

TOWN OF JAMES ISLAND  
BOARD OF ZONING APPEALS  
SUMMARY OF MAY 21, 2024

The Board of Zoning Appeals (BZA) held its regularly scheduled meeting on Tuesday, May 21, 2024, at 5:00 p.m. at the James Island Town Hall, 1122 Dills Bluff Road, James Island, SC.

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

Call to Order: Chair Savage called the meeting to order and asked Comm'r Hayes to 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 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, property owner, and property owners within 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 the parties of interest. This hearing was also live streamed on the Town's website.

Introductions: Chair Savage introduced himself as Vice Chair (acting as Chair), BZA members, (Comm'r Smith, excused absence), staff, BZA Attorney, Mayor Brook Lyon, and Mike Hemmer, Town Administrator.

Review Summary (Minutes) from the April 16, 2024, BZA Meeting: A motion to approve the minutes of the April 16, 2024, meeting was made by Comm'r Hayes, seconded by Comm'r Yannitelli and passed unanimously. Comm'r Fabri abstained as she was absent at that meeting. Chair Savage announced that 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 that the purpose of the Board of Zoning Appeals is a quasi-judicial Board, and it is 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.

Chair Savage gave an overview of how the cases would be conducted. He stated that tonight the Board will hear three variance requests and one special exception. He stated that the Dutch Brothers Coffee Case is for a special exception and a variance request. At the request of counsel for Dutch Brothers, the Board decided to hear the variance request first. He further stated that all cases being heard tonight must meet all criteria of the Ordinance.

Review of the Following Applications:

Case #BZAV-3-24-036: Variance request for the removal of a grand tree (52" DBH Live oak) in the Low-Density Suburban Residential (RSL) Zoning District in the front yard of 1209 Taliaferro Avenue, Town of James Island (TMS#426-09-00-030): (this case is a continuation from the 4/16/24 Public Hearing).

Chair Savage stated that the Board deferred its vote at last month's meeting to allow the applicant an opportunity to supplement his submissions and address concerns that the members had during the deliberation on the root causes that were not specifically or fully addressed in the applicant's engineering report.

Chair Savage called for a motion to dispense the staff's review. Motion came forth from Comm'r Fabri, seconded by Comm'r Hayes and passed unanimously.

Chair Savage announced as a part of the record information submitted at last month's hearing included:

- BZA packet along with photographs
- Staff Review
- Applicant Submission Letter, March 10, 2024
- Rosen & Rosen Associates Letter, January 16, 2024
- F.A. Bartlette Tree Experts Company Letter, December 14, 2023
- One letter in opposition from Sherry Herring
- Testimony from the previous meeting
- The supplement received on May 14 includes a Koenig Homes repair estimate with photos.
- Charleston Arborist Letter, May 11, 2024
- Email accepted at the initial hearing from Kyle Foster, Charleston County Planning and Zoning
- Staff emailed on Monday, @ 4:23 p.m. attaching letters 2-5 from: Teri Lynn Herbert, Kyle Foster, Chris and Kristin Mein, and Dupont.
- Staff email, May 21, 2024, with original Rosen Engineering Letter, October 25, 2023

Chair Savage asked the applicant if there were other matters entered into the record that he did not identify.

Thomas Marcinko, 1209 Taliaferro Avenue, Charleston, SC: responded to Chair Savage's question that no documents were overlooked.

Chair Savage said at the last BZA meeting, the Board asked Mr. Marcinko to return this month to address some concerns that were raised during the deliberations. Mr. Marcinko responded by reading into the record the attached statement.

After reading his statement, Mr. Marcinko said the only other question he had was that during the hearing he thought he would be provided a letter with more specific information as to why the Board's decision was made and did not receive it. He wanted to know if that was something he misunderstood or if it was something he should have received within 10 days after the hearing. Chair Savage said as a Board they do not issue decisions, which is done by the Town.

Questions for the Applicant:

Comm'r Fabri mentioned there were three arborist reports but in the packet there are only two. Mr. Marcinko said the other is from Kyle Foster because it was brought up in the last meeting that said it could be a solution and the other two clearly state that it is not. He said it seemed to be one against the other and he wanted to provide more data.

Chair Savage called for a motion to close the hearing. Comm'r Yannitelli moved to close the hearing, seconded by Comm'r Hayes, and passed unanimously.

Board Discussion:

Comm'r Yannitelli said he thought the letter from the Charleston Arborist Company was helpful; the analogy explaining the root zone and root plate spells it out and he now has a good understanding of this.

Chair Savage said in the deliberations last month there were some concerns with Condition 4-C, and he thought the applicant did not know the burden of proof or the standard of proof that the Board would need. He said personally having received the original Rosen letter from October 2023 (that was not in the original packet) it satisfied his inquiry of the cause between the tree roots and the change in the foundation.

Comm'r Hayes said he had the opportunity to look through all of the documentation. Chair Savage corrected a procedural error and called for a motion to approve the application based upon the staff's recommendation. The motion was made by Comm'r Yannitelli, seconded by Comm'r Hayes.

Comm'r Fabri said she watched the last meeting and did not get a clear sense of the mitigation plan regarding the inch-to-inch replace. She asked whether it would be the 52" all at once, or a fee be imposed. She asked Ms. Crane to explain how the mitigation process works. Ms. Crane explained that staff works with the applicant on a plan that would suit both them and the Town. The Town's Ordinance states inch-by-inch plantings; both, or money donated to the Town's tree fund. Also, that any future significant pruning to grand trees on the site adheres to Section 153.334 of the Ordinance. Ms. Crane noted in the applicant's letter of intent that there had been significant pruning to the grand trees, according to the homeowner. Without any permits on record for this pruning, staff added a condition of approval that permits would be applied for if any other significant pruning should occur.

In light of Comm'r Fabri's questions regarding mitigation, Chair Savage asked that the motion made by Comm'r Yannitelli and seconded by Comm'r Hayes be withdrawn and restated. Chair Savage moved for the approval of Case #BZAV-3-24-036: A Variance Request for the removal of a grand tree (52" DBH Live Oak) in the Low-Density Suburban Residential (RSL) Zoning District in the front yard of 1209 Taliaferro Avenue based on the following conditions by staff; seconded by Comm'r Hayes:

1. The applicant/owner shall mitigate the removal of the subject grand tree by submitting a mitigation plan to the Zoning Administrator, as described in 153.334 (E)(2) of the Ordinance, which includes inch-per-inch replacement.
2. The applicant/owner shall provide documentation that the remaining grand trees on the subject parcel have been treated and cared for as recommended by a Certified Arborist, to mitigate and prevent any potential spreading of disease/fungus.
3. Any future significant pruning to grand trees on site must adhere to Section 153.334 of the Ordinance, including obtaining proper zoning permits for excess canopy (limb) removal.

Vote:

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

Passed unanimously.

Chair Savage stated that the variance request has been approved with the conditions recommended by staff. The final decision will be mailed to the applicant within 10 business days, and they may contact the Planning and Zoning staff for questions about the approval.

Case #BZAV-4-24-037: Variance request for encroachment into the 15' required OCTM Critical Line Buffer for the placement of a pool filter backwash tank, and concrete decking, for community pool improvements in the Fort Johnson Estates neighborhood at 400 Trapier Drive, Town of James Island (TMS #454-08-00-071): Comm'r Yannitelli recused himself from discussions as he serves as a member of the school and left the hearing. Recusal attached.

### **Staff Review:**

The applicant, The Fort Johnson Community Foundation, is requesting a variance for encroachment into the 15' required OCRM Critical Line Buffer for the placement of a pool filter backwash tank, and concrete decking, for community pool improvements in the Fort Johnson Estates neighborhood at 400 Trapier Drive (TMS #454-08-00-071). Adjacent property to the north & east is marshland and adjacent properties to the south and west are in the Low-Density Suburban Residential Zoning District and are in the Town of James Island's jurisdiction. Other properties within 300' of the subject property include residential uses in the Town of James Island, the City of Charleston, and a James Island PSD Pump Station.

*Town of James Island Zoning and Land Development Regulations, § 153.337 WETLANDS, WATERWAYS, AND OCRM CRITICAL LINE (1) (c) "reduction in any required buffer shall be made by appeal to the Board of Zoning Appeals."*

The subject property is 0.83 acres in size and has a swimming pool that was constructed in the 1960s according to the applicant's letter of intent. There is also a clubhouse, restrooms, and several concrete pads/patios located on the property. The applicant states in their letter of intent that *"the addition of the surge tank will ensure the pool equipment meets current regulatory standards but also be beneficial in assuring that clean water is being discharged and significantly lessen any environmental impact from normal pool operations."* Additionally, they state that the *"existing concrete extends well into the 15-foot buffer line and needs to be replaced following the existing pavement limits for as minimum a distance as we can to maintain a safe deck area around the pool"*. 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 be extraordinary and exceptional conditions pertaining to this piece of property due to the use itself (community/neighborhood pool), combined with the use's existing location and age, along with their close proximity to the continually shifting OCRM critical line.**

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

**Response:** **These conditions may not generally apply to other properties in the vicinity as surrounding properties do not have a community function with older facilities that were constructed prior to the current OCRM buffer requirements 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:** **Tank:** According to the applicant's letter of intent the pool *"is in need of refurbishment/repair to continue operations"* and the addition of the surge tank will ensure *"the pool equipment meets current regulatory standards."* Therefore, the application of this ordinance to the piece of property may unreasonably restrict the utilization of the swimming pool on the property.

**Deck:** The application of this ordinance to the piece of property may unreasonably restrict the safe utilization of the concrete pool deck. According to the letter of intent the proposed decking encroachment is *"to accommodate the growing number of families who use the pool"* and to *"maintain a safe deck area around the pool."*

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:** **Tank:** The applicant's letter of intent explains that *"the existing pool backwash system discharges directly into the marsh"* and that *"the addition of a surge tank is mandated by SCDHEC as a means to contain the backwash discharge wastewater from the pool in a way that does not harm the surrounding environments nor overcome the existing public sanitary system."* Therefore, the authorization of this variance may not be of substantial detriment to the adjacent property or the public good.

**Deck:** The applicant explains in their letter of intent that *"along the south side of the pool deck the existing concrete extends well into the 15-foot buffer line"*. They further indicate that the proposed decking encroachment *"is for a small area in the corner where the pre-existing deck and expanded deck meet."* Therefore, due to the minimal area of proposed decking encroachment, the authorization of this variance may not be of substantial detriment to the adjacent property or to 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:** **Tank:** The applicant explains in their letter of intent that *"As directed by SCDHEC to properly treat and discharge the water from the pool, we have no choice but to add this surge tank."* Furthermore, the applicant's letter states that *"the existing pool equipment is located just outside of the Town's 15' OCRM encroachment buffer with no adjacent space available without extending into the buffer"* and that they are asking to place the surge tank in this location to *"most efficiently tie into the water/sewer lines that are currently in place for the pool"*. Therefore, the need for the variance may not be the result of the applicant's own actions due to the age and existing location of the pool and equipment, and the shifting OCRM line.

**Deck:** The need for the variance may not be the result of the applicant's own actions due to the existing location of the pool, decking, and the shifting OCRM line.

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

**Response:** **The Natural Resources Element of the Comprehensive Plan has a goal to “protect, preserve and enhance the natural environment” while the purpose of the required buffers is to provide a visual, spatial, and ecological transition zone between development and the town’s saltwater wetlands and waterways and to protect water quality and wildlife habitat. Because the “existing pool backwash system discharges directly into the marsh per design standards from 1960” and the “addition of the surge tank will ensure the pool equipment meets current regulatory standards but also be beneficial in assuring that clean water is being discharged and significantly lessen any environmental impact from normal pool operations”, this 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-4-24-037 variance request for encroachment into the 15’ required OCRM Critical Line Buffer for the placement of a pool filter backwash tank, and concrete decking, for community pool improvements in the Fort Johnson Estates neighborhood at 400 Trapier Drive.– Town of James Island (TMS #454-08-00-071) 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. Any alteration or removal of plant life must be replaced in a manner that will not alter the existing pattern of vegetation.
2. Prior to obtaining zoning permits for any improvements, the applicant/owner shall install tree protection around grand and protected trees, as described in §153.334 of the *Ordinance*.
3. Prior to obtaining permits for improvements, the applicant/owner shall install silt fencing, as described in Chapter 51 of the *Ordinance*.

#### **Questions to Staff:**

Chair Savage said there were a couple of letters from nearby landowners and one of the primary concerns was some type of screening. He asked Ms. Crane for options that are available should the Board want to inquire about them. Ms. Crane replied that an option would be to replace any type of plant life that is removed, but she did not think there would be any with this request. She believes waxed myrtles, a natural barrier/buffer, could be planted and treated as a buffer for the pool. Chair Savage said in one of the letters there was reference to some type of fencing or wind screen (i.e., such as on tennis courts) and Ms. Crane said that could be placed on the existing fencing or the one that was replaced.

Comm'r Fabri asked to see a better picture where the pool deck would be extended, and Ms. Crane complied. Comm'r Fabri asked the height of the fence and Ms. Crane said 6 ft. Comm'r Fabri asked if that is the fence the family wrote the screening about. Ms. Crane answered that she thought the family lived on the other side, but the applicant may be able to explain the location. Ms. Crane said by looking at the aerial the area would be on the bottom right of the pool for the decking and the surge tank would be behind the upside-down L-shaped building. Comm'r Fabri asked if a permit from DHEC is required, and Ms. Crane said the applicant is working to get that as well as stormwater permits.

Chair Savage announced for record the information received for this case:

- BZA Packet
- May 20 staff email @ 4:23 p.m.
- Letters from: Scarborough, Walters, and Moore

Applicant Presentation:

Katie Henderson, 430 Wade Hampton Drive: represents the Fort Johnson Community Foundation (applicant) located at 400 Trapier Drive, James Island. Ms. Henderson requested permission to call upon a member of the Board, Rob Jenkins, and Engineer, Gray Lewis with Forsberg Engineering & Surveying to speak on the technical aspects of the project.

Rob Jenkins, 448 Wallace Drive: Pool Administrator and volunteer stated that three years ago they tried to begin the project and it has taken some time. He said the pool is 65 years and they are trying to enhance it for the neighborhood's membership. Mr. Jenkins said Gray Lewis would speak on the design of the project. He commented that all entities need to agree to the plan before it is priced for completion. The pool is aged, and he said before it is lost, they are trying to fix it. Everything will need to be gutted so it will be done from the "ground up." They are open to a wind screen and landscaping but have a tight budget. He said there is no other place for the surge tank other than the back side and it is protected under an existing covered building. He said they are working within the confines there and not adding anything to it.

Grey Lewis, Forsberg Engineering & Surveying is the Civil Engineer for the project. He has been working with the owners and the design and construction team to put together the package for permitting that has been submitted to SC DHEC for the changes and improvements proposed for the pool, the equipment room, plumbing, piping coordinators, filters, backwash system and all of that goes to SCDHEC because it is a major overhaul. He said when the pool was originally built, DHEC and the Clean Water Act did not exist. He explained that according to the code, direct discharge is not allowed into wetlands or natural areas and has to run through an approved stormwater system, or a sanitary improvement system. He said in this area of the island there is only a sanitary sewer system. DHEC requires the water to be removed and discharged and the James Island PSD along with DHEC sets the standards for how it is to be received and at what rate it is received. The pumps are 350 gallons per minute, but they are only allowed to discharge at 20. Although the filters are cleaned in 15 minutes all 5300 gallons of water have to be placed in a single tank, held, and trickles out of an aluminum pipe into the sewer system. He said this is similar to a stormwater detention system but for sewage water instead and the only place it will fit is on the back property line where the equipment is where the sewer lines come together to pick it up. This is why they have not made an application because they are on the high ground but not encroaching on the wetlands.

Mr. Lewis said that they are pulling the deck away from the wetlands in several places to increase stability along the critical line embankment. There is one small area where they are expanding outside of the buffer and where the two come together leaves a notch that is 4x8. The request is to fill that in because otherwise there would be a dead zone in the middle of where the pool deck and fencing goes. The Site Plan (identified as Grading and Drainage Plan) was presented to the Board to review.

Chair Savage called for a motion to enter the Site Plan into the record. Motion to enter it into the record was made by Comm'r Fabri, seconded by Comm'r Hayes and it passed unanimously. Chair Savage recalled there was a similar schematic included in the BZA packet in black and white and Mr. Lewis confirmed. He said those drawings were from the initial preliminary meeting with Town staff before the application was made.

Ms. Henderson responded to the letter from Wallace Scarborough where he questioned whether the encroachment was on his property. She responded that Mr. Scarborough had no problem with the expansion if it does not encroach onto his property or into the OCRM critical line. She replied that it does not.

#### Questions from Board:

Chair Savage asked if membership to the pool is open to anyone and Mr. Jenkins replied yes; on a first come, first-serve basis. He said there is a wait list because the pool is full every week. Two-thirds of the members are outside of the Fort Johnson community.

Chair Savage asked Mr. Lewis his opinion that if the decking were not granted if there would be a change in the surface area, and he confirmed. Chair Savage asked if that were deemed a safety hazard and Mr. Lewis replied that it would be a sanitary issue because of debris and children running around tracking into the pool, so it would be a safety and sanitary problem.

Chair Savage asked Ms. Henderson if she read the letters of concerns and understands the concerns of the speaker who had no opposition to putting up a screen. Ms. Henderson stated that personally, she had no opposition and thought the option would be screening or vegetation. Vegetation is a preferred choice. She did not think the Board would have opposition to either. Chair Savage said he lives across the marsh and could hear announcements, horns, and screams, so he appreciates the concerns.

#### Support:

Rick Johnson, 378 Sweetgrass Creek Rd: He and his wife Janet live in the property adjacent to the pool (on the other side of the surge tank) and have no objections to what the Fort Johnson Community Foundation wants to do. He wanted to come and reiterate that the new fence they put in be screened with something aesthetically pleasing; plants are desirable. He said the Civic Club has been helpful and responsive to his concerns and he met with them and looked everything over. There is no challenge to put up a silt fence because of the construction, but there is not much room between the existing vegetation and the fence. His concern is they might tear down the existing vegetation to put it in the silt fence and if they do not go with some plant that would be an aesthetic challenge and a sound abatement issue. 99% of the noise from the pool is pleasant. They are willing to hear the swim team that meets three times a year because there is no way to abate that sound. They are afraid if all the vegetation is scraped away, the fence torn down, and the concrete decking, and no aesthetic on the outside of the pool that would degrade the new fence and abate some of the sound and that would be less desirable for them.

Julie Walters, 362 Sweetgrass Creek Rd: a native of James Island realizes that this pool is in desperate need of improvement. She would like to reiterate the requirement of putting in vegetation along the eastside fence because it is unsightly. She is afraid with the construction it would get worse. If soil tolerant plants along the fence line are put in that would be appreciated. Six houses look directly onto the pool deck and hear every conversation; but normally it is happy. The property is old and in need of upgraded landscaping. They would especially like to have vegetation along the eastside fence that will be put in.

Opposition: None.



Ms. Henderson clarified to Mr. Johnson that the swim team meets twice a year. She agreed that vegetation along the fence would make it look good and could appease the concerns. She said without having a landscape architect with them she could not tell what it would look like but she does not think anyone is opposed to doing what is best for the neighbors.

Comm'r Fabri moved to approve Case# BZAV-4-24-037: Variance Request for encroachment into the 15" required OCRM Critical Line Buffer for the replacement of a pool filter backwash tank, and concrete decking, for community pool improvements in the Fort Johnson Estates neighborhood at 400 Trapier Drive, Town of James Island, TMS# 454-08-00-071 based on the 3 conditions recommended by staff and added a 4<sup>th</sup> condition.

- Comm'r Fabri answered Ms. Henderson's question asking if the fence screening was required. Comm'r Fabri said she did not want to say it had to be done with plants or with fence screening, but for the Community Foundation to work with the neighbors adjacent to the pool for one or the other to their satisfaction, but that their issue is addressed. Comm'r Hayes seconded the motion.

Comm'r Fabri	Aye
Comm'r Hayes	Aye
Chair Savage	Aye

Chair Savage announced the approval of the variance request. The final decision will be mailed to the applicant within ten business days, and they may contact the Planning and Zoning staff for questions regarding the approval of the application.

9

Chair Savage stated that the following documents were included in the record:

- BZA Packet forwarded for last month's meeting that included photographs of the surrounding areas; staff review; Foresite letter, March 14, 2024; Kimlee Horn Technical Memorandum, March 14, 2024; letters of opposition from Wendy Tripp, and George Hyams; email from Town Planner, May 14, 2024, that included Kimlee Horn Technical Memorandum, May 8, 2024; staff email May 20 @ 4:23 p.m. included letters 3-15; 12 in opposition and 1 neutral noting a better site map.

### **Staff Review:**

The applicant, Dutch Bros, LLC, is seeking a Variance for the construction of a double-drive thru for a proposed fast-food use (Dutch Brothers Coffee) on a vacant lot in the Community Commercial (CC) Zoning District and in the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District at 890 Folly Road (TMS #425-06-00-101). In March of 2021, the lot lines at the site were reconfigured to their existing layout, and the existing building (previously Pizza Hut) on the site was demolished. The property is 0.65 acres in size, zoned Community Commercial (CC), and is currently vacant and was previously prepped for development. Adjacent property to the south, north, and west is in the Town of James Island and zoned Community Commercial (Chase Bank, Hyam's Garden & Accent, and a vacant lot, future Jimmy John's). The adjacent parcel to the east is in the City of Charleston's jurisdiction and is zoned General Office (Southern Bell Telephone & Telegraph Company, utilized by AT&T). Additional uses within 300' include convenience stores and service stations (Circle K), vehicle service (Super Suds Carwash), general restaurant (Tropical Smoothie Café) social club or lodge (VFW), florist (Floriography Studio), drug store (Walgreens), personal improvement services (Folly Jujitsu) and parcels in the Town of James Island zoned RSL and DR-1F in the City of Charleston.

*Town of James Island Zoning and Land Development Regulations Ordinance, § 153.336 D(2)(c) ARCHITECTURAL AND LANDSCAPE DESIGN GUIDELINES. "Only single lane drive-throughs are allowed. Multi-lane drive-throughs are only allowed for banks (or similar financial institutions), post office, or utilities."*

According to the applicant's letter of intent they are "seeking a variance to ordinance section 153.336(D)(2)(c) and requesting a double drive-through lane to increase the stacking capacity on site and improve traffic flow" for the operation a drive-thru coffee establishment Dutch Bros Coffee. Pebble Hill MP, LLC is the current owner of the subject parcel, and the lot is considered legal and conforming.

### **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 constricting size and the existing location of a shared access drive on the property. As the letter of intent states, "the subject property is 0.652 acres, of which 0.127 acres is already developed with a shared access drive with the adjacent Chase Bank." Additionally, the applicant states that the "existing access drive has**

*easements and restrictive covenants in place which would prohibit the rearrangement of the drive.”*

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

**Response:** **These conditions may not generally apply to other properties in the vicinity as no commercial properties nearby have a shared access drive utilizing 0.12 acres of property nor the existing configuration and layout of the subject property. Although there are five commercial properties in the vicinity that are smaller than 0.525 acres according to Charleston County records, there is only one double-drive thru fast food use, in which the parcel is larger.**

F (c): *Because of these conditions, the application of this Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

**Response:** **The application of this Ordinance, specifically section §153.336, Architectural and Landscape Design Guidelines, may not prohibit the utilization of the property as a drive-through fast food use. However, according to the letter of intent Dutch Bros Coffees “use double drive through lanes, dynamic ordering, and drink runners to help make the order experience smoother and more enjoyable” and “granting of this variance allows Dutch Bros Coffee to operate to the best of their ability, provide the highest quality service and experience to their customers, and mitigate any negative impacts to the adjacent properties and the surrounding community”. Therefore, not granting the variance may unreasonably restrict the use from operating at full capacity or to the best of their ability.**

F (d): *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district will not be harmed by the granting of the variance.*

**Response:** **The authorization of this variance may not be a 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. As the applicant’s letter of intent states, “a double drive-through lane allows more cars to get on site and out of the shared access drive with Chase and reduces overflow onto the surrounding streets, Folly Road, and Camp Road.” Furthermore, the applicant indicates that the variance request is made “to protect the safety of our customers and employees, and to improve traffic flow” and that “granting of this variance allows Dutch Bros Coffee to operate to the best of their ability, provide the highest quality service and experience to their customers, and mitigate any negative impacts to the adjacent properties and the surrounding community.”**

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:** **Constraints such as the size of the property and the location of the shared access drive are existing site conditions and may not be the result of the applicant's own actions. Additionally, the need for the variance, as the applicant explains, is to "increase the stacking capacity on site and improve traffic flow."**

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

**Response:** **Ordinance section 153.336 ARCHITECTURAL AND LANDSCAPE DESIGN GUIDELINES state the purpose of the standards is "to promote and protect the appearance, character, and economic value of new development; to encourage creativity in new development (as opposed to homogeneity or "look-alike" projects); and to foster attractive streetscapes and pedestrian environments, while accommodating safe vehicular movements and access." Therefore, the variance may not conflict with the Comprehensive Plan, specifically the Transportation Element needs of "Mitigating the impacts of a changing population on the existing transportation system".**

*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-4-24-038 Variance Request for the construction of a double-drive thru for a proposed fast-food use (Dutch Brothers Coffee) in the Community Commercial (CC) Zoning District and in the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District at 890 Folly Road– Town of James Island (TMS #425-06-00-101) 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 condition:

1. Any future proposed double drive-through on the subject parcel must also follow Variance procedures as a new application.

#### **Questions to Staff:**

Comm'r Fabri asked about the addition on the double drive-through. What if someone comes back that wants a single drive-through? Ms. Crane said it would depend on what they wanted it for. She said not all drive-throughs necessitate a special exception. However, if the special exception is granted the same conditions would apply and a new fast-food use would go through the entire special exception process.

Chair Savage asked a question about condition F-(c ); referencing the size of the property and Ms. Crane answered yes; it was also established that the property is vacant. He said the conditions are not existing structures and Ms. Crane stated it is the size and shared drive that is already there.

Comm'r Fabri asked what are the restrictive covenants and easements on the drive. Ms. Crane said she preferred to defer response to the applicant because that is a legal document. She was unaware that it existed until the applicant's letter of intent was submitted. Comm'r Fabri asked if the area is where it intersects

with Camp Road, to which Ms. Crane said it is off of Folly Road and is the right-in, right-out between the Chase Bank. The proposed site has an access easement that is already there on the proposed site property, (not the Chase site). Ms. Crane showed the hatched area referenced to the Board. Comm'r Fabri asked if it has to be built on or could it be a driveway. Ms. Crane said that is what was developed in the Chase site as shared access. If it were built on, we would have to start from scratch with a site plan review with Chase. Comm'r Fabri recalled the right-in-, right-out from SCDOT for a previous case and Ms. Crane said the right-in, right-out would not be mandated by the Town.

For clarification, Comm'r Yannitelli asked if the entrance/exit from Camp (from Folly) is designed to be shared with the two properties. Ms. Crane answered yes. Comm'r Fabri asked if there were discussion with SCDOT when Chase was being developed regarding shared access onto Camp Road (i.e., land use on the vacant parcel). Ms. Crane said she was unsure. Comm'r Fabri recalled at one time the land was supposed to be a park or a park and ride. Ms. Crane said a park was discussed but there were many iterations of what could be there but did not think the lot lines were in the existing configurations for a park. Chair Savage recalled that the site was originally a Pizza Hut and Ms. Crane answered yes. He said the existing landowner had to consent or negotiate the changes. The changes are not forced upon him/her to which Ms. Crane answered yes. Further the site was a Pizza Hut, Subway, Papa Johns, and Corky's.

#### Applicant Presentation

Sarah Hamblin, Civil Engineer, Foresite Engineering: Spoke referencing the shared access, that the striped area is a part of it, but they only surveyed the new property that covers both access drives. The original parent parcel was a single parcel and it was subdivided into parcels A and B, so the owners placed restrictive covenants on the access to be shared by both sides. It is recorded and in place. As Dutch is not the owner, they would be leasing the new parcel and do not have the right to change or make any configurations to the access drive. She also spoke why the request is unique. It is small, but it is not the size that makes it unique; it is the location of the existing drive. She stated on a normal half-acre site, you could have a driveway off of Folly Road and still wrap around the building and go back out potentially to allow for better stacking. Since the driveway runs along the site it limits the ability to wrap a driveway around the building. That is part of the reason it is unique. It is in place; it is not something the applicant has imposed. It is there from the existing site. Ms. Hamblin touched on whether land use was discussed with SCDOT and stated that there is an improved traffic study and land use was contemplated into it and a memo was submitted to the Board that addresses the changes. Ms. Hamblin availed herself as the Civil Engineer to answer questions related to site.

Jeff Hertzog, Regional Business Coach (for Florida, Kentucky, Alabama, and Tennessee): Has recently taken on that role several years ago. He has worked for Dutch Brothers for 31 years. He has seen a lot of sites designed over the years from the single walk-ups to the site design before the Board tonight. His job as a Regional Business Coach is to look at plans when submitted to the construction and real estate team from an operational standpoint to see whether it will meet their ability to serve their customers at a fast and efficient speed. He said the double sided drive-up used to be done but has been modified to this plan two years ago because it is more efficient in getting cars onto the property and out of traffic. Their goal is to serve the customer in 35 seconds. Currently he supervises 64 locations and many sites look like what is proposed here and has good success in getting customers in and out quickly. He touched on double drive-ups that is actually a single drive-up with a double stack lane behind it. He explained how the operation works and how their workers direct traffic when cars pull onto the lot stacking them correctly, taking orders and bringing the drinks to the customers' cars. He said in his 31 years with the company their goal is fast and friendly service to community. The company takes pride in providing jobs at their locations and planting roots in the community. One of the give-backs he is proud of is donating to MDA as one of the

founders passed away from Lou Gehrig disease and they donated \$1.4 million last year for that cause. He is looking forward to being a part of this community if this request is approved.

Chair Savage informed the applicant that they had more time to present, and it would be helpful to him if they could speak on the factors of the variance. Ms. Hamblin came forth and Chair Savage asked her to give explanation on conditions 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*; and F(f): *The need for the variance is not the result of the applicant's own actions*. Ms. Hamblin explained condition F (c) that it being a drive-through business with a single drive-through it would not allow as many cars to get out of the way and into the drive-through from a traffic flow and stacking standpoint. She referred to the point made by Mr. Hertzog about Dutch Brothers dynamics of bringing drinks to the cars to keep traffic moving faster. Regarding condition F(f) she said with the existing configuration of the site and the access drive located where it is there is no way to have a driveway wrap around the building as with a traditional drive through where cars drive through one side and exits out of another. That cannot be done here because the driveway is already in place and movement is in a semi-circle that restricts the stacking as well. Comm'r Fabri asked for clarification and Ms. Hamblin explained it is the internal driveway (with the hatch) is already in place utilized by Chase they do not have the ability to reconfigure it and almost makes the property have two frontages where you cannot have the circulation as on a true stand-alone lot. Cars cannot be stacked there because it is used by Chase and in their agreement, you cannot block or impede their operation.

#### Questions from the Board:

Chair Savage shared his concern that this is a vacant lot and as he understands the applicant is in some sort of agreement with the owner to lease the property; and that it would be contingent upon getting the appropriate variance and special exception. He said the restrictions on the lot were imposed or agreed to by the owner of the lot and the applicant is dealing with the owner that knows what the restrictions; yet still want to plan to put a business that requires a variance and a special exception. He said the Board has to follow the factors and it is up to the applicant to show that all criteria are met. He reiterated the condition under F(c ) that it is not the utilization of the property as a double drive through for Dutch Brothers that criteria is the property cannot be utilized. We know that is not the case because historically there were businesses there that tended to be high turnover restaurants. His question to the applicant was on that factor because the Board is not looking at it as whether or not Dutch Brothers can't get it, they just can't go in there and that is not the gist of that section. It is if we don't grant the variance the landowner can't utilize that property. He has concerns about this and asked anyone from the Dutch Brother team to address that matter. His second concern is F(f) that the need for the variance is not the result of the applicant's own actions. He said the applicant wants to put the property here and knows what the restrictions are, and it doesn't seem that criteria are met. These are his concerns before the special exception is addressed.

Nichole Scott, Maynard Nexsen stated that she represents the applicant, Dutch Brothers, not the property owner. She addressed condition F(f) stating that Dutch Brothers had nothing to do with subdividing the property or putting in the easement but are charged with having to live with it. They have no authority to reconfigure, block or impede that access. She submitted that the conditions of the property are not caused by the applicant. They are doing their best to utilize the property in its highest and best use as a commercial use. They have proposed a double drive-through which not only allows them to conform to the conditions of the property, but it ends up in a safer design than a single drive-through would. She said a single drive would extend cars out onto the access and possibly push the cars out onto Folly Road that they do not want. Regarding the size of the property and the way access is configured, none is the result of the action of the applicant and that is the standard that has to be met. She stated that the applicant did not create this situation

and has no authority to change it regarding access. She noted, could the applicant redesign as a one lane drive through. It is something that could be looked at but do not think the Town would be happy with that result. She thinks this is a safer course; however, she is not a traffic engineer and did not want to speak to that.

Chair Savage stressed his concerns about condition F(f) stating in this case the applicant does not have a property interest because it hasn't been constructed. He noted that the applicant is creating the issue because they want to go into a place where there is nothing constructed and build something that requires a variance. He noted it is the applicant's actions and desires as to what they want that creates the issue.

Ms. Scott stated that anyone who tries to develop this property with the location of the access easement where it is will have difficulty with any use and that limits the buildable area to what is shown on the aerial. She dared to say anyone that comes for a commercial use would have difficulty designing something that does not require a variance. Chair Savage replied it is the owners doing because he agreed to the restrictions there. Further Ms. Scott said she understands, but to hold every applicant that tries to develop the property, fears will result of being vacant and losing revenues for the Town and a derelict property. She said the property has been vacant for four years and a number of companies have tried to develop it.

Ms. Scott gave explanation of condition F (f). As a land use attorney and has worked with county attorneys and has seen a number of variances where the size and configuration of a lot drives the need for a variance. Even if the land is completely vacant. She responded to F(c ) that a lot of her comments are similar to that of F(f) where there is an access easement that cuts down the edge of the property and limits a rather small lot and it limits the buildable capacity on the lot. She believes this makes the property unique and is evidenced by the fact that the Town has not been able to find anyone in three-and-a-half years to construct something on the parcel and it prohibits utilization of the property for commercial use. She believes the standard has been met and quoted some uses in the Town's Comprehensive Plan. Chair Savage responded that the restrictions are what landowner has placed on the property. Ms. Scott stated that she represents the applicant that has to live with the legal design of the property.

Comm'r Fabri explained the goals of the Road Overlay and gave reasons why the property has been vacant for a long time. She also commented on previous requests for the property such as a bus stop/bus shelter. Mr. Hertzog spoke on Dutch's business model and referenced the drawing of the parking and patio spaces. He explained that Dutch Brothers used to do double sided drive-ups serving cars in both directions with two stacking lines. However, they realized that most people want to get out of their cars, walk up, get a coffee, and sit and enjoy the day. He said walk-ups are typically 30-40%. There are people that ride bikes, so they try to accommodate pedestrian traffic. One of their locations in Tennessee is almost 50% walk-ups. He said there was opposition at first fearing high-volume traffic, but the neighborhood has now embraced them and loves having them there.

Comm'r Fabri addressed the issue of the fast and efficient service in 35 seconds or less and the goal of getting people in/out. She commented on the Oregon location if we could do that here, it would be awesome, but Folly Road is definitely not Oregon so when we have an opportunity to repurpose parcels that is the goal of the Overlay District to make it pedestrian friendly. She also mentioned the school in close proximity and children having to cross the intersection so a double drive through that is fast and efficient with cars in and out does not seem compatible to her. Mr. Hertzog explained it is a mix of both and a lot of business during the morning rush for customers headed to work. This is where it is fast and efficient because people don't want to be late to work. He also explained that fast isn't "the need for speed". Ms. Scott added this is why the sidewalk gets extended and in the special exception presentation, there is a bus stop in front of the property. A part of the plan is to improve the bus stop and make it sheltered. While that is not pedestrian oriented, it is public oriented and results in getting cars off of the road. She said the core of the Folly Road

Overlay Corridor consists of high intensity commercials, i.e., chain type restaurants, vehicle service/repair, drug stores and shopping centers (with minimum buffering ) along Folly Road. Future development in this area is intended for higher commercial uses than those found in other areas of the corridor. She said by the definition of what the Town envisions for this property putting a bunch of pedestrians in the Folly Road Corridor at this particular intersection seems in direct violation of what the Overlay is calling for. Comm'r Fabri disagreed and read the remainder: future development in this area should place high priority on pedestrian connectivity between businesses and the surrounding neighborhood with attractive plans and streetscapes and building plan and architecture.

Comm'r Fabri stated it is the commercial core, but also multi-use paths are required. A bus stop in front of the business moving cars out in the morning that is a right turn only next to a bus shed is concerning to her. Ms. Scott said she would be interested to talk with other Planners because this is in-fill property and there are limited things that can be done to improve pedestrian accessibility. There are sidewalks with trails that are required and sidewalks that connect to neighborhoods. People that work at Hyams can walk over for a cup of coffee as they browse through the plants there. She thinks that while it is not a perfect embodiment of the Overlay, she does not think a perfect environment could be gotten for the lot that sits there. There is walkability between the Chase Bank and the coffee shop so to the extent they are able to incorporate the pedestrian component they have. But, without the Town acquiring larger acreage around the property and starting from scratch she doesn't think that the Town will meet that goal, but think they've done the best they can to meet that intent. Comm'r Fabri recalled an application for the property for a single drive-through and it was denied because it was too intense of a use and the opinion of the Board was not to have a drive through the way the lot is situated. She reasoned, (not speaking for the owner), they put the parking in the restrictive covenants was to make sure whatever goes on the other parcel is not as intense use as a Dutch Brothers or a Chick-fil-A or something of that nature. Chair Savage made reference that typically it is the owner's property that receives the variance.

Conrad Sulvegan, Traffic Engineer, Kimlee Horn stated they did the initial TIA and the updates that has occurred over the past four years. He responded to the question about the owner forcing them to share the driveway. He said that was not the owner's decision but also SCDOT to conform to the access manual they use. He said the owner is required to have one shared access along Folly and on Camp Roads so this was not the owner's decision only.

Support: No one spoke in support of the application.

Opposition:

Wendy Tripp, 841 Seafarer Way. Ms. Tripp is part property owner at 887 and 888 Folly Road, Hyam's who rents from her and also his property. Her concern with the variance adding two lanes and Camp and Folly is a mess to this day. Getting in and out, stop lights, and people coming in and out. She said years ago Folly was widened and some properties were taken so parking was lost on Hyam's end so even Hyam's getting in and out is a danger zone now. When the light turns, how is anybody going to turn left from Folly Road across the two lanes of traffic at the two-way stop? She does not see how anything can go there across the double lane.

Rebuttal:

Ms. Hamblin addressed the left turn off issue on Camp and reiterated the existing access driveways that Chase currently uses but it is not in their power to reconfigure the access. She also responded to the comment made that often variances come later after something is put in place and it is realized that a variance is needed. She said the Chick-fil-A down the street is a good example when they realized they had



operational issues and requested a drive through from the BZA and it was approved. She said Dutch wants to build right the first time. In reading the minutes she knows the Board struggles with the same issues of meeting criteria and felt that while all criteria may not have been met, it would be a bigger detriment to not approve the variance and would like the same consideration.

Comm'r Yannitelli asked Ms. Crane about the conforming uses of the property by right. Ms. Crane replied, restaurant (not fast-food), retail, office, medial office, personal improvements, i.e., nail salon, dance studio, gym, wholesale business are all uses that would be allowed without the need for a Special Exception.

Chair Savage made a motion to close the hearing, seconded by Comm' r Fabri and passed unanimously. Chair Savage asked for a motion to approve the variance request with the conditions recommended by staff. Comm'r Fabri moved, seconded by Comm'r Hayes and discussion followed.

During discussion, Comm'r Hayes stated that he was not satisfied with the remarks made by the applicant during the rebuttal and commented on condition F (c) and asked if there were any rebuttals from the Board.

Chair Savage spoke about the two criteria he is concerned about, F (c) and F(f) and was not satisfied that the need of variance is the result of the applicant's action. Comm's Hayes asked the appropriate action to get to a "yes" vote. He would like to see something that qualifies. Chair Savage explained that the Board is a quasi-judicial board, and those are the criteria that are the biggest hurdle. There was brief discussion about the Chick-fil-A case and the Board granting their variance for the drive through. It was noted that the Chick-fil-A was already in place as an existing business and they appeared before the Board to come into compliance with the drive through. Also that they purchased the lot next to them for additional space. The Board also discussed the ramifications of traffic. Comm'r Fabri commented on the intense use and in her mind the variance did not meet the criteria. After the Board's discussion, Chair Savage called for the motion. A vote of aye approves the variance, and a vote of nay denies the variance.

#### Vote

Comm'r Fabri	Nay
Comm'r Hayes	Nay
Comm'r Yannitelli	Nay
Chair Savage	Nay

Chair Savage announced that the variance was denied unanimously on the basis criteria F(f): The need for the variance is not the result of the applicant's own action; and

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.

A final decision of the Board will be mailed to the applicant within ten business days and the applicant may contact Planning and Zoning staff for questions regarding the denial of the application.

Case # BZAS-3-24-029: Special Exception request for a fast-food use (Dutch Brothers Coffee) on a vacant lot in the Community Commercial (CC) Zoning District and in the Commercial Core of the Folly Road, Town of James Island (TMS# 425-06-00-101): Chair Savage asked the applicant if they wished to move forward on the request for the Special Exception and Ms. Scott informed the Board that after consulting with her clients and having studied a single drive through previously and knowing that it does not work on this site, they respectfully withdraw the application.

Vote for Chair and Vice Chair:

Chair: Comm'r Fabri moved for the nomination of David Savage to serve as Chair, seconded by Comm'r Hayes. There were no other nominations. Chair Savage's term will begin immediately and run through the end of the year.

Vice-Chair: Comm'r Yannitelli moved for the nomination of Amy Fabri to serve as Vice-Chair, seconded by Chair Savage. There were no other nominations. Vice-Chair Fabri's term will begin immediately and run through the end of the year.

Additional Business: The next meeting of the Board of Zoning Appeals is scheduled for June 18, 2024. Ms. Crane announced that no applications have been received as yet.

Adjourn: There being no further business to come before the body, the meeting adjourned at 7:34 p.m.

Respectfully submitted:

Frances Simmons

Town Clerk and Secretary to the BZA