

**TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
Town Hall
1122 Dills Bluff Road, James Island, SC 29412
BZA AGENDA
March 19th, 2024
5:00 PM**

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

(MEETING WILL BE STREAMED ON THE TOWN WEBSITE jamesislandsc.us)

Members of the public addressing the Board in support or opposition of this case at Town Hall must sign in. The Town invites the public to submit comments on this case prior to the meeting via email to kcrane@jamesislandsc.us referencing the Case #. Emailed comments not sent to this email address, and comments that don't include a home address for the record, will not be accepted.

- I. CALL TO ORDER
- II. COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT
- III. INTRODUCTIONS
- IV. REVIEW SUMMARY (MINUTES) FROM THE DECEMBER 19th, 2023, BZA MEETING
- V. BRIEF THE PUBLIC ON THE PROCEDURES OF THE BZA
- VI. ADMINISTER THE OATH TO THOSE PRESENTING TESTIMONY
- VII. REVIEW OF THE FOLLOWING APPLICATION:
 1. **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 (TMS #425-09-00-027).
- VIII. VOTE FOR CHAIR AND VICE CHAIR
- IX. ADDITIONAL BUSINESS:
 1. Next Meeting Date: April 16th, 2024.
- X. ADJOURN

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

Variance Application

Town of James Island Board of Zoning Appeals

Town of James Island
Zoning/Planning Department
1122 Dills Bluff Road
James Island, SC 29412
Phone 843-795-4141
Fax 843-795-4878
www.jamesislandsc.us



This application must be complete and submitted in person to the Town of James Island Zoning/Planning Department in order to apply for a Variance. Please read the entire form prior to completing the application. The applicant shall receive a copy of this completed form at the time the application is filed. This application will be returned to the applicant within fifteen (15) working days if these items are not submitted with the application or if any are found to be inaccurate:

- 1) Completed Variance application signed by the current property owner(s).
- 2) Copy of **Current Recorded Deed** to the property (Owner's signature must match documentation). If the applicant is not the owner of the property, the **Current Property Owner(s)** must sign and print the **Designation of Agent** found below.
- 3) **Restrictive Covenants & Posted Notice Affidavit(s)** signed by the applicant or current property owner(s).
- 4) A **letter of intent** signed by the applicant or property owner(s) stating the reason for the request that explains why this request should be granted and how it meets the Approval Criteria of §153.049 F. All proposed Variances, except single family, shall satisfy the Site Plan Review process and attend at least one Site Plan Review meeting prior to submitting this application.
- 5) An accurate, legible **Site Plan drawn to Engineers Scale** must be attached. The site plan must show property dimensions, dimensions and locations of all existing and proposed structures and improvements, parking areas, Grand trees(24" DBH or greater, Pine, Sweetgum, SC Invasive Pest Trees are exempt), wetlands(properties containing DHEC-OCRM Critical Line areas must contain an up to date DHEC-OCRM signature on site plan or plat), holding basins and buffers when applicable.
One 24 x 36 copy & fifteen (15) 11 x 17 copies.
- 6) Copy of a legible **Approved and Recorded Plat** showing present boundaries of property.
- 7) **Fee \$250** check made out to "Town of James Island". Grand tree variances add \$50 each additional tree

Applicant Name: GROUND WORK GENERAL CONSTRUCTION, LLC

Mailing Address: 329 Bertram Rd.

City, State, Zip Code: Summerville, SC 29485 Daytime Phone: (843) 814-7883

Email Address: sonja@gwgcllc.com

Subject Property Address: 1006 Folly Rd., Charleston, SC 29412

Present Use of Property: Commercial (Restaurant)

Variance Description: A deviation from a 10' setback to 6' to accommodate placement of a pavilion at the rear elevation of the property

Applicant Signature: *Sonja Y. Mason* Date: 2-13-24

Designation of Agent (Complete only if owner is not applicant): I hereby appoint the person named as Applicant above as my (our) agent to represent me (us) in this application.

Owner Print Name: AHMED HASSAN Date: 01/30/2024 Owner Mailing Address: 1692 EVADARA WAY C

Owner Signature: *Ahmed Hassan* City, State, Zip Code: Charleston SC 29414

FOR OFFICE USE ONLY:	
Application #: <u>BZAV-2-24-035</u>	Flood Zone: _____
Zoning District: <u>CC, FRC-O(Com Core)</u>	Fee Paid (\$250): <u>\$250 (ck# 1007 \$25; ck# Trust \$22)</u>
Date Filed: <u>2/16/2024</u>	Zoning Officer: <u>HC</u>
TMS#: <u>425-09-00-027</u>	

TOWN OF JAMES ISLAND

BOARD OF ZONING APPEALS

SUMMARY OF DECEMBER 19, 2023

The Board of Zoning Appeals (BZA) held its regularly scheduled meeting on Tuesday, December 19, 2023, at 5:00 p.m. at the James Island Town Hall, 1122 Dills Bluff Road, James Island.

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

Call to Order: Chair Savage called the meeting to order and asked everyone to silence their phones. Commissioner Hayes led the Pledge of Allegiance.

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, BZA Attorney, and staff.

Review Summary (minutes) from the November 21, 2023, Board of Zoning Appeals Meeting: A motion to approve the minutes of November 21, 2023, was made by Comm'r Hayes, seconded by Comm'r Smith. 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-11-23-034 is a variance request for an increase in the maximum building coverage allowance (maximum allowed is 30%) for a new single-family residence in the Low-Density Suburban Residential (RSL) Zoning District at 1023 Leeward Avenue, Town of James Island, TMS #452-01-00-050.

Kristen Crane, Planning Director, provided the Staff Review:

The applicant is requesting a variance for an increase in maximum building coverage allowance (maximum allowed is 30%) for the construction of a new single-family residence in the Low-Density Suburban Residential (RSL) Zoning District at 1023 Leeward Avenue (TMS# 452-01-00-050) Adjacent properties to the north, east, south, and west are also in the RSL Zoning District and are in the Town of James Island's jurisdiction.

Town of James Island Zoning and Land Development Regulations, §153.070(C) states that all

development in the RSL district shall be subject to the following density, intensity, and dimensional standards: *Maximum Building Cover: 30% of Lot. Building Coverage refers to the area of a lot covered by buildings (principal and accessory) or roofed areas, as measured along the outside wall at ground level, and including all projections, other than open porches, fire escapes, canopies, and the first two feet of a roof overhang.*

The subject property is 0.31 acres in size and currently has one single-family home built in 1956 per Charleston County records. The subject property was purchased by the applicant in September of 2023 and a demolition permit for the existing residence was issued in October of 2023. This lot is considered legal-nonconforming due to its size. According to the applicant's letter of intent, "*granting this variance would allow the Gurski's to build a single-story home which is required for their health needs. Mr. Gurski sustained a life-altering injury while serving in the US Military and suffers from chronic back and neck pain. A two-story home would be detrimental to his recovery. In addition, a single-story home would allow for aging in place and the ability for Mrs. Gurski to care for her elderly parents*". 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: **The minimum lot size in the Low-Density Suburban Residential Zoning District is 14,520 sf, or 0.33 acres. The subject property is considered legal non-conforming due to its size of 0.31 acres. According to the letter of intent, "this lot is 13,624 square feet, 896 square feet smaller than the minimum lot size".**

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

Response: **This condition may generally apply to neighboring properties in the vicinity. According to Charleston County GIS records, three of the four immediately adjacent parcels to the subject property are also legal nonconforming due to their lot sizes being under one-third of an acre. However, the remaining twenty properties within 300' of the subject property are considered legal and conforming due to size, according to Charleston County GIS.**

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 to this particular piece of property may prohibit the construction of the proposed home in its' desired one-story style, layout, and size, but the utilization of the property would not be completely restricted. The owner mentions in their letter of intent that "building a two-story home with a drive under would be easier to keep within current lot coverage limits", however the owners wish to utilize the property to "try and maintain a**

healthy lifestyle despite our chronic conditions”.

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 applicant has submitted a comprehensive stormwater plan and any potential detrimental effects shall be addressed and remedied during the review of the site plan and enforcement of applicable stormwater standards before construction begins. Furthermore, according to the applicant's letter of intent, the proposed home is “in keeping with the history of the Lighthouse Point neighborhood” and it would not be “advantageous for anyone to have a taller structure that towers over the single-story homes that surround our property.” Therefore, the character of the zoning district may not be harmed.**

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 due to the desired style, size, and configuration of the home. However, the letter of intent states, “Granting this variance would allow the Gurski’s to build a single- story home which is required for their health needs. Mr. Gurski sustained a life- altering injury while serving in the US Military and suffers from chronic back and neck pain. A two-story home would be detrimental to his recovery”.**

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

Response: **A Natural Resources Element Strategy includes continuing “to strongly encourage utilization of pervious materials in development and redevelopment activities with the use of pervious asphalt, pervious concrete, brick pavers, etc.”. The applicant has presented a site and stormwater plan utilizing many of these practices. However, this property is in a flood hazard zone and the Natural resources element states that it “is in the Town’s best interest to evaluate use of a property based on risk level for flooding to further resilience and longevity of the community.”**

Ms. Crane stated that 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-11- 23-034 (Variance request for an increase in maximum building coverage allowance (maximum allowed is 30%) for the construction of a new single-family residence in the RSL 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. Provide runoff mitigation by practices such as rain gardens, rain barrels, infiltration trenches, and additional vegetative buffering, according to the Town of James Island’s Supplemental Stormwater Design Standards.
2. Non-roofed areas shall consist of pervious or permeable materials.
3. All Charleston County Stormwater and Town of James Island Stormwater requirements and comments shall be addressed, and all relevant approvals in place, prior to commencement of construction activities.

Questions from the Board:

Comm’r Smith referred to the applicant’s plan and asked for clarification about what is included/excluded in the square footage (front porch, garage, back porch, and how much). Ms. Crane explained that everything that is roofed is considered building coverage according to the Zoning and Development Regulations Ordinance. The garage, house and the porches. Comm’r Smith read the statement “*other than open porches, fire escapes, canopies*” and asked for more information about those. Ms. Crane stated that open porches are not considered, it would be anything with a roof. She explained that an “open porch” is considered a deck or a patio. Comm’r Smith asked Ms. Crane to define a canopy and she said it is like a pergola, or a ca type of covering, other than a roof.

There was discussion about the areas of the building (anything covered with a roof). Comm’r Smith asked if the three-car garage was included, and Ms. Crane said yes. Comm’r Smith m intentioned the photo that showed a two-story house across the street, and asked if that house is within the 300 feet and Ms. Wood confirmed it is. Comm’r Smith discussed the square footage that is over the lot size, as he understands it is a part of the hardship, as the applicant’s lot is small. He said the minimum lot size in the Town is 14,520 sq. ft. and if 30% is taken from that it would be the maximum size house the applicant could have. He asked Ms. Crane if that would be larger, the same, or smaller, than what they are asking for? Ms. Crane said it is larger. The calculation of the square footage was confirmed to be 4,356, more than the maximum on a minimum lot.

Chair Savage said a conforming lot is 14,520 sq. ft. and it cannot have more than 30% of coverage. According to his calculation that is 4,356 feet. He said if he understands the submission from Ms. Crosby, the applicant is asking for an allowance that would allow 5,536 sq. ft. coverage and he asked Ms. Crane if he understood the letter correctly. Ms. Crane answered ‘yes; that the current sq. ft. is 5,333. Chair Savage said that is 1,000 sq. ft. more.

Applicant Presentation:

Jodi Crosby, Crosby Creations, Meggett, SC: Thanked the Board for hearing the case and Ms. Crane for a good presentation. Ms. Crosby said she understands the difference of the 30% conforming lot size vs. the applicants’ request that is shy of 1,000 sq. ft. over. She said this is a legal non-conforming lot, which is the hardship and the reason for the request. She said this is a young couple that has debilitating, chronic pain and disabilities and they are asking the Board to consider their application because of the disabilities they

suffer from. Ms. Crosby said they did everything they could to go above and beyond to help mitigate the additional coverage by going to the top level of the permeable surfaces on the lot for rainwater to runoff not to impact the neighbors. Ms. Crosby said they are not required to use permeable surfaces or a lot of other things they have used. The Gurski's wants to be good neighbors and to make sure they are not negatively impacting the neighbors. She said a landscape architect was hired who will speak about the plan to mitigate and create relief for any water runoff from the Gurski's lot onto the neighboring lot.

Taylor Fehmel, Remark Studio, Georgetown SC: Ms. Fehmel, Landscape Architect, Remark Studio, thanked the Board. She stated that overall, the design approach is hardscaping on the lot to allow infiltration and most has sub storage to capture stormwater to infiltrate into the ground. Ms. Fehmel said the company follows the Town's Supplemental Design Stormwater Standards and the property is designed to handle a 25 year, 24-hour storm event to capture approximately 8 inches of rain on the entire site, slowly releasing it through best management stormwater practices. Ms. Fehmel referred to the Stormwater Plan and shared the practices of her company; paving around the property is pervious allowing water to seep through, as well as installing French drains. She said an extensive grading plan and comprehensive pre/post stormwater calculations, the combination of French drains, sub storage, pervious decking, pervious turf, will be left for native plantings to help mitigate the water. On the current lot is an existing storage percentage of zero and with this proposed design they will be capturing over 49% of the stormwater that enters the site, which is a substantial amount. The minimum required by the Town for 25 years- 24-hours is 44% and equates to over 21,000 gallons of water (515 bathtubs) and they are going above and beyond that.

Paul Gurski, 959 Ashley Avenue: Mr. Gurski spoke that he and his wife are the owners of 1023 Leeward Avenue. He stated the reason for his application is to build a forever home on the lot they've purchased. The irony he said, is that he is not supposed to be here this evening. He explained that 23 ½ years ago he graduated from boot camp at Paris Island and swore that he would never return to this state. While he was stationed in Washington, DC, he met his wife, from South Carolina, so this is why he is appearing before the Board. Mr. Gurski said they moved here for a career change and to find a place to call home after being in the military for 10 ½ years and unable to choose where they want to live. The Gurski's has lived here since July 2013 and has 3½ year old daughter. They love James Island, and the property is around the corner from his wife's family. They are ecstatic about sending their daughter to Stiles Point School. Mr. Gurski gave a brief description of the injuries he sustained while in the military. He said the more serious injury occurred at age 21. He is now 42 years old having dealt with a degenerative and debilitating disease for half of his life that will only get worse as he ages. Having a one-story home would allow him and his wife to grow old and live out the better part of their years. It would also provide a home for their daughter and the potential for their in-laws as they age. Mr. Gurski said they have taken into account the accessibility and functionality that is needed for the home because it will be nearly impossible for his wife to care for him as he ages, and his condition worsens. Mr. Gurski thanked the Board and offered to show his medical records but did not want to make it a part of the public records.

Questions from the Board:

Comm'r Hayes said the covered portion is what is in question because of qualitative and quantitative information. He asked if the applicant could be accommodated by taking away some things to make it stand (i.e., 1,000 ft. 3-car garage) that would not be a detriment. Ms. Crosby said in her professional opinion, having a 3-car garage is not going to get where you need to be, or by taking a bay away (300 sq. ft.). In order for this to fit she feels they would have to go with the two-story structure because they would have to remove something. The house is 3,200 sq. ft. The garage and the porches would have to be moved and at that point it takes away the character, usability and functionality of the home as a whole as it being a single story.

Comm'r Smith asked if the entire garage were removed and portions of the porch that would leave the entire heated and air-conditioned portions alone and fit within the area. Ms. Crosby answered that the garage

is 1051 sq. ft., which would bring them into compliance. She said not having a garage probably would not be desirable for anyone building a home. Comm'r Smith commented that some people don't have garages.

Chair Savage asked Ms. Crosby when she was preparing for this hearing, was she familiar with the criteria the Board would have to consider. Ms. Crosby said yes; that she submitted her own variance test questions but did not think they were included in the packets and Ms. Crane confirmed that they were. Chairman Savage spoke about several issues. He mentioned reading the doctor's narrative and understanding it, but the burden of proof is upon the applicant, and there are several criteria that causes concern. He asked the date the home was purchased, and it was said to be September 2023. He asked if the plans submitted were "home and garden" or created by Ms. Crosby. Ms. Crosby said she created customized plans for the Gurski's. Chair Savage asked when that began, and Ms. Crosby replied October 12, 2023. He asked if preferences were given to help decide what plans to draw up; and the requirement of no more than 30% coverage. She said yes. Chair Savage said in the Staff's Review, one of the criteria the Board must find, if the request is not approved, is that it would restrict the utilization of the property. He said before the property was demolished it was usable as a single-family home and it still could be by downscaling the size. This request is 1,000 sq. ft., slightly less than 20%. Chair Savage stated that he did not find that this lot usable if the variance isn't granted and asked for the applicant's help to understand if this was the case. Ms. Crosby said that she understood the question and believed it to be subjective.

The Board did not wish to review Mr. Gurski's medical records. They thanked him for his service.

Support

Amanda Gurski, 959 Ashley Avenue: Ms. Gurski briefly shared the medical concerns that she and her husband has. Both suffer from migraines and chronic illnesses. They both work from home, using two bedrooms as offices. She shared with the Board that they would like to build this home for them and so that her parents may live with them, and to have it compliant with ADA (the Americans Disabilities Act).

Opposition

Fran Trotman, 714 Creekside Drive: representing Lighthouse Point Civic Club read a letter in opposition (attached). She expressed not able to see how the house would not be raised because it would not be level. She said if they are planning on bringing in a lot of dirt to make the property higher it would harm the people on either side and the drainage that goes down to the creek through the culvert beside her property.

Frank Cervantes, 733 Creekside Drive: His property is at the applicant's back/side door. He thanked Mr. Gurski for his service, having spent time at Fort Stuart himself but stated He stated concern that the property was purchased prior to knowing it is .31 acres; over 11%. The guidelines must be fair for everyone. He asked everyone to stay comfortable in their own lane and to comply and be happy.

Rebuttal:

Taylor Fehmel, clarified the statement about bringing in a tremendous amount of fill. She said that is not the intent and they are hoping to keep the profile of the house and the landscape very low. They may work in some terracing to reduce the number of stairs for egress out of the house, but they will not be bringing in fill or anything to negatively impact the neighbors.

Jodi Crosby stated that the original letter of intent did have 11% and it was reduced to 9% so they would not have to get a stormwater variance. She said as far as "staying in one's lane," the neighbor behind the Gurski's shed is about 6 or 9 inches off the property line so there may be some encroachments there. She doesn't know if there are any variances on record for that.

Chair Savage closed the hearing to the public at 5:55 p.m. and asked for a motion and second to have discussion. A motion to approve Case # BZAV 11-23-034: Variance request for an increase in maximum

building coverage allowance (maximum allowed is 30%) for a new single-family residence in the Low-Density Suburban Residential (RSL) Zoning District at 1023 Leeward Avenue, Town of James Island (TMS #452-01-00-050) with the conditions set forth by staff was made by Comm'r Smith, seconded by Comm'r Hayes.

Comm'r Smith stated his initial thoughts is this is a hard case to hear because he has a lot of appreciation for what Mr. Gurski is telling the Board. It is also very difficult because he doesn't see the health condition as something he can consider because all of the criteria must be met. He said a lot of discussion was had as to why those criteria were not met but he wished they were. He said you can take the roof off the garage, and he is not saying there is anything wrong with the way it looks, but as an architect, he knows that it could look good otherwise. Comm'r Smith said he cannot support his motion because it does not meet criteria B, and C. He said the area as beautiful, particularly the Indian mounds which is the gem of the neighborhood. There are flooding problems in the neighborhood and the fact that attention was taken in trying to be a good neighbor. Unless he hears something more persuasive from the other members, he cannot support this variance request. He apologized to Mr. Gurski and wish that he could honor his request.

Comm'r Hayes stated that he is also a Marine Corp Veteran, and a disabled veteran, and Mr. Gurski has his empathy and sympathy in that respect. He understands his plight, that it is rough. He has a spouse, and they struggle with their own situations. However, when it comes to meeting the requirements, it is unfortunate that they are not met. He believes with some tweaks to the current schematic it would fall within those guidelines, but as it currently is, he cannot vote for this approval.

Chairman Savage informed the public viewing by Zoom, that the Board is authorized to hear appeals, variances and special exceptions. He explained that a variance is when someone lives on a property and their situations changes causing them to need relief that is not their fault. He thinks if Mr. and Mrs. Gurski had lived in the home and as their conditions developed to need relief and modifications, it would have been possible for the Board to find that the criteria were met. He agrees with Comm'r Smith that the burden of proof was not met for Criteria F: B, C, F. After discussion, Chair Savage called for the vote:

Comm'r Hayes	Nay
Comm'r Smith	Nay
Chair Savage	Nay

Variance Request: Denied

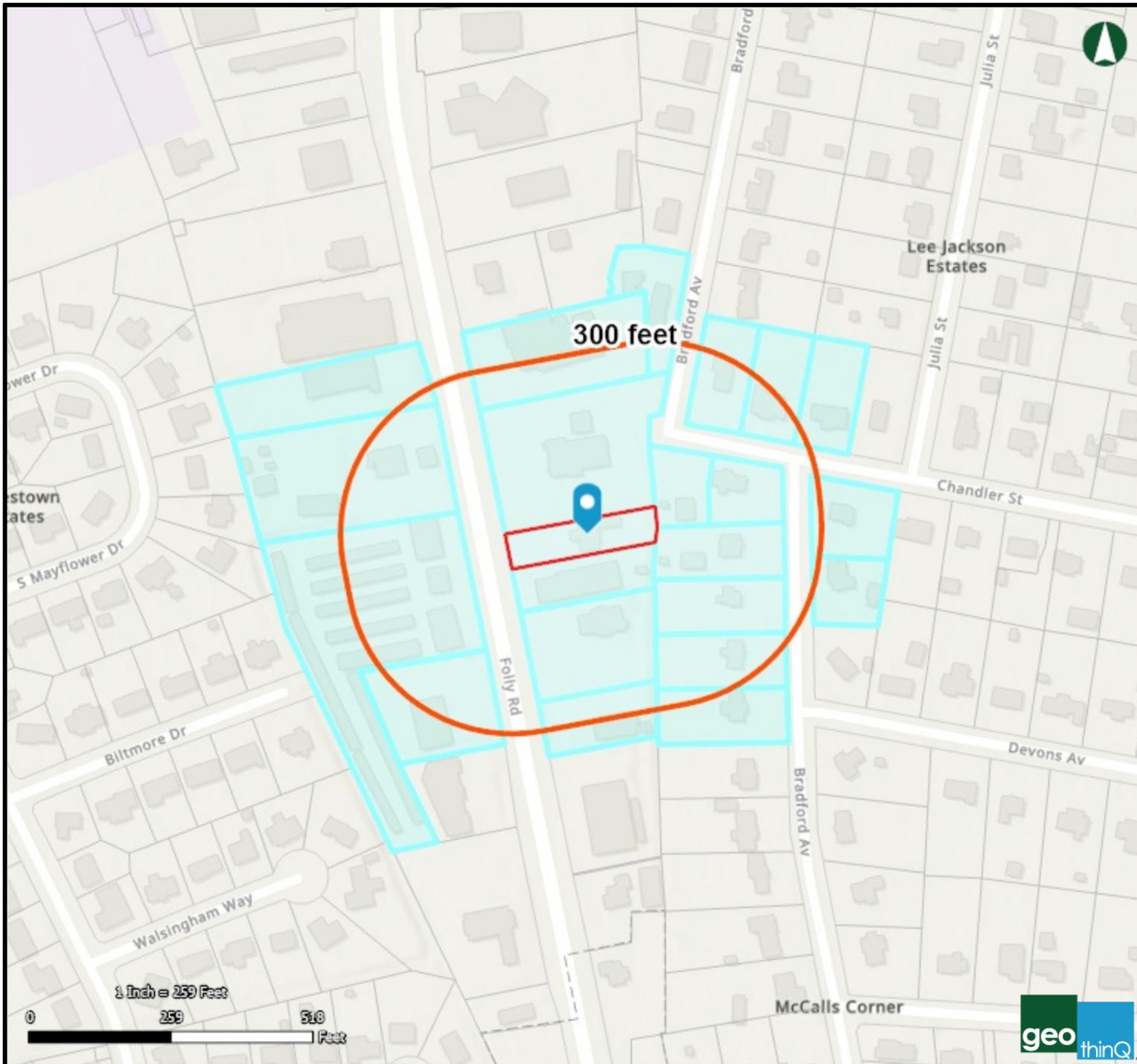
Chair Savage stated the legal reasons for the denial of Case #BZAV-11-23-034 is that it did not meet all the criteria as outlined in the staff's review. The Board's decision will be mailed to the applicant within ten (10) business days, and they should contact the Planning & Zoning Department should they need further information.

Additional Business: The next meeting of the Board of Zoning Appeals is scheduled for Tuesday, January 16 @ 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:

Frances Simmons
Town Clerk and Secretary to the Board of Zoning Appeals



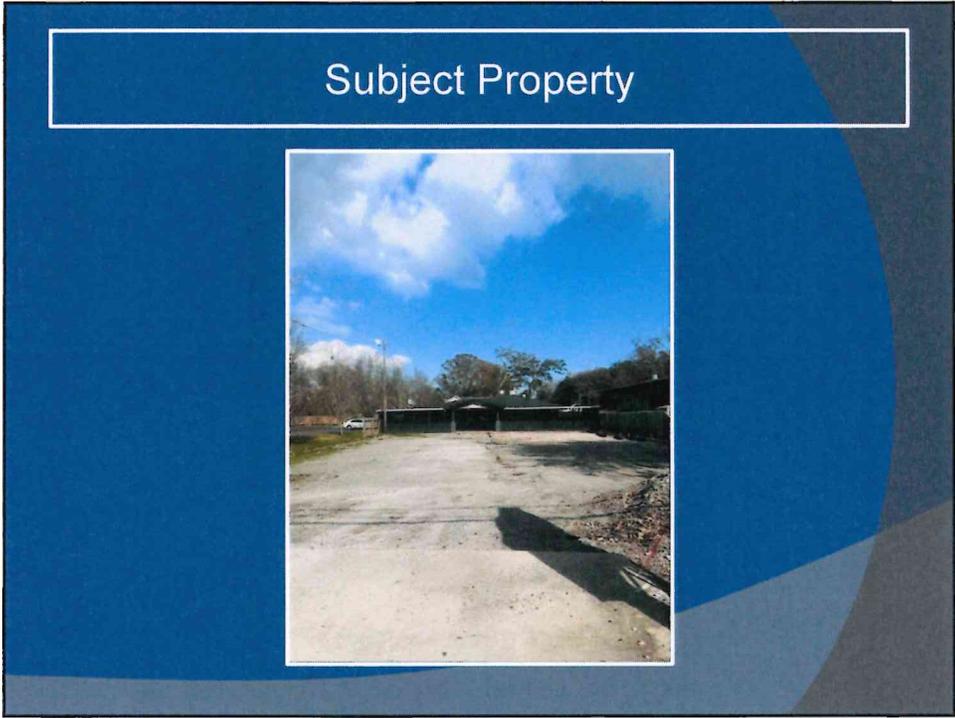
Town of James Island
South Carolina



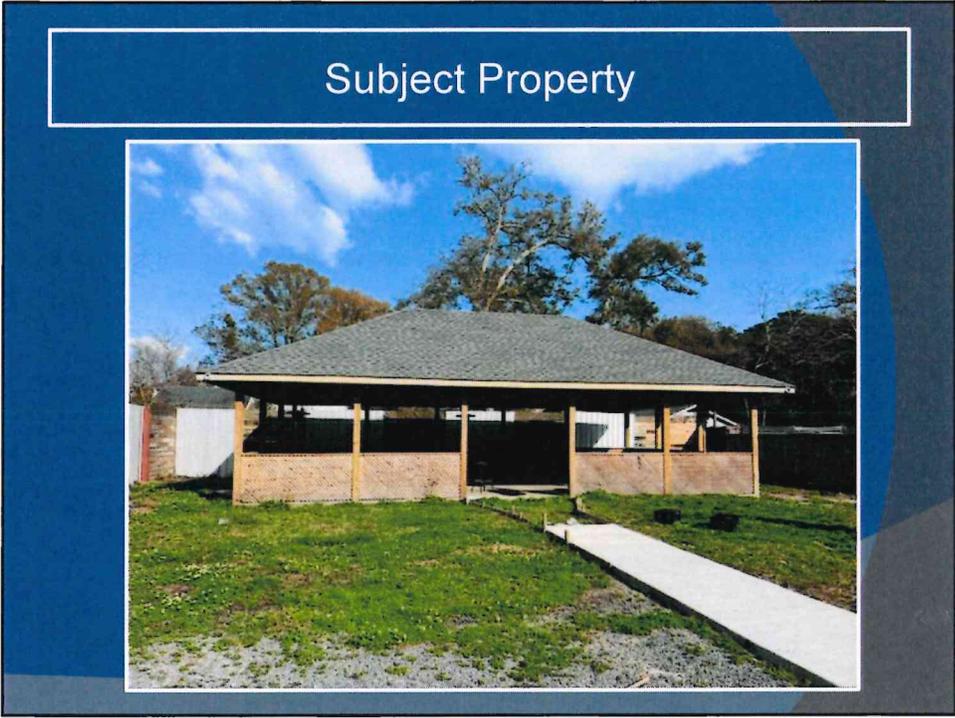
1006 Folly Road Radius Map

03/01/2024

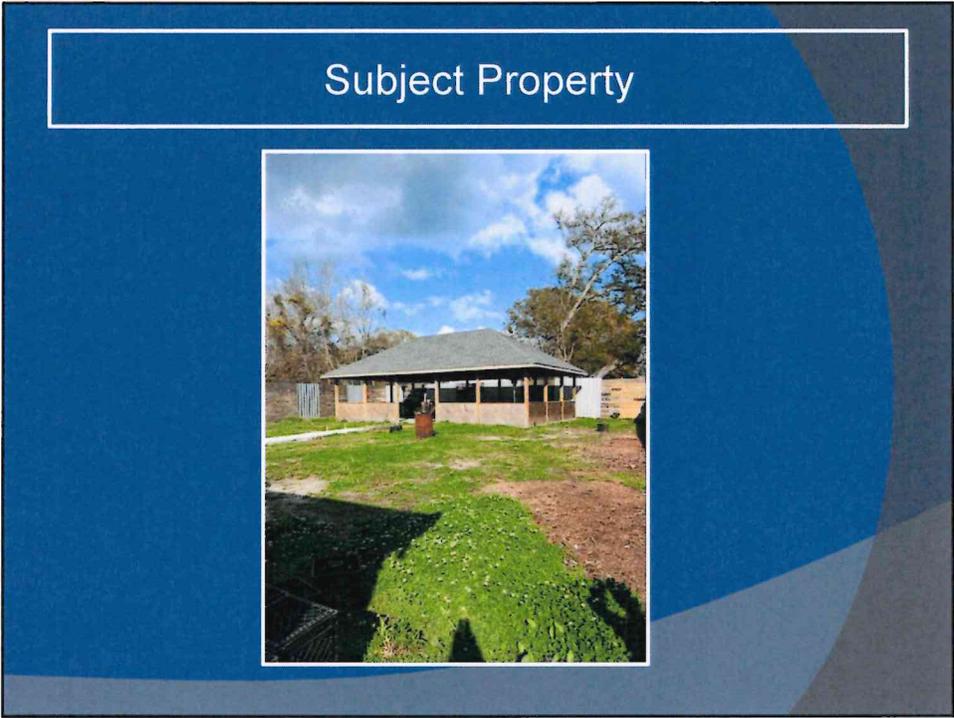




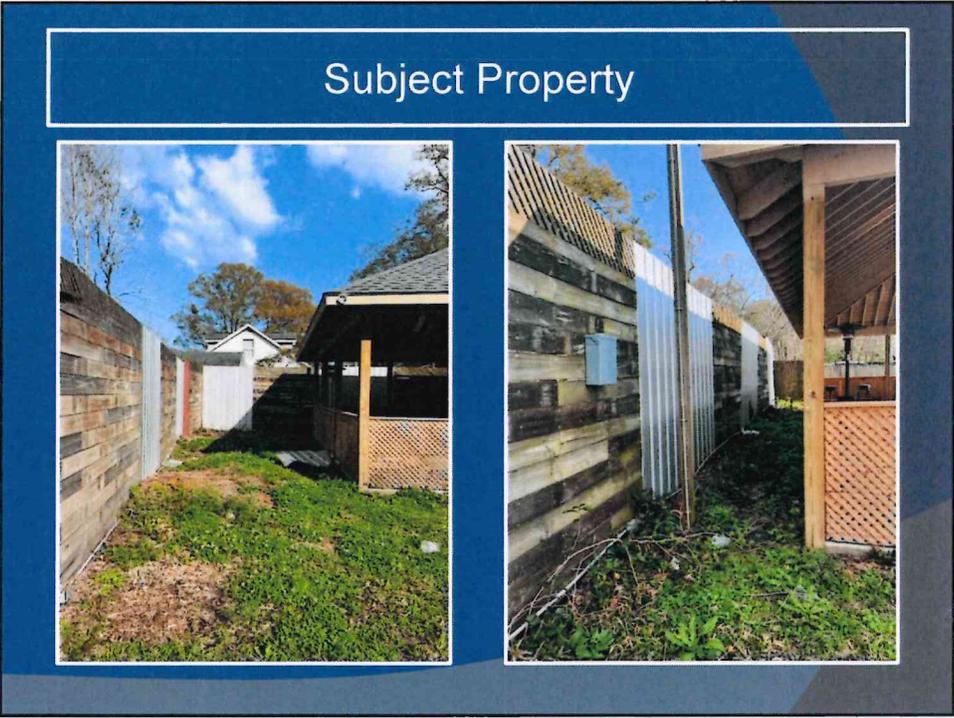
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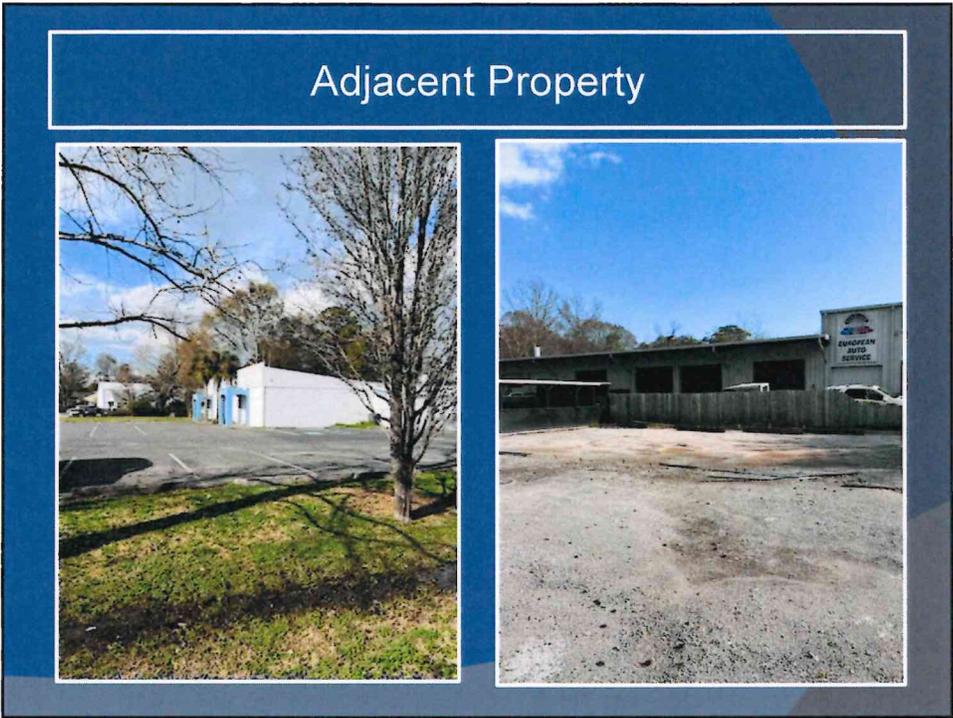
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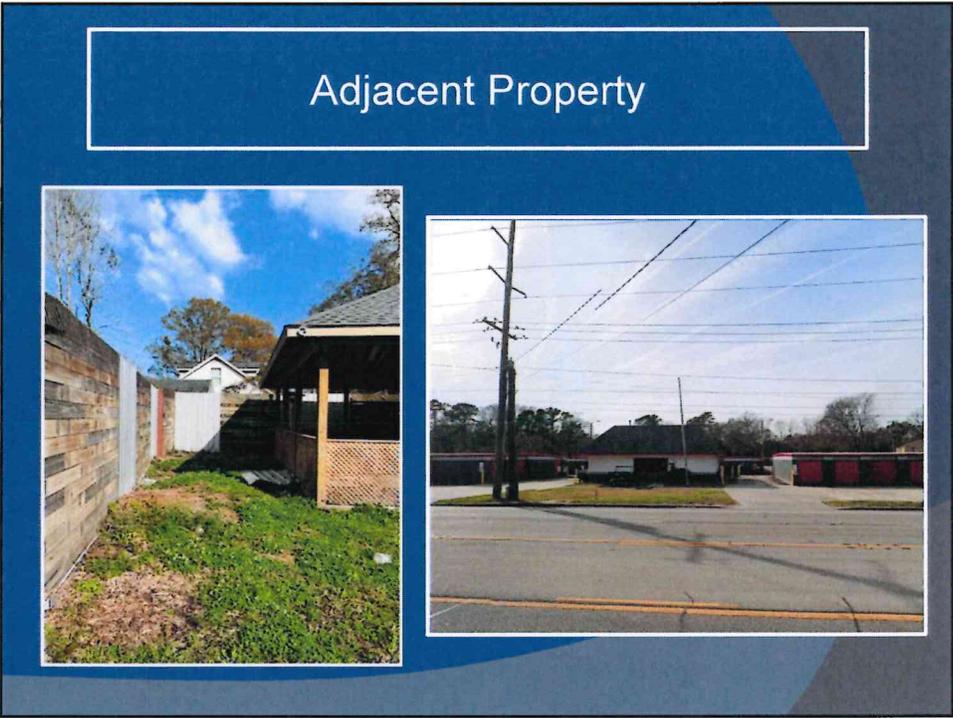
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Staff Review:

The applicant, Ground Work General Construction, LLC (GWGC) 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.

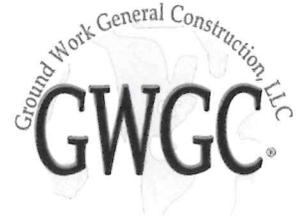
In granting a Variance, the Board of Zoning Appeals may attach to it such conditions regarding the location, character, or other features of the proposed building or structure as the Board may consider advisable to protect established property values in the surrounding area or to promote the public health, 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. 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.



February 2, 2024

Kristen Crane, Planning Director
Planning and Zoning
Town of James Island
1122 Dills Bluff Road
James Island, SC 2941

Dear Ms. Crane:

In reference to the property located at 1006 Folly Rd., TMS No. 425 090 0027, the owner of which is Mr. Ahmed Hassan. Mr. Hassan has engaged Ground Work General Construction, LLC (GWGC) to provide general contracting services in the construction of an outdoor dining structure (pavilion) situated at the rear elevation of the property. In this capacity, GWGC submits the accompanying application for a **variance to deviate from the setback requirements for accessory structures in Commercial Zoning Districts**. Specifically, this request is for the reduction of the 10 feet setback requirement by 4 feet, allowing for a 6' setback at the rear elevation of the property line for the placement of the proposed pavilion.

We provide the following justifications for your consideration:

According to South Carolina Code of Law Title 6, Chapter 29, Article 1, Section 6-29-800, the board of appeals of the local planning commissions has the power to authorize a variance if ***“the authorization of a variance will not be of substantial detriment to adjacent property or to the public good.”*** This provision forms the basis of our request. The rear fence line sits one foot inside of the property line, behind which is a gully flanked on either side by a sloped grassy area (see Figure 1). 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 adjacent property or to the public good.

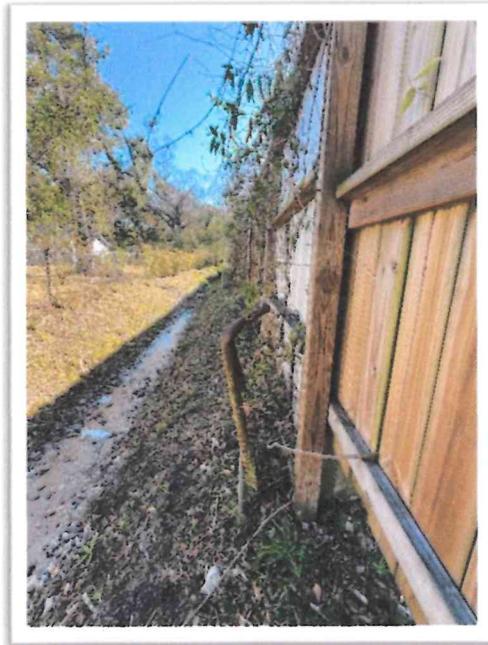


Figure 1. Rear Setback

WWW.GWGCLLC.COM

(843) 330-9943 | (843) 814-7883

Alvin E. Burch, Sr., SC General Contractor BD4

Sonja Moses, Project Manager | Property Manager | CQM

Building Construction Empowered by
VISION • ETHICS • COMPETENCE • EXPERIENCE
Minority, Woman, Veteran-Owned Business

Additionally, authorization of a variance would mitigate the economic hardship placed on restaurant staff members, currently on an unemployment status as a result of the stop work order placed on the project constituting the construction of a 24'X40' pavilion 6' in from the rear property line. 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.

Thank you for your hearing our appeal and taking under consideration the aforementioned factors.

Very respectfully,



Alvin E. Burch, Sr., General Manager
SC General Contractor



Sonja Y. Moses, Project Manager, CQM

WWW.GWGCLLC.COM

(843) 330-9943 | (843) 814-7883

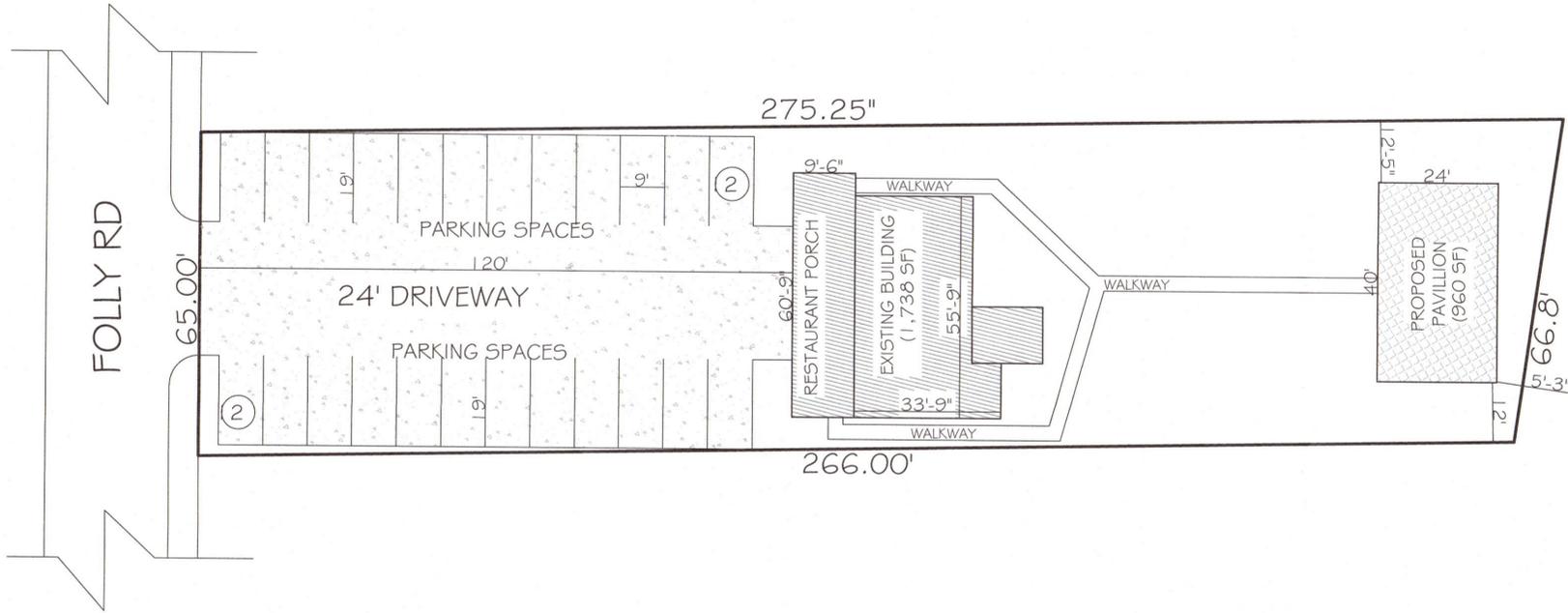
Alvin E. Burch, Sr., SC General Contractor BD4
Sonja Moses, Project Manager | Property Manager | CQM

SITE PLAN

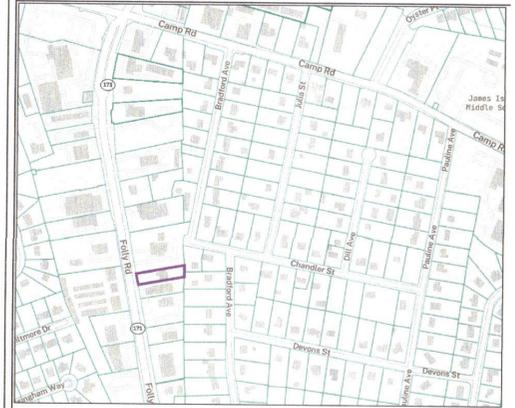
LOCATION: 1006 Folly Rd, Charleston, SC 29412, USA

PARCEL ID: 4250900027

LEGAL DESCR.: LOT 25 SEC C



VICINITY MAP



SCOPE OF WORK

SITE PLAN OF THE PROPERTY UNDER REVIEW
SHOWING THE PROPOSED PAVILLION

LOT SIZE

0.407 Acres
=
17,728 SF

SITE PLAN

CLIENT:
AHMED HASSAN

1006 Folly Road (Hideout Bar & Grill)

TOJI Planning/Zoning Timeline (3/2017 – 2/2023)

3/21/2017 – SPR app received from Kain Slowikowski (new owners Ahmed Hassan)

- New concept presented

4/20/2017 – email from Town Administrator to new owner to complete SPR paperwork, zoning, etc.

5/26/2017 – ZP-2017-11 issued for work (renovations, outdoor bathroom, new bar, new outdoor pavilion, etc)

8/20/2020 – email from Town Administrator to Town staff re: new sign and new name w/out permits

9/21/2020 – email from Town Administrator to Town staff: follow-up from previous email asking Code Officer to make a visit

10/16/2020 – email from Town Administrator to Town staff: follow-up from previous emails (P/Z replied w/no paperwork received)

6/30/2022 – P/Z emailed Wayne (Chas. County Building Services) and Code Officer w/complaint about work being done w/out permits, with contractor name.

6/30/2022 – NSP-2290370-2022 Stop Work Order and inspection report issued by Chas. County Building Services. Work is being done w/out permits or inspections (pavilion, deck, expired zoning, work in wrong location, expired building permits, etc)

Wayne sent email w/this report to Code Officer and P/Z on 6/30/2022

9/1/2022 – ZP-2022-37 issued for interior and exterior painting

1/19/2023 – email to Code Officer and Public Works from P/Z re: a complaint from neighbor that they were paving their parking lot

2/17/2023 – ZP-2023-09 issued for 20' long boardwalk on right side of building

Kristen Crane

From: James Hackett
Sent: Wednesday, March 13, 2024 2:07 PM
To: Flannery Wood
Cc: Kristen Crane
Subject: RE: 1006 Folly timeline

10/16/20 Following up on Town Administrator emails site visit to 1006 was completed to drop off hospitality tax information and advised staff to consult with Zoning Department for any necessary permits.

6/30/22 Site visit following County stop work order. Contractor advised to have owner contact Planning and Zoning staff for permit.

10/24/23 Site visit to 1006 Folly work going on including cutting of a tree. Throughout that week Public Works was involved in correspondence regarding repavement of the parking area. Charleston County BIS observed an electrician being there. Town staff met with Mr. Hassan to discuss activity at the business and he was issued 5 tickets listed below. The first court date was 11/16/23 with subsequent follow-ups to track progress.

11/16 Hassan court date continuances on 12/13, 1/16, 3/5

#119 Zoning permit for freestanding sign (dismissed 12/13)

#120 Zoning permit for business operation (status update presented to judge at subsequent hearings)

#121 Zoning permit for resurfacing parking lot (status update presented to judge at subsequent hearings)

#122 Zoning permit for structure not approved by Charleston County BIS (status update presented to judge at subsequent hearings)

#123 Zoning permit for Removing protected/required trees (status update presented to judge at subsequent hearings)

3/5 hearing judge wants to know what occurs at 3/19 BZA hearing

3/19 BZA case

3/20 there will be a phone call or meeting to discuss ramifications of BZA case and steps forward.

From: Flannery Wood <fwood@jamesislandsc.us>
Sent: Tuesday, March 12, 2024 4:21 PM
To: James Hackett <jhackett@jamesislandsc.us>
Cc: Kristen Crane <kcrane@jamesislandsc.us>
Subject: RE: 1006 Folly timeline

Hey James,

I have emails with code violations from the Fall of 2020 that you were copied on. Can you please go back further than October 2023?