

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF MAY 16, 2023

The Board of Zoning Appeals held its regularly scheduled meeting on Tuesday, May 16, 2023 at 5:01 p.m. at the James Island Town Hall, located at 1122 Dills Bluff Road, James Island.

Comm'rs present: Amy Fabri, David Savage, Vice Chair, Roy Smith, and Brook Lyon, Chairwoman, who presided. Also, Kristen Crane, Planning Director, Flannery Wood, Planner II, Niki Grimbball, Town Administrator, Sam Snider, MPA Intern, Deputy Chris King, and Frances Simmons, Town Clerk and Secretary to the BZA. A quorum was present to conduct business.

Call to Order: Chairwoman Lyon called the BZA meeting to order at 5:01 p.m. She asked anyone who wished to speak and had not signed in, to please do so and to silence cell phones. She asked members of the Board and the public to speak loudly into the mics for the purpose of transcribing the minutes.

Compliance with the Freedom of Information Act. This meeting was held in compliance with the SC Freedom of Information Act. The public was duly informed and notifications were given that the meeting would also be live-streamed on the Town's You-Tube Channel.

Introductions: Chairwoman Lyon introduced herself, BZA members, and staff. Sam Snider, MPA Intern for the Town was welcomed and introduced.

Review Summary (Minutes) from the February 21, 2023 BZA Meeting: Chairwoman Lyon called for a motion to approve the February 21, 2023 BZA minutes. Commissioner Fabri noted a typographical error on page 7, under votes taken that the word "aye" was misspelled. Ms. Simmons took note and will make the correction. The minutes was seconded by Commissioner Smith and approved unanimously with the noted correction.

Administer the Oath to those Presenting Testimony: In the absence of BZA Attorney Wilson, Chairwoman Lyon asked those presenting testimony to stand and swore them in.

Review of the Following Application: Chairwoman Lyon introduced Case #BZAV-4-23-033: Variance request for the reduction of the required 25' front/street side setback by 12' to 13' for the construction of a new single-family residence in the Low-Density Suburban residential (RSL) District at 736 Tiller Road (TMS #452-05-00-078): Planning Director, Kristen Crane, provided the staff's review.

Staff Review:

The applicant, Mr. Greg Wahlers, is requesting a Variance for the reduction of the required 25' front/street side setback by 12' to 13' for the construction of a new single-family residence in the Low-Density Suburban Residential (RSL) Zoning District at 736 Tiller Road (TMS #452-05-00-078). 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.

Town of James Island Zoning and Land Development Regulations, §153.070 (C) states that all development in the RSL district shall be subject to the following density, intensity, and dimensional standards: Minimum Setbacks, Front/Street Side: 25 feet. Section 153.066 (C) (5) states that "On

corner and double-frontage lots, front setback standards will apply to each lot line that borders a street. The remaining lot lines will be subject to side setback standards. There is no rear lot line.”

The subject property is 0.34 acres in size and is currently vacant and was recently cleared. The subject property was purchased by the applicant in April of 2023. According to the applicant’s letter of intent, “With a setback reduction, we would be able to have a larger and more square backyard which is more desirable to us and future homeowners.” Please review the attached documents for further information regarding this request.

Findings of Fact:

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 not be extraordinary and exceptional conditions pertaining to the piece of property. However, the lot is vacant and is located on a corner.

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

Response: These conditions may not generally apply to other properties in the vicinity. Of the 18 homes in a 300’ radius of the subject property, four properties (including the subject property) are corner lots. Additionally, the subject property is the only vacant corner lot as the other properties’ homes were constructed in 1965, 1978, and 1999, according to Charleston County records.

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: The application of this Ordinance to this particular piece of property would prohibit the construction of the proposed home in its desired location and according to the applicant’s letter of intent, the application of the required setbacks “would allow us to have a less desirable, very narrow backyard”.

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: The character of the zoning district should not be harmed, and the authorization of the variance should not be of substantial detriment to

adjacent property. As the applicant states in their letter of intent “the setback reduction would still meet the current requirements for setbacks on lots that are not corner lots, with at least 10’ on each side between the house and the property line.”

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 be the result of the applicant’s own actions due to the desired location and configuration of the home. The letter of intent states that the “reason for the proposal is backyard size preference”.

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

Response: Granting the variance may not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance, as one purpose of Section 153.070 (C) is to maintain vehicular sight lines around corner lots. With a granted setback reduction, the home would be at least 30’ from the edge of the pavement on Skiff Street and at least 40’ from the edge of the pavement along Tiller Road, according to the proposed site plan and may not hinder vision from the roadway.

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-4-23-033 (Variance request for the reduction of the 25’ required front/street side setback by 12’ to 13’ for the construction of a new single-family home) based on the “Findings of Fact” listed above, unless additional information is deemed necessary to make an informed decision.

Staff Questions from the Board:

Comm'r Fabri asked Ms. Crane to walk the Board through Criteria "F(g) again regarding the setback reductions of the home. Ms. Crane explained that the Applicant's Letter of Intent and the Site Plan shows the edge of the pavement (Skiff Street grayed out); as the edge of the pavement. If 20' is added to the actual property line, and 13' is added from the property line to the edge of the house , it would be 33'. On Tiller Road it would be 20' plus 25' .

Comm'r Smith asked Ms. Crane the length of time these setbacks were in place for that neighborhood. She replied at least 10 years, her length of time at the Town. Comm'r Smith said he rode through the neighborhood and some of the houses were at a 45 degree angle. He commented that those homes were probably not built under this ordinance and Ms. Crane said they fall under a legal non-conforming use. Comm'r Smith asked if there were other vacant lots in the neighborhood and Ms. Crane said she did not know of any.

Vice Chair Savage asked Ms. Crane to go back to the radius map as he needed help when he reviewed Criteria "A" (extraordinary and exceptional conditions pertaining to the property). He said when he looked at the photo of the cleared lot it was basically a rectangular lot. He asked Ms. Crane if that was correct and she answered 'yes, it is rectangular; not square.

Comm'r Smith asked if there were trees on the lot and Ms. Crane said yes, but the lot has never had a structure on it.

Chairwoman Lyon said this information does not pertain to this case and shared from the last Planning Commission meeting that they reviewed changes coming to Town Council this week on corner lots but that would not negate the need for this case. She asked Ms. Crane to speak to this change as it may affect the Board in future cases. Ms. Crane explained the change is for accessory structures on corner lots; i.e., a shed. She said before these changes were made accessory structures had to be behind the front building line on the house or the one next to it which would not work out on corner lots.

Applicant Presentation:

Jasmin Brooks, 1206 Peregrine Drive: Ms. Brooks thanked the Board for their time and consideration. She introduced herself as an Army Veteran currently working at MUSC and Greg Wahlers (applicant) who is employed at Boeing. She stated that when they got together, they moved into his house down the street; they have a nine month old and decided they wanted to build their home. She said the lot was owned by friends of Greg's who live in Indiana where he is from. They lucked out when they found it because they love James Island and want to continue to make it their home. She said when they looked at plans and found the lot they liked, they modified it to make sure it would fit. They looked at the ordinance and said "good... 10', 10', 25' ". They did not realize until after they had modified the plan, paid for it, and got the structural drawings that was a corner lot so it's a little bit different. That is why they are here today. She added that an appraisal was done valued at \$900,000 for what they are building so it would add value to the neighborhood and property. If they were to move one day, it would add value for future owners as well. She said with the current ordinance, the backyard would be narrow and the side yard would be large. This is a preference but she hopes the Board will agree that the house would look better facing Tiller Road.

Applicant Questions from the Board:

Comm'r Smith asked Ms. Brooks when did she find out about the setbacks and she replied that the problem happened very quickly when she found out about the lot and got the owner to sell it as they were very pleased with it but it wasn't listed for sale. She said it was probably in February or March when they went through Charleston County first. She said it was hard to find the ordinance for James Island because there

is a lot to read. She said it was her fault when she first read it and saw the “10, 25’ 10’ and said.... We’re good and it was perhaps a month later they saw the problem with it being on a corner lot, so she would say the beginning of April.

Comm’r Smith said he was having a hard time and informed Ms. Brooks that all criteria has to be met and he is having a problem with some of them. He said she has to prove to the Board that there are extraordinary and exceptional conditions pertaining to this piece of property for the Board to grant the variance for the setbacks Criteria A. He asked Ms. Brooks to tell him what the extraordinary and exceptional conditions are for the property; not her desire. Ms. Brooks complimented Ms. Crane for doing a great job in her presentation, as she pointed out that there may not be extraordinary or exceptional conditions. She said it is definitely more of a preference how the house would look fitting in the neighborhood; also the property value for future owners. She stated that when you have something come into your neighborhood it can raise or decrease the value of property, and that is the only thing she can think of for that.

Comm’r Smith said he has a problem with Criteria 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” and asked Ms. Brooks how does it unreasonably prohibit or restricts. Ms. Brooks referred to a diagram of the current ordinance as it stands with having a narrow backyard. She said the question it raised immediately was did they want a pool in the backyard, other buildings i.e., a shed, a workshop, and they can’t have anything like these in the backyard. She said when looking, not only from their house, but both houses, you’re looking out your backdoor/back porch and not able to see the side yard. So a pool, pets (they have pets), and a little one, they do not have full visualization from the side yard from the front or back yard, and most any house placed there will have the same issue. Comm’r Smith asked Ms. Brooks she is saying the inability to have a pool or an accessory structure prohibits or unreasonably restricts the utilization of the property and Ms. Brooks said “right” _____ 27’ those structures still have to be 10’ on the property line so you’re looking at a 17’ leeway.

Comm’r Savage said he did not understand that answer and Ms. Brooks explained that from the diagram there is 27’ from the house to the property line from the back setbacks. She noted not remembering if it is 10’ or 15’ from the rear of the house or property. She stated even though there is 17’, if it is 10’, that’s 17, if its 15 that’s 12 so that makes you to have a very narrow pathway to be able to add accessories.

Comm’r Smith noted there are a lot of houses that doesn’t have accessory structures and asked Ms. Brooks if she thought they were not utilized or unreasonably restricted? She said that a lot don’t and a lot do. As an example she shared there are two houses/lots back from her _____ has a pool in her backyard and her lot is very _____ so it’s different with different sized lots. Most of the lots in her neighborhood is her size, but a few are bigger. She added that most of the homes were built 25-30 years ago when different ordinances were in place and thinks the last corner lot was built in 1988. Comm’r smith said he noticed that the houses that are **tilted** have very small backyards and unusual side yards so that is common.

Comm’r Smith further questioned Criteria F, the need for the variance is not a result of the applicant’s own action that she stated the reason is her preference. He asked her to reconcile her preference is not a result of her own actions. Ms. Brooks stated that she did not think it was a result of their own action because they chose the plans and picked them out and modified them before they knew the 25’ was for both sides of the ordinance.

Comm’r Fabri asked Ms. Brooks the square footage of the home and she replied 2700 square feet. Comm’r Fabri thinks what Ms. Brooks is trying to say is because the lot is rectangular with a house of that size, no matter how it is placed with the existing setbacks is going to restrict its utilization because it takes up the entire lot. They can’t move it to the front, to the back, or on Tiller Street, but if they shift it a certain way (which is why they are requesting the variance), that would allow them to have a decent size yard and be

able to utilize that. She thinks, if she could speak for the applicant, what she is trying to express is the extraordinary condition is the fact that the lot is rectangular and a corner lot and the size of the house that she is trying to place there and this is how she interprets this. Comm'r Fabri stated she does not have a problem with Criteria A or B with the application to other properties in the area because in the packet it said basically the other houses on corner lots were all built before this ordinance was in place.

Vice Chair Savage introduced himself and told Ms. Brooks that she appealed to him early on when she said that she is an Army Veteran; he is in the Marine Corps. He said while he can only speak for himself in these hearings, when people come for a variance to the extent the Board can exercise their discretion on each of the factors is that they try to give the applicant the tip of the ball. He has real difficulties especially with the sections that Mr. Smith referred to. He asked Ms. Brooks to help him with the extraordinary and exceptional conditions pertaining to the property because he is sitting here with the evidence and what was presented was that a lot was bought that is rectangular. He gets that because most lots are. He asked Ms. Crane if it would get narrow somewhere where this property is a little different. He said basically what he is hearing from the applicant is that "we got a deal on a lot and we want to put this house on it... if we put it this way it can fit but that's not what we want to do... we want to put it this way **and he is with her**. But, when they were appointed to this Board the criteria they hear has to be followed. He said on each of the criteria it is limited in what they can hear and to their discretion as to whether or not its **swayed**. He has a problem with Criteria A. He asked Ms. Brooks if she had further information to add to please do so. He also has a problem with Criteria C, would it effectively prohibit or unreasonably restrict the utilization of the property; and Criteria F that it was not the result of the applicant's own actions. He mentioned that Ms. Brooks said they were picking out the house in February or March, but the lot was bought in April and is cleared. Now, the applicant is coming to the Board. He said when you purchase property you do the due diligence and it could have been possible to seek a variance before the purchase that would've told them this is what they need to do. Vice Chair Savage said these are the three criteria he has issues with and how can she help him with those issues: 1) the extraordinary condition of the property, 2) if not approved it would unreasonably restrict the use and 3) we're not here because of the applicant's actions.

Ms. Brooks talked about her experience in construction. Her father has been in the construction business for more than 36 years and her brother is in construction as well. She has seen hundreds and hundreds of house plans. Their plan is 48 feet wide and the average house plan is between 45-50 feet wide so this would not only be an issue for them. They are not the only ones that would have an issue with placing a house on the lot in this manner. If someone else came along and wanted to build a house, they would have the same issue with having a very narrow backyard. As she said, this give them about 12 to 17 feet to work with in the backyard and that does not include the stairs that come down on the back of the house. She said another piece that she could add to try to help the Board visualize what they're looking at.

Chairwoman Lyon asked how many stories were in the house and Ms. Brooks answered there are two stories. Chairwoman Lyon also expressed concerns with Criteria "A, C, and F. She shared information from past cases on setbacks and their requirements. She said it sounds like the applicants are building a nice house but they have to follow the criteria. She asked Ms. Brooks when the lot was purchased and she replied in early March and modifications were made in April.

In Support

No one was present to speak.

In Opposition

No one was present to speak.

Rebuttal

Not required.

Chairwoman Lyon closed the case at 5:39 and moved for a motion for discussion, Comm’r Fabri offered a second to the motion.

Comm’r Smith expressed being sorry this has happened but he cannot get over the fact that the variance does not meet **Criteria A**: **There are extraordinary and exceptional conditions pertaining to the particular piece of property;**

Criteria 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 and;**

Criteria F: **The need for the variance is not the result of the applicant’s own actions;**

Vice Chair Savage spoke that he asked the applicant for help on the criteria he expressed concerns about. He again stated that the Board is limited to the discretion they have and he does believe Criteria “A,C, and F” meets those criteria.

Chairwoman Lyon also expressed concerns about Criteria “A, C, and F” she commented that the Board tries to give the benefit of the doubt to applicants as well as the public. She said having a lot that is rectangular does not make it extraordinary or exceptional.

Chairwoman Lyon restated the motion for the approval of Case #BZAV-4-23-033: Variance request for the reduction of the required 25’ front/street side setback by 12’ to 13’ for the construction of a new single-family residence in the Low-Density Suburban residential (RSL) District at 736 Tiller Road (TMS #452-05-00-078). She stated that an “aye” vote approves the request, and a “nay” vote disapproves it.

The roll was called and votes were taken as follows:

Comm’r Fabri	Aye
Vice Chair Savage	Nay
Comm’r Smith	Nay
Chairwoman Lyon	Nay

The motion failed. Chairwoman Lyon stated for the record that the variance request did not meet all of the criteria as outlined in the ordinance, specifically:

Criteria A: **There are extraordinary and exceptional conditions pertaining to the particular piece of property;**

Criteria 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 and;**

Criteria F: **The need for the variance is not the result of the applicant’s own actions;**

She told the applicants that perhaps they can modify their plans and wished good luck with their dream home. She informed the applicants that the final decision of the Board would be sent to them in 10 business days and questions about the denial should be directed to the Planning Department.

Additional Business:

Next Meeting Date: June 20, 2023: Chairwoman Lyon announced the next meeting on Tuesday, June 20. We do not have a case at this time, however, the deadline for filing is Friday, May 19 and we may have the Jimmy Johns case return to the Board.

Chairwoman Lyon thanked the staff for their hard work in preparing for the BZA meetings, She especially complimented Kristen Crane, Planning Director, for her hard work. She noted that Kristen get a lot of heat from these cases, it has been especially challenging the last two years with the Planning Commission and BZA. She wanted Kristen to know that both Boards appreciates her very much. Her job is stressful but they appreciate all that she does.

Appreciation to Flannery Wood for being the “good right hand. Flannery does a good job and she appreciates all that she does. Please continue to hang in there.

Thank you to Frances Simmons for doing a good job in preparing the meeting minutes. Thank you to Niki Grimbball, Town Administrator for a good job.

Chairwoman Lyon announced that the Board may be getting a new member soon. Councilman Boles is looking for a replacement for former member Corie Hipp and could possibly have a replacement by the next meeting. She asked Ms. Grimbball if she was aware of a replacement. Ms. Grimbball replied that Councilman Boles has reached out to three individuals but has not made a decision as yet. Chairwoman Lyon is hopeful that a new member could be sworn in before the next BZA meeting.

Adjourn

There being no further business to come before the body, the meeting adjourned at 5:49 p.m.

Respectfully submitted:

Frances Simmons
Town Clerk and Secretary to the BZA