



Case # BZA-03-24-00767

Charleston County BZA Meeting of May 6, 2024

Applicants: Tim and Kathryn Luwis

Property Owners: Timothy and Lisa Broadbent

Representative: Charlie Miraziz of Drafted Architecture

Property Location: 200 Black Tupelo Lane – Johns Island

TMS#: 205-00-00-074

Zoning District: Low Density Residential (R-4) Zoning District

Request:

Variance request to encroach a 30" DBH Grand Live Oak Tree and a 17"/18" DBH Grand Live Oak Tree more than twenty-five (25%) of the protected root zone area and to construct within a restricted area three times the DBH (Critical Root Zone) of the 17"/18" DBH Grand Live Oak tree for a proposed single-family residence.

Requirement:

The Charleston County Zoning and Land Development Regulations Ordinance (ZLDR), Chapter 9 Development Standards, Article 9.2 Tree Protection and Preservation, Sec. 9.2.1 General, C. Definition of "Tree Removal": "For the purpose of this Article, the term 'Tree Removal' shall include, but not be limited to, damage inflicted to the root system by machinery; girdling; storage of materials and soil compaction, changing the natural Grade above or below the root system or around the trunk; damage inflicted on the Tree permitting fungus infection or pest infestation; excessive pruning; excessive thinning; excessive paving with concrete, asphalt or other impervious material within such proximity as to be harmful to the Tree; excessive grading; or any act of malicious damage to a Tree. Pruning or thinning more than 25 percent of the leaf surface on both the lateral branch and the overall foliage of a mature Tree that is pruned within a growing season shall be considered excessive. Paving or grading more than 25 percent of the root zone of the Tree protection area shall also be considered excessive. Additionally, one-half of the foliage of a mature Tree is to remain evenly distributed in the lower two thirds of the crown and individual limbs upon completion of any pruning. The final determination of Tree Removal shall be made by the Zoning and Planning Director."

Sec. 9.2.4.C. Required Tree Protection states, "In no case shall any paving, filling, grading, Building, or construction footing occur or be placed within three times the DBH in inches from the trunk of the Tree, unless otherwise approved by the Board of Zoning Appeals."

Sec. 9.2.4.E. Required Tree Protection states, "Limited encroachments into the area located within Tree barricades may be allowed by the Zoning and Planning Director provided that encroachments do not constitute more than 25 percent of the protected area beneath a Tree and do not occur in the area located within three times the DBH in inches from the trunk of the Tree unless otherwise approved by the BZA. Any paving, Grading, trenching, or filling of the protected area must be pre-approved by the Zoning and Planning Director or the Board of Zoning Appeals, as required by this Ordinance, and may require specific construction techniques to preserve the health of the Tree. When grading and construction within the protected area of a Tree has been approved, all damaged roots shall be severed clean."

ARTICLE 9.2 TREE PROTECTION AND PRESERVATION

Sec. 9.2.1 General

- A. Trees are essential natural, invaluable economic, and priceless aesthetic resources. They play a critical role in purifying air and water, providing wildlife habitat, enhancing natural drainage, and managing stormwater and sediment. They also help conserve energy by providing shade and shield against noise and glare. Trees promote commerce and tourism by buffering different land uses and beautifying the landscape. For these and other reasons, this Article is intended to enhance the health, safety and welfare of Charleston County and its citizens and visitors.
- B. **Applicability and Exemptions.**
1. The provisions of this Article apply to all real property in unincorporated Charleston County, except as otherwise expressly exempted.
 2. The following are exempt from the provisions of this Article:
 - a. Single-family detached residential Lots of record are exempt except for those relating to Grand Tree documentation, protection and replacement. This does not exempt applications for Major or Minor Subdivisions from the requirements of Sec. 9.4.4, Landscape Buffers.
 - b. This Article shall not restrict public utilities and electric suppliers from maintaining safe clearance around existing Utility lines, and existing Easements in accordance with applicable state laws. Siting and construction of future gas, telephone, communications, electrical lines, or other Easements shall not be exempt from the provisions of this Article.
 - c. Removal of Trees for “bona fide forestry operations” shall comply with state law.
 - d. Removal of Trees for Bona Fide Agricultural Uses pursuant to Sec. 3.8.2, Exemptions, Sub-Paragraph A, provided this exemption does not apply to the Grand Tree documentation, protection, and replacement requirements of this Ordinance.
 - e. Removal of Trees associated with relocating the OCRM Critical Line pursuant to 4.24.4.C, except Grand Tree removal, shall be mitigated inch per inch pursuant to section 9.2.6 of this Ordinance.
 - f. Removal of Trees for safe clearance of aircraft as required by federal law or the establishment of facilities exclusively dedicated to Aviation operations are exempt.
 - g. Removal of Trees on properties in the Industrial (IN) District pursuant to the following conditions:
 - i. Tree removal shall not occur prior to Site Plan Review approval;
 - ii. This exemption does not apply to Live Oak species of Grand Trees or any Protected Trees within required buffers and Parking Lots; and
 - iii. A mitigation plan for Grand Trees, Protected Trees, and any Trees removed in violation of this Ordinance is required pursuant to Sec. 9.2.6, Tree Replacement, prior to Site Plan Review approval.
 3. The South Carolina Department of Transportation (SCDOT), when exercising its authority over the construction, maintenance, and operation of the state highway system, shall be exempt from the provisions of this Article. Notwithstanding the foregoing exemption, SCDOT, when using real property as owner or tenant, is subject to the provisions of this Article.
 4. The Charleston County Public Works Department (CCPW) shall be exempt from the provisions of this Article except Section 9.2.3, Tree Plans and Surveys, and Section 9.2.4, A, B, D, and E, Required Tree Protection, with the following conditions:
 - a. Grand Trees other than Live Oak species in all present and proposed Rights-of-Way and Easements not located on a Scenic Highway are protected but may be permitted administratively for removal.
 - b. Protected Trees located on a Scenic Highway and Live Oak species of Grand Trees may be approved for removal by Charleston County Council as part of a CCPW initiated road or drainage project. In such cases, County Council shall hold a Public Hearing for the request prior to final approval.
 - c. The project is under review within the County’s Limited Site Plan Review Process and in an approvable state.
 - d. Protected Trees located on a Scenic Highway that are Impacted within CCPW road projects shall be mitigated pursuant to Section 9.2.6.D, Tree Replacement. To the greatest extent possible, the replacement trees shall be planted in the same general area to provide a replacement tree canopy. A tree mitigation plan shall be provided as part of the County Council approval process.
 - e. Grand Trees that are Impacted within CCPW road projects shall be mitigated pursuant to Section 9.2.6.D, Tree Replacement. To the greatest extent possible, the replacement trees shall be planted in the same general area to provide a replacement tree canopy. A tree mitigation plan shall be provided as part of the County Council approval process.

C. Definition of "Tree Removal." For the purpose of this Article, the term "Tree Removal" shall include, but not be limited to, damage inflicted to the root system by machinery; girdling; storage of materials and soil compaction, changing the natural Grade above or below the root system or around the trunk; damage inflicted on the Tree permitting fungus infection or pest infestation; excessive pruning; excessive thinning; excessive paving with concrete, asphalt or other impervious material within such proximity as to be harmful to the Tree; excessive grading; or any act of malicious damage to a Tree. Pruning or thinning more than 25 percent of the leaf surface on both the lateral branch and the overall foliage of a mature Tree that is pruned within a growing season shall be considered excessive. Paving or grading more than 25 percent of the root zone of the Tree protection area shall also be considered excessive. Additionally, one-half of the foliage of a mature Tree is to remain evenly distributed in the lower two thirds of the crown and individual limbs upon completion of any pruning. The final determination of Tree Removal shall be made by the Zoning and Planning Director.

D. Measurements and Definitions.

1. If a Tree trunk splits at ground level and the trunks do not share a common base (separated by earth at natural Grade), then each trunk shall be measured as a separate Tree. If a multi-trunk Tree splits below the four and one half foot mark and the trunks share a common base, all trunks shall be measured separately, added together, and counted as one Tree, unless the trunks are of different species. Any trunk measuring less than eight inches DBH is not included in the calculation.
2. For Trees between a four-inch and 12-inch Caliper, the trunk is measured 12 inches above the ground.
3. All Grand Trees are prohibited from removal unless otherwise exempted by this Ordinance, a Grand Tree Removal Permit is issued, or if the removal is part of an approved Bona Fide Forestry Operation.
4. Limited removal is allowed only when specified in this Article.
5. All Trees six inches DBH and greater located within a designated Scenic Road Right-of-Way shall require protection as Protected Trees pursuant to the Protected Tree requirements of this Ordinance.

Effective on: 2/27/2024, as amended

Sec. 9.2.2 Administration

A. Zoning Permit Required.

1. Removal of Grand and Protected Trees is prohibited prior to the issuance of a Zoning Permit, which may be issued after a Tree plan is approved by the Zoning and Planning Director; pursuant to Sec. 9.2.3, *Tree Plans and Surveys*.
2. *Excess Canopy (Limb) Removal.*
 - a. Removal of three or more limbs with an individual diameter of six inches or greater requires a Zoning Permit.
 - b. Removal of any size limbs contributing to more than 100 continuous linear feet of canopy over public Roadways requires Variance approval from the BZA. This requirement does not preclude SCDOT, CCPW, or other entities from maintaining height clearances at a minimum of 14 feet, width clearances within designated travel ways, and removing unprotected Trees along Rights-of-Way for road widening projects.
- B. Tree plans prepared by a licensed surveyor, civil engineer, forester, arborist, or landscape architect are required on all non-exempt Parcels before Zoning Permit is issued.

Sec. 9.2.3 Tree Plans and Surveys

A. General.

1. Tree plans of the same scale as, and superimposed on, a Development site plan or Preliminary Plat shall include location, number, size (DBH), and species with a scaled graphic representation of each Grand Tree, along with the canopy size and shape, and trunk location.
2. Tree surveys shall include the name, phone number, address, signature, and seal of a licensed surveyor, civil engineer, forester, arborist, or landscape architect registered in the State of South Carolina.
3. The survey shall include all Trees to be protected or preserved, and those scheduled to be removed, including dead and damaged Trees. In cases where a previously approved recorded Plat is utilized for the purpose of Tree plans, the name, address, phone number, signature, and seal of the licensed surveyor, civil engineer, or landscape architect registered in the State of South Carolina shall be provided. A scaled infrared or high resolution black-and-white aerial photograph or print of equal quality may be substituted in cases where the Director determines that it would provide the same information as a Tree plan. However, all Grand Trees within 40 feet of proposed construction and land disturbance areas and Trees within required buffers must be surveyed and mapped.
- B. Subdivision Plats refer to the Subdivision Regulations of CHAPTER 8 of this Ordinance.
- C. Commercial, Industrial, and Multi-Family, Civic/Institutional, and Other Uses.**

1. All Trees surveys must show the location, number, size, and species of all Trees with eight or more inches DBH, including those scheduled to be removed.
 2. When the Subject Property has frontage along a designated Scenic Road, the Tree survey must show the location, number, size, and species of all Trees six inches DBH and greater in areas proposed to be disturbed within the Right-of-Way of the designated Scenic Road.
 3. When there are no Trees that meet the above listed criteria, documentation to that effect shall be provided from a licensed surveyor, civil engineer, forester, arborist, or registered landscape architect.
- D. Agricultural and Single-Family Detached Residential Uses must show all Grand Trees within 40 feet of the area of construction land disturbance, Rights-of-Way, and Easements, and in conjunction with the Subdivision regulations at the time a Zoning or Building Permit application is made.

(Ord. No. 2239, 12/06/2022)

Effective on: 12/21/2023, as amended

Sec. 9.2.4 Required Tree Protection

A. General.

1. All Grand Trees and any other Trees required to remain on a site must be protected during construction and Development of a 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 Zoning and Planning Department for approval prior to the issuance of permits or the start of Development activities.
 2. Prior to issuance of a Zoning Permit, a pre-construction planning conference is required for on-site Tree preservation with the Zoning and Planning Director or staff representative, the Applicant(s), and any appropriate parties for determining if there is need for additional Tree protection techniques and for designating placement of Tree barricades, construction employee parking, temporary construction office, and dumpsters.
- B. Prior to the start of Land Development activities, protective Tree barricades shall be placed around all Required Trees in or near Development areas. The barricades shall be constructed of wood, metal, or plastic fencing or other materials approved by the Zoning and Planning Director; and include a top rail. Tree barricades shall be placed beneath the canopy Drip Line or one foot times the DBH of the Tree as a radius from the trunk, whichever is greater. Other protective devices or construction techniques may be used as approved by the Zoning and Planning Director. Three inches of mulch shall be installed and maintained within all Tree barricade areas. The mulch shall remain in place throughout Development activities. The area within the Tree barricade shall remain free of all Building materials, dirt, fill, and other construction debris, vehicles, and Development activities. All Required Trees are also subject to the requirements of Sec. 9.4.6, *Landscape Materials Standards*, and Article 11.3, *Enforcement Responsibility and Complaints*.
- C. In no case shall any paving, filling, grading, Building, or construction footing occur or be placed within three times the DBH in inches from the trunk of the Tree, unless otherwise approved by the Board of Zoning Appeals.
- D. Limited Clearing and Grubbing may be authorized by the Zoning and Planning Director prior to the installation of Tree barricades on sites that exhibit unusually heavy undergrowth and where access to the interior of the site and its Protected Trees is impractical. Limited Clearing shall be for the express purpose of accessing the property and Protected Trees to erect the Required Tree barricades and silt fencing. Such limited Clearing shall be done with hand tools, push or walk -behind equipment, or lightweight bush-hog type equipment designed for brush and undergrowth Clearing and which is not capable of removing vegetation greater than three inches in diameter. Under no circumstances may metal-tracked bulldozers, loaders, or similar rider/operator equipment be allowed on site until the Tree barricades are erected and a Zoning Permit is issued.
- E. Limited encroachments into the area located within Tree barricades may be allowed by the Zoning and Planning Director provided that encroachments do not constitute more than 25 percent of the protected area beneath a Tree and do not occur in the area located within three times the DBH in inches from the trunk of the Tree unless otherwise approved by the BZA. Any paving, Grading, trenching, or filling of the protected area must be pre-approved by the Zoning and Planning Director or the Board of Zoning Appeals, as required by this Ordinance, and may require specific construction techniques to preserve the health of the Tree. When grading and construction within the protected area of a Tree has been approved, all damaged roots shall be severed clean.
- F. Prior to issuance of a Zoning Permit for uses other than Single-Family Detached Residential, the following numbers of Trees with a DBH of eight inches or greater shall be preserved and protected pursuant to the requirements of this Ordinance. Preservation and protection of native Trees is to be prioritized. Properties within the Industrial (IN) District may elect to mitigate the removal of these Protected Trees, as described in Sec. 9.2.6.D, with the exception that all Grand trees and any required Buffer tree measuring eight inches (8") or greater shall be preserved. On properties in the IN District that elect to mitigate the removal of these Protected Trees and where the planting of canopy trees is required within Buffers and other landscaping, screening, and buffer areas, canopy trees shall be a minimum of four inch (4") caliper.

1. 20 Trees per acre; or
 2. Any number of Trees with a combined DBH of at least 160 inches per acre.
- G. When Lots lack a sufficient number of Trees to meet the requirement for DBH/number of Trees per acre, this requirement shall be fulfilled by existing Trees and must equal 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 Zoning and Planning Director. Properties within the Industrial (IN) District may elect to mitigate the removal of Protected Trees, as described in Sec. 9.2.6.D, with the exception that all Grand Trees and any required Buffer tree measuring eight inches (8") or greater shall be preserved. On properties in the IN District that elect to mitigate the removal of Protected Trees and where the planting of canopy trees is required within Buffers and other landscaping, screening and buffer areas, canopy trees shall be a minimum of four inch (4") caliper.
- H. Required drainage improvements, such as Detention and retention ponds and wetlands, may be subtracted from the area used to calculate Tree preservation requirements.

(Ord. No. 2239, 12/06/2022)

Effective on: 12/6/2022, as amended

Sec. 9.2.5 Tree Removal

- A. Permits for Tree removal may be approved where one or more of the following conditions are deemed to exist by the Zoning and Planning Director:
1. Trees are not required to be retained by the provisions of this Article.
 2. Trees are diseased, dead, or dying. Documentation may be submitted by a qualified tree care professional and approved by the Zoning and Planning Director;
 3. Trees pose an imminent safety hazard to nearby Buildings, pedestrian, or vehicular traffic (as determined by the Zoning and Planning Director or a qualified construction professional); or
 4. Removal of Required Trees has been approved by the Board of Zoning Appeals.
- B. 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 Zoning and Planning Director will make recommendations to the Board concerning the number, species, DBH or caliper, and placement of such Trees.
- C. 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 Zoning and Planning Director may waive requirements of this Article. Documentation shall later be submitted for review outlining the threat to public safety which initiated the removal. Documentation must include any written findings by a qualified professional and photographs supporting the Tree Removal emergency.
- D. The Zoning and Planning Director may require replacement of Required Trees that are removed where it is determined that death or disease resulted from negligence.
- E. Violations and penalties are specified in CHAPTER 11, Violations, Penalties, and Enforcement, of this Ordinance.

Sec. 9.2.6 Tree Replacement

- A. 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; except where caliper is otherwise identified
 2. The Zoning and 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. When Trees of eight 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 Zoning and Planning Director.
- C. Where sites were cleared of Trees prior to the 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 Zoning and Planning Director.
- D. The Tree Fund is established to receive monies exacted from tree removal violation fines or other Tree removal mitigation, to include, but not limited to, removal, damage, destruction, or as defined in Sec. 9.2.1.C of this Chapter, and as a form of mitigation when planting of the Required Trees is determined to be detrimental to the overall health of existing Trees or impractical for the intended site design. The Zoning and Planning Director shall impose a Tree Mitigation fee based on the current market retail value of two-and one-half inch Caliper Trees installed to the American Association of Nurserymen Standards. The Applicant shall

provide a minimum of two quotes from local (tri-county area) contractors for review and fee determination by the Zoning and Planning Director. If the Applicant disagrees with the amount of the Tree Mitigation fee imposed, they may request a Variance from the Board of Zoning Appeals in accordance with the provisions contained in this Ordinance. All Tree Mitigation fees collected shall be paid to the County Treasurer and placed in an account established exclusively for public beautification through the planting of trees in Charleston County.

E. When Trees have been removed through an approved mitigation program and the project will not be completed for any reason (i.e., bankruptcy, abandonment, change in ownership, etc.), the owners of the Subject Property are responsible for the mitigation of the removed Trees as outlined and agreed or subject to Sec. 9.2.6.D of this Chapter.

(Ord. No. 2239, 12/06/2022)

Effective on: 12/6/2022, as amended

Sec. 9.2.7 Inspections and Final Approval

- A. The Zoning and Planning Director may periodically visit Development sites prior to completion to monitor compliance with the Tree plan approved for a project.
- B. Prior to issuance of a Certificate of Occupancy by the Director of Building Services, the Zoning and Planning Director shall issue a statement of approval attesting to the Developer's compliance with the site plan approved for the project (including landscaping, parking, drainage, etc.). The Director of Building Services shall withhold Certificates of Occupancy pending verification of compliance. It is the responsibility of the owner or agent to contact the Zoning and Planning Director regarding the compliance inspection, which will occur within five working days of contact. Failure to obtain a Certificate of Occupancy prior to occupying or using the Building for its intended purpose will result in ticketing and fines.
- C. The Zoning and Planning Director may approve a delayed schedule for planting materials (provided by the Applicant's contractor) when the immediate planting schedule would impair the health of the Plants. When a delayed planting schedule is approved, the Applicant shall provide a bond equivalent to one and one-half times the projected cost of the planting materials and installation in accordance with the American Association of Nurserymen Standards. This is designed to include severe weather, such as droughts, heat waves, and floods. The Applicant shall provide a minimum of two quotes from local (tri-county area) contractors for review and the bond amount shall be determined by the Zoning and Planning Director.
- D. Within three years of the issuance of the Certificate of Occupancy, the Zoning and Planning Director may perform a site inspection to verify the health of Trees and landscaping that were retained to meet the requirements of this Article and which may have suffered damage due to insufficient protective measures during Development.
- E. Each Required Tree or Plant determined by the Zoning and Planning Director to be diseased or injured to an extent it is irreparably damaged shall be approved for removal. The burden of proof of the extent of disease or injury shall rest with the Applicant, who must provide documentation from a qualified landscaping professional. Any Tree or landscaping damaged during or as a result of construction shall be repaired to the satisfaction of the Zoning and Planning Director and in accordance with accepted ANSI A300 or International Society of Arboriculture practices. Tree or landscaping damage must be repaired prior to issuance of a Certificate of Occupancy.
- F. The owners of a non-exempt property or properties shall be responsible for the maintenance of all Required Trees. No department or agent of the County of Charleston is in any way responsible for the maintenance of Required Trees on private property. All approved and required landscaping must be maintained throughout occupancy of site.

CASE # BZA-03-24-00767
TMS # 205-00-00-074
ZONING MAP

SUBJECT PROPERTY

BLACK TUPELO LN




R-4

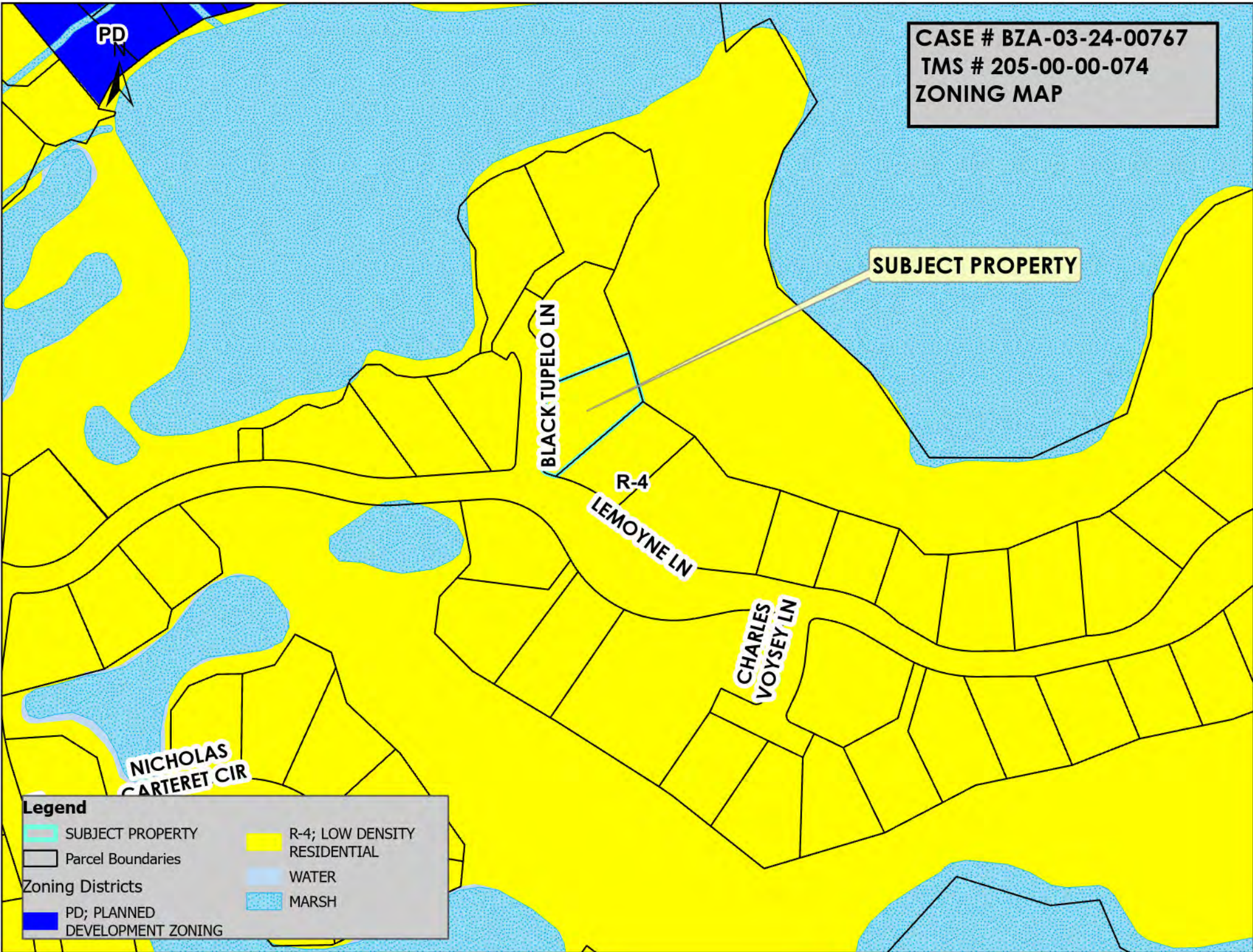
LEMOYNE LN

CHARLES VOYSEY LN

NICHOLAS CARTERET CIR

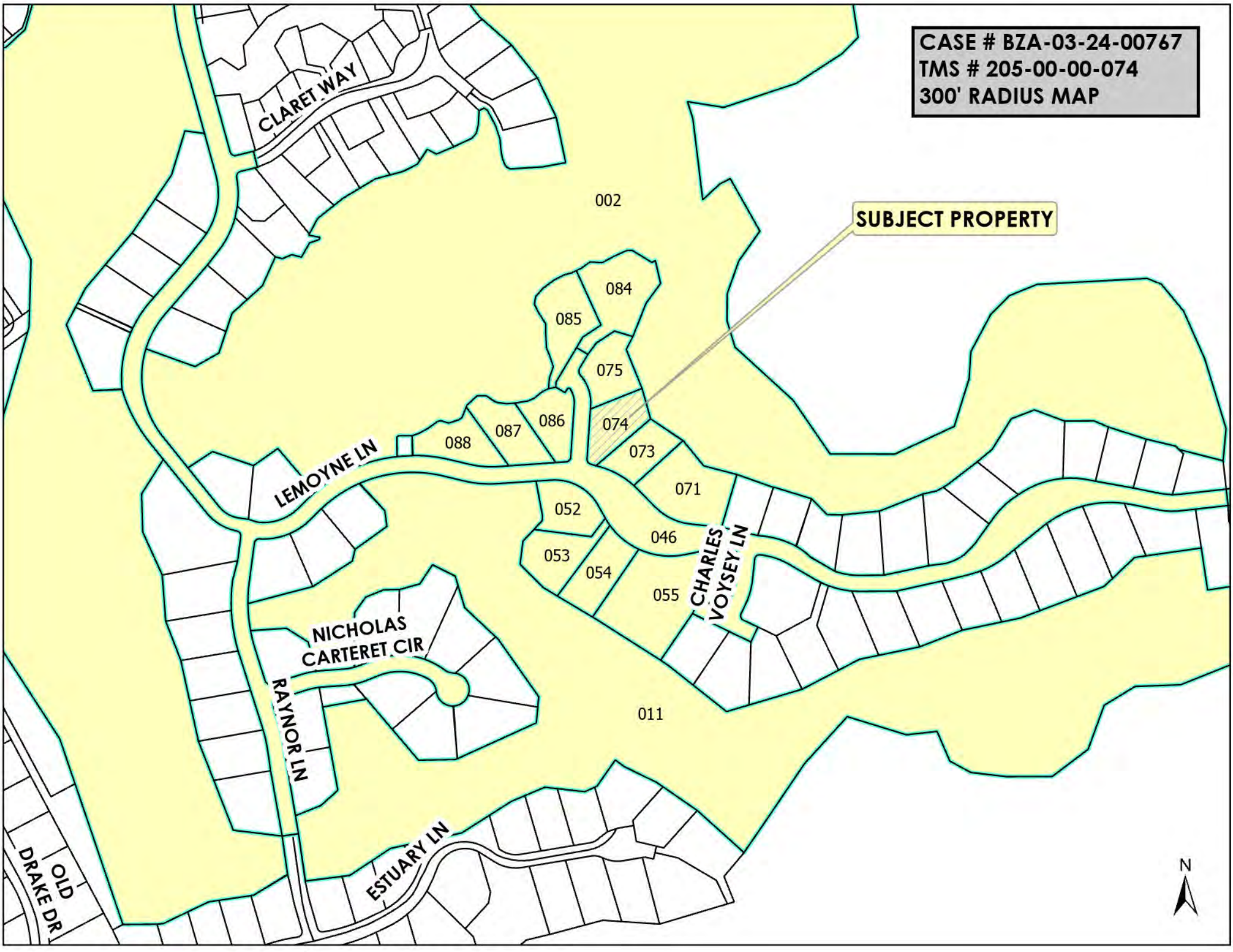
Legend

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|---|--|
|  SUBJECT PROPERTY |  R-4; LOW DENSITY RESIDENTIAL |
|  Parcel Boundaries |  WATER |
| Zoning Districts |  MARSH |
|  PD; PLANNED DEVELOPMENT ZONING | |



CASE # BZA-03-24-00767
TMS # 205-00-00-074
300' RADIUS MAP

SUBJECT PROPERTY



CASE # BZA-03-24-00767
TMS # 205-00-00-074
AERIAL VIEW

BLACKTUPELO LN

LEMOYNE LN

SUBJECT PROPERTY



CASE # BZA-03-24-00767
TMS # 205-00-00-074
AERIAL VIEW

LEMOYNE LN

SUBJECT PROPERTY

BLACK TUPELO LN

LEMOYNE LN

CHARLES VOYSEY LN

RAYNOR LN

NICHOLAS CARTERET CIR



Case # BZA-03-24-00767

BZA Meeting of May 6, 2024

Subject Property: 200 Black Tupelo Lane – Johns Island

Proposal: Variance request to encroach a 30" DBH Grand Live Oak Tree more than 25% and to encroach a 17"/18" DBH Grand Live Oak Tree more than 25% and to construct within the restricted area 3 x's the DBH (Critical Root Zone) for a proposed single-family residence.



30" DBH Live Oak Tree

Encroach more than 25% - Zoning Variance required from BZA



17"/18" DBH Live Oak Tree

Encroach more than 25% & construct within 3 x DBH - Zoning Variance required from BZA



Subject Property



Staff Review:

The applicants, Tim and Kathryn Luwis, the property owners, Timothy and Lisa Broadbent, represented by Charlie Miraziz of Drafted Architecture are requesting a variance to encroach a 30" Diameter Breast Height (DBH) Grand Live Oak Tree and a 17"/18" DBH Grand Live Oak Tree more than twenty-five (25%) of the protected root zone area and to construct within a restricted area three times the DBH (Critical Root Zone) of the 17"/18" DBH Grand Live Oak tree for a proposed single-family residence at 200 Black Tupelo Lane (TMS # 205-00-00-074) on Johns Island in Charleston County.

The subject property and all surrounding properties are located in the Low Density Residential (R-4) Zoning District in The Cassique private, gated golf community. The 0.60-acre subject property is vacant and is located between two developed parcels.

The site contains five (5) Grand Trees:

1. A 24" DBH Oak Tree was administratively permitted to be removed because the County Arborist determined it was either "*diseased dead, or dying.*"
2. A second 24" DBH Oak Tree was administratively permitted to be removed because the County Arborist determined it was either "*diseased dead, or dying.*"
3. The proposed site plan preserves one 24" DBH Oak located near the southwestern property boundary.
4. 30" DBH Live Oak Tree encroach more than 25%.
5. 17"/18" DBH Live Oak Tree encroach more than 25% and 3 x's DBH (Critical Root Zone). Per the County Arborist, if this site plan is approved by the BZA, the 17"/18" DBH Live Oak will most likely die because there is no amount of treatment that will keep the tree from dying after it loses 70% of it's roots.

The applicant's letter of intent explains, "*As illustrated on the Site Plan attached, the two subject trees are located centrally in the buildable area of the lot. Development of an appropriately sized home (as designed 2,550 sq ft footprint) on the lot is impossible while complying with the required 25% tree intrusion. Two other grand oaks on the property further restrict the possible location of the home and its required components. We kindly request additional 32% intrusion and root zone intrusion at the 17"/18" oak, and additional 8.2% intrusion at the 30" oak. The majority of the proposed coverage within the 17"/18" oak tree protection and root zones, and a portion of the coverage at the 30" oak tree protection zone, is comprised of ground level pervious paving (no foundation) specified by a licensed landscape architect.*"

Applicable ZLDR requirement:

The Charleston County Zoning and Land Development Regulations Ordinance (ZLDR), Chapter 9 Development Standards, Article 9.2 Tree Protection and Preservation, Sec. 9.2.1 General, C. Definition of "Tree Removal": "For the purpose of this Article, the term 'Tree Removal' shall include, but not be limited to, damage inflicted to the root system by machinery; girdling; storage of materials and soil compaction, changing the natural Grade above or below the root system or around the trunk; damage inflicted on the Tree permitting fungus infection or pest infestation; excessive pruning; excessive thinning; excessive paving with concrete, asphalt or other impervious material within such proximity as to be harmful to the Tree; excessive grading; or any act of malicious damage to a Tree. Pruning or thinning more than 25 percent of the leaf surface on both the lateral branch and the overall foliage of a mature Tree that is pruned within a growing season shall be considered excessive. Paving or grading more than 25 percent of the root zone of the Tree protection area shall also be considered excessive. Additionally, one-half of the foliage of a mature Tree is to remain evenly distributed in the lower two thirds of the crown and individual limbs upon completion of any pruning. The final determination of Tree Removal shall be made by the Zoning and Planning Director."

Sec. 9.2.4.C. Required Tree Protection states, "In no case shall any paving, filling, grading, Building, or construction footing occur or be placed within three times the DBH in inches from the trunk of the Tree, unless otherwise approved by the Board of Zoning Appeals."

Sec. 9.2.4.E. Required Tree Protection states, "Limited encroachments into the area located within Tree barricades may be allowed by the Zoning and Planning Director provided that encroachments do not constitute more than 25 percent of the protected area beneath a Tree and do not occur in the area located within three times the DBH in inches from the trunk of the Tree unless otherwise approved by the BZA. Any paving, Grading, trenching, or filling of the protected area must be pre-approved by the Zoning and Planning Director or the Board of Zoning Appeals, as required by this Ordinance, and may require specific construction techniques to preserve the health of the Tree. When grading and construction within the protected area of a Tree has been approved, all damaged roots shall be severed clean."

Applicable ZLDR Chapter 12 Definitions, Article 12.1 Terms and Uses Defined:

Arborist, Certified A Person certified by the International Society of Arboriculture.

Diameter Breast Height (DBH) The total diameter, in inches, of a Tree trunk or trunks measured at a point four and one-half feet above existing Grade (at the base of the Tree). In measuring DBH, the circumference of the Tree shall be measured with a standard diameter tape, and the circumference shall be divided by 3.14.

Grand Tree Any Tree with a diameter breast height of 24 inches or greater, with the exception of Pine Tree and Sweet Gum Tree (*Liquidambar styraciflua*) species.

Staff conducted a site visit of the subject property on April 17, 2024. 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: There may be extraordinary and exceptional conditions pertaining to the 0.60-acre subject property. **The applicant's letter of intent states**, "Yes, the location and size of the two subject grand trees, in conjunction with required neighborhood building setbacks, other grand trees on the property, and the pie-shaped of the lot, make development on the property **difficult.**" Therefore, the request may meet this criterion.

§3.10.6(2): *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. The 0.60-acre subject property is vacant and is located between two developed parcels. **The applicant's letter of intent states**, "We are unaware of other properties in the vicinity that suffer from similar grand tree size and location conditions." Therefore, the request may meet 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, Chapter 9 Development Standards, Article 9.2 Tree Protection and Preservation, Sec. 9.2.1 General, C. Definition of "Tree Removal", and Sec. 9.2.4. (C. and E.) Required Tree Protection to 200 Black Tupelo Lane may unreasonably restrict the utilization of the property. **The applicant's letter of intent states**, "Yes. Considering the minimum requirements for driveway and hardscapes, even a small home would be difficult to manipulate on the lot. Additionally, the neighborhood design guidelines require a minimum home size of 2,500 conditioned sq. ft. Any house design with a size appropriate for the neighborhood would be impossible to site using the required maximum 25% intrusion of the protection zones of the two subject grand oaks." 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: Authorization of this variance request may not be of substantial detriment to adjacent properties or to the public good. Therefore, the character of the Low Density Residential (R-4) Zoning District may not be harmed. The **applicant's letter of intent states**, "No, the authorization of this variance would not impact any neighboring properties. The character of the neighborhood is governed by the Cassique ARB, which enforces specific criteria regarding all trees, particularly grand oaks. The authorization of this request does not preclude the requirement to adhere to Cassique's tree care and protection standards." Therefore, the request may meet 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 not be **the result of the applicant's own** actions because the Grand Trees are located near the center of the buildable area of the property. **The applicant's letter of intent** states, "No, we do not believe the need is a result of the actions of any parties." Therefore, the request may 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: Granting of the variance may not substantially conflict with the Comprehensive Plan or the purposes of the Ordinance if the Board finds that the strict application of the provisions of the Ordinance results in an unnecessary hardship and the Tree Preservation Plan approved by Planning Staff is implemented. **However, the 17"/18" DBH Grand Live Oak Tree will** most likely die even if the Tree Preservation Plan is followed. Therefore, the request may not 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).

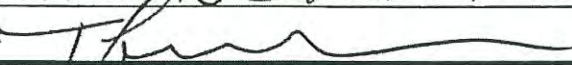
In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building or structure as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare (§3.10.6C).

The Board of Zoning Appeals may approve, approve with conditions or deny Case # BZA-03-24-00767 [Variance request to encroach a 30" DBH Grand Live Oak Tree and a 17"/18" DBH Grand Live Oak Tree more than twenty-five (25%) of the protected root zone area and to construct within a restricted area three times the DBH (Critical Root Zone) of the 17"/18" DBH Grand Live Oak tree for a proposed single-family residence at 200 Black Tupelo Lane (TMS # 205-00-00-074) on Johns Island in Charleston County] based on the BZA's "Findings of Fact", unless additional information is deemed necessary to make an informed decision. In the event the BZA decides to approve the application, Staff recommends the following conditions:

1. If either of the Grand Trees requested for encroachment (**17"/18" and/or 30"** DBH Live Oaks) dies within 3 years of the completion of the project, the applicant shall mitigate the tree by either (a) submitting a mitigation plan for review and approval indicating the installation of canopy trees no smaller than two and one-half (2.5) inches in caliper equaling inch per inch replacement, (b) by depositing funds into the Charleston County Tree Fund as described in Sec. 9.2.6 of the *ZLDR*, or (c) a combination of both (a) and (b). The allotted mitigation shall be in place prior to its removal.
2. Tree barricades constructed of chain link fencing shall be installed around all **protected trees within 40' of disturbance prior to any construction, pursuant to** Sec. 9.2.4 of the *Charleston County Zoning and Land Development Regulations*.
3. The applicant shall retain a Certified Arborist to monitor and treat all Grand Trees **within 40' of disturbance** through the duration of construction. The applicant shall

provide a copy of the Tree Preservation Plan to Zoning Staff for review and approval prior to Zoning Permit approval for construction.

ZONING VARIANCE APPLICATION
Charleston County Board of Zoning Appeals (BZA)

| | | | |
|---|-------------------------------|-----------------------------------|----------------------------|
| Property Information | | | |
| Subject Property Address: 200 BLACK TUPELO | | | |
| Tax Map Number(s): 2050000074 | | | |
| Current Use of Property: LOT | | | |
| Proposed Use of Property: NEW HOUSE | | | |
| Zoning Variance Description: Additional tree intrusion over 25% TPZ and root zone | | | |
| Applicant Information (Required) | | | |
| Applicant Name (please print): TIM + KATHERINE LOWIS | | | |
| Name of Company (if applicable): | | | |
| Mailing Address: 4107 FORDHAM RD NW | | | |
| City: WASHINGTON | State: DC | Zip Code: 20016 | |
| Email Address: TIM LOWIS @HOTMAIL.COM | | Phone #: 703-408-3689 | |
| Applicant Signature:  | | | Date: 3/14/24 |
| Representative Information (Complete only if applicable. Attorney, Builder, Engineer, Surveyor etc.) | | | |
| Print Representative Name and Name of Company: Charlie Miraziz, Drafted Architecture | | | |
| Mailing Address: PO Box 14441 | | | |
| City: Charleston | State: SC | Zip Code: 29422 | |
| Email Address: charlie@draftedarchitecture.com | | Phone #: 864-237-0920 | |
| Designation of Agent (Complete only if the Applicant listed above is not the Property Owner.) | | | |
| I hereby appoint the person named as Applicant and/or Representative as my (our) agent to represent me (us) in this application. | | | |
| Property Owner(s) Name(s) (please print): Timothy and Lisa Broadbent | | Timothy and Lisa Broadbent | |
| Name of Company (if applicable, LLC etc.): | | | |
| Property Owner(s) Mailing Address: 985 Fifth Avenue | | | |
| City: New York | State: NY | Zip Code: 10075 | Phone #: 5166625920 |
| Property Owner(s) Email Address: Tsbroadbent@gmail.com | | | |
| Property Owner(s) Signature: <input type="checkbox"/> DocuSigned by: Timothy Broadbent <input type="checkbox"/> DocuSigned by: Lisa Broadbent | | | Date: 3/14/2024 |
| FOR OFFICE USE ONLY: | | | |
| Zoning District: R-4 | Flood Zone: AE (0785K) | Date Filed: 3-26-2024 | Fee Paid: \$300 CC |
| Application #: BZA-03-24-00767 | TMS #: 205-00-00-074 | Staff Initials: DP | |

Description of Request

Please describe your proposal in detail. You may attach a separate sheet if necessary. Additionally, you may provide any supporting materials that are applicable to your request (photographs, letter of support, etc.)

As illustrated on the Site Plan attached, the two subject trees are located centrally in the buildable area of the lot. Development of an appropriately sized home (as designed 2,550 sq ft footprint) on the lot is impossible while complying with the required 25% tree intrusion. Two other grand oaks on the property further restrict the possible location of the home and its required components.

We kindly request additional 32% intrusion and root zone intrusion at the 17"/18" oak, and additional 8.2% intrusion at the 30" oak. The majority of the proposed coverage within the 17"/18" oak tree protection and root zones, and a portion of the coverage at the 30" oak tree protection zone, is comprised of ground level pervious paving (no foundation) specified by a licensed landscape architect.

Applicant’s response to Article 3.10 Zoning Variances, §3.10.6 Approval Criteria

Zoning Variances may be approved only if the Board of Zoning Appeals finds that the proposed use meets all 7 of the approval criteria. In evaluating your request, the members of the board will review the answers below as a part of the case record. You may attach a separate sheet if necessary.

- 1. Are there extraordinary and exceptional conditions pertaining to the subject property? Explain:

Yes, the location and size of the two subject grand trees, in conjunction with required neighborhood building setbacks, other grand trees on the property, and the pie-shaped of the lot, make development on the property difficult.

- 2. Do these conditions generally apply to other property in the vicinity or are they unique to the subject property? Explain:

We are unaware of other properties in the vicinity that suffer from similar grand tree size and location conditions.

- 3. Because of these extraordinary and exceptional conditions, would the application of this Ordinance to the subject property effectively prohibit or unreasonably restrict the utilization of the property? Explain:

Yes. Considering the minimum requirements for driveway and hardscapes, even a small home would be difficult to manipulate on the lot. Additionally, the neighborhood design guidelines require a minimum home size of 2,500 conditioned sq ft. Any house design with a size appropriate for the neighborhood would be impossible to site using the required maximum 25% intrusion of the protection zones of the two subject grand oaks.

4. Will the authorization of a variance be a substantial detriment to adjacent property or to the public good? Will the character of the zoning district be harmed if this variance is granted? Explain:

No, the authorization of this variance would not impact any neighboring properties. The character of the neighborhood is governed by the Cassique ARB, which enforces specific criteria regarding all trees, particularly grand oaks. The authorization of this request does not preclude the requirement to adhere to Cassique's tree care and protection standards.

5. The BZA 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 if a Zoning Variance is granted shall not be considered grounds for granting a Zoning Variance. Does the variance request meet this criterion?

We do not believe that the granting of this variance request would affect or change any of the above-listed zoning conditions.

6. Is the need for the variance the result of your own actions? Explain:

No, we do not believe the need is a result of the actions of any parties.

7. Does the variance substantially conflict with the Charleston County Comprehensive Plan or the purposes of the Ordinance? Explain

No, we do not believe the variance would conflict with the Charleston County Comprehensive Plan or the the purposes of the Ordinance.

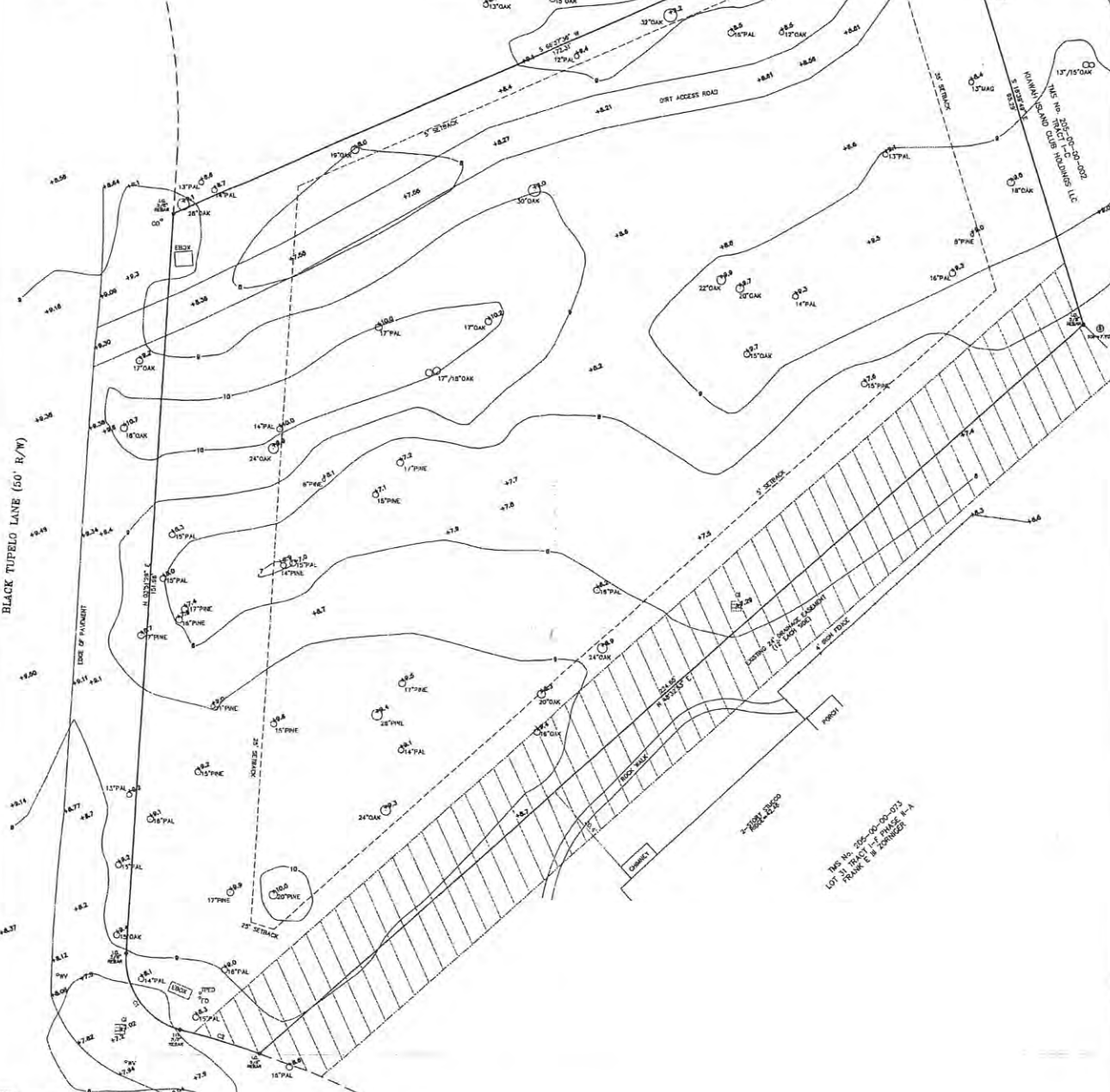
In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building or structure as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health,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

REFERENCE:
 PLAN BY MARK S. BISEY
 DATED MAY 15, 2002
 BOOK 87 PAGE 193
 REC CHAS CO.
 TAX MAP No. 205-00-00-074
 No. 200 BLACK TUPELO LANE
 Requested by: COBBLEBY HENHAM,
 WATKINS ARCHITECTURAL

LOT AREA
 24,188.8 Sq. Feet
 0.60 Acres

THIS NO. 205-00-00-075
 LOT 200 TRACT I-F PHASE II-A
 MARTHA B. REED REV TRUST

THIS NO. 205-00-00-073
 LOT 211 TRACT I-F PHASE II-A
 MARTHA B. REED REV TRUST



NOTES:
 BEARING SHOWN ARE BASED ON SOUTH CAROLINA
 STATE PLANE COORDINATE SYSTEM AND ALL
 AREA DETERMINED BY COORDINATE METHOD.
 ELEVATIONS ARE BASED ON NGVD '29 DATUM.
 THE PUBLIC RECORDS REFERENCED ON THIS PLAN ARE
 ONLY THOSE LISTED AND/OR NECESSARY TO THE
 ESTABLISHMENT OF THE BOUNDARY OF THIS PROPERTY.
 THEY ARE NOT AND DO NOT CONSTITUTE A TITLE
 SEARCH. NOTHING SHOWN ON THIS PLAN REFLECTS
 THE BOUNDARY OF THIS PLAN IS FOR DESCRIPTIVE
 PURPOSES ONLY.
 THE REQUIRED SETBACKS MAY BE DESIGNATED AND/OR
 VARY BY THE CHARLESTON COUNTY ARCHITECTURAL
 REVIEW BOARD. THE ARCHITECTURAL REVIEW BOARD
 RESERVES THE RIGHT TO GRANT VARIANCES
 RESPECTIVE SETBACK CONDITIONS AND/OR TO EXPAND
 THE "BUILDABLE" AREA.
 THE PRESENCE OR ABSENCE OF U.S. ARMY CORPS OF
 ENGINEERS JURISDICTIONAL WETLANDS IS
 UNDETERMINED AS OF THE DATE OF THIS SURVEY.
 NO SUBMERGIBLE OR ENVIRONMENTAL INVESTIGATION OR
 SURVEYS WERE PERFORMED FOR THIS PLAN.
 THEREFORE THIS PLAN DOES NOT REFLECT THE
 EXISTENCE OR NONEXISTENCE OF WETLANDS
 CONTRIBUTION OR OTHER ENVIRONMENTAL CONDITIONS
 WHICH MAY AFFECT THIS PROPERTY.
 PROPERTY APPEARS TO BE LOCATED IN FLOOD ZONE
 AS SHOWN ON FEMA FLOOD MAPS
 PANEL No. 43016C 0782D
 DATED: NOVEMBER 17, 2004
 COMMUNITY No. 450413
 A FURTHER REVIEW IS REFERRED FROM TO DESIGN
 OR CONSTRUCTION BY CONSULTING AUTHORITY.

- LEGEND:
- 10 200' OLD (TOLONG)
 - 11 CLEAN CUT
 - 12 ELEC BOX
 - 13 FRENCH WALK
 - 14 GREAT BAY
 - 15 TRENCH
 - 16 TELEPHONE PESTERIAL
 - 17 PAIR VALK
 - 18 SPOT ELEVATION (NGVD '29)
 - 19 12" (DBH) OAK TREE

| CURVE | RADIUS | ARC LENGTH | CHORD LENGTH | CHORD BEARING | DELTA ANGLE |
|-------|---------|------------|--------------|---------------|-------------|
| 1 | 15.00' | 18.64' | 12.00' | S 33°12'15" E | 7°28'10" |
| 2 | 125.00' | 18.64' | 18.64' | S 73°11'50" E | 4°18'49" |

SURVEYOR'S CERTIFICATION

I hereby state that to the best of my knowledge, information, and belief, the survey shown hereon was made in accordance with the requirements of the Standards of Practice Manual for Surveying in South Carolina, and meets or exceeds the requirements for a Class A survey as specified therein. Also there are no visible encroachments or projections other than shown.

KEVIN M. SCHWACKE, SR., PLS
 S.C. Registration Number 20448



CONTRADICTIONS ARE NOT TRANSFERABLE TO ADDITIONAL INSTRUMENTS OR SUBSEQUENT CORRECTIONS.
 THIS PLAN IS COPYRIGHTED AND IS INTENDED ONLY FOR THE EXCLUSIVE USE OF PERSONS SHOWN HEREON. THIS PLAN REPRESENTS A SURVEY BASED ON THE LISTED REFERENCES ONLY AND IS NOT THE RESULT OF A TITLE SEARCH.
 2/24/20 / 20048

TREE & TOPOGRAPHIC SURVEY
 LOT 200 TRACT I-F PHASE II-A
 THE CASSIQUE
 LOCATED ON SEABROOK ISLAND
 CHARLESTON COUNTY, SOUTH CAROLINA

DATE: FEBRUARY 26, 2020 SCALE: 1" = 10'



Note: See attached survey and plat for lot dimensions.

① Grand Tree Protection
1" = 10'-0"

CPM

DRAFTED
ARCHITECTURE

| No. | Issued For | Date |
|-----|--------------|----------|
| 1 | BZA Variance | 5/6/2024 |
| | | |
| | | |
| | | |

200 Black Tupelo Lane
Cassique, Kiawah Island, SC

Stamps

Plot Date 3/15/24
 Project No.
 Drawn by CPM
 Drawing Title
Site Plan

Drawing No. A001

