

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF MARCH 19, 2024

The Board of Zoning Appeals (BZA) held its regularly scheduled meeting on Tuesday, March 19, 2024, at 5:04 p.m. at the James Island Town Hall, 1122 Dills Bluff Road, James Island.

Comm'rs present: David Savage, Vice Chair (Acting as Chair), Amy Fabri, and Massey Yannitelli. Absent: Comm'r Joshua Hayes and Roy Smith (gave notice). Also: Kristen Crane, Planning Director, Flannery Wood, Planner II, and Attorney Bonum S. Wilson. Frances Simmons, Town Clerk and Secretary to the BZA was absent.

Call to Order: Chair Savage called the meeting to order and asked everyone to silence their phones. Chair Savage led the pledge.

Compliance with the Freedom of Information Act: Chair Savage stated that this hearing is held in compliance with the SC Freedom of Information Act. The applicant, property owners within 300 feet of the application, and parties of interest were duly informed of the hearing. This hearing was also live-streamed on the Town's website.

Introductions: Chair Savage introduced himself, members of the BZA, the BZA Attorney, and staff.

Review Summary (minutes) from the December 19th, 2023, Board of Zoning Appeals Meeting: A motion to approve the minutes of December 19th, 2023, with a correction made by Comm'r Savage on page 6 paragraph 1 was made by Comm'r Fabri, seconded by Comm'r Yannitelli, passed unanimously. All case rulings and minutes from BZA hearings are available for public review and inspection during normal business hours at the Town Hall.

Brief the Public on the Procedures of the BZA: Chair Savage explained the purpose of the BZA as a quasi-judicial Board empowered to approve, approve with conditions, or to deny requests. The BZA is authorized to defer a case should there be a need to obtain additional information. Chair Savage announced that no letters or emails in support of or opposition to this request were received.

Administer the Oath to those Presenting Testimony: BZA Attorney Wilson swore in persons wishing to provide testimony.

Chair Savage introduced tonight's case, #BZAV-02-24-035 Variance request for the reduction of the 10' required accessory structure rear setback by 4' to 6' for the retention of an existing pavilion in the Community Commercial (CC) Zoning District and the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District at 1006 Folly Road, Town of James Island, TMS #(TMS #425-09-00-027).

Kristen Crane, Planning Director, provided the Staff Review:

The applicant is requesting a variance for the reduction of the 10' required accessory structure rear setback by 4' to 6' for the retention of an existing pavilion in the Community Commercial (CC) Zoning District and the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District at 1006 Folly Road (TMS #425-09-00-027). Adjacent properties to the north, south, and west are also in the Commercial Core of the FRC-O and are zoned CC (American Legion Post #147, EuroPro Auto Service, and Cube Smart Self-Storage). The adjacent properties to the east are in the Low-Density Suburban

Residential (RSL) Zoning District and is in the Town of James Island’s jurisdiction. Other uses within 300’ include Restaurants (Lowdown Oven and Bar), Fast Food (Zaxby’s), Vehicle Repair (Bert’s Motor Works), Medical Office (Dialysis Clinic INC), Preschool (Loving & Learning Educational Center) and Vehicle Parts Store (AutoZone).

Town of James Island Zoning and Land Development Regulations, § 153.208 (B)(3) ACCESSORY STRUCTURES IN GENERAL OFFICE/COMMERCIAL DISTRICTS. If in a zoning district that abuts a residential district, the accessory structure shall be located at least ten feet from the abutting interior lot line of the residential district.

The subject property is 0.40 acres in size and currently has one building that hosts the bar “Hide Out Bar & Grill”, as well as the subject pavilion. The property was purchased by the current owner, Nefertiti Investment Group, in March of 2017. The subject pavilion was under construction in June of 2022, when a complaint was addressed by Charleston County Building Services (see attached Inspection Worksheet, Case BIS-06-22-02662). No zoning or building permits have been issued for the pavilion’s construction. (Please see timeline requested from Town Code Enforcement, and timeline from Planning/Zoning, attached). According to the applicant’s letter of intent, “authorization of a variance would mitigate the economic hardship placed on restaurant staff members currently on unemployment status as a result of the stop work order placed on the project constituting the construction of a 20’ x 40’ pavilion 6’ from the rear property line.” Please review the attached documents for further information regarding this request.

Findings of Fact:

According to §153.049 F, Zoning Variance Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR), The Board of Zoning Appeals has the authority to hear and decide appeals for a Zoning Variance when strict application of the provisions of this Ordinance would result in unnecessary hardship. A Zoning Variance may be granted in an individual case of unnecessary hardship if the Board of Appeals makes and explains in writing the following findings:

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

Response: There may not be extraordinary and exceptional conditions pertaining to the particular piece of property in a physical sense as the property is legally conforming in size and may not have any extraordinary features. However, the conditions surrounding the original contractor’s intent and the corresponding outcome may be considered uncommon and infrequent.

F (b): *These conditions do not generally apply to other property in the vicinity;*

Response: The condition concerning the original contractor’s intent and the corresponding outcome may not generally apply to other properties in the vicinity as there have been no similar requests with property in the surrounding area.

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, §153.208, to the subject property may prohibit the retention of the pavilion in its current location.

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: According to the applicant’s letter of intent “the rear fence line sits one foot inside the property line, behind which is a gully flanked on either side by a sloped grassy area. The proposed structure does not alter the character of the vicinity and would be concealed by the large privacy fence installed just inside of the property line posing no detriment to the adjacent property or the public good.” The authorization of the variance may not be of substantial detriment to adjacent property and the character of the zoning district may not be harmed if certain mitigation conditions are met and all applicable regulations are adhered to.

F (e): *The Board of Zoning Appeals shall not grant a variance to the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a non-conforming use of land or to change the zoning district boundaries shown on the Official Zoning Map;*

Response: The variance does not allow a use that is not permitted in this zoning district, nor does it extend physically a nonconforming use of land or change the zoning district boundaries.

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

Response: The need for the variance may be the result of the applicant’s own actions as the pavilion was constructed without zoning or building permits. The applicant’s letter of intent states, “the owner and GWGC acknowledge that the previous contractor’s performance of this work was in violation of the Town of James Island’s permitting requirements and non-conformant to IBC 2021. It is the intent of the current contractor, GWGC, to remedy these infractions within the boundaries of the law should you authorize the requested variance.” However, there was no enforcement follow-up during the construction phase after the initial Stop Work Order was placed.

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-2-24- 035 (variance request for the reduction of the 10' required accessory structure rear setback by 4' to 6' for the retention of an existing pavilion in the CC Zoning District and the Commercial Core of the FRC-O Zoning 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 eastern/rear side of the pavilion (adjacent to residential uses) shall be enclosed/walled.
2. Applicant/owner shall work with planning/zoning staff on suitable landscape buffering adjacent to residential uses.
3. Business must adhere to Town of James Island Regulations Ordinances concerning noise in set out in §90.32 and §90.33 or be subject to revocation of Business License.
4. A fully permitted 8-foot high, opaque, wooden privacy fence shall be installed along the eastern perimeter, adjacent to any residential use or property.
5. The applicant/owner shall obtain proper retroactive zoning and building permits for all previous unpermitted work done to the site and building, as well as any proposed work.

Questions from the Board:

Comm'r Fabri asked Ms. Crane to go back over the site plan and clarify the variance footage that they are looking for. Ms. Crane explained that the pavilion is 5.25' from the property line at the closest corner to the fence. She stated that the fence was 1' in from the property line so the setback reduction would be 4.75 feet. Comm'r Fabri asked for a history of the property. Ms. Crane explained that the current owners bought the property in March of 2017. A new concept was presented to change the name. In April 2017, the Town realized hospitality tax was not being collected from the business, so the Town Administrator emailed the new owner and asked them to complete the appropriate paperwork. The new owner completed Site Plan Review paperwork and in May of 2017, the business license transferred was transferred from Stag Erin. Zoning permits for all work including a new pavilion in a different location were submitted in 2017. The 2017 submission met the appropriate setbacks.

Chair Savage asked how long zoning permits were valid. Mrs. Crane explained that they were valid for a year from their issue date. Ms. Crane continued her site history and stated that there was a gap from 2017-2020 and in 2020 a new sign was installed without permits. The Town Administrator asked Code Enforcement staff to address this violation a total of 3 times in the Fall of 2020. Staff visited the address and told the staff of the business to contact planning and zoning. There was no follow-up from the applicant. In 2022 following a complaint, a Stop Work Order was given by Wayne with Charleston County Building Inspection Services. Ms. Crane indicated this was the report provided to BZA members. Code Enforcement staff visited the site again and asked the owner to contact the Planning & Zoning Department. Again, there was no follow-up by the owner. In September of 2022, a zoning permit for interior and exterior paint was issued. In January of 2023, Town Staff received a complaint that the parking lot was being re-paved. In February of 2023, another zoning permit was issued for a boardwalk on the property. In October of 2023, a complaint was received that protected trees were being removed. Code enforcement visited the property and Wayne with Charleston Building Inspection Services issued a Stop Work Order again. Five (5) tickets were issued for existing violations. The owner had a court date on November 16th and shortly thereafter came in and pulled the appropriate sign permits. Following court dates again in December and January the owner got retroactive tree permits for diseased sweetgum trees and resolved that ticket. The owner had another court date on March 5th.

Comm'r Savage asked if the permit submission in 2017 had the pavilion in its current location. Ms. Crane explained that a site plan was submitted for permitting in 2017 showing the pavilion in a different location. She indicated that a zoning permit was issued for the work, but not a building permit. Comm'r Fabri asked if the zoning permits were issued to the new owner at the time and if the permitting process was explained to him. Ms. Crane indicated that they were and explained that zoning permits are automatically sent to Charleston County for building permits and that the site plan review paperwork includes a timeline and steps for the permitting process. Comm'r Fabri asked if zoning staff visited the site in 2022 after the stop work order was issued in June of 2022. Ms. Crane responded that she had not as the meeting was conducted on-site and the applicant was instructed to come speak to the planning and zoning department. She also confirmed for Comm'r Fabri that the property owner continued to have work done and did not communicate with Town staff or the County.

Comm'r Yannitelli asked how far the pavilion proposed in 2017 was from where it was currently located. Ms. Crane indicated it was very close to the building and produced a site plan for the board members to look at. The Board members discussed the original placement of the pavilion and where trees were originally located on the site. Ms. Crane confirmed that setbacks would not have been an issue in the original proposed location. Comm'r Yannitelli asked about the pavilion violating the noise ordinance. Ms. Crane explained that it would depend on what the pavilion was used for. She clarified that if you are inside a building and can hear the noise from outside then you are violating the noise ordinance and that there were no hour restrictions attached to the ordinance. Comm'r Fabri asked if any variances would have been required if the pavilion was constructed in its original location. Ms. Crane responded that only an administrative review would have been required. She also stated that since there was no change of use the site would not have been required to be brought up to code.

Chair Savage asked if there was any underground infrastructure that would have influenced the placement of the pavilion. Ms. Crane indicated that she wasn't sure as far as underground utilities, but if there was a septic tank on the property it was not used anymore. Chair Savage noted the location of a concrete walkway connecting the primary building to the pavilion would have covered any possible utilities anyway. Mr. Savage asked if the Town was required to do anything after being notified that the County had placed a stop-work order on a building within the Town's jurisdiction. Attorney Wilson confirmed that it was the responsibility of the property owner to clear up a violation.

Applicant Presentation:

Alvin Burch & Sonja Moses, Summerville, SC: Mr. Burch indicated that a lot what had been presented was information he just learned tonight. He indicated that he and his wife were hired by Mr. Hassan to correct all the findings. He explained that their business does a little more than construction. They try to educate. They indicated that Mr. Hassan was interviewed and based on their experience they found him to be lacking knowledge and did not understand the process. They explained that they run across a lot of contractors who don't educate the homeowners or the business owners and say they can do the work and business owners and homeowners don't investigate any further and rely on the knowledge of the builder. Many times, the builders put the homeowners and the business owners in a real bind. Mr. Burch indicated that this is what they found to be going on with Mr. Hassan. He is motivated to correct the issue and has some great employees who depend on him. Ms. Moses read letters from two of Mr. Hassan's employees into the record. (See attached)

Mr. Burch and Mrs. Moses indicated they work hard to decide on who they take on an interview to get a feel for potential clients. They want them involved and don't want them to be ignorant. If clients don't seem like they will be a part of the team and work on solutions, they back out. This is one we felt compelled to believe that this would fit our model, which is why we are here today. They were hoping that the Board would consider the employees returning to work and that the authorization of the variance would not be a substantial detriment to the neighboring properties. Mr. Burch indicated that if a higher fence or enclosure were needed, they would permit that. He stated that he hoped the board would consider and figure out a way to get Mr. Hassan's business back open. Ms. Moses addressed concerns about sound and explained that if the structure must be moved or structurally altered, they would have an opportunity to integrate design attributes that will manage sound.

Questions from the Board:

Comm'r Fabri asked if they were aware of the proposed site plan from 2017. Mr. Burch and Ms. Moses confirmed that they were not. Comm'r Savage confirmed that the contractors were hired by the property owner to correct the existing issues. He asked Mr. Burch if he had a contractor's license. Mr. Burch indicated that he did. Chair Savage asked if Mr. Burch had any monetary limitations for jobs, he was able to perform. He indicated he could work jobs with values up to 1.5 million. Chair Savage confirmed that Mr. Burch was able to do work including cutting and pouring concrete and moving posts. He asked Mr. Burch if the need for the variance was due to the Owner's selected agent. Mr. Burch answered in the affirmative.

Opposition

Daniel Beard, 281 Meeting Street Apt B: representing the business at 1010 Folly Road stated he was in opposition to the variance. He indicated that the owner was in wanton disregard for the law and the contractors may have been led to believe Mr. Hassan was uninformed but he manages the business next door and had talked to him several times about this. He stated that permits were needed, and the applicant had been following the code. Mr. Beard indicated that Mr. Hassan had built to the property line of the American Legion and to his fence. He stated that his fence is 6 inches inside his property line. Mr. Beard explained that one of the complaints received was from him because Mr. Hassan was attaching things to and building off his fence and painting it without permission. This was a big point of contention because it was a very expensive fence. Mr. Beard stated that Mr. Hassan added square footage to the back of the building including adding to the kitchen, a walk-in cooler, and the front covered seating area with no permits. Mr. Beard stated that Hassan knew he was not supposed to do this.

Chair Savage closed the hearing to the public and asked for a motion and a second to have a discussion. A motion to approve Case# BZAV-02-24-035 (variance for the reduction of the 10' required accessory structure rear setback by 4' to 6' for the retention of an existing pavilion in the Community Commercial (CC) Zoning District and the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District at 1006 Folly Road (TMS #425-09-00- 027)) was made by Comm'r Fabri, seconded by Comm'r

Yannitelli.

Chair Savage stated that the applicant may not have addressed criteria C as the utilization of the property was not effectively prohibited or unreasonably restricted. He explained that the pavilion did not have to be in the position it is now for the property to be utilized and this was supported by a site plan from 2017 showing the pavilion closer to the main structure. Chair Savage stated he also had concerns regarding criteria F. He stated that the initial zoning permit was allowed to lapse, and the owner knew what needed to happen and that this was a plea for forgiveness and not permission. He re-stated that his initial impression remained the variance request fails on the 3 criteria he mentioned. Comm'r Yannitelli agreed the applicant was choosing to ignore the requirements. Comm'r Fabri agreed as well and stated that moving the pavilion so close to the fence would impact on the residences behind the businesses, with consideration to noise. She stated that she also had concerns about Criteria F as the property owner went ahead several times after being warned and receiving a stop work order. Comm'r Fabri also stated that the applicant did not meet criteria G as there is a reason there is a setback and asking for a variance after the fact is detrimental to our comprehensive plan. She and Comm'r Yannitelli also agreed that criteria C was not met.

Commissioners Fabri and Yannitelli agreed with Chair Savage that the burden of proof was not met for Criteria F: A, C, F, G. After discussion, Chair Savage called for the vote:

Comm'r Savage	Nay
Comm'r Fabri	Nay
Chair Yannitelli	Nay
Variance Request:	Denied

Chair Savage stated the legal reason for the denial of Case #BZAV-02-24-034 is that it did not meet all the criteria as outlined in the staff's review. The Board's decision will be mailed to the applicant within ten (10) business days, and they should contact the Planning & Zoning Department should they need further information.

Vote for Chair and Vice Chair: Comm'r Savage made a motion to delay the vote until the next meeting since several members were absent. This motion was carried unanimously.

Additional Business: The next meeting of the Board of Zoning Appeals is scheduled for Tuesday, April 16th @ 5:00 p.m.

Adjournment: There being no further business to come before the body, the meeting adjourned at 6:04 p.m.

Respectfully submitted:

Flannery Wood
Planner II