Case # BZA-09-19-00359
Charleston County BZA Meeting of November 4, 2019

Applicant/Property Owner: Louise Anderson

Representative: Voka Stokes-Norwood

Property Location: 389 Maggie Road – East Area

TMS#: 556-00-00-292

Zoning District: Special Management (S-3) Zoning District

Request: Variance request for the removal of a 36” DBH Grand Live Oak tree in order to provide access for a proposed lot.

Requirement:
Charleston County Zoning and Land Development Regulations (ZLDR) Ordinance, Chapter 9 Development Standards, Article 9.4 Tree Protection and Preservation, §9.4.5 Tree Removal, B. Variances: “Grand Trees and protected trees that do not meet the above criteria (§9.4.5.A) may be removed only where approved by the Board of Zoning Appeals, and shall be replaced according to a schedule determined by the Board. The Planning Director will make recommendations to the Board concerning the number, species, DBH or caliper, and placement of such trees.”
All Grand Trees and any other trees required to remain on a site as outlined in this Ordinance must be protected during construction and development of the parcel. Tree protection must be shown on all development plans prior to site plan approval. A site inspection of the tree barricades must be scheduled by the applicant with the Planning Department for approval prior to the issuance of permits or the start of development activities.

Prior to issuance of a zoning permit, a pre-construction planning conference for tree preservation is required on site with the Planning Director's representative, the applicants, and any parties deemed appropriate for the purpose of determining if there is a need for additional tree protection techniques and for designating placement of tree barricades, construction employee parking, temporary construction office and dumpsters.

B. Tree Protection During Development and Construction

Protective barricades shall be placed around all required trees in or near development areas on all zoning parcels, prior to the start of development activities. These barricades, constructed of wood or plastic fencing or other approved materials shall be erected in accordance with standards by the Planning Director and placed beneath the canopy drip line or one and one-half feet times the DBH of the tree. Other protective devices or construction techniques may be used as approved by the Planning Director. The barricades shall remain in place until development activities are complete. The area within the protective barricade shall remain free of all building materials, dirt, fill, or other construction debris, vehicles, and development activities. All required trees are also subject to the provisions of Section 9.5.6 of this Chapter and subject to the enforcement criteria of Chapter 11.

C. Partial Exception for Limited Clearing

Limited clearing and grubbing may be authorized by the Planning Director prior to the installation of protective tree barricades on sites that exhibit unusually heavy undergrowth where access to the interior of the site and its protected trees would be otherwise highly impractical. Limited clearing shall be for the express purpose of accessing the property and protected trees to erect the required tree protection and silt fencing. For the purposes of this Article, limited clearing shall be clearing done with hand tools, push or walk behind equipment or lightweight bush-hog type equipment designed specifically for brush and undergrowth clearing that is not capable of removing vegetation greater than 3 inches in diameter. Under no circumstances will metal tracked bulldozers, loaders, or similar rider/operator types of equipment be allowed on the site until the protective barricades are erected and a zoning permit is issued.

D. Separation of Trees from Pavement, Grading and Structures

Paved areas shall be separated from trees by a minimum distance of the drip line or one and one-half feet times the DBH or as modified by the Planning Director as deemed necessary to protect the root system of the tree. Paved areas shall not constitute more than 25 percent of the protected area beneath a tree. Any paving, grading, trenching, or filling within the remaining 75 percent of the protected area must be approved by the Planning Director and may require specific construction techniques to be used in order to preserve the health of the tree. Refer to Chapter 9 exhibits for examples. When grading and construction within the protected area of a tree has been approved, all damaged roots shall be severed clean and inspected by the County Landscape Architect or Inspector prior to the receipt of a Zoning Permit.

E. Quantity and Location of Trees to be Protected

Before the issuance of a Zoning Permit for Commercial, Industrial, Multi-Family, and Civic/Institutional uses, the following number of trees with a diameter breast height of 8 inches or greater shall be preserved and protected in accordance with the provisions of Section 9.4.4.B of this Ordinance. All trees located within required buffers as outlined in Article 9.5 shall be protected.

1. 20 trees per acre; or
2. Any number of trees with a combined diameter breast height of at least 160 inches per acre.
3. Required drainage improvements such as detention and retention ponds and wetlands may be subtracted from the area used to calculate tree preservation requirements.

Effective on: 11/20/2001, as amended

§9.4.5 Tree Removal

A. Generally

Permits for tree removal may be approved where one or more of the following conditions are deemed to exist by the Planning Director:
1. Trees are not required to be retained by the provisions of this Article.
2. Trees are diseased, dead or dying (as determined by the Planning Director or a qualified arborist);
3. Trees pose an imminent safety hazard to nearby buildings, or pedestrian or vehicular traffic (as determined by the Planning Director or a qualified arborist); or
4. Removal of required trees has been approved by the Board of Zoning Appeals.

B. Variances

Grand trees and protected trees that do not meet the above criteria may be removed only where approved by the Board of Zoning Appeals, and shall be replaced according to a schedule determined by the Board. The Planning Director will make recommendations to the Board concerning the number, species, DBH or caliper, and placement of such trees.

C. Emergency Provisions

In the event that a tree poses a serious and imminent threat to public safety due to death, disease or damage resulting from emergencies including, but not limited to, fires, flooding, storms, and natural disasters, the Planning Director may waive requirements of this Article. Documentation must later be submitted for review outlining the threat to public safety which initiated the removal. Documentation must include any written findings by a qualified arborist and photographs supporting the tree removal emergency. The Planning Director may require replacement of required trees that are removed where it is determined that death or disease resulted from negligence.

D. Violations and Penalties

Violations and penalties are specified in Chapter 11 of this Ordinance.

Effective on: 11/20/2001, as amended

§9.4.6 Tree Replacement

A. Generally

Tree replacement shall be required accompanying development on all non-exempt properties in the manner described below:

1. When replacement canopy trees are required in fulfillment of the requirements of this Article, they shall be no smaller than two and one-half-inch caliper.
2. The Planning Director or Board of Zoning Appeals is empowered to require trees of larger caliper as determined appropriate for site-specific conditions and the circumstances, lawful or illegal, under which removal occurred.

B. Protected Trees Removed in Violation

When trees of 8 inches DBH or greater have been removed in violation of this Ordinance, replacement trees shall be planted in the same general area according to a replacement schedule approved by the Planning Director.

C. Sites with Less Than 160 Inches per Acre Combined DBH

When lots lack a sufficient number of trees to meet the requirement for DBH/number of trees per acre, all trees six inches DBH or greater shall be preserved and protected in accordance with Section 9.4.4.B of this Chapter during development and must equal no less than 40 inches per acre combined DBH. On lots with less than 40 inches per acre combined DBH, additional trees shall be planted on the lot equaling or exceeding 40 inches per acre combined DBH. Planting schedules shall be approved by the Planning Director.

D. Previously Cleared Sites

Where sites were completely cleared of trees prior to adoption of this Article or have been cleared subsequently for activities exempted from this Article, replacement trees shall be planted, the combined caliper of which equals or exceeds 40 inches per acre. Replacement schedules, including number, species, caliper and placement shall be approved by the Planning Director.

E. Tree Fund
Proposal: Variance request for the removal of a 36” DBH Grand Live Oak tree in order to provide access for a proposed lot.
36" DBH Grand Live Oak Tree
Existing Access
Photographs provided by the Applicant
Staff Review:

The applicant and property owner, Louise Anderson, represented by Voka Stokes-Norward, are requesting a variance for the removal of a 36" DBH Grand Live Oak at 389 Maggie Road (TMS # 556-00-00-292) in the East Area of Charleston County. The subject property and surrounding properties to the north, south, east, and west are located in the Special Management (S-3) Zoning District.

The Charleston County Zoning and Land Development Regulations (ZLDR) Ordinance, Chapter 9 Development Standards, Article 9.4 Tree Protection and Preservation, §9.4.5 Tree Removal, B. Variances states, "Grand Trees and protected trees that do not meet the above criteria (§9.4.5.A) may be removed only where approved by the Board of Zoning Appeals, and shall be replaced according to a schedule determined by the Board. The Planning Director will make recommendations to the Board concerning the number, species, DBH or caliper, and placement of such trees."

The subject property contains a single family residence and is approximately 1.33 acres in size. The applicant is proposing to subdivide the property into two lots, and the requested tree is located within the proposed access way (SBBV-01-18-00713). Staff conducted a site visit of the subject property on October 15, 2019. Please review the attachments for further details regarding this request.

Planning Director Review and Report regarding Approval Criteria of §3.10.6:

§3.10.6(1): There are extraordinary and exceptional conditions pertaining to the particular piece of property;
Response: The property is approximately 1.33 acres and is not extraordinary in regards to its size or shape, other than the flag portion of the lot leading up to the house and the location of the Grand tree in relation to the existing home and access way. Therefore, the request may meet this criteria.

§3.10.6(2): These conditions do not generally apply to other property in the vicinity;
Response: The number and location of Grand Trees vary throughout the area. Therefore, the request meets this criterion.

§3.10.6(3): 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 would not prohibit the utilization of the property; however, it may unreasonably restrict the utilization of the property. The applicant's letter of intent states, "The lot is "T"
shaped with little road frontage. The current house sits right at the middle of the "T" making it difficult to access the rear of the home." Therefore, the request may meet this criterion.

§3.10.6(4): 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 authorization of this variance may not be of substantial detriment to adjacent properties or to the public good and the character of the Zoning District. The letter of Intent states, "Surrounding properties are family members." Therefore, the request meets this criterion.

§3.10.6(5): The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a nonconforming use of land, or to change the zoning district boundaries shown on the official zoning map. The fact that property may be utilized more profitably, should a variance be granted, may not be considered grounds for a variance;

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. Therefore, the request meets this criterion.

§3.10.6(6): The need for the variance is not the result of the applicant's own actions;

Response: The need for the variance may be the result of the applicant's own actions based on the desire to remove the tree and subdivide the property. Therefore, the request may not meet this criterion.

§3.10.6(7): Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of the Ordinance;

Response: The granting of the variance may not substantially conflict with the Comprehensive Plan or the purposes of the Ordinance, if the Board finds that strict application of these provisions creates an unnecessary hardship. Therefore, the request may meet this criterion.

Board of Zoning Appeals' Action:

According to Article 3.10 Zoning Variances, Section §3.10.6 Approval Criteria of the Charleston County Zoning and Land Development Regulations Ordinance (ZLDR), (adopted July 18, 2006), 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 (§3.10.6A). A Zoning Variance may be
granted in an individual case of unnecessary hardship if the Board of Zoning Appeals makes and explains in writing their findings (§3.10.6B Approval Criteria).

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 (§3.10.6C).

The Board of Zoning Appeals may approve, approve with conditions or deny Case BZA-09-19-00359 [Variance request for the removal of a 36” DBH Grand Live Oak tree at 369 Maggie Road (TMS # 556-00-00-292) in the East Area of Charleston County] based on the BZA’s “Findings of Fact”, unless additional information is deemed necessary to make an informed decision.
Variance Application

County of Charleston
Board of Zoning Appeals

This application must be complete and submitted in person to the Zoning/Planning Department in order to apply for a Variance. Please read the entire form prior to completing the application. The applicant shall receive a copy of this completed form at the time the application is filed. This application will be returned to the applicant within fifteen (15) working days if these items are not submitted with the application or if any are found to be inaccurate:

1) Completed Variance application signed by the current property owner(s).
2) Copy of Current Recorded Deed to the property. If the applicant is not the owner of the property, the Current Property Owner(s) must sign and print the Designation of Agent found below.
3) Restrictive Covenants & Posted Notice Affidavits signed by the applicant or current property owner(s).
4) A letter of intent signed by the applicant or property owner(s) stating the reason for the request that explains why this request should be granted and how it meets the Approval Criteria of §3.10.6. All proposed Variances, except single family, shall satisfy the Site Plan Review process and attend at least one Site Plan Review meeting prior to submitting this application.
5) An accurate, legible Site Plan drawn to Engineers Scale must be attached. The site plan must show property dimensions, cardinal points, and locations of all existing and proposed structures and improvements, parking areas, Grand trees (24" DBH or greater), wetlands (properties containing DHEC-OCRM Critical Line areas must contain an up to date DHEC-OCRM signature on the site plan or plot), holding basins and buffers when applicable.
6) One 24 x 36 copy and twenty (20) 11 x 17 copies.
7) Copy of a legible Approved and Recorded Plat showing present boundaries of property.
8) Check made out to "Charleston County" or cash. $250 fee. Grand tree variances are $250 for one tree, add $50 for each additional tree.

Applicant Name: Louise Anderson
Mailing Address: 389 Maggie Rd
City, State, Zip Code: Mt. Pleasant, SC 29464
Daytime Phone: 843-303-3451
Subject Property Address: 389 Maggie Rd
Variance Description: Rear yard setback exceed
Applicant Signature: Louise Anderson
Email Address: Vokanor Wood@gmail.com

Designation of Agent (Complete only if owner is not applicant): I hereby appoint the person named as Applicant above as my (our) agent to represent me (us) in this application.

Owner Print Name Date Owner Mailing Address
Owner Signature City, State, Zip Code
Owner Email Address

FOR OFFICE USE ONLY

Application #: 52A-09-19-00359
Flood Zone: AE-11 5265
Zoning District: S-3
Fee Paid: $250 cash
Date Filed: 9/24/19
Zoning Officer:
TMS #: 556-00-00-292

Application for Variance
Variance request for grand tree removal to build 20’ easement to access property

Notes for Letter of Intent

- Property owner is 89 years old. The property owner wishes to subdivide property for granddaughter to build a home.

- The lot is “T” shaped with little road frontage. The current house sits right at the middle of the “T” making it difficult to access the rear of the home. Currently a dirt road is used to access the home unlike neighboring properties that have greater road frontage both in front and behind the house.

- Additionally, the location of the grand tree sits right at the front corner of the of the home increasing the difficulty to access the rear of the home and prevents needed access to the proposed second lot through a designated 20’ easement.

- Because the tree sits where the potential access could be, without removal, the property couldn’t be subdivided to build the new home.

- Removing the tree for 20’ access is the most feasible way to provide access for family member. (why access to the left can’t be used?)

- Removing the tree would not harm any neighboring property owners. Surrounding properties are family members.

- The variance is to allow us to remove the tree for the easement. The tree is blocking 50ft of the needed easement.

- Wesley Habersham (TMS#556-00-00-293) is the property directly in front of 389 Maggie Road. This is Louise Anderson grandfather property that is heirs property. No home on property.

- Berkeley County Electric was at 389 Maggie Road the week of August 19, 2019 to cut branches off the roof of my home because it was damaging the shingles on my roof that was hanging from the power line. This is the same tree I am trying to have removed.
EGYPT ROAD 50' R/W
SOI°35'17"W 288.7'
Charleston, South Carolina
Office of Register Mesne Conveyance

Plat recorded this 33 day of Oct. 1981
10.40:40 in Plat Book All Page 160 and tracing cloth
copy filed in File 7 Drawer 5 Folder 31 Drawing
No. 35 Original, plat (black and white print) delivered
to Co. Co. Planning Board

Robert N. King
Register Mesne Conveyance

LOT 3
1.6 AC

LOT 2
1.33 AC

NOTE: PUBLIC WATER AVAILABLE

HEIRS PROPERTY
PROPERTY IN THE ESTATE OF ROSABELL HABERSHAM
LOCATED IN CHRIST CHURCH PARISH
CHARLESTON COUNTY, S.C.

SCALE: 1" = 60'

WESLEY HABERSHAM

ELIZABETH L. CUMMINGS

LOUISE A. ANDERSON

APPROVED FINAL PLAT
Chairman Charleston County Council
Director of Planning
October 2, 1981
# 3271-A

I, FORREST G. CALVERT, A REGISTERED SURVEYOR IN THE STATE OF SOUTH CAROLINA, HEREBY CERTIFY THAT I HAVE SURVEYED THE PROPERTY SHOWN HEREON, THAT THIS PLAT SHOWS THE TRUE DIMENSIONS OF THE PROPERTY, THAT ALL NECESSARY MARRIERS HAVE BEEN INSTALLED, AND THE PRECISION IS ± 1/10,000.

FORREST G. CALVERT, R.G., LS 475
RECEIVED 8-1-1981

LOTS 1 AND 2 DO NOT MEET MINIMUM HEALTH DEPARTMENT REQUIREMENTS.

WE THE UNDERSIGNED HEREBY DEED THIS 40' DRAINAGE EASEMENT TO THE USE OF THE PUBLIC FOREVER. THE APPROVAL OF THIS PLAT IN NO WAY OBLIGATES THE COUNTY OF CHARLESTON TO THE MAINTENANCE.

WESLEY HABERSHAM

ROSABELL HABERSHAM

ELIZABETH L. CUMMINGS

LOUISE A. ANDERSON