

TOWN OF JAMES ISLAND
BOARD OF ZONING APPEALS
SUMMARY OF SEPTEMBER 19, 2017

Members present: Mr. Sim Parrish, Mr. Jason Gregorie, Vice Chair, Mr. Roy Smith, and Chairwoman Brook Lyon, absent: Mr. Jim Fralix. Also, Bonum S. Wilson, BZA Attorney, Ashley Kellahan, Town Administrator (for Kristen Crane, Planning Director), Leonard Blank, Town Council, and Frances Simmons, Town Clerk and Secretary to the BZA.

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

Prayer and Pledge: Chairwoman Lyon opened in prayer, afterward followed with the Pledge of Allegiance.

Compliance with FOIA: Chairwoman Lyon announced that this meeting has been noticed in compliance with the South Carolina Freedom of Information Act.

Introductions: Chairwoman Lyon introduced the members of the Board of Zoning Appeals (BZA), BZA Attorney, and staff. Town Councilman Leonard Blank, Planning Commissioner Bill Lyon, and Mayor Bill Woolsey were recognized.

Review Summary and Rulings from August 15, 2017 BZA Meeting: Chairwoman Lyon asked if there were corrections to the minutes. There were no corrections. A motion to approve was made by Mr. Smith, seconded by Mr. Gregorie and passed unanimously.

BZAS-7-17-010
TMS# 425-02-00-171
831 Folly Road

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.

TABLED FOR ADDITIONAL INFORMATION FROM APPLICANT

Brief the public on the procedures of BZA: Chairwoman Lyon explained how the Board of Zoning Appeals hearing would be conducted.

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

Chairwoman Lyon asked for a motion to allow public input since there were many people present to speak regarding this case. Clarification was given by Chairwoman Lyon for a Point of Order raised by Mr. Parrish. **MOTION:** to allow public input was made by Mr. Smith, seconded by Mr. Gregorie and passed unanimously.

Chairwoman Lyon asked for a motion to remove Case BZAS-7-17-010 from the table in order to move forward with discussion. **MOTION:** to remove from the table was made by Mr. Smith, seconded by Mr. Gregorie. **IN FAVOR:** Mr. Smith, Mr. Gregorie and Chairwoman Lyon. **OPPOSED:** Mr. Parrish. Motion Passed 3-1.

Review of the following application: Resumed from August 15, 2017 meeting: 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:

Staff Review: Town Administrator, Ashley Kellahan said she had no new information to present. She stated that she would review the Power Point that Planning Director, Kristen Crane presented at the August 15 meeting if the Board desired. Mr. Gregorie stated that the Board had a new Site Plan in its packet and he asked for it to be reviewed. Chairwoman Lyon said the applicant has the site plan on a large poster and did not bring in time for staff to put it into a Power Point. She said the applicant would review it for the Board as new evidence.

Attorney Wilson followed up on the request made by Mr. Gregorie regarding the special exception for the Wag Factory at a previous location (Stag Erin Bar). Mr. Wilson said he has looked at the application and the applicant was acting as agent for the owner. He received the special exception for that location which maintains or still technically has the special exception for one (1) more year. Mr. Wilson said the special exception runs with the land, and the owner of the location has the special exception as we sit here today. Mr. Wilson said he has been advised that that location is going to undergo renovations for a bar but he is uncertain about the exact status. He noted that the special exception could be revoked by the owner if they choose. He asked the Board to consider each site on its own merits as long as they are not contiguous. As an example, if there were a series of small animal boarding locations, it might create another consideration of the Board. However, this location is fairly distinct. Mr. Wilson recommended that the Board consider the location at 831 Folly Road on its own merits, just as it would consider the Stag Erin location on its own merits and not have one contingent upon the other. He said they are independent places that would not interact with each other, in his opinion, due to their locale.

Applicant Presentation:

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

Mr. Reed resurfaced the question from the last meeting about the special exception; that he is confident that the owner has sold the property. Mr. Wilson responded that the special exception runs with the property. Mr. Reed presented his updated Site Plan. He noted that all of the setbacks and other requirements were kept and the plan aligns better with the Town's Folly Road Overlay-Corridor Plan by placing the building in the front (by the street) and parking at the rear (similar to Sherwin-Williams). He said the entry, lobby, grooming room, office, and the finished areas will be toward the rear of the property. The pet enclosures and the outdoor dog run will be at the front of the property, as far away as possible from the rear property line of residential zoning. The building will have the same façade and a roof will be over the outdoor area. He said this completely changes the play area. When he appeared before the Board in August, the outdoor play area only bordered the building by one wall and the other three would be a 10ft. privacy fence. Now, the building will border the outdoor play area on three sides at a minimum of 16-18 feet high and go up from there. This will be a much higher fence with the 10ft section possibly being only on that one side. The size of the play area was also decreased from almost 1900 square feet to 1500 -1600 square feet. Mr. Reed said this plan was more costly; but he is happy with it and it is a good compromise to the plan that he had. He was able to meet with the resident and property owner that would be closely affected. He met with Glenda Thrasher this morning and showed her the plan. He commented that Mrs. Thrasher said she would email the Town that she is not in objection. However, he is unsure whether she had. He hopes that Mrs. Thrasher, as a close resident, would affect the Board's decision. Mr. Reed summarized by stating that a small animal boarding facility is an acceptable use on the site. The issue at hand is not whether a small

animal boarding facility is allowed there; it is for one greater than 2,000 square feet and that is the reason for this request.

Questions from the Board:

Mr. Parrish referred to some of the emails received. He asked Mr. Reed how many animals he foresees boarding after the normal hours of 7:00 a.m. to 7:00 p.m. on an average. Mr. Reed said during the week at the current location they might have 15-30 dogs and on the weekends, it might be up to 60 dogs boarding overnight. During holidays, it could be 75 dogs. Mr. Parrish asked if the dogs are all out in the exercise area at one time. Mr. Reed replied that the dogs would be in enclosures (shown on Site Plan); but if people are concerned about noise, it is very quiet at night.

Chairwoman Lyon asked the maximum number of dogs that go out during the day. Mr. Reed said the playgroups are rotated in the outdoor areas for a maximum of 25-40 dogs. Chairwoman Lyon asked if the boarding dogs go into those play areas; if so, how are they separated from the other dogs. Mr. Reed said boarding dogs would not participate in daycare and they would have four small areas where they would go.

In-Favor

Samantha MacDougal, 424 Wade Hampton: Kennel Manager at the Wag Factory for over five years. Ms. MacDougal said she works hard with Mr. Reed and the staff to create a wonderful place for the dogs; a quiet, safe and happy environment. To the average person, 20 dogs seems crazy, but it is manageable with the training, techniques and the continued education she and her staff provides. Ms. MacDougal said she is a Certified Animal Behaviorist so the dogs are not running rampant; they are being trained, they are worked with for gate control, sitting, bark control, and dogs that constantly barks are removed. She commented that people are not happy when they call an owner to come get their dog because they are a nuisance; but they offer different kennels where they can board in Hollywood or Ravenel. The staff works very hard on bark control and the dog to staff ratio is amazing. Depending on staff, the ratio is 1-10; she can handle 1-25. Ms. MacDougal said they strive to keep this business on James Island. They care about the community, the neighbors, the Town, and want to stay on James Island.

Rusty Wolfe, 808 Clear View Drive: knew the Wag Factory during its early days next to the Ropes Course. He knows many people that board their dogs there, either for daycare or otherwise, and have heard nothing but wonderful comments about the services they provide. Recently he has gone by the current location and many of the dogs were in the play area. Not a single bark was heard during his time and there were no smells. It looked like a very nice kennel. He has also heard from other people that use the facility that it acts as an ambassadorship for James Island. Clients come from Mount Pleasant, which is amazing to come across the bridge to support a business such as this. He shared a conversation about a woman who boards her dog at the Wag Factory, that it fosters a sense of community. He said the property is commercial and something will be placed there. He feels the Wag Factory would be better than another quick fix oil facility or food establishment with its smells and dumpsters. This business would have the least impact on the neighborhood.

Brooke Olsen, Box 2998-B Johns Island: worked for the Wag Factory for five years. The Wag Factory is completely community based; not one time has the Wag Factory advertised. Hundreds of clients support the business and all advertisements have been by word-of-mouth, by internet, or sharing wag cams at work. It is a wonderful place to be. Ms. Olsen said she first worked with the Wag Factory at its location next to the Ropes Course and she is now at the current location. Each location she said has gotten better by learning from mistakes and fixing them. She is in support of the new building.

In Opposition:

Caitlyn Keefe, 880 W. Madison Avenue: lives down the street from where the new Wag Factory will be. She boarded her dog at the Wag Factory for over two years. She has not boarded there in a while because

she has moved and has a yard. One of the biggest issues she and her fiancé have had since moving where they live is how noisy noise is. They live behind the car wash and the noise happens at 3 a.m. when "X" and "Y" want to wash their cars; this happens all the time. While a neighbor living directly behind the facility might say, "it is no big deal"; noise is not specifically behind one lot. Noise goes over the entire neighborhood. When her two dogs bark, her neighbors can hear it down the street. She knows that is super annoying because she has a terrible puppy. Whether a dog is well trained is found out over the weekend when you have a nuisance dog. If you board 75 dogs and expanding a facility, you are going to find nuisance dogs on the weekend. She is also concerned that property values will fall. As a homeowner, she was excited to live where she is but when she hears things like this; it makes her afraid about her property's value in the future. She does not think the Wag Factory is a good idea and the noise will have an affect over the neighborhood, not just Ms. "X" or "Y " who lives behind the facility.

Jacob Clegg, 876 W. Madison Avenue: lives next door to Ms. Keefe and down the street from where the new Wag Factory will be. He has a dog also. He said there are many problems with dogs that are unforeseen. The training of the staff can be one thing, but if there is a nuisance dog, you will not find out until it barks constantly and annoys neighbors. The woman that does not mind that now could sell her house and the noise could become a nuisance to a new neighbor. Mr. Clegg said his dog eats and uses the restroom, but if you have 75 dogs using the restroom twice a day, going outside to play, and making noise, the smells has to go somewhere. When wastes goes into the dumpster and it rains hard, where is the excrement going ...into his yard eventually. He said a restaurant and bar has noises too but not animal wastes that will build up in the neighborhood, not to mention the smell, extra traffic, and dogs barking while seeing each other in the parking lot. He said it is good that the play area will be in the front and parking in the back; but dogs makes the most noise when they see their owners for the first time, getting out of or going into a place they don't want to be. He said the amount of noise would be more than anyone could ever imagine and noise travels.

Pat Harpell, 863 W. Madison Avenue: talked about the noise ordinance. James Island has a noise ordinance that specifically talks about allowing animals to bark. She cannot imagine allowing 25 to 40 animals to bark concurrently or even sequencing them. She hear the neighbor's dogs (and it is good that she loves her) but it gets annoying in the middle of the night when they wake you up. She hears Hyams guard dogs from across the street barking and the noise carries. She is caddy-cornered from where the Wag Factory property will be built. She is also very interested in property resale value. They purchased their home and improved the neighborhood, now there are noise issues that is definitely going to impair, the stench, runoff and pollution. She cannot even imagine how it will devalue the homes.

Katherine St. Hilaire, 863 W. Madison Avenue: commented about public health codes and the Town's regulations concerning livability. She read a portion of Town Code Section 90.16. She also spoke about the resident that was concerned about runoff going into his yard and asked how the (Wag Factory) is going to deal with that. If the application is approved and there are nuisance complaints from the residents; what is the budget for law enforcement to respond to the complaints. This puts an undue stress on the public code officers.

Jackie Stringer, 840 W. Madison Avenue: is opposed to the special exception. She did some research and found there is a huge difference from sound absorption and sound proofing materials. She said zoning laws were created in a large part to represent the interests of the community and she thinks it is obvious what the interests are today. Sounds escapes, smells escapes and she can vouch for that having dealt with Chic-Fil-A's noise and smells since they were built on Folly Road. She is now being asked to contend with the added noise and smell of a dog kennel. She asked why we could not have a normal business built that will not interfere with the residents use and enjoyment of their homes. A dog kennel should never be built adjacent to a residential community or that near to a residential community. She suggests that the proposed owner

look for property that will not encroach on the rights of the homeowners having a peaceful and quiet community. She asked that the Board vote no on this request.

Mary Ann Henry, 825 W. Madison Avenue: noted that Mr. Wolfe is selling the property and he and others that spoke in favor were given more than 2 minutes. At the last meeting, there were still a lot of unknowns. She said Mr. Reed, a resident of Indiana and owner, said he would use Acoustiboard in the construction. She commented that Acoustical Services, Inc. confirmed that they only muffle sounds to a sound transmission coefficient in the 30s, while the acceptable range is in the 60s with no 100% guarantee that any actual sound is blocked regardless of material used. She asked the Board to investigate this further. She said after the last meeting Mr. Reed told neighbors that an average number of dogs per day would be 125. His staff member confirmed that 125 had been the largest number at the current facility and the new facility will be double the size of the current facility. Will that be double the number of dogs? If not, why are they spending over \$1 million to build? Mr. Reed also told them their dogs do not bark that they have a special way of training, which according to their website consists of staff members spraying the dogs' feet with water from a spray bottle. She asked, with 25-40 or more dogs in the outside area, how many staff with how many spray bottles it would take to spray each dog to keep them from barking. Three weeks ago, she did a site visit and while standing in the parking lot she heard large dogs barking the entire time. She asked the Board to honor the Town's regulations that it is unlawful for a dog to bark or whine in a continuous fashion to interfere with the reasonable use and enjoyment of the neighboring premises. She is a gardener that loves their yard and does not want to hear dogs barking all of the time.

*Chairwoman Lyon commented that we have someone keeping time of the pros and cons so everyone speaking is treated fairly.

Kelsey Harris, 829 W. Madison Avenue: a local veterinarian voiced the concerns many of her neighbors have which is violation of the Town's nuisance code. She said dogs bark for a wide variety of reasons; interaction during play and at some point there may be dogs boarded with anxiety issues; old dogs with cognitive dysfunction could possibly bark and bark excessively. She said you would have to work for months with animal behaviorists to control barking issues and it is unrealistic to think that limited interaction with a staff member will control barking long term.

Steven Hodskins, 822 W. Madison Avenue: his property is caddy-cornered on the other side. He visited the property and his main concern is the size of the lot for the facility being described. He feels there are other properties on James Island that may be more suitable and less controversial to fit the size of the facility. He is concerned about noise. He works for engineers that use similar technologies, and unfortunately, they still deal with many complaints. Sound barriers are put up 20-30 feet sometimes and noise still travels. Luckily, their projects are temporary; but permanently, he cannot support this. He enjoys the neighborhood and wants to be able to use his back yard and this will be a 24/7 facility. He asked would he have to deal with dogs outside every weekend. Lastly, it comes down to the hours the facility operates. His wife works at MUSC at night, so he can see her getting home at 8 a.m. and not be able to sleep because of dogs barking. This will not be an ideal situation for him.

Chairwoman Lyon stated for the record that the Board received emails in opposition to the application. Some were from persons that spoke tonight: Valerie Beacham, Patricia Harpell and Jackie Stringer. She thanked everyone that came out in support and in opposition. She also thanked the Board for allowing the people who came out to speak.

Rebuttal:

Mr. Reed responded to the comments made. Noise: he plans to have a quiet room for the boarders that will be a heavily insulated soundproof room with three kennels so if there are excessive barkers they will make sure to have them in the quiet room. Smells: he said if anyone has ever been to the facility, they could walk-around or go wherever, and the facility does not smell. Waste: DHEC has approved his waste management

procedures and the current location is next to the Intercostal Waterway so if there was any chance of runoff the Charleston Water keeper levels would go higher in that area. That has not happened during the time they have been there. Soundproofing: he has no idea what the acoustiblok is that was mentioned. He mentioned a product called Acoustiblok with high coefficients. Doubling size of facility: he said the facility is less than 1/3 larger. The current facility is 2700 square feet and the proposed is 3500 square feet. He said there are a lot of assumptions and opinions to the facts he is stating. Again, he said a small animal boarding facility is allowed and he is asking for one that is larger than 2,000 square feet.

Chairwoman Lyon closed the hearing to the public at 7:52 p.m. and asked for a motion and second from the Board in order to have discussion. She said when the Board tabled the case there was a motion and a second on the table to approve the special exception request with eight (8) conditions presented by staff last month.

A motion for discussion was made by Mr. Parrish and seconded by Mr. Smith and all voted in favor. Chairwoman Lyon stated that the Board is discussing the current motion and they could vote on it after discussion or amend the original motion.

Mr. Gregorie stated, should the motion prevail, that he would like to see a 9th condition added, that the Wag Factory be developed using the schematic design dated September 14, 2017 that shows the play area near Folly Road and the parking lot at the rear. He said as he sits here now, the same as last month, he does not know how he will vote.

Mr. Parrish said he thought that was taken care of in condition #1 and the applicant is just amending his site plan from what he had in August to meet the requirements we asked him to do - the site plan he had was replaced with a new site plan. Mr. Gregorie said condition #1 does not commemorate the site plan; it states that it shall be in accordance with our ordinance. Mr. Gregorie said another condition would be to commemorate a specific site plan. Mr. Parrish said he agrees with Mr. Gregorie's recommendation for a condition #9.

Mr. Gregorie moved to **AMEND THE MOTION on the table to include a ninth condition, which is the site plan that was provided with tonight's application, seconded by Mr. Smith and Mr. Parrish**. Chairwoman Lyon stated that motion is to amend for approval the eight conditions, and add a 9th condition, which is the new site plan. **MOTION: Passed unanimously.**

Chairwoman Lyon called for the vote to approve the special exception request with the eight conditions presented by staff and add a 9th condition, which is the site plan. Mr. Parrish asked that the conditions be read, as members of the public were not present at last month's meeting. Chairwoman Lyon read 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.
9. Condition #9 stated below

Mrs. Kellahan expressed a concern that the 9th condition to approve the site plan as presented has not been reviewed by the Town's Planning Director and it may change once it is reviewed for buffers, landscaping, etc. also when it is reviewed by DOT permitting it may not be the final site plan. She said a better wording for the condition would be that the site plan depict the parking in the rear and play area in the front.

Mr. Gregorie stated that was his recommendation. **Condition #9: Applicant Site Plan will have the play area towards front of building and parking in rear.**

Chairwoman Lyon asked for a roll call. The roll was called and votes were recorded as follows:

Mr. Parrish	Yes
Mr. Gregorie	No
Chairwoman Lyon	Yes
Mr. Smith	Yes

Motion carried. Chairwoman Lyon announced that the special exception is approved with the nine conditions and stated the reasons for the approval is the applicant met the legal requirements as set forth in the Findings of Facts.

Chairwoman Lyon spoke stating that the BZA is a quasi-judicial body and must follow the law. She commented that she and some of the board members did a lot of investigating last year when the facility was going to go behind another residential neighborhood. She knows many people were not at that meeting last year or last month. She said we care about our citizens, but if the applicant has met the legal requirements, we are bound to approve it; and the conditions are set forth to protect the public.

Chairwoman Lyon informed the applicant that the final decision of the Board would be mailed within 10 days.

There being no further business to come before the body, the meeting adjourned at 8:06 p.m. on motion by Mr. Parrish and Mr. Smith.

Respectfully submitted:


 Frances Simmons
 Town Clerk and Secretary to the BZA