

**TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
Town Hall
1238-B Camp Road, James Island, SC 29412
BZA AGENDA
July 17, 2018
7:00 PM**

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

- I. CALL TO ORDER
- II. PRAYER AND PLEDGE
- III. COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT
- IV. INTRODUCTIONS
- V. REVIEW SUMMARIES AND RULINGS FROM THE JUNE 19, 2018 BZA MEETING
 1. BZAV-4-18-015
TMS #425-02-00-046
Variance request for the reduction of the 5' required accessory structure setback by 1.6' to 3.4' for the placement of a pavilion accessory structure on existing slab in the Low-Density Suburban Residential District (RSL) at 1792 Enoree Lane
TABLED
- VI. BRIEF THE PUBLIC ON THE PROCEDURES OF THE BZA
- VII. ADMINISTER THE OATH TO THOSE PRESENTING TESTIMONY
- VIII. REVIEW OF THE FOLLOWING APPLICATION:
 1. **OLD BUSINESS (RESUMED):**
BZAV-4-18-015
TMS #425-02-00-046
Variance request for the reduction of the 5' required accessory structure setback by 1.6' to 3.4' for the placement of a pavilion accessory structure on existing slab in the Low-Density Suburban Residential District (RSL) at 1792 Enoree Lane
- IX. ADDITIONAL BUSINESS
 1. Next Meeting: August 21, 2018
- X. ADJOURN

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

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS (BZA)
SUMMARY OF JUNE 19, 2018

Members present: Mr. Jim Fralix, Mr. Sim Parrish, Mr. Jason Gregorie, Vice Chairman, Mr. Roy Smith, and Mrs. Brook Lyon, Chairwoman. Also, Kristen Crane, Planning Director, Bo Wilson, BZA Attorney, Leonard Blank, Councilmember/Mayor Pro-tem, Ashley Kellahan, Town Administrator, and Frances Simmons, Secretary to the BZA and Town Clerk.

Call to Order: Chairwoman Lyon called the Board of Zoning Appeals meeting to order at 7:02 p.m. A quorum was present to conduct business.

Prayer and Pledge: Chairwoman Lyon asked members of the BZA and others who wished, to join in the prayer and Pledge of Allegiance.

Compliance with FOIA: Chairwoman Lyon announced that this meeting has been noticed in compliance with the South Carolina Freedom of Information Act.

Introductions: Chairwoman Lyon introduced the members of the BZA, BZA Attorney, staff, Councilmember/Mayor Pro-tem Blank, and Planning Commissioner Bill Lyon.

Review Summary and Rulings from the April 15, 2018 BZA Meeting: Chairwoman Lyon informed the Board that a transcript of the April 15 meeting was emailed to them. It is a transcript where the transcriber was not present at the meeting and according to the disclaimer, the transcript should not be considered verbatim; it might include interpreted words and/or unidentified speakers and inaudible portions.

Chairwoman Lyon asked if there were changes, and if not, a motion and second is required to approve. The motion to approve was made by Mr. Gregory, seconded by Mr. Fralix. Mr. Parrish commented that his meeting packet did not include the minutes and Chairwoman Lyon explained that the transcript contained a hundred pages and the Board received it electronically to review. A printed copy of the transcript is on file at the Town Hall for review. Motion carried.

1. BZAS-3-18-015
TMS #425-03-00-037 and TMS #425-03-00-038
Special Exception request for the placement of a full-service carwash in the Community Commercial (CC) District and the Folly Road Corridor Overlay (FRC-O) District on property located at 765 and 761 Folly Road.
DENIED
2. BZAV-3-18-014
TMS #425-03-00-037
Variance request for pavement encroachment of more than 25% of the canopy of a grand tree for a carwash in the Community Commercial (CC) District and the Folly Road Corridor Overlay (FRC-O) District on property located at 765 Folly Road.
CASE NOT HEARD

Brief the Public on the Procedures of the BZA: Chairwoman Lyon explained how the Board of Zoning Appeals Hearing would be conducted.

Administer the Oath to Persons Presenting Testimony: Attorney Wilson swore in persons who wished to provide testimony in tonight's cases.

Chairwoman Lyon informed the Board that prior to the meeting, she received a request from Mr. Sid Boone, attorney representing a party in opposition to the case the Board is about to hear. Mr. Boone requests extending the time the opposition speak to five (5) minutes or less. Chairwoman Lyon said in fairness, if the Board approves, we should allow the same time to those speaking in favor. Chairwoman Lyon asked for a motion to extend the time for both sides to five (5) minutes or less. Mr. Smith moved and Mr. Parrish seconded. Chairwoman Lyon explained that the applicant would have five (5) minutes to speak and those in favor and opposition would have up to five (5) minutes or less to speak. Mr. Boone would speak as a member of the public representing his client. Mr. Gregorie said he does not support the motion, that the Board should keep the procedure established. Chairwoman Lyon said Mr. Boone provided information to the Board in the event the request were not approved. She expressed concern about receiving the information only tonight and not having time to review it. Chairman Lyon said she respected Mr. Gregorie's position, especially in light of the April meeting. Mr. Fralix also voiced opposition to extending the time.

Vote:

Mr. Fralix	nay
Mr. Parrish	nay
Mr. Gregorie	nay
Mr. Smith	aye
Chairwoman Lyon	aye

Motion Failed 3-2.

Review of the Following Applications:

NEW BUSINESS:

1. BZAV-4-18-015

TMS # 425-02-00-046

Variance request for the reduction of the 5' required accessory structure setback by 1.6' to 3.4' for the placement of a pavilion accessory structure on existing slab in the Low-Density Suburban Residential District (RSL) at 1792 Enoree Lane:

Planning Director, Kristen Crane gave the staff's review. She stated that the applicant, Mr. John DuPree is requesting a variance for the reduction of the 5' required accessory structure setback by 1.6' to 3.4' for the placement of a pavilion accessory structure in the Low-Density Suburban Residential (RSL) Zoning District at 1792 Enoree Lane (TMS #425-02-00-046). Adjacent properties to the south, east, and west are also in the Low-Density Suburban Residential Zoning District in the Town of James Island's jurisdiction. Property to the north is single-family and is in the City of Charleston. The Town of James Island Zoning and Land Development Regulations, §153.207 states that accessory structures in residential zoning districts that are over 120 square feet, shall be at least five feet from any interior lot line in a residential district.

The subject property contains one single family home that was constructed in 1960 according to Charleston County records. The current property owners purchased the property in March 2017. The property owners began building the pavilion structure before the zoning and Building Permits were issued. Unaware that building had already began, a Zoning Permit was issued on December 15, 2017 (based on a plat submitted by the applicant, Book DC Page 853, dated July 20, 2001 showing existing slab being 5' from the rear property line) and Charleston County received the permit package for building plan review shortly after that. The Town Building Department staff conducted a site visit on February 1, 2018 and discovered the structure was not as depicted on the site plan with the post being 22" from the existing chain link fence. A recent survey dated May 2, 2018 shows the slab being 3.4' from the rear property line.

Mrs. Crane said 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 the 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 criteria based upon the findings of facts unless additional information is deemed necessary to make an informed decision. Mrs. Crane reviewed the seven criteria in the staff's review.

Questions from the Board

Mr. Gregorie asked if there was a time that the applicants had a Zoning Permit and a Building Permit for the construction. Mrs. Crane said yes; there was miscommunication between the County and the Town. The County issued a Building Permit between the times the Town had requested them not to until the zoning issue was resolved. She said at that time, the applicants had both and the Town revoked the Zoning Permit shortly thereafter.

Chairwoman Lyon referred to a letter from Mrs. Crane where she stated that incorrect information on the Site Plan setback that was submitted for the permit. Chairwoman Lyon asked for clarification of this for the record. Mrs. Crane explained that in the Board's packet, the Zoning Permit issued on 12/13/17; and the plat dated 4/2/2001 shows an existing slab. This was submitted with the Zoning Permit that was approved showing the slab as 5' from the property line, and 5' from the chain link fence. Chairwoman Lyon asked if the Building Permit was issued before construction began and Mrs. Crane said no, that the applicants began construction before any permits were issued. Chairwoman Lyon asked where the slab and structure is on the aerial that was shown. Mrs. Crane showed a Google Earth image that was taken in 2017 and commented that she did not see the slab in that image.

Mr. Smith referred to the Variance Application, number 3 that says, Restrictive Covenants and Posted Notice Affidavit(s) signed by the applicant or current property owner. He asked Mrs. Crane to refresh his memory on this. Mrs. Crane said State Law mandates the inquiry of an applicant whether there are restrictive covenants in their neighborhood. The applicants signs the documentation that they are not violating any covenants. The posted notice alerts the public about the request being made.

Applicant Presentation

John Keith DuPree and Amy Hayes DuPree, 1792 Enoree Lane: Mr. DuPree said there was an existing shed on the property that was horrible and he tore it down. He has built a roof over the slab for family Easter and Christmases. He is not invading anyone's privacy. Mr. DuPree showed the property line and a 10' variance to the Board. He said in the 10' on the other side of the fence are bushes that were planted. They are supposed to be bushes but are actually trees. Mr. DuPree said he likes his privacy as much as the neighbor likes theirs and does not want problems. The roof drain does not come near the other property and he does not know why they are here (at BZA) because it makes no sense.

Mrs. DuPree spoke saying they grew up on James Island and loves James Island. They bought the house and have the plat. She said on the picture shown by Mrs. Crane the shed was there but they had to tear it down or they would not be approved for a loan. Mrs. DuPree said the survey showed 5' but it never was, it was always 4'. She stated not knowing a Zoning or a Building Permit was needed. They do many home projects and this has been a huge learning experience. Mrs. DuPree said they received a Stop Work Order from the City of Charleston on December 15 and December 15 should be the date on the Zoning Permit application. She said Mr. DuPree came to the Town

because of the Stop Work Order from the City, (they are in the Town, not the City). They received a Zoning Permit on the 20th and a call to pay the County Building Permit. That was paid on February 8 and they waited for things to be processed. She said Mr. DuPree got a call from the Town that the County was not going to approve the permit. On the 9th Mrs. DuPree said she went to the RMC Office and got copies of plats and talked to the people there. She was told to go to mapping and she went there on the 12th and then to Building Services where she and met with Ward Brown. She said Mr. Brown asked her if she had anything from the Town that they could do this and she said yes, a Zoning Permit. The next day she went there with the Zoning Permit and Mr. Brown and three of his colleagues talked to her. They said if a municipality agrees to zoning they do not look at the zoning. Mrs. DuPree said she did not understand why someone at the Town would tell them that they would not be approved by the County, that is why they went to the County. If they knew they had to come to the Town first, they would have done that, but they were not told. March 1, 2018, they got a Building Permit and on March 15, 2018, the Zoning Permit was pulled. Mrs. DuPree said she called Ward Brown and was told that the Town pulled it. Mrs. DuPree said they are in this financially and in this stress-wise. Mr. DuPree added that the structure that is looked at is not the structure they built without permits. They got the permits and the structure went up. Mrs. DuPree said they are trying to have an outside area for their family to enjoy and to beautify the place to make it better. She grew up in James Island (Fort Johnson Estates). Her parents still live in the house she grew up. They are not doing anything wrong; they started out wrong because they were not knowledgeable. There should be a list of places to go when you apply.

Questions from the Board

Mr. Gregorie asked what was there before; what is being rebuilt; was the concrete slab existing and has it been modified; Mr. DuPree said no, except for the roof that he is putting over the top. Mr. Gregorie asked how old the concrete slab is. Mrs. DuPree said when the house was built the slab was put in by the original owner, the shed came later next to it and it was rotting. Mr. DuPree said the shed and concrete has been on the plat since 1960; Mrs. DuPree said the shed was not and Mr. DuPree said the concrete has. Mr. Gregorie asked when the shed demolished was. Mr. DuPree said immediately upon buying the home because it was hideous and awful. He said if the neighbors had to look at it with them living there, it would bring their property value down tremendously. Mrs. DuPree said the mortgage company said they had to take it down because it was a hazard. They closed on the house on March 31, 2017, and asked the then owner if they were good with the shed taken down and they were told to go ahead. Mrs. DuPree said they put handrails in and did everything to get the loan approved. Mr. Gregory asked what year, and Mr. DuPree said they have been there a year; Mrs. DuPree said since 2017. Mr. DuPree said before they lived there, the house could barely be seen and they have made it a special place. Mr. Gregory asked their opinion in the final determination of the location of the shed. Mr. DuPree said he wants to finish putting on the roof. Mr. Gregory asked the location of the shed from the property line and Mr. DuPree said 3'6". Mr. DuPree said there have been four or five surveys on the property in the past 10 years and all are different.

Chairwoman Lyon asked if the slab was preexisting how the footings of 16x16 with #4 rebar would be confirmed that was on the plat. Mrs. DuPree she rebar could be seen and footing were poured after receiving the permit. Chairman Lyon asked if the shed was going to be 3'6" or 3'4"; and will there be an overhang on the pavilion structure, if so, how much. Mr. DuPree said 12" under the property line on his side and 10' James Island PSD easement, and the other property. Mrs. Crane referred to the easement on the plat entitled "survey B".

Mr. Fralix asked Mr. DuPree what it would take to live within the 5' easement. Mr. DuPree said he would have to move \$3,500, tear it down and rebuild it.

Mr. Smith asked if there are restrictive covenants in the neighborhood and Mrs. DuPree said no, there were no covenants in the paperwork when they closed on the property. Mr. Smith explained restrictive covenants. This is the question he asked Mrs. Crane regarding signing the variance application. Mr. DuPree said there are no committees in the neighborhood and Mr. Smith said it does not have to be a committee, covenants could run with the land. Mr. DuPree said as far as he knows, there are none. Chairwoman Lyon added that covenants are usually established when a neighborhood is developed and an HOA often could enforce the covenants. Mrs. DuPree stated there was nothing in their closing paperwork. Mr. Smith commented that is not unusual and it does not mean there are no covenants.

In Opposition: Michael Lynch, 1806 Lady Jordan Lane, (adjacent property); Managing Director of Milo Properties, LLC, (owns the undeveloped lots); Director and Officer of the HOA, (owns and controls the adjacent properties). Mr. Lynch said Sid Boone, McNair Law firm, would handle the legal aspects. He said a couple of things needed to be pointed out and clarified and Mr. Boone will cover them in more detail. First, the survey shown has been corrected, it is not the correct survey; Sid put it in his packet. Many surveys have been done over the years and they have spent time, effort, and legal costs to confirm that their survey is accurate. He said the previous owners of the property that the DuPree bought had title insurance and the title policy references the covenants that were on the property next door. He will let Sid cover that.

Sid Boone, Attorney, McNair Law Firm, 100 Calhoun Street, stated there is a later survey that shows the property is 2' from the property line, so it would be a 3' variance. He said, more importantly, there are restrictive covenants recorded in Book Z-47, page 581 that is in the packet he submitted. It states: No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling not to exceed two and one half stories in height , and a private garage for not more than two cars, and a chicken or doghouses, pumps house and tool sheds on the rear quarter of the lot". An agency cannot allow this; it is prohibited and it is not permitted by their restrictive covenants. On this property, they cannot move it; they cannot meet the setback. They have a shed in the front yard, and now they are building this shed slammed up against his client's property. He think the request is a detriment to the neighborhood because his client wants to build a new house and they want setbacks that they are entitled to and should have. Covenants run for a period of 25 years and are renewed every 10 years unless a majority of the owners of the lots change it and research by his paralegal show they have not been changed. They are not entitled to this restrictive covenant and they have not met the variance requirements.

Rebuttal: Mrs. DuPree said she does not think anyone in the neighborhood knows there are restrictive covenants because there are chicken coops everywhere, and buildings that have been added all over the place. She feel that it would be fair and would like the Board to evaluate the case. They have not seen what is in the package that is disputed. She does not know what is in it and does not know if that is fair for them to sit here and try their case and they not know all the information. She said they are not trying to do anything wrong and are not trying to hurt anybody. The piece of property behind them no one is going to build a house on because the sewer line as narrow and they have put a dock at the end- it is not on the market; they have it listed as community property. She feels this is James Island. They may not have the biggest houses but it is full of family and great things. She is James Island and they are not; she feels her city does not need to let her down. Mr. DuPree mentioned the property line and 10' of easement where they should not have planted bushes to begin with.

Chairwoman Lyon closed the hearing and asked for a motion and second for discussion. Mr. Gregorie motioned to enter into executive session to receive legal advice the BZA Attorney, Mr. Wilson. Mr. Smith seconded and the motion carried. The BZA entered into executive session at

7:47 p.m. Chairwoman Lyon asked for a motion to return to regular session at 8:03 p.m. Mr. Smith moved, seconded by Mr. Gregorie and carried.

Chairwoman Lyon asked for a motion to approve, disapprove or table Case BZAV-4-18-015: Variance request for the reduction of the 5' required accessory structure setback by 1.6' to 3.4' for the placement of a pavilion accessory structure on existing slab in the Low-Density Suburban Residential District (RSL) at 1792 Enoree Lane.

Mr. Smith made a motion to table discussion to the July 17 BZA meeting pending legal research from BZA Attorney, Mr. Wilson; Mr. Gregorie seconded. Chairwoman Lyon announced to the public that the Board would request its Attorney to research whether there are covenants that do apply to this case as presented by Mr. Sid Boone to qualify that in order to make a fair and informed decision.

Vote:

Mr. Fralix	aye
Mr. Parrish	aye
Mr. Gregorie	aye
Mr. Smith	aye
Chairwoman Lyon	aye

Motion passed unanimously

BZAV-5-18-016

TMS #428-08-00-002

Variance request for the construction of a 6' privacy fence in the front setbacks of a corner lot in the Low-Density Suburban Residential District (RSL) at 988 Dills Bluff Road:

Mrs. Crane provided the staff review that the applicant, Mr. Michael Witten is requesting a variance for the construction of a 6' privacy fence in the front setbacks of a corner lot in the Low-Density Suburban Residential District (RSL) at 988 Dills Bluff Road. Adjacent properties to the north, south, east, and west are also in the Low-Density Suburban Residential Zoning District and are in the Town of James Island.

The Town of James Island's Zoning and Land Development Regulations, §153.066, states fences and walls may be located within any required setback, provided that in residential, office, and commercial districts no fence, wall, or hedge shall exceed four feet in height when located within any front or street side setback with the exception of chain link fences, which can be six feet in height.

The subject property contains one single-family home that was constructed in 1974 according to Charleston County records. The current property owner purchased the property in 2006. The applicant requests the variance for security reasons as his letter of intent states. "The reason for my request is that due to the specific location of my property it has been the subject of break-ins to the house and vehicles or other personal property located on the site a minimum of seven (7) times since 2006 (more than once every two years)."

Mrs. Crane reviewed the Findings of Facts outlined in §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 the Ordinance would result in unnecessary

hardship. In granting a variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed funding or structure as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, safety, or general welfare outlined in §153.045 E2.

Questions from the Board:

Mr. Gregorie asked if a building or another type of permit is required to construct a fence in the Town. Mrs. Crane said yes if the fence is over 6’.

Mr. Parrish asked Mrs. Crane to show the photo of the front of the property. Mr. Parrish said according to the property plat presented, is the right side of the residence structure on the 10’ setback, and she answered yes. Mrs. Crane said on the side setbacks that he is referring to, it is allowed up to the property line; there is no restriction on the interior line. Mr. Parrish asked if the photo at the bottom would be an obstruction if the fence were placed there. He also questioned visibility by pulling onto traffic on Dills Bluff. Mrs. Crane compared the location of the fence to the fire hydrant and said would not obstruct vision. Mr. Parrish asked if the PSD has restrictions that requires a certain radius around fire hydrants. By looking at the photo at the top left, it looks further than the post on the corner, and the photo at the bottom corner, the post is closer. He asked if it is within the 3 or 4’ Mrs. Crane explained that a letter of coordination from the PSD could be requested if the request is approved.

Applicant Presentation

Mr. Michael Whitten is requesting a variance to replace a chain link fence that was on the property when he purchased it. The fence would be in the same location as the original one. He said most likely, when the original fence was installed, the owner had to go through the PSD regarding the fire hydrant. He explained the numerous break-ins on his property since occupying his residence. The first year a trailer was stolen from his yard. He commented that a chain link fence does not obstruct vision, people can look right in and there is a lot of foot traffic down to Dills Bluff, walking to the front of his property in the setback and around the corner. There is a sidewalk across the street that ends at one of the giant trees, so they cross over and walk along his property and turn on Williams Rd. Mr. Whitten said the first year, he had friends over and they broke into a toolbox in the friend’s truck. Once after pressure washing the driveway, he left the equipment in the garage and stayed with a cousin for the night. The next day he returned home and found that he was broken in through the back door of the garage, and pressure washer was stolen. Mr. Whitten said he was afraid to stay home that night so he stayed with the cousin again, called an alarm company, and was told it would take a week to install a system. When he returned home the next day, they had broken in and a washer and dryer was stolen. Several years later, there was a break-in through the front door and a laptop was stolen. The alarm went off and they grabbed whatever they could and ran. Mr. Whitten said he has had a number of different break-ins including cars over the years. When he finally began to build a fence (along the same line as the chain link fence), he told about the 4’ limit in the setback. The old chain link fence had trees and bushes were growing into it, it looked bad so he wanted to replace it with something that looked nice. He came to Town Hall and spoke with Mark Johnson to find out if he needed a permit and was told no, not as long as the fence was not over 8’ a permit was not needed. He came back on another occasion, spoke with Mr.

Johnson, and showed him pictures of how the fence would look with wood and metal. He asked if that would be ok and he also spoke with Mrs. Crane who said there was no restriction, but no one ever said the fence could not be more than 4'. Mr. Whitten said he is trying to replace a chain link fence. The bushes growing in it was unsightly but it blocked view from the street. He said with a 4' fence anyone could look over and see what is in his yard. He is afraid to have a barbecue grill or patio furniture outside because things just disappear. He stopped building the fence because he was told that he was in violation of the height ordinance; and they came into his yard and stole four posts. Mr. Whitten said he just want to have privacy for security. He is afraid to stay at home at night from hearing sounds and people walking through his property through the back yard to get to Williams Rd. People come through to get to the pizza restaurant and to the Dollar General.

Questions from the Board:

Mr. Fralix asked if the four stolen posts were planted. Mr. Whitten said no, he stopped building when he was told to and the concrete was not poured.

Chairwoman Lyon asked what kind of fence would be built. Mr. Whitten said metal and wood. Mr. Boles distributed copies of pictures of fences on James Island. Mr. Whitten pointed out on the last page that the site lines of the fire hydrant is a distance from the fence. Mr. Fralix asked Mr. Whitten if he stores a lot of material in his yard and Mr. Whitten said yes, but some cannot be replaced.

Mr. Parrish asked about the chain link fence at the back of the property. Mr. Whitten said there is a section of fence that is being left.

Mr. Daniel Boles, attorney, said high fences makes good neighbors. He responded to Mr. Parrish's question, he said there is a photo in the Board's packet where Mr. Whitten went back and temporarily put up corner so you can see the cars coming and going without impeding, sight. He also responded to the chain link fence in the rear. He answered that he had asked Mr. Whitten if we are going argue safety to the Board, how we would explain leaving one side of the fence unguarded. He said Mr. Whitten said the area is so thickly grownup in the fence with shrubs, trees and impediments that no one is going to be able to drag a trailer, fence post or other personal property through there, so rather than rip out all of that vegetation, he thinks that is adequate security for the fence line in the rear. Mr. Boles said there has been recent shootings around the corner from Mr. Whitten's house and the theme that Mr. Whitten is continuing to enforce is this is a safety concern for him. He is trying to make the fence look good for us - he lives on Foxcroft Road. He noted what Mr. Whitten is asking for is a reasonable request given where his property is situated and given that he is already going to knock the fence down by 2'. He touched on some miscommunication that Mr. Whitten had earlier with the Town to build the fence and asked the Board not to hold that against him.

In Opposition:

No one spoke

Mr. Parrish asked the applicant what his homeowners insurance says about having a 6' fence because he is now impeding public safety from entering the property or to be able to see what is going on from the street. He is also impeding the Fire Department from having access to the property for safety. He asked how that would work because he will have gates of the same material and a 6' fence around the property. If someone is breaking into the house how could someone from the Sheriff's Office or Police know someone is in the house. If the Fire Department needs to get into the house they will have to break the gate down unless it is left open. Mr. Whitten said the gate is a wood panel that the Fire or Police could use a crowbar to break and enter, and there will be a gate. He said there was a gate before but he took it down when he removed the chain link fence and used a chain and lock, so it is the same situation. The insurance company, he said, would probably decrease his rate if they knew he has a fence around the property because he has to turn information to them every time something is stolen; but that is something they would have to approve. Mrs. Crane said for personal reasons she wanted to know this so she emailed Sergeant James, with Island Sheriff's Patrol and she asked him if someone had a 6ft fence around their property would that deter thefts and Sgt. James said he thought it would because criminals are lazy. She also asked if it would be a safety issue for them not being able to see a property he said no, the County often has to go to homes that are behind trees.

Chairwoman Lyon closed the hearing at 8:33 p.m. and asked for a motion and second. Mr. Fralix moved to approve the variance and Mr. Smith seconded. Mr. Gregorie said he would support the motion. Mr. Parrish expressed concern that if the variance is approved, in his opinion, we are setting a precedent of allowing 6' fences throughout James Island. He knows this is on a case-by-case basis but it is a precedence to allow 6' fences on the right-of-way to streets. This would deter the aesthetics of the Town. If this request is approved, the next-door neighbor would want to do it and you would have a bunch of fences all the way down. This does not look appropriate to him. He said he would allow the fence but that is not exceed the front edge of the residence on the Williams Rd. side. Chairwoman Lyon said that would defeat the purpose and Mr. Parrish said it would still allow him a backyard that would be secured. Chairwoman Lyon said they looking in the front when they walk down the street. Mr. Gregorie said the applicant can install a 6' chain link fence and would not need a variance. He thinks a wood fence is more attractive than a chain link fence, especially since they become dilapidated. Mr. Parrish again reiterated his concerns about the 6' fence not being the nature of the Town. Mr. Smith said there are extraordinary and exceptional conditions pertaining to this piece of property because of the thefts there that does not necessarily pertain to other properties in the area and is not of substantial detriment to adjacent properties or the public good. He said the variance is not the result of the applicant's own actions, so for those reasons he supports the variance. Chairwoman Lyon said she supports the variance and the applicant has met all of the criteria.

Vote:

Mr. Fralix	aye
Mr. Parrish	nay
Mr. Gregorie	aye
Mr. Smith	aye
Chairwoman Lyon	aye

Motion passed 4-1

Chairwoman Lyon stated that variance for the construction of a 6' fence meets all of the criteria. The final decision will be mailed to the applicant within ten working days and he should contact Mrs. Crane if he has questions.

Additional Business:

Discussion on possible change to BZA Rules of Procedure: Conduct of Hearings (Time Limits): Chairwoman Lyon noted that the Rules of Procedure were last revised September 15, 2015. She thanked everyone for diligence at the April meeting and believes we did the right thing. She said Autobell did not file an appeal. On the advice of Counsel, she felt we gave them every benefit of the doubt and they did not have a time limit to use as a reason for an appeal. She said for complicated cases such as Autobell that 5 minutes is not enough time. She has spoken with the Town Administrator, Mayor, Planning Director and the Mayor Pro-tem for their feedback on what would be an appropriate time limit for an applicant. Mrs. Crane also obtained information from other municipalities: Folly Beach, 10 minutes, City of Charleston 10 minutes, and Charleston County, 5 minutes, the same as the Town. She said ten minutes might be ok; however, everyone thought 15 minutes might be better if it is a complicated case. Most people would not take the extra time. 10 minutes would be better than 5. Chairwoman Lyon asked for input from the Board. Mr. Fralix recommended staying with the established 5 minutes as it worked well tonight. He said people should be prepared for the situation where they have 5 minutes to speak. Chairwoman Lyon stressed cases that involve Stormwater issues or engineering studies may require more time. Mr. Gregorie said he prefers to keep the procedure and time limit as it is. He said we had two cases tonight where the applicants spoke for 5 minutes and it lasted 1.40 minutes; he said the majority of our cases are not complicated. Several Board members spoke about extending time on a case-by-case basis, or an applicant may petition in writing to extend time. Chairwoman Lyon spoke about protecting the Town and yet be fair to the applicant. Mr. Wilson noted that changing the procedure does not mean it is set in stone; it can be changed if it becomes abusive. Mr. Smith suggested that the time is fixed to allow a maximum length of time to speak. He expressed concern if someone asks for an hour and we allow them 30 minutes. Mr. Wilson spoke about the Board getting information at the last minute and considering a set time to speak. Mr. Gregorie spoke in opposition to extending the time to 15 minutes; that 10 minutes is sufficient. After discussion. Mr. Gregorie moved to change the Rules of Procedure: Conduct of Hearing (Time Limits) for the applicant to speak to a maximum of 10 minutes. Mr. Parrish seconded.

Vote

Mr. Fralix	aye
Mr. Parrish	aye
Mr. Gregorie	aye
Mr. Smith	aye
Chairwoman Lyon	aye

Next Meeting: The next meeting will be held on July 17, 2018. Mr. Parrish gave notice that he may be absent due to knee surgery.

Adjourn: There being no further business to come before the body, the meeting adjourned at 8:51 p.m.

Respectfully submitted:

Frances Simmons
Town Clerk and Secretary to the BZA

DRAFT

Town of James Island Board of Zoning Appeals Rules of Procedure

Article I Organization

Section 1. Rules. These rules of procedure are adopted pursuant to S.C. Code § 6-29-790 for the Town of James Island Board of Zoning Appeals with 5 members appointed by Town Council for staggered terms.

Section 2. Officers. The officers of the board shall be a chair and vice-chair elected for one year terms at the first meeting of the board in each calendar year. The board shall appoint a member of the staff as secretary of the board.

Section 3. Chair. The chair shall be a voting member of the board and shall:

- a. Call meetings of the board to Order; introduce Board members to the public;
- b. Preside at meetings and hearings; and may swear in witnesses or may request the counsel; or the secretary to administer the oath;
- c. Act as spokesperson for the board;
- d. Authority to sign documents for the board;
- e. Have orders of the board served on parties;
- f. Perform other duties approved by the board;
- g. The Chair is a full voting member of the Board of Zoning Appeals; and
- h. The Chair may make or second any motion or may call a question.

Section 4. Vice-Chair. The vice-chair shall exercise the duties of the chair in the absence, disability or disqualification of the chair. In the absence of the chair and vice-chair, an acting chair shall be elected by the members present.

Section 5. Secretary. The secretary shall:

- a. Provide and publish notice of appeals and meetings;
- b. Assist the chair in preparation of agenda;
- c. Properly post property involved in appeals for variances or special exceptions;
- d. Keep recordings and minutes of meetings and hearings;
- e. Maintain board records as public records;
- f. Serve board decisions on parties;
- g. Attend to board correspondence; and
- h. Perform other duties normally carried out by a secretary.

Section 6. Members. A member must be present to vote. Each member shall vote on every question unless disqualified by law. The question of disqualification shall be decided by the member affected, who shall announce the reason for disqualification, give it to the chair in writing, have it placed in the minutes, and refrain from deliberating or voting on the question.

Section 7. Counsel. The Counsel shall be appointed by the Board upon the recommendation of the Mayor to serve on a year-to-year basis until either the counsel withdraws from the position or is replaced by the Mayor and Town Council. Counsel may assist in the preparation of orders, amendments to the Rules of Procedure, or drafting responses to appeals to Circuit Court.

Section 8. Stipend. Board of Zoning Appeals members shall receive a stipend of \$50.00 for each monthly meeting they attend. Work sessions will be considered a meeting. Stipends will not be given for cancelled meetings.

Article II Meetings

Section 1. Time and Place. An annual schedule of regular meetings shall be adopted, published and posted at the designated Town Hall office in December of each year. Special meetings may be called by the chair upon 24-hour notice, posted and delivered to all members and local news media. Meetings shall be held at the place stated in the notices and shall be open to the public.

Section 2. Agenda. A written agenda shall be furnished by the secretary to each member of the board and the news media and shall be posted at least 5 days prior to each regular meeting and at least 24 hours prior to a special meeting. Items may be removed from the agenda or postponed at a meeting by majority vote.

Section 3. Quorum. A majority of the members of the board shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting. A quorum shall include members present even if they are disqualified from voting by law.

Section 4. Rules of Order. *Robert's Rules of Order Newly Revised*, latest edition, shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

Article III Appeals Procedure

Section 1. Form of Appeal. Appeals from administrative decisions, applications for variances and applications for special exceptions shall be filed in person on forms approved by the board and provided to applicants by the Town of James Island Zoning Department (1238B Camp Road, James Island, SC 29412). The board may require additional information deemed necessary. The failure to submit adequate information may be grounds for dismissal. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.

Section 2. Time for Appeal. An appeal from an administrative decision must be filed within 15 days after the decision becomes a matter of public record by denial or issuance of a permit or the filing of a written decision in the office of the zoning administrator. An appeal shall be filed by delivery of the approved appeal form to the secretary of the board who shall notify the official appealed from.

Section 3. Calendar. Appeals and applications shall be marked with the date of receipt and placed on the hearing calendar in the order in which received. Appeals shall be heard in the order on the calendar unless otherwise set by the board for good cause shown.

Section 4. Withdrawal of Appeal. Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the board. An appeal from an administrative decision which is withdrawn may not be re-filed after the 15 day time for appeal has expired. Withdrawn applications for variances and special exceptions may be re-filed after six months and shall be placed on the calendar according to the date re-filed.

Section 5. Continuances. The board may continue an appeal or application hearing one time for good cause shown.

Section 6. Notice. Public notice of a hearing of the board shall be published in a local newspaper and posted on or adjacent to the property affected at least 15 days prior to the hearing. The notice shall contain a description of each matter to be heard and identify the applicant and property affected.

Article IV Hearing Procedure

Section 1. Appearances. The applicant or any party in interest may appear in person or by agent or attorney. The board may postpone or proceed to dispose of a matter on the records before it in the absence of an appearance on behalf of an applicant.

Section 2. Witnesses. All persons giving testimony must be sworn in before being called upon by the Chair to speak. Witnesses may be compelled to attend by subpoena requested at least 10 days prior to a hearing and signed by the chair. The board may call its own witnesses when deemed appropriate.

Section 3. Cross-examination. No party shall have the right to cross-examine witnesses; however, the opportunity to examine opposing witnesses may be freely extended when conducted in an orderly manner. Intimidation of witnesses will not be allowed.

Section 4. Evidence. Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony which is not cumulative or hearsay will be received. The chair will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.

Section 5. Conduct of Hearing - Appeals. The normal order of hearing, subject to modification by the chair, shall be:

- a. Call to Order;
- b. Prayer & Pledge;
- c. Compliance with the Freedom of Information Act;
- d. Introduction of Board members by the Chair;
- e. Review and act on Summary of previous meeting;
- f. Brief the public on the Procedures of the BZA;
- g. Administration of Oath for all participants giving testimony;
- h. Statement of matter to be heard (chair or secretary);
- i. Presentation by Appellant (5-minute limit);
- j. Questions to Appellant by BZA;
- k. Presentation by official appealed (5-minute limit);
- l. Questions to Staff by BZA;

- m. Presentation by public in support or opposition (2-minute limit);
- n. Rebuttal by Appellant (2-minute limit);
- o. BZA motions to close the case to the public;
- p. BZA motions stating specific findings of fact and conclusions of law; and
- q. Hear next case; additional business or Adjourn.

The board may question participants at any point in the hearing. All questions shall be posed by members of the board. No person may speak for more than the time limits outlined above without majority consent of the board.

Section 6. Conduct of Hearing – Variances and Special Exceptions. The normal order of hearing, subject to modification by the chair, shall be:

- a. Call to Order;
- b. Prayer & Pledge;
- c. Compliance with the Freedom of Information Act;
- d. Introduction of Board members by the Chair;
- e. Review and act on Summary of previous meeting;
- f. Brief the public on the Procedures of the BZA;
- g. Administration of Oath for all participants giving testimony;
- h. Statement of matter to be heard (chair or secretary);
- i. Presentation by Staff (5-minute limit);
- j. Questions to Staff by BZA;
- k. *Presentation by Applicant (10-minute limit);
- l. Questions to Applicant by BZA;
- m. Presentation by public in support or opposition (2-minute limit);
- n. Rebuttal by Applicant (2-minute limit);
- o. BZA motions to close the case to the public;
- p. BZA motions stating specific findings of fact and conclusions of law; and
- q. Hear next case, additional business or Adjourn.

The Board may question participants at any point in the hearing. All questions shall be posed by members of the board. No person may speak for more than the time limits outlined above without majority consent of the board.

Section 7. Disposition. The Board may deliberate and make final disposition of a matter by majority vote of members present and qualified to vote. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which he or she has not heard. Deliberating and voting shall be done in public.

Section 8. Form of Order. An order shall be issued disposing of a matter by granting or denying relief with such conditions may be deemed necessary; or affirming, modifying, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusions of law shall be separately stated in an order.

Section 9. Service of Order. The secretary shall deliver a copy of an order to each party in interest by certified mail immediately upon execution of the order by the chair.

Section 10. Rehearing. The board may grant a rehearing of an application which has been dismissed or denied upon written request filed with the secretary within 30 days after delivery of

the order accompanied by new evidence which could not reasonably have been presented at the hearing, or evidence of a clerical error or mutual mistake of fact affecting the outcome. Upon vote of the BZA, a member from the prevailing side may make a motion to reconsider a case at the same or next BZA meeting. Any member may second the motion. If the motion to reconsider the case is granted, then the case will be scheduled and heard by the BZA at the next available BZA public hearing. A case may be reconsidered only once. The BZA may vote to consider amending or removing a condition(s) for approved Variances or Special Exceptions within a year from the approval date, only when the applicant/owner can demonstrate to the BZA that the condition(s) is not feasible and/or cannot be reasonably met or if the Planning Director determines that the conditions are not in the best interests of the Town. If a motion to reconsider a condition(s) is granted, it will be scheduled and heard by the BZA at the next available BZA public hearing.

Article V Records

Section 1. Minutes. The secretary shall record all meetings and hearings of the board on tape which shall be preserved until final action is taken on all matters presented. The secretary shall prepare minutes of each meeting for approval by the board at the next regular meeting. Minutes shall be maintained as public records.

Section 2. Transcripts. Any applicant or party in interest may request a transcript to be generated from the recording of the meeting or hearing. The cost of such transcript shall be at the expense of the applicant or party of interest. In the event there is an appeal to Circuit Court the transcript shall be done at the expense of the Town but may be awarded by the Court at the expense against the party or person bringing the appeal.

Section 3. Orders and Documents. The secretary shall assist in the preparation and service of all orders of the board in appropriate form. Copies of all notices, correspondence, documentary evidence, orders and forms shall be maintained as public records.

Article VI Amendment and Adoption

Section 1. Amendment. These rules may be amended at any regular meeting of the board by majority vote of the members of the board at least seven days after the written amendment is delivered to all members.

Section 2. Adoption. These rules were adopted by vote of a majority of the members of the board at a regular public meeting on June 18, 2013.

Attest _____
Secretary

Chair