

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF APRIL 21, 2015

Members Present: Vice Chairman, Mr. Jim Fralix, Mr. Jason Gregorie, Mrs. Brook Lyon, and Mr. Roy Smith. Absent: Chairman, Sim Parrish, who gave notice of his absence.

Also Present: Kristen Crane, Senior Planner, Bonum Wilson, BZA Attorney, Sally Brooks, Planner I, Charleston County Planning and Zoning, Councilmembers: Leonard Blank and Garrett Milliken, and Frances Simmons, Town Clerk and Secretary to the BZA.

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

Prayer and Pledge: Vice Chairman Fralix led the prayer, which was followed by the Pledge of Allegiance.

Compliance with the Freedom of Information Act: Vice Chairman Fralix announced that this meeting has been noticed in compliance with the South Carolina Freedom of Information Act. Fifteen (15) days prior to this hearing, a public hearing notice was printed in the Post and Courier, a sign was posted on the designated property, and a notice was mailed to the applicant or representative, property owner and 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: Vice Chairman Fralix introduced the members of the Board of Zoning Appeals, the BZA Attorney, Town Council members, and staff.

Review Summary and Rulings from the December 16, 2014 BZA Meeting: Mr. Gregorie moved to approve the minutes of the December 16, 2014 meeting, seconded by Mr. Smith and carried.

BZAV-11-14-004

425-04-00-079

778 Folly Road

Special Exception request for the sale of alcoholic beverage in a bar/lounge in the Community Commercial (CC) District.

Approved with Conditions

Brief the Public on the Procedures of the BZA: Vice Chairman Fralix 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 the persons who wished to provide testimony in tonight's case.

Review of the Following Application:

New Business:

BZAV-3-15-006

425-08-00-035

Highland Avenue, Lot M

Variance request for the removal of two (2) grand trees at Lot M, Highland Avenue for possible subdivision and single family home

Town Planner, Kristen Crane presented the staff's review. The applicant and owner, Danny O'Quinn of Eagle Real Estate, Inc. is requesting a variance for the removal of two (2) Grand Water Oak trees at 1546 Highland Avenue (TMS 425-08-00-035). The subject property and adjacent properties to the north are located in the Low-Density Suburban Residential (RSL) Zoning District. Properties to the south, east, and west are residential use properties under the jurisdiction of the City of Charleston.

The Town of James Island Zoning and Land Development Regulations Ordinance, Chapter 9 Development Standards, Article 9.4 Tree Protection and Preservation, §9.4.5 Tree Removal, B. Variances states, "Grand Trees and protected trees that do not meet the above criteria (9.4.5.A) 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 §9.4.1 General, D. Measurements and Definitions, 3. Grand Trees as, "All species of tree measuring 18" or greater diameter breast height (DBH) except Pine and Sweet Gum."

The subject property is 1.54 acres in size and is currently vacant and wooded. A preliminary subdivision plat (SBMi-1-15-20083-P) has been submitted to the Charleston County Zoning and Planning Department to subdivide the subject parcel into four (4) lots. The requested trees, 24" diameter breast height (DBH) Water Oak and 18"/19" DBH Water Oak, are located on Lot M-1, as shown on the submitted plat. Lot M-1 is proposed to be 16,275.7 square feet (0.37 acres) in size.

Staff conducted a site visit of the subject property on March 20, 2015. Mrs. Crane reviewed the Findings of Facts and the seven approval criteria as outlined in Article 3.10, Zoning Variances, Section §3.10.6 of the Town of James Island's Zoning and Land Development Regulations Ordinance (ZLDR). She stated that the Board of Zoning Appeals may approve, approve with conditions or deny Case # BZAV-3-15-006 based on the Findings of Facts, unless additional information is deemed necessary to make an informed decision. Should the Board decide to approve the application, they should consider the following conditions:

1. Prior to zoning permit approval, the applicant shall complete the subdivision process.
2. The applicant/owner shall mitigate the removal of the two (2) Grand Trees by (a) submitting a mitigation plan and installing canopy trees 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).
3. Prior to obtaining a Zoning Permit for the proposed site improvements, the applicant/owner shall provide documentation that the remaining Grand Trees on the

subject parcel have been pruned and fertilized as recommended by a Certified Arborist, in order to mitigate potential damage to the trees caused by the construction of the subdivision driveways, and homes.

4. Prior to obtaining a Zoning Permit for the proposed site improvements, the applicant/owner shall install tree barricades around the remaining Grand Trees on the property, as described in §9.4.4 of the Ordinance.

Questions from the Board:

Vice Chairman Fralix asked if the development process had been completed. Mrs. Crane said no; the Town considers three (3) or more lots as a major subdivision and the development process will be heard before the Planning Commission.

Mr. Smith asked when the staff recommends that the trees on the subject parcel are protected and fertilized, if this was for the one (1) future lot or all four (4) future lots. Mrs. Crane said it would pertain to all four lots.

Mr. Gregorie commented on Condition #4: that the applicant/owner shall install tree barricades around the remaining Grand trees. He said because this is written in our Ordinance it has to be done; to which Mrs. Crane confirmed.

Mr. Smith asked Mrs. Crane if she has seen alternate site plans that show other driveway access solutions, and have they been presented. Mrs. Crane said she has not seen alternate site plans.

Applicant Presentation:

Danny O'Quinn
Eagle Real Estate, Inc.
12 Clam Shell Row
Charleston, SC 29412

Danny O'Quinn addressed the Board stating that everything will be done as the conditions state. His arborist, Don Skinner, is present tonight and he will make sure everything is done as it should be by fertilizing and caring for the trees. Mr. O'Quinn said they will not remove any trees that do not need to be removed; whether they are protected or not. He wants to beautify the property and is not going to "skin" the property leaving nothing on it; he wants it to remain as natural as possible.

Questions from the Board:

Vice Chairman Fralix asked about the statement made in the variance request that he had exhausted all possible remedies; and if he was talking about on the one lot. Mr. O'Quinn, said yes, to put a house on that one lot. Mr. Fralix commented about having flexibility around the entire property. Mr. O'Quinn said nothing will interfere with the other three lots; only the one with the trees on it.

Mrs. Lyon asked if there was a way to change the size of the other lots to where they are not in the square grid. She asked Mr. O'Quinn if he tried to figure a way to save all of the trees. Mr. O'Quinn said his surveyor tried to move around somewhat but after the ingress/egress being in

the position where it is, and the offsets and back sets, to place the house there would encompass the trees and there was no other way.

Mr. O'Quinn said he had an alternative for a driveway that could possibly keep them even further off of the trees, and, in reality, it may save the trees. He said this information was not submitted for this meeting and he did not have it with him. He talked of the possibility of having a gravel driveway, curving it away a little, and keeping the protection barricades to the right of the trees to protect them.

Donny Skinner, a Certified Arborist with Natural Directions, stated that he and Mike Russell were brought in a couple of weeks ago and these plans were submitted before they were brought in. He visited the site last week and reviewed the submittal and determine that with the driveway shift and a smaller house footprint, that all of the trees on the lot can be saved, including the 24', the double stem, and the other nine (9) trees. He said shifting the driveway with a permeable surface, larger tree barricades (to protect the roots on the opposite side of the trees in question), they feel that all of the trees can be saved. Their reason for coming to the BZA is that the Town's Ordinance requires a 40x40 footprint approval for subdivisions. Mr. Skinner noted having an alternative plan to save all of the trees on the lot and the subdivision; hopefully taking no Grand Trees out at all.

Mrs. Lyon said it sounds that if the variance is denied, and possibly a different plan is allowed, that the trees could be saved with some tweaking of the setbacks. She asked if this is what Mr. Skinner was saying. Mr. Skinner said this is what they hope to. He said they are trying to follow through with the tree removal approval for the subdivision to be approved. Mrs. Lyon asked if the variance should be for the size of the lots. Mrs. Crane said if the lots are scaled down, the applicant would not meet the 40x40 footprint requirement and could not get the subdivision approved. She noted that the applicant needed a variance regardless. Ms. Sally Brooks, Charleston County Planning, who has worked on this request, said in order to create a lot in the Town of James Island, that it requires a 40x40 buildable area; and how the lot is configured, the applicant would not have a 40x40 buildable area to create this new lot. She said approval could be given to remove the trees and the applicant can decide to save them later. However, when a lot is created, it must meet the minimum building area requirement of 40x40.

Vice Chairman Fralix opened the floor for those who wished to speak in opposition. No one spoke in opposition. Comments and questions were asked about the request.

Garrett Milliken, James Island Town Council, commended the applicants for a great plan and clearcutting the lot and deciding what to do. He said this is revolutionary for James Island and he thanked them for saving many of the trees on the property. He hopes the variance could be approached in a slightly different manner and offered as consideration a variance for the size of the footprint of the home on the lot and preserve the trees rather than simply taking the trees out for subdivision purposes. Vice Chairman Fralix noted that the consideration would need to be brought before the Planning Commission.

Drucilla Berkhan, 1541 Kemper, Lot #43 is neither for nor against the request. She asked about the number of homes that could be built. Mrs. Crane answered four (4). She also asked what will happen to the Grand Trees on the other lots; to which Mrs. Crane said they will be preserved and

protected. Mrs. Berkhan expressed concern about her flood insurance rates and the fact that a tidal creek backs up to her property. She asked if the development of the lot will affect the water flow and affect her property. Mrs. Crane explained OCRM's critical line requirements and also vegetative buffers and setbacks. Mr. O'Quinn, the applicant, also explained that construction will have no effect on the tidal creek or Mrs. Berkhan's property; there is a 35' setbacks, the creek, and a ditch on Mrs. Berkhan's property.

Scott, Lot #34 who lives adjacent to the property asked the applicant questions regarding the minimum height of the house and the crawl space. He also asked about the pine trees with the white tape around them and if they will be taken down. The applicant responded to his questions they will be on a crawl space, not high up in the air.

Comments were closed to the public at 7:32 p.m. Vice Chairman Fralix asked the Board for a motion to approve, approve with conditions, or to deny BZAV-3-15-006.

Mr. Smith moved to defer the request to the next meeting. He believes the applicant is asking for the wrong variance and the issue with the 40x40 buildable area is hampering their ability to move forward in the best way. Mrs. Crane explained the requirements of Chapter 8 of the Subdivision Regulations and said the only variance the applicant can apply for is what is before the Board. After her explanation, Mr. Smith withdrew the motion.

Mrs. Lyon said she had a problem with that because if the applicant wants to save the trees why couldn't they get a variance for something else; or could the Board approve the variance with a condition not allowing the trees to be taken down. Mrs. Crane explained that the applicant still has to apply for a zoning permit to take the trees down; but they don't have to take them down. Mrs. Lyon asked why then is the request before the Board to approve. Mrs. Crane explained that proof must exist that there is a 40x40 buildable lot and where the lot is, it encroaches into the root zone. Mrs. Lyon said there is enough acreage for a "weird" shaped subdivision that could be tightened up later so that the trees could be saved.

Ryan Weekley, the homebuilder, said if the driveway could be moved and gravel put down, they could save the two trees. He also expressed their presence is for the approval for the 40x40 buildable lot. Mr. Weekley offered to show Board members the Site Plan that depicts where the houses will be built on the lots.

Mr. Gregorie commented that the two trees in question or requesting to be removed are not shown in the buildable area; nor in the setbacks. Mr. Gregorie asked if the canopy extended over the building pad; to which Mr. Weekly said yes, but they can be pruned. They need the variance to remove the two trees in order to have the subdivision approved. He said after that they can put a smaller house on the lot, change the driveway and save those trees, but the variance is needed for subdivision approval.

Mrs. Lyon asked Mrs. Crane if the applicant could go to the Planning Commission for approval. She does not understand why the applicant need a variance to get something removed that they will not remove. She recalled approval of the Shopping Center and the Ropes Course to approve something that doesn't happen as it's supposed to. Mrs. Lyon said she would rather approve

something to have them get what they need and asked how this could be done. Mrs. Crane stated this would be done under Condition #1.

Mr. Smith made comments (as did Mr. Gregorie) about the two trees. He said they are not located in the buildable area or the setback. He commented about having a hard time connecting why the applicant needs to remove the trees and keep a 40x40 building area; which shows they are keeping the trees. Mrs. Crane explained it would damage the roots, and build into 25% of the canopy. Mr. Smith asked what the Ordinance says about a buildable footprint of 40x40, and does it mention trees, and how close they may be. Mrs. Crane said the Ordinance states that it cannot encroach more than 25% into the canopy of the tree or cause damage to the roots by grading or of concrete.

Mrs. Lyon asked if the Board motions to deny the request based on certain conditions, can the applicant go to the Planning Commission for the approval. Sally Brooks stated that the subdivision cannot be approved if the variance is denied. She explained the minimum subdivision standards that by law cannot be varied from except by Court Order from a Judge. Ms. Brooks said the Board could review the applicant's Site Plan and if they like it, they can approve the trees with a condition that the applicant build as shown on their Site Plan. The Board reviewed the Site Plan. After reviewing the Site Plan, Mr. Gregorie moved to approve Case BZAV-3-15-006 based on the staff's recommendations for conditions 1, 2, and 3. Mr. Smith seconded the motion.

1. Prior to zoning permit approval, the applicant shall complete the subdivision process.
2. The applicant/owner shall mitigate the removal of the two (2) Grand Trees by (a) submitting a mitigation plan and installing canopy trees 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).
3. Prior to obtaining a Zoning Permit for the proposed site improvements, the applicant/owner shall provide documentation that the remaining Grand Trees on the subject parcel have been pruned and fertilized as recommended by a Certified Arborist, in order to mitigate potential damage to the trees caused by the construction of the subdivision driveways, and homes.

In the discussions, Mr. Gregorie said he think there is a difference in opinion in the staff arborist vs. the applicant's arborist. He said there is a disagreement as to whether the trees actually encroaches on the building footprint or whether the tree will be healthy or not. Vice Chairman Fralix added that it seems that everyone has a positive approach about what they want to have done.

Mrs. Lyon asked to amend the motion to add as a condition, the adoption of the Site Plan, as it was shown to the Board of a smaller footprint of the home to ensure that the two trees would not be taken down. Mr. Wilson said the site plan is not before the Board and we do not know if the applicant want to submit it. Mr. Wilson asked the applicant, for the record if he wanted to submit the Site Plan as a part of the approval request; to which Mr. O'Quinn answered yes. The Site Plan was accepted and entered as Exhibit.

Mr. Gregorie amended the motion to approve Case BZAV-3-15-006 based on the staff's recommendations for Conditions 1, 2, and 3, and added Condition #4, which states: **when the applicant goes through the subdivision process, the house on the buildable area on Lot M-1 be as indicated in the Exhibit as submitted to the Board of Zoning Appeals.** The amended motion was seconded by Mr. Smith. Mr. Wilson asked about the mitigation requirements in Condition #2, and asked, according to the motion, if the mitigation option will be left to the applicant. Mr. Gregorie answered yes. Vice Chairman Fralix called for the question. 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 passed unanimously.

Additional Business:

Next Meeting: The next meeting of the Board of Zoning Appeals will be held on Tuesday, May 19, 2015.

Adjourn: There being no further business to come before the body, the meeting adjourned at 7:50 p.m.

Respectfully submitted:
Frances Simmons
Town Clerk and Secretary to the BZA