

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF AUGUST 20, 2019

Members present: Mr. Jason Gregorie, Vice Chair, (who presided), Mr. Roy Smith, and Mr. Sim Parrish. Absent: Mrs. Brook Lyon, Chair (gave notice), and Mr. Jim Fralix. Also, Kristen Crane, Planning Director, Flannery Wood, Planner I, Leonard Blank, Town Councilmember and Mayor Pro-Tem, Attorney Brandon Reeser, (for BZA Attorney, Bonum Wilson), and Frances Simmons, Secretary to the BZA and Town Clerk.

Call to Order: Vice Chair Gregorie called the Board of Zoning Appeals meeting to order at 7 p.m. A quorum was present to conduct business.

Prayer and Pledge: Vice Chair Gregorie asked members of the BZA and others who wished, to join in the prayer and Pledge of Allegiance.

Compliance with FOIA: Vice Chair Gregorie announced that this meeting has been noticed and in compliance with the SC Freedom of Information Act.

Introductions: Vice Chair Gregorie introduced the members of the BZA, staff, and Councilmember/Mayor Pro-tem Blank. He stated that BZA member Jim Fralix was absent and he would chair the meeting in the absence Chairwoman Lyon.

Review Summaries and Rulings from the February 19, 2019 BZA Meeting: Vice Chair Gregorie asked if there were changes to the February 19, 2019 meeting minutes. If not, a motion and a second is required to approve. Motion to approve was made by Mr. Smith, seconded by Mr. Parrish and passed unanimously.

BZAS-1-19-017

TMS# 425-08-00-022

Special Exception request for the placement of a One-Bay Consumer Vehicle Repair Facility in an existing garage in the Community Commercial (CC) District and the Folly Road Corridor Overlay Zoning District (FRC-O) at 808 Folly Road.

APPROVED

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

Administer the Oath to those Presenting Testimony: Attorney Reeser swore in the persons who wished to provide testimony in tonight's case.

Review of the Following Application:

NEW BUSINESS

BZAS-7-19-018

TMS #425-13-00-082

Special Exception request for the placement of a Child Day Care Facility in the Low-Density Suburban Residential (RSL) District at 1238 Pauline Avenue: Planning Director, Kristen Crane, presented the staff review. The applicant, James Island Presbyterian Church (JIPC), is requesting a Special Exception for the placement of a Child Day Care Facility in the Low-Density Suburban Residential (RSL) District at 1238 Pauline in the Town of James Island, having TMS # 425-13-00-082. The parcel is currently vacant. The adjacent properties to the north, east, and west are zoned Low-Density Suburban Residential (RSL) and are in the Town of James Island. The two properties to the south are also owned by JIPC, with the adjacent southern parcel housing a Counseling Center and the next parcel housing the church and related uses including an existing daycare and cemetery. Other uses within 300' of the subject property include professional office, the JIPC Mission House, residential/office uses in the Town and Commercial Transitional property currently for sale in the City of Charleston.

The Town of James Island Zoning and Land Development Regulations Ordinance, Use Table §153.110 allows child day care facilities, including group day care homes for child care centers, with a Special Exception in RSL districts.

Mrs. Crane reviewed the Findings of Facts according to §153.045 E, for Special Exceptions. The Board of Zoning Appeals has authority to approve, approve with conditions or to deny the case upon the Findings of Facts unless additional information is required to make an informed decision. Mrs. Crane then read the six approval criteria and three (3) conditions being recommended by staff:

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 on the subject parcel 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 shall provide a pedestrian walkway that connects the existing parking lots of the James Island Presbyterian Church currently accessible from Fort Johnson Road, to the main entrance of the proposed daycare in order to provide a continual link access from the adjacent parcels belonging to JIPC.

Questions from the Board: None.

Applicant Presentation: Mr. Harold Noland, 1245 Caperton Way, said the application is pretty straightforward. He said the Church purchased the property five to six years ago with the intent of what it would do with it. Since then, they have been working diligently on expansion plans. He said the expansion has caused some potential conflicts with the existing daycare building. He said the education building on the east side was built in the 1950's and comprised of class rooms. It now houses the daycare facility. He said they would probably have to cut down on the number of children they serve or close the operation completely while work is being done on the campus. There is a waiting list of 50+ children they cannot serve, and the new building would give them the flexibility about what they might or might not do on the other part of the campus; and they are

pursuing this direction. The Church is asking for the Special Exception before it spends a lot of money on architects and engineers and figure out what they would do. Mr. Noland said they want to make sure that they can do something. He commented that Mrs. Crane asked them to clear up the application they submitted because originally, they had asked for a 6,000 square feet building because that is what the lot would accommodate. He said the drawing provided to the Board is 5,000 square feet building because that is what the architect came up with when he did the Site Plan. This was the architect's concept, not necessarily theirs. They revised the application for up to 6,000 square feet and would expect that the Board would grant a variance for the lot coverage. The construction of the building would be consistent with the other buildings on the JIPC campus made with Stucco and have low impacts in terms of what they would be putting on the property. He said JIPC has a long track record of accomplishments in having a daycare facility there and this would be good for the community.

Questions from the Board:

Vice Chair Gregorie addressed Mr. Noland stating that the staff recommended three conditions for consideration and is he aware of what they are. Mr. Noland said yes; they would do those kinds of things anyway but is unsure how to provide access to the new building from Ft. Johnson. They currently have a walkway that goes through the west side of the property that would have kids walk through the graveyard area into a paved walkway. They think that is probably what they would do, but they would have to study this to know how it would work.

In Support: No one spoke.

In Opposition: Carolyn Jayko, 1228 Pauline Avenue: Mrs. Jayko said she has grave concerns with the daycare facility. She said the noise has been horrible with the daycare center already. They listen to noise for about four hours/day. She knows these are kids, but they scream, yell, and cry and she has put up with this for four years. She hears the noise from her yard and kitchen and having to put up with 50+ kids on top of what is already there is a lot to deal with. She said one year she could name the children that got into trouble because the teacher would call them out. She talked about noise on Folly Rd and a parking lot coming down the street. She said the neighbors are looking for peace and quiet in their own back yard. She said the facility would be a large building that would sit on top of Althea Cooper, lot #81. Her home was purchased in 1991 but to her it is no longer residential.

Vice Chair Gregorie asked Mrs. Crane to show 1228 Pauline Avenue on the aerial map and it was pointed out to be lot #80.

Althea Cooper, 1232 Pauline Avenue: (lot #81) has lived at 1232 Pauline Avenue since 1992. She agrees with Ms. Jayko about the noise from the daycare. She said the daycare would cause more traffic to increase. She asked if speed humps would be put in. She said this is an area where people walk their dogs. She walks her dog too and has to move aside because people fly around the curve at 30 mph and she doesn't know how many times she's almost gotten hit. Personally, the daycare would be a hindrance to her and those that live around it. Having the daycare next to her would devalue her home 5-10% because of the traffic and noise pollution. She said there are children yelling and screaming and there is no peace. She is a nurse and works 12 hours a day. When she comes home, she wants to sit in the back yard or porch and have peace and quiet.

Applicant Rebuttal: Vice Chair Gregorie gave Mr. Noland a two-minute rebuttal. Mr. Noland said this is the first time he has heard negative objections from the neighbors. He referred the Board to the Site Plan and said the intent was for the daycare to use the current playground already there because it meets those requirements. He said they would work diligently to minimize any noise. He said the noise is limited because the children go outside in summer a few hours a day.

Vice Chair Gregorie closed the Hearing to the public at 7:28 p.m. and asked for a motion and second for discussion. Mr. Parrish moved to accept the application as outlined with the three (3) conditions recommended by staff; Vice Chair Gregorie seconded for discussion.

Discussion:

Mr. Smith said he understands that the church wants to have the opportunity for more daycare. He has had two children in daycare on James Island not too many years ago. He thought it was very important then and is now to have good daycare for children. However, he said all of the requirements of the application must be fulfilled in order for the Board to grant approval. He said in listening to the two of the neighbors and hearing their concerns, he does not find, in his opinion, that the application meets E (b): *"is compatible with existing uses in the vicinity and will not adversely affect the general welfare or character of the immediate community"*. He thinks it borders too closely to residential properties and the neighbors are saying to the Board that they would be adversely affected. He said actually they are already adversely affected, and he would vote against the motion.

Mr. Parrish said he believes the applicant meets or will meet the requirements that we are imposing on them. He noted that he does not live in the neighborhood and cannot speak about the noise. He said even kids in a neighborhood could get rowdy; but he could not see that a few children at a daycare center would impose more noise than what is there already.

Vice Chair Gregorie said he agreed with Mr. Parrish in a way and he is debating in his mind. He does not know how he would vote, although he seconded the motion. He is having a hard time understanding how noise would be increased if the playground remains where it currently is and there would be a building where the children would be housed. However, the playground is to remain where it is. He asked Mr. Smith if his position would change if there were a condition that the playground remains at its existing location. Mr. Smith said he also had concerns about the 50+ children, and at some time they would have to go outside. Mr. Smith added that he would like to support the daycare and what the church is trying to do. He has no opinions against it, except he does not think it is best for the neighbors.

Vice Chair Gregorie asked if there were a condition that a fence and a buffer was to be maintained. He said the Board has dealt with acoustical noises in the past where there were applications with opposition due to noise. And, for various uses, the Board has addressed this. He said we have had a precedence of addressing this with fences and landscape buffers as a condition for past approvals. Mr. Smith said he thinks that would be a better motion for the neighbors to the north and having said that he does not know if we have had that condition for a daycare. Vice Chair Gregorie added that in discussion about past cases it has come to the Board that the topic of noise is subjective, and it is difficult to quantify. He said what is defined as noise by one person may not be noise to another. He is having a hard time in his mind thinking that children make noise that is equivalent

to some of the other applications the Board has heard, i.e., dog kennel or a bar with live music. He does not see a daycare on the same level as bar, restaurant, or a dog kennel when it comes to a subjective topic such as noise. Mrs. Crane added there is a 15 ft. required landscape buffer beside residential areas. Mr. Smith pointed out that the motion on the floor does not contain language for acoustical buffers, and perhaps the motion could be modified to add an acoustical area there. Vice Chair Gregorie recalled the case involving the Black Magic Café Coffee Shop (on Folly Rd) where a condition was added for a sound attenuating fence between the commercial property and the neighboring residential property.

Vice Chair Gregorie moved to amend the motion on the table to add a 4th and 5th condition.

4th Condition: that a sound attenuating fence be installed between the subject property and the neighboring residential properties in accordance with the Town of James Island Ordinances.

5th Condition: an outdoor playground is not placed on the subject property.

Mr. Smith seconded the amended motion. Mr. Parrish said he thought the applicant had already stipulated that they were not moving the playground. Vice Chair Gregorie said the applicant stated that was their intent, but the condition he is adding is that the current parcel would not be capable of adding a playground on it.

Vice Chair Gregorie called for the vote on the amended motion to add Conditions 4 and 5. Mr. Parrish asked that the vote on the amended motion be separated. Vice Chair Gregorie said that it could be done, however, the motion on the table has to be defeated first, then the other two added. Vote: Mr. Smith (nay); Mr. Parrish (nay); Vice Chair Gregorie (nay) AMENDED MOTION FAILED UNANIMOUSLY.

SEPARATED AMENDMENT TO THE ORIGINAL MOTION:

4th Condition: Mr. Smith moved for an amendment to require a sound attenuating fence, similar to that installed by Black Magic Café Coffee Shop, be installed between the subject property and the neighboring property; in addition to the buffering and other requirements they need to have. Mr. Parrish seconded. Vice Chair Gregorie called for the vote: Mr. Smith (aye); Mr. Parrish (aye); Vice Chair Gregorie (aye) PASSED UNANIMOUSLY.

5th Condition: Mr. Smith moved to amend to add a 5th Condition that no outdoor playground would be placed on the subject property. Vice Chair Gregorie seconded. Vote: Mr. Smith (aye); Mr. Parrish (nay); Vice Chair Gregorie (aye). AMENDED MOTION PASSED 2-1.

MAIN MOTION:

Vice Chair Gregorie reiterated the motion on the floor is to approve the Special Exception request for the placement of a Child Day Care Facility in the Low-Density Suburban Residential (RSL) District at 1238 Pauline Avenue with 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 on the subject parcel 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 shall provide a pedestrian walkway that connects the existing parking lots of the James Island Presbyterian Church currently accessible from Fort Johnson Road, to the main entrance of the proposed daycare in order to provide a continual link access from the adjacent parcels belonging to JIPC.
4. A sound attenuating fence, similar to the Black Magic Café Coffee Shop be installed between the subject parcel and the neighboring residential properties.
5. The subject parcel (from the application heard by the Board) be restricted from adding an outdoor playground installed on it.

Vice Chair Gregorie called for the vote: Mr. Parrish (aye); Mr. Smith (nay); Vice Chair Gregorie (aye) MOTION PASSED 2-1. Vice Chair Gregorie announced the legal reasons for approving the request is that the applicant met the requirements of the Town of James Island Ordinances. A final decision will be mailed within ten (10) business days and the applicant may contact the Planning and Zoning staff with questions regarding the approval or the conditions.

Additional Business:

Next Meeting: September 17, 2019, 7 p.m.

Adjournment: There being no further business to come before the Board, the meeting adjourned at 7:44 p.m. upon motion by Mr. Smith, and second by Mr. Parrish.

Respectfully submitted:



Frances Simmons

Town Clerk and Secretary to the BZA