

TOWN OF JAMES ISLAND  
BOARD OF ZONING APPEALS  
SUMMARY OF OCTOBER 18, 2022

The Board of Zoning Appeals held its regularly scheduled meeting on Tuesday, October 18, 2022 via Zoom virtual platform and in person at the James Island Town Hall, 1122 Dills Bluff Road, James Island, SC.

Commissioners present: Amy Fabri, Corie Hipp, David Savage, Vice Chair, Roy Smith, and Brook Lyon, Chairwoman, who presided. Also, Kristen Crane, Planning Director, Flannery Wood, Planner II, Niki Grimball, Town Administrator, Bonum S. Wilson, BZA 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 7:00 p.m. by opening in prayer. The Pledge of Allegiance was not recited because the meeting was held on Zoom.

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, members of the BZA, Attorney, and Staff.

Review Summary (Minutes) from June 21, July 19, and August 16, 2022 BZA Meetings: Comm’r Hipp moved for approval of all three (3) meeting minutes, seconded by Comm’r Smith. No discussion.

Vote:

Comm’r Hipp	Aye
Vice Chair Savage	Aye
Chairwoman Lyon	Aye

Motion Carried.

\* Comm’rs Fabri and Smith joined the meeting after the vote was taken.

Chairwoman Lyon stated that case rulings and minutes from this and any BZA meeting are available for public review and inspection during normal business hours at the Town Hall.

Chairwoman Lyon gave a special thank you to Frances Simmons. She said these minutes were at least 10-15 pages per meeting because it was a very involved case. She doesn’t recall during her tenure on the BZA having a case that was this intense lasting three meetings. Frances did a fantastic job and she appreciates her efforts.

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: Chairwoman Lyon announced that each person who wished to address the Board must be sworn. Those who wished to speak at the Town Hall and those on Zoom were asked to stand as a group and were sworn by Mr. Wilson. Jenny Welch, an attendee on Zoom, utilized the “chat” feature and was sworn by Mr. Wilson.

Chairwoman Lyon gave an overview of how tonight's cases would be conducted and the time allotted for addressing the Board. She stated for those speaking in support at the Town Hall to stand one-by-one and state their name and address for the record. Those speaking in support on Zoon will be asked to wait until their name is called upon to speak. Those speaking in opposition would follow the same procedure. The applicant will then have a chance to reply to any opposition with time limited to two (2) minutes and then the Board will make a motion to close the case to the public. Finally the Board will make a motion concerning the application stating its findings of fact and conclusions of law.

Review of the Following Applications:

Case #BZAS-9-22-026; TMS # 337-04-00-100

Special Exception request for indoor recreation (axe-throwing) in an established shopping center in the Community Commercial (CC) Zoning District and in the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District at 915 Folly Road, Unit 5: Planning Director, Kristen Crane, presented the staff's review that the applicants, Mr. Sean Humphry and Ms. Molly McFadden, are requesting a Special Exception to establish indoor recreation (axe-throwing) in an established shopping center in the Community Commercial Zoning District and in the Commercial Core of the Folly Road Corridor (FRC-O) Zoning District at 915 Folly Road, Suite S. The suite previously operated as a thrift store and currently shares a mixed-use shopping center with a medical office, nail salon, barbershop, gym, coin operated laundry, a tobacconist, liquor store, restaurants, and a financial service/loan office. The adjacent properties to the north and south are zoned Community Commercial. To the west are parcels in the Low Density Suburban Residential District (RSL), and the adjacent parcels to the east are in the General Office Zoning District. Other uses within 300' of the subject property include a bank, service stations with gasoline, drug store, professional offices, social club, office complex, fast food and general restaurants, retail/donation center, school, and single family residential uses.

The applicant's letter of intent states, *"the purpose and intent of this company is to open a recreational axe throwing business... I think it will be very well received by all James Islanders."*

The Town of James Island Zoning and Land Development Ordinance, §153.093 FRC-O, Folly Road Corridor Overlay District. (H) Commercial Core Area. (2) Uses requiring special exception. Vehicle storage, boat/RV storage, bar or lounge, consumer vehicle repair, fast-food restaurant, gasoline service stations (with or without convenience stores), **indoor recreation and entertainment**, vehicle service.

Mrs. Crane reviewed the Findings of Facts according to §153.045 E, Special Exception Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR), Special Exceptions may be approved only if the Board of Zoning Appeals finds that it meets all six (6) criteria as indicated below:

Findings of Fact:

*According to §153.045 E, Special Exceptions Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR), Special Exceptions may be approved only if the Board of Zoning Appeals finds that the proposed use:*

E. (a): *Is consistent with the recommendations contained in the Town of James Island Comprehensive Plan and the character of the underlying zoning district "Purpose and Intent";*

**Response: The Town of James Island Comprehensive Plan, Economic Development Element Strategies includes "encouraging a variety of diverse commercial uses**

*that will benefit the Town as a whole.” The applicant states in their letter of intent that “James Island is lacking in recreational venues where people of all ages can spend time together. While there is nothing really like this in the area, I believe it is compatible with other businesses nearby.” Additionally, §153.093(H) states that, in the Commercial Core Area, “Future development in this area is intended for higher intensity commercial uses than those found in the other areas of the corridor.” Therefore, this application may be consistent with the Town of James Island *Comprehensive Plan* as implemented through Community Commercial District.*

E (b): *Is compatible with existing uses in the vicinity and will not adversely affect the general welfare or character of the immediate community;*

**Response:** The mixed-use shopping center in the application and nearby properties have a wide range of existing uses (retail sales, bank, social club, restaurants, professional and medical offices, service stations, drug stores, barber shops, nail service, barbershop, liquor sales, coin operated laundry, personal improvement studio, tobacconist, financial services/loans), and therefore is compatible with existing uses in the vicinity. The proposed use should not adversely affect the general welfare or character of the immediate community.

E (c): *Adequate provision is made for such items as: setbacks, buffering (including fences and/or landscaping) to protect adjacent properties from the possible adverse influence of the proposed use, such as noise, vibration, dust, glare, odor, traffic congestion and similar factors;*

**Response:** The proposed business is to occupy a vacant suite within an existing shopping center. The parcel is fully developed for Community Commercial use. Additionally, the applicant describes in their letter of intent that *“the construction of the axe throwing lanes will implement the recommended noise reduction set up, which includes cement backerboard, which reduces the soundwaves when the axe hits the wooden target. Our targets are also not facing either wall, they back up to another throwing lane so noise should be minimal.”*

E (d): *Where applicable, will be developed in a way that will preserve and incorporate any important natural features;*

**Response:** The parcel and shopping center are fully developed with no changes being proposed to existing building footprints or existing vegetation. Any existing natural features will be preserved.

E (e): *Complies with all applicable rules, regulations, laws, and standards of this Ordinance, including but not limited to any use conditions, zoning district standards, or Site Plan Review requirements of this Ordinance; and*

**Response: The applicant is in the process to ensure compliance with the applicable regulations.**

E (f): *Vehicular traffic and pedestrian movement on adjacent roads shall not be hindered or endangered.*

**Response: Vehicular traffic and pedestrian movement should not be hindered or endangered since the shopping center is existing with an existing sidewalk. The present layout of the site shows 172 marked parking spots and exceeds requirements for a fully leased shopping center. Including the shared parking on the adjacent parcel, there are 280 total spaces available.**

The Board of Zoning Appeals may approve, approve with conditions, or deny Case # BZAS-9-22-026 based upon the Findings of Facts unless additional information is needed to make an informed decision.

#### Questions from the Board

Vice Chair Savage said his initial concern when he looked at this request was the sale of alcohol with people throwing axes but it was addressed fairly well. He said this is more of a question and not a demand because he wishes the applicants success should the request be approved. He said you could have people trained that sell beer by TIPS and Serve Safe online that he thinks is between \$35 -\$50. He asked for a pledge from the applicants that it would occur as this would greatly ease his concerns.

Comm'r Hipp asked if the use operated as a thrift store previously, and the applicant are seeking an exception for indoor recreation and entertainment. In the same clause it says bar or lounge and she is curious if it is grandfathered from a previous use of the building. She asked how the liquor license would be treated. Mrs. Crane answered if they wanted to operate a bar it would have been grandfathered because alcohol was already served there. She said our definition of a bar is gross receipts of alcohol sales of 25% or more and the applicants do not intend to go over that amount so it would not be a bar.

Chairwoman Lyon asked if the applicants anticipates that their alcohol sales would be less than 25% of their total sales including the axe throwing and food and Mrs. Crane said yes.

#### Applicant Presentation

Molly McFadden

810 N. Channel Court; a resident of James Island since 2002.

Ms. McFadden stated that she is a Corporate Accountant by trade and will continue to keep her job. She spoke that she always wanted to own a business and luckily the person sitting next to her (Mr. Humphry) has owned many businesses. Their combined love of axe throwing brought this business to fruition. She looked for a location for six months in the West Ashley area but was determined to be on James Island. Axe throwing is a fun thing for families to do. They have no intention to operate as a bar. She said the establishment will not be a place where people come to "hang out" and drink unless they have access to axe throwing. She encouraged the Board to try it if they've never done it. She described axe throwing as a very fast process with little time to drink a lot. On average she said most people have one or two drinks. Reservations are made for an hour but can be booked for two hours. Corporate team building is also planned.



Ms. McFadden said alcohol is just a part of the experience of coming in to throw axes. It is the same as someone going to play pool. There are almost no accidents because every participant is trained on how to throw the axe and they must sign a waiver. Their full liability coverage includes liquor. Food will be snacks because there is not enough time to eat and throw axes at the same time. Ms. McFadden informed the Board that she would like to take the focus off of the alcohol because it is a supplement of their revenue but don't have anything to compare it with other businesses on the island. They don't want to be a bar or focus as a bar. Both she and Sean Humphry are TIPS trained and certified. Anyone working for them whether they sell alcohol or not, will be TIPS trained and would be able to recognize someone that walks-in and had been drinking elsewhere. They will not be throwing axes. Safety is absolutely a thousand percent their top concern and they will take every precaution to ensure that.

Sean Humphry stated that he moved here two years ago but has run two or three hair salons, stores, and construction companies. He sold those businesses and moved here with Ms. McFadden. He thought about working construction but realized he's too old to be outside. Axe throwing is something they love and want to do. He shared being at North Charleston but could not get any revenue off of that because they have connection to a brewery and they don't sell food or alcohol. He said they are trying to figure out what the sales would be. He described axe throwing as fun for kids and for birthday parties. Children 10 years and older can throw under parent supervision. They have made every precaution to make axe throwing safe. He explained one incident in a poorly built facility that did not have buffers all the way to the floor, when it hit the concrete it bounced back at a young lady. Other than that incident, there are mats that are made for this. He said axe throwing has taken off and is a big deal up north. Here, it is looked at for recreation and would give the island more to do other than going to a restaurant or sit at a bar. You can bring your kids and have fun. He said there is no skating rink here anymore and there needs to be something to do other than play pool or something that costs an arm and a leg. They are excited about this opportunity and hopes the Board will be.

#### Questions from the Board

Comm'r Hipp said she was curious and fascinated and asked if lessons would be taught. Mr. Humphry explained the process that when a customer comes in they are booked for an hour (on the booking app it is an hour and fifteen minutes) and is walked through the process. They are shown how to position the axe, throw it, and what not to do. They also sign a waiver. He said it sounds difficult, but it is not. The axes are made to make three/four rotations and stick to a board. The only way to mess up is how you throw your wrist. They go over rules and walk around to make sure people are throwing the axes correctly and having a good time. There will not be lessons but there is a fifteen minute tutorial for instruction. Ms. McFadden shared that it can be frustrating until you get the hang of it and commented that she is better than Sean. She also shared experience at Chuck Town Axe where people were getting frustrated and kept waiting for someone to give them tips. But they will be more hands on than some other places. There will not be private lessons but instructions and guidance.

Mr. Humphry addressed the question of alcohol and axes and explained how the lanes are built with a large divider and there is no way for an axe to come from one lane to another. He said the customers are also fifteen feet away so when the axe is thrown, it hits the wall and drops straight down onto a rubber padded mat. He compared the chances of getting hurt is more from a bowling ball. Axes and alcohol sounds dangerous but it is not.

Vice Chair Savage thanked the applicants for addressing that they are TIPS certified. He said he was not worried about the people in there getting hurt by the axes, he was worried about when there is the sale of alcohol and people leave their business. He knows that the applicants are TIPS certified and at this point he is not going to ask that it be made a requirement, but a pledge from them that everybody working there will be. Both applicants agreed that everyone would be 100% and Mr. Humphry said he quit his other jobs and will be at the business full-time. He said at the start up their two sons aged 18 will be there and they will

get certified and will not touch any alcohol. Everyone working will get TIPS certified because it helps their insurance and is a safety factor. Ms. McFadden agreed. Vice Chair Savage said the applicants addressed his concerns and thanked them.

Comm'r Smith spoke of wanting a better feel for the business model. He asked if he were to come to the business and signed up for an hour, with fifteen minutes of instructions first, how many times could he throw the axe. He also asked what types of food would be served while he is drinking a beer and throwing the axe.

Mr. Humphry said it depends on the number of people playing that could book anywhere from two to six people per lane. The double lanes are mainly a family of 8 or 10 and there is a large waiting area on the other side. He said there are 10 throws per person/per game. If there are four people, you might get in six games; if there are two people you could get 8-10 games, so that is 80-100 throws per hour is how best he can judge it. He commented never putting it on paper but could figure it out. The types of snacks served would be chips, popcorn (popcorn machine), nachos, and candy bars. He is talking with some vendors because he does not want to have a kitchen with a dishwasher. There will be plastic cups with their logo for people to take home as a souvenir or throw away.

Chairwoman Lyon asked out of curiosity what it would the cost for her and her husband to throw. Mr. Humphry said between \$25-28 per hour but they are trying to bring the pricing down to \$25.00. He said others are \$28.00 per hour. They want to keep the price at \$25.00 per hour because that is where they started but will see what happens the first year.

Chairwoman Lyon asked about the age 10 to axe throw. Ms. McFadden said they do not have that firm and their insurance did not require that. She wants to leave that in the parents hands but will not allow a toddler to throw an axe. She explained there are axes that are 11 inches for children. An adult axe is 14-16 inches so the junior axe is very light. A lot of young ladies use the lighter axes and men the bigger ones. Closed toed shoes are required, no sandals are allowed and a waiver must be signed.

In Support:

Town Hall: None

Zoom: None

In Opposition:

Town Hall: None

Zoom: None

Rebuttal: Not Needed

Chairwoman Lyon announced that three (3) letters/emails were received in support of this application that included the names and addresses of those in favor. No letters/emails were received in opposition.

Chairwoman Lyon closed the Public Hearing at 5:39 p.m. and moved to approve Case #BZAS-9-22-026; TMS # 337-04-00-100 for discussion. Comm'r Hipp seconded. Then Chairwoman Lyon called for the vote.

Vote

Comm'r Fabri           Aye

Comm'r Hipp           Aye

Vice Chairman Savage Aye

Comm'r Smith         Aye

Chairwoman Lyon  
Motion carried

Aye

Chairwoman Lyon thanked the applicants and informed them that the Board's decision will be mailed to them within ten (10) business days and to contact the Planning Department if additional information is required.

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 and Fort Johnson Road: Planning Director, Kristen Crane provided the Staff Review that Charleston County Transportation is requesting a variance for the removal of two grand trees (44" DBH Live Oak and 37.5" DBH Live Oak) for intersection improvement at the intersection of Camp Road and Fort Johnson Road, in the right-of-way (ROW) adjacent to 1182 Fort Johnson Road. Adjacent property to the northeast and southwest quadrants of the intersection are zoned Low-Density Suburban Residential (RSL) in the Town of James Island. Adjacent property to the southeastern quadrant of the intersection is zoned Single-family Residential (SR-1) in the City of Charleston and houses Charleston Fire Department Station 7. The northwestern quadrant is also in the City of Charleston, zoned Commercial transitional (CT) and has an abandoned building located on it.

*Town of James Island Zoning and Land Development Regulations Ordinance, §153.334 (A) (4) Tree Protection and Preservation defines "Grand Tree: Any species of tree measuring 24 inches or greater diameter breast height (DBH) except pine and sweet gum. All GRAND TREES are prohibited from removal unless a grand tree removal permit is issued."*

The Charleston County staff-recommended alternative for the intersection (Recommended Option #1, attached) is an "urban compact roundabout" and has the least impact on grand trees and adjacent properties. These impacts include the removal of a 37.5" DBH Live Oak (Grade C according to a certified arborist) and a 44" DBH Live Oak (Grade C w/hollow base according to a certified arborist). The requested trees are to be removed to accommodate the improvements which include safety, drainage, sidewalks, and buffer improvements.

**Findings of Fact:**

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

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

**Response:** **There may be extraordinary and exceptional conditions pertaining to this project area due to the large number of trees that currently line the right-of-way and the "many utilities within the project area causing conflicts and obstructions" according to the applicant's letter of intent. The letter of intent also explains, "the grand trees proposed for removal are in the existing SCDOT**

***Right-of-Way” and the “proximity of the grand trees is very close to the edge of pavement.”***

- F (b): *These conditions do not generally apply to other property in the vicinity;*  
**Response:** **Other properties are within the project limits; however, these conditions do not apply anywhere else in the vicinity and any healthy grand trees in the area will not be impacted by the project or the installation of the drainage structures required. Additionally, the letter of intent explains, “many efforts have been taken to minimize impact of all the grand trees.”**
- 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 §153.334, Required Tree Protection, may not restrict the utilization of the property as it is currently being used; however, it will effectively prohibit the implementation of the construction project for “safer roads and better traffic circulation as well as a safer pedestrian crossing” and to “aid in drainage and flooding”, as the letter of intent explains.**
- F (d): *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance;*  
**Response:** **The authorization of this variance will not be a detriment to adjacent property or to the public good because the “the removal of the two grand trees will allow safer and better traffic circulation at the intersection” according to the applicant. The character of the zoning district will not be harmed by the granting of the variance.**
- F (e): *The Board of Zoning Appeals shall not grant a variance the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a non-conforming use of land or to change the zoning district boundaries shown on the Official Zoning Map;*  
**Response:** **The variance does not allow a use that is not permitted in this zoning district, nor does it extend physically a nonconforming use of land or change the zoning district boundaries.**
- F (f): *The need for the variance is not the result of the applicant’s own actions; and*  
**Response:** **The need for the variance is not the result of the applicant’s own actions because the size and location of grand trees are existing site conditions, as previously stated. Additionally, the need for the variance, as the letter of**

intent explains, and previously stated is to ***“allow safer and better traffic circulation at the intersection.”***

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

**Response:** **This variance may not conflict with the *Comprehensive Plan*, specifically the Transportation Element Needs of *“Mitigating the impacts of a changing population on the existing transportation system”*, with a Strategy to *“ensure that roads are constructed in a way that promotes safe vehicle passage and pedestrian/bicycle use and provides sufficient drainage”* and to *“work with appropriate agencies to investigate how to improve roads within the Town”***

*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-9-22-030 (Variance Request for the removal of two grand trees: 44” DBH Live Oak and 37.5” DBH Live Oak for intersection improvements) 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. Prior to obtaining a Zoning Permit for the proposed site improvements, the applicant/owner shall install tree barricades around the protected trees on the property, as described in §153.334 of the *Ordinance*, throughout the duration of construction.
2. Prior to obtaining a Zoning Permit for the proposed site improvements, the applicant/owner shall provide documentation that the protected trees in the project area have been pruned and fertilized as recommended by a Certified Arborist, in order to mitigate potential damage to the trees caused by construction.
3. The applicant/owner shall mitigate the removal of the grand trees by submitting a mitigation plan to the Zoning Administrator, as described in 153.334 (E) (2) of the

**Questions from the Board:**

Comm’r Hipp said the applicant indicated the SC Department of Transportation (DOT) has right-of-way a number of times. She asked could this be an eminent domain situation that the DOT could come back to the Board and overturn its decision and do eminent domain? Could the DOT say we have the right to cut the trees down because it’s in the right-of-way? Mr. Wilson said the Town’s Ordinance protects trees no



matter where they might be; they are owned by the Town, whether in the County's right-of-way or in someone's backyard.

Ms. Crane said her understanding is if this were a DOT project they would be able to remove the tree but this is a County project and a variance is needed from the Town. She does know about eminent domain.

Comm'r Fabri asked if this request had gone through the approval by the City and Town Councils. She asked if these entities have to agree because it is a joint municipal project. Ms. Crane said she did not believe it went before City Council but did at County Council. Comm'r Fabri said her reason is that the Harbor View Road project, Fort Johnson sidewalk, and the Camp and Folly Road project all had to go through the entire municipal approval process and she wonders since two lots on the corner are in City and two in the Town if it would follow the same process. She looked online and could not find anything so it hasn't happened yet. Ms. Grimbball, the Town Administrator, spoke that this is something that was just brought to her attention before the meeting began and she is looking into it with Attorney Wilson. Comm'r Fabri said she wanted to ask that question to know if there are still steps to take before the tree removals.

Applicant Presentation:

Keane McLaughlin, 1539 Chandler Street: Landscape Architect, ESP Associate  
and John Martin, Project Manager, Charleston County

Mr. McLaughlin said he would like to make five points about the project. He thinks the design team, engineers, and development team has done a good job with the design options. Tree health has been taken into consideration: Requirements, and Infrastructure: Road Alignment options: and Safety.

The design team looked at three different potential alignment options. The first looked at the removal of 16 Grand Trees but they knew immediately that was not going to work. They went back to the drawing board and came up with a right-of-way that showed a Traffic Circle that indicated a right hand turn that took down 5 Grand Trees. They knew they could do better and came up with an Urban Compact round-about, that takes out two trees. He said from that perspective they have done their homework and tried to minimize the impacts overall. The two Grand Trees that they are removing were graded "C" by the arborist but he honestly thinks that is a generous grade. They were on site and looked at the trees and they were full of vines; one has a hollow center and the canopies are very bad. He said the trees have not been taken care of, trimmed, or maintained for years. They are very close to the road, scared and damaged .

In speaking about the required drainage infrastructure, he said there is not a lot they can do. Engineering requirements are needed to maintain what is desired by DOT. Pipes have to be placed into the ground and there is no way around it. He said when doing curb and gutter a catch basin is needed to retain and hold the water coming off pervious pavement. They are increasing the amount of pavement on site to put the pipes into the ground. They looked at road realignment issues where the circle is on the current intersection and played with that enough to get it right. He said any other direction to push it one way or the other expands the scope of the project: left/right, north/south; east/west and would take away more right-of-way than they want to do.

Mr. McLaughlin said this area has been a bad intersection for years. Everybody knows it and those who drive it and trying to make a left hand turn on Ft. Johnson is basically taking their lives in their hands. They have reports of all of the incidents that have happened there. This traffic circle is desperately needed. He thinks the team has done a fantastic job of minimizing the destruction/removal of the two Grand Trees and he thinks it is something to be admired. They started with 16 trees and brought it down to two. The two trees to be taken out will be mitigated and nice canopy/ornamental trees will be put in its place that will grow and thrive at that intersection.



### Questions from the Board

Comm'r Fabri wanted Mr. Martin to have opportunity to speak and asked he had anything to add to the presentation. Mr. Martin said at the beginning the Board had questions to the staff about DOT's right-of-way. He said Camp and Ft. Johnson Roads are both state roads so they are having to do the project based on the state's guidelines and requirements. He said the trees are located within the existing road right-of-way belonging to the State but subject to the Town's ordinances and that is why they are before the Board tonight and want to work with all the stakeholders that are involved. He said there would be no eminent domain to get the trees because the State already has ownership. It would be a matter of going through the process to get the project permitted. The other question that was brought up was whether the project has gone before County Council and the City of Charleston. He said the project has been heard before County Council. There was a sales tax referendum in 2016 to fund this project and a number of others on James Island (the intersection of Secessionville and Riverland Drive). He said they have been working on this project for five years and still need to get permitting through the City and through DOT. They are starting this process now because they need to have the full design to submit to them. The stormwater drainage and the actual design of the traffic circle is what they need from DOT and there are certain stormwater requirements that must be met with the City. They also have to go through the process of obtaining some right-of-way needed for the project because the traffic circle (that the Board saw), the conceptual, there is some property that is still private and they still have a way to go to make this project a reality. He said the trees they are trying to get permitted to remove would not be removed until construction began.

Comm'r Fabri said she asked the question about the Municipal Agreement because on James Island with these projects, we are fortunate to have three entities that govern the island so everyone is involved: City, Town, and County all have to agree on everything. She said in reading the report, the justification for removing the trees is the Stormwater Plan. What she'd like to ask specifically about the Stormwater Plan is if it complied with the City of Charleston's 2013 Stormwater Regulations. She said they just did a reboot as well as the County on their stormwater regulations so now there is the 2020 stormwater plan. She asked if it was in compliance with the 2020 regulations adopted in June by the City. Mr. Martin said that the stormwater analysis was mainly done in 2019, so when they applied for permitting with the City they may have to revise and update a few things but he did not think it would change substantially as far as the drainage portion. He said if there is anything they need to do to meet new requirements they will do that, also with DOT if their requirements have changed. Right now, he said the project is in review with DOT and they hope to get final approval soon and that will drive what happens with the City. But he wants approval from the DOT before going to the City since its ultimately DOT's road. Chairwoman Lyon asked if he meant the City and the Town and Mr. Martin said the City, because they will be the MS-4 entity to give the stormwater permit.

Chairwoman Lyon reiterated Comm'r Fabri's question if the request would come before the City and Town Councils. Mr. Martin said he is unaware of any maintenance agreement they might do with the City. Generally they would apply for a permit from the City and would go before the Design Review Committee and all of the information is reviewed with their City Council. He did not think they would formally appear before City Council but go through their permitting process for approval.

Comm'r Fabri asked if Mr. Martin and McLaughlin were at the site recently or today, almost directly across the street from the trees are two that have been Dominion(ed). She asked them to walk her through the stormwater plan for her understanding. She asked why they couldn't adjust things so that the trees on the other side that were pruned by Dominion (which she believes on the chart are a "D" not a "C" ) why it's not possible to shift things or put the junction boxes on the other side of the street or further up the street to save the trees that are on the road. Mr. Martin said the drainage would have to be on both sides of the road. He explained how the catch basins for the boxes must be spaced according to DOT guidelines. He was asked before about realigning of the road and explained if it is shifted from the trees, he doesn't know if that would be feasible. There would not be a significant shift away from the trees to go on the other side of

the road and would come all the way down Camp Road for the road to be road safe meeting DOT requirements. Additionally, he is unsure that they could get a permit and have to take right-of-way from the property owners on the other side. He is unsure that would be an option to pursue.

Comm'r Fabri said wouldn't they be moving the sidewalk? Right now the sidewalk runs on that side of the street. Mr. Martin said if the road is moved over they would have to move everything over. Comm'r Fabri asked the possibility of getting a variance from DOT that would make it possible to move those boxes to save those trees. Mr. Martin said they might could increase the scope of the project but still need the storm drains even if the boxes were moved. He said that is the problem because the pipes would come close to the root zones and everything would have to be moved away from those trees a great distance because the root spreads far from the trees. He commented about not being an arborist but thought it would have to be 10-15 feet away from the trunk of the trees to put the pipes near the trees without harming them. He said moving everything over is not possible. They have to put in storm drains because of the pervious areas the project creates. Curb and gutter for the boxes are needed to catch the runoff from the curb and gutter.

Comm'r Fabri stated that the plan went from 16 trees to 2 trees. She asked have they looked all possibilities to save the other 2 trees. Mr. Martin said that they had. They do not want to take down Grand Live Oaks if they don't have to. He said this is certainly not something the County wants to do and they have tried to find a way to avoid it. They have been working on this project almost 5 years and this has the best case they could come up with to build the project in a way to provide greater safety for drivers and meet all of DOT's requirements. He said if they could avoid cutting down the trees and found some way not to, they would. Mr. McLaughlin stated they are working with four municipalities, a state agency, and the Department of Health and Environment Control (DHEC) and it is not an easy route to go. It has been challenging and he tried to avoid that route as much as possible and is here basically as a last resort to get the project moving.

Comm'r Smith said he looked at the plans and across the two trees is a thin strip of green between the sidewalk and the road that go from almost nothing to a few feet, across in other places it is a lot thicker. He asked why does it need to be there? Why can't the road move over that much? Mr. McLaughlin talked about DOT and Highway standards for road alignments that must be met. He said shifting and realigning the road in any way would be a challenge and unfortunately it has been shifted as much as it could. Mr. Martin said they have had to change the realignment. Another factor is the way the road is aligned and the amount of property they would have to take from property owners at the intersection. He said that is never a popular thing. He said it is not a lot, but some is needed to fit the project into the right-of-way. Mr. McLaughlin said regarding the property on the northwest corner (gas station) they have already taken a substantial amount of right-of-way and they would need to take a lot more to shift over but have approval from Charleston County for eminent domain.

Comm'r Smith referred to what he thought was the property line. Mr. Martin said that will be the new right-of-way they don't have yet. Comm'r Smith talked about the green strip and said if it is moved over by that number of feet it, would that impact the property? He said what Comm'r Fabri was talking about is figuring a way to use the same amount of hard surface from the west of the sidewalk to the east of the roadbed to configure it differently and perhaps figure out something else to do with the sidewalk on the other side that could perhaps go around the trees. He asked if those options were studied. He appreciates that option 3 was studied. For Option 2, did not have good ingress or egress from the Fire Station. Option 1, seems to be the best because they've gone to 2 trees. He asked if they could do better. Mr. Martin said they did not have enough hard surface and they would need to get right-of-way. The sidewalk could not be on the other side of the tree without taking private property and would still be close to the trees. The root zone would still go out 10 -15 feet from the trunk of the tree and sidewalk and drainage would be in people's yards.

Comm'r Smith asked if variances are available to keep the trees? Mr. Martin said there is not a variance to not do storm drainage because it would create a safety issue when it rains. Comm'r Smith asked if they

could study this further and come up with another plan? He asked about the possibility of placing the boxes at a different location. Mr. Martin explained that the boxes need to connect to the storm drainage pipes. If they are moved, it would not stop the drainage at the tree because they still have to continue tapering of the road well beyond the trees. Drainage is needed all the way down to where it ends and doesn't see how that would avoid the trees.

Comm'r Fabri recalled that the plan has to be taken to the City's Stormwater Department for approval. Mr. Martin said they do, but generally the City approves what the State requires for storm drainage plan and the City would be looking at is water quality, more so than water quantity. He said it would be different if this were a City road but because it is a State road they will be accepting what the State wants, the quantity portion of stormwater management. Mr. McLaughlin said the state is very particular when it comes to drainage on public rights-of-way. Comm'r Fabri said she wonders if we might be putting the cart before the horse because the plan still needs to be taken to the City and DOT for review. She has suspicion at that time they could ask for variances with the objective of trying to save those two trees or ask them if they have ideas on how that could be done. She said they might say "no", you have to make it bigger and another tree may need to come out. So she wonders if it would be prudent to talk to the two entities before the BZA approves or denies the permit. Mr. Martin said drainage is a DOT decision. He said if the DOT does not want to not install drainage to save the trees that would be their decision. He could ask them but he would be surprised if they would, Their main concern is always safety but he could ask them for the record so they can get a statement from them. Mr. McLaughlin said his experience is that the DOT does not grant variances and Mr. Martin said sometimes you can get a waiver for a small amount of runoff (i.e., detention waiver) but still need to do something. In this case, there is too much runoff and they would not be able to get a waiver on installing stormwater drainage period because the impervious areas they are installing with the traffic circle has a lot of asphalt and they are putting in curb and gutter. He stated never hearing DOT not having drainage with curb and gutter. Without a curb and gutter it would create a river because there is no place for the water to runoff; it is trapped on the roadway with the concrete curb on the side, so he doesn't see how there could not be curb and gutter.

Comm'r Fabri said the report said the runoff would go to Clarks Sound down Stone Post Road. Mr. Martin said if you're in a heavy storm event with no storm drains and it all goes into the road you will have flooding in the road. That is why they want the drainage there to get the water off of the road. Comm'r Fabri asked why does the drainage have to run up Camp Road and he said because there will be curb and gutter that far up because the project's footprint is to have drainage for the entire area to avoid that situation. She asked why couldn't the drainage go on Ft. Johnson. Mr. Martin said there is drainage on Ft. Johnson and Stone Post, the entire project will have drainage on both sides of the road. Comm'r Fabri said she is not an engineer and in her mind she would feel better if this request had gone to the two other decision-makers, the City of Charleston, and the DOT. Mr. Martin replied that it will go to them because permits are needed from them and they have to review these plans. Comm'r Fabri reiterated that getting permits before coming to the Town would be better, but if they are wanting the Board to vote on this today, she is fine with that. Mr. Martin said if the Board wanted, he could ask the DOT if they would consider waiving the drainage requirements to get something for the record from them. He is willing to do that and to ask them. They are going to review these plans and after their approval it will be sent to the City for the MS-4 permit. Comm'r Fabri said if they are in the middle of review with the DOT if he would ask them to take a look at that and see if there is a way to save the trees there. She is sure they will make a whole-hearted effort to explain that we are trying to save one or two of these trees in order to accommodate and still comply with DOT regulations. Mr. Martin said he would do that.

Comm' Smith said on Options 2 and 3 they show the Stone Posts remaining very close to the roundabout but in Option 1 it says it will be relocated. He asked where are they going to be relocated. Mr. Martin said they will be relocated but a definite decision on where has not been determined. Chairwoman Lyon asked if there were any ideas where they might go and Mr. McLaughlin said behind the sidewalks. They will be kept close to where they are now but they are trying to determine the best spot in the area and that will partially be driven by the DOT and utilities to find a location where it makes sense and for safety and avoiding impacts to utilities in the area. He said there are a lot of utilities that have to be relocated in the project which is another challenge in the project with most being on the south side. Comm'r Smith asked if there is a possibility that they might not be relocated where they are with the problems of relocating them because they don't have it determined yet and spoke of the historical significance of the stone posts. Mr. Martin said they will be relocated and there is a monthly meeting with the utility company so there is a plan in the works and they have an idea where they will be relocated but the design is not completed yet. He said every project is coordinated with the utility company because they need to be involved in the moving of utilities.

Chairwoman Lyon asked Mr. Martin if he is willing to ask the DOT and request a variance for the stormwater and we were to defer any motion or vote tonight, how much time would he need, a month or two months, and she asked him what his thoughts are as far as coming back to the BZA with that information. Mr. Martin said he was pretty sure that he could get a response from the DOT in one month. He does not think it would take them longer than one month to respond. Chairwoman Lyon said the next meeting of the BZA is November 15 and is available to meet the third Tuesday of every month. She just wanted to throw that out and is reading the room where this seems to be going when the Board gets to that point. She said that is something that he could work out with Ms. Crane if things go in that direction.

Vice Chair Savage asked if the stone posts that are going to be relocated are the ones that were recently reconstructed because they were already knocked down by cars a number of times? Mr. Martin said yes, these are the ones that are existing now and they will be relocated. Vice Chair Savage asked if these are the ones that are presently a safety issue. Mr. Martin explained the reason they have to be relocated is when they redesigned the intersection they would be in the road. Vice Chair Savage said and that they have already been knocked down a number of times. Mr. Martin replied they have been hit a number of times over the past decades, the last time in the late 90s or early 2000. Vice Chair Savage said they were knocked down again in the last two years.

In Support @ Town Hall: None

Town Administrator Grimball spoke that she had a little more information that she wanted to add to the first question from Comm'r Fabri regarding the municipal agreement. She said the County will be reaching out to the Town a bit further in the process most likely after all of the permits and stormwater design issues are settled so the municipal agreement is forthcoming, its just happening a bit further into the process.

In Support on Zoom: None

In Opposition @ Town Hall: None

In Opposition on Zoom:

Jenny Welch, 1163 East and West Road: Spoke that over the last two weeks she has been trying to explore creative ways to save the two trees without impacting the overall project. She met with County Councilwoman Honeycutt and they came up with a plan they hope will be an easier solution, a slight shift in the roadbed west providing room for the drainage. She has also talked with the project manager many



times and he kindly answered many of her questions and offered her many reasons why some of them wouldn't work. She appreciates the time and help he provided her over the last few weeks. On Friday she asked for the stormwater drainage plans from the County. She consulted with a private engineer and they came up with a few other ideas she hopes can be fully explored. She included those ideas in her written comments that she submitted earlier today. Many of those ideas have already been discussed. The only one that hasn't been discussed yet necessarily is if they could place the drainpipes underneath the roadbed since the utilities seem to be mostly on the western side of the road to begin with. She is unsure what is involved with that but it was a thought that she had. Hopefully, the County will have thoughtful responses to these questions and if they don't hopefully they will go to DOT to see if any of those ideas are doable with affecting the project overall. She has lived here all of her life and travel through this intersection daily. She understands that the intersection can be made safer and the County is trying to do that. However she feels it is so important for all avenues to save these grand trees because they also help with our stormwater control and drainage. She personally have never seen any flooding in that area in 44 years. She hopes we can achieve safer intersections and roadways and save what is still special about James Island, our live oaks.

Chairwoman Lyon announced for the record that two letters were received in support of the request and one in opposition (Jenny Welch).

Applicant Rebuttal:

Mr. Martin spoke that she saw the comment about putting the pipes under the road and knows that is something they cannot get permitted from DOT. He said they could do a crossline across the street but they will not put pipes up and down the road under the road which is for maintenance reasons. If there are problems the entire road would have to be shut the road down and remove the asphalt to get to the pipes and that is something the DOT would not do for maintenance and would cost a lot more taxpayer monies. He said some of the other things were already talked about and he did agree to ask DOT about any reconsideration dealing with the storm drainage plan. Mr. McLaughlin added the DOT is pretty stringent about stormwater, drainage and infrastructure and Mr. Martin has offered to speak with them if there is any flexibility on their part.

Chairwoman Lyon thanked the applicants and appreciates their hard work on this project. It sounds like there's has been a lot and a lot to deal with.

Chairwoman Lyon closed the Public Hearing at 6:38 p.m. and moved to approve 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 and Fort Johnson Road with the three conditions recommended by staff for discussion. Vice Chair Savage seconded.

Comm'r Hipp asked for confirmation that the applicants are not talking about current issues, rather preventative issues once all of the pervious structures are installed. Chairwoman Lyon explained with curb and gutters the area would be like a swimming pool without drainage. Comm'r Hipp also asked where does the water go and Chairwoman Lyon said to Clark Sound. Further she asked what is the possibility of the Clark Sound flooding and it becomes a Lockwood Drive. Chairwoman Lyon said she is willing to break protocol and have the applicants come back to answer questions if the Board needed them to as this is very important. Comm'r Fabri explained that basically the water that will be created with the drainage is going to flow down Stone Post Road and down Stone Post is the first culvert and eventually it heads to Clark Sound. She said one of the things that they are going to have to do with the stormwater with the City of Charleston is look at what they are discharging into Clark Sound, i.e., water quality, which is a big issue that happens with the updated guidelines. This is why she asked whether they are following the 2013 or 2020 so they will have to comply with the new City of Charleston Stormwater Regulations that looks more

at discharge that would go into Clark Sound. And, the City may have more considerations for this plan. That is why she is worried that if we say ‘yes’ with conditions that by the time they complete DOT review and the City of Charleston’s review there may be other issues. They may say we need to take down trees across the street too so then they would have to come back to us to hear that again and she would not be happy about that. She would rather rip the band aid off all at once if that is the direction they are heading.

Vice Chair Savage commented being in a catch 22 because the City may say why are we spending time considering this if its going back to the James Island. He further stated that it looks that there is a consensus from the applicants to go to the DOT to see if they can get a variance. He stated he is willing to, if he is reading the room correctly, why don’t we get the answer to that question and then revisit it. He is willing to go forward because he personally thinks they meet the criteria because safety always outweighs two “C” grade trees. He agrees with Walters’ letter that this is a dangerous intersection. He said it is a safety issue. Comm’r Fabri has good questions. So the Board covers all of its bases, let us take them up on their offer to see if they can get a variance then our decision that is based on safety would not be subject to criticism that we did not explore all opportunities. He thinks Ms. Jenny Welch is right and we should explore that. He agrees with Comm’r Hipp that Ms. Welch misunderstood this is not based on historical flooding with what you might see with curb and gutter and no drainage. He lives right next to the Harborview and Ft. Johnson traffic circle so he understands when you’re building curbs and gutters. He promised to Comm’r Hipp that the runoff from that one area will probably not flood Clark Sound but is concerned about the quality of what goes into it. Vice Chair Savage asked if the Board is heading in the direction to make a motion and have them return in a month with their findings.

Mr. Wilson reminded the Board that they have a motion on the floor to approve the case and they could defer, freeze, or approve contingent upon a good faith attempt and failure to get a waiver from the DOT. Or it could be phrased to disapprove contingent on denial of the DOT for stormwater waiver in which case we approve. Chairwoman Lyon said they would like to defer. She withdrew the motion on the floor and Vice Chair Savage seconded the withdrawal.

Chairwoman Lyon moved to defer the case to allow the applicants to make a good faith effort to potentially relocate or change the drainage in order to save one or two of the trees. Comm’r Fabri seconded the motion to defer the case.

Vice Chair Savage said the language about the variance should be included in the motion and asked Comm’r Fabri to add that language. **MOTION: Chairwoman Lyon moved to defer the case for the applicant to consult with SCDOT to request a variance to allow reduction in drainage in order to preserve the trees.** Comm’r Fabri seconded the motion.

VOTE

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

Motion to defer passed unanimously

**\*This case is deferred to the November 15 meeting.**



Additional Business:

Next Meeting Date: November 15, 2022 @ 5:00 p.m.

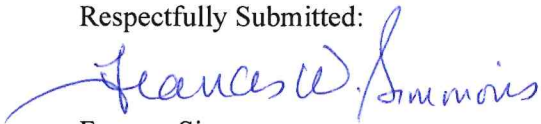
Chairwoman Lyon asked the Board to think about the new time for BZA meetings and whether it is working for everyone and the public at next month's meeting.

Chairwoman Lyon thanked the staff and Attorney Wilson for their hard work .

Adjourn:

There being no further business to come before the Board, the meeting adjourned at 6:50 p.m.

Respectfully Submitted:



Frances Simmons  
Town Clerk and Secretary to the BZA