

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



TEL (864) 638-4218 FAX (864) 638-4168

Minutes

6:00 PM – January 24, 2022

Members in Attendance

Gwen Fowler

Tim Mays

Jim Codner

Bill Gilster

John Eagar

Staff

James Coley, Planning Director

Vivian Kompier, Planner/Zoning Administrator

David Root, Attorney

Media

Lauren Pierce, The Journal

ITEM 1 – Call to Order – Mr. Coley called the meeting to order at 6:00 PM.

ITEM 2 – Election of officers – Mr. Coley called for nominations for Chair. Mr. Eagar made a motion that Mr. Codner continue as Chair; seconded by Mr. Gilster with no discussion. Mr. Coley called for a vote. The motion was approved 5/0. Mr. Codner called for nominations for Vice-Chair. Mr. Eagar made a motion for Ms. Fowler to serve as Vice-Chair. Ms. Fowler declined the nomination. Mr. Codner made a motion for Mr. Eagar serve as Vice-Chair; seconded by Ms. Fowler with no discussion. Mr. Codner called for a vote. The motion was approved 5/0. Mr. Codner made a motion that Mr. Coley serve as Secretary; seconded by Mr. Eagar with no discussion. Mr. Codner called for a vote. The motion was approved 5/0.

ITEM 3 – Approval of 2022 calendar – Mr. Eagar made a motion that the proposed 2022 calendar be adopted; seconded by Mr. Mays with no discussion. Mr. Codner called for a vote. The motion was approved 5/0.

ITEM 4 – Brief statement about rules and procedures – Mr. Codner outlined the proceedings of the meeting going forward:

- Applicant will provide a presentation to state their request.
- Staff will be asked to make any comments regarding the request.

- Citizens are allowed to voice their approval or opposition to the proposed. Please do not repeat opinions that have already been stated into the record.
- Applicant rebuttal
- Board members will discuss in detail.
- Voting

ITEM 5 – Approval of minutes of November 30, 2021 meeting – Mr. Eagar made a motion to approve the November 30th minutes; Mr. Gilster seconded. Discussion: Mr. Codner noted that Mr. Ratliff sent an extensive letter pointing out issues with the minutes. Mr. Codner asked County Attorney, David Root to define and explain what minutes should provide. Mr. Root stated that minutes for public bodies are defined by statute. They should include when a meeting is held, the subject matter of the meeting, and who is present. With regards to the essence of what was spoken, the statute says minutes should capture the substance of what was said; it is not a transcript. Mr. Codner summarized that approval of the minutes would be agreement that the minutes are a fair representation of what happened in that meeting. When asked, Mr. Coley stated that he believes the minutes are a fair representation. Discussion included agreement that the proposed minutes are adequate and suggestion that all public comments, including the letter questioning the minutes, should be included with the approved minutes. Mr. Coley confirmed that as procedure, all citizen emails would be attached to the minutes as part of the record after the minutes are approved. In addition, the Ratliff letter will be attached to the minutes as well. Mr. Eagar noted the spelling of his name was incorrect in the minutes. Mr. Codner called for a vote. The motion was approved unanimously 5/0.

ITEM 6 - Variance request Continuation #VA 21-011: Ridgewater Engineering and Surveying – Joe Meaders is requesting an 18.1’ variance from the 50’ Right of Way for the entrance of the subdivision due to the end of the existing road not making full access into the property and only having a prescriptive ditch to ditch right-of-way. TMS # 150-00-01-459 an unaddressed parcel with the closest address of 599 Ellenburg Rd, Seneca, SC 29672. – Mr. Codner explained that this request is a continuation from the January meeting and the requesting and responding parties have presented their cases and all public comments have been entered into the record. Public comment was closed with the closing of the last meeting, with the exception of the letter received from Mr. Ratliff concerning the minutes. In preparation of this continuation, the Board asked staff to present a delineation of who owns the road in question and they asked the two parties to attempt to come to an agreement. Mr. Coley deferred to Mr. Root for clarification on ownership of the road. As a matter of parliamentary procedure, Mr. Root asked Mr. Codner to first take action to remove the request from the table before proceeding. Mr. Eagar made a motion to remove Variance request #VA21-011 from the table; seconded by Mr. Mays. Mr. Codner called for a vote. The motion was approved 5/0.

Mr. Root explained that there is no question on who owns the rights to the land underneath the road. The question at hand is the traveling surface of the road. Records show that Oconee County Roads & Bridges maintained the road to the end of the paved section for 20 years (the requirement for a prescriptive easement). However, Mr. Root has recently received affidavits that questioned his findings and he needs more time to research the facts.

Board questions: Mr. Root answered questions from members of the Board regarding the definition of the term prescriptive easement, clarifying the County's authority to approve or deny a request to change the location of a road (prescriptive easement), if and how right-of-ways should be considered, and clarification of the need for permit approval in the future.

Mr. Codner summarized the actions the Board can take at this juncture. Based on his conversations with the legal counsel for both parties, Mr. Root stated that a postponement may be in order. Attorneys for the applicant and the opposing party agreed. Mr. Eagar made a motion to postpone the request until the applicant asked for it to be reinstated on the BZA agenda; Mr. Gilster seconded the motion. Discussion led to amending the motion on the table. Mr. Codner amended the motion to limit the postponement for a total of six months. Mr. Codner called for a vote of motion as amended. The motion was approved 5/0.

ITEM #7 - Variance application #VA 21-012A: Variance allowing the side setback for lot lines dividing attached single family units to be reduced to zero feet thus allowing the construction of individually-platted, attached single family units. Variance application VA21-012B: 27' Variance from the 50' road right of way to allow for the new townhomes to be consistent with the existing townhomes. Resideum, LLC – Greg Kurzner is requesting these variances. TMS# 257-00-02-008 an unaddressed parcel with the closest address of 304 Breakwater Lane, Seneca, SC 29678.

Applicant's opening statement and provision of evidence: Greg Kurzner, Managing Member of Resideum LLC, presented their answers to the four questions on the Variance application, noting that they are trying to complete the development of a previously approved community in the fashion, consistent with the existing individually platted for sale units and to protect the integrity and investment of the current homeowners. He also noted that the required 50' road right-of-way was not in place at the time the development was originally designed, permitted and built.

Public Comment:

- Gary Moss, citizen, requested more information on how approval of the variance will affect the established homes off Shiloh Road.

- Craig Schweisinger, citizen, expressed his opposition to the request, including his concern for street parking and concern that the current HOA will control the new homes.
- Mr. Codner read emails received into the record.
 - Tim and Tanya Liddy voiced their support of the request.
 - Robert and Nancy Holmes voiced their support of the request.

Applicant rebuttal: Mr. Kurzner addressed Mr. Moss’ concerns providing details on setbacks, road right-of-ways, and landscaping plans. The Board discussed the County standards applied to private roads. Mr. Kurzner confirmed the established HOA will have authority over the proposed homes. Mr. Kurzner shared plans for guest parking to be part of the common area in this new phase.

Board Discussion: Board members asked questions to clarify the questions of parking.

Staff comments: None

Consideration of VA21-012A:

1. There **are** extraordinary and exceptional conditions pertaining to the particular piece of property:
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

2. These conditions **do not** generally apply to other property in the vicinity:
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Gilster. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property **would** effectively prohibit or unreasonably restrict the utilization of the property; and
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Gilster. Brief discussion followed.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

4. The authorization of a variance **will not** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
 - a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved**.
 - a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that variance request was approved.

Consideration of VA21-012B:

1. There **are** extraordinary and exceptional conditions pertaining to the particular piece of property:
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

2. These conditions **do not** generally apply to other property in the vicinity:
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property **would** effectively prohibit or unreasonably restrict the utilization of the property; and
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

4. The authorization of a variance **will not** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
 - a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved**.
 - a. Motion – Mr. Eagar made a motion; seconded by Mr. Mays. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the variance request was approved.

Item 8 – Variance application #VA21-013: Joe and Lynn Arve are requesting a 4.9’ variance from the 25’ required setback from the right-of-way to permit an existing foundation for a home. TMS# 149-04-01-050 with an address of 851 Little Bay Lane, Seneca, SC 29672.

Applicant’s opening statement and provision of evidence: Lynn Arve presented visuals to show the location of the existing foundation and where it violates the setback. She explained that not allowing the variance will impact and change the design of the home. Mr. Codner asked how it happened that the foundation is complete and in the setbacks. Ms. Arve explained it was an error by the foundation contractor.

Public comment:

- Don Bradford, President of Timber Bay Property Owners Association, voiced his opposition to approving the variance. He stated that this location of the house is

not the location that was approved by the POA's Architectural Committee and that no other home in the community has encroached on the County's setbacks. He noted that Ms. Arve had not offered any other solution to the problem. The Board asked Mr. Bradford if he has documentation of the Committee's review and approval. Mr. Coley stated the documents are part of the back-up. Mr. Bradford was asked what actions the POA would take if the BZA were to approve the variance. Mr. Bradford advised they are consulting an attorney and are presently unsure of the answer.

Applicant rebuttal: Ms. Arve stated she had not explored other solutions as they were cost prohibitive. The Board confirmed that the footer and foundation is all that is finished and that the garage is the only part of the house that is in the setback.

Staff comments: Mr. Coley confirmed that the variance application is valid, the foundation is clearly in the setback and it is within the Board's purview to discuss and decide.

Board discussion: The Board engaged in a discussion that included, but was not limited to, the difference between asking for permission vs. forgiveness, the fact that all other homes in the neighborhood had complied with the setbacks, an approval would make it harder for HOA/POAs to maintain certain characteristics of an entire community, the BZA's approval would not nullify the POA's ability for them to enforce their covenants, the relative small size of the variance requested and the liability of the foundation contractor responsible for the error.

1. There **are** extraordinary and exceptional conditions pertaining to the particular piece of property:
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. A brief discussion followed.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 1 | 4 |

Mr. Codner noted that the criterion failed.

2. These conditions **do not** generally apply to other property in the vicinity:
 - a. Motion – Mr. Eagar made a motion, seconded by Ms. Fowler. A brief discussion followed.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 0 | 5 |

Mr. Codner noted that the criterion failed.

3. Because of these conditions, the application of this chapter to the particular piece of property **would** effectively prohibit or unreasonably restrict the utilization of the property; and
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Gilster. Brief discussion followed.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 0 | 5 |

Mr. Codner noted that the criterion failed.

4. The authorization of a variance **will not** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
 - a. Motion – Mr. Eagar made a motion; seconded by Ms. Fowler. A brief discussion followed.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 0 | 5 |

Mr. Codner noted that the criterion failed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Denied**.
 - a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 4 | 1 |

Mr. Codner noted that the variance request was denied.

Item 9 – Variance application #VA21-014: Dennis and Michelle Hill are requesting a 1.86’ variance from the 25’ required setback from the right-of-way to permit an existing porch for a home. TMS# 162-05-01-057 with an address of 419 Peninsula Rd, West Union, SC 29696.

Applicant’s opening statement and provision of evidence: Mr. Dennis Hill, property owner, the details of their request and admitted it was an error on their part and asked for forgiveness. The Board asked questions for clarification. Details discovered include the house is under construction at the framing stage and the County learned of the encroachment in a complaint made by a neighbor.

Public comment:

- Mr. Codner read an email from Erin Fisher, property owner, in support of approving the variance into the record.

Applicant rebuttal: None

Board discussion: The Board discussed the size of the variance request, the fact that the only public comment was favorable, and that there is no HOA that opposes the variance request.

Staff comments: None

1. There **are** extraordinary and exceptional conditions pertaining to the particular piece of property:
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. A brief discussion followed.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

2. These conditions **do not** generally apply to other property in the vicinity:
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Gilster. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

3. Because of these conditions, the application of this chapter to the particular piece of property **would** effectively prohibit or unreasonably restrict the utilization of the property; and
 - a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. Brief discussion followed.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

4. The authorization of a variance **will not** be of substantial detriment to adjacent uses or to the public good, and the character of the district will not be harmed by the granting of the variance.
 - a. Motion – Mr. Eagar made a motion; seconded by Mr. Gilster. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed variance be **Approved**.
 - a. Motion – Mr. Eagar made a motion; seconded by Ms. Fowler. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that variance request was approved.

Item 10 – Special Exception application SE21-005: Pandacon, LLC – Ben Collins is requesting a special exception for a rental cabin project in the Lake Overlay District. TMS# 209-00-01-051 with an address of 128 Tuscany Lane Seneca, SC 29672.

Applicant’s opening statement and provision of evidence: Mr. Ben Collins, Pandacon, LLC distributed supplementary back-up for his request. Mr. Collins asked the Board to consider the rationale of staff classifying the proposed rental cabin project as a commercial use when there are many single-family homes in Oconee County that are short-term or seasonal rentals that are not considered commercial. Mr. Collins presented a detailed case for the approval of the special exception, noting that the proposed development is consistent with the spirit and intent of the zoning ordinance, the lake overlay, and aspects of the Comprehensive Plan. Mr. Collins argued the cabins would be a welcomed and a needed residential component of the commercial businesses of Lake Keowee Marina. He also cited there are other privately owned short-term rentals in the neighboring areas. Mr. Collins stated that the special exception is for a land use exception; all other aspects of the development would still go through the Planning & Zoning department for their approval.

Staff comments: Mr. Coley confirmed that staff believes this is a commercial project and noted that there are many commercial businesses that are in the area that would have a hard time getting approved if they were being developed today. Mr. Coley also verified that the proposed development would be subject to the County’s approval and permitting process.

Board questions to applicant: The Board asked for clarification regarding the location of Tuscan Lane. Mr. Clay Schile, Lake Keowee Marina, provided the response.

Public comment:

- Mr. James Simmons, citizen, expressed his concern of not knowing the complete scope of the project—will the development continue to expand and require additional approvals from the Board. The classification of the cabins as single-family dwellings or rentals and noise abatement was also a stated concern of Mr. Simmons.
- Robert Moore, citizen, expressed his opposition to the request citing that exceptions to the Lake Overlay should only be given when there are no alternatives and it serves the common good.
- Steve Owings, citizen, expressed his opposition to the request citing his concern of rental properties and the unknown regarding the complete scope of the project.
- Robert Sedler, citizen, expressed his opposition to the request citing his concern to the complete scope of the project, noise abatement and boat parking of future renters.
- Danny Greg, citizen, express his opposition to the request citing his concerns for noise abatement and the unknown of the scope of the project.
- Amy Sedler, citizen, expressed her concern on where the potential renters will be enjoying the lake—i.e. swimming.

Applicant rebuttal: Mr. Schile responded to the stated objections, stating that the nature of a marina is public. He stated that their target customer for renting the cabins are families. When asked if the development can be realized without being in the overlay, Mr. Schile answered no, due to constraints on the property. He added that he is aware of noise issues and they control as much as they can, stating that noise comes from all sides. Mr. Collins provided more input to diminish the public's concerns over the development being labeled a commercial project. He deferred to Mr. Schile on the question of possibly more cabins at a later date.

Staff was asked if the conceptual drawings of the cabins provided in the supplementary documents could meet Appendix A. Mr. Coley stated that it is hard to make a decision on pictures and it would require a more detailed review, but it would be required to meet Appendix A. Mr. Coley also clarified his remarks on the existing commercial developments' ability to gain approval in the overlay if submitted today. Ms. Kompier added that Appendix A can be amended to meet the needs. Mr. Coley also clarified that the applicant did not note in the application that the variance request was specifically for three cabins.

Board discussion: Discussion included, but was not limited to, the negative aspects of short-term rentals, noise, and the purpose of the lake overlay.

1. In accordance with the comprehensive plan and is consistent with the spirit, purposes, and the intent and specific requirements of this chapter, to include the definition and intent of the district in which the special exception is being requested:

- a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. A brief discussion followed.
- b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

2. In the best interests of the County, the convenience of the community and the public welfare:

- a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. A discussion followed that included limiting the number of cabins to be approved.
- b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

3. Suitable for the property in question, and designed, constructed, operated, and maintained so as to be in harmony with appropriate in appearance to the existing or intended character of the general vicinity:

- a. Motion – Mr. Eagar made a motion, seconded by Mr. Mays. Brief discussion followed.
- b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

4. Suitable in terms of effects on highway traffic, parking and safety with adequate access arrangements to protect streets from undue congestion and hazards.

- a. Motion – Mr. Eagar made a motion; seconded by Mr. Mays. Brief discussion followed.
- b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the criterion passed.

5. Mr. Codner asked – Based on the evidence presented to the Board, do I hear a motion that the proposed special exception be **Approved** with a restriction that the maximum of three cabins can be built as shown on the submitted site plan under this special exception.
 - a. Motion – Mr. Eagar made a motion; seconded by Ms. Fowler. No discussion.
 - b. Vote

| In-favor | Opposed |
|----------|---------|
| 5 | 0 |

Mr. Codner noted that the special exception was approved.

Item 11 – Adjourn

Mr. Codner asked for a motion to adjourn

Motion – Mr. Eagar made a motion; seconded by Mr. Mr. Mays

Vote – Mr. Codner called for a vote. Motion was unanimously approved 5/0.

Meeting was adjourned at 8:45 PM.

OCONEE COUNTY BOARD OF ZONING APPEALS

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There will be no more
public comment for
VA21-011 – Arrowhead
Subdivision as this was
tabled at the last
meeting.

OCONEE COUNTY BOARD OF ZONING APPEALS

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TEL (864) 638-4218 FAX (864) 638-4168

VA21-012A/012B - Townhomes on Breakwater Lane

Public Comment - First Name, Last Name - please print legibly

1. Dary Moss

2. Craig Sweeringer

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____

13. _____

OCONEE COUNTY BOARD OF ZONING APPEALS

415 South Pine Street - Walhalla, SC



TEL (864) 638-4218 FAX (864) 638-4168

VA21-014 - 419 Peninsula Road

Public Comment - First Name, Last Name - please print legibly

1. _____

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____

13. _____

OCONEE COUNTY BOARD OF ZONING APPEALS

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VA21-013 - 851 Little Bay Lane

Public Comment - First Name, Last Name - please print legibly

1. Don Bradford - HOA Pres,

2. _____

3. _____

4. _____

5. _____

6. _____

7. _____

8. _____

9. _____

10. _____

11. _____

12. _____

13. _____

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SE21-005 - Rental Cabins - 128 Tuscany Lane

Public Comment - First Name, Last Name - please print legibly

1. JAMES SIMMONS - *Maina Pointe* - *Noise Abatement* - *Long-term residential* - *Scope? 3? Commercial*
2. Robert Moore *Seneca* - *No - Expanding commercial* - *Common good?*
3. Steve Owings - *Maina Pointe* - *Hospitality expansion*
4. _____ - *Crowds - Tiki Hut*
5. Robert Sedler - *New home adjacent* - *# cabins 2, 3, 4?*
6. _____ - *Event center*
7. Danny Craig - *Alternate number?* - *Noise*
8. _____
9. Ray Sedler - *Where swims? Play*
10. _____
11. _____
12. _____
13. _____