

TOWN OF JAMES ISLAND  
BOARD OF ZONING APPEALS  
SUMMARY OF JANUARY 17, 2023

The Board of Zoning Appeals held its regularly scheduled meeting on Tuesday, January 17, 2023 at the James Island Town Hall, located at 1122 Dills Bluff Road, James Island, SC.

Comm'rs 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, Niki Grimball, Town Administrator, Bonum S. Wilson, Town Attorney, and Frances Simmons, Town Clerk and Secretary to the BZA. A quorum was present to conduct business.

Call to Order: Chairwoman Lyon called the BZA meeting to order at 5:02 p.m. She asked anyone who wished to speak and had not signed in, to please do so and to silence cell phones. She asked Board Members to please speak loudly into the mics for the purpose of transcribing the minutes.

Chairwoman Lyon asked all who wished to join in prayer and followed with 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 notifications were given that the meeting would also be live-streamed on the Town's You-Tube Channel.

Introduction: Chairwoman Lyon introduced herself and the members of the BZA. She mentioned that Comm'r Hipp needed to leave the meeting at 7:30 p.m., but a quorum would still be present to conduct business. Also introduced were: BZA Attorney and staff. Elected officials: Town of James Island, Mayor, Bill Woolsey, Town Councilmember, Garrett Milliken, James Island PSD Comm'rs, Inez Brown-Crouch, and newly elected, Paul Cantrell, and Deputy Chris King, Island Sheriff's Patrol.

Chairwoman Lyon thanked the staff and commented that it has been quite a past year for BZA meetings, and this year is starting off with a bang. She appreciates the staff's hard work. A huge thank-you was given to David Savage for chairing the November meeting. Chairwoman Lyon shared that her father had been ill for some time and she received a call the day of the meeting that he had been given a very short time, so she called David and he confidently stepped in within a few hours' notice and did a great job, which she appreciates. She made it within a few hours before her dad passed away. She thanked everyone for their support during that time.

Review Summary of Minutes from the October 18 and November 15, 2022 BZA Meetings: Chairwoman Lyon stated that the October and November minutes were provided in the meeting packets and she understands there may be some changes. If so, a motion is required to amend the record from the draft version in order to correct the minutes for final form.

Comm'r Hipp moved to amend the November 15, 2022 Minutes for She Case #BZAP-10-22-026: Appeal of Zoning-Related Administrative Decision (Home Occupation Bed and Breakfast permit denial at 10-27 Grand Concourse Street) in the RSL Low-Density Suburban Residential Zoning District (TMS#428-11-00-005);

**Under Questions from the Board, the draft reads: In 2015, she said one of their biggest fights was short-term rentals. She said from 2015-2018, short-term rentals increased from 50 to 103,000. They were everywhere....**

***Comm'r Hipp amended her statement to read: In 2015-2018, she said one of their biggest fights (she states that she uses the term fight loosely) was short-term rentals. She said from 2015-2018, short-term rentals increased from (she states that these numbers are an estimate) about 50-100 to 3,000. They were everywhere....***

Chairwoman Lyon seconded the motion. There was no further discussion on the amendment and it passed unanimously. Vice Chair Savage moved to accept the meeting minutes of October 18 and November 15 as amended; Chairwoman Lyon seconded.

Vote:

Comm'r Fabri:	aye; (October); abstained November (due to absence)
Comm'r Hipp:	aye
Vice Chair Savage:	aye
Comm'r Smith:	aye
Chairwoman Lyon:	aye; (October); abstained November (due to absence)

*Passed as amended.*

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 those Presenting Testimony: Mr. Wilson swore in the individuals who wished to provide testimony.

Comm'r Fabri moved to reverse the order of the cases on tonight's agenda; Vice Chair Savage seconded. Comm'r Fabri stated her reason is the variance for the fence may be less involved. Comm'r Smith agreed.

Vote:

Comm'r Fabri	aye
Comm'r Hipp	aye
Vice Chair Savage	aye
Comm'r Smith	aye
Chairwoman Lyon	aye

*Passed unanimously*

Case #BZAV-12-22-031: Variance request for the construction of an 8' privacy fence in the front setback of a residential lot in the Low-Density Suburban Residential (RSL) Zoning District (TMS# 454-10-00—038): Planning Director, Kristen Crane provided the staff's review.

The applicants, Ms. Jeanette A. Kress, and Douglas E. Ries, are requesting a variance for the construction of an 8' privacy fence in the front setback of a residential lot in the Low-Density Suburban Residential (RSL) Zoning District at 649 Harbor View Road. Adjacent property to the west, east, and south is zoned RSL in the Town of James Island. Adjacent property to the north is zoned Single-Family Residential (SR-1) and is in the City of Charleston's jurisdiction.

*Town of James Island Zoning and Land Development Regulations Ordinance § 153.066 C(1)(b)(1)(a) states that 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 is a 0.29-acre lot and currently has one home, built in 1966 per Charleston County records. The current property owner purchased the property in August of 2021. The applicants are requesting 22.5' of 8' privacy fence within the 25' street side setback "to increase our privacy, improve security and livability in our permanent, personal residence". The requested section of fence would be adjacent to the property line between 649 and 643 Harbor View Road.

**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:** **In their letter of intent, the applicants describe "extraordinary/exceptional circumstances" including "loud music, engine revving and loud noises" as impacting the livability of their property. Therefore, there may be extraordinary and exceptional conditions pertaining to this piece of property**

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 the Town of James Island has not received other complaints regarding "loud music, engine revving and loud noises" in this area. Additionally, in their letter of intent, the applicant states that "these conditions do not apply to other property in the vicinity to our knowledge".**

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 §153.066 to the subject property would prohibit the construction of the section of fence at the requested height in the front/street side setback.**

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 character of the zoning district should not be harmed, and the authorization of the variance should not be of substantial detriment to adjacent property. The**

**proposed location of the fence will not obstruct neighboring properties view for vehicular access to Harbor View Road.**

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:** **In their letter of intent, the applicant describes the necessity of the variance to “increase our privacy, improve security and livability in their permanent, personal residence” due to circumstances including “loud music, engine revving, and loud noises.” Therefore, the need for the variance may not be the result of the applicant’s own actions.**

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

**Response:** **The granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.**

*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 building 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 (§153.045 E 2).*

**Action:**

The Board of Zoning Appeals may approve, approve with conditions, or deny Case # BZAV-12-22-031 (Variance request for the construction of an 8’ privacy fence in the front setback of a residential lot in the Low-Density Suburban Residential (RSL) District) based on the “Findings of Fact” listed above, unless additional information is deemed necessary to make an informed decision. In the event the Board decides to approve the application, the Board should consider the following conditions:

1. The applicant shall obtain the required zoning and building permits before fence construction.

**Questions from the Board:**

Comm’r Hipp asked if the fence would be along the front and the side, or only on the side. Mrs. Crane replied that it would be on the side between the existing lot.

Comm’r Smith stated to be clear, if the fence is only on one side of the property and Mrs. Crane said yes and noted on the slide for clarity. Comm’r Smith asked that in front of the dotted line (on slide) if the applicant could have a 4’ or a 6’ chain link fence and not need a variance. And Mrs. Crane said yes.

Comm’r Fabri asked the height of the neighbor’s fence, 6’? and Mrs. Crane said it is over 7’.

Applicant Presentation:

Janette Kress, 649 Harbor View Road, was sworn in by Mr. Wilson. Ms. Kress stated that her request for the fence is a privacy issue. She did not want to call anyone out but there is a structure between their property that is not conducive to them and does not allow them privacy. It doesn't allow them to have décor or landscape because there are all sorts of stuff on the other property. She doesn't mind them having it there but doesn't want to look at it. They have plenty of yard space and love the area and the beach and if they want to have their home and yard beautiful, it can't be connected to an eye sore. She said another piece of this matter is they cannot communicate properly or friendly with the neighbor so they thought to put a stop to this and go on with their lives. They love it here.

Questions from the Board:

Comm'r Hipp asked about the loud music and engine revving and if it isn't necessarily coming from Harbor View Road. Ms. Kress replied it is coming from the neighbor's house and it is typically between 8 p.m. – 2 a.m. Comm'r Hipp asked if the neighbor owned the house and Ms. Kress said yes. Ms. Kress said they did their best to work with law enforcement to come up with the right thing to do; but it is a very difficult situation. Comm'r Hipp asked if she believes having the fence would help mitigate that. She said it would prevent the neighbor from watching them, bending over their property. If she is in her car or walking up her driveway she is screamed at and the neighbor does what she considers inappropriate things. She doesn't need that because she is not doing anything -- she is in her own home. She further stated that when she tends her front yard getting yelled at. She doesn't want to live that way. Comm'r Hipp asked, Ms. Kress how long have they owned their home. Ms. Kress said one year ago last August. She further said there were no problems for eight to nine months then something went wrong. She said she doesn't want to say anything unpleasant about anyone. Commissioner Hipp reminded her that she is on the record and she understands it is not a pleasant place to live when things like that happen and they don't need to be awakened in the middle of the night.

Vice Chair Savage said he drives down Harbor View Road every day to get to and from work every day and he's seen the escalation of construction so his only question to Ms. Kress is what took her so long to make an application for the fence. Ms. Kress said they came to the Town and talked to James Hackett, and some other staff to try to get the lay of the land and she got confused about the 6' fence. They did not know where the setbacks were so after talking and talking about it they decided to have a survey done got copies and brought it to the Town to be done correctly. She said if this could've been done on July 15 they would have done it.

In Support: No one spoke.

Chairwoman Lyon said the Board received one (1) email in support as long as the 8' fence is meant to provide privacy between the two neighboring houses.

In Opposition: No one spoke.

Chairwoman Lyon closed the Hearing to the public and moved to approve the variance with the condition set forth by staff that the applicant shall obtain the required zoning and building permits before fence construction. Motion was seconded by Vice Chair Savage.

Vice Chair Savage said he was in favor of approving the variance request. Comm'r Smith stated that the criteria was met and he understands better now based on the testimony the Board heard. Chairwoman Lyon said she agreed after reviewing the criteria presented by Ms. Crane.

Vote

Comm'r Fabri            aye  
Comm'r Hipp            aye  
Vice Chair Savage      aye  
Comm'r Smith           aye  
Chairwoman Lyon      aye

*Passed unanimously*

Chairwoman Lyon stated for the record the unanimous decision by the Board is because the variance met all the criteria. She restated for the record that she moved for approval and Vice Chair Savage seconded. The Board's final decision will be mailed to the applicant within ten (1) business days and questions regarding this approval should be directed to the Planning and Zoning staff.

Case #BZAV-9-22-030 (Resumed): Variance request for the removal of two grand trees (44" DBH Live oak and 37.5" DBH Live oak) in the Right-of-Way of Camp Road (1182 Fort Johnson Road) for intersection improvements at Camp Road and Fort Johnson Road:

Chairwoman Lyon announced that a Public Hearing was held at the October meeting and at the November meeting time was granted to receive more information from the applicant.

Chairwoman Lyon moved to bring Case #BZAV 9-22-030 back to the table, seconded by Comm'r Smith.

Vote:

Comm'r Fabri            Aye  
Comm'r Hipp            Aye  
Vice Chair Savage      Aye  
Comm'r Smith           Aye  
Chairwoman Lyon      Aye

*Passed unanimously.*

Chairwoman Lyon said tonight is not a Public Hearing but comments will be received so everyone has a chance to be heard.

Board Questions to Staff:

Comm'r Hipp asked the difference between the two separate level 2 reports. She said the Board received one from the County containing 54 pages, and one from Ms. Welch that were level 2 reports. She asked how could one report be so drastically different from the other. Ms. Crane said she could not answer that question and would defer it to the County's arborists. Comm'r Hipp said she would ask them that question.

Comm'r Hipp said she seemed to recall that this project must still be approved by Town Council and asked if the Board approves this tonight, does it still have to go through one more step? Ms. Crane said not for the trees, but the project itself. Comm'r Hipp asked if the project could happen without the trees removed and Ms. Crane answered that they both have to happen.

Comm'r Fabri asked if an arborist report was submitted with the original application, or if one was submitted at the October meeting. Ms. Crane said no, Natural Directions graded the trees. Comm'r Fabri noted that it was not a full report like what was given today.

Applicant Presentation:

John Martin, Project Manager, Charleston County Government  
4045 Bridgeview Drive, North Charleston, SC

Mr. Martin gave a slide presentation to the Board of the project for the Camp Road and Ft. Johnson Road Intersection Improvement. (Presentation at end of minutes) he indicated that the arborists would speak to the health of the trees, its impacts, and their report findings.

Ashley Connelly, Charleston Tree Experts

2851 Maybank Highway, Johns Island: Ms. Connelly, Charleston Tree Experts, provided an overview via a slide presentation. She said with her is Marshall Badeaux, ASCA, Registered Consulting Arborist. An overview of the report based on a level 2 evaluation, determined that the 36" Live Oak (tree #1), 44 Live Oak (Tree #2), 23" Laurel Oak (Tree #4), 32" Live Oak (tree #5) and 44" Laurel Oak (Tree #6) outlined in the report would not sustain through construction, are structurally compromised, an imminent hazard and should be removed as soon as possible to reduce unnecessary risk of failure, injury to people and/or damage to property.

The 30" Live Oak (Tree #3) has a high survivability rating if properly preserved through construction and no additional encroachment is permitted. Any additional shift to the west would likely compromise the health and structural stability of this tree and cause its ultimate destruction as well.

Conclusions: Trees #1 and #2 are hazardous and no longer viable specimens. The proposed conceptual construction plan would significantly increase the risk of mechanical failure, increase the hazard each tree poses to life and property within 1x its height. There is no way to mitigate risk and removal is the only option.

Tree #3 is a moderate risk and will sustain through construction under the original site plan if an adequate Tree Preservation Plan is enacted.

Trees #4 #5, and #6 are hazardous and no longer viable specimens. There is no way to mitigate risk and removal is the only option.

Report Recommendations: Trees #1 and #2 do not cater plans to retain these trees. Complete removal utilizing ANSI A300 Standards for Tree Care Operations.

Tree #3: Cater construction plans for the preservation and retainment of Tree #3. Enact an adequate Tree Preservation Plan, and prune to remove dead limbs 1" in diameter and greater to reduce risk.

Trees #4, #5 and #6: Do not adjust plans to retain these trees. Complete removal utilizing ANSI A300 Standards for Tree Care Operations.

Mr. Martin said the County's decision is based on the arborist report and their recent analysis of changing the design by shifting west, plus other alternatives they have done in the past, this current proposal is the least impactful to the trees and properties of the residents in the area. He said the County will make every effort to monitor the health of all trees in that intersection when they go to construction with tree protection measurements and will do tree mitigation for trees that are removed.

### Board Questions to Applicant:

Comm'r Hipp said she was curious how the three tree reports could be so different; including the spreadsheet from the contractor in October.

Comm'r Fabri answered Comm'r Hipp's question by explaining the initial spreadsheet received from the County, the application graded the trees a "C", that is what their landscape person testified to when he was here. The initial meeting in October the arborist retained by Ms. Welch graded them a "B" and this report grades them an "F"). She said this seems to be quite a disparity and she asked the arborist to speak to that.

Ashley Connelly, Charleston Tree Experts: Ms. Connelly said they also looked at the report from the arborist hired by Ms. Welch. She said the content of the report was probably the biggest difference. She said her company prides itself on doing a thorough job and taking their certification very seriously and inspects trees based on what is required for a level 2 basic tree risk assessment. She said Marshall Badeaux is more qualified than both arborists and perhaps that played a part. Mr. Badeaux is a Registered Consulting Arborist and holds an ISA Board Certified Master Arborist Certification. She said there are no other individuals in the state that hold those credentials.

As far as grading, she said there is a difference between a health grade and a risk grade. What was found in the report from Mr. Murphy seemed to combine them which is not appropriate in grading the health of a tree.

Marshall Badeaux, Charleston Tree Experts, 2851 Maybank Highway, Johns Island, SC: stated that basically Mr. Murphy tried to go back to the tree risk assessment guide for the rating system but there is no A,B, C, D. Their grading system has two components, using low, moderate, high and extreme which goes back to the track system and the A,B,C,D repetition is a component of the health grade itself. They find with the K pathogen contained in the tree were typically going to grade into a D or F based on their experience with tree failure. Also the existence of wood decay pathogens is going to increase the risk rating as well because it undermines the root color of the tree and is turning port wood at the base now supporting a significant amount of weight above the weakened area.

Comm'r Fabri referred to the Murphy report about tree risk assessment qualification and asked Mr. Badeaux if that is what he is referring to. She said in the Murphy report he talked of how terms such as good and fair are not accurate, and that you need to use tracts so it seems that is what he was using to look at these. She thinks in another letter he submitted to the Board that he has been working as an arborist since 1972. Mr. Badeaux said he was in the New England area, the Savannah area, and now Charleston.

Comm'r Fabri asked if Parish was the first arborist that looked at the trees (from spreadsheet the Board received). She stated that Natural Directions, a qualified arborist, graded the trees a "C". Mr. Badeaux spoke that neither arborists did a thorough job. Mr. Badeaux said he spent a lot of time at the site and also reviewing pictures on Google Earth. Ms. Connelly added that in the Murphy report he indicated that pruning the trees would upgrade them to an "A". She said no tree is a grade "A". She also said that neither of the arborists pointed out what was identified as wood decay pathogen. If they were aware of this, their grading would've changed. She reiterated that wood decay pathogen is a disease that compromises the tree's structural integrity; a tree may look big and beautiful, but it will not stand. She mentioned continuing education and said that Mr. Murphy has apparently worked as an arborist since 1972. She indicated that continuing education is needed to stay up to date with current science.

Comm'r Hipp stated that it appears that pathogen was detected in trees 1 and 2. She asked if they did not detect pathogen in the other trees and if tree #3 is good. Ms. Connelly answered yes, and that the focus has



been trying to save two trees that have structural issues that will not survive construction and that there has been no attention paid to preserving the others.

Mr. Martin pointed out that the evaluation by Natural Directions was done over four years ago so a decline in the trees has occurred since that time. Disease could be in a tree and not show itself immediately because it is internal.

Comm'r Hipp asked if there are other trees, i.e., # 1 and #2 that would go through the same situation because they would not survive construction and if the others were looked at. Ms. Connelly mentioned that #3 would survive because it is far away from construction. #4, (Laurel Oak) #5 (Live Oak), and #6 (Laurel Oak) will not survive because they are already not in great condition and unsure they will survive construction. Comm'r Hipp asked if she were certain and she said she was pretty sure they would not survive. Comm'r Hipp asked her if she was certain to the point that she is certain about Trees # 1 and 2. Ms. Connelly said the focus has been on 1, 2 and 3 but 4 and 5 definitely would not survive; so the shift does not make a difference for them. Comm'r Hipp thanked Ms. Connelly for doing a good job in helping her to understand trees.

Comm'r Smith asked to see Concepts "A and B". He said between Concept "A and B", the unused asphalt in the median in the center of the road appears to go further in "A" than it does in "B" and asked why.

Mr. Martin explained that the alignment had to be shifted for the entire intersection. Comm'r Smith asked if it is as narrow as it can be. Mr. Martin said it is as narrow as they can make it in that section and still meet the requirements of building the intersection the way it needs to be for vehicles to get through the traffic circle. Comm'r Smith asked if that has always been done that way, are there exceptions to make it narrower?

Davin Wallace, Senior Roadway Project Engineer, Holt Consulting Company spoke that he prepared the drawing and believes what Comm'r Smith is referring to is called a "splitter island" which is a standard for this style of round-about. He said it provides a safety benefit to pedestrians as they cross the street so that 6' width is the required width per DOT standards. Comm'r Smith asked if it is as close to the circle as it can be. Mr. Wallace said yes, that the DOT has specific standard requirements. There is a regular shape and dimension of that splitter island that is a minimum for the standard. Comm'r Smith asked if exceptions are ever made to the standard and Mr. Wallace said not of which he is aware. Comm'r Smith said he is asking if there is anyway it could be shrunk because he needs to understand why. There are so many places on James Island with asphalt in the middle of roads unused and we have runoff problems and going into the marsh. Comm'r Smith said he doesn't understand why we need the extra asphalt and could the speed limit be reduced by 5 MPH or can the requirements change? Comm'r Smith said he has driven in England and they have much smaller roundabouts than we do. Mr. Wallace said every effort has been made to meet the minimum standards that is permitted by the DOT. Mr. Martin said another consideration is the circle has to be based on the size of vehicles traveling down Fort Johnson Road. He said there are smaller roundabouts, but they may not have the same size vehicles traversing those roads. He said the road has to be large enough to accommodate school buses, fire trucks and commercial trucks and if it is reduced it still would not change the width of the road for the impacts on the trees. Regarding runoff, he said drainage will be put into the project and Comm'r Smith answered that he is more concerned with excess asphalt.

Don Alexander, Parrish & Partners spoke that in general the DOT is trying to go bigger. The standards are creating the additional right of way in general. He believes this is a smaller roundabout but they can't go any smaller. He said this is the smallest roundabout to get approved by the DOT and is what they have designed and is referred to as a "mini roundabout", smaller than the standard because they initiated the design prior to the current standard. They would not permit a variance because it already does not meet current design standards as the process was implemented prior to the current standards. Chairwoman Lyon

asked if it is grandfathered in even though it is not completed and he said as long as we continue forward with this alternative and not deviate; to go back to the main roundabout style would require a larger diameter roundabout.

Comm'r Fabri said that didn't make sense because, if she understands correctly, this is the alternative that came out of discussions from the October meeting so this is not the original plan. Mr. Alexander said Comm'r Fabri was correct and that particular slide shown is the shifting. Mr. Martin talked about how the alignment would look if it were moved around for the trees, but it would not make everything smaller.

Comm'r Fabri asked Comm'r Smith if what he is referring to is that Option "B" seems smaller. Comm'r Smith said he see less asphalt in the median next to the tree and more in the other option; this this is not the current design. Mr. Martin said this is a conceptual design; that they have made significant efforts to reduce much of the pavement for the correct design that has been submitted. Mr. Alexander said this is a conceptual plan not engineered drawings.

Comm'r Smith asked how far would the trees be from the asphalt? If the tree were left would the road run through the tree? Would the tree be next to the road and damage the roots? Mr. Martin said it would be right up on the tree and you would not be able to put the road on top of the roots and have it survive.

Chairwoman Lyon asked about curb and gutter and Mr. Martin said it would not be possible to build it with the road and curb on the tree trunks. Chairwoman Lyon also asked if the trees could be left and let them take their chances and do a curb and gutter. Mr. Martin said it would be even closer to the road than it is now. Comm'r Smith said the tree would be closer, but would it be in the road? Mr. Martin said it would be in the 10 ft. diameter area of the trunk.

Comm'r Hipp commented that Option #2 does not in fact save both trees. It would only save one of them if theoretically it survives construction.

Ms. Connelly spoke about trees #3,4, and 5. She said #6 if shifted westward, utilities would have to be moved for the 10 ft. clearance required on either side of the line. #6 would require significant pruning which it already has had. She did not think #6 would survive substantial pruning.

Comm'r Fabri asked if this roundabout is the same size as the one at Camp and Riverland or Harborview Mr. Wallace said the intent of the design of the project for the tractor trailer would deal fully traversing the island ... so tractor trailers would be able to mount any portion of the island is why it is not landscaped; it would be all concrete.

Vice Chair Savage commented that he is not the smartest guy on this panel and needed to go back to the basics for his analysis. He asked the reason for this upgrade is to improve the safety of this intersection and Mr. Martin said yes, He stated that Plan "A" as he understands is the smallest it can get with regard to the circle size and the answer was yes. He commented that two trees would be lost? and the response was yes. Vice Chair Savage said either in the October or November meeting, the Board asked to see if it could be moved over in a westward direction, and Mr. Martin answered yes. Vice Chair Savage noted that would require taking more land from other homeowners along Camp Road (on the west side). He spoke to Ms. Connelly, stating as he understands Alternative "B" would require the removal of three (3) grand trees and impact eight (8) trees. If he is concerned with tree removals, he does not want to consider Plan B because that would result in more trees being lost. He said his questions are on Plan "A" and asked if all the other alternatives have been considered from an engineering standpoint to put the roundabout in without losing those two trees. Mr. Martin said that they have. They have looked at the intersection and the design and they do not want to remove the trees. He said if there was a way to design the intersection and still meet the project's goals, requirements, and specifications they have to meet for the State and avoid the trees they

would definitely do it but this is the smallest they can do to get the project approved and it is impossible not to lose the trees.

Vice Chair Savage said he has listened to the public that spoke during public comments and by far most of them don't have a problem with improving the safety they just want to make sure that we explore all alternatives to save those two trees. He said he think that he understands the theory behind why a traffic circle is safer than putting in a stop light. He remembers one or two people from the public comments say "Why can't you put a stop light there". He asked Mr. Martin to explain for the record why a roundabout is intended to be a safer means of navigating this intersection than a traffic light. Mr. Martin said they did look at a traffic light for the circle a few years ago. But, in order to do that they would be required to put in terminals. The DOT would require terminals because of traffic at that intersection. He said they quickly moved away from that because it would cause the removal of up to 16 trees and it didn't seem like it would be a good plan and they looked at a traffic circle, but they did look at traffic signal at the intersection.

Vice Chair Savage asked if he understood from Mr. Martin's testimony or presentation that in order to improve the safety of this intersection, which most people in the public comment acknowledges to be done that the least offensive Alternative is Plan "A" because it only impacts two grand trees and Mr. Martin answered yes.

Chairwoman Lyon thanked the applicants for their presentation.

#### Public Comments:

##### Support:

Mayor Bill Woolsey, 961 Mooring Drive: The Town for many years, since I've been Mayor asked the DOT (Department of Transportation) and the County what could be done about this intersection that is a clear safety hazard. Finally, some years ago it was placed on the Half-cent Sales Tax Referendum and passed. So the County took over working on the project. It is very important that people who have asked you to deny this case approval for the most part have agreed that the traffic circle is desirable and to look at some way to take fewer trees. I think that approving this is a good decision. I think that our community definitely would like to see a traffic circle and can we do the traffic circle in a different way that takes fewer trees. I also would like to mention that some have said "why don't we just have a four way stops". The DOT is not going to approve four-way stop signs on Ft. Johnson Road. That was considered by the County as part of the proposal. There is too much traffic on Ft. Johnson Road to allow stop signs to be put in. Could we have a traffic signal? Now it was mentioned that if we put a traffic signal they are going to require, not all citizens understand this, but they're going to require the turn lanes which will also take a lot of trees, but also we need to emphasize that may not meet anywhere close to the requirements for a traffic signal. There is not enough through there to allow a traffic signal. Too much for a traffic signal on Ft. Johnson, and not enough on Camp and Dills Bluff for a traffic light so it's a traffic circle or nothing. I can assure you in my conversations with the County over this entire period I've insisted that there are a lot of great trees. The one that is further up on Ft. Johnson directly across the street from the Fire Station I think is the most beautiful tree in the intersection. I pointed out that trees are an issue and you need to figure out a way to take few trees as possible. I've read citizens that says the "County doesn't even care about trees." Well, I can assure you, they do. That's what they testified to and we all do. If there was a way to have this project and save all the trees that would be great. If there are any viable and healthy trees, we don't want to take it down; no one wants to take them down. So really, just the question is most people understand the needs of the travel and safety. (*time was called*).

Inez Brown-Crouch, 1149 Mariner Drive: I am 83 years old and grew up on James Island. Trees are not a problem on James Island. We have so many trees on James Island that trees are not a problem. Safety is a problem. I am here to support a roundabout. I grew up here when it used to be a dirt road. We used to walk

it. It is horrendous; the high school, the buses, the kids. Try to come down Ft. Johnson Road at 3:30 p.m. in the afternoon, you could get killed. Camp Road and Ft. Johnson Road is a nightmare. So I am here to support the roundabout. Roundabouts saves lives. I know people who have died in that area and I don't want to see that anymore. So I am here to say that if we are going to lose two trees, so what, we have a lot of trees here on James Island so cut it out.

Mark Johnson, 6038 Admiral Blake Lane, Town of James Island PW Director: concern is safety and is the main thing that he cares about. With a roundabout it's going to be a lot safer. He travels through that intersection many times a day and it is a challenge so to reiterate, it's a safety issue.

Opposition:

Garrett Milliken, 762 Fort Sumter Drive: I don't envy your task this evening. This is a very difficult decision to make, one that shouldn't be entered into lightly. Just because it passed the Half-Cent Sales Tax doesn't mean that we have to do it the way they say we have to do it. I'm not sure the turn lanes are necessarily needed. I think that we could probably get past the width of the road for a traffic light. I think that is something that's an option that needs to be explored. I like traffic circles, they're wonderful but they are also pretty big and take up a lot of space and they don't do much for drainage. All that water just flows into the culvert and then out into the marsh, not a good way to go. Trees actually aid in the hydrology issues that we have on the island and trees actually provide a whole lot of relief from all the issues we're having as a country right now. I think even losing two trees is a tragedy, particularly two grand trees and I will not trifle with all the issues related to the differences and opinions about how they're rated. I'm not going to trifle about the way all of these things are just thrown in about the public even knowing; it's all rather remarkable but what I am going to speak to are some of the things that adopts the criteria for regional value. I have exception with Criteria D where in the authorization of the variance will not be of a substantial detriment to adjacent property and the character of the zoning district would not be harmed by the granting of the variance. I present that the character of the zoning district will be harmed by the loss of trees from an established allee of oaks that gives James Island its character. Having examined the trees in question, I assign a higher grade because they certainly do not deserve an F grading. Along those same lines, what are we going to do with the other trees that received the F grading? According to Mr. Badeaux's report I think that all but one tree was an F grading. Are we going to cut them all down now with that information? I'd like to know. Regarding Criteria G, granting the variance does not substantially conflict with the Comprehensive Plan for the purpose of this ordinance. The Town of James Island continually supported planting trees for Arbor Day... (*time was called*).

Paul Cantrell, 1163 East and West Road: a couple points. In the meeting in November I didn't hear that anything came back from the DOT on the variance for drainage – whether there would be boring or to go around it. I didn't hear any resolution on that. The second thing I really noticed is the Town of James Island could really spend more money on trees in the right-of-way. These trees have vines that could've been removed. I implore the Town to increase its budget.

Jenny Welch, 1163 East and West Road: As you all know, I hired a Master Certified Arborist, Michael Murphy to examine the two live oaks. All of you have seen the report and he stands by the rating of those trees. The County writes that they are concerned the root damage done during construction would be detrimental to the trees. Mr. Murphy states that most live oaks would stand root loss along with known disturbances on the other side of the tree. This would be the case here. The health of these two trees have become quite controversial. Initially they were graded fair by the County and Mr. Murphy graded them a B and now the new County arborist rated them F. All I know is that these two trees have stood on this ground for more than a century. In reference to variance Criteria D stating the tree removal would not be a substantial detriment to adjacent property to the public good and character and the zoning district would not be harmed, I have to disagree. The family on the corner would be directly adversely affected. Right now the shade of the canopy covers much of the roofline keeping the house cooler especially in the hot

summer months. I image this will cause the electric bill to increase substantially. Moreover from the public's perspective this is one of last remaining live oak allees on James Island that many people find a sacred symbol of living on the sea islands. We all will suffer from the loss of these trees. Criteria G says granting of the variance would not substantially conflict with the Comprehensive Plan or the purpose of this ordinance. Granting the variance to cut down two historic trees rated B by a Master Arborist will substantially conflict with the Town of James Island's Comprehensive Plan that recognizes the importance of trees and includes strategies to preserve and protect them. I would like to wholeheartedly thank the BZA for all of your careful consideration over the last few months regarding the future of these live oaks. Please deny this application.

Applicant Rebuttal: Devri DeToma, Charleston County: provided clarification from something the Mayor spoke about. She said before they started this project, they had a traffic study done by the DOT and it was not even close to warranting a light. So even if we asked them to eliminate the turn lanes, we have a letter stating that they would not allow a light at that intersection. She also addressed the Board about drainage that their arborist has made it known that the actual construction itself with or without the drainage that these trees are a safety hazard. She said the project is in place for safety reasons; they do not want a tree falling into the road.

Mr. Martin said he agreed with those comments and he was going to address the DOT letter. He said that would not change anything because and the road itself is detrimental to safety.

Chairwoman Lyon closed the hearing at 6:46 p.m. and moved for the approval of Case #BZAV-9-22-030 with the conditions set forth by staff with an additional condition that the trees are not removed until all permitting of the project is completed and all municipalities have signed off first; seconded by Vice Chair Savage for discussion.

Comm'r Hipp asked the Chair if all of the letters were tallied. Chairwoman Lyon said a petition, 84 signatures including the additional 6 received tonight; emails/letters received today were 80 supporting. She said of them supported the variance to remove the trees for the traffic circle; there were a few that just wanted the trees cut down. There were a lot of people who said they loved trees but safety was more important. There were 50 emails that were received against the application. Most of these address safety. They want the roundabout and want to save the trees also. There were a number of them that wanted a stoplight (less than 10). Then, we had the additional arborist report that Ms. Jenny Welch took the time and expense as a private citizen to provide to the Board and she appreciates that as well. She studied it and appreciated Mr. Murphy taking a look at it and it was different information than what the Board heard tonight. Comm'r Fabri added that the Board is not here tonight to vote on whether or not there is going to be a roundabout constructed just like they're not here to vote on other road projects for James Island. What they are here for is to consider the removal of two trees. Now, whether they are not removed, the County showed several options would it mean that they wouldn't come back and ask to remove the other ones that were graded F. She wants to clarify all this because there has been a lot of discussion about "I'm for the roundabout", but don't take out the trees. She is for the roundabout too and thinks everybody realizes the danger of that intersection. The intersection project will not be constructed for many years like the one at Ft. Johnson and Secessionville is a nightmare. She thinks anyone who lives on the island and drive the road is familiar with our problem areas so she wanted to clarify that the Board is not here tonight to vote on the problem traffic areas on James Island, we're here to vote on the removal of those trees and the Board's duty is to explore all options to see if there is any way that we could not remove these trees and do due diligence in that regard. Chairwoman Lyon stated that in everyone's mind if it meets all criteria it's the Board's duty to approve it. She thanked Comm'r Fabri for the clarification and her comments.

Vice Chair Savage stated to him it is not an issue whether a tree is a "B, C, D, or F" . He thinks that Amy articulated the issue: does the application meet the criteria. And, we are just in the first step in many as it

goes forward, and if these plans are changed it would still come back to the Board again if it is something different from what they may or may not approve tonight. He spoke from his perspective that when it comes to a safety issue a person trumps a tree; he is sorry. Before this hearing if people were asked what is your impression of Camp and Fort Johnson, we would say some like: let me tell you about the time I almost hit a guy on a bicycle or let me tell you about the time I had to pull out so far out to see if traffic was coming and almost got hit. So it appears that the crux of his analysis is there is a need to improve this intersection for safety consideration and safety is the public good. If he remembers all of the public comments that he read, there were probably less than 5 that disagreed that this that this was a safety consideration. Now in these matters there are some people that believe that no tree should stand in the way of growth and development – this is not reasonable. But likewise there are some people believe that under no circumstances should any tree ever be cut down and that is untenable because our island grows. The more reasonable path is the path we heard from most of the people in public comments and the one that really stood out to me was by Councilman Boles who said he understands that something has to be done but want to make sure that you explore every alternative possible to avoid cutting down those trees and that is the reasonable approach to take

He said as a Board and Town we have to be consistent in our analysis. He remembers not long ago that someone wanted a special exception at the corner Camp and Folly for a food restaurant and this Board hit them pretty hard that it wasn't safe to do. And that safety consideration allowed them to conclude that the criteria was not satisfied. He said they are all familiar with the safety needs and have to be consistent so if an application is denied on safety concerns sometimes we might need to consider approving an application on safety concerns because if not we're going to be accused of being arbitrary and capricious in our actions He also noted that the applicant is not a private individual trying to cut down a tree to benefit their personal lot to the detriment of character of James Island. This is an application to remove the trees to promote the general good of the island. He addressed Mr. Cantrell and he is correct about his concerns and raised good ones because one of the things the Board tasked the County to do was to find out about the drainage issue and thanked Mr. Cantrell for bringing this back to them. He understands that the answer to the construction of the roadway is going to be so close to the trunk of the tree that it must go . He said in October the Board asked the applicants to look for alternatives and they came back with alternatives and in his mind the alternatives are worse than the original application. They performed the task that the Board asked them to do and he thinks tonight, by making them do that, the Board performed its due diligence to the citizens of this island to make sure there is not another alternative that could avoid the removal of those two trees. As he sees it from the testimony, if we keep this intersection the same, that is untenable and a safety issue and somebody is going to be putting up a wreath at that intersection one day. We can't have that either so we approve the first alternative that was presented which he understands has the least adverse impact on the trees. He would be inclined to grant the application as having met the criteria set forth by staff.

Comm'r Smith stated this is really hard. His concern is Criteria D, the authorization of the 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. He has trouble with the criteria because when the trees are removed it would change the character and be detrimental. He thinks it is unfortunate to have this as a problem because he wants the roundabout.

Comm'r Fabri said it has been her experience that sometimes government comes to you and says this is the way it has to be and we can't have it any other way because this is the only way. So give us permission to do whatever. She thinks about the time when someone thought it was a good idea to put a huge housing development right next to the Angel Oak. There have been some other bad ideas in her opinion that have come out of the governments that have jurisdiction over this island and that is her concern. When she hears somebody say there is no other way, we've looked at it six ways from Sunday, it concerns her. The Board did ask the applicant seven times to discuss the variance for drainage with DOT and report back to us as well as another alternative. In the letter we got was a discussion of another alternative, but not the drainage

and anything about any meetings with the DOT. She was disappointed with that and was disappointed by not having the thorough report by the arborist that we literally got today that was not in the original packet and was not with the submittal by the applicant. In discussing due diligence, she thinks the Board asked a lot of good questions and had a lot of good discussion but she is a hard “no” on this.

Chairwoman Lyon spoke about the importance of applications meeting the criteria. She recalled a case from 2013 involving a Water Oaks on Camp Road. It was a very contentious meeting, but that doesn’t apply here. She mentioned that the Board has gone through applications before regarding safety issues. She asked for further discussion and there was none.

Chairwoman Lyon called for the vote:

Comm’r Fabri	Nay
Comm’r Hipp	Aye
Vice Chair Savage	Aye
Comm’r Smith	Nay
Chairwoman Lyon	Aye

*Passed 3-2*

Chairwoman Lyon reviewed the legal criteria for the approval of the variance. Three members felt that it met the criteria outlined by staff. She reiterated BZA members that voted in favor (3) and those who voted in opposition (2)

The Board’s final decision will be mailed to the applicant within ten (10) business days and questions regarding this approval should be directed to the Planning and Zoning staff.

Additional Business:

Next Meeting Date: February 21, 2023

Chairwoman Lyon expressed her appreciation to Frances Simmons, Kristen Crane, Flannery Wood, Niki Grimbball, Robin Flood and Jackie Mays for the jobs that they do.

Chairwoman Lyon surveyed the Board and asked them how the 5:00 p.m. meeting time was working for them. All agreed that they liked meeting earlier.

Chairwoman Lyon announced that in the spirit of transparency she would like a follow-up from BZA meetings on cases approved or denied and how members voted. This information is distributed by the City and County. BZA members thought this would be good to do and Chairwoman Lyon will get with staff to begin this procedure.

Chairwoman Lyon also surveyed the Board for their consideration in having a workshop in the future/ All were in favor of having this done. Vice Chair Savage asked that a map be provided (an overview for purposes of the Comprehensive Plan) and also to pose questions to Mr. Wilson regarding legal aspects of appeals.

Comm’r Hipp noted that she may be absent for the February meeting.

Adjourn: There being no further business to come before the body, the meeting adjourned at 7:12 p.m.

Respectfully Submitted:

Frances Simmons  
Town Clerk

\*Arborist Report:



Chas. Tree Experts  
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