

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF JULY 19, 2022

The Board of Zoning Appeals held its regularly scheduled meeting on Tuesday, July 19, 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, Corie Hipp, David Savage, Vice Chair, Roy Smith, and Brook Lyon, Chairwoman, who presided. Also, Kristen Crane, Planning Director, Flannery Wood, Planner II, Bonum S. Wilson, BZA Attorney, Niki Grimbball, Town Administrator, and Town Councilmember Cynthia Mignano. 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 as the meeting was on Zoom and no flag was available.

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.

Introduction: Chairwoman Lyon introduced herself, members of the BZA, Attorney, Staff, and Town Councilwoman Cynthia Mignano.

Administer the Oath to those Presenting Testimony: Chairwoman Lyon announced that each person who wished to address the Board must be sworn. Those who wished to speak at the Town Hall and those on Zoom were asked to stand as a group and sworn in by Mr. Wilson, BZA Attorney. Persons addressing the Board on Zoom were asked to use the “chat” function, state their name and whether they were speaking in support or opposition and they would be called upon at the appropriate time. Those calling in to speak will be recognized by their phone number and will be asked to speak at the appropriate time.

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

Executive Session: Not needed.

Public Comment:

Dr. Cynthia Mignano, 963 Foxcroft Rd., James Island. Business Address: 914 Folly Road: Dr. Mignano stated that her place of business has been on the other side of Camp Road for over 20 years and she is very familiar with that intersection. Her business was there before it was improved and is still there. The traffic report that she read was very concerning because that intersection already has an “F” rating, which means it’s a failure. She doesn’t know where in the intersection they are going to put the driveway going onto Camp Road turning in and out. This is going to make a huge complication. She loves KFC and eats there. That was the first food she had after she had her oldest daughter and she specifically requested it. But, that intersection is really, really, dangerous and wrecks are there all the time. If you’re going to do a Traffic Study, she suggest doing another Traffic Study during summertime hours, during school pickup and drop off hours, and during rush hour, and look at Friday and Saturday because she is there five days week, and sometimes on Saturday. She can tell you that an October study on a Tuesday or Monday is not accurate of

what that intersection really looks like on any given day. She thinks we need to look really close at this. She is all for pro-business, but we have to make sure that it is safe there. The more cars you add into the Chase Bank driveway taking a left on Camp are more people that are going to get hit in car accidents. And, you also have to figure the people that are coming out of the gas station taking a left to get onto Camp Road to go up Folly. She watches them take a right circle all the way back around at Camp nearly causing accidents and then get in the other lane. That is just how the intersection is now, so she thinks a new Traffic Study is critical.

Chairwoman Lyon stated that we have started requiring names and addresses of persons who email/write, (as we do when someone speaks in person), and the comments are available as a part of our public records. We received 17 last month; 13 were received before the cutoff and 4 received after the noon cutoff; and those 4 will fall into the cutoff for tonight's meeting and counted with the 17 from last meeting. This month we received 16 more against for a total of 33 against and 2 in favor.

Review of the Following Application (resumed):

Chairwoman Lyon introduced 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 held on June 21, 2022 and tonight the Board will continue with the case proceedings. She said at the June meeting a motion was made and seconded to defer the meeting to the July 19 meeting. Chairwoman Lyon then moved to reopen the Case and Mr. Savage seconded.

Vote:

Ms. Fabri	aye
Ms. Hipp	aye
Mr. Savage	aye
Mr. Smith	aye
Chairwoman Lyon	aye
Passed Unanimously	

Questions to Staff:

Ms. Hipp asked why does the Town require a Special Exception for a fast-food restaurant? Ms. Crane replied that Special Exceptions in their nature are for special circumstances and the BZA may add conditions on a special exception if needed.

Mr. Savage asked that if KFC weren't seeking a drive-thru, that they would not need a special exception, is that correct? Ms. Crane said 'no' that isn't correct. She stated that drive-thrus can be on fast food restaurants, and there are restaurants that are not considered fast food restaurants but have drive thrus.

Ms. Hipp asked if Starbucks is considered fast- food and Ms. Crane said it would depend on whom you ask, but the Town would consider them a fast-food restaurant because one criteria is that food is not generally made to order. It is ready made, heated, self -served, and served on paper plates vs. real plates.

Chairwoman Lyon said a Panera Bread serves some of its food on China plates and some of their restaurants do have drive thrus. She asked if a Panera Bread could go in that space without a Special Exception because most of what they serve is made-to-order? Ms. Crane said that is correct; that the Town would not consider Panera Bread fast food even though they have a drive thru. Chairwoman Lyon asked if the lot would be suitable for an Outback. They do not have a drive thru but a drive up and Ms. Crane said a lot of restaurants are going to the curb service. Outback would not be considered fast food and could go in without a Special

Exception unless they serve alcohol that would automatically require a Special Exception. She said if a restaurant serves alcohol and it is 500 ft. or more away from a residential district they would not be required to have a Special Exception. An alcohol requirement is not generic, it depends upon how close it is to residential property and most commercial properties in the Town are within 500 ft.

Ms. Hipp had a question about Criteria B, that the representative from Pebble Hill said if the Town did not allow the Special Exception to go into the space, that another allowed commercial business may be worse. Ms. Hipp asked for examples of commercial businesses that could go into the space and Ms. Crane listed businesses such as: retail, daycare, general restaurant, Panera Bread, grocery store (though small) Drug store, Nail salon, Corky's who was there, so a lawn mower repair, Post Office, parking lot and office space.

Mr. Savage said he understands that a Pizza Hut was previously there and his question is based on the reality of how food is served now. He said a pizza establishment could go in there and pizzas could be delivered by Door Dash, Uber Eats, or a variety of delivery services. He asked if that is correct and Ms. Crane answered yes. Mr. Savage said he is thinking that a Chinese Restaurant could go there because you order specifically at a particular time and a delivery service could pick up the food. He said this basically operates like a drive thru except with commercial delivery vehicles and Ms. Crane said that is correct. Chairwoman Lyon asked if Pizza Hut served alcohol and Ms. Crane said they served beer and she is unsure when they went in there but they would have been considered a legal non-conforming use on the alcohol sales. Chairwoman Lyon mentioned that it may've been grandfathered in before the Town existed

Applicant Presentation:

Stephanie Grant, 9117 Pine Breeze Drive, Riverview Florida: Ms. Grant appeared in person stating the reason for continuing the meeting was to allow the Board time to study the Traffic Report. She said the engineer and architect is present and she would forego her time to allow for questions and dialogue with the Board.

Thomas Purcell, Site Engineer at Kimley Horn: Thomas.purcell@kimley-horn.com stated with him tonight is Nick Jehn, Traffic Engineer and that Dillon Turner, present at last month's meeting is on vacation.

Ms. Fabri stated that her questions would be directed to the Traffic Engineer. She recalled that she went over this in the report the last time with Mr. Turner but she wanted to reiterate that the level of service at Camp & Folly is currently an "F" according to the Traffic Study. She commented that she went through the Traffic Report with a friend who is an aerospace engineer and he gave her some information. Ms. Fabri said on Table 5 of the Traffic Study on the Capacity Analysis, 2020 and the projected build; for peak situation whether it was 2020 no build or the bank and restaurant, it is all an "F". She wants to look at the increase from the no build to the 2022 build, and how much was added. If her calculations are correct, it adds up to 2.5 minutes with the previous intersection and 3.0 minutes between the 1.34 and 1.59 with the updated intersection data. She asked Mr. Jehn to talk about the increase.

Mr. Jehn asked how Ms. Fabri came up with the 2.5 and 3.0 minutes to which she explained. She said if the percentages are thrown out, and if you tell anyone that it is 3.0 minutes they won't be happy about that. She said it is a failed intersection and obviously it is not going to be 30 seconds. She asked Mr. Jehn to acknowledge with the no build that, even though it is an "F", that it goes to an F- with the build out of the site. Mr. Jehn responded that they do not use plus and minus' traffic, he said an "F" is an "F".

Further, Ms. Fabri said it looks like at the PM times that it is operating as an "E", a step above "F", and with the build out it operates as an "E". The 2020 PM peak for the build would be when KFC is operating because their plans were not to serve breakfast. It goes from 66.8 an "E" to 79.3 and Mr. Jehn confirmed. Ms. Fabri asked what is the threshold for an "F" according to their HCM, and he said it is 80 seconds, so they are very close to it there. He said the industry is trying to get away from letter standard because there

is a very thin line between “E” and “F” and it begins to be subjective comparing scenarios that way. Ms. Fabri made reference to Page 4, Table 3, LOS (level of service) and said it does not encompass everything as Mr. Jehn stated but what was interesting to her is that it says the appropriate level of service for a given system (i.e., Camp & Folly) is up to the local policy body to determine what is safe and acceptable to the community and asked Mr. Jehn if that is how he understood that and he answered yes. He explained that in school and you get a “D”, it’s not a good grade but in terms of traffic a “D” is typical. So, in most cases in urban areas, the Dept. of Transportation would consider a level service “D” (such as Folly Road) to be acceptable and even an “E”. When you cross to an “F” it means that you are starting to slide into congested conditions. So you can’t look at the level of service and say a “D” is bad because it varies by jurisdictions.

Ms. Fabri asked if he would say that the section where officials decide what is tolerable and acceptable for the people who are driving on that roadway in an urban area? Is an “F” way higher than 80 or 120? Is that acceptable or is an 80 acceptable? Is it up to the local policymaker to say this is what we are striving for our community? Is this where the DOT and Charleston County come in to try to correct these problems like we have at Camp & Folly? Mr. Jehn said she interpreted correctly. Ms. Fabri said the fear she has is that Camp & Folly was recently improved and those improvement are already failing and we have not even reached the capacity of growth on James Island for people who go through that intersection and that is a concern for her.

Ms. Fabri recalled that she asked Mr. Turner about the queuing/stacking report last month. She asked Mr. Jehn to explain the Networkwide Queuing Penalty for the no build option in 2020, and the penalty for what has been built out. She said the number goes from 468 PM peak with the no build option to 1610 or 1618 for the total build out option, which according to her calculations is three times penalty. She asked if the queuing penalty is the traffic volume times the percentage of time the lane is blocked and Mr. Jehn said yes. He made reference to a software packet that is used but is not included in any of the methodologies they normally consider as traffic engineers. The main piece is that specific increases in the viewing penalty is associated with adding intersections to the analysis scenario as they go from background to build they add the driveways for the site in and those have a viewing penalty attached to them. So it is not an apples to apples comparison no build to build, and that is the reason why a big increase is seen. Ms. Fabri asked if adding an intersection meant the right-in, right-out from Site 2? Mr. Jehn said the right-in and right-out and the full movement driveway services the Chase Bank on Camp Road. Ms. Fabri asked if what he is saying is that it increases congestion because the driveway is putting more strain on the ingress/egress onto Camp Road? Mr. Jehn said he would check to make sure but he thinks in the printouts that the only intersection that was included for the no build was the intersection at Folly and Camp.

Ms. Fabri stated where it was at 468. Then with the build, you have the ingress and egress from Camp and then the right in, right out onto Folly. Mr. Jehn said what is seen in the Appendix is that for the no build scenario, even though, the two driveways exists today on the Chase Bank, they were not included in the analysis files, so the printout that includes the queuing penalty does not calculate the queuing penalty of those two additional intersections under the no build, which is why the total is so much less than under the build. Ms. Fabri added that it is increasing the times that the lanes are blocked because you add more opportunity for capacity and Mr. Jehn answered yes.

Ms. Fabri referenced the section for queuing on Folly Road and Camp at the 50th and 95th percentile asking if some days/hours are good or bad. Mr. Jehn said there is a statistical measure in the calculations. The 50th percentile would be the median que length and over the course of the peak hour that would be the average that essentially is assumed as normal distribution and the 95th percentile is typically looked at for design purposes as engineers would indicate that only 5% of que lengths would be observed if you sat there for an hour and watched traffic. Ms. Fabri asked about the footnote that said 95th percentile volume exceeds capacity; the que may be longer. Mr. Jehn said when they analyze the peak hour traffic they are also concerned with the peak 15 minutes because sometimes the highest 15 minutes of volume during that era,

can be much higher than the other 45. He said what that footnote is indicating is that based on the calculations during that 15 minutes or the peak of the cycle that the intersection itself has over capacity, so the queue length is increasing with each cycle of the signal over time. In those cases, he said when they're running these analyses they usually run a simulation in some traffic, which is where that queuing and blocking report she referenced comes from. He said just to confirm how far back the queue is actually extending so basically that's a footnote saying that the calculation from synchro which is separate from the syntax if we look at that calculation, it may not necessarily reflect the total queue length that you observe. For that reason, so a lot of times when you see that footnote if you run the simulation the queue length would be longer in the simulation because it's able to capture situations where the queue continues to get longer, and maybe you have to know the left turn queue stacks outside of the left turn lane and blocks so they are able to capture those types of simulation. Ms. Fabri referenced the Folly and Camp at the 95th percentile that basically almost every number across there has a pound on it, indicating the footnote so basically at every turn possible, no matter what direction you're going the queue is longer and Mr. Jehn said it may be longer. Then she asked if it is the same thing with the 50th that as well, as it says volume exceeds capacity queue is theoretically infinite which is basically saying the same thing so almost in every direction that you're turning has that. Ms. Fabri stated the footnote applies across the board and asked how would he characterize that intersection if he saw something like that, but it had that kind of stacking going on. Mr. Jehn asked if she were referring to the AM peak results specifically and she replied it is the 2020 to build amp and Mr. Jehn said that is something that they would typically see from their software in situations where there is a level "F" if you have long delays. He said there is congestion and there is no running from that and anybody that's driven through Camp & Folly during the right time of day is experiencing that. She said then it is a poorly functioning intersection to which he said yes. Ms. Fabri asked if he could characterize that as a poorly functioning intersection and he stated that subjectively you can say that. Ms. Fabri said those were the questions that she had on the report.

Chairwoman Lyon thanked Ms. Fabri for her questions and Mr. Jehn for the information that he shared.

Stephanie Grant asked to make a comment before Mr. Savage spoke. She understands there is a lot of talk about the congestion and that the intersection is an "F", and we're all acknowledging that. She said to the earlier point the fact is that it is a commercial lot and there will be a business built there that at some point will add to the traffic. So, she hopes the Traffic Study shows that KFC will minimally impact that intersection where potential other businesses such as Chipotle or Panera could have potentially a worse impact on an already tough situation and she wanted to share that.

Mr. Savage asked Ms. Grant what percentage of sales (tickets not dollar amounts) would be drive thru and what percentage would be in-store purchases. Ms. Grant said she would have to make a phone call to get those stats. However, she wanted to point out that they are trying to make this more of a dine-in patio seating to come inside and eat as opposed to the drive thru. They are making every effort to emphasize that. She said there are more ticket sales from dinner and from the drive thru and she can get those statistics pretty quickly.

Mr. Savage asked Ms. Grant if KFC participated in the Grub Hub and Uber eats program as well and she said yes they do. She said typically in this area their franchisees do, since this is a corporate store, she would have to take that question to her boss to see if corporate participates in those, but typically she thought the answer is yes. Mr. Savage said he would like some confirmation and to be honest he will tell where his mind is going. He said when you have these pickup deliveries they are compensated by time, speed, and efficiency, and asked if that was correct. He said as Ms. Fabri pointed out, we have a failing intersection and he thinks we can all safely conclude that if Ms. Corie is taking her children through the drive thru she's not going to be as rushed as a delivery service person, so he would like the answer to those two questions before he is turned over to the traffic engineer. Ms. Grant verified that her boss, Michelle Adams was on the phone to answer those questions. Ms. Adams said as a corporate location they only contract with Grub

Hub and do not have agreements with Door Dash, Uber Eats or any of the other delivery chains that Mr. Savage listed. They also have a pickup area as everyone like everyone had mentioned about Outback that has the pickup parking spots for those drivers. Mr. Savage thanked her and said that takes care of the question as to whether or not they have commercial delivery service. He said it doesn't matter if you have all four, if you have one, people are just going to use that one, so he understands the answer.

Mr. Savage said his second question is for clarification on the breakdown of number of tickets (not dollar sales) that goes through and the drive thru vs. in the store. He asked Ms. Adams if she understood the question and she answered yes. She stated that it depends on the location. They have several locations that are in urban areas where the bulk of their tickets are from the store. They have other locations that a good portion of their sales are drive thru. She said when COVID hit most of their sales were coming through the drive thru and some pickup. She said it would be hard to say what exact percentage for this particular location. As Stephanie mentioned they are focusing more on the dine-in and also on pickup of the digital orders. She would think that based on how they're building the store most of it would be dine in sales. She hates to give a percentage without knowing. Their plan as they build the store is to focus on the outdoor dining. They perceive that way the store will fit in with Folly Road. They expect people to be walking up, walking in, coming in, and dining. That is their primary focus but she could not give a percentage. Mr. Savage asked Ms. Adams if she was located in Charleston and she said she is in Louisville, Ky. Mr. Savage said he is trying to wonder where she is getting this notion that people are going to be walking to the store and where are they going to be walking from. Ms. Adams said that came from working with Kristen Crane and the vision of Folly Road, so they've taken a look at the Rethink Folly Road plan quite a bit with her. She knows the vision there is to make it more pedestrian friendly so they are working with that vision and that is why they keep emphasizing this walk up, the dining and the patio because they are thinking of that long term vision.

Ms. Hipp asked a question about Grub Hub, how many parking spots typically would be reserved for drivers. She thought Chick-Fil-A had perhaps six or seven parking spots reserved for Grub Hub. Ms. Adams said they generally have one spot and was unsure if it was outlined on the plan Thomas had for them. Ms. Hipp mentioned that the printout was small and apologized if it is there. Ms. Adams said she did not think it was outlined on the plan, but the intention is one space.

Ms. Hipp asked what happens if someone doesn't know how popular it would end up being and what happens if six Grub Hubs show up. Do they just figure it out for themselves? Ms. Adams said they can park in the dedicated parking spots or they can park in the strip behind the Chase Bank in the public spots that are owned by the Town.

Ms. Fabri said in looking at the plan, how big are the trucks that will come to deliver products because there is no turn around. Ms. Grant said this was mentioned to their architect and construction manager and she was told that it met their standards. They are going back and double check that. They know they need to take into account the turn radius for delivery trucks. Ms. Fabri said she wanted to walk through the scenario. She stated that the trucks are not going to be coming from Folly Beach. They are going to be heading down Folly Road towards Folly Beach or heading east and that means they're going to have to access the restaurant from Camp Road. Ms. Fabri said she did not know if they want their architect or project manager to answer that question but they are going to have to access from Camp Road so they will have to turn from Folly to Camp go in like they were going to the bank, go into that spot, pull in and then they'll have to take the dedicated right turn out is the only way that they're going to be able to access it as its currently drawn on the plan. Ms. Grant said if they are coming that way, it is the only way they can access it. Ms. Fabri said she assumes it is like a tractor/grocery store delivery truck. Ms. Grant said they can be quite large and asked Ms. Adams if she knew the answer to that question. Ms. Adams said she did not know the dimensions but they use a company that has a few different sizes and would have to check on that, but yes, it's usually like a tractor trailer style truck.

Mr. Savage asked the Traffic Engineer if he has familiarity with Folly Road, and he said yes. Mr. Savage said as you come in from Folly Beach towards downtown, you're going to approach Camp Road, and as Ms. Fabri pointed out, you're going to approach a failing intersection. He asked if there are no previous failing intersections from Folly Beach until you get to Camp? Mr. Jehn said he did not know that answer off of the top of his head but can tell there are thousands in the Charleston area. Mr. Savage said as people come to approach Camp Road right before they get to those lights, there's kind of a sweeping turn by the Goodwill store. He asked if there is a speed limit on the roadway. Mr. Jehn said he was blanking out right now and Mr. Savage said he thinks its 45 and asked if that sounds about right and Mr. Jehn answered yes. Mr. Savage said so those cars are coming at 45 around that turn and they hit that failing intersection as it presently exists, correct; Mr. Jehn asked if he missed something and Mr. Savage said he is trying to visualize the testimony that Mr. Jehn gave to Ms. Fabri in accordance with his understanding of that roadway and how people are driving. In other words, people can build up some speed up to about 45 as they approach that curve that then immediately meets that failing intersection and Mr. Jehn said ok.

Ms. Fabri asked when the Traffic Study was done. She believes Mr. Turner said it was in February or March. She asked Mr. Jehn if he knew and he said he didn't know if it was February or March, but it wasn't 2020. The original Traffic Study, which included the Chase Bank was conducted in 2020. Ms. Fabri asked is it outside of this project or is it something that he has seen on road projects before where they asked that a Traffic Study be done because of the sensitive nature of the roadway or because the capacity is seasonal? Mr. Jehn said he has done work in other states where that's the case, but not SC. Ms. Fabri asked should we look at June as well as February to address traffic going to the beach. Further Ms. Fabri said because you can expect the capacity, the number of cars on the road to be different, correct? And Mr. Jehn said it depends on the situation, but yes. She asked if he would say that the cars on Folly Road in June are different than the cars on a Saturday in February? Jokingly he said he is yelling at people to get off of his lawn on a Saturday; yes its worse. He said there is definitely an influx of beach traffic but specific to this location, the other half of it is that schools are not in session over the summer and you have a middle school adjacent to the site so that significantly influence patterns, especially in the morning. He said the reason why in SC they don't typically look at summer traffic volumes anywhere is because we'd like to collect data when school is in session to make sure that are capturing those commuting patterns of dropping them off and picking up kids at school as well as taking into account school buses on the road. He said this is to capture more of what would be considered an average time of the year because they don't have the time and resources to design and build all the roadways to satisfy the absolute worst case condition.

Mr. Smith spoke that it is important to know when this Traffic Study was done. In February or March of 2020 is what he understands, but when in February or March of 2020? Mr. Jehn said the Traffic Study was done in 2020 but they did not collect new data during the pandemic, so they followed the DOT guidelines and SCDOT staff was closely tracking traffic volumes day in and out across the pandemic charting the changes in volumes as quarantines set in and when they were lifted. Through the tracking they provided guidance to them as engineering consultants as to how to do traffic studies. He said across the country they were all collectively coming together and trying to determine the best way to approach things, and so far this specific study they took pre-pandemic data, extrapolated it, applied a growth rate to it based on the historic data on Folly Road to bring that from the past up to 2022 as opposed to collecting new data. Mr. Smith said he was happy with the response.

Mr. Smith asked Ms. Grant to explain how KFC is different from Zaxby's and Chick-fil-a. He asked her this question last month and asked if she recalled how they are different. Ms. Grant said her first point is that KFC is better than them, they serve more families and have meals for everybody. They have an individual chicken sandwich that anyone can purchase. She said what they are known for and what people come to them for is the bucket of chicken to serve their family. She said they are unique in that way; in that they serve families. They serve individuals but the focus is on the larger meals. Mr. Smith said he also

recalled that people would be getting the chicken on the way to the beach and Ms. Grant stated that they would be passing them on the way home from the beach.

Ms. Hipp asked what time they are open 10:30 or 11:00? Ms. Grant said it depends on the location, but between 10:30 and 11, is when we open and they do not serve breakfast. Ms. Hipp recalled going to KFC when she was in college and thinks there are going to be a lot more people going to the beach later in the afternoon and think they'll have a lot of people getting buckets on the way.

Chairwoman Lyon thanked the applicants for answering all of the questions so thoroughly. She said if no one else has questions they will move on with discussion. She said there is a motion on the floor to approve the application with a second and the Board may discuss further, amend, table, or vote on the motion.

Mr. Savage asked to hear Ms. Fabri's take on the responses she received from her questions. He said it appears that she has a better grasp and would like her to explain what her understanding is, not only from the submissions, but the answers in a nutshell. He said the road is an "F" and he understands what an F minus is (in other words he gets it). He said Ms. Fabri's questions were good and he tried to follow along and asked her to explain.

Ms. Fabri said the level of service in the a.m. is an "F" and the level of service is very close to an "F" in the pm and this is on a recently improved intersection. This is what concerned her when she was reading all of this and asking people and had a conversation with Mark Johnson at the Town. She said an "F" level of service is 80 seconds per vehicle wait so what the information was is that it would be not 80 seconds, but 154 and 159.5 respectively am and pm so this is way beyond the 80. She said the thing that concerns her is that the Traffic Study doesn't measure, but it can account for the behavior of people in traffic. When you make something worse, what is the behavior of people? They try and go around, go faster, or find a shortcut especially in the am and pm peak when they're late for something or trying to get their kids from school or trying to pick up their kids from school or whatever it may be. She said by building this, in the pm it is going to make it an "F" and in short order if it isn't ready because we're not taking into consideration Bennett's Bluff. There are two houses, one neighborhood away from way worse than 80 seconds. She said by the engineers own admission, the queuing capacity exceeds their measurements, the volume exceeds their measurements and a perfect example of this is if you go to Johns Island and you look at the improvements they made. You have gas station on the side. It's basically the same setup. Its coming to a light onto the island with three lanes – you have a right turn lane, drive through lane and dedicated left turn lane. Then on the opposite side of Folly Road, its two lanes of traffic turning on to their which is the same as it is for that same intersection and where that gas station is with people trying to pull out or somebody trying to pull across three lanes of traffic. From the bank to get into that gas station, there are accidents there all the time and that is what concerns her because the Traffic Study lays it all out there. She said the numbers are the numbers, they don't lie and the engineer, Mr. Turner, at their prior meeting and Mr. Jehn in our meeting tonight confirmed all of those things that its bad, its failing, it's an "F" .

Mr. Savage said if he were inclined to want to disapprove the application he would want a decision to survive an appeal and a circuit court would look for arbitrary and capricious and where he wants her to help him is and at some point they can build a conforming business here that is going to negatively impact the existing traffic and they can do that. He asked how would he articulate a disapproval teasing out the increased traffic from a conforming business. He does not grasp enough of the traffic report and one of the reasons that he asked to continue this was for those concerned people to go out and get a Traffic Study because we are not traffic engineers and the Town does not have one. He asked if he could be told how he would justify a denial on traffic reasons by showing the increase of this particular special exception as compared to a conforming use and asked Ms. Fabri if she understood his question. Ms. Fabri said she understands his questions. She thinks of the examples that were brought up that it could just as easily be a dry cleaner. A Panera Bread is not going to go on a parcel that size. She said if you look at what Panera

Bread's model is, they are usually in a shopping center where there is plenty of parking capacity. She thinks the best solution that she found and has researched is that she talked to an engineer in Columbia and that we hire him to read their Traffic Study and give them his input on it. She thinks we need to do our due diligence. As well as she understands it, she still doesn't understand the engineering stuff behind it and thinks that we have the ability to meet with a traffic engineer and have him look over the Traffic Study and make suggestions. She thinks that's the best solution because we all have concerns and our duty is to the to make the best decision for the citizens of James Island in this situation. She is not trying to put an undue burden on the applicant by asking this. What would be helpful is for the Board to hire somebody that could read their study, who is one of their engineering peers who has the same degrees as they do that could look at it and say, it is what it is, any other business can go there, it's never going to an "A" this is, you should go ahead, this is a fine Traffic Study, or whatever you should go ahead with it or somebody who might lay eyes on it say... well has DOT reviewed this yet? I would ask DOT this. Maybe we should look at summer capacity... something you know. She thinks personally to try and be as best informed about making the decision would like to see the Board hire an expert to review the plan, the site plan and the study and give input.

Mr. Savage said one of his concerns is that you could put a Chinese restaurant in there. And if you're going to have Grub Hub and all because no one eats at a Chinese restaurant... he's sorry, they just don't do it. But, then you have these people that are just whipping in there making money on speed and it may be that a conforming business that operates as a takeout like this might even be a little more harmful than the applicant. He said he doesn't know and shares his frustration of not having a traffic engineer with the Town. Unfortunately, those people that were in opposition at the last meeting did not pick up on the idea of getting together and investigating the Traffic Study. The last thing we want to do is make a decision that will be overturned and we have to base our decisions on the evidence as presented. He said he was sort of implying from Ms. Fabri's testimony to think there was probably enough by the applicant's own admission that moving this from a poor "E" to borderline "F" would be sufficient to deny on traffic, but he agrees that he'd like a little more information on it. He also had concerns as to whether or not it was a fit for the character of the space. He looked at a lot of these letters and a lot of them are ... "oh no... not another fast food place" but he remembers the evidence from the staff that there are, he think 105 businesses, of which only 8 were fast food. He understands where the community opposition comes because they don't know what fast food restaurants are in the City and which ones are in the Town. Mr. Savage said he is not opposed to her proposal but is unsure of the procedure of how we do that.

Chairwoman Lyon corrected that there are only five (5) fast food restaurants in the Town: Chick-Fil-A, Bojangles, Dunkin Donuts, Sonic, and Zaxby's and there are 106 other businesses. Mr. Savage said he understands where the opposition is from the community because they view Folly Road as one entity, when in fact a lot of those businesses are in the City. Ms. Fabri stated that we're looking at it from the aspect of this falling under the purview of the Folly Road Corridor or Rethink Folly Road and should take into consideration if it's in the County, City, or Town. It should be looked at as a whole because Dunkin Donuts or KFC is not just the Town, it doesn't operate in a vacuum, it's going to impact whatever else is in that area. She knows personally that it is their responsibility to look at the entire corridor and consider that when making a decision. Mr. Savage said for him personally you have to pass the safety test. If you pass the safety test then you can look at the aesthetic analysis, but he is with her (Ms. Fabri) and has questions.

Ms. Hipp said one of her questions was concern whether it met Criteria C. The Traffic Study is telling her how long it's going to take to get from point A to point B, but it is not investigating the number of accidents that happens at that intersection. Is she correct in how she is seeing this? It doesn't say there were eight accidents last month at that intersection driving northwest. She explained away from Folly as northwest and then you turn right into the KFC. She said you're going to go right into the ingress where you're going to go right onto Camp Road. She assumes if there are a lot of cars that could create a bottleneck which on that curve is very dangerous. Ms. Fabri said that was one of the questions that she broached with Mark

Johnson and with this traffic engineer to whom she spoke with on the phone is if we could get the accident data and spoke to Ms. Crane or Flannery, We can get the data, we don't have the accident data for that intersection and where most of the accidents occur. We don't have that and it wasn't included in the Traffic Study. She said to Mr. Savage that we would be within our right to say, "you know the data is right here and it shows that during the peak, it's going to be worse during the am peak and during the pm peak, and its going go from an "E" to an "F" and it's going to affect the intersection.

Mr. Savage referenced the testimony that it is up to the local policymakers, in other words its within that range where it is and he thought that was very effective. He said at some point how do they ask the Bo Wilson (BZA Attorney) how can they call a witness? How would they retain a traffic engineer and who is going to pay for it, the five of them chip in? He doesn't know but those are questions he has and if we would like to go in that direction he is not opposed to that. He doesn't know the procedure of finding out how to do it. Chairwoman Lyon said it is her understanding that the Board would make a request to the Town Administrator and Mayor who are in charge of the budget. There is money in the Town's budget for the Board to call witnesses. The Board would need to present that and have them provide the credentials and they would process a purchase order to do it. She said it is within the Board's purview to do that if that is what the Board decides. She said what concerns her that she is back to what else could go in there. She said the people have the right to use their property, what might go in there that doesn't need to come before the Board. She said what if we got (just say a devil's advocate) a contractor who had a bunch of construction trucks and had created a lot more traffic during the peak hours. She thinks Amy had great questions on due diligence, we need to do that because it is so important, but we just want the Board to make a sound decision and do what is best for our community, which is what we are tasked with. She said there are a number of commercial businesses that can go in the commercial corridor without coming to the Board, such as a catering business, a restaurant, contractor's office. You could have an office building with a doctor's office with people coming and going. She noted that this is a terrible traffic intersection and we don't want anything that is going to make it worse. She stated that if we need more information, or an expert witness, we need to look at that. Mr. Smith said what has been said is sound advice and he think if they can have someone review this study as Ms. Fabri suggested. Ms. Hipp agreed with everyone saying she doesn't understand enough about it but knows what her gut tells her and her residency of Charleston tells her what that street is like. She doesn't need a Traffic Study to tell her that its dangerous so she would like to understand what type of accidents and what that rate. Dr. Mignano office near the intersection and she has seen and witnessed many accidents. She thinks more information is needed. Chairwoman Lyon stated that it sound like everyone is in agreement for more information about the Traffic Study by a member of their peers, another traffic engineer.

Chairwoman Lyon said she would like to put the request to a vote because the Board is in open session. She said in the future if a Board member has something come up where they want to have an expert witness or request, they can come to her or whoever the Chair is at the time and make a request to the Town staff. She is sorry the applicant will have to wait longer for a decision but since its come this far and the Board feels it needs more clarification she hopes the applicant understands and would want the Board to make the best decision which would be good for them if it is approved, and understand if it is not approved, that it is an unsafe situation and does not meet the criteria. She would hope that the applicant understand that it is a good idea to have the Traffic Study reviewed. Chairwoman Lyon said there is a motion on the floor to approve and a second for discussion, so she thinks they should **move to table the main motion to request a professional opinion by a traffic engineer, a peer to review this Traffic Study.**

Ms. Fabri moved to have a traffic engineer retained by the Town for advice to the BZA on the Kimley Horn Traffic Study and any other discussion related to this proposed project on the site on Folly Road

Chairwoman Lyon asked Mr. Wilson for his assistance with the motion asking if they could table the motion on the floor or amend with this language or to make a new motion. Mr. Wilson said they do not want to

amend the motion, but to table the motion to allow the BZA to request funds from the Town to retain a traffic expert and receive that report and act upon that report before the next meeting in 30 days. He said basically a continuation of the tabled motion to accept that information.

Clayton McCullough, KFC Attorney, requested to ask Mr. Wilson a question. He had printed a copy of the BZA's Rules of Procedure and asked Mr. Wilson if it is okay to continue the request for a second time. He said Article III, Section 5 states for good cause, the Board can do this once. Is it a violation of the procedures and the applicant ultimately was deemed to be out of time as a result of another postponement. He is not trying to create a quarrel. He is worried because of his interpretation of it and wants to make sure the applicant is protected. Mr. Wilson said the State law says a reasonable time and the BZA's rules say a one-time continuance. He did not have the Rules in front of him but said if they prefer to press the issue we can call for a vote. Mr. McCullough said he doesn't want to press the issue; his folks need some answers because they have a contract. However, he is reading the room and not trying to press the Board to make a vote tonight. He wants to make sure whatever is on the record is clear that the BZA understands that this is intentional that they are able to come back because his reading of the Rules gives him concern. Mr. Wilson said he is sure with the applicants consent additional time can be granted. He said if a vote is desired now that is within their rights. If they consent to a 30 day extension to get the assuming report he is fairly certain the report will be authorized to be retained but at least getting that report and getting it to the BZA within 30 days will be acceptable to the applicant.

Ms. Grant spoke that they are under contract and weren't expecting this to be pushed another time. She said they were pushed back the last time so it's a little disheartening because KFC is in a position now where they will be in default of their contract and it's not a good spot to be in. Mr. Wilson asked when is the time period when they will be in default. Ms. Grant said they were supposed to have permits in two days which they cannot pull until the Special Exception is granted. Mr. Wilson asked if she is saying if they didn't have a permit in two days they would be in default? He said because they would not get the opinion of the Board in two days. Ms. Grant said it would be better to go back to the landlord and say we got our Special Exception and we're going to submit for the permits and this is the timeframe to get them than they (BZA) decided to push it another 30 days and she doesn't know what that decision is going to be then what type of amendment is she supposed to come to with the landlord at that point. Mr. Wilson said he doesn't know what default means under their contract and doesn't know if the contract can be re-negotiated but guesses he will leave it to her if she wants to exercise the right to call for the vote at this time. He said that is her option and would defer to Mr. McCullough on which is the preferable course of action for her. Mr. McCullough said it is entirely up to the client. He just understands that they can protect the opportunity to come back. He stated understanding the default issue and that's going to be a decision that the applicant needs to make. Mr. Wilson asked and it was granted for KFC's attorney to confer with his client on this matter.

Ms. Grant spoke stating that she doesn't want this to come across in a bad way but why wasn't this request made weeks ago and what assurances do they have that this will be done now and that they're not in the same position a month from now. She said if it's going to keep being pushed back they all need to make a decision. She hopes that this is a good faith effort that the Board has someone in line that they're going to pay and get the results and they come back next month and really analyze the information. She think that's one scenario but don't want to have what happened last month and this month happen again. Chairwoman Lyon stated it is her understanding that one of the Board members has found an expert in the state of South Carolina, who, while she doesn't have timeframe, it is her understanding they can fairly quickly get them a written report.

Chairwoman Lyon apologized that this didn't come up sooner and could have been addressed earlier. She said if Ms. Grant is uncomfortable with that the Board could address it now and put it to a vote. She mentioned that people in the community are concerned and the Board has had much opposition from the

public. She said we have to live in this community and just want to be sure that we do our due diligence. Ms. Grant replied they very much so want to come in and be a part of this community. That is why she keeps flying in for these meetings. They want to be a part of this community and have its best interests at heart. They are not asking for a change in zoning and as they've all mentioned and the property is going to be something someday. A Traffic Study wasn't required, but they provided it in good faith and want to work with. Ms. Grant said she is looking for a decision from the Board that there is assurance that they will be paying someone to analyze the Traffic Study and that by next month they will have those findings and a decision can be given to them.

Chairwoman Lyon assured Ms. Grant that she has spoken with the Mayor and the Town Administrator and that is doable that the Board has the authority to do that and she will ask them to jump right on it tomorrow to get it lined up. She said the Board members would feel more comfortable with understanding the Traffic Study because it is so highly technical and while a Traffic Engineer is here tonight and his explanations were great the Board would like one of his peer to review it to give them a level of comfort in understanding the Traffic Study. Whatever goes into the property is going to cause traffic either way and feel strongly about understanding the study. She said there are many members of the community that have concerns and the Board wants to give everyone the opportunity to get as much information as they can. Chairwoman Lyon recognized that Ms. Grimbball, the Town Administrator was nodding her head as a confirmation that she would contact the engineer tomorrow regarding a peer review. Chairwoman Lyon said she did not have the engineer's schedule but feels we could get the information we need in a timely manner. She hopes this will help Ms. Grant with her decision. She told Ms. Grant and Mr. McCullough to take all the time they need to discuss this matter.

Before conferring with KFC attorney, Ms. Grant pointed out that Ms. Fabri mentioned about the addition to traffic and it's not going from 80 to 159, the addition to Chase and the restaurant is 8 seconds; 5 ½ seconds between Chase and their restaurant. She said what Ms. Fabri is talking about is 80 to 160 is the range that is considered "F". Ms. Grant said she wanted to clarify that it is 5 ½ seconds between the two businesses that are there. Upon Ms. Grant's return she thanked the Board for giving them the time to consult with their attorney. She said they would like to be a part of the Town and understands that the Traffic Study is very detailed and they do need experts to help walk them through it. She said they do not want to deprive the Board of that opportunity and are willing to push their request another month. She hopes by next month the Board will be able to make a decision one way or another but they really want to be here and will work with the Board however they want. Chairwoman Lyon thanked Ms. Grant and said the Board will do its due diligence and they appreciate KFC's flexibility and looks forward to getting the information and going forward.

Chairwoman Lyon moved to table the motion on the floor in order to request funds from the Town to hire a Traffic Engineer to review KFC's Traffic Study and advise, Mr. Smith seconded.

VOTE

Ms. Fabri	aye
Ms. Hipp	aye
Mr. Savage	aye
Mr. Smith	aye
Chairwoman Lyon	aye
Passed Unanimous	

Chairwoman Lyon moved to request funds from the Town to hire a Traffic Engineer to review KFC's Traffic Study and give advice. Mr. Savage seconded.

VOTE

Ms. Fabri aye
Ms. Hipp aye
Mr. Savage aye
Mr. Smith aye
Chairwoman Lyon aye
Passed Unanimous

Other Business: Chairwoman Lyon said the applicant may want to hear this next agenda item because it relates to the potential time change for BZA meetings. Chairwoman Lyon spoke about an incident that occurred at the last BZA meeting when the Board was in executive session. She said the staff reported hearing what they thought were gunshots behind Town Hall. Chairwoman Lyon expressed concern for safety of the staff. Often when the Board meets it can hear up to two cases and meetings can run quite late. The Board discussed and gave suggestions on meeting times. (Ms. Crane provide information from other municipalities meeting times). Mr. Savage and Mr. Smith were in agreement to whatever time is decided upon. Ms. Fabri was in favor of meeting early and mentioned that Charleston County meets at 5:00 p.m. but is in favor of whatever time is decided upon. Ms. Hipp talked about the time change and asked how long will the Board be able to meet by Zoom. Ms. Crane stated that the Town’s State of Emergency has not been lifted so the Board can meet by Zoom until it is lifted. Chairwoman Lyon suggested 6:00 p.m. in order to give the public time to get to meetings after work.

After some additional discussion, Ms. Fabri asked staff what time would they like to meet and Ms. Crane said 5:00 p.m. She also explained that she has friends who attends meetings and felt like 7:00 p.m. was too late for those with young children. It was also determined that staff stays at the office for a couple hours before the meeting begins. Mr. Smith moved to change the meeting time for the Board of Zoning Appeals to 5:00 p.m. through the remainder of the year, Ms. Fabri seconded.

VOTE

Ms. Fabri aye
Ms. Hipp aye
Mr. Savage aye
Mr. Smith aye
Chairwoman Lyon aye
Passed Unanimous

The change in time will be published and advertised by staff. Ms. Hipp gave notice that she will be absent at the August 16, BZA meeting.

Respectfully submitted:
Frances Simmons
Town Clerk and Secretary to the BZA