Planning Commission** may consider and weigh the standards of **Sec. 16-2-103.C.3, Zoning Map Amendment (Rezoning) Review Standards**, and the extent to which the proposed PUD District complies with the standards of **Sec. 16-1-101**, or **Sec. 16-3-106.G, Planned Development Overlay (PD-2) District**.

5. Designation on Official Zoning Map

Designation of a PUD District on the **Official Zoning Map** shall note the ordinance approving the PUD zoning district classification.

6. Effect of Approval

a. For lands rezoned to a PUD District the approved Master Plan shall be the zoning text for the district.

The **applicant** may apply for and obtain subsequent **development**

approvals and permits necessary to implement the Master Plan in accordance with the appropriate procedural standards of this **Ordinance**.

Any subsequent permit or **development** approval shall comply with the PUD Master Plan.

7. Expiration

Any approved PUD District shall not expire, but the amended **Official Zoning Map** or PUD District is subject to further amendment or repeal in accordance with map amendment and PUD District procedures set forth in this subsection.

8. Minor Deviations from Approved Master Plan

a. General

Subsequent **applications** for permits and **development** approvals within

a PUD District may include minor deviations from the approved PUD Master Plan, without the need to amend the PUD District approval, provided, however, that such deviations are limited to the following:

i. Changes that result in a decrease in the **density** approved for a specific **parcel**, either residential or nonresidential;

ii. Change in a **land use** designation from **multifamily** to **single-family** or a change from any **use** to **open space** / passive recreation;

iii. Change in major infrastructure features (e.g. **streets / access**, sewer, water, storm drainage) that are clearly beneficial to the occupants of the Master Plan area. The **applicant** requesting such change shall provide reasonable notice of the request to the property owners' association that would be affected by the change and ask that all comments be directed to the **Official**. Proof of such notification shall be provided to the **Official**. If after considering comments from affected **property owners**, the **Official** determines that the change would not be clearly beneficial to the occupants of the Master Plan area, the **Official** shall deny the deviation;

iv. Change in **land use** designation from **single-family** to **multifamily** with no increase in permitted site-specific **density**;

v. The addition of collocated or building mounted telecommunication antennas; and

vi. The **construction** of a new **monopole telecommunication tower** and facilities on **land** not designated for **single-family use**.

b. Appeal

Any approved PUD District shall not expire, but the amendment or special use development approval shall be subject to further amendment or special use development approval. The **Official's** decision on a minor deviation request may be appealed by an aggrieved **person** to the **Board of Zoning Appeals** in accordance with Sec. 16-2-103.T, Appeal of Administrative Decisions and Written Interpretations to Board of Zoning Appeals.

9. Amendments

A PUD District approval shall be amended, extended, or modified only in accordance with the procedures and standards for its original approval.

E. Special Exception

1. Purpose

The purpose of this section is to state the procedure for seeking a special exception approval.

2. Applicability

Any **use** identified as a Special Exception in a zoning district in Chapter 16-3: Zoning Districts, must receive approval of a Special Exception in accordance with the procedure and standards of this subsection before it may be developed under this **Ordinance**.

3. Special Exception Procedure

a. Application Submittal

An **application** for a Special Exception may be submitted by **persons** identified in Sec. 16-2-102.C.1, and shall be submitted in accordance with Sec. 16-2-102.C.

b. Staff Review and Action

On receiving an **application**, the **Official** shall review the **application** and prepare a staff report with a recommendation for action on the **application** in accordance with Sec. 16-2-102.D. The **Official's** recommendation shall be based on the standards in Sec. 16-2-103.E.4, Special Exception Review Standards.

that is in conflict with the **Comprehensive Plan**, then the governing or policy-making body of the entity shall publicly state its intention to proceed and its reasons for proceeding and send a copy of its intention and reasons to the **Town Council** and **Planning Commission**. It shall also publish a public notice of the **Planning Commission** findings and its intention and reasons for proceeding in a newspaper of general circulation in the **Town** at least 30 days in advance of award of a contract or the beginning of **construction** of the proposed public project.

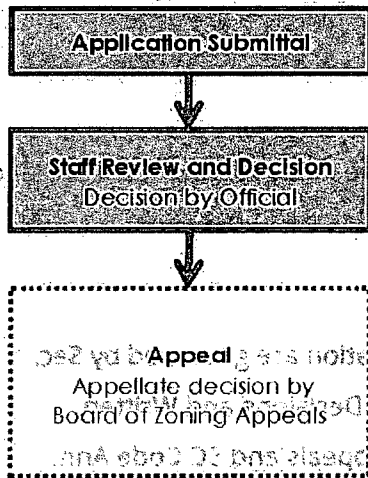
R. Written Interpretation

1. Purpose

The purpose of this subsection is to establish procedures and standards for rendering formal written interpretations of this **Ordinance**.

2. Applicability

Written Interpretation



The **Official** is authorized to and shall be responsible for making interpretations of this **Ordinance**—including, but not limited to, interpretations of:

- a. The text of this **Ordinance**;
- b. Zoning district boundaries; and
- c. Whether an unspecified **use** is comparable to a listed **use** or not, and whether any unspecified **use** should be allowed in a zoning district or prohibited in that district.

3. **Written Interpretation Procedure**

a. **Application Submittal**

An **application** for a Written Interpretation shall be submitted in accordance with Sec. 16-2-102.C, except that **applications** may be submitted only by **persons** with a direct interest in the matter requested for interpretation (e.g., **landowner** or contract purchaser of a relevant property, **applicant** for or holder of an affected permit). The **application** shall include a statement of the **applicant's** direct interest.

b. **Staff Review and Action**

On receiving an **application**, the **Official** shall review and render an interpretation in accordance with Sec. 16-2-102.D. The **Official's** written interpretation shall be limited to the matters for which an interpretation is requested and shall be based on the standards in Sec. 16-2-103.R.4, Written Interpretation Standards.

c. **Post-Decision Actions and Limitations**

i. **Notice of Decision**

The **Official** shall provide notice of the interpretation in accordance with Sec. 16-2-102.H.1.

ii. **Appeal**

Appeals from the **Official's** interpretation are governed by Sec. 16-2-103.T, Appeal of Administrative Decisions and Written Interpretations to Board of Zoning Appeals and SC Code Ann. 6-29-800.

4. **Written Interpretation Standards**

a. **Zoning Map Boundaries**

Interpretation of zoning district boundaries on the **Official Zoning Map** shall be in accordance with the criteria in Sec. 16-1-107.C, Zoning District Boundaries.

b. **Unspecified Uses**

Interpretation of whether an unspecified *use* is similar to a *use* or is prohibited in a zoning district shall be based on Sec. 16-4-102.A.5, Interpretation of Unlisted Uses, and whether the interpretation is in accordance with the *Comprehensive Plan*.

c. Text Provisions

Interpretation of text provisions and their application shall be based on the standards in Sec. 16-10-101, General Rules for Interpretation, and the following considerations:

- i. The plain language used in the text, considering (a) any defined term set out in Sec. 16-10-105, General Definitions, and (b) the common and accepted usage of other words in the text;
- ii. The general purposes served by the provision and this *Ordinance*; and
- iii. The *Comprehensive Plan*.

5. Official Record of Interpretations

The *Official* shall maintain a record of written interpretations that shall be available in the Town Hall for public inspection, on reasonable request, during normal business hours.

6. Effect of Interpretation

A written interpretation shall be binding on subsequent decisions by the *Official* in applying the same provision of this *Ordinance* in the same circumstance.

5. Variance

1. Purpose

The purpose of this subsection is to establish procedures and standards for the review and decision on *applications* for a Variance.

2. Applicability

Sec. 16-10-105. General Definitions

Terms defined in this section shall have the meanings stated in the definition of the term.

Abutting

The condition of two or more adjoining parcels of land having a common property line or boundary, including cases where two or more parcels of land join at a corner. Parcels of land that are separated by a street or alley are not abutting.

Access

The right or ability of pedestrians, vehicles, and boats to enter and leave property.

Accessory Structure

A building or structure subordinate and incidental to, and located on the same lot with, a principal building and use, the use of which is customarily found in association with and is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or roof to the principal building.

Adjacent

A parcel of land or development site that shares all or part of a common lot line or boundary with another parcel of land, or a parcel of land that would abut another parcel of land, but for the fact a street or right-of-way divides the parcels.

Adopted Traffic Service Level Standards

See Sec. 16-5-106.C. Traffic Impact Analysis Plan Standards.

Agricultural Activity

For purposes of stormwater management, any activity directly related to: (a) the production of crops, dairy products, poultry, or livestock; (b) the cultivation or harvesting of trees; or (c) fish farms.

Airport Runway Primary Surface Area

A surface longitudinally centered on the runway which extends beyond the runway. The width and length of the primary surface area are set forth in Sec. 16-3-106.E.3, Delineation of the District. The elevation of any point on the primary surface area is the same as the elevation of the nearest point on the runway centerline.

All-Weather Driving Surface

A driving surface capable of supporting the imposed load of fire apparatus weighing at least 60,000 pounds.

Amenity

A natural or man-made feature which enhances a particular property.

Applicant

A person who has submitted an application for review under applicable provisions of this Ordinance.

Application

The completed form or forms and all accompanying documents, exhibits, and fees required by this Ordinance to be submitted as part of the review of a request for a development permit or approval.

Archaeological Resource or Archaeological Site

Place of past human settlement or activity, where archaeological remains are present, whether known, suspected, or unknown. Sites vary in size and use; examples include burial and campsite (e.g., for temporary hunting or fishing), quarry, mine, industry, fort, pueblo, or rock shelter.

As-Built Survey

A plat prepared by a South Carolina registered land surveyor that accurately identifies and depicts a parcel of land and shows the location of all boundaries, easements, and on-site improvements, including, but not limited to, all structures, parking facilities, utilities, and stormwater detention/retention areas.

Authorized Agent

A **person** with express written consent to act upon another's behalf.

Average Daily Traffic (ADT)

The number of vehicles passing a point on a street during a 24-hour period, usually calculated as the average of two or more days of traffic, and based on trip generation rates taken from the latest edition of the Institute of Transportation Engineers *Trip Generation Manual (ITE Manual)*.

Base Flood Elevation

See Sec. 16-10-102.C.3, Base Flood Elevation.

Beach

That area of unconsolidated material that extends landward from the mean low water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation (usually the effective limit of storm waves).

Beach Nourishment (also Beach Renourishment)

A process by which sand lost through longshore drift or erosion is replaced from sources outside of the eroding **beach**.

Beachfront Line

Beachfront Line shall have the same location as the 1999 OCRM Baseline. The South Carolina State Plane coordinates which bound the 1999 OCRM Baseline are the same as those utilized to locate the Beachfront Line.

Best Management Practice (BMP)

A practice, facility, or **site improvement**—or a combination of practices, facilities, or **site improvements**—that is generally accepted by professionals in the field to be an effective and practical means (technological, economical, and institutional) of preventing or reducing the amount of pollution generated by nonpoint sources of stormwater runoff. Examples of BMPs include, but are not limited to, **detention** ponds, sediment basins, filter strips, and buffer zones. Although BMPs may be identified and described in various documents, the

Storm Water Management BMP Handbook published by the South Carolina Department of Health and Environmental Control is an example of such a document pertinent to Hilton Head Island.

Bike Lane

A corridor expressly reserved for bicycles that exists on a *street roadway* in addition to any lanes for use by motorized vehicles.

Board of Zoning Appeals

The Town of Hilton Head Island Board of Zoning Appeals. See Appendix A-3, Board of Zoning Appeals.

Building

Any *structure* having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any *person*, commercial or business activity, process, equipment or goods. Each portion of a *building* separated from other portions by a firewall shall be considered as a separate *building*.

Building Code

The latest edition of the International Building Code (IBC), International Mechanical Code, International Energy Efficiency Code, International Plumbing Code, International Fuel Gas Code, and International Residential Code as adopted by the South Carolina Building Codes Council.

Building Permit

A permit issued by the *Town* in accordance with the *Building Code* then in effect, and this *Ordinance*.

Building, Principal

A *structure* on or in which the main or primary *use* of the *lot* is conducted, as contrasted to an accessory *building* in which *uses* subordinate to the primary *use* are conducted.

By Right

Land uses that are permitted in a zoning district without being subject to *use*

specific conditions or requiring approval of a Special Exception.

Department of Health and Environmental Control is an example of such a

Capital Improvements Program

The plan for public capital *improvements* within the *Town* which has most recently been approved by the *Town Council*.

A corridor expressly reserved for bicycles that exists on a street roadway in

Change of Use

A change in the *use* of a *structure* or *land*. Change of *use* shall include a change from one *use* type to another *use* type.

The Town of Hilton Head Island Board of Zoning Appeals. See Appendix A-3

Changeable Copy

Any *copy* or *graphics* on a sign designed to be changed manually in the field.

Circuit Court

any structure having a roof supported by columns or walls and intended for

The Court of Common Pleas for Beaufort County, South Carolina.

activity, process, equipment or goods, each portion of a building separated

Clerk of Circuit Court

from other portions by a fire wall shall be considered as a separate building.

The Clerk of the Court of Common Pleas for Beaufort County, South Carolina.

Coastal High Hazard Area

The location of the International Building Code (IBC) International

A velocity (v) zone as shown on flood insurance rate maps (FIRM) prepared by the Federal Emergency Management Agency (FEMA). Alternately, a flood hazard area subject to high velocity waters. (See also "Flood Hazard District").

Coastal High Velocity Area

See "Coastal High Hazard Area"

Coastal Receiving Waters

The navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark.

Common Open Space

Any part of a *development site* that is not utilized for *single-family lots*, *rights-of-way*, *streets*, commercial *structures*, *multifamily structures*, and parking and loading areas. The following are included in the definition of

common open space : golf courses, tennis courts, areas for other court games, **swimming pools**, pedestrian and bicycle paths, equestrian trails, play fields, picnic areas, horse stables, places for people to gather, and passive recreation areas.

Comprehensive Plan

The Comprehensive Plan for the Town of Hilton Head Island, as amended, including the Transportation Element of said plan and other such adopted supplements.

Conditional Use

A use that is permitted subject to listed conditions.

Construction

The erection of any **building or structure** or any preparations (including **land disturbing activities**) for the same.

Construction/Storage Trailers

A temporary mobile unit located at a **development site** to be used for **construction, storage, or sales purposes**.

Contiguous

Directly or immediately **adjacent** to a boundary or separated only by a **street** or public utility **right-of-way**.

Copy

Any letters, numerals or characters used in any combination and displayed on a sign.

Corner Lot

A **lot abutting** two or more **streets** at their intersection, where the interior angle of the intersection does not exceed 120 degrees.

County

Beaufort County, South Carolina.

Critical Facility

A structure or other improvement that, because of its function, size, service area, or uniqueness, has the potential to cause serious bodily harm, extensive property damage, or disruption of vital socioeconomic activities if it is destroyed or damaged or if its functionality is impaired. Critical facilities include but are not limited to health and safety facilities, utilities and government facilities.

Cul-de-Sac

A *street* with only a single means of ingress or egress leading to a turnaround at the end.

Delivered

A document, notice or other item shall have been *delivered* upon the earliest of the following:

1. The item is given to the intended recipient by personal hand delivery to the *applicant* or authorized representative; or,
2. The item is deposited into the United States Mail, with the postage required by the form of the mailing (i. e., first class mail, certified mail, return receipt requested), in which case the item is deemed to have been delivered as of the date of the post mark.

Delivery

A transfer of the possession of an object, property, or document to another.

Density

See Sec. 16-10-102.B.1, Density.

Design Review Board

The Town of Hilton Head Island, Design Review Board. See Appendix A-4, Design Review Board.

Detention

The collection and storage of surface water for subsequent controlled

discharge at a rate that is less than the rate of inflow. (See also "retention.")

Developer

The legal or beneficial owner or owners of a *lot* or of any *land* proposed to be included in a proposed *development*, including the holder of an option or contract to purchase, or any other *person* having an enforceable proprietary interest in such *land*.

Development

The *use* of a *structure* or *land*; or the *construction*; reconstruction or alteration of a *structure*; or an increase in *land use* intensity; or *filling*, excavating or dredging a *parcel* or intertidal or underwater *land*; or a change in effects or conditions of a *site*; or the alteration of a shore, bank or floodplain; or the *construction* or extension of a utility; or the *subdivision* of

land.

Development Agreement

An agreement entered into by the *Town* in accordance with Sec. 6-31-10, et seq. of the S.C. Code of Laws.

Diameter at Breast Height (DBH)

The diameter of a *tree* four and one-half (4.5) feet above ground level.

Disaster

Any occurrence of widespread or severe damage, injury, or loss of life or property resulting from a natural, technological, or national security incident, including but not limited to earthquake, explosion, fire, *flood*, high water, hostile military action, hurricane, landslide, mudslide, storm, tidal wave, tornado, or wind-driven water, when a State of Emergency is declared by the Mayor in accordance with Section 7-7-20 of the *Municipal Code*.

Divisible Dwelling Unit

A *dwelling unit* in a *multifamily residential* or *interval occupancy development* that includes one or more lock-out bedrooms that can be physically closed or locked off from the remainder of the *dwelling*. Such units

must have a bathroom. Size is limited to 75 percent of the **gross floor area** of the entire **dwelling**.

Drainage Basin

A drainage area or watershed contributing to the flow of stormwater runoff into a receiving body of water.

Drive Aisle

A vehicular accessway within a parking bay providing direct ingress and egress to **adjacent** individual parking spaces. Drive aisles include extensions of such accessways that connect **adjacent** parking bays.

Drive-Through

An accessory facility designed to enable a motorist to drive up to a window or service point and quickly transact business or obtain services, products, or goods while remaining in the motor vehicle. Drive-throughs can be accessory to restaurants, banks, pharmacies, laundromats, and ATMs.

Driveway

A vehicular accessway providing ingress and egress to a vehicle parking area (including a garage or carport), loading area, or maneuvering area on a **lot** from a **street** or another driveway.

Driveway, Service

A private driveway providing access for vehicles to a dumpster or something similar.

Dune Boardwalk

A pedestrian walkway constructed of (generally wood) planking that crosses a **dune system** to the **beach**. Boardwalks may also be used for bicycle traffic.

Dune or Dune System

One or a series of hills or ridges of wind-blown sand exhibiting varied topography, but generally running parallel to the **beach**; or one or a series of hills or ridges of sand resulting directly or indirectly from **beach** restoration or

beach renourishment Dunes may or may not be anchored by vegetation (e.g., sea oats) and are in the vicinity of the **beach**

Dwelling

A **building** or part of a **building** designed and occupied exclusively for residential purposes by an individual or **family** unit, together with permitted **accessory uses**.

Dwelling Unit (DU)

A **building** or a portion of a **building** providing complete and independent living facilities for a **family**, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Earth Tones

Colors listed as such in the Town of Hilton Head Island Design Guide.

Easement

An interest in **land** of another that entitles the holder to a specified limited use

Electric Vehicle (EV)

A vehicle that operates, either partially or exclusively, on electric energy stored in the vehicle's batteries. "Electric vehicle" includes a vehicle operating exclusively on electrical energy from its batteries (battery electric vehicle, or BEV), or a vehicle that is powered by both an internal combustion engine and an electric motor operating on electrical energy from on-board batteries charged primarily through connections to the electric grid or other off-board electrical source (plug-in hybrid electric vehicle, or PHEV).

Electric Vehicle (EV) Level 1 or 2 Charging Station

An electric vehicle (EV) level 1 or 2 charging station is a vehicle parking space that is served by an electrical component assembly or cluster of component assemblies (battery charging station) designed and intended to transfer electric energy, by conductive or inductive means, from the electric grid or other off-board electrical source to a battery or other energy storage device within an

electric vehicle: A Level 1 charging station is a slow charging station that typically operates on a 15- or 20-amp breaker on a 120-volt Alternating Current (AC) circuit. A Level 2 charging station is a medium charging station that typically operates on a 40- to 100-amp breaker on a 208- or 240-volt Alternating Current (AC) circuit.

Expansion

An increase in the **gross floor area** of an existing **structure** or **building**, or the increase of area or intensity of a **use**.

Facade

A **structure**'s entire single elevation, including wall face, parapet, windows, doors, awnings, or canopies.

Factory Built Housing

A **structure** that is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities, designed for long term residential **use**.

For the purposes of this LMO, factory built housing consists of two types: modular homes and **manufactured homes**. (See definitions of those terms in this Section.)

Fall Zone

The area in which a telecommunication tower may be expected to fall in the event of a structural failure, as measured by engineering standards.

Family

One or more **persons** who are related by blood, marriage, or adoption and living together as a single household unit in a **dwelling unit**—provided, however, that "**family**" also includes nine or fewer mentally or physically handicapped **persons** provided care on a 24 hour basis and living together as a single household unit in a **dwelling unit**, where such arrangement is approved or licensed by a state agency or department or under contract with the agency or department.

Farmers' Market

A public market held in a **structure** or open area occasionally or periodically for only a limited time period during the year, where farmers primarily sell produce and other farm products they have grown, gathered, or raised directly to consumers.

Filling

Any activity that increases ground surface or substrate elevation—including, but not limited to, sedimentation and dumping.

Finish Grade

The elevation of **land** resulting from alteration as part of **development** activity. (See also "grade" and "pre-development grade.")

Flood

A general and temporary condition of partial or complete inundation of normally dry **land** areas from the overflow of inland or tidal waters or from rain.

Foot-Candle

A unit of illumination produced on a surface, all points of which are one foot from a uniform point source of one candle. A foot-candle is equal to one lumen per square foot, or 10.764 lux.

Frontage

The width in linear feet occupied by each separate business or other **use** or the width in linear feet of a **lot** that fronts on a **street**. Each **building** or **lot** front shall, for purposes of sign **copy** area allowed, be separately calculated.

Fully Shielded

Fixtures that are shielded in such a manner that light emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted. This means that a fully shielded fixture is one used in a way that allows no direct or internally reflected light to shine above the fixture.

Gate

A movable-frame or solid **structure** which swings, slides, or rolls controlling ingress and egress through an opening in a fence, wall, or vegetation.

Grade

See Sec. 16-10-102.C.4, Grade.

Grade, Finish

See Sec. 16-10-102.C.5, Grade, Finish.

Grade, Pre-development

See Sec. 16-10-102.C.6, Grade, Pre-development.

Graphics

For the purposes of Sec. 16-5-114, Sign Standards, any drawing, symbol, picture, motif, or logo displayed on a **sign face**.

Gross Floor Area

See Sec. 16-10-102.B.2, Gross Floor Area.

Ground Water

That portion of water below the ground surface that is under greater pressure than atmospheric pressure.

Height

See Sec. 16-10-102.C, Height.

Home Occupation

Any *use* of principal and accessory **buildings** located within a residential area that is clearly incidental to their *use* for **dwelling** purposes and conducted for compensation by a resident thereof.

Housing Unit

See **Dwelling Unit**.

Impervious Cover

See Sec. 16-10-102.E.1, Impervious Cover

Impervious Surface

See Sec. 16-10-102.E.2, Impervious Surface

Improvement

The **construction** of **buildings** and the establishment of basic services and amenities associated with **development**, including, but not limited to **streets** and sidewalks, parking areas, water and sewer systems, drainage system, property markers and monuments, recreation facilities (i.e., lakes, **swimming pools**, tennis courts, golf courses, riding stables, club houses, cabanas, **marinas**, docks and the like) and other similar **construction** or establishment.

Interval Occupancy Unit

The "Accommodations" and "Facilities" as those terms are defined in S. C. Code Ann. § 27-32-10(1) and S. C. Code Ann. § 27-32-10(5) that are subject to any "Vacation Time Sharing Plan" as that term is defined in S. C. Code Ann. § 27-32-10(9).

Invasive Species

Non-native plants that are likely to spread, disrupting the natural balance of an ecosystem, often causing the loss of native species.

Land

The earth, water, and air, above, below, or on the surface, and including any **improvements** or **structures** customarily regarded as land.

Land Disturbing Activity

Any change of the **land** surface—including, but not limited to, removing vegetative cover, excavation, **filling**, grading, and the placement or **construction** of any **improvement** or **structure**

Landowner

A **person** who holds legal title to a property or the **authorized agent** of such a **person**.

Larger Common Plan

A Larger Common Plan (LCP) is "broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot."

63 Federal Register No. 128, July 6, 1998, p. 36491

For example, if master calculations have been prepared and/or submitted for an entire site, then all phases and parcels at that site would be considered part of an LCP. If the site is part of a subdivision, industrial park, commercial park, etc., then it is considered to be part of an LCP.

Any land-disturbing activities, including clearing, grading or excavating, on any site considered part of a Larger Common Plan, based on the definition above, would be required to obtain coverage under the NPDES Construction General Permit even if the land-disturbing activities resulted in a disturbed area of less than one (1) acre.

Ldn

The A-weighted equivalent sound level for a 24 hour period with an additional 10 decibels (dB) imposed on the equivalent sound levels for night time hours of 10 p.m. to 7 am; expressed as dBA.

Legal Nonconformity

Any land use, development, structure, or site, including any lot of record, that was legally established, but that is not presently in full compliance with the provisions of this Ordinance.

Legal Protection

For the purposes of wetland mitigation regulations, a legally-binding agreement that specifically preserves a wetland mitigation area for a duration of time. Legal Protection includes, but is not limited to deed restriction, covenant, conservation easement, or gift to a conservation group or land trust.

Legally Established

Any **land use, development, building, structure or site**, including any **lot of record**, which was established, constructed, used or recorded pursuant to, and in conformance with all relevant requirements of the **Ordinances** then in effect.

Legally Maintained

As used in this **Ordinance**, the phrase "legally maintained" shall mean that any and all conditions, obligations, and requirements of any permit, **development approval**, or certificate of any description issued by Beaufort County, South Carolina, the Town of Hilton Head Island, the State of South Carolina, or other government entity shall have been met within the time frame, if any, required by such permit, approval, or certificate, or that the permit, **development approval**, or certificate has been fully executed according to its terms.

Level of Service (LOS)

A qualitative measure describing operational conditions within a traffic stream; generally described in terms of such factors as speed and travel time, freedom to maneuver, traffic interruptions, comfort and convenience, and safety.

Lock-Out Room

See " **Divisible Dwelling Unit** ".

Lot

A legally described piece of **contiguous land** that has been or may be developed as a unit. This term is synonymous with " **parcel** ."

Lot of Record

A **lot** that exists and is described and defined as part of a recorded **subdivision plat** or a **lot** otherwise recorded with the Beaufort County Register of Deeds before the date of the **Town's** adoption of **subdivision** regulations or subsequent to that date and in accordance with **Town subdivision** regulations applicable at the time of recordation.

Maintenance

Any activities required to assure successful restoration after a project has

...including any lot of
...which was established, constructed, used or recorded pursuant to

Manufactured Home

A factory-built, *single-family structure* that is manufactured under the authority of 42 USC Section 5401 and that is transportable in one or more sections, is built on a permanent chassis, but is not constructed with a permanent hitch or other device allowing transport of the unit other than for the purpose of delivery to a permanent *site*, and does not have wheels or axles permanently attached to its body or frame.

Material

The adjective "material" as contained herein shall be construed to mean objective, substantive, tangible, and consequential.

Maximum Extent Practicable

No feasible or practical alternative exists, as determined by the *Official*, and all possible efforts to comply with the standards or regulation or minimize potential harmful or adverse impacts have been undertaken by an *applicant*.

Economic considerations may be taken into account but shall not be the overriding factor determining "maximum extent practicable."

Mean High Water Line

That line which intersects with the shore representing the average height of high waters over an 18.5-year tidal cycle. Benchmarks purporting to have established mean high or low water values must be verified by Town Hall as meeting *State* and National Ocean Survey Standards.

Mobile Home

A transportable, factory-built *structure* that was manufactured prior to enactment of the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 USC Section 5401) and that is designed to be used as a single *dwelling unit*.

Model Sales Home/Unit

A *dwelling unit*, or other marketable unit of a new *development*, that is used

for real estate sales or leasing activities associated with the **development** pending **construction of the development** and the initial sales of homes or units in the **development**.

Modular Housing

Factory built housing constructed in accordance with the standards set forth in the South Carolina Modular Buildings Act, and bearing a label of compliance with the Act (Title 23, Chapter 43). Modular homes shall be subject to the same standards as **site-built homes**.

Motorized Watercraft

Any boat or other type vessel propelled by any type of electric, internal combustion or other type of engine.

Municipal Code

The Municipal Code of the Town of Hilton Head Island, South Carolina, 1983, as amended.

Natural Water Body

Any pond, lake, channel, **wetland**, marsh, creek, sound, or ocean which ordinarily or intermittently contains water and which has a discernible shoreline and is not the result of **development**.

Neighborhood

Sub-areas of the **Town** within which there are similarities in character, such as **land use**, **development** patterns, natural features or socio-economic attributes.

Net Acre

See Sec. 16-10-102.B.3, Net Acre;

Nonconforming Building or Structure

Any **structure** that fails to conform to any provision of this **Ordinance**, including **height**, bulk, setback from any **lot** line or from the **street**, **building** coverage, or **building** design. Also, any **structure** that fails to conform to any

applicable provision of an approved Development Plan as to **height**, bulk, setback from any **lot** line or from the **street**, **building** coverage, **building** size, or **building** design.

Nonconforming Sign

Any sign that does not meet the standards of this **Ordinance**.

Nonconforming Site Feature

Any **site** feature or attribute—including but not limited to, parking, buffering, landscaping, screening of mechanical equipment, or walls and fences—that was legally established at the time of **development**, but that does not conform to all the standards and regulations of this **Ordinance**.

Nonconforming Use

Any activity using **land**, **buildings**, or **structures** that was legally established, but that fails to conform in any respect to an applicable **use** requirement set forth in this **Ordinance**.

Non-Contiguous Planned Unit Development (PUD)

Lands in more than one **tract**, not totally **adjacent**, or **contiguous**, that are controlled by one owner or one ownership entity, and are proposed for **development** as a PUD.

Nonprofit Organization

Any **person**, partnership, association, corporation, or other group whose activities are conducted for civic, or humanitarian motives, or for the benefit of others, and not for the gain of any private individual or group.

Notice of Violation

An initial notice from the **Town** indicating a violation of this **Ordinance**, not associated with a fine.

Official

The **Town** employee to whom the Town Manager has delegated the responsibility of administering and enforcing this **Ordinance**. See Appendix

A-1. Official: The Official is the *person* referred to as zoning administrator in the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (S.C. Code Ann. § 6-29-310 *et seq.*).

Off-Site

Describing a location or an area of *land* which is not *on-site*; outside the *lot* or *parcel* that is the subject of a given *land use application*.

On-Site

On or within the area specified in a *development permit application* or within other areas that, in accordance with this *Ordinance*, may define the

development site:

Open Space

See Sec. 16-10-102.E.3, Open Space.

Ordinance

A legislative enactment of the *Town* adopted in compliance with Section 2-7-40 of the *Municipal Code*.

Outdoor Display and Sale of Merchandise

The placement of products or materials for sale outside the entrance of a retail or *wholesale sales* establishment.

Outdoor Seasonal Sales

A temporary outdoor business enterprise that is conducted primarily outdoors and offers for retail sale items that, by their nature, are in particular demand during a relatively short peak season—including, but not limited to, Christmas *trees*, pumpkins, produce, and flowers.

Outdoor Storage

The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than 24 hours.

Overstory Tree

Trees that compose the top layer or canopy of vegetation.

Parcel

See "Lot."

Peak Hour

Both the AM and PM single hour on a weekday when the traffic volume reaches its maximum, measured for the AM *peak hour* between 7:00 a.m. and 9:00 a.m., and for the PM *peak hour* between 4:00 p.m. and 6:00 p.m.

Pedestrian Accessway

A walkway that provides pedestrian or bicycle passage either between *streets* or from a *street* to a *building* or other destination such as a school, park, or transit stop.

Person

A natural person, firm, partnership, association, social or fraternal organization, corporation, trust, estate, receiver, syndicator, branch of government, or any group or combination acting as a unit.

Planned Unit Development (PUD)

A *tract* or tracts of *land* that are developed in a comprehensive, design-integrated manner according to an overall Master Plan. Generally a PUD will be phased and consist of two or more types, *densities*, or intensities of *development*. See Sec. 16-2-103.D, Planned Unit Development (PUD) District.

Planning Commission

The Planning Commission of the Town of Hilton Head Island. See Appendix A-2, Planning Commission.

Pre-Development Conditions

Those conditions that existed before alteration, resulting from human activity, or the natural topography, vegetation and rate, volume or direction of surface or *ground water* flow as indicated by the best available historical data.

Premises

A lot, including the **buildings** or **structures** thereon.

Primary Dune

Any of the dunes that constitute the front row of dunes **adjacent** to the Atlantic Ocean.

Property Owner

A person who holds legal title to **land**.

Public Way

Any **street**, highway, road, pathway, internal and external sidewalk, **beach**, or waterway, whether privately or publicly owned, that is designed or used for outdoor vehicular, watercraft, or pedestrian traffic, either by public right or custom, or by invitation of one or more owners.

Quorum

The minimum number of **Town Council**, **Planning Commission**, **Board of Zoning Appeals**, or **Design Review Board** members that must be present in order to conduct official business or take official action.

Recreational Vehicle

Any of the following vehicles designed for travel, recreation, and vacation uses: motorhome or van (a portable, temporary **dwelling** constructed as an integral

part of a self-propelled vehicle); pickup camper (a **structure** designed to be mounted on a truck chassis); recreational trailer (a portable **structure** built on a single chassis, 400 square feet or less when measured at the largest exterior horizontal projections); park trailer (a semi-portable **structure** built on a single chassis, which does not exceed 400 square feet when constructed to ANSI

A-119.5 standards, and 500 square feet when constructed to USDHUD standards); or tent trailer (a canvas or synthetic fiber folding **structure** mounted on a hard body base and towed by a vehicle). **Use** of a recreational vehicle for residential or accommodation purposes is prohibited except in a

Recreational Vehicle (RV) Park

Repair

The restoration to a good or sound condition of materials, systems, or components of a **structure** that are worn, deteriorated, or broken using materials or components identical to or closely similar to existing materials or components.

Right-of-Way

An area dedicated to public or private **use** for pedestrian and vehicular movement, which may also accommodate public utilities.

Roadway

That portion of a **street** improved, designed, or ordinarily used for vehicular and bicycle traffic. A **roadway** includes motor vehicle travel lanes and may include **bike lanes**.

Satellite Dish

A device used to transmit or receive radio or electromagnetic waves between terrestrially and orbitally based devices.

Shared Parking

The use of parking spaces used or proposed to be used to meet the minimum number of off-street parking spaces required for one or more other **uses**.

Shipping Container

A standardized, reusable shipping vessel used in the transportation of freight and capable of being mounted on a rail car, or mounted on a chassis for movement by truck trailer, or loaded on a ship.

Sight Triangle

A triangular area at each corner of the intersection of two **streets** or of a **street** and a **driveway**, where vision is required to be unobstructed.

Sign

Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, **structures**, costumes, designs, trade names, or trademarks by which anything is made known (all or any of which are sometimes referred

to as "**copy**"), and that are used to designate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or products, and that are visible from any **public street** or **adjacent** property and used to attract attention. A sign includes the **sign structure** and the **sign face** on which any **copy** is displayed.

Sign Area

The area enclosed by the perimeter of the **sign face**. For **signs** consisting of **copy** or **graphics** individually applied to a **facade**, the **sign area** shall be considered as the area of an imaginary rectangle that will enclose all such items.

Sign Face

The part of the sign that is or can be used for the display of any **copy** or **graphics**, including any background material, panel, trim, color, or illumination that differentiates the sign from a **facade** or **sign structure**.

Sign Structure

Any supporting **structure** erected, used, or intended for the purpose of displaying any sign, with or without a sign thereon.

Sign Structure Area

The area within an imaginary rectangle that encompasses the sign minus the area of the **sign face**.

Sign, Dilapidated

Any sign that is structurally unsound, has defective parts, or is in need of painting or **maintenance**.

Sign, Directory

A freestanding or **facade** sign that serves to identify the location of tenant spaces within a multi-tenant **building** or **development** to pedestrians or motorists moving with the **development**.

Sign, Facade

Any sign that utilizes any portion of a **facade** for support.

Sign, Freestanding

Any sign supported by a **sign structure** secured in the ground and that is wholly independent of any other support.

Sign, Illegal

Any existing sign that does not have a Sign Permit issued by the **Town** in accordance with **Sec. 16-5-114, Sign Standards. Persons** responsible for such **signs** are subject to the enforcement provisions in Chapter 16-8: Enforcement.

Sign, Illuminated

Any sign which is directly or indirectly lighted by an artificial light source.

Sign, Inflatable

Any sign that is either expanded to its full dimensions or supported by gasses contained within the sign, or sign parts, at a pressure greater than atmospheric pressure. Untethered airships are not considered to be inflatable **signs**.

Sign, Internally Illuminated

Any sign which has light transmitted outward through its face or any part thereof.

Sign, Legal

Any **permitted sign** that complies with the provisions of **Sec. 16-5-114, Sign Standards**.

Sign, Off Premises

Any sign located or proposed to be located at any place other than within the same platted **parcel of land** on which the specific business or activity being identified on such sign is itself located or conducted.

Sign, Permitted

Any sign for which a Sign Permit has been issued by the **Town** in accordance with **Sec. 16-5-114, Sign Standards**.

Sign, Political

Any sign erected for the purpose of advertising a candidate for public office or stating a position on a public issue on which an election or referendum is pending with respect to a particular campaign.

Sign, Project

Any sign erected and maintained on the *premises* temporarily during **construction** and displaying only the name of the project, architect, engineer, contractor, **developer** or finance organization upon which property such individual is furnishing labor, services or material.

Sign, Public Utility

Any sign placed by a publicly regulated utility for the purpose of identifying its utility lines, devices, or other similar equipment.

Sign, Real Estate

Any sign advertising real property as being for rent, for lease, or for sale.

Sign, Roof

Any sign erected over or on the roof of a **building**.

Sign, Special Event

Any sign erected for the purpose of announcing a special event or function which may be of general interest to the community.

Sign, Temporary

Any sign or information transmitting **structure** intended to be erected or displayed for a limited period.

Sign, Traffic Directional/Safety

Any sign that is designed, sized, and erected solely for the purpose of vehicular or pedestrian traffic direction or safety, and is without any commercial **copy** or **graphics**.

Sign, Vehicle

Any permanent or **temporary sign** affixed, painted on or placed in or upon any vehicle.

Site
A lot or lots occupied or planned for occupation by a **structure** or a set of **structures**.

Site Plan
A detailed engineering plan, to scale, showing **uses**, and **structures** proposed for a **parcel of land** as required by this **Ordinance**.

Solar Energy Device

A system consisting of solar panels and related equipment (e.g., heat exchanger, pipes, inverter, wiring, storage) that collects solar radiation and transfers it as heat to a carrier fluid for **on-site** use in hot water heating or space heating and cooling, or that collects solar energy and converts it into electricity for direct **on-site** use and transfer of excess electricity to an electric utility grid. Solar panels and equipment are typically mounted on the roof(s) of principal or **accessory structure**, but may be mounted on other parts of **structures**, or on the ground.

Special Event

A planned, temporary activity as defined in Section 17-12-115 of the Special Events Ordinance.

Specimen Tree

A **tree** that is an outstanding representative of its species in size, as listed in Sec. 16-6-104.F.1, Specimen Tree Defined.

Stand of Trees

A relatively uniform group of **trees** that form a continuous canopy.

State

The State of South Carolina.

State or Condition that Existed Prior to a Disaster

The state or condition of a **structure** that existed prior to any disaster

Street

An existing or planned public **right-of-way** or private easement used or intended to be used primarily for carrying vehicular, bicycle, and pedestrian traffic and providing a principal means of **access** to **abutting** property.

Street, Private

A street that has not been dedicated and publicly accepted by any governmental entity.

Street, Public

A street that has been dedicated and publicly accepted by a governmental entity.

Structure

Anything constructed, installed, or portable, the use of which requires a location on a **parcel of land**. Structure includes a fixed or movable **building** which can be used for residential, business, commercial, agricultural, or office purposes, either temporarily or permanently. "Structure" also includes, but is not limited to, **swimming pools**, tennis courts, **signs**, cisterns, sewage treatment plants, sheds, fences and **gates**, docks, mooring areas, and similar **accessory construction**.

Subdivision

Any division of a **tract** or **parcel of land** into two or more **lots**, **building sites**, or other divisions for the purpose, whether immediate or future, of sale, lease, or **development**—including any division of **land** involving a new **street** or change in existing **streets**, the alteration of any **streets** or the establishment of any new **streets** within any **subdivision** previously made and approved or recorded according to law, any re-**subdivision** involving the further division or relocation of **lot** lines of any **lot**:**lots** within a **subdivision** previously made and approved or recorded according to law, and the combination of record **lots**—provided, however, that the following are excepted from this definition:

- 1)

The combination or recombination of portions of previously platted *lots* where the total number of *lots* is not increased and the resultant *lots* are equal to the standards of this *Ordinance* ;

2) The division of *land* into *parcels* of five acres or more where no new *street* is involved and plats of these exceptions are received as information by the *Town* , which shall indicate that fact on the plats;

3) The combination or recombination of entire *lots of record* where no new *street* or change in existing *streets* is involved.

Swimming Pool, Spa, or Hot Tub

An above- or below-ground *structure* that is filled with water and used for swimming (swimming pool) or for soaking, relaxation, massage, or hydrotherapy (spa or hot tub).

Telecommunications Facility

A telecommunications facility is the set of equipment and network components —including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment—necessary to provide wireless data and telecommunications services to a discrete geographical area. A telecommunications facility may consist of (a) telecommunications facility equipment and network components that are collocated (attached or mounted) on an existing telecommunications tower, or (b) telecommunications facility equipment and network components that are collated (attached or mounted) on an existing *building* or *structure* other than a

telecommunications tower (such *building* or *structure* is not considered part of the telecommunications facility), or (c) a monopole tower whose sole or primary purpose is to support and elevate telecommunications facility equipment and network components above the ground, and including any ground-based *accessory structure* used to house associated equipment. A distributed antenna system does not constitute a telecommunications facility.

Television or Radio Antenna

An omnidirectional antenna tuned to the broadcast frequencies assigned to television or commercial radio. This *use* does not include an amateur radio antenna or a *satellite dish* .

Town

The Town of Hilton Head Island, South Carolina.

Town Council

The Town Council for the Town of Hilton Head Island, South Carolina.

Tract

A defined area or *parcel of land*, the term itself not importing any precise dimension.

Travel Ready

Any temporary *dwelling* or temporary nonresidential unit that can be removed entirely from the island or driven or pulled off the island in the event that a subsequent disaster occurs.

Tree

Any living woody or fibrous (e.g., palm) perennial plant having one or several self-supporting stems. Trees may be classified as conifer, deciduous, evergreen, or ornamental.

Tree Protection Zone

A defined area containing one or more healthy *trees* designated for preservation and protection in accordance with Sec. 16-6-104, Tree Protection, delineated generally by the outermost drip line of the *tree(s)*.

Tree, Street

A *tree* with a 3" caliper *diameter at breast height* with a trunk free of branches 7' to 9' from the grade immediately adjacent to the *tree* and generally located in the area between the *street* and any pathway or sidewalk.

Tree Survey

A survey of *trees* protected by Sec. 16-6-104, Tree Protection. See Sec. 16-6-104.C.2.

Underbrushing

The removal of the shrub layer or understory from a **site** by hand or machine (also known as bush-hogging).

Understory Trees

Trees that grow beneath the overstory.

Upland

For purposes of the **wetland** protection standards in Sec. 16-6-102, Wetland Protection, any area that does not qualify as a **wetland** because the associated hydrologic regime is not sufficiently wet to elicit **development** of vegetation, soils, or hydrologic characteristics associated with **wetlands**. Such areas occurring within floodplains are more appropriately termed non- **wetlands**.

Use

The purpose or activity of which the **land** or **building** is designed, arranged, or intended, or for which it is occupied or maintained. **Accessory use** is subordinate to the main or **principal use of land or building**.

Use, Accessory

A **use** of a **building, lot**, or portion thereof, which is customarily incidental and subordinate to the **principal use** of the **building or lot**.

Use, Principal

The primary purpose for which a **lot** or the main **building** thereon is designed, arranged, or intended and for which it is or may be used, occupied, or maintained.

Vested Right

The right to undertake and complete the **development** of property under the terms and conditions of a **site specific development plan** or phased **development plan** as provided in S.C. Code of Laws Ordinance 6 Chapter 29 Article II, Section 6-29-1510 et seq., and Sec. 16-2-102.J, 1, Vested Rights for Approvals of Site Specific Development Plans, of this **Ordinance**.

Wetland

An area that is inundated or saturated by surface or **ground water** at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. To be considered a **wetland**, the following three criteria must be met:

- 1) the presence of hydric soil;
- 2) the prevalence of hydrophytic vegetation; and
- 3) the presence of **wetland hydrology**.

Wetlands generally include swamps, marshes, bogs and similar areas.

Wetland Alteration

Any human activity that causes changes in the hydrology, vegetation, or other physical, biological or chemical characteristics of regulated **wetlands**

—including, but not limited to: dredging or **filling**; drainage; diking; addition of **impervious surfaces**; addition of sediment and pollutants; removal of or damage to vegetation; and planting of non-native vegetation.

Wetland Buffer

A strip of upland area along the outer edge of a **wetland** intended to consist of undisturbed vegetation. See Sec. 16-6-102.D, Wetland Buffer Standards.

Wetland Creation

Construction of a **wetland** where one did not previously exist.

Wetland Functions

The physical, chemical, and biological process or attributes of a **wetland** without regard to their importance to society.

Wetland Mitigation Banking

The restoration, creation, enhancement, or preservation of a **wetland** undertaken expressly for the purpose of compensating for unavoidable loss of **wetland** to a **development** project. The goal is to replace the exact function and value of **wetlands** that would be adversely affected by a proposed **development** project. Units of restored, created, enhanced, or preserved

wetland are expressed as "credits" that may subsequently be withdrawn to offset "debits" occurring through the loss of **wetland** as a **development site**. Such credits may be bought and sold between those who restore, create, enhance, or preserve **wetlands** and those who must compensate or mitigate the loss of **wetlands** or **wetland functions**.

Wetland Preservation

Conservation of a **wetland** area in perpetuity through legal protections on the **use** and disturbance of the area.

Wetland Restoration

Re-establishment of previously existing **wetland functions** at a **site** where they have ceased to exist, or exist only in a substantially degraded state.

Wetland Revegetation

The replanting of native vegetation in a **wetland** area where man-made changes have altered vegetation, but where hydrologic and soil conditions have been retained.

Wind Energy Conversion System, Small

A wind energy conversion system consisting of a rotating wind turbine and related control or conversion equipment that converts the kinetic energy in wind into mechanical energy, has a rated capacity of not more than 100 kilowatts (kW), and is intended to primarily reduce **on-site** consumption of utility power for homes or businesses.

Zero Lot Line Development

The location of a **building** on a **lot** in such a manner that one of the **building's** sides rests directly on the common **lot** line of an **adjacent lot**.

Zoning District

The various classification of zoning categories provided for in this **Ordinance** and the areas on the zoning map in which such different districts are mapped, where the regulations governing the **use of land, density, height, and coverage of buildings** and other **structures** are uniform.

Zoning District, Base

Those zoning districts grouped into Conservation and Recreation Districts, Residential Districts, and Mixed-Use and Business Districts, and which are described in Sec. 16-3-102 through Sec. 16-3-105 of this **Ordinance**

Zoning District, Overlay

A zoning district that is superimposed over one or more underlying **base zoning districts** to address area specific conditions or features, and which are described in this **Ordinance**

Zoning Map, Official

The **Official Zoning Map** of the Town of Hilton Head Island, on which the boundaries of various zoning districts are drawn and which is an integral part of this **Ordinance**.

(Revised 11-3-2015 - Ord. No. 2015-23; revised 4-18-2017 - Ordinance 2017-05; revised 6-6-2017 - Ordinance 2017-08; revised 12-5-2017 - Ordinance 2017-19)



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
VIA: Taylor Ladd, *Board Coordinator and Senior Planner*
FROM: Teri B. Lewis, AICP, *LMO Official*
DATE: February 27, 2018
SUBJECT: APL-00493-2018 – Determination related to height of structures at 28 Bradley Circle and 3 Whelk Street

Staff has received an appeal from Tamara Becker and Ronda Carper on behalf of the Bradley Circle Community. Ms. Becker and Ms. Carper are appealing the determination of the LMO Official dated February 8, 2018 which states that the structures proposed for 28 Bradley Circle and 3 Whelk Street are vested to a height of 75' above the base flood elevation (BFE). The appellant believes the determination in error and seeks to reverse the determination. This appeal is scheduled to be considered at the March 26, 2018 BZA meeting.

The decision that the height of the proposed structures at 28 Bradley Circle and 3 Whelk Street is vested to 75' above BFE is based on the information provided in detail in the determination letter I sent to Mr. Drew Laughlin, attorney for the property owners, on February 8, 2018 (Attachment B). Per the Code of Laws of South Carolina, specifically 6-29-800.B, upon receipt of an appeal, staff is required to immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.

The record as attached consists of the following documents:

- Attachment A - Appellant Submittal
- Attachment B - Staff Determination Letter
- Attachment C - December 14, 2017 Letter from Drew Laughlin to Teri Lewis
- Attachment D - Variance 352-2016 File
- Attachment E - Copy of South Carolina State Code Article 11, Vested Rights
- Attachment F - Copy of Land Management Ordinance (LMO) Section 16-2-102.J, Vesting and Expiration of Development Approval or Permit
- Attachment G - Copy of Email Correspondence

Staff reserves the right to submit additional documents.

Please contact me at (843) 341-4698 or at teril@hiltonheadislandsc.gov if you have any questions.

Attach.
A



Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928
Phone: 843-341-4757 Fax: 843-842-8908
www.hiltonheadislandsc.gov

FOR OFFICIAL USE ONLY	
Date Received:	2/11/2018
Accepted by:	Sherry P.
App. #: APL	0439-2018
Meeting Date:	

Applicant/Agent Name: Bradley Circle Community, Company and Family Remara Becker and Rhonda Cooper
Mailing Address: 5 Bradley Circle City: Hilton Head Is State: SC Zip: 29928
Telephone: 843-338-3941 Fax: _____ E-mail: jhvdavis@gmail.com

APPEAL (APL) SUBMITTAL REQUIREMENTS

If you are interested in submitting your appeal electronically please call 843-341-4757 for more information.

The following items must be attached in order for this application to be complete:

- A detailed narrative stating the Town Official or Body who made the decision, the date of the decision being appealed, the basis for the right to appeal, the grounds of the appeal, cite any LMO Section numbers relied upon; and a statement of the specific decision requested of the review body.
- Any other documentation used to support the facts surrounding the decision. *if needed or missing please*
- Filing Fee - \$100.00 cash or check made payable to the Town of Hilton Head Island.

To the best of my knowledge, the information on this application and all additional documentation is true, factual, and complete. I hereby agree to abide by all conditions of any approvals granted by the Town of Hilton Head Island. I understand that such conditions shall apply to the subject property only and are a right or obligation transferable by sale.

I further understand that in the event of a State of Emergency due to a Disaster, the review and approval times set forth in the Land Management Ordinance may be suspended.

Applicant/Agent Signature: _____ Date: February 20, 2018

CERTIFIED TRUE COPY

[Signature]

Town Clerk
Hilton Head Island, South Carolina

ALTA
A

Appeal of LMO Official Decision: BZA

Submitted on 2-21-18 (via email and hand delivery)

1) This appeal is a result of an administrative decision made by Teri Lewis, LMO Official for the Town of Hilton Head.

2) The Decision was emailed on February 9, 2018 and received as a cc to a select group of others. No community wide notice or general public notice to ALL Bradley Circle neighborhood as well as the general public of Hilton Head Island is inappropriate and wrong.

3) As property owners directly affected by the controversial variance and now wrongful decision by Teri Lewis, the HHI Town LMO Official we have standing to file this appeal as aggrieved persons. Section 6-29-800

4) We seek an immediate stay on any review and approval of building applications BLDR-3923-2017 and BLDR-3922-2017 and a final reversal of the LMO Official Teri Lewis' wrong arbitrary and capricious decision regarding Vesting of the height of the buildings to be built on the properties R510.009.000 0096.0000 and R510.009.000 01102.0000.

We are seeking an order to the Developer that he does not have any Vested Right to build to a 75' height on Lot 1 and Lot 2 or a/k/a #28 Bradley Circle and #3 Wheel Street, Hilton Head Island and must be built only to the limit of the LMO requirements of 45 feet. 16-3-106H

IF the BZA does not reverse Ms. Lewis' decision it WILL FOREVER CAUSE IRREPRAPABLE HARM to us as property owners and full-time residents of Bradley Circle HHI. And by default, the entire Bradley Circle neighborhood and Hilton Head Islands character and general reputation.

Ms. Lewis' wrongful decision is a blatant abuse of discretion by a Town Official as there are numerous facts and legal documents to rely on. Yet she admits and acknowledges that "the Town is still unclear about the allowable height for the structures located at 28 Bradley Circle."

AND outrageously instead of writing a decision based solely on facts, documentation, and clarity Ms. Lewis chooses to write explaining in paragraph one the reasons WHY THERE IS NO CLARITY! And end by giving rights for no lawful reason. It's unbelievable that Ms. Lewis chose to give rights to the owner/developer when she knows full well that neither she nor the Town understands why they are giving the rights away to the Owner/Developer Mr. Chindris, rights that she knows negatively affect the public good and are contrary to law and covenants. This is mind boggling! This is a wrongful an outrageous abuse of Official discretion.

1) For this reason, the Decision MUST be immediately reversed.

In Ms. Lewis' defense and as a factual matter of importance, at one time Ms. Lewis had come to a different decision and wrote to the Owner/Developer On August 28, 2017 after he applied for Town for review and approval to build on the properties two homes that do not comply with the covenants of the land that he agreed to in the Settlement with DST. Ms. Lewis decided that the Settlement Agreement has legally binding covenants that must be legally addressed before a review etc by the Town could take place. 6-29-1145

The recorded Settlement Agreement and Restrictive Covenants absolutely do address the very issue at hand, height. That Ms. Lewis and the Town need clarity on.

THE SETTLEMENT AGREEMENT

In Teri Lewis' letters she states that there is a settlement agreement between parties. The agreement is the result of an appeal of the BZA variance approval on March 28, 2016.

The agreement imposes on the property certain covenants and affirmative obligations, all of which shall run with the property and be binding on all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of DST and the Adjacent Properties and each subsequent owner thereof.

Teri Lewis states there is vagueness to the agreement in respect to #5 Development Restrictions.

The agreement states: The owners and the developer agree and covenant that any structure developed or constructed on the Property will be constructed in accordance with the applicable LMO, Laws, and ordinances.

TIMELINE:

A timeline of events is important here as it relates to the LMO 2016-Amendments which INCLUDES 16-3-106H, and amendment to change the height of single family homes from 75' to 45' in RD zoned districts.

1) There is record of approved minutes from at least as early as October 28, 2015 of Ms. Lewis and the LMO Committee having discussions and review of proposed 2016 LMO amendments, they continued their review at the November 13, 2015 LMO Committee meeting, public notice was given on February 14, 2016 and by February 26, 2016 Town Staff recommends that the LMO Committee forward the Proposed 2016 LMO Amendments First Set to the Planning Commission for their approval.

2) On March 7, 2016 the Planning Committee held a Public Hearing Approved the 2016 LMO Amendments, including 16-3-106H unchanged and forwarded to Planning Commission with recommendation to approve as drafted.

3) On March 8, 2016 Ms. Lewis wrote to the Planning Commission via Jayme Lopko a Senior Planner, Ms. Lewis stated that a PUBLIC HEARING would be held on Wednesday, March 16, 2016.

4) March 16, 2016 Planning Commission Held a Public Hearing and voted unanimously 7-0-0 to recommend to Town Council.

5) Town Council voted to approve as drafted and the final Ordinance to reduce height to 45-feet was codified on May 17, 2016.

The reasoning for the LMO amendment and Ordinance change is in response to an outcry from neighbors over the unharmonious, out of character nature of the height of the homes. Clearly, they are detrimental to the public good and so much more.

I do not see the vagueness or confusion in this simple statement. Its already been shown that the height much earlier than even February 28, 2016 had been identified, discussed, and acknowledged as being detrimental to the public good and the Town of HHI had made overt public plans to amend the LMO and lower the height to 45'. These are known and documented facts. The new LMO, the applicable LMO was in the works, everyone knew it. Most especially the owners and developer as they must have been made aware of it by Town Staff in particular Nicole Dixon and the LMO Official as they were actively engaged in the construction of the amendment, the public discussions and their own recommendation to town governing committees to approve. In particular as the time-line demonstrates, The LMO Committee, The Planning Commission, and the Town Council.

The settlement agreement concludes that it is to be construed as a covenant not a condition and in response to One must acknowledge the facts that there was full knowledge and disclosure of the active pursuit to reduce the height of single family homes to 45' prior to the Variance Hearing.

To suggest that there would be no knowledge or acceptance of the change in height is on its face an obvious attempt to skirt the honest integrity of record.

Moreover, #12 of the Settlement Agreement requires that if any provision of this Agreement requires judicial interpretation, the Owners and Developer agree that the court shall not by rule of construction ... be more strictly construed against the party who prepared the document as BOTH parties, the agents and counsels of Owners and Developer and DST have participated in the final agreement. Therefore, for Teri Lewis as Town LMO Official to call the development restrictions vague gives the developer, now owner, Radu Chindris an advantage that is prohibited within the corners of the document.

Both in SC State in the LMO Code it is REQUIRED that the most restrictive of interpretations must be used and held as the decision on "vague" matters. For this reason the decision must be immediately reversed.

Ms. Lewis was correct in her first decision on 8/24/18 that if she was unclear to #5 Development Standards intention regarding the applicable LMO height and to address the demands of the Owner/Developers application for building permits to build well above 45' as is the applicable LMO height limitation: LMO 16-3-106H-A judicial interpretation was needed.

It is unfair, unreasonable and a violation of the AGREEMENT by Radu Chindris to force her hand to make a decision on #5 interpretation and its merits, and for his attorney to ignore the covenants his client agreed to and force the Town and Ms. Lewis to violate the agreement and the law. IF Mr. Chindris needed an INTERPRETATION his remedy is clear and mandated by the Settlement Agreement. It is NOT to skirt the issue and make the Town Official interpret what he Mr Chindris full well knows already to be meaning. IF he didn't he would NOT have manipulated the system as he has done. But Mr. Chindris is accustom to skirting the regulations as when he removed the existing home on #28 without first getting a building permit. As he did when he sent 5 dump trucks of grading materials to begin construction on #28 prior to having any permit to do so. I wrote the Town when the Town Attorney insisted that the

Owner/Developer could dump the material and grade the property without a permit and those acts are by LMO and State SC laws both considered construction, and construction requires a permit. As he did when he worked with the previous owners Dorsey/Craig, and the Town Staff to manipulate the LMO and reconfigure the existing developed lot scheme to more profitably utilize the land. As this was a condition of him purchasing the property from the Dorsey/Craigs. That the Dorsey/Craig's went along with the scheme to apply for two variances once He and Town Staff had exhausted the LMO exceptions to setbacks, buffers, etc and if approved by the BZA he'd purchase the property and develop the land. As Mr. Chindris then sold one of the reconfigured lots with setback and buffer variances for as much as he himself had paid the Dorsey/Craig's for the entire parcel of land.

Now Mr. Chindris' attorney in his letter to Ms. Lewis makes very concerning and factually incorrect statements. He states that on March 28, 2016 the BZA approved variances to allow the construction of two single family home to be built without setback angle requirements and without adjacent setbacks on both sides of the properties. IN FACT, the Variance applications request was a further setback reduction than the LMO allowed for on the SWEET GRASS SIDE to 1' and no buffer. And a 4' setback and a 3' buffer from Wheelk Street. Its concerning that the Attorney would make errors in stating what the Variances approved by the BZA included to the Town. Furthermore there is nowhere in the variance narrative or the Town recommendation for the variances or the attachments provided that considered a request to build to a specific height.

Mr. Chindris' attorney brings up in his letter "Proposed Elevation Drawings" that ought to be considered as they are substantially the same configuration and height as three other homes Mr. Chindris was involved developing. The attorney confuses again the attachment H that is titled by the owner/developer as Bradley Circle Elevation Proposed" with one that is attachment G. Attachment G refers to the setbacks and what the developer could NOT build if not given approval of his variances.

It's interesting and will be important later that these are the same three houses that is rational for the LMO Officials, LMO Committee, Planning Commission, and Town Council to begin discussion in the latter part of 2015 to amend the LMO to reduce single family height to 45'. And even more importantly those three houses are the focus of intense concern of Bradley Circle Property Owners, Visitors, and others around the HHI community to this day and will forever be so.

Those specific concerns caused the Town to reconsider and REZONE the Bradley Circle neighborhood back to RM8 as it was clear that not only was the three houses out of neighborhood character and unharmonious with the other homes but that in fact the height and scope of the homes proved to be a significant and undesirable detriment to public good and community, to the environment and to the overall quality of life to Bradley Circle and HHI.

Site Development Plan and Vested Rights.

The LMO Official, Teri Lewis in a letter dated February 8, 2018 (received 2/9/2018 via email) states on page 2, that the site plan associated with VAR-352-2017 is vested for a height of 75' above BFE and will be reviewed as part of building permit applications BLDR-3923-2017 and BLDR-3922-2017.

This in spite of stating not having clarity regarding the allowable height.

Ms. Lewis goes on to say that she uses and relies on South Carolina State Code 6-29-1510 specifically to make her decision. This same State code has been adopted in full into the 2014 LMO. 6-29-1510.

6-29-1520 requires that there is, (9) a site specific development plan, a variance is defined as a site development plan.

(10) "Vested Right means the right to undertake and complete the development of property under the terms and conditions of a site development plan as provided in this article and in the local land development ordinances or regulations adopted pursuant to this chapter.

6-29-1540 conditions and limitations

(6) A site specific development plan... for which a various regulation or special exception is necessary DOES NOT CONFER A VESTED RIGHT UNTIL THE VARIANCE, REGULATION OR SPECIAL EXCEPETION IS OBTAINED.

6-29-1510.Citation of Article

(1) "Approved" or "Approval" means a FINAL ACTION BY THE LOCAL GOVERNING BODY OR AN EXHAUSTION OF ALL ADMINISTRATIVE REMEDIES THAT RESULTS IN THE AUTHORIZATION OF A SITE SPECIFIC DEVELOPMENT PLAN OR PHASED DEVELOPMENT PLAN.

*Due to the appeal, the time delay, THERE IS NOT A FINAL APPROVAL OF THE VARIANCE VAR-352-2016 AS OF THIS DATE, 2/20/18

*Further Ms. Lewis has on numerous occasions said to me when asked that there is NOT a final approval of the site plan

(3) And for this reason the Decision by Ms. Lewis must be immediately reversed

Below is a complete description and discussion of the submitted site specific development plan as part of the variance package considered by the HHI BZA.

The only rightful conclusion is that there is NO site plan that demonstrates any height other than 49' from ground to peak of buildings.

The LMO Officials decision is wrong and a perfect example of a willful, arbitrary and capricious act. And that absolutely causes undue and irreparable harm to me, my family, my property, my neighborhood and my home town

The LMO Official, Teri Lewis chose to arbitrarily ignore and not consider the entirety of what was submitted by the Property owners (Shirley and Craig) as part of the variance application created with advice and consent of Town Staff specifically, though not limited to, Nicole Dixon. With Ms. Dixon's assistance then developer Radu Chindris and HHI Town Staff put together the variance application/packet which was accepted and used by the BZA in its approval on March 28, 2016.

In particular Ms. Lewis willfully refuses to acknowledge and consider all of the narrative and exhibits submitted in the variance application. Which clearly defines with reasonable certainty the site development plan. She chooses to consider one computer generated schematic and wrongly conclude, siding with the owner/developer and his attorney in his quest to establish a vested right for height at any cost.

Please review the variance application attachments and in particular pay attention to exhibit Attachment H.

Attachment H is labeled by the applicants BRADLEY CIRCLE ELEVATION PROPOSED

The **SOLE AND ONLY MEASUREMENT ON ATTACHMENT H** refer to a combined width of 49' from the exterior left side of home to be constructed on lot 1 and the exterior right side of the exterior home to be built on lot 2. There exists **ABSOLUTELY NO** measurement with regard to height and therefore there no site specific development plan can vest a height not provided, and moreover one that is not allowable by HHI-2014 LMO (and amendments) when building permits are applied for, the developers building applications were submitted on August 8, 2017.

The only other measurements noted on the **PROPOSED Elevation drawings** is the easements and setbacks that the owner/developer is seeking. Therefore, its uncontroversial that the **PROPOSED Elevation drawing, attachment H** is the site plan.

- 1) It's labeled sequentially to follow in narrative, the example of what can **NOT** be built
- 2) And is what is shown with the variances approved that **CAN** be built.

It further is illustrative of the design concept described with relative certainty throughout the narrative.

Further, if one measures across the base of both homes (inclusive of lot 1 and 2) from the left exterior side of the home on lot 1 to right exterior side of the home on lot 2 with a simple ruler and uses that measurement (given and noted on the drawing as 49') and then apply it to the drawings elevation one can easily determine the height as **PROPOSED** by the applicant in **ATTACHMENT H - "Bradley Circle Elevation Proposed"**. It's clear that Attachment H - Bradley Circle Elevation Proposed shows a height of 49' from the ground to the peak of the homes. Nothing more.

Moreover, based on the applicant's title of Attachment H as Bradley Circle Elevation Proposed this is unequivocally the only piece of information in the variance packet constituting a Site Development Plan and therefore the vesting of height based on the property owners own drawing and official submission of variance materials is 49' from ground to peak.

- 4) The BZA must be compelled to reverse based on this fact.

Further evidence of same wrongful decision and reason to reverse. Within the packet there are several cherry-picked pictures of homes **NONE** of which show a home of 75' in height and all conforming to the 45' height limit required by LMO code and regulations. Therefore, all of the attached photos support the conclusion that there was nothing within the variance packet that proves a site specific development plan exceeding 45' limit. Further, nowhere in the narrative or HHI Town Staff rationale to recommend approval of the variances is height discussed or is there any language to exceed the LMO height limit of 45'. In fact, to the contrary, all discussion during the hearing by the then developer Radu Chindris, was that he intended to build to the same height as the homes in the neighborhood.

A quick statistical note of fact that at the time of March 28, 2016 and the variance hearing there were 15 homes that fronted Bradley Circle. Of those only four homes are built in a manner that the new homes were to be built - 3 stories above garage and with no side angle setback, and two (2) that are 2 stories above garage and 10 that are one or one plus story above garage.

Other homes off of Bradley Circle and ocean front are also 3 stories above garage and most without side angle setbacks. **And ALL are within the 45' LMO height limit.**

Clearly any demonstration of desire to be like and harmonious with the surrounding homes as shown by use of the pictures only confirms the intent to build within LMO height regulations.

6-29-1540

- (1) the form and contents of a site development plan must be prescribed in the land development ordinances or regulations
- (2) also within the South Carolina Vesting Act as well as within the HHI LMO code there is to be a strict reading of any provision in question, providing the most restrictive conclusion of any potential and possible choices. Considering and abiding by this rule of law, if there are any doubts as to the right decision

- 5) The immediate reversal of the decision is totally appropriate and required by law.

South Carolina Supreme Court Decision

Sherman V. Reavis 273 S.C. 542 (1979) 257 S.E.735

South Carolina Supreme Court decided that there are no vested rights when an ordinance is legally pending. Casey v. Zoning Hearing Board of Warwick Township 459 Pa. 219, 328 A.2d 464 (1974)

The SC Supreme Court writes in their decision that in fact a well-known and Publicly Noticed (done several times over in our case here) and Multiple Public Hearings of the LMO Amendment, noticed is consistent with the logic used in above referenced Supreme Court Decision and that because of the activity noted here there is a legally Pending Ordinance at the time of the variance hearing for VAR-352-2016 on March 28, 2016 as there was in Sherman v. Reavis.

Furthermore It's obvious from the timeline that Town Staff was well aware of the LMO amendment to change the height of single family homes, and it is unequivocal that Staff in their quest to be fair and equitable and just would have made the property owners (Dorsey and Craig and their potential buyer/developer, Radu Chindris) aware of the pending change in allowable height to a maximum of 45' and that they owners and developer had clear knowledge based on the Public Notices and Public Hearings held and unanimous votes to approve.

All of this well occurring well before the variance hearing date 3/28/26.

Senior Planner Nicole Dixon is on the record as working directly with Radu Chindris (Developer) in creating the variance scheme and materials.

The SC Supreme Court decision states that it'd be "utterly illogical to that, after a zoning commission had prepared a comprehensive zoning ordinance OR AMENDMENT thereto, which was on file and open to public inspection and upon which public hearings had been held, and while the ordinance (amendment) was under consideration, any person could by merely filing an application compel a municipality to issue a permit, that they knew or could have known would be forbidden by the proposed ordinance (amendment), and by doing so nullify the entire work of the municipality in endeavoring to carry out the purpose for which the zoning law (amendment) was enacted.

The Owners and Developer absolutely had or could have had knowledge of the long and many months of work being done by the Town Staff, Town Committee and Commissions.

And therefore, first, there is no Vested Right because no PERMIT would be allowed for a building above the 2016-LMO Amendment change of 45' at the time of the Variance Hearing. *Remember that there was never a variance for height.

- 6) Based on this alone the BZA should immediately reverse Ms. Lewis' decision.

Town of Hilton Head Island
Board of Zoning Appeals



Conclusion:

We have shown 6 different reasons by facts, law, and regulations why the LMO Official, Teri Lewis erred in her decision to give Vested Rights to the owner/developer Radu Chindris.

It is only right and just and proper that the BZA upon reading this appeal reverse the Official, Ms. Lewis' decision immediately and provide all the relief sought herein.

Further, It is demonstrated herein that from the outset of Mr. Radu Chindris' desire to work with the Dorsey/Craigs to possibly purchase their property that there has been material facts of omission and therefore not considered by this body in making any decision regarding the variance and the criteria necessary for their approval.

It is demonstrated herein that in the discussions, preparation and recommendation of the variances that there have been several violations of staff discretion and law. It's further contemplated that the Government Officials of the Town of Hilton Head Island should review the full background and history of the Variance Applicant, its review by the BZA and its Approval and REVERSE the issuance of the two variances in full as they are contrary to law and the public good as is within their powers to do. *SC State Law 6-29-1540 (11)

Approved by the Board

Approved by the Board - Regular Meeting February 22, 2016

Next Meeting

OFFICIAL RECORD

Official Record of the Board of Zoning Appeals, Town of Hilton Head Island, South Carolina. This document contains the official record of the Board's actions and decisions regarding zoning variances and appeals. It is a public document and is available for review by anyone interested in the process.

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Approved by the Board

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**Town of Hilton Head Island
Board of Zoning Appeals
Regular Meeting**

March 28, 2016 - 2:30 p.m.

Benjamin M. Racusin Council Chambers

AGENDA

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call**
4. **Freedom of Information Act Compliance**
Public notification of the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.
5. **Welcome and Introduction to Board Procedures**
6. **Approval of Agenda**
7. **Approval of the Minutes – Regular Meeting February 22, 2016**
8. **New Business**

PUBLIC HEARING

VAR-338-2016: Richard Lowe, on behalf of the YANA Club, is requesting a variance from LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, to retain a non-permitted paver patio and arbor that extends into the adjacent street setback and buffer. The property is located at 107 Mathews Drive and is identified as Parcel # 92 on Beaufort County Tax Map# 8. *Presented by Nicole Dixon*

PUBLIC HEARING

VAR-352-2016: John P. Qualey, on behalf of Frederick Craig and Shirley Dorsey, is requesting a variance from LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, to allow the construction of two single family attached homes within the adjacent street setback and buffer on both sides of the property. The property is located at 28 Bradley Circle and is identified as Parcels # 896 and 1102 on Beaufort County Tax Map# 9. *Presented by Nicole Dixon*

9. **Board Business**

-
10. **Staff Reports**
Waiver Report

11. **Adjournment**

Please note that a quorum of Town Council may result if four or more Town Council members attend this meeting.



**TOWN OF HILTON HEAD ISLAND
COMMUNITY DEVELOPMENT DEPARTMENT**

One Town Center Court | Hilton Head Island, SC 29928 | 843-341-4757 | FAX 843-842-8908

STAFF REPORT

VARIANCE

John P. Qualey, on behalf of Frederick Craig and Shirley Dorsey, is requesting a variance from LMO Sections 16-5-102 C, Adjacent Street Setbacks, and 16-5-103 D, Adjacent Street Buffers, to allow the construction of two single family attached homes to be built without a setback angle requirement and within the adjacent street setback and buffer on both sides of the property.

Case #: VAR-000352-2016	Public Hearing Date: February 22, 2016
-----------------------------------	--------------------------------------------------

Parcel or Location Data:	Property Owner	Applicant
Parcels#: R510 009 000 0896 0000 and R510 009 000 01102 0000 Acreage: Parcel 896: 0.115 acres Parcel 1102: 0.189 acres Zoning: RD (Resort Development) District:	Frederick Craig & Shirley Dorsey PO Box 5236 Hilton Head Island, SC 29938	John P. Qualey Qualey Law Firm PO Box 10 Hilton Head Island, SC 29938

Application Summary:

John P. Qualey, on behalf of Frederick Craig and Shirley Dorsey, is requesting a variance from LMO Sections 16-5-102 C, Adjacent Street Setbacks, and 16-5-103 D, Adjacent Street Buffers, to allow the construction of two single family attached homes to be built without a setback angle requirement and within the adjacent street setback and buffer on both sides of the property.

Staff Recommendation:

Staff recommends the Board of Zoning Appeals approve the application, based on the Findings of Fact and Conclusions of Law contained in the staff report.

Background:

The two lots subject to this application are part of an existing 5 lot subdivision that was approved in 2003 (See attachment C). The property is surrounded by single family residential uses and a tidal wetland in the rear. There is an existing home that straddles the common property line in between lot 1 and 2 (See attachment D).

Staff has met several times over the past few months with the developer of the property, Radu Chindris, to determine what the buildable area of the property would be after the LMO requirements



were applied and how the two properties could be reconfigured and redeveloped.

The properties as they are currently configured have the following LMO requirements:

See Attachment E

Lot 1

- 20 foot setback and buffer from Bradley Circle and a 60 degree setback angle
- 20 foot setback and 10 foot buffer from Sweet Grass Manor, which can be reduced to a 10 foot setback and buffer because it is a corner lot, and further reduced by 20% to 8 feet because it is in the RD Zoning District and a 60 degree setback angle
- 20 foot setback and 10 foot buffer from Whelk Street, which can be reduced to a 10 foot setback and buffer because it is a corner lot, and further reduced by 20% to 8 feet because it is in the RD Zoning District and a 60 degree setback angle
- 5 foot setback in the rear of the lot adjacent to lot 2 and a 75 degree setback angle

Lot 2

- 20 foot setback and 10 foot buffer from Sweet Grass Manor, which can be reduced by 20% to a 16 foot setback and 8 foot buffer because it is in the RD Zoning District and a 60 degree setback angle
- 20 foot setback and 10 foot buffer from Whelk Street, which can be reduced by 20% to a 16 foot setback and 8 foot buffer because it is in the RD Zoning District and a 60 degree setback angle
- 5 foot setback adjacent to lot 1 and a 75 degree setback angle
- 20 foot buffer adjacent to the tidal wetland in the rear of the property

The applicant has determined that when the LMO requirements are applied that lot 2 becomes an unbuildable lot. He wishes to reconfigure the two lots to be side by side or parallel to each other as opposed to one behind the other, both of which will have frontage on Bradley Circle, as a zero lot line attached subdivision. The applicant proposes to demolish the existing home and construct two homes that will be attached at the first level along the common property line and then detached at level two for views between the two homes.

The applicant is requesting the following variances in order to reconfigure the two lots and construct the two homes:

See Attachment F

Lot 1

- Reduce the 8 foot setback and buffer from Sweet Grass Manor to a 1 foot setback and no buffer
- Eliminate the 60 degree setback angle from Sweet Grass Manor

Lot 2

- Reduce the 8 foot setback and buffer from Whelk Street to a 4 foot setback and a 3 foot buffer
- Eliminate the 60 degree setback angle from Whelk Street

Applicant's Grounds for Variance, Summary of Facts and Conclusions of Law:

Grounds for Variance:
According to the applicant, when the LMO requirements are applied to the existing two lots, there is only room for an approximately 700-square-foot structure, essentially making lot 2 an unbuildable lot. He wishes to reconfigure the two lots so that they are side by side fronting Bradley Circle and construct two single family attached homes. The applicant states in the narrative this reconfiguration will be more in harmony with the surrounding homes in the neighborhood, will allow views and breezes between the dwellings and will be more architecturally similar to other nearby homes. The applicant states in the narrative that the strict enforcement of all the required setbacks, setback angles, buffers and wetland buffer places an unnecessary hardship on them. The applicant states that with all of the setbacks, setback angles and buffer requirements, only one dwelling approximately 3,600 square feet could be constructed, which deprives him of the two lots allocated with the original subdivision plat. He states it would result in a dwelling that will be less harmonious with the neighborhood. The applicant states in the narrative that the approval of the requested variance will not be a detriment to adjacent property because the proposed homes will already be separated from the adjacent homes by the 20 foot access easements on the north and south sides.

Summary of Fact:
o The applicant seeks a variance as set forth in LMO Section 16-2-103.S.

Conclusion of Law:
o The applicant may seek a variance as set forth in LMO Section 16-2-103.S.

Summary of Facts and Conclusions of Law:

Summary of Facts:
o Application was submitted on February 26, 2016 as set forth in LMO Section 16-2-102.C and Appendix D-23.
o Notice of the Application was published in the Island Packet on March 6, 2016 as set forth in LMO Section 16-2-102.E.2.
o Notice of the Application was posted on March 7, 2016 as set forth in LMO Section 16-2-102.E.2.
o Notice of Application was mailed on March 9, 2016 as set forth in LMO Section 16-2-102.E.2.
o The Board has authority to render the decision reached here under LMO Section 16-2-102.G.

Conclusions of Law:
o The application is in compliance with the submittal requirements established in LMO Section 16-2-102.C.
o The application was submitted 31 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
o Notice of application was published 22 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
o Notice of application was posted 21 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.

- Notice of application was mailed 19 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
- The application and notice requirements comply with the legal requirements established in LMO Section 16-2:102.E.2.

As provided in LMO Section 16-2-103.S.4, Variance Review Standards, a variance may be granted in an individual case of unnecessary hardship if the Board determines and expresses in writing all of the following findings of fact.

Summary of Facts and Conclusions of Law:

Criteria 1: *There are extraordinary and exceptional conditions pertaining to the particular piece of property (LMO Section 16-2:103.S.4.a.i.01):*

Findings of Facts:

- The two properties are bound on the north side by Sweet Grass Manor, a 20 foot access easement that runs through the property and on the south side by Whelk Street, also an access easement. Both access easements require setbacks, setback angles and buffers from it, as detailed in the background section above.
- Lot 2 is bound by a tidal wetland to the east, which requires a 20 foot buffer from it.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.01 because there are extraordinary and exceptional conditions that pertain to this particular property.
- Even though there are setback and buffer requirements adjacent to other residential properties, the setback is greater from a street. It is extraordinary to have the property reduced by the 20 foot easement that runs through the property, to have a greater setback and buffer in addition to that, have a greater setback on the south side of the property from that easement and to also have the wetland buffer requirement on the east side.

Summary of Facts and Conclusions of Law:

Criteria 2: *These conditions do not generally apply to other properties in the vicinity (LMO Section 16-2-103.S.4.a.i.02):*

Finding of Facts:

- The majority of the properties in this vicinity do not have these extraordinary conditions.
- There is only one other property in the vicinity, the property directly adjacent to the subject property, that is bound on two sides by an access easement and also bound by a tidal wetland. There is an existing home on that lot that is built right up to the access easement.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.02 because the extraordinary conditions do not generally apply to other properties in the vicinity.
- As these conditions only apply to one other property in the vicinity, it is clear they do not generally apply to other properties in the vicinity.

Summary of Facts and Conclusions of Law:

Criteria 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 (LMO Section 16-2-103.S.4.a.i.03):

Findings of Facts:

- Because there are two lots currently, the applicant is trying to redevelop the property while retaining two lots.
- With the adjacent street setbacks, setback angles, buffers and wetland buffer requirements it appears that lot 2 as it exists in the current configuration is unbuildable, as shown on attachment E.
- With the proposed reconfiguration, each lot becomes a corner lot. Because they will be corner lots (with the frontage along the access easements being the sides that can be reduced by 50%), LMO Sections 16-5-102.C, Adjacent Street Setbacks and 16-5-103.D, Adjacent Street Buffers, requires an 8 foot adjacent street setback and buffer and a 60 degree setback angle on those two sides.
- Attachment G demonstrates what the applicant would be allowed to build meeting all LMO requirements. You can clearly see by this attachment they would be left with one structure, two townhouse style units, with only a one car garage each. This would not be in harmony with the adjacent redeveloped homes.
- The applicant is requesting to reduce the 8 foot setback and buffer from Sweet Grass Manor to a 1 foot setback and no buffer and reduce the 8 foot setback and buffer from Whelk Street to a 4 foot setback and a 3 foot buffer. This will allow the construction of two single family homes, attached at the ground level, to be built at the minimum width in order to be able to provide a two car garage and a stairway entrance into the second level of the home.
- The applicant is also requesting to eliminate the 60 degree setback angle requirement from both Sweet Grass Manor and Whelk Street. This will allow the homes to be constructed with 4 levels over parking, similar to the other homes in the vicinity. The 60 degree setback angle requirement would limit the homes to be very small in size with only 2 - 2 1/2 narrow levels over parking, not in harmony with the other resort style homes in the vicinity.

Conclusions of Law:

- Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.03 because the extraordinary conditions do prohibit and unreasonably restricts the utilization of the property.
- Staff finds the strict enforcement of the LMO requirements do restrict the applicant from developing the two existing properties. Staff finds the setback, setback angle and buffer

reduction request the applicant is proposing is the minimal amount in order to two construct two homes.

Summary of Facts and Conclusions of Law:

Criteria 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 (LMO Section 16-2-103.S.4.a.i.04):

Findings of Facts:

- o Most of the homes in this neighborhood have been redeveloped in the same architectural manner as what the applicant is proposing (tall narrow homes with no setback angles and no setbacks or buffers from adjacent access easements).
- o The existing home encroaches over the Sweet Grass Manor access easement and also encroaches onto the adjacent property, into the Wheelk Street access easement.
- o Staff received a phone call from Tamara Becker, the property owner across the street, stating her opposition to the variance application for the following reasons: two new homes in the area will produce more traffic, parking and safety concerns for pedestrians and will block her views to the beach.

Conclusions of Law:

- o Staff concludes that this application does meet the criteria as set forth in LMO Section 16-2-103.S.4.a.i.04 because the variance will not be of substantial detriment to adjacent property.
- o The variance will allow the redevelopment of the property to be more in style and harmony with the existing redeveloped homes in the vicinity.
- o The new homes when constructed will not be encroaching into the access easements, like the existing home is currently, therefore bringing it more in compliance with the LMO and providing a further setback or distance between the proposed homes and the existing adjacent homes.
- o Even though there is a property owner opposed to the application, staff could not find the application to be a substantial detriment to the adjacent property or public good when the proposed homes will be in harmony with the newer adjacent homes in the neighborhood.

LMO Official Determination:

Based on the above Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance should be granted to the applicant.

BZA Determination and Motion:

The "powers" of the BZA over variances are defined by the South Carolina Code, Section 6-29-800, and in exercising the power, the BZA may grant a variance "in an individual case of unnecessary

ATTACHMENT A

hardship if the board makes and explains in writing their decisions based on certain findings or may remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review.

This State law is implemented by the Hilton Head Island Land Management Ordinance, Chapter 2, Article 103 and the Rules of Procedure for the BZA.

A written Notice of Action is prepared for each decision made by the BZA based on findings of fact and conclusions of law.

The BZA can either Approve the application, Disapprove the application, or Approve with Modifications. Findings of Fact and Conclusions of Law must be stated in the motion.

PREPARED BY:

ND
Nicole Dixon, CFM, Senior Planner

March 14, 2016

DATE

REVIEWED BY:

HC
Heather Colin, AICP, Development Review
Administrator

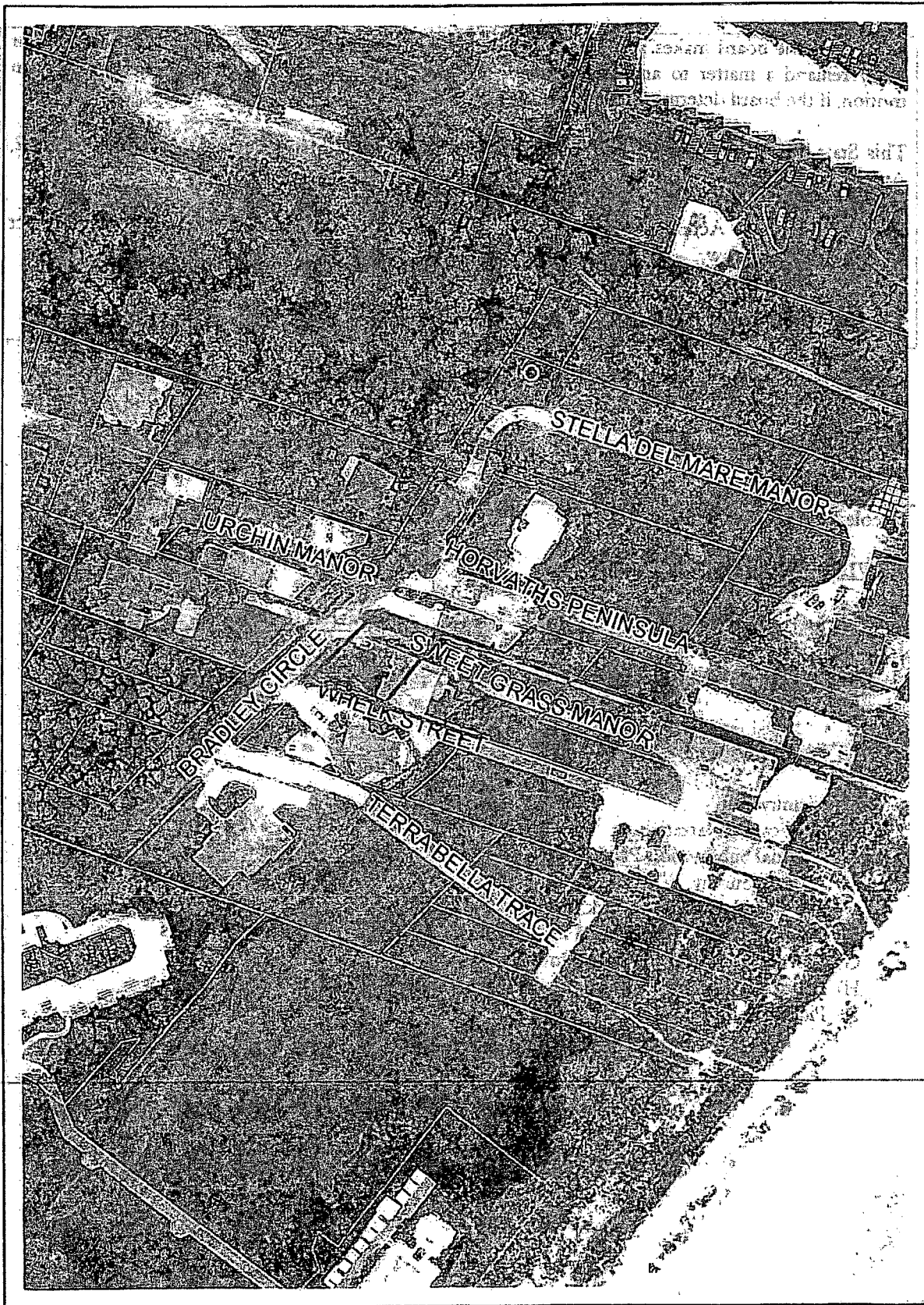
March 16, 2016

DATE

ATTACHMENTS:

- A) Vicinity Map
- B) Applicant's Narrative
- C) Original Subdivision Plat
- D) As-built Survey
- E) Site plan showing current lots with LMO requirements
- F) Site plans showing proposed reconfiguration and lots with proposed homes
- G) Elevation showing if the two lots met LMO requirements
- H) Elevation showing proposed homes
- I) Pictures

ATTACHMENT A



VAR-352-2016 Vicinity Map

ATTACHMENT B
S. THIRUMINATHA

NARRATIVE FOR VARIANCE APPLICATION

28 BRADLEY CIRCLE, TOWN OF HILTON HEAD ISLAND, SC

TAX MAP NOS.: R510-009-000-0896-0000 and

R510-009-000-1102-0000

February 26, 2016 (Revised March 9, 2016)

The Applicant owns 28 Bradley Circle, which is known as "Lot 1" containing 0.115 acres, and "Lot 2" containing 0.189 acres, as more fully shown on the plat of the property recorded in Plat Book 97 at Page 192, a copy of which is attached. These lots were approved by the Town as separate lots of record, as shown on such recorded plat.

The Applicant is proposing to subdivide the property into two (2) single family resort lots, upon which zero lot line single family homes will be constructed (which are designated as Lots 1 and 2 on the attached site plan). The Applicant is requesting two (2) variances, as follows:

1. As to Lot 1 shown on Plat Book 97 at Page 192, the LMO requires a setback and buffer of 8' and a setback angle of 60° along the 20' Access Easement (Sweet Grass Manor), and, as to Lot 2 shown on said plat, the LMO requires a setback of 16', a 60° setback angle, and a buffer of 8'. As shown on the attached Site Plan, which now depicts Lots 1 and 2 as parallel with each other instead of one behind the other, the Applicant seeks approval of variances allowing a setback of 1', no setback angle, and no buffer on the North side of Lot 2 along the Access Easement/Sweet Grass Manor. The side setback of 1' will allow for the overhang of the roof and eaves of the dwelling to be built on Lot 2. If the Variances are authorized, the dwelling to be built on Lot 2 will be at least 20' from the adjoining property, upon which is located a 15' beach walkway easement, so there will be at least 35' separation between dwellings on the adjoining properties.
2. As to Lot 1 shown on Plat Book 97 at Page 192, the LMO requires a setback and buffer of eight feet (8') and a setback angle of 60 degrees along Whelk Street, which is located along the South property line of the project, and, as to Lot 2 shown on said recorded plat, the LMO requires a setback from Whelk Street of 16', a 60° setback angle, and a buffer of 8'. As shown on the attached Site Plan, the Applicant seeks approval of variances to reduce the side setback of Lot 1 along Whelk Street to four feet (4') in width, to eliminate the side setback angle, and to reduce the buffer to 3' in width (to allow for the roof and eaves overhang). The result will be a minimum of 19' separation between dwellings on the adjoining properties, because Whelk Street is a right of way/easement measuring fifteen feet (15') in width.

The Applicant seeks the two (2) variances allowing reduced side setbacks, side setback angles, and buffers along such North and South property lines so the Applicant will be able to construct two (2) zero lot line dwellings, which will: (a) be more in harmony with the existing homes in the neighborhood; and (b) may allow views and breezes between the dwellings, as requested by neighbors who live across the street on Bradley Circle. Photographs of other homes in the neighborhood will be provided to the BZA to demonstrate that the zero lot line homes which the Applicant will be allowed to build if the Variance is granted are architecturally similar to other nearby homes.

MUNICIPALITY OF WASHINGTON
ATTACHMENT B

Without the requested variances, the building footprint of Lot 1 shown on the recorded plat will be approximately 30' by 30' and of Lot 2 would be approximately 25' by 30', because Lot 2 is subject to 16' setbacks from Sweet Grass Manor and from Whelk Street. Without the requested variances, the Applicant would only be able to build a dwelling on Lot 1 containing one story above a garage/parking area, and the Applicant would only be able to build a dwelling on Lot 2 containing approximately 700 square feet of heated/cooled space due to the extreme setbacks. Needless to say, neither of such dwellings would be in harmony with the other, newer dwellings in this resort neighborhood, and strict enforcement of the setbacks, setback angles and buffers will result in unnecessary hardship to the Applicant.

Variance Request. A Variance may be granted by the Board of Zoning Appeals if it concludes that the strict enforcement of any appropriate dimensional, development, design or performance set forth in the LMO would result in unnecessary hardship to the applicant.

The Applicant requests Variances from the following Sections of the LMO:

1. LMO Section 16-5-102.C Adjacent Street Setbacks/Setback Angles along North and South property lines of the project;
2. LMO Section 16-5-103.D Adjacent Street Buffers along North and South property lines of the project.

In this case, the Applicant requests Variances from the cited LMO Sections, because:

- A. **There are extraordinary and exceptional conditions pertaining to the Applicant's property, including the following:** (a) the properties are bounded on the North side by a 20' wide access/utility easement (named Sweet Grass Manor), which has also reduced the amount of developable land for the Applicant's intended project because new LMO provisions require the setback to be measured from the access easement, not from the property line; and (b) the properties are bounded on the South side by Whelk Street, a 15' right of way/easement, which in itself provides an additional 15' wide setback from the adjoining residential property; and (c) Lots 1 and 2 shown on Plat Book 97 at Page 192 are existing lots of record, and it will not be feasible to build new homes on said lots without the requested variances.
- B. **These conditions do not generally apply to other properties in the vicinity.** There are no other properties in the vicinity which have such adjoining uses and conditions that adversely affect development of the sites. Other nearby properties which have adjoining access easements were developed without the adverse effect of the revised LMO requirement that the side setbacks and buffers be measured from the access easement boundary line instead of the property line.
- C. **Because of these conditions, the application of this Ordinance to this particular property will effectively prohibit or unreasonably restrict the utilization of the property.** The application of the Ordinances would unreasonably restrict Applicant's utilization of the property, because the imposition of the 8' setbacks, 60° setback angles and buffers on the North and South property lines will result in construction of only one (1) dwelling containing only approximately 3,600 square feet, which deprives the Applicant of one of the approved dwelling units allocated to Lots 1 and 2 as shown on the recorded subdivision plat. It will also result in a dwelling which will be less attractive and less harmonious with the neighborhood than Applicants' proposal to construct two (2) smaller zero lot line

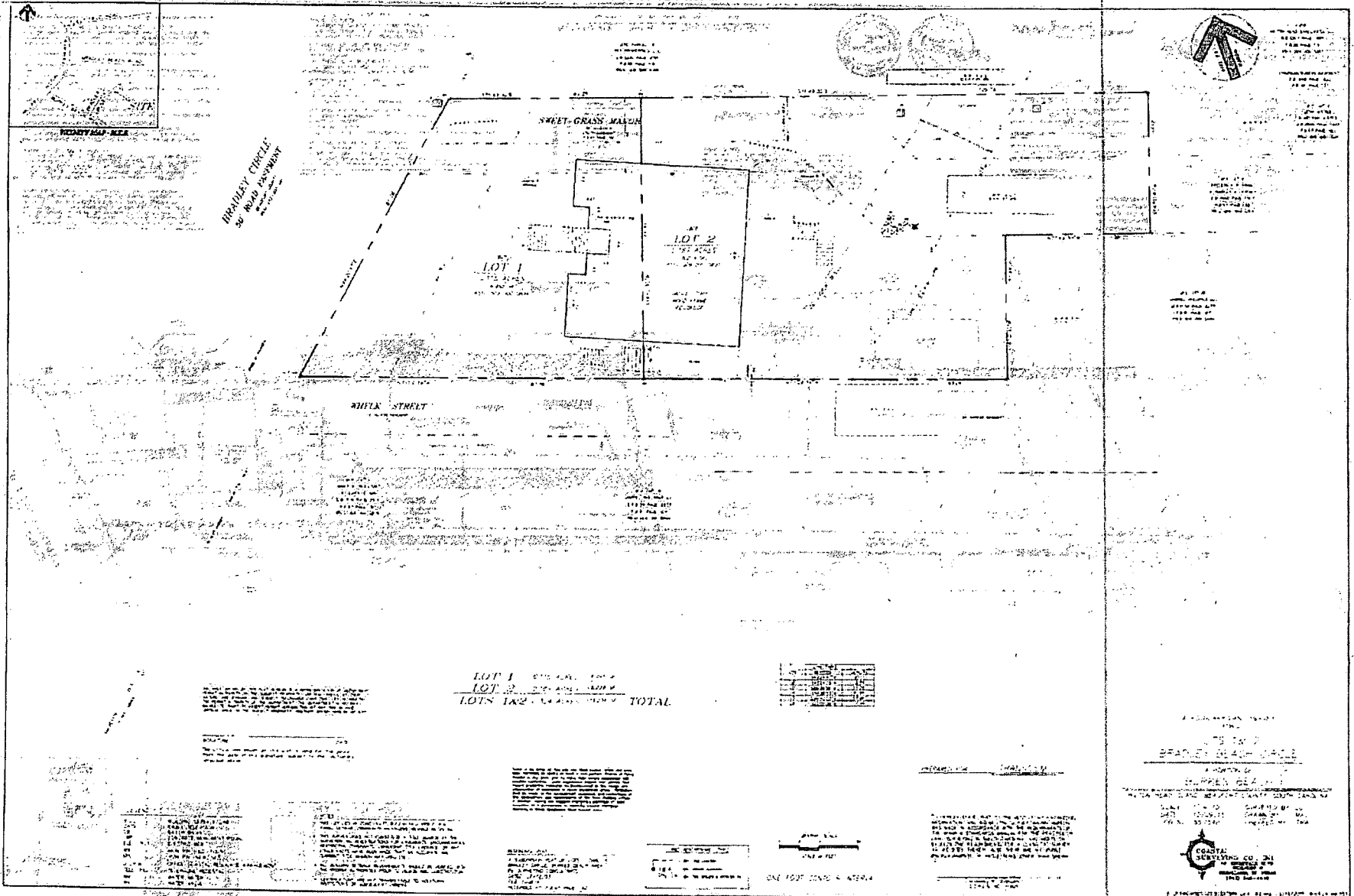
B ATTACHMENT B

*dwelling: Applicant's position is that the optimum utilization of the property is as two (2) zero lot line
homes and that the Ordinance would unreasonably restrict development of the property as one (1)
dwelling unless the Variances are approved.*

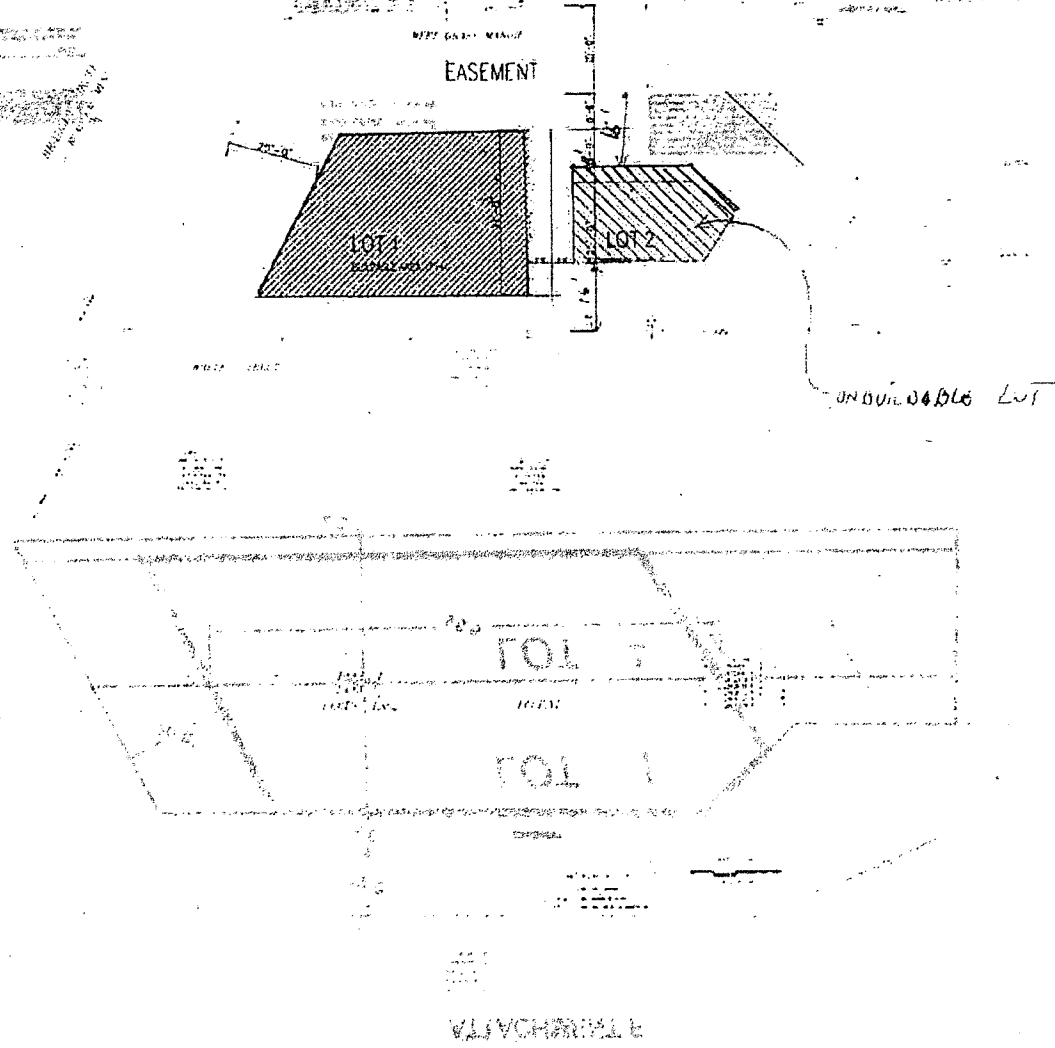
B ATTACHMENT B

D. ~~cross~~ **The authorization of the Variances 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 Variances.** *The Variances will not be of substantial detriment to adjacent property, because the only adjacent properties affected by the Variances are already separated from the project by a 20' Access Easement (Sweet Grass Manor) along the North side and a 15' Access Easement (Whelk Street) along the South side. The closest dwelling on the North side will be approximately 35' from the property line because of the additional setback due to the 15' wide beach walkway easement which is on the other side of the 20' Access Easement. Along the South side, there will be at least 19' of separation between dwellings because of the Whelk Street access easement which lies between the properties. There is no detriment to the public good, nor will the character of the zoning district (Resort Development District) be harmed by the granting of the Variances to reduce the side setback distances, side setback angles, and buffers as applied for by the Applicant.*

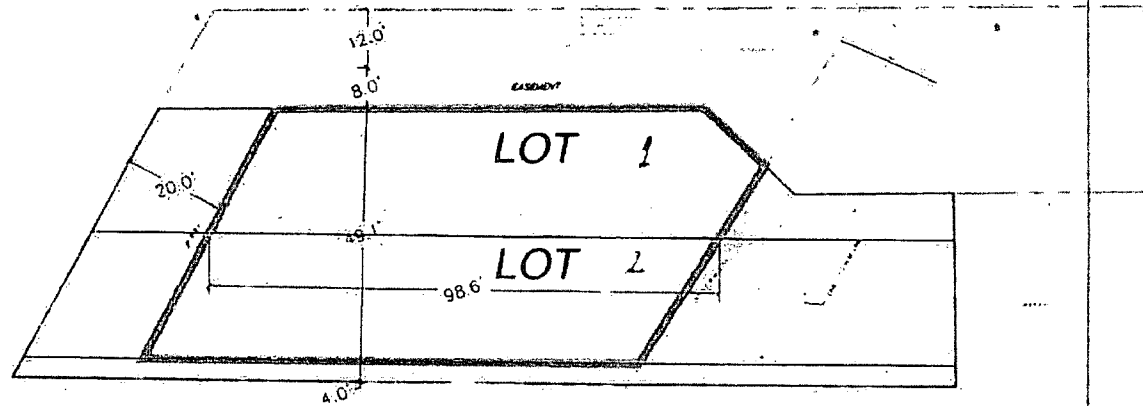
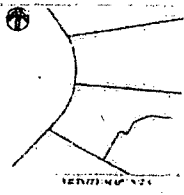
ATTACHMENT D



ATTACHMENT E



ATTACHMENT F



ALL DIMENSIONS ARE IN FEET AND INCHES
 UNLESS OTHERWISE SPECIFIED
 ALL CORNERS ARE TO BE ROUNDED OFF
 TO THE NEAREST 1/8" OR 1/4" AS APPLICABLE
 ALL DISTANCES ARE TO BE MEASURED
 ALONG THE CENTERLINE OF THE ROAD
 UNLESS OTHERWISE SPECIFIED
 ALL DISTANCES ARE TO BE MEASURED
 ALONG THE CENTERLINE OF THE ROAD
 UNLESS OTHERWISE SPECIFIED

THE ENTIRE AREA SHOWN ON THIS PLAN IS TO BE USED FOR THE PURPOSES
 STATED ON THE TITLE OF THIS INSTRUMENT, SUBJECT TO THE RIGHTS
 RESERVED THEREIN.



0.115 ACRES (P&M #1)
 0.106 ACRES (P&M #2)
 0.304 ACRES (P&M #3)

NO.	DESCRIPTION	ACRES
1
2
3
4
5
6
7
8
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10

THE ENTIRE AREA SHOWN ON THIS PLAN IS TO BE USED FOR THE PURPOSES
 STATED ON THE TITLE OF THIS INSTRUMENT, SUBJECT TO THE RIGHTS
 RESERVED THEREIN.

THE ENTIRE AREA SHOWN ON THIS PLAN IS TO BE USED FOR THE PURPOSES
 STATED ON THE TITLE OF THIS INSTRUMENT, SUBJECT TO THE RIGHTS
 RESERVED THEREIN.

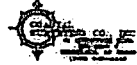
PREPARED FOR: _____

A ROADWAY LAYOUT PLAN FOR

A PORTION OF

WILTON HEAD ISLAND, BEaufORT COUNTY, SOUTH CAROLINA

SCALE: 1" = 10' SURVEYED BY: L.C.
 DATE: 12/02/75 DRAWN BY: HED
 JOB NO.: 20,7548 CHECKED BY: TWB

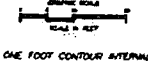


LEGEND
 ROADWAY CENTERLINE
 ROADWAY RIGHT-OF-WAY
 PROPERTY BOUNDARY
 EASEMENT
 UNDEVELOPED AREA
 EXISTING UTILITY
 PROPOSED UTILITY

ROADWAY CENTERLINE
 ROADWAY RIGHT-OF-WAY
 PROPERTY BOUNDARY
 EASEMENT
 UNDEVELOPED AREA
 EXISTING UTILITY
 PROPOSED UTILITY

THE ENTIRE AREA SHOWN ON THIS PLAN IS TO BE USED FOR THE PURPOSES
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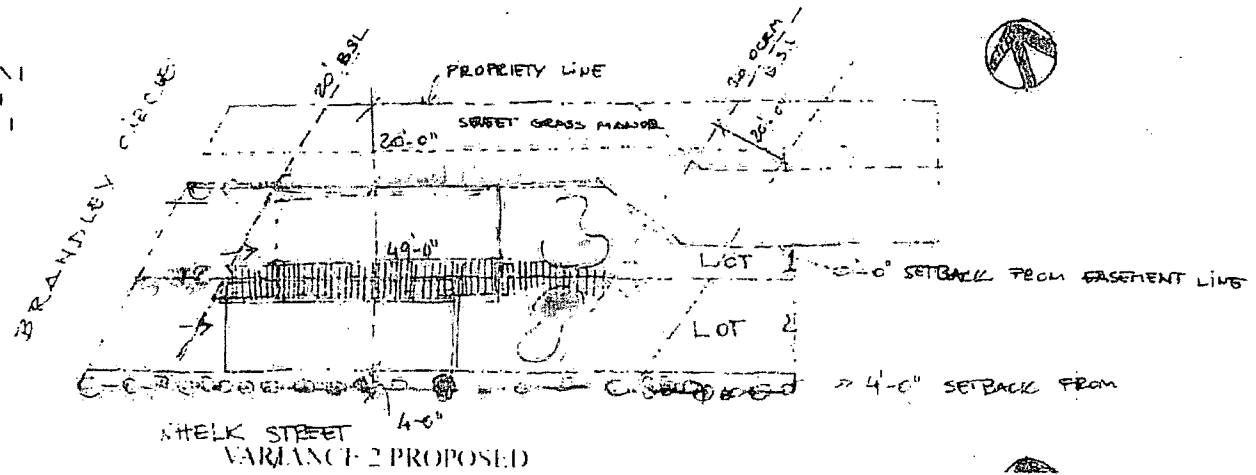
TOTAL AREA
 0.525 ACRES

ATTACHMENT F

ATTACHMENT F

VARIANCE REQUEST 2

REQUESTING A VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASEMENT FROM SET 100 FT AND ALONG WELK STREET FROM SET 10 FT.



THE ABOVE INFORMATION IS FOR INFORMATION ONLY AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE OF ANY KIND. THE USER OF THIS INFORMATION SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

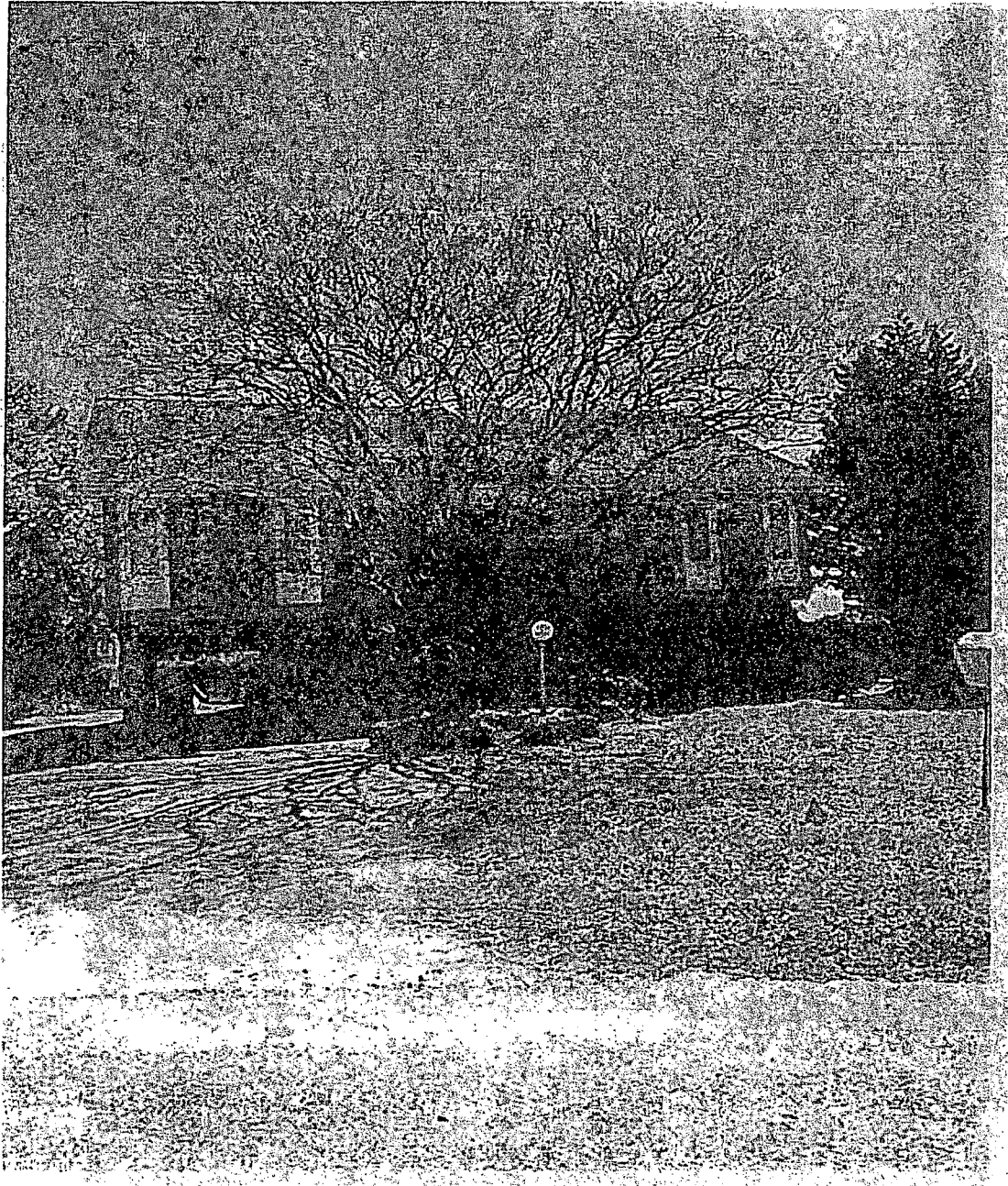
01/19/2016

TRANSCON INDUSTRIES

TRANSCON INDUSTRIES
 1000 W. WELK STREET
 WELK, OHIO 43081
 (614) 233-1111
 WWW.TRANSCONINDUSTRIES.COM

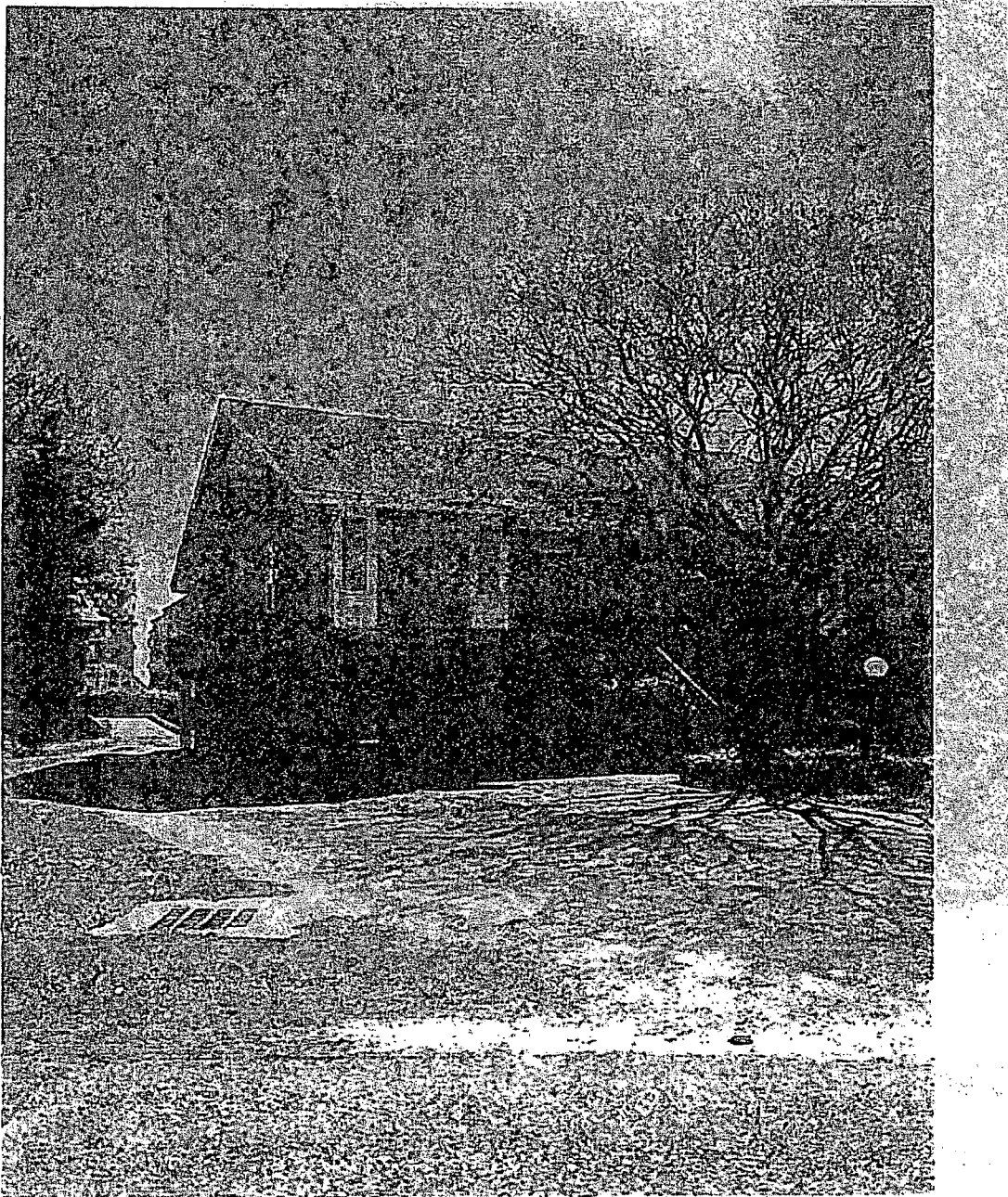
WELK, OHIO

ATTACHMENT I



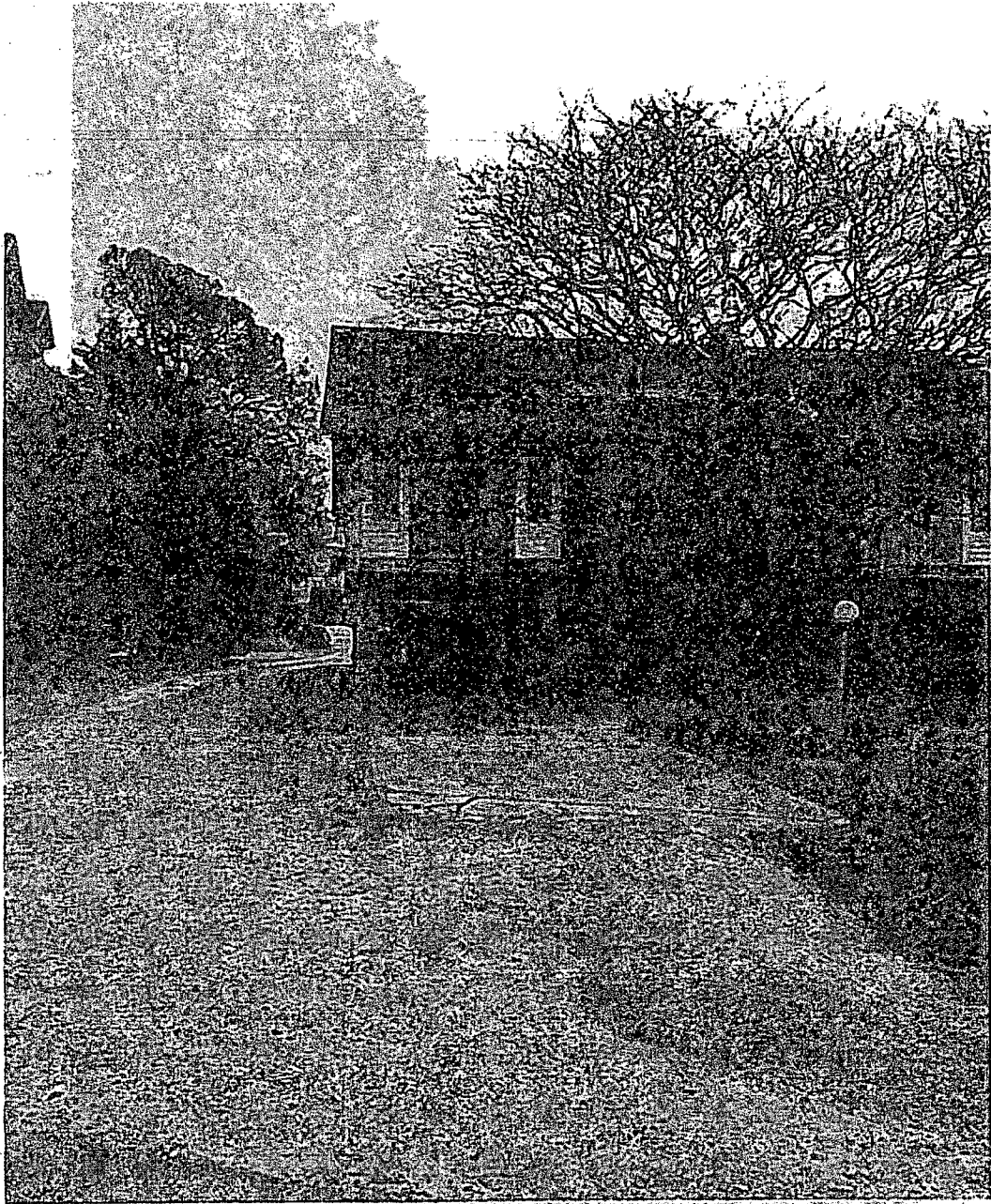
28 Bradley Circle, Subject to variance

ATTACHMENT I



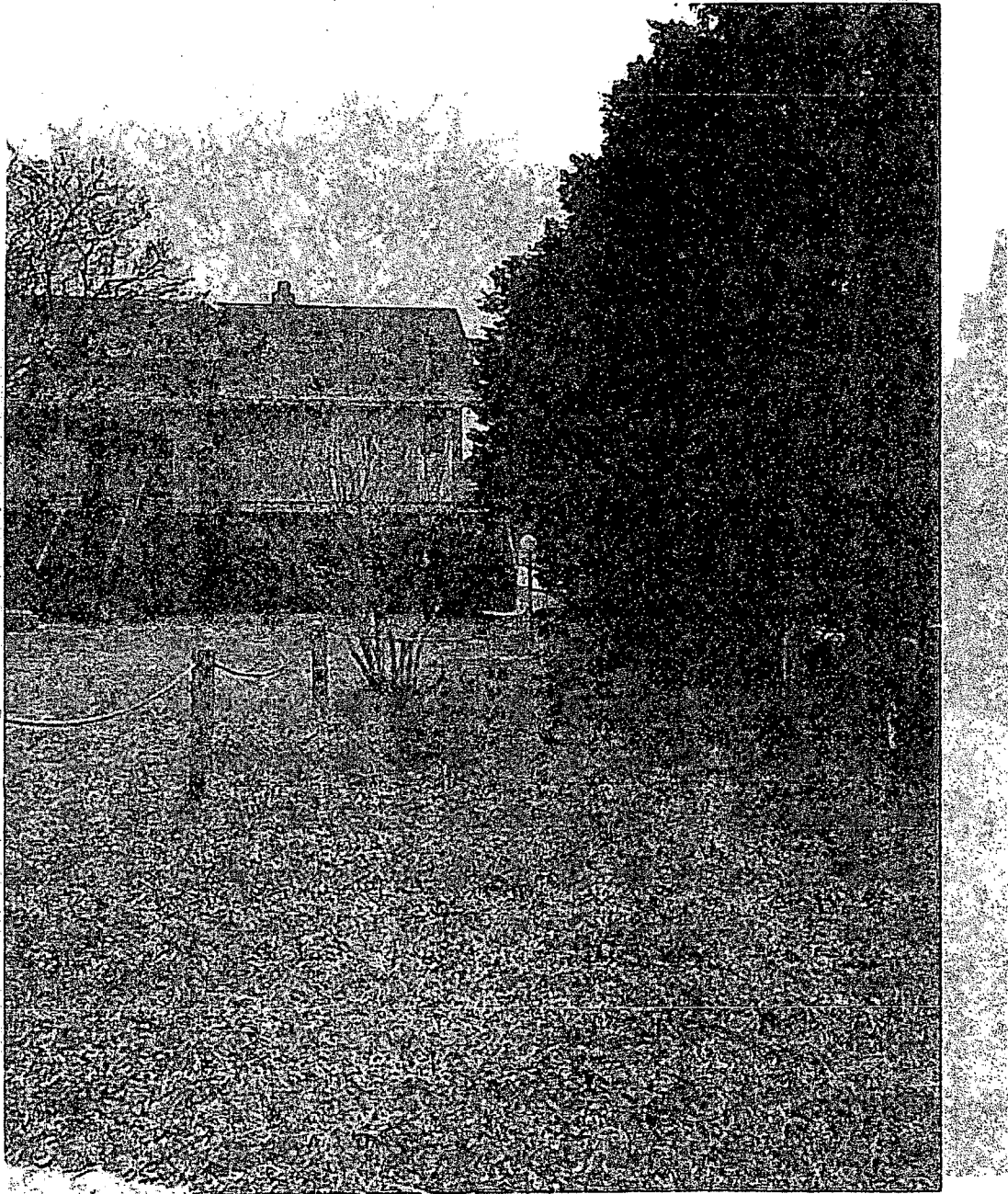
View of Sweet Grass Manor Access Easement

ATTACHMENT I



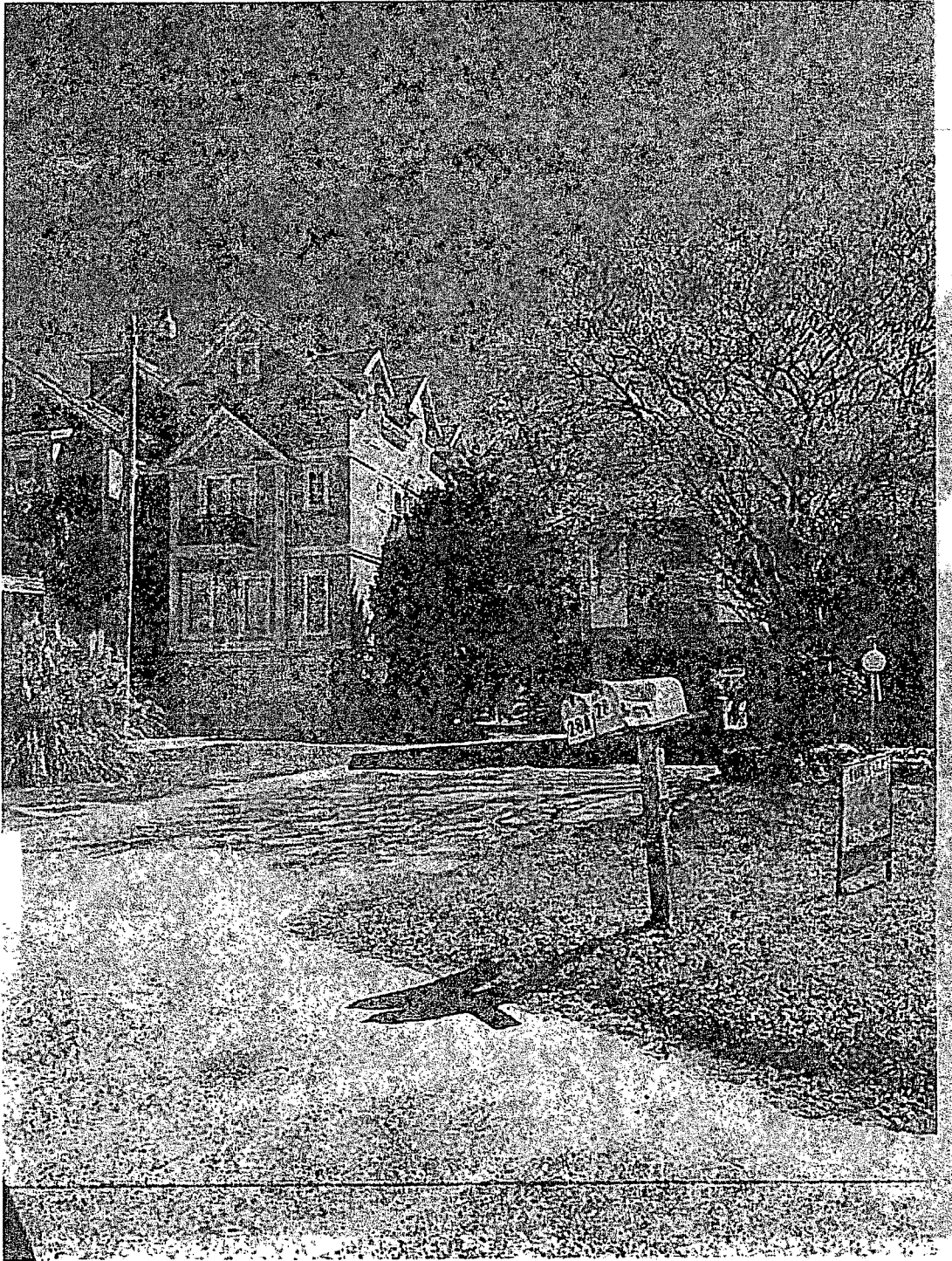
View showing existing home encroaching into access easement

ATTACHMENT I



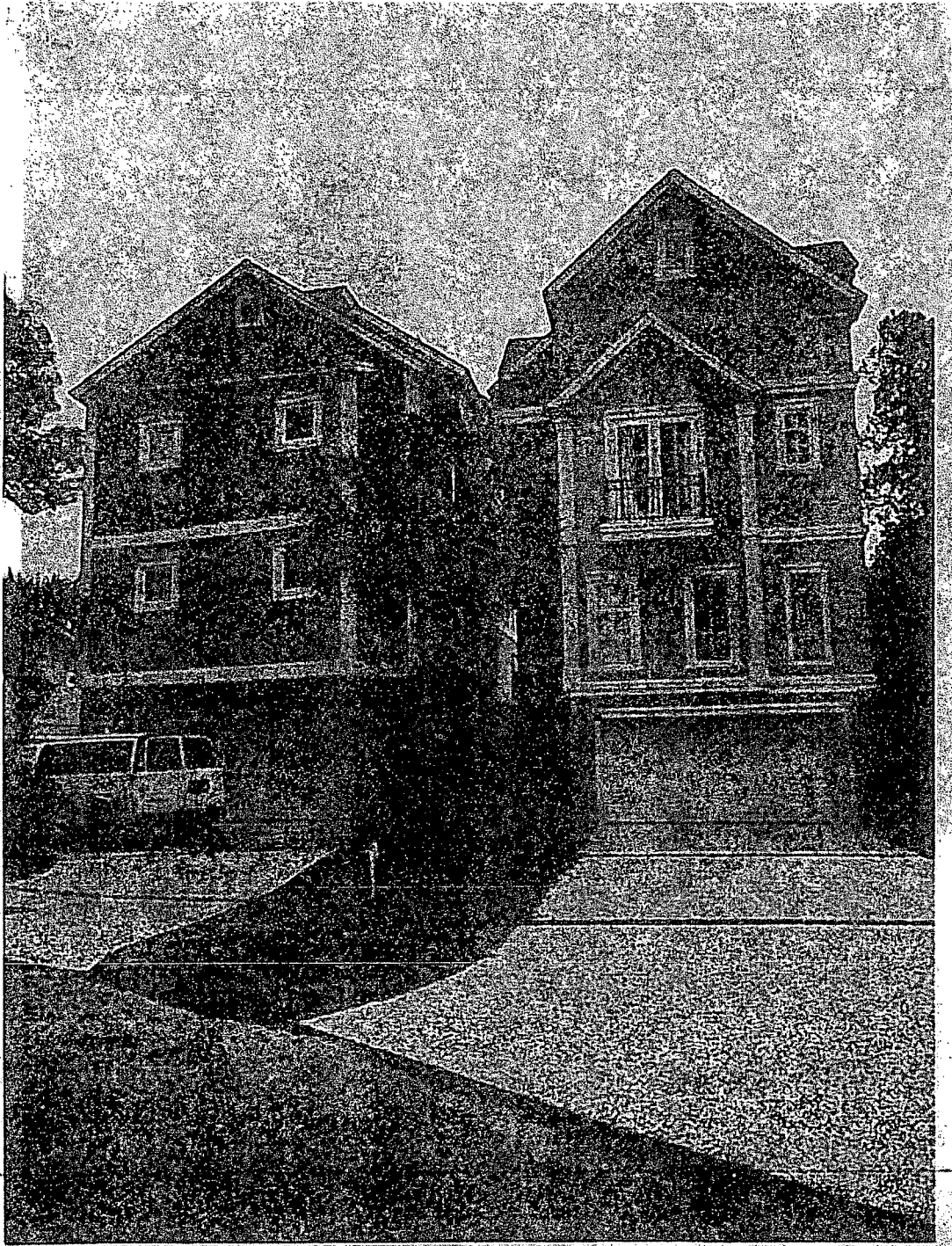
View showing side deck and stairs of existing home encroaching into adjacent property

ATTACHMENT I



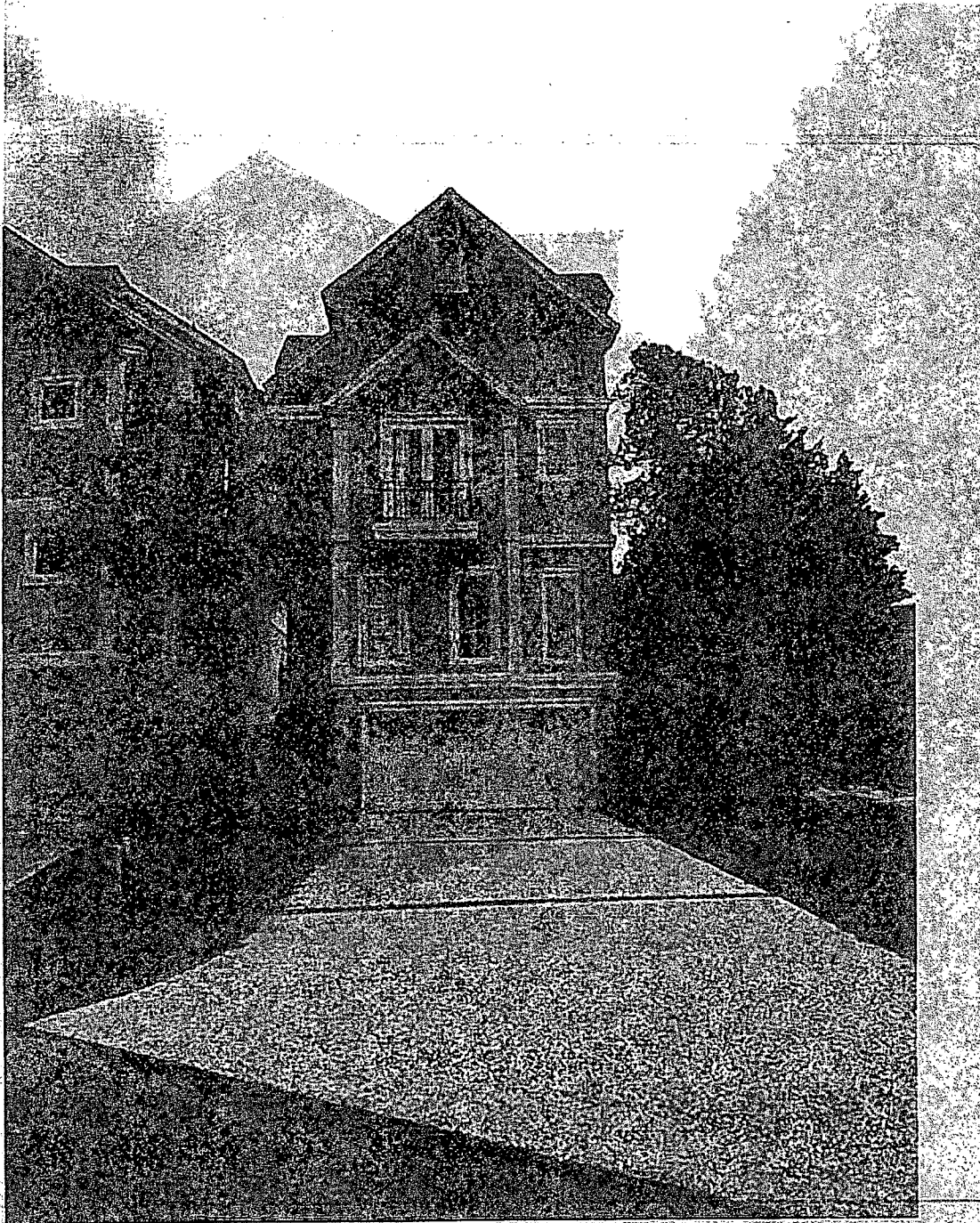
View of adjacent homes

ATTACHMENT I



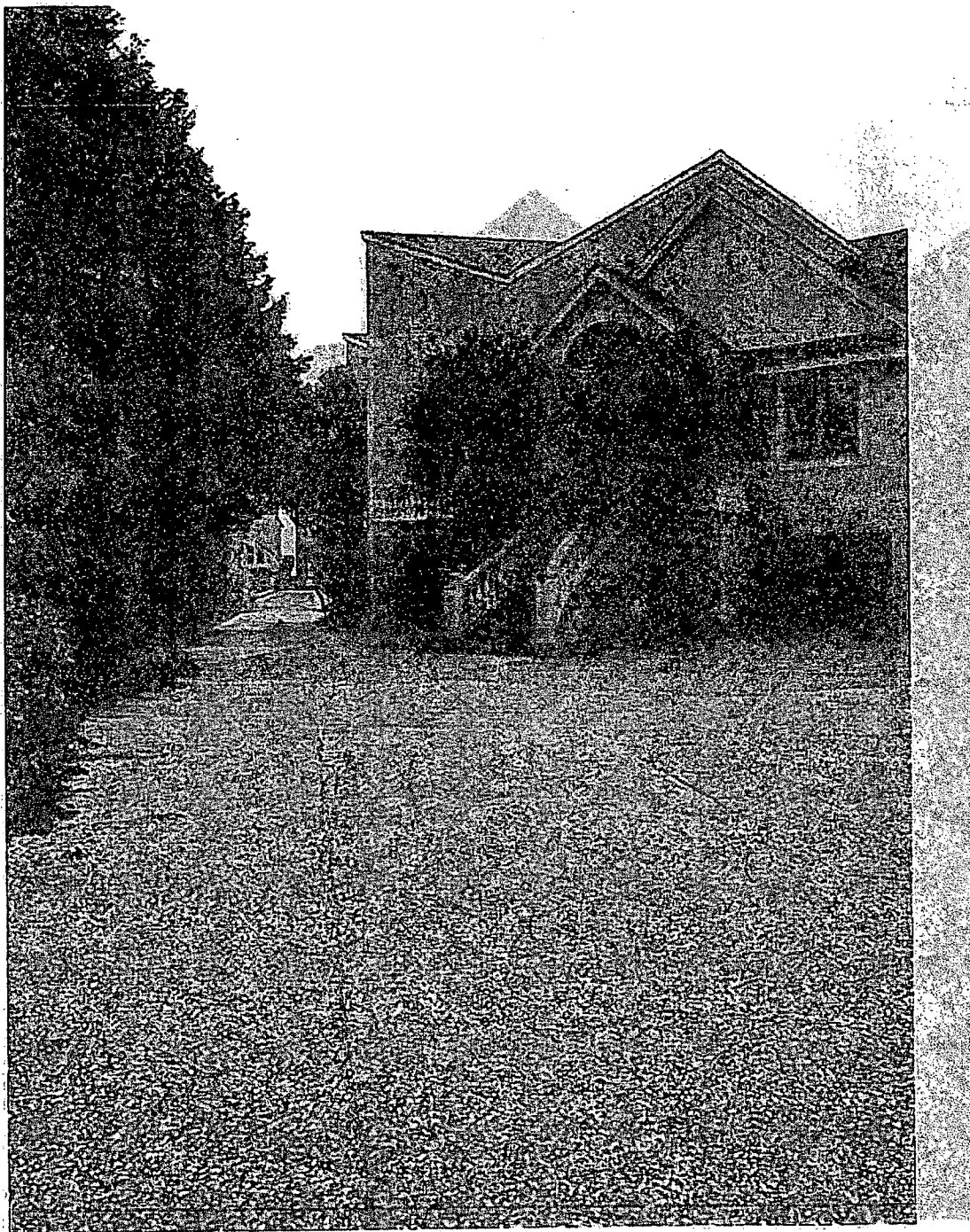
View of adjacent homes

ATTACHMENT I



View of adjacent home, according to the applicant this is the minimum width a home can be constructed in order to provide two car garage and stair entrance

ATTACHMENT I



View of adjacent home

ATTACHMENT I



View of homes across the street

ATTACHMENT I



View of homes across the street

ATTACHMENT I



View of beach-front homes behind 28 Bradley Circle

staircase and the beachfront property located at 28 Bradley Circle

ATTACHMENT I



View of beach-front homes behind 28 Bradley Circle

View of beach-front homes behind 28 Bradley Circle



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE: March 16, 2016
SUBJECT: Substitutions of Nonconformities for Redevelopment

The Board of Zoning Appeals (BZA) requested that staff keep them informed of substitutions of nonconformities for redevelopment that are granted by staff. A memo is distributed every month at the regular BZA meetings and is discussed under staff reports on the agenda. Even if there have been no waivers for the month, a memo will be included in the packet to inform the BZA members.

The following language is contained in Section 16-7-101.F, Substitutions of Nonconformities for Redevelopment, which gives the Administrator the power to grant such substitutions for existing nonconforming structures and site features.

LMO Section 16-7-101.F:

"To provide flexibility and encourage redevelopment of sites with nonconforming features or structures, the Official is authorized to approve a Development Plan for such sites if the proposed development:

1. Will not include any new development that increases the amount of encroachment into any required buffer or setback;
2. Will not increase the impervious cover on the site over the maximum allowed for the district or the existing impervious cover, whichever is greater;
3. Will not result in a density in excess of what is allowed under this Ordinance, or the existing density, whichever is greater;
4. Will lessen the extent of existing nonconforming site features to the greatest extent possible;
5. Will not have an adverse impact on the public health, safety or welfare; and
6. Will lessen the extent of nonconformities related to any existing nonconforming structure on the site to the greatest extent possible."

There has been one Substitution of Nonconformity for Redevelopment granted by staff since the February 2016 Board of Zoning Appeals meeting.

1. Sea Turtle Marketplace (the redevelopment of Pineland Station)- 430 William Hilton Parkway. Applicant wished to make improvements to the existing parking lot in front of Steinmart. The parking lot is currently non-conforming to the parking design standards that are provided in the LMO. Because the applicant will be bringing the parking lot more into compliance with the LMO, the waiver was granted.

TOWNSHIP OF HILLBURY



By Order of the Council

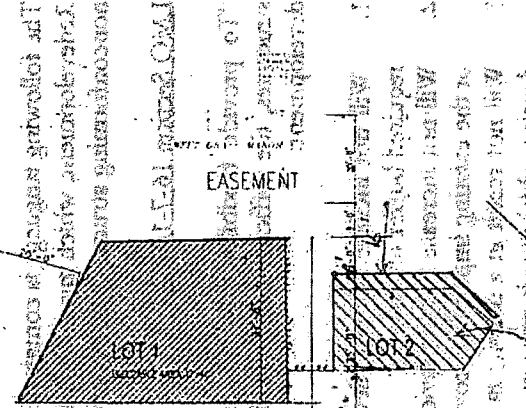
W. J. ...
 Mayor
 Hillbury, Ontario

Approved by the Council of the Township of Hillbury on this 1st day of ... 2012

WHEREAS the ...
 and whereas the ...
 and whereas the ...

AND WHEREAS the ...
 and whereas the ...

AND WHEREAS the ...
 and whereas the ...



AND WHEREAS the ...
 and whereas the ...

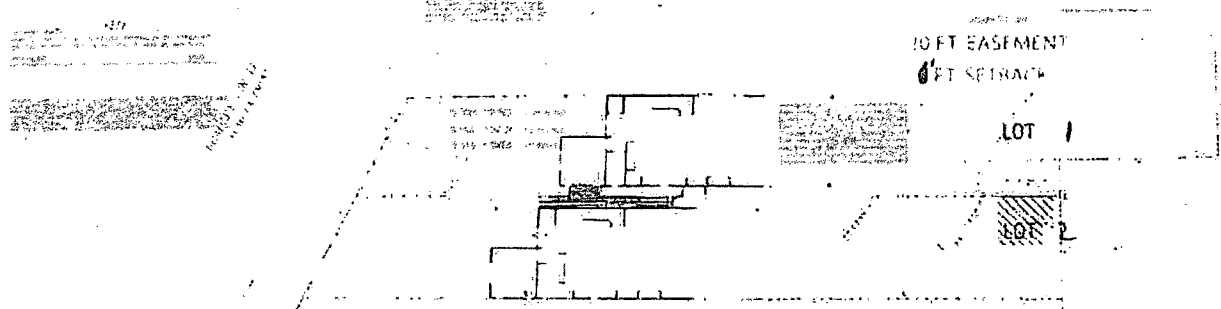
AND WHEREAS the ...
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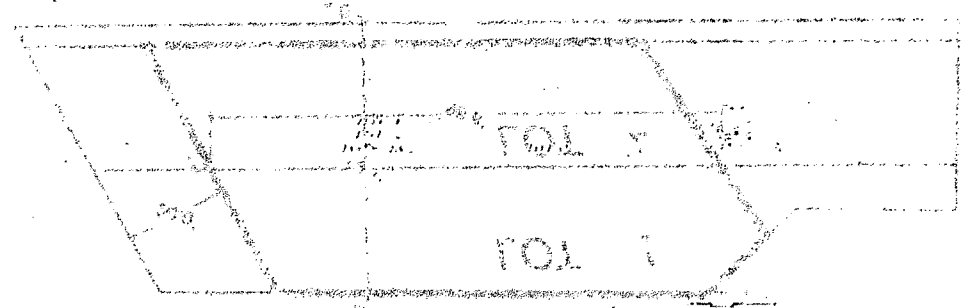
AND WHEREAS the ...
 and whereas the ...

ATTACHMENT F

VARIANCE REQUEST 1:
REQUESTING A VARIANCE TO REDUCE SIDE SETBACK
REQUIREMENT ALONG THE EASEMENT FROM 8 FT. TO 0 FT.
VARIANCE REQUEST 2:
REQUESTING A VARIANCE TO REDUCE THE SIDE SETBACK ALONG
THE WHELK STREET FROM 8 FT TO 4 FT



4 FT SETBACK
VARIANCE REQUEST 1:
REQUESTING A VARIANCE TO REDUCE SIDE SETBACK
REQUIREMENT ALONG THE EASEMENT FROM 8 FT TO 0 FT
VARIANCE REQUEST 2:
REQUESTING A VARIANCE TO REDUCE THE SIDE SETBACK ALONG
THE WHELK STREET FROM 8 FT TO 4 FT.



ATTACHMENT F

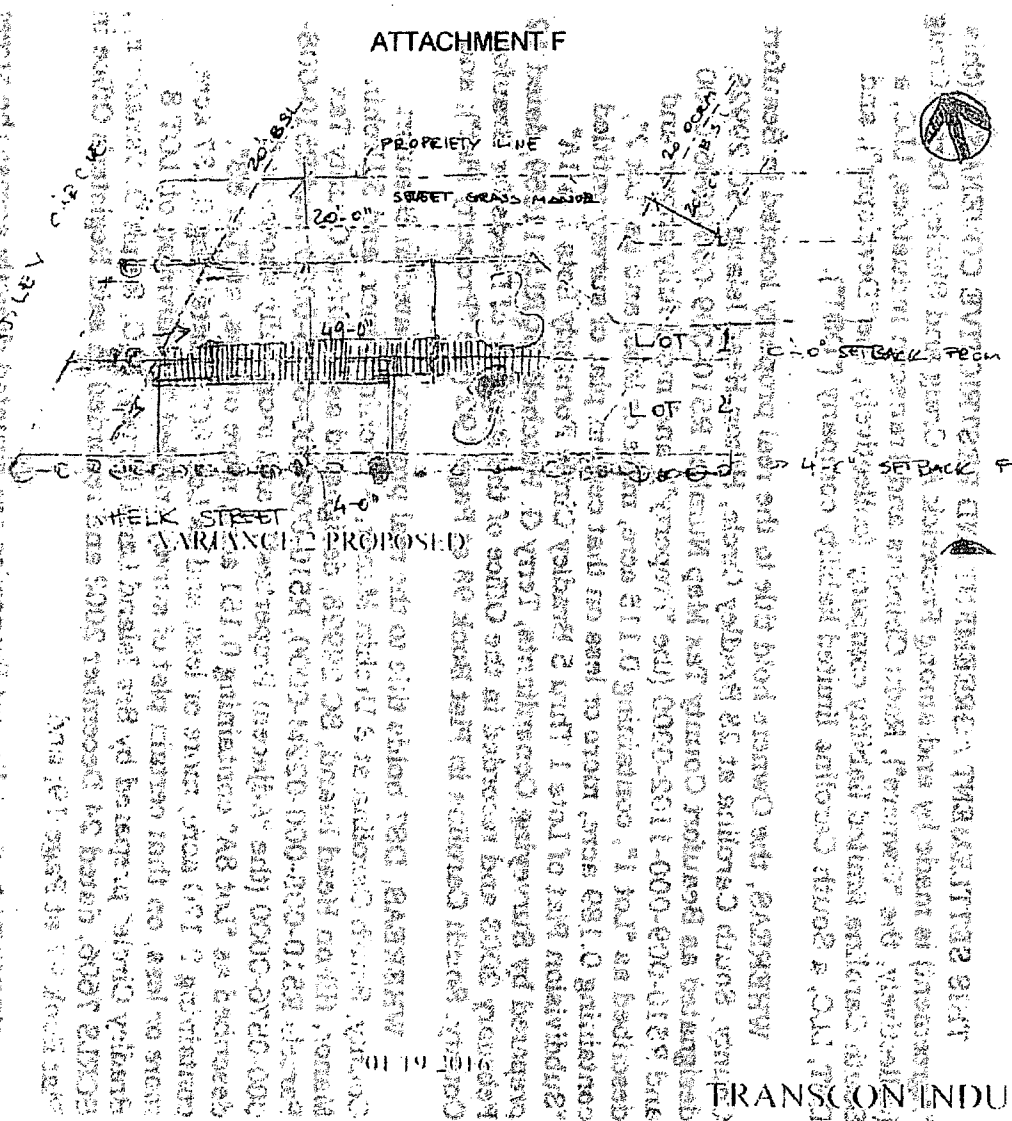
RECEIVED
 PLANNING DEPARTMENT
 1000 WEST 10TH AVENUE
 DENVER, COLORADO 80202
 MAY 15 1987

CITY OF DENVER
 PLANNING DEPARTMENT
 1000 WEST 10TH AVENUE
 DENVER, COLORADO 80202
 MAY 15 1987

TRANSCON INDUSTRIES
 1377 K STREET
 DENVER, CO 80202

TRANSCON INDUSTRIES
 1377 K STREET
 DENVER, CO 80202

ATTACHMENT F



1377 K STREET
 PROPOSED VARIANCE

46
 VARIANCE REQUEST
 REQUESTING VARIANCE TO REDUCE SIDE SETBACK REQUIREMENT ALONG THE EASTMENT FRONT OF 10011 AND ALONG WALK STREET FROM 8 FT TO 4 FT.

The applicant requests a variance to reduce the side setback requirement from 8 feet to 4 feet along the eastment front of 10011 and along Walk Street. The proposed variance is shown in the attached site plan. The variance is requested because the existing building is located within the setback line and the applicant wishes to maintain the building. The variance is requested because the existing building is located within the setback line and the applicant wishes to maintain the building.

for variances from the requirements of the Town's Land Management Ordinance (the "LMO") for adjacent street buffers, adjacent street setbacks, and adjacent street setback angles relating to the development of the Property for single family residential use, as set out in Variance Application VAR-352-2016 (the "Application"); and

WHEREAS, DST and Matthew J. Toddy ("Toddy") and Mark S. Davidson ("Davidson"), principals of DST, have filed an appeal of the BZA's decision to approve the Application in the Court of Common Pleas, Fourteenth Judicial Circuit, Civil Action No. 2016-CP-07-00955 (the "Appeal");

WHEREAS, the Owners, the Developer, and DST have agreed to settle and dismiss the Appeal in exchange for the imposition on the Property of certain covenants, conditions, and affirmative obligations, all of which shall run with the Property and be binding on all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of DST and the Adjacent Properties and each subsequent owner thereof;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration and exchange of One (\$1.00) Dollar and the agreement of DST, Toddy, and Davidson to dismiss the Appeal and forgo any further appeal of the BZA decision on the Application, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners, the Developer, and DST hereby agree to and acknowledge the terms and conditions listed below:

- 1. RECITALS.** The foregoing preamble and "WHEREAS" clauses are incorporated herein as if restated verbatim.
- 2. USE LIMITATION.** The Owners and the Developer agree that the Property shall be used only for not more than two single family residences (which may be used for short term rentals in the Resort Development zoning district), and for no other use absent the prior written approval of DST or its successor owners of the Adjacent Properties.
- 3. BEACH ACCESS.** The Property Plat shows a "Beach Access R/W" located adjacent to the generally northern boundary of the Property (the "Beach Access"). The Beach Access is also shown on that certain plat of survey entitled "1.078 Acre Szuberla Property" prepared by Sea Island Engineering, Inc. and recorded in said Register's Office in Plat Book 62 at Page 125. The Owners and the Developer acknowledge that all present and future owners of the Adjacent Properties, together with their respective tenants, licensees, guests, and invitees, have the right to utilize the Beach Access for access to and from the beaches of the Atlantic Ocean; forever relinquish any right to

change or alter the location of the Beach Access; and agree that they shall not take or allow any action that might have an adverse effect on the Beach Access.

4. **WETLANDS BUFFERS AND SETBACKS.** The Owners and the Developer acknowledge the LMO's provisions establishing wetlands buffers and setbacks on the Property, agree that no structures or other improvements of any nature shall be constructed on the Property that encroach into any wetlands buffer or setback as currently established by the LMO, and further agree that no variance from the LMO's wetlands buffer and setback requirements for the Property may be sought or approved by the Town in the future.

5. **DEVELOPMENT RESTRICTIONS.** The Owners and the Developer agree and covenant that any structure developed or constructed on the Property will be constructed in accordance with the applicable LMO, laws and ordinances.

6. **DISMISSAL OF THE APPEAL.** DST, Toddy, and Davidson will file a notice of dismissal with prejudice of the Appeal within five (5) business days after the execution of this Agreement by the Owners, the Developer, and DST, and the recordation of this Agreement in said Register's Office.

7. **NO FURTHER VARIANCES.** The Owners and Developer covenant and agree that they shall be prohibited from filing or causing to be filed any further application for any variance from any requirement of the LMO with respect to the Property.

8. **INDUCEMENT.** As a material inducement to DST to enter into this Agreement and dismiss the Appeal, the Owners and the Developer agree that the terms and provisions of this Agreement shall be deemed to be covenants running with the land constituting the Property that shall be binding upon the heirs, successors, successors in title to the Property, grantees, devisees, and assigns of the Owners and the Developer and any person claiming by, through, or under them, including, without limitation, subsequent owners of all or any part of the Property, and shall inure to the benefit of, and be specifically enforceable by, DST and by the successors, successors and title to the Adjacent Properties, grantees, and assigns of DST and any person claiming by, through, or under DST, including, without limitation, subsequent owners of all or any part of the Adjacent Properties. Any and all obligations contained herein and charges imposed on the Property shall be construed as covenants and not as conditions. The Owners and the Developer acknowledge and agree that this Agreement will be filed for record in the Office of the Register of Deeds for Beaufort County, South Carolina.

9. **ENFORCEMENT.** The Owners and the Developer acknowledge and agree that any remedy at law for any breach or violation of this Agreement by

an owner of any part of the Property would be inadequate, and that, in addition to damages, any owner of any part of the Adjacent Property at any given time shall, without notice to the Owners or the Developer, be entitled to immediate temporary injunctive and other equitable relief, with no requirement for the posting of any bond, in the event any breach or violation of provisions of this Agreement occurs or is threatened in any way. Further, upon ten (10) days notice, or sooner if requested by the Owners or the Developer, a hearing shall be held and upon a showing that an actual breach or violation of this Agreement has occurred or is likely to occur, then the owner of the Adjacent Property shall be entitled to permanent injunctive relief.

10. NOTICE. Any notices required or permitted hereunder shall be in writing and shall be deemed given upon receipt by the party to whom directed at the following addresses or such other address as such party may designate in writing, which receipt shall be evidenced by return receipt or affidavit of U.S. mail deposit.

As to the Owners: P.O. Box 5236
Hilton Head Island, SC 29938

As to the Developer: 23 Wood Eden Lane
Bluffton SC 29910

As to DST: 1205 Seal Drive, Alpharetta, GA 30022

11. NO WAIVER OF RIGHTS. No failure on the part of DST to exercise any right hereunder or to insist upon strict compliance by the Owners or the Developer or any other party to its obligations hereunder, and no custom or practice of any person or entity in variance with the terms hereof, shall constitute a waiver of any right to demand strict compliance with the terms of this Agreement.

12. JUDICIAL INTERPRETATION. If any provisions of this Agreement require judicial interpretation, the Owners and the Developer agree that the court interpreting or construing the provisions shall not apply a presumption that the terms hereof be more strictly construed against any one party by reason of the rule of construction that a document is to be construed more strictly against the person who, himself, or through his agent, prepared the same, as the agents and counsels of the Owners, the Developer, and DST have participated in the final preparation of this Agreement.

13. PERPETUITIES SAVINGS CLAUSE. Notwithstanding any provisions of this Agreement to the contrary, if any of the covenants, conditions, restrictions, prohibitions, or other provisions of this Agreement shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the

death of the last survivor of the now living descendants of Queen Elizabeth II, Queen of the United Kingdom.

14. **SEVERABILITY.** Except as provided for in the immediately preceding section, if any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

15. **ATTORNEY'S FEES.** If a party prevails in any legal action to enforce any right or remedy under this Agreement, it shall be entitled to recover its reasonable costs and expenses in connection with such legal action, including, but not limited to, court costs and attorney's fees.

16. **GENERAL PROVISIONS.** This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the laws of the State of South Carolina. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute a fully executed instrument. No provision of this Agreement may be amended or changed, in whole or in part, absent the express, written approval of the then current owner or owners of the Adjacent Property.

(Signature pages follow)

provision, or a provision found in other adopted codes or **ordinances** of the **Town**, the more restrictive provision shall govern unless the terms of the more restrictive provision specify otherwise. The more restrictive provision is the one that imposes greater restrictions or burdens, or more stringent controls.

2. When there is a conflict between an overlay zoning district and an underlying **base zoning district**, the provisions of the overlay district shall control. When there is a conflict between two overlay districts and one of the districts is the Redevelopment Overlay District, the provisions of the Redevelopment Overlay District shall control.
3. When it is possible to implement, administer, or construe a particular provision in more than one way, it shall be implemented, administered, or construed in a way that eliminates or minimizes conflicts with other provisions of the

B. Relationship to Restrictive Covenants or Deed Restrictions

In accordance with S.C. Code Ann. § 6-29-1145, **Town applications** for **land development** permits or approvals other than those authorizing the **building** or placement of a **structure** on a **tract** or **parcel of land** shall ask whether the subject **tract** or **parcel of land** is restricted by any recorded covenant that is contrary to, conflicts with, or prohibits the proposed activity. If the **Town** has actual notice of such a restrictive covenant, whether from the **application** or other source, the **Town** shall not issue the permit unless the **Town** receives written confirmation and proof from the **applicant** that the restrictive covenant has been released for the **tract** or **parcel of land** by action of the appropriate authority or property holders, or by court order. The issuance of a permit does not affect the **applicant's** obligations under any recorded covenants.

Sec.16-1-107. - Official Zoning Map

A. Establishment and Maintenance



**Town of Hilton Head Island
Planning Commission Meeting
Wednesday, March 16, 2016
3:00p.m. Benjamin M. Racusin Council Chambers**

AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting.

1. Call to Order

2. Pledge of Allegiance to the Flag

3. Roll Call

4. Freedom of Information Act Compliance

Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

5. Approval of Agenda

6. Approval of Minutes Regular Planning Commission Meeting – March 2, 2016

7. Appearance by Citizens on Items Unrelated to Today's Agenda

8. Unfinished Business

None

9. New Business

Public Hearing

LMO Amendments - The Town of Hilton Head Island is proposing to amend Chapters 2, 3, 4, 5, 6, 10, and Appendices A and D of the Land Management Ordinance (LMO) to revise the following sections:

Section 16-2-103.B: to clarify who can submit a text amendment, **Section 16-2-103.I:** codifies existing practice that the DRB takes action on conceptual development, **Section 16-2-103.K:** codifies existing policy that work in wetlands, wetland buffers and dunes requires a natural resources permit, **Section 16-2-103.P:** to clarify when a Certificate of Compliance is required, **Section 16-3-105.D:** changes RV park from permitted by right to permitted by condition in the LC (Light Commercial) zoning district, **Section 16-3-105.E:** changes wholesale sales from permitted by condition to permitted by right in the IL (Light Industrial) zoning district, **Section 16-3-105.L:** changes the height requirement for single-family development in the RD (Resort Development) zoning district, **Section 16-3-106.H:** provides a map that illustrates which parcels are included in the Forest Beach Neighborhood Character Overlay District, **Section 16-3-106.M:** specifies when activities can occur within a dune or dune system when located in the Transition Area Overlay District, **Table 16-4-102.A.6:** changes to allow an RV Park as a permitted by condition use in the LC (Light Commercial) zoning district and wholesale sales as a permitted by right use in the IL (Light Industrial) zoning district, **Section 16-4-102.B.1 and 4:** allows dwelling units, hotel rooms and bed and breakfast rooms on the first floor in the CR (Coligny Resort)

zoning district if the proposed development is located behind a commercial services use, Section 16-4-102.B.1.c: relocates the condition stating that recreational vehicles can only be occupied within an RV park from Chapter 10 to Chapter 4, Section 16-4-102.B.9: eliminates the condition associated with wholesale sales in the IL (Light Industrial) zoning district, Section 16-5-102.B: eliminates the need for properties behind the gates of a master planned area but still within the Corridor Overlay District to meet setback requirements, Section 16-5-102.E: allows bike racks and the like within the adjacent use and street setbacks, Section 16-5-103.B: eliminates the need for properties behind the gates of a master planned area but still within the Corridor Overlay District to meet buffer requirements, Section 16-5-103.H: codifies existing policy that any work in buffers must be reviewed and approved by staff and clarifies that the removal of invasive species in the buffer is allowed with an approved replanting plan, Section 16-5-105.A: clarifies any confusion caused by a conflict in Town and SCDOT standards, Section 16-5-105.O: clarifies the standards that should be used for pathways internal to a site, Section 16-5-107.D: provides more flexibility for site design and ensures that in larger parking lots, electric vehicle charging stations are available to those that need them, Section 16-5-107.E: allows for a safe turning radii under buildings, Section 16-5-107.H: increases flexibility in site design related to bicycle parking, Section 16-5-107.I: relocates the vehicle stacking section to a different section in the LMO since it deals entirely with internal site design, Section 16-6-102.B: codifies existing policy that any work in a wetland or wetland buffer requires a natural resources permit, Section 16-6-102.D: allows pervious walkways in a wetland buffer and eliminates the need for the reestablishment of a wetland buffer when the provided bulkhead is impervious, Section 16-6-103.B: codifies existing policy that any work in a dune or dune system requires a natural resources permit, Section 16-6-103.F: changes the way the bottom of a dune boardwalk is measured from vegetation to grade, Section 16-6-104.C: clarifies that cedar trees are protected at 8" instead of 12", Section 16-6-104.E: clarifies that specimen trees are protected when the DBH is equal to or greater than the number provided in Table 16-6-104.F.1 and clarifies that specimen trees are not protected on single-family lots, Section 16-10-102: clarifies that when density results in a fraction, it is not rounded up, Appendix A. A-3: adds the review of Traffic Impact Analysis Plans to the powers and duties of the Planning Commission, Appendix D.D-4: adds the requirement that a lot grading plan be submitted as part of the subdivision requirements, Appendix D. D-20: adds two requirements (that are already listed in the Airport Overlay District) to the plat stamping section. *Presented by Teri Lewis*

10. **Commission Business**

11. **Chairman's Report**

12. **Committee Report**

13. **Staff Reports**

14. **Adjournment**

Please note that a quorum of Town Council may result if four or more of their members attend this meeting.

TOWN OF HILTON HEAD ISLAND

Planning Commission Meeting

Wednesday, March 16, 2016

3:00pm Benjamin M. Racusin Council Chambers

Commissioners Present: Chairman Alex Brown, Vice Chairman Peter Kristian, Caroline McVitty, Barry Taylor, Jim Gant, Judd Carstens and Lavon Stevens

Commissioners Absent: Todd Theodore (excused)

Bryan Hughes (excused)

Town Council Present: None

Town Staff Present: Terri Lewis, LMO Official, Jill Foster, Deputy Director of Community Development, Jayme Lopko, Senior Planner & Board Coordinator, Teresa Haley, Secretary

Call to Order

Pledges of Allegiance to the Flag

Roll Call

Freedom of Information Act Compliance

Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

5. Approval of Agenda

The Planning Commission approved the agenda as submitted by general consent.

6. Approval of Minutes

Mr. Gant made a motion to approve the minutes of the March 2, 2016 Planning Commission meeting. Mr. Kristian seconded the motion. The motion passed with a vote of 7-0-0.

7. Appearance by Citizens on Items Unrelated to Today's Agenda

None

8. Unfinished Business

None

9. New Business

Public Hearing

LMO Amendments - The Town of Hilton Head Island is proposing to amend Chapters 2, 3, 4, 5, 6, 10 and Appendices A and D of the Land Management Ordinance (LMO) to revise the following sections:

Section 16-2-103.B: to clarify who can submit a text amendment, Section 16-2-103.I: codifies existing practice that the DRB takes action on conceptual development, Section 16-2-103.K: codifies existing policy that work in wetlands, wetland buffers and dunes requires a natural resources permit, Section 16-2-103.P: to clarify when a Certificate of Compliance is required, Section 16-3-105.D: changes RV park from permitted by right to permitted by condition in the LC (Light Commercial) zoning district, Section 16-3-105.E: changes wholesale sales from permitted by condition to permitted by right in the IL (Light Industrial) zoning district, Section 16-3-105.L: changes the height requirement for single-family development in the RD (Resort Development) zoning district, Section 16-3-106.H: provides a map that illustrates which parcels are included in the Forest Beach Neighborhood Character Overlay District, Section 16-3-106.M: specifies when activities can occur within a dune or dune system when located in the Transition Area Overlay District, Table 16-4-102.A.6: changes to allow an RV Park as a permitted by condition use in the LC (Light Commercial) zoning district and wholesale sales as a permitted by right use in the IL (Light Industrial) zoning district, Section 16-4-102.B.1 and 4: allows dwelling units, hotel rooms and bed and breakfast rooms on the first floor in the CR (Coligny Resort) zoning district if the proposed development is located behind a commercial services use, Section 16-4-102.B.1.c: relocates the condition stating that recreational vehicles can only be occupied within an RV park from Chapter 10 to Chapter 4, Section 16-4-102.B.9: eliminates the condition associated with wholesale sales in the IL (Light Industrial) zoning district, Section 16-5-102.B: eliminates the need for properties behind the gates of a master planned area but still within the Corridor Overlay District to meet setback requirements, Section 16-5-102.E: allows bike racks and the like within the adjacent use and street setbacks, Section 16-5-103.B: eliminates the need for properties behind the gates of a master planned area but still within the Corridor Overlay District to meet buffer requirements, Section 16-5-103.H: codifies existing policy that any work in buffers must be reviewed and approved by staff and clarifies that the removal of invasive species in the buffer is allowed with an approved replanting plan, Section 16-5-105.A: clarifies any confusion caused by a conflict in Town and SCDOT standards, Section 16-5-105.O: clarifies the standards that should be used for pathways internal to a site, Section 16-5-107.D: provides more flexibility for site design and ensures that in larger parking lots, electric vehicle charging stations are available to those that need them, Section 16-5-107.E: allows for a safe turning radii under buildings, Section 16-5-107.H: increases flexibility in site design related to bicycle parking, Section 16-5-107.I: relocates the vehicle stacking section to a different section in the LMO since it deals entirely with internal site design, Section 16-6-102.B: codifies existing policy that any work in a wetland or wetland buffer requires a natural resources permit, Section 16-6-102.D: allows pervious walkways in a wetland buffer and eliminates the need for the reestablishment of a wetland buffer when the provided bulkhead is impervious, Section 16-6-103.B: codifies existing policy that any work in a dune or dune system requires a natural resources permit, Section 16-6-103.F: changes the way the bottom of a dune boardwalk is measured from vegetation to grade, Section 16-6-104.C: clarifies that cedar trees are protected at 8" instead of 12", Section 16-6-104.F: clarifies that specimen trees are protected when the DBH is equal to or greater than the number provided in Table 16-6-104.F.1 and clarifies that specimen trees are not protected on single-family lots, Section 16-10-102: clarifies that when density results in a fraction, it is not rounded up, Appendix A. A-3: adds the review of Traffic Impact Analysis Plans to the powers and duties of the Planning Commission, Appendix D.D-4: adds the requirement that a lot grading plan be submitted as part of the subdivision requirements, Appendix D. D-20:

adds two requirements (that are already listed in the Airport Overlay District) to the plat stamping section.

Ms. Lewis presented the Proposed 2016 LMO Amendments - First Set, attached in the Staff Memo and included in the Commission's packet. Staff recommends that the Planning Commission forward the LMO Amendments to Town Council with a recommendation of approval. Ms. Lewis further noted that at this time Staff is excluding Appendix D.D-4 from the proposed LMO Amendments. Staff will further review Appendix D.D-4 and bring to the Planning Commission at a future date. Ms. Lewis answered questions from the Commission and the public.

Mr. Gant made a motion to **approve** the Proposed 2016 LMO Amendments - First Set with the exclusion of Appendix D.D-4 and **forward** to Town Council for their approval.

Mr. Kristian **seconded** the motion. The motion **passed** with a vote of 7-0-0.

10. Commission Business - None

11. Chairman's Report - None

12. Committee Report:

Mr. Kristian noted that he was alerted to a concern on the County's website related to the Proposed 1% Sales Tax and the Town's CIP pathways project. On the County's website, the list of proposed pathways specifically related to schools and pedestrian safety does not include pathways of Hilton Head Island. Mr. Kristian suggested to the Town Manager and certain Council Members to further investigate this concern.

Mrs. Gant reported that the Circle to Circle Committee has made recommendations and TOCD approved some of the numerous proposed traffic infrastructure changes reviewed by them. The Committee intends to continue their efforts in other related areas and should bring further details to the Planning Commission in the near future.

Mr. Carstens reported that the Comprehensive Planning Committee recently met to discuss the Beach Management Plan. The Committee plans to bring this to the Planning Commission in the near future for review and approval to forward to Town Council.

13. Staff Reports - None

14. Adjournment - The meeting was adjourned at 3:45 p.m.

Submitted By: _____ Approved By: _____ April 6, 2016

Teresa Haley, Secretary _____ Alex Brown, Chairman



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Planning Commission
VIA: Jayme Lopko, AICP, *Senior Planner*
FROM: Teri B. Lewis, AICP, *LMO Official*
DATE: March 8, 2016
SUBJECT: Proposed 2016 LMO Amendments – First Set

Recommendation: The LMO Committee met on March 7, 2016 to review the proposed 2016 LMO Amendments – First Set. The Committee recommended forwarding the amendments to the Planning Commission with a recommendation for approval with the changes as discussed by the Committee.

Staff recommends that the Planning Commission forward the attached amendments to Town Council with a recommendation of approval.

Summary: The following changes were made to the proposed amendments as a result of the meeting on March 7th:

- LMO Section 16-4-102.B.1.a.ii – deleted ‘unless the mixed use development is located behind a commercial services use’ and replaced that language with ‘unless there are commercial services uses located between the street and the proposed dwelling units.’
- LMO Section 16-4-102.B.1.b – deleted ‘unless the multifamily development is located behind a commercial services use’ and replaced that language with ‘unless there are commercial services uses located between the street and the proposed dwelling units.’
- LMO Section 16-4-102.B.4.a.i – deleted ‘unless the bed and breakfast is located behind a commercial services use’ and replaced that language with ‘unless there are commercial services uses located between the street and the proposed bed and breakfast rooms.’
- ~~LMO Section 16-4-102.B.4.b.i – deleted ‘unless the hotel is located behind a~~ commercial services use’ and replaced that language with ‘unless there are commercial services uses located between the street and the proposed hotel rooms.’
- LMO Section 16-5-107.E.2.e – deleted ‘raised or curbed’ and replaced that language with ‘painted’.
- Appendix D. D-4.B.20 – The Committee asked that Bryan McIlwee attend the Public Hearing for the 2016 LMO Amendments – First Set and speak to the reason for the proposed amendments related to lot grading plans.

Vote



**Town of Hilton Head Island
Planning Commission
LMO Committee**

Monday, March 7, 2016

6:00 p.m. – Benjamin M. Racusin Council Chambers

AGENDA

As a Courtesy to Others, Please Turn Off All Cell Phones and Pagers during the Meeting.

1. Call to Order

2. Freedom of Information Act Compliance

Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.

3. Approval of Minutes – Meetings held on October 28, 2015 and November 13, 2015

4. LMO Amendments The Town of Hilton Head Island is proposing to amend Chapters 2, 3, 4, 5, 6, 10 and Appendices A and D of the Land Management Ordinance (LMO) to revise the following sections:

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Overlay District to meet setback requirements, Section 16-5-102.E: allows bike racks and the like within the adjacent use and street setbacks, Section 16-5-103.B: eliminates the need for properties behind the gates of a master planned area but still within the Corridor Overlay District to meet buffer requirements, Section 16-5-103.H: codifies existing policy that any work in buffers must be reviewed and approved by staff and clarifies that the removal of invasive species in the buffer is allowed with an approved replanting plan, Section 16-5-105.A: clarifies any confusion caused by a conflict in Town and SCDOT standards, Section 16-5-105.C: clarifies the standards that should be used for pathways internal to a site, Section 16-5-107.D: provides more flexibility for site design and ensures that in larger parking lots, electric vehicle charging stations are available to those that need them, Section 16-5-107.E: allows for a safe turning radii under buildings, Section 16-5-107.H: increases flexibility in site design related to bicycle parking, Section 16-5-107.I: relocates the vehicle stacking section to a different section in the LMO since it deals entirely with internal site design, Section 16-6-102.B: codifies existing policy that any work in a wetland or wetland buffer requires a natural resources permit, Section 16-6-102.D: allows pervious walkways in a wetland buffer and eliminates the need for the reestablishment of a wetland buffer when the provided bulkhead is impervious, Section 16-6-103.B: codifies existing policy that any work in a dune or dune system requires a natural resources permit, Section 16-6-103.F: changes the way the bottom of a dune boardwalk is measured from vegetation to grade, Section 16-6-104.C: clarifies that cedar trees are protected at 8" instead of 12", Section 16-6-104.F: clarifies that specimen trees are protected when the DBH is equal to or greater than the number provided in Table 16-6-104.F.1 and clarifies that specimen trees are not protected on single-family lots, Section 16-10-102: clarifies that when density results in a fraction, it is not rounded up, Appendix A-A-3: adds the review of Traffic Impact Analysis Plans to the powers and duties of the Planning Commission, Appendix D-D-4: adds the requirement that a lot grading plan be submitted as part of the subdivision requirements, Appendix D-D-20: adds two requirements (that are already listed in the Airport Overlay District) to the plat stamping section.

Adjournment

Please note that a quorum of Town Council may result if four or more of their members attend this meeting. A quorum of Planning Commissioners may result if five or more of their members attend this meeting.