MINUTES
CITY OF BEAUFORT
ZONING BOARD OF APPEALS
August 26, 2013, 5:30 P.M.
City Hall Planning Room, First Floor – 1911 Boundary Street
Beaufort, South Carolina

STATEMENT OF MEDIA NOTIFICATION: "In accordance with South Carolina Code of Laws, 1976, Section 30-4-80(d), as amended, all local media were duly notified of the time, date, place, and agenda of this meeting."

Members Present
Brad Hill, Chairman
Don Starkey
Tim Wood

Members Absent
Rod Mattingly
Eric Powell

Staff Present
Libby Anderson, Planning Director

FREEDOM OF INFORMATION ACT COMPLIANCE
Public Notification of the Zoning Board of Appeals meeting has been published in compliance with the *Freedom of Information Act* requirements.

Chairman Hill called the meeting to order at 5:30 p.m.

MINUTES
Mr. Starkey made a motion, second by Mr. Wood, to accept the minutes of the July 8, 2013 special meeting as submitted. The motion passed unanimously.

REVIEW OF PROJECTS
806 Newcastle Street, identified as District 120, Tax Map 4, Parcel 384,
Special Exception for short term rental
Applicant: Beaufort Rentals, LLC, for Chandler Burns (ZB13-11)
The applicant is requesting a special exception in order to operate a short-term rental.

Libby Anderson said that the property is in the Northwest Quadrant of the Beaufort Historic District. It's one lot off of Duke Street. It's zoned General Residential District and has a single-family dwelling on the lot. The owner wishes to rent the house on a short-term basis. Short-term rentals are acceptable with a special exception. The applicant has provided a draft rental

agreement and documentaion that a fire alarm system has been installed. Only one vehicle can be parked in the head-in space on the property. A parking pad has been developed, Ms. Anderson said, but a portion of it may be in the right-of-way, and parking is encouraged in the rear of the house, not the front. Newcastle Street does not have formalized on-street parking. Staff feels the vehicles should be limited to one. In regard to public notice, all postings were made. One email was received, and the Board was provided a copy of it.

Special Exception criteria:

1. **Proposed use is compatible with existing uses in the surrounding area:** The property is located in the Northwest Quadrant of the Historic District and has easy access to Charles Street, which is in the downtown commercial corridor.
2. **Planned changes are harmonious with the area:** The proposed site plan is harmonious with the character of the surrounding area; no changes are proposed and the finding can be met.
3. **Impact on infrastructure such as roads, water, and sewer and on public services:** Staff feels the proposed use will not have a greater impact on public services than it would as a long-term rental.
4. **In conformity with the Comprehensive Plan:** The proposed use is in general conformity with the Comprehensive Plan and the Civic Master Plan.
5. **Impact on public health and safety:** Proposed use will likely have little impact on health and security; a local property management company will manage the short-term rental.
6. **Potential creation of nuisances:** Staff feels that the proposed use has little potential to create hazards. It is local management company, and there's a monitored fire alarm system; if the use of parking spaces is determined, it will have even less impact.

Staff recommends that if the application is approved, it should be with two conditions, Ms. Anderson said: No more than one overnight guest vehicle should be permitted, and the applicant should provide documentation of the *monitoring* contract for the fire system.

JC Cuppia, on behalf of Beaufort Rentals, said that they have revised the rental agreement to accommodate just one vehicle. They also have the certificate for the monitored fire alarm system, he said.

Mr. Starkey said that when the short-term rental issue first came up, many were concerned about short-term rentals creating nuisances with noise. He said he'd noticed that there's no noise information in their rental contract. The city has noise ordinances, and there were concerns about that expressed at the time that short-term rentals were publically discussed. Short-term renters may not know about the noise ordinance, and Mr. Starkey feels it should be in the rental agreement. Ms. Anderson said there's no amplified music after 9 p.m.

Mr. Starkey made a motion, seconded by Mr. Wood, that the application for short-term rental be approved with the conditions as stated by staff and the insertion of the noise ordinance into the rental contract. The motion passed unanimously.

1312 Harrington Street, identified as District R120, Tax Map 2, Parcel 261,
Fence Height Variance
Applicant: Scott Gordon (ZB13-12)
The applicant is requesting a fence height variance in order to construct a fence on a corner lot.

Ms. Anderson said this property is on the corner of Harrington and Cherokee Streets in the Pigeon Point neighborhood. It's single-family residential district, and a single-family dwelling is located on the lot. The applicant began to install a privacy fence on the lot without a permit. Fences can be 6' on the rear and interior side, but there are 4' limits on the front and any sides fronting the street. The applicant feels a higher fence is needed for safety concerns because they have small children who play in the fenced backyard.

Ms. Anderson said whenever anyone sees anything that doesn't seem right, they should call the police department. The Neighborhood Association is active in Pigeon Point, and staff suggested that the applicants join that association. She said the police department also wants graffiti to be reported. The applicants can also get involved with the Neighborhood Associations' meetings with city staff which take place every 4th Wednesday of the month at City Hall.

This public notice of the hearing was made, and one public comment was received.

Ms. Anderson reviewed the criteria staff considers to grant a variance, and said that three votes are needed to approve this variance and that in the next application.

1. **Extraordinary and exceptional conditions:** Staff feels this finding is not extraordinary. The applicant has stated that this is a corner lot and is near an active ball field.
2. **Conditions do not generally apply to other properties in the vicinity:** These conditions apply to other properties in the vicinity, Ms. Anderson said, so staff doesn't feel it's an extraordinary condition. Ms. Anderson went on to enumerate some of the parks and fields in the Pigeon Point and Higginsonville neighborhoods.
3. **Conditions are not the result of the applicant's own actions:** Staff believes this finding can be made if the Board determines that the extraordinary condition is Basil Green Park.
4. **Granting the variance would not conflict with comprehensive plan:** The Board must find that this is not in conflict with the Comprehensive Plan, but staff feels it is not in conflict, Ms. Anderson said.
5. **Unreasonable restriction on utilization of the property:** Ms. Anderson said there's a question as to whether it's unreasonable to restrict the height of fences along a public street. Staff feels it is *not* unreasonable to limit the height along streets to 4'.
6. **Not a detriment to adjacent property and the public good:** Staff feels that this *could* be a detriment to the adjacent property and the public good. They don't feel the stockade style fence is appropriate, and the mixing of fencing materials is also not appropriate.

In sum, staff recommends denial of the application, Ms. Anderson said, but if the ZBOA believes the applicant can meet the criteria, staff would request that the conditions would be that the design be a board-on-board fence, and she showed an example. It should have caps or mitered posts or a nice finish, and it should be treated with a waterproof sealer or a stain to prevent weathering. Also, the chain link fence should be removed and replaced with a wooden fence of this style.

Mr. Wood said the recommendation for the design doesn't change the height. If the Board feels that they can make all six findings, Ms. Anderson said, they should approve the application with the two conditions as to design and materials.

The applicant, **Patience Gordon,** said when they reviewed the purposes of the ordinance, one was public safety and one was uniformity of appearance, preserving open light air and space. When they considered the fence, they don't want to keep the chain link, she said. Their property is situated so that visually if someone else put in a 4' fence, it would look 6' high because their property is flat and others are going down a hill.

Mrs. Gordon said if the Board granted the variance, they would cooperate in reference to the look of the fence. It is an older neighborhood, she said, and graffiti has been spray painted in the neighborhood by gangs; it's disturbing when her children come in and say there are strangers around. Kids are fighting in Basil Green Park, she said, and some neighbors have called the police department about this.

The applicants don't want the fence in the front of the house, so it would not affect the sight triangle, and there would be fence only to the back of the property. **Scott Gordon** said not many houses around them have their backyard on the street. Mrs. Gordon said most don't, and those on the corner have street-side parking that obscures and buffers the backyards, but their house doesn't have it.

Mr. Wood asked the applicant if having the big, flat wall might not encourage more graffiti instead of less. Mrs. Gordon said that was a good point, and she wanted it to be sealed and also to put plants in front of it to make it "friendlier." Mr. Wood said the back green fence is nice and thick and creates a good barrier. He likes to see "green" fences. He leans toward that to get the same sort of atmosphere as on the other line as opposed to a solid wall. Mrs. Gordon said she hopes to find some plants for screening. Mr. Wood said they don't need a stockade fence to get their ultimate goal. Mrs. Gordon asked if his suggestion was to plant a green fence, and Mr. Wood said yes. He understands their position, he said, but the bottom line is that what they started is not in compliance and it sounds like a green fence is being finessed into it anyway. Mr. Gordon said they had that when they moved in because the property had not been cared for. The neighbors complained about the overgrowth, and he's spent a considerable amount of time clearing that area out; plantings are one thing, he said, but some of the greenery is rooted in and might require a Bobcat to turn it up. Mrs. Gordon said, for them, things grow quickly, but

she has young kids there, and the area the kids like to play in needs to be protected. Their priority is to put up protection first and beauty second, she said.

Chairman Hill asked the applicants if two feet makes a difference in regard to safety, and Mrs. Gordon said it is harder to grab a kid over a fence that's 6' rather than 4'. Mr. Gordon said people have stopped and leaned over the fence as it is now, and at 4' he feels it's not safe.

Mrs. Gordon explained where the fence would end and begin. She showed where she would put camellias and take out the chain link. Chairman Hill said unless the children are limited to where they can play, someone could get in where there's not a fence. Mrs. Gordon said the chain link fence is 4' tall. Mr. Gordon said the existing chain-link goes to the corner of the street and to the corner of the house. He showed the Board a drawn diagram. He showed the Board where the kids like to play, and said since they've cleaned out the area, he said, the kids are playing in that area because there's not as much growth. The kids play all through the yard. They have found snakes in the area as well.

Mr. Starkey asked them to show where the rest of the fences are on a different drawing. Mrs. Gordon demonstrated where fences are and where they propose to put the wooden privacy fence and where they will remove the chain-link fence. Mr. Gordon described an area where a carport is. Mr. Starkey said the backyard is enclosed, and Mrs. Gordon agreed.

Chairman Hill said he is under the impression that 2' additional "will not make a lot of different in terms of safety," and maybe the applicants could create another play area. No precedent has been set in having 6' fences, so it's a violation, and he doesn't "see the hardship." Mr. Starkey said a 4' fence is barrier enough for 90% of the problems. People would not see the kids while driving by, he feels. He has concerns about setting a precedent with variances. Mr. Wood said he agrees and "dreads seeing hundreds of stockade fences around yards." He said he'd be open to the Gordons coming back with a more comprehensive plan for the whole yard including removing the section of chain link fence. The backyard has a green buffer, but the Gordons had said the neighbors complain about the overgrowth, Mr. Wood said. They might want to rethink the design to give them everything they want. Mr. Wood said they don't meet the criteria to be approved.

Mr. Starkey said part of the existing fence should come down, anyway. He agrees that the Board needs more information if the Gordons want to come back. Chairman Hill said if they table the matter, they can come back, but if they deny it, they can't come back for a year. He said he doesn't see a hardship or a compelling argument for a 6' fence. Mr. Wood said it's a matter of giving the Gordons an option to come back with a different plan that doesn't include a 6' fence.

Mr. Starkey made a motion that, because the ZBOA had concerns in regard to setting precedent, and the applicants had failed to demonstrate a requirement for a 6' fence along

the street, they recommended against the variance. Mr. Wood seconded the motion. The motion was approved unanimously.

1039 and 1051 Otter Circle, and 1004 Mustelidae Road, identified as District R120, Tax Map 29C, Parcels 95, 157, and 162, Variances.
Applicant: D.R. Horton, Inc. (ZB12-13)
The applicant is requesting variances in order to construct garages in front of the front line of the dwelling.

Mr. Starkey said he is a resident of Battery Shores, but as per the UDO, he has no financial interest in the property, so he is not recusing himself.

Ms. Anderson said there are three separate tax parcels in this application. All the lots are located in the Battery Shores subdivision. Battery Shores is zoned R-3 Single-Family Residential District. All of the lots are undeveloped. The UDO sets out several conditions for the development of garages, and she read the ordinance as it pertains to them. The applicant is requesting a variance to allow garages to project in front of the dwelling. At 1039 Otter Circle, the garage will project 3' and will be side-loaded. The garage doors do not face the street. At 1051 Otter Circle, the garage will project 6' from the front of the dwelling and will be front-loaded, so the garage doors will face the street. At 104 Mustelidae the garage will be front-loaded and project 10' from the front of the dwelling.

A windshield survey was done, and she said most of the dwellings on the lots have a garage, and the vast majority are attached in Battery Shores. Of the attached garages, 64 are in front of the front line of the dwelling, probably before this part of the ordinance went into effect. Of those 64, 46 are side-loaded, so they don't have front-facing doors. 18 have front-facing doors. 23 garages have garage doors in line with the front, so they are flush with the front elevation of the house; 50% have side-loaded, and 50% are front loaded, Ms. Anderson said. 37 garages are located behind the houses' front elevation. The most common design is a projecting garage with side-facing doors.

Public notice was made, and all the comments were forwarded to the Board; they were also given hard copies of the comments.

Ms. Anderson reviewed the six findings that the staff considers to granting of the variances:

1. **Extraordinary and exceptional conditions:** Staff feels that this finding may be able to be made in that the lots are in the Battery Shores subdivision where the garages of this type are the most common.
2. **Conditions do not generally apply to other properties in the vicinity:** Staff feels that citywide, these projecting attached garages are not the norm.
3. **Conditions are not the result of the applicant's own actions:** These would not be a result of the applicant's own actions.

4. **Granting the variance would not conflict with comprehensive plan:** Staff feels this is not in conflict with the UDO; new development needs to be compatible with existing development, as long as it is of appropriate character and design and blends in in an established neighborhood.
5. **Unreasonable restriction on utilization of the property:** Prohibiting construction typical of the design of other houses in the neighborhood may be an unusual restriction.
6. **Not a detriment to adjacent property and the public good:** Granting the variance would not be a detriment to the adjacent property and the public good because these types of garages are common in the neighborhood, but they have received many comments to the contrary and they should be considered.

All the garages, Ms. Anderson said, should be side-loaded, which is the most common design in the neighborhood and this should be a condition.

Mr. Starkey asked if they looked at the houses on the water, and Ms. Anderson said they "didn't pull those out." Mr. Starkey said a lot that are front-loaded are on the waterfront. Mr. Wood clarified that these 3 homes are *not* on the water, and Ms. Anderson agreed.

Chairman Hill asked, of the 64 homes with the garage projected in front, how many were built after the UDO, and Ms. Anderson said she didn't know. She guessed that the provision came in in 2003, and some may have been built after that but "slipped by." The wording of the section should be clarified, she said, but the current interpretation about the garage design not projecting applies to detached and attached garages.

Mr. Starkey said one garage was denied on a home in Battery Shores recently. Ms. Anderson said they have been strict about it since she has been doing the plan review, especially for those that are front-loaded.

Doug Nichole, of DR Horton, said he reviewed the application, and they would be happy to reorient the 2 that are front-loaded to be side-loaded. With the variety and nature of the subdivision, he said this provides variety in the streetscape, and with the numbers Ms. Anderson put together, the side-loaded garages will not be a detriment to the neighborhood. Chairman Hill clarified that side-loaded is not an issue, just the projection. Mr. Knicoll clarified that they all could be side-loading.

Mr. Starkey said there's an advantage to a side-loading garage. It's almost equivalent to a garage in the rear of the house if they have a boat, so it's parked alongside the house, not in front of the house. If the driveway is set back, it is important to him to have the vehicles be side-loaded so that the vehicles aren't in the front of the house.

Chairman Hill opened it up to public comment. **David Addlesburg**, president of the Battery Shores property owners' association, said 10 marsh lots have front-loading garages. He said 1051 is a retention pond, so there might have been an address problem. 1049 is the correct address. Mr. Addlesburg said he agrees with the recommendations of Ms. Anderson and DR

Horton. They want to get the subdivision built out as soon as they can. They are "in agreement with keeping the development harmonious." Chairman Hill asked if he had a problem with the projection, and Mr. Addlesburg said no, as long as they're side-loaded. Chairman Hill asked if he was representing the property owners' association or appearing as a homeowner, and Mr. Addlesburg said both.

Pat Kase lives on Otter Circle. He concurs with the staff recommendation for approval of the variance with side-loading. A few neighbors have assembled figures on home value; in regard to "characteristics that make the homes compatible with the existing character that aren't opinion, they tried to put a metric to that." At what appropriate time, Mr. Kase said, they have wondered might they speak to what's being proposed for the plans to ensure that contextual design standards are in place. Chairman Hill said this is a variance application in regard to side-loading and projection of the garage.

Donna Starkey is a resident of Battery Shores. She said because there are many existing homes with a front-projecting garage doesn't in and of itself mean this will look similar to what's in the neighborhood. When the codes required that they had to be built for hurricane-strength, the builder could say, "Well, these others didn't have it." This is no exception. One of the biggest design features in Battery Shores is porches on the front, Mrs. Starkey said. She doesn't know what the plans are for these houses, but the front-extending garage becomes the dominant design feature. One extends 10' out, and if a porch were added to the other part of the front, it would make it more aesthetically fitting in the neighborhood. She would like to request that the Board specify that those homes would have a front porch if they were going to approve this variance. It may already be planned for these properties to have porches, but she'd like it to be required.

Andy Gregis asked if these front-facing garages would meet the setback. Chairman Hill said he's almost certain they *have* to meet the setback.

Chairman Hill addressed the applicant, saying that looking at the submitted plans, all will be side-loaded after revision; he asked if the two that will be resubmitted would have garages projected in front. Mr. Knicoll said it would be a different garage orientation. Chairman Hill said to Mrs. Starkey that there appears to be a porch in front of each house. Mr. Wood said sometimes a style of porch doesn't look like a front porch because of having columns, not railings.

Mr. Starkey asked which models are going on these lots, and Mr. Kase showed the model. Mr. Addlesburg said he's only asking for a variance on these lots. Mr. Addlesburg said there's no option for a front-loaded garage when they go for sale. Chairman Hill said the issue is the front-*projecting* garage. Mr. Starkey said his house's garage is front-projecting but side-loaded. Mr. Wood said it's not a question of projection but the preference that they be side-loaded.

Chairman Hill said they would set precedent for this development, but as far as staff's comment about fitting in with the existing neighborhood, he asked whether it would be putting an unreasonable restriction on the builders since a majority percentage have these front-projecting garages already at 75% build out. He thinks it will not stand out to have a front-projecting garage in this neighborhood. He just stressed that this is a precedent-setting.

Mr. Wood made a motion that the variances be granted based on the agreement that the garages on these three lots will be side-loaded, and front-projections are acceptable but not front-loaded. The motion is for strictly side-loaded garages. Mr. Starkey seconded the motion. The motion was approved unanimously.

Additionally, the Board stated for the record that they support this development practice for the remaining development. Ms. Anderson said the developers would still have to come before the ZBOA. Mr. Wood said he would suggest a 10' maximum projection since they are granting that for one of these now. Ms. Anderson said a garage has to meet a minimum setback but can be setback as far as they want.

UPDATE ON FORM-BASED CODE COMMITTEE

Mr. Starkey said they are in recess, and "there's no idea when they will start again." He has heard they are awaiting the approval of the Civic Master Plan.

ADJOURNMENT

There being no further business to come before the Board, Chairman Hill adjourned the meeting at 6:48 p.m.