

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF AUGUST 21, 2018

Members present: Mr. Jim Fralix, Mr. Jason Gregorie, Vice Chair, Mr. Roy Smith, Mr. Sim Parrish, and Mrs. Brook Lyon, Chair. Also, Kristen Crane, Planning Director, Ashley Kellahan, Town Administrator, Leonard Blank, Councilmember/Mayor Pro-tem, Flannery Wood, Planner I, and Frances Simmons, Secretary to the BZA and Town Clerk.

Call to Order: Chairwoman Lyon called the Board of Zoning Appeals meeting to order at 7:00 p.m. A quorum was present to conduct business.

Prayer and Pledge: Chairwoman Lyon asked members of the BZA and others who wished, to join the prayer and Pledge of Allegiance.

Compliance with FOIA: Chairwoman Lyon announced that this meeting has been noticed in compliance with the South Carolina Freedom of Information Act.

Introductions: Chairwoman Lyon introduced the members of the BZA, staff, Councilmember Blank and Planning Commissioner Palmer.

Chairwoman Lyon stated that the election of officers was inadvertently left off the agenda. The Board of Zoning Appeals Rules of Procedures states that elections are to be held in August for a one-year term effective September. Mrs. Lyon asked for a motion to amend the agenda to add election of officers. Mr. Parrish moved, Mr. Gregorie seconded, and the motion passed unanimously.

Review Summary and Rulings from the July 17, 2018 BZA Meeting: Chairwoman Lyon asked if there were changes, if not, a motion and a second is required to approve. Motion to approve was made by Mr. Fralix, seconded by Mr. Gregorie and passed unanimously.

BZAV-4-18-015

TMS#425-02-00-046

Variance request for the reduction of the 5' required accessory structure setback by 1.6' to 3.4' for the placement of a pavilion accessory structure on existing slab in the Low-Density Suburban Residential District (RSL) at 1792 Enoree Lane. DENIED.

Brief the Public on the Procedures of the BZA: Chairwoman Lyon explained how the Board of Zoning Appeals Hearing would be conducted.

Administer the Oath to persons presenting testimony: Mayor Pro-Tem Blank swore in the persons who wished to provide testimony in tonight's cases.

Review of the following Applications:

New Business:

BZAV-7-18-017

TMS# 426-08-00-079

Variance request for the reduction of the 10' required side setback by 4.1' to 5.9' for a single-family home in the Low-Density Suburban Residential District (RSL) at 911 White Point Boulevard:

Planning Director, Kristen Crane, presented the staff review. The applicants, Thomas and Kim Wills are requesting a variance for the reduction of the 10' required side setback by 4.1' to 5.9' for the construction of a new single-family home in the Low-Density Suburban Residential (RSL) Zoning District at 911 White Point Blvd. Adjacent properties to the south and west are also in the RSL Zoning District and are in the Town of James Island. Property to the east is single-family, and is in the City of Charleston. Property to the north is marsh.

The Town of James Island Zoning and Land Development Regulations, §153.070 states that all development in the RSL district shall be subject to the following density, intensity and dimensional standards: Minimum Setbacks, Interior Side: 10 feet.

The subject property contained one single-family home that was constructed in 1972 per Charleston County records. The current property owners purchased the property in January 2017 and demolished the existing dwelling in January 2018. A zoning permit was issued in January 22, 2018 for the construction of a new single-family home within the required setbacks. During construction of the foundation, it was discovered that the garage extended 4.1' into the side setback. According to the applicant's letter of intent, the contractor feels that "heavy rains during foundation preparation, as well as a property line obscured by plantings contributed to this mistake."

Mrs. Crane stated that according to §153.049 F, Zoning Variance Approval Criteria of the Town of James Island's Zoning and Land Development Regulations Ordinance (ZLDR), the Board of Zoning Appeals has the authority to hear and decide appeals for a Zoning Variance when strict application of the provisions of this Ordinance would result in unnecessary hardship. Mrs. Crane reviewed seven (7) criteria in the Findings of Facts. The Board of Zoning Appeals may approve, approve with conditions or deny Case #BZAV-7-18-017, based on the Findings of Facts unless additional information is necessary for the Board to make an informed decision.

Questions from the Board:

Mr. Gregorie asked Mrs. Crane if she had a photo that showed the rear. She answered no; she has a photo that shows the front that is closest to the house. Mr. Gregorie asked Mrs. Crane to show the Foundation Survey that was prepared by RLA Associates. Mr. Gregorie asked if she knew why the side setback on the survey is 9' as opposed to 10'. Mrs. Crane said usually when surveys are done; the surveyor writes on it that the setbacks were checked by a zoning official. She said the City of Charleston is 9' for residential zoning districts; she guesses the surveyor did not check with the Town and used 9'. Mr. Gregorie asked if a 35' rear yard setback is correct for the Town. Mrs. Crane said yes, that staff could administratively reduce it if it is not a detriment to the OCRM critical line. Mr. Gregorie said his main question is about the northwest corner of the foundation survey; it appears some portion is beyond the 35' setback and is not hashed. Mrs. Crane said the applicant could encroach into the 35', because we have a 15' rear setback. If the applicant wanted a variance to be closer than 35', i.e., 15', he would need a variance, but the 35' line, if it were not

a detriment to the marsh, could be done administratively. Mr. Gregorie asked if that is administratively negotiable with the Town or OCRM and Mrs. Crane explained that anything on the Town's side of the OCRM line is the Town's judgment.

Mr. Smith asked if the 25' setback is the correct setback and Mrs. Crane answered yes. Mr. Gregorie asked Mrs. Crane if she had ever granted an administrative setback reduction for a rear yard to which she replied yes.

Applicant Presentation:

Thomas Wills (also known as Cam)
P.O. Box 80201, Charleston, SC 29416

Mr. Wills addressed the Board informing them that on the rear setback is a planter bed; an ancillary structure used for planting grass and bushes, similar to what the Town has when stepping off the porch. He said the planter bed runs on the rear of the house and is not a part of the foundation and he wanted to clarify that. He said on the right side of the garage is a 23' section. Mr. Wills apologized for this happening and said that it was brought to his attention after the foundation was poured and the framing had started. He said the neighbor's house is 25' from the property line so he did not build close to the setback. The good news is he is 25'; not 10' so that area is not strangled. It is 4' inside where it should be but that is a 23' section then the house steps back and it is clearly off the setback, which he is very glad that the full house was not in the setback. Mr. Wills said there were torrential rains when the contractor was laying out the foundation and they discussed what might have happened - - and that was it. He noted that the same foundation crew is doing the James Island Library and they are a good crew. This crew was involved in building schools for his General Contractor who is not a Residential Builder but a contractor. The contractor feels awful about what has happened. Mr. Wills said that right now he is very worried because if they have to rip up the foundation so much is going to be pulled into litigation and he cannot cover all this. There are children that play around the job site and he is hoping to move forward with a variance and get it done so it is not an eyesore for three years. The first thing he did was to approach his neighbor on the property line. If the neighbor had said move it off, he would have done it. Meyer and Lynn Moore have no objections; they are not concerned with how this variance would affect their property. Mary Forbes is here who lives in between two of the houses that have written objection letters but she is in favor of the variance. Mr. Wills said he has tried to speak to as many neighbors as he could. He spoke to Myrtle Ann who owns the empty lot to the left and she does not object to the variance. Mr. Wills said there is a huge, massive oak tree close to the left property line and he think it is actually a good thing that the house picked up 4' on that side because he has two chimneys going up and this massive grand oak is sprawling out and inadvertently now he may have the arborist to trim it. He said Myrtle Ann to the left is not upset and the Meyers to the right are not upset, and Miss Mary behind him is not upset. Mr. Wills said he hates that this happened. The neighbor's house that pitches to the right (so the left front of his house is 25' to his property line), that neighbor's house pitches to the right pretty hard so as you go down to his back yard it opens up even more. He wishes he had a picture to show the Board from the backyard in, but it ties to the front of the garage, the narrowest point you see is on the picture from the road. It actually gets very far from the house. The architect turned it 30 degrees. The same architect drew his house and he wanted these houses to look like cousins so it did not stick out. He tried to turn the house similar to the neighbor, and in doing so, it got tight on the right property setback. In retrospect, he

wished they started on the right side and worked to the left but it was a freak accident and they apologized to me profusely. He thinks he has a good construction team and has used that contractor before on commercial jobs. He is a very honest person who wanted to be here tonight but could not because of family obligations. Mr. Wills said he does not want to cause waves and is apologetic to the Town and the neighbors.

Questions from the Board

Mr. Fralix asked Mr. Wills if he has spoken to Mr. Karnaky and he said no. Mr. Gregorie asked how this issue was discovered. Mr. Wills said the contractor brought it to his attention and then ordered a foundation survey and at that point, they were starting the framework to the house – he immediately came to the Town, met with Mrs. Crane and filed for a variance. Mr. Gregorie said looking at the Foundation Survey it does not show any easements or protected areas along the subject property line. He asked if that is accurate. Mr. Wills responded that there are no easements and nothing should be affected there.

Support

Mary Forbes, 916 White Point Blvd, James Island, worked 40 years for Carolina One, selling real estate and has lived in her house across the street (and one house down) for 32 years. Said the variance would not affect anything and the neighbors do not care.

Opposition

Cynthia Kridler, 912 White Point Blvd, James Island, said she watched this being laid out across the street and although she has never met the man, her problem is that it has always been laid out this way. It is almost like being a scam to see how much can be built, how fast, and then get a variance. Her personal opinion is that is the only way they could lay it out to get the trucks to put in a swimming pool in the back. Her complaint is how it is being handled than the actual house.

Edwin G. Kridler, 912 White Point Blvd, James Island, sent his concerns in a letter to the BZA and wished that his comments would be taken into consideration. In his mind, there is no excuse for a house to be laid out 4' in the rear. He has probably laid out over 200 houses in his career and probably worked on foundations for at least 100.

Applicant Rebuttal

Mr. Wills stated he has a great contractor; that the substantial rains they believe caused this problem. The house was laid out properly on the approved site plan and is a minute fraction over compared to the scope of the project. He said that happened but this house was approved; the site plan was properly laid out and nothing has been changed. He apologized to the neighbors that feel that way and think they are in the process of selling their home. The house that was there frankly was an eyesore, it was dilapidated and unkempt and he think this house is going to be an attractive house. He built the house for the right reasons; he will live in it. This is where he and his wife will reside. They are not flippers. He hired a competent contractor that has never had this happen. He concurred to the Board that surveyors makes mistakes; they are not perfect. He hopes that this is one that 4' will not spiral a horrible situation.

Chairwoman Lyon closed the hearing to the public and asked for a motion from the Board to approve, approve with conditions, or to deny Case BZAV-7-18-017, in order to have discussion.

Mr. Gregorie moved to approve the variance request for the reduction of the 10' required side setback by 4.1' to 5.9' for a single-family home in the Low-Density Suburban Residential District (RSL) at 911 White Point Boulevard, with the condition that the Town of James Island issues a letter of warning to the General Contractor that he be reminded and adhere to the Town of James Island's ordinances, including the required setbacks; Chairwoman Lyon seconded the motion.

Mr. Fralix stated by asking what good is a letter of reprimand. If we have rules and regulations, they should be followed. He said the letter submitted to the Board about the batters and construction had points that it should be given heavy consideration.

Mr. Parrish said he agreed with Mr. Fralix and according to information that he had seen, the contractor laid the foundation lines with chalk and that is not common construction practice. Normal construction is batter boards and the lines are set up in a manner where they do not move. This is his concern. The construction was flawed in the beginning and should have been done different.

Mr. Smith stated that in order to grant the variance the Board must find that all criteria of law are met and he does not see where the applicant has met them. Criteria F (a) Mr. Smith said he does not see any extraordinary or exceptional conditions that is particular to that property from the other properties in that neighborhood. Further, he does not see any link between the house and the rain and any special conditions. He does not see rain as a particular condition of that property as everyone got the same rain. Criteria F (b) Mr. Smith said the conditions do apply. The setbacks applies to everyone. He does not see that there is anything driving a variance except for a mistake that was made. He sees Mr. Gregorie's point that a letter of reprimand might be issued; however, if the point is to discourage this behavior in the future, he thinks it would be stronger to ask the contractor to put the house where it was properly permitted. He does not believe that the permit, although he heard the applicant say it was permitted, was issued for it to be over the setback or at least not over that setback. Criteria F (c) Mr. Smith said he does not see this because he thinks the house could be properly situated on the lot and not disturb the setbacks and utilize the property as it should be in the zoning district. Mr. Smith said he does not believe the applicant meets the first three criteria and he is not sure he meets the others.

Chairwoman Lyon said what bothered her is when she went by to do a site visit it looked like construction had continued. To her, if he (applicant) had a problem he would stop dead in his tracks and not incur further financial liability until it is addressed, however, that has nothing to do with the criteria. She understands he will have a financial hardship, or maybe his contractor will, but Mr. Smith makes a good point and as we all know, all criteria must be met as set forth for the case. Chairwoman Lyon said had everything come to a dead stop at that point, if the request was not approved tonight, that might not have been so awful.

Mr. Gregorie said he does not dispute the facts, statements, and opinions that the contractor made an error. He said that is established; but the contractor is not the applicant. The applicant is the homeowner who hopes to become a resident in the Town, and has been put in this unusual situation. He said the Board set forth very good positions and arguments. He also read the staff's responses to each portion of the ordinances (A-G) and he did not disagree with the staff's response

so he at least see an avenue which this could be approved, although if the facts discussed are correct, the positions made by everyone are good and sound. As he sits here, even though he made the motion to approve, he is on the fence right now and does not know how he will vote at this moment.

Mr. Parrish said he knows that the Board takes each case individually and agrees with Mr. Smith. He said there were no recommendations from the staff for what the Board could do to safely say this would not happen again. We should not approve the request because someone made a mistake and there should be repercussions for that. He said the Board should not say, "Ok, we will approve this". He commented about writing a letter to the contractor; that perhaps he may not get another job on the island then another contractor may come along and do the same thing. He said the Board has had cases where structures in the setback line were not approved. His concern is if this is allowed and another contractor comes along, it rains, or that we have a hurricane that knocks things down, we are back in the same boat.

Mr. Gregorie said he shared Mr. Parrish's concern on setting a precedence in this particular case, sending a message that contractors can ask for forgiveness instead of permission in advance. He said it is important to establish these issues before construction as opposed to after. Mr. Fralix said he thinks that would be understood when the guidelines are put out. Mr. Smith said his heart goes out and he is sorry for what happened. He understands that it was a mistake; it may have been an honest mistake, and it was not the applicant's mistake, but the contractor's. However, he cannot see that the request fits the criteria the Board has to go by. After discussion, Chairwoman Lyon asked Mr. Gregorie to restate his motion for the record:

MOTION: to approve the variance request for the reduction of the 10' required side setback by 4.1' to 5.9' for a single-family home with the condition that the Town of James Island issue a letter of warning to the General Contractor that for future reference, all Town setback requirements and Town ordinance requirements must be adhered to.

VOTE:

Mr. Fralix	nay
Mr. Gregorie	aye
Mr. Parrish	nay
Mr. Smith	nay
Chairwoman Lyon	nay

Chairwoman Lyon announced that the motion did not carry. For the record the legal reasons for this decision is that the application did not meet Criteria: F: (a-c) as set forth in the Ordinance. The final decision of the Board would be mailed to the applicant regarding the denial in ten working days and they should contact the Planning Director if they have questions.

BZAV-7-18-018: Variance Request for reduction of the 10' required setback by 4.1' to 5.9' for a single family home in Low-Density Suburban Residential District (RSL) at 728 Canopy Cove, TMS#454-10-00-179:

Planning Director, Kristen Crane presented the staff's review. The applicants, Mr. James and Mrs. Shannon Oleksak are requesting a variance for the reduction of the 10' required setback by 4.1' to 5.9' for a single family home in Low-Density Suburban Residential District (RSL) at 728 Canopy Cove. Adjacent properties to the north, south, east, and west are also in the Low-Density Suburban Residential Zoning District and are in the Town of James Island.

The Town of James Island Zoning and Land Development Regulations §153.070 states that all development in the RSL district shall be subject to the following density, intensity and dimensional standards: Minimum Setbacks, Interior Side: 10 feet.

The subject property is 0.25 acres in size and is currently a vacant residential lot. The current property owners purchased the property in May 2018. There is a 24"+29" DHB double Live Oak on the right side of the parcel in which the applicants address in their letter of intent stating, "We are requesting this variance to work around the protected oak tree on the property and to adhere to HOA guidelines." After review of the staff's findings of facts, Mrs. Crane said the Board may approve, approve with conditions or deny Case #BZAV-7-18-018 based upon those findings of facts unless additional information is necessary to make an informed decision. Mrs. Crane added two conditions for the Board's consideration:

1. The applicant/owner shall install tree barricades around the grand trees on the property, as described in §153.334 of the Ordinance, throughout the duration of construction.
2. Prior to obtaining a Zoning Permit for the proposed site improvements, the applicant/owner shall provide documentation that the grand trees on the subject parcel has been pruned and fertilized as recommended by a Certified Arborist, in order to mitigate potential damage to the tree caused by construction.

Questions from the Board

Mr. Gregorie asked if the subdivision was platted when the Town of James Island did not exist. Mrs. Crane answered that the Town existed then under another planning administration, but it was not platted correctly.

Applicant

James Oleksak, 1061 Harbortown Rd., Charleston: stated that Mrs. Crane summed up his request. He described a tree on the property as having a big, nasty left hook that goes over and they have hired an architect to work around the tree for the construction of their home.

Questions from the Board

Mr. Smith questioned Mr. Oleksak by referring to a section of the house that will be one story. He asked if a limb survey had been done or how do they know that they would miss the tree. Mr. Oleksak answered by showing the area in question on the canopy survey. Mr. Smith said there is 10.2' from the property line to the edge of the porch and a lesser amount on the setback side. He asked if the house shifted over, (he is not recommending that), there would be no encroachment request for a setback on the variance. However, would there be a need for a variance for the porch. There was dialogue between members of the Board and the applicant about the roofline. Mrs. Crane said the roofline could encroach 2' into the setback and Mr. Oleksak answered Mr. Smith's questions. Mr. Smith asked if the house moved over 4' it would be too far into the setback and

Mr. Oleksak explained. Mr. Smith said if there were no tree and a portion of the porch going back was removed, the house could be pushed over and be in the setback, however, he is not recommending that but trying to understand. Mr. Oleksak said if the tree were not there, in order to push the house over they would have to trim the porch. Mr. Fralix asked Mr. Oleksak if he had spoken with Mr. Joe Thomas, and he said yes.

Support: No one spoke

Opposition: No one spoke

Councilman Blank spoke up that Canopy Cove subdivision is a renegade subdivision according to our RSL requirements. The Town does not allow quarter-acre lots. This was done at the end of the third incorporation and never taken to the Planning Commission for approval; but recorded. This was not recognized until the incorporators were preparing the borders of this fourth Town and saw that Canopy Cove subdivision had been recorded. He commented it is very difficult for anyone to build on a quarter-acre lot using setbacks established for one-third acre lots. When the subdivision was laid out, trees were never taken into consideration. He said someone drew the lots and had them recorded. Councilman Blank said he does not know what the answer is. Certainly, Canopy Cove is a nice and attractive subdivision and laid out nicely, but there are problems with it. He does not know whether the Board would consider those but he wanted to let them know. This was never an approved subdivision by the Planning Commission in any Town.

Chairwoman Lyon closed the public hearing to the public and asked for a motion from the Board to approve, approve with conditions or deny Case BZAV-7-18-018: Variance Request for reduction of the 10' required setback by 4.1' to 5.9' for a single family home in Low-Density Suburban Residential District (RSL) at 728 Canopy Cove, TMS#454-10-00-179: Mr. Parrish made a motion to approve the variance request with the conditions as outlined by staff, seconded by Mr. Fralix.

Mr. Smith said he finds there are exceptional and extraordinary conditions because of the way the tree is situated and it seems there has been a great deal of attention in trying to fit a house on a difficult property and the unique condition with the tree. He said these conditions do not apply to properties in the vicinity. Because of these conditions, the application of the ordinance to this particular piece of property would prohibit or unreasonably restrict the reasonable utilization of the property.

MOTION:

Mr. Fralix	aye
Mr. Gregorie	aye
Mr. Parrish	aye
Mr. Smith	aye
Chairwoman Lyon	aye

Chairwoman Lyon announced that the motion carried as it met all criteria in the ordinance. The final decision of the Board would be mailed to the applicant in ten working days and they should contact the Planning Director if they have questions.

Election of Officers:

Chair: Mr. Smith moved for the nomination of Brook Lyon as Chair; Mr. Gregorie seconded. There were no other nominations. Motion carried for Mrs. Lyon to serve for a one-year term effective September 2018.

Vice Chair: Mr. Smith moved for the nomination of Jason Gregorie as Vice Chair; Mrs. Lyon seconded. Mr. Parrish moved to nominate himself as Vice Chair and Mr. Fralix seconded.

VOTE FOR GREGORIE

Mr. Gregorie
Mr. Smith
Chairwoman Lyon

VOTE FOR PARRISH

Mr. Parrish
Mr. Fralix

Upon a vote of 3-2, Jason Gregorie was nominated to serve as Vice Chair for a one-year term effective September 2018.

Next Meeting: The next meeting of the Board of Zoning Appeals will be held on September 18, 2018.

Adjourn: There being no further business to come before the body, the meeting adjourned at 8:09 p.m.

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