



Case # BZA-02-25-00848

Charleston County BZA Meeting of April 7, 2025

Applicant/Property Owner:

Gary J. and Susan E. Gilberti

Property Location:

1159 River Road – Johns Island

TMS#:

311-00-00-057

Zoning District:

Low Density Residential (R-4) Zoning District

Request:

Variance request to remove a 46" DBH Grand Live Oak Tree near an existing 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. 9.2.5.B. Tree Removal states, "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."*



## CHAPTER 9 | DEVELOPMENT STANDARDS

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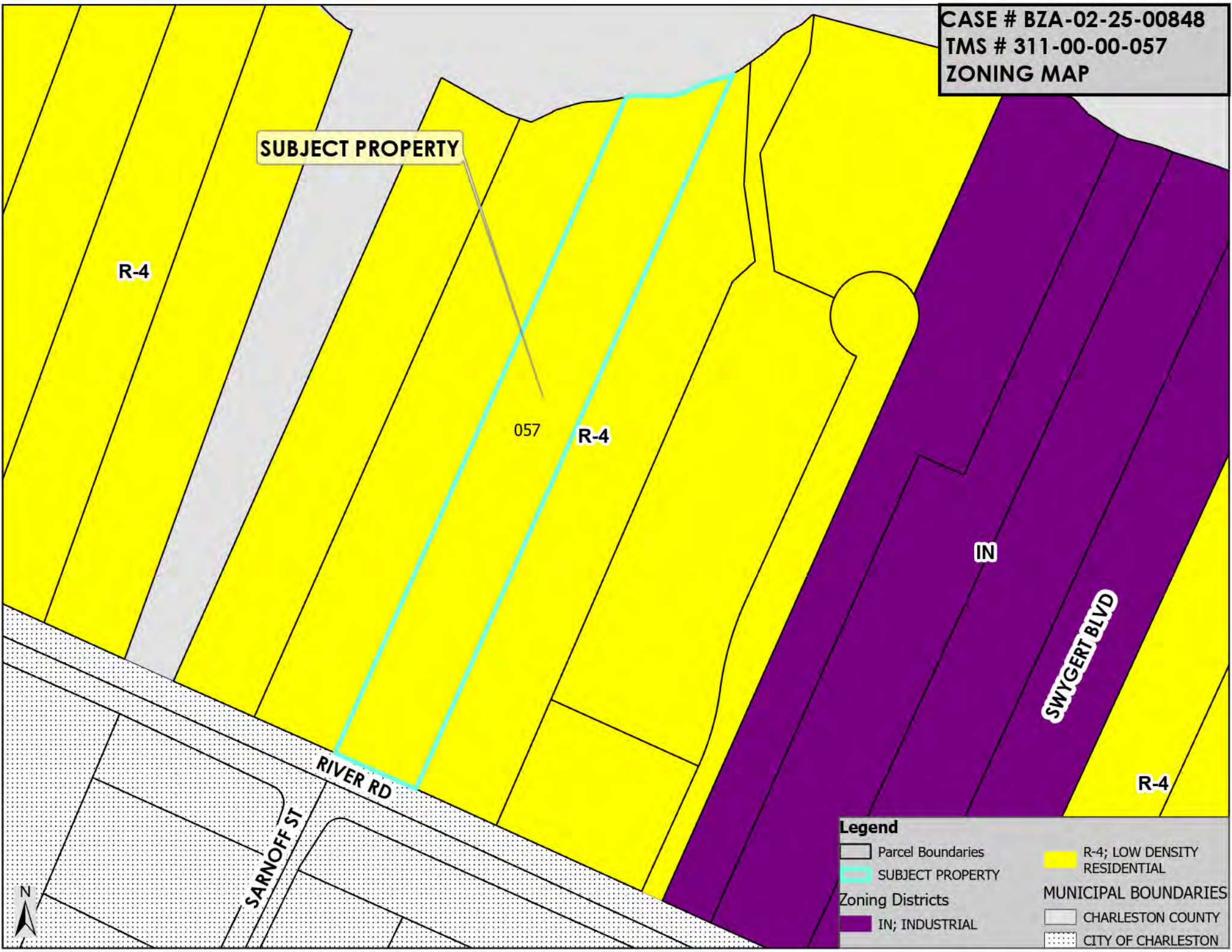
### ARTICLE 9.2 TREE PROTECTION AND PRESERVATION

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#### Sec. 9.2.5 Tree Removal

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- 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.



SUBJECT PROPERTY

R-4

057

R-4

IN

SWYGERT BLVD

R-4

RIVER RD

SARNOFF ST

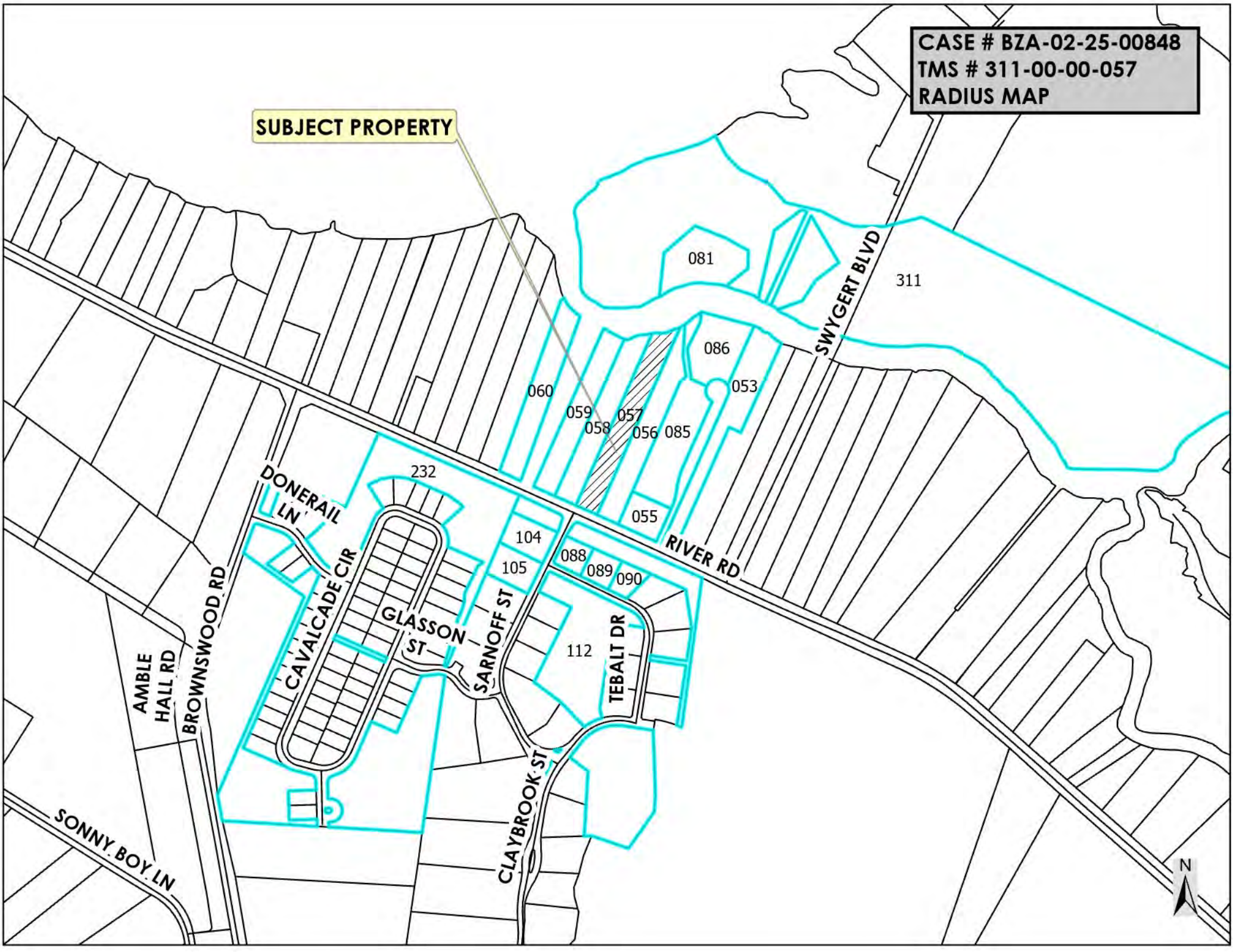
Legend

- |                         |                              |
|-------------------------|------------------------------|
| Parcel Boundaries       | R-4; LOW DENSITY RESIDENTIAL |
| SUBJECT PROPERTY        | <b>MUNICIPAL BOUNDARIES</b>  |
| <b>Zoning Districts</b> | CHARLESTON COUNTY            |
| IN; INDUSTRIAL          | CITY OF CHARLESTON           |



CASE # BZA-02-25-00848  
TMS # 311-00-00-057  
RADIUS MAP

SUBJECT PROPERTY





CASE # BZA-02-25-00848  
TMS # 311-00-00-057  
AERIAL MAP

SUBJECT PROPERTY

057





CASE # BZA-02-25-00848  
TMS # 311-00-00-057  
AERIAL MAP

SUBJECT PROPERTY

057

RIVER RD

SARNOFF ST

SWYGERT BLVD





**Case # BZA-02-25-00848**

**BZA Meeting of April 7, 2025**

**Subject Property: 1159 River Road – Johns Island**

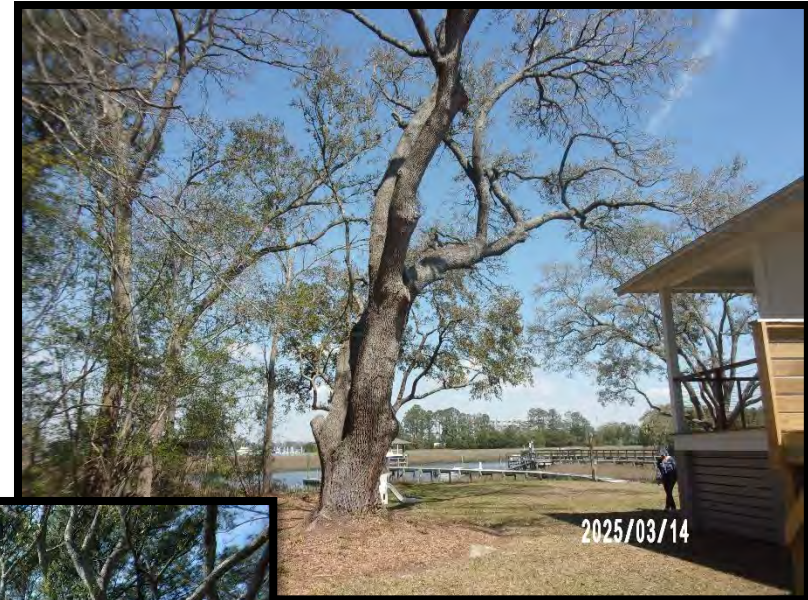
**Proposal: Variance request to remove a 46" DBH Grand Live Oak Tree near an existing single-family residence.**





# 46" DBH Live Oak Tree

Variance to Remove





# Subject Property

## Trees to be Preserved in Rear Yard





# Subject Property

## Trees to be Preserved in Front Yard







Case # BZA-02-25-00848

Charleston County BZA Meeting of April 7, 2025

Photographs provided by the Applicant





Areas where prior owners removed large limbs







Tree leaning toward home and canopy over roof.



Tree leaning towards home & large limbs removed





Large limb removed by prior owners





Staff Review:

The applicants and property owners, Gary J. and Susan E. Gilberti, are requesting a variance to remove a 46" DBH (Diameter Breast Height) Grand Live Oak Tree near an existing single-family residence at 1159 River Road (TMS # 311-00-00-057) on Johns Island in Charleston County. The subject property and the adjacent properties to the east and west are located in the Low Density Residential (R-4) Zoning District.

The 1.70-acre property contains a single-family residence and detached garage/Accessory Dwelling Unit that were constructed in 2023 per Charleston County records. The property contains a 36" DBH Grand Red Maple Tree and six (6) Grand Live Oak Trees in the front yard (28", 28", 30", 33" 38", and 40"). The rear of the property contains three (3) Live Oak Trees (26", 26", and 46") for a total of ten (10) Grand Trees. The applicant/property owner plans to preserve all the Grand Trees except for the 46" DBH Grand Live Oak Tree that is closest to the existing house. This tree is a Grade C tree.

The applicant's letter of intent explains, *"It is our desire to remove 1 grand Oak that is adjacent to our home. The tree was improperly protected while being pruned and while the home was built, 2 yrs ago. We just purchased the home in September of 2024. We feel that the tree has been stressed and could be a danger to the home. Letter of full explanation and pictures are attached."*

*"My wife and I purchased the property at 1159 River Rd. on September 6, 2024. Upon acquiring the property, we began to have work done in our backyard for the purpose of improving the property. Not being prior residents of South Carolina, we were unaware of the ordinances surrounding the removal of certain varieties of trees. Our contractor informed us that some of the trees in our yard are protected under Article 9.2 of the Charleston County Zoning and Land Development Regulations Ordinance.*

*We respect the desire to preserve the natural resources and aesthetic value of these trees and have no issue with most of the trees on our property. As you can see on the attached "Site Plan", there are roughly 9 Live Oaks of significant size within the boundaries of our lot. We intend to preserve and properly maintain the health of all of these trees with the exception of one.*

*The tree in question is highlighted on the "Site Plan" and described as a 46" Live Oak. It sits within 25 feet of our house with a lot of its canopy extending over our roof. We have concerns about it as it relates to the safety of our home and overall health of the tree.*

*The prior owner and builder of the home did not properly protect the tree while the home was being built. An arborist from Charleston Tree Experts looked at the tree and stated that the tree was in fact "stressed" from this activity. He instructed us that he could not submit for a permit for the tree's removal and that I'd have to contact Charleston County.*



An arborist from Charleston County came out approximately six weeks ago. He agreed that the tree was stressed but he could not say that it was to the point that he could allow a permit for the tree's removal. He instructed me to present our case to the Charleston County Board of Zoning Appeals (BZA) to see if a variance could be obtained.

To that end, we are requesting a variance to allow the removal of this tree for the following reasons.

- 1) The tree has been poorly maintained before and through the process of the building of the home. 2 arborists agree that there is some level of stress as a result.
- 2) In its current state, the tree leaves us uncomfortable that it could fall during a storm, causing damage to our home.
  - a. The canopy of the tree hangs over the house.
  - b. The main trunk of the tree and larger branches lean towards the home.
  - c. Any branches on the non-house side of the tree have been removed, by the previous owner, not allowing any counterbalance to the portion leaning towards the house.

None of this was done by us nor were we afforded the ability to inspect trees as a part of the pre-purchase due diligence. We simply would request the ability to remove this one tree to allow for peace of mind and the further improvement of the property.

We intend to plant additional trees on the front half of our property to provide a barrier to light and sound from River Rd. We are considering adding Oaks or Crape Myrtles along the side of our driveway to mirror those on the opposite side. We hope that this could be recognized as a potential offset for the removal of this tree and offer that for discussion."

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. 9.2.5.B. Tree Removal states, "**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.**"

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 March 14, 2025. 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 1.70-acre subject property. The property contains a 36" DBH Grand Red Maple Tree and six (6) Grand Live Oak Trees in the front yard (28", 28", 30", 33", 38", and 40"). The rear of the property contains three (3) Live Oak Trees (26", 26", and 46") for a total of ten (10) Grand Trees. The applicant/property owner plans to preserve all the Grand Trees except for the 46" DBH Grand Live Oak Tree that is closest to the existing house. This tree is a Grade C tree. 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. 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. 9.2.5.B. Tree Removal to 1159 River Road would prohibit the removal of the 46" DBH Grand Live Oak Tree that is the nearest Grand Tree from the existing single-family residence. 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/property owner is willing to mitigate the removal of the Grand Tree with replacement trees onsite. 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**. The applicant's **letter of intent states, "No. Prior owners of our property did not properly care for the tree while the house was being built."** 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 Grand Tree is mitigated. 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-02-25-00848 [Variance to remove a 46" DBH Grand Live Oak Tree near an existing single-family residence at 1159 River Road (TMS # 311-00-00-057) 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. The applicant shall mitigate the removal of the 46 DBH inches 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)**

<b>Property Information</b>			
Subject Property Address: 1159 River Rd. Johns Island, SC 29455			
Tax Map Number(s):			
Current Use of Property: Residential			
Proposed Use of Property:			
<b>Zoning Variance Description:</b>			
<b>Applicant Information (Required)</b>			
Applicant Name (please print): Gary J. + Susan E. Gilberti			
Name of Company (if applicable):			
Mailing Address: 1159 River Rd.			
City: Johns Island		State: SC	Zip Code: 29455
Email Address: gary.gilberti@numotion.com		Phone #: 443-386-5772	
Applicant Signature: 		Date: 10-30-2024	
<b>Representative Information</b> (Complete only if applicable. Attorney, Builder, Engineer, Surveyor etc.)			
Print Representative Name and Name of Company:			
Mailing Address:			
City:		State:	Zip Code:
Email Address:		Phone #:	
<b>Designation of Agent</b> (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):			
Name of Company (if applicable, LLC etc.):			
Property Owner(s) Mailing Address:			
City:		State:	Zip Code:
Property Owner(s) Email Address:		Phone #:	
Property Owner(s) Signature:			Date:
FOR OFFICE USE ONLY:			
Zoning District: Z-4	Flood Zone: AE-9 (489K)	Date Filed: 2/27/25	Fee Paid: \$250
Application #: BZA 02 25 00848	TMS #: 311-00-00-057	Staff Initials: jji	



### 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.)

It is our desire to remove 1 grand Oak that is adjacent to our home. The tree was improperly protected while being pruned and while the home was built, 2 yrs ago. We just purchased the home in September of 2024. We feel that the tree has been stressed and could be a danger to the home. Letter of full explanation and pictures are attached

### Applicant's response to Article 3.6 Special Exception, §3.6.5 Approval Criteria

Special Exceptions may be approved only if the Board of Zoning Appeals finds that the proposed use meets all 6 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. Is the proposed use consistent with the recommendations contained in the Charleston County Comprehensive Plan and the character of the underlying zoning district "Purpose and Intent"? Explain:

NA

2. Describe how the proposed use is compatible with existing uses in the vicinity and will not adversely affect the general welfare or character of the immediate community.

NA

3. Describe what adequate provisions have been or will be made for such items as: setbacks, buffering (including fences and/or landscaping) to protect adjacent properties from the possible adverse influence of the proposed use, such as noise, vibration, dust, glare, odor, traffic congestion and similar factors.

NA

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 impact on neighbors or the community.

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?

NA

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

No. Prior owners of our property did not properly care for the tree while the house was being built.

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

Only with regard to preservation of Grand Oaks.

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.



Mr. and Mrs. Gary J. Gilberti  
1159 River Rd.  
Johns Island, SC 29455  
443-386-5772

February 17, 2025

Charleston County Zoning and Planning Dept  
4045 Bridge View Drive  
North Charleston, SC 29405

Re: Removal of Grand Live Oak Tree @ 1159 River Rd.

To whom it may concern:

My wife and I purchased the property at 1159 River Rd. on September 6, 2024. Upon acquiring the property, we began to have work done in our backyard for the purpose of improving the property. Not being prior residents of South Carolina, we were unaware of the ordinances surrounding the removal of certain varieties of trees. Our contractor informed us that some of the trees in our yard are protected under Article 9.2 of the Charleston County Zoning and Land Development Regulations Ordinance.

We respect the desire to preserve the natural resources and aesthetic value of these trees and have no issue with most of the trees on our property. As you can see on the attached "Site Plan", there are roughly 9 Live Oaks of significant size within the boundaries of our lot. We intend to preserve and properly maintain the health of all of these trees with the exception of one.

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Thank you for your time and any consideration that can be given to this matter.

Sincerely,



Gary J. Gilberti  
Susan E. Gilberti  
Homeowners

Attachments:

Photo Pages





PIN 311-00-00-057

PENNY CREEK

Year	Wetland	Wetland
1991	3,211,100	11,100
1992	3,230,100	26,100
1993	3,250,100	31,100
1994	3,271,100	3,100
1995	3,292,100	13,100
1996	3,313,100	2,100
1997	3,334,100	10,100
1998	3,355,100	14,100

## DHEC-OCRM CRITICAL LINE STATEMENT

THE AREA SHOWN ON THIS PLAN IS A SUBDIVISION OF DEPARTMENT (ADDRESS-ORCA) PERMITS AUTHORITY ON THE SUBJECT PROPERTY. CRITICAL AREAS BY THEIR NATURE ARE DYNAMIC AND SUBJECT TO CHANGE OVER TIME. BY DELICATING THE PERMIT AUTHORITY OF ADDRESS-ORCA, ADDRESS-ORCA IN NO WAY WAIVES ITS RIGHT TO ASSESS PERMIT JURISDICTION AT ANY TIME IN ANY CRITICAL AREA ON THE SUBJECT PROPERTY, WHETHER SHOWN HEREON OR NOT.

APPROVED AND SIGNED BY SPECIAL AGENT IN CHARGE MARSHALL O'CONNOR  
ON MAY 13, 2002

THE CERTICAL LINE SHOWN ON THIS PLAT IS VALID FOR FIVE YEARS FROM THE DATE OF THIS SIGNATURE. SUBJECT TO FIVE CAUTIONARY LIGHTS ABOVE.

LEUNG

- 0 NON FINE FOUND  
 1 #1 (3" DIA 1/2" REBAR)  
 2 COMPUSED PILE  
 3 END = CONCRETE SUBMENT FOUND (4' x 4')  
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LOT 17A & 17B  
CHARLES HETTON

LOT 18-AREA  
ABOVE CRITICAL LINE  
1.737 Acres

LOF 19  
HAWKEL, LIVING TRUST

A SITE PLAN  
OF 1159 RIVER ROAD  
LOCATED ON JOHNS ISLAND  
CHARLESTON COUNTY  
SOUTH CAROLINA

NOTES: 1. TWS #311-00-00-067  
2. IRON PIPES FOUND AT ALL CORNERS UNLESS OTHERWISE SHOWN.  
3. IPSV = IRON PIPE SGT. (1/2" REDDAN)  
4. PLAT REFERENCE: BOOK 6 PAGE 085.  
5. DEED REFERENCE: BOOK 1062 PAGE 923.  
6. LOCATED IN PIGGO HAZARD ZONE AT MINIMUM ELEVATION 0'  
AND ZONE 1 SHADING. NO MINIMUM ELEVATION REQUIRED PER  
7. 1925/21. MAP REVISION: 1/28/21. (MAP #460100048K)  
8. NOW OWNED BY: SHANON L. MONNEY.



## GENERAL PROPERTY SURVEY

[illegible]

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THIS SURVEY SHOWING RESULTS WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARDS OF PRACTICE APPLICABLE FOR SURVEYING IN NORTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

ROBERT L. FRANK P.S. NO. 4172

Billings

