

TOWN OF JAMES ISLAND  
BOARD OF ZONING APPEALS  
SUMMARY OF NOVEMBER 15, 2022

The Board of Zoning Appeals held its regularly scheduled meeting on Tuesday, November 15, 2022 in person at the James Island Town Hall, 1122 Dills Bluff Road, James Island, SC.

Comm'rs present: Corie Hipp, Roy Smith, and Vice Chair, David Savage who presided. Absent: Comm'rs: Amy Fabri, (gave notice) and Chair Brook Lyon due to a family emergency. A quorum was present to conduct business. Also, Kristen Crane, Planning Director, Flannery Wood, Planner II, Niki Grimbball, Town Administrator, Bonum S. Wilson, BZA Attorney, Mark Johnson, Public Works Director, and Frances Simmons, Town Clerk and Secretary to the BZA.

Call to Order: Vice Chair Savage called the BZA meeting to order at 7:00 p.m. by opening in prayer. Comm'r. Hipp led 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. This meeting was also live-streamed on the Town's You-Tube Channel.

Introduction: Vice Chair Savage introduced himself, members of the BZA, Attorney and Staff. Recognition was given to the elected officials present: Mayor Bill Woolsey, Councilman Dan Boles, James Island PSD Comm'rs Inez Brown-Crouch, and Susan Milliken.

Brief the Public on the Procedures of the BZA: Vice Chair Savage explained how the Board of Zoning Appeals Hearing would be conducted.

Administer the Oath to those Presenting Testimony: BZA Attorney, Mr. Wilson, swore in the individuals who wished to provide testimony.

Review of the Following Applications:

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.

Vice Chair Savage stated that he would call each case by its file number and the applicant must state their name and current address for the record before presenting testimony. Afterward, those speaking in support and opposition would be called upon to speak within the allotted time. The applicant would then have opportunity to reply to any opposition and then the BZA would make a motion concerning the application, stating specific findings of fact and the conclusions of law.

Vice Chair Savage stated that the Public Hearing for tonight's first case was held on October 18. At that meeting, a motion was made and seconded to continue the meeting until November for additional information. Since that meeting, the Board has received on November 10, an email from Susan Milliken, on November 11, an arborist report from Michael Murphy, on November 14 an email in support from County Councilwoman Jenny Honeycutt, on November 14, an email from Ms. Jenny Welch, and also on November 14 an email from Ms. Kristen Crane attached with 65 pages of letters in support and 20 pages of letters in opposition. On today's date (November 15) emails were received from the Planning Director

at 12:47 p.m. with letters in support and opposition. As of this meeting, a petition with 18 signatures in support was presented. Vice Chair Savage said all of the items received would be made a part of the record. He announced that the Board would now resume Case #BZAV-9-22-030: 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.

Vice Chair Savage stated that at the last meeting, after the taking of evidence, the Board tabled this matter to allow the applicant, (at the Board's specific request), to make inquiry to the SC Department of Transportation (SCDOT) to allow a reduction in drainage to preserve the trees. Vice Chair Savage asked Mr. Martin, (the Transportation Project Manager @ County Public Works) if he had the results of the request. {Mr. Martin was sworn in to speak}. Vice Chair Savage asked, in order to assist the Board, if he had enough time for the request, or if additional was needed. Mr. Martin said the County would like to have more time to gather information and the data they need. He said once the information is obtained, he would like to return to the December meeting to present it. Vice Chair Savage asked him if the 30-day window he was given was not enough time to make request and get answers from SCDOT. Mr. Martin said the time to re-evaluate the trees took more time and they are exploring other options to make sure other alternatives are looked into. Vice Chair Savage asked if his information would be available in the timeframe of the BZA's December meeting and Mr. Martin agreed that it could.

Comm'r Hipp questioned whether December 20 would be a good time with holidays approaching and the public present to speak tonight may not be able to return in December to make comments. There was discussion among the Board whether 30 or 60 days should be granted to receive Mr. Martin's information. Mr. Martin said 30 days would be enough time and Mr. Wilson added there is no time limit on the Board's continuance. Town Administrator, Grimbball recommended to the Board to allowed those present tonight to speak in the event they cannot return in December to have their comments on record.

Comm'r Hipp moved to allow Mr. Martin to present his findings from the SCDOT at the BZA's January 17, 2023 meeting (60 days); Comm'r Smith seconded. The vote follows:

Vote

Comm'r Hipp	Aye
Comm'r Smith	Aye
Vice Chair Savage	Aye
Unanimous	

Vice Chair Savage opened the floor to hear public comments:

In Favor:

Mayor Bill Woolsey, 961 Mooring Drive: I don't come before the BZA very often. The last time I appeared before the Board was in support of the Lighthouse Point Sidewalk Project. The applicant in that case was formally the County, but it was a project that affected all local governments and the Town was especially interested. A tree variance was involved in that case also and it was granted. Thank you. The project was completed. Tonight we are in a similar situation. Officially the County is the applicant, but the traffic at Camp and Fort Johnson has been a vital concern for all of the local governments, including the Town. We've requested many times that something be done about that intersection and it was included on the Half-Cent Sales Tax Referendum five years ago and passed as a specific intersection that needs to be taken care of. Something that is very important to this Town. The County was responsible for developing a Plan for that project and it is my understanding that some versions of trying to fix that intersection involved taking 16 trees. The current version is two trees, almost a 90% reduction. We've counted the trees on the

segment of Camp Road at Dills Bluff and Fort Johnson and there are over 43 trees and 95% of the trees along that segment will remain. However, my primary reason in speaking tonight is to ask the Board to grant the variance because it is my understanding that the County is looking into alternative drainage systems that I believe we had in mind and try to see if the two trees can be saved, which all of us prefer. None of us want to see any tree gone. In the final analysis the choice is sacrificing the two trees or giving up on the project and leaving the intersection as it is. A responsible choice is to give up the trees.

Inez Brown Crouch, 1149 Mariner Drive: I grew up on James Island and trees are not a problem on James Island. We have more trees than anything else. Removing the trees is not going to hurt James Island. I am here to support the round-about and my reason is a friend, five years ago husband was killed at that intersection. I grew up on James Island and “*you who come here*” don’t know what it’s like. There were a lot of people that died from trees, so round-about saves lives; we need the round-about. I wish anyone would go there around 2:30 p.m. when the High School gets out. They think it’s a freeway from Ft. Johnson and it is very, very dangerous. We need to do something and we need to do something now. I support the round-about 100%.

Mark Johnson, Town Public Works Director: I want to share information for the Board to understand. As Commissioner Crouch said, round-about are safe. They reduce the accident rates and the severity of accidents that might occur. Second, there has been some concern about the monuments on Stone Post @ Ft. Johnson that are being removed. I want to let everyone know that they are not historic structures. I have personally within the last 10 years watch the City of Charleston rebuild them after there were accidents there. The monument has cinderblocks inside and the outside is Belgian Paving stones. They can be moved easily without obstructing anything.

Steve Jarrett, 783 Clearview Drive: I use that intersection frequently and it is dangerous. The most dangerous is coming from Camp Road trying to turn left (down from my house) to get onto Ft. Johnson. Not only are the trees an issue; but the bushes and other things in that corner, and people come zipping down Ft. Johnson Road. I have seen people almost flip numerous times. It is a dangerous intersection. The round-about put in at Camp Road/Fort Johnson/and Clearview works very well and I go through that one all the time. It doesn’t depend on electricity being on or a stoplight to slow traffic down. I highly recommend the round-about. I don’t like taking down trees either but I have been through that dangerous intersection a number of times and something needs to be done about it.

Carol Jarrett, 783 Clearview Drive: I support the round-about. There aren’t accidents there. No one can run a stop sign or run through a red light at a round-about They are successful and positive.

Susan Milliken, 762 Ft. Sumter Drive asked a procedural question, whether we are in a Public Hearing or in Public Comments. She said usually a Public Comment period is done before starting a case and we are in a case that is being continued, so she is confused. Vice Chair Savage responded that we are in a case where all testimony was taken. In the first case we (BZA) went into deliberation and while in deliberation we rescinded the motion to approve a procedure which was to set the stage to begin discussion.

Tonight, when we asked the applicant to whom we made the request for additional information if they were ready to proceed, the answer was ‘no’. What we (BZA) have done was to continue the final determination until January. However, some people who may not be able to be here later and wish to have their comments put on record, we have allowed them to speak tonight.

Mr. Wilson added that these comments will become a part of the record introduced from verbal to written and Ms. Simmons will include these comments in the record when it appeals. It was asked if this would be a part of the permanent record and Mr. Wilson said ‘yes’.

In Opposition:

Dan Boles, 1016 Foxcroft Road: I am here to speak in opposition to this applicant's petition. I don't see why we need to have a binary choice put before the Board. Perhaps we can have our trees and our round-about. I agree with everything Inez Brown-Crouch said and everyone else who spoke that safety is important and we all know... we all live here, that intersection is dangerous at a certain time of the day. I am not an engineer; we have a lot of talented folks at the County who I think may be able between now and January to explore a way that makes everyone happy. Maybe we'll only lose one of them, maybe we don't need to lose any of them. I can tell you when I was in college when I first moved here and I drove through James Island that stretch of Camp and Ft. Johnson stuck with me. It's a special place with a special look. I understand what the Mayor is saying that we are losing two in favor of saving 14 and that is not bad when you frame it like that, when you frame it that we can either have the round-about or not. I am not convinced that there is only two choices before you. I hope between now and January the County and anyone else who can present information to this Board, that perhaps there are alternatives; alternative placements and things like that. So, as it has been presented to you I will ask that you deny it, but I want to point out that perhaps there are alternatives that you could approve that everyone can certainly be satisfied with.

Jenny Welch, 1163 East and West Road in the Stone Post Neighborhood. I just want to say that I think everyone in this room is in support of the round-about. I feel like if it is framed that there is against the round-about, it's not, because we all actually want the round-about, it's just that we want solutions to keep the trees. This neighborhood is very near and dear to my heart. My family has lived here for six generations. It is my home. Please note that I said I support the round about 100%. We badly need a safer intersection there and am very grateful that many Oak Trees will be saved. However when I heard that two of those Grand Trees were in danger I simply wanted to know two things: what is their true condition. They looked pretty to me. And, second is there any hope in saving them by doing some small tweaks. These are special trees because they are pretty large 44" and 37" DBH and is the beginning of Oak Alley that runs along Camp Road. As you all know, I hired an arborist and he came and looked at the two trees in person. I sent you all the report and to summarize, he found the two Oaks in good health with no hollow areas only vine growth and poor canopies. He believes with a little bit of care we can improve the trees to an "A". I hope the County can look at various options and hopefully save the two Oak trees and have the round-about. They do so much for our environment and our quality of life on James Island.

Vice Chair Savage said the Board thanks Ms. Welch, not only for her comments, but also for her efforts in gathering this information.

Vice Chair Savage asked if anyone else would like to speak in favor or in opposition. There were no other comments. Vice Chair Savage announced that this matter is closed until revisited at the January 17 BZA meeting.

Case #BZAP-10-22-026: Appeal of Zoning-Related Administrative Decision (Home Occupation Bed and Breakfast permit denial at 1027 Grand Concourse Street) in the RSL (Low-Density Suburban Residential) Zoning District (TMS#428-11-00-005):

Vice Chair Savage announced the Board will hear an Appeal of a Zoning-Related Administrative Decision for a Home Occupation Bed & Breakfast Permit denial at 1027 Grand Concourse Street in the RSL Zoning District.

Vice Chair Savage said the appeal packet indicates that the Planning Director along with other reasons has determined that the density standard for RSL Zoning with a maximum of three (3) dwelling units per acre

could not be met with this Bed and Breakfast application due to the size of the property at 0.269 acres. The information that the BZA received were the administrative appeal application and other various exhibits.

Vice Chair Savage informed Ms. Ong of her five (5) minute allotted time. He said the Board has reviewed all of the information presented and is familiar with this request. He asked that the record reflect that Ms. Ong was previously sworn in.

Applicant Caitlyn Ong, 1027 Grand Concourse: Applicant, Caitlyn Ong stated that with her is husband, Spencer Ong, and daughter Heidi. Ms. Ong addressed the Board that she and her husband filed for a Bed and Breakfast Permit and Business License with the Town of James Island and was waiting on the proof of residency. Her request is to use a portion of the interior of an existing detached accessory structure as a guest house to rent out for short-term and/or month-to-month via the operation of a Bed and Breakfast. She said when the structure is not rented, it would be used for non-paying guests, family, and friends. A small portion of the interior would continue to be used as storage. Ms. Ong stated that her application/request received on October 4, was “Not Approved” by the Town’s Zoning Administrator, Kristen Crane and is the reason she is appealing the Zoning Administrator’s decision. Ms. Ong’s gave the Board an overview of the reasons why she believes the Zoning Administrator’s decision is in error.

Section 153.013: Ms. Ong said the Definition of Density standards is what the Zoning Administrator is drawing her decision from that states “*provisions of this chapter controlling the size and shape of zoning lots and the location and bulk of structures thereon. Such regulations include those relating to density, lot area, lot width, setbacks, buffers, building cover, height, and open space.*”. She said the owners are not proposing to change the size or shape of the lot or move, add onto, or build/erect any structures on the property.

She said the only thing density standards control is the location in both for the structures thereon. They are not seeking to move any structures, add any structures, or erect any structures. They are simply looking to use a portion of an existing structure on their property. She said the density standards simply do not apply in this instance and is inapplicable to their request.

Ms. Ong said the word “*use*” does not appear anywhere in the Code’s definition of Density/Intensity and Dimensional Standards and does not in any way control “*use*” of a portion of the interior of an existing detached accessory structure. The code clearly delineates “Density/Intensity and Dimensional Standards”. For instances in which an applicant proposes to erect a new structure or otherwise alter the location and bulk of structures on the applicant’s lot and is inapplicable in instances in which an applicant intends to use an existing structure.

She stated that “dwelling unit” clearly does not refer to “accessory dwelling units” such as broad apartments or guest houses. She stated the definition for dwelling groups, that density cannot be calculated by taking accessory dwelling units such as guest houses. Section 153.127(B) is inapplicable because it applies to dwellings what are to be “constructed” and they are not seeking to construct, but to use an existing structure on the property. She stated the “Not Approved” is further bolstered by the simple fact that a guest house does not meet the definition of 153.013 and stated that a guest house is not used for residential occupancy by a single household; it is her privilege to use it personally, for friends, guests, or multiple people. It is not for use by a single household and doesn’t meet the definition of a dwelling. She said for all of these reasons, the Zoning Administrator’s decision is in error and her request for appeal should be sustained.



### Questions from the Board

Comm'r. Hipp prefaced her comments by stating that she worked for the Preservation Society in Charleston, from 2012-2018. 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. She said short-term rentals have been proven to alter the character of neighborhoods. She asked Ms. Ong if there is an HOA and covenants in her neighborhood. Are there restrictions regarding short-term rentals. Ms. Ong said to her knowledge there is not an HOA.

Comm'r Hipp said she needed to find that out. Ms. Ong said to be clear she didn't believe there is and did not want to say something out of turn. Comm'r Hipp asked and Ms. Ong confirmed that they purchased their home in Feb. '22. Comm'r. Hipp continued that it is proven that short-term rentals have a transient nature that affects communities. She referred to Section 153.210: Home Occupation: General: that one of the criteria of for short-term rentals is that it is not a detriment to the character and livability of the surrounding area. She asked Ms. Ong if she talked with neighbors and they know her intentions to have a short-term rental? Ms. Ong replied, they haven't.

Comm'r Hipp talked about short-term rental transients coming through households; random strangers who at times no background checks are done on, and not knowing what is happening at all. She said these are the things short-term rentals brings and she is "really", "really", "fiercely" protective of her community. She is from South Carolina and has lived here for 25 years. She said the BZA needs to know answers to these questions; whether there are covenants, (which Ms. Ong said there were not); also if the neighbors know that she is starting a Bed and Breakfast and should blame when people come into their neighborhood. She would like for Ms. Crane to define density and the restrictions because it is her understanding that it isn't just a structure, it is people, and bodies. She asked how many people could be on 0.269 acres. This is why she is "fiercely" protective of her community and its character. She said short-term rentals have a very transient nature that is detrimental to a community and her HOA has a statement in the covenants that they are not allowed.

Ms. Ong said she understood where Comm'r Hipp is coming from and she has spoken to their neighbors, one of them is the Wilburn's who would like to do the same. To her knowledge there is no HOA or covenants. She stated recently purchasing their home but pretty confident there is no HOA. Ms. Ong said the short-term rental isn't just for paying debts so they can make money. They haven't been in the community long. Her husband has three siblings/with children in California living on a pastoral salary. They cannot stay in a hotel when they visit, and they do not have space to accommodate them. Comm'r Hipp asked if she could build a guest house and not rent it out. Ms. Ong answered that they could but there is nothing that prohibits doing so and this is something they want to do. To have family time and more space. They have not been in the community long and they both work from home. They would have room to spend time, for conference calls, and things of that nature. They do intend to make some profit because they have already explored costs and it's going to be expensive. Comm'r Hipp talked about setback requirements stating that sometimes you have to be 30 ft. from the adjacent property. She doesn't know if the property is old or new enough to have that setback attached to it. Ms. Ong read the setback definition and her interpretation.

Comm'r Hipp asked Ms. Ong if she knew what her setbacks were of which she did not know. Comm'r Hipp suggested she find that out, get letters of support from the neighbors, and whether there are covenants. She guaranteed Ms. Ong that some neighbors may not approve of a short-term rental in their neighborhood with the exception of the Wilburn's, who she says want to do the same thing. Ms. Ong said she was using

the Wilburn's as an example and have spoken to many of their neighbors. Comm'r Hipp suggested having written information because there is a reason the Planning Director denied the application and the Board must do due diligence with her coming before them for an appeal. Comm'r Hipp reiterated her experience with short-term rentals and it is a problem. Ms. Ong said she understood that Comm'r Hipp may've had a bad experience with short-term rentals and Comm'r Hipp said her experience were not personal, but through governments. She said it is a fact that short-term rentals are an issue and her responsibility on the BZA is to take the advice of the Planning Director. Ms. Ong said she disagreed and stated there may be issues with short-term rentals; however, a blanket statement should not be made against all short-term rentals. Comm'r Hipp further elaborated on ingress/egress issues that happens all over the tri-county area, (Savannah, Georgetown). She commented that the Planning Director is doing her due diligence to make sure that she is following the rules. She commented that the Planning Director, Ms. Crane, will have opportunity to speak, but she feels a lot of criteria is missing to make a decision otherwise. Ms. Ong said she understood and noted that setbacks was not one of the issues mentioned in Ms. Crane's denial. Comm'r Hipp spoke of her knowledge as a preservationist and someone that has lived here a while, that setbacks are a concern when building structures or converting living dwellings. She used an example of space rented to a college student must have a kitchen, bathroom, and bedroom; that makes it a dwelling, whether or not it is called short-term, and setbacks are attached to it. Comm'r Hipp said it would interesting to find out what the setbacks are. Ms. Ong stated that she understood but respectfully disagreed.

Vice Chair Savage referred to page 4, referencing that the present structure does not have a kitchen and would not qualify as a dwelling and asked if that was correct. He inquired as to alterations necessary that would make it in essence, a dwelling. He also talked about the calculations for density. Vice Chair Savage said he needed to depend on the definition of the Planning Director for the use, as once the appeal is granted "the cat's out of the bag." He inquired if the project is allowed then this would not then be a single household and referenced if a neighbor wanting to do the same, would cause contiguous properties to exceed the density restrictions and impact the neighborhood. Ms. Ong responded the parking plan is far more than ample and would not cause concerns.

Planning and Zoning Director, Kristen Crane addressed the Board that the applicant is appealing the Zoning Administrator's decision to make the Home Occupation/Bed and Breakfast application as "not approved". Per Section 153.124, Bed and Breakfasts, the bed and breakfast must be residential in nature and comply with the home occupation regulations of §153.210. Section 153.210, Home Occupations states that zoning permits shall be required for all home occupations.

Per Section 153.047, zoning permits are required prior to change the use classification of any part of a structure or lot, including any increase in the number of families or dwelling units occupying a building or lot; and prior to obtaining a business license.

She stated that the applicant was not able to secure a Bed and Breakfast permit due to the fact that the zoning permit to change the use and density of the parcel would not have been issued. The applicant also states in her appeal that the reason the decision is in error was due to Section 153.070, density standards, are inapplicable per 153.070's unambiguous definition and that the code "does not prohibit or restrict owner's use of the existing detached accessory structure as a guest house for paying and non-paying guests.

Ms. Crane said because the intent of the application is to use the structure as a "guest house" as stated in her letter of intent, this would be considered an additional dwelling unit. Zoning Districts, such as the RSL Zoning District have density and intensity standards to control the amount of dwelling units that are located on a certain size parcel of land. Ms. Crane explained the definition of density according to State Law Section 6-29-270 that are regulated by zoning districts that are enacted by zoning ordinances that are approved by

Planning Commissions and governing bodies such as Town Councils and are defined in state laws as “the use of buildings, and the density of development, use, or occupancy of buildings. Mrs. Crane stated that she has worked for the town for 10 years since this last and final version of the Town was formed.

It has always been her understanding that the Town was formed to preserve the low-density suburban residential character in the Town’s Land Use Goals in the Comprehensive Plan. She said if the decision is made to allow more than one dwelling unit on a parcel smaller than the density and zoning standards would permit, that would, in her professional opinion, repeal the ordinances that have been in place without going through the proper process.

Questions to Planning & Zoning Administrator: Comm’r Smith asked Ms. Crane to describe what a dwelling unit is and she gave response. He asked if a Certificate for Occupancy for a garage makes it a dwelling unit, and Ms. Crane answered ‘no. Vice Chair Savage asked by what authority the Town based the denial of the requested application and Ms. Crane answered the density standard.

Comm’r Hipp asked how many Bed and Breakfasts rentals are in the neighborhood range or in the Town. It was noted that there are approximately 40. She asked how many are in established communities i.e., Harbor Woods and Ft. Johnson, to which 30-35 was said if the principal residences are used.

Vice Chair Savage referenced the Town’s email to the applicant dated 10-12 and the clause about accessory structure being made a part of the principal structure as offering a solution.

Comm’r Smith asked if the structure was connected without a kitchen is that fine and Ms. Crane stated “yes.”

#### In Support

Spencer Ong, 1027 Grand Concourse Street: Spoke in favor.

#### Rebuttal

Ms. Ong spoke that the definition of dwelling unit is unclear. It is not a single household and it would be used for family, friends and paying guests. She said to attach it to the house is extremely expensive (\$50-100,000) and it is not an option and there is nothing in code that requires that; the zoning standards do not apply.

Vice Chair Savage closed the Hearing at 6:20 p.m. and called for a motion on Case #BZAP-10-22-026: Appeal of Zoning Related Administrative Decision (Home Occupation Bed and Breakfast permit denial at 1027 Grand Concourse Street) in the RSL (Low-Density Suburban Residential) Zoning District (TMS #428-11-00-005:

Comm’r Smith moved to approve the applicant’s request to overturn the Zoning Administrator’s denial, Comm’r Hipp seconded.

Comm’r Smith stated the structure is another dwelling because another family could live there and he is inclined to vote against his motion.

Vice Chair Savage spoke about what constitutes a dwelling and that would make other Town ordinances moot. He will vote against the motion. Comm’r Hipp agreed with the Zoning Administrator’s decision and will vote against the motion.

Vote follows:



Comm'r Hipp            Nay

Comm'r Smith        Nay

Vice Chair Savage    Nay

Unanimous to deny the applicant's request.

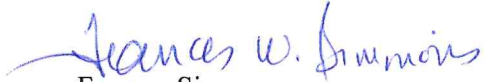
Vice Chair Savage announced that the final decision of the BZA would be mailed to the applicant within ten (10) business days.

Additional Business

Next Meeting Date: December 20, 2022

Adjournment: There being no further business to come before the body, the meeting adjourned at 6:26 p.m.

Respectfully submitted:



Frances Simmons

Town Clerk and Secretary to the BZA