

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF NOVEMBER 19, 2019

Members present: Mrs. Brook Lyon, Chair, Mr. Jason Gregorie, Vice Chair, Mr. Roy Smith, and Mr. Sim Parrish. Absent: Mr. Jim Fralix. Also, Kristen Crane, Planning Director, Flannery Wood, Planner I (for Frances Simmons, Secretary to the BZA and Town Clerk), Cynthia Mignano, Town Councilmember and Bonum Wilson, BZA Attorney.

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

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

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

Introductions: Chairwoman Lyon introduced the members of the BZA, staff, Councilmember Mignano, and Attorney Wilson. She thanked Flannery Wood for standing in for Frances Simmons, Secretary to the BZA and Town Clerk. She also thanked Jason Gregorie for chairing August's meeting in her absence.

Review Summaries and Rulings from the August 20, 2019 BZA Meeting: Chairwoman Lyon asked if there were changes to the August 20, 2019 meeting minutes. If not, a motion and a second is required to approve. Motion to approve was made by Mr. Parrish, seconded by Mr. Smith. Chairwoman Lyon abstained from the vote due to her absence at the previous meeting. The motion passed unanimously.

BZAS-7-19-018

TMS# 425-13-00-082

Special Exception request for the placement of a Child Day Care Facility in the Low-Density Suburban Residential (RSL) District at 1238 Pauline Avenue.

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 the Oath to those Presenting Testimony: Attorney Wilson swore in the persons who wished to provide testimony in tonight's case.

Review of the Following Application:

NEW BUSINESS

BZAV-10-19-024

TMS #454-05-00-032: Planning Director, Kristen Crane, presented the staff review. The applicant, Mr. Adam Ridgeway, is requesting a Variance for the reduction of the 5' required accessory

structure side setback by 1.9' to 3.1' for the placement of a detached shed in the Low-Density Suburban Residential District (RSL) at 750 London Drive. Mrs. Crane noted an error in the review and stated that adjacent properties to the west are Low-Density Suburban Residential (RSL) and are in the Town of James Island while properties to the east and south are in the City of Charleston but are also single family residential in nature. Property to the north is a freshwater lake owned by the Stiles Point Plantation Homeowners Association.

Town of James Island Zoning and Land Development Regulations, §153.207 states accessory structures in residential zoning districts that are over 120 square feet, shall be at least five feet from any interior lot line in a residential district.

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 (ZLDR). She stated that The Board of Zoning Appeals has authority to approve, approve with conditions or to deny the case based upon the findings of facts unless additional information is required to make an informed decision. Mrs. Crane then read the six approval criteria and two (2) conditions being recommended by staff:

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

Questions from the Board: Mr. Smith stated that while a 5' setback was required for structures over 120 sq. ft., he wanted to know what was required for structures under that. Mrs. Crane explained that a 3' setback was required and that 5' was a change made in 2016. Mr. Smith asked why that change was made. Mrs. Crane responded that the change was implemented due to an influx of applications for large accessory buildings and complaints from neighbors that buildings were too close. Mr. Smith then asked if the tree that he was viewing in the photographs was the one to the right of the home, and if the structure moved to the west only one limb would have to be removed. Mrs. Crane agreed that the limb would probably have to be removed and mentioned that Town ordinances only allow 25% encroachment into the tree canopy. She noted that a canopy survey would have to be done to determine that. Mr. Smith asked if such a survey had been completed. Mrs. Crane responded that it had not, and she could not tell if it was over the 25% encroachment from the photos. Mr. Smith stated that he read in the requirement that conditions do not generally apply to properties in the area, but he found the properties are very much alike in that they have grand trees and accessory structures. Mr. Smith then stated that he had no further questions.

Applicant Presentation: Mr. Adam Ridgeway thanked the Board for allowing him to request this variance for the shed. He stated that there was no space on the other side of lot as a satellite shot shows other grand trees on other side. He would be unable to access the yard with any vehicles if

they tried to do a garage or ancillary structure on that side. Mr. Ridgeway explained that in 2016 when he checked, the zoning requirement was 3 feet. He stated that there were large camellias beside the building. The house was built in 1964 by the Gilberts and they owned it until he bought it in 2007. The camellias are now trees and shifting anything to the west would take out the camellias and a reasonable large oak branch. He stated that he would not speculate on the canopy but adding all three trunks together probably wouldn't reach 25 percent. He explained that the oak trees that can be seen from the street are 3 or 4 more live oaks on the right side of his property or the adjacent lot next door. If you look at the picture to right, you see another branch to the right part of 2 or three more trees rooted there. Mr. Ridgeway stated that he would like to believe that granting the variance doesn't change the nature or culture of neighborhood. Most of the homes have ancillary structures in a similar proximity. As far as adjacent property owners being affected, he stated that he had a letter for the Board. He stated that the letter was from the people on either side and across the street from him. Mr. Ridgeway explained that preferably they would be granted the variance and finish the structure. Ideally, there would be no tree trimming and moving stuff. He stated that he hasn't argued his fault with the Town and has paid the fine and that he hoped they would approve the variance and he can move forward. He would like to keep it where it is, finish it, and is more than happy to protect the trees.

Questions from the Board:

Chairwoman Lyon addressed the Board and offered them several minutes to look over the letters provided by the applicant. Chairwoman Lyon stated that she would like to read the letter into the record. She stated that what the applicant has produced is a statement signed by different residents: To whom it may concern, in regard to the variance request for parcel 454-05-00-032 case # BZAV-10-19-024, I am familiar with the property and the nature of the variance request. I do not have any issue with this project and would encourage the Board of Zoning Appeals for the Town of James Island to grant the variance and allow the shed to be located 3.1 feet from the side property line. Chairwoman Lyon then stated that the signature is David WM Owens at 745 London Drive. The next one is some initials at 756 London Drive which is to the left if facing the house. 744 London Drive is Stephen Martina, to the right of the home, and Rebecca Langley who she is assuming is a neighbor at 744 Norfolk drive.

Mr. Parrish noted the size and layout and asked if a workshop and large equipment would be stored in the shed. Mr. Ridgeway explained that a table saw, drill press, and chop saw would be in one room and tool storage in the other. There is a semi attic upstairs where his wife will put her Christmas decorations instead of in the main house. Mr. Parrish then asked how the applicant would provide power. Mr. Ridgeway explained that he would use a sub panel off of the main house. Chairwoman Lyon asked the applicant why he didn't get a permit to start? She explained that if he had, he would have known about the new setback laws. She stated that she hated that he had started something and was so close to being finished and now there was a problem with the zoning laws. Mr. Ridgeway stated that he doubted he could provide a truly acceptable answer. It was an idea and then he saw an opening in his schedule and jumped in and started for lack of a better term. Chairwoman Lyon then asked how hard it would be to move as it looks like it is on piers and not a slab and they will be tearing down the other shed anyway. She asked if they could move away from the camellia and live oak more toward water and away from the property line, and if there was no way to fix it? Mr. Ridgeway responded that is was America, we can do a lot of stuff, but that it would be a challenge. Mr. Smith asked the applicant if he was a contractor. Mr.

Ridgeway responded he had a residential builders license. Mr. Smith then stated that he wanted to echo some things that Mrs. Lyon said. He said that while it looks like a wonderful shed and plan and he could see why the applicant would want it, his heart goes out to him. Mr. Ridgeway interrupted stating that he had a question and asked how big the shed needed to be for it to be 3' from the property line. Mrs. Crane said that it would have to be 120 sq. ft. Mr. Smith responded that his shed was 16' by 40'. Mr. Ridgeway then asked if he could go in and cut one-foot sections out and make it comply. Chairwoman Lyon asked if he would consider cutting it down the middle and making it 2 and if that would be an option. Mr. Ridgeway stated that while this wasn't a reasonable option for utilization if he moved over and cut several inches out and moved over and made it comply with 120 sq. ft then the building would still be there and be 3 feet but it would fit the zoning ordinance and not be an effective structure. Chairwoman Lyon asked how big it is now. Mr. Smith responded that it is 640 sq. feet on the first floor. Chairwoman Lyon stated that she thought 10 x 12' was the legal size because she was thinking of doing one similar. She said it would have to be cut into almost 3 small sheds and she wouldn't know how that would work. Chairwoman Lyon expressed that she wanted to help the applicant, but she has to uphold the Zoning of the Town. Mr. Smith stated that it was terrible the way his mind was working right now, but he was not seeing that the applicant met the requirements and he would like to find a way for him to meet those requirements. But he must meet all 9 requirements and it is not just held up on one but several. Mr. Smith explained that it is awful but unless he hears something in the next few minutes, he will have to vote against allowing the variance because he doesn't think the applicant complies with the Ordinance and that is his job to follow the Ordinance. Mr. Smith stated that if there was anything else the applicant could explain to him about why he complies he would really like to hear it because he wants to help him but so far, he hasn't heard anything that would allow him to do so.

Mr. Ridgeway explained that he was not sure of any support that he could offer that would help Mr. Smith other than that he doesn't think granting this variance goes against the intentions necessarily of where James Island wants to be with its zoning. He stated that he does understand the 5-foot setback and can appreciate protecting the adjacent property owners, he didn't speak to the Town but did speak to them. He stated the shed is not visible from London Drive. It is only visible from where he is. He stated that numerous structures do exist, and he isn't sure if they were built in 2016 or not. He doesn't think the variance negates what the Town is trying to do. It does allow him to maintain as much line of sight as he can to the water. He explained that he and his wife have young kids, 5,6,7 & 8-year-olds fishing and kayaking and stuff. He and his wife would love to be with them, but they don't not have the time or the energy to always be right next to them. It is easier for them to be in the house and see the children. He stated that while this is not a zoning concern, it is part of their concern. Their goal was to make the shed disappear as best they could. Its not a small structure, but he did not go and chop any trees down. He tucked it in where 90% of the shed disappeared between the trees and bushes and stuff like that. He stated that again this is not necessarily a zoning specific issue, but he was trying to do what is best for the property and conform. Ideally, he would not like to not be imposing on neighbors.

In Support: No one spoke.

In Opposition: No one spoke.

Chairwoman Lyon closed the Hearing to the public at 7:41 p.m. and asked for a motion and second for discussion. Mr. Parrish moved to accept the application for discussion purposes; Mr. Smith seconded for discussion.

Discussion:

Mr. Gregorie stated that he did not see anything in the application that rose to the individual case of unnecessary hardship which is one of the things that requires a variance. He explained that he also agreed with the point that said there are 9 criteria the Ordinance. He thought it was actually 7 criteria, a-e, but that he doesn't think it meets all 7. Mr. Gregorie explained that he thought the application struggled with criteria B, conditions do not generally apply to other property in the vicinity and that he did not think it met that. He stated he didn't think the application met C. Because of these conditions, the application of this chapter to the particular piece of property would not effectively prohibit or unreasonably restrict the utilization of the property, and F, the need for the variance is not the result of the applicant's own actions; and he thinks it is as construction started without permits. Chairwoman Lyon stated that she agreed with Mr. Gregorie. She explained that D also concerned her, that it may be a detriment. While current property owners may be okay with it, it could still affect the neighborhood and future owners. She noted that while that is not what we are here for tonight, we must look at all aspects of it. She stated that D states that the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and certainly F, because of it being the applicant's own actions when he started without the permit. Mr. Parrish stated that he is mainly concerned about what would happen if we denied this. He stated that an executive session was needed so the Board could ask their Attorney what the consequences would be of denying or accepting this. Chairwoman Lyon stated that she had no problem with that, but she did know if there was a denial the applicant could appeal it to circuit court just as prior cases they have had. Mr. Parrish moved that they adjourn for executive session. There was no second to the motion and it failed. Chairwoman Lyon started to call for the vote and Mr. Parrish asked to move to amend to include conditions.

Chairwoman Lyon asked for a motion to amend the previous motion to include conditions. Mr. Parrish moved to amend to add conditions; Mr. Gregorie seconded.

MOTION TO AMEND ORIGINAL MOTION:

Motion to accept the application and amend to add conditions recommended by staff:

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

Chairwoman Lyon called for the vote: Chairwoman Lyon (aye); Mr. Smith (aye); Mr. Parrish (aye); Vice Chair Gregorie (aye) PASSED UNANIMOUSLY.

ORIGINAL MOTION:

Motion to approve the variance request for the reduction of the 5' required accessory structure side setback by 1.9' to 3.1' for the placement of a detached shed in the Low-Density Suburban Residential District (RSL) at 750 London Drive with conditions set forth by staff: Mr. Parrish moved to accept the application; Mr. Smith seconded.

Chairwoman Lyon called for the vote: Chairwoman Lyon (nay); Mr. Smith (nay); Vice Chair Gregorie (nay); Mr. Parrish (aye) MOTION FAILED 3-1. Chairwoman Lyon announced the legal reasons for denying the request is that the applicant did not meet the requirements of the Town of James Island Ordinances. A final decision will be mailed within ten (10) business days and the applicant may contact the Planning and Zoning staff with questions regarding the approval or the conditions.

Vote for Chair/Vice Chair:

Chairwoman Lyon stated that another order of business before the Board is to vote for Chair and Vice Chair. She explained the procedure to vote for Chair and Vice Chair and their terms.

Mr. Smith nominated Jason Gregorie for Chair. There were no other nominations. Mr. Gregorie accepted the nomination. Chairwoman Lyon called for the vote: Chairwoman Lyon (aye); Mr. Smith (aye); Mr. Parrish (aye); Vice Chair Gregorie (aye) CARRIED UNANIMOUSLY.

Chairwoman Lyon nominated Mr. Smith for Vice Chair. There were no other nominations. Mr. Smith accepted the nomination. Chairwoman Lyon called for the vote: Chairwoman Lyon (aye); Mr. Smith (aye); Mr. Parrish (aye); Vice Chair Gregorie (aye) CARRIED UNANIMOUSLY.

Additional Business:

Next Meeting: December 17, 2019, 7 p.m.

Chairwoman Lyon thanked the Board and staff for allowing her to serve as Chairperson for the last two years.

Adjournment: There being no further business to come before the Board, the meeting adjourned at 7:53 p.m. upon motion by Mr. Smith, and second by Mr. Parrish.

Respectfully submitted:



Flannery Wood
Planner I