

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF FEBRUARY 21, 2023

The Board of Zoning Appeals held its regularly scheduled meeting on Tuesday, February 21, 2023 at the James Island Town Hall, located at 1122 Dills Bluff Road, James Island, SC.

Comm'rs present: Amy Fabri, Corie Hipp, David Savage, Vice Chair, Roy Smith, and Brook Lyon, Chairwoman, who presided. Also, Kristen Crane, Planning Director, Flannery Wood, Planner II, Niki Grimball, Town Administrator, Bonum S. Wilson, Town Attorney, Deputy Chris King, 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 5:00 p.m. She asked anyone who wished to speak and had not signed in, to please do so and to silence cell phones. She asked members of the BZA to please speak loudly into the mics for the purpose of transcribing the minutes.

Chairwoman Lyon asked all who wished to join in prayer and followed with the Pledge of Allegiance.

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 notifications were given that the meeting would also be live-streamed on the Town's You-Tube Channel.

Introductions: Chairwoman Lyon introduced herself, BZA members, BZA Attorney and staff.

Review Summary: Minutes from the January 17, 2023 BZA Meeting: Chairwoman Lyon called for a motion to approve of the January 17, 2023 BZA minutes. Comm'r Smith moved to approve with a correction to Page 9, "*... he has driven in England (not New England),*" seconded by Vice Chair Savage. Minutes passed unanimously with the correction.

Brief the Public on the Procedures of the BZA: Chairwoman Lyon explained how the Board of Zoning Appeals Hearing would be conducted.

Administer the Oath to those Presenting Testimony: Mr. Wilson swore in the individuals who wished to provide testimony.

Review of the Following Applications: Chairwoman Lyon introduced Case #BZAV-1-23-032: A variance request for the placement of an 8'x12' existing accessory structure in the front/street side setback of a residential lot in the Low-Density Suburban Residential (RSL) District at 917 Ravenswood Drive (TMS#428-11-00-050) Chairwoman Lyon introduced the case and asked Ms. Crane, Planning Director, to provide the staff's review.

Staff Review:

The applicant, Mr. James Cuba is requesting a Variance for the placement of an 8' x 12' existing accessory structure in the front/street side setback of a residential lot in the Low-Density Suburban Residential (RSL) Zoning District at 917 Ravenswood Drive (TMS #428-11-00-050). Adjacent properties to the north, east, south, and west are also in RSL Zoning District and are in the Town of James Island's jurisdiction.

Town of James Island Zoning and Land Development Regulations, § 153.070(C) Density, intensity, and dimensional standards state that the front/street side setback is 25 feet.

153.066 (C) Setbacks:

(2) Contextual setbacks. Notwithstanding the front setback requirements of the underlying zoning district, the front building line of any structure or addition to a structure may be as close to the street as the front building line of a structure located on any lot that is immediately adjacent to the subject lot.

The subject property contains one single-family home that was constructed in 1966 per Charleston County records. The current property owners purchased the property in October of 2020. The property owner placed the shed in its current location in December of 2021. Due to the size of the accessory structure (96 sq. ft.), no building or zoning permits were required. Town of James Island Code Enforcement spoke with the applicant in the spring/summer 2022 after receiving a complaint. In November 2022, the homeowner began the process to apply for a variance. A recent survey dated June 22nd, 2022, shows the shed being 13.2' from the front/street side property line. Please review the attached documents for further information regarding this request.

Findings of Fact:

According to §153.049 F, Zoning Variance Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR), The Board of Zoning Appeals has the authority to hear and decide appeals for a Zoning Variance when strict application of the provisions of this Ordinance would result in unnecessary hardship. A Zoning Variance may be granted in an individual case of unnecessary hardship if the Board of Appeals makes and explains in writing the following findings:

F (a): *There are extraordinary and exceptional conditions pertaining to the particular piece of property;*

Response: **There may be extraordinary and exceptional conditions pertaining to this piece of property due it being a corner lot with an irregular shape and nonconforming size. Additionally, as the applicant's letter of intent states "Due to the shape and narrowness of this lot, combined with having two (2) street setbacks as well as the pre-existing pool, pool deck, fence line, and raised planting area, we are requesting a reduction in the required 25 Ft. front setback by 11.8' to 13.2' to allow for the shed to remain in the already established footprint of the existing raised area."**

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

Response: **The conditions pertaining to the existing site design of the subject property including the shape and narrowness of the lot, two street setbacks, the pre-existing pool, pool deck, fence line, and raised planting area, do not generally apply in a combined fashion to other property in the vicinity as they do with the subject property.**

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

Response: **The application of this Ordinance, §153.070 (C), to the subject property would prohibit the accessory structure from remaining in its existing location.**

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

Response: **The authorization of the variance should not be of substantial detriment to adjacent property or to the public good, and the character of the zoning district should not be harmed by the granting of the variance. In the letter of intent, the applicant states that “the location of the shed does not interfere with any public services or prohibit access as needed.” In addition, the accessory structure does not hinder any sight lines for vehicles or pedestrians.**

F (e): *The Board of Zoning Appeals shall not grant a variance to the effect of which would be to allow the establishment of a use not otherwise permitted in a zoning district, to extend physically a non-conforming use of land or to change the zoning district boundaries shown on the Official Zoning Map;*

Response: **The variance does not allow a use that is not permitted in this zoning district, nor does it extend physically a nonconforming use of land or change the zoning district boundaries.**

F (f): *The need for the variance is not the result of the applicant's own actions; and*

Response: **The need for the variance may not be the result of the applicant's own actions as the pool and fence were existing site conditions prior to the applicant's purchase of the property. The shape and narrowness of the lot are also existing conditions. Additionally, there was no required review of the site plan because the accessory structure does not require permitting due to its small size.**

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

Response: **The granting of the variance may not substantially conflict with the Comprehensive Plan or the purposes of this Ordinance as purpose of the ordinance in question (153.070(C)) is to maintain sight lines on corner lots. The accessory structure in question does not disrupt vision from the roadway or any adjacent properties.**

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-1-23-032 (variance request for the placement for the placement of an 8' x 12' existing accessory structure in the front/street side setback in the Low-Density Suburban Residential District (RSL) at 917 Ravenswood Drive) based on the “Findings of Fact” listed above, unless additional information is deemed necessary to make an informed decision.

Questions from the Board:

Comm'r Fabri asked to see the aerial of the pool and asked if the shed were in the back yard if it still wouldn't meet the setback requirements on the other side of the fence? Ms. Crane said probably not; and pointed to the shed on the other side that is 25 feet.

Comm'r Smith asked if the shed is 25 feet on that street as well. He also asked if the shed on the other street is closer. The Board spent some time discussing the measurements. Ms. Crane stated there are two sheds, one is 13 feet and the other 13.2 feet. Comm'r Hipp asked if the shed were within 25 feet, and in compliance with the setback, would it matter how it looked. Ms. Crane said 'no. Ms. Crane said it could be 16 inches in the back and still meet the rule. She explained there is a contextual setback where the building on the adjacent lot could be placed close to that building line. So if we measured the adjacent lot building, how close they would be to the front is a difference of only 16 inches.

Chairwoman Lyon asked if that rule were applied it would be 16 inches instead of 13.2 feet. Ms. Crane said that would be the request.

Vice Chair Savage read the staff's recommendation under F (c) that 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. As he understands, it was purchased in October 2020 and it was utilized as a single family residence. Ms. Crane answered 'yes. He asked if the applicant decided on the size, shape, or placement of the shed when it was placed on their property. He said if the shed is removed, would it prohibit the use of the property as a single family residence and Ms. Crane answered 'no.

Applicant Presentation:

James Cuba, 917 Ravenswood Drive, stated that he is presenting his case for the approval of the shed as it is next to the pool for supplies. The foundation is on a pressured treated wood structure with hurricane straps fastening it to the ground to prevent it from moving during high winds and was designed by the manufacturer. As they noted if removed, it would limit their use because they do not have a lot of storage in the house. There is another shed on the other side that is in disrepair because of rain, rot, and age. He asked the Board to approve his request. In addition, the raised area where the shed is, were two 25-year old palm trees that were removed for safety for the adjacent property and for their property which is why they waited to install a shed there. Mr. Cuba thanked the Board for their consideration.

Questions from the Board

Comm'r Hipp questioned the foundation of pressured treated wood and asked if it cannot be taken apart easily. Mr. Cuba said 'no, that it would be a considerable cost to move it the way it is installed and the rods go down 4 foot into the ground and is strapped. Comm'r Hipp asked about the garage. Mr. Cuba stated the garage is where the yellow car is (photo shown). It is a single car garage that his father-in-law had before it was turned into a workshop and that is where the hot water heater is so there is very limited space there. Comm'r Hipp asked if that is the only place he considers as a place to store a lawn mower, electrical and pool equipment. She asked if he takes care of his own pool to which Mr. Cuba answered 'yes.

Comm'r Smith asked where were the things stored in the building; i.e., chemicals etc. stored before the building was built? Mr. Cuba said there was a small structure on the other side near the fence where the filter is for the pool.

Vice Chair Savage addressed Mr. Cuba about his property and that it was purchased from his father-in-law so Mr. Cuba knew the footprint beforehand. Mr. Cuba said that is correct. Vice Chair Savage said it appears

that he is before the Board because someone made a complaint. He asked Mr. Cuba if he had read the complaint from Mr. Pepin. Vice Chair Savage said he drove through the neighborhood and haven't seen any structures similar to Mr. Cuba's and asked him if he was aware of any and Mr. Cuba said yes, the adjacent property on the other side of Foxcroft. Vice Chair Savage asked what kind of structure it is and Mr. Cuba said a wooden shed. Vice Chair Savage asked if the shed is in the setback and Mr. Cuba said yes. Vice Chair Savage said what he is saying is there are no other properties with a structure like Mr. Cuba's within the setback. Mr. Cuba said other than on Foxcroft, across the street from his house. Vice Chair Savage asked when he decided to put the structure in did he let the (neighbor) know that he was planning on putting it there and Mr. Cuba said they did not have that conversation.

Vice Chair Savage looked at the picture of Mr. Cuba's house and asked about his decision to select that type of shed. He said first of all, the material is not similar to any of the material on the house. Mr. Cuba agreed. Also, Vice Chair Savage said the architectural style of the shed doesn't appear to blend in with the home. He asked why did he decide on that type of shed? Mr. Cuba said they are reworking the front porch and having the column squared off to fit in with the structure. It was confirmed that Mr. Cuba meant that the shed would fit into the structure that is of natural wood. Vice Chair Savage referred to Criteria (F-C) and stating that someone seeks a variance before building a structure. In this case, a variance is being requested after the structure was built and someone complained and is now asking for a variance. Mr. Cuba confirmed. Vice Chair Savage said one of the criteria as the applicant is to satisfy the burden of persuasion to everyone on the Board would be Criteria (F-C) *because of these conditions, the application of the Ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.* He said if the shed is removed, the property would still be utilized in the same manner as he bought it as a single family residence. He asked if that was correct and Mr. Cuba stated that is correct. Vice Chair Savage said he is looking at the dimensions of the schematics of the house that shows the pool footprint and the shed. While he is not an architect it seems if you flip the shed over it would fit in the pool area. The only disadvantage is it might not be as aesthetically pleasing. Mr. Cuba said based on the foundation it is 16 inches higher and they would not have room to get around the shed to get in near the pool. Vice Chair Savage said he could put skirting around it to make up the difference in elevation.

The next criteria Vice Chair Savage said he is wrestling with is Criteria F (f) *the need for the variance is not the result of the applicant's own actions.* He said had he not built it, he would not be seeking a variance. Mr. Cuba said it was his understanding that it was under the square footage for needing a permit and after removing the palm trees it was placed there. Vice Chair Savage said he understands that answer but to erect something, whether or not a permit is needed, it must be placed in the proper location so the setback requirements aren't violated. He spoke to Mr. Cuba asking that is why he is here, because he tried to place the shed in one of the setbacks, it's not that he needed a permit. He said the decision he made to place it was his action that brought him to the Board to seek a variance. Mr. Cuba said he understood. Vice Chair Savage asked if Mr. Pepin was present which he was. Further, Vice Chair Savage said his reason for asking the question is that the Board may approve, deny, or approve with certain recommendations. And, it seems there might be an opportunity if the only person that appears to object is for them to get together to see if there is a solution that is suitable for everyone. That might be important information for the Board as there are at least two criteria there may be some questions as to whether or not they are met and Mr. Cuba said 'yes.

Vice Chair Savage said there is no door facing the street and there appears to be no door on the right or left and the fence goes up to both corners of the shed. He assumes the shed opens to the enclosed pool area. Mr. Cuba said it has a garage door that slides. Vice Chair Savage asked if the shed is being used as a party hut

or an additional party area. Mr. Cuba said there is no bar but they do have a table with some chairs and storage.

Comm'r Fabri asked about the old shed on the site that is in disrepair and observed that it seems to be the same size or slightly larger as the new installed one. She asked why wasn't it taken down and the pool shed placed there. Mr. Cuba said that house the lawn mower and things he doesn't have room for in the garage. Comm'r Fabri asked if there is a reason it was not placed inside the fence in the corner. Ms. Cuba said there were palm trees on the shared neighbor's side and if they put it on the concrete deck there would not be enough room to move around. Comm'r Fabri clarified that she meant to put it on the other side of the fence and move it around closer to the house. She noted the shed company that installed it said it should be fine because they did ask and were told it would be fine there because of the size.

Comm'r Fabri asked if there is a reason why the pool filter would not fit in the shed if it were in that corner. Ms. Cuba said it's in the concrete along with all the irrigation. Comm'r Fabri talked about her pool and that her equipment is nearby. Mr. Cuba said that would be a financial burden on them to move the pool filter. Comm'r Fabri said you could put the pool shed around the pool filter. Ms. Cuba said it would not fit, there is a roof line sticking out that was built there previously when they bought it so there is already a structure on the other side of the pool filter.

Comm'r Smith said he is sorry that she believed the person who told her the wrong thing and wished she had come and had talked with someone on the staff and is sorry that happened to them.

Support: No one spoke.

Chairwoman Lyon announced that two emails/letters in support were received and will be a part of the permanent record.

Opposition

Paul Pippin, 1001 Foxcroft Road: spoke that he lives directly adjacent to Cuba's. They have a great relationship with them and also had a great relationship with their parents. The reason for the opposition is the shed's position to the street and the architectural design. He would like that changed.

Rebuttal

Mr. Cuba said he spoke incorrectly about the shed on Foxcroft, that it is on Berkshire, and he would work with the homeowner.

Chairwoman Lyon closed the Public Hearing at 5:41 p.m. and made a motion to approve the variance for discussion. The motion was seconded by Vice Chair Savage.

During the Board's discussion, Vice Chair Savage stated that this is not contentious and appears to be a reasonable issue. However, there are a few criteria that are not met. Attorney Wilson said the application could be tabled to next month for issues to be resolved regarding setbacks and design assuming the applicant agrees to the carrying over.

Chairwoman Lyon stated she would consider withdrawing her motion and vote on tabling the application for the applicant to work with the neighbor and come into compliance because some members of the Board feel some criteria would not be met. Chairwoman Lyon withdrew her motion and Vice Chair Savage withdrew his second.

Chairwoman Lyon moved to Table Case #BZAV-1-23-032: A variance request for the placement of an 8'x12' existing accessory structure in the front/street side setback of a residential lot in the Low-Density Suburban Residential (RSL) District at 917 Ravenswood Drive (TMS#428-11-00-050) to allow the applicant to work with the neighbor to come into compliance with the shed. Meeting to resume at a future date.

Vote

Comm'r Fabri	Aye
Comm'r Hipp	Aye
Vice Chair Savage	Aye
Comm'r Smith	Aye
Chairwoman Lyon	Aye

Passed unanimously

Chairwoman Lyon informed the applicant to reach out to Ms. Crane for questions or further instructions on a future meeting date.

Case# BZAS-1-23-027: Special Exception request for a fast-food restaurant in the Community Commercial (CC) Zoning District and in the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District at 889 Folly Road (TMS #425-02-00-195): Chairwoman Lyon introduced the case and asked Ms. Crane, Planning Director, to provide the staff's review.

Staff Review:

The applicant, Edge Enterprises, LLC, is seeking a Special Exception for a fast-food restaurant in the Community Commercial (CC) Zoning District in the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District. 889 Folly Road (TMS #425-02-00-195) is 0.53 acres in size and is currently being utilized as a self-service/automatic car wash (Island Car Wash) which has been in operation since 1987. The current use is considered legal non-conforming. Adjacent property to the north, east and south is in the Town of James Island and is zoned CC (Super Suds Carwash, Chase Bank, Circle K). The adjacent parcels to the west are zoned RSL and are also in the Town of James Island. Additional uses within 300' include convenience stores and service stations (Circle K), general restaurant (Tropical Smoothie Café), florist (Floriography Studio), drug store (Walgreens), garden supply centers (Hyam's Garden & Accent) and parcels in the Town of James Island zoned RSL.

Restaurant, fast-food, including snack bars, shall comply with the special exception procedures on a parcel zoned CC, according to Use Table 153.110.

The applicant is seeking to utilize the property for the operation of a Jimmy John's quick service sandwich restaurant. The letter of intent describes a "family-owned local small business" and states that the "project seeks to continue to improve Folly Road, and not have any negative impacts to the surrounding areas. Our building will be designed to enhance the island's low country experience and continue to increase pedestrian friendly traffic. We want to make Folly Road more desirable, explorable, and walkable. As for our Jimmy John's, we will be owner/operators of our store and be in the store on a day-to-day basis to make fresh sandwiches 'freaky fast'". Island Car Wash INC of Charleston is the current owner of the subject parcel, and the lot itself is considered legal conforming.

Findings of Fact:

According to §153.045 E, Special Exceptions Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR), Special Exceptions may be approved only if the Board of Zoning Appeals finds that the proposed use:

E. (a): *Is consistent with the recommendations contained in the Town of James Island Comprehensive Plan and the character of the underlying zoning district “Purpose and Intent”;*

Response: **The Town of James Island Comprehensive Plan, Economic Development Element states a strategy as “encouraging a variety of diverse commercial uses that will benefit the Town as a whole”. The applicant states in the letter of intent that they “intend to bring additional business to the island, as well as promote the employment of residents and locals” and “want to invest back into the surrounding community and focus on sponsorship and involvement with local schools, charities, and other businesses.” Furthermore, the Economic Development Element Goal is to “encourage redevelopment to improve current aesthetics and diversity of amenities in the Town’s commercial areas”. As the applicant notes in their letter of intent, the “current plan aims to help with the diversity of Folly Road by replacing the existing car wash, which there are currently six of within two miles. This will be the only grab and go fast-food sandwich shop on the south side of the Connector on Folly Road.”**

E (b): *Is compatible with existing uses in the vicinity and will not adversely affect the general welfare or character of the immediate community;*

Response: **Nearby properties have a wide range of existing uses including convenience store, service stations, vehicle service, restaurant general, florist, drug store, banks, & garden supplies centers. In addition, the applicant’s letter of intent states, “our local family-run Jimmy John’s will bring a much-needed sandwich shop to Folly Road.” Therefore, the use may be compatible with most of the existing uses in the vicinity and should not adversely affect the general welfare or character of the immediate community.**

E (c): *Adequate provision is made for such items as: setbacks, buffering (including fences and/or landscaping) to protect adjacent properties from the possible adverse influence of the proposed use, such as noise, vibration, dust, glare, odor, traffic congestion and similar factors;*

Response: **A comprehensive landscaping and site plan is required during the Site Plan Review process to address supplemental buffering, fencing requirements, parking, lighting, and setbacks. The applicants have presented a site plan showing required landscape buffering and in their letter of intent state that the “site plan has been designed to address all provisions for items in Exception C, including appropriate setbacks, buffering, and landscaping. We believe that nature and drainage are important and will put together a landscape plan that promotes the feel of the island, while bringing additional greenery to a currently bare lot. There is currently limited**

landscaping and no trees on the property with significant concrete. Our plan will improve and increase the level of landscaping and trees on the property by adding additional plantings. We plan to work to ensure that the building does not provide any undue glare by choosing the proper building materials. Noise will not impact the surrounding community as we will face our drive-through order box in a manner that projects any sound away from any residential areas. Our sandwich process uses no exhaust ovens, or hoods; no unkind odor will be released from our building. Dust and vibration will also not occur, as we do not have any processes that would facilitate those two factors.” Additionally, all applicants are required to meet Town ordinances concerning any factors mentioned in Criteria C.

E (d): *Where applicable, will be developed in a way that will preserve and incorporate any important natural features;*

Response: The parcel currently hosts a self-service car wash that, according to the letter of intent, has “limited landscaping and no trees on the property with significant concrete”. Therefore, there are no important natural features on site that will be impacted. Landscaping and vegetation will be incorporated per requirements in the Town’s zoning regulations.

E (e): *Complies with all applicable rules, regulations, laws and standards of this Ordinance, including but not limited to any use conditions, zoning district standards, or Site Plan Review requirements of this Ordinance; and*

Response: The applicant is in the process to ensure compliance with the applicable regulations.

E (f): *Vehicular traffic and pedestrian movement on adjacent roads shall not be hindered or endangered.*

Response: The applicant’s letter of intent states that “As shown in our site plan, we will utilize a right-turn only traffic lane as to not hinder movement in and out of our location. We have created a plan that indicates the minimum ten-car stack plus an additional surplus of seven to eight cars, if needed. With our ‘freaky fast’ service we will ensure a 30-second or less turnaround time for our customers. It is to be noted in similar Jimmy John’s, like the location on Savannah Highway, the typical stack during peak is six cars.” Additionally, the applicant states that the “walkable site will allow patrons to grab a bite to eat and support the surrounding businesses on Folly Road. Our design will be in compliance with the provisions set forth by the committee and we will continue to work closely with Kristen Crane. Our location will promote Rethink Folly Road by being pedestrian friendly.” Therefore vehicular traffic and pedestrian movement on adjacent roads should not be hindered or endangered.

In granting a Special Exception, 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 # BZAS-01-23-027 (Special Exception Request for a fast-food restaurant in the Community Commercial (CC) Zoning District in the Commercial Core of the Folly Road Corridor Overlay (FRC-O) Zoning District) based on the “Findings of Fact” listed above, unless additional information is deemed necessary to make an informed decision.

Questions from the Board:

Chairwoman Lyon asked for clarification that it would be a right turn in/out only. Comm’r Hipp gave a scenario assuming that she is driving towards the connector, there is a cement media stop there where you can turn left. Ms. Crane said the DOT required Chase Bank to extend the median so no left turn would be allowed and would probably request the same for this request if this application goes through.

Comm’r Hipp asked why does a fast food restaurant need an exception, and is it required? Ms. Crane explained that it is a requirement for the Commercial Core and the Overlay District.

Vice Chair Savage said he has questions that might telegraph what he may be asking the applicant. He said what is holding him up is Criteria E (f) vehicular traffic and asked where the applicant plans on placing their curb cuts. Comm’r Fabri said they are losing one curb cut and the second one is further away. Vice Chair Savage expressed concern about people coming from Folly Beach to Charleston. His concern is the people coming from Folly Beach to Charleston, see Jimmy Johns, and attempts to make a left hand turn. Ms. Crane responded that she assumes the DOT will make them put in a median all the way down so that doesn’t happen, or the Board could add that as a condition. Vice Chair Savage asked if SCDOT is going to spend money because this Board made a zoning decision. Ms. Crane said no, the DOT would not spend money, but the applicant making the request would pay. Vice Chair Savage asked the estimated number of vehicles going in/out of the restaurant per hour/day. He understands the Board cannot control the conforming use, and a conforming use by definition would still increase traffic. That is not something the Board can base a denial on. What he is trying to determine is the amount of vehicular traffic as we did three months ago in the prior case. Ms. Crane said it would be low and may not require a traffic study.

Applicant Presentation

Kevin Kaiser, 2224 Folly Rd., Mr. Kaiser addressed the Board for a Special Exception for Jimmy John’s fast food restaurant, 889 Folly Road. He and his wife, Kali, are personally purchasing the property from J.D. Cox to set roots at this location. He said as the Board looks at the Special Exception request to remember that they are not approving a corporate run franchise; but a local, family-owned small business. He and his wife live 4.8 miles down the road going on eight years now and have seen the growth on Folly Road. He shared a personal story he and his wife were coming home from a trip. Not wanting to cook after getting home, they just wanted a cold sandwich and did not want to get out of the car. They wished there were a Jimmy John’s drive through so they could get home quickly, but that was not an option on Folly Road. This lack of options gave them the idea of their business for a “freaky fast” Jimmy John’s restaurant on Folly Road. Over the last four years they have been looking for a location to invest in that is sustainable and makes sense for the community. They have explored a number of different avenues and found that 889 Folly was their best option. He said James Island is the place where they want to raise their children, send them to school, continue to shop, and give back to the community they call home.

For those unfamiliar with Jimmy John’s, he said they are a “freaky fast” sandwich shop. The store works hard to make sandwiches in under 30 seconds. Sandwiches includes: chips, pickles, cookie, and a drink. They cater to all types of sandwich lovers. His wife is a vegan and loves the #6 veggie. Moms whose children won’t eat an entire sandwich can enjoy the little John. Gluten and dairy free options are also available. He wants people to come to their shop, place an order and hang out. Parties can be catered. If

someone is in a hurry they can use the friendly app and breeze through the “freaky fast” drive through. He said the beauty of all of this is there is no on-demand cooking. Everything is freshly prepared and supports a “freaky fast” environment. In the request for a Special Exception they obtained 91 signatures and five (5) emails from local residents and businesses in support of their campaign. He personally walked door-to-door around the area of 889 Folly Rd. and there was not a single objection to this addition in the area. It was the complete opposite. Mr. Kaiser read some comments from the people he spoke with... *“this is a great addition since we have limited options to run out and get lunch”*; *“heck yeah, we need that”*; *“we need a fast option for lunch because I only get 30 minutes”*; *“great, now I can walk to a place that I actually want to go to”*; *“I would love to stop there on my way home to get a quick, more cost effective and healthier option for our kids”*. Because they are local they are invested in the community and have become greatly intertwined with many local businesses. He shared about his community involvement with Pet Helpers, coaching with the Warriors, and years of service at the SC Aquarium. They plan to donate a portion of their profits and give back to the community. He spoke of the importance in giving back to the community where they live because it has given them so much.

Mr. Kaiser addressed several criteria. One of which, Criteria E(a) about diversity on the island. He said from the connector to the time he hits his front door, he passes six (6) car washes; eight (8) nail salons; and seven (7) gas stations but not a single drive through sandwich shop. He said this project would support the island’s needs for additional diversity for a quick, family-friendly drive through sandwich shop. Criteria E (b & c) talks about the beautification and use of the property. He assured the Board that they are not putting up a loud red & black Jimmy John’s. They plan to build it in a manner that suits the island’s design and work with the Planning Department. He said the current lot has an existing car wash that will be replaced with their new integrated store. They will update the existing lot by adding additional trees and plant flowers to complement the addition of their family friendly seating on the patio, pedestrian friendly family, walkway and bikes. Criteria E (f) addresses traffic and they are very focused on making sure it saves the core value at their location . He said the SCDOT has confirmed that they will have a right turn in and right turn out only entrance at the location. They will also be installing additional curbing of the median so a left turn is not possible. He said this will increase safety at the location and deter anyone from entering from the other side of Folly Road. He also spoke of how Jimmy John’s operates its drive through and how it would work on Folly Road. The hours of operation are 10 a.m. – 9 p.m. and the volume from a national average is 96 cars per day over the course of 11 hours of operation. The car total includes both drive through and in-store. Peak hours would be 11-1. From the hours of 11-1, peak cars totals would be 18 for drive- through and in store. He said that is one car every 3 minutes and 20 seconds. He said that the sandwiches are made “freaky fast”, under 30 seconds and because of this, it promotes the drive through to have a national average of 3 minutes, and 45 seconds. They have a 25 second overlap per car during peak time. They are very sensitive to the drive through. As seen in the drawing and what Ms. Crane mentioned, the current set up is a 10 car stack with 7 cars backup to the road.

He said this brings him to a question he is sure the Board is asking... is that enough. He said as mentioned in his letter of intent, he personally spends time at the West Ashley location on Savannah Highway. That is a busy location and during his time there he noticed there are no more than six (6) car stack at their peak from the order window. Jimmy John’s will have 16 additional parking spaces to accommodate in-store customers. He mentioned that their volume is not like their competitors, it is quicker because they make their sandwiches “freaky fast”. He summed by saying that he traveled up and down Folly Rd. six (6) times yesterday and it confirmed that he wants to make sure his shop is one of the places on James Island people want to go to, looks great, and integrates into the community to give back for many years to come. They understand Rethink Folly Road and wants to be on the side that improves Folly Road and help it to continue to prosper. He believes their plan and drive through will continue to create jobs for the island and provide opportunity for growth and a team environment with top notched customer service. He told the Board that if he makes their sandwich to remember that it will be “freaky fast”.

Questions from the Board

Chairwoman Lyon received clarification that 96 cars were expected per day based on an 11 hour day operation; peak times between 11-1 p.m. both in shop and drive through. Chairwoman Lyon also asked if they were planning on extending the median. Mr. Kaiser said they talked with the DOT this morning and they will be making a right turn in and right turn out only with something called a “chicken bone” or “chicken wing” and the median would have to be extended past their entrance to prevent anyone from making a left.

Comm’r Hipp asked how many Jimmy Johns there are. Mr. Kaiser said he believes there are five; downtown, West Ashley, Summerville, and Moncks Corner, however, he thinks Summerville is closing. Comm’r Hipp said she understands two of them have drive throughs. She asked why a drive through would be needed on James Island. Mr. Kaiser stated they are purchasing the property themselves and from a financial aspect a drive through would be more lucrative. Unfortunately, if they are not allowed to have a drive they would not be able to go through with the purchase. Comm’r Hipp also asked if Uber Eats would be an option for orders. Mr. Kaiser stated there would be two in-house drivers. She asked how many employees including the drivers would be on site. Mr. Kaiser said they don’t have a staffing plan yet but compared to the other stores, perhaps four (4) or five (5). She asked if they each have cars. He said some of the staff are high schoolers so some may not have cars. She also asked how many tables are planned for the inside. Mr. Kaiser said it would be low-key but he has not finished the plan yet. The West Ashley restaurant has seven (7) to eight (8) booths but he assumes customers will eat and not stay.

Comm’r Fabri said 96 cars were cited as the national average for the open and close and asked out of curiosity how many cars the West Ashley restaurant does during a day or peak hours. Mr. Kaiser said he doesn’t know from a continuation perspective but when he was there, the total was 38 for two hours, from 11:30-1:30 p.m. Comm’r Fabri said they seem to be more focused on wanting to keep the drive through kind of the mainstay of the business as opposed to in seating and assumed the average for drive through would be higher than the West Ashley or the national average because of the nature of their location. Mr. Kaiser said when he was at the West Ashley location, they were a lot of people that came and sat and there was a good amount of people going through the drive through but he can’t plan on how people will react, if they will stay. Again, he stated they will have a beautiful patio so people can come and stay. Comm’r Fabri said her reason for asking is that we have a threshold for a traffic study in our ordinance and she wants to make sure as Ms. Crane stated that he is well below that threshold. She said looking at the site plan, it looks like he checked all of the boxes to be in compliance with the Overlay as far as the bike path requirements.

Vice Chair Savage said he is familiar with the product and is a fan. His office has it on speed dial! He complimented Mr. Kaiser for a very good presentation and for being knowledgeable. He stated having no problems with Criteria A,C,D, and E and think his plan would improve this piece of property. He asked Mr. Kaiser if the purchase of the property is contingent upon approval of this request and Mr. Kaiser answered ‘yes. Vice Chair Savage said if the Board approves this Special Exception it is grandfathered and if they decide to go into another direction there is nothing that we can do. He asked Mr. Kaiser what he would be doing at the restaurant, what is his occupation? Mr. Kaiser said he owns a consulting company that does training and development, and is a leadership coach, and environmental and health coach. He said the plan for Jimmy John’s is for him to work in the store. He has a very flexible schedule and global clients that meet at different times. He will be the person there making sandwiches. His wife also has a job but will be in the store with him too. Vice Chair Savage asked in addition to purchasing the property, is there a franchise fee they have to pay? Mr. Kaiser said they have already paid it. Vice Chair Savage asked if they realize this is not for them, who gets the franchise, does it “die” with him? Mr. Kaiser stated there are several options and reiterated that they live down the road and want this to be a place to retire . They have signed a 10-year franchise agreement. Comm’r Hipp asked if the variance is not granted would he have to

find another location and he said the property deal would fall through. Since they have franchise rights to James Island, they would have to find another location.

Vice Chair Savage said his concern tonight is for traffic. He asked if DOT has to extend the median past their entrance? Mr. Kaiser said yes and are happy they said that because he hates taking a left on Folly Road.

In Support

Kyle Walker, 1755 Central Park Road: Mr. Walker said he has been a resident of James Island for 20 years and a local business owner for 10 years. Before the 10 years he was in the food and beverage industry that the Kaiser's are getting into. He has known the Kaiser's for 8 years and they are talented and incredible people with hearts as big as anybody he knows. The business acumen that they bring to the table is incredible, especially as local business owners and a husband and wife team. He knows they will be good.

Katie Frederick, 490 Woodland Shores Road: knows the couple in several ways. She's been a friend for a decade. Kevin is a business partner of hers who hosts an island sports club and a Wednesday night league at Bohemian Bull on Folly Road. He's hosted that league for 7 years and approached her a year-and-half ago. She is a commercial real estate owner and is involved in this transaction, having some skin in the game. She is looking forward as a resident of James Island to swing by the drive through with her puppy so she doesn't have to get out of the car, and head to the beach with a sandwich. As a current real estate agent they see all kinds of things, landlords and relationships, just like homeowners vs. tenant and usually an owner occupant is definitely the best.

J.D. Cox, 1469 Headquarters Place Drive: owns the property and had it as a car wash for 35 years so he is very familiar with James Island. James Island is a special place. Before the car wash he was at Piggly Wiggly in the James Island Shopping Center for 20 years. He has always tried to be a good merchant but at some point in time, everything comes to an end. The car wash is dated and he knows James Island would like to see something new and fresh at that location. He considers the area to be the center of James Island and lately there have been a lot of car washes on Folly Road. He complimented the new drug store and the Chase Bank and thinks Jimmy Johns is perfect for that location. He asked the Board to please consider it.

Scott Peevy, 866 Wellington Drive: resident of James Island stated he is a resident of James Island. He is also a commercial real estate broker and has the pleasure of representing Mr. Cox in listing and marketing his property over the last several years. As Mr. Cox mentioned, he has operated the car wash for over 35 years and he's seen the pride of how Mr. Cox took care it. It is an old building but if you've been there you'd see that it was kept clean. He's old school and has treated his customers right and takes pride in ownership. We've all been here for a while and we've seen progress. As residents we have to face a couple of things, the current building on the property is old and frankly we have to ask, do we really want to continue with two car washes operating side by side in addition to the other six (6). The buyers are local and stand to gain from the transaction and comes to us as a resident of the island.

Opposition

Katy Powers, 880 W. Madison: her property is directly behind where the Jimmy John's will be. In the photo the fence is where her property starts. Her husband, Philip Powers is here and she works with Kali and they are wonderful people. Their concerns is less about the Jimmy John's business but more about the property and permanence. She addressed Vice Chair Savage that when you ok a drive through, heaven forbid that it doesn't work out, what happens next? That is her property that is butting up against their property. They live there with their two week old son and dog so what she wants to address and the main thing they want to talk about is the back fence. She said the site plan is great and fits in, but what she thinks needs to be done and what she is asking for is like the Board imposing conditions with the DOT. She would like to impose conditions of a fence, landscaping and lighting behind the building. She is asking the Board to

impose conditions of an 8 ft. wall, not a fence. They operate a restaurant. She is a culinary manager and her husband is an owner and culinary director of Lewis BBQ. They understand restaurant work and understand that little critters go places, even if you have the cleanest of spots. They would like to request that the Board impose condition for an 8 ft. wall, cement or cinder block or stone behind their property to make it look nice, landscaping (as on the site plan, the landscaping is not defined) of 10-12 ft. bushes, Chick Fil-A butts against one of her neighbor's property and they have Evergreen 12 ft. bushes; whether holly or some type of Ficus. Chairwoman Lyon called time. Ms. Powers went on to state imposing conditions for a fence, landscape and lights.

Chairwoman Lyon stated for the record there were six (6) letter in support, a petition with 91 signatures in support and two (2) letters in opposition that addressed traffic and another fast food restaurant.

Rebuttal

Mr. Kaiser spoke that their goal is to own the property longer than J.D. He addressed the neighbors behind the property that they want to be neighborly. They live near the business and want to be good stewards and would like to speak with those who spoke in opposition to consider what would work to have a relationship with people in the community.

Chairwoman Lyon closed the Public Hearing at 6:37 p.m. and moved to approve the request with the following conditions:

1. Extend median to disallow a left turn
2. Erect a solid 8 ft. with acoustiblock type material
3. 8 ft. landscape buffers
4. Lighting that is confined to the commercial property

Vice Chair Savage seconded for the purpose of discussion.

Comm'r Hipp question was about the 8 ft. fence and the acoustiblock material. Ms. Crane stated an 8ft. fence is the max allowed and acoustiblock is a brand name. Chairwoman Lyon expressed concerns that if the applicant decides to move because of extenuating circumstances that approval of the lot remains with the property. Comm'r Hipp asked if the number of cars could be attached under the 100 threshold as a condition. Mr. Wilson interjected opinion that the Town is not without recourse if it got out of control and becomes a public nuisance. There was discussion about past applications of Chick-Fil-A, KFC, and traffic.

Comm'r Fabri asked about the dumpster pickup and delivery. Mr. Kaiser stated responded other than that, there would be a box truck delivery and Sysco. The Board also discussed assessing hours of operation, 8 am. to 10 p.m., noise and smells, no outdoor music, concrete median extended past the entrance to avoid left turn out, alcohol would have to come to BZA for approval. Chairwoman Lyon withdrew her original motion and Vice Chair Savage withdrew his second.

Chairwoman Lyon moved for approval of the application based on the following conditions; seconded by Comm'r Fabri:

1. Hours of Operation 8am-10pm.
2. No outdoor music.
3. Right-turn-in and right-turn-out only.
4. Concrete median extended past entrance going north.
5. Solid noise-attenuating 8' barrier wall along the back of the property w/vegetation and lighting required as said by Planning staff.

Vote:

Comm'r Fabri	Aye
Comm'r Hipp	Aye
Vice Chair Savage	Aye
Comm'r Smith	Aye
Chairwoman Lyon	Aye

Motion passed unanimously. Chairwoman Lyon informed the applicant that the final decision of the Board would be sent in 10 business days and questions about the approval should be addressed to the Planning Department.

Additional Business:

Chairwoman Lyon thanked Comm'r Hipp for her service on the Board of Zoning Appeals. This is Comm'r Hipp's last meeting. She has decided to step back to take care of her family and will be missed. We hope she will serve again in the future.

Next Meeting Date: March 21, 2023: Chairwoman Lyon announced the Board will not meet in March unless the Storage Shed is brought back before them. If so, the Board could meet an hour early for a workshop. She spoke with Jenny Werking, Charleston County, for some tips that could be shared with the Board. She encouraged the Board to bring other suggestions to the table. Both she and Vice Chair Savage shared their experience on the Board for the first time. Chairwoman Lyon thought this would help orient a new member on the workings of the BZA, i.e., three (3) members constitutes a meeting, and there should be no discussion of a case amongst themselves prior to the meeting. She noted these are things a new member needs to know.

Executive Session: Chairwoman Lyon stated now we need to talk about the tree that was cut down against the Board's ruling from our last case. She displayed her thick binder from the last three meetings on the tree case that she spent many hours studying. She stated she does not remember when she has been so mad. Comm'r Fabri moved to go into executive session. Mr. Wilson asked if the executive session was posted and Chairwoman Lyon said no, there was no time because the incident just happened on Thursday and the agenda had already been posted. Chairwoman Lyon moved to amend the agenda for executive session if that is what the Board wanted to do; it was seconded by Comm'r Fabri to amend. Mr. Wilson expressed concern about amending the agenda at the meeting. Chairwoman Lyon said they do it all the time at Town Council and Mr. Wilson acquiesced.

Chairwoman Lyon called for a roll call vote to amend the agenda to add an executive session.

Vote

Comm'r Fabri	Aye
Comm'r Hipp	Aye
Vice Chair Savage	Aye
Comm'r Smith	Aye
Chairwoman Lyon	Aye
Unanimous	

Chairwoman Lyon moved to enter into an executive session for legal advice on the cutting of the tree on Camp Road after the Board had given its ruling. The motion was seconded by Comm'r Fabri.

Vote

Comm'r Fabri	Aye
Comm'r Hipp	Aye

Vice Chair Savage Aye

Comm'r Smith Aye

Chairwoman Lyon Aye

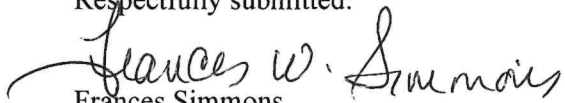
Unanimous

The motion passed at 7:08 p.m. to enter the executive session.

Return from Executive Session: The Board of Zoning Appeals returned to open session at 7:41 p.m. No votes were taken during the Executive Session.

Meeting Adjourned: There being no further business to come before the body, the meeting adjourned at 7:42 p.m.

Respectfully submitted:

A handwritten signature in cursive script that reads "Frances W. Simmons". The signature is written in black ink and is positioned above the printed name.

Frances Simmons

Town Clerk and Secretary to the Board of Zoning Appeals