

Case # BZA-11-24-00823

Charleston County BZA Meeting of January 6, 2025

Applicant/Property Owner:

J. Marshall Milligan of Tiger Devil, LLC

Property Location:

311 Papa Charlie Way - James Island

TMS#:

334-12-00-016

Zoning District:

Special Management (S-3) Zoning District

Request:

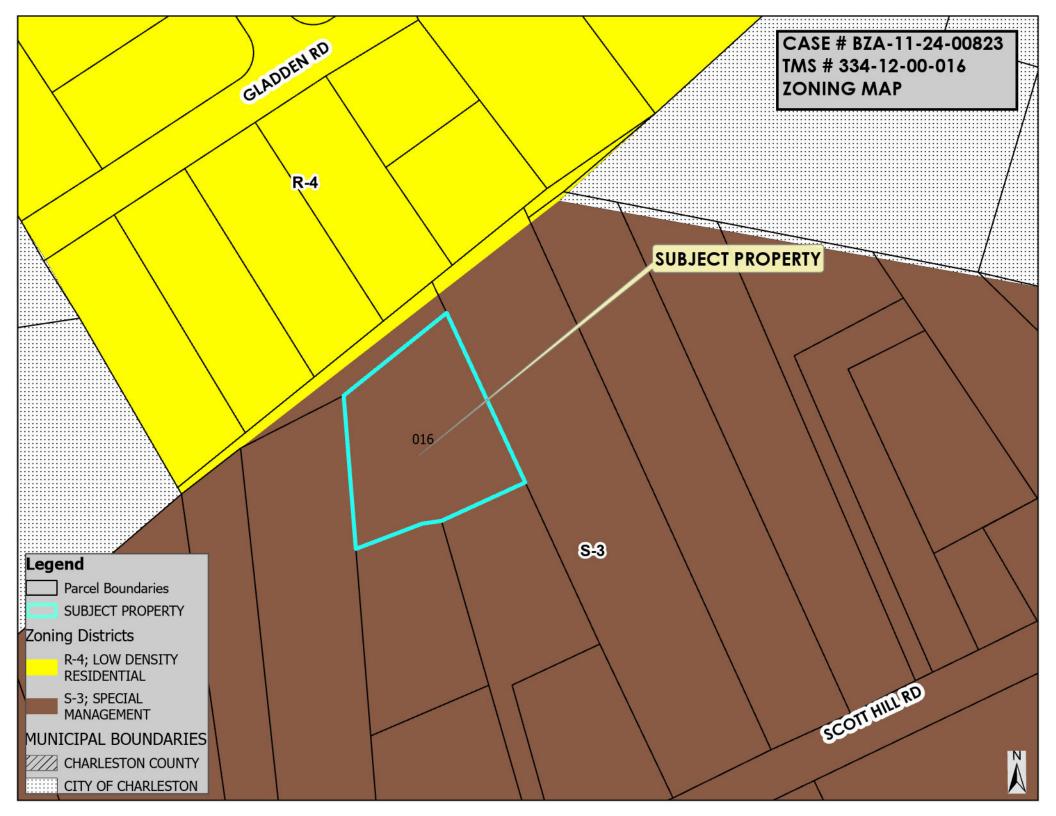
Variance request to remove three (3) Grand Trees for a proposed single-family residence.

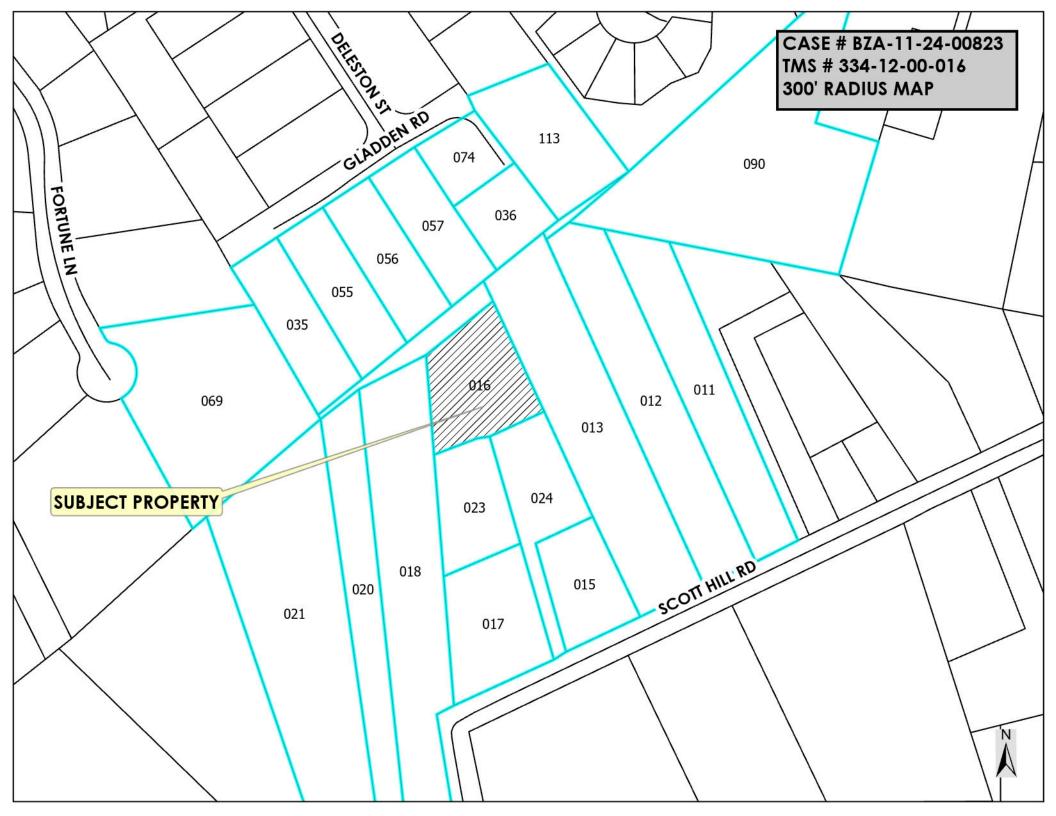
Requirement:

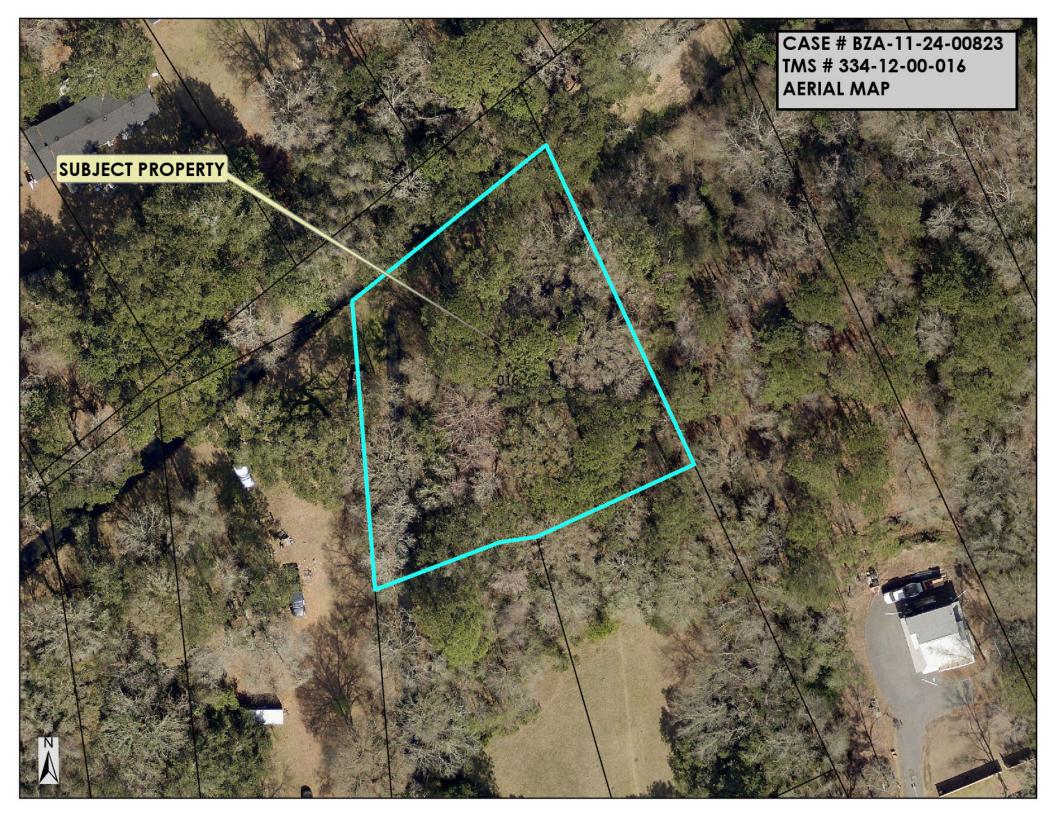
The Charleston County Zoning and Land Development Regulations Ordinance (ZLDR), Chapter 9 Development Standards, Article 9.2 Tree Protection and Preservation, Sec. 9.2.5.B. Tree Removal states, "Grand Trees and Protected Trees that do not meet the above criteria may be removed only where approved by 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."

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 <u>Tree Removal</u> 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.



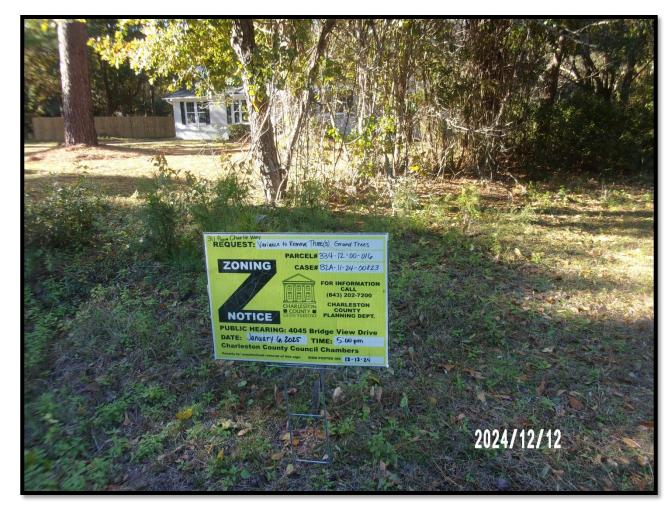






Case # BZA-11-24-0023 BZA Meeting of January 6, 2025 Subject Property: 311 Papa Charlie Way – James Island

Proposal: Variance request to remove three (3) Grand Trees for a proposed single-family residence.



24" DBH Red Maple Tree

Variance to Remove

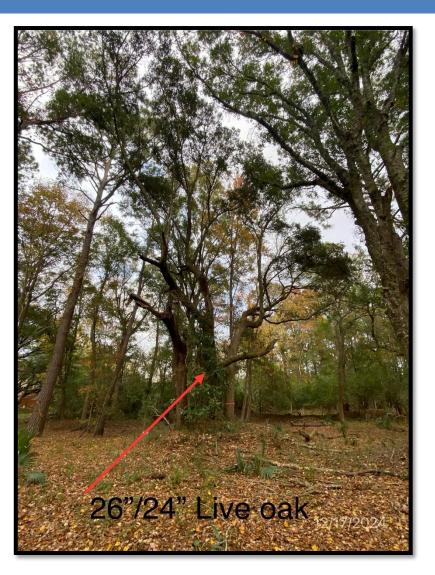




24"/28" DBH Live Oak Tree

Variance to Remove

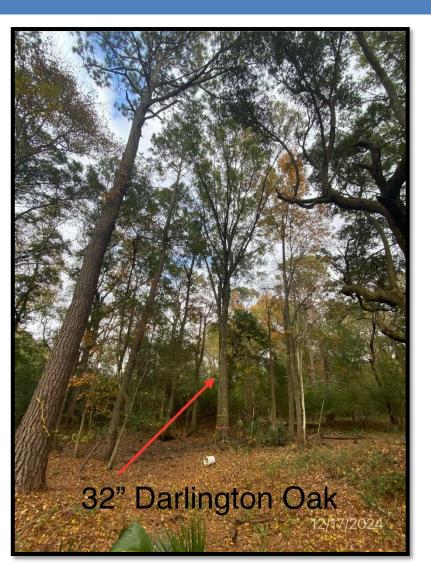




32" DBH Darlington Oak Tree

Variance to Remove





Subject Property





<u>Staff Review:</u>

The applicant and property owner, J. Marshall Milligan of Tiger Devil, LLC, is requesting a variance to remove three (3) Grand Trees for a proposed single-family residence at 311 Papa Charlie Way (TMS # 334-12-00-016) on James Island in Charleston County. More specifically, the applicant is requesting to remove a 24" Diameter Breast Height (DBH) Grand Red Maple Tree, a 24"/28" Grand Live Oak Tree, and a 32" DBH Grand Darlington Oak Tree. The subject property and adjacent properties to the east, south, and west are located in the Special Management (S-3) Zoning District. Adjacent properties to the north are located in the Low Density Residential (R-4) Zoning District.

The 0.71-acre property is currently vacant. The applicant is proposing to construct a single-family residence. The property contains eight (8) Grand Trees. The applicant/property owner plans to preserve the 76" DBH Grand triple Oak Tree and 28" DBH Grand Oak Tree located in the front of the property, and the 30" DBH Grand Oak located to the rear of the property. The 40" and 48" DBH Grand Oak Trees were permitted to be removed administratively because they were dead, dying, or diseased.

The applicant's letter of intent explains, "This lot is heavily wooded and taking these three trees down does not present a significant impact to the integrity of the lot due to the many other trees present, however, they pose a significant obstacle to building a home on the lot."

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 December 12, 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 0.71-acre vacant subject property. The property contains eight (8) Grand Trees. The applicant plans to preserve the 76" DBH Grand triple Oak Tree and 28" DBH Grand Oak Tree located in the front of the property, and the 30" DBH Grand Oak located to the rear of the property. The 40" and 48" DBH Grand Oak Trees were permitted to be removed administratively because they were dead, dying, or diseased. The applicant is requesting to remove the 24" DBH Grand Red Maple Tree, the 24"/28" Grand Live Oak Tree, and the 32" DBH Grand Darlington Oak Tree. The applicant's letter of intent states, "This is merely a vacant residential lot on James Island that is heavily wooded with a few trees that are in the way of a home site." 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 applicant's letter of intent states, "Trees are not unique to this lot as it relates to other lots in the general vicinity. This is a heavily wooded and undeveloped area of James Island. I do not know if other vacant lots nearby have trees in places that would restrict a home build." 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 311 Papa Charlie Way may unreasonably restrict the utilization of the property. The applicant's letter of intent states, "Should a variance for these three (3) trees not be obtained, the lot is essentially non buildable. So, yes, if a variance to take down the three (3) aforementioned trees is not granted it would severely and unreasonably restrict utilizing the property for a home Page 2 of 4

site." Therefore, the request <u>may meet</u> 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 Special Management (S-3) Zoning District may not be harmed. The applicant's letter of intent states, "No to both of these questions. These three (3) trees are just a few of many on this lot and surrounding lots. There would be absolutely no detriment to any adjacent properties, the public good, or to the character of the zoning district." Therefore, the request <u>may meet</u> 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 <u>meets</u> 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 three (3) Grand Trees to be removed contingent on variance approval are in the center of the buildable area on the lot. Therefore, the request <u>may meet</u> 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 Trees are mitigated. Therefore, the request <u>may meet</u> this criterion.

Board of Zoning Appeals' Action:

According to Article 3.10 Zoning Variances, Section §3.10.6 Approval Criteria of the Page 3 of 4

BZA Meeting of January 6, 2025 Staff Review, Case # BZA-11-24-00823

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-11-24-00823 [Variance to remove three (3) Grand Trees for a proposed single-family residence at 311 Papa Charlie Way (TMS # 334-12-00-016) on James 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 108 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)

| Property Information | | | | |
|---|------------------|-----------|--------|-----------------|
| Subject Property Address: B11 Papa Charlie Way, Charleston, SC 29412 | | | | |
| Tax Map Number(s): $334 - 12 - 00 - 010$ | | | | |
| Current Use of Property: Vacant land | | | | |
| Proposed Use of Property: Home Construction | | | | |
| Zoning Variance Description: | | | | |
| Applicant Information (Required) | | | | |
| | | | | |
| Applicant Name (please print): J. Marshall Milligan, Managing Member Name of Company (if applicable): Times Devil LLC | | | | |
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| A last wapp | | Urive, SU | | Zip Code: 29412 |
| city: Charleston | State: 5 C | - Dharma | | |
| Email Address: mmilligan@bellcarringfon.com Phone #: 843-532-5148 | | | | |
| Applicant Signature: Date: 11/13/24 | | | | |
| Representative Information (Complete only if applicable. Attorney, Builder, Engineer, Surveyor etc.) | | | | |
| Print Representative Name and Name of Company: | | | | |
| Mailing Address: | | | | |
| City: | State: | | Zip Co | ode: |
| Email Address: | dress: Phone #: | | | |
| 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): | | | | |
| Name of Company (if applicable, LLC etc.): | | | | |
| Property Owner(s) Mailing Address: | | | | |
| City: | State: Zip Code: | | I | Phone #: |
| Property Owner(s) Email Address: | | | | |
| Property Owner(s) Signature: | | | 1 | Date: |
| FOR OFFICE USE ONLY: | | | | |
| Zoning District: S-3 Flood Zone: Shaded X (6784) Date Filed: 11 25 24 Fee Paid: 2000 | | | | |
| Zoning District: S - 3 Flood Zone: Shaded X (6784) Date Filed: 11 25 24 Fee Paid: Fee | | | | |

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.)



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:

SEEATTACHED FOR ANSWERS TO NOS. 1. FAROUEH 7

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

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:

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:

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?

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

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

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.

Charleston County Board of Zoning Appeals

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Zoning Variance Application for TMS No. 334-12-00-016

Description of Request

- This request is for a variance in response to Charleston County Staff Arborist's determination that four (4) trees could not be taken down on the subject lot without a variance. The trees are shown on the survey which is Page 1 of Exhibit "A" attached hereto and incorporated herein by reference. They are, specifically denoted on said survey, (1) 24" Maple; (2) 28" Oak; (3) 24" Oak; and (4) 32" Oak. This lot is heavily wooded and taking these four trees down does not present a significant impact to the integrity of the lot due to the many other trees present, however, they pose a significant obstacle to building a home on the lot.
- To comply with the requirements of the attached Zoning Variance Application, the Site Plan is attached hereto as Exhibit "A;" the Approved and Recorded Plat is attached hereto as Exhibit "B;" the current Recorded Deed is attached hereto as Exhibit "C;" and the notarized Attorney letter showing LLC authority is attached hereto as Exhibit "D."

Applicant's response to Article 3.10 Zoning Variances, Sec 3.10.6 Approval Criteria

- 1. <u>Are there any extraordinary and exceptional conditions pertaining to the subject</u> <u>property?</u>
- No. This is merely a vacant residential lot on James Island that is heavily wooded with a few trees that are in the way of a home site.
- 2. <u>Do these conditions generally apply to other property in the vicinity or are they unique</u> to the subject property?
- Trees are not unique to this lot as it relates to other lots in the general vicinity. This is a heavily wooded and undeveloped area of James Island. I do not know if other vacant lots nearby have trees in places that would restrict a home build.
- 3. <u>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?</u>
- Should a variance for these four (4) trees not be obtained, the lot is essentially nonbuildable. So, yes, if a variance to take down the four (4) aforementioned trees is not granted it would severely and unreasonably restrict utilizing the property for a home site.
- 4. <u>Will the authorization of a variance be a substantial detriment to adjacent property</u> or to the public good? Will the character of the zoning district be harmed if this variance is granted?
- No to both of these questions. These four (4) trees are just a few of many on this lot and surrounding lots. There would be absolutely no detriment to any adjacent properties, the public good, or to the character of the zoning district.

- 5. <u>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 requested meet this this criterion?</u>
- The variance requested would not (1) establish a use not otherwise permitted in the zoning district, (2) extend physically a Nonconforming Use of the land, nor change the zoning district boundaries shown on the Official Zoning Map.
- 6. Is the need for the variance the result of your own actions?
- No.
- 7. <u>Does the variance substantially conflict with the Charleton County Comprehensive</u> <u>Plan or the purposes of the Ordinance?</u>
- No.

EXHIBIT "A"

