

# ATTACHMENT 16

## Order on Appeal from Action of UDO Administrator Historic Preservation Commission Town of Bluffton, SC



Date Filed: **May 1, 2023**

Appellant: **Eugene & Melanie Marks**

Property Location: **9 Bruin Road; Bluffton, SC**

Permit Application No. **ZONE-05-23-017996**

Date of Public Hearing: **June 7, 2023**

Property Tax Map Nos. **R610-039-00A-0021-0000**

On June 7, 2023, the Town of Bluffton Historic Preservation Commission held a public hearing to consider an appeal filed by Eugene and Melanie Marks in which they appealed the determination of the UDO Administrator dated April 26, 2023, which served as letter to state that the Rough-HD inspection for the building had failed.

After consideration of the evidence and arguments presented, Commissioner Schmelter made a motion to affirm the UDO Administrator's decision in part given that the windows installed were not the same windows approved by Staff and as specified in the Building Permit (Marvin Elevate windows), Staff was not provided additional information regarding the Pella Lifestyle windows prior to installation; and Staff did not approve them as required by the Certificate of Appropriateness. However, Commissioner Schmelter continued to move to reverse the UDO administrator's decision that the Pella Lifestyle windows installed do not meet the Arm's Length Rule, meaning they are not indistinguishable from the original windows at an arm's length; and the Pella Lifestyle windows installed do not match the old windows in design and texture.

The applicant was allowed to proceed with the current approved Certificate of Appropriateness – HD.

Seconded by Commissioner Frazier. Voting Yea: Commissioner Schmelter, Commissioner Vaux Bell, Chairman Trimbur, Commissioner Frazier, Commissioner Guenther. The minutes from the June 7<sup>th</sup> HPC meeting were voted on and approved at the July 5<sup>th</sup> meeting. Therefore, the appeal was:

☐ Denied

☒ **Granted**

☐ **Granted, subject to the following condition(s):**

The Board based its decision on the attached findings of facts and conclusion of law.

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

1. You may file a petition with the Clerk of Court for Beaufort County, South Carolina, in writing, setting forth plainly, fully, and distinctly why the decision is contrary to the law. The appeal must be filed within thirty (30) days after the decision of the Board is mailed (S.C. Code § 6-29-820A). The mailing date of this decision is January 28, 2019.
2. You may file a notice of appeal with the Circuit Court accompanied by a request for pre-litigation mediation in accordance with S.C. Code § 6-29-825. Any notice of appeal and request for pre-litigation mediation must be filed within thirty (30) days after the decision of the Board is postmarked.

By: Bruce Trimbur, Chairperson, Board of Zoning Appeals

Date: \_\_\_\_\_

By: Kerry Guzman, Secretary, Historic Preservation Commission

Date: \_\_\_\_\_

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### **BACKGROUND, FINDINGS OF FACT AND CONCLUSION OF LAW**

Based upon the documentation submitted to the Historic Preservation Commission (the “HPC”) in advance of the hearing, the public comment and the testimony provided by all interested parties, and the relevant portions of the Town of Bluffton Unified Development Ordinance (the “UDO”), the HPC concludes and makes the following findings of fact and conclusions of law:

#### **BACKGROUND:**

1. On April 13, 2023, Katie Peterson, AICP, Senior Planner and Kevin Icard, Director of Growth Management, completed the Rough-HD inspection in association with permit RNEW-08-22-2266.
2. Upon inspection the following items were found to be noncompliant with the approved Certificate of Appropriateness – HD (COFA) (COFA-03-22-016484):
  1. Porch Columns: The approved COFA and Building Permit included the reconstruction of the existing, 7-bay front porch. Upon inspection, it was found that a 5-bay front porch had been framed.
  2. Windows. One of the conditions of approval for the COFA was that all windows practicable be repaired rather than replaced, and should windows be beyond repair, additional information regarding the proposed replacement windows be provided for review and approval by Staff prior to installation.

The windows installed on the building are noncompliant with UDO Section 3.18.3. Application Review Criteria for the following reasons:

- a. The windows installed were not the same windows approved by Staff and as specified in the Building Permit: DH Marvin Elevate windows.
- b. Staff was not provided additional information regarding the Pella Lifestyle windows prior to installation, and has not approved them as required by the COFA.
- c. The Pella Lifestyle windows installed do not meet the Arm’s Length Rule, meaning they are not indistinguishable from the original windows at an arm’s length. (UDO 5.15.6.A. and Traditional Construction Patterns (TCP) Chapter 6 and Chapter 8 Section 21)
- d. The Pella Lifestyle windows installed do not match the old in design and texture. (UDO 3.18.3.A., Secretary of the Interior’s Standards for the Treatment of Historic Properties, Standard 6)

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3. Piers: The historic pier locations have brick façade piers, however, they are visibly veneer, only one brick deep and did not reflect the requirements of the Certificate of Appropriateness approval. The façade must wrap towards the center of the house on both sides of the piers to appear as though it is a true pier.
4. Brick Skirting Between Piers: Pierced brick skirting has been added between the piers from the stoop on the left side of the house to the principal façade. The COFA and Building Permit reflects hog board panels between the piers. No historical documentation of brick between the piers at this location was a portion of the application. The COFA and Building Permit require any changes from the approved plans to be submitted for review and approval prior to moving forward. As no documentation was provided and any evidence of brick skirting at the building's original location has since been destroyed, the brick skirting must be removed and replaced by the hog boards as indicated on the approved plans
5. On April 26, 2023, the Town's Director of Growth Management, Kevin Icard, provided a letter to the Applicant stating that the rough-HD inspection failed based on the items listed above.
3. On May 1, 2023, the Appellant, filed an appeal with the UDO Administrator contesting her determinations as set forth in the April 26, 2023, zoning determination letter.
4. The Property at issue is located within the Town's Neighborhood Core-HD (NC-HD) zoning district.
- 5.

### FINDINGS OF FACT:

8. All Buildings proposed to be constructed by the Applicant on the Property constitute Dwelling Units as they meet the definition of Section 9.4.1.E of the UDO.
9. The UDO does not define nor does it regulate rentals of Dwelling Units, whether long-term or short-term. Therefore, if long-term rentals are permitted by right, short-term rentals are equally permitted by right.
10. Table 4.3, included within Article 4 of the UDO, provides a list of all of the permissible uses within each zoning district within the Town. Table 4.3 is silent as to whether rentals are permitted by right within the NG-HD zoning district, as the UDO does not regulate or address rentals.
11. Section 4.3.G.1 of the UDO states that if a particular use is not listed, the UDO Administrator shall select the use listed in Table 4.3, Uses by District, which most closely resembles the proposed use. The Applicant and Town Staff contend that Single-Family Detached Residential is the use that most closely resembles rentals. The Appellant contends that the proposed use most closely resembles a Hotel, which is defined by Section 9.4.4.B as "[a] Building or portion thereof, or a group of buildings, which provides sleeping accommodations, with or without meal service, for transients on a daily or weekly basis, whether such establishment is designated as a hotel, inn, automobile court, motel, motor inn, motor lodge, tourist cabin, tourist court, or tourist home."
12. The Buildings proposed include more than "sleeping accommodations" as found in the definition of a Hotel. Instead, they are designed to provide complete independent living

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facilities “including permanent provisions for living, sleeping, eating, cooking and sanitation” as set forth within the definition of Dwelling Unit.

### CONCLUSIONS OF LAW:

13. The rental of an entire building equipped with provisions for living, sleeping, eating, cooking and sanitation - whether by the day, week, month or year – more closely resembles the definition of Single-Family Detached Residential than the definition of Hotel.
14. Given that the UDO does not regulate rentals or attempt to differentiate between short-term and long-term rentals, short-term rentals are permitted wherever long-term rentals are permitted.
15. Additionally, the NG-HD zoning district is not purely residential. There are multiple commercial uses permitted within the NG-HD zoning district, including but not limited to, Personal Services Establishments, Restaurants (Conditionally), Bed and Breakfasts, Inns, Professional Offices, Medical Offices, Nursing Homes and Long-Term Care, Museums, Religious Assembly, Schools, Artisan Workshops and Contractor’s Offices (Conditionally).

Based on the foregoing Findings of Fact and Conclusions of Law, the decision of the UDO Administrator was upheld 3-2 and, therefore, the appeal was denied.