

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF JULY 20, 2021

The Board of Zoning Appeals held its regularly scheduled meeting on Tuesday, July 20, 2021 in person at the Town Hall, 1122 Dills Bluff Road, James Island. Commissioners present: Amy Fabri (via telephone conference), Corie Hipp, David Savage, Vice Chair, Roy Smith, and Brook Lyon, Chairwoman, who presided. Also, Kristen Crane, Planning Director, Bonum S. Wilson, Town Attorney (via telephone conference), Flannery Wood, Planner II, 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 7:00 p.m. She announced that it was good to see everyone in person since the Board hasn't met in person since December last year. Chairwoman Lyon welcomed Commissioner Amy Fabri, recently appointed to the Board. Commissioner Fabri will be participating by telephone conference as she has come into a bad case of poison oak.

Compliance with the Freedom of Information Act: This meeting was held in compliance with the SC Freedom of Information Act. The public was also informed that this meeting would be live-streamed on the Town's YouTube Channel and was provided that information.

Introductions: Chairwoman Lyon introduced herself, Members of the BZA, Attorney, and Staff.

Review Summary from December 15, 2020 BZA Meeting: Motion to approve the meeting minutes from the December 15, 2020 BZA meeting was made by Commissioner Savage, seconded by Commissioner Smith, and passed unanimously.

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: Chairwoman Lyon swore in persons who wished to give testimony.

Review of the Following Application:

Case# BZAV-6-21-027

TMS #426-08-00-078

Planning Director, Kristen Crane, presented the staff review by showing a radius map and an aerial view of the property. The applicant, Mr. E. Culver Kidd is requesting a variance for the removal of a grand tree for the construction of a single-family home on a vacant lot in the Low-Density Suburban Residential (RSL) Zoning District at 907 White Point Blvd, TMS #426-08-00-078. Adjacent properties to the east, south, and west are also in the Low-Density Suburban Residential Zoning District and are in the Town of James Island's jurisdiction. Adjacent property to the north is marsh. Other uses within 300' of the subject property includes residential uses in the Town of James Island and the City of Charleston.

The Town of James Island's 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 were approved by the Board of Zoning Appeals and shall be replaced according to a schedule determined by the Zoning Administrator.

The subject property is vacant and is 0.44 acres in size. There are currently six (6) grand trees on the site, with two (2) of those having previously been permitted for removal due to health. The tree requested for removal is a 48" DBH live oak located in the center of the property on the western side. Records indicate a plat for the property was recorded in 1969. The previous property owners owned the lot since 1972. The applicant purchased the property in April of 2021. The applicant explains in their letter of intent "I purchased this residential lot to build a single-family residence. Upon acquiring the parcel and meeting with potential builders it quickly became apparent that in order to build a single-family residence one grand live oak would need to be removed."

Mrs. Crane reviewed the Findings of Facts according to §153.049 F, Zoning Variance Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR). She said the Board has authority to approve, approve with conditions, or to deny the case based upon the Findings of Fact unless additional information is required to make an informed decision. Mrs. Crane then read the seven (7) approval criteria and three (3) conditions recommended by staff:

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, to mitigate potential damage to the trees caused by construction.
3. The applicant/owner shall mitigate the removal of the grand tree 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 from the Board:

Commissioner Fabri asked when was the two (2) trees previously permitted for removal requested and Mrs. Crane said she received an arborist letter in February recommending that they be removed.

Commissioner Fabri asked if the applicant was planning on removing any other trees on the lot when the permits for these two were applied for and Mrs. Crane responded it is only for the two in the back as far as she understands, but the applicant may know more about that.

Chairwoman Lyon questioned Condition #3 should the application is approved. She asked Mrs. Crane if the applicant/owner submits the mitigation plan to her as the Zoning Administrator to approve and is the plan an inch-per-inch replacement. Mrs. Crane answered that it is inch-per-inch so the applicant would need to replace 42 inches. The Town requests quotes from tree companies for similar trees that are at least 2 inches in caliper and the costs of the trees can be planted on the site or the amount of money donated to the Tree Fund; or a combination of both if it doesn't make sense to plant the trees back on the site. Chairwoman Lyon asked what the Tree Fund money is used for, and Mrs. Crane answered to replant and maintain the trees.

Commissioner Fabri asked for clarification of the mitigation plan. Mrs. Crane stated that the smallest caliper tree for mitigation purposes is a 2 inch tree. If the mitigation plan includes replacement of physical trees it would be 2 inch trees replaced and planted somewhere. If it includes a donation to the Tree Fund for mitigation purposes the Town would request two quotes for a live oak that is at least a 2 inch caliper tree.

Applicant Presentation:

Culver Kidd, 669 Lake Francis Dr., Charleston, thanked the Board for hearing his request. He has lived on James Island since 1999 for 22 years now. This is home, where he wants to live out his days, and is raising his son. He wants to build his forever home and has spent the bulk of his life savings to purchase the lot. He originally did so thinking that he could build a home without destruction of the trees. He, like many Board members, love our Town because of the grand oaks and nature. His current home has live oaks in the yard, and he loves them and hopes to have them here as well. In fact he originally wanted to build around the trees and to find a way to protect them. Shortly after purchasing the lot it became apparent with the survey done and the OCRM line that he began to understand what the footprint would look like. He answered Commissioner Fabri's question that he made the removal of the back damaged trees a condition in his contract and the permit came prior to closing on the property. He was hopeful that he could build behind the two existing grand oaks, but it became apparent that the slope and the encroaching OCRM line, while also creating a buffer to those existing trees not only impeded the root structure but the size of their canopy was not possible.

Mr. Kidd said he is not looking to build a huge house and the homes in that area run 3,000-9,000 square feet. His house would be on the low end of that range. He said it is not that he wants to cut the trees down, he needs to cut them down. He doesn't make that decision lightly because he understands how important it is to our island. He wants to approach this the right way and to be respectful of the process. He referred to the arborist letter stating that he is not trying to make the tree into something that it is not, but everything he's read and knows about live oaks and the tree's damage it would not survive if you're going to build this house. He feels that it's the only use that makes sense for the property. He said when going through the factors that Mrs. Crane identified, he believes it fits the scenario perfectly; it is a very unique property having a unique set of trees on it and he believes that you cannot build a family residence without removing one of them. The arborist has suggested this as the appropriate tree to remove under these circumstances so that we can help create a more appropriate buffer for the remaining grand oak on the property to preserve it, and he is putting the tree on a pedestal to make sure that it lives a long and healthy life without the encroachment of the construction project on the property. They are willing to do whatever is necessary to appease the Board and satisfy the law. Despite him being a lawyer, this isn't his area of expertise, however, the Board has the authority to approve the variance under the law and he hopes the Board will see it the same way and allow him to construct his residence so that he can move in with his family. He has reached out to the immediate neighbor at 911 White Point Blvd. who is with him tonight and is not opposed to him cutting down the tree. He hopes the Board will look at the unique nature of this for a single family residence and hopes they will take that into consideration.

Questions for Applicant:

Commissioner Hipp asked if the other neighbor was opposed to the request. Mr. Kidd said the other neighbor is the person who he purchased the lot from. He did not want to ask her to come and speak on his behalf because he knows that she is very attached to the trees. He said to be frank with the Board, she sold him the lot knowing that was a possibility; one that was discussed prior to him purchasing the lot and that is why they paid what they did. Frankly he did not ask her one way or another because he did not want to put her in that position. She is elderly and he wants to have harmony with his neighbors.

Commissioner Hipp asked if he had exhausted all resources to figure out if this was the best footprint for this type of house with the trees. Mr. Kidd said they reached out to a number of architects but has not gone through the full architect/planning process because it is extremely costly in designing a full architectural design not knowing what the actual building footprint would be because of the trees. The answer is candidly

no. He hasn't done a full design with an architect but has met with several builders and walked through the lot to discuss what could be built on the street side of the trees. With the flood zone and OCRM line, a sizeable home in-line with the neighboring houses on the street would not be able to be constructed because of the buffer from the trunk and the canopy. He feels the footprint is extremely limited from both a horizontal and vertical standpoint.

Commissioner Fabri asked if the trees on the water side had been removed. Mr. Kidd said he has not removed any trees from the property yet because he does not intend to spend more money on the property if he can't build on it. He does not intend to remove any of the trees if he can't remove one of the grand oaks.

Commissioner Smith said after looking at the plan, if Mr. Kidd intends to remove the two 30 inch oaks that are dead and dying, and what is the plan for the 20 inch tree in the back. Mr. Kidd said the plan was to remove the tree because it is connected to the dying trees; it comes up from the same root structure, so it looks to be one tree with the exception that the arborist considers them two trees. On the drawing they look to be apart but in reality they are connected. He said the larger portion of that tree is dead and he does not believe one can be removed without the other. There was discussion about variances and if one is required for 20 inch trees. Mrs. Crane responded that variances are not required for trees under 24 inches, and she has the arborist report for those two trees. Commissioner Smith referred to Mr. Kidd's letter of intent that stated the lot as being unique in that years of erosion have caused the OCRM line to move inland. Mr. Smith asked if this didn't do anything to the other lots. Mr. Kidd said it most likely has, that all of the lots had residences built on them for a long time. Now many of these homes are in the setback of the OCRM line. Because his lot has not had construction on it and there is no buffer or provision for erosion on it, it limits where he can build.

Support:

Cam Wills, 911 White Point Blvd., lives to the right of Mr. Kidd's lot. His wife is tending to a sick dog, otherwise she would be here. They are both in favor of Mr. Kidd utilizing the lot. He is also a General Contractor and like Mr. Kidd stated, he cannot utilize the lot because of the trees. As a contractor, he is worried about him building a house under any one of those trees and have a limb slam into a child's bedroom. This happens all the time when we go through hurricanes with houses on the harbor. He has spoken with Myrt Lamm, the seller, who knows what Mr. Kidd's intentions are. She loves trees but is totally aware that he needs to remove them to build the house. Mr. Wills said that he recently finished his house and Mrs. Crane was great through the entire process; but regardless, grass grows in the OCRM line that establishes the critical line, so this is what happens to these lots over the years as the grass is growing up when they come out and mark the lines. The grass grows significantly. He has lost maybe 3/10 of an acre with the line creeping up on him. So with the front setback, and the rear buffer, and the side setbacks he would have a tiny area to build a house. Frankly if it were him, he would be asking for both trees to be removed to utilize the lot and mitigate, replant, and donate to the Town's tree fund.

Opposition:

John Fairey, 883 White Point Blvd. Mr. Fairey stated, just so that everyone knows, he did not know if the packets has the responses of the people who were notified within 300 ft. He said the family right across the street from the vacant lot just experienced a death in the family, the young father, so the wife and the children are in Maine right now. He doesn't know if they have any idea he is saying this, so he just wanted to put it out there. He asked is there a way to have a variance that allows you to encroach on the canopy and Chairwoman Lyon responded that the Board is not for questions and answers, this is the public's time to make their comments. Mr. Fairey mentioned other houses that are under the canopies of trees and that

other strategies be considered because this is a 200 year old tree and no one here will see the replacement grow to that size.

Applicant Rebuttal:

Mr. Kidd responded to the opposition stating that you could build underneath the canopy to some extent. You have to maintain certain distances from the main leads, and you are limited to how far underneath the canopy you can go. He said a lot of the older homes here that you see when you ride up and down the road some of the oaks are right over the roof.

Chairwoman Lyon closed the meeting to the public at 7:43 p.m. and moved to approve Case #BZAV-6-21-072, TMS #426-08-00-078: Variance Request for the removal of a grand tree for construction of a single-family home on a vacant lot in the low-density suburban residential district (RSL) on property located at 907 White Point Blvd. with the three (3) conditions recommended by staff. Chairwoman Lyon asked for a second to the motion for discussion. The motion was seconded by Commissioner Smith.

Board Discussion:

Commissioner Hipp stated that she is not for cutting down trees, but it seems impossible to get around it. Unless the applicant donates the land to the Town and calls it a day, she doesn't understand how his right to build a house is not the best use of the land.

Commissioner Fabri stated there is no way to build without taking out a tree, however the applicant should be responsible for the two trees in the rear that were approved. She said approval is conveyed with the property.

Chairwoman Lyon discussed the condition, disease, and size of the trees; therefore mitigation was not necessary, however, a small permit fee of \$25.00 was charged. She said two trees were permitted, one because of its health and the other because of its size. Chairwoman Lyon went on to state that she felt the applicant met all criteria and she would need to vote to approve.

Commissioner Fabri spoke about the conditions for sale of the lot and some form of mitigation should be assessed.

Commissioner Savage spoke that the issue of mitigation for the other trees is not before the Board, only the one tree. He said the applicant has satisfied all of the criteria required (F) a, b, c, d, e, f, and g, and he doesn't see how he could build a house on the lot, also this is a residential lot. He cannot think of any reason to deny the request and spoke in favor of approval based on satisfaction of meeting all criteria.

Commissioner Smith stated that he does not agree that denying the application would make the property worthless as some kind of house could be built. He stated that he is an architect and feels certainly a house could be built, just not one in keeping with the character of the neighborhood and possibly causing a hardship. Commissioner Smith stated that the applicant met the criteria, and he will support the motion.

After discussion, Chairwoman Lyon reiterated the motion to approve Case #BZAV-6-21-072 with the three (3) conditions recommended by staff.

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, to mitigate potential damage to the trees caused by construction.

3. The applicant/owner shall mitigate the removal of the grand tree 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.

Vote:

Commissioner Fabri	Aye
Commissioner Hipp	Aye
Commissioner Savage	Aye
Commissioner Smith	Aye
Chairwoman Lyon	Aye

Passed Unanimously

Chairwoman Lyon announced that the final decision will be mailed within ten (10) business days and the applicant may contact the Planning and Zoning staff with questions regarding the application.

Additional Business:

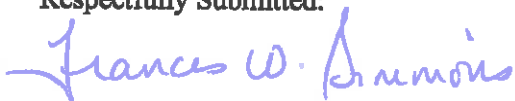
No applications were received for the August 17th meeting. the next Meeting will be held September 21 if applications are received.

Chairwoman Lyon thanked Mrs. Crane, Ms. Wood, and Mrs. Simmons, for all the hard work they do in preparing for the BZA meetings.

Adjournment:

There being no further business to come before the Board, the meeting adjourned at 7:58 p.m.

Respectfully Submitted:



Frances Simmons
Secretary to the Board of Zoning Appeals