

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF JULY 15, 2014 MEETING

Members Present: Chair, Mr. Sim Parrish, Mr. Jim Fralix, Mr. Jason Gregorie, Mrs. Brook Lyon, and Mr. Roy Smith. A quorum was present to conduct business.

Also Present: Kristen Crane, Senior Planner, Bonum Wilson, BZA Attorney, Councilman Leonard Blank, Ashley Kellahan, Town Administrator, and Frances Simmons, Town Clerk and BZA Secretary.

Call to Order: Chairman Parrish called the Board of Zoning Appeals to order at 7:00 p.m.

Prayer and Pledge: Chairman Parrish led the prayer, followed by the Pledge of Allegiance.

Compliance with the Freedom of Information Act: Staff has met the requirements of state law for notification of this case to be heard by the Board of Zoning Appeals at this meeting. The notification procedures were completed by staff fifteen (15) days prior to this meeting, a public notice was printed in the Post and Courier, signs were posted at the designated property, and notices were mailed to property owners within 300 feet of the application and to parties of interest. Persons, organizations, and the news media that have requested declaration of our meeting have also been notified. The Freedom of Information Act does not require notification of anyone other than the applicant and parties of interest.

Introductions: Chairman Parrish introduced the members of the Board of Zoning Appeals, BZA Attorney, Town Council, and staff.

Review Summary and Rulings from the May 20, 2014 BZA Meeting: Mr. Fralix asked that a mathematical change be made to the minutes. Page 4; paragraph 7, Mrs. Lyon asked about the size of the lot per house; Mrs. Mackintosh said 50x100, (which would be 5,000 square feet); roughly 1/6 of an acre. Mr. Fralix said the calculation is 1/9 of an acre; because an acre is 43,560 square feet. Instead of 5,000 square feet; it should have been closer to 7,000 square feet; or Mrs. Mackintosh should have said 1/9 of an acre. He asked that the minutes reflect what the reality is. Mr. Fralix moved to approve the minutes of the May 20, 2014 meeting with the correction; Mrs. Lyon seconded. The roll was called and the minutes were approved. (Mr. Smith was absent for the May 20th meeting and abstained from vote).

BZAV-4-14-002
1054 & 0 Dills Bluff Road
428-03-00-060; (024-069)
Variance request for the removal of four (4) grand trees.

Approved with Conditions

Brief the Public on the Procedures of the Board of Zoning Appeals: Chairman Parrish gave an explanation of how the Board of Zoning Appeals Hearing would be conducted.

Administer the Oath to those Presenting Testimony: Attorney Wilson swore in persons who wished to provide testimony in tonight's case.

Chairman Parrish announced that the Board will decide whether or not to reconsider a condition on Case BZAS-2-14-002 (White Duck Taco), and will hear a variance request for the removal of one (1) grand tree. He stated that variance must meet all seven (7) criteria contained in the Ordinance.

Review of the Following Application:

Old Business:

BZAS-2-14-002

TMS# 425-08-00-023

792 Folly Road, F1

Special Exception Request for the sale of alcoholic beverages in a restaurant (White Duck Taco) in the Community Commercial District. This agenda item was tabled at the May 20, 2014 BZA meeting.

Applicant:

Andrew Pannell

550 Harbor Cove Lane, Apt. 1700-I

Mr. Pannell stated that he is before the Board because he failed the first time around to fully understand what he was presenting to them. He said that White Duck Taco is a family restaurant that closes early; it is not a bar. He stated that when he appeared before the Board, he gave them the hours of operation at the Asheville location because at that time he had not decided what his operational hours would be. He also wanted to see what days of the week were busy and which were not. He has been opened now for 13 days and has some data. He has obtained information from other businesses asking them how important Sundays are to their business and viability. He said an overwhelming response was received that opening on Sunday is extremely important. Mr. Pannell further stated that the only day of data he has for his restaurant (that really counts and was not on a holiday weekend), is this past Saturday where he earned roughly \$6,000 in total sales. He anticipates being able to do a number close to that every Sunday. He estimated earnings of \$260,000 in a year (\$5,000 x 52). He said that is a large sum of money, especially to a small business, and it would severely, if not detrimentally impact his business and viability to stay open in his opinion. Mr. Pannell asked the Board to reconsider his request and allow him to open for business on Sundays.

Chairman Parrish asked for a motion to reconsider this case at the next BZA Public Hearing. Mr. Fralix moved; seconded by Mr. Gregorie.

During discussion, Mr. Fralix commented that he felt enough information was presented to reconsider the case.

Mrs. Lyon said we need to be very careful not to set a precedent of re-reviewing conditions that people may not like. She addressed the applicant and said that when he appeared before the Board, he was given exactly what he asked for. She said in order for the Board to reconsider a condition, information must be provided that someone did not have at the time of the original application. In her opinion, the applicant has done that, and she will vote with the others when the matter comes to a vote. Mrs. Lyon said she wanted this information entered into the record for the future; that if the Board has to make an exception or a decision, that this will be the only reason for reconsideration.

Mr. Gregorie added that he thought the information the applicant provided about the other restaurants was reasonably attainable previously, but the applicant did present new data about his sales. He considers this new information that was not obtainable previously.

Chairman Parrish called for the vote on whether there will be a public hearing to reconsider Case BZAS-2-14-002, at the next scheduled BZA meeting. The roll was called and votes were recorded as follows:

Mr. Fralix	aye
Mr. Gregorie	aye
Mrs. Lyon	aye
Mr. Smith	aye
Chairman Parrish	aye

Motion approved unanimously. This request will be scheduled for the August 19, 2014 BZA meeting.

New Business

BZAV-6-14-003

TMS-425-14-00-083

1197 Oakcrest Drive

Variance Request for the removal of one (1) grand tree

Chairman Parrish stated that he will recuse himself from voting on this case because the applicant is his next door neighbor.

Town Planner, Kristen Crane, presented the staff review. The applicant and property owner, Mr. Larry Brown, is requesting a variance for the removal of one (1) grand tree at 1197 Oakcrest Drive (TMS# 425-14-00-083). There is currently one single family residence and a detached garage on the property. The subject property and surrounding properties to the north, south and west are located in the Low-Density Suburban Residential (RSL) Zoning District and are in the jurisdiction of the Town of James Island. To the west, properties are mainly residential with one institutional parcel and are under the jurisdiction of the City of Charleston.

The Town of James Island Zoning and Land Development Regulations Ordinance, Article 9.4.5 Tree Removal, §9.4.5B Variances states, "Grand Trees and protected trees that do not meet the above criteria may be removed only where approved by the Board of Zoning Appeals, and shall be replaced according to a schedule determined by the Board. The Planning Director will make recommendations to the Board concerning the number, species, DBH or caliper, and placement of such trees". Grand Tree is defined in Chapter 12 Definitions, Article 12.1 Terms and Uses Defined, as, "... all species of tree measuring 18" or greater diameter breast height (DBH) except Pine, Sweet Gum and Chinese Tallow."

Staff received a complaint call regarding the subject property for a suspected unpermitted tree cutting on May 14, 2014. Upon the arrival of the Town of James Island's Code Enforcement Officer, he noted that the applicant was in the process of cutting two of the four trunks of an American Holly tree in order to complete a driveway to a detached garage that was completed in 2012. One of the two cut trunks was 9.4" and the other was less than 8". The two remaining trunks are 11.5" and 8.5", making the DBH that remains 20". The applicant's letter of intent states, "We learned a few weeks ago that the Town of James Island has a tree removal Ordinance in place that requires us to request a permit to remove this tree. Based on the time when we started this building and completed it, this ordinance was not in place." Mrs. Crane referenced that one letter was received from a

neighbor regarding this case and was included in the BZA packets. The staff conducted a site visit of the subject property on June 20, 2014.

Mrs. Crane reviewed the Findings of Facts. Afterward she stated that the Board of Zoning Appeals may approve, approve with conditions or deny Case BZAV-6-14-003 (variance request for the removal of one (1) grand tree at 1197 Oakcrest Drive) based upon the Findings of Facts unless additional information is deemed necessary to make an informed decision. In the event the Board approves the application, they should consider the following condition:

1. (a) The applicant/owner shall mitigate the removal of the grand tree by installing canopy trees on site no smaller than two (2) inches in caliper equaling inch per inch replacement, (b) by depositing funds equaling inch per inch replacement value into the Tree Fund as described in §9.4.6 of the Ordinance, or (c) a combination of both (a) and (b).

Mr. Gregorie asked and Mrs. Crane responded to his question that the current DBH of the holly tree is 20"; prior to the cutting it was 29.4".

Vice Chairman, Mr. Fralix, presided over this portion of the meeting.

Applicant and Property Owner, Larry Brown
1197 Oakcrest Drive
James Island, SC 29412

The applicant and property owner, Mr. Larry Brown, stated that eleven years ago he started building a garage. Prior to building the garage, he asked his neighbor if there would be any conflicts in taking down two trees that were on the property. One was a Pine tree and the other a Holly tree. Mr. Brown said the neighbor said there would be no conflicts. Mr. Brown said the Pine tree was taken down by a contractor and he and his brother-in-law built the garage a little at a time because of lack of funds. After eleven years, the garage was completed. Mr. Brown said he now has funds to install a driveway; however the Holly tree is in the middle of where the driveway would be. Mr. Brown said he began to cut the tree a little at a time, having cut two trunks. He further stated as he was cutting the tree one day, the Town's Code Enforcement Officer, Jim Palmer, saw it and asked if he had permission to take down the tree. Mr. Brown's response was 'no'; that he was unaware that the Town had an ordinance. Mr. Brown said he knew that Oak trees could not be taken down without a permit; but he was unaware that a Holly tree could not be taken. Mr. Brown said that Mr. Palmer told him to contact the Town. This is why he is before the BZA.

Questions from the Board

Mr. Fralix asked if the garage was permitted; to which Mr. Brown answered yes.

Mr. Fralix asked how much of the tree remains; Mr. Brown said two trunks were cut and the two trunks that remain are 11.5" and 8.5", totaling a DBH 20".

Mr. Gregorie asked if there is a way to route the driveway around the tree. Mr. Brown said the roots of the tree will eventually kill it. Mr. Gregorie asked how close the proposed driveway is to the side property line. Mr. Brown said it is 2' off of the property line (there is a 10" gate there now). The driveway is approximately 10' wide. From the house it would be 4' and from the property line is 2' to give him 10' driveway.

Mr. Gregorie asked if the garage was permitted under Charleston County; Mr. Brown responded that the garage was permitted under the Town of James Island twelve (12) years ago.

In Support of the Application: The following persons spoke in favor:

Mrs. Donna Parrish, 1203 Oakcrest Drive, next door neighbor; has no objection to the request.

Lynwood Taylor, 1198 Oakcrest Drive, after being sworn in, Mr. Taylor supports the removal of the tree to allow the Browns' access to their garage.

Kristen Crane, Senior Planner made reference to a letter of support from Mr. Thomas Skrupskelis, 1204 Oakcrest Drive in the Board's packet

Susan Milliken, 762 Fort Sumter Drive, said she drove by the Browns' home a couple of times and looked at the tree. She stated that when Mr. Brown spoke to the fact that he had talked to his neighbor about whether or not he could remove the tree, she took for granted that it might be Mr. Parrish; though she does not know whether or not it was him. She thinks the entire James Island community is well aware that Mr. Parrish has been a Commissioner at the Town of James Island for at least as long as she has been involved with the Town, which is 10 years. The tree ordinance has changed from 12" to 18" to, 24" and back to 18" within that 10 year period and with three to four Towns. Mrs. Milliken stated she would say that Mr. Brown probably relied on Mr. Parrish's involvement with the Town, his knowledge of the BZA, and his knowledge of being a sworn Commissioner of the Town when he started to trim the tree. She said if Mr. Brown was unaware that the tree ordinance had been changed, it is the Town's fault in not getting the word out. Mrs. Milliken asked that the Board not only grant the variance, but also to waive any mitigation. She recently saw a statement by Councilwoman Berry that the Town has trees available to plant and it may be that the Town has a tree to offer the Browns' should they want one after their driveway is done.

Councilman Leonard Blank, 1500 Relyea, said it looks to him that when all of this took place that the Town's Ordinance only covered Oak trees. This is probably what Mr. Brown meant, that if the tree was not an Oak tree, he could probably cut it down. Councilman Blank said our Ordinance has recently changed to protect all trees with the exception of Pine, Sweet Gum, and Chinese Tallow. Prior to that, only Oak trees were protected.

Sim Parrish, 1203 Oakcrest Drive, said he has been a resident of James Island for more than 30 years. He said at the time of discussion with Mr. Brown about the tree; that was at least 3-5 years ago. As Councilman Blank indicated, the Ordinance did not include trees of this type and caliper. He stated that his knowledge of the Ordinance, caliper and the types of trees, were not in existence at the time he and Mr. Brown discussed this matter.

In Opposition to the Application: No one spoke in opposition.

Chairman Parrish assumed the role as Chair and asked for a motion to approve, deny, or approve with conditions Case BZAV-6-14-003, a variance request for the removal of one (1) grand tree at 1197 Oakcrest Drive.

Mr. Gregorie moved to approve the variance without conditions; seconded by Mr. Smith.

Mr. Gregorie said he believes the request meets the requirements as set forth in the Ordinance. There was no further discussion. The roll was called and votes were recorded as follows:

Mr. Gregorie	aye
Mrs. Lyon	aye
Mr. Smith	aye
Vice Chairman Fralix	aye

The motion was approved with 4 ayes. Chairman Parrish was recused from vote.

Chairman Parrish announced that the final decision of the Board will be mailed to the applicant within ten (10) days and the applicant should contact the Zoning staff if they have questions.

Additional Business

Next Meeting: August 19, 2014

Adjourn: There being no further business to come before the body, the meeting adjourned upon a motion by Mr. Fralix, seconded by Mr. Smith and carried. The meeting adjourned at 7:41 p.m.

Respectfully submitted:



Frances Simmons
Secretary to the BZA