



Board of Adjustment Minutes
Indian Trail Meeting Hall, 113 W. Moore St.
October 4, 2022, 4:30 P.M.

Present: Harley Lemons, Jason Robbins, Amy Aycock, Lisa Fosbury, Pete Haislip, and Josh Cline McGee

Absent: Loten Masker and Kate Seigler

Board Liaison: Alderman Tom Lombardi

Staff Present: Dorothy Dutton, City Clerk/ Interim Planner
Tanya Shannon, Deputy Clerk

Others Present: Cameron Smith, Harry, and Janet Hentschel

Meetings are now open to the public.

- 1) Call to order by Chairman Harley Lemons at 4:30 p.m.
- 2) The Pledge of Allegiance was led by Chairman Lemons.
- 3) A motion was made by Ms. Aycock to approve the August 30, 2022, minutes with the amendment that the record reflects a correction to the vote for the excusal of Aldermen Lombardi to state that the second to the motion was made by Ms. Seigler, and a Nay vote was made by Ms. Aycock. Mr. Robbins seconded the motion. ***Unanimous vote; motion carried.***
- 4) Chairman Lemons gave a review of the process and procedures for a quasi-judicial hearing. He explained that a quasi-judicial hearing differs from a land-use or legislative decision. The Board's discretion is limited. The Board must base its decisions upon the facts. It is a decision constrained by the standards in the Unified Development Ordinance and based on the facts presented. He stated that if a witness is speaking, they should focus on the facts and standards, not opinions. Individuals with standing are allowed to speak, but only evidence and facts presented should be used to make a decision. The parties of this case are entitled to an impartial board. A board member may not participate in this hearing if she or he has a fixed opinion about the matter, a financial interest in the outcome of the matter, or a close relationship with an affected person. The parties to this case have rights for any ex parte communication to be disclosed. Chairman Lemons asked the Board if there were any conflicts of interest or ex parte communications. There were none.

Chairman Lemons opened the public hearing and swore in City Clerk/Interim Planner Dorothy Dutton and asked her to explain the variance request. She stated the property in question is Parcel ID 238HG042, on a 0.24 acre tract located in the R-10 zoning district. The property is currently vacant. The address is 244 Joshua's Way, in Olde Southport Subdivision. The applicant is seeking a variance from the required front setback in order to save a 54" Oak tree in the back yard. The required setback in the R-10 is 25 feet, but the applicant is requesting a 10 foot setback so that the tree can remain on the property. She said The Board of Aldermen recently adopted an amendment for Section 3.18 Tree Protection and Landscape Preservation in the UDO. Ms. Dutton read the amendment that states the following purpose:

1. *The general purpose of this section is to regulate and control the planting maintenance, and removal of trees and vegetation on both public and private property.*
2. *The specific purposes of this section are:*
 - a) *To safeguard and enhance property values and to protect public and private investment through the maintenance and protection of significant existing trees.*
 - b) *To prevent lot clearing*
 - c) *To outline the City's responsibilities with regard to protection and maintenance of Southport's urban forest trees and landscaping on public property; and*
 - d) *To prevent the indiscriminate removal of trees and ensure mitigation when trees are necessarily removed.*

Ms. Dutton stated that mitigation must be done when regulated or specimen trees are removed, but it is the intent to protect and preserve as much of the Urban Maritime Forest and the tree canopy as possible. Several of the parcels in this area are double frontage lots that lie between Joshua's Way and Willis Drive. She said that the Board of Adjustment will need to determine if the attached variance application meets all the outlined criteria in the General Statutes.

Mr. Haislip wanted clarification on the need for a variance to allow the tree to remain if there is an Ordinance for Tree Protection and Landscape Preservation. Ms. Dutton explained that because there are setback requirements that have to be met the preservation of the tree would conflict with requirements in the UDO and would need to be considered as a separate matter.

Ms. Fosbury questioned if the request for the variance to reduce the setback requirements is also so that the house plan will fit onto the lot if the tree remains on the site. Ms. Dutton said that was correct.

Chairman Lemons asked if an Arborist had been contacted to observe the Oak. Ms. Dutton said that the applicants must contact an Arborist and submit a tree plan before any permits can be issued to build.

Mr. Robbins questioned if there was any easements, utilities or infrastructures that could be affected with a possible setback reduction. Ms. Dutton said none that she was aware of.

Mr. Robbins asked if the Fire Marshall has already approved the potential 10ft. setback reduction since the lot is on a cul-de-sac. Ms. Dutton stated the cul-de-sac was already approved by the Fire Marshall when the subdivision was platted.

Mr. McGee questioned the 30ft sewer easement and if it staddles on the property line. Ms. Dutton deferred that question to the applicant Mr. Smith who will provide his testimony after being sworn in.

There were no further questions or comments at this time for Ms. Dutton from the Board.

The applicant and on behalf of the property owners Mr. and Ms. Hentschel Mr. Cameron Smith was sworn in by Chairman Lemons. Mr. Smith stated that while working with the property owners a large Oak tree was identified on the property. He said a survey was completed to determine the exact location of the tree and its relevance to the design of the house. Mr. Smith said that they are requesting a variance for a 10ft setback from the property line so that the tree can remain, and the owners can build a home that will be able to accommodate both desires. He said the property is uniquely located on a cul-de-sac and a 10ft setback would still put the house in line with the other homes. He said the property will still be developed even if the variance is not approved, but it is their great intention to allow the setback reduction so that the tree can remain on the site.

Chairman Lemons asked if the roads were private. Mr. Smith said that this was a gated community, and the roads are private. Mr. Lemons questioned the survey that was provided and asked if the covered porch on the adjacent home to the left would line up with the proposed front porch of the Hentschel's home. Mr. Smith said the detached garage of the house next door is built a little further up from the main structure which puts the Hentschel's home closely in line with it. Mr. Lemons asked if the tree was identified as a Live Oak. Mr. Smith stated that it appears to be a Live Oak, but he said an arborist would have to confirm. Mr. Smith said the tree is very large and appears very healthy.

Ms. Fosbury questioned how the roots will be protected from the construction. Mr. Smith said some of the roots may be disturbed on one side of the tree. He said the back of the house is planned to be approximately 13 ft from the base of the tree. Mr. Smith said that some of the branches will have to be trimmed but the tree will still remain large and appealing. Ms. Fosbury asked if an arborist could survey the root line and convey a way to protect the roots. Mr. Smith said that he did not think that was possible.

Mr. McGee applauded Mr. Smith for his presentation, and the professional renderings of the plans. He said he is appreciative and impressed with the efforts to protect and preserve the tree. Mr. McGee questioned the 30 ft sewer easement and asked if it straddled the property line. Mr. Smith yes, it would be 15 ft off each side of the sewer easement. Mr. Smith said that it is on the left side of the setback. Mr. McGee asked from a functional point of view if that part of the property is buildable. Mr. Smith said that it would not be buildable in that area.

Chairman Lemons asked if there could be other alternatives for the design of the house to keep the setback at 25 ft and also save the tree. Mr. Smith stated that he has tried every way possible to find a solution for a design plan that would work. He explained that the house will be as wide as possible and as deep as possible in order to make a functional home and preserve the tree. Mr. Smith said there could be other compromises, but this would affect the function of the house and the appeal to the home owners. Mr. Lemons asked how many other trees are in the back yard. Mr. Smith the lot has a decent amount of trees but not a lot around this particular oak tree. He said this tree stands mostly by itself.

Ms. Aycock asked if it was a one or two story house. Mr. Smith said that it would be a two story house. Ms. Aycock questioned if this would affect the tree canopy. Mr. Smith said that some branches will need to be trimmed but it would have no effect on interference with the proximity to the house.

Mr. McGee asked for clarification on the side loaded garage. Mr. Smith said it would be called a courtyard where you drive in towards the front door and then turn in and he said that was the only way the entry way would work. Ms. Aycock asked if that gives enough radius to get the cars into the garage. Mr. Smith said that it does. Mr. McGee confirmed that the garage is wider than it is deep. Mr. Smith explained because the shape of the lot, the plan is to slide the garage a little closer to the street.

Mr. Robbins questioned whether the HOA would have any effect on the decision for this request. Mr. Smith said that after the City had made their decision for the variance, he would present the same request to the HOA for their approval.

Mr. McGee asked how far the existing curb was from the property line. Mr. Smith said approximately 10-15ft. from the right of way.

Mr. Kevin DesRoches, 248 Joshua's Way was sworn in my Chairman Lemons. He stated that he is the neighbor of Mr. & Mrs. Hentschel and has lived there for 2 years and moved here because of the beautiful Oak Trees and the City's dedication to the preservation of the trees. He stated that he is in support of keeping the Oak tree on the Hentschel's property. Mr. DesRoches said reducing the setbacks 10ft would not interfere with the alignment of the surrounding houses.

Chairman Lemons asked if all the surrounding neighbors had been contacted regarding the request for the variance. Ms. Dutton said that they had been notified and that there were calls with questions but there were no complaints. Mr. Lemons said that he appreciated the testimony of the adjacent neighbor to provide his input on this matter.

Mr. Robbins asked for clarification on lot 6 and lot 8 and if they were already built. Mr. Smith said the photo that was taken and provided was from the back of the lot. Mr. Smith said that the lot on the right was finished and the lot on the left was near complete.

Mr. McGee asked what is behind the property that appears to be like a swell in the landscape. Mr. Smith said it is berm that buffers with the landscape to delineate between Willis Drive.

Mr. McGee pointed out that in the UDO Article 3 Section 3.9 A (2) *The location of required front, side, and rear yards on irregularly shaped lots shall be determined by the UDO Administrator. The determination will be based on the spirit and intent of this ordinance to achieve an appropriate spacing and location of buildings and structures on individual lots.* He said the UDO Administrator will have some lenience on the setback requirements in certain situations and would still be in accordance with the UDO.

Mr. McGee also pointed out that in the UDO Section 3.9 B (1) *Nonconforming lots which are located in the R-10 district may be granted rear and side yard setbacks proportionate to the size of the lot. Example: If a 10,000 square foot lot is required and the lot is 6,000 square feet, a 40 percent reduction is allowed.*

Mr. McGee said that his interpretation of the Ordinance is that with the calculation for the unbuildable area on the lot it could be determined that the buildable area is less than 10,000 sft. and the setback reduction could be allowed at the discretion of the UDO Administrator.

Ms. Fosbury questioned when an arborist would be required to observe the tree. Ms. Dutton said that if the variance is approved by the Board and the HOA for the subdivision. The applicants must submit a tree plan that must be approved before any permits are issued. Ms. Dutton said that Chairman Scott Len with the Forestry Committee may also examine the health of tree. Ms. Fosbury stated that it is important to determine that the Oak Tree is healthy and remains in good condition.

Mr. Robbins questioned if the tree does not sustain could a condition be placed on the variance that another tree be required to be planted in the same place. Ms. Dutton said it would be difficult to enforce that.

Ms. Janet Hentschel was sworn in by Chairman Lemons. She is the owner of the property and stated that she and her husband were approached by several neighbors requesting that they preserve the Oak Tree on their lot. She said it is a beautiful tree that many have become accustomed to seeing. She said they too would like to keep the tree and consulted with Mr. Smith to design a plan for the house that would allow the tree to remain.

Olde Southport HOA President Mr. Keith Bucklum was sworn in by Chairman Lemons said that had deliberations regarding the Live Oak Trees that are planted throughout the median in the neighborhood with an Arborist. He had concerns regarding the large roots that could potentially cause damage to their privately maintained roads. He said the arborist could not predict if the tree would be harmed if the roots were cut. He agreed that an Arborist should provide recommendations on how to best protect the tree.

Mr. Smith said that he would contact an Arborist to survey the tree to ensure that the tree in question is pruned, protected, and preserved in the best way possible. Mr. McGee asked what type of foundation will the house be on. Mr. Smith said it will be a crawl-space foundation.

There were no other questions or comments. Chairman Lemons closed the public hearing.

Finding of Facts

1. Mr. Robbins made a motion that the unnecessary hardship would result from a strict application of the ordinance because it would be a loss to the property if the tree was removed, and was seconded by Mr. McGee. ***Unanimous vote; motion carried.***
2. Mr. McGee made a motion that the hardship results from conditions that are peculiar to the property such as location, size, or topography, and there being a 54' Live Oak in the middle of the property is such a condition and was seconded by Mr. Robbins. ***Unanimous vote; motion carried.***
3. A motion was made by Ms. Fosbury that the hardship did NOT result from actions taken by the applicant or property owner and was seconded by Mr. Haislip. ***Unanimous vote; motion carried.***
4. A motion was made Mr. Robbins that the requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice achieved, and was seconded by Ms. Aycock. ***Unanimous vote; motion carried.***

5. A motion was made by Mr. Haislip that based on the findings of fact and the evidence presented, the Board of Adjustment recommends approval of the variance application with the condition that an Arborist comes to observe the health and condition of the tree, and the Builder will take into serious consideration the Arborist suggestions and recommendations for preservation. Motion was seconded by Mr. McGee. ***Unanimous vote; motion carried.***

Other Business or Comments: None

Adjournment:

Being that there were no further questions or comments Mr. Haislip made a motion to adjourn and was seconded by Mr. McGee. ***Unanimous vote; motion carried.***

Adjourn 5:29 p.m.

Chairman, Harley Lemons

Deputy Clerk, Tanya Shannon