

The Smithfield Board of Zoning Appeals held its regular meeting on Tuesday, December 20th, 2016. The meeting was called to order at 7:30 p.m. Members present were Mr. Clem Batten, Vice Chairman; Ms. Catherine Bowden, Mr. Christopher Gwaltney, and Mr. Robert Briggs. Ms. Faye Seeley, Chair, was absent. Staff members present were Mr. Joseph Reish, Planning Technician and Mr. William H. Riddick III, Town Attorney. There were five (5) citizens present. The media was not represented.

Vice Chairman Batten – Good evening. I will call this Board of Zoning Appeals meeting to order. Our first item is a Special Yard Exception – 92 Moonefield Drive – Dave Hare and Mary Mitchell, applicants. Could we have a staff report please?

Planning Technician – Thank you, Mr. Vice Chairman. If everyone would pull out their plat it would be helpful. We originally permitted a house to be built at 92 Moonefield Drive that met all of the setbacks. However, the applicant came back and showed us a tree that they really wanted to save. It would be in peril if the house was built where it was originally permitted. As you can see, the lot is subject to the one hundred (100) foot resource protection area through the Chesapeake Bay Act as well as the extra twenty-five (25) foot buffer that the town imposes. Basically, the extra twenty-five (25) feet is to allow for accessory structures. We have had issues in the past where people have built houses right to the one hundred (100) foot RPA line and then they want to put in a shed or a pool. We cannot permit them due to the state law. So, at some point in the past, the extra twenty-five (25) foot buffer was put onto the one hundred (100) foot state buffer. You have a one hundred, twenty-five (125) foot buffer with this waterfront property. If you look at the plat , the house just barely encroaches into the twenty-five (25) foot buffer at about fourteen (14) or fifteen (15) feet into that buffer. There is a little patio they want to build that will go into it as well as a covered porch. We are talking about a house that has not been built yet so we are still at the planning stages. They have come seeking relief to be able to save this tree by positioning the house far enough away from it so the construction impact will save the tree. Of course, if it is approved, it will still meet the one hundred (100) foot state law as well as the general front and side yard setbacks that we have in Neighborhood Residential. Thank you.

Vice Chairman Batten – Is there anyone here for or against this application?

Mr. Dave Hare – Good evening ladies and gentlemen. I am one of the applicants along with my wife Mary. I currently reside at 13274 Queens Gate Terrace in Carrollton,

Virginia. We are here tonight to ask for your consideration of our request for the special yard exception. We are thirty (30) year residents of Smithfield. We want to move back to Smithfield. We were fortunate enough to find this lot. We are looking to build our new residence there. Despite this plat, this lot being over two (2) acres in size, the topography of the lot, as well as the setbacks, actually make the buildable area quite small. It is a plateau that slopes down the hill. A lot of it is on a slope. It is a beautiful lot. There are a lot of trees. We are trying to save as many of the trees as we can, in particular, this one tree. We have learned, from the neighbors that it has a lot of memories associated with it. If you were able to get out there and see the tree, you would know that it sits very prominently at the front of the lot. We already went to a lot of effort with our builder and cost to carry our driveway around the tree. We are trying our best to preserve the canopy for the town and minimize the number of trees that we have to disturb. We have already had to take a few down. We are hopeful that the encroachment is minimal enough that the Board would consider granting the exception. As was pointed out by staff, most of the encroachment has to do with a paver patio and the corner of a screened porch. The main house will rest within the guidelines. We have tried moving the house around. There is just really no way to get around it and site it so that it fits in the neighborhood with the other houses. I will be happy to answer any questions. We have with us our arborist, who we consulted, to make sure that what we thought was going to happen; happened, if we put the house where it is. We did not want to second guess this. We asked for an expert. He is prepared to address the Board and answer any questions you might have of that nature. I appreciate your consideration. We hope to get this approved so that we can get started on construction. Thank you.

Mr. Carter Williams – I live at 500 Moonefield Drive. I am just around the corner from this piece of property. I went and looked at it and I liked the tree too. Some people claim that I am a tree hugger; but I do not like to call myself that. I just like trees. However, I do not see where it encroaches on anything at all. I do not see where it would bother any of the neighbors or anybody except for maybe Judge Delk. I do not think it is too much on any property around there. I am in favor of this application with the new plan to move it.

Vice Chairman Batten – Is there anyone else who would like to speak?

Mr. Rodham Delk – I sold the lot to the Hare's. Just a little history, the way the piece of property is configured now is the way it has been for generations. There used to be tenant house for the dairy farm. The Moonefield development used to be a large dairy farm. I believe there was a house there because there used to be a septic system there. The tree could be one of the oldest trees in Moonefield. It is fairly narrow which is the reason for the side yard setbacks. I wrote a letter of support. I hope you have seen it. If there are any questions about the history of it, I will be glad to tell you what I know. I do not see that it harms anything. The lot is connected to marshland. In fact, next to the lot, on the east side was the original farm pond for the Moonefield dairy farm. The dam has been out for decades. There is a lot of history there, that this lot is part of for that farm, which dates back a couple of hundred years or so. If you have any questions of me, I would be happy to answer them. Obviously, I am in favor of it since I sold them the property.

Town Attorney – Mr. Chairman, I would like to explain some of the history about law as to how this has all come about. The Chesapeake Bay Act was adopted in 1989. Most of the Moonefield subdivision was platted long before that. This Board sees this all the time; where we are trying to apply laws that have been adopted after lots have been created. In 1989, you could get relief up to fifty (50) feet. They wanted you to be at one hundred (100) feet but they would give you relief down to fifty (50) feet. The state told us that was going to be fine; but then they changed the rules and said that you could not do that either. We got stuck at one hundred (100) feet. There is a lot of difference between a house that was there before the law was passed and one that is new. Last month, we had one that has been there before the Chesapeake Bay Act was adopted. They could not do anything about it. The law was superimposed over top of their property. This lot is different in that it is new construction. Several years ago, we initially adopted exactly what the state required which was the one hundred (100) foot. What we would have are people that would build their house right up to the one hundred (100) foot mark. Then they would come in and say, after the fact, that they wanted to put a swing set or a patio out there or something like that. They wanted to encroach into the one hundred (100) feet although it was new construction. We ended up having a lot of

push-back from the state on that. We are under the supervision of what used to be called the Local Assistance Board. I do not know what it is called now. We answer to the state about things like that. The Town Council then decided, in order to avoid being in violation or under scrutiny by the state, that they would just add another twenty-five (25) feet onto the required setback. It gave the town the ability to grant relief and still not violate the Chesapeake Bay Act. Even though the state ordinance says one hundred (100) feet, our ordinance says one hundred, twenty-five (125) feet. We did it just for these kinds of reasons so that you would have the flexibility to give people relief without causing a violation of state law.

Vice Chairman Batten – I seem to remember that.

Ms. Batten – Did you say something about an original permit?

Planning Technician – We had originally permitted the home slightly closer to the road where the cul de sac is. The tree canopy is designated as the ‘wavy’ line. It also says ‘TP’ which stands for tree protection. It is a little fence that they have put around it to keep machinery from getting too close to the roots. When we originally permitted it, as per the current ordinance, the home was closer to the road and further over to the right hand side if you were standing in the road looking at it where the tree canopy would actually go over the top of the home. It was originally permitted as per the town ordinance. After the permit was written, Mr. Hare and Ms. Mitchell came back and asked if they could save the tree. If they build it where it was originally permitted, the tree would probably die because of the machinery.

Mr. Oscar Richardson – Thank you for the opportunity to speak on behalf of the tree. I am a tree hugger. I have been a certified and consulting arborist for over twenty-five (25) years. I have a real commitment to trees especially in this area where we are dealing with preservation of not only trees; but the viability and importance of the Chesapeake Bay. The tree is on your sheet says that it is a sixty (60) inch Elm. It is actually a sixty (60) inch Hackberry. If you have gone out and looked at it, it has a dramatic limb structure for a Hackberry. Trees were intended to grow in communities. If you go by where trees grow in force, you will notice that there are very limited scaffold limbs that develop on trees in those areas. They are more upright and the canopy reaches to the top. Where you have trees that grow independently, you will get

development of scaffolding limbs that grow more horizontal than vertical. The height of the tree is limited for that reason; but it has an extended canopy that goes out. It is a unique development that is particular to independent trees. I would like to address where tree roots grow. If you have ever seen a tree uprooted in a hurricane, when we have those wind events here, you will notice that there is an extended root plate that gets uprooted. If you examine it, you will see that the root plate at its full depth is probably two (2) to (3) feet in the ground. Roots run horizontally. They run very shallow; depth wise. Most of us, during first or second grade, used a Dixie cup to grow something. When you took the seed out the root was longer. Naturally, in our minds, we can understand that a mature tree would have a very extensive taproot. Most deciduous trees, at full maturity, have no taproot. At three (3) feet in the ground, you have very limited root structure. It has an extended horizontal root plate. The drip line of the tree and the critical root zone has been defined as coming out to the area of the drip line. Tree roots will extend two (2) to (3) times the drip line of the tree. Most of your fibrous roots which are the absorbing roots of the tree that take up the water and interact with the fungi and the soil create a symbiotic relationship with the fungi gives the tree the ability to uptake water. They are within the first four (4) to twelve (12) inches of soil depending upon the makeup of the soil. With the higher density clay soils, the roots are going to be closer to the surface. The relief that the applicant is asking for by moving the house approximately fifteen (15) feet back will capture approximately four hundred, fifty (450) to five hundred (500) more square feet of root zone that would not be impacted by the construction process. My recommendation to the builder was to put a chain linked fence all the way out. I have a predisposition to chain link fences. For some reason, men will not knock down chain link fences; but, they will knock over the orange tree protection fences. The more we can capture, the greater chance we have of insuring the tree's viability after that. I also spoke to them about the placement of utilities in the project. Oftentimes, it is overlooked and none of the utility companies have any commitment to preserve trees on lots. At times, they will take the shortest route which can take them right through the root zone. My recommendation to the builder and to Mr. Hare and Ms. Mitchell was that they make sure, when the alignment of that comes, that it is outside of the root zone of that tree. They can protect the interior by linking it off and

minimizing the impact of that so that they capture as much of the root zone as possible.

From the plat, I called Mr. Hare to ask if my calculations were off. The riparian buffer that extends along the back side of that property all the way around, if you do the length of that property, you have close to a four-four thousand (44,000) square foot of undisturbed, riparian buffer on the back side of that lot. It does not include the one hundred, ninety-seven (197) feet coming down the right side as you face the property. I did not take into consideration the grass part that is over on the left side as you initially come up to the property. The applicant is asking for consideration of about four hundred, fifty (450) to five hundred (500) square foot of relief in light of the existing riparian, undisturbed area where you have a lot of opportunity to capture any kind of runoff. If there is still some concern, it can be mitigated with the runoff from the roof from the property by putting in a BMP and then channeling the water through a downspout drain that runs into the BMP and that would give the filter system. With that amount of square footage of riparian buffer, I do not know if you would need to do that; but it might be something that could be offered as a consideration in this matter.

Planning Technician – I would like to add that the Isle of Wight County Stormwater Division has already approved it as is. There is no BMP needed. If the applicants decided to build a BMP, it would strictly be voluntary.

Ms. Batten – How many other options are there in order to place this particular home on that lot?

Planning Technician – Well, it could be moved over to the right and back slightly. I think they are trying to preserve a degree of symmetry to keep it centered.

Mr. Hare – The lot is heavily treed in the back. To move the house back, we would knock down another dozen big trees to save one tree. Even if you shifted the house, there is a rear yard setback. We have a side loading garage so then the end corner of the house would impact the root system. So there is not enough room, as I said earlier, to shift this house and totally take it out of impacting that tree by moving it back. Plus, we would be knocking down a dozen more trees to save the one tree which to us did not seem to be a good trade off. This, to us, was the optimal outcome to improve the chances of saving that tree and only impacting fifteen (15) feet and not taking any more of the trees down that are on the property and preserving the canopy

as much as possible. That was the main reason why it did not seem to offer a better solution.

Planning Technician – A lot of the pecan trees would have to come down if you shift it. To answer your question, Ms. Batten, there are other options but this one would be the least impact on the indigenous vegetation. If you look at the plat, you can see where it says ‘silt fence runs along top of bank.’ I have walked that silt fence line and you can also see the dotted line where the one hundred, twenty-five (125) foot buffer line is. As soon as you start going in that direction, you have to pull the home forward which would impact the tree. You still have to stay out of that one hundred, twenty-five (125) buffer in order to administratively approve it. Could it be moved; yes. Would it meet the goals of the applicant to move it; no, it would not.

Vice Chairman Batten – Does anyone else have any questions? If there are no other questions, I am ready to entertain a motion.

Mr. Gwaltney – I make a motion that we approve this as presented.

Mr. Briggs – Second.

Vice Chairman Batten - A motion has been made and properly seconded to approve this application. All in favor signify by saying aye, opposed say nay.

On call for the vote, four members were present. Vice Chairman Batten voted aye, Ms. Catherine Bowden voted aye, Mr. Christopher Gwaltney voted aye, and Mr. Robert Briggs voted aye. There were no votes against the motion. The motion passed.

Vice Chairman Batten – The motion was approved for the special yard exception. Our next item is to Approve the November 15th, 2016 Meeting Minutes.

Town Attorney – I recommend the minutes be approved as presented.

Mr. Gwaltney – So moved.

Mr. Briggs – Second.

Vice Chairman Batten - A motion has been made and properly seconded. All in favor signify by saying aye, opposed say nay.

On call for the vote, four members were present. Vice Chairman Batten voted aye, Ms. Catherine Bowden voted aye, Mr. Christopher Gwaltney voted aye, and Mr. Robert Briggs voted aye. There were no votes against the motion. The motion passed.

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Vice Chairman Batten – We are adjourned.

The meeting adjourned at 7:52 p.m.

Mr. Clem Batten
Vice Chairman

Joseph Reish
Planning Technician