

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF APRIL 16, 2024

The Board of Zoning Appeals (BZA) held its regularly scheduled meeting on Tuesday, April 16, 2024 at 5:04 p.m. at the James Island Town Hall, 1122 Dills Bluff Road, James Island, SC.

Comm'rs present: David Savage, Vice Chair (Acting as Chair), Joshua Hayes, Roy Smith, and Massey Yannitelli. Absent: Comm'r Amy Fabri (gave notice). Also: Kristen Crane, Planning Director, Flannery Wood, Planner II, Attorney Brian Quisenberry, and Frances Simmons, Town Clerk and Secretary to the BZA.

Call to Order: Chair Savage called the meeting to order and asked everyone to silence their phones. The Pledge of Allegiance followed.

Compliance with the Freedom of Information Act: Chair Savage stated that this hearing is held in compliance with the SC Freedom of Information Act. The applicant, property owners within 300 feet of the application, and parties of interest were duly informed of the hearing and it was also live-streamed on the Town's website.

Introductions: Chair Savage introduced himself, members of the BZA, the BZA Attorney, and staff. He also recognized Mayor Brook Lyon and Town Administrator Michael Hemmer in attendance.

Review Summary (Minutes) from the March 19, 2024 BZA Meeting: A motion to approve the minutes of March 19, 2024, was made by Comm'r Yannitelli, seconded by Comm'r Hayes and passed unanimously. Chair Savage announced that all case rulings and minutes from BZA hearings are available for public review and inspection during normal business hours at the Town Hall.

Brief the Public on the Procedures of the BZA: Chair Savage explained the purpose of the BZA as a quasi-judicial Board empowered to approve, approve with conditions, or to deny requests. The BZA is authorized to defer a case should there be a need to obtain additional information. Chair Savage announced that three letters were received: two (2) in opposition to the Special Exception, and one (1) in opposition to the Variance. Attached for the record.

Administer the Oath to those Presenting Testimony: BZA Attorney Brian Quisenberry swore in persons wishing to provide testimony.

Review of the Following Applications: Chair Savage gave an overview of how tonight's cases would be conducted. Following the explanation, he brought forth a request to amend the agenda as the applicant for Case #BZAS-3-24-029, the Special Exception Request for a Fast Food Use, (Dutch Bros Coffee) has requested the case be deferred tonight. The applicant's attorney, Nicole Scott, with Maynard Nexsen, confirmed the request is to defer.

Chair Savage called for a motion to amend the agenda to defer the case. Comm'r Smith moved, seconded by Comm'r Yannitelli. No discussion.

Vote

Comm'r Hayes	Aye
Comm'r Smith	Aye

Comm’r Yannitelli Aye
Chair Savage Aye
Passed Unanimously

Chair Savage announced that the application for the Special Exception would not be heard tonight and anyone attending to hear that case could leave.

Case #BZAV-3-24-036: Variance Request for the removal of a grand tree (52” DBH Live Oak) in the Low-Density Suburban Residential (RSL)n Zoning District in the front yard of 1209 Taliaferro Avenue, Town of James Island (TMS #426-09-00-030): Chair Savage introduced the case and stated that the application must meet all criteria that is outlined in the Town’s Ordinance.

Staff Review: Planning Director, Kristen Crane presented the staff’s review and the findings of facts. She reported that the applicants, Thomas and Blanca Marcinko are requesting a variance for the removal of a grand tree (52” DBH Live Oak) in the Low-Density Suburban Residential (RSL) Zoning District in the front yard of 1209 Taliaferro Avenue (TMS #426-09-00-030). Adjacent properties to the north, east, south, and west are also in the RSL Zoning District and are in the Town of James Island’s jurisdiction. Other uses within 300’ of the subject property include residential uses in the Town of James Island and the City of Charleston.

Town of James Island Zoning and Land Development Regulations, §153.335 (E) (2) TREE PROTECTION AND PRESERVATION states trees that do not meet the criteria may be removed only when approved by the Board of Zoning Appeals and shall be replaced according to a schedule determined by the Zoning Administrator.

The subject property is 0.39 acres in size and has one single-family residence that was constructed in 1965, according to Charleston County records. The current property owners purchased the property in March of 2015. Charleston County Building Services issued a Building Permit in March of 2021 for “Foundation/Crawl Space Repair”. There are currently 4 grand trees in the front yard of the parcel. One 32.5”+27” DBH Live Oak, located at the front right corner of the home, was permitted for removal due to disease in September of 2023. The 52” DBH live oak that is the subject of this request is in the center of the front yard, approximately 10’ from the home. The applicant states in their letter of intent “*We are only asking this to try and prevent any further damage to the greatest investment our family has*”. Please review the attached documents for further information regarding this request.

Findings of Fact:

According to §153.049 F, Zoning Variance Approval Criteria of the Town of James Island 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. A Zoning Variance may be granted in an individual case of unnecessary hardship if the Board of Appeals makes and explains in writing the following findings:

F (a): *There are extraordinary and exceptional conditions pertaining to the particular piece of property;*

Response: **There may be extraordinary and exceptional conditions pertaining to this piece of property as there are currently four grand live oak trees located in the front yard of the parcel.**

F (b): *These conditions do not generally apply to other property in the vicinity;*

Response: These conditions may generally apply to other properties in the vicinity as most properties in the area have grand trees of a similar size and species. However, the location of grand trees and their proximity to the homes on surrounding lots varies by parcel.

F (c): *Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property;*

Response: According to Charleston County records, the single-family home was constructed in 1965 and purchased by the applicants in 2015. Therefore, the application of this Ordinance to the particular piece of property may not restrict the utilization of the property as a residence due to the pre-existing location and age of both the home and the tree.

F (d): *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance;*

Response: Although Ordinance Section 153.334 Tree Protection and Preservation states that “trees are an essential natural resource, an invaluable economic resource, and a priceless aesthetic resource”, the authorization of this variance may not be of substantial detriment to the adjacent property or the public good as the applicant plans to retain two other grand live oak trees in the front yard.

F (e): *The Board of Zoning Appeals shall not grant a variance to the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a non-conforming use of land or to change the zoning district boundaries shown on the Official Zoning Map;*

Response: The variance does not allow a use that is not permitted in this zoning district, nor does it extend physically a nonconforming use of land or change the zoning district boundaries.

F (f): *The need for the variance is not the result of the applicant's own actions; and*

Response: The need for the variance may not be the result of the applicant's own actions due to the pre-existing location and age of both the home and the tree. Additionally, the applicant's letter of intent states that they “have had a structural engineer to the house multiple times and he has concluded that the tree roots have and are continuing to raise the house off its pier.”

F (g): *Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.*

Response: The Natural Resources Element of the Comprehensive Plan has a Goal to “protect, preserve and enhance the natural environment”. Furthermore, Section 153.334 Tree Protection and Preservation states that “the tree protection and preservation regulations of this section are intended to enhance the health, safety, and welfare of the citizens of the town.” However, exceptions for removal are made where trees are diseased, dead, dying, pose a safety hazard or removal has been approved by the Board of Zoning Appeals.

In granting a Variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building or structure as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare (§153.045 E 2).

Action:

The Board of Zoning Appeals may approve, approve with conditions or deny Case # BZAV-3-24-036 (variance request for the removal of a grand 52” DBH Live Oak tree in the Low-Density Suburban Residential Zoning District in the front yard of 1209 Taliaferro Avenue) based on the “Findings of Fact” listed above, unless additional information is deemed necessary to make an informed decision. In the event the Board decides to approve the application, the Board should consider the following conditions:

1. The applicant/owner shall mitigate the removal of the subject grand tree by submitting a mitigation plan to the Zoning Administrator, as described in 153.334 (E)(2) of the Ordinance, which includes inch-per-inch replacement.
2. The applicant/owner shall provide documentation that the remaining grand trees on the subject parcel have been treated and cared for as recommended by a Certified Arborist, to mitigate and prevent any potential spreading of disease/fungus.
3. Any future significant pruning to grand trees on site must adhere to Section 153.334 of the Ordinance, including obtaining proper zoning permits for excess canopy (limb) removal.

Questions for Staff:

Comm’r Yannitelli asked about tree replacement options and mitigation procedures. Ms. Crane said the staff works with applicants on a case-by-case basis for them to either replant a tree on their property or make a donation to the Town’s Tree Fund; or a mixture of both. She said it is up to the applicant to obtain quotes from nurseries for inch-by-inch cost replacement. Comm’r Yannitelli asked if the applicant would have to plant a small live oak tree on the property and Ms. Crane replied a 52” is what the ordinance states or they could donate the cost to the Tree Fund. Comm’r Yannitelli asked what that cost would be and Ms. Crane said we ask for three (3) quotes at market value. Comm’r Yannitelli said he did not see pictures of underneath the house. Ms. Crane replied not seeing that either but typically it is included in the engineer’s report. Comm’r Yannitelli made reference to the house being lifted off its pier and is on a crawl space rather than slab. Ms. Crane said the only pictures she has seen were those submitted by the applicant.

Chair Savage followed up with Comm’r Yannitelli’s questions stated looking at the engineering report and in reading it did not see, to a reasonable degree of engineering certainty, that the house is being lifted off of its pier. He said Comm’r Yannitelli established that it is on a crawl space opposed to a slab and asked Ms. Crane if that was correct. Ms. Crane answered yes, and mentioned a part of the home on the right side that is on slab, but the part they are concerned about is on a crawl space.

Chair Savage said in following up with Comm’r Yannitelli’s questions, there were no pictures documenting or supporting the opinion that the tree is lifting the joist beam off of the pier. Ms. Crane answered that she has not seen any pictures. He asked if that was normal for what she has seen in the past in engineering reports. Ms. Crane stated typically they see pictures in support of a report.

Chair Savage recalled that Ms. Crane mentioned that a portion of the house is on slab and asked if that was the portion that had foundation repairs in 2021. She answered her understanding that is the portion. Chair Savage asked if she ever went back and looked at applications to see what they were for or the reason it stated by the homeowner for that work. Ms. Crane acknowledged having a copy of the building permit and

it was presented to the Board. She said it appears that the building permit shows the foundation work being done on the slab portion in the rear of the home and in the building permit report it states that the applicant stated that he was worried about cracks in the brick. The permit did not say any more than that; it was from a different foundation company.

Comm'r Smith asked Ms. Crane if she has often seen recommendations for alternatives. Ms. Crane said yes. The Charleston County Arborist recommended a root barrier and root trimming. She had an email from the arborist and offered to present it to the Board. She said that he was a private arborist before going to work for the County and has had success with root pruning and root barrier to mitigate vs. taking a tree down.

Chair Savage stated for clarification that the 2021 foundation that was done on the back of the house, that the Board could agree had nothing to do with this tree. Ms. Crane said that is how she understood it. She said there is another tree on the right of the house that she asked about the foundation repair; and thought it was attributed to the tree with the fungus where there is a permit to remove. Chair Savage asked if the answer that she gave in response to Comm'r Smith's question about the arborist's viability of root pruning was brought up to address the statement of the applicant's arborist that said it could not be done. She answered yes. Chair Savage asked if there is competing opinions by the arborists and Ms. Crane answered yes.

Chair Savage asked for a motion to enter the email from Kyle Foster (Charleston County Planning and Zoning) into the record. Comm'r Smith moved, seconded by Chair Savage. There was no discussion or opposition. Approved unanimously.

Comm'r Smith asked Ms. Crane when she sees structural reports, does she often see if structural alternatives are provided; or has she ever seen structural alternatives provided and she said no.

Applicant Presentation:

Thomas Marcinko
1209 Taliaferro Avenue

Mr. Marcinko said a lot of what Ms. Crane stated is factual. The home was purchased in 2015 and they immediately had work done to the trees and sidewalk requested by insurance company before they would insure the home. He said that was in 2015 and the sidewalk is completely blown out again. The structural engineer does not have a picture of underneath the house, but he knows for a fact that they were under there and his letter references a bulge going through into the living room/dining room of the home. They have pictures of the cracks of the interior and exterior of the walls. He said the arborist provided a letter and made no uncertain term that this is not a viable alternative. He said the only thing that he would disagree with Ms. Crane's presentation was what she was told by Charleston County because that is where they started the process and were ultimately told that they had to get permits through the Town of James Island. He said the arborist did not want to do it by no uncertain terms, but they provided the information that was needed in order to get it approved. He feels what they have done from the "get-go" is to provide what was requested to get the tree removed. They cannot afford to rebuild their porch every eight years and the structural engineer clearly shows the difference in the bricks from the exterior of their home vs. the front of the porch. He said there is a difference in the concrete and the joint where the porch was rebuilt prior to them owning the home. He thinks they lost the bottom steps to the porch because the sidewalk was repoured so many times on a continual higher level and this is continuous problem that will not go away. He said a tree of this size, from multiple people in the arborist field they've talked to, said in order to put in a root barrier that would be effective on the tree, that it would literally the width of their home and if those trees were disrupted and cut that close, it would not be safe through a storm. He said the tree is literally 10ft within their home and all they are trying to do is protect their home. He commented not knowing what else

to say and he provided the Board with the pictures have and the engineer's report. Mr. Marcinko said they have not done this before and doesn't know what to look for or, what he may've missed, or did not provide. What just picked up the phone and started calling the people they were asked to. They were referred to Mr. Rosen who delivered a report after many visits to their home. Mr. Marcinko said they are willing to replant if needed. They take care of the other trees in their yard as well as this one. They are not doing this because they want to because it is a very costly endeavor; but the damage that is being done to their home is far more costly and that is what they are trying to prevent.

Questions from the Board

Comm'r Yannitelli asked Mr. Marcinko if he had gotten any pricing on the root pruning and barrier. He responded that he was told by Ms. Crane to investigate the viability of that and he contacted the first tree company who recommended a certified arborist so they contacted a second arborist that had all of the credentials. That arborist came to the home and said it was not a viable option for a tree of this size and location to the home. They did not get to a price because he didn't think it would work.

Comm'r Smith asked Mr. Marcinko if he had asked Mr. Rosen if there were other structural solutions for the home to mitigate the damage to prevent further damage. Mr. Marcinko said that did not seem to be an option and this will continue to happen because of the root growing underneath the house. He said unless that is stopped it will continue to happen. Comm'r Smith asked if he was told there were no other options and Mr. Marcinko said no, he recommended that the tree be removed, and he took that as his recommendation.

Chair Savage asked if he would've used the arborist to remove the tree and Mr. Marcinko said yes, 100%. He clarified that it is not the people who wrote the letter but was someone they hired as a consultant with the certifications he thought needed to present to the Board.

Chair Savage said if the house were on a slab he would have no questions. Chair Savage gave explanation of a house on a pier. He said that you can go under the house and take pictures of the joist that is off of the pier. He said because the applicant bears the burden of proof, he wonders if he had the ability to use an iPhone to take pictures to show where the house was raised. Mr. Marcinko said he doesn't know what he would be looking for; perhaps there are more pictures but he can't answer why they were not included. He presented to the Board what he received from the engineer.

Chair Savage explained the burden of proof that is placed on the applicant and ordinances in place that protects trees that were in place when the house was purchased. As he is reading the engineer's report he documented that there is a 1/4 inch difference on the floor and a picture is taken at that level. As an example he explained age of his house and could see how an issue such as this could progress. He said the Board has to determine that the applicant has met the burden of proof in all of the criteria. Chair Savage said one element of concern is why the engineer did not produce a picture of something that would be evident or easy to document. He said to Mr. Marcinko's statement of having had the structural engineer to their home at multiple times to which Mr. Marcinko confirmed. Mr. Marcinko said that Cantey was the engineer for the 2021 foundation on the slab portion of the home that was caused by the other tree that was permitted. Chair Savage asked if they looked at the crawl space area and Mr. Marcinko said it was on the slab but the crack in the porch did not exist at that time. They have been watching this since August and see it grow day-by-day is why there are presenting before the Board.

Comm'r Hayes thanked Mr. Marcinko for providing a comprehensive packet. He stated as Chair Savage pointed out that his house is also on a crawl space and is something that he would want the structural engineer to identify as that could be the key to this case. It would show that something significant is happening outside of what has been provided but he cannot look at the information provided and say it is caused by a root from this tree or that tree.

Support

Amanda Simons, 1211 Taliaferro Ave. Ms. Simons is the next door neighbor to the Marcinko's. She said the tree in question was planted by her grandmother in the 1950s. Ms. Simons is a third generation and the first family to live in their home.. When they moved in the 1950's, everything were fields so her grandmother planted trees and Truluck came in the 1970's and did a harbor program. She feels guilty that the Marcinko's can't do something about the tree. She knows it will probably cost more than \$10,000 to have it removed and cannot fathom the thought of paying an inch-by-inch replacement or donating money to a tree fund. The Marcinko's should be allowed to fix their home and not repair it repeatedly. Her grandmother passed away in the 90's and cannot speak for them.

Megan DuPont, 891 Simpkins St., read the following statement into the record: My name is Mary Megan DuPont, 891 Simpkins Street. I am writing in regards to Grand Oak Tree Variance (permit for removal) at 1209 Taliaferro, by Blanca and Tommy Marcinko.

I have been Tommy and Blanca's next door neighbors for the last 9 or 10 years, maybe a little longer! They are wonderful neighbors who truly tend to care for their property. I grew up on James Island, as did my mother and her father. I'm a 14th generation Charlestonian and to say I have a fondness and love of our Grand Oaks is an understatement.

With that being said, preservation of our Grand Oaks was not being considered when our homes were being built in the 1960s. If the Marcinko variance were seeking to remove their tree for an addition to their home, it would give me pause. However, their variance request is to maintain the structural integrity of their home. Most people's homes are their biggest asset and should the home become inhabitable structurally, what are they to do? What is their recourse?

Additionally, as sewer lines are to be installed in our neighborhood in the coming years, what guarantees do any in our neighborhood have that the directional boring necessary to connect homes to the main sewer lines won't impact the trees and their roots. As much as I will miss the view from my kitchen window, I would miss my neighbors more. I urge you to grant the Marcinko's their variance.

Michele Becker, 1215 Taliaferro Ave., lives with her husband and three small children with many Grand Oak trees in their yard. They love James Island and because the neighborhood has many mature trees that that is one of their favorite features. Tommy and Blanco takes good care of their trees. Grand Oak trees take a lot of work, and as a homeowner you know this before you purchase, but the fact that the tree is damaging their home is of great concern. They have a Grand Oak tree about the same size and in proximity to their house. They did not make the connection, but they have cracks in their walls. Maybe this could be happening to other people in the neighborhood. She is in support of Tommy and Blanca's request. This is a big discussion for people on the island living in neighborhoods with mature trees that are close to their homes.

Richard Jay, 1210 Taliaferro Ave., father moved the family here in 1965. As a young boy he thought the Grand Oaks were magical, which they are. Tommy and Blanca are good neighbors and understand why the tree is a problem. He has had several diseased/damaged trees taken down that were permitted but who's to say that the next hurricane won't take one out. He said one of the problems he has is what the Town's guidelines are for getting variances. He lives in Teal Acres where the last standing woods were developed, and several Grand Oaks were clear cut, and someone had to permit that. Four large houses are being built in the last bit of woods they had in the neighborhood where 8-10 Grand Oaks had to be removed. He is sure that if the oak trees were causing a problem in one of the Board's properties, they would not have a problem with granting the variance.

Chair Savage stated that some members have served on this Board for three years. The project that Mr. Jay spoke about did not come before this Board. He recognized Mayor Brook Lyon in the audience and stated that in order to change criteria, it must be done by Town Council. The Board has to follow criteria set forth by Council. Mr. Jay asked the Board to grant the variance for the Marcinko's.

Blanca Marcinko, 1209 Taliaferro Ave., thanked Mayor Lyon for being in attendance tonight as well as her loving and supportive neighbors. She stated that when they purchased their home it was for the beauty and nature surrounding it, not realizing at the time that the beautiful Grand Oak was damaging the structural foundation of their home. Her husband has provided pictures of not only the walkway but also the brick damage that has been done repeatedly. She said for no other reason would they request a permit to remove any tree on their property unless it was a detriment to their home and lifesavings. She thanked the Board and greatly appreciates their consideration as if it were their home and property.

Opposition: None

Rebuttal: None

Chair Savage closed the Public Hearing at 5:51 p.m. and asked for a motion from the Board to approve the application with the conditions established by staff for the purpose of beginning discussion. The motion was made by Comm'r Smith, seconded by Comm'r Yannitelli and passed unanimously.

Chair Savage stated that his inclination is he wants to approve the application. He doesn't want to hold the applicant up, but the applicant may not have met their burden of proof on the issue of the house being raised by the root on the pier system. He noted that all Board members had similar concerns that are easy to document in a photo. Chair Savage said he doesn't want to deny the request because the applicants would have to wait one year before coming back to the Board. Chair Savage said a solution might be to defer and request photographs or clarifications from a structural engineer. He said those are his initial thoughts, but his concern is there may be a lack of a burden of proof. He is not holding the applicant at fault because they are not trained in what to look for.

Comm'r Yannitelli asked how a deferral would work and Chair Savage explained that the Board could subpoena witnesses and evidence for additional information; or ask the applicant to provide additional information. The Board would then take the matter up at its next meeting and determine whether the applicant met the burden of proof. He said this would give the applicant a second chance to satisfy the questions he has based upon the contents in the packet. Clarification was given to Comm'r Yannitelli that a new application would not be required if the applicant is able to produce the information requested at the next meeting.

Comm'r Smith said if the deferral is granted, he would like additional information about the ability to provide structural solutions. He is an architect and works in residential areas and spoke of the ability to save trees. He also noted that if the trees were planted in the 50s, they are probably 75 years old, and the engineer's report estimates the trees to be 200 years old. This gives him pause and wonders what is estimated and what is true.

Comm'r Yannitelli spoke about having a large tree next to his house and the damage it could cause during hurricanes and would like to approve the request. He also referred to comprehensive packet that was provided to the Board with the varying opinions. He would like to see documents provided that the root from the tree is causing the issues, however due diligence is required.

Comm'r Hayes asked for clarity that it is the root from the tree that is causing the issue. He would like to approve the request but has an obligation to the Town to do his due diligence and he does not want to punish

the applicant for doing what they were instructed to do . He would like to see whoever is hired to provide that information.

Comm'r Smith feels for the applicant and want to approve the request but is not satisfied with the report and he has a problem with "Condition C". He would like for the structural engineer to be specific about the gravity, what might happen, and what the options are. He is in favor of the deferral. He understands this is a big investment and it is difficult for him to make a decision. Chair Savage agreed that he wants to approve the request but needs more information (referred to Cond. F-C). Chair Savage reiterate giving the applicant the opportunity to supplement the engineer's report and asked Comm'r Hayes his thoughts. Comm'r Hayes said his concern is not costing the applicant additional funds to have the person come in. There is substantiating documentation that is leading him for approval and it would be nice to have the photos; however he leans towards approval.

Chair Savage asked the Board if there is a consensus to defer for 30 days to allow the applicant time to satisfy the information members of the Board that have some lingering concerns but are inclined to approve.

After discussion **Comm'r Smith moved to withdraw the original motion to approve the application with the staff's recommendation; Comm'r Yannitelli withdrew his second.** There was no discussion.

Vote

Comm'r Hayes	Aye
Comm'r Smith	Aye
Comm'r Yannitelli	Aye
Chair Savage	Aye

Motion approved unanimously

Chair Savage moved to defer Case #BZAV-3-24-036: Variance request for the removal of a grand tree (52"DBH Live Oak) in the Low-Density Suburban Residential (RSL) Zoning District in the front yard of 1209 Taliaferro Avenue – Town of James Island (TMS# 426-09-00-030) to the next hearing for the purpose of allowing the applicant to obtain additional information, either in the form of photographs supporting the opinion of the structural engineer that the tree is lifting the beam or joist off the piers, or in the alternative, some photographs. The basis is that the Board does not believe the applicant, through no fault of his own, has met the burden of proof for Condition 4-C in the Criteria to grant due to the ambiguity of the engineer's report, the lack of a photographs, and upon the staff's recitation of the history of the project. Comm'r Smith seconded the motion.

Chair Savage restated the **motion is to defer to the next hearing to allow the applicant to either provide clarification in the engineer's report and/or photographs that he can supplement his earlier presentation on the issue that the Board is having questions about that being 4-C of the variance criteria.**

Vote

Comm'r Hayes	Aye
Comm'r Smith	Aye
Comm'r Yannitelli	Aye
Chair Savage	Aye

Motion approved unanimously

The decision of the Board was to defer the matter (not deny) for 30 days to allow the applicant opportunity to supplement his submission, particularly in the engineer's report as it states in conclusion that the tree is

raising the house off of its piers and/or the submission of photographs which might further support that contention so this BZA can reconsider the matter within 30 days.

**Another justification is the Board did not want to deny the application because it would prejudice the applicant by postponing any subsequent action for at least one year.*

The applicant will be advised that the final decision will be mailed to them within ten (10) business days and should contact the Planning and Zoning staff about questions regarding the deferral. Chair Savage informed the applicant that they did not have to wait the ten days if they could provide the information sooner and the Board will take up the case in 30 days.

Additional Business:

Vote for Chair and Vice Chair: Comm'r Savage made a motion to delay the vote until the next meeting for Comm'r Fabri to be present. Comm'r Smith seconded. Passed unanimously.

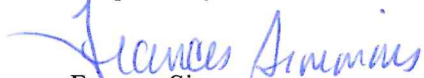
Next Meeting:

The next meeting will be held on Tuesday, May 21, 2024 at 5:00 p.m.

Adjournment:

There being no further business to come before the body, the meeting was adjourned at 6:10 p.m.

Respectfully submitted:



Frances Simmons

Town Clerk and Secretary to the BZA