

TOWN OF JAMES ISLAND  
BOARD OF ZONING APPEALS  
SUMMARY OF DECEMBER 19, 2017

Members present: Mr. Jim Fralix, Mr. Sim Parrish, Mr. Jason Gregorie, Vice Chairman, and Chairwoman, Brook Lyon. Absent: Mr. Roy Smith (gave notice). A quorum was present to conduct business. Also present, Planning Director, Kristen Crane, BZA Attorney, Bo Wilson, Town Administrator, Ashley Kellahan, Town Clerk and Secretary to the BZA, Frances Simmons, and Councilmember/Mayor Pro-tem, Leonard Blank.

Call to Order: Chairwoman Lyon called the Board of Zoning Appeals meeting to order at 7:00 p.m.

Prayer and Pledge: Chairwoman Lyon asked BZA members and others who care to, to join in the prayer and the 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 Board of Zoning Appeals (BZA), BZA Attorney, staff, and Councilmember/Mayor Pro-tem Blank. BZA member Roy Smith was absent due to illness and was wished a speedy recovery.

Review Summary and Rulings from the November 21, 2017 Meeting: Chairwoman Lyon asked if there were corrections to the minutes. There were no corrections. A motion to approve was made by Mr. Fralix, seconded by Chairwoman Lyon. Mr. Parrish and Mr. Gregorie were absent at the November 21 meeting and recused themselves from vote. Minutes passed.

BZAS-10-17-011

428-07-00-082

1023 Seaside Lane

Special Exception request for the placement of a manufactured housing unit in the Low-Density Suburban Residential (RSL) Zoning District.

**APPROVED WITH CONDITIONS**

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

Administer Oath to those Presenting Testimony: Mr. Wilson swore in the persons who wished to speak on tonight's case.

Chairwoman Lyon introduced tonight's case: Variance request for the removal of two grand trees for the construction of a new single-family home in the Low-Density Suburban Residential (RSL) Zoning District.

Review of the following Application:

NEW BUSINESS

BZAV-11-17-011

TMS #428-05-00-046

Variance request for the removal of two grand trees for the construction of a new single-family home in the Low-Density Suburban Residential (RSL) Zoning District.

Staff Review: Planning Director, Kristen Crane stated that the applicant, Mr. Phil Clarke of Clarke Design Group is requesting a variance to remove two grand trees at 944 W. Ocean View Road, (TMS# 428-05-00-046). Adjacent properties to the east and west are also in the Low-Density Suburban Residential Zoning District in the Town of James Island's jurisdiction. Adjacent properties to the north and south is marshland.

The Town of James Island Zoning and Land Development Regulations, §153.334 € (2) states that grand trees that do not meet the criteria for tree permits may be removed only where approved by the Board of Zoning Appeals, and shall be replaced according to a schedule that is determined by the Zoning Administrator.

The subject property is .25 acres in size and is currently vacant. There are currently four (4) grand trees on the site. Tree #1 that is requested for removal is a 14''+15'' Live Oak located on the front southwest corner of the lot. Tree #2 requested for removal is a 15''+12''+10'' Live Oak is located in the center of the property on the east side. According to the Tree Risk Assessment performed by arborist at Schneider Tree Care, the overall risk rating for Tree #2 is moderate. The overall risk rating after the recommended mitigation options are complete or started is low. There was no risk assessment or an arborist report for Tree #1. Staff conducted a site visit of the subject property and determined the findings of facts.

Mrs. Crane reviewed §153.049 F, the Town of James Island's Zoning and Land Development Regulations that the application must meet all of the seven (7) criteria. The Board of Zoning Appeals (BZA) may approve, approve with conditions or deny Case #BZAV-11-17-011 based on the findings of facts. In the event the Board approve the application, they should consider the following conditions:

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 have been pruned and fertilized as recommended by a Certified Arborist, in order to mitigate potential damage to the tree caused by construction.
3. The applicant/owner shall mitigate the removal of the grand trees by submitting a mitigation plan to the Zoning Administrator, as described in 153.334 (E) (2) of the Ordinance, that includes inch per inch replacement.

Questions for Staff:

Mr. Fralix asked if there were support or any opposition to the application. Mrs. Crane said she received a phone call this afternoon from a caller to ask questions about the request; but no comments in support or opposition had been received.

Mr. Gregorie asked why the lot is classified as legal, non-conforming. Mrs. Crane explained that the lot size in the Town is 14,520 square feet or 1/3 acre. The subject property is .25 acres; it was subdivided before the Town changed its regulations to a 1/3 acre. She said this is a legal lot but it does not conform to Town standards as they are now.

Chairwoman Lyon asked the location of the fourth (4<sup>th</sup>) grand tree. Mrs. Crane said it is a Cedar tree located at the front of the property (near Ocean View Road).

Clarification was given to Mr. Parrish that the 23.5" Cedar Tree is dying and does not require a permit to be taken down.

Chairwoman Lyon asked about the cluster of Live Oak trees in the middle of the lot. Mrs. Crane said earth separates the trunks so they are considered as separate trees. She said none of them is 24" and they will be taken down.

Applicant Presentation:

Cooper Williams, Clarke Design Group  
2902 Split Hickory Court  
Johns Island, SC 29455

Mr. Williams gave a review of the two (2) grand trees proposed for removal. He said in Clark's Design Group's opinion, and in the owners opinion, the truly signature and beautiful tree they are trying to protect is the large 18" Triple Tree. They are trying to do everything they can to protect it. The Triple Oak they want to take down is in moderate health. He said Nate Ball (arborist at Schneider Tree Care) sent him a letter stating that because of the health of this tree, he would focus his efforts to nourishing and making sure the larger tree in the back was protected, and that is what they are trying to do. He said this is the reason they want to remove the first tree as well, (the Double Live Oak) and pull the house farther away from the Triple Tree in the back that they are trying to save.

Mr. Williams addressed Chairwoman Lyon that he heard her speak earlier about separating the vote to address the trees separately. Mr. Williams said from their perspective, the most important tree to remove is the Triple Oak Tree in moderate health. He said they could make it work by keeping the Double Oak Tree in the front, which is solely an effort to pull it further away from the larger tree in the back. Mr. Williams provided an updated Site Plan that he reviewed with the Board showing how Tree #1 could be kept.

Questions for the Applicant:

Mr. Gregorie asked if the dashed lines on the Site Plan is the location of the canopy. Mr. Williams said that is where the barricade will be located to protect the tree during construction. Mr. Gregorie asked if the size of the canopy is larger or smaller than it is depicted on the Site Plan. Mr. Williams

said it is a large canopy; and the numbers are based on the size of the tree trunk. Mr. Gregorie asked if the Site Plan presented tonight is used, would the existing canopy have to be cut back if the larger tree is kept. Mr. Williams said no; that it fits without encroaching, however, some pruning might be needed based on the arborist assessment for the health of the tree. Mr. Williams answered Mr. Gregorie question that the Site Plan he provided would cause no damage to the canopy of the other tree. Mr. Gregorie commented that the Town's Ordinance regulates the amount of canopy that can be cut back. Mr. Williams said they have done all they can to protect the tree and consulted with Mr. Nate Ball about the tree's protection. What he has been told is that they can make it work with the design he presented without encroaching on the tree protection zone. What he does not want to say to the Board is they will not mess with the canopy at all because some trimmings may be required and he does not want to misspeak. He imagines, based on things his clients has gone through, if it meant heavy pruning of the tree they would rather change the design to make sure the tree is not damaged because it is a big focal point for everyone. Mr. Williams said he could comfortably say they will not hack up the tree to make it unhealthy - - they are doing everything they can to save it.

Chairwoman Lyon asked where the Cedar tree is in relation to the Oak requested for removal. She commented that it sounds as if the applicant could live with this Site Plan if the other was not approved. Mr. Williams showed the Board the existing Cedar Tree on the Site Plan that will remain as well as the other they will keep.

Mr. Parrish received confirmation that the Cedar Tree near the triple Oak will be removed; the 25" Cedar will be kept.

Chairwoman Lyon asked what is planned for the clumps of Oaks in the middle on the property line; Mr. Williams said they would be removed because nothing could be built if they were kept. .

Mr. Gregorie mentioned that one of the conditions is tree mitigation for inch-by- inch replacement. He asked if that was discussed with the owner and if they are open to it to make the request go forward. Mr. Williams said the owners are open to mitigate and he would leave it to them and the arborist where the trees could be planted. He said the owners love the design of the home and their biggest concern is to make sure the Triple Tree on the eastern side of the property line could be taken down so their home can be built.

Mr. Parrish asked a procedural question. He said the applicant has provided the Board with another option. Is the Board going to tell the applicant which Site Plan to go with? If the Board says, the applicant cannot remove the 14+ 15 Double Oak, the applicant has to change his Site Plan. If the applicant uses his new Site Plan, the Board would not have to vote on the 14+15 double Oak Tree. Chairwoman Lyon said this application is similar to the DNR case and she was going to discuss it when the hearing closes to the public; whether to separate and vote on the trees separately. Since the applicant has presented two Site Plans, it could go either way.

In Support: No one present.

In Opposition: No one present.

Rebuttal: Not needed

Chairwoman Lyon asked for a motion to close the hearing to the public. Motion was made by Mr. Parrish, seconded by Mr. Gregorie and passed unanimously at 7:34 p.m.

Chairwoman Lyon stated before asking for a motion to approve or disapprove the application, she would like to ask the Board to consider a motion to separate the vote and discussion on the two trees. She said this case somewhat mirrors the issues the Board had with the DNR case. Mr. Gregorie moved to separate the vote and discussion between the two trees, Mr. Parrish seconded.

VOTE

|                 |     |
|-----------------|-----|
| Mr. Fralix      | nay |
| Mr. Parrish     | nay |
| Mr. Gregorie    | aye |
| Chairwoman Lyon | aye |

MOTION FAILED

Chairwoman Lyon asked for a motion to approve, approve with conditions, or to deny Case BZAV-11-17-011, TMS #428-05-00-046, Variance request for the removal of two grand trees for the construction of a new single-family home in the Low-density Suburban Residential (RSL) Zoning District.

Mr. Gregorie moved to approve the variance request and the three (3) conditions recommended by staff, Mr. Fralix seconded.

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 have been pruned and fertilized as recommended by a Certified Arborist, in order to mitigate potential damage to the tree caused by construction.
3. The applicant/owner shall mitigate the removal of the grand trees by submitting a mitigation plan to the Zoning Administrator, as described in 153.334 (E) (2) of the Ordinance, that includes inch per inch replacement.

Mr. Gregorie said he visited the site and it is an exceptionally narrow and skinny lot, the narrowest he has seen on James Island. He said it would be difficult to build any reasonably sized single family dwelling on that lot with the trees. He added that he understands the Design teams' reasons for pushing the house forward to promote the health of the future tree in the back. As he reviewed the application, the presentation, and the site visit, the removal of the two trees meets criteria A-F in the Ordinance to grant the variance.

Mr. Parrish asked and Mrs. Crane confirmed that the total replacement of the tree mitigation is 65" of tree. Mr. Parrish he noted that is 22- 3" trees. Mr. Parrish asked the minimum size tree that is required. Mrs. Crane said if she works with the applicant or owner there would be no minimum size because not all of the trees have to be planted on the site. Some could be planted offsite or

funds could be donated to the Town's Tree Fund for tree plantings and tree maintenance on the island.

Chairwoman Lyon shared her concern about voting on the trees together. She stated she felt the Triple Oak Tree meets the criteria, but the Double Oak Tree does not. Personally, she does not think it meets the criteria for C and F since it sounds as if the Site Plan can be adjusted to protect that tree. She said she would not be able to vote for this because she does not feel that it meets the criteria with them bundled together. She made a site visit and it is the skinniest, craziest lot she has ever seen and takes her hat off to Mr. Williams for being able to design a home to fit there with the two houses so close together. It is a beautiful spot and she sees that it cannot be built with the Triple Tree practically smack-dab in the middle. She personally feels that removal of the front tree (Tree A) does not meet the criteria.

Chairwoman Lyon restated the motion to approve the variance with the three conditions recommended by staff.

VOTE

|                 |     |
|-----------------|-----|
| Mr. Fralix      | aye |
| Mr. Parrish     | aye |
| Mr. Gregorie    | aye |
| Chairwoman Lyon | nay |

MOTION PASSED 3-1

Chairwoman Lyon stated the legal reason for the variance is that the majority of the Board felt that the applicant met the criteria. The final decision of the Board will be mailed to the applicant within ten (10) days and the applicant should contact the Planning and Zoning staff if he has questions.

Next Meeting: January 16, 2018; two (2) cases to be heard.

Adjourn: There being no further business to come before the body, the meeting adjourned at 7:42 p.m.

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