

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF DECEMBER 18, 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, Flannery Wood, Planner I, Leonard Blank, Councilmember and Mayor Pro-tem, Bonum Wilson, BZA Attorney, 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: Chairman 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/Mayor Pro-tem Blank, and Attorney Wilson.

Review Summaries and Rulings from the November 20, 2018 BZA Meeting: Chairwoman Lyon asked if there were changes to the November 20, 2018 meeting minutes. If not, a motion and a second is required to approve. Motion to approve was made by Mr. Gregorie, seconded by Mr. Smith and passed unanimously.

BZAV-11-18-021

TMS #452-01-00-184

Variance request for the removal of two grand trees (26"+28" DBH Live Oak and 25" DBH Live Oak) for drainage and sidewalk improvements on Lighthouse Boulevard in the Low-Density Suburban Residential District (RSL) at 849 Fort Johnson Road. APPROVED WITH CONDITIONS

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

Administer the oath to those persons presenting testimony: Attorney Wilson swore in the persons who wished to provide testimony in tonight's cases.

Review of the Following Applications:

New Business:

1. BZAV-11-18-022

TMS# 428-08-00-059

Variance request for the construction of an 8' privacy fence in the front setback of a corner lot in the Low-Density Suburban Residential (RSL) District at 1164 Seaside Lane.

Planning Director, Kristen Crane, presented the staff review. The applicant, Mr. Matthew Trainum is requesting a variance for the construction of a 8' privacy fence in the front setback of a corner lot in the Low-Density Suburban Residential (RSL) District at 1164 Seaside Lane (TMS# 428-08-00-059). Adjacent property to the north, east, and south is zoned RSL in the Town of James Island. Adjacent property to the west is zoned Moderate-Density Suburban Residential (RSM) also in the Town of James Island.

The Town of James Island's Zoning and Land Development Regulations Ordinance §153.066 C (1)(b)(1)(a) states that "fences and walls may be located within any required setback, provided that in residential, office, and commercial districts no fence, wall, or hedge shall exceed four (4) feet in height when located within any front or street side setback with the exception of chain link fences, which can be six (6) feet in height."

The subject property is 0.76-acre corner lot and currently has one concrete building built in 1950 per Charleston County records, formerly owned by the Seaside Farmers Lodge Union #5. The current property owner purchased the property in October 2018 and is converting the existing structure into a single-family residence, and currently has approved permits to add a 30'x30' metal accessory structure to the rear of the property. The applicant requests the 8' fence on the southwestern portion of the lot along Seaside Lane "to prevent robbery and theft to and protect our privacy and children."

Mrs. Crane reviewed the Findings of Facts according to §153.049 F, Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance. She stated that the Board of Zoning Appeals has the authority to approve, approve with conditions or deny this case based upon the findings of facts unless additional information is necessary to make an informed decision. She then read the seven approval criteria with the staff's conditions:

1. The privacy fence shall be constructed as depicted on the submitted site plan, with the fence ending at the back southern corner of the house.
2. The applicant shall obtain the required zoning and building permits before fence construction.

Questions from the Board:

Mr. Gregorie asked what the Town Ordinance requires as a height limitation for a side setback or a side fence or a rear yard fence. Mrs. Crane replied that a 6' fence is allowed without a permit and a zoning and a building permit is required for an 8' fence. Mr. Gregorie asked and Mrs. Crane confirmed that zoning and building permits could be issued administratively through staff. Mr. Parrish received confirmation that the zoning is RSL.

Applicant Presentation:

Matthew Trainum, 1164 Seaside Lane: Mr. Trainum said he purchased the property two months ago but he is unsure of the length of time the property had been vacant. When he and his brother took possession of the property there were vagrants living in it, there was no running water or electricity, and an unbelievable amount of debris was strewn through the back where they are requesting to put up a fence. There were broken glass, beer and liquor bottles, and the property served as a cut-through for the Seaside Lane community because it was a vacant parcel and no one attended it. Mr. Trainum said drug paraphernalia was found on the site. He expressed his concern because he has children. He noted going through the proper steps to obtain permits to put up a building and a fence. He said his property is actually lower than the road. On Seaside, he said, it sits below, and a 4' fence would actually be a 3' fence on the property. He noted that the new sidewalk was installed on Seaside Lane and there is a lot of foot traffic in the late evening hours. Mr. Trainum said he requested and received a crime report from Charleston County that showed over 100 incidences within the last year and a half. The issue, he said, is not to place a fence around the property, (similar to last month); they do not want to quarantine themselves off in any way. He said there is already a 6' fence on the northern side of the property and on the eastern side there is nothing except five empty lots that are overgrown. No homes are there. Directly across the street on Seaside is an abandoned, dilapidated house that is uninhabitable and a lot of foot traffic goes in and out of that structure at different times of the evening. He notices it from working on his property and seeing the increase of patrol on Seaside. Mr. Trainum said he and his brother talked with officers and they were told to be aware and that it is a concern. He has a written affidavit from the neighbor that he does not have a problem with it – it would just be closer to the sidewalk. The variance would be given a setback only on the Seaside Lane southwestern exposure of the property. That is the only place they are asking a variance. Since his property is on a corner

lot, the way he see his home is Dills Bluff is his front yard; this is where the house faces. If the property were not on a corner lot it would not be an issue to put the fence up, it would already be approved through zoning. He said being that he has two road frontages that is creating an issue with the setback. If it was just in his back yard with no secondary road frontage, there would be no issue and he would not be here tonight for a variance to put a fence in his back yard.

Questions from the Board

Mr. Gregorie referred to letters in the packet from Mr. Lawton and Ms. Deas who are not in opposition to the variance requested. Mr. Gregorie asked Mr. Trainum to point to where those properties are in location to his. Mr. Trainum showed the locations on the site plan (#40 and #42, and #41 is the abandoned dilapidated structure where no one lives). He said #41 is across from where he is requesting the variance for the fence.

Chairwoman Lyon asked Mr. Trainum if he wants the fence all along the side and he replied no, the red dots on the site plan are the proposed fencing in his back yard. The proposed fence line along Seaside Lane is the only variance that he is requesting; there is no issue with the northwestern or the eastern exposure.

Mr. Fralix asked if other neighbors expressed any resistance to the variance. Mr. Trainum said no, the plat shown; with not all the plots depict the actual setting. He said there are only two homes that could see his residence and one of them is two lots past the end of his property line.

Mr. Parrish asked Mr. Trainum if the variance request on the red dotted lines is the entire fence he will be doing or is it on the entire lot. Mr. Trainum said no, it is just for the red dotted lines. The only variance that he is requesting is for Seaside Lane because he had been approved for zoning to put it on the east and northwest side connecting to the corner of his home. Mr. Parrish asked what would be done with the 30x30 metal building and Mr. Trainum said it would be a storage shed. He is an avid fisherman and the building would be used to store his boat.

Mr. Smith asked about the statement made about the over 100 incidences in one-and-a-half years; what were they and where? Mr. Trainum said there were over 100 crime incidences within one-mile of the surrounding area. There was a shooting today that caused the school to be locked down. He said Seaside Lane connects to the school and this is a concern for his children.

Support: No one spoke

Opposition:

Edward Greene, 1115 Seaside Lane, stated that Mr. Trainum should have checked the area before he purchased his property. Of the 100 crime incidences, Mr. Greene said he has lived on Seaside Lane since 1969 and has never had a break-in or anything stolen. Mr. Greene said he has cameras on his house and Mr. Trainum could do the same but not come into the neighborhood to put up an 8' fence. There are other fences in the area, but they are not 8'. He said there are crimes in other areas, on Dills Bluff, and some on Seaside Lane, but to say there were 100 crimes on Seaside, that is a no! Mr. Greene asked that an 8' fence not be put up. He spoke on behalf of his sister, Carrie Middleton, and Keith Bright who could not attend tonight and oppose. Mr. Greene asked the BZA to deny the request.

Rebuttal

Mr. Trainum said he did not say that he had anything happen to him or his property. He was just getting the facts from the crime reports, which was not his only issue. He spoke to all of the neighbors and probably seven or eight have been to the property and assisted him with putting roofing on and they were happy to see that the structure was being preserved that seems to be an important part of the community. Everyone

is in favor of what they are doing, to clean and preserve the property and its history and he is very proud to have that history.

Chairwoman Lyon closed the hearing to the public at 7:31 p.m. and asked for a motion to approve, approve with conditions or deny the request in order to have discussion.

Mr. Gregorie moved to approve the variance request for the construction of an 8' privacy fence in the front setback of a corner lot in the Low-Density Suburban Residential (RSL) District at 1164 Seaside Lane with the following conditions:

3. The privacy fence shall be constructed as depicted on the submitted site plan, with the fence ending at the back southern corner of the house.
4. The applicant shall obtain the required zoning and building permits before fence construction.

Mr. Parrish seconded for discussion. Mr. Gregorie said his reasons for offering the motion is that it is a unique property because it is a double frontage property for a corner lot and there are unique circumstances and additional restrictions for a corner lot. He said it is important to understand that an 8' privacy fence is permitted with staff approval for other portions of the lot and he see the true frontage of the lot is along Dills Bluff. He said there is only a section of fence line that requires the zoning approval. He understands the security concerns the applicant has, and believes he should have the right to have an appropriate fence to protect his property.

Mr. Fralix commented that he does not understand the rational of having an 8' fence vs. a 6' one. Mr. Gregorie said he was thinking in terms of this as well because in another application a few months ago, the Board approved a 6' fence and his thinking was an 8' fence is already allowed in other portions of the lot.

Mr. Smith asked Mrs. Crane if a 6' chain link fence would be acceptable in the same location with the Board's review and she answered yes. Mr. Smith asked if a 6' wood fence would be permitted and Mrs. Crane said no. After discussion, Chairwoman Lyon called for the vote.

MOTION:

Mr. Gregorie restated the motion to approve the variance request for the construction of an 8' privacy fence in the front setback of a corner lot in the Low-Density Suburban Residential (RSL) District at 1164 Seaside Lane with the following conditions:

1. The privacy fence shall be constructed as depicted on the submitted site plan, with the fence ending at the back southern corner of the house.
2. The applicant shall obtain the required zoning and building permits before fence construction.

VOTE

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

Motion carried unanimously. Chairwoman Lyon announced the legal reasons for the approval of the request and that the final decision of the Board would be mailed to the applicant within ten working days and the applicant should contact the Planning and Zoning staff with questions.

BZAV-11-18-023

TMS# 425-16-00-126

Variance request for the reduction of the required 20' Right-of-Way Buffer to 5' for the placement of a leasable retail center in the Community Commercial District at 1233 Camp Road.

Planning Director, Kristen Crane, presented the staff review. The applicant, Mr. Frederick Whittle of Monterey, LLC is requesting a variance for the reduction of the required 20' Right-of-Way Buffer to 5' for the placement of a leasable retail center in the Community Commercial (CC) District at 1233 Camp Road (TMS #425-16-00-126). Adjacent property to the east is zoned Low Density Suburban Residential District (RSL) in the Town of James Island and is utilized by First Baptist Church. Adjacent property to the north and west are zoned Community Commercial (CC) and are in the Town of James Island. To the south are parcels zoned Low Density Suburban District (RSL) in the Town of James Island as well as other residential zoned parcels that are in the City of Charleston's jurisdiction. Currently, the property is being leased to All Green Landscape, Head to Tail Day Spa and Inn, and Twice the Ice.

The Town of James Island Zoning and Land Development Regulations Ordinance §153.335 (D) (1) (c) Right-of-Way Buffers states that "Streets and roads not indicated in the table shall comply with S2 buffer requirements (S2 buffer requirements: 20' minimum buffer depth from right-of-way)."

The subject property is 0.65 acres in size and currently has one concrete building, an ice machine and shed. In the letter of intent the applicant explains, "We desire a variance from the code which would preserve the grand live oak tree, utilize the existing curb cuts to Camp and Dills Bluff Roads, and improve the aesthetic appeal of the site from an architectural, landscaping, and community-friendly standpoint. We will clean up the site considerably and improve the corner."

Mrs. Crane reviewed the Findings of Facts that according to §153.049 F, Zoning Variance Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR). She stated that the Board of Zoning Appeals has the authority to approve, approve with conditions or deny this case based upon the findings of facts unless additional information is necessary to make an informed decision then read the seven approval criteria with staff conditions:

1. Prior to obtaining a Zoning Permit for the proposed site improvements, the applicant/owner shall install tree barricades around the protected 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 protected 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 construction.
3. Any proposed encroachment into the canopy of the 80" DBH grand Live Oak on the property shall consist of permeable pavers or some other specific construction technique, approved by the Zoning Administrator and a Certified Arborist, to ensure the preservation of the health of the tree.
4. An 8-foot high, opaque, wooden privacy fence shall be installed along the southern perimeter adjacent to any residential use or property.
5. Buffer plantings adjacent to any residential use shall be of a taller nature to ensure maximum screening, subject to the discretion of the Zoning Administrator during Site Plan Review.
6. Lighting shall be directionally controlled away from residential uses, and shall conform to the requirements described in §153.336 of the Ordinance, as submitted on a lighting plan with photometrics.
7. Architectural plans shall be subject to the discretion of the Town as to whether architectural guidelines and development standards have been followed.

8. Rear land-use buffer adjacent to residential uses shall remain at a minimum of 12 ½ feet and shall contain emergency exits only, with no gathering space or employee break areas.

Questions from the Board:

Mr. Parrish asked what is the minimum rear and right setback of the building. Mrs. Crane said the right setback is 10ft, and the rear is 10 ft. Mr. Parrish asked Mrs. Crane if she is recommending a 12 ft. buffer. Mrs. Crane explained that the landscape buffer needs to be planted and the building setback is how close the building could be to the property line.

Mr. Smith asked what the two setbacks are where the building seems to be closest to the property line. Mrs. Crane said the building setback is 10 ft. on both sides. Mr. Parrish said technically the building has to be 12.5 on the back; Mrs. Crane said yes, with a buffer. Chairwoman Lyon said that is one of the conditions for the Board to consider if it is approved. Mrs. Crane stated the buffer should not be less than 12.5 ft.; this is a requirement for the Folly Road Overlay Zoning District for commercial properties that backs up to residential properties. Chairwoman Lyon said that gives a little extra buffer and protection for the residential properties.

Mr. Gregorie said on the site plan it has parking spaces 12, 6, and 5. He asked if the Town's ordinance set the minimum requirement of parking spaces based on the building size or the parcel area. Mrs. Crane said it would depend on the use. Mr. Gregorie asked for this use and zoning, is it based on building size and Mrs. Crane answered the square footage of the building area. Mr. Gregorie asked if staff had done a review of the preliminary site plan that was submitted with the application to determine that what is depicted shows the appropriate number of parking spaces. Mrs. Crane said the request would not go through the site plan review unless there are enough parking spaces and the building size is subject to change.

Mr. Smith asked if there had been discussion of water retention in the preliminary site plan because there seems to be many impervious areas. Mrs. Crane said that would be a storm water issue when it goes through storm water permits and the site plan review. Mr. Parrish asked if the buffers would be affected if a retention pond were required. Mrs. Crane said it would be discussed during the storm water review. Mr. Parrish asked the types of businesses that are not allowed in a community commercial zoning and Mrs. Crane gave some of the uses, i.e., alcohol or tattoo parlor. Mr. Gregorie asked if a gas station could go there as a permitted use and Mrs. Crane said no; that would go through a special exception. Chairwoman Lyon asked if a convenience store without gas could go there and she said yes, without gas. Mr. Smith asked Mrs. Crane and Attorney Wilson a hypothetical question that if the variance is granted based on the drawing and the building size shrinks significantly and the need for parking and paving is much less, could the parking and paving still be in the area that we grant the variance for, and Mrs. Crane said yes.

Applicant Presentation:

Eddie Buck, 130 N. Gilbert, James Island: Mr. Buck introduced Giles Branch, Earth Source Engineering and Fred Whittle, Monterey, LLC. Mr. Buck stated that they appeared before the Board in September and heard loud, and clear from the community that they did not want a gas/convenience store on the site and that they wanted the grand tree preserved. Mr. Buck said they have returned to the Board with a conceptual plan predicated around saving the grand tree. Mr. Buck said they worked around the hardship that the DOT caused to the site when the road was widened. One or two curb cuts were put in place and they have to work around those and the one on Dills Bluff with a one-way access point. He said the main curb cut would be off Camp Road. Mr. Buck said from the site plan, the site triangle is much larger. They did not need it but that is what the DOT took at the time, it is much larger than what they took from the other corners and it caused a real hardship for the site. He said the plan is to expand the existing building to allow the uses based on current zoning that would then dictate parking, so the building can only be so big based upon the particular use to be able to park. He said the plan is to be able to show them a box to work within and then go out to market and see what retail services and the like that might be located there. He said the variance

they are requesting is consistent with what is up and down Camp Road and in some of these places it isn't even 5'. Based upon the current plan they are showing a buffer of 5' that would give 10'-12' off the property line. The actual planning of 5+ feet that is not on their property and 5' that would be on their property. He said this is consistent with what is up and down Camp Road and substantially more than what is there today. He said there is actually no buffer on their property and in some places no green space along Camp Road. He said there are no plans to put a convenience store on the property in any form or fashion.

Giles Branch, Earth Source Engineering, 886 Johnny Dodds Blvd., Mt. Pleasant: stated that Stormwater is something they are definitely planning for underground. The site is approximately 60% impervious and would more than meet Stormwater requirements. The building is 7,000 square feet but it cannot get bigger and it will not be smaller so the parking fits a building of that size. They are prepared to put 12.5 feet buffer with a screened fence and prepared to have a 10' setback. Once the tenants are there, it could be mixed retail or office. There will be 23 mixed spaces on a simple small site. Mr. Buck added that circulation is needed on the site and this is the main reason for the buffer reduction request to get cars on/off the site with utilizing the curb cuts that they have been given.

Questions from the Board

Mr. Gregorie said the staff has set forth eight conditions and asked Mr. Buck if he is aware of them and is ok with them. Mr. Buck said they are aware of the conditions and they are prepared to meet the stipulations that is set forth and to meet the criteria for the reduction and agrees to what is required by staff.

Mr. Smith had several questions for Mr. Buck. He said the last time Mr. Buck spoke and this time he spoke about the transfer of property from the private property owner to the DOT. He asked Mr. Buck if this happened before or after he purchased the property. Mr. Buck responded that it was before. Mr. Smith asked if the transfer was from Mr. Buck to the DOT and he said that was not correct. Mr. Smith asked if it was from the previous owner and Mr. Buck said that was correct. Mr. Smith said to Mr. Buck that he purchased the property as it was; and did the DOT take anything from him, and Mr. Buck said no sir. Mr. Buck said these are typical hardship the DOT puts on properties and it is very common what they are asking the staff and planning and zoning staff to develop when these hardships are there. Mr. Smith asked how far the northwest corner of the building is from the property line. Mr. Buck said it is less than 10 feet and Mr. Smith said that we have a 10ft. setback. Mr. Smith noted there are no setbacks on the drawing and that is a little confusing to him; and there are no dimensions, and he is very concerned about that. Mr. Buck said in regards to the left corner, they are trying to use the existing buildings there and expand it and the majority of the left line would be the existing buildings that are currently there. Mr. Smith asked how much a majority is. Mr. Buck said the building is under 3,000 square feet and the plan is to use what is there to expand and reutilize as much of the building as possible. Mr. Smith said when discussing the drawing he does not give the dimension, he gives a 20ft dimension from the property line to where the variance is required, but he doesn't see what the distance is from the variance. Mr. Buck said it is 15ft. on average; the smallest portion would be no less than 5'. He said this is a conceptual plan that was requested by the Town. Mr. Smith told Mr. Buck they have made a lot of progress but he still has questions and think they are closer than 5' in some areas. Mr. Smith said there are no dimensions on the conceptual plan and it makes it confusing for him to read. Mr. Smith asked how far it is from the back of the concrete wall to the property line and he was told they more than meets setback requirements.

Mr. Smith asked when they drew the tree, as he understand it is an 80" and 80" is sizeable. He does not know what the diameter of the tree is and when he looks at the canopy that was drawn, it actually goes halfway from the trunk of the tree to the sidewalk. He noted that the canopy actually extends over the sidewalk and almost back to the property line. The canopy is much larger than shown and that is misleading to him. Mr. Smith said one of the staff's suggestions for moving forward is to have everything under the canopy to be pervious pavers and that is a lot and the drawing does not clearly show what that is. Mr. Smith

said he wished they had a more definitive plan so we would know we are reacting to something conceptual because again, if a variance is granted and they decide to do something else, they still have the variance. Mr. Smith said they have made a lot of progress but he does not see it as concrete and as decided as he would feel comfortable.

Chairwoman Lyon asked if they are proposing a building that large for the site, is there a way to compromise with a smaller building and lengthen the setback requirements, instead of just the 5'. She asked if there was a way to work out a compromise. Mr. Buck said the reason is for circulation on site, predicated on saving the tree and they would have to get to the curb cut on the lower part of the site for circulation. He said what they are requesting is consistent with neighboring properties and what has been granted up and down Camp Road. Chairwoman Lyon said this is before the Town and now we have rules in place. Mr. Buck said there are a couple of properties in the city that have these setbacks. Chairwoman Lyon said this is the Town, not the City. She agreed with Mr. Smith that it is a great improvement and it is his property and he has the right to develop it but we also have rules in the Town so she was hoping there could be some compromise with his plan.

Mr. Fralix asked about circulation and it was clarified that it means access with cars going in and out and deliveries. Mr. Branch said they need the setbacks to allow room for delivery trucks to get in and out. They are at a minimum for it to work.

Mr. Gregorie asked if the reason for the concept plan, which is not a site plan, submitted for plan review or stormwater engineering. Is there an existing building on site that encroaches in the side setback. Mr. Giles said that is right, and they are not here to ask for the side setback variance. If that were something that needed to be required, they would have to pull it. It would not be grandfathered. The existing building is in place and grandfathered on the side setbacks.

In Support: No one spoke

In Opposition:

Andrew Borgman, 1206 Gun Powder Dr, lives behind where the building would be. This is a huge improvement and he is happy that the gas station was changed. As the owner of property next to it, he still has concerns. He would like to have considered the contingences in the staff review including additional fencing and buffering to be very thick and maintained if this is approved so that it does not affect his property value. He is concerned that the rear setback area is encroached in the future. Could there be a contingency that it is never encroached in the future. He does not know if that is possible. He would like permeable pavers to be under the entire canopy of the tree and has the same concerns with the stormwater. He and his neighbor have never had flooding, even in the 100-year flood. However, he thinks this plan is a big improvement.

William Holsberg, 1200 Gun Powder Dr, the squiggly line is his back yard and all of the traffic is going to come through his back yard and that is going to directly affect his property value; and he will not be able to sell it. He is concerned about the noise, trash, and all of the things you would not want. This is not quality enough and there should be more specifications of what will be there. He asked the Board to deny the variance.

Susan Milliken, 762 Ft. Sumter Drive, urged the Board strongly to disapprove the variance request with the reduced buffers to 5' just in terms of the criteria (C) where it talks about utilization of the property is not unreasonably restricted or prohibited. We have all seen where three businesses have operated here for some years now vibrantly and actually flourished. There have been talks from the owners that the property and site does not look good but she thinks the Christmas tree lot was extremely charming and she liked the

eclectic quality of it. The 20' setback has not restricted the use of the property unreasonably. Businesses have been able to operate there and three businesses are there that has been successful. She understands the tenants would like to stay. She said when you look at the rules in the Town's ordinances; they can build a building as large as 35% of the lot size. When you look at the County records, (she cannot remember) but maybe it was 45,000 square feet. So, obviously Mr. Buck wants to build a building that is the maximum that he can. In doing the math, it is 7,000 square feet and that is a huge building. They have indicated that it would be one-story and she thinks that height is extremely important and saw something that community commercial could be up to 50' tall. She does not know if there is an overlay here where the height restriction is, but height needs to be restricted to one-story. She asked the Board to deny the variance.

Rebuttal

Mr. Giles stated there were good comments on the rear buffer and it is their intent with the entire design to do the best they can for the residents. He said obviously they back up to residential property and will respect the residents in every way they can. It is their intention that the building be in this location near the residences rather than the parking lot. The landscape buffer will help protect from the noise. He said he wished he do something to change the driveway but it is there because of the curb cuts. For the flooding, they want to do ground retention.

Mr. Buck said one of the concerns is what they are proposing is the maximization and that is not the case based upon criteria B, close to 10,000 square feet; this is 30% less, a one-story building.

Chairwoman Lyon closed the hearing to the public at 8:18 p.m. and asked for a motion and a second from the Board in order to have discussion, and to approve, approve with conditions or deny the variance.

MOTION

Chairwoman Lyon for discussion moved to approve Case BZAV-11-18-023 with the eight (8) conditions recommended by staff, Mr. Smith seconded.

Mr. Gregorie said he would vote in favor of the motion. He said there were discussions of concessions made and he think the conception plan and the reason for the frontage variance request is due to concessions to protect the 80" DBH grand tree and they want to increase the rear buffer. He said the applicant has the right to demolish the building and put a new building closer to the residential area that exists now but they are proposing to increase that buffer in a distance away from the residential property lines. Mr. Gregorie said we have the opportunity with these conditions to improve the buffer and separation between this commercial property and the adjoining residential properties. He said this is an unusual property because of what the DOT has done. They have taken a portion of the property and he thinks there are some extraordinary conditions of what the DOT have taken and the presence of an 80" DBH oak tree because an 80" DBH oak tree is extraordinary. It is important, he said to recognize that we (BZA) are not Storm Water Reviewers, Site Plan Reviewers, or Transportation Reviewers. The development of the site will be heavily vetted and limited by parking spaces, Stormwater requirements and transportation requirements, so he totally believes the size of the building, as legally permitted by our current ordinances is going to be limited by the transportation and parking required in our ordinance. He does not think that the plan submitted would be a detriment to the community. This concept plan is for retail space, different in his opinion when it was to be a gas station. He also does not think that a 5' setback from the frontage in a commercial district is unusual. If you drive around Charleston /Greater Charleston area, it is not that unusual. He reiterated that he thinks it is a good concession that they are willing to increase the rear buffer and increase the distance of the buffer from the adjoining residential properties.

Mr. Fralix commented that the applicants have gone a long way to ameliorate with having a gas station and he will vote to approve the variance. He said the BZA is not supposed to shut everyone down but we must also protect the neighbors in accordance with the ordinances that exist. For these reasons, he will vote yes.

Mr. Smith commented that the size of the building is not only dictated by the property but also by the setbacks and the number of spaces so they go hand in glove back and forward. If the strict application of the setbacks were applied then there would be a smaller building and fewer spaces that would actually fit within the area. He understands that might not be financially as great a package, but we are not to consider those. He is pretty sure there is a caveat in the ordinance. As far as the buffer in the back, that can be a condition. Mr. Smith said he sees many good in the plan but is uncomfortable with it because it is not fully worked out. He said had he jumped in earlier he might have said he wanted to defer it until there is an actual plan in place for the site.

Mr. Parrish said he agreed with Mr. Gregorie and his comments and emphasized that the conditions be followed to the letter during construction and all.

Mr. Gregorie asked the chair that when the motion is called, that it is read in its entirety along with the eight conditions for the record to which she agreed.

Chairwoman Lyon said she echoed Mr. Smith's concerns as far as the site plan and drawings. She wished that we had more detail and she is very uncomfortable with that and she had concerns about Criteria C when she reviewed the information prior to the meeting. She said this particular plan is what is causing the variance. The applicant has come a long way as far as being community friendly in trying to work with the site. She has concerns and wishes that we could have a more accurate site plan to work with.

Mr. Gregorie said he agrees with Chairwoman Lyon and Mr. Smith and he has the same concerns but we are only in the first step in a long process of review and negotiation that the developer will have to have for the Town in order to build on this site. He stated again that we are not Stormwater or site plan reviewers so this concept is sufficient for him to make this decision today for the purpose of the BZA.

Mr. Parrish asked for the vote to be called. Chairwoman read the motion and the conditions. She said the motion is to approve Case BZAV-11-18-023, TMS# 425-16-00-126: Variance request for the reduction of the required 20' Right-of-Way Buffer to 5' for the placement of a leasable retail center in the Community Commercial District at 1233 Camp Road with the following conditions:

1. Prior to obtaining a Zoning Permit for the proposed site improvements, the applicant/owner shall install tree barricades around the protected 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 protected 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 construction.
3. Any proposed encroachment into the canopy of the 80" DBH grand Live Oak on the property shall consist of permeable pavers or some other specific construction technique, approved by the Zoning Administrator and a Certified Arborist, to ensure the preservation of the health of the tree.
4. An 8-foot high, opaque, wooden privacy fence shall be installed along the southern perimeter adjacent to any residential use or property.
5. Buffer plantings adjacent to any residential use shall be of a taller nature to ensure maximum screening, subject to the discretion of the Zoning Administrator during Site Plan Review.
6. Lighting shall be directionally controlled away from residential uses, and shall conform to the requirements described in §153.336 of the Ordinance, as submitted on a lighting plan with photometrics.

7. Architectural plans shall be subject to the discretion of the Town as to whether architectural guidelines and development standards have been followed.
8. Rear land-use buffer adjacent to residential uses shall remain at a minimum of 12 ½ feet and shall contain emergency exits only, with no gathering space or employee break areas.

VOTE:

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

The motion passed upon a vote of 3-2. Chairwoman Lyon announced the final decision would be mailed to the applicant within ten (10) business days and they should contact the Planning Director if there are questions about the approval or the conditions.

Additional Business

Next Meeting: January 15, 2019: There are no cases scheduled and no meeting will be held in January.

Chairwoman Lyon referred the Board to the Meeting Schedule for 2019 that was provided to the Board in the packets.

Chairwoman Lyon wished everyone a Merry Christmas.

There being no further business to come before the Board, the meeting adjourned at 8:33 p.m.

Respectfully submitted:



Frances Simmons
Town Clerk and Secretary to the BZA