

TOWN OF JAMES ISLAND  
BOARD OF ZONING APPEALS  
SUMMARY OF AUGUST 15, 2017

Members present: Commissioners: Jim Fralix, Jason Gregorie, Brook Lyon, Vice Chair, Sim Parrish, and Chairman, Roy Smith, who presided. Also, present Kristen Crane, Planning Director, Leonard Blank, Town Council, Bonum S. Wilson, BZA Attorney, and Robin Flood, Acting Secretary (for Frances Simmons).

Call to Order: Chairman Smith called the Board of Zoning Appeals meeting to order at 7:00 p.m.

Prayer and Pledge: Chairman Smith asked for a moment of silence, afterward followed with the Pledge of Allegiance.

Compliance with the Freedom of Information Act. Chairman Smith announced that this meeting has been noticed in compliance with the South Carolina Freedom of Information Act.

Introductions: Chairman Smith introduced the members of the Board of Zoning Appeals, Town Staff, Town Council, and BZA Attorney.

Review Summary and Rulings from the May 16, 2017 BZA Meeting: Chairman Smith asked if there were corrections to the minutes. There were no corrections. A motion to approve was made by Mr. Parrish, seconded by Mr. Gregorie and passed unanimously.

BZAV-3-17-009

425-16-00-124

1235 Camp Road

Variance request for the reduction of the 20' required rear setback by 11'10" to 8'2" for the encroachment of a building addition in the Community Commercial (CC) Zoning District.

APPROVED WITH CONDITIONS

Brief the Public on the Procedures of the BZA: Chairman Smith explained how the Board of Zoning Appeals hearing would be conducted.

Administer the Oath to those Presenting Testimony: Attorney Wilson swore in the persons who wished to offer testimony in tonight's case.

Review of the Following Application:

\*Mr. Fralix noted a correction on the agenda, under "New Business", that both cases have the same tax map number. Mrs. Crane apologized and stated that the correct tax map numbers are on the radius maps in the Board's packets.

BZAS-7-17-010

TMS# 425-02-00-171

Special Exception request for the placement of a Small Animal Boarding Facility in the Community Commercial (CC) Zoning District and the Folly Road Corridor Overlay (FRC-O) Zoning District on property located at 831 Folly Road.

Mrs. Crane provided the staff's review stating that the applicant, Mr. Ryan Reed of the Wag Factory, is requesting a Special Exception for the placement of a Small Animal Boarding Facility in the Community Commercial (CC) District and the Folly Road Corridor Overlay Zoning District (FRC-O) at 831 Folly Road.

Adjacent properties to the north, east and south are also in the Community Commercial Zoning District. Adjacent properties to the west are in the Low-Density Suburban Residential District (RSL). The Overlay's land use recommendation for the subject property is Commercial, which matches the current Zoning District. Other uses within 300' of the subject property include restaurants, fast food restaurant, vehicle service, repair and maintenance service, watch and jewelry repair, retail or personal services and outdoor entertainment.

The applicant's letter of intent states, "*The property the Wag Factory occupies at 719 Folly Road has been for sale for some time and even had an accepted purchase agreement last year. We plan to provide James Island with a state-of-the-art pet care facility. This would be accomplished by demolishing the current structure and building a new 4,275 square foot building with great considerations made regarding the architecture and aesthetics.*"

According to §153.045E, Special Exceptions Approval Criteria of the Town of James Island Zoning and Land Development Regulations Ordinance (ZLDR), Special exceptions may be approved by the Board based upon the six (6) criteria of the Finding of Facts reviewed by Mrs. Crane.

Mrs. Crane stated that the Board may approve, approve with conditions or deny Case #BZAS-7-17-010, (Special Exception request for the placement of a Small Animal Boarding Facility in the Community Commercial (CC) Zoning District at 831 Folly Road), based upon the "Findings of Fact" unless additional information is deemed necessary to make an informed decision. In the event the Board decides to approve the application, they should consider the following conditions:

1. Prior to obtaining a Zoning Permit for the proposed site improvements, the applicant/owner shall install tree barricades around the grand and protected trees on the property, as described in §153.334 of the Ordinance.
2. An 8' wooden privacy fence lined with "Acoustifence" by "Acoustiblok" or an approved equivalent acceptable to staff shall be installed and maintained along the entire rear perimeter and around any outside enclosure to ensure quietness.
3. Any indoor boarding or play areas, including walls and ceilings, shall be lined with "Acoustiblok" material or an approved equivalent, acceptable to staff.
4. Chronic barking dogs (dogs that exhibit excessive, continuous or untimely barking or howling which interferes with reasonable use and enjoyment of neighboring properties) shall not be allowed for boarding or daycare.
5. There shall be no more than 25 dogs for every facility staff member present outside during outdoor playtime.
6. A 24-hour web cam with video shall be available to Town Staff when requested with viewing ranges of outdoor playtime.
7. Noise-reducing construction and maintenance of the noise-reducing construction shall be subject to the discretion of the Town as to whether quietness is or has been ensured.
8. Restriction of outside activities and/or loss of Business License may occur at the discretion of Town Staff.

Questions from the Board:

Mr. Gregorie asked if letters or emails in support or opposition had been received and Mrs. Crane said the letter placed before the Board was received today.

Application presentation:

Mr. Ryan W. Reed  
8766 E. County Road, 200 N  
Seymour, IN 47274

Mr. Reed addressed the Board as the owner and founder of the Wag Factory. He recalled appearing before the Board last year for a Special Exception to place a small animal boarding facility at 1006 Folly Road (approved with conditions). After that meeting, Mr. Reed said there were some site conditions that made the purchase too expensive and he did not follow through with it. Now, a year later, he has found another property, across the street from the first location at 832 Folly Road.

Mr. Reed gave background when he was a first-time business owner and the idea for an animal day care on James Island. He fast-forwarded to today by thanking the Town's citizens for the support that has allowed him to expand, invest, and develop a true state-of-the-art facility they plan to have. Mr. Reed said he hopes this happens, as it will help advance the Town's efforts in the Folly Road corridor to make it more accessible, aesthetically pleasing and pedestrian friendly. Mr. Reed said the property would be a complete redevelopment and it would adhere to the Town's long-term plan and vision (sidewalk, landscape, position the building toward the front of the property, and adherence to the setbacks and other requirements in the Folly Road corridor). He further stated that one of the advantages of building a new pet care facility would implement a variety of noise reduction and sound proof materials that they were unable to do in the building they leased. Mr. Reed noted that he would be working with architects, contractors and Acoustiblok; one of the nations' leading soundproofing companies. He said James Island and its surrounding communities' benefits from the Wag Factory's presence. Last year realtor.com named Charleston the #1 area in the nation for dogs; which can be seen through his business. The Wag Factory often draws beyond James Island, where this type of business does not exist and draws people who live downtown and those that vacation here. The Wag Factory was voted Best of Charleston by readers of the Charleston City Paper, received the Moms Choice Award by the readers of the Low Country Parent Magazine, and on-line ratings are very high. The Wag Factory provides well-paid entry-level jobs in the community. Mr. Reed said according to the staff's review, many the conditions are similar to the ones that were approved for the Special Exception last year. He gladly accepts the majority of the conditions, however, he asked the Board to reconsider Condition #6: 24-hour web cam with video shall be available to Town Staff when requested with viewing ranges of outdoor playtime. He feels this would be inappropriate. In addition, Condition #8: Restriction of outside activities and/or loss of Business License may occur at the discretion of Town Staff. He said this is vague and it concerns him given the fact that he is making an investment in excess of \$1 million, relying solely on the long-time success of his business.

Question from the Board:

Mr. Gregorie asked the reason the outdoor play area could not be in the front rather than the back. Mr. Reed said he figured it would not be good for the Folly Road Corridor having a fenced-in area facing Folly Road; this was done mainly for aesthetics for the corridor

In Support:

Jason Williams, 1118 Blue Marlin Drive: owner/operator of Chic-fil-A, (located next door to the proposed location of the Wag Factory) supports the application; it would be a good addition for Folly Road and area businesses.

Samantha McDougall, 424 Wade Hampton: Manager, Wag Factory, has run the business for some time and takes pride in it. She think James Island definitely needs the Wag Factory and it is a valued-service. The staff does more than play with dogs and picks up "poop". She has worked with dogs for some time and is able to help people to keep their dogs. It would help James Island if they could move into a bigger and a better location. To be able to expand would really help James Island.

Question from the Board:

Mr. Gregorie asked who the general clientele is. Are they James Islanders dropping their dogs off for travel, or are they out-of-towners. Ms. McDougall said their main clientele comes from James Island, West Ashley, and downtown Charleston. Also, MUSC, doctors/nurses, and travelers during the busy months.

In Opposition:

Jackie Stringer, 840 W. Madison Avenue: has lived at this address since October 1987. She lives directly behind Chick-Fil-A and contends 24/6 with the smell of old grease- - Chick-Fil-A is closed on Sunday so this a respite. Traffic on Eugene Gibbs is horrendous. Now to talk about opening a dog kennel (dogs are not particularly religious), so it is 24/7. She doubts seriously that an 8-foot fence, the height, air above, the acoustic or otherwise, will keep the noise of dogs barking for their owners. This is understandable but she does not want to hear it. She has had enough and she does not want the smell of dog poop intermixing with the stink of Chick-Fil-A's old grease. W. Madison used to be quiet neighborhood in Centerville and is no longer. The residents are fighting for the last remnant of a nice area in the Town but it seems every two minutes there is another oil or lube joint, bar, or something being built in their area. They are done with all this and feel they are being forced to leave. Mrs. Stringer also submitted an email in opposition dated 8/15/17.

Glenda Thrasher, 828 W. Madison Avenue: lives directly behind the property. She loves animals and used to have a dog that barked sometimes. He passed away and she did not get another animal. The kennel that the applicant is proposing would back up to the fence that divides his property from hers'. She feels she would be robbed of her right to have quiet enjoyment on her property if this request is allowed to go forward.

Mary Ann Henry, 825 W. Madison Avenue: is in full support of property in the Town of James Island to be approved as sustainable and livable, not just a drive-thru commercial strip between Folly and Charleston. The neighbors are already battling the noise from the Blues Cajun Kitchen with their electric guitars at night. To add 25 dogs outside or any dog (neighbor with Walker Hound) keeps the neighborhood awake. She does not care about the acoustics and staff recommendations in a 4,000 sq. ft. million-dollar facility. It is a problem waiting to happen. They just want to live in their neighborhood and really do not need more noise.

Steven Hodskins, 822 W. Madison Avenue: lives in the property that is caddy-cornered to the subject property. He reiterated most of the concerns that were brought forth: Noise: he believes architects and engineers can build an indoor facility that can handle this, but his biggest concern is the outdoor area closest to his property. He understands there will be an 8-foot fence, but does not know if that is sufficient to contain the noise for the number of dogs. Waste: how will it be handled, where will it be stored, how often will it be emptied.

Mr. Fralix referenced the fact that the dogs would be outside during playtime, not at night. However, he said the applicant could address this.

Rebuttal:

Mr. Reed responded to the comments that were raised about smells. He said if one were to visit his current facility, they would not notice a smell because they dispose of feces accordingly. He has a letter from DHEC stating that they are acceptable and smells are a non-issue. Regarding extra level of noise, he stated that he cannot help noise coming from any of the other businesses around him and the growth of the island but he will do his best to maintain a quiet facility and use the best products in the industry to adhere to that. He noted that one of the conditions, and they adhere to, is no chronic barking dogs are allowed for boarding or daycare and they adhere to that. Mr. Reed also answered that there are 25 dogs per facility member. If there is 75 dogs outside playing, (which is typically not the case), there would be three staff members. Usually they adhere to a 1/15 or 1/20 minimum for the staff to dog ratio.

Questions from the Board:

Mr. Fralix asked when outdoor playtime is. Mr. Reed said the facility opens from 7:00 a.m. to 7:00 p.m. and the bulk is 8 a.m. to 5:00-6:00 p.m.

Mrs. Lyon asked how the feces is disposed. Mr. Reed answered it is sealed in a bag and taken to the curb with normal trash. He said this is standard procedure for most kennels and they have not had any problems with smell. Mrs. Lyon asked if all of the dogs are brought in at 6:00 p.m., Mr. Reed said yes, generally speaking. Mrs. Lyon asked if the dogs are ever out overnight and Mr. Reed said no, there is no outside time. The dog boarding enclosures are indoor and there is no staff from 7:00 p.m. to 6:45 a.m., the dogs are generally quiet and sleep during that time. Mrs. Lyon asked if it would be appealing to the Folly Road Corridor, the Town, and Mr. Reed, if he could resituate the play area to the front, if that is a possibility. Mrs. Lyon asked where the dumpster would be placed. Mr. Reed said he has been meeting with contractors this week and his initial thinking was there would be a fence toward the front, which would not be the best-case scenario. Mr. Reed said working with the Architects, they could situate it in such a manner to have a nice façade, but move that toward the front of the property.

There was some discussion among the Board members about where the dumpster would be placed. Mr. Reed said he does not have a dumpster now and he has not researched when the trash is picked up. At his current and the previous facilities, the trash was picked up two times a week. The Wag Factory has never had a dumpster, they place waste in closed cans.

Mr. Gregorie asked if the outdoor play area was moved to the front of the building; from the back of the site would Mr. Reed be amenable to making the front façade of the fence along Folly Road a different material other than wood, such as a decorative masonry. Mr. Reed showed the Board an artist rendering of the facility, that the aesthetics could be maintained by shifting it to the front and possibly moving the parking to the rear. Mr. Gregorie asked, based on the artist rendering, what is the general concept of the material, to which Mr. Reed explained as he showed the rendering. Mr. Gregorie recalled that the Board approved this variance request a year ago for another parcel. He then asked Mr. Reed to explain what was specifically wrong with that property and why the development did not go through on that parcel. Mr. Reed explained after the Board's approval he had a soil test conducted as they are expensive, costing him \$7-8,000. During the testing, it was discovered that the first seven (7) feet was organic material and they would have to do muck and fill and replace it with good dirt; below that, they would have to pile down 40 feet to get to solid ground to be able to support a new building. Mr. Reed said this was \$100,000 as extra site work and he figured it was not in his best interest to purchase the property.

Chairman Smith closed the meeting to the public and asked for a motion and a second in order for discussion.

Mrs. Lyon moved to approve BZAS-7-17-010, TMS# 425-02-00-171 Special Exception request for the placement of a Small Animal Boarding Facility in the Community Commercial (CC) Zoning District and the Folly Road Corridor Overlay (FRC-O) Zoning District on property located at 831 Folly Road, with the eight (8) conditions as presented by staff. Mr. Parrish seconded the motion.

Discussion:

Mr. Gregorie said he did not know how he would vote. He said this is a beneficial and needed business on James Island; however, he has concerns about allowing a second special exception across the street in the Town. Another parcel before this one was approved, and special exceptions stay forever with that piece of property. Mr. Gregorie shared two other points: if the request prevails, would the Board consider adding conditions that would restrict outdoor playtime from 8:00 a.m. to 6:00 p.m. and consider placing restrictions

on the site, such as moving the play area to the front of the site and the building and parking moved to the rear of the site.

Mrs. Lyon said she would support the 8:00 a.m. to 6:00 p.m. playtime and although the applicant is already doing that, it would be good to have it stated in the record. She would also support moving the outdoor play area, if the request is approved. Mrs. Lyon summarized the entire case, and the fact that it came before the Board last July. She commented that the Board took the case very seriously and a number of residents came and spoke in opposition to it. She stated that the Board is very concerned about the residents in the Town. The Board of Zoning Appeals is a Quasi-Judicial body that depends upon findings of facts and last year, the Wag Factory met the criteria for approval. As she see it, tonight, they have met the criteria for approval, which is why she made the motion to approve. Last year, a site visit was done and Mrs. Lyon said she was very impressed with the facility. There were no smells or chronic barking dogs. Disruptive dogs upset the entire facility and those type of dogs are not allowed to stay at the facility. This is not only for the neighborhood but also for the peace of mind of the other dogs and the business. Mrs. Lyon said she cares about the residents and does not want a business that would upset residents. She mentioned that last July the request was tabled, and came back to the Board in August. Much research had been done by the Board. Information on noise control materials, such as Acoustiblok and Acoustifence was studied, so there is knowledge and history of this case. Mrs. Lyon said she felt new residents should be aware that the Board is informed of the building materials and as the applicant stated, the request was approved with conditions last year. Mrs. Lyon reviewed the conditions regarding the 24- hour web cam. She reads as availability to Town staff upon request if issues were to arise not as government intrusion by the Town. The condition regarding restriction of outside activities and/or loss of Business License may occur at the discretion of Town staff. It is her understanding that a business license could be revoked anyway for infractions and this condition is not as an ax to hold over an applicant's head. Mrs. Lyon said she wanted to address these issues, as they were what was voted on last year. With Mr. Gregorie's suggestions, it may make it more palatable for everyone and still allow the applicant his business.

Mr. Fralix said he feels there is a need for the service because of the facts that have been generated and from the last time. However, he is not ready to support it because he believes more dialogue is needed between Mr. Reed and the residents. He asked if the applicant is doing enough to try to ameliorate what the residents would have to face and what they are already facing.

Attorney Wilson referred to Mr. Gregorie's comments about the special exception granted to the last location; and, whether it would last in perpetuity. Mr. Wilson said he would not make that assumption without looking into it and would be glad to do so. He said the exception may or may not last into perpetuity depending upon the applicant. Chairman Smith said Mr. Reed was the applicant. Mr. Wilson stated that Mr. Reed was the potential buyer not the property owner. Mr. Wilson informed Mr. Fralix that he had a copy of the Town's code Section 90-16 that refers to nuisances, noise; what is/is not enforceable. Mr. Gregorie asked Mr. Wilson to read the regulation, which follows:

Section 90-16: It shall be unlawful for any person to keep, possess, or maintain an animal in such a manner as to constitute a public nuisance or nuisance to neighbors. It is therefore unlawful to have an animal disturbs the rights of, or interferes with the ordinary use and enjoyment of their property. It is unlawful to maintain property that is offensive, annoying or dangerous to public health safety or the welfare of the community. It is unlawful to allow or permit an animal to bark, whine, or howl in an excessive continuous or untimely fashion, so as to interfere with the reasonable use and enjoyment of neighboring premises.

Mr. Wilson said the regulations goes on to talk about the right of the state to bring about enforcement action or for members of the public to bring about an action for a violation of this section if damaged by the violation to be able to institute a civil action to abate the nuisance.

Chairman Smith stated that he also has not made a decision on the case. He think the idea of putting an acceptable façade immediately next to the street and moving the building to the back might sway his thinking. Having said that, he has not seen the site plan, and does not know that anyone has studied it and does not know if it would work. He said without that, he is having some difficulty in knowing if it would work. Chairman Smith said he suggests that the Board ask the applicant to return with a site plan, talk with the neighbors, and the Board could find out whether the previous property would continue to have the exception or if it has expired because of the change that has now occurred. Chairman Smith said he did not know enough and would like to table it.

**Mr. Fralix moved to table Case BZAS-7-17-010: Special Exception request for the placement of a Small Animal Boarding Facility in the Community Commercial (CC) Zoning District and the Folly Road Corridor Overlay (FRC-O) Zoning District on property located at 831 Folly Road; seconded by Mrs. Lyon.**

**VOTE:**

Mr. Fralix	aye
Mr. Gregorie	aye
Mrs. Lyon	aye
Mr. Parrish	nay
Chairman Smith	aye

Motion to table passed 4-1. The Board will discuss this case at its September 19 meeting. Action to follow: The applicant is to present a new site plan showing the play area at the front of the property; communicate and seek input from neighborhood, if the neighbors are amenable and Mr. Wilson will research whether special exception to last year's case would still apply.

BZAV-7-17-009  
TMS# 428-08-00-074

Variance Request for the reduction of the 25' required front setback by 8' to 17' for the encroachment of a building addition in the Low-Density Suburban Residential (RSL) Zoning District at 1129 Sigsbee Road:

Mrs. Crane announced that the applicant was not present. She stated that Mr. Michael Reilly is requesting a variance for the reduction of the 25' required front setback by 8' to 17' for the encroachment of a building addition. Mr. Parrish asked, since the applicant was not present and everyone has reviewed the application and staff recommendation, if the Board could make a decision, as there is no one from the public to speak for or against the request. After consulting with Mr. Wilson, Chairman Smith dispensed the staff's presentation, applicant presentation, and comments from the public.

Questions from the Board

Mr. Fralix recognized that this case listed on the agenda had the same tax map number (TMS) as the previous case. Mrs. Crane apologized for the error. The TMS number on the radius map is correct.

Mr. Smith closed the hearing and asked for a motion and second for discussion. **Mr. Parrish moved to approve Case BZAV-7-17-009; Variance Request for the reduction of the 25' required front setback by 8' to 17' for the encroachment of a building addition in the Low-Density Suburban Residential (RSL) Zoning District at 1129 Sigsbee Road per the application as written and staff recommendation, seconded by Mr. Fralix.** Mrs. Lyon stated after reviewing, the applicant meets the criteria in the findings of fact and she supports the motion.

**VOTE**

Mr. Fralix	aye
Mr. Gregorie	aye
Mrs. Lyon	aye
Mr. Parrish	aye
Chairman Smith	aye

Motion passed unanimously. Chairman Smith announced the legal reasons for the approval of the case is that the applicant has met the criteria as presented in the packet.

Public Comment: None

Election of Officers: Chairman Smith announced that according to the Board of Zoning Appeals Rules of Procedure, Article 1, the officers of the Board shall be a Chair and Vice-Chair elected for one-year terms at the first meeting of the Board in each calendar year. The new term will begin following this meeting.

Chairman Smith asked for nominations for the office of Chairman. **Mr. Parrish** asked for consideration as Chair; Mr. Gregorie nominated Mr. Smith, who declined. **Mrs. Lyon** asked for consideration since she now serves as Vice-Chair.

**VOTE FOR CHAIR**

Mr. Fralix	- a vote for Mr. Parrish
Mr. Gregorie	- a vote for Mrs. Lyon
Mrs. Lyon	- a vote for Mrs. Lyon
Chairman Smith	- a vote for Mrs. Lyon
Mr. Parrish	- a vote for Mrs. Lyon

\*Mrs. Lyon will serve as Chair for a one-year term to September 2018.

Chairman Smith asked for nominations for the office of Vice Chairman. **Mr. Parrish** asked for consideration as Vice-Chair. Mrs. Lyon nominated **Mr. Gregorie**. She stated he has not served in an office and feels there should be a rotation. Mr. Gregorie accepted the nomination.

**VOTE FOR VICE CHAIR**

Mr. Fralix	- a vote for Mr. Gregorie
Mr. Gregorie	- a vote for Mr. Gregorie
Mrs. Lyon	- a vote for Mr. Gregorie
Chairman Smith	- a vote for Mr. Gregorie
Mr. Parrish	- a vote for Mr. Gregorie

\*Mr. Gregorie will serve as Vice-Chair for a one-year term to September 2018.

Next Meeting: The next meeting of the Board of Zoning Appeals will be held on Tuesday, September 19, 2017.

Adjourn: There being no further business to come before the body, the meeting adjourned at 8:10 p.m.

Respectfully Submitted (transcribed by)  
Frances Simmons  
Town Clerk and Secretary to the Board of Zoning Appeals