

**TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
Town Hall
1122 Dills Bluff Road, James Island, SC 29412
BZA AGENDA **REVISED**
June 21, 2022
7:00 PM**

NOTICE OF THIS MEETING WAS POSTED IN ACCORDANCE WITH THE FREEDOM OF INFORMATION ACT

**(PLEASE SEE ZOOM LINK AND CALL-IN NUMBERS BELOW TO VIEW VIRTUALLY, OR VISIT THE TOWN'S
YouTube CHANNEL)**

Members of the public addressing the Board in support or opposition of this case at Town Hall must sign in. Social distancing will be in place. The Town invites the public to submit comments on this case prior to the meeting via email to kcrane@jamesislandsc.us referencing the Case #.

- I. CALL TO ORDER
- II. COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT
- III. INTRODUCTIONS
- IV. REVIEW SUMMARY (MINUTES) FROM THE **APRIL 19** & **MAY 17, 2022** BZA MEETING
- V. BRIEF THE PUBLIC ON THE PROCEDURES OF THE BZA
- VI. ADMINISTER THE OATH TO THOSE PRESENTING TESTIMONY
- VII. REVIEW OF THE FOLLOWING APPLICATIONS:
 1. **Case # BZAS-5-22-025**
TMS # 425-06-00-101
Special Exception request for a fast-food restaurant on a vacant lot in the Community Commercial (CC) Zoning District and in the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District at 890 Folly Road
- VIII. ADDITIONAL BUSINESS:
 1. Next Meeting Date: July 19, 2022
- IX. ADJOURN

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/82491116191?pwd=NnBtUFdHK0VrMmszWlluSDYrNndRZz09>

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*Full packet available for public review Monday through Friday during normal business hours.

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF APRIL 19, 2022

The Board of Zoning Appeals held its regularly scheduled meeting on Tuesday, April 19, 2022 in person at the James Island Town Hall, 1122 Dills Bluff Road, James Island, and by virtual platform on Zoom.

Commissioners present: Amy Fabri, Corie Hipp, David Savage, Vice Chair, Roy Smith, and Brook Lyon, Chairwoman, who presided. Also, Kristen Crane, Planning Director, Flannery Wood, Planner II, Bonum S. Wilson, BZA Attorney, Frances Simmons, Town Clerk and Secretary to the BZA, and Town Administrator, Niki Grimball. A quorum was present to conduct business.

Call to Order: Chairwoman Lyon called the BZA meeting to order at 7:00 p.m. She asked the Board and others who wished, to join in the prayer followed by the Pledge of Allegiance.

Compliance with the Freedom of Information Act: This meeting was held in compliance with the SC Freedom of Information Act. The public was duly informed and notification was given that the meeting would be live-streamed on the Town’s YouTube Channel.

Introduction: Chairwoman Lyon introduced herself, members of the BZA, Attorney, Staff and welcomed the newly appointed Town Administrator, Niki Grimball.

Review Summary from the March 15, 2022 BZA Meeting: Commissioner Fabri moved for approval of the March 15, 2022 meeting minutes, Commissioner Hipp seconded. There was no discussion.

Vote:

Commissioner Fabri	Aye
Commissioner Hipp	Aye
Vice Chair Savage	Aye
Commissioner Smith	Aye
Chairwoman Lyon	Aye
Passed Unanimously	

Chairwoman Lyon stated that case rulings and minutes from this and any BZA meetings are available for public review and inspection during normal business hours at the Town Hall. Chairwoman Lyon thanked Frances Simmons for her hard work in preparing the minutes and said she does a great job.

Brief the Public on the Procedures of the BZA: Chairwoman Lyon explained how the Board of Zoning Appeals Hearing would be conducted. She added that when a Board Member feels it is necessary to go into an executive session for legal advice, a motion must be made, seconded, and passed to add it to the agenda. After the item is added, the motion must state the reason, seconded, and must pass. No votes are taken in the executive session.

Administer the Oath to those Presenting Testimony: Chairwoman Lyon announced that each person who wished to address the Board must be sworn. She stated that in order to expedite the procedure, those who wished to speak at Town Hall and those on Zoom were asked to stand as a group and sworn in by Mr. Wilson, the BZA’s Attorney. Persons addressing the Board via Zoom were asked to use the “chat” function, state their name and whether they were speaking in support or opposition and would be called upon at the

appropriate time. Those calling in to speak will be recognized by their phone number and asked to speak at the appropriate time.

Chairwoman Lyon gave an overview of how the cases would be conducted with the time allotted. Those speaking in support at the Town Hall should stand one by one and state their name and address for the record. Those speaking in support on Zoom will be asked to wait until their name is called upon to speak and those speaking in opposition would follow the same procedure.

Commissioner Fabri moved to reverse the order of the cases to be heard requesting that Case #BZAV-3-22-029, the variance request for the construction of a double-drive thru at an existing Chick-Fil-A restaurant in the Community Commercial (CC) District, 849 Folly Road, be heard before Case #BZAS-3-22-028 for the removal of a Grand Tree. The motion was seconded by Chairwoman Lyon. She asked for discussion. There was none. She called for the vote.

Vote:

Commissioner Fabri	Aye
Commissioner Hipp	Aye
Vice Chair Savage	Aye
Commissioner Smith	Aye
Chairwoman Lyon	Aye
Passed Unanimously	

Review of the Following Application:

Case #BZAV-3-22-029

TMS# 425-02-00-172

Variance Request for construction of a double-drive thru at an existing Chick-Fil-A restaurant in the Community Commercial (CC) District at 849 Folly Road:

Planning Director, Kristen Crane, presented the staff’s review stating that the applicant Mr. Michael White, with G. Robert George & Associates representing Chick-Fil-A Inc. is requesting a variance for the construction of a double drive-thru at an existing Chick Fil-A restaurant in the Community Commercial (CC) Zoning District and in the Commercial Core of the Folly Road Corridor District at 849 Folly Road. The property currently has two buildings including a Chick-Fil-A restaurant built in 2006 and an accessory building utilized for training and storage. The parcel is 1.48 acres in size and is considered a legal conforming lot. Adjacent property to the west is zoned low-density suburban residential (RSL) in the Town of James Island. Adjacent property to the south is zoned CC in the Town of James Island. To the east is property zoned General Business in the City of Charleston. Other uses within 300 ft. of the subject property include retail sales, repair service, retail/personal service, vehicle service, recreation, and entertainment outdoors and parcels in the Town of James Island zoned RSL.

The Town of James Island Zoning and Land Development Regulations Ordinance, §153.336 D(2)(c) Architectural and Landscape Design Guidelines. “Only single lane drive-throughs are allowed. Multi-lane drive-throughs are only allowed for banks (or similar financial institutions), post office, or utilities.

The applicant’s letter of intent states that “Chick-Fil-A intends to make site improvements to the existing site located at 849 Folly Road and will expand the site to include an adjacent parcel of land located at 831 Folly Road (north of the existing CFA site). The purpose of these improvements will be to increase the stacking capacity of the drive thru operation and improved traffic flow. The proposed site improvements will require a variance to allow construction of double stacking lanes for the drive thru operation. The subject property is currently owned by Harris N. Cohen and is leased and utilized by Chick-Fil-A, Inc.

Mrs. Crane reviewed the seven (7) Findings of Fact and stated that the Board of Zoning Appeals may approve, approve with conditions, or deny Case BZAV-3-22-029, the variance request for the construction of a double drive-thru at an existing Chick-Fil-A restaurant, based upon the Findings of Facts unless additional information is necessary to make an informed decision.

Questions for Staff:

Commissioner Hipp asked if there are other special exceptions in James Island's district that has a double drive-thru. Mrs. Crane said that we have not had any applications for variances for double drive-thru.

Commissioner Hipp asked about the stormwater drainage area that has water near the shed and if it is impacted by these plans. And, do we know how that would be addressed? Is it a substantial stormwater receptacle? Mrs. Crane said she could not be technical but the intent is to move the stormwater receptacle to the middle of the horseshoe drive thru area. There will also be some underground detention to satisfy the requirements for stormwater.

Vice Chair Savage said there was a double drive thru that people were utilizing. He asked if someone complained to cause the Town to issue a cease and desist and is this the reason this application is being made? Mrs. Crane answered no; what Chick-Fil-A currently has would not technically be considered a double drive thru because everything is removable and temporary. Nothing they are doing now required a permit. She replied there is one order box and one canopy drive under and one concrete lane for the drive thru. What Chick-fil-A is proposing requires permitting that would be considered a double drive thru vs. what they now have. Vice Chair Savage asked if the application is denied could Chick Fil-A still continue to function as they have been and Mrs. Crane said yes. Vice Chair Savage said at some point there must have been an approval when the initial construction plans were submitted as there was an entrance coming from Folly Rd. and at some point it was closed. He asked who closed it? Was it done by Chick-Fil-A? Did the Town ask that it be closed because of traffic concerns? Mrs. Crane said it was not a request from the Town, it was through Charleston County in 2006 when the Town lost its incorporation and was not a Town anymore. She did not have specific answers but thought the engineer that worked on the original plan could provide answers since the same is the applicant.

Commissioner Hipp said one of the letters received in opposition or support asked that a true traffic study be done. She asked if one had been done. Mrs. Crane said not specifically for this site, but one was done for the Folly & Camp intersection which may have included that site. She said a traffic study is not required for what the applicants are requesting to do.

Commissioner Fabri asked about the multi-use path under the Rethink Folly Rd. plan that would go in front of Chick-Fil-A. She asked if she is correct that it would be 7 ft. wide, and south, in front of the Verizon, it would go to 5 ft. wide. Mrs. Crane reviewed that in front of Verizon is 5ft that Charleston County put in when the Folly & Camp improvements were done. She stated that Phase I Rethink Folly Rd. project includes an 8 ft. sidewalk backup curb from Ellis Creek where the sidewalk starts at Verizon. The Town, in the Rethink Folly Road Plan, and in its Ordinance requires a 12 ft. separated multi-use path for new developments, even if there is a sidewalk because the goal of the Rethink Folly Plan is to have a separated larger multi-use path all the way up and down both sides of Folly Rd. The 5ft sidewalk would not meet the standards of the Rethink Folly Road Plan.

Commissioner Fabri asked if the 12 ft. path would also encompass the bike lane. She thinks it is currently striped with the bike lane in that section of Folly. Mrs. Crane answered that she think there is a bike lane there but the Rethink Folly Rd. Plan would have a bike lane and an additional separated multi-use path.

Commissioner Smith said he looked at the criteria of whether the variance is the result of the applicant's own action. He understands what we are saying about the configuration of the lot's existing site. He asked

the size of the lot because there are two, and one is to be leased. He assumes we are saying that the first variance is contingent upon the Board looking at the site plan submitted with the other variance. He said if they are going to get rid of the detention pond so there is something else in the middle of the horseshoe in the site plan that includes both lots? He is curious to know if a study had been done to put some catacomb or some other water storage underneath where we already have it and pave on top of that without destroying all of the trees along the property line including the grand tree. He asked what studies have been done because the request says to improve traffic flow. He asked if the flow of traffic to be improved includes two lots; or is it due to any study that has been done with the one lot that they already have? Which lot are they referring to, one or both? Mrs. Crane answered that since there is a remaining lot line with two different owners of each parcel, she thought it best not to include the other parcel in this request. The drive-thru and the tree are on the existing parcel. Mrs. Crane commented that this question may be best answered by the applicant since it talks about reconfiguration and whether they looked at the possibility of an underground detention pond where the current one is.

Applicant Presentation

Mr. Mike White, Engineer with G. Robert George & Associates, 2411 Savannah Highway. Mr. White stated also presenting tonight was Mr. Chad Ross, Project Manager and Jason Williams, local operator, both with Chick Fil-A. Mr. White stated meeting with staff Kristen Crane and they endeavor to be good stewards of both properties. He said unfortunately the properties are leased by different parties and they cannot completely integrate them, which may answer Commissioner Smith's question. They are semi integrated. He said the double drive-thru was well addressed by Mrs. Crane and they are trying their best to address the traffic backup and capacity issues and the safety of their patrons and team members. He referenced the pandemic and Chick Fil-A's dining room shut down but will reopen in full measure when the improvements are completed. Mr. White said the primary purpose of the drive thru is to address traffic, backups, and capacity. In conjunction with that, they will also improve the kitchen which will be completely gutted with a max-serve kitchen. Chad Ross will talk more about that. These improvements would help to improve Chick Fil-A's ability to serve its customers quicker so hopefully there will be no traffic issues on Eugene Gibbs and to a lesser degree on Folly Road. He said some of this is tied to tree removals of which he has seen a lot of emails about. Other than the grand tree application, basically regular trees are planned to be removed. He said just about every one of the trees were planted by Chick Fil-A and is outlined on the landscape plan provided to the Town as a record to show that they planted them. Mr. White said he is not the type of engineer that removes trees "willy-nilly" and likes to do things that makes common sense. He said to put the drive-thru in for the capacity would help relieve the traffic problems and they will need to remove a lot of the non-protected, non-grand trees. He said many of them are relatively small. For example, there are four-10" Maples, two-12" Berkshire Elms, and a couple of nice Oaks at the front of the drive-way that need to be removed because the driveway will be relocated. There are a couple of trees that are on the expansion parcel to be removed because that is where the driveway would be located to compliment the traffic circulation. Mr. White spoke regarding the stormwater issue and asked Mrs. Crane to share the screen to display the plan that showed where the underground detention would be. He said there will be two separate underground detentions, one on the primary Chick Fil-A site and a separate underground detention on the expansion parcel.

Mr. White said after thinking about it they did not want to put a hole behind the store and want to use that for plantings so the most current site plan does not show the detention in that area. He said that would be primarily underground where it is shown but set back so it is not within the buffer, and the other part on the expansion parcel would be separate. He stated they have tried to maximize the planting areas for the trees they are trying to preserve to survive and thrive. An arborist has been hired to evaluate the trees and gave ratings whether or not they should be removed. Mr. White further mentioned that they tried to limit the amount of pervious surface areas (that is not on the one site plan shown and is on another site plan) and they are over 30% pervious planting green space areas on the Chick Fil-A site not counting pervious pavers that will be put in the upper portion. The expansion parcel is nearly 40% greenspace, not counting pervious

pavers that will be put in. Mr. White said they tried to think about the environment, tree preservation, and traffic. That is a fairly complex site in a tight area with a lot of physical constraints. They plan to abide by the requirements for the multi-use path. If they need to look at caliper tree size and plantings, they do their best to be good stewards of what they plant and replenish on the site.

Mr. Chad Ross, Project Manager, 1500 Buffington Rd., Atlanta, GA: Mr. Ross stated that they are doing a comprehensive remodel: kitchen, dining room, refresh of the exterior, and obviously the drive thru that gets a lot of attention, parking/parking lot, and landscaping. Mr. Ross said Chick Fil-A prides itself in what it does. They don't come in and slash and burn, and they don't patch things. They take pride in how the buildings look, especially the landscaping because it's a part of the curb appeal. He reiterated that they are not here to squeeze in what they can and want customers to have the experience when they come onto the lot, it is holistic and worthy of what they are trying to do. Mr. Ross stated that Jason Williams and his team is experienced in what they provide to the customer. This is done all across the country and they will continue to try doing it here.

Questions to the Applicants:

Commissioner Hipp asked about the two trees in the front; if it is because of relocating the driveway. She asked if the trees planted in 2006 were compensation for the ones that existed. Mr. White said he could not answer that question directly and they try to plant what is required; sometimes they have to supplement. He said the project was originally permitted under Charleston County under Joel Evans in the Planning Department. He referenced a copy of the landscape plan that he said is fairly extensive. He asked Mrs. Crane to share the screen to show the information. He said Chick Fil-A's drive-thru is pretty good and the plans are to replicate that same experience. He said they will not disturb anything that does not need to be disturbed, but, on the part that is north to the site, there is an area where a lot of landscaping would be done. They do not have a plan for the area yet but will be using the same landscape architect who worked on the previous plan and he does excellent work. Mr. White said whatever needs to be done to make this work so the community is proud and supportive, (including upsizing caliper trees), they will do, but he think everyone knows that they don't want to jam trees into an area to have none of them survive.

Chair Lyon said that it is her understanding that the applicants want to address traffic and safety issues, to increase capacity, and to improve the site which is why the variance is being requested. Mr. White stated that is a good summary but there are some idiosyncrasies and details to it. He said essentially that is the focus of what the double drive is for. Chair Lyon said when she did her site visit they had one order box and one canopy and were putting cones out and noticed a painted second drive that is somewhat permanent. She assumes that is done when there are a lot of people coming to eat at one time. When she was there on yesterday there was one lane open when going through for a breakfast sandwich. She walked around for a while and it wasn't that busy. She said it looked as if they had been operating on a semi-permanent basis and perhaps no one knew that they needed a variance. She asked if this was caused by the virus (Covid) and if they needed to go back to full dining room capacity? Was the business booming for drive thru before Covid? She knows during the past two years the world has been turned upside down on its head in many ways. It's not back to normal yet because we are meeting by Zoom tonight. She asked as things get back to normal if this was necessary?

Mr. Jason Williams, answered that before the pandemic began they had a one lane drive thru all the way around and discovered that guests had to circle back on Eugene Gibbs and on Folly Road. Obviously, no one wants to do that. So they decided to make the entrance to the drive thru circle around the building and enter through the back side. He said that is one of the reasons the Folly Road entrance was blocked off because you can cut the line on Folly instead of circling around. He said the problem with the circle around is getting into the drive thru. The exits are blocked which is a big traffic nightmare and backs up on Eugene Gibbs. They decided to do the double stack as most all of the new Chick Fil-A remodels go to the double stack to allow more cars to get onto the lot. There is an opportunity to get the lot next to them for parking

and the drive thru stack can be longer. On the plan, the number of drive thru stack is an important key to success because they can stack more cars in the drive thru and not have a backup on Eugene Gibbs and Folly Road. Mr. Ross said they are operating as a quasi-double drive thru right now. It is not ideal because the team has to walk between traffic and there is only one canopy and when it rains they have to go to one lane. If they are able to get the variance for the double drive thru they would have double coverage so the team can be outside and not be in the sun because both sides are covered and it is safer for the team and the guests.

Commissioner Fabri asked out of curiosity, not to put the applicants on the spot if they couldn't answer the question, if he knew the volume of business on James Island compared to Magwood Drive, West Ashley and Mt. Pleasant for customers served. Mr. Ross said today it was 149 cars in an hour through the drive thru on James Island. The annual sales for James Island was over \$7 million and over \$10 million at Magwood Drive. He thought both Mt. Pleasant stores did about \$7-8 million since there are three stores and some of the volume had been taken away. He said Chick Fil-A James Island has an average volume because they are a single drive thru and not as good as the restaurants with a double drive thru. Commissioner Fabri said she looked up the size of the other two restaurants knowing that they are always very busy like James Island. She said James Island is 1½ acres; Mt. Pleasant is 1.6; and Magwood is 1.3 so they are managing their traffic basically on the same size of land that James Island currently has. She knows that the Mt. Pleasant location (off of Johnny Dodds) closed for a while and it sounds like it did for renovations that the applicants want to do with reconfiguring the parking lot, upgrading the kitchen, etc. She asked Mr. Ross if that were the case and he answered yes. He explained that the Mt. Pleasant and Magwood restaurants both have overflow parking which is helpful because they are not surrounded by residential property and their team members park off-site in neighborhoods and shopping centers. James Island doesn't have that so the staff have to park on-site. Mr. White said they try to design the restaurants so there are no overflows but those restaurants do have them. Magwood Drive has backups. He designed that restaurant. They didn't optimize it. The building was fixed and they had to stay with the location so they could not maximize the stack. Maximizing the stack has a profound impact on keeping the roadways clear. He said a restaurant that really maximizes the stack is the Dorchester Road restaurant, which he originally designed and redesigned. That restaurant rarely backs up and they are doing an amazing catering service as well. The double drive thru is really going to be needed to make sure the restaurant works properly and doesn't impact the local community in a negative way with traffic issues.

Commissioner Fabri said the reason she asked the question is out of concern about the stormwater detention they are looking to fill and she would like to hear more information about the stormwater plan. That is a big concern for her. She went on to say that they are putting more impervious surface as well as impacting the current drainage system and that is her concern. The other thing is the backup of the drive thru is somewhat their own creation in a way. Commissioner Fabri stated not to be judgmental on Chick Fil-A but with the pandemic and the dining room closed, they had no choice but for customers to be serviced by the drive thru. She said in the past couple of weeks she has gone through the James Island Chick Fil-A on different days to look at what was going on and there is a backup on Eugene Gibbs but it seems there is a very small window of a peak traffic during lunch time, "a Saturday afternoon kind of thing," and she knows it is frustrating for the residents who live nearby to have that kind of impact. Her fear is what is going to happen with the impact on the stormwater system with the lot next door being paved and having more impervious surface. She asked what is going to be done with the detention pond because she has concerns about flooding in that neighborhood. Mr. White asked Mrs. Crane to show the most current site plan he provided yesterday that shows the comparison of the trees, but also the underground detention chambers in the specific location they intend to build them. Mr. White gave an overview of the site plan while referencing the size of the detention area for the Chick-fil-A portion. He said it is independent and will handle the stormwater for the Chick Fil-A parcel and it is more than the size of the current detention area above ground they will be filling-in. He said they will go through all of the hydrology and conform to the new regulations he believes restricts the release of runoff to 80% of what the runoff rate would typically

be. He said if it has to be larger they will make it larger and address the stormwater concerns the way it needs to be. He knows that Charleston County helps to administer this and he has had discussions with Chris Wannamaker and the Town's engineer about it. He said the Chick Fil-A portion will be handled that way and the detention for the out-parcel and adding pervious pavers to reduce the amount of runoff even more. They will find out what the predeveloped rate is off of that and resize it appropriately if it needs to be expanded and redesigned. He said they are going to make a separate connection to the storm drain facilities on Folly Road that follows the curb line linear (hard to see on the drawing). They already have a connection that will be utilized to control structure and there is a utility junction box to be installed because of the sewer line. He made reference to the Tree Table at the top of the drawing stating it is a very accurate tabular breakdown of the current pervious and impervious surfaces. On the new development, counting the pervious pavers, the Chick Fil-A will be over 30% at 33% and in today's time that is pretty significant. The out parcel itself counting the pervious pavers is roughly 50% so they are trying to reduce the amount of impervious surface areas and trying to preserve many trees, particularly the two grand trees in the center on the common property. That in itself will create a massive amount of planting areas in pervious plantings and limit the amount of runoff. Commissioner Fabri asked if it would all be underground and Mr. White answered yes. They do not plan to put in raingardens and the plantings will absorb the rain and the existing buffers will be left alone. Commissioner Fabri asked what the divider is in the drive thru? Is that a different system than what is used in Mt. Pleasant on Johnny Dodds? Mr. White said he did not work on the Johnny Dodds restaurant but what she is referring to is stripping on the pavement designed for the safety of the team members.

Commissioner Fabri said when you drive into the Chick Fil-A there is the drive thru with two double lanes, then there are three lanes she guess are two stacks, and a travel lane on the far outside. Mr. White said that is a temporary measure and he asked Mr. Williams to speak more about it. Mr. Williams explained the single stack turns to double because the horseshoe is too small and there is not enough room around the curve to stack cars.

Commissioner Smith said his question is not to be taken as facetious and asked the applicants if they feel the need for the double lane is the result of their own actions by being so darn successful in working with the delivery lanes than anyone else. Mr. Ross said they try to do their best to serve their guests and to staff appropriately by hiring as many people as they can. They try to give many jobs to the community to serve the guests and thankful that they come.

In Support @ Town Hall: No one spoke

In Opposition @ Town Hall:

Mrs. Mary Ann Henry, 825 W. Madison Avenue. Mrs. Henry stated that she is the neighborhood representative for the Centerville neighborhood (adjacent to the Chick Fil-A). She said it is no secret and there are very legitimate sources on the internet that Chick Fil-A, the corporation as a whole, is expanding and changing their business model to extend pickup and delivery. She said as the gentleman from Atlanta has already assured, they will be expanding their kitchen facility with new construction. She asked the BZA to consider this. Why are they expanding their kitchen facility? They say they want to alleviate traffic. She lives in Centerville on West Madison Avenue and they have a terrible problem with cut through traffic already; it's a terrible problem. All day, but especially at lunch and dinnertime and doesn't know that it's about alleviating traffic when they say that. She thinks the corporation is in the business of making a profit and not about saving their neighborhood or insuring the livability of James Island residents. She would like to suggest that perhaps our problem with traffic and their expansion of the kitchen and the change in their business model would create more of a traffic problem. They cannot guarantee that they are going to alleviate the traffic problem, they cannot do that. She thinks there is a lot of missing information here, a lot of it. She respectfully asked the Board to consider the quality of life of the residents. She thanked the Board for allowing her to speak.

In Support on Zoom: No one spoke.

In Opposition (call-in):

Mrs. Susan Milliken, 762 Ft. Sumter Drive, stated she is a JI PSD Commissioner but tonight is speaking as a private citizen who has lived on James Island for over 25 years. She regularly frequents the Chick Fil-A restaurant because she has two sons and that is something they do often. She asked the BZA to please deny Chick Fil-A's variance request for a double drive thru. She said this application is very difficult and involves many sticky issues. It involves the Rethink Folly Rd. plan, it touches on the pandemic, it touches on traffic congestion, and it really has so much in it for the BZA to look at. She said what makes it easy for the BZA is that their charge is clear, to look at the criteria and judge and weigh them to deny or approve these variance requests from the folks who come before them. She said one thing she wanted to mention quickly is that none of us would head out on a summer Saturday at 11 a.m. to go to Folly Beach. None of us would go to the airport at 8 a.m. from James Island. We all know not to go to Chick Fil-A at school dismissal, at 5 p.m. and at lunch at different times, so there is definitely an ebb and flow. She is glad that Mrs. Henry spoke from Centerville and knows it is very tough for the residents on West Madison and in Centerville. There happens to be several other access points out of and into Centerville on Camp Rd., and another one on Folly Rd. so thankfully they do have those other access points. Back to the issue at hand, by her count, Chick Fil-A can seat 22 cars in the drive thru and they are asking for 39 cars. That is an increase of 17 cars. What we know on James Island is that we will have 200 or more new residential units built on James Island this year. We know where they are going to be: two neighborhoods on Central Park Rd., a neighborhood on Riverland, a large community on Grimball and Folly, new town homes on Folly behind the Roper hospital, so the people are going to keep coming. There will always be more spillover and what is really sobering to her is the populations in West Ashley and in Mt. Pleasant are so much more massive than our island population and for the Town of James Island to house the largest Chick Fil-A in the county is what's it sounding and looking like (Ms. Wood called time). Mrs. Milliken asked the BZA to please deny this request, especially given the loss of trees, whether they be grand or not, 13 trees, and the grand tree summary provided by the applicant is incorrect, there are only three or four grand trees on that list and that is not an exceptional condition.

Chairwoman Lyon stated for the record that prior to the meeting the Board received a total of 6 emails for support and 23 in opposition. She said it appeared that 6 of the ones against were specific towards the tree case which would make 17 against for this case. Chair Lyon mentioned that many of the emails did not have addresses and in the future she would like to request that we always have the person's address just as we require that when someone is speaking in person. She said that is important because someone's proximity could affect the evidence, i.e., someone across the island or someone who lives behind West Madison.

Rebuttal

Mr. Williams thanked the Board and everyone who spoke. He apologized for any inconvenience they have made for the community and they have identified certain issues that they hope will address traffic and team member safety. They do not claim that it is perfect as there are no perfect solutions but they have had success with this in the past and it has helped everyone. They hope and pray that the Board would consider that.

Discussion of the Board

Chairwoman Lyon closed the hearing to the public at 8:18 p.m. and moved to approve the variance for discussion. Commissioner Smith seconded. Chairwoman Lyon stated that the Board could make amendments, add conditions, approve, deny, or defer the request if additional information was needed. She said this case has become very complicated as far as the questions and interests from the public.

Vice Chair Savage said the applicant's submission is fairly thorough, it is more thorough than most he has seen. He shares Commissioner Fabri's questions about the drainage, instead of someone saying, "we're going to take care of that," the applicants had the actual plan and square footage and showed that the drainage would be improved. He is torn by the fact that on Folly Road, the Town controls a certain amount of the businesses and the City controls the others. He said if you look at what businesses the Town controls, sometimes they're not the most advantageous. We encourage businesses to be successful. Chick Fil-A came in and I think everyone can agree that they are successful. He goes there and it sounds like everybody else goes there, although he hasn't heard yet if Roy goes there. He said the fact of the matter is, at times the traffic is backed up onto Eugene Gibbs, and when you're on Folly Rd. you can't turn in. He's been caught there and it's an inevitable situation. People are going to go there and if we think if we deny the application (which is designed to get cars off of Eugene) that somehow people aren't going to go there we're deceiving ourselves. We have cars on Folly because people are coming from Folly Beach towards the City and are at the light to turn left onto Eugene. When the light turns yellow as many people as possible will make that turn and block Folly Road from the other way. He said we know there is a traffic issue as it presently exists and if we deny the application the traffic situation is going to continue, it is not going away. He saw a proposal from the applicants where they try to anticipate a solution and it's a solution that a lot of people don't like because it increases the success of the business. He looked at what the applicants presented and thought it was well designed. He heard some people in opposition talk about the fact that the Town's population is going to increase. It is, we're not going to stop that, but we need to start planning now for that increase and putting a double drive thru is not going to cause the population of the island to increase. What it may do is alleviate some of the problems the population increase causes. Those are his initial thoughts. He hasn't addressed each of these factors and is interested in hearing the Board's input. Some of the comments in opposition say, "there must be an ulterior motive." Yes, corporations make profits – they really do, but give him some facts to deal with in terms of the opposition. He heard some people talk about the traffic, but the traffic is what the applicants are trying to address. Vice Chair Savage said his decision is going to depend on what he hears from other members of the Board.

Chairwoman Lyon stated one comment that everyone has brought up is flooding and drainage in the basin which is typically handled by Planning and Zoning. She said we ran into this issue on a previous case. She thinks their plans are thorough, like David said. Flooding worries her a lot but we have to trust in our municipality staff like Kristen to do the right thing. She stated that the Board's purview is how it would affect the quality of life for the residents. She noted that in the past planning has not always been good for James Island, but now we have a Town and people like Kristen Crane and Mark Johnson, our Public Works Director. They work hard and review to permits and make folks jump through the hoops who are developing and remodeling. She thinks it is important that we trust them and know that they will make sure folks do the right thing. She wanted to throw that flooding concerns her too. She knows that is a big concern of Amy, and Corie touched on it as well. Chairwoman Lyon said she saw the detention pond too and wondered what was going to happen with that. Her biggest concern is do they meet the criteria. That is the Board's job and we need to make sure they meet all the criteria that we require for approval.

Commissioner Smith mentioned that if anyone wants to know, he does eat at Chick-Fil-A... more than he should and he likes the drive thru and thinks they do a good job with that. He is trying to wrap his mind around the first criteria, are there extraordinary and exceptional conditions pertaining to this particular piece of property and he read the staff's response that there may be due to the existing layout and configuration, corner setbacks and landscape buffers. He said landscape buffers is not extraordinary or unusual, everyone needs to be doing that, grand trees are extraordinary but not unusual, for corner setbacks, every corner has them. He agrees with the idea of improving traffic flow and applauds the applicants. They do good job for the island and have been, but he is having a hard time with the first criteria. He said everyone has buffers and corners so he does not see this as strange.

Commissioner Hipp said she eats at Chick-Fil-A a lot. She has a 4 and 5 year old and have eaten there may be 10 times within the last 10 days ever since receiving the BZA packet to do due diligence. She said the James Island Chick-Fil-A does a really good job and she complimented the applicants. She said the Mt. Pleasant (Johnny Dodds Chick-Fil-A) is horrible compared to James Island and thinks with the traffic flow that James Island does a good job getting people in and out and the staff is nice. She feels James Island is doing it very well right now in her opinion.

Commissioner Fabri agreed with Commissioner Lyon about looking at the criteria. As an example she said the Starbucks has the same issues with traffic but they are not before the Board asking for a bigger space or a different type of drive-thru. She said these corporations have a footprint that they want for their stores and she thinks it's the new one for Chick-Fil-A. While she doesn't think it is necessarily a bad thing, she thinks in this particular situation there are two other locations that have made it happen basically with the same amount of space that James Island has and while there are issues with traffic, she wonders if they can completely reconfigure that site with parking and eliminate some of the plantings they have in there to reconfigure the current layout. It would allow them to accommodate a double drive-thru like they are doing now and get the traffic off the street or have a lesser disruption to Eugene Gibbs. She agrees that the safety of the employees is paramount and they do an extraordinary job at controlling and moving traffic. She wished they would come work for Charleston County because it would be wonderful as they are masters in controlling traffic. She is reluctant to agree with this because they do not meet the criteria and wonders if they can't reconfigure the site to do what they want to do. If that includes having to reduce the multi-use path to 5 or 7 feet that is something that she would be ok with because the entire Camp Rd. intersection was redone and put in 5 ft. sidewalks. She asked why would Chick-Fil-A be held to a higher standard to have 12 ft. on their small section of Folly Road. There are things she would definitely like to entertain . She does not want to say "no" completely but they don't meet the criteria based on the information they have right now.

Commissioner Hipp added that she doesn't believe there is an extraordinary and exceptional condition, and their business seems to be doing well right now.

Chairwoman Lyon stated having a problem with Criteria C. That does not meet the criteria. She said Chick-Fil-A is currently doing it, just not the way they want to. C is the criteria she was grappling with and she pointed out Criteria A and B as well. Commissioner Hipp stated her concerns with Criteria B and C.

Commissioner Smith said he is becoming convinced that he would vote against the variance because of A, B, and C, but what he would like to say to Chick-Fil-A is he wished our Planning Commission would consider not making a double drive thru for a restaurant that is doing well having to have a special exception. But that is up to the Planning Commission, not the BZA. Commissioner Smith spoke that the request does not meet A,B, and C. He is sadden that he cannot say "yes" but is not able to for the double drive-thru

Chairwoman Lyon pointed out that Mrs. Henry, the representative for Centerville, that there was a letter in support on Yorktown and she believes Yorktown is in the Centerville neighborhood. Katy Zimmerman with Charleston Moves also sent in support for the 12 ft. multi-use path.

Chairwoman Lyon asked the Board if they needed to have more information to make a decision on the variance request.

Commissioner Fabri addressed the applicants that something that may change the Board's mind is if they go back and reconfigure the space and come back and tell the Board how they tried to do it and on the stormwater. She said stormwater is an education for them. She is not an engineer and feels more information is needed.

Chairwoman Lyon asked Attorney Wilson if the Board needed to go into an executive session to discuss this further or should they continue discussion in open session. Mr. Wilson said an executive session was not needed. He addressed Commissioner Fabri's question that if the variance is rejected there is a lengthy time of a moratorium. There is a process to allow that unless the Board continues this to the next meeting, the applicant could make a motion for good cause shown. Chairwoman Lyon said if this is done by the applicant there is a year waiting period but the Board could postpone the request to the next meeting or in June to avoid the year waiting period. Mr. Wilson said if a continuance is requested it can be carried over, if it is postponed there is a year waiting period. Mr. Wilson addressed Commissioner Smith's question regarding timing of the continuance. He said the request could be carried over at least one time and if the applicant agrees more than once.

There was discussion about requesting further information from the applicants. Commissioner Fabri said more information was needed on stormwater with a brief explanation of exactly how it would be handled, the increased capacity by replacing the detention pond and the system that is currently there, any attempts to reconfigure the space that they currently have to accommodate the double drive-thru which is already there, and ability to handle the parking and online pickup with other needs that they have.

Commissioner Smith again expressed not being able to wrap his mind around Criteria A,B, and C for the double drive-thru. Regarding the grand tree, he is curious to know if other studies had been done for other sites that would not require removal of the grand trees. But, he said we are not discussing the grand trees now, but they are tied together on the site plan. He said he has listened to Commissioner Fabri about a site plan that could be studied to continue on the existing piece of property, i.e., overflow and parking could be leased for the property next door. However, these are just ideas and he appreciates what the applicants presented and what the Board has said.

Vice Chair Savage said he agrees with the Board that they can ask the applicants what they want but asked that they be fair because what they are asking will cost money. They are going to go to people to redraw a plan and if they come back to us we could still say it doesn't satisfy "A" because there aren't exceptional circumstances. He asked the Board to not do this to the applicants. He said if we are going to stand by the rejection that "A" was not satisfied then what we are requesting is never going to be satisfied. He asked the Board not to exercise the applicants by costing them money to return to us and be rejected again. He said the Board needs to be consistent and fair. Chick Fil-A is a good business for the Town, it is so dadgum successful that they sought a variance and if we turn it down that's fine but be good stewards with our business community. Commissioner Smith thanked Vice Chair Savage for his comments.

Chairwoman Lyon said her concern was also whether or not the applicant would meet the criteria because that is what the Board is charged with as BZA members. Mr. Wilson asked Chairwoman Lyon about the issue before them, whether there will be a motion for a continuance on behalf of the Board or if they are ready to vote because that information would not affect their opinions regardless of the outcome.

Commissioner Smith said he could not say that any information he hears might affect his opinion as he hasn't necessarily decided.

As discussion continued, Commissioner Fabri said earlier in the meeting a question was posed to Ms. Crane that Chick Fil-A is currently using the drive thru as a double stacked drive thru although they have striped it, it's not permanent and there are cones. What is not included now are additional canopies so if they reconfigure the current space they have to better utilize restriping the parking and reconfiguring the drive thru by restriping the parking she doesn't think it would be an issue for the BZA any longer based on what Ms. Crane said in the beginning because they are not in violation of anything. She asked Ms. Crane if that was correct.

Chairwoman Lyon commented that technically they have been operating illegally by having the double drive thru because it is not permitted in our ordinance. It is her understanding this was done during Covid and now they want to get it permitted and have permanent structures. She noted that illegal may be too strong, but this is something that was done and not permitted during Covid to help with the extra flow. She said there is a painted line and to her its permanent. Maybe they didn't know about permitting until they came before Ms. Crane for the grand tree. However, a variance is still required to operate the double drive-thru legally. Chairwoman Lyon asked Ms. Crane if that was correct.

Chairwoman Lyon stressed that our ordinance says only single lane drive-thrus are allowed unless the business is a post office, bank, or utility. Commissioner Hipp asked Ms. Crane her question and she replied that it is her interpretation and professional opinion that it is a single drive thru with a temporary double drive thru when needed. She said everything they have is removable – paint can be repainted and signs and flags can be removed, and employees can go inside. To her, that is a single drive thru. She further stated some ordinances from Charleston County were carried over to us when we became a Town and we may need to be look at the intent of what a double drive thru is or is for. Chairwoman Lyon said if the Planning Commission changed it and it was adopted by Town Council it would be a moot point and we would not be here tonight and the applicants would not be asking for this variance and would only have the case for the grand tree.

Vice Chair Savage said his thoughts were similar to Commissioner Hipp and everyone can agree that if someone calls foul on what Chick Fil-A is doing and they have to go back to the single line, we are in a mess with traffic, safety and he think then Criteria A would be satisfied as well as Criteria C. He does not know what we need to do but knows that people are listening and someone that may not like Chick-Fil-A may call foul and we are in a big mess.

Commissioner Hipp asked is what Chick Fil-A doing now considered a double drive thru. She knows that Ms. Crane spoke in her professional opinion it is portable and can be moved, but the Board needs to set the definition because it changes the way this is perceived. Commissioner Smith said he thinks Vice Chair Savage has changed the way he perceived things.

Vice Chair Savage asked to make a motion for a continuance or to go into an executive session. Commissioner Hipp questioned what the continuance would involve and Chairwoman Lyon explained that a motion would be made and seconded and the matter would come back to the BZA at its next meeting Vice Chair Savage moved for the continuance. Mr. Wilson stated that the motion include the tree to deal with both at the same time.

Commissioner Hipp asked if there is a way to determine what constitutes a double drive thru and asked if Mr. Wilson could provide an opinion. Chairwoman Lyon agreed and asked Mr. Wilson to do so. Commissioner Hipp said she would like to know more because she was hung up on Criteria A,B, and C and when it was explained they are operating as a double drive thru it changed everything. She asked if the motion could include an opinion from Mr. Wilson on the double drive thru and Commissioner Smith's request if there are alternate plans that would not destroy the grand tree if all of the parking is available.

Chairwoman Lyon summarized the motion to read:

The Board of Zoning Appeals requests that the applicants relook at the site plan to possibly save the tree; and work things out differently. Provide more clarification on the drainage and detention pond for the effect on the surrounding neighborhood, and if additional parking is needed and Mr. Wilson's opinion of what constitutes a double drive thru.

Chairwoman Lyon said the next meeting would be May 17 and the Board does not have a case as the time has passed for submitting requests. If the Board wishes or if the applicants can provide information they can meet then or in June or July. Chairwoman Lyon said the Board would break protocol to ask the applicant when they thought the additional information could be presented. Mr. White said time is the key. They are in agreement with the continuance but is unsure that they can get the packet in time for the May 17 continuance meeting. He is concerned that they may have to go to the June meeting to have more time to meet the deadline. They will work with Ms. Crane to determine to what degree they need to do engineering and research. Chairwoman Lyon asked if that could be done without specifically setting a date and Ms. Crane could let the Board know after working with the applicants to which the Board agreed.

Vice Chair Savage motioned to continue with both cases: Case #BZAS-3-22-028: Variance Request for the removal of a grand tree for site improvements at an existing Chick-Fil-A restaurant in the Community Commercial (CC) District at 849 Folly Road; and Case BZAV-3-22-029: Variance Request for Construction of a double-drive thru at an existing Chick-Fil-A restaurant in the Community Commercial (CC) District at 849 Folly Road. Chairwoman Lyon seconded the motion.

Vote

Commissioner Fabri	Aye
Commissioner Hipp	Aye
Vice Chair Savage	Aye
Commissioner Smith	Aye
Chairwoman Lyon	Aye
Passed unanimously	

Chairwoman Lyon announced that the motion carried and both cases will continue. The double drive thru case will continue with the motion on the floor to approve and that will continue until the Board returns to address the applicants information.

Chairwoman Lyon thanked everyone and mentioned the likeliness of having a meeting in June. She said the Board will get the information it needs to address, be fair and look at all of the evidence. She thanked the staff, applicants, and the public for coming and for providing emails in support and in opposition to this case.

The motion on the floor continues to the next meeting of the Board of Zoning Appeals.

Respectfully,

Frances Simmons
Town Clerk and Secretary to the BZA

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF MAY 17, 2022

The Board of Zoning Appeals met on Tuesday, May 17, 2022 in person at the Town Hall, 1122 Dills Bluff Road, James Island, and by virtual platform on Zoom.

Commissioners present: Amy Fabri, Corie Hipp, David Savage, Vice Chair, Roy Smith, and Brook Lyon, Chairwoman, who presided. Also, Kristen Crane, Planning Director, Flannery Wood, Planner II, Bonum S. Wilson, BZA Attorney, Niki Grimball, Town Administrator, and Frances Simmons, Town Clerk and Secretary to the BZA. A quorum was present to conduct business.

Call to Order: Chairwoman Lyon called to order the May 17, 2020 BZA meeting to order at 7:00 p.m.

Compliance with the Freedom of Information Act: This meeting was held in compliance with the SC Freedom of Information Act. The public was duly informed and notification was given that the meeting would also be live-streamed on the Town's YouTube Channel.

Introductions: Chairwoman Lyon introduced herself, members of the BZA, BZA Attorney, and Staff.

Chairwoman Lyon announced that this meeting is a continuation of the April 19 meeting. There was a motion on the floor made by her as Chair and seconded by Commissioner Smith to approve the variance request for Case #BZAV-3-22-029: TMS #425-02-00-172: Variance Request for construction of a double-drive thru at an existing Chick-Fil-A restaurant in the Community Commercial (CC) District at 849 Folly Road. She announced that Case # BZAS-3-22-028, TMS #425-02-00-172: Variance Request for the removal of a grand tree for site improvements at an existing Chick-Fil-A restaurant in the Community Commercial (CC) District at 849 Folly Road has been withdrawn.

Chairwoman Lyon moved to reopen Case # BZAV-3-22-029: Variance Request for construction of a double-drive thru at an existing Chick-Fil-A restaurant in the Community Commercial (CC) District at 849 Folly Road, seconded by Commissioner Hipp. Chairwoman Lyon stated that the Board had voted to continue this case and has new evidence. No further discussion.

Vote to Reopen Case # BZAV-3-22-029

Commissioner Fabri	Aye
Commissioner Hipp	Aye
Vice Chair Savage	Aye
Commissioner Smith	Aye
Chairwoman Lyon	Aye

Passed unanimously

Chairwoman Lyon moved to amend the agenda to have Mr. Wilson administer the oath to those presenting testimony and anyone speaking at tonight's meeting before public comment; seconded by Commissioner Hipp. Chairwoman Lyon said she think it is important that everyone be sworn in, whether they are giving testimony or just speaking. No further discussion.

Vote to Amend Agenda

Commissioner Fabri	Aye
Commissioner Hipp	Aye

Vice Chair Savage Aye
Commissioner Smith Aye
Chairwoman Lyon Aye
Passed unanimously

Executive Session: Chairwoman Lyon announced that an executive session is on the agenda and asked the Board if they needed to have one for receipt of legal advice from Mr. Wilson. The executive session was not needed.

Administer the Oath to those Presenting Testimony: Chairwoman Lyon stated that anyone addressing the Board tonight either at Town Hall or by Zoom/Call-in would be sworn in as a group to expedite time. Mr. Wilson administered the oath and swore in persons who wished to speak.

Public Comment: Chairwoman Lyon asked for those present at Town Hall wanting to make a comment to speak. She asked that they state their name and address for the record and limit comments to two minutes. No one present to speak. There was no one on Zoom or called in to speak.

Review of the Following Application (Resumed): Case #BZAS-3-22-029, TMS#425-02-00-172: Variance Request for construction of a double-drive thru at an existing Chick-Fil-A restaurant in the Community Commercial (CC) District at 849 Folly Road. Chairwoman Lyon introduced the case as the continuation from the April 19th meeting and the Board would hear an edited staff review and see an updated site plan.

Mrs. Crane addressed the Board stating that since this meeting is a continuation from April, they may not want to hear the things that hasn't changed; but she would if the Board wanted. She said the edited portion was the Findings of Fact (below) and the adjusted site plan.

Findings of Fact:

According to §153.049 F, Zoning Variance Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR), 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. A Zoning Variance may be granted in an individual case of unnecessary hardship if the Board of Appeals makes and explains in writing the following findings:

F. (a): *There are extraordinary and exceptional conditions pertaining to the particular piece of property;*

Response: **There may be extraordinary and exceptional conditions pertaining to this piece of property due to the existing layout and configuration of the site including preservation of all healthy grand trees, corner setbacks, landscaping buffers, dimensions, and stormwater detention areas. As the letter of intent states, the current configuration makes it “exceptionally difficult to provide adequate capacity for vehicle stacking for the drive thru without designing double lanes to increase the capacity.” Additionally, the enforcement of the current zoning regulation of only single-lane drive thrus (except for banks and utilities) creates an exceptional condition for the specific property. Other notable extraordinary and exceptional conditions are the extreme popularity of the restaurant with**

high demand, coupled with the unusually close proximity to Folly Road creating the potential to cause traffic stoppages and snarls.

F (b): *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 as commercial properties nearby do not have the existing configuration and layout of the subject property. Additionally, any restaurants in the vicinity that have drive-thrus are single lane drive-thrus. Within 300' of the subject parcel, there are no properties with the conditions listed above (no corner properties that have existing stormwater detention areas, grand trees, large landscape buffers, or existing configuration.) Furthermore, there are no properties in the vicinity that have a need for a double-drive thru, that spatially have the ability to create one, yet the enforcement of the zoning code would not allow it without a variance.

F (c): *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, specifically section §153.336, Architectural and Landscape Design Guidelines, may not restrict the utilization of the property when it is being used in single-drive thru mode; however, it will effectively prohibit and unreasonably restrict the implementation of the site improvements aimed to increase the stacking capacity of the drive-thru operation and improve traffic flow by preventing stoppages and snarls on adjacent roads, due to the previously mentioned existing conditions.

F (d): *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: The authorization of this variance may not be a detriment to adjacent property or to the public good, since there has been no enforcement of, and more remarkably, no complaint, of the current use of a double-drive thru. As the applicant's letter of intent states, "granting of the variance will improve traffic circulation, reduce overflow onto surrounding streets, and lessen the impact to surrounding properties." The character of the zoning district will not be harmed by the granting of the variance.

F (e): *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 non-conforming use of land or to change the zoning district boundaries shown on the Official Zoning Map;

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.

F (f): *The need for the variance is not the result of the applicant's own actions; and*

Response: The need for the variance may not be the result of the applicant's own actions because the size and configuration of the lot are existing site conditions. Existing site conditions also include the location and number of grand trees on the site. Additionally, the need for the variance, as the letter of intent explains, is to improve traffic flow due to an increase in patronage, which was a need that did not exist when the current layout was configured, at no fault of the applicant.

F (g): *Granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.*

Response: The variance may not conflict with the *Comprehensive Plan*, specifically the *Transportation Element* needs of "**Mitigating the impacts of a changing population on the existing transportation system**". Additionally, the proposed site plan shows a new multi-use path, which satisfies another *Transportation Element* need of "Providing safe, convenient, pedestrian and bicycle systems in appropriate locations" while an *Economic Development* strategy is to "**Continue to encourage positive redevelopment/development by offering incentives such as nonconforming signage reimbursements and buffer reductions for multi-use path placement, transit facilities, etc.**"

Questions from the Board:

Vice Chair Savage said he is mindful of some of the questions in the last meeting and he thinks Ms. Fabri picked up on something that he may not have been very knowledgeable about. He said she was interested in surface water absorption and thinks she had a concern about flooding which he may have missed. He asked if there are county, state, or federal regulations that would dictate the materials that the applicant would have to comply with. Mrs. Crane said yes, and she should've mentioned at the last meeting, that the applicants would go through an extensive stormwater planning, permits and approval process. In addition, the Town has supplemental stormwater standards that it adopted that are on top of what the County already requires. These regulations are more stringent than what the County requires. It is something that would be regulated after their plan is approved by a number of different entities. Vice Chair Savage said that was his concern.

Commissioner Hipp asked for clarification that what the Board is voting on tonight is to allow the double drive-thru, period. Not to allow the applicants to do building because they don't need to have a permit to do all of the excess building since the grand tree was taken away. Ms. Crane said this is the only variance that is required and everything else would be permitted administratively. Commissioner Hipp commented that none of the permitting has to come before the Board and the information is a courtesy. Ms. Crane answered yes.

Application Presentation

Michael White, G. Robert George Associates: stated that Ms. Crane covered the request pretty thoroughly. They have endeavored to go back and look at concerns about tree preservation; particularly the removal of the grand tree and thinks everyone can see by the site plan that they tried to maximize the offset and has gotten the arborist involved again. He said a letter of recommendation was provided and they will include the subject matter of tree preservation on the plans to make sure that they are taken seriously by the contractors and subcontractors. He stated that they always endeavor to try to limit the amount of impervious surface area to address the stormwater issues and knows they have very significant stormwater regulations to abide by and have tried to factor that into their site planning. He told the Board that it is probably hard to see on the plan, but it is the shadow ghosted underground detention location that they tried to coordinate with trees so they know the route zones for any of the grand trees they are trying to preserve. He said there will be two separate detention areas that they plan on, one in the front of the Chick Fil-A where the extra parking bay is added and one over to serve the expansion parcel where the circulatory areas are for the dumpster. Mr. White said they went so far as to do a preliminary landscape plan and will continue to work on that with the staff to make sure that it meets the ordinance requirements and any planting criteria, screening, and things of that nature. He stated that they have endeavored to address the concerns of the community and the Board and is subject to any questions they have. They feel this is necessary because Chick Fil-A is a successful business and has had good patronage but obviously they cannot control how many people come to the restaurant, so they are dealing with an exceptional situation and if they don't do something it is not going to improve. If the Town decides to make it go back to a single lane drive though, like it was designed 15-16 years ago, they will have some serious traffic problems. He informed the Board that he is happy to answer any questions that they have as well as Chad Ross, Chick Fil-A rep. and Jason Williams, Operator at the James Island, Folly Rd. location.

Jason Williams, said he has lived on James Island for over 16 years and know there is a lot of concern about development on James Island, and feels it himself. He has been with Chick-Fil-A for 16 years and they want to continue to get better and for Chick-Fil-A to be something that everyone is proud of. He said asking for the opportunity to build a double drive-through would help his team to be safe and right now they are operating in a quasi-double drive through because it is what they had to do. He said the plan is meant to enhance safety for staff and guests. As new Chick-Fil-A's are built, they're all basically built with a double drive-thru. The James Island restaurant is 16 years old and double drive-thrus did not exist when it was built. Every time a Chick-Fil-A goes through a big remodel like this they do a double drive-thru because it is so much better for the team members and guests. He asked that the request be approved to provide the good level of service that is expected from Chick-Fil-A.

Chad Ross, thanked the Board again for allowing them to present and for hearing their request. He reiterated that he runs the project from Atlanta and wanted to say that when they do these remodels a lot of time they are reacting to a known need. They know there is a traffic problem here, and the way that the drive-thru is functioning now they know is unsafe. He said there is a lot of things with the weather, just as with traffic and the way it flows they know it is very inefficient. He said the heart of Chick-Fil-A is to solve the problem and that is why they are here and why they want to do it. As he said the last time, their model isn't only this

site, they try to do it holistically and try to include everything it can to make a better customer experience, but especially the team members and operators as well. He thanked the Board for allowing him to share.

Vice Chair Savage spoke about making sure that we all know what we're relying on. He asked Ms. Crane to do a screen share with the landscape plan because it is not as cluttered. He said in looking at the side of the building to the bottom, (left pointing to where the first car is). He asked from that car going to the center of the building, is it the plan that there is not going to be a double lane; but a single lane until it gets to that point and branches out? Mr. White answered yes. The plan is that it will be a single lane adjacent to the main entry point in the building where there's currently an existing canopy. He said it's more like a fabric type canopy. It will provide a circulatory lane and a backing lane for customers who will park and walk in, unlike right now. He said some may use the mobile app. But the intent is that it will be open all the time for traffic circulation. Vice Chair Savage said it appears that one lane shown on the plan is a little less than what is being used in practice now. If he is not mistaken because sometimes there is another lane parallel to the lane shown on the plan. Mr. Williams answered that currently they are doing a double Q (where the cursor was shown on the plan). He said there have two lanes that are queuing before the order taker and that is because they don't have a way to wrap around the building because there isn't enough space in the parking so a double que had to be done up to the order taker. He said the idea with the new plan, if approved, the order takers will be basically at the horseshoe and won't have to double que; it will double que after the order is take and this is for safety. He knows that the parking lot is congested because of the double cars queuing, but that is what they've had to do with the old plan. Vice Chair Savage asked as a Board can they rely on this schematic (master plan?) and Mr. White replied, that is correct.

Commissioner Hipp said that she drove by Chick-Fil-A today and paid close attention to the existing parking spots. She believes in the last meeting Mr. White was speaking about the type of material that would be used to absorb water (impervious pavers) and asked if that is not there now and is regular asphalt parking spots being proposed there. Mr. White stated currently pavers are on the backside and he thought there are also some on this plan. He said those do not show the existing conditions but they plan on putting pavers in to meet the stormwater quality and quantity requirements, as necessary. On this plan, they plan to put in pavers where the parallel spaces are to the west of the site and also adjacent to the tanning salon business to the north of the site. If it turns out the stormwater requirements dictate that they have more impervious surface that will go to other parking space if necessary. They are trying to address the surface water requirements and then the underground detention. He said the arch system will also address that which are open on the bottom. They will try to take advantage of the fact that you can get water quality treatment through the infiltration into the soil but can only take so much credit as there are limits in the ordinance that do not allow that. They will try to cross every "t" and dot every "i" regarding storm drainage. Commissioner Hipp asked if the drawings that are shaped like honeycombs are the impervious pavers and Mr. White said that was correct.

Commissioner Fabri stated that when the Board met last time, she thought when they left they asked that the applicants to go back and look at trying to save the grand tree, which they did, and for more information about stormwater retention. She asked Mr. White if that was his recollection. Mr. White replied knowing that they had that discussion, and they have done a lot of preliminary work on sizing the stormwater and detention that is seen on the plan. He noted that it was hard for him to see it on the screen he is looking at but believes it should be shown on the plan he has provided showing the detention. They have done preliminary sizing calculations and has not submitted them to the Town yet, but they can. They will abide in full compliance with the ordinance. Mr. White said it is his understanding that they are going to have to reduce the amount of runoff that is currently coming from the combined site at least 20% of what's coming off there now. That is his understanding of the ordinance so it has some fairly significant teeth in it and they

are going to have to reduce it. He stated there is not a whole lot of runoff. There is a very large amount of impervious surface on the site as it exists and as it will be built if they are approved to do so. He said there is not a whole lot of runoff coming out right now and they are going to reduce that even more because the ordinance requires them to do so.

Commissioner Fabri thanked Mr. White for his explanation. She stated that her question was very simple, what they received in their packet today was basically a pavement plan, pretty much an outline. It didn't have anything for the stormwater plan, which Mr. White says is still a work in progress. She asked if the black dots in the parking spaces and in the pervious parking spaces on the new lot they will be taking over are catch basins? Mr. White said those are boring locations where Terra who is doing GEO technical investigation to do the borings will measure the groundwater level and determine the infiltration rates and that is where they plan to place the two separate underground detention. Mr. White injected that they have had to do some subsurface utility investigation work that the Board may have been. He explained the process where they vacuum excavate holes in the ground and locate stormwater tie-in points. In the hopes that the variance is approved, they have engaged a company to start doing that to complete the stormwater connections and meet the requirements that the BZA is requesting. Commissioner Fabri thanked Mr. White for the explanation. She commented knowing they are not requesting a variance for stormwater but she thinks it goes to criteria "d" for consideration of adjacent property and the public good and if they are going to impact stormwater. That definitely has to do with the surrounding neighborhoods so she appreciates his explanation.

Vice Chair Savage said he had questions based on hearing Commissioner Fabri's series of questions. He asked for clarification. He understands now with the new regulations if the variance is approved that their stormwater plan will have to result in a 20% decrease in the present stormwater runoff of the two lots they will be developing. Mr. White responded that is his understanding, though he has not read the regulations in extreme detail, but he has reviewed it, talked with Chris Wannamaker at the County, and to the Town's Public Works Director so they will abide by it and they have already done some preliminary calculations to make sure that they can do so. He said they won't know for sure the configuration of the underground detention until they get the geotechnical work done because they need to know where the groundwater table is because the ordinance also restricts how the positioning or level of underground detention has to be set above the ground water and they need that information before they can go further with the design. He understands that the Board may want to see more design information and they can provide some preliminary information but they need a lot more information to go into the details of designing the underground detention with infiltration.

There were no further questions for the applicants. Chairwoman Lyon thanked Mr. White, Mr. Williams, and Mr. Ross for their presentation. Chairwoman Lyon commented as she stated at the beginning of this meeting that at the April 19 meeting a motion was made and seconded to approve the application and opened the floor for further discussion. Chairwoman Lyon stated that we received 11 new letters/emails in support which included names and addresses, and one new email against. She recalled at the April meeting there were 23 against, six were specific to the tree case that was withdrawn, so that was 17 against the double drive-thru and six in support. In total, there were 17 for and 18 against which makes it neck to neck and pretty close. Chairwoman Lyon announced that this information is available to the public should anyone wish to review them.

Commissioner Hipp asked for the motion to be restated:

Motion: Chairwoman Lyon moved to approve the variance for discussion, seconded by Commission Smith. She said the motion on the floor is to approve the variance. She said the motion can be amended with

conditions. However, what the Board is discussing now is potentially voting to approve as is. Commissioner Hipp wanted to clarify that the motion/vote is for the double drive-thru and Chairwoman Lyon answered yes.

Commissioner Smith said to him this case is whether or not the double drive-thru meets each and every criteria. He has some heartburn about some of it in some ways but he does think that there would be a real traffic problem if something isn't done one way or another. He tends to think that for the matter of the public good, and also it is something on which they did not plan. He thinks it is beyond their control. He does not think the potential traffic problem was intentional. This is an unusual case and perhaps unique right now for the Board so it meet a lot of their criteria.

Commissioner Hipp asked if we have confirmed that they would have to resort back to a single lane drive thru if the variance was not granted. There was discussion among Commissioners Hipp and Smith regarding this and Commissioner Hipp mentioned the opinion from Mr. Wilson that it is either a single or the Board grants the variance. She has looked at all of the criteria and based on them, they are met because there is no way on God's green earth, that they can go back to a single lane drive-thru because people would be backed up to the Harris Teeter and Folly traffic. Commissioner Smith mentioned that could make it difficult for emergency vehicles to get up/down the road. Commission Hipp also mentioned that she found it appealing that they would dress up the sidewalk for mobility on Folly Road.

Vice Chair Savage said his analysis always starts with what is being requested... is it a special exception or it is a variance. In this case, he said, it is not a special exception. It is a variance and the variance is sought by an existing property owner not someone trying to jam in a non-conforming use into a property that they seek to buy or use. He said last meeting, Commissioner Smith made a very sound request of the applicant asking if they could go back and redraw something that would preserve the grand tree. He doesn't profess to speak for Commissioner Smith but he may have noticed like he did that a lot of the earlier opposition was focused on the grand tree removal and the applicant did what we requested and they have come back and have presented a plan. He is mindful from previous decisions of the Board, where they have granted variances under promises of people that they wanted to develop family homes and they turn around and sell the property right after we granted a variance that turned Seaside Lane into an area where you can have manufactured homes. He looked at the efforts that the applicants took with regard to concerns for the Board and likewise with regard to Commissioner Fabri's questions. He commented feeling a little inadequate at the last hearing because he didn't pick up on those that she was talking about such as stormwater and drainage but he knew, as a novice, that this was not his area of expertise so he wanted to assure himself that those requirements were going to be looked at and enforced by someone else. Based upon what Ms. Crane relayed to him, the Town has more stringent regulations than anyone. If this application is to proceed, the Town will ensure that the stormwater plan is followed. He said that Chick-Fil-A was built 16 years ago and the stormwater plan is a lot less intensive than the one that is going to be approved today. He said the Board's decisions have to be reasonably related to the objective evidence that we receive and he appreciates the valid concerns of Commissioner Fabri. He feels that he can rely on Ms. Crane's statements, likewise he can rely on the testimony under oath by the applicants representatives that it is his believe that the eventual stormwater runoff of now these two lots is going to be 20% less than what previously existed and that is what we all seek so that doesn't concern him. He noted as Commissioners Smith and Hipp indicated the applicant is simply seeking a variance to formalize what is presently in existence. He said his question in bringing up the site plan is this... are you telling me that from the corner of that store to the horseshoe, there is only going to be one lane and he answered yes, and he asked can we rely on this and the answer was yes. He said that is actually less of a stacking of vehicles than what presently exists. He said he has to look at what are the facts on the ground, and what are we asking to be done. He believes Commissioner

Hipp said if you look back 16 years, what worked 16 years ago isn't going to work on Eugene Gibbs or Folly Road anymore so when he looks at the criteria, especially "a" are there extraordinary conditions? He thought the staff's opinion got it right. They are, because of the layout of the site and our desire that they preserve all healthy grand trees and because of the corner setbacks and the landscape buffers. He thinks the criteria is met. Likewise criteria "b," that the conditions do not generally apply to other properties, again the staff did a good job in letting us know that within 300 feet of this area, there are no properties with the conditions listed above, that would be the corner, buffers, stormwater requirements, grass, and trees. That brings us to criteria "c." The property is effectively prohibited or unreasonably restricted in the utilization. He agrees that without the variance the ordinance would restrict the site improvements. The improvements are designed to increase the efficiency and improve traffic flow which prevent stoppages. He loved the word used by the staff "snarls" on Folly Road, stating he finds that compelling from personal experience and from the information provided. Criteria "d" is will the variance be a substantial detriment to the adjacent property owners and he thinks Commissioner Fabri was focusing on stormwater and he thought that has been addressed to this satisfaction. He said going back for the last two years, this has not been occurring and there has been no complaints so obviously there would not be a substantial detriment to the adjacent property owners. Criteria "e" is not applicable as per the staff's opinion and Criteria "f" the variance is not the result of the applicants action. He said early in the first discussion they had chuckled when Commissioner Smith said "maybe it is the result of the applicants own action because they are so "dadgum" successful. The staff pointed out that the variance sought is to improve the traffic flow due to an increase in patronage and you can't blame that on a business because businesses that we approve, we want to be successful. He said he think it meets criteria "f." Criteria "g": does it substantially conflict with the Comprehensive Plan and the staff pointed out that it meets the impacts of a changing population on the existing transportation system plan. Vice Chair Savage said he hasn't read that and would defer to the staff that this variance does comply with that, but also it gives the Town a new multi-use path which satisfies another transportation element needed to provide safe pedestrian and bicycle access. To him, he thinks the applicant has come to us in a situation where there are certain facts on the ground that exists. They have taken the concerns of not only the BZA but the letters in opposition and they have come back with a plan and he thinks the plan meets all of the criteria. He said at this point, he hasn't heard from Chairwoman Lyon or Commissioner Fabri but he would be inclined to approve the variance request.

Chairwoman Lyon thanked Vice Chair Savage for his succinct synopsis and for going through all of the criteria. She tends to agree with him on those and think the applicant has done a really good job and listened to the community and the Board's questions and concerns and has come back with a plan that is much more acceptable plan in addressing the stormwater runoff and it sounds most importantly that they would meet the criteria that is set forth for us in order to approve.

Commissioner Fabri spoke in response to Vice Chair Savage. She said this is not before the Board but would just say overall that these chains like Starbucks and Chick-fil-A have sometime become, while successful, nuisance businesses in their communities because their corporate plan is to build on certain sized lots and plan for "x" number of cars coming through daily. Because of the growth in our community and other communities and the popularity of the business, they have outgrown what their corporate build plan is. She doesn't think we should hold it against the applicant because that is for Chick-Fil-A corporate and Starbucks corporate. That is something that she think needs to be the purview of the Planning Commission and Council to change ordinances and our code to address situations like businesses such as Chick-Fil-A that are going to have a high traffic volume that are on main arteries, and the fact that they could impact traffic emergency vehicles and the quality of life of the neighborhood behind them. She stated she is going to say her piece. She doesn't think they meet criteria "b" because directly across the street we have Starbucks that basically blocks that entire intersection during the day. She said it's the same thing with

Chick-Fil-A, they are stacking up in the neighborhood and on Folly Rd. causing a nuisance for the neighborhood and people traversing Folly Rd. She said Mr. Wilson's opinion that they are in violation of the code without a double drive-thru leaves them no choice because to deny this is to further exacerbate the issues that they are already trying to solve. She agrees with Vice Chair Savage that their stormwater plan today hopefully is a lot better than it was many years ago and they will have to bring it into compliance, which to her is a positive. Commissioner Fabri said she is going to have to hold her nose and vote for this one. She would love to see them move across the street to the BI-LO parking lot where there is lots of space to run their drive-thru and build a giant Chick-Fil-A and everybody going to the beach and those who live on Johns Island would take advantage of it but that's a burden that we can't put on the applicant by asking them to do that. But, if they would like to think about it, she would suggest that would be a great use of that space because you would have a lot of business. She went on to clarify her reluctance to vote for this because she does not think they meet all of the criteria but thinks by not granting this we are going to cause a bigger problem than what already exists. Chairwoman Lyon thanked her and said that she raised some great points.

Commissioner Smith stated for the record that he agreed with Vice Chair Savage. Although he understands Commissioner Fabri's comment about generally applying, he wants to say that the conditions don't generally apply to everyone. Maybe they apply to some, but he thinks that there is some discretion in that, but he thinks they meet all the criteria

Chairwoman Lyon stated that the opinion was received from Mr. Wilson about how Chick-Fil-A had been operating. She said according to Mr. Wilson's opinion the way they had been operating as a double drive-through was not permitted by code without a variance. The opinion is available to anyone who wishes to see it for the record. Frances Simmons, BZA Secretary, will provide a copy of the opinion with these minutes.

Vote: (Variance Request, Double Drive-thru)

Commissioner Fabri	Aye
Commissioner Hipp	Aye
Vice Chair Savage	Aye
Commissioner Smith	Aye
Chairwoman Lyon	Aye

Motion passed unanimously

Chairwoman Lyon announced that the motion carried unanimously and the final decision would be mailed to the applicants within ten working days. The applicants should contact the Planning and Zoning staff with questions about the approval.

Chairwoman Lyon stated for the record the legal reason for the decision is that Board Members felt the variance request met all the criteria with the exception of Commissioner Fabri who had some concerns, but she felt she would vote for it in lieu of the other issues that it might cause. The other four (4) members felt the variance met all of the criteria.

Additional Business

Next Meeting Date: June 21, 2022: Chairwoman Lyon announced that the Board would have a meeting in June.

Chairwoman Lyon said a special thank you to the staff. This has been a very important case to our community, as all cases are, but the staff has had to do a lot of extra work by having two meetings and

appreciates their hard work. She thanked the applicants for listening to the community and it sounds like they are working hard to make their business a better place by responding to the increased growth that our island has seen explode. Chairwoman Lyon said in thinking, 16 years ago, she didn't think we had a Town so everything that was permitted back then was haphazard and now we are very blessed to have our Town and some control of our destiny and such a great staff. She thanked everyone and the Board for serving, asking great questions and for their working hard.

Adjourn: There being no further business to come before the body, the meeting adjourned at 7:58 p.m.

Respectfully submitted:

Frances Simmons
Town Clerk and Secretary to the BZA

DRAFT