

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF AUGUST 16, 2022

The Board of Zoning Appeals held its regularly scheduled meeting on Tuesday, August 16, 2022 via Zoom virtual platform and in person at the James Island Town Hall, 1122 Dills Bluff Road, James Island SC.

Commissioners present: Amy Fabri, David Savage, Vice Chair, Roy Smith, and Brook Lyon, Chairwoman, who presided. Absent: Commissioner Corie Hipp (gave notice). Also, Kristen Crane, Planning Director, Flannery Wood, Planner II, Bonum S. Wilson, BZA Attorney, Niki Grimbball, Town Attorney, and Frances Simmons, Town Clerk and Secretary to the BZA. A quorum was present to conduct business.

Call to Order: Chairwoman Lyon called the BZA meeting to order at 7:00 p.m. She asked the Board and others who wished, to join in the prayer. The Pledge of Allegiance was not recited with the meeting being held on Zoom.

Compliance with the Freedom of Information Act: This meeting was held in compliance with the SC Freedom of Information Act. The public was duly informed and notification was given that the meeting would be live-streamed on the Town's You-Tube Channel.

Introductions: Chairwoman Lyon introduced herself, the members of the BZA, BZA Attorney and Town Staff.

Executive Session: Chairwoman Lyon stated that the Board may enter into an executive session to receive legal advice if any member feels the need to. Executive Session not needed.

Administer the Oath to those Presenting Testimony: Chairwoman Lyon stated that any person planning to address the Board must be sworn. In order to expedite the process anyone wishing to speak either in Town Hall or on Zoom stood as a group and was sworn by Mr. Wilson, the BZA Attorney.

Public Comment: Chairwoman Lyon encouraged anyone who would like to make a comment and is signed in at Town Hall to state their name and address for the record and limit their comments to two (2) minutes.

Town Hall: Wendy Tripp, stated that she attended the last two meetings and is an owner of the Folly Road property next door to where the applicant wants to build the Kentucky Fried Chicken (KFC). George Hyams is the tenant. Ms. Tripp said she has stated at each meeting that Folly Beach, Folly Road, and Camp Road are an absolute mess and they can't imagine that lot is the place where they want a building built. She hopes the Board has someone here tonight that has checked the "F" situation that was used in 2020 traffic study and now has more information. She can't imagine the road going from an "F" to anything better. She is hoping that tonight a decision will be made to help Folly Beach, Folly Road, and Camp Road so we don't have a bigger mess than we have now.

Zoom: None

Chairwoman Lyon stated that we received additional email letters today with names and addresses that is available as a part of the record. Eleven (11) additional were against and one (1) additional in favor for a total of 44 against and three (3) in favor.

Chairwoman Lyon announced the Public Hearing for Case # BZAS-5-22-025, is a Special Exception Request for a fast-food restaurant 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 that was held on June 2 and tonight the Board will continue the case proceedings. At the June meeting a motion was made and seconded to defer the meeting until July so the public could have time to review the traffic study; and in July a vote was made to defer the case again until August in order for a peer review of the traffic study to be conducted. Chairwoman Lyon moved to reopen Case # BZAS-5-22-025; and Vice Chair Savage seconded.

VOTE

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

Motion Passed Unanimous to Reopen Case

Chairwoman Lyon stated it was her understanding that the Engineering Firm, Stantec and Engineer Josh Mitchell, was contracted by Town Administrator, Niki Grimball for the peer review was on the approved contractor list with the Town, instead of the engineer from Columbia that was suggested by Commissioner Fabri at the last meeting. She hopes the Board had the opportunity to review Stantec's report as well as the response from KFC's Engineer, Dillon Turner, with Kimley Horn.

Chairwoman Lyon asked the Board if they had questions for staff and afterwards questions would be directed to Mr. Mitchell at the Town Hall. There were no questions for staff. Chairwoman Lyon thanked Mr. Mitchell for his attendance and for conducting the peer review of the traffic study.

Questions to Stantec Traffic Engineer, Josh Mitchell

VC Savage: Is looking at the email of July 28 to Mr. Mitchell from Ms. Grimball asking if he could participate in this process for the BZA. He asked if the assumptions used in the conclusion stated in the applicant study are in line with accepted engineering standards. He believes that Mr. Mitchell answered those throughout his report, but asked if there is anything new today that would be different from the memorandum prepared on July 28?

Mitchell: Stated there is nothing new.

VC Savage: Asked is there anything for the Board to be concerned about with regard to the study being conducted using February/March traffic counts. He believes that was addressed and there were some recommendations. If not mistaken, Kimley Horn had a response to his concerns. VC Savage asked if he was satisfied that the response was accurate and is in-line with the accepted engineering standards.

Mitchell: Said yes. In the document they provided there was also documentation of coordination about the process and that satisfied his comment.

VC Savage: Asked do we have the best traffic study numbers that we can expect at this point?

Mitchell: Answered yes; it was done in an acceptable way.

VC Savage: Said the gist of his question is the focus on additional traffic safety impacts if any at all with the applicant's proposal vs. a conforming use, which may have high traffic. In that question he elaborated

more. But for those people who may be watching us tonight, it is only fair that he recap that. He indicated that the request above centers on the fact that at present there is no activity on the property so there is no impact whatsoever. The property owner has the right to develop the property and the Town allows and encourages development at this location. Even in the event of a future conforming use, one that we would have no control on there will be some negative traffic impact which would be legally permissible outside the Board's control. His need for information from the study centers on traffic impact difference, if any, from a potential high use conforming business compared to the present application for KFC, and if there is an increase in traffic impact with the applicant's proposal compared to a high traffic conforming use is the difference meaningful (statistically significant) from a traffic engineering perspective is what he is trying to determine from Mr. Mitchell.

Mitchell: Regarding the memo submitted in June by Kimley Horn, the goal was to do an updated analysis showing a fast food restaurant with a drive through and what the traffic impacts would be compared to what was previously reported in the traffic study, which was a fast casual restaurant. The difference between those land uses is typically a fast food with a drive through will generate more traffic, which is not surprising to them, but based on the industry standards that they use to estimate trip generation potential, (the number of trips that a particular site may generate) a fast food and drive through would typically generate more trips. He said that was documented in the Kimley Horn memo in June of this year and their analysis showed that. In terms of the impact in the appendices of that document is a queuing analysis and level of service analysis and reports from the programs that are used to do these analyses with the same programs that Stantec would use to do it themselves, so that's all done by the book. In talking about the access to the site, the access on Camp Rd., which is full access to allow vehicles to turn in and out in all directions was the access that he focused on most in his review. Because that is where the impacts are most noticeable because the other access is a right in/right out which typically doesn't have too many impacts to your main roadway. What the Kimley Horn memo showed is that there might be a slight increase in que for the vehicles turning left into the driveway off of Camp Rd. In terms of whether that is meaningful, he doesn't know if he is able to say that, it is not a matter of acceptability necessarily, the thing to think about with a higher generating land use, it is likely that there is a higher probability of a vehicle being in that lane trying to turn left and may not be able to make that turn. He thinks that is probably a policy decision from a traffic standpoint but the impacts are not out of the ordinary and it wasn't done or analyzed in such a way that he wouldn't have done it himself as a traffic engineer. He just wanted to note that if you do have a higher land use that generates a higher number of trips that left turn in particular could have a vehicle waiting there more often that could impact the signalized intersection because there are two left turns that comes off the main line that could que up. The average que length was just north of 20, it was 20-30 feet which was essentially one vehicle so 50% of the time there is likely to be one vehicle waiting to turn in. Other than that it is likely to be clear, he wanted everyone to be aware of that. That was the main concern he saw. But again there is nothing wrong with the analysis. It is the output that came from it. He stated that he may not be answering Mr. Savage's question completely and to let him know if he needed to provide more details.

VC Savage: Stated if he understands what Mr. Mitchell is saying with the applicant's proposed use, there will be a slightly greater hindrance of the vehicular traffic at that intersection and asked if that was correct.

Mitchell: Answered yes and thinks the report and the memo from Kimley Horn documents it well with the slight increase in que length and delay turning in there.

VC Savage: The intersection, and he thinks we all agree, is a failing intersection as it presently exists.

Mitchell: Stated the intersection he is referring to is the site access off of Camp Rd. The signalized intersection as documented in the report shows it is a failing level of service.

VC Savage: Asked from Stantec's report in terms of confirming the generation of the numbers of output they all tend to agree with, but he does understand that it is a policy determination we need to make as to whether or not the hindrance is significant.

Mitchell: Yes; said he believes so.

VC Savage: Mr. Savage referred to P. 2 of the report dated July 28, 2022, in orange at the bottom of the page. He thanked Mr. Mitchell for making the comments in orange for easy reference. He asked for an explanation under the Trip Generation Chart that said the comparison indicates that if the site included a conforming use, the site would be projected to generate significantly less trips than a fast food restaurant with a drive through window. Fewer trips in and out of the site would also reduce the potential for conflicts at the project driveways and at the SC 171 Folly Rd, Camp Rd. intersection. Mr. Savage asked what does conflicts mean. Are they delays, accidents, or near misses?

Mitchell: Mr. Mitchell replied that the number of vehicles turning in vs. the opposing traffic that is trying to get past the site access point.

VC Savage: Asked if conflicts would include accidents?

Mitchell: Said it's not a one to one correlation but specifically the higher number of conflicts the higher the potential for a collision.

VC Savage: Are there various grades or standards for the word "significantly less" trips?

Mitchell: It is not necessarily a gradation but based on the table it is comparing a fast food restaurant with a drive through window vs. a high turnover sit down restaurant. As the table shows it is 83 less trips in the am and 57 fewer trips in the pm. That being an 80 and 70 % decrease is why he used the word significantly but it is not necessarily a gradation.

VC Savage: Asked for clarification on Page 3 of the report under Trip Distribution/Assignment ... as discussed subsequently in this memo that has the potential to cause traffic and safety issues at site "A" Access. He asked what is Site "A" Access.

Mitchell: Said this is also referred to as driveway 1, the full access off of Camp Rd.

VC Savage: At the Folly & Camp intersection what traffic and safety issues is he concerned about there.

Mitchell: At Site Access "A" going back to what he mentioned earlier it is the additional trips taking a left turn into that site and because of where it is in relation to the signalized intersection (example, turning off of Folly Rd taking a left there are two lanes to take a left in. The inside most left turn lane and you turn and there is a vehicle in front of you who wants to turn into the site it may present a challenge for you because you either have to choose to stay behind and wait, or if that que reached back to the intersection or someone decides to change lanes to get around the person and take a left could be a safety issue.

VC Savage: Referred to page 3, under Recommended Improvements – based on the LOS output provided for the proposed project is anticipated to increase delay at this intersection by almost 10 seconds per vehicle in the am peak hour and by almost 5.0 seconds/vehicle in the pm peak hour. Based upon the increases and delays at this intersection which already experiences operational challenges today it is recommended consideration to mitigate this increased delay. Mr. Savage asked for explanation of the am 10 second delay at peak hours.

Mitchell: This intersection based on the report experiences an undesirable level of service today and is projected to continue to experience that. The point of this was to call out what is documented in the June 28, 2022 memo that with the project that traffic delays would increase by 5 seconds per vehicle. Every vehicle that goes through the intersection would expect to see their delay at the intersection increase by 5 seconds on average in the pm peak hour and 10 seconds in the am peak hour. This is a challenge because the intersection experiences an undesirable level of service with or without this development so it's not as if the issues at the intersection are caused by this development, there is plenty of other traffic as we know that go through that intersection not related to this but just to callout there is an increase in delay and 10 seconds per vehicle can be felt. It's a question that when you have an intersection that already experiences this kind of delay whose responsibility it is to fix it? So they are not necessarily saying in the memo whose responsibility it is to but wanted to mention it. It is a pretty well built out intersection in terms of turn lanes and everything else there so it is a challenge but they noted there is some increase in delay there is likely to occur.

VC Savage: Stated to Mr. Mitchell that he may not know where he fits in this puzzle that is a Hearing today; but the applicant has made a request for a Special Exception and under the rules the BZA must follow it says "*Special Exceptions may be approved only if the Board of Zoning Appeals finds that the proposed use: E(f) Vehicular traffic and pedestrian movement on an adjacent roads shall not be hindered or endangered.*" Mr. Savage said as he understands Mr. Mitchell's testimony as compared to a conforming use, the applicant here, there would be an additional hindrance in the traffic at this already failing intersection.

Mitchell: Stated yes, it is a slight increase in delay comparatively.

VC Savage: When Stantec prepared their memo, it was given promptly Kimley Horn and they prepared a response. Did he look over that? Mr. Mitchell said yes. Mr. Savage asked if the testimony that he just gave is still his testimony on consideration of Kimley Horn's review of his memo?

Mitchell: He doesn't think his testimony has changed; however, some of the things that were called for in the original July 28 memo were answered, particularly the documentation that the site access was approved by SCDOT and the coordination on the volume development discussion was very important and helpful in documenting the entire process.

CW Lyon: She noticed on the Kimley Horn response that they mentioned a couple of times about a mistake on the striping on the site plan. She could ask their engineer when he comes forward but also wanted to ask Mr. Mitchell if this would affect how he looked at things and if this changed anything in his opinion, if at all.

Mitchell: It did not impact the analysis. It was still performed properly based on the site access that was assumed. That was just a point of clarification as they reviewed the original traffic study. This has to do with a right turn only arrow coming out and into the site. It appeared that way so their initial assumption was this should be a right in/right out access instead of a full access but based on that arrow, the right turn arrow is not there today that just confirms that it was a full access driveway. It does not change any of their review.

CW Lyon: Stated from what you have said and written, this would make it hard to access the restaurant and driveway. It looks like it would be safer coming in off Camp to have a right in/right out only at that access just like the one on Folly. She thinks he touched on that in his report as well. That would be the least troublesome to the intersection and the traffic. She asked if that is correct.

Mitchell: Replied yes, that is correct, and at that point it becomes a matter of whether the site has proper access. It would be a challenge to access with two right ins but as discussed earlier it would reduce the number of conflicts at those drives.

Comm'r. Fabri: Wants to follow up on a part of the conversation he had with Mr. Savage to make sure she understood him correctly. When they were discussing what seems to be the issue, he brought up in his analysis that when people are turning from Folly onto Camp and trying to take a left to access the site, that seems to be the problem issue. Cars turning left into the site are going to block the lane 50% of the time. She asked if she understood that correctly.

Mitchell: That is his interpretation of the output from the report (he can look the number up) but his recollection is approximately one vehicle of average que; the length of one vehicle is the 50th percentile or average que. That is why he said 50%. On average there may be one vehicle that is waiting to turn in. That doesn't mean that they are waiting there forever, however, it is likely to happen that is why he said 50%

Comm'r Fabri: Stated, in layman's term so everyone understands, this will happen frequently and is not a rare occurrence.

Mitchell: Said yes, he believes so, it will happen because it is serving a useful access to the site for anyone that needs to turn into the site that way. As an example: if you're coming southbound on Folly Rd. to access the site you'll have to take a left and then a left in. He said about 40% of the traffic was assumed to come to and from that direction so 40% of the traffic would have to access the site that way.

Comm'r Fabri: Asked would the people coming from Riverland take that same option as well.

Mitchell: Answered potentially, although they may be able to use the other right in access points.

Comm'r Fabri: Touched on Mr. Savage's question about the intersection at Camp & Folly already functioning as an "F". The Board, in prior meeting which he was not a part of, talked a lot about level of service, that 80 is a failing level of service, now with the drive through the proposed plan for site is now we're getting into 160 and he discussed the number in his report as well so the difference between 80 and 160 is pretty significant. They talked about this with the prior engineer and there is no such thing as an F minus when you're looking at a failing intersection, if its failing its failing. And, what the Board had discussed the onus is on us as an arborator for the community to make the decision on if it is an acceptable level of service, if this causes any harm, or if it is something that folks can live with. She think when he was talking to Mr. Savage he said that with regard to the level of service that it is up to the local policy makers to make the decision about the 10 and 20 seconds if that is something that people can live with or not because of the condition of the intersection already; that it is already a failing intersection - - failing and built out as he expanded on, and there's not much else that can be done to it. She asked if that was correct and Mr. Mitchell said answered yes.

Comm'r Fabri: Thanked Mr. Mitchell for his analysis when it came to looking at the different land uses and comparing it to different land use codes and basically saying in his report (this is his language), a sit down restaurant, rather than a fast food restaurant would generate significantly less trips. As Mr. Savage touched on... fewer trips to the site would reduce the potential for conflicts. It is his understanding if it were a shopping center (one of the land uses that he compared it to) even though that would cause increase trip generation, it wouldn't seem to cause as many conflicts as a fast food restaurant with a drive through window and asked if that is correct.

Mitchell: In terms of the number of conflicts he would say that is directly tied to the trip generation so if another land use were on the site that generated comparable trips to a fast food with a drive through it would

have the same potential for conflicts. He said this section of the report was to show the trip generation potential of the site so if the land use is projected to generate fewer trips then that would directly relate to fewer conflicts in and out of the site. He said these were compared with other land use codes with the assumption of the same square footage of the site but if for some reason you were to build a commercial development that were six stories tall (he's not saying that) and it generated as many or more trips than a fast food with a drive through then it would have even more concerns from a level of service and conflicts. It is not necessarily about what goes there, it is about how many trips it generates.

Comm'r Fabri: Asked in your example have you looked at a strip retail plaza and a high turnover restaurant, and the different approvals they would have to get from the Town and he answered yes, that is correct.

Stephanie Grant, Applicant, asked the Board's permission to question Mr. Mitchell. Chairwoman Lyon asked and received approval from the Board to break protocol for Ms. Grant to questions of Mr. Mitchell. Attorney Wilson asked if the Board would be allowing both Ms. Grant and their attorney, Mr. McCullough, to cross examine Mr. Mitchell. Mr. McCullough said he was satisfied having Ms. Grant ask questions. He explained that they are not cross examining but asking questions from his report.

Ms. Grant asked for some points to be clarified. She asked if she understood correctly that the bottom line is that a fast food restaurant in the am peak hours is going to add 10 seconds of additional traffic per vehicle and 5 seconds in the pm hour of additional traffic per vehicle. Mr. Mitchell asked if she was referring to the fast food restaurant alone that is adding those seconds vs. a different land use. Ms. Grant rephrased her question and asked if there was a high turnover fast food restaurant on the site in the am peak hour and pm peak hour, how many additional seconds would that add. Mr. Mitchell said that was in the Kimley Horn report, the memo on Page 6, Table 5: Capacity Analysis Results. He said the columns are comparing the previous intersection level of service and the updated level of service. The delay in the am peak hour is 5.3 seconds so that is the difference in the increase in delay with a fast food with a drive through vs. a sit down, and in the pm peak hour it is a 1 second delay at the Camp and Folly Rd. intersection. Ms. Grant commented so, it is a 1 second delay in the pm peak hour between a high turnover restaurant and a KFC.

Ms. Grant asked where the 10 seconds and 5 seconds that she heard come from? Mr. Mitchell said it was comparing the 2022 background row, with the 2022 build row. The background that's an F at 154 seconds of delay just above, and the number below is an F 159.5 seconds. Then, in the pm peak hour its 75.1 in the background and 79.3 in the build. So the 5 and 10 were meant to give it a round number. Ms. Grant asked from no build to a high turnover restaurant, 10 seconds in the am and 5 seconds in the pm, and you add an additional second to the am peak hours for the fast food drive through. She asked if that was correct. Mr. Mitchell replied it is a 3 second delay between the no build and the build with a high turnover and adding 1 second to that. Ms. Grant asked if his analysis would change if the fast food restaurant did not serve breakfast because there would be no trips generated to the site in the morning hours. Mr. Mitchell said this was discussed when they reviewed it and gave a quote from the local district DOT traffic engineer, that "Taco Bell didn't use to serve breakfast, now they do" so even though the land use doesn't currently serve breakfast and generate am/pm trips, if it's a fast food with a drive through that is the technical land use they like to use in the trip generation because of the unknown Ms. Grant asked as of today, is it a safe assumption that there is no delay because KFC does not serve breakfast, is that correct? Mr. Mitchell said if there is no trips in/out in the morning that would reduce the impacts in that peak hour, there would be no impacts at that time.

Applicant Presentation: Stephanie Grant spoke about the criteria noting that they meet E (a-e) and what they are here tonight is to discuss criteria E (f): vehicular traffic and pedestrian movement on adjacent roads shall not be hindered or endangered. She said from both engineers testimony going from no build to KFC is going to add 6 seconds of delay per vehicle so putting all the other technical aspects aside that is what the report comes down to. 5 seconds from a no build to a fast casual restaurant, KFC. She asked if 6 seconds

constitute a hindrance or endangerment. She doesn't think the standard here is to any degree she think it's an overly strict interpretation and standard to uphold. The issue is if 6 seconds will be so significant that traffic will be hindered or endangered they would argue no. Five seconds is certainly considered an inconvenience but to believe that it rises to the standard of a hindrance or endangerment is not played out by the facts provided before this Board.

Clay McCullough, KFC attorney, stated this is the third meeting and he knows the Board is taking this very seriously. He lives in Mt. Pleasant and gets it, it's a nightmare all over the place and we all understand that nothing can get more calls than from people stuck in traffic, raising cane, and wanting to do away with it. He said, as it has been said several times, and as Ms. Grant stated that this application checks the boxes. They understand that this is very highly trafficked area, in this particular location especially, and it creates passion amongst the folks that are near it. But again as just stated, it really boils down to whether or not this is a hindrance or it creates an endangerment or a dangerous condition, They do not believe that it creates either and you have to rely on the traffic engineers, not on passion or what people are saying. They believe that the traffic engineers largely agree there will be a slight increase or hinderance. As a practical matter something is going to get built there, it's going to be a commercial situation, it will increase traffic and all of that will happen regardless of this application so they totally understand the issues the Board is faced with but with that being said these folks (KFC) have really bent over backwards to try and do everything humanly possible to accomplish making this a safe location to make the folks the Board is trying to serve happy. They believe both traffic engineers presented information that it does not create a technical hindrance or endangerment of criteria E (f) so they respectfully think that the application should be granted. He thanked the Board for how seriously they are taking this and the attention they have given this application.

Dillion Turner, Traffic Engineer, Kimley Horn, reiterated what the others have said and thanked the Board. Josh did a great job reviewing and was great to work with on this. From the traffic perspective he stands by what he said the first time. The data that was previously presented does not seem significant on the impacts on Folly and Camp. In addition, an increase in delay doesn't necessarily mean it is an increase in safety impacts. He said delay and safety don't necessarily go hand-in-hand. That is something to consider as you go through this.

Questions to the Applicant

Comm'r Smith Asked how does KFC set themselves apart from other restaurants that serve chicken on the island. He believes they said previously they are different from Zaxby's and Chick-fil-A because they have a family meal deal, buckets of chicken. Ms. Grant answered yes, and that they want to be there. They scoped out the site and negotiated it extensively and to her knowledge other competitors weren't wanting to do that so she thinks their desire to be here sets them apart from other restaurants and what sets them apart from other chicken competitors would be their ability to serve families rather than individual meals.

VC Savage Directed his question to Ms. Grant or Mr. McCullough. He heard what was said in their presentation about significant delays or endangerment or hindrance. He said in order for the Board to grant a special exception the Board can only do it if the BZA finds that the proposed use involving vehicular traffic shall not be hindered. There is no requirement of significant hindrance, there's been no gradation of the difference there. He hears what they are saying and asked them to tell him what their position would be on that. Mr. McCullough responded that nobody is trying to say that those roads aren't already problematic. This is a commercial property and they believe that there is going to be a slight increase in traffic as a result of building this restaurant. They are not trying to run from that but they do not believe per this regulation classifies as a hindrance and certainly not an endangerment. He said there is no legal description as to what the definition means as to be hindered. He thinks the only thing that you can rely on is how the traffic engineers testified in their report. He think what he's heard repeatedly is this is a bad intersection, not that

this application is going to create a bad intersection and he thinks frankly that is where they are. You have a commercial property with someone who is doing everything possible to try to minimize the impact by taking all of the steps they've talked about in prior meetings. He does not have a case that he could give to the Board that details exactly what you could go by other than going by the word hindrance and endangerment and rely on the expert testimony. Mr. Savage asked Mr. McCullough to repeat the last 5-6 seconds as he had issues with hearing what was said and Mr. McCullough said the only thing you can do is to be guided by competent testimony on technical matters and there are two very competent folks in the room, one of which the Board paid for and one of which KFC paid for. He really doesn't think they disagree that much. He thinks they both say mostly the same thing and he doesn't believe that their application and restaurant hinders or endangers. They are not taking a position on the fact of whether or not (we all know and the Board better than him) that this area has a ton of traffic. The Board is trying to remediate to the extent they can, but they believe their application checks the boxes. What he was trying to say previously, which he did not say effectively

is that the background noise is not relevant to this decision because the Board is in a rare situation and had two experts that provided reports and that's what they need to rely on in this case. He believes the experts largely agree and there is going to be an increase in traffic but they do not believe either the experts or this regulation would be classified as rising to hinder or an endangerment.

Comm'r Fabri Asked Dillon Turner about a response to Mr. Mitchell's input on their report. She asked about page 6, the Analysis and Level of Service Calculations: the comparison of projected turning movement in the June 2020 memo of updated land use to include a fast food restaurant with a drive through window indicates increased ingress left turns. That would be a left turn from Camp to access the restaurant as compared to previous projections. The turn lane analysis was not confirmed with the change in land use from the high turnover restaurant to the drive through per the June 2020 study. He went on to say the increase in projected ingress left turn is likely to highlight the issue of the left turn issues. He talks about how one of the recommendations is to limit the Site A access to right turn out only. Her question is that limiting the Folly Rd. access point to right in/right out would leave only the Camp Rd access. Because of the traffic backup there, (5 seconds or 10 seconds), could be a point of conflict. She said Mr. Savage asked Mr. Mitchell if that means accidents, what does that mean exactly? She asked Mr. Turner for his input based on the information that he read in their report. Does he see that same occurrence happening? Mr. Turner said conflict points is a very cool term. In the traffic world conflicts are where a turning vehicle meets another turning vehicle thereby increasing the trip generation. He did a calculation of four cars in and four cars out at that access from the previous analysis so it would be a total eight more vehicles experiencing conflicts. So it's not an increase in conflict points; the conflict points stay the same. It's an increase in the number of vehicles that travels through those conflict points. Ms. Fabri asked if he would agree that with those conflict points whether its 4 or 8 cars meeting each other it only takes two cars to run into each other and cause an issue there and asked if that is correct. He said yes, that is correct to create an accident but that does not apply here in his opinion. Ms. Fabri said she believes the reason why (and does not want to put words in Mr. Mitchell's mouth) but in her understanding of his report the reason why he was recommending restricting Site A access point is to also limit the ability to turn because of the issue of conflict because the cars coming to access through that left turn in. The conflict is going to be that those cars are going to have to cross three lanes of traffic in order to access the site and asked Mr. Turner if that is his understanding. He stated his understanding is that Stantec and Josh had recommended to relook at it and provide a left turn if warranted. It was previously warranted with the high turnover sit down restaurant. They discussed it with SCDOT and there is not available space to provide that left turn lane there with the existing cross section. He thinks he was just saying "*hey, look out for that*" and he brought it up again to the Board. That means you have about a car on average waiting to turn left from Camp Rd. in there. As far as how that correlates to safety/accidents he is unsure there is a direct 100% correlation between that which is more drivers behavior vs. anything else because they're not increasing the number of conflict points. It's the number of increased vehicles that are going through those conflict points.

Comm'r Fabri Asked if the site were used for something that was expected to generate less trips vs. more trips you are creating more opportunities for conflict so eight cars with a drive through window would be two conflict points. Mr. Turner said it is eight more than a high turnover sit down restaurant.

Chairwoman Lyon asked if there were any additional questions. There were none. Chairwoman Lyon then announced the motion is on the floor to approve the Special Exception for a fast food restaurant with a drive through. The motion was made by her as Chair and seconded by Mr. Savage at the June meeting that extended to July and August. Chairwoman Lyon opened the floor for discussion. She stated that the Board has tried to do its due diligence and give the applicant every opportunity and benefit of a doubt, as well as listen to the community, and the Board's concerns about safety. But, the bottom line is does the application meet all of the criteria? Chairwoman Lyon stated that the Board has gotten good information from the experts. The motion is to approve the application with no conditions but the Board could amend the motion and add conditions if they are inclined to do so. If the Board does not feel the application meets the criteria, even with conditions added, they could discuss it individually before taking a vote. Chairwoman Lyon stated that conditions such as hours of operation that does not include serving breakfast. She mentioned that Taco Bell did not always serve breakfast, and the conditions remains with the site with special exceptions, which was confirmed with Ms. Crane. Would it be possible to have a condition with only a right in/right out onto Camp. That would not affect the intersection from Camp unless people break traffic laws. Chairwoman Lyon said she is putting out these ideas so the Board could have discussion. She asked Ms. Crane if her suggestion is doable and could she defer to her for a response. Also, she is unsure if the applicant could change the site plan or want to do that. Also, would it be a problem with the bank and the SCDOT. Ms. Crane said from a site plan zoning perspective, it would be acceptable but she thinks that SCDOT would need to approve it as well as the property owner and the bank. It also might cause an issue with U-turns down the road. She is unsure if a right in/right out only would be acceptable. Chairwoman Lyon said those are some things the Board could talk about. They've never had a case such as this stretching three meetings come before the Board and she is trying to look at everyone's side. We represent our community; we welcome new businesses yet we must meet the criteria for each case. She asked the Board if they are interested to look at her potential conditions however, KFC may not even want something like that. She apologized to the applicant that it has taken three meetings to hash all of this out but spoke of the importance of the Board doing its due diligence and thanked everyone for their patience and participation.

Comm'r Fabri piggybacked the discussion of Chairwoman Lyon. She said the special exception runs with the property so as well-meaning as the applicant might be and they are not going to serve breakfast or just say they are going to serve from 12-6 every day and that is their intention that if at any point the applicant decided to change that and/or sold the property anything could go in there, there is no limitation so she would only say that if anybody was inclined to approve this request they would seriously look at limitations because a special exception granted to this doesn't run with the applicant it runs with the property. So if we say "welcome KFC" conduct business we understand that you're not going to serve breakfast, there is nothing in writing that would hold them or any future occupant of the property to that. Chairwoman Lyon said that is something that the Board could put as a condition that it would run with the property with the special exception. We would amend the motion to approve with hours i.e., 10-10 and not serve breakfast or something to that affect if the Board is inclined to approve it based on the other criteria. Chairwoman Lyon agreed that if KFC is approved and doesn't serve breakfast now and they sold the property to McDonalds who does, then it would be a different ballgame. That is why if we are looking to approve it that would be a way to negate that from happening down the road.

Comm'r Fabri stated that after having read the reports and taking a lot of time speaking with both traffic engineers she is personally very grateful for their time. There was a lot of information in the Stantec report and the thing she keeps coming back to is by allowing the special exception with this type of restaurant with a drive through window is increasing the conflict. Her understanding of the engineer is that it is increasing a risk to the public. She said neither report, or any she has seen, has ever measured or is not in

the reports, the number of accidents that would occur if there were something there. They do not look i.e.; that 300 cars went through and 5 ran into each other on a Tuesday. That is not what they look at, they look at trips and time and other things, so she is not going to negate the data on the increase in time. What she focused on is the fact that there is an increase in time between a high turnover restaurant or a retail spot and what they are asking for the special exception. There is an increase in traffic and that the intersection is already failing significantly. There is no room to correct the intersection at a future point and there is no room to add a dedicated turn lane according to SCDOT at that intersection to try and resolve some of the conflicts. Those options are off the table. From what she is reading it is not that KFC is not welcomed as a business and is not welcomed on James Island, she just doesn't think this is the right spot for them. She thinks that is pretty clear from Stantec's report is there is going to be an increase in traffic in turning into this location and that is going to present an opportunity for accidents to happen.

Comm'r Smith spoke that he likes KFC and likes fried chicken a lot, but he doesn't think that having the bucket of chicken really makes them significantly different from other restaurants that we already have. He said both Chick-fil-A and Zaxby's both have family deals. He thinks one is called the family pack and the other family deal so we do have these things already. We have two already on the island. It seems to him that since it's a special exception it's on KFC to show how they are really better for the island and how they meet all of the criteria. He is not sure if they meet a, b, or both, but they definitely do not meet B because we already have two fast food restaurants, one on the east side of Folly Road, very close nearby that serves family meals. Secondly he doesn't believe they meet f, vehicular traffic and pedestrian movement on adjacent roads shall not be hindered or endangered and it seems to him that every indication is going to cause a hindrance. He agrees with Ms. Fabri that the amount of hindrance is debatable but he doesn't think it's any debate that it's going to cause a hindrance. Criteria f states that traffic shall not be hindered. He doesn't think they meet the criteria on either case. However, if the other Board members disagree and feels that they do meet the criteria and they have proven their case then he would agree with Ms. Lyon that additional conditions need to be addressed.

VC Savage stated he thinks Roy's analysis was spot on and he is reading what is required for the Board to grant a special exception. He quoted "exceptions may be approved only if the Board finds that the proposed use with regard to traffic shall not be hindered. He said the burden squarely falls on the applicant for a special exception. He agree with Mr. McCullough that we have competent evidence in the form of two traffic studies and as he understand the testimony of both witnesses, like Roy said, there will be a hindrance. He would be open to some discussion as to whether that hindrance is meaningful for the Board to exercise some discretion but he think under the clear statement of the criteria for which a special exception shall be granted he doesn't think the applicant met their burden. He think it is really important that the Board make clear (and he understands what Roy is saying also) that nobody is saying that there cannot be any development at this location because there will be a hindrance of traffic. That is not what they're saying. The property owner has the right to develop his property and if he develops a conforming use there will be a negative impact on this roadway, we will not be able to stop it. That is not what they're looking at. The Board has put a lot of effort into reading the studies and their primary focus is "what is the hindrance on the roadway considering a potential conforming use to the proposed use and in that analysis at least how he heard the testimony is there will be an increase in hindrance. You want to call the number of vehicles a conflict, or you want to call it a delay or whatever you want to call it there will be some hindrance there. He would be inclined to say that the applicant did not meet its burden but he would be willing to hear the thoughts of anyone else who thinks that he may be misinterpreting how we analyze this.

Chairwoman Lyon said the two criteria she struggled with are b, and f. B states it should not adversely affect the general welfare or character of the immediate community and it is going to potentially cause more conflict points and accidents. Then it would not meet that criteria. Criteria f, which we all discussed states the vehicular traffic should not be hindered or endangered. These are the criteria she has issues with and if it criteria can be met with conditions put on them she is open to that which is why she brought them up to

begin with: a right in/right out onto Camp which would negate her understanding of a lot of the traffic issues may not be approved or accepted anyway. She doubts (KFC) would have a problem with the breakfast condition. These were her thoughts and after it was hashed out it was a 6 second difference for the fast food and 5 second difference for the high traffic sit down. That's a 1 second difference however that is 20% of total time difference. It will have an effect, how much and how busy it will be we don't know, but as David said, we're not here to look at that high traffic sit down restaurant, we are here to see if KFC meets the criteria for this case and look at it on its individual merits.

Comm'r Fabri expanded her thoughts on criteria b, she thinks we had 44 letters in opposition and 2 or 3 in favor, one of which was the property owner. She said 44 responses from the community is a lot that she's seen in her short time here but that is a lot of input from the community and she thinks the comments were saying that the public felt that it would adversely affect the immediate community. A lot of the people that are on Rivers Point Row were talking about the same issue that they spoke about when we were looking at the Brewery further up on Camp and it was how a business could negatively impact them and they are already being squeezed by other businesses in the area and they are the ones that drive in and out of this every day and have to live with all of this every day and were pretty inphated in their request to deny this because of the further degradation of their community so she thinks we need to take that into consideration also.

VC Savage referenced what Mr. McCullough said that we need to filter out the "white noise" . He doesn't want anyone to think that his decision is based upon those letters from people who took the time to send them, the contents that were outside of what we could properly consider. He said for instance, those letters that came in he found there were six areas of what the objections were. There were some people that said "no more development anywhere; he believes Ms. Milliken said she is against any level of increased traffic moving on Folly Road. He did not consider that because he can't consider that, the law is pretty clear that that according to the case we know of no requirement that a traffic assessment must be performed comparing existing to proposed use where that the case, a special exception permit was never issued for a vacant premises because traffic would always increase and thereby be negatively impacted by the proposed use. He said he does not want there to be any misunderstanding that comments such as that swayed his opinion as to where he is right now. And to say there can be no development on this property would be an inverse condemnation. The next series of objections are people saying, "I don't want another chicken restaurant, put a Chipotle in there", he read and heard it but it is outside the criteria that the Board can use. He said his opinion as he read the letters, it is not a criteria that he could follow or use to justify his beliefs that it may not have met all of the criteria for a special exception. The third area that he saw as from a lot of people saying, "we want you to put a family business there, not a chain", he said again, that is not a criteria . If you want to make it a criteria, the people writing the letters should be writing to Town Council members about changing what the criteria are our putting in a preference for a family owned business. He said while some of those comments may have been by the public, it was not used by him. There were also requests in the comments for no more restaurants on Folly Road. They want a Target or Marshalls. That is not something that we take into account as a Board to either approve or disapprove a case. He said one that was very good that people thought the Board could use but can't is "the rules for drive through stacking of 10 vehicles and the parking requirements are antiquated" and he agrees with those criticism but those rules as they presently exist are the ones the Board has to follow. So those people who seek to allow us to deny or approve on that basis have to contact Council to get those rules changed. The great majority, as Amy said, all came down to safety and traffic conditions. He said to please bear in mind to look back and see what the Board did , Clay is right when he said we must make a decision based upon the record. What he was saying is 1,000 letters saying this is going to make the traffic worse, we are appreciative of that but that is not competent evidence to allow the Board to disapprove; when you have specific testimony, you need expert opinion. He said at the first meeting the Board recessed to allow all of the people who were concerned and asked us to disapprove the request on a traffic basis time to get a traffic engineer to rebut this. When we came back nobody had done it. The Board took a very unusual step of hiring our own traffic

expert to take a look at this and the basis for our ability to either approve or deny must be based upon the information produced by those witnesses. He think if the public knows that if they want to object to something on the basis of traffic they have to have something more than their opinion and Clay was right on that and is why we made the move that we did. He is still of the belief that he is unsure that the applicant met the burden and agree with Amy that there was a lot of public sentiment but does not want any reviewing authority to think that his opinion may have been based on extraneous matters that may have been included in those letters.

Chairwoman Lyon added that some letters referred to having (“no more unhealthy fried chicken” restaurants) and that is out of our purview as well. She loves KFC but Mr. Savage is right and the bottom line is we have to look at what the experts said in the traffic studies and the criteria if it meets or not.

Chairwoman Lyon asked for further discussion and there was none. She further asked if there were amendments to the motion and there were none. Chairwoman Lyon called for the vote to approve without conditions, Case # BZAS-5-22-025, TMS #425-06-00-101, Special Exception request for a fast-food restaurant 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.

Vote

Commissioner Fabri	Nay
Vice Chair Savage	Nay
Commissioner Smith	Nay
Chairwoman Lyon	Nay

Motion Failed

Chairwoman Lyon announced as the Board has discussed, the application did not meet criteria b and f. For the record she stated that Chairwoman Lyon initially made the motion, seconded by Vice Chair Savage. The final decision of the Board would be mailed to the applicant within ten (10) days and they should contact the Planning and Zoning staff if they have questions.

Vote for Chair: Chairwoman Lyon opened the floor for the nomination of Chair for the Board of Zoning Appeals for one year (August 2022 to August 2023). She asked Vice Chair Savage his interest in serving as Chair and he commented that he doesn’t think everyone sees what goes into preparing for these meetings, gathering information, and making sure everything is done. He thanked Chairwoman Lyon for the offer and stated that he is unsure he has the time and experience of knowing the people that she knows and respectfully declined. He said Ms. Lyon does a good job and if she would like to continue to serve that would be fine or if someone else wished to but he is unsure that he is the best person. Commissioner Smith asked Ms. Lyon if she would continue on as Chair and she expressed it is an honor to serve. She said the BZA is important to her and we have an awesome Board where everyone works hard, does their homework, cares, and follows the rules. Vice Chair Savage moved for the nomination of Ms. Lyon, seconded by Commissioner Smith.

Vote:

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

Motion Passed Unanimously

Chairwoman Lyon thanked the Board for their vote of confidence and Commissioner Fabri thanked her for her leadership.

Vote for Vice Chair: Chairwoman Lyon opened the floor for the nomination of Vice Chair of the Board of Zoning Appeals for a one year term of August 2022 to August 2023. Chairwoman Lyon moved for the reappointment of David Savage and Commissioner Smith seconded. There were no other nominations.

Vote:

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

Motion Passed Unanimously

Chairwoman Lyon congratulated Commissioners Smith and Fabri on their reappointment to the Board of Zoning Appeals for a 4-year term and thanked them for their service. She thanked Town Administrator Niki Grimball for handling the peer review with the engineer. She felt like he did a very thorough job and appreciates him being here tonight. She also thanked Kristen Crane and Flannery Wood for all they do to prepare for these meetings. She also thanked Frances Simmons for being able to make it tonight. She had been out for surgery and is doing great now and appreciates her service to the Town, Board, and the community. The Board is blessed to have great staff and support.

Chairwoman Lyon thanked the Board for their hard work on this case. She recalled having one case continue some years ago, but never of this intensity. She knows it is disappointing for the applicant but the Board did its due diligence and the applicant did not meet the criteria. Chairwoman Lyon said we are blessed to have a great attorney and gave a “shout out” to Mr. Wilson for all he does and being at meetings to answer their legal questions.

Comm’r Fabri asked if the Board likes meeting earlier and everyone agreed the time is better. Chairwoman Lyon announced that Ms. Simmons has updated the time of the meeting on the Town’s advertising and social media platforms for the remainder of the year. She said the Board may keep this time moving forward if it continues to work for everyone.

Additional Business:

Next Meeting Date: The next meeting of the Board of Zoning Appeals is scheduled for September 20. One application is pending. The deadline for application submission is Friday, August 19.

VC Savage said the next time the Board has a training session he would like to come up with a protocol that when they are reading the packet and think there may be a question to send those questions to one source so when the applicant makes their presentation they have a heads up to some of the Boards’ questions ahead of time and will have the information available for the Board. Chairman Lyon noted that sounded good.

Mrs. Crane informed Chairwoman Lyon that there was a question in the chat box asking if the Board could state the criteria that the application did not meet and Commissioner Smith said both he and Chairwoman Lyon stated the criteria that the applicant did not meet. Ms. Crane clarified to state i.e. the specific criteria such as “b” the caller was not online but wanted that information shared. Chairwoman Lyon stated that the criteria was touched upon a few times during the meeting. Commissioner Smith said he stated that it did not meet criteria b, because we have other restaurants doing the same thing and criteria f, because it cause a delay and Chairwoman Lyon had stated that vehicular traffic shall not be hindered or endangered as did Commissioner Fabri. She stated that we can state that in the future and always assume that people also read the packets but always want others to know why an application did not meet criteria and thanked Ms. Crane for sharing that information.

Adjourn: There being no further business to come before the body, the meeting adjourned at 6:48 p.m.

Respectfully submitted:

Frances Simmons

Town Clerk and Secretary to the Board of Zoning Appeals