



**Town of Hilton Head Island
Board of Zoning Appeals
Regular Meeting
November 16, 2015 2:30 p.m.
Benjamin M. Racusin Council Chambers
AGENDA**

1. **Call to Order**
2. **Pledge of Allegiance to the Flag**
3. **Roll Call**
4. **Freedom of Information Act Compliance**
Public notification of the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.
5. **Welcome and Introduction to Board Procedures**
6. **Approval of Agenda**
7. **Approval of the Minutes – Regular Meeting October 26, 2015**
8. **New Business**
 - A. **Public Hearing**
VAR-1942-2015: Gregory Wynn with GW Services, Inc., on behalf of the Woodbine Villas Regime, is requesting a variance from Land Management Ordinance Section 16-6-104.F, Specimen Tree Preservation, to remove a specimen tree. The tree is located behind Unit 52 at 2 Woodbine Place, further identified as Beaufort County Tax Map parcel number R550 017 00A 0120 052A.
Presented by: Anne Cyran
 - B. **Request from Tai Scott:** Tai Scott is asking for the Board of Zoning Appeals to make a motion to issue subpoenas in conjunction with an upcoming appeal.
 - C. **Request from Tai Scott:** Tai Scott is requesting his appeal be scheduled for the January 25, 2016 Board of Zoning Appeals meeting as he will be unavailable for the December 14, 2015 meeting.
9. **Board Business**
10. **Staff Reports**
Waiver Report
11. **Adjournment**

Please note that a quorum of Town Council may result if four or more Town Council members attend this meeting.

TOWN OF HILTON HEAD ISLAND
Board of Zoning Appeals
Minutes of the October 26, 2015 2:30pm Meeting **DRAFT**
Benjamin M. Racusin Council Chambers

Board Members Present: Chairman Glenn Stanford, David Fingerhut, Steve Wilson,
John White, Lisa Laudermilch, and Jerry Cutrer

Board Members Absent: Vice Chairman Jeffrey North

Council Members Present: None

Town Staff Present: Nicole Dixon, Senior Planner & Board Coordinator
Brian Hulbert, Staff Attorney
Teri Lewis, LMO Official
Heather Colin, Development Review Administrator
Kathleen Carlin, Secretary

1. Call to Order

2. Pledge of Allegiance to the Flag

3. Roll Call

4. Freedom of Information Act Compliance

Public notification of the Board of Zoning Appeals meeting has been published, posted and mailed in compliance with the Freedom of Information Act and the requirements of the Town of Hilton Head Island Land Management Ordinance.

5. Welcome and Introduction to Board Procedures

Chairman Stanford welcomed the public and introduced the Board's procedures for conducting the business meeting.

6. Approval of Agenda

Mr. Cutrer made a **motion** to **approve** the agenda as presented. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 6-0-0.

7. Approval of the Minutes

Mr. Wilson made a **motion** to **approve** the minutes of the September 28, 2015 meeting as amended. Mr. Fingerhut **seconded** the motion and the motion **passed** with a vote of 6-0-0.

8. Board Business

None

9. New Business

Public Hearing

VAR-001830-2015: John P. Qualey, Jr. is requesting a variance from Land Management Ordinance Section 16-5-102.D, Adjacent Use Setback Requirements, in order to construct a single family home within the adjacent use setback. The property is located at 22 Bradley Circle and is further identified

as parcel 22U on Beaufort County Tax Map 8. Chairman Stanford introduced the application, opened the public hearing, and requested that the staff make their presentation.

Ms. Nicole Dixon presented an in-depth overhead review of the application including the vicinity map and proposed site plan. The staff recommended that the Board of Zoning Appeals approve the application based on the Findings of Fact and Conclusions of Law contained in the staff's report.

The applicant previously submitted an application for variance from LMO Sections 16-5-102.C, Adjacent Street Setback Requirements, 16-5-102.D, Adjacent Use Setback Requirements, and 16-5-103.D, Adjacent Street Buffer Requirements, in order to subdivide the property into four single-family lots. The application was presented at the July 27, 2015 Board of Zoning Appeals meeting with a staff recommendation for approval. The Board denied the application for variance.

The applicant has since substantially revised the plans and is now proposing to subdivide the property into three single-family lots with attached homes. There will be open space on both sides of the project. The applicant has worked with the staff on the design to try to meet all LMO requirements. The only variance they are currently seeking is from the adjacent use setback on the side of the project that is adjacent to the Marriott Surf Watch timeshare development. The LMO required a 27-ft. setback for single-family residential use adjacent to a resort accommodations use. The applicant is requesting the setback be reduced to 15 ft.

The applicant states in their narrative that there are exceptional conditions pertaining to this particular piece of property. Being located adjacent to a resort accommodations use which requires a greater setback than being between two single family uses, being bound by wetlands and having an access easement running through the property all have reduced the buildable area of the property. A variance is required because the applicant would like to reduce the adjacent use setback on the south side of the property. The required adjacent use setback on the south side is 30'. Per Note 5 under Table 26-5-102.D, the required adjacent use setback of 30' may be reduced by 10% to 27' if the applicant meets six conditions. The staff has determined that the applicant meets the conditions necessary to receive the reduction in the adjacent use setback. The property owner states that the application of the 27' adjacent use setback on the south side of the property will require the homes to be fully attached not allowing any views or breezes in between the homes.

The applicant is seeking a variance to reduce the required adjacent use setback from 27' to 15' so that they can construct attached homes at the ground level, but then detach them for the levels above the garage to be more harmonious with the existing homes in the neighborhood. Ms. Dixon reviewed the Findings of Fact and Conclusions of Law contained in the staff's report. Following the staff's presentation, Chairman Stanford requested that the applicant make his presentation.

Mr. Radu Chindris presented statements on behalf of the developer including comments regarding the heated square footage of the project. Mr. Chindris also presented comments regarding the site plan and projection of the roofline. Following the applicant's presentation, Chairman Stanford requested public comments and the following were received: (1) Ms. Tamra Becker, 5 Bradley Circle, presented statements regarding the revised submission. Ms. Becker presented statements in concern of the logistics; (2) Mr. Carl Brinker, 16 Bradley Circle, presented statements regarding the setback line. Following public comments, Chairman Stanford stated that the public hearing is closed for this application. Chairman Stanford invited discussion among the Board members.

The Board discussed the application and stated that it is a good faith effort on the part of the property owner to come forward and comply with the ordinance. The Board agreed that it is a permitted use of

the property. Following final comments by the Board, Chairman Stanford requested that a motion be made.

Mr. Cutrer made a **motion** to **approve** application for variance, VAR-001830-2015, as presented based on the Findings of Fact and Conclusions of Law contained in the staff's report. Mr. White **seconded** the motion and the motion **passed** with a vote of 6-0-0.

9. Board Business

Discussion on considering abolishing the option for a Motion to Reconsider from the BZA's Rules of Procedure.

Chairman Stanford presented opening comments regarding the original intent of the Motion to Reconsider and today's discussion to abolish the option for a Motion to Reconsider entirely from the BZA's Rules of Procedure. Brian Hulbert, Esq., presented a legal opinion on behalf of staff.

Chester Williams, Esq., presented statements in support of keeping the Motion to Reconsider in the BZA's Rules of Procedure.

The Board discussed the pros and cons of abolishing the option for a Motion to Reconsider from the BZA's Rules of Procedure. Most Board members agreed that it may be of potential benefit to a property owner appearing before the BZA. Most Board members stated that they would be opposed to removing the Motion to Reconsider from the BZA's Rules of Procedure.

Ms. Nicole Dixon presented statements in support of the staff adding the Motion to Reconsider option to their Notice of Action. Ms. Dixon stated that this will help the public to be more aware of their options. Chairman Stanford agreed with this idea and requested that staff add a note for the public to refer to the BZA's Rules of Procedure for complete information.

10. Staff Reports

Ms. Dixon presented the Waiver Report to the Board

11. Adjournment

The meeting was adjourned at 3:20p.m.

Submitted By:

Kathleen Carlin
Secretary

Approved By:

Glenn Stanford
Chairman



TOWN OF HILTON HEAD ISLAND COMMUNITY DEVELOPMENT DEPARTMENT

One Town Center Court	Hilton Head Island, SC 29928	843-341-4757	FAX 843-842-8908
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STAFF REPORT

Case #	Public Hearing Date	Development Name
VAR-1942-2015	November 16, 2015	Woodbine Villas

Parcel Data	Property Owner	Applicant & Agent
<u>Address:</u> 2 Woodbine Place, Unit 52 <u>Parcel:</u> R550 017 00A 0120 052A <u>Acreage:</u> 3.42 acres <u>Zoning:</u> PD-1, Planned Development Mixed Use District: Sea Pines	Erline Smith 2 Woodbine Place, Unit 52 Hilton Head Island SC 29928	Gregory Wynn GW Services, Inc. PO Box 6476 Hilton Head Island SC 29938

Application Summary

Gregory Wynn of GW Services Inc., on behalf of the Woodbine Villas Regime, is requesting a variance from Land Management Ordinance (LMO) Section 16-6-104.F, Specimen Tree Preservation. This section states that specimen trees shall not be cut, removed, pushed over, killed, or otherwise harmed. The applicant is requesting the variance to remove a healthy, specimen-size tree, 40 inch DBH (diameter at breast height) Live Oak tree behind Unit 52 at Woodbine Villas.

The applicant is requesting to remove the tree to prevent further damage to the roof and foundation of Unit 52's sunroom. The trunk is growing against the edge of the roof. The property owner does not want to notch the roof to accommodate the trunk because the tree's roots will continue to damage the foundation of Unit 52.

Staff Recommendation

Staff recommends the Board of Zoning Appeals **approve** the application based on the Findings of Fact and Conclusions of Law contained in the staff report **with the following conditions:**

1. The applicant shall apply for a Natural Resources Permit to remove the subject tree.
2. The applicant shall plant four, Category I mitigation trees per LMO Section 16-6-104.I.3.

Background

The Woodbine Villas were built in 1966 using plans approved by Beaufort County. Current LMO standards would not allow the construction of a building so close to a tree. Given the growth rate of live oak trees, the subject tree, which is now 40 inches DBH, was probably not specimen size (35 DBH) at the time of construction.

In mid-October, the property management company submitted a natural resources application to remove the tree. Rocky Browder, the Town's Environmental Planner, examined the tree and determined that it is healthy. He denied the application to remove the tree because removing a healthy specimen-size tree would be a violation of LMO Section 16-6-104.F, Specimen Tree Preservation. He recommended that the applicant explore alternatives to removing the tree or to seek a variance per LMO Section 16-6-104.F.

Shortly after the application to remove the tree was denied, the property management company submitted the application for a variance to remove the tree.

The applicant states the Woodbine Villas regime supports the removal of the tree.

Applicant's Grounds for Variance, Summary of Facts and Conclusion of Law

Grounds for Variance

The applicant states the variance is required from LMO Section 16-6-104.F because Town staff will not issue a Natural Resources Permit to allow the applicant to remove the specimen tree. The applicant states that the only way to prevent further damage to Unit 52 is to remove the tree.

Summary of Facts:

1. The applicant seeks a variance as set forth in LMO Section 16-2-103.S.

Conclusion of Law:

1. The applicant may seek a variance as set forth in LMO Section 16-2-103.S.

Summary of Facts and Conclusions of Law

Summary of Facts:

1. Application was submitted on October 16, 2015 as set forth in LMO Section 16-2-102.C and Appendix D-23.
2. Notice of the application was published in the Island Packet on October 25, 2015 as set forth in LMO Section 16-2-102.E.2.
3. Notice of the application was posted on October 29, 2015 as set forth in LMO Section 16-2-102.E.2.
4. Notice of the application was mailed on October 23, 2015 as set forth in LMO Section 16-2-102.E.2.
5. The Board has authority to render the decision reached here under LMO Section 16-2-102.G.

Conclusions of Law:

1. The application is in compliance with the submittal requirements established in LMO Section 16-2-102.C.
2. The application was submitted 30 days prior to the meeting, therefore meeting the 30 day deadline required in the LMO.
3. Notice of the application was published 22 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
4. Notice of the application was posted 19 days prior to the meeting, therefore meeting the 15 day deadline required in the LMO.
5. Notice of the application was mailed 25 days prior to the meeting, therefore meeting the 15

- day deadline required in the LMO.
6. The application and notice requirements comply with the legal requirements established in LMO Section 16-2-102.E.2.

As provided in LMO Section 16-2-103.S.4, Variance Review Standards, a variance may be granted in an individual case of unnecessary hardship if the Board determines and expresses in writing all of the following findings of fact.

Summary of Facts and Conclusions of Law

Criteria 1: There are extraordinary and exceptional conditions pertaining to the particular piece of property (LMO Section 16-2-103.S.4.a.i.01):

Findings of Fact:

1. The trunk of the subject tree is growing into the edge of the roof.
2. Staff has found no evidence that many specimen trees are located so close to buildings that their trunks are growing into the edges of roofs.

Conclusion of Law:

1. Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.01 because the especially close proximity of the tree trunk to the building is an extraordinary and exceptional condition that pertains to this particular property.

Summary of Facts and Conclusions of Law

Criteria 2: These conditions do not generally apply to other properties in the vicinity (LMO Section 16-2-103.S.4.a.i.02):

Finding of Fact:

1. Staff is not aware of any other specimen tree in the vicinity that is located so close to a building.

Conclusion of Law:

1. Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.02 because the very close proximity of the tree trunk to the building is a condition that generally does not apply to other properties in the vicinity.

Summary of Facts and Conclusions of Law

Criteria 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 (LMO Section 16-2-103.S.4.a.i.03):

Findings of Fact:

1. The subject tree is healthy and will continue to grow into the roof.
2. The applicant is seeking the variance to prevent further damage to the roof and foundation of Unit 52.
3. The applicant could make alterations to the building's design to avoid contact between the tree and the roof.

Conclusion of Law:

1. Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.03 because, though the roof could be notched to accommodate the trunk, the subject tree will continue to grow and damage the building’s foundation, effectively prohibiting the reasonable use of the building. No reasonable alternative is available to prevent the tree’s roots from damaging the foundation of the building.

Summary of Facts and Conclusions of Law

Criteria 4: The authorization of the Variance will not be of substantial detriment to adjacent property or the public good, and the character of the zoning district where the property is located will not be harmed by the granting of the Variance (LMO Section 16-2-103.S.4.a.i.04):

Findings of Fact:

1. LMO Section 16-6-104, Tree Protection, states that specimen trees contribute to the ambiance, economy, and quality of life on Hilton Head Island.
2. LMO Section 16-6-104.F, Specimen Tree Preservation, includes a provision that a variance may be sought if the preservation of a specimen tree causes unnecessary hardship.
3. Staff found no evidence that the authorization of the variance will be of substantial detriment to the adjacent property or the public good.
4. Staff found no evidence that the character of the zoning district will be harmed by the granting of the variance.
5. Staff received a letter from the owner of an adjoining unit in Woodbine Villas in support of the variance request.

Conclusions of Law:

1. Staff concludes that this request **meets the criteria** as set forth in LMO Section 16-2-103.S.4.a.i.04.
2. Since there are no reasonable alternatives available to prevent the tree’s roots from damaging the foundation of the building, the preservation of the tree is an unnecessary hardship.
3. Though the LMO guides development to preserve specimen trees, staff can find no evidence that the removal of this tree will be of substantial detriment to adjacent property, the public good, or the character of the zoning district.
4. A neighboring property owner supports the request to remove the subject tree.

LMO Official Determination

Based on the above Findings of Facts and Conclusions of Law, the LMO Official determines that the request for a variance **should be granted with the following conditions:**

1. The applicant shall apply for a Natural Resources Permit to remove the subject tree.
2. The applicant shall plant four, Category I mitigation trees per LMO Section 16-6-104.I.3.

BZA Determination and Motion

The powers of the BZA over variances are defined by the South Carolina Code, Section 6-29-800, and in exercising the power, the BZA may grant a variance "in an individual case of unnecessary hardship if the board makes and explains in writing ..." their decisions based on certain findings or "may

remand a matter to an administrative official, upon motion by a party or the board's own motion, if the board determines the record is insufficient for review.”

This State law is implemented by the Hilton Head Island Land Management Ordinance, Chapter 2, Article 103 and the Rules of Procedure for the BZA.

A written Notice of Action is prepared for each decision made by the BZA based on findings of fact and conclusions of law.

The BZA can either Approve the application, Disapprove the application, or Approve with Modifications. Findings of Fact and Conclusions of Law must be stated in the determination.

PREPARED BY:

AC

Anne Cyran, AICP, Senior Planner

October 30, 2015

DATE

REVIEWED BY:

ND

Nicole Dixon, CFM, Senior Planner

November 2, 2015

DATE

REVIEWED BY:

HC

Heather Colin, AICP, Development Review
Administrator

November 2, 2015

DATE

ATTACHMENTS:

- A) Location Map
- B) Aerial Photo
- C) Site Plan
- D) Applicant's Narrative
- E) Photos
- F) Public Comment



Town of Hilton Head Island
 One Town Center Court
 Hilton Head Island, SC 29928
 (843) 341-4600

Town of Hilton Head Island

VAR-1942-2015, Woodbine Villas Specimen Tree

Attachment A: Location Map



410 205 0 410 Feet



This information has been compiled from a variety of unverified general sources at various times and as such is intended to be used only as a guide. The Town of Hilton Head Island assumes no liability for its accuracy or state of completion.



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Hilton Head Island, SC 29928
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Town of Hilton Head Island

VAR-1942-2015, Woodbine Villas Specimen Tree

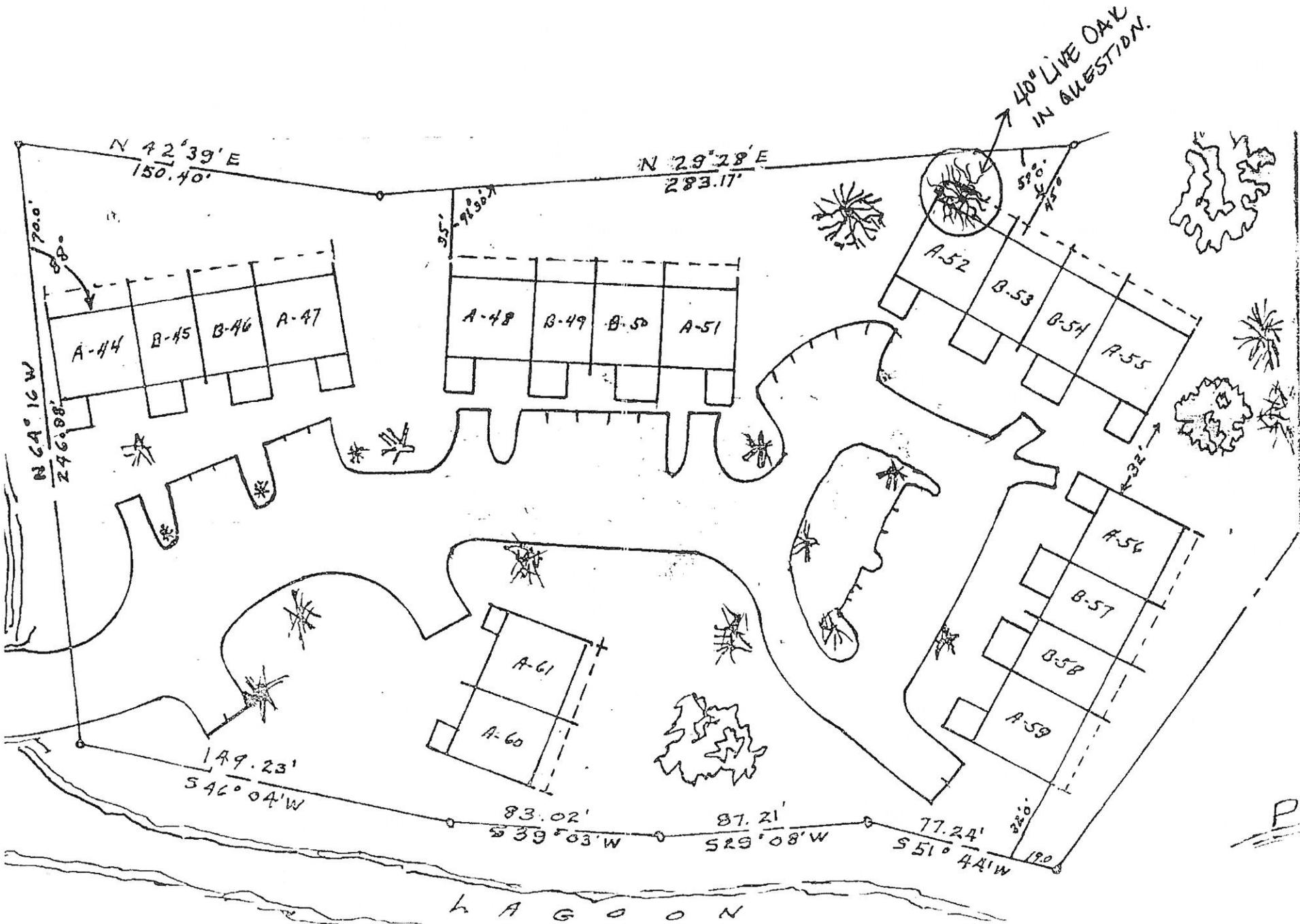
Attachment B: Aerial Photo

75 37.5 0 75 Feet



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VAR-1942-2015
Staff Report Attachment C





P.O. Box 6476
Hilton Head Island,
South Carolina, 29938
Phone: (843) 686-4052
Fax: (843) 686-4055
Email Address:
gwserviceshhi.com

October 14, 2015

Town of Hilton Head Island
Community Development Department
One Town Center Court
Hilton Head Island, SC 29928

2 Woodbine Unit 52

To Whom It May Concern:

GW Services, Inc., the regime management company of Woodbine Villas, received information from the owner of 52 Woodbine Villas noting that there is a large Live Oak behind the villa and over roof. The Woodbine Regime is concerned that the Live Oak, as it continues to grow, will damage the roof and foundation of 52 Woodbine Villas. This item would fall under the regime's responsibility; GW Services, contacted Tree Wise Men, and All Care Tree Services for an estimate to remove the Live Oak. The proposal was approved by the Woodbine Villas, Board of Directors, but denied by the Town of Hilton Head.

The tree is a 40" Live Oak that is growing into the fascia board and roof of the back side of 52 Woodbine Villas. After speaking with the Town of Hilton Head, notching into the fascia board of the villa was suggested. The Board of Directors are not in favor of notching into the fascia on the back side of the villa, and are concerned as the tree continues to grow, the roots will cause issues for the foundation and the slab of the villa. Please reference photo documentation 1.1 (attached); the photo visibly shows the gradation difference in the ground to the base of the home, the roots have raised all the ground on the right back-side of the villa, which the Regime believes will inevitably cause structural damage. Please reference Images 1.1 through 1.5 to show ground and roof damages and hazards.

The regime would like to request a variance for the removal of this tree as the tree meets the requirements for the variance criteria as stated below:

1. The area extraordinary and exception conditions pertaining to the particular piece of property.
 - a. The 40" Live Oak has physically contacted the roof of the villa, and will cause roof damage, and possible leaks. As it continues to grow and develop, the owner believes inevitably the roots will affect the foundation of 52 Woodbine Villas.
2. These conditions do not generally apply to other properties in the vicinity.

- a. There are no other trees in proximity to other villas that would be deemed dangerous to the foundation.
3. Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.
 - a. The Woodbine Regime is concerned that as the tree continues to grow it will cause structural damage to the slab and roof of 52 Woodbine Villas.
4. Is not the result of the applicant's own actions?
 - a. The tree was not planted by Woodbine Villa Regime
5. Granting of the variance does not substantially conflict with the Comprehensive Plan and the purpose of the LMO.
 - a. The Woodbine Regime will abide by any mitigation plantings required by the Town of Hilton Head based on the removal of the 40" Live Oak.
6. The authorization of the variance will not be of substantial detriment to adjacent property or to the public good, and the character of the district will not be harmed by the granting of the variance.
 - a. If variance in question is approved by the Zoning Board, all mitigation requirements will be met.

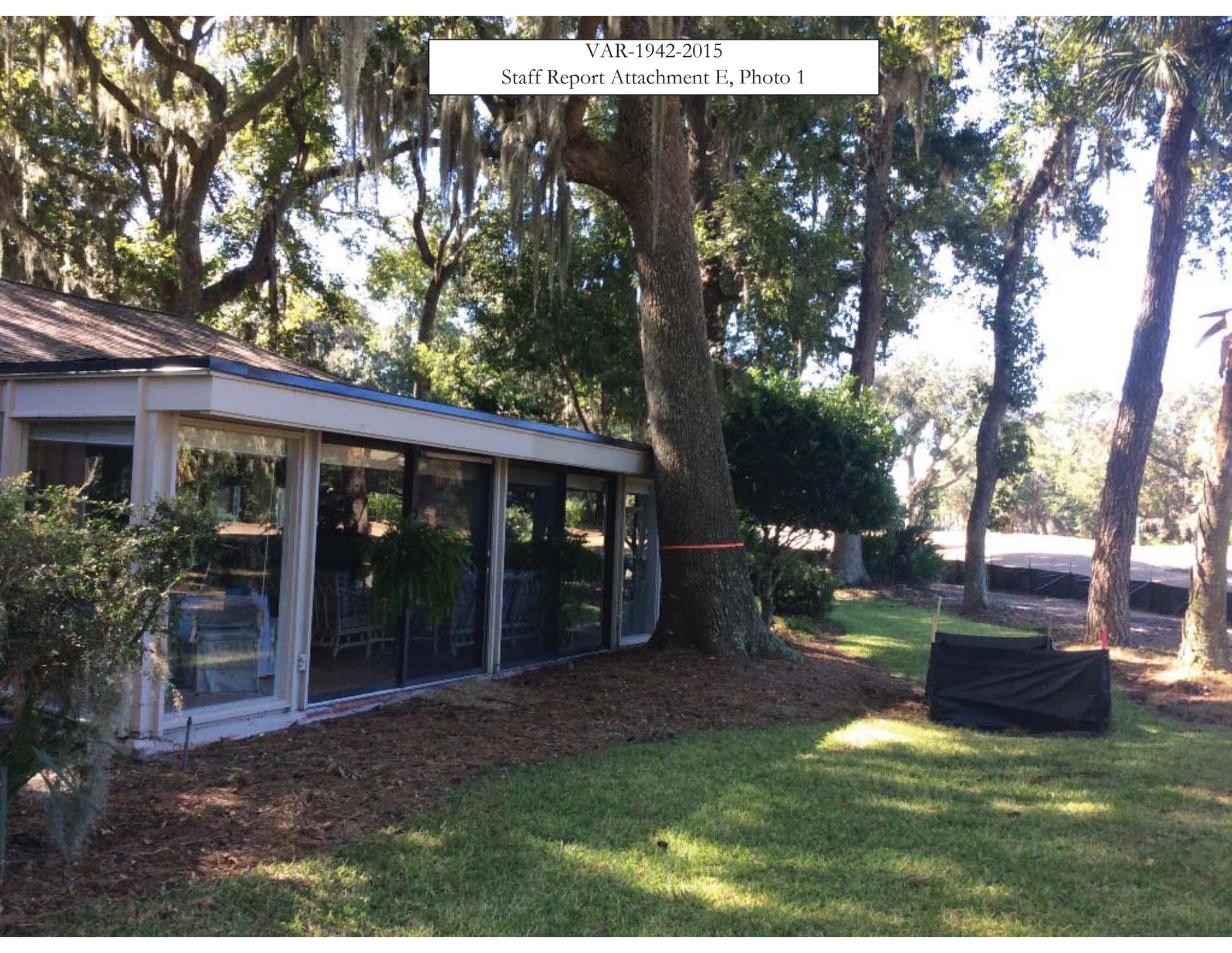
On behalf of GW Services, and Woodbine Regime, I would like to thank you for your time towards this matter.

Best Regards,

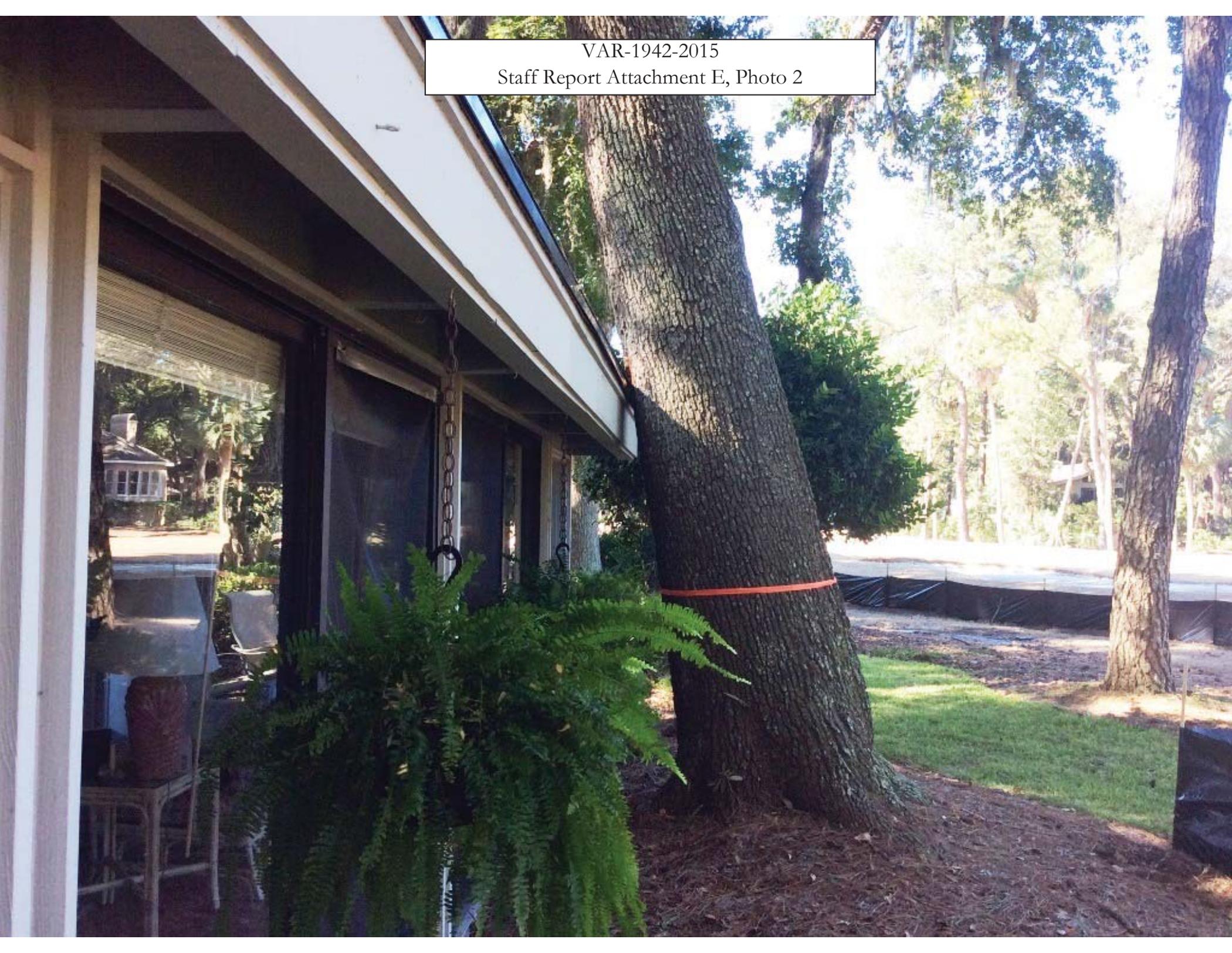


Gregory A. Wynn
Woodbine Villas, Association Manager
GW Services, Inc.

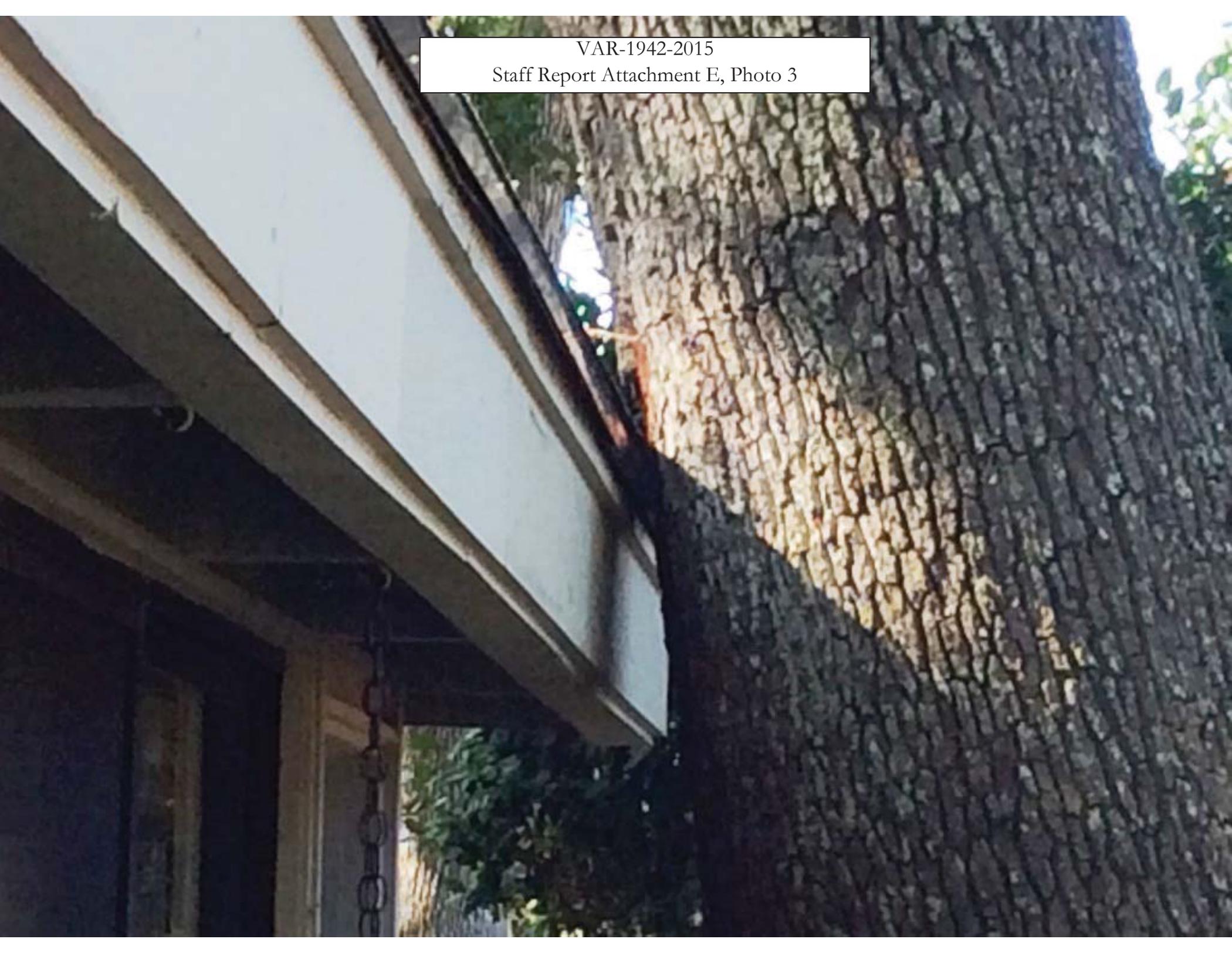
VAR-1942-2015
Staff Report Attachment E, Photo 1



VAR-1942-2015
Staff Report Attachment E, Photo 2



VAR-1942-2015
Staff Report Attachment E, Photo 3



From: [Sheila Richard](#)
To: [Cyrán Anne](#)
Subject: VAR-1942-2015
Date: Tuesday, November 03, 2015 11:12:42 AM

Dear Anne,

I received notice of the variance request for 2 Woodbine Place, Unit 52, Beauford County Tax Map, Parcel R550 O17 00A 0120 052A on behalf of the Woodbine Villa Regime.

I am the property owner across from the unit.

I have no objection to the tree being removed.

The tree is leaning against the house. I don't understand why this is an issue. It needs to be taken down.

I imagine the town has a tree ordinance which requires a variance for removal.

Will this suffice as a comment for the hearing or do I have to appear in person?

Or can you just submit this. Do i need to submit a photo?

Thanks.

Sheila W. Richard
5 Magnolia Crescent Road
Hilton Head, Sc. 29928
[REDACTED]

Sent from my iPad



TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: Board of Zoning Appeals
FROM: Nicole Dixon, CFM, *Senior Planner*
DATE: November 2, 2015
SUBJECT: Substitutions of Nonconformities for Redevelopment

The Board of Zoning Appeals (BZA) requested that staff keep them informed of substitutions of nonconformities for redevelopment that are granted by staff. A memo is distributed every month at the regular BZA meetings and is discussed under staff reports on the agenda. Even if there have been no waivers for the month, a memo will be included in the packet to inform the BZA members.

The following language is contained in Section 16-7-101.F, Substitutions of Nonconformities for Redevelopment, which gives the Administrator the power to grant such substitutions for existing nonconforming structures and site features.

LMO Section 16-7-101.F:

“To provide flexibility and encourage redevelopment of sites with nonconforming features or structures, the Official is authorized to approve a Development Plan for such sites if the proposed development:

1. Will not include any new development that increases the amount of encroachment into any required buffer or setback;
2. Will not increase the impervious cover on the site over the maximum allowed for the district or the existing impervious cover, whichever is greater;
3. Will not result in a density in excess of what is allowed under this Ordinance, or the existing density, whichever is greater;
4. Will lessen the extent of existing nonconforming site features to the greatest extent possible;
5. Will not have an adverse impact on the public health, safety or welfare; and
6. Will lessen the extent of nonconformities related to any existing nonconforming structure on the site to the greatest extent possible.”

Below is a summary of the Substitutions of Nonconformities for Redevelopment that were granted by staff since the October 2015 Board of Zoning Appeals meeting.

October – 2015

1. A project at 165 Pembroke Drive (Hilton Head Early Childhood Center): the applicant requested to expand the school building with 4 additional classrooms. With the existing classrooms plus the additional four, 96 parking spaces total would be required. The site only has 83 current spaces on site. The applicant requested a waiver to allow the classroom expansion without having to provide the additional parking. The applicant provided parking data and photographs showing there were many vacant parking spaces on a daily basis and also submitted a deferred parking plan, showing where on site those additional 13 spaces could be provided should the parking need arise. The waiver was granted with the condition that should there be a parking problem on site in the future, they would need to construct the additional 13 parking spaces, and that the agreement shall be recorded with the Beaufort County Register of Deeds.