

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF APRIL 15, 2025

The Board of Zoning Appeals (BZA) held its regularly scheduled meeting on Tuesday, April 15, 2024, at 5:08 p.m. at the James Island Town Hall, 1122 Dills Bluff Road, James Island, SC.

Comm'rs present: David Savage, Chair, Joshua Hayes, Roy Smith, and Massey Yannitelli. Absent: Comm'r Amy Fabri (gave notice). Also, Planning Director, Kristen Crane, Town and BZA Attorney, Brian Quisenberry, Town Engineer, Laura Cabiness, Mayor Brook Lyon, and Town Clerk and Secretary to the BZA, Frances Simmons. A quorum was present to conduct business.

Call to Order: Chair Savage called the meeting to order and asked those who wished to participate to join in the prayer. Comm'r Hayes lead the Pledge of Allegiance.

Compliance with the SC Freedom of Information Act: Chair Savage announced that this meeting was being held in compliance with the SC Freedom of Information Act. Fifteen (15) days prior to this hearing, a public notice was posted in the Post and Courier, sign posted on the designated property, and a notice was mailed to the applicant or representative of the property, the property owner, and property owners within three 300 feet of the application and to parties of interest. Persons, organizations and the news media that have requested declaration of our meetings were also notified. The Freedom of Information Act does not require notification to anyone other than the applicant and parties of interest. This hearing was also live-streamed on the Town's website.

Introductions: Chair Savage introduced himself as Chair, the members of the BZA, staff, Town Attorney, Town Engineer, and Mayor Brook Lyon.

Review Summary (Minutes), of the May 21, 2024 Meeting: Chair Savage asked if there were any changes or corrections to the minutes. He then brought forth a change on page 1, (second to the last paragraph) and page 9, (last paragraph) regarding the Dutch Brothers application, which should read: ***"at the request of counsel for Dutch Brothers, the Board decided to hear the variance request first"***. The motion to approve the minutes as amended was made by Comm'r Hayes, seconded by Comm'r Yannitelli and passed unanimously. The minutes will be changed to reflect this correction.

Brief the Public on the Procedures of the BZA: Chair Savage explained the purpose of the Board of Zoning Appeals 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.

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

Executive Session: The BZA may enter into an Executive Session in accordance with three (3)0-4-70(a) Code of Laws of South Carolina: An Executive Session was not needed.

Review of the Following Application:

Case #BZAV-3-25-040: Variance request for an increase to the Town's Supplemental Stormwater Design Standards' allowable impervious lot coverage (maximum 40%) to 47%, for the construction of an inground swimming pool, spa and decking in the Preserve at Dills Bluff Neighborhood (PD-101) at 1106 Bright Court (TMS #428-03-00-105)

Planning Director, Kristen Crane, provided the Staff Review and Findings of Facts:

Staff Review:

The applicant, Mackenzie Keohane of Heritage Pools, and property owners, (the Northcutts) are requesting a variance for an increase to the Town's *Supplemental Stormwater Design Standards*' allowable impervious lot coverage (maximum 40%) to 47%, for the construction of an inground swimming pool, spa and decking in the Preserves at Dills Bluff Neighborhood (PD-101) at 1106 Bright Court (TMS #428-03-00-105). Adjacent property to the north is HOA maintained open space and drainage/retention ponds, and adjacent properties to the south, east, and west are residential properties in the PD-101 Zoning District. All surrounding properties are in the Town of James Island's jurisdiction. Other properties within three 300' of the subject property include residential uses in the Town of James Island.

Town of James Island Supplemental Stormwater Design Standards, Section three (3).2.1 Impervious Area for SFR Lots states: "Impervious area for individual residential lots, including those within a larger planned community, shall not exceed 40% of the total property area."

The subject property is 0.19 acres in size and has a 2-story home, screened porch and patio that were constructed in 2018. The property is part of a 30-lot, 11.078 acre Planned Development (PD) that was created and rezoned in July of 2014. The PD also includes approximately 3 acres of open space which is broken up into HOA area, tree protection zones and drainage ponds. The applicant states in their letter of intent that *"while the proposed improvements exceed the allowable lot coverage, we believe this variance is justified due to the unique characteristics of the surrounding environment"*. Additionally, they state that *"the area around the lot provided excellent drainage and ample greenspace, which minimizes any potential impact on stormwater management"*.

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 piece of property due to its smaller lot size as compared to most residential lots in the Town, its proximity to preserved open space and stormwater retention facilities, and its zoning designation of PD-101.**

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

Response: **These conditions do not generally apply to other residential properties within the Town's jurisdiction, or to surrounding neighborhoods in the vicinity. Although most of the lots in the subject development are similar in size, only around 1/3 of them are directly adjacent to open space and/or stormwater facilities, and one of those has a swimming pool and decking that was permitted in 2022, prior to the current *Supplemental Stormwater Design Standards* being in place.**

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 the *Supplemental Stormwater Design Standards* to this piece of property may unreasonably restrict the construction of the pool and decking as submitted. According to the property owner’s letter of intent, “we purchased 1106 Bright Ct. in August of 2023 with the plan of putting a pool in” which is prior to the current *Stormwater Standards* being adopted and therefore, the *Standards* are effectively prohibiting the utilization of the property as was intended when it was purchased by the current owners.**

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 adjacent open space and retention pond, along with the overall density of the neighborhood, should contribute to successful stormwater quantity control. Therefore, the authorization of this variance may not be of substantial detriment to the adjacent property or the public good.**

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 applicant’s letter of intent states they “signed with Heritage Pools on September 3, 2024. On September 19, 2024, the new stormwater standards went into effect. And on September 23, 2024, Heritage Pools applied for the project permit with the Town of James Island.” Therefore, the need for the variance may not be the result of the applicant’s own actions because the restriction to no more than 40% impervious surface coverage was not in effect at the time of the purchase of the home, nor during the planning stages for the pool.**

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

Response: **Planned Developments are “intended to encourage achievement of the goals of the town’s Comprehensive Plan and to allow flexibility in development of property that proposes a single or multiple use(s) that will result in improved design, character, and quality of new or redesigned developments and preserve natural and scenic features of open spaces.” The granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.**

Ms. Crane explained 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 structures 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 (§15three (3).045 E2).

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 piece of property due to its smaller lot size as compared to most residential lots in the Town, its proximity to preserved open space and stormwater retention facilities, and its zoning designation of PD-101.**

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

Response: **These conditions do not generally apply to other residential properties within the Town's jurisdiction, or to surrounding neighborhoods in the vicinity. Although most of the lots in the subject development are similar in size, only around 1/3 of them are directly adjacent to open space and/or stormwater facilities, and one of those has a swimming pool and decking that was permitted in 2022, prior to the current Supplemental Stormwater Design Standards being in place.**

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 the Supplemental Stormwater Design Standards to this piece of property may unreasonably restrict the construction of the pool and decking as submitted. According to the property owner's letter of intent, "we purchased 1106 Bright Ct. in August of 2023 with the plan of putting a pool in" which is prior to the current Stormwater Standards being adopted and therefore, the Standards are effectively prohibiting the utilization of the property as was intended when it was purchased by the current owners.**

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 adjacent open space and retention pond, along with the overall density of the neighborhood, should contribute to successful stormwater quantity control. Therefore, the authorization of this variance may not be of substantial detriment to the adjacent property or the public good.**

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 applicant's letter of intent states they "signed with Heritage Pools on September 3, 2024. On September 19, 2024, the new stormwater standards went into effect. And on September 23, 2024, Heritage Pools applied for the project permit with the Town of James Island." Therefore, the need for the variance may not be the result of the applicant's own actions because the restriction to no more than 40% impervious surface coverage was not in effect at the time of the purchase of the home, nor during the planning stages for the pool.**

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

Response: **Planned Developments are "intended to encourage achievement of the goals of the town's Comprehensive Plan and to allow flexibility in development of property that proposes a single or multiple use(s) that will result in improved design, character, and quality of new or redesigned developments and preserve natural and scenic features of open spaces." The granting of the variance does not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance.**

Action:

The Board of Zoning Appeals may approve, approve with conditions or deny Case # BZAV-3-25-040 (variance request for an increase to the Town's *Supplemental Stormwater Design Standards*' allowable impervious lot coverage maximum of 40% to 47% for the construction of an inground swimming pool, spa and decking in the Preserve at Dills Bluff Neighborhood at 1106 Bright Court) 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:

The applicant/owner shall work with the Town's Stormwater Engineer to develop an implementation plan for runoff reduction practices that may include disconnected downspouts, rain gardens, infiltration trenches, rain barrels, rain gardens, etc. to mitigate any potential impervious runoff.

Questions to Staff:

Comm'r Yannitelli asked what is the purpose, or why do we care about stormwater retention at a 40% threshold for impervious coverage. Ms. Crane deferred the response to Town Engineer, Laura Cabiness. Ms. Cabiness explained that anytime land is altered for development, stormwater patterns can change if it is done haphazardly and can have an accumulated affect over time on multiple lots. As lands gets developed and covered over, more stormwater is created. The Town has additional Supplemental Stormwater Standards but had initially adopted the County's. These additional standards helps with the community

system ratings for reductions and insurance. It also applies a long term look at how developments takes place in incremental ways and how that can affect stormwater runoff into the future.

Comm'r Yannitelli asked now if retention ponds and new developments are required, but they did not use to be. Ms. Cabiness said 'right' and that the Town's Supplemental Standards have been in place for some time now.

Comm'r Hayes was informed that the March 12 email (in BZA packet) that referred to the Town's drainage engineer/architect is Ms. Cabiness.

Comm'r Smith asked Ms. Cabiness if she finds rain gardens to be effective, and what keeps people from changing those later into a mowed lawn. Ms. Cabiness said the permit is required to be signed and typically when those go in, it is enforceable to be maintained.

Chair Savage addressed both Ms. Crane and Ms. Cabiness that this is the first time this BZA has had to address a case under the revised Supplemental Stormwater Design Standards, which was approved September 19, 2024. He recalled that he and Comm'r Smith attended a workshop. Chair Savage expressed that these BZA proceedings are viewed by people remotely and for them to understand the gist of the questions and what the Board has to consider. He recalled from the workshop (page 2 of the revised Supplemental Stormwater Design Standards) and read: *"these standards have been coordinated between the County and City to ensure stormwater management on James Island, as well as coordinated between the effective three governing entities"*. The phrase that came to his mind in the workshop is that nothing happens in a vacuum. He said, in this case, we are looking at the application for 1106 Bright Circle. He understands that the stormwater regulations says an impervious structures cannot exceed 40% of the property. His question is 40% of what? He explained that we are dealing with a Planned Development that was 11 acres total, and of that Planned Development, the developer set aside three (3) acres for stormwater retention purposes. Ms. Crane answered 'yes. Chair Savage said as far as the 11 acres is concerned they have set aside 27% of the property to handle stormwater and if three (3) acres is set aside, the potential size of each lot is taken from the land. Ms. Crane answered 'yes.

Chair Savage spoke that when the Board is making a decision regarding a request for a variance, i.e., stormwater design standards, their consideration should be what effect it has in the direction of the water runoff on the property. He asked Ms. Crane to show the slide with the circle and asked if she had a part in the submission of the revised Supplemental Stormwater Design Standards to Town Council for their consideration. Ms. Crane answered that she had some. He said the effect is to ensure that stormwater and runoff does not harm another person's property, or cause flooding, block roads, and things of that nature. He said as a Board when they hear these cases they try to put themselves in the position of the applicant, what are they trying to achieve, and what is fair under the circumstances. He said as he was looking at this and reading the stormwater it construed strictly and technically and can perceive a potential problem. He asked Ms. Crane to help him to understand these regulations.

Chair Savage gave a scenario using the slide with the circle as a 4 acre tract of land purchased by someone with four children. He said when the property was purchased the owner carved out a 1/3 acre lot in the middle (in this case, the property is 0.19 acres) so it would be 50% bigger and they deeded the other property to the Town as consideration that it would not be developed. He posed a question to Ms. Crane that the person that kept the 1/3 lot with the 4 children and a wife who could not go upstairs would have to build a single story house and 41% of the 1/3 acre would require a variance. Ms. Crane answered correct. He said that would be a draconian result for the property owner because in all fairness they have more than adequate space around them for the stormwater to run off. Ms. Crane agreed. He asked Ms. Crane if it was her understanding that those types of results were intended with the passing of the stormwater standards.

Ms. Cabiness responded that she was instrumental in helping to draft the supplemental stormwater design standards and do not believe it was our intention. When the application came in and with the circumstances that were presented they realized that there could be some kind of application that was not intended or a consequence that was not intended. She said that is why staff is here today because they realized there is a lot more land adjacent to these lots if it hadn't been zoned this way, it would've been larger lots and more akin to what we have in other areas of the island. With the drainage behind it, it would not adversely affect any of the adjacent properties or any downstream or upstream from it.

Chair Savage asked Ms. Cabiness as the engineer for the Town is she concerned that if the variance is granted that it is somehow going to work in opposition to the intent of the recently passed Stormwater Design Standards. Ms. Cabiness answered 'no, that she thinks the very special circumstances that here will not be replicated anywhere else that she is aware of; there may be one or two other places, but she would not be appearing before the Board if she thought it would hurt the ordinance or an adjacent property.

Applicant Presentation:

Eric Northcutt, 1106 Bright Court

Chair Savage informed the applicant that the Board has to look at those enumerated factors and asked him to speak to those as it would help the Board.

Mr. Northcutt spoke in regards to the extraordinary and exceptional conditions that Chair Savage said when the Preserves was zoned. He said the Preserves was zoned in a way that the 1/3 acres of open space, in addition to all of the lots, and when divided by the total number of houses still maintained a density of less than three (3) units per acre. He said the open space he should be allotted is approximately enough to make his property 1/3 acre. With his math that comes out to 5,000 sq. ft. which, when added to his property puts it well below the 40% if the pool is added. He said most developments in the area do not have as much open space or open space that is directly attached to a good portion of the properties.

He said if the open space had not been allocated as open space, the property directly behind him would mostly have been added to his property. He cannot say that with one-hundred percent certainty but as a builder he would assume that "*I would make as much money as I can*" and add that to get the cost of the property up. He said the retention pond is well below the grade of all of the properties in the area and all of the properties grade drastically towards "that". They will maintain the grade with the installation of the pool if it is allowed.

When they purchased the property in August 2023, their goal was to add a pool and they saved up. He mentioned as Ms. Crane said on September 3 they made a deposit and signed with Heritage Pools. On the 19th, the Town's new stormwater ordinance went into effect. On the 23rd (four days later) he got his permit from their HOA to allow them to apply to the Town. He said granting of the variance would take into consideration the ample open space in the neighborhood. The neighborhood was designed to provide greater flexibility in retaining more natural areas through the creative integration of more moderate size lots and setbacks. The variance allowed in the development of the Preserves uses ample open space of the development to maintain a density not to exceed three (3) units per acre. This 1/3 acre standard is the same as the passage of this ordinance and the stormwater ordinance also has this same 1/3 to maintain the same lot size.

Questions for the Applicant: None.

In Support: No one present. Six (6) letters of support were received via email and attached as a part of this record.

In Opposition: No one present.

Rebuttal: None required.

Chair Savage called for a motion to close the Public Hearing at 5:39 p.m. Motion to close the Public Hearing was made by Comm'r Yannitelli, seconded by Comm'r Hayes and passed unanimously.

Chair Savage called for a motion to approve the application subject to the conditions recommended by staff. The motion was made by Comm'r Yannitelli, seconded by Comm'rs Smith and Hayes and passed unanimously.

Chair Savage said a question that he should've asked Ms. Crane was had the applicant gotten his HOA approval four days earlier the Board would not be here because he would have made the application with the Town; and the variance was not caused by action of the applicant. Chair Savage said the only criteria that he had a question about was does it unreasonably prohibit. The purchase of the property was with the understanding to put in a pool and it was allowed. As someone with a pool, he understands that you don't buy a house and put a pool in at the same and time and understands the delay. Chair Savage explained a case before the BZA 18 months ago regarding brick pavers and a deck that exceeded the square footage. This was an older community where consideration was not made for stormwater runoff. He is bringing this up because he doesn't want people to think that he is inconsistent in this analysis; however, there was a difference. He said it is important for the people watching online to understand that his analysis is the same but when there is a different feature with the set aside of three (3) acres directly behind the applicant's house and in the direction the water would flow, he is more at ease in thinking to grant the variance than he was in the earlier case that he mentioned.

Comm'r Smith said that he found the analysis interesting but doesn't think that we need it to grant the variance because it meets all of the criteria on its own; in its peculiar and unique ways. In particular F(b) that it is different than anywhere else and does not generally apply to other properties in the vicinity. He said each property is unique and that one with the area behind it is different than most other ones. This is where he thinks the open space comes from, not just because it is in a planned development. He appreciated Chair Savage's analysis but he doesn't think we need it. The variance passes on its own because it meets all of the criteria.

Chair Savage called for the approval of Case #BZAV-3-25-040: Variance request for an increase to the Town's Supplemental Stormwater Design Standards' allowable impervious lot coverage (maximum 40%) to 47%, for the construction of an inground swimming pool, spa and decking in the Preserve at Dills Bluff Neighborhood (PD-101) at 1106 Bright Court (TMS #428-03-00-105) with the staff's recommendation as follows:

The applicant/owner shall work with the Town's Stormwater Engineer to develop an implementation plan for runoff reduction practices that may include disconnected downspouts, rain gardens, infiltration trenches, rain barrels, rain gardens, etc. to mitigate any potential impervious runoff.

Vote

Comm'r Hayes	Aye
Comm'r Smith	Aye
Comm'r Yannitelli	Aye
Chair Savage	Aye

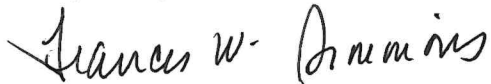
Motion passed unanimously. Chair Savage announced that the final decision of the Board will be mailed to the applicant within ten business days and the applicant may contact the Planning and Zoning staff for questions regarding the application.

Additional Business:

Next Meeting Date: May 20, 2025.

Adjourn: There being no further business to come before the body, the meeting adjourned at 5:46 p.m.

Respectfully submitted:

A handwritten signature in black ink that reads "Frances W. Simmons". The signature is written in a cursive style with a large, stylized 'F' and 'S'.

Frances Simmons

Town Clerk and Secretary to the BZA