

Minutes

McClellanville Board of Zoning Appeals

December 11, 2021, 6:00PM

The McClellanville Board of Zoning Appeals held a public hearing on the above-noted date. Notice of the hearing had been published as required by the Freedom of Information Act and the Town's Zoning and Land Development Ordinance. Board members present were Allen DuPre, Cheves Leland, Scott Youngblood, Scott Rowland, and TJ Johnston. Town staff present included Town Planner Eddie Bernard and Executive Assistant Natalie Lewis. In attendance virtually by Zoom, Zoning Administrator, Kathryn Basha. Public in attendance included Bob McCarly, Claude Cross, Barbara and Keyes Aton, Marylou High, and Christine Freeze.

Allen DuPre, Chair, called the hearing to order at 6:00 PM. She asked the members to review the minutes from the July 20, 2023, public hearing. TJ Johnston made a motion to approve the minutes as written. The motion was seconded by Cheves Leland and carried unanimously with "aye" vote recorded for all members.

Next, Allen DuPre opened the public hearing on an appeal for reconsideration of the Zoning Administrator's determination that a violation occurred, and mitigation is required for removal of a significant tree absent of a permit as required by Section 6.S(d) of the Town of McClellanville Zoning and Land Development Ordinance on property located at 506 Pinckney Street, Charleston County Tax Map# 766-03-00-003. Allen DuPre asked Zoning Administrator to present staff findings.

Kathryn Basha went over staff notes prepared for board. (Reference attachment). BZA members, the Zoning Administrator and the public discussed the application and information as it pertains to the staff notes and the Order on Variance. Allen DuPre then asked the representative of the applicant, the owner's father, Claude Cross, if he would like to speak on behalf of the applicant. Mr. Cross stated that the family has had concerns about pecan trees on the property since they purchased it in 1975, due to the size and age of the large trees and the brittleness of pecan trees as they age, which makes them especially dangerous. Mr. Cross stated that they had permission to take down other pecan

trees on the property, and this was the last remaining tree that was of concern. This tree was dropping limbs on and around the driveway and sidewalk, and there was concern that a limb could hit and damage the residence during hurricane season while the applicant was out of town. Mr. Cross also noted that the applicant planted 14 live oak trees on the property prior to taking down this pecan tree.

BZA members discussed the application and information as it pertains to the Order on Variance. The board felt that applicant could have come back to Town sometime within the eight months between February 2023 and October 2023 when application was denied and when tree was removed to ask for another tree removal. Also, because the applicant at one time worked for the Town, he should not have knowingly violated Town ordinance.

The Board asked Zoning Administrator to explain the mitigation regarding deciding the mitigation fees to be charged. Kathryn Basha informed the board that they could alter the dollar amount of mitigation per tree. TJ Johnston made a motion to fine the property owner for violating the ordinance.

The board concludes that the decision of the zoning official was based on the interpretation of sections 6.4 and 6.5 of the zoning ordinance and zoning map that it was unlawful to remove the subject tree without a permit pursuant to the ordinance.

The board makes the following findings of fact which are supported by the evidence that the tree was removed without an approved permit in violation of Sections 6.4 and 6.5 are applicable in this case and shall be interpreted as sections 6.4 and 6.5 prohibit the removal of the subject tree without a permit. The board, therefore, orders that the decision of the zoning official is modified as follows. The applicant has the option of contributing to the Town's Tree Fund of \$200 per mitigation tree and all other findings remain unmodified.

Next, Allen Dupre opened the public hearing request for variance of the minimum side/rear setback for an accessory structure as required by Section 3.4.4(c)(6)f to allow re-establishment of a shed in the former location less than the required five (5) feet on property located at 119 Oak Street, bearing Charleston County Map #764-14-00-105. Allen DuPre asked Town Planner to present staff findings.

Eddie Bernard read staff notes for board. (Reference Attachment). BZA members, the Zoning Administrator and the public discussed the application and information as it pertains to the staff notes and the Order on Variance. After reviewing the Orders of the Board, Cheves Leland made a motion to grant the variance.

The board concludes that the applicant has an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property and that these conditions do not generally apply to other property in the vicinity based on the following findings of fact:

The well and associated other equipment are currently within the 5' setback, as was the previous structure which burned. The lot to the west is largely marsh land with a limited amount of high ground, approximately 10' wide opposite the area where the shed was and is currently proposed.

The shed would abut an area that is largely marsh and the configuration of the coastline to the side of a lot is unique in this area to the Aton's lot. The sliver of high ground opposite of the shed location could only support a small accessory building. Combined with several protected trees within the area, no principal structure could be built in the vicinity of the proposed shed location without a variance. Therefore, the typical concerns of proximity noises, smells, drainage, fire etc. which setbacks protect against would be of less concern.

The lot has several protected trees scattered around which limit potential shed locations, but more so the well would have to be moved and redrilled.

Authorization of a variance would have no impact to the adjacent property due to the adjacent property configuration and the fact that approximately high ground opposite the shed is only 10' wide. An identical shed was previous in this location prior to burning, so the public perception and district character would not be altered.

The board concludes that because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.

The board concludes that the authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance based on the following findings of fact: The variance will allow the property to be returned as close as possible to its state before the fire.

The board concludes that the effect of the variance would allow the establishment of a use not otherwise permitted in the zoning district, would not extend physically a

nonconforming use of the land; and would not change the zoning district boundaries shown on the official zoning map, based on the following finding of fact: The variance will allow the property to be returned as close as possible to its state before the fire.

Allen DuPre made a motion to accept staff recommendations and approve the requested variance. The motion was seconded by TJ Johnston, none opposed. Motion carried unanimously with an “aye” vote recorded for all members.

There being no further business, the meeting was adjourned at 7:28 PM.

Respectfully submitted,

Natalie Lewis

Executive Assistant