

CITY OF ST. AUGUSTINE, FLORIDA

Code Enforcement, Adjustments and Appeals Board Meeting
March 13, 2018

The Code Enforcement, Adjustments and Appeals Board met in formal session at 3:00 P.M., Tuesday, March 13, 2018, in the Alcazar Room at City Hall. The meeting was called to order by Clyde Taylor, III, Chairman, and the following were present:

1. ROLL CALL

Clyde Taylor, III, Chairman
Martha Mickler, Vice Chairman
Dennis Wissel
Stephen Simmons
Noel Mahr
Larry Weeks

Staff Present:

John Cary, Esq., Assistant City Attorney
David Birchim, Director, Planning & Building Department
Richard Schauland, Building Official & Code Enforcement Manager
Curtis Boles, Code Enforcement Inspector
Robert van Mierop, Code Enforcement Inspector
Sandra Partin, Administrative Coordinator, Recording

The City staff was sworn in.

2. APPROVAL OF MINUTES
(January 9, 2018)

MOTION

Mrs. Mickler moved to approve the minutes as presented. The motion was seconded by Mr. Simmons and approved by unanimous voice vote.

3. DISCLOSURE OF EX-PARTE COMMUNICATIONS

None.

Public comment for items not on the agenda was opened, however there was no response.

4. VARIANCES/TREE REMOVAL

Item 4 (a) **2018-0062**
John Pineda
308 Arpieka Avenue
Removal of a 26" dbh. Live Oak tree
City Code Chapter 25, Section 25-56

Mr. van Mierop read from the staff report and testified to the following:

- Staff recommended the board approve the removal based upon the Arborist's recommendation.
- Applicant was present for questions.

Mr. Taylor asked for confirmation that the tree in question was not on a property line.

Mr. van Mierop confirmed that the tree in question was in fact on the property of 308 Arpieka Avenue.

John Pineda, 308 Arpieka Avenue, testified to the following:

- That the natural state of their property was very moist, and after Hurricanes Matthew and Irma the conditions were even more so.
- After Hurricane Matthew they had to replace the entire floor of their home, and during that process it was noticed how large of a root from the subject tree was coming underneath the home.
- That application for tree removal had been made with consideration of the properties soil moisture conditions, the finding of the root system underneath the house, and the potential of root movement.

Mr. Taylor asked the applicant if he were aware of the replacement requirement should the appeal be approved.

Mr. Pineda acknowledged that he was aware.

Mr. Mahr stated that the replacement shall be substantial shade trees.

Mr. Taylor asked Mr. Birchim to clarify whether there was definition in the code of acceptable shade trees.

Mr. Birchim responded that the code spoke to preserved shade trees, but that staff could work with the applicant on replacements.

Mr. Simmons asked whether or not there was a plan for replacement, as he understood there to be only discussion of a plan.

Mr. Birchim asked Mr. Simmons to clarify whether he was asking for a site plan showing the location and species.

Mr. Simmons explained that he was speaking to the statement of "the plan was acceptable", and he wished to make clear whether there was a plan. And he added that the board was constrained by somewhat of the law, and he did not wish to dictate placement and species, but recommended that it be something that would come through the building department.

Mr. Birchim stated that was a valid assumption, and that staff could provide an update at the next meeting.

Mr. van Mierop explained that with submittal of the application, the owner had stated they planned to plant two trees in the front yard, in line with the arborist's recommendation. And that was the plan that he had deemed acceptable.

Mr. Taylor commented that he wished to make certain that the applicants had space for the two required replacement trees. Explaining that in past cases where the CEAAB had approved removal with replacement requirement, that it could prove to be difficult for some homeowners that have a small lot like many in his neighborhood of Lincolnville.

Mr. Pineda responded that he did not have room on the property for two shade trees, as the lot was 50' less the driveway, which would reduce it to approximately 35'. That he had met with Southern Horticulture and was looking to replace with a Cassia tree because it was not a large diameter tree like the Magnolia. That they desired to do the right thing, but were limited with space on the property and welcomed recommendation of this board, city staff and the experts.

Mr. Birchim explained that should the lot size be insufficient for replanting, the applicant could pay into the tree fund.

Public comment was opened.

B. J. Kalaidi, 8 Newcomb Street, commented to the following:

She appreciated the discussion of replacements, and she wished to see replacements on property in which they were removed rather than payment into the tree fund for planting elsewhere.

Public comment was closed.

MOTION

Mr. Simmons moved to approve the removal of one 26" Live Oak tree based upon staff and arborist recommendation, with replacement requirement of two shade trees. The motion was seconded by Mr. Taylor and approved by unanimous voice vote.

The board and staff had discussion regarding the replacement requirements and the option to pay into the tree mitigation fund in lieu of replanting. They also discussed future land development where mitigation was not feasible.

Item 4 (b) 2018-0095

**Steven Gray/A.D. Davis Construction
32 N. St. Augustine Boulevard
Removal of two 11" & 11.5" dbh.
Southern Red Cedar trees
City Code Chapter 25, Section 25-56
Mr. van Mierop read from the staff report and testified to the following:**

- Staff recommended that the board approve the removal of the two Cedar trees based upon the close proximity of the newly constructed home; upon the recommendation of the arborist; and the health of the trees.
- The applicants were present for questions.

Mr. Taylor asked Mr. Birchim to explain whether this application would have been required to go before the Planning

and Zoning Board (PZB), rather than the CEAAB.

Mr. Birchim responded that the removal appeared to have been an afterthought, believing that there would have been room for the construction of the home with the trees placement. However, from the photos it would appear that the stem wall was affected by the trees location.

Steven Gray, 32 N. St. Augustine Boulevard, was present and testified to the following:

- He was in agreement with the staff report.
- That the two trees had been affected by Hurricanes Matthew and Irma.
- That very little canopy remained on the trees.
- That the property would not allow for replacement, as he had a total of 10 palms and other large Southern Red Cedar trees.
- There were clumps of trees on the property.

Mr. Taylor asked if the new home and the previous home had the same footprint.

Mr. Gray responded that the house was a little smaller, and that the setback had been changed per city code.

Mr. Wissel commented that from looking at the pictures, the footer seemed to come very close to the Cedar trees. And he asked if the demolished home was the same foundation as the new;

had the old house been damaged by the tree; and if there was room for replacement.

Mr. Gray confirmed that the footprint was not the same, but that the previous footprint was within five feet of the Cedar tree. That the tree had not interfered with the previous structure, but the trees had been trimmed.

Mr. Mahr asked the applicant if he were planning to remove or grind the stumps, as that could affect the other trees.

Mr. Gray stated the plan was not to grind the stumps.

Mr. Taylor questioned if the tree had not interfered with the previous structure, why were they seeking removal now and could the trees be trimmed. And he asked the applicant for an explanation of the damage to the trees during demolition.

Mr. Gray replied that he believed the digging of the foundation had caused damage to the trees.

Mrs. Mickler asked whether the closest tree in the photo had received damage from the storms.

Mr. Gray confirmed that sustained damage had occurred during the recent hurricanes.

Public comment was opened:

B.J. Kalaidi, 8 Newcomb Street, commented to the following:

That we are a tree city. That this board was not a qualified PZB board, and she would not like to be in their position. That she would like to see these meetings televised and have members of the tree committee attend to hear some of these cases.

Public comment was closed.

Mr. Taylor expressed that he felt constrained by the requirement of the code which stated replacement to be two Southern Red Cedar trees. And he believed this to be better heard by the PZB.

Mr. Weeks commented that this property was in his neighborhood which had sustained a lot of damage during the recent hurricanes. That the property did have a large number of Cedar trees, and it was his opinion that the North Davis Shores neighborhood would not run out of Cedar trees. He believed there to be justification to protect personal property rights, but he was also looking at it from a resident that lived in the neighborhood and had witnessed the trees that were present and that they were being protected.

Mrs. Mickler commented that having a professional opinion would be helpful, and asked what would happen should the trees not be removed and only trimmed.

Mr. Simmons added that he heard in testimony that the trees had been trimmed. That both trees were leaning

toward the house and the root system was compromised. That negligence through the contractor had caused compromise with the root system, however if we are looking at a compromised tree what is the after.

Mr. Taylor stated that should the property owner hire a tree company and the tree be caused to fail, then the enforcement would go to the property owner.

Mr. Mahr clarified to his fellow board members that the trees were 3" above the preserved size specified.

Mr. Weeks directed staff to look at the section of the code 25-56, with regard to application review, item (d) (3). And he asked if that applied to all trees, preserved trees, and if it were applicable to this application.

Mr. Birchim replied that that was the standard by what staff looked at to determine the approval of a tree removal permit. And he directed the board to look at the next section of that code, item (e), explaining that staff did not have the authority to approve the removal of a preserved tree.

Mr. Taylor commented that removal of any tree has to have a tree removal permit. However, when a tree meets a certain size dimension then it comes before the CEAAB. That it can become difficult, especially when an arborist report does not provide much detail and it would be helpful to have the arborist present.

Mr. Simmons commented that the tree should have been protected by the contractor.

Mr. Taylor commented that Cedar trees do not do well in hurricanes, however he felt confined by the code for the replanting of two Southern Red Cedar trees.

Mr. Weeks asked staff about another case on Inlet Drive that removed Cedar trees that were being interfered with by power lines, how did they mitigate.

Mr. Birchim provide a brief recollection and stated that he would have to review the case file. He then went on to explain the regulation of the PZB level, and stated that he was not sure what the PZB could contribute to the approval of the subject trees.

Mr. Taylor commented that this board could not confirm that there was no space for replacement trees. And he was not in favor of approval based upon the applicant's statement of not having sufficient space for replanting.

Mrs. Mickler made comment that the board had two options. To either approve the removal with replacement of four Cedar trees, or deny the request and the two trees remain.

Mr. Simmons asked Mr. Taylor to follow through with that thought, that should this board approve removal and the applicant no follow through with replacement planting, what then would happen.

Mr. Mahr commented that staff would bring the case to the board for fines to be imposed. And he explained that was why he had asked if they were going to grind the stumps, because with the close proximity it would jeopardize the other trees.

MOTION

Mrs. Mickler moved to deny the removal of two Cedar trees. The motion was seconded by Mr. Taylor and approved by the following voice vote:

Ayes: Mickler, Taylor, Mahr, Simmons

Nays: Weeks, Wissel

Mr. Mahr made comment to the board that Mr. Gray should be permitted to remove the trees should they fail and become dead.

5. REVIEW OF PREVIOUSLY HEARD CASES

None.

6. REVIEW OF NEW CASES

None.

7. CITY ATTORNEY ITEMS

Mr. Cary introduced himself and expressed his pleasure to be here and to serve the CEAAB.

8. OTHER BUSINESS

Election of Chairman and Vice-Chairman.

Mrs. Mickler moved to nominate Mr. Taylor for reappointment to serve as Chair. The motion was seconded by Mr. Wissel and approved by unanimous voice vote.

Mr. Taylor moved to nominate Mrs. Mickler for reappointment to serve as Vice-Chair. The motion was seconded by Mr. Weeks and approved by unanimous voice vote.

The board and staff discussed the possible addition of an arborists. Determination was made for staff to produce material to the board prior to the next meeting for further discussion.

9. REVIEW OF CONFLICT STATEMENTS FROM PREVIOUS MEETING

None.

10. ADJOURNMENT

Meeting was adjourned at 4:19 P.M.

Clyde M. Taylor, III, Chairman

Sandra Partin, Administrative
Coordinator